

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 30th May, 2017

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Speaker: Ring the Quorum Bell.

(The Quorum Bell was rung)

We can commence business.

MESSAGE

SENATE'S APPROVAL OF REPORT ON ELECTION OF MEMBERS TO EALA

Hon. Speaker: Hon. Members, Standing Order No.41 relating to Messages requires the Speaker to expeditiously report to the House any message received from the Senate. In this regard, I wish to convey that today, Tuesday, 30th May 2017; I received a Message from the Senate regarding the Senate's approval of the Report of the Joint Select Parliamentary Committee on Election of Members of the East African Legislative Assembly (EALA). The Message states as follows:

“The Senate, on Thursday, 25th May 2017, debated and adopted the Report of the Joint Select Parliamentary Committee on the election of Members to EALA without amendments.”

(Applause)

Hon. Members, as you may recall, the end of the term of the current EALA is 4th June 2017. Therefore, considering the limited time left within which the election process ought to be concluded, I implore upon the House to also expeditiously consider the said report for possible adoption, so as to pave the way for the other processes relating to the election of members to the EALA in the shortest time possible, as per the recommendations of the Report.

I thank you.

Hon. Speaker: Leader of the Majority Party.

Hon. A.B. Duale: Thank you, Hon. Speaker, for the Message that you have delivered from the Senate. The Senate has passed the Report of the Joint Select Parliamentary Committee

on the Election of Members to EALA without amendments. In today's Order Paper, the Coalition for Reforms and Democracy (CORD) has proposed amendments to the said Report.

Therefore, we are seeking your guidance as to what the implications of the proposed amendments would be, should they be carried. Will it result in further mediation or collapse of the Report?

Secondly, should we pass the Report with any amendment, as the National Assembly, will the Senate be required to reconsider those amendments? Thirdly, what does this mean for the timelines that have been gazetted by the two presiding officers? Those are the areas I need guidance on.

Hon. Speaker: With regard to the latter question, that Report proposes that if the Speakers of the two Houses were to extend the election date, the Speakers would have to agree on the next election date. The second issue is on what would happen if this House was to pass this Report with some amendments. The natural order of things would be that the resolution of this House on that Report with those amendments would have to be taken to the Senate for them to consider the amendments. If the Senate does not agree with the Report with amendments, then the whole process would collapse. Currently, the EALA sittings will start on 2nd to 7th June. There is only one thing that can be done; swear-in those members, so that they get into the payroll of EALA.

It is also important to observe that currently, the information that I have is that, it is only Kenya and Rwanda who have fully paid up. Therefore, it means the rest of the East African Community will be earning salaries coming from the member State that is in default of sending membership. Kenyans will be paying, but will not be represented. The EALA can only transact business when there are, at least, not less than three members from each of the partner states. So, if you desire, you can also do something that enables three Members to sit in EALA, and then it will proceed to transact business. This is a matter you will consider very soon. The best thing would be to see what becomes of the proposed amendments.

Member for Gem.

(Technical hitch)

An hon. Member: Come to Jubilee!

Hon. Midiwo: No, I will not come to Jubilee. I am still welcome this side.

(Laughter)

Hon. Speaker: As we near the end of the term, it looks like the machines are also getting tired.

(Laughter)

Hon. Midiwo: There is no quorum for the machines.

Hon. Speaker, there are only two things and I do not need to take you back regarding this matter. I had earlier asked you to pronounce yourself to what is widely being misread on Rule No.6 of the nominations, which I think is the rule that is bringing all this contention. I had requested that you pronounce yourself on this issue of "not more than three" and the word "election" so that we get a resolution. That is because what I seem to be getting from my side is a

“do not care attitude” and I think this is a House of rules. I was there when the rules were established and an election just means an election. You said that once the Report of the Committee is brought, you would pronounce yourself. The Report seems to agree with your pronouncement that day that there has to be an election. There is an attempt to amend the Report; an amendment whose meaning or import would be that even if you present one name, it is an election. That is the import of those amendments. On the amendments which are on the Order Paper, I would think they should not reach discussion before you pronounce yourself on the meaning of Rule No.6. After what you said, I do not think I could be wrong. I think it would be interpreted one way but, all I read is impunity because we keep saying: “Let us get this thing over with so that the matter can be settled once and for all.”

Hon. Speaker, lastly, as to the Report from the Senate, you seem to have said that if we were to pass these amendments, then our whole Report would be referred to the Senate for a consideration. I am not sure if there should not just be a Mediation Committee before we send them to clean our mess which, I think the answer lies with your good brains.

I thank you.

Hon. Speaker: Hon. Members, you know we are not yet at that business. I just read out the Message from the Senate. So, I think that business is listed on the Order Paper as No.11 actually. We will be able to canvass the various points when we get there. You know we are not discussing it. It is a Message at this point. It is not good to discuss a Message. Let us just proceed. When we get there, I am sure we will be able to hear.

You have already moved the Report. You are the one who moved the Report. You see, if I allow you to speak, it is like you are replying to something. There is really nothing. Let us deal with this matter when we get there so that we can transact the rest of the business.

Next Order!

PAPERS LAID

Hon. Speaker: Leader of the Majority Party?

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Tuesday 30th May 2017:

The Annual Report on Devolving Land Governance from the National Land Commission;

The Report and Financial Statements of the Agricultural Finance Corporation for the Financial Year ended 30th June, 2014;

The Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June 2016, and the certificates therein:

The Judiciary;

The National Council for Law Reporting;

The Garissa University College;

The State Department for Water and Irrigation;

The National Crime Research Centre;

Jomo Kenyatta Foundation;

The Kenya Maritime Authority; and,

The National Government Constituencies Development Fund (NG-CDF) – Msambweni Constituency.

Hon. Speaker: Hon. Members, before we move to the next Order, allow me to recognise the presence of students from the following institutions seated in the Speaker's Gallery:

Githunguri Girls High School, Kandara Constituency of Murang'a County, Wahundura High School, Mathioya Constituency of Murang'a County and Kisumu County Assembly staff on attachment.

In the Public Gallery, we have:

William Ngiro Gitau High School, Githunguri Constituency of Kiambu County; Gramo Joy Primary School, Embakasi South Constituency of Nairobi County; Misyani Girls High School, Kangundo Constituency of Machakos County; Our Lady of Peace Academy, Nandi Hills Constituency of Nandi County; Muheri Girls High School, Kiharu Constituency of Murang'a County and Kathyaka High School, Kibwezi West Constituency of Makueni County.

They are all welcome to observe proceeding in the National Assembly.

Chairperson of the Departmental Committee on Environment and Natural Resources, Hon. Amina Abdalla.

Hon. (Ms.) Abdalla: Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House today Tuesday, 30th May 2017:

Report of the Departmental Committee on Environment and Natural Resources on the Petition by the Kenya Association of Manufacturers on the Ban on the Use and Manufacture of Plastic Bags.

Hon. Speaker: Next Oder!

BILLS

REPORT AND THIRD READING

THE INSURANCE (AMENDMENT) BILL

Hon. Cheboi: Hon. Speaker, I beg to report that a Committee of the whole House has considered the Insurance (Amendment) Bill (National Assembly Bill No. 17 of 2017) and approved the same with amendments.

Hon. A.B. Duale: Hon. Speaker, I beg to move that the House doth agree with the Committee in the said Report.

Hon. Abdi: I second.

(Question proposed)

Hon. Speaker: Member for Kamukunji, do you want to participate in the proceedings? Yes, please. I can see you desired to express yourself one way or other.

Hon. Members, debate on this Motion was concluded. What remained is the Question to be put which, I hereby do.

(Question put and agreed to)

Hon. Speaker: Mover?

Hon. A.B. Duale: Hon. Speaker, you know Njoroge is very thorough on procedure, but today---

Hon. Speaker, I beg to move that the Insurance (Amendment) Bill (National Assembly Bill No. 17 of 2017) be now read a Third Time. I also ask Hon. Washiali, Member for Mumias East to second.

Hon. Speaker: Hon. Washiali?

Hon. Washiali: Thank you, Hon. Speaker. I second.

(Several hon. Members stood up in their places)

Hon. Speaker: Take your seats please. Hon. Members, it is not that I am chasing you away from consultations. Let us just clear this business.

(Question proposed)

Having confirmed that there is quorum, I put the Question.

(Question put and agreed to)

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

Hon. Speaker: Next Order!

REPORT

THE FINANCE BILL

(Recommittal of Clauses 9, 10, 16, 24 20, 26, 27, 28 and 29)

THAT, this House doth agree with the Report of the Committee of the whole House on its consideration of the Finance Bill (National Assembly Bill No. 16 of 2017) , subject to re-committal of Clauses 20, 26, 27, 28 and 29.

Hon. Speaker: Order Members! It looks like most Members are still in the constituencies revisiting their employers. Hon. Members, before we begin commencement on this Order, I wish to give guidance.

This Bill was considered by the Committee of the whole House on Thursday last week. I wish to remind the House that they had gone up to conclusion and that the Leader of the Majority Party sought to recommit Clause 20, Clause 26, Clause 27, Clause 28 and Clause 29.

However, there was no quorum to put the Question on agreement with the proposed re-committal. At that point, some of the Committee's proposals had been rejected and the status quo as in the published Finance Bill maintained. Today, therefore, we are seeking the approval of this House to consider those clauses afresh. I have since received word from the Leader of the Majority Party and the Chairperson of the Departmental Committee on Finance, Planning and Trade that they wish that this House also recommits Clause 9, Clause 10, Clause 16 and Clause 24.

I have reviewed the proposed amendments and approved them for circulation. Just for your information, should the House reject the Question on re-committal, the clauses as shown in the Bill will remain as amended by the House in the Committee of the whole House last Thursday.

If the House agrees to the re-committal, we shall immediately proceed to Committee of the Whole House on the Finance Bill as shown on the Order Paper.

Hon. Members, I wish to put the Question; I hope what I have said is clear and I confirm that there is quorum.

Chairman of the Budget and Appropriations Committee or the Vice-Chairman, in terms of the Communication, could you place on record your additional proposed clauses for re-committal?

Hon. Gaichuhie: Hon. Speaker, I beg to move:

THAT, the Motion for re-committal of Clauses 20, 26, 27, 28 and 29 be further amended by inserting additional Clauses 9, 10, 16 and 24, accordingly.

This is after further consultation with the stakeholders and also the National Treasury.

Hon. Speaker: Do you have a seconder?

Hon. Gaichuhie: Yes, Hon. Speaker. I will ask Hon. Theuri, Member for Embakasi West, to second.

Hon. Theuri: I second.

(Hon. Kipyegon laughed)

Hon. Speaker: Order, hon. Members! Member for Emurua Dikirr, you cannot laugh like that. That is too loud. Hon. Members, it is important that we all follow this.

(Question proposed)

Hon. Members: Put the Question!

(Question put and agreed to)

Hon. Speaker: Next Order!

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

Hon. Speaker: Hon. Limo, what is out of order?

Hon. Limo: Hon. Speaker, I am rising on a point of order because there is a very important issue before this House. I want to ask you to guide the House on what is on the Order Paper. Without anticipating debate, I have seen some amendments which might contravene the Constitution. This is the Finance Bill. In my understanding, the Finance Bill is a Money Bill. The prosecution of Money Bills is guided by Article 114 of the Constitution. If, indeed, the Finance Bill is a Money Bill, then it will only be dealt with by the relevant Committee of the House in consultation with the Cabinet Secretary (CS) in charge of finance.

I want to ask you to guide this House on the amendments which will be brought in the Committee of the Whole House. Without anticipating debate, if the amendments which have been proposed do not pass the test of our Constitution, then I seek your guidance on how we will proceed with this matter. I stand to be guided.

Hon. Speaker: Which particular amendment?

Hon. Limo: According to the Order Paper, the amendments which are supposed to be considered by the Committee of the Whole House actually touch on Clauses 20, 26, 27, 28 and 29, which are proposing a very different thing from what the Committee had discussed. I feel that if we go by the amendments which have been proposed by the Leader of the Majority Party, then it will be a complete diversion from what the Committee and the CS discussed. Therefore, I ask for your guidance on this one.

Hon. Speaker: These amendments are proposed by the Leader of the Majority Party. Are you saying that as members of the Departmental Committee on Finance, Planning and Trade, you have not looked at them? Has the Committee had no interaction with the CS for National Treasury?

Hon. Limo: If you look at the details, in the discussion between the Committee and the CS, it was proposed that taxation should stand at 50 per cent. The Committee discussed issues with various stakeholders, including the Betting, Licensing and Control Board (BLCB), the Principal Secretary (PS) in charge of sports, culture and arts; and the one for Interior and Co-ordination of National Government. All of them, except the National Treasury, were in agreement that the proposed amendments were not proper for the industry. Therefore, what the Leader of the Majority Party is proposing is to reduce taxation from 50 per cent to 35 per cent without consulting neither the Committee nor the CS. As a Committee, we are not aware of his proposals. We have not sat down with the Leader of the Majority Party. He has not appeared before the Committee and yet, he is pushing the amendment. According to me, he is setting a bad precedent. If the Constitution has to be respected, the Leader of the Majority Party himself has to respect the Constitution. Therefore, I am proposing that you make a ruling that the amendments which are being proposed by the Leader of the Majority are null and void, and unconstitutional.

Hon. Speaker: Let us hear the Leader of the Majority Party; the man who is proposing the amendments.

Hon. A.B. Duale: I do not know whether Hon. Limo was in the House on Thursday last week when the Finance Bill was discussed at the Committee of the whole House. If he was here, and the HANSARD will bear me right, he would know that the Committee proposed a deletion of these clauses and the House rejected it. So, after that rejection, what remained was the proposed 50 per cent by the CS which is found in the Bill.

That day, there was a lot of discussion. Now that the Committee's proposal to delete the tax proposal of the Cabinet Secretary (CS) was rejected by the House, which has the powers, let us agree on a more middle ground level of taxation. The CS for the National Treasury agreed with that level and as the custodian, he said he is comfortable with 35 per cent. That is why we asked for a re-committal. Once we go to the Committee of the whole House, the House can disagree with the 35 per cent of the CS. It can agree with the Committee and agree on deletion. It can agree on 10 or 15 per cent. There was nothing wrong. I think Hon. Limo was not in the House. We better go to the Committee of the whole House and revisit the clauses afresh as per the re-committal and the House will decide. So, there is no law that the CS has broken. There is no law that I have broken. If there is somebody who reads before he comes to this House, Hon. Limo, I am sure you will agree with me that it is me who reads. Therefore, the 35 per cent is a proposal. The House can go to 5 per cent, it can go to 5 per cent or retain 7 per cent or it can agree with the Committee on deletion.

Hon. Speaker: I can see the Vice-Chair of the Departmental Committee on Finance, Planning and Trade.

Hon. Gaichuhie: Thank you, Hon. Speaker. I agree with the Leader of the Majority Party that were it not for his re-committal, maybe, we would not be in this stage. I also confirm that we have not had any discussions with him, even after the re-committal. That is why we are here.

Hon. Speaker: Sorry!

Hon. Gaichuhie: I can confirm that, were it not for him, we would not be in this stage. I thank him for that. I also confirm that he has not been able to come to our Committee on the 35 per cent that he is proposing. I thank him for the re-committal because we would not be in this stage.

Hon. Speaker: He has not come to the Committee? What is the position? What we know as the position is the one that was proposed in the Bill, is it not? Yes, Hon. Gaichuhie!

Hon. Gaichuhie: Thank you. That is the stand that we have. We have not had any time to discuss about the 35 per cent. Maybe, he was not able to come to the Committee to discuss with us as a Committee because he is on Ramadhan. Therefore, we still have those two scenarios; the 50 per cent and the deletion as per the Committee.

Hon. Speaker: Hon. Mulu Makali.

Hon. Mulu: Thank you, Hon. Speaker. I just want to pick up the matter from where Hon. Limo has left. I think we need to understand some of these things we discuss here. I did say last week that the reason why Article 114 of the Constitution is very important is because in the budget-making, there is the side of the revenue generation and the side of expenditure and there are a number of micro-economic factors which inform both sides. So, any time you propose an amendment like from 50 percent to 35 or 5 per cent, it means in terms of revenue collection, you are actually reducing the revenue to be collected by the Government. Therefore, what are the options? The option is either the Government will borrow to meet that gap or it has to tax Kenyans more in another area. The challenge we have is when you propose such amendments and you do not say where the money will come from. That is why the National Treasury becomes important.

I think it is important that the Departmental Committee on Finance, Planning and Trade looks at all these amendments in totality and tells us how you balance the budget. Otherwise, at the end of the day, we will increase the deficit and we are not going to help this country by doing partial amendments. I will go by what Hon. Limo has said. The Leader of the Majority Party, you can allow us to have proper discussion on this matter so that we balance the budget again. Otherwise, we are going to have an imbalanced budget. We will borrow more. We are all saying that the public debt is becoming an issue in this country. Let us not take these matters lightly. That is why we are leaders in this House.

I beg to stop there.

Hon. Speaker: Hon. Moses Kuria.

Hon. Kuria: Hon. Speaker, I am of the opinion that it is not an issue between 50 and 35 per cent. This is an issue of, one, equitability and, two, constitutionalism. On equitability, last week, you threw away many of our amendments on the basis that they had not gone through the Committee. We were obliged. That has to apply to everyone, including the Leader of the Majority Party.

It is also an issue of constitutionalism on the basis of Article 114 of the Constitution that money Bills are not to be taken for granted. You are going to throw away our public finance management into disarray, if we allow amendments to be brought to this House in jest. On this basis, I think the Leader of the Majority Party is totally out of order. He needs to take his amendments to the Committee for deliberations.

Thank you, Hon. Speaker.

Hon. Speaker: Let us have the Chair of Departmental Committee on Finance, Planning and Trade, Hon. Benjamin Langat.

Hon. Langat: Hon. Speaker, thank you very much. When you look at the way the Finance Bill was transacted this time, since the time it was moved by my friend, the Leader of the Majority Party while we were deep in consultations in Mombasa with the National Treasury and the stakeholders--- Although I am not refusing to support it, I think the Leader of the Majority Party should have had the courtesy to inform me and, at least, my Committee, that he was moving the Bill while we were away. He never had that courtesy. However, I allowed him. I think we need to amend the Standing Orders so that anybody trying to move another person's Bill or Motion should actually do it with a written authority from the owner of the Bill. I did not know what the hurry was for.

However, we are where we are.

If you look at Article 114 of the Constitution, the others are the CS for the National Treasury, the Speaker and the relevant Committee of the House. Therefore, I do not know how the Leader of the Majority Party came in and put this amendment to the Finance Bill without any of those actors. I think it is good to clarify that if it is a money Bill, Article 114 of the Constitution takes precedence.

Thank you.

Hon. Speaker: Member for Wundanyi.

Hon. Mwadeghu: Mhe. Spika, nashukuru wenzangu leo wamemuweka sahihi huyu ndugu na rafiki yangu mkubwa wa upande wa walio wengi. Lakini huenda ikawa alikuwa amefikiria Mhe. Benjamin amehama chama chao. Kwa hivyo, anaweza kuchukua mamlaka yake.

(Laughter)

Kwa hivyo, nashukuru Mhe. Benjamin Langat amekuja akasema wazi kuwa bado yuko na anaendelea. Wakati umefika wa kuambiana ukweli na ukweli ujitoe wazi. Tukiwa tunaleta mabadiliko katika Hoja yoyote Bungeni, hasa ambayo inahusu fedha, ni lazima na ni muhimu vipengele vyote vya sheria vifuatwe. Kama tutakaa hapa na watu watumie mamlaka ambayo hawana na yakubalike kuwa sheria ipitishwe kiholela, tutakuwa tumehujumu nchi yetu na tutaepuka mamlaka tuliyopewa na wananchi.

Nikimalizia, nasema hivi: Wakati huu tufuate sheria vile ilivyo. Kama Waziri ambaye anahusika na mambo na fedha hakuhusishwa kulingana na sheria, tunaomba ahushiswe kikamilifu na iletwe tena na ijadiliwe vile inavyotakikana. Wale ambao wamejitwika mzigo wa kubeba mamlaka ambayo si yao wakome. Tuelezane wazi wazi.

Kwa haya machache, kama ujuavyo, hivi nakunja jamvi langu. Labda haya yatakuwa mazungumzo yangu ya mwisho mbele ya Wabunge wenzangu. Naomba Bunge liendelee kuheshimu Katiba na sheria zake.

Ahsante.

Hon. Speaker: Member for Kikuyu.

Hon. Ichung'wah: Thank you, Hon. Speaker. I want to be very brief and speak on just two principles that my colleague, Hon. Moses Kuria, has spoken about - the principles of equity and constitutionality. The point of order that Hon. Limo has raised is on the question of Article 114 of the Constitution which is very clear. I want to join my colleagues because I am one of those Members--- I have seen that we have gone to the substance on the debate on the

amendments. I am one of those Members who on Wednesday last week proposed particular amendments to this Bill on an issue that I am very sensitive about - the question of betting on withholding tax. My amendments were rejected on the principle that they will negate the provisions of Article 114 on the Money Bill effect.

On the question of equity, if my amendments on this Bill were refused on the basis of Article 114, the same with amendments from Hon. Moses Kuria on other issues, then there will be no equity in this House if we allow the Leader of the Majority Party to bring amendments without passing through the Committee. I have absolutely no problem with the amendments proposed by the Leader of the Majority Party but, it is on the question of rules and procedure on equity and on you as a Speaker upholding equity amongst all Members of this House. When we walk through that door, I come to this House to represent the people of Kikuyu the same way the Leader of the Majority Party comes to represent the people of Garissa Township. I would want us to just dwell on the issue of constitutionality and equity that we have left to you as the Chair and as the Speaker - to uphold equity amongst all Members. There should be no reason why my amendment and those of Moses Kuria should be refused and allow others behind the door.

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

Hon. Speaker: Member for South Mugirango, do not claim to be rising on a point of order. Just say your bit. Hon. Nyamweya.

Hon. Nyamweya: Hon. Speaker we need your guidance. The Chair has clearly stated that he was not aware of what was brought by the Leader of the Majority Party. By extension, he is telling us that the Cabinet Secretary of Treasury is not aware. He has also said that the Committee was discussing that Report. This issue has been brought here and discussed under the pretext that the Leader of the Majority Party has brought this on behalf of the Government. Can we get clarifications whether he brought it as Member of Parliament or he brought it as the Leader of Majority? This is a serious issue. We are talking about a Money Bill and the Finance Bill. The message which is coming from the Chair - if you listen carefully - is that the Cabinet Secretary for Treasury does not know what Hon. Duale has brought before this House. That is what the Chair is saying. The Chair has said he was not informed and he is not aware. We need directions Hon. Speaker, from you as the Chair.

Thank you, Hon. Speaker.

Hon. Speaker: When the Leader of the Majority Party moved this Bill, he said that he was moving it on behalf of the Chair of the Departmental Committee on Finance, Planning and Trade. The HANSARD will show that. I, therefore, allowed him to do so. I am surprised that Hon. Benjamin Langat now says courtesies were not extended to him. Leader of the Majority Party, can you address the issue of the Cabinet Secretary, National Treasury discussing with the Committee this proposed amendment?

Hon. A.B. Duale: Thank you, Hon. Speaker. The Finance Bill was brought to this House when the Cabinet Secretary read the Budget. The Chair was hip-hopping in Jubilee from a governor back to his constituency seat. One time, he was vying on our party's ticket as a governor and when he miserably lost, he went back to---

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

Hon. A.B. Duale: I listened to you and so, listen to me. When he miserably lost, he went back to his former seat in Ainamoi on an independent ticket because, already, somebody else was there. The point we are discussing---

Hon. Speaker: Let us hear the point of order from Hon. Benjamin Langat. What is your point of order?

Hon. Langat: Hon. Speaker, is it in order for the Leader of the Majority Party to engage in irrelevancies outside the issues we are discussing? I want him to concentrate on relevant questions on the table. It is not the question of whether I was seeking governorship or whether I lost it or not. We are going for elections on 8th August and although I am not praying for him to lose, he might lose.

(Laughter)

Hon. Speaker: Hon. Members, there was a point raised by Hon. Nyamweya. That is what you should deal with.

Hon. A.B. Duale: Hon. Speaker, you know the truth hurts. He lost miserably in the governorship and now he is an independent candidate. The point is that you need to come back to the House. Those of us who were here on Thursday, I have a letter written that once the 50 per cent taxation on betting--- The problem is that every time this House is discussing Betting and Lottery, there are too many things that happen. Since I am a Muslim and I am fasting and I do not do gambling, there are too many issues that come in. The issue was that we re-commit that clause. The Committee wanted to delete Clauses 25, 26, 27, 28 and 29 on betting. The House led by Hon. Ichung'wah - and I do not know why today he is not very vocal - told the House that we must protect our children. He convinced the House. Hon. Fatuma was here. We rejected those clauses in a bi-partisan manner. Hon. Jakoyo was here. We agreed that let us protect the investor and the tax collector. We agreed to come to a proposal in which we can harmonise the taxation level. The Cabinet Secretary for National Treasury, through the Leader of Government Business, made his proposal which is 35 per cent and people can still reject. These are things we should debate when we come to the Committee of the whole House. The House can come back to the old issue, but the issue is that the Committee rejected the 50 per cent which was in the Bill. But when it came to the House last Thursday, the House disagreed with the deletion by the Committee. That is why, in a fair way, we did a re-committal.

(Hon. Nyamweya interjected)

You know I am not at the Kisii Stadium. There is something that people who go to Kisii Stadium take. Maybe, you have taken it.

(Laughter)

I am not at the Kisii Stadium, I am in the Chamber. We re-committed and in the re-committal, there is a proposal of the Minister through the Leader of the Majority Party. There is a proposal of the Committee which they might tell. The House can still go back to deletion or it can agree on another figure. There are only two people who can bring amendments under your guidance at this stage; the Leader of Government business and the Committee Chair.

Hon. Speaker: Let us be clearer. Hon. Midiwo, I want us to address the issue of constitutionality.

(Hon. Korir raised his hand)

Hon. Korir, I can see you. You do not have to raise your hand. I can see you because you are directly facing me. Let us address the issue raised by Hon. Limo about constitutionality. If the Cabinet Secretary desires to bring a proposal, where should he take it if it is a money Bill proposal? Hon. Midiwo.

Hon. Midiwo: Thank you, Hon. Speaker. I think we are going off track, away from the issue raised by Hon. Limo. I have said before during the term of this Parliament that I do not agree with the application of Article 114 of the Constitution because it contravenes the power of this law to make law.

Hon. Speaker: It is the Constitution. The Constitution is superior to the House.

Hon. Midiwo: However, two wrongs do not make a right. I believe Hon. Limo is raising a very pertinent point. There is no scenario, given all the rulings you have given in the last four years. In fact, I have heard Hon. Duale call himself Leader of Government Business. How wrong could it be? Which government? This House does not have a leader of government business. That must be expunged from our records because he is not saying the right thing. He is giving himself powers that can only belong to the Committee of Hon. Mutava Musyimi or that of Hon. Benjamin Langat. Those powers do not belong to any of the rest of us.

The Leader of Majority Party has said exactly what happened. But what he has brought, purporting to have been recommitted, is not what we recommitted. What we recommitted is the Committee proposal. That is the rightful position in law. Instead of wasting so much time, the only thing you can find is that, that proposal by Hon. Duale is misplaced. Those proposals ought to have come from the Committee after a discussion with the CS for the National Treasury. If they did not, it would be wrong for the Chair to allow that precedent. Going into the future, we will have gone back to the position where we were before this Constitution. So I beg you to make the right ruling because it is a matter of law. I like his proposals, but liking them and being lawful are two different things.

I thank you, Hon. Speaker.

Hon. Speaker: The Member for Cherangany.

Hon. Korir: Thank you, Hon. Speaker. I would like to thank Hon. Limo for raising a very pertinent issue. I want to read Article 114(2) of the Constitution, especially on how we can proceed with this. It says:

“If, in the opinion of the Speaker of the National Assembly, a motion makes provision for a matter listed in the definition of “a money Bill”, the Assembly may proceed only in accordance with the recommendation of the relevant Committee of the Assembly after taking into account the views of the Cabinet Secretary responsible for finance.”

Hon. Speaker, you had better find ways of making a ruling on this matter. It does not in any way say how the Leader of the Majority Party comes in. According to Article 114 of the Constitution, that has to come from the Committee, after they have discussed with the relevant ministry. What we are dealing with here is a very important issue that affects us as Kenyans, our children and this nation in tax collection. It also affects very important businesses and people who have invested too much money in this business of betting. You should rule the Leader of the Majority Party out of order for bringing this recommittal. If he says he is representing the Government and the CS then he needs to sit with the Committee and let it bring the amendment and not the Leader of the Majority Party.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Wamalwa, maybe I will hear you last.

Hon. Wakhungu: Hon. Speaker, I am sorry to say that we are wasting a lot of time on this matter. Last time you gave a ruling which affected all the new amendments, and you based it on Article 114 of the Constitution. Therefore, what the Leader of the Majority Party is trying to bring is no exception. At that particular time, there was no proposed amendment to the percentage. The ruling you gave outlaws what the Leader of the Majority Party is trying to do. Therefore, we do not have to waste time on this. You made a ruling. Let us move on. He has to withdraw his amendment.

Thank you.

Hon. Speaker: Hon. Members, we cannot debate this for ever. Many of you are quite alive to what is defined in the Constitution as constituting a money Bill. Any proposal to raise taxes falls in the category of money Bills. Of course the proposals contained in the Order Paper from the Leader of the Majority Party fall in that category.

Like the Member for Cherangany has correctly read out the provisions of the Constitution, any money Bill proposals may proceed in the Assembly only after the relevant Committee of the House has had discussions or consultations with the CS for the National Treasury. Thereafter, that relevant committee presents to the House its recommendations. The House is at that time in a position to deal with whatever recommendations of the Committee.

The Chair and Vice-Chair of the Committee and Hon. Limo who claim to raise the issue of constitutionality have indicated that the proposal has not been subjected to that Committee. Several of you have confirmed that: Hon. Makali Mulu, Hon. Manson Nyamweya, Hon. Midiwo and Hon. Wamalwa, as well as the Member for Cherangany. It, therefore, means that these proposed amendments by the Leader of the Majority Party offend the provisions of Article 114 of the Constitution and are accordingly ordered to be expunged from the Order Paper.

(Proposed amendments by Hon. A.B. Duale dropped)

(Applause)

This, therefore, means that since you as a House have moved for recommitment you proceed and deal with those clauses in the manner you find appropriate. It is, indeed, up to the House in Committee to deal with the clauses. They have not been taken away. The clauses are still there. You move the recommitment. Therefore, the House goes into Committee without the proposed amendments from the Leader of the Majority Party.

COMMITTEE OF THE WHOLE HOUSE

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

IN THE COMMITTEE

[The Chairlady (Hon. (Dr.) Laboso took the Chair]

THE FINANCE BILL

(Recommittal of Clauses 9, 10, 16, 24, 20, 26, 27, 28 and 29)

Hon. Chairlady: Order Members! I have already indicated that you may settle down. Get seated so that we can proceed with the Committee of the whole House. Can we settle down?

We have two Bills to consider. First is the Finance Bill, then the Division of Revenue Bill. Order Members! Can we have some order? We want to begin. Those who are exiting to other businesses, please do so quietly.

Hon. Chairlady: Hon. Gaichuhie, the Floor is yours.

Hon. Gaichuhie: Thank you, Deputy Chairlady---

Hon. Chairlady: Just a minute, Hon. Gaichuhie. The Leader of the Majority Party, what is your point of order?

Hon. A.B. Duale: Hon. Deputy Chairlady, where is the amendment? It is not in the Order Paper. We also do not have it. How does he move an amendment without us seeing it?

Hon. Chairlady: I am told it is being circulated. Do Members have the amendments?

(Loud consultations)

They have the amendments. We can get the Leader of the Majority Party a copy.

Hon. Gaichuhie, proceed.

Hon. Gaichuhie: Hon. Deputy Chairlady, I beg to move:

THAT, Clause 9 be further amended—

(a) by inserting the following new sub-paragraph immediately after paragraph (ii)

—

(iiA) by deleting paragraph 42”

(b) in sub-paragraph (iv) by inserting the following new paragraph immediately after the proposed paragraph 93—

“94. Materials for the construction of grain storage facilities, upon recommendation by the Cabinet Secretary for the time being responsible for agriculture.”

Hon. Deputy Speaker, through this amendment, we are trying to exempt materials that are used to construct grain storage facilities from VAT, just as we did for liquid petroleum gas. We want the materials that are used to construct silos exempted from VAT.

(Question of the amendment proposed)

Hon. Chairlady: Hon. Members, those of you who want to comment on the amendment need to put in your interventions.

Hon. Kimani Ichung’wah!

Hon. Ichung’wah: Thank you, Hon. Chairlady. I support the amendment by Hon. Gaichuhie. The Committee, on Thursday, exempted imported diapers from VAT. These are the same imports that make our local industry very uncompetitive. Those people who are manufacturing ---

Hon. Chairlady: Just a minute, Hon. Ichung’wah. Are you really contributing to the amendment that has just been moved?

Hon. Ichung’wah: It is the same 9(a) and (b).

Hon. Chairlady: Hon. Gaichuhie was talking about silos.

Hon. Ichung'wah: It is the same amendment.

Hon. Chairlady: There is so much, and we are not concentrating.

Hon. Gaichuhie: Hon. Chairlady, Hon. Ichung'wah is saying that on Thursday we also included the exemption of diapers, which we are now dropping so that we do not exempt diapers but sanitary pads and tampons.

Hon. Chairlady: Let us move step by step, so that we do not get confused. This particular amendment is on silos and materials for constructing silos.

Hon. Gaichuhie: They are in two parts. The first part is that we want the status quo to remain. Initially, we had included diapers, which we are now removing. We now want materials for constructing silos exempted from VAT.

Hon. Chairlady: Are the ones on diapers still on Clause 9? We are on a further amendment to Clause 9.

Hon. Gaichuhie: Yes, it is Hon Chairlady.

Hon. Chairlady: Hon. Ichung'wah, have you got the clarification so that we put it on record?

(The Chairlady consulted the Clerks-at-the-Table)

Hon. Ichung'wah: Thank you, Hon. Deputy Chairlady. I had just consulted with the Chair and the Vice-Chair of the Committee. It must be an oversight because this was talking about paragraph 42 but the one on diapers is paragraph 39(3). There was a bit of confusion. The Chair can now move the further amendment on paragraph 39. That is the one I was in support of. I have just walked from him after consulting the Vice-Chair and the Chair.

(Loud consultation)

Hon. Chairlady: Can we have the Vice-Chair? Can we do some consultations? We seem to be confusing ourselves on what is being moved. Hon. Ichung'wah, you had better come this side together. As we consult, members can raise a few points of order.

We can have Hon. Wamalwa. It has already been moved and proposed. We just need a clarification.

Hon. Wakhungu: Hon. Chairlady, I oppose. In most cases, most imports with tax exemption are the ones that burden the common *mwananchi*. This often happens when it comes to diapers and those things used by our ladies when they are in those particular days. However, in this case, things like silos, unless we are creating business for somebody who is already importing silo construction materials, I can see a catch-22 situation in this amendment. We use silos in a life time. They are not something we use commonly. We just saw the issue of maize being exempted from tax. Some people have already brought in maize which was waiting somewhere in Mombasa. They are cheating us that it is from Mexico.

I oppose because this is a one life time. We do not use it often unless we are creating business for somebody.

(Loud consultation)

With those remarks, I oppose.

Hon. Chairlady: Okay, that is your contribution. Leader of the Majority Party, the Floor is yours.

Hon. A.B. Duale: Hon. Deputy Speaker, I do not do grain storage. I deal with camel rearing and milk and meat storage. However, I am shocked by what Hon. Wamalwa who comes from the grain basket of our country says. The Jubilee Government is very kind to him. After a bumper harvest, he can build a silo using materials on which no VAT has been charged.

The difference between us and our colleagues on the other side is that we are looking for solutions. We are solving a problem. They are known for lamenting. When we made *unga* very cheap, they started asking where it came from. They started asking why we imported maize from Mexico and South Africa. The fundamental question is whether the food is affordable at the table of Kenyans.

I like Hon. Wamalwa. He is one of the very few Members who think outside the box. These grain silos are good for you, and for the people of Kitale. They will build, and they will not pay duty for building materials. This is good for Kitale and the North Rift. Let us support it.

I support.

Hon. Ferdinand Waititu: Thank you, Hon. Deputy Chairlady. I just want to correct *mheshimiwa*. As members of the Departmental Committee on Agriculture, Livestock and Cooperatives, we travelled to Western Province, where we got problems with the farmers who had maize, but could not afford to have the silos. I am saying this because it is on record that we travelled to Kitale and Western Kenya, where you come from. It is important for you to know that if we do not have silos in this country---

Hon. Chairlady: Hon. Waititu, there is a Chair in the House. I am here. Please, address me. Do not address your colleague.

Hon. Ferdinand Waititu: As a member of the Departmental Committee on Agriculture, Livestock and Cooperatives, which is sitting even today, I had to wait for this. We went across the country. The proposal we got from farmers was to have silos for them. It is now for him to take up the matter and understand that we are doing this for the country, and not for political purposes.

Hon. Chairlady: Hon. Gaichuhie, can you just clarify what we are proposing the Question about? I believe you have consulted enough.

Hon. Gaichuhie: Yes, Hon. Chairlady. We have consulted. The one concerning diapers is Clause 39. We are deleting the clause on diapers that we had included as the Departmental Committee on Finance, Planning and Trade. The status quo remains, which is that the sanitary towels be exempted from taxation.

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

(Clause 9 as amended agreed to)

Clause 10

Hon. Chairlady: Hon. Nelson Gaichuhie, do you have an amendment?

Hon. Gaichuhie: Hon. Chairlady, I beg to move:

THAT, Clause 10(a) be further amended in Subparagraph (ii), by inserting the following new paragraph immediately after the proposed new paragraph 14-

15. Milk and cream, not concentrated not containing added sugar or other sweetening matter, of tariff numbers-

0401.10.00 - of a fat content, by weight, not exceeding 1%.

0401.20.00 - of a fat content, by weight, exceeding 1% but not exceeding 6%.

0401.40.00- of a fat content, by weight, exceeding 6% but not exceeding 10%.

0401.50.00 - of a fat content, by weight, exceeding 10%”.

We are zero-rating these milk products.

(Question of the amendment proposed)

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

(Clause 10 as amended agreed to)

Clause 16

Hon. Chairlady: Hon. Nelson Gaichuhie, you have an amendment.

Hon. Gaichuhie: Hon. Chairlady, I beg to move:

THAT, Clause 16 of the Bill be further amended by inserting the following new paragraph immediately after the proposed New Paragraph 24C-

Capital
Expenditure on
buildings and
machinery for
use in a Special
Economic Zone
outside Nairobi
and Mombasa

24D. Subject to this Schedule where capital expenditure is incurred on construction of a building or on the purchase and installation of machinery by or for a Special Economic Zone Enterprise located outside Nairobi and Mombasa counties for use by enterprise in carrying out the business activities for which it was licensed, the enterprise shall be entitled to an investment deduction equal to one hundred and fifty per cent of the capital expenditure, against the gains or profit of that enterprise in the year in which the building or machinery is first used”

We are encouraging more investors to use the special economic zones outside Nairobi and Mombasa. That is the essence of this amendment.

(Question of the amendment proposed)

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

(Clause 16 as amended agreed to)

Clause 20

Hon. Chairlady: Hon. Members, we will not handle Clause 20, although it is appearing on the Order Paper. This is because the only amendment in that Clause is the one by the Leader of the Majority Party and there is a ruling by the Hon. Speaker that we are not considering the amendments by the Leader of the Majority Party. So, we will skip Clause 20 and move to the next one.

(Clause 20 skipped)

Clause 24

Hon. Gaichuhie: Thank you, Hon. Deputy Chairlady. I beg to move:

THAT, Clause 24 be further amended by inserting the following new paragraph immediately after paragraph (b)-

“ (c) deleting the proviso appearing after paragraph (b) and substituting therefore the following proviso-

“Provided that-

- (a) this Section shall not apply in respect of any tax where the person who should have paid the tax-
 - (i) has been assessed in respect of the tax or any other matter relating to the tax; or
 - (ii) is under audit or investigation in respect of the undisclosed income of any matter resulting to the undisclosed income;
 - (b) where no funds have been transferred within the period of amnesty, there shall be a five year period of remittance but a penalty of 10 per cent shall be levied on the remittance”
- This should happen if the person declares gains got from outside.

(Question of the amendment proposed)

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

(Clause 24 as amended agreed to)

Clause 26

Hon. Chairlady: Hon. Nelson Gaichuhie, you have an amendment.

Hon. Gaichuhie: Hon. Chairlady, I beg to move:

THAT, Clause 26 of the Bill be amended by deleting the word “fifty” and substituting therefor the word “thirty-five”.

Deleting this does not mean that these people will not be paying taxes. They will still be paying the Corporation Tax of 30 per cent and also the current tax that they are paying which is at the rate of five per cent of their gross income.

(Question of the amendment proposed)

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

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

(Clause 26 as amended agreed to)

Clause 27

Hon. Gaichuhie: Hon. Chairlady, I beg to move:

THAT, Clause 27 of the Bill be amended by deleting the word “fifty” and substituting therefor the word “thirty-five”.

This is the same as Clause 26, but in this case, they will be paying a tax of 7.5 per cent of the gross and 30 per cent Corporation Tax.

(Question of the amendment proposed)

Hon. A.B. Duale: On a point of order.

Hon. Chairlady: What is your point of order, Leader of the Majority Party?

Hon. A.B. Duale: Hon. Chairlady, this means that the taxation level which the Cabinet Secretary, the National Treasury has proposed of 50 per cent is now being deleted and that betting, lottery and gaming will flourish and affect each and every young person in this country. I agree that the House will decide together with the Committee but the social evil consequences will be there. I thought we would agree between the tax collector and the investor on the percentage, something like 12, 13 or 14 per cent. That could have been a very good idea. But now that they have asked for deletion, as the Member for Garissa Township, I oppose.

Hon. Chairlady: Hon. Mulu.

Hon. Mulu: Thank you, Hon. Chairlady. I am surprised that the Committee is proposing the deletion of Clauses 26 and 27. I thought the bone of contention was that the National Treasury had proposed 50 per cent taxation. We are proposing 35 per cent taxation. I would like to hear from the Committee what informed this decision. I oppose this in the strongest terms possible.

Hon. Chairlady: Hon. Kimani Ichung’wah.

Hon. Ichung’wah: Thank you, Hon. Chairlady. I am one of those people who have seen the menace that has been caused by betting because of lack of regulation in this industry. Since Thursday, I have had extensive discussions with the Chair of the Committee, the Vice-Chair, a number of officers in the Budget Office, the National Treasury and the Leader of the Majority Party who has been my greatest supporter in this endeavour.

There are certain issues which have emerged and I think Hon. Makali Mulu is right in asking for a justification. If we pursue the agenda of using taxation to deal with social ills, we will be erring to an extent. The Constitution and Cap. 131 of our own laws give the mandate of levying taxes to the CS, Interior who is also in charge of regulating the betting industry. Extensive work was done by the Committee and I had a chance to see some of the presentations which were done before it by the Kenya Revenue Authority (KRA). I am saying this in the interest of what Hon. Makali Muli asked.

The KRA is the collector of taxes in this country and has indeed emphatically presented before the Committee that the amendments we sought to do may be counter-productive in the collection of taxes. I had made very good proposals to introduce a more effective way before we went into the Committee of the whole House. In the next Parliament, God willing, I will bring amendments to collect taxes from the consumer so that we are not seen as a country which kills investments. I have done a lot of research, across the border in the East African Community Common Tariffs Market and in Tanzania their final tax rate is 18 per cent.

Mhe. Makali Mulu let me tell you that the taxation of 12.5 per cent is on gross revenue and not on net profit and a further 30 per cent as corporate tax is equivalent to almost 60 per cent taxation. Therefore, I would like to urge this House to support the amendments as proposed by the Committee because effectively we will not be killing an industry which is also employing many Kenyans. As a House, we must get the CS, Interior to gazette the regulations which were presented before the Committee to ensure we regulate this industry because if we do not, we are dealing with an evil which this country will not be able to handle in the next five years.

Thank you, Hon. Chairlady.

Hon. Chairlady: Hon. Ababu Namwamba followed by Hon. Gikaria, Hon. Gichigi, Hon. Korir and the Chair, Departmental Committee on Finance, Planning and Trade will finish.

Hon. Ababu: Thank you, Hon. Chairlady. Just two quick ones. In January 2013, I had the privilege of moving in this House the Sports Bill when serving as the Minister responsible for Sports that provided the legal and statutory framework for sports betting. At the time when we enacted the Sports Act, we did not have a statutory framework for sports betting. I, therefore, want this House to know that sports betting is statutory and already provided for in the law.

Secondly, as we grapple over the text and spirit of the Constitution, we went ahead to recognise betting, lotteries and even provided a framework of how the same can be managed by both the national Government and county governments. Therefore, this House must appreciate that we are discussing a matter which is already provided for both in statute law and the Constitution. I want to urge this House not to use a hammer or a mallet to treat a tumour which needs clinical surgery. You cannot use taxation as a form of regulation. This could be one of the fastest growing industries in the country today. It is also providing employment to hundreds and thousands of people and many of our teams are being sponsored by betting firms.

The economic benefits of regulated statutory sports betting cannot be gainsaid. What this industry needs is an effective framework which can regulate and cure the ills and mischief which the Members have already noticed. That cannot be done by a taxation regime which would basically sound a death knell for this sector. To tax gross revenues at 50 per cent is to send all betting firms in this country to their grave. I want my colleagues to know if you are to kill SportPesa or any other betting firm in this country, you will not end betting, but you will only provide opportunity and avenue for foreign based betting companies to reap where these ones may be doing business for the benefit of this country.

Today, you can log into Sky Sports web page or even while watching an English Premier League game, you can engage in betting online using your phone. If you kill local firms through this kind of taxation measure, you will be killing the goose that lays the golden egg while providing opportunity for foreign firms to do business here. I want to urge this House to be reasonable, magnanimous, objective and think in a manner which will enable the betting industry to grow while at the same time allow the National Treasury to collect revenue. I want to warn the National Treasury that no sensible farmer kills the goose which lays the golden egg.

The Chairlady: Hon. Ababu, please remember this is the Third Reading.

Hon. Ababu: I am concluding. I want to tell the National Treasury that they already introduced 7.5 per cent taxation in January. It is not even six months since they introduced that last taxation measure. They should test that measure and when we come to the next cycle of budgeting, we can consider a different measure.

Hon. Chairlady, I support the deletion of this clause.

Hon. Chairlady: Let us have Hon. Gikaria. For the next Members who will speak, remember to just make your points. This is the Third Reading Stage and not debate time.

Hon. Gikaria: Thank you, Hon. Chairlady. I am making this contribution as an administrator in the sports industry. It is very sad that late last year or early this year, Hon. Jakoyo Midiwo came up with a very good piece of legislation that was supposed to take this industry to where--- There are people who are crying about our young children. Jakoyo Midiwo's Bill had suggested most of those things. It would have addressed most of the issues that the Members are bringing up, but it was defeated, which is very unfortunate.

Hon. Members: No! Not yet!

Hon. Gikaria: I am sorry. It has not been defeated. If Jakoyo Midiwo's Bill is still a property of this House, it is one of the things that will regulate and give us the answers that we are now asking for.

Secondly, it is very unfortunate that the Leader of the Majority Party has got some people who have refused some of the issues on matters of constitutionality, which is okay. At the same time, the Leader of the Majority Party had a good idea about betting.

As a sportsman, in the sports industry we are the greatest beneficiaries of the betting companies who sponsor our two clubs - AFC Leopards and Gor Mahia. What Jakoyo Midiwo was also trying to do in his Bill is to tell the betting companies to look at the local clubs, local industry and the local usage. They should not just look at the overseas club like what they did by investing Kshs6 billion in Hull City, which they have already withdrawn and now moved to Everton, paying huge sums of money in the process. We were going to address most of those things. But as it is now, as Hon. Ababu Namwamba has just said, if we put it at 50 per cent we are killing the industry. Now we are torn in between.

I support what the Vice-Chairman has just said that we support the deletion and then once Jakoyo's Bill comes to the Floor of the House, it will regulate all those issues that we are talking about.

Hon. Chairlady: Next is Hon. Gichigi.

Hon. Gichigi: Thank you, Hon. Chairlady. I personally do not like the betting habits and business in this country. But I will not support any move that intends to kill an industry just because we do not like it.

I am a Member of the Departmental Committee on Labour and Social Welfare that prepared a report on this area. What happened is that those particular proposals and provisions are not based on any research or consultation at all. They are punitive and are actually meant to kill the industry.

Recently, as Members of that Committee, we visited the headquarters of betting in this world which are in Las Vegas, Nevada in the United States of America, seeking more information. The rate of taxation in Nevada is only 6.75 per cent. The truth of the matter is while we have problems, we should actually streamline the industry based on the proposals that have already been tendered by the Ministry of Interior and Coordination of National Government. Nkaissey appeared before our Committee and made proposals. The Kenya Revenue Authority (KRA) appeared before our Committee, made proposals and suggested that we maintain the current taxation measures. We also consulted the industry.

When the Finance Bill came up with this suggestion of 50 per cent rate of taxation, it was not based on anything. It was just sneaked in there by some people who have an axe to grind with the industry. We have problems but let us research, consult and come up with proper recommendations to address the industry. I suggest that we adopt what the Committee has come up with and delete these clauses.

Hon. Chairlady: Hon. Korir, just say one word. Members, I need to put the Question. It is not debate time on this Bill.

Hon. Korir: Thank you, Hon. Chairlady. I stand here as a sports person. The nation and the Members of Parliament need to listen to this.

What the betting industry has done to the sports industry in this country is more than any other industry has ever done. I want the Leader of the Majority Party to listen. I know he is very passionate about betting because of his religion. The problem of betting cannot be solved by killing an industry. It will only be solved by an injection of morality into our kids in our churches and mosques. That is why I said we cannot regulate the industry by imposing taxes but we can regulate it by talking to the stakeholders who are the betting companies. We should sit together and come up with a very good regulation that will end those problems and suspicions that we have for the betting industry.

I oppose the idea of imposing more taxes on this industry. That is why I support the idea of deleting the 50 per cent tax rate, go back to how it was and come up with good proposals.

Hon. Chairlady: Members, I want to put the Question on this. You will still have an opportunity to contribute the same points you want to make in the next clause. The next clause is exactly the same. Hon. Langat, Hon. Fatuma and Hon. Okoth, you can make your contributions then. We are considering very similar clauses.

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

(Clause 27 deleted)

Clause 28

Hon. Gaichuhie: Thank you, Hon. Chairlady. Before I move, I want to confirm to Duale that I do not gamble and I do not care about those who gamble.

Hon. Chairlady, I beg to move:

THAT, Clause 29 be deleted.

We are now on the final clause, Hon. Benjamin. Hon. Chairlady, I want to make it clear that we are now---

(Loud consultations)

Hon. Chairlady: Order Members! Just address the Chair. Ignore the noise from the side and focus on your contribution.

Hon. Gaichuhie: Hon. Chairlady, I beg to move:

THAT, Clause 29 of the Bill be deleted.

Hon. Chairlady: Clause 28! Hon. Gaichuhie. Please repeat that for the record. You are now confusing the clauses.

Hon. Gaichuhie: Thank you, Hon. Chairlady. We are debating too much until I am confused.

Hon. Chairlady, I beg to move:

THAT, Clause 28 of the Bill be deleted.

The same reasons that I gave apply. I also want to tell this House that we are not saying that once we delete this they will not be taxed. They will still have taxes to pay namely, the 30 per cent Corporation Tax and even the gross percentage tax that they normally pay.

I have heard sentiments from my colleagues. It is good to make it clear that we have consulted with all the stakeholders namely the Betting Control and Licensing Board, the National Treasury - who proposed this amendment - the sportspeople and other stakeholders. We have come to an agreement after being totally informed.

It is also good to state here that maybe Members are confused. Those small machines they see in their small markets are not betting and lottery machines. Those are other kinds of machines and their owners are not even taxed. We are trying to make sure that people who are licensed pay taxes. I would urge the Government to ban those small machines because their owners never pay any taxes.

(Question of the amendment proposed)

Hon. Chairlady: Let us have Hon. Fatuma Ibrahim.

Hon. (Ms.) F.I. Ali: Thank you, Hon. Chairlady. I stand to oppose this amendment. Hon. Ababu said that the betting industry is a growing segment of our economy and that we need gambling and betting laws. We are misleading this country as legislators. We need to have a deterrent law that disallows some of those bad practices. I said earlier that there are many gamblers who want to destroy this society. I am happy that there are no major betting and gambling shops in Wajir. But if we encourage this kind of law that we will only give a penalty of taxation, it will consume our children, families and destroy our society in terms of engaging in this very unproductive and bad habit. As a country, we can be the pacesetter by having a very deterrent high taxation to discourage the many Kenyan children, youth and some Members of this House who have lost their resources in gambling and might be paupers in terms of their resource base.

Thank you. I oppose.

Hon. Chairlady: Hon. Weru. Please, Members, as I have said, you can give the same arguments for each of the five clauses proposed to be deleted. So, let us just make the points quickly, so that we do not debate for long.

Hon. Kinyua: Thank you, Hon. Chairlady for giving me this opportunity. I support the deletion. What we have witnessed as a menace of gambling and betting cannot be dealt with by this taxation. This taxation is directed at the investor as opposed to a way of deterring our children from committing suicide after betting using school fees. They also engage in drug abuse and other anti-social activities that are related to lawlessness and lack of values. As a society, we need to focus on laws that are going to make sure that the people who engage in gambling and betting know what they are doing. We need to look at the age of the people who are doing it. We must look for ways and means of making sure that we do not have online gambling so that the people who gamble are of age and means.

Through this law that just ensures that we more or less punish the investor, we are addressing the core rot in the society.

Thank you.

Hon. Chairlady: Thank you, Hon. Weru. Hon. Benjamin Langat, Chair of the Departmental Committee on Finance, Planning and Trade.

Hon. Langat: Hon. Chairlady, I want to thank the Members who have contributed. There is a lot of confusion here. We need regulations to regulate the sector. That is what is lacking. In fact, our proposal, as a Committee, is that the Cabinet Secretary, (CS) National Treasury, the CS, Interior and Coordination of National Government and the sector should sit together with the stakeholders and come up with regulations that will cure some of the ills the Members are talking about. Even if we propose 50 per cent or even 100 per cent tax, we will not cure those issues. In fact, we will encourage backstreet betting and lottery. Therefore, we need to apply the right drug to the right illness. In this case, we are applying a wrong one and, therefore, we may not cure the disease.

So, I strongly encourage that the CSs that I have mentioned and the sector should sit, and hopefully in the coming Parliament, we do a new law on betting and lottery.

Having said that, I also wish to clarify that it is not that currently these companies are not paying taxes. In fact, if we are taxing them at the rate of 7.5 per cent on gross, that is like 20 per cent on net plus what they are already paying which is the normal corporate tax at the rate of 30 per cent. So, effectively, if you look at the amount they are paying, they are paying almost 50 per cent, as we speak today. So, we are only saying that let us uphold the *status quo* and give more time for further consultation.

This House may note that the new taxes which we are trying to amend to 50 per cent are barely six months old. So, we cannot bring 6 per cent today, after six months, we bring it to 30 per cent and after another six months to 50 per cent. It is good to give time to the new taxes, so that we can see their performance.

Otherwise, I support my Committee's decision, of course, as moved by my Vice-Chair. Thank you very much.

Hon. Chairlady: Hon. Ken Okoth, just two words.

Hon. Okoth: Thank you, Hon. Chairlady. I support that we keep the taxes that have been levied and are less than six months old in place. It will be very critical. As we have been debating this at one point, the Leader of the Majority Party declared his interest when there was an amendment about silos, that he had no interest and that he is only interested in camels.

On this betting issue, it will be prudent for Members - because we saw when Hon. Jakoyo's Bill came up how it was received - to declare if they have any interest or any influence or whether they are voting and deciding based purely on their conscience. Members know these regulations and tax levels were set less than six months ago. They proceeded to publish an extortionist and scary 50 per cent and then they are turning round and saying that they now want to withdraw them. It smells very fishy to me and there is no good explanation why a whole Committee proceeded to publish 50 per cent threat of imposing a tax to an industry and once the amendments became the property of the House, they changed their minds and are now telling us that they are wiser. It is suspicious. I just hope in future, such sensitive things that involve a lot of sums of money in an industry such as betting that affect the lives of many people, if we manage them properly, should be for the benefit of the country and improve the sports sector. But people should declare their interests.

Thank you, Hon. Chairlady.

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

Hon. Chairlady: Order, Hon. Millie Odhiambo! Give me a minute.

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

(Clause 28 deleted)

Hon. Chairlady: Hon. Millie Odhiambo, what is your point of order?

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Chairlady. If you listened carefully to Hon. Ken Okoth, he was not just raising a concern, but he imputed improper motives on the Members of the Departmental Committee on Finance, Planning and Trade. He is implying that they could have been extorting money from certain quarters. That is a very serious allegation and if it is left, it casts aspersions on the integrity of Members of the Departmental Committee on Finance, Planning and Trade.

So, can he substantiate and clarify whether there are, indeed, Members who are trying to extort money from companies? We are here to legislate and not to be paid money to legislate.

Hon. Chairlady: Unfortunately, I might have been engaged elsewhere, but Hon. Ken Okoth, are you imputing any improper behaviour or motives on the part of your colleagues? If not, can you, please, withdraw until you are able to substantiate, if there is such an assertion? I did not hear it, but the Member heard it.

Hon. Okoth: Hon. Chairlady, the HANSARD will bear me out. I was very careful in what I said. We must look at the context and history. Hon. Jakoyo Midiwo, Member for Gem, brought a Bill to this House on a comprehensive regulation of the betting sector. We have a Sports Bill which was brought by the former Minister, Ababu Namwamba, that is already in place and we have a betting industry that exists and regulations on how they should be taxed and the taxation levels that were set less than six months ago. The uproar with which the proposal by Hon. Midiwo was met, which was a comprehensive Bill and was rejected by this House and was withdrawn and put aside, was too much. The Committee that has full resources, support of the institution and backup of the technical advisory of Parliament proceeded within less than six months to propose a 50 per cent increase in conflict with what the CS was proposing at 35 per cent. I said, that to me, smells fishy because the same Committee proposed and last week, when we were here on Thursday, the Chair, the Vice-Chair and their Members were asked why they were withdrawing things that they were proposing. As I understand it, once the amendments are published, they are a property of the House. They were now our amendments and not the Committee's. The Committee proceeds on the more significant and sensitive part of that debate to say, "withdraw and change from that 50 per cent provision and go back to the *status quo*." What happened in between? I need an explanation that is convincing.

Hon. Chairlady: So, yours is a rhetorical question.

Hon. Okoth: Yes. My key point was that in such debates, it is important that Members declare their interests. I very much respect Hon. Duale. He said he is supporting the issue of silos. He said he has no interest in this matter and that his only interest is in camel production.

Hon. Chairlady: I will leave it that you have raised a rhetorical question. You have not imputed any improper motive on any of your colleagues. Let us proceed.

Clause 29

Hon. Gaichuhie: Hon. Chairlady, I beg to move:

THAT, Clause 29 be deleted.

I want to make it clear to Hon. Ken Okoth that the Committee's position has always been to delete this clause. The proposal of 50 per cent was not from the Committee. It was from the National Treasury. The Committee was only disagreeing with the National Treasury. Otherwise, the Committee has never had a stand on the 50 per cent proposal. We are still proposing deletion.

I also want to assure the House that we have not been compromised by any gambler. We have only heard from the BLCB, the Ministry of Interior and Co-ordination of National Government, the Ministry of Sports, Culture and Arts and other stakeholders. There has been no compromise. We are the ones who passed the 5 per cent, 7 per cent and 12 per cent last year and it took effect in January. With regard to tax laws, one has to be consistent for planning purposes. When you keep on changing goal posts, then industries will never plan how to operate.

(Question for the amendment proposed)

Hon. Ichung'wah: Thank you, Hon. Chairlady. I support it. Let me bring to the attention of the House the fact that the House has been very emphatic in demonising the actions of the Leader of the Majority Party. However, let us also appreciate that were it not for the Leader of the Majority Party, this Motion would not be before the House today. It was the Leader of the Majority Party in consultation with the Chair of the Departmental Committee on Finance, Planning and Trade who sought to have this Motion brought back this afternoon. Those of us who are anti-betting would like to suggest that in the next Finance Bill, we should allow Members to engage with the National Treasury to have a clear analysis of the impact of social ills and economic gains that this country is deriving from betting. Therefore, I want to ask that some of the proposals that we had brought, including taxation of consumers and not the investors, be considered in the next Finance Bill.

I support.

Hon. Chairlady: Hon. Joseph Limo. Hon. Murungi, you will be next.

Hon. Limo: Hon. Chairlady, I want to make the following observations: It is important that even when such proposals are made by the National Treasury, it consults before it publishes. It is very discouraging for investors in this country when policies keep changing. Today you speak this language and the following day, you speak another language. Therefore, going forward, it is important that consultations are done before publishing. For this country to thrive, ease of doing business is important. When you keep on changing goal posts, it is going to discourage investors.

As I sit down, I know there is some discussion to bring haphazard requirements. For instance, as from July, owners of vehicles have to display their details on the windscreen. Those are the kind of things which are going to discourage people in this country. We want to ask the National Transport and Safety Authority (NTSA) to stop bringing such kinds of things which will bring problems to this country.

I support the deletion.

Hon. Chairlady: Yes, Hon. Kathuri.

Hon. Murungi: Thank you, Hon. Chairlady. I also want to add my voice on this Bill. People who are paying these taxes are the big investors in betting. Now, the small machines have been placed in all major towns and villages are not captured in any taxation. Therefore, I support that this clause be deleted. These people are paying corporate tax of 30 per cent and still pay another 7 per cent on the gross. It is important that these taxes are reviewed later on. The taxation started the other day. It would be appropriate to review that in the next financial year.

Hon. Chairlady: Hon. Benjamin, do you have something new to add?

Hon. Langat: No.

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

(Clause 29 deleted)

New Clause 20A

Hon. Gaichuhie: Hon. Chairlady, I beg to move:

THAT, the following new clause be inserted after Clause 20 –
That Clause 20 of the Bill be further amended by inserting the following closing statement immediately after paragraph (c) –

“shall apply to the commissioner to be registered”

(Question of the new clause proposed)

(New clause read the First Time)

*(Question, that the new clause be read
a Second Time, proposed)*

Hon. Chairlady: Do we have any contribution? Hon. Maanzo, we press the intervention button when we want to contribute. Do you want to make a contribution on this?

Hon. Maanzo: Yes.

Hon. Chairlady: Okay.

Hon. Maanzo: Thank you, Hon. Chairlady. The application to the commissioner for registration harmonises, so that there is control when it comes to payment of taxes on this issue. I support.

*(Question, that the new clause be read
a Second Time, put and agreed to)*

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

Hon. Chairlady: I want to call the Mover to move reporting for the Finance Bill. Remember we have the Division of Revenue Bill after this.

Hon. Langat: Hon. Chairlady, I beg to move that the Committee doth report to the House its consideration of the Finance Bill (National Assembly Bill No.16 of 2017) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

THE DIVISION OF REVENUE BILL

Hon. Chairlady: We want to move quickly to the next Bill, which is the Division of Revenue Bill. It is very short.

(Clauses 3, 4 and 5 agreed to)

Schedule

Hon. Chairlady: Let us have Hon. Mutava Musyimi.

Hon. Musyimi: Hon. Chairlady, I beg to move:

THAT, the Schedule be amended—

(a) in the second column, by—

(i) deleting the figure “20,416,400,000” appearing against the item “Additional County Conditional Allocations (not part of sharable revenue)” in the first column, and substituting therefor the figure “31,476,018,499”;

(ii) deleting the figure “7,875,000,000” appearing against the item “Allocation from fuel levy (15%)” in the first column, and substituting therefor the figure “11,068,192,369”;

(iii) deleting the figure “12,541,400,000” appearing against the item “Conditional Allocations (loans & grants)” in the first column, and substituting therefor the figure “20,407,826,130”;

(iv) deleting the figure “323,757,560,000” appearing against the item “Total County Allocations (D+E)” in the first column, and substituting therefor the figure “334,817,178,499”;

(b) in the third column, by deleting the expression “34.60%” appearing against the item “Total County Allocations (D+E)” in the first column, and substituting therefor the expression “35.78%”.

Amendments listed under (a)(i), (a)(ii) and (b) are really consequential figures. The substantive changes are happening with respect to (a)(ii) where we are deleting Kshs.7.875 billion appearing against that item allocation from the Fuel Levy of 15 per cent and substituting with the figure of Kshs11.7 billion. The issue here is that the Road Maintenance Fuel Levy Fund with respect to the Finance Bill 2016 has shifted from Kshs12 to Kshs18 per litre. That has brought in substantial revenues of a total of close to Kshs73.78 billion. As we all know, the law now expects that 85 per cent of the money raised by this Fund goes to the national Government which is responsible for road categories A, B and C. The 15 per cent goes to the county roads which are categories D, E and unclassified roads. That is why there is a shift from Kshs7.8 billion to Kshs11 billion.

With respect to (a)(iii), this concerns additional funds that have now been communicated to the national Government. That confirmation was given to my Committee by the CS for the National Treasury. As I have said, most of those funds have come from donors to support devolution and the main donor here is the World Bank, among others. Those are the pivotal changes. The others, (a)(i), (a)(iv) and even (b) are purely consequential. I thank you and request the Chair, Finance, Planning and Trade, to second.

(Question of the amendment proposed)

Hon. Chairlady: You may now make your comments, Chair of the Departmental Committee on Finance, Planning and Trade.

Hon. Langat: Hon. Chairlady, I just wanted to second the amendments. I support the amendments.

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

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

(Schedule as amended agreed to)

Appendix

Hon. Musyimi: Hon. Chairlady, I beg to move:

THAT, the Appendix be amended, in paragraph 7, under the part entitled “Additional County Conditional Allocation (Not Part of Sharable Revenue)”, by—

(a) deleting the paragraph on “Conditional Grant from the Road Maintenance Fuel Levy Fund of Ksh.7.9 billion” and substituting therefor the following—

“Conditional Grant from the Road Maintenance Fuel Levy Fund of Ksh11.1 billion. This conditional grant which is in its third year of allocation has been increased from an allocation Ksh4.3 billion in the 2016/17 FY to Ksh11.1 billion in FY 2017/2018. This amount includes an additional Ksh3.2 billion, which results from an adjustment of the fuel levy in July, 2016, from Ksh12.00 to Ksh18.00. This grant is meant to further enhance County Governments’ capacity to repair and maintain roads and is equivalent to 15 percent of the Road Maintenance Fuel Levy Fund”;

(b) deleting the paragraph on “KDSP County Capacity Building (“level 1”) Grant” and substituting therefor the following—

“KDSP County Capacity Building (“level 1”) Grant. This is a conditional grant financed by a World Bank credit to support county capacity building under the Kenya Devolution Support Program (KDSP) amounting to Ksh2.1 billion. This grant includes Kshs1.5 billion allocated for the financial year 2017/18 together with Ksh648 million that was allocated for the financial year 2016/17 but not disbursed. The grant is intended to support capacity building initiatives in the counties in the following areas:

- Strengthening public financial management (PFM) systems;
- Strengthening county human resource management;
- Improving county planning and Monitoring & Evaluation systems;
- Improving civic education and public participation; and,
- Strengthening Intergovernmental relations”;

(c) deleting the paragraph on “Conditional allocation financed by other loans and grants received from development partners” and substituting therefor the following—

“Conditional allocation financed by other loans and grants received from development partners and the Government counterpart funding derived from the National Government’s share all totalling Ksh13.4 billion. These conditional allocations have increased from a total of Ksh2.6 billion in the FY 2016/17. Of the conditional allocation from other loans and grants, Ksh7.2 billion will be transferred to county governments. However, of the conditional allocation from

other loans and grants, Ksh6.2 billion will not be transferred to County Governments in the financial year 2017/18 but will instead be managed by the National Government because they are tied to financing agreements which entered into prior to the establishment of the county governments. Such funds are tied to on-going contracts with suppliers while the related financing agreements also specify the funds flow modalities which may not be consistent with what is contemplated under the intergovernmental arrangement.

It is therefore expected that the loans and grants under the existing financing agreement will be included in the budget of the National Government, and managed by National Government with involvement of County Governments in Project Steering Committees and Project Implementation Units for each programme/project. In addition, reporting arrangements as well as the conditions attached to the implementation of the programme/project will be clearly spelt out in Project Implementation Frameworks to be agreed with County Governments prior to the release of the funds and implementation of the projects.”

Again, this is purely consequential. It is just cleaning up the Bill because of the changes that we have agreed upon. So, I beg to move that these changes be adopted.

(Question of the amendment proposed)

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

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

(Appendix as amended agreed to)

(Clause 2 agreed to)

(Clause 1 agreed to)

(Title agreed to)

Hon. Chairlady: Can we have the Mover to move reporting?

Hon. Musyimi: Hon. Chairlady, I beg to move that the Committee doth report to the House its consideration of the Division of Revenue (No. 2) Bill (National Assembly Bill No.22 of 2017) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORTS AND THIRD READINGS

THE FINANCE BILL

Hon. Speaker: Let us have the Chairperson.

Hon. (Dr.) Laboso: Hon. Speaker, I beg to report that a Committee of the whole House has considered the Finance Bill (National Assembly Bill No.16 of 2017) and approved the same with amendments.

Hon. Speaker: Let us have the Mover, Hon. Langat.

Hon. Langat: Hon. Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. Mutava Musyimi to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Musyimi seconded.

(An Hon. Member stood up in his place)

Hon. Speaker: The Member who is unable to sit---

(Question proposed)

Hon. Speaker: Hon. Members, I have confirmed that you have the requisite quorum. I, therefore, put the Question.

(Question put and agreed to)

Hon. Speaker: Let us have the Mover.

Hon. Langat: Hon. Speaker, I beg to move that the Finance Bill (National Assembly Bill No.16 of 2017) be now read a Third Time. I also request my Vice-Chair, Hon. Nelson Gaichuhie, to second.

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

(Question proposed)

Hon. Speaker: Again, having confirmed that the House has the requisite quorum, I put the Question.

(Question put and agreed to)

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

THE DIVISION OF REVENUE BILL

Hon. (Dr.) Laboso: Hon. Speaker, I beg to report that a Committee of the whole House has considered the Division of Revenue (No.2) Bill, National Assembly Bill No.22 of 2017 and approved the same with amendments.

Hon. Musyimi: Hon. Speaker, I beg to move that the House do agree with the Committee in the said Report. I request, Hon. Moses Lessonet to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Lessonet seconded.

(Question proposed)

(Question put and agreed to)

Hon. Musyimi: Hon. Speaker, I beg to move that the Division of Revenue (No.2) Bill, National Assembly Bill, No.22 of 2017 be now read the Third Time. I request Hon. Moses Lessonet to second.

Hon. Lessonet seconded.

(Hon. Tongi walked into the Chamber)

Hon. Speaker: Hon. Tongi, please. Hon. Members, I can see more of you are coming in. We are more than the quorum.

(Question proposed)

(Question put and agreed to)

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

MOTION

ELECTION OF MEMBERS TO EALA

THAT, pursuant to Article 50 of the Treaty for the establishment of the East African Community and Rule 13(5) of the East African Legislative Assembly Elections (Election of Members of the Assembly) Rules, 2017, this House adopts the Report of the Joint Parliamentary Select Committee on the Election of Members to the East African Legislative Assembly on its consideration of the nominees for election as Members of the East African Legislative Assembly, laid on the Table of the House on Wednesday, May 17, 2017.

(Hon. Katoo on 18.5.2017)

(Resumption of Debate interrupted on 18.5.2017)

Hon. Speaker: Hon. Mwadeghu, you were the one who was proposing an amendment. I allow you to move it quickly.

Hon. Mwadeghu: Thank you, Hon. Speaker. The debate on this Motion was adjourned under Standing Order No.96 by Hon. Nyikal, so as to give us time for further consultation.

Pursuant to the Standing Order No.48, I beg to move that the Motion be amended by inserting the following words immediately after the word “2017”, “subject to the deletion of Recommendations 3, 5, 6 and 7 appearing on pages 16 and 17 of the Report.”

I am aware and cognisant of the fact that the Report was tabled and discussed partially and that in moving the amendment, I am aware of the court ruling in Arusha. But to the best of my knowledge, the time that matter went to court, we did not have rules in the House and we were relying entirely on the Report by the House Business Committee (HBC), hence the decision of the East African Court of Justice Ref No.1 of 2006. Subsequently, rules have been passed by this House. Rule 6(1) requires the parties which have slots to submit the names of their candidates as long as they do not exceed three times the number allocated to them.

It is imperative to note that the Coalition for Reforms and Democracy (CORD) and in this case our coalition, has been given slots under the political parties represented. The Orange Democratic Movement (ODM) has been given three slots and the party has submitted three names as mandated. The Wiper Party has submitted one name. It is on that basis that I do not see any reason why any other party should submit a name under their coalition. There are only four slots. Three belong to the ODM, one to Wiper and the same has been done. Under Recommendation No.5, that the presiding officer appoints a new nomination officer and appoints a new nomination date to receive and process further nominations from CORD, is not attainable. As far as we are concerned, we had four slots. We have complied with the rules and regulations. After further consultations, we have agreed that the names which we submitted shall hold water and shall prevail. As far as this recommendation by the Committee is concerned, it is my considered opinion that it is wanting and does not hold water.

Recommendation No.6 is on the conclusion of further nomination that the presiding officers forward the list of further nominees of CORD to the Joint Committee for consideration in accordance with Rule No.13. I find this recommendation misplaced. It is misplaced in the sense that ODM as a party has submitted three names. Wiper has submitted one name. The four slots have already been taken up. Which further names are we required to submit? Why are we being required to submit further names? Let us face it. This is the purview of political parties. Political parties are the ones who are supposed to submit the names, not any other person. It is in that regard that I wish to put it very clear to the House that we have done our bit. We have complied with the rules and there is no room for any other name.

Where will any other names, which are being sought for, come from if the same party is the one that is required to submit the names? I understand that one of our coalition partners submitted a name to make them five. I want to make it very clear on the Floor of this House, that the names that have come from us are four and not five. The Members are being asked to accord ODM and Wiper an opportunity to give the names we have given. We have followed the procedures. We received a total of 39 applicants and we had a criterion which we used to eliminate and decide which names should be submitted to Parliament. We followed that criterion.

As I have said, at first, we had 29 names. We looked at the record of individual candidates in the public service in term of continuity, institutional memory, gender balance, regional balance, social diversity and other added advantages.

At that time, we picked Abubakar Zein Abubakar, Hon. Judith Ramaita Pareno, Nancy Lungahi Abisai and Mumbi Ng'aru. We went further and interrogated those names and we ended up with three names, namely, Hon. Judith Ramaita Pareno, Hon. Abubakar Zein Abubakar and Mr. Ronald Kipng'eno arap Ng'eny. Those are the names which were submitted.

The Wiper Democratic Movement, on its part, equally did a similar exercise and submitted the names of their candidates. We have no problem with that. It is in that regard that we as a party find it an unacceptable proposal by the Committee that we should submit further names apart from the four names that our coalition has submitted.

I wish to request that the amendment I am seeking be approved by the House. We should move to the elections as slotted without any further ado. I am aware of what has happened.

I ask Hon. Maanzo to second.

Hon. Speaker: Hon. Maanzo.

Hon. Maanzo: Thank you, Hon. Speaker. I would like to second this amendment as moved by the Whip of the Minority Party. There is no mistake the CORD Coalition have made. They have not breached any law, nor has the Jubilee Coalition breached any law in relation to the regulations or the law in relation to the matter of EALA elections. The regulations, as they are, are weak and probably for purposes of the future, they could---

Hon. Speaker: The Member for Awendo, what is your intervention?

Hon. Opiyo: Thank you, Hon. Speaker. You are well aware that the matter that is being discussed now has attracted a lot of interest. This is something that will represent the country regionally. I was just wondering if we will allow this debate to go on owing to the fact that there is no quorum.

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

Hon. Opiyo: Let me finish, Hon. Wandayi.

Hon. Speaker: Is it the issue of lack of quorum.

Hon. Opiyo: Yes, Hon. Speaker.

Hon. Speaker: Yes, I agree that there is no quorum. The Quorum Bell may be rung. It is also one of the rules that, other than the Whips, you who has raised the issue of quorum must remain here. You can never raise the issue of quorum and then start trotting out. I am keeping an eye on Hon. Opiyo Jared.

(The Quorum Bell was rung)

ADJOURNMENT

Hon. Speaker: Order, Members! Hon. Mwachugu does not appear to have been successful.

(Loud consultations)

Hon. Members, the House having failed to realise quorum, we have no option, but to do the necessary. Therefore, the House stands adjourned until tomorrow, Wednesday 31st May 2017, at 9.30 a.m.

The House rose at 5.07 p.m.