

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 30th August 2018

The House met at 9.30 a.m.

[The Deputy Speaker (Hon. Moses Cheboi) in the Chair]

PRAYERS

QUORUM

Hon. Deputy Speaker: Hon. Members, we do not have the required number to transact business. Therefore, I order the Quorum Bell to be rung for 10 minutes.

(The Quorum Bell was rung)

Order Members. We now have the required numbers. The Bell should be stopped and business to begin. Proceed.

PETITION

RE-CLASSIFICATION OF TAITA TAVETA COUNTY AS MARGINALIZED AREA

Hon. Deputy Speaker: On this Order, we have Hon. Dan Mwashako, Member for Wundanyi.

Hon. Danson Mwashako (Wundanyi, WDM-K): Thank you, Hon. Deputy Speaker. I would like to present a Petition.

I, the undersigned, on behalf of the residents of Taita Taveta County, draw the attention of the House to the following:

THAT, Article 204(1)(2)(3) and (4) of the Constitution establishes the Equalisation Fund, which provides that one half per cent of all the revenue collected by the national Government each year calculated on the basis of most recent audited accounts to provide for services that include water, roads, health facilities and electricity to the marginalised areas.

THAT, in its second Marginalisation Policy, the Commission on Revenue Allocation has dropped roads as one of the key indicators of measuring access to the Equalisation Fund by counties, a decision which is likely to impact negatively on the beneficiary counties such as the County of Taita Taveta, whose inclusion as a beneficiary was arrived at due to undeveloped road network among other factors.

THAT, the net effect of dropping undeveloped road network as an indicator for accessing the Equalization Fund will lead to de-gazettement of beneficiary counties such as Taita

Taveta despite the area having poor or no road network for economic prosperity and is also in contravention of Article 204(2).

THAT, the claim by the Commission on Revenue Allocation that 78.20 per cent of households in Kishushe Sub-Location in Wundanyi Constituency, which has been rated the highest in terms of access to safe drinking water, is untrue as the said area has the worst access to safe drinking water in the county hence casting doubt on the authenticity of data and parameters used to determine marginalised areas in the second CRA policy.

THAT, public participation done by the Commission on Revenue Allocation in coming up with the second Equalisation Fund policy was inadequate as the key stakeholders in the County of Taita Taveta and the other counties in the first policy were never involved in its formulation;

THAT further, the use of school attendance rates by Commission on Revenue Allocation as an indicator of marginalisation without taking into account dismal performance in the national examinations among students in the county occasioned by poverty, undeveloped school infrastructure, human wildlife conflict and reluctance by teachers to take postings in the county due its hardship status.

THAT, Taita Taveta County has had numerous unresolved land issues since 62 per cent of the land is under wildlife, leaving very little for doing viable economic activities by the residents compounded by lack of title or ownership, the county still registers the lowest electricity connectivity with only 10 per cent of homes connected to power as opposed to CRA claims that the area is adequately connected with electricity.

THAT, the idea to spread the Equalisation Fund thinly to 34 counties up from 14 counties is ill advised as counties enjoy the equitable share of revenue that counties that are not marginalized are able to sort out challenges in their sub-locations or small areas with the resources allocated to them.

THAT, the Commission on Revenue Allocation did not establish the level of impact achieved by the first Margination Fund Policy neither did it submit a report of actual findings to the National Assembly for deliberation before attempting to review and implement a new policy.

THAT, the second Marginalisation Policy adopted by the CRA has not been approved by Parliament prior to implementation as provided in Article 216(5) of the Constitution.

THAT, efforts to have the matter resolved amicably and render permanent solution through the concerned Government departments has been unsuccessful.

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

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Finance and National Planning:

- i) Recommends that the CRA includes sub counties and all areas of Taita Taveta County among the benefitting areas in the second policy on marginalization.
- ii) Cause the CRA to conducts public participation in the initial 14 counties before attempting to review the first policy including carrying out the level of impact achieved by the first policy and submit a report of actual findings to the National Assembly, before attempting to review and implement a new policy.
- iii) Recommends that the CRA re-introduces roads as an indicator of marginalisation as stipulated by the Constitution in Article 204 of the Constitution.

- iv) Recommends that the CRA conducts actual visits of marginalised areas and build on the first-hand findings on the first policy instead of relying on out dated or erroneous data as parameters to measure marginalisation.

And your petitioners will forever pray. Thank you.

Hon. Deputy Speaker: Well, I give a chance to a few Members to put their thoughts on it. We will start with Hon. Sheikh Abdullahi Sheikh, Member of Mandera North.

Hon. Major (Rtd.) Bashir S. Abdullahi (Mandera North, JP): Thank you, Hon. Deputy Speaker. From the outset, I support the Petition. The Equalisation Fund initially comprised of 14 counties. The CRA without proper consultation of the initial counties expanded it to cover 21 counties. What is glaring is that Taita Taveta was among the initial 14 counties. If the counties to be covered were expanded, how do you exclude those who were there before and bring in new players? The initial 14 counties have not even benefited from the first equalisation phase. The Equalisation Fund cumulatively is projected to be around Kshs21 billion. Even Kshs2 billion has not been exhausted. We now have issues of expanding it to cover more than 21 counties. How fair is the CRA? Have we conducted research on what has been done on the first tranche of the Equalisation Fund? I am aware because I come from one of the counties that was a beneficiary of the Equalisation Fund that nothing tangible has been done in the counties so far.

Hon. Deputy Speaker: Hon. Sheikh, you are now making the contribution you could have saved for the committee. Make a brief contribution so that I can give a chance to more Members. I know you are the Vice-Chair of the entire pastoralist group where the Equalisation Fund resides mostly. Make your brief comments and the rest will go to the committee when it will be transacting this matter.

Hon. Major (Rtd.) Bashir S. Abdullahi (Mandera North, JP): Hon. Deputy Speaker, I am much obliged.

These days, many counties want to share the Equalisation Fund. I am very happy that as the Vice-Chair, we will have more Members. They are welcome, but the resources are meagre. Going forward, we need to have the Equalisation Fund Board as suggested by the Member.

I support the Petition. We want Taita Taveta to be included and retain the same position as before. Thank you.

Hon. Deputy Speaker: Hon. Mwandime, Member for Mwatate.

Hon. Andrew Mwandime (Mwatate, ODM): Thank you, Hon. Deputy Speaker for giving me this opportunity. From the outset, I support the Petition.

Corruption is not only embezzlement of funds, but it is also denying some regions what is due to them. Removing Taita Taveta County from the Equalisation Fund is like embezzling funds for roads, health, electricity and water meant for the people. Right now, even though Taita Taveta has boreholes, the area is covered by minerals. Some of the minerals are poisonous. Even as we speak, there are areas where people walk for almost 20 kilometres to fetch water.

The area is hilly and the roads are pathetic. We were shocked that amongst the 14 areas that were pointed out to be beneficiaries of the Equalisation Fund, Taita Taveta is the only that was removed from the list. The people who hold offices should not use their offices to deny others. The Petition by Hon. Mwashako is very clear that what the office holders are doing is unconstitutional. In Mwatate Constituency, we have problems of wildlife conflict and it is not yet finalised. We have problems of roads, the entire region does not have electricity, water is a big problem and we are left wondering. In Mwatate, we do not have any industry which can employ our youth. The youth have to go to either Nairobi or Mombasa. We are shocked by the CRA removing Taita Taveta from the list of beneficiaries of the Equalisation Fund. The

Equalisation Fund, which was distributed in 2013/2014 has not yet been implemented. There are some projects which have not yet been done. Before they are finished, the CRA had already removed Taita Taveta. This implies that these projects are going to be white elephants. I am supporting this petition and I am requesting the committee concerned to be faster...

Hon. Deputy Speaker: That is fine. The next one is Hon. (Dr.) Pukose.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Deputy Speaker. From the outset, I want to support the Member for Taita Taveta. Taita Taveta should be reinstated to the list of the beneficiaries of the Equalisation Fund. It is very unfair for the CRA to remove a constituency that was initially slated to benefit from the Equalisation Fund even before they could realise the benefits. One of the key issues in the CRA is the costing of the functions especially when it comes to electricity in the energy sector, immunisation and issues to do with water supply. Once you have done the costings, you will know that it is going to require this much. But before funds are put in place, a county is removed from the list. Last time, we were told that new wards have been put in that list. We would want that list to be published so that we get to know the beneficiaries of the Equalisation Fund.

With those few remarks, I want to support the Petition by the Member.

Hon. Deputy Speaker: Hon. Maanzo Kitonga.

Hon. Maanzo Kitonga (Makueni, WDM-K): Thank you, Hon. Deputy Speaker for giving me an opportunity to support Hon. Mwashako. Taita Taveta County borders Makueni. Although Makueni was not factored in this, the case made by Taita Taveta is on equity. Everyone knows that Taita Taveta is a semi-arid area and it is almost equal to other semi-arid areas, which are already benefitting. It is only fair that it be included in the Equalisation Fund so that the people who have suffered for many years can be equalised with the rest. Furthermore, this Fund has not yet been implemented. So, there is nothing wrong with relooking at the list to ensure it is not only Taita Taveta that has been left out, but any other county in a similar situation where Kenyans could benefit from the Fund.

I thank you, Hon. Deputy Speaker

Hon. Deputy Speaker: Lastly on this one, Hon. Lemein

Hon. Korei ole Lemein (Narok South, JP): Thank you very much, Hon. Deputy Speaker for giving me this opportunity. I rise to support the Petition by my very good friend, Hon. Mwashako. Narok County is a beneficiary of the Equalisation Fund. However, we have not seen the benefit of the last allocation. I have had the benefit of visiting Wundanyi Constituency in Taita Taveta County three weeks ago. It beats logic to hear that the CRA has given Taita Taveta a raw deal. The Petition by Hon. Dan is well placed and the relevant authority should look into it.

Hon. Deputy Speaker: Next order! What is your point of order, Leader of the Majority Party?

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, you have seen the Chair of the Justice and Legal Affairs Committee consulting with me.

Hon. Deputy Speaker: Just a minute, Leader of the Majority Party. I will give you an opportunity shortly. Allow us to dispense of two things. The Leader of the Majority Party, we can now hear you.

Hon. Aden Duale (Garissa Township, JP): I was saying that I was consulting with the Chair of the Justice and Legal Affairs Committee on the Statute Law (Miscellaneous Amendment) Bill (National Assembly Bill No.12 of 2018). From what he is telling me and the number of amendments that we have on this Bill, I need to have further consultations with a

number of committee chairs such as the Chair of the Departmental Committee on Labour and Social Welfare and Justice and Legal Affairs Committee, so that we can step this Bill down at the Committee of the whole House.

Hon. Deputy Speaker: This has been in the Order Paper for a long time. I hope when you seek this adjournment, you will have an opportunity to resume quickly when we find the next opportune time.

Hon. Aden Duale (Garissa Township, JP): We have been doing this. We consulted with the Chairs and Members of their committees and decided to reduce the amendments. The House is meant to make good laws for the country.

Hon. Deputy Speaker: Agreed, this is your Bill, so it will be withdrawn.

What is it, Hon. Junet?

Hon. Junet Nuh (Suna East, ODM): Hon. Deputy Speaker, as much as the Bill belongs to the Leader of the Majority Party and he is in order to withdraw it any time, this is a Bill that is of immense interest to the Members. Members prepared for it and came this morning with the sole purpose of participating in the Committee of the whole House. The Leader of the Majority Party did not give a definite time when he intends to bring it back, so that Members can plan when to prepare for it.

Hon. Deputy Speaker: Let us hear from Hon. Omboko Milemba, and then I will make a substantive ruling on it.

Hon. Omboko Milemba (Emuhaya, ANC): Hon. Deputy Speaker, it is in the same spirit already mentioned by Hon. Junet that we would really want to know at what time the Bill is coming back. It has been in the Order Paper for the last two consecutive weeks.

Hon. Deputy Speaker: Hon. Akoth. Is that you, Hon. Millie?

Hon. (Ms.) Odhiambo – Mabona (Suba North, ODM): Yes, Hon. Deputy Speaker.

Hon. Deputy Speaker: You have many names. You are Hon. Akoth, Hon. Odhiambo, Hon. Gesagesa and another one which I do not want to mention now. Hon. Members are saying you are Hon. Mabona.

Hon. Odhiambo-Mabona (Suba North, ODM): Thank you. Hon. Mwadime is also saying I am a ranking Member.

Hon. Deputy Speaker, I came in very early with my computer to look at the several pieces of legislation in this Bill. Nonetheless, I think the request by the Leader of the Majority Party is in order. I was going to request that we set up a harmonisation committee to enable us prosecute the Bill much better, tidier and neater at the Committee of the whole House. There are some amendments that we might all be agreed on and drop similar ones. I know Hon. Nyikal and about three other Members have amendments similar to mine. When we synchronise, we do not need to spend so much time on the Bill. So, I would encourage that we go that direction and that you direct the Leader of the Majority Party not to just consult the committees, but have a harmonisation committee.

Hon. Deputy Speaker: It is very surprising many times, Hon. Mabona Millie Odhiambo, in the mornings you are very reasonable.

(Laughter)

Let us hear from the Chair of the Departmental Committee on Justice and Legal Affairs.

Hon. William Cheptumo (Baringo North, JP): Thank you, Hon. Deputy Speaker. I want to agree with the Leader of the Majority Party. There are over 69 proposed amendments to the

Bill touching on various statutes. Indeed, you will find a situation where two or three Members propose amendments to the same sections of those statutes. As a House, it is important for us to harmonise all this so that we spend the time of the House in a manner that is going to be very useful. So, I support the proposal that we adjourn this matter. I support the Leader of the Majority Party, and he is busy consulting.

Hon. Deputy Speaker: Yes, you are supporting him on record. So, you do not have to worry about him having to hear you.

Hon. William Cheptumo (Baringo North, JP): Hon. Deputy Speaker, the essence of this Bill is to align areas where we feel the law is not properly aligned. So, it is very important that we take time and move together as a House.

Lastly, what is it, Hon. Mutavi, Member for Yatta?

Hon. Charles Kilonzo (Independent, Yatta): Thank you, Hon. Deputy Speaker. On the same issue of harmonisation, which I do agree with, I want to bring to your attention that I have noticed a trend where amendments that contradict existing laws are brought to the Floor of the House. I was just wondering if there is no procedure, yet we have a Legal Department in the House, to confirm that an amendment does not contradict existing laws. I saw that happen yesterday.

Hon. Deputy Speaker: Leader of the Majority Party, before I make the final ruling, there are two issues which have been raised. The first one is the timeline. What is the approximate time that you think you would want to bring this matter to the House? Already, Members have seen it and it has elicited a lot of interest. Secondly, is what Hon. Millie Odhiambo asked, which to me looks very reasonable: That you probably need to do some harmonisation so that it becomes easier and we will not have to spend so much time transacting it. What do you have to say? Of course, I am going to allow your request. In fact, I rule that we have accepted your request. We want to hear what you intend to do to make it easier for Members to transact this business. You see the interest they have.

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, every Bill or Motion is of interest to Members and the country. There is no one Bill or Motion that is superior to another. Sorry, Hon. Millie for coming too early. You know I pray at 5.30 a.m., so I am forced to wake up. Maybe you wake up at 10 a.m.

We will deal with this matter when we come back. As Hon. Millie said, we have done this even in the 11th Parliament. Hon. Wamalwa is aware. We will sit with Members whose amendments are similar to agree on one. We will sit with the committee chairs. We will come with amendments that we feel must be subjected to the Floor of the House.

What Hon. Charles Kilonzo raised is very true. Yesterday we were legislating on something which is found in the Unclaimed Assets Act. So, as the Legal Department drafts amendments, they must look at what exists. We do not want to duplicate or contradict existing laws. We have the best Legal Department in the National Assembly. Once we come back in the first week of October, if the House agrees with me in the afternoon, we will deal with that matter.

Hon. Deputy Speaker: So, it is ruled. The rest we leave to the Leader of the Majority Party to coordinate and make sure that this Bill is transacted. Of course, this has more interest. It is actually the Statute Law (Miscellaneous Amendments) Bill like no other brought to the House before. For Members who have been in this House, this is a different one. It is a bit too heavy.

Let us proceed to the next Order.

MOTION

ADOPTION OF REPORT ON AIR PASSENGER SERVICE
CHARGE ACT (APPORTIONMENT) ORDER

Hon. Deputy Speaker: Chairperson of Committee on Delegated Legislation, I am sure you are ready.

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): Hon. Deputy Speaker, I beg to move the following Motion:

THAT, the House adopts the Report of the Committee on Delegated Legislation laid on the Table of the House on Thursday, 23rd August 2018, and pursuant to the provisions of Section 15(1) of the Statutory Instruments Act and Standing Order 210(4)(b) annuls in its entirety the Air Passenger Service Charge Act (Apportionment) Order, 2018 (Legal Notice No. 143 of 2018).

As we all know, the Committee on Delegated Legislation is established pursuant to the National Assembly Standing Order 210, and has the power to scrutinise and certify that all regulations submitted to the National Assembly comply with the Constitution and all other Acts of Parliament.

Hon. Deputy Speaker: Just a minute. Which Act are we annulling in its entirety?

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): We are annulling the Regulations, which are published in Legal Notice No.143 of 2018.

Hon. Deputy Speaker: The Order Paper talks about the Air Passenger Service Charge Act.

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): Yes, it is under that. The main statute is the Air Passenger Service Charge Act. You are correct.

Hon. Deputy Speaker: Hon. Shollei, all I want you to do is to read that on record so that we are very sure it is the one we are dealing with. You skipped that bit. Proceed.

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): Hon. Deputy Speaker, I will repeat that for the Hansard record.

I beg to move the following Motion:

THAT, the House adopts the Report of the Committee on Delegated Legislation laid on the Table of the House on Thursday, 23 August 2018, and pursuant to the provisions of the Statutory Instruments Act...

Hon. Deputy Speaker: There must be something with what you are referring to because you still skip something, unless I am not clear myself. Kindly, repeat it again. What I want the Hansard to capture is the Air Passenger Service Charge Act. If you can go by the Order Paper, it will be much easier.

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): Yes, I will. Hon. Deputy Speaker, I beg to move the following Motion:

THAT, the House adopts the Report of the Committee on Delegated Legislation on the Air Passenger Service Charge Act (Apportionment) Order, 2018, laid on the Table of the House on Thursday, 23 August 2018, and pursuant to the provisions of Section 15(1) of the Statutory Instruments Act and Standing Order 210(4)(b), annuls in its entirety the said Regulation.

The Air Passenger Service Charge Act (Cap 475 of the Laws of Kenya), specifically Section 3(3) provides that all proceeds of the charge imposed under this Section shall be

apportioned between the Kenya Airports Authority (KAA) and the Kenya Civil Aviation Authority (KCAA).

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): On a point of order.

Hon. Deputy Speaker: What is your point of order Hon. Odhiambo?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Deputy Speaker for giving me this opportunity. I am sorry for interrupting my sister, Hon. Gladys. As she was giving very good points, Hon. Shakeel Shabbir walked in with something which I am not too sure is parliamentary. I know that women yesterday donned white scarfs in support of the two-thirds gender rule. I do not know whether his is part of another agenda, maybe an anti-corruption crusade because it looks more or less like a blanket. Give the House direction as to whether what he is wearing is parliamentary.

Hon. Deputy Speaker: Actually, it is said that he brought it from Mauritius. You were complaining about that gadget that is not working well where you are sitting. If you remind yourself, that is the particular seat. You know what you did in the last Parliament in that particular seat. You might be actually responsible for that gadget not working.

But Hon. Shabbir, surely this is not a religious attire. That is not religious at all. Let us hear what you have to say.

Hon. Shakeel Shabbir (Kisumu East, Independent): Hon. Deputy Speaker, this is an Islamic hat. It is worn by Muslims all over the world. It is an Islamic formal hat. The Hon. Leader of the Majority Party wears an Islamic Swahili hat. This one is used in most Muslim countries that are cold such as Russia and Tajikistan.

Hon. Deputy Speaker: No, I am not convinced, but let me hear what Hon. Junet has to say. Is this an Islamic hat? Then I will ask the Member for Wajir if it is an Islamic hat because I am convinced it is not.

Hon. Junet Nuh (Suna East, ODM): Hon. Deputy Speaker, the last time in the world somebody was seen dressed like this was during Mobutu Seseseko's time.

(Laughter)

However, the Islamic hat that he is talking about is the one that is put on by Hon. Duale and others, not this one of Hon. Shakeel. He is becoming another Mobutu in our country.

Hon. Deputy Speaker: Let us hear from you, Hon. Member. Which one is this?

Hon. Ahmed Kolosh (Wajir West, ODM): Hon. Deputy Speaker, Hon. Junet has never worn even the one that Hon. Duale wears. This is an Islamic hat, but a Swahili one. This one is worn in the cold areas such as the USA, Russia and Afghanistan.

Hon. Deputy Speaker: Okay, so the question which I should be asking is: How cold is it this morning for Hon. Shakeel to decide to wear this? You see, we of course, will recognise religious hats, but when you tell us this is worn in Russia... I know the kind of people who wear it in Russia and they are not Muslims. If he was fighting the cold, there is a better way to do it. I am not convinced, but what is it, Hon. Shamalla?

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Deputy Speaker. I must appreciate that the Islamic empire actually extended from Damascus right up to Spain and North Africa. This area covered several different cultures. So, you will find that in Morocco, they wear the fez, which has nothing to do with the cold, but it is a red hat with a little tussle on it. What Hon. Shakeel is wearing is, indeed, another variance of style of an Islamic hat and not

necessarily because of cold, but it is, indeed, an Islamic hat. There are different variations in different countries of the Islamic world.

Hon. Deputy Speaker: Well, probably you are picking yours out of history. I would rather people who practice it because, of course, you are not a Muslim. So, let me give the Member for Wajir a chance before I come to the Leader of the Majority Party. It should not take us a long time, but we cannot have people coming in here with caps. There were threats yesterday that male Members would come here with hats and I do not know whether Hon. Shakeel decided to do that today. Yes. Hon. Member for Wajir South.

Hon. Mohamed Mohamud (Wajir South, JP): Thank you, Hon. Deputy Speaker. Hon. Millie has pointed to Hon. Shakeel, but I can assure you that that hat has come from Mauritius where she witnessed the buying of it because I was there.

That is an Islamic hat and there is the *kofia*, *jilbia* and there are so many types of *kofias* in Islam. As much as Hon. Junet has said, the last time we saw it was when Mobuto Seseseko was wearing it. That was the African fashion of it where there was the leopard type. There is the Persian Islamic hat that comes originally from Persia and that is an Islamic hat. To give much more benefit to Hon. Shakeel, that has got more temperament position on it. That is an Islamic hat used in Islamic ceremonies.

Hon. Deputy Speaker: This is very serious and so, I have to be very clear. Before I even give a chance to the Leader of the Majority Party, let me hear from the lady Member for Tana River. Let me hear her and then lastly, the Leader of the Majority Party. This is serious. Proceed.

Hon. (Ms.) Rehema Hassan (Tana River CWR, MCCC): Hon. Deputy Speaker, I concur with my colleagues. The Muslim *kofias* are in several designs. So, even that is a Muslim hat in a different design. There is even one that covers a small space, which we call *Kitoria* at the Coast. It is also a Muslim hat.

Hon. Deputy Speaker: Now just to ask you a question, you said that one in Coast is called *Kitoria*. Is that okay. What is the name of this one?

(Laughter)

Hon. (Ms.) Rehema Hassan (Tana River CWR, MCCC): I do not know the name. It could be a *Kitoria* in a different design, but I do not know the Moroccan name. *Kitoria* is a Coast name.

Hon. Deputy Speaker: The Leader of the Majority Party, you will have the final one on this.

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, I want to confirm that all the hats that people wear are either communal or cultural. There is no specific hat that is Islamic. The hat that Hon. Shakeel is wearing is based on his ancestral descent. It is a Pakistani hat. If you read the history of Pakistan, at Independence, Bhutto is the only man who had that kind of a hat. Current prime ministers and leaders do not wear it, but it is a traditional Pakistan hat. If you have to allow a hat in the Chamber, you must allow a hat that is synonymous with the Kenyan culture. We cannot import Pakistan culture into our Chamber. We cannot allow that because the route we are taking is dangerous. Yesterday we had Members who were wearing white scarfs. Tomorrow, Bobi Wine's group will wear red. You will find Bobi Wine's supporters wearing their red scarf here. I saw Hon. Babu Owino and Hon. Gideon Keter wearing that. So, let us maintain decency. That is a Pakistan thing and I want you to throw him out of the Chamber.

Hon. Deputy Speaker: Hon. King'ola.

Hon. Patrick Makau (Mavoko, WDM-K): Thank you, Hon. Speaker. Allow me to remind this House that Hon. Shakeel used to be the Mayor of Kisumu Town. I want to confirm that all mayors, including myself from Mavoko - and I am sure even Hon. Junet - used to wear the same cap. This *kofia* used to be a sign power and authority. I am sure Hon. Shakeel this morning must have reminded himself the days and times he used to be a mayor. I think he is rightfully wearing it.

Hon. Deputy Speaker: Hon. Members, I really gave a lot of time to that and we have really taken unnecessary time on this particular one, which is supposed to be a small issue. This is because Hon. Shabbir said it is a religious hat. I think it is not. It is probably a cultural attire. If it is a cultural attire, as I think, then he should have actually put the entire cultural dress to go with it. So, you have actually mixed what we have in the Standing Orders with what is, probably, your cultural hat. I will not throw you out, but I will ask and request you to remove it and then we proceed. Hon. Shabbir is a very respectable Member of this House. So, I will not throw him out at all. He has done what is correct and we will proceed.

Hon. Shollei, proceed. Of course, I understand Hon. Shabbir has issues with his hair. So, it becomes a bit cold.

(Hon. Shakeel Shabbir removed his hat and wore another one)

(Laughter)

I will ignore Hon. Shabbir. Hon. Shabbir, you know it is unnecessary to create unnecessary excitement and waste the time of the House. I am not so sure I see it clearly, but it is also not an Islamic cap. Is that an Islamic one?

An Hon. Member: Yes, it is.

Hon. Deputy Speaker: If it is, then, let us proceed. Hon. Members, let us proceed. Proceed, Hon. Shollei. Let us put it to rest, Hon. 001. What is it, Hon. Sankok? That is the last.

Hon. David ole Sankok (Nominated, JP): Hon. Deputy Speaker, you know he may have so many of them. You are closing him out. Let him remove this one so that we can see the third one, the fourth one and the fifth one. This guy seems to have so many.

Hon. Deputy Speaker: Out of order. I assume that is an Islamic cap. We will proceed. That is Islamic. So, let us proceed. We will now dispense this matter very quickly because we have taken almost 20 minutes of the very valuable time of this House discussing dressing.

Hon. (Ms.) Gladys Boss Shollei (Uashin Gishu CWR, JP): Thank you, Hon. Deputy Speaker. I will continue from where I was. I was just laying the foundation for the reasons for annulment.

Hon. Deputy Speaker, I stated that Section 33 of the Air Passenger Service Charge Act Cap.475 provides that all proceeds of the charge imposed under the section shall be apportioned between the Kenya Airports Authority (KAA) and the Kenya Civil Aviation Authority (KCAA) in such manner as the Cabinet Secretary may, in a notice in the Kenya Gazette, specify. In exercise of these powers, the CS for the National Treasury published these regulations of the Air Passenger Service Charge Act (Apportionment) Order, 2018 on 29th June 2018 via Legal Notice No.143 of 2018. Following this publication, the Order was tabled before this House as required by law on 4th July 2018.

This particular Order or regulation seeks to introduce the Tourism Promotion Fund as an additional beneficiary of the Air Passenger Service Charge collected under the Air Passenger Service Charge Act. Section 3(1) also provides that the proposed Fund receives 20 per cent of the resources collected under this Act. The effect of these regulations is to introduce a third beneficiary. This is where the Committee had a problem with. The fact is that the law is very clear. It only identifies two beneficiaries which are the KAA and the KCAA. Therefore, introducing a third beneficiary is in contravention of the parent statute.

Section 16 of the Statutory Instruments Act allows the Committee on Delegated Legislation to consult with the regulation-making authority, in this case, the National Treasury. In fact, the Act says that the Committee shall confirm with the regulation-making authority for which the statutory instrument has been brought or made under. This happened between 17th and 19th August 2018. The delegation from the National Treasury was led by the Chief Administrative Secretary (CAS), Hon. Nelson Gaichuhie. Once this was brought before the Committee, the Committee then, in its considerations, made the following recommendations.

Firstly, as I already said, the Order is inconsistent with the parent Act. The creation of a third beneficiary is not envisaged or provided for by the Air Passenger Service Act at all and, therefore, it not only contravenes the parent statute, but it also contravenes Section 22(2) of the Statutory Instruments Act, which says:

“A statutory instrument shall not be inconsistent with the provisions of the enabling legislation or any Act of Parliament and the statutory instrument shall be void to the extent of the inconsistency.”

For that reason, these regulations are inconsistent and, therefore, void. In fact, if we had approved these regulations, it would have been tantamount to amending an Act of Parliament through a regulation, which is contrary to the law.

The second reason for annulment is that an order or a regulation cannot apply retrospectively. The Finance Bill 2018, under Clause 56, contains a proposed amendment to the Air Passenger Service Charge Act to include the Tourism Promotion Fund as one of the beneficiaries. However, this amendment has not yet passed. If the CS for the National Treasury would like this amendment passed or introduce a new beneficiary, he should await the amendment to the parent statute. Furthermore, Section 13 of the Statutory Instruments Act provides that:

“The Committee, in carrying out scrutiny of a statutory instrument, shall ensure that it does not give retrospective effect to any of the provisions in respect of which these regulations are made.”

The third and last reason is that there was lack of public participation. Section 11(1) of the Statutory Instruments Act requires that when the regulations are submitted to the National Assembly, they must be accompanied by an explanatory memorandum of the manner and the level in which consultations and public participation were undertaken. This is not only a requirement of the Statutory Instruments Act, but also in the spirit of the Constitution in Articles 10 and 118.

Hon. Deputy Speaker, in concluding, we did find, as a Committee, that it was a little perturbing that the CS would publish regulations that have not undergone public participation. You must recall that there has also been a pronouncement by the courts that this is necessary during regulation-making process.

Having considered the Order, pursuant to the provisions of Article 94(6) of the Constitution, the Air Passenger Service Charge Act, the Statutory Instruments Act and the Interpretation and General Provisions Act, which the regulation-making authority presented

before us, after conferring with the regulation-making authority and having considered all the above laws, the Committee recommends to this House that the Air Passenger Service Charge Act (Apportionment) Order, 2018 be annulled in its entirety for those reasons.

In conclusion, I thank the Members of my Committee. As you know, any matters relating to the National Treasury only have a 15-day window within which we must dispense with them. It took a lot of hard work on their part in order for us to complete this on time.

I beg to move and request Hon. Daniel Maanzo, Member for Makueni Constituency and a Member of the Committee, to second this Report.

Hon. Deputy Speaker: Let us have Hon. Maanzo. Be brief. I am sure this is a teacher-student relationship. Proceed.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Deputy Speaker. I second this Motion.

As my very able teacher has told the House, when you make this sort of thing, you must follow the law. The problem is that if you introduce an apportionment of funds to the Tourism Promotion Fund, it will be contrary and inconsistent with the provisions of Section 3(3) of the Air Passengers Service Charge Act, which is the enabling provision. This will amount to a violation of the Statutory Instruments Act.

Therefore, when we make instruments or legislation which we receive from the Cabinet Secretary and which is contrary to the parent Act, it becomes illegal and void to that extent. Also, although the Tourism Promotion Fund has many benefits, we need the necessary legal framework having gone through public participation. It amounts to having two statutory bodies dealing with one fund and several conflicts could arise. Therefore, the money should serve the right purpose. It was better to annul this and give an opportunity to the Cabinet Secretary and the necessary authorities to bring an appropriate instrument, which I am sure this House will approve.

I beg to second.

(Question proposed)

Hon. Deputy Speaker: I will give an opportunity to only two Members and then put the Question. I will start with the Chair of the Departmental Committee on Transport, Public Works and Housing, Hon. Losiakou.

Hon. David Pkosing (Pokot South, JP): Thank you, Hon. Deputy Speaker for giving me this opportunity. People ask me what my other name is but that is my bull. They can come to me later.

I agree with the Committee on Delegated Legislation. People are accusing them of annulling all these regulations. I agree with them that this is in order. I have also talked to them and there is one reason, namely, the parent Act. The KCAA and the KAA are domiciled in my Committee. The parent Act only recognises two shareholders in that Fund, namely, the KAA and the KCAA. Where is the other one coming from? How can the Cabinet Secretary for the National Treasury purport to gazette Regulations and bring in other people who are outside the law? I agree 100 per cent with what the Chair of the Committee on Delegated Legislation said yesterday 100 per cent. They are being misled by the so-called legal officers in the Ministry. I agree with them as the Committee in charge. They are doing very well. Let us now work together.

I advise the ministries, if they are listening to us, if they cannot consult the Committee on Delegated Legislation, then they should do the honourable thing of consulting the responsible Committee, so that we can work out these things and avoid wasting time. I agree with the Committee 100 per cent. This is a good job well done, Hon. Shollei.

Hon. Deputy Speaker: Let us have Hon. Osotsi. If you take one minute, I could give a chance to two other Members.

Hon. Godfrey Osotsi (Nominated, ANC): Thank you, Hon. Deputy Speaker. This trend of annulling regulations is very worrying. From the position of the Committee on Implementation, where I am the Vice-Chair, we realise that so many laws do not have the accompanying regulations. Any attempt to come up with regulations ends up with these kinds of challenges. Maybe we need to look for a proactive way of dealing with this matter so that when regulations come to us, they can be adopted by the House. One way is for the Committee on Delegated Legislation having capacity-building sessions with the lawyers in various ministries who draft these regulations so that by the time the regulations come to us, they meet the expectations of this House.

Hon. Deputy Speaker: Let us have Hon. Wangari Wanjira.

Hon. (Ms.) Martha Wangari (Gilgil, JP): Thank you, Hon. Deputy Speaker. The Committee on Implementation is looking for a scapegoat for their work. Yesterday, the Chair of the Committee on Delegated Legislation laid out the statistics in terms of the number of regulations that we have adopted.

Hon. Deputy Speaker: Hon. Member for Gilgil, you wanted to raise a point of order, but you are prosecuting your case. So, I will allow you to prosecute your case. Just proceed and finalise.

Hon. (Ms.) Martha Wangari (Gilgil, JP): Thank you, Hon. Deputy Speaker. Is it in order for the Member to invoke that it is the Committee to do capacity-building for the regulations-making bodies? It is not right. We have our role as a Committee and it is for the Committee on Implementation to find out how they can improve their capacity to come up with regulations as they should. More importantly, the Committee on Implementation is dealing with a lot of Motions that have been passed in this House. It should do its work and report to us how many Motions have actually been implemented and let the Committee on Delegated Legislation do its work.

Hon. Deputy Speaker: Let us have Hon. Nanok Epuyo.

Hon. Daniel Nanok (Turkana West, JP): Thank you, Hon. Deputy Speaker for the opportunity. I wish to add my voice to the Motion.

It is a worrying trend as one of my colleagues observed. Even yesterday, that concern was raised. There are many annulments of regulations that have been tabled in this House. Regulations are the way in which laws are implemented. For every annulment, it means that the execution or implementation of Acts which have been passed by this House is hampered or delayed. That affects service delivery. It is important for the ministries who come up with regulations to do a little bit more. Ministries are losing it at the point of public participation on the issue of regulations to actualise the various Acts that are passed by this House. It is not right. It will deny the Kenyan people the services they require. Therefore, the Acts being passed are not being made useful by the ministries concerned.

Therefore, with regard to the Committee on Delegated Legislation, whereas it is doing its work for sure, there must be some level of collaboration, cooperation and consultation so that the regulations are not annulled in the numbers that we are witnessing in this House.

Hon. Deputy Speaker: Let us have Hon. Koskei Kipkoech.

Hon. Dominic Koskei (Sotik, JP): Thank you very much, Hon. Deputy Speaker. Sorry for the interruption.

Hon. Deputy Speaker: When you get involved in activities that are not...Proceed, Hon. Koskei.

Hon. Dominic Koskei (Sotik, JP): I wanted to support my Chair on the issue of Air Regulations. I do not know why the Cabinet Secretary came up with this issue.

As a Committee, we discussed it. We did not find any reason for the regulations to be put in place.

With those few remarks, I support.

Hon. Deputy Speaker: Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Deputy Speaker. Let me also applaud the Committee. Since the new Chair came in, commendable work has been done. I want to suggest the way forward while the Leader of the Majority Party is in the House.

The nullification of this regulation shows that there is lack of legal capacity in the ministries. I have information that some ministries do not even have legal departments. Some ministries have very junior legal officers who do not have any support. That is why we have these kinds of regulations. If they are making mistakes in regulations, what kind of mistakes are they making in legal agreements they are involved in, like agreements relating to tenders? The fact that we have regulations in ministries that are not based on the law means the Government is losing a lot of money. It is necessary for all ministries to have strong legal departments that are supported by the Attorney-General's Office. What used to happen in the past is that they asked the Attorney-General if they could be supported. That is a worry. It is an indication which we cannot let pass.

In the years before we had a competent Chair of the Committee on Delegated Legislation, what happened to those statutory instruments that were passed at that time? We should ask ourselves whether we have statutory instruments in operation that are faulty. If we get into problems, our opponents in any legal tussle will obviously win the cases. This is an issue we need to address.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: If Members contribute briefly as you have done, two more Members will have opportunity to contribute for a minute each, and we will be fine.

Hon. Omulele.

Hon. Christopher Omulele: Thank you, Hon. Deputy Speaker, for giving me this opportunity to contribute. I want to support the Committee on Delegated Legislation for annulling this regulation. What is more worrying is the fact that in the past one or two years, we approved a tax levied on all passengers who arrive at our border points. I am aware that levy has accumulated in excess of Kshs10 billion, which needs to be utilised through regulations. So, it is important for the line ministries to come up with regulations to utilise this money, which this House passed for use by the Ministry of Tourism and Wildlife to promote tourism, and by the Kenya Airports Authority (KAA) to improve the airports in this country. It is, therefore, very important for the line ministries to come up with proper regulations that can be implemented.

I support the Committee on Delegated Legislation. If the ministries bring regulations that do not comply with the law, they must be annulled.

Hon. Deputy Speaker: Hon. Members, if we take so much time to contribute, many Members will not contribute. I will give an opportunity to the Chair of the Departmental

Committee on Sports, Tourism and Culture to contribute for one minute. Hon. Junet will then contribute for one minute. Majority Whip and Minority Whip, please do something.

Hon. (Dr.) Victor Munyaka (Machakos Town, JP): Thank you, Hon. Deputy Speaker. Tourism is under my docket. This particular fund was created to promote tourism in Kenya. We earn Kshs120 billion per year from tourism, but the budgetary support for tourism is Kshs4 billion. The Air Passenger Service Tax was created to revive and promote tourism. However, I agree with the Committee that the Cabinet Secretary (CS) needs to come up with proper legislation, so that we can have proper laws to facilitate the collection of that tax to promote tourism.

Thank you very much, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Junet.

Hon. Junet Nuh (Suna East, ODM): Hon. Deputy Speaker, I want to take one minute to comment and congratulate the Committee for doing a good job.

(Applause)

We remember how this Committee operated in the last Parliament. It is good that it is now functioning. It is a very important Committee of this House. This is an area where the Executive used to do a lot of injustice to the people of Kenya some time back. I want to commend the Committee and tell the Chair that she should not be intimidated. If the regulations do not make sense, annul all of them.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Let us have the Mover to reply.

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): Hon. Deputy Speaker, I want to thank the Members who have contributed to this debate and congratulated ourselves. Thank you, Hon. Junet, for your kind words. This particular recommendation was well canvassed.

With those few remarks, I beg to reply.

(Question put and agreed to)

Hon. Deputy Speaker: Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[The Deputy Speaker (Moses Cheboi) left the Chair]

IN THE COMMITTEE

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

THE FINANCE BILL

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, we are now in the Committee of the whole House. Let us settle down, so that we can prosecute the Finance Bill from where we left yesterday. We left at New Clause 58A. We also recommitted New Clause 18C and Clause 31.

If the Chair of the Committee on Delegated Legislation and the Chair of the Departmental Committee on Sports, Tourism and Culture can allow us to proceed, we will be glad. Do not stand on the gangways.

The Temporary Deputy Chairman (Hon. Christopher Omulele): I see interest from the Chair before Hon. Jude Njomo says something about it. You need to move it. It is a proposed new Clause.

New Clause 58A

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by inserting the following new clauses immediately after clause 58—

Insertion of
new section
33C in Cap.
488.

58A. The Banking Act is amended by inserting the following new clause immediately after clause 33B—

Power of Central
Bank to prescribe
conditions on
deposits or
withdrawals.

33B.(1)The Central Bank may prescribe, in regulations, conditions on deposits or withdrawals by customers in banks and financial institution.

(2) The Central Bank shall prescribe the regulations under sub-section (1) within thirty days of coming into force of this section.

(3) For avoidance of doubt no other person shall purport to make regulations required under this section and any existing guidelines or regulations prescribing conditions on deposits or withdrawals by customers shall cease to be operational within fourteen days of the coming into force of the regulations made under this section.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, look at page 1093 of the Order Paper.

Hon. Joseph Limo (Kipkelion East, JP): The import of the amendment is that of late, we have realized that banks have been introducing regulations left, right and centre. When you visit a bank, you are asked to specify where you are going to pay the money and who you are going to pay, yet it is your money. When you are depositing, the same stories are brought in. Now Kenyans have been asking why we are making laws which are disturbing. They tell us that banks ask them many questions and it makes the country risky. Most people now keep their money in their houses because they do not want a lot of questions. The questions may be okay. But do they have the full force of the law? They are not made by this House and they do not come through regulations which are brought through delegated legislation. So, the new Clause 58A will require

that when Central Bank makes regulations, they must be brought to this House for endorsement to have the full force of the law. Any regulation made by any busy-body outside this House will just be paper. They must come through the House. This is the only House that has the mandate to make legislation in the country.

That is the justification for the amendment. I beg the House to support new Clause 58A.

(Question of the new clause proposed)

(New Clause 58A read the First Time)

(Question that the new Clause 58A be read a Second Time, proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): I see interest from Hon. Abdullahi Sheikh, Member for Mandera North.

Major (Rtd) Bashir S. Abdullaih (Mandera North, JP): Thank you, Hon. Temporary Deputy Chairman. The clause says that the Central Bank may prescribe in regulations, conditions on deposits or withdrawals by customers in banks and financial institutions. To me, this is ambiguous. What are these regulations and conditions? Are we giving the Central Bank a blanket cheque to decide whatever they want to do to Kenyans? The Mover has said that Kenyans have told them that they are asked unnecessary questions, filling in forms and many things by banks. Where are those regulations and conditions for us to go through them so that we know whether they are in tandem with the general public? We are now told that the Central Bank will prescribe conditions on how to withdraw and deposit. Where are these conditions and prescriptions? We need to be told so that, as a House, we go through them and not give a blanket cheque to the Central Bank to decide on matters banking and other things that touches on the lives of innocent Kenyans.

The Temporary Deputy Chairman (Hon. Christopher Omulele): From where I sit, I think what the Chair is proposing to do is to bring within the ambit of statutory instruments that must be brought to the House so that those questions you are asked at the bank must have the stamp or authority of this House. Let the Chair clarify then we move to this end.

Hon. Joseph Limo (Kipkelion East, JP): Let me give further information. Currently, what we have put in legislation here is already happening. The reality is that when you go to the bank, this regulation is there requiring that you must explain where you got the money you are depositing. You must also equally explain when you are withdrawing any amount above Kshs1 million and where you are taking it. So, the regulations that are already in the bank do not have the full force of the law. We have now put it in law that the Central Bank can make regulations. We have now prescribed that they can make the regulations. However, sub-clause (2) says that the Central Bank shall prescribe the regulations under sub-clause (1) within 30 days of coming into force of this Clause. That means that whatever regulations that are being used by the banks now will be null and void in 30 days, if they are not brought to this House.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Junet, is that the point you wanted to make?

Hon. Junet Nuh (Suna East, ODM): Hon. Temporary Deputy Chairman, I just want to reiterate what the Chairman has said. If the regulations are not in conformity with what the Member wants, we will annul them the way we have annulled them a few minutes ago.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Makali Mulu.

Hon. Benson Mulu (Kitui Central, WDM-K): Hon. Temporary Deputy Chairman, I like what the Chairman of the Committee has said. We do not have an opportunity to look at regulations and that is why things are happening the way they are. But through this new clause, regulations will be becoming to the House for us to approve. Once we approve, they can then be effected.

I support the new clause.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Nguchine, Member for Central Imenti.

Hon. Moses Kirima (Central Imenti, JP): Sub-clause 33(b) states that the Central Bank may prescribe, while sub-clause (2) says that the Central Bank “shall”. It means the first sub-clause gives the Central Bank an option to do it or not to do it. Sub-clause (2) contradicts it because it is a must.

Even if you go to any enforceable institution to enforce the same, these two sub-clauses contradict each other. If it is “shall” let it be so because it means must. When it comes to the regulations and conditions on deposits of customers, there is nowhere it is prescribed that it is going to come to this House. It is left blank. When it is left like that, there is no way you can later claim that you left it ambiguous to purport to intimate that it comes to this House. It should indicate in black and white that the regulations must pass through this House to be enforced.

That is the position.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Nguchine, that is a valid point. Chair, you need to look at that. In one, you use the word “may” giving them an option and in the second one ... Let us hear the Chair.

Hon. Joseph Limo (Kipkelion East, JP): When you make a law requiring regulations to be made, generally, we do not ask the Central Bank to make regulations. They can either make them or not. That means that customers are free to deposit or withdraw money without giving any information or they can require that you give some information. We are giving them a leeway to make regulations. However, if they make the regulations, sub-clause (2) requires that they must, within 30 days... Maybe, sub-clause (2) requires that the regulations should be brought to this House.

“Shall” means that in the event that they make regulations, they must be taken through the required procedures for approval. The third one is saying, for the avoidance of doubt that, no other person shall purport to make regulations required under this section and any existing guidelines or regulations prescribing conditions on deposits or withdrawals by customers shall cease operation within 14 days.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Nguchine, I hope you have been listening to what the Chair has been saying. Hon. T. J. Kajwang’, you seem to be agitated.

Hon. T.J. Kajwang’ (Ruaraka, ODM): No, I am very happy and settled this morning. The Chair has explained something but I will ask him to listen to us. We understand what you have done, but the way you have drafted your law will not do what you want to achieve. In sub-section 1, you very well say that Central Bank may prescribe. That is the way legislation is done, because it is “may”. They may choose to do it or they may also choose not to do it. But when you go to sub-section 2 and then you say that Central Bank shall prescribe those regulations within 30 days. “Shall” means that if they do that within 30 days, they must never do it at all. That is what you have done. So, what you may have done in terms of drafting is this: You

should have said: “Within coming into force of these regulations, the regulations should be done within 31 days. This is a different ball game. The way you have done it, the understanding is that if they do not do it within 30 days, they will not do those regulations at all. So, you can get help from the Table to do a further amendment and get your wording correctly, so that you do what you mean.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well, Hon. T. J makes a lot of sense. It looks like under sub-section 2, you are saying that they must. From what I understand the Chair to say is that they may want to prescribe or they may not want to. But what we want to achieve is where they want to prescribe those regulations, then they must come to the House within 30 days. That is not the effect of your sub-section 2. Just think about it as Members contribute.

Hon. Jude Njomo.

Hon. Jude Njomo (Kiambu, JP): I totally agree with you, Hon. Temporary Deputy Chairman and that is what I wanted to emphasise on. It is very important that the only people who can make laws are Members of Parliament in this House and Members of the County Assemblies. Nobody else makes laws. When a Ministry or any other organisation would like to have some regulations or some laws to be made, they must be brought to this House. I also agree with Hon. T. J. Kajwang’ that this has not been properly defined here. It is not properly drafted. People in the Treasury and the Central Bank are guys of *kizungu mingi*. They will translate this to their own language and do funny things. We must put it in very simple and straight forward language which will be understood easily.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): We shall have Hon. Maanzo and then Hon. Cecily Mbarire.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Speaker. I want to agree with what Hon. Members have said. However, I want to tell the Chair in charge of this committee that already, those regulations are in use. If you deposit Kshs1,000,000 today, you must explain where you got it from. You will find this written in some of the banks. It is not yet harmonised. When a practise is already going on, the work of Delegated Legislation Committee in which I am a member, is to summon those people here and tell them to bring it formally. That has not been provided in law and we are attempting to make it now. This is very important. What we need to do with the assistance of the lawyers here and the officers of Parliament is to draft it correctly and capture it correctly, bring it to a law so that we can regulate what is already happening and Kenyans are suffering from, and put it law because it not in law yet it is already in practice.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Temporary Deputy Chairman, I just want to add my voice to those that have spoken. These regulations are already there but are not anchored in any known law at the moment and so, it is important that we do so. But more importantly, is to make sure that these regulations come to Parliament to ensure that they are in line with the laws of Kenya. I have this concern, when we say the Central Bank may prescribe. I think that “may”, leaves them to do it or not to do it. I think it should be mandatory, “shall”, so that we are not dealing with any grey area. I want to support what Hon. T. J has said. This whole provision needs to be re-worded so that we do not leave any ambiguity or grey areas that can be misused.

The Temporary Deputy Chairman (Hon. Christopher Omulele): We shall have the Leader of the Minority Party.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Temporary Deputy Chairman, much as I may not have a problem with Parliament reigning in on these regulations that come up, banks just come with regulations, things that you ask yourself who gave them the powers to make laws. My concern is why we find it necessary to use the Finance Bill to bring such kinds of amendments. In my view, Finance Bill is supposed to deal with taxes and revenue-raising measures. If it is a matter of administration, Members of Parliament sometimes lack Bills to debate. Why can Members not make amendment to the Banking Act so that we debate and involve public participation because Kenyans probably have a say in how these things need to be conducted. I think this is the amendment proposed by the Chairman of the committee. The best thing to do is to avoid these amendments coming through the Finance Bill. The Committee can generate an Amendment Bill to the Banking Act, we debate it, give it full thought, including those legal issues in the drafting. It can better be dealt with in an Amendment Bill rather than an amendment like the one we have before us. Why do we not just do away with this amendment rather than disturbing our minds? We can engage our minds to other useful things and allow the Committee to go and bring an amendment to the Banking Act.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well, your contribution is noted. We shall have Hon. Wangari.

Hon. (Ms.) Martha Wangari (Gilgil, JP): Thank you, Hon. Temporary Deputy Chairman, picking from what Hon. Mbadi has said, my contribution to the Chairman is that, if you read No. 2, it says that the Central Bank shall prescribe the regulations under sub-section 1 within 30 days of coming into force with this section. What we are running away from is the fact that these regulations, however illegal, have been in application. So, what we are trying to do is put it in a proper way. My proposal would be, from the Delegated Legislation Committee point of view, is that we put it and anchor it to the Statutory Instruments Act. These two will be prescribed in accordance to the Statutory Instruments Act. That will put the necessary timelines that prescribe how regulations should be made. It will also take care of the issue of public participation. If they do not go through public participation, we will have a situation where we can sit down and say they have not done them in the right way and we can annul them. Therefore, my proposal to the Chair is that even as we re-word it, let us anchor these regulations in accordance to the Statutory Instruments Act because it prescribes the timing, the manner and how the law should be applied.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairman. I stand to support the amendment. I listened to the Leader of the Minority Party and he has a point in the Finance Committee bringing meaningful amendments not just to the Banking Act, but even to the interest capping law. It is imperative not just for the Chair of Finance but also for the National Treasury or the committee to formulate meaningful changes to the overall credit management system in the country. That is why, yesterday, I was very opposed to the interest capping changes that were proposed by the National Treasury. It needs to be relooked at deeper than just bringing amendments through the Finance Bill.

However, I support this and I want to concur with what the Member for Gilgil, Hon. Wangari, has said. It is not about just conforming to the Statutory Instruments Act but this amendment is actually in line with Article 94 of the Constitution that says no other body other than Parliament has the powers to make laws or any regulations that have the force of law. Therefore, for CBK to purport to make regulations that will have the force of law, without those

regulations coming here in the first place, is illegal. All we are doing is to clean up that mess. That is why I support what the Committee is proposing. We are just making effective provisions of Article 94. We are not taking away their power to make regulations. They will be able to make regulations that will regulate the industry. But for those regulations to have the force of law, they must come to this House. We also represent people; and the people must have a say in those regulations because they affect the way people conduct business.

I have done business in Nyamakima for many years. It is an industry that is cash based. Kshs1 million is like Kshs10,000 in upmarket Nairobi. Therefore, we feel CBK has been stifling the growth of business. In the same breath, you and I know that during campaigns, Kshs1 million in a day is difficult to use in paying all your logistics. Nobody will trust a politician to give him or her any goods or services during campaigns on credit. You have to pay it in cash. So, we have to queue in banks every morning to withdraw Kshs999,000 today and a similar amount tomorrow. Therefore, it is only fair that we support this amendment by the Committee.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Ichung’wah, you can see how Members are looking at you when you say Kshs1 million is very little money - pocket change.

Hon. Kimani Ichung’wah (Kikuyu, JP): I am a man of means, Hon. Temporary Deputy Chairman. That is why I was very quick to support the lifestyle audit. I am not just a man of means by virtue of being a politician. I am a seasoned accountant who worked for many years as a senior finance person. From there, I went into very successful business in downtown Nyamakima. That is why I am saying Kshs1 million is small change.

The Temporary Deputy Chairman (Hon. Christopher Omulele): That was just beside the point. We shall have Hon. Nyikal then the Chairman so that we can clean this up.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Speaker. I rise to support this amendment. It is important that we support our people. Banks, in a way, have gone haywire by bringing all kinds of regulations; even charging you when you deposit money which they will use for trade. And nobody says how much they should charge. Sometimes, I joke that the next thing they will charge us for is the air we breathe when we go to the banks. Therefore, having all regulations come to us is extremely important.

I would also like to add that the Committee has the opportunity to see where it is necessary to make substantive laws. So, this is my suggestion to the Chairman of the Committee: “Please, go ahead and look at all areas where we need substantive laws, consolidate them and bring them to this House so that we can have substantive laws so that we do not use the Finance Bill to bring changes.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): The last one is Hon. Lessonet, then the Chairman.

Hon. Moses Lessonet (Eldama Ravine, JP): Thank you, Hon. Temporary Deputy Chairman. Having been a banker before coming to this House, I stand to support this very wonderful amendment. You will notice that CBK has been issuing circulars every week on everything—on foreign currency transactions, on cash deposits, on cash withdrawals and, in fact, ignoring the requirement of bringing those circulars to this House. So, I totally support this amendment that such circulars, including regulations, must be processed in accordance to the Statutory Instruments Act so that they can be looked at by this House before they become operational.

With those brief remarks, I support the amendment. I thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Members, as you consider this, I would like you to take note of what statutory instrument means under the Statutory Instruments Act. It means any rule or regulation, direction, form, tariff of costs or fees, letters, patent, commission, warrant, other statutory instrument issued, made or established in the execution of a power conferred by or under an Act of Parliament under which such statutory instrument or subsidiary legislation is expressly authorised. So, all these things are covered here.

Chairman, how do you intend to clean this so that we can make progress?

Hon. Joseph Limo (Kipkelion East, JP): I would also like to bring to the attention of the House that, besides the regulations which have been issued by the CBK, the Kenya Bankers Association (KBA) a month ago reverted the gain which we have gotten through so many years back to the old way of operation where, if you want to withdraw money beyond a certain limit, you give a notice of three days. That is very dangerous because the moment you give notice, the bank employees can give that information to people outside the bank that so and so is coming after three days to withdraw Kshs10million. So, this particular regulation will ensure that no other person will make any regulation.

I wish to propose a further amendment in subsection (i) by replacing the word “may” with “shall”, so that it will read: “The Central Bank shall prescribe, in regulations, conditions on deposits or withdrawals by customers in banks and financial institutions.” In subsection (ii), I wish to delete the whole of it and replace it with the following:

The Central Bank shall, within 30 days of coming into force of this Act, prescribe regulations setting out conditions for deposit and withdrawals by customers in banks and financial institutions in accordance with the Statutory Instruments Act.

This will ensure that it must come to this House for avoidance of doubt. That is a further amendment that I have moved.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, you have all heard the proposed further amendments by the Chairman.

(Question, that the New Clause 58A as further amended be read a Second Time, put and agreed to)

(The New Clause 58A as further amended was read a Second Time)

(Question, that the New Clause 58A as further amended be added to the Bill, put and agreed to)

New Clause 58A

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, there is a further proposed new Clause 58A.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Jude, this is yours. Members, it is on page 1103 of your Order Paper

Hon. Jude Njomo (Kiambu, JP): Thank you, Hon. Temporary Deputy Chairman, I beg to move:

THAT, the following new clauses be inserted immediately after clause 58—

Insertion of new section 33C in Cap. 488.

58A. The Banking Act is amended by inserting the following new section immediately after section 33B—

Reserving of money for some loans. 33C. Every bank or financial institution shall reserve at least ten per cent of its loan portfolio for lending to small and medium scale enterprises.

Insertion of new section 44B in Cap. 488.

58B. The Banking Act is amended by inserting the following new section immediately after section 44A—

Information on next of kin.

44B. (1) Every bank or financial institution licensed under this Act shall, in respect of each savings, current or fixed-deposit account operated at the institution, maintain a register containing particulars of the next of kin of all customers operating such accounts, and shall update this register every two years.

- (1) A bank or financial institution that contravenes subsection (1) commits an offence and shall be liable, for each account in which there is default, to a fine not exceeding one million shillings, for every two years or part of the period during which the default persists.

This Section is a requirement that every banking institution must secure 10 per cent of its loan portfolio to be loaned to Small and Medium Enterprises (SMEs). This was brought by the desire to encourage banks to lend *wananchi*. You remember that after the capping of interest rates was done, banks withdrew their support to SMEs and generally to the citizens. This could be termed as economic sabotage because it affected many sectors of businesses. So, we are trying to secure credit to those in the SMEs who qualify for loans. Yesterday, while we were discussing this same Bill, two Hon. Members came to me; Hon. Amos Kimunya and Hon. Amos Kilonzo. They were convincing me to withdraw this particular amendment and they had two good reasons.

First, there are banks that do not have SMEs banking. There are those that do corporate banking without having members of the public banking in those institutions. Their argument was that this may not apply to them.

Secondly, the National Treasury was against this amendment although I would not like to listen to them so much. They were talking about freedom of banks to do business; that this would interfere with the spirit of liberalisation.

As a House, we should also be driven by the spirit of *mwananchi* because the banks sometimes do not listen to the citizenry. So, I stand to be advised by this House whether we go ahead with this amendment or we withdraw it.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Jude, this is your proposal. It is for you to deal with it as you wish. If you move it, it shall belong to the House, but before you move it, it is up to you to do with it as you wish. He has to move it. It is his.

Hon. Jude Njomo (Kiambu, JP): Hon. Temporary Deputy Chairman, I beg to move.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members allow me to propose the Question so that it can become the property of the House.

(Question, of the new clause proposed)

We shall have the Hon. Leader of the Minority Party. Hon. Members, you will have time to speak to this.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Temporary Deputy Chairman. I persuade Hon. Jude Njomo that I completely understand him. I think this is a concern that we have as a country. Immediately we passed the amendment to the Banking Act which we must thank Hon. Njomo for, there are some Kenyans who have forgotten that the interests rates cap was his Bill which became an Act of Parliament. I understand the frustrations that SMEs are going through, but I think we need to bring a stand-alone amendment that we can debate properly. Probably, the solution is not on prescribing the percentage or the amounts to be allocated to SMEs. The solution could be a re-think as a country on our borrowing from banks by the Government because that is where the problem is. The problem is that banks have alternative people to lend to and this alternative is the Government.

So, if we can manage that, then we may not even have to go this way. Again, we do not want to send a wrong signal in the economy that this is as a country of regulations, regulations and further regulations! Period! We only want to regulate where we feel Kenyans are hurting, but we do not want to over-regulate. I oppose this amendment not because I do not see the merit in it, but because it is not properly thought out at this point in time. Thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): The Member for Bomet Central, Hon. Tonui Kiprotich.

Hon. Ronald Tonui (Bomet Central, JP): Thank you. I have been trying to get your attention. I support the amendment proposed by Hon. Jude Njomo. This is well intended to take care of SMEs. Our current big problem is unemployment and we need to help the small businesses to pick up. So, by bringing the issue of at least 10 per cent of lending to go to that direction, I believe that is the right thing to do. The issue which has been raised by the Leader of the Minority Party that it requires a stand-alone is a small amendment. In fact, it is a one line amendment. So, it is in order that it comes through this Bill and so, I fully support it. I believe the people of Suba support this because it will benefit them as small people. Let us not be advocates of the large banking sector to the detriment of our people.

Thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us have the Member for Lamu West.

Hon. Stanley Muthama (Lamu West, MCCC): Thank you. I support this Motion. You know very well that, at the market place now, our youth cannot access facilities from banks. Our women who are doing small businesses of selling fish and vegetables cannot access facilities

simply because the Central Bank of Kenya (CBK) is the one consuming a lot of the money and banks are lending it to the CBK. So, our children whom we have taken to universities and have nowhere to go end up being frustrated and turn to drugs. By subjecting the banks to set aside 10 per cent to lend to SMEs, we will be supporting the cadre of SMEs. This is the only way we can support the economy of this country. This is the only way we can empower them. In the next ten years, those SMEs will have a turnover such that the banks will be fighting for them.

In the next ten years, the banks will be fighting for those business people who we are going to prosper by allowing this clause to be included. I hear very well what the Leader of the Minority has said about the stand alone amendment but, going by the current situation, we need to allow this to pass.

Thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us have the Member for Suba North. The Member for Kikuyu has had his bite at it. Let the Member for Suba North also speak. Use the next microphone.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you. I thank Hon. Jude Njomo for bringing this amendment. The SMEs are what runs this country. Even if you walk on the streets of this country, all the people that are being chased are SMEs. Since we have the capping on the interest rates, what the banks have done is to try to manipulate Parliament to remove the capping by introducing stringent conditions for them to get loans. I know Hon. Mbadi, being a person from a financial background, would want to think about not regulating or over-regulating. But we must also have a human face. First and foremost, we represent people. So, I fully support this proposal. If the banks find ways of dealing with the mischief we are curing, we will repeal this provision. For now, it is in our interest as legislators to defend the small and medium enterprises that are no longer getting business. Those enterprises should be helping young people in terms of employment.

I support.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Next is the Member for Tinderet.

Hon. Julius Melly (Tinderet, JP): Thank you, Hon. Temporary Deputy Chairman. I rise to support this amendment and thank Hon. Jude Njomo for being considerate, especially to the business community of this country. This will ensure that that money is availed to SMEs. Even developing countries of South-East Asia, like China, have tailor-made banks for specific sectors. They have agriculture banks and export banks, among other sectoral banks that grow the economy. This Bill will make the banks lend 10 of their resources to SMEs so that they can develop enterprises and ensure that those businesses grow.

Hon. Temporary Deputy Chairman, I support.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Member for Butula.

Hon. Joseph Oyula (Butula, ODM): Thank you, Hon. Temporary Deputy Chairman. I stand to support this amendment. It is clear that small business people have suffered a lot in this country. No attention has been given to them because of the volume of business they carry out. If Parliament sets aside a certain amount to support small businesses, I am sure that the economy will grow. In the rural areas, you will find table banking. Without table banking, people cannot improve their businesses. If they get 10 per cent allocation, I am sure there will be a lot of improvement in those businesses.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, so that we can make progress, we need to agree unless you have something in the contrary. I will

give a chance to two people; one from either side of the House. Those are Hon. Wanga from Homa Bay and Hon. Koyi.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. I do not have something in the contrary. I would like to support the amendment by Hon. Jude Njomo. The reason is that, currently, we have the policy of ensuring that the youth, persons with disabilities and women, who mostly run SMEs, access 30 per cent of Government tenders. However, you find that they are unable to do a lot of those businesses because they are unable to raise the required capital. What ends up happening is that established businesses take up all the Government tenders using the registration certificates of some youth, women and persons with disabilities.

So, there could not be a better place. If there are any micro-economic effects of this particular amendment, adjustments should be made accordingly by the National Treasury. However, I would like to see a situation where banks actively look for SMEs to lend them money. The SMEs are being frustrated by banks. Instead, big companies are being lent huge sums of money.

With those remarks, I thank Hon. Jude Njomo and I support the amendment.

Hon. John Waluke (Sirisia, JP): Thank you, Hon. Temporary Deputy Chairman. I thank Hon. Njomo for bringing this amendment. This country needs to grow economically. This country cannot grow economically without the SMEs. We represent people. We represent the people who own SMEs. We need to support them, as a country.

With those remarks, I support.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Junet.

Hon. Junet Nuh (Suna East, ODM): Hon. Temporary Deputy Chairman, I just want to say one thing. I persuade Hon. Jude Njomo to withdraw this amendment because it might not be enforceable. How are we going to enforce it and make sure that 10 per cent of banks' loans go to SMEs? It might be difficult. The second reason is that we have not done proper analysis. Maybe, even now, banks are lending more than 10 per cent to SMEs. Maybe, they are giving them 40 per cent as we speak now. We do not have that data with us now. Thirdly, if it is not enforceable, it might just become like black law or law in letter, but which you cannot enforce. We can only amend the Banking Act and incorporate an enforcement mechanism for this purpose after we have done a proper analysis.

With those remarks, I persuade Hon. Jude Njomo to withdraw this amendment for now.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Member for Lagdera.

Hon. Mohamed Hire (Lagdera, KANU): Thank you, Hon. Temporary Deputy Chairman. I would also like to add my voice on this amendment. As much as this is a good proposal, I have a few concerns regarding this amendment. First of all, the problem of low loan uptake by SMEs is not unavailability of cash. The problem is lack of collateral. Most SMEs do not have collateral. Just like Hon. Junet has said, we need to get data on what the uptake of loans by SMEs is at the moment. In the absence of data, even if we pass this regulation, enforcing it will become a problem. As much as this is a good proposal for SMEs, we need to have proper data on how the situation is at the moment.

With those remarks, I do not support this amendment.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman, thank you for giving me this opportunity.

While the proposal by Hon. Jude Njomo seems very laudable and timely, I have a few concerns and because of those concerns, I request him to either withdraw it or redraft the particular amendment to avoid three critical issues. One is a case of over-regulation and generally stifling decision-making in banks. Specifically, the problem that SMEs in this country have in terms of accessing loans is not unavailability of funds. It is lack of collateral by SMEs and outcomes of risk assessment of some SMEs by banks. Let us deal with the aspect of giving CBK powers to make regulations, rules and systems that can allow SMEs to access credit on more favourable terms so that we allow ourselves enough time to develop tools, regulations and approaches that will enable banks to lend to SMEs without stifling the work of banks.

Generally, *Uwezo* Fund, Women Enterprise Fund, Youth Enterprise Development Fund, Development Bank and Kenya Industrial Estates (KIE) have adequate funds for SMEs. The problem lies in credit evaluation, risk management and the issue of collateral. I ask *Mheshimiwa* Jude Njomo to relook at this and either withdraw or redraft it, shifting the burden of proposal to the Central Bank of Kenya because even the issue of 30 per cent women and the rest is not law. It is a Government policy.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us have Hon. Jude Njomo.

Hon. Jude Njomo (Kiambu, JP): Thank you, Hon. Temporary Deputy Chairman. Thank you, Members, for supporting this amendment. I assure Members who feel like we do not have enough data that we had researched on this and we found that small and medium enterprises (SMEs) are getting much lower than 10 per cent.

However, I will reluctantly withdraw this for the following reasons: Members, let me explain to you. The Zambian Parliament passed the capping of interest rates about 10 years ago. The banks in Zambia looked for a small reason and they went to court. The court gave an injunction. The substantive case has not ended 10 years later. In this country, there was the Donde Bill which was passed by Parliament. It was passed but it was taken to court and nullified.

Hon. Kimani Ichung'wah (Kikuyu, JP): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Ichung'wah, what is out of order?

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Chairman, I seek your guidance. Having consulted with Jude, I agree on withdrawal of this amendment and resubmission of the Bill in a more comprehensive manner. I am aware and I know that even the banking industry... What I find out of order - just to go straight to the point - is Hon. Jude Njomo justifying the withdrawal - besides other reasons - by drawing reference to issues to do with judicial references. Only the other day, the Speaker guided us that we should do our work in this House without reference to other authorities. We have the powers to legislate and we should not do so with fear that anybody will go to court. It is within everybody's right. The courts never give reference to what everybody else is doing.

Therefore, I am amiable to the withdrawal of the amendment for the other reasons that I am privy to from Hon. Jude Njomo. I feel slighted as a Member of Parliament to have reference to the judicial processes.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Order, Hon. Ichung'wah! I know you are sitting next to Hon. Jude Njomo. You might be detecting waves of fear from him but from where I sit, I see no fear in the countenance of Hon. Njomo. He is a man who has been known to do his work without any fear. Even now, I doubt that he is intimidated.

Hon. Jude Njomo, proceed to deal with your proposed amendment as you deem fit.

Hon. Tonui, what is out of order?

Hon. Ronald Tonui (Bomet Central, JP): Thank you, Hon. Temporary Deputy Chairman. I seek your guidance. He had already moved his amendment. I believe it is out of his hands. It is within the House. He can no longer purport to withdraw it.

The Temporary Deputy Chairman (Hon. Christopher Omulele): He was just interrupted before he completed it.

Hon. Ronald Tonui (Bomet Central, JP): He can no longer withdraw it. He does not have the power. He had already moved it. It is the business of the House now.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Tonui, you need to refresh your mind with our Standing Orders. He can withdraw his amendment anytime. Proceed, Hon. Jude.

Hon. Jude Njomo (Kiambu, JP): What Hon. Ichung'wah has done is what we say in my language. It is like a *mukurino* jumping before the drums are sounded. I was in the middle of explaining why I feel that we may be doing disservice to the amendments. We should not give people opportunities to poke holes in the laws that we are making. This is an amendment that was introduced just the other day. They will go to court and say that there was no public participation on that particular amendment. I feel that it is better that I withdraw this amendment, and then we go and do a thorough job on it then we bring it back so that it will stand the test of time.

(Loud consultations)

Secondly, the banks themselves had offered to give 10 per cent of their loan portfolio to SMEs. They have not done it yet. We know it is something that can be worked out. In the amendment, we will give the regulations on how it will be effected.

I wish to withdraw the amendment.

(Hon. Jude Njomo withdrew his amendment to introduce New Clause 58A)

The Temporary Deputy Chairman (Hon. Christopher Omulele): That is the end of that particular proposed amendment.

New Clause 58 C

Hon. Jude Njomo (Kiambu, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the following new Clause be inserted immediately after Clause 58—

58C. The Second Schedule to the Banking Act is amended by deleting paragraph (d) and substituting therefor the following paragraph—

“(d) a core capital of at least five billion Kenya shillings by the 31st December, 2021, in the case of a bank or a mortgage finance company:

Provided that the provisions of this paragraph shall apply in accordance with the following table—

<i>Compliance date</i>	<i>Minimum core capital for banks and mortgage finance companies (Ksh.Million)</i>
------------------------	--

31 st December 2019	2000
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Amendment of the
Second Schedule to
Cap.488

31st December 2020 3500

31st December 2021 5000

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Njomo, before I give this to the House, you need to give Members a basis on which to propose.

Hon. John Mbadi (Suba South, ODM): *(Off-record)*

The Temporary Deputy Chairman (Hon. Christopher Omulele): Leader of the Minority Party, allow him to prosecute his proposed amendment.

Hon. Jude Njomo (Kiambu, JP): Thank you, Hon. Temporary Deputy Chairman. This particular amendment is informed by the desire to have strong and stable banks. The same law had been proposed in 2016, but there was an outcry by banks. They asked for execution to be delayed for two years which are lapsing now. In the meantime, two banks have failed. Imperial Bank collapsed. Chase Bank collapsed, although it is currently coming to life again. This amendment is asking the banks to improve on their core capital from Kshs2 billion to Kshs5 billion in a period of three years from 2019 to 2021. When we do this, we shall have strong banks and deposits of *wananchi* and customers safe in banks. We do not want *wananchi* to take their money to banks and then they collapse the following day. That is why we want to have strong banks.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, it is not yet your property. Let him move his amendment then you will deal with it. He is still on his feet.

Hon. Jude Njomo (Kiambu, JP): My prayer to Members is that they support this amendment so that we have strong banks that do not collapse with customers' money, and that will support the economy of our country. I would like to cite an example. In Nigeria, when the Nigerian Parliament passed the increment of core capital, Nigeria had over 100 banks, many of which were *jua kali* banks which were almost collapsing. They were forced to come together and today Nigeria has 10 very strong banks which are not collapsing and are supporting its economy. I want to persuade you to support this so that we have strong banks.

I beg to move.

(Question of the new clause proposed)

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chris Wamalwa, what is out of order? Can the Chair be out of order?

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Temporary Deputy Chairman. With due respect, this is a substantive amendment that should go to the principal Act which is the Banking Act.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chris Wamalwa, you are out of order. I said that the amendment is not yet your property. If you had just waited a little while, I would have given you an opportunity to contribute. Let me propose the Question.

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chris Wamalwa, you are now in order. You can contribute.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Temporary Deputy Chairman. The banking industry plays a very critical role, as far as the economic development is concerned. There are some people who are in this banking industry who want to increase the entry barrier, so that other people cannot invest in this business. I am saying so because we have banks in this country which have a specific origin. When you go to access a loan at times and you are not favourable, it becomes difficult to access it. In case of default, they exercise discretion and you are harassed.

The issue is not about stability or increasing the core capital in banks. This similar amendment of increasing the capital requirement from Kshs2billion to Kshs5billion was brought in the last Parliament and we rejected it. Where I come from, we are struggling to bring up a bank. We have now raised the capital of Kshs1billion. When we raised the core capital of Kshs500million, it went up. We have raised Ksh1billion now, and we want to raise Kshs2billion. You want to increase the core capital to Kshs5billion, so that the existing banks can continue to enjoy abnormal profits. You do not want other people to enjoy that benefit. We oppose this amendment. It is a major amendment that must go to the Banking Act. It cannot come through miscellaneous amendment. It must be subjected to Article 118 of the Constitution which is on public participation. Kenyans want to own banks but not just specific people. We reject this selfish amendment.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chris Wamalwa, you are very passionate about this amendment. I will allow Hon. Tong'i to contribute.

Hon. Richard Tong'i (Nyaribari Chache, JP): Thank you, Hon. Temporary Deputy Chairman, for giving me the opportunity to contribute to this amendment. It is founded on the grounds that the banks have suffered a lot in the past. We have a history of banks which have closed down and in the process people have lost a lot of money. We are all aware of what is going on with Imperial Bank and Chase Bank. Part of the reasons banks have gone under is because they were founded on a very weak foundation. As a banker, I am speaking with authority. The foundation of a bank is the capital base. If it is weak, it will collapse unless it is managed well.

I support the amendment. However, we should cascade it, so that we do not have to do it all at once. We should cascade it in such a way that it graduates from one point to the next one, so that we safeguard the investment of Kenyans who invests in the bank in the faith that it is strong enough to keep their wealth. We are empowered to do that as Members of Parliament. If we do not do that, we will lose our core foundation of protecting Kenyans.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Tong'i, are you supporting or opposing the amendment?

Hon. Richard Tong'i (Nyaribari Chache, JP): Hon. Temporary Deputy Chairman, I support it.

(Loud consultations)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Order Hon. Members. We can only speak one at a time and you know this. I am giving an opportunity to Members who have not spoken at all since morning and were here. Hon. Kilonzo, kindly proceed.

Hon. Charles Kilonzo (Yatta, Independent): Thank you, Hon. Temporary Deputy Chairman. This House should not be used to legislate to form cartels.

(Applause)

What the Hon. Member is proposing to amend is to ensure that the big banks become a cartel. We have small financial institutions which are crucial and are planning to become banks like Unaitas and many others. I thought Hon. Njomo fights for the small people. You have let us down today because you are fighting for the cartels. I oppose the amendment.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Nduati.

Hon. Joseph Nduati (Gatanga, JP): Thank you very much, Hon. Temporary Deputy Chairman. I stand here to oppose this amendment because it will kill the local businesses. I come from Murang'a County. I know how Equity Bank started. Hon. Kilonzo has spoken about Unaitas which is a growing Savings and Credit Cooperative Organisation (SACCO). If we pass this amendment, it means that our people will be out of business.

I also want to give another example. It happens in the construction industry where people categorise others. You say that category one will do work worth more than Kshs2billion which means that our people do not compete for those jobs.

I oppose this amendment.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Milemba Omboko.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Temporary Deputy Chairman. I have been following Hon. Njomo very keenly. He has stood for the people in socialism at one time. He is a great guy. However, his oscillation from one side to the other side of capitalism by gagging other people to invest into the banking sector shows inconsistency.

Hon. Kimani Ichung'wah (Kikuyu, JP): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Ichung'wah, let me deal with it. Hon. Milemba cannot discuss the beliefs of the Hon. Member who has brought this proposed amendment. You must withdraw.

Hon. Omboko Milemba (Emuhaya, ANC): I withdraw. I am guided, Hon. Temporary Deputy Chairman. Thank you.

I want to say that the collapse of banks has nothing to do with the capital base. We have seen even big banks go under. That should not be used as an excuse to gag other players in the banking sector. Since independence, banking was monopolistic and later on an oligopolistic market for a long time. If we or the parliamentarians preceding us were making such laws, the likes of Equity Bank, which has helped the poor in this country, would have not come up.

Therefore, I wish to oppose this amendment in the strongest terms.

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

New Clause 67A

The Temporary Deputy Chairman (Hon. Christopher Omulele): The Leader of the Majority Party to move the amendment in Page 1097 in the Order Paper. He is not present to prosecute his proposed amendment. It is dropped.

(Proposed amendment by Hon. Aden Duale dropped)

New Clauses 69A, 69B, 69 C, 69D, 69E, 69F, 69G, 69H, 69I and 69J

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clauses immediately after clause 69—

Amendment of
Section 5 of
No. 15 of 2008.

69A. Section 5 of the Accountants Act is amended by—

- (a) renumbering section 5 as section 5(1); and
- (b) inserting the following new subsection immediately after subsection (1)—

(2) Despite subsection (1), a trainee accountant, student or a person required by the Institute to be registered as a member prior to attaining the qualifications under section 26 shall not be required to pay any fees or subscriptions.

Amendment of
Section 8 of No. 15
of 2008.

69B. Section 8 of the Accountants Act is amended by inserting the following new paragraph immediately after paragraph (f)—

(fa) prescribe the remuneration order for the accountancy profession with the approval of the Cabinet Secretary responsible for finance.

Amendment of
Section 17 of No. 15
of 2008.

69C. Section 17 of the Accountants Act is amended by inserting the following new subsection immediately after subsection (2)—

(2A) The Examinations Board shall, prior to registering a person to undertake an examination in accounting, require that the person be registered as a member of the Institute.

Amendment of
Section 18 of No. 15
of 2008.

69D. Section 18 of the Accountants Act is amended in subsection (2) by deleting the words “one hundred thousand” and substituting therefor the words “five hundred thousand”.

Amendment of
Section 19 of No. 15
of 2008.

69E. Section 19 of the Accountants Act is amended by inserting the following new subsection immediately after subsection (3) —

(4) An entity in either the private or public sector shall not employ a person to practice accountancy unless the person is a member of the Institute.

Amendment of
Section 21 of No. 15
of 2008.

69F. Section 21 of the Accountants Act is amended in subsection (8) by deleting the words “five thousand” and substituting therefor the words “five hundred thousand”.

Amendment of
Section 24 of No. 15
of 2008.

69G. Section 24 of the Accountants Act is amended in subsection (5) by deleting the words “fifty thousand” and substituting therefor the words “five hundred thousand”.

Amendment of
Section 30 of No. 15
of 2008.

69H. Section 30 of the Accountants Act is amended by inserting the following new subsections immediately after subsection (2)—

(2A) An accountant shall observe the ethical guidelines and applicable standards in the discharge of duty.

(2B) The ethical guidelines and applicable standards of the accountancy profession shall take precedence over any instructions from a client or other person.

(2C) An accountant shall not be liable for taking such actions or decisions or rejecting instructions from a client if such action, decision or rejection is in pursuance of the provisions of subsections (2A) and (2B).

Amendment of
Section 41 of No. 15
of 2008.

69I. Section 41 of the principal Act is amended by deleting subsection (4) and substituting therefor the following new subsection—

(4) A person who commits an offence under this section is liable on conviction to a fine not exceeding two million shillings, and, in the case of a continuing offence, a further fine not exceeding two thousand shillings for each day on which the offence continues.

Amendment of
Fifth Schedule
to No. 15 of 2008.

69J. The Fifth Schedule to the principal Act is amended in—

(a) paragraph (4) by deleting the words “one hundred thousand” appearing in subparagraph (1) (d) and substituting therefor the words “one million”; and

(b) paragraph (8) by deleting the words “twenty thousand” appearing in subparagraph (3) and substituting therefor the words “five hundred thousand”.

The Institute of Certified Public Accountants Kenya (ICPAK) appeared before the Committee during public participation with these proposals...

The Temporary Deputy Chairman (Hon. Christopher Omulele): It is on page 1094 on the Order Paper.

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Hon. Joseph Limo (Kipkelion East, JP): I hope Members have seen it so that we move together. It is on page 1094.

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, what is out of order?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, given that the new clause has many sub-clauses, would it not in order for the Chair to move them bit by bit. They are many and have different implications. If he moves them bit by bit, we will be able to better to follow and contribute more effectively.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, your observation is valid, but I have looked at them and they are all interrelated, basically seeking to regulate the accounting profession. It is possible to deal all of them at once.

Hon. Chair, proceed.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, you have delivered the point very well. All these clauses are interrelated. Their objective is to make accountancy a better profession. It will create accountancy remuneration order, the same way as lawyers have. You have realised that there have been many problems in the financial sector and in most cases accountants are involved. You find people calling themselves accountants even when they are not qualified.

The amendment tries to bring to order everybody including students who are aspiring to be accountants. They will now be required to be members of the institute but under the students category. To help them, under this law, they will not be required to pay subscription fee which in most cases will make students face difficulties. So, they will not be required fees under this law establish Clause 69A.

At the same time, anybody who aspires to be an accountant and therefore registers to do an accountancy examination will now be required to register first as a member of the Institute. These proposals will bring all accountants practising in the country under regulation so that when they make any mistake, the Institute will be able to discipline them and take action in terms of penalties.

This particular law also will require that anybody who employs an accountant must employ one who is a member of the Institute. So, this particular law is going to bring order to the accountancy profession. It is also going to bring accountancy to be a real profession respected just like any other profession in the country. I urge the House to support the amendment.

There is also a proposal to increase penalties which currently is at Kshs100,000. The Institute proposed to raise it to Kshs2 million but we thought that that is too high. We propose to set it at Kshs500,000. That will be reasonable.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, let me present the amendment to the House first.

(Question of the new clauses proposed)

*(New Clauses 69A, 69B, 69C, 69D, 69E, 69F,
69G, 69H, 69I and 69J read the First Time)*

(Question, that the New Clauses 69A, 69B, 69C, 69D, 69E, 69F,

69G, 69H, 69I and 69J be read a Second Time, proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): I will allow the Leader of the Minority Party, then Hon. Ichung'wah.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Temporary Deputy Chairman. Being a registered accountant, I have a direct interest in this amendment. Whereas I agree that we have had a problem as accountants in terms of regulations, many times there are people who are called accountants, but they are not. It is true we need regulation.

I have a problem with this amendment. We need a substantive amendment to the Accountants Act. This evening we have a meeting to look at the Act and review it.

Sub-clause 69E says that an entity in either private or public sector shall not employ a person to practice accountancy unless the person is a member of the Institute. The Chairman must define what practising accountants are. You cannot just say any entity including Parliament where we have many people working in finance as accountants, but are not qualified accounts or are not registered by the Institute. Are we saying that they are practicing accountancy or not? It is important to bring a stand-alone amendment for us to define some of these words. We will define "practising accountancy". There is even the amendment that says "prescribe the remuneration order for the accountancy profession with the approval of the Cabinet Secretary responsible for Finance". How do you bring a Cabinet Secretary in regulating accounting matters? It does not happen with lawyers.

This amendment is not well thought out. As accountants we agree that we need regulation and we need the Accountants Act to be amended but this is not the right way to do it. I plead with the Chair to kindly withdraw it so that we can engage. We have members of the institute here led by a former chairman Hon. Kimunya. I am a member of the institute of repute. There are those who are not members of the institute and are qualified like Hon. Kimani Ichung'wah, who is very knowledgeable in matters accountancy. We need to engage on this matter more seriously.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairman. To a large extent, I concur with what the man has said. The accounting sector needs regulation because it is true, as the Chair of the Committee said, that there are many pretenders, people who call themselves accountants yet some are not qualified at all. Some probably did the old-time book keeping where they were shown the pink, green and white paper and where to file each transaction and where to post them.

I am very much opposed to some of the provisions by the Chair. For instance, as the Leader of the Minority Party has said, I worked as an accountant for almost ten years rising to a level of a deputy financial controller, but I was never a member of ICPAK. Therefore, we have been doing great injustice to young students or young Kenyans who are training today as accountants, who can progress to be employed. If, for instance, we enact Clause 69E, that says that an entity in either private or public sector shall not employ a person to practice accountancy unless the person is a member of the institute...

Lawyers are only not allowed to practise law, if they are not members of their professional body. We cannot say that an accountant will not be employed if they are not members of the institute. It means that I would never have been employed because I never joined the institute. I am, therefore, very opposed to the provisions of the chair because this will not only deny Kenyans who are looking for opportunities to get employed, unless they subscribe

to the institute. I am very opposed and I want to plead with the Chair to either drop Clause 69 E or drop all the amendments and bring it as a stand-alone Bill.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Olago Oluoch

Hon. Olago Aluoch (Kisumu West, Ford-K): Thank you, Hon. Temporary Deputy Speaker. Having listened to the Leader of the Minority Party and my friend, Hon. Ichung'wah, I have realised that they are the ones feeling the pinch of these proposed amendment, since they are the accountant. The renowned accountants in the House are the ones who are saying that they want to be re-engaged. If they have not been sufficiently engaged, who are we to say no? Let the Chair of the committee withdraw this amendment and engage the professionals.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Leonard Brighton, Member for Konoin.

The Member for Konoin is not interested in speaking. Hon. Junet, what is out of order?

Hon. Junet Nuh (Suna East, ODM): As much as I agree with what Hon. Olago has said that the people who are feeling the pinch of this matter are the accountants, who are in this House, there are other accountants who are out there. This amendment is curing quacks who pretend to be accountants. We have not seen the certificates of the accountants who are in this House; we are just assuming that they are accountants. It is okay, we agree that they are accountants who are qualified.

(Loud consultations)

I have not mentioned any names. This amendment is very important that this House must carry it, so that the profession of accountancy can be held. It is not about Members who are here.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Ichung'wah, what is out of order?

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Chairman, is the Hon. Junet, Member for Suna East in order to be referring to Members in this House especially the Leader of the Minority Party and myself as quacks? We are seasoned professionals. Probably by the time I was a first year university student, Hon. Junet had not left primary school. He cannot be referring to us as quacks because we sit in this Chamber as accountants. The issues we have spoken on are issues that touch on those accountants out there; some are children in Suna East who shall not be employed because they are not Members of an institute. It is wrong.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Order, Hon. Ichung'wah! Let us have order, Hon. Members. We need to debate on this thing that is relevant to what is before us. We must observe relevance. Let us not go out of relevance. We have dealt with this matter from yesterday in a very orderly way. I want to give the final opportunity on this one to the Chair of the committee.

Hon. Joseph Limo (Kipkelion East, JP): Before I speak to it, I wish to also dispel fears that people will be removed from working as accountants because they are not members or they are students. This Bill admits everybody including students without even payment of fees.

New Clause 69A says,

- (1) A trainee accountant, student or a person required by the Institute to be registered as a member prior to attaining the qualifications under section 26 shall not be required to pay any fees or subscriptions.

Everybody who is doing accountancy courses even at entry level is required to be a member free of charge. It is not restricting anybody. The reason for this is to bring discipline to

accountancy profession so that you are together even if you are students. It is not discriminative because it is in cognisance of the fact that students do not have money to pay for subscription. It allows students, accountants who are just pursuing exams to be members of the institute without any fee.

I want to propose that New Clause 69 E which in the opinion of many Members here is offensive in the terms that accountancy has not been defined properly, other than all the other clauses which are not offensive, I withdraw New Clause 69E.

(Question, that the New Clauses 69 A, B, C, D, F, G, H, I and J be read a Second Time, put and agreed to)

(The New Clauses 69 A, B, C, D, F, G, H, I and J was read a Second Time)

(Question, that the New Clauses 69 A, B, C, D, F, G, H, I and J be added to the Bill, put and agreed to)

The Temporary Deputy Chairman (Hon. Christopher Omulele): What is out of order, Hon. Kilonzo?

Hon. Charles Kilonzo (Yatta, Independent): The matter I am bringing up has been brought up previously by Members. Under the Constitution, the Finance Bill is a money Bill strictly dealing with new taxes or modification of taxes. So, Members have noticed a trend where we are bringing amendments of Acts which have nothing to do with taxes. So, I am just asking for guidance from the Chair because this is not been the practise, it purely a money Bill, but we are getting some amendments of substantive Acts through the money bill.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Which amendment are you speaking to?

Hon. Charles Kilonzo (Yatta, Independent): The amendment for the accountants has nothing to do with Finance Bill.

The Temporary Deputy Chairman (Hon. Christopher Omulele): On that one, the horse has fled. The horse left the stable, you cannot ride it.

Hon. Charles Kilonzo (Yatta, Independent): This matter has been brought up severally by Members. We have not heard a ruling from the Chair. This is a money Bill it should strictly deal with issues of taxes, how Government will raise taxes, but not to deal with amendments of other Acts.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Kilonzo, allow us to make progress because the House has delivered its verdict on that. You know the avenues that are available to you, if you wish to deal with it and bring it up again, it is up to you. We have just voted on it, allow us to make progress.

Hon. Chair, how do you propose to deal with New Clause 72?

New Clause 72

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after clause 71—

Amendment of section 20 of Cap.22. 72. Section 20 of the Limitation of Actions Act is amended in subsection (2) by deleting the expression “six years” and substituting therefor the expression “twenty years”.

The amendment is on page 1096 of the Order Paper. Currently, if there are any actions to be made on property, then someone dies and leaves two-years old, if the two-year old must take some action on property bestowed to them, they will not be able to, upon attaining maturity age to take action because it is limited to six years. This is because it lapses at eight years. When they get their identity card at 18 years, and there is an issue touching on taxes on their property, they are told it lapsed. During public participation this issue came up strongly and we proposed to amend it from six years to 20 years to allow minors to take action on property.

(Question, that New Clause 72 be read the Second Time, proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): I will give the first bite at it to Hon. TJ Kajwang’.

Hon. Tom Kajwang’ (Ruaraka, ODM): Hon. Temporary Deputy Chairman, we are in problems now. We have a committee that touches things that they know very little about. I am sorry. Something called limitation of actions has nothing to do with minors. It has everything to do with the period that the action is alive. Minors have somebody called *guardian ad litem* (GAL). Minors have somebody called a ward. I do not think this committee had legal advice. What they are trying to do here, and they are not telling you Members, is that KRA will chase you not only for the six years but for 20 years. Right now the limitation of action is six years.

What they are trying to do which they are not telling, and they are going into things called minors, KRA will chase you for 20 years and they have not collected money from you. What happens is, the highest limitation of actions that we have, even in cases where you have not commenced an action, is 12 years. So when they come up with 20 years, you do not know it is from which jurisdiction, whether Commonwealth or American. It is ridiculous.

The committee should know what a Finance Bill is and what legislation should come on its own. Everybody is complaining. They come to limitation of action and put in something, like the Statute Laws (Miscellaneous Amendments) Bill. In fact, if this provision was in the Statute Laws (Miscellaneous Amendments) Bill, I would have let it pass. What is it doing in a Finance Bill if it is not for the fact that some clever people at Treasury are trying to do things which are going to hurt Kenyans? This thing must be reined in on.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well laid basis. Members, allow me to give just one chance to Hon. Olago Aluoch.

Hon. Olago Aluoch (Kisumu West, FORD-K): Thank you, Hon. Temporary Deputy Chairman. The chairman of the finance committee is either ignorant of the law or he is concealing facts from the House. One of the oldest pieces of statute in Kenya is the Limitation of Actions Act. That is what you intend to amendment under the Finance Bill? It should come under the Statute Laws (Miscellaneous Amendments) Bill or separately.

What this amendment truly means, and which the chairman has deliberately refused to disclose, is that the six years that the law limits any person to follow another by court proceedings or any other legal proceeding should be extended to give KRA 20 years to chase anybody. That is a whole lifetime. If this amendment goes through, then it will mean that one cannot plan their life. If for 20 years you live in uncertainty of being chased by KRA, you cannot plan your life. This amendment is one of the worst I have ever seen in this House.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Members, in accordance with Standing Order 133(5), I direct that this particular proposed amendment will not even be put to question. It will not be permitted under that particular Standing Order. That will be the end of it. If you look at that Standing Order, it provides that:

No amendment shall be permitted to be moved if the amendment deals with a different subject or proposes to unreasonably or unduly expand the subject of the Bill or is not appropriate or is not in logical sequence to the subject matter of the Bill.

I find that that particular proposed amendment clearly falls within this provision of our Standing Orders. So, that will be the end of it.

(Proposed new Clause 72 withdrawn)

Clause 18(c) – recommitted

Hon. Omboko Milemba (Emuhaya, ANC): On a point of order.

The Temporary Deputy Chairman (Hon. Christopher Omulele): What is out of order, Hon. Milemba?

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Temporary Deputy Chairman. I think at this pace, the chair should also observe all other amendments which he is importing into this Finance Bill so that we do not waste the House's time.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Milemba, the House's time can never be wasted. The House debates and deliberates on many issues. The House never wastes time or acts in vain.

Let us proceed to the recommittal. Hon. Junet.

Hon. Junet Nuh (Suna East, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 18 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b)—

(c) in section (B) of Part I by deleting the expression "1st September 2016" appearing in paragraph (ii) and substituting thereof the expression "1st September 2018."

This is a matter that we dealt with yesterday and it went through except that there was a typo error where we quoted 2020 instead of 2018. So it is just a change of date. Members need to know that we are just changing the duration from 2020 to 2018. That is all. We are on page 1102.

Hon. Members, yesterday you made your voices heard on this but there was a mistake which we are trying to correct. It is a recommittal.

(Question of the amendment proposed)

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

(Clause 18 as amended agreed to)

Clause 31 – recommitted

The Temporary Deputy Chairman (Hon. Christopher Omulele): There are two parts to this, Hon. Members. You remember yesterday we dealt with this particular clause and there were two parts to it. Members approved of one and the other one had issues but they went ahead to deal with it in a manner that would have made the situation worse than what they intended to do. So, the proper way to move with it is to allow the chair to have the first opportunity then Hon. TJ Kajwang' will have the second bite at it. Chair, proceed.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, in this particular clause, I just want to make a clarification that Clause 31(a) was passed. Therefore, the one we have an issue with is Clause 31(c). That is the clarification I want to make so that we do not mix issues.

Thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): If that is the position the chair has taken, that the House was comfortable with part (a), and then I will allow the chair to deal with part (b) so that we make progress. Hon. TJ Kajwang', I think you are comfortable.

Hon. Tom Kajwang' (Ruaraka, ODM): I am comfortable but I can contribute.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let the chair move then you can deal with it.

Hon. Joseph Limo (Kipkelion East, JP): The reason why we recommitted the Clause is because when the Question was put the Members did not understand how to go about it. But in Clause 31(c), I had proposed this way:

THAT Clause 31 is amended

(b) by inserting the following new paragraph immediately after paragraph (b)—

(c) in Part III by inserting the following new definition in proper alphabetical sequence—

“Money transferred” means money transferred from one account to another account either within a bank or from one bank to another bank or from a person to another person through a money transfer agency or other financial service providers, but does not include—

(a) transfer of taxes to or tax refunds from the Kenya Revenue Authority;

(b) transfers from the Kenya Revenue Authority's collection accounts to the Central Bank of Kenya;

(c) transfers by or to the National Government, County Governments or Central Bank of Kenya;

(d) transfers relating to the purchase and sale of shares and securities on the Nairobi Securities Exchange by banks or financial service providers on behalf of customers;

(e) transfers between accounts belonging to the same person; or

(f) any other category of money transfers that the Cabinet Secretary may specify through a gazette notice.

So, this proposal provides exceptions. Robin Hood tax was providing that any transfer of money above Kshs 500,000 will be charged 0.05 per cent which translates to Kshs 250 and Kshs 500 for one million for the purpose of funding universal healthcare. Because of the volume involved, the Government may raise over Kshs 15 billion to finance medical healthcare for our people.

However, there were concerns that this may involve double taxation and so, the proposal to provide exemptions will shield individual transactions within one account. Also, if you have money and you have given it to the stock exchange broker to buy for you shares, it is very likely that you will be charged when you are transferring money to them. You will also be charged when transferring the money to the person selling shares. So, to exempt that we have provided an exemption that will exclude any cash transfers by the stock brokers and any other service providers dealing with shares. If they are transferring money to buy shares on behalf of customers and so you are charged once.

So, this excludes Government to Government transaction. If you allow that, it is like you are taking from one pocket to another. Government is as good as individuals who have been excluded from transferring their own money. It is the same for Central Bank and the KRA, because it is about collection of taxes and transfer of taxes. So, this one is making it better and all of us are supposed to support the Government in this agenda to provide healthcare for the people. We also must protect the interest of Kenyans who came through public participation to give their views. I, therefore, propose that you support it. At the same time, deliver funding for the Government to carry its own agenda in providing healthcare for the people of Kenya.

Thank you.

(Question of the further amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. T.J. Kajwang, I had given you a chance and I think you are happy. So, let other Members speak. Let us have Hon. Chris Wamalwa.

Hon (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you. I have listened carefully. In many jurisdictions, the Robin Hood tax is used. My fear is that we are opening a Pandora's Box. There is no clarification when it comes to transfer of salaries. We control the National Government Constituencies Fund (NG-CDF) and at times we send bursaries to universities in excess of Kshs500,000. Who will take care of this extra charge? I had wished that in the same exemptions, we would have gone to an extent of including even the NG-CDF bursaries and the Uwezo Fund. When we talk of the principle of Robin Hood, it refers to the people who are endowed, not kshs500,000. We ought to have increased the threshold to one million. Small organisations send salaries of their employees to the banks for it to be disbursed to the subsequent beneficiaries.

We are opening a Pandora's Box and I am humbly requesting that we reject this proposal in totality, unless we agree for a further amendment. Hon. Angwenyi, soon the salaries of your staff under the NG-CDF, will face the challenge. This is the problem at hand. So, Hon. Limo, we should reject it in totality.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chris Wamalwa, you have made your point. Hon. Members, you do not need to raise your hands. We deliberated on this yesterday. We had recommitted it for very good reasons. I just want to restate them so that Members can decide what they want to do with it.

What the proposed amendment seeks to do is to qualify in some instances some of the transfers that will not be subject to the provisions of Clause 31. However, if you reject the proposed amendment, then you need to know that you will go back to the proposals as made by the CS where all transactions will be available to this. So, Hon. Members, I am just giving guidance so that you can deal with it the way that will be effective for you.

Hon. T. J. Kajwang' (Ruaraka, ODM): On a point of order.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. T.J. what is out of order?

Hon. T. J. Kajwang' (Ruaraka, ODM): Chair, I request your guidance on this. I had an amendment to Clause 31 which I dropped in favour of the Chair. I am between a hard place and a hard rock, because whereas the Chair has taken over my Clause 31, and I appreciate he has taken my Clause 31 (c), but it is sandwiched between something very good and very bad. The decision which we will take on this later one, may affect the decision that was taken on mine.

Just follow my logic. If, for example, we go to the Bill, and if Members choose to drop the Bill itself, it will also go with mine, although I have no problem because the parent Act does not put tax on confectionaries. So, I want to advise Members to look at everything that is here because we do not want to take some good part of it and carry a good baby with the dirty birth water. This what we are trying to do and so give us directions as to how we need to proceed with voting in such a way that protects the amendment which I also had on the Order Paper.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. T.J, your concerns are noted. I want to guide you that the House had carried the amendment that you had proposed, yesterday. So, your proposed amendment is safe. We are dealing with the one that the Chairman is now proposing. That is why I am giving guidance.

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie Odhiambo, what is out of order?

Hon. Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, you do notice that Members have no problem with the proposed amendment that was passed yesterday. However, we have problems with this second one. Hon. Temporary Deputy Chairman, could I seek your guidance and direction that when we...

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let me hear what you are saying, Hon. Millie.

Hon. Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I seek your direction on that because we do not have a problem with the first part. When we go back to the CS's proposal in the main Bill, and when we will be adopting it from the Bill, can you also move it in disjointed form? We can then pass that one and kill the one of the CS. Otherwise; we will throw the baby and the bath water.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Millie, it is like you read my mind. That is exactly where we are going to. Hon. Members, so that we can make progress, allow me to put the Question. Hon. Kiarie, you had something to say to this. This is the last point so that we can make progress.

Hon. John Kiarie (Dagoretti South, JP): Thank you very much, Hon. Temporary Deputy Chairman. We do appreciate the efforts made by the chairman of the Committee to remedy with this amendment that he brings here. However, this remedy that he is proposing is one that is adding a paragraph that comes to define money transfer. In this money transfer, we were

expecting to see an exclusion of mobile money transfers because these mobile money transfers are carried in paragraph 5 where excise duty is being imposed to a tune of 10 per cent on mobile money transfers on any platform including Mpesa, Airtel Money and so on, in essence negating the whole concept of Robin Hood. This is because when you impose excise duty on mobile money transfer, you are actually loading the duty on the people who we say are at the bottom of the pyramid in Kenya. In essence, this remedy does not exclude mobile money transfer.

Paragraph 6 talks about money transfer between banks. However, on mobile money transfer, by passing his amendment, we will still be imposing excise duty to mobile money transfer that is used by the lowest people in society, as such negating that Robin Hood concept. So, if his amendment falls, it puts us in a predicament where, if we revert to Clause 31 as is proposed in the Bill, we might have to, on that condition, also fall Clause 31 itself.

Thank you very much, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, before I put the Question, allow me to recognise, in the Public Gallery, members of South Imenti Njuri Ncheke Council of Elders who are 52 and whose patron is the elder, Hon. Kathuri Murungi. They are welcome to this Parliament. We want them to know that we recognise that they were a form of Parliament at a much earlier time than this Parliament we sit in today. So, they are welcome.

Hon. Members, now allow me to make progress on this. I will put the Question.

(Question, of the further amendment that the words to be inserted be inserted, put and negated)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, you need to be careful with this. Now we go back to the Bill. I will proceed to propose the Question to Sub-clauses 5 and 6 of Clause 31.

(Question of the amendment proposed)

Hon. Members, now this is the property of the House. It is up to you to decide one way or the other. Hon. T.J., you are safe. You do not wish to debate on this. Hon. Members, for me to make progress... Hon. Millie, allow me to put the Question.

Hon. Members: *(Inaudible)*

The Temporary Deputy Chairman (Hon. Christopher Omulele): This is the provision in regard to excise duty on fees charged for money transfer services. So, it is now your business to decide where you want to place it. I will now put the Question.

(Question, that Sub-clauses 5 and 6 be part of the Bill, put and negated)

I will now put the final Question on this.

(Clause 31 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Christopher Omulele): We shall now have the mover to report.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the Finance Bill (National Assembly Bill No. 20 of 2018) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, there is, in your Order Papers, a further Bill that we were to deal with this morning. This is the Division of Revenue (Amendment) Bill (Senate Bill No. 14 of 2018) which we were to deal with this morning.

I will direct that because of time, this particular Bill be listed down for consideration in the afternoon.

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

(The House resumed)

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

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order, Members. I now call upon the Chairperson.

Hon. Christopher Omulele (Luanda, ODM): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Finance Bill (National Assembly Bill No.20...

(Loud consultations)

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order, Members. Let us give the Chair time to report back to the House.

Hon. Christopher Omulele (Luanda, ODM): Thank you very much for protecting me.

Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Finance Bill (National Assembly Bill No.20 of 2018) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Mover, you can now go ahead to move for agreement with the Report.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report. I also request Hon. Aden Duale, who is the Leader of the Majority Party, to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Temporary Deputy Speaker. As I second, I thank Members for making sure that before we go on recess, the Finance Bill has been concluded.

I beg to second.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order, Hon. Shamalla. Order, Members.

(Question proposed)

Hon. Members: Put the Question!

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Should I go ahead to put the Question?

Hon. Members: Yes!

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us have the Mover to move for Third Reading.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Speaker, I beg to move that the Finance Bill (National Assembly Bill No.20 of 2018) be now read the Third Time. Before I ask Hon. Duale to second, I wish to thank the Members for the great support which they have given to this particular Bill.

(Loud consultations)

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order Members. Please, hold your horses. Be patient. Let us have the Chair complete the Third Reading of the Bill.

Hon. Joseph Limo (Kipkelion East, JP): I thank the Members for the support they have given this particular Bill. I thank the Committee, the Speaker's Office and the Clerk's Office for the support. I ask Hon. Duale, the Leader of the Majority Party, to second.

Hon. Members: Bow!

Hon. Aden Duale (Garissa Township, JP): I only bow when I am praying. I have never bowed. I also bow when I am doing some other things. I only bow twice - when I am praying and when it is very dark.

Hon. Temporary Deputy Speaker, I beg to second.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order, Members. The Leader of the Majority Party has seconded. Hon. Jayne you do not have to sit on the Floor. You can just freeze where you are.

(Question proposed)

Hon. Members: Put the Question!

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Is that the mood of the House? Obviously, we have the requisite numbers.

(Question put and agreed to)

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

BILLS

Second Readings

THE HEALTH LAWS (AMENDMENT) BILL

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Speaker, because the Chair of the Departmental Committee on Health is not around to second me, can I step it down so that we do it in the afternoon?

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Very well. We shall go by that.

(Bill deferred)

THE URBAN AREAS AND CITIES (AMENDMENT) BILL

Hon. Aden Duale (Garissa Township, JP): It is the same situation. I cannot see the Chair of the Departmental Committee on Transport, Public Works and Housing, Hon. Pkosing. We can shelve it for this afternoon.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): It is so ordered.

(Bill deferred)

THE WAREHOUSE RECEIPT SYSTEM BILL

Hon. Aden Duale (Garissa Township, JP): It is the same story. The Chair of Departmental Committee on Agriculture and Livestock is away. He is yet to recover from the sugar mercury. I am sure he will be back in the afternoon.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Is it the recess blues, Hon. Leader of the Majority Party?

Hon. Aden Duale (Garissa Township, JP): No, Hon. Temporary Deputy Speaker. We thought that after the Finance Bill, the Committee of the whole House on the Division Revenue Bill would continue. Most of the Chairs felt that the time remaining is too little for me to move.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Very well. We shall also defer Order No.12.

(Bill deferred)

Hon. Kathuri Murungi (South Imenti, Independent): On a point of order.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): What is out of order, Hon. Kathuri?

Hon. Kathuri Murungi (South Imenti, Independent): Thank you, Hon. Temporary Deputy Speaker. Order Nos.10, 11 and 12 are marked under the Leader of the Majority Party. He

is a very able Leader of the Majority Party. With or without the Chairs, he can move these Bills. For the sake of my constituents who are here, I thank the Njuri-Ncheke Council of Elders for finding time to come to the National Assembly. I also want Hon. Duale to recognise the elders who are here.

Hon. Duale, I wish that you recognise the Njuri-Ncheke elders.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Leader, I think you understand where Hon. Kathuri is coming from. Let us have the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): The Njuri-Ncheke members are not recognised in the Standing Orders. We want to welcome the very important delegation of the Chair of Special Funds Accounts Committee to the House. We want to assure them that their elected leader, as the leader of the Njuri-Ncheke of that constituency is a very able Member. He is a very able Chair of the Special Funds Accounts Committee. He was elected as an Independent Member of Parliament. That tells you that despite our party strength in that region, they felt that they should not let their leader down. Hon. Kathuri, we congratulate you for your new position. Please, make sure that there are no quacks as leaders of Njuri-Ncheke. These days there are quacks masquerading as leaders. We must insulate the Njuri-Ncheke from bogus quacks as their leaders in the near future.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Kathuri, you have had your day and your moment with your constituents.

Order. Hon. Members, we have no further business. The time being 12.59 p.m., this House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 12.59 p.m.