

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 26<sup>th</sup> June 2019

The House met at 9.30 a.m.

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

### PRAYERS

### QUORUM

**Hon. Deputy Speaker:** Order, Hon. Members. This cold morning, we are quite short of the required quorum. I, therefore, order that the bell be rung.

*(Quorum Bell was rung)*

Order Members. We now have the required quorum. Therefore, business will begin.

### PETITION

#### IRREGULAR TRANSFER AND SUBDIVISION OF LAND

**Hon. Deputy Speaker:** Under this particular one, we have the Member for Sabatia, Hon. Alfred Masadia Agoi.

**Hon. Alfred Masadia** (Sabatia, ANC): Hon. Deputy Speaker, I, the undersigned, on behalf of the family of Mr. Thomas Anzeze Musila, Kenyan citizen from Igunga Village, Chavakali Location and Sabatia Sub-County in Vihiga County, draw the attention of the House to the following:

THAT, land is an essential enabler of economic empowerment for families through utilisation of the various forms of economic potential of land;

THAT, the Late Mzee Hezekiah Musila Chaleng'a was the owner of land, Parcel Number LR. No. KAKAMEGA/VIYALO/1, measuring approximately 2.8 acres;

THAT, on 19<sup>th</sup> March 1998, Mzee Hezekiah Musila Chaleng'a transferred ownership of the said parcel of land to his son, Mr. Thomas Anzeze Musila as inheritance;

THAT, Mr. Thomas Anzeze avers that in 1996 his late father lost the original title deed for the said parcel of land and reported the case to Kitale Police Station, captured under OB No.43/26/8/96, as required by law;

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THAT, to legalise the said land transfer to his son, Mr. Thomas Anzeze, the late Mzee Hezekiah swore an affidavit before the then Principal Magistrate of Kenya Court on 23<sup>rd</sup> August 1996, since he could not raise Kshs2,000 procedural fee required to obtain a copy of a lost title deed;

THAT, the import of the affidavit was to declare the lost title deed null and void for purposes of any transactions relating to the said parcel of land in case the title deed resurfaced anywhere at any given time from the time and date of the swearing in of the affidavit;

THAT, on 30<sup>th</sup> August 2005, the petitioner visited the Kakamega Lands Office and requested for a search of the Title Deed No.KAKAMEGA/VIYALO/1 and was startled to find out that the ownership had been transferred to his brother, Mr. Samson Musila, under the voided title deed, contrary to the terms of the affidavit sworn in by his late father;

Further, that other irregular sub-divisions had already been effected on the same piece of land under Parcel Nos.N/MARAGOLI/VIYALO/1661, N/MARAGOLI/VIYALO/1662 and N/MARAGOLI/VIYALO/1663 and awarded to Mr. Ephraim Andefa Ngereso, Japheth Onzere Garo and Beatrice Night Opiyo, respectively, without the knowledge of the bonafide owner;

THAT, on 20<sup>th</sup> January 2015, Thomas Anzeze was served with a Court Order E&L Case No.8 of 2015 where the complainant, Pasalino Sibiro Lubeka had sued him for having refused to vacate her land;

THAT, vide a court judgment made on 26<sup>th</sup> January 2015 in favour of Pasalino Sibiro, Mr. Thomas Anzeze was evicted from the land on 6<sup>th</sup> July 2018 by a gang of young men who demolished all his houses and structures, thereof rendering him homeless.

Hon. Deputy Speaker, the said petitioner is my neighbor and the contents of this Petition are well within my knowledge because I was witnessing this case as was happening

THAT, efforts to resolve the matter with the relevant agencies have been futile; and,

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

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Lands:

- (i) inquires into all the matters raised in this Petition pursuant to Standing Order No.216(5);
- (ii) requests the Cabinet Secretary for Lands to provide information on the manner in which land belonging to the petitioner was illegally transferred to other persons; and,
- (iii) makes any other recommendations that it deems fit in the circumstances of this matter; and, your petitioners will ever pray.

Hon. Deputy Speaker, I beg your indulgence to request that this matter be handled within 60 days because the petitioner has been thrown out and is living on the streets. He has two daughters who are supposed to sit Class Eight exams and are living in a bush.

**Hon. Vincent Kemosi** (West Mugirango, FORD-K): On a point of order.

**Hon. Deputy Speaker:** There is nothing out of order. What is it? Unless there is something and you must quote the specific section that you are referring to.

**Hon. Vincent Kemosi** (West Mugirango, FORD-K): Hon. Deputy Speaker, I cannot get whether the Member is presenting this Petition. I am very sure the entire House is lost.

**Hon. Deputy Speaker:** That cannot be true because it has gone through the processes of the House and it has been approved. So, in the wisdom of the person who approved it, he must have looked at all those concerns that you are trying to raise.

**Hon. Vincent Kemosi** (West Mugirango, FORD-K): Perhaps, the person who prepared this needs to be interrogated further to see whether this Petition is in the correct format.

**Hon. Deputy Speaker:** You know you are completely out of order because I am the one whom you are asking to be interrogated and you probably have no power for the time being. Hon. Agoi, proceed and finish.

**Hon. Alfred Masadia** (Sabatia, ANC): Thank you, Hon. Deputy Speaker for protecting me. Land matters are very emotive and we do not want to play with issues of land because some of our Members here have a lot of issues of this type. I am sure they will comment about it, but I beg to continue and finish.

So, Hon. Deputy Speaker, the petitioner request that we make any necessary recommendations that deem fit in the circumstances of the matter. I am requesting that the Committee deals with this matter within 60 days as required by the Standing Orders because this is a very burning case.

**Hon. Deputy Speaker:** Now Hon. Agoi, you are headed the direction which Hon. Mogaka was referring to.

**Hon. Alfred Masadia** (Sabatia, ANC): I thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** You know you had come very well, but somewhere towards the end, you got carried away and started debating it. You will have the opportunity to have that canvassed. It is actually hereby committed to the relevant committee and so, you will have your time there. I do not know if there are Members who want to speak to this. I see Hon. Wamunyinyi.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Thank you, Hon. Deputy Speaker. We have had issues of land brought up either in court, petitions or tribunals of some sort.

In this case, the Member is bringing a petition on behalf of a family which has been thrown out of their piece of land. This has happened with land grabbers across the country. We have private investors, individuals, who have grabbed land and people who have encroached on public land or forests and even in areas where public has interest. Therefore, I support the Petition and agree with the Member that it is necessary that when a Petition of this nature is brought, it is handled within the shortest time possible. You have directed petitions to some committees and there is a specific period within which they should be handled. This has not been happening. So, I am only urging committees to take petitions seriously.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Osotsi.

**Hon. Godfrey Osotsi** (Nominated, ANC): Thank you, Hon. Deputy Speaker. I support the Petition by Hon. Agoi, Member for Sabatia. Every time we have a session, Members come up with petitions, but somehow they are not processed expeditiously by committees. So, we need to look for a way of dealing with petitions in this House.

I know of a parliamentary jurisdiction with a committee on petitions. So, when amending the Standing Orders, we need to possibly consider having a committee on petitions. Members cannot come up with petitions and then they lapse because committees have not handled them.

Secondly, the Hon. Member has raised a common problem in most homesteads in Vihiga because of the pressure of land. Families are big and land sizes are small. So, we expect to have some challenges on matters of land. I know at one point the Judiciary said they will promote traditional dispute resolution mechanisms, so that some of the issues like the ones the Member has raised can be dealt with.

**Hon. Deputy Speaker:** Hon. Osotsi, I am just giving opportunity for brief interventions to guide the Committee as they debate this particular issue. But you are already giving what you will raise in the Committee. I think your time is over. Let us briefly have Hon. Fabian Muli and then we end.

**Hon. Fabian Muli** (Kangundo, Muungano): Thank you, Hon. Deputy Speaker. It is true our citizens are feeling threatened by land grabbers. In this country, we are unable to respect ownership of land because of organised crime. Many of these people are working in Government offices while others are in the streets ready to harm our citizens. We need to respect the rule of natural justice. Every time, we have people crying that their land has been taken. So, it is high time this House established a tribunal or come up with good measures to save our country on land matters.

Thank you.

**Hon. Deputy Speaker:** Now that you have saved time for us, I will give a chance to Hon. Kathuri Murungi and he should be brief.

**Hon. Kathuri Murungi** (South Imenti, Independent): Thank you, Hon. Deputy Speaker I want to make a very brief comment on this Petition by my friend, Hon. Agoi. As he clearly put it, it is very important that the Departmental Committee on Lands, led by Hon. Nyamai, expedites this matter and reports to this House. This Petition is similar to the many others on land matters which have come before the House. So, I hope this will be dealt with in upmost speed so that the family can be resettled.

Thank you.

**Hon. Deputy Speaker:** As we give the Leader of the Majority Party the opportunity to table his Papers, let me recognise in the Public Gallery students from Nguutani Boys Secondary School, Mwingi West, Kitui County, pupils from Sunrise Children Garden Primary School, Embakasi East, Nairobi County and pupils of Mugoiyo Junior Academy, Mbeere North, Embu County.

### PAPERS LAID

**Hon. Aden Duale** (Garissa Township, JP): Thank you, Hon. Deputy Speaker. It is good to welcome our children in the morning. Members do not want to welcome them and they want to see their leaders and parents.

Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House:

Youth Enterprise Development Fund Board Performance Report for the period between June 2016 and May 2019.

Annual Report and Financial Statements of the Tom Mboya University College for the year ended 30<sup>th</sup> June 2017.

The Reports of the Auditor-General and the Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June 2018 and the certificates therein:

- a) Technical and Vocational Education and Training Authority;
- b) Coast Water Services Board;
- c) Youth Enterprise Development Fund;
- d) The Kenya School of Law; and,
- e) Kenyatta National Hospital.

The Reports of the Auditor-General and the Financial Statements in respect of the following constituencies for the year ended 30<sup>th</sup> June 2018 and the certificates therein:

- a) Kikuyu;
- b) Ruaraka;
- c) Juja;
- d) Dagoretti North;
- e) Kabete; and,
- f) Kitutu Chache North.

**Hon. Deputy Speaker:** Very well. We can go to the next Order.

### ORDINARY QUESTIONS

**Hon. Deputy Speaker:** In this particular Order, I am aware there are only Ordinary Questions and to start us off is Hon. Geoffrey Omuse, Member for Teso South.

#### *Question No.291/2019*

#### STATUS REPORT ON PREPAREDNESS FOR AUGUST 2019 POPULATION CENSUS

**Hon. Geoffrey Omuse** (Teso South, ODM): Thank you, Hon. Deputy Speaker. I rise to ask Question No.291/2019 to the Cabinet Secretary for National Treasury and Planning.

- (i) Could the Cabinet Secretary provide an updated status on the Government's preparedness for the August 2019 Population Census?
- (ii) Could he also state whether the registration of persons will be undertaken manually or via biometric system, and further state the resources, including funding allocated to undertake the exercise?

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Very well. That one will be replied to before the Departmental Committee on Finance and National Planning. Next is the Member for Kilifi South, Hon.

Ken Chonga. Are we able to give the Member the microphone? It still does not seem proper. Please, use the one behind you, it is better.

*Question No.292/2019*

MECHANISMS TO CURB EARLY TEENAGE PREGNANCIES

**Hon. Ken Chonga** (Kilifi South, ODM): Thank you, Hon. Deputy Speaker. I think this one is better. I beg to ask Question No.292/2019 to the Cabinet Secretary for Education on early pregnancies in the country.

- (i) Could the Cabinet Secretary confirm whether the task force setup to inquire into early teenage pregnancies in the country has concluded its work as per the term of reference and, if so, provide the final report on the inquiry?
- (ii) What mechanisms is the Ministry putting in place to curb early pregnancies among school going children in the country, and in particular, in Kilifi South Constituency?

**Hon. Deputy Speaker:** That will be replied to before the Departmental Committee on Education and Research. The next Question by Hon. Dawood is deferred. He is out on official duty. That other one by Hon. Ferdinand Wanyonyi is also deferred. He had made a request, which is reasonable.

*Question No.293/2019*

MEASURES TO GUARANTEE PRUDENT MANAGEMENT OF UNCLAIMED ASSETS

*(Question deferred)*

*Question No.294/2019*

STATUS OF COMPLETION OF TVET INSTITUTES IN CONSTITUENCIES

*(Question deferred)*

**Hon. Deputy Speaker:** As I proceed to ask other Members to ask Questions, I want to recognise, in the Speaker's Gallery, students from Gathigiriri Secondary School from Mwea Constituency of Kirinyaga County. I should believe that, that is the constituency represented in the National Assembly by Hon. Kabinga Wachira. By good coincidence, he is actually having a Question. So, Hon. Kabinga, ask your Question in the presence of your students.

*Question No.295/2019*

## STATUS OF CONSTRUCTION OF WAMUMU KEMRI BUILDING IN MWEA

**Hon. Josphat Kabinga** (Mwea, JP): Hon. Deputy Speaker, I am not sure how to do this without my microphone working. My microphone on the other side is not working and that is where my Question is.

Hon. Deputy Speaker, before I ask my Question, let me once again recognise the presence of Gathigiriri Secondary School. This is one of the best performing schools in Mwea Constituency.

**Hon. Deputy Speaker:** Now do not go that direction. The only thing that I recognise on your part is that you are actually techno-savvy. You are one of the few Members who are asking Questions using their phones.

**Hon. Josphat Kabinga** (Mwea, JP): Thank you, Hon. Deputy Speaker, but it is also good to know that these are products of farmers who produce the best rice in Africa. I think it is good for you to know that.

Hon. Deputy Speaker, I rise to ask the Cabinet Secretary for Health the following Question:

- (a) Could the Cabinet Secretary state the current status of the construction of the Wamumu Kenya Medical Research Institute (KEMRI) building facility in Mwea Constituency?
- (b) Could he provide details of the company awarded the project, construction commencement date, scope of works, the range of services to be offered once complete and the nature of the medical facility intended to be constructed on the 100-acre piece of public land donated by the Kirinyaga County Government?
- (c) Could he confirm whether there is any provision in the contract safeguarding job opportunities for locals during construction of the said facility, and further state challenges that KEMRI may be facing in undertaking the project that has led to delays during construction of the said facility?

**Hon. Deputy Speaker:** That Question will be replied to before the Departmental Committee on Health.

Next Order!

**MOTION**

## DEVELOPMENT OF ROAD SAFETY CURRICULUM IN SCHOOLS

THAT, concerned that available reports indicate that on average, road traffic accidents in the country cause an estimated 3,000 deaths with many other victims injured and maimed as a result, placing Kenya among the countries with the highest road carnage globally; further concerned that it is estimated that the cost to the economy from road traffic accidents is in excess of Kshs300 billion annually according to the National Transport Safety Authority (NTSA) Road

Safety Status Report (2015); aware that legislation and policies in place to a large extent address the key road safety risk factors, and the challenge is in implementation and enforcement; cognizant that road safety awareness would help in combating road accidents in the country; acknowledging that Section 4(2) of the National Transport and Safety Act mandates the NTSA to develop and implement road safety strategies and facilitate the education of members of the public on road safety; recognising that schools provide the largest and most concentrated group of members of the public who can benefit from road safety education; this House resolves that the National Government urgently develops and implements a mandatory and examinable curriculum for training of students and pupils in primary and secondary schools on road safety.

*(Hon. Silvanus Onyiego on 19.6.2019)*

*(Debate concluded on 19.6.2019)*

*(Loud consultations)*

**Hon. Deputy Speaker:** Order, Hon. Members! Hon. Wamunyinyi and team, order! Order, Hon. Members! Order! Please, take your seats. Caucuses can handle their matters outside the Chamber.

On this particular one, debate had been finalised and, therefore, what remains is for the Question to be put and I can confirm that we have the required numbers. So, I put the Question.

*(Question put and agreed to)*

**Hon. Deputy Speaker:** Next Order.

## **BILLS**

### *First Readings*

#### THE CROPS (AMENDMENT) BILL

#### THE KENYA INSTITUTE OF CURRICULUM DEVELOPMENT (AMENDMENT) BILL

#### THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL

*(Orders for First Readings read - Read the First Time and ordered  
to be referred to the relevant Departmental Committees)*



*(Hon. Caleb Kositany consulted loudly)*

**Hon. Deputy Speaker:** Order, Hon. Kositany. Hon. Kositany, you know there are ways of greeting Members in the House. Take your seat. That is not one of them.

*Second Reading*

THE LAW OF CONTRACT (AMENDMENT) BILL

**Hon. Aden Duale** (Garissa Township, JP): Hon. Deputy Speaker, first I want to go on record that I am moving this Bill on behalf of my very good friend and Member for Juja, Hon. Waititu, because he is not feeling well. So, we have agreed that I move it on his behalf. My colleague and Senior Counsel, Member for Tharaka, will second.

Hon. Deputy Speaker, I beg to move that the Law of Contract (Amendment) Bill (National Assembly Bill No.1 of 2019) be now read a Second Time.

I also want to go on record that from my religious background as a Muslim, we do not take interest. If you are Muslim and you take interest, you know the consequences both in this world and thereafter. However, as a leader, I move it on behalf of other Kenyans who, in one way or another, are affected by the law.

The main objective of this Bill is to amend the Law of Contract Act, Cap.23, to provide that in case of defaulting on loan repayment, the creditor must first realise the security of the principal. I will give a home ground example. When we borrow from our Savings and Credit Cooperative Societies (SACCOs), there are Members who guarantee us. These Members have no security, but on the basis of trust, we sign for them as guarantors. If that Member defaults on loan from the SACCO, the law currently states that the SACCO goes for the assets of the guarantor in case the principal hides. Before you go to the guarantor, you should look for the assets of the principal borrower. That has been the case. There are many people out there who lose their family property because Hon. Duale, Hon. Washiali or Hon. Junet made them guarantors. They have disappeared and did not pay. You end up losing your property. This law is very important.

I have received a letter from the Attorney General saying that we should wait for more discussions. No! I want to tell the Government that the legislative powers of the House lie with the 349 Members. If the Government has issues with Private Members' Bills, it should propose amendments. You cannot step down a Private Members' Bill.

When applying for a loan from a financial institution, the institution usually requests the borrower for a guarantor. If the institution asks for a guarantor, in case the borrower's assets cannot cover the cost of the loan, he or she goes to a friend and asks the friend to guarantee the loan from the bank or the SACCO, as requested by the institution. When this borrower defaults in the payment of the loan, that same institution, after issuing a notice to both the guarantor and the borrower, chooses which assets to recover for the loan. Most of the time they go for the assets of the guarantor. The Member for Juja is saying that the institution should not go for the guarantor. We should amend the law so that the institution goes for the principal borrower. It is a

very important and welcome amendment. It is one of the things that he will be remembered for as the Member for Juja. This should not be the case. The assets of the borrower should be sold first as he is the main beneficiary.

This is a small Bill, if you have a copy. It says that the assets of the borrower must be realised first because he is the one who benefitted. The guarantor did not benefit. He helped you out of goodwill maybe because he is your relative or friend. He helped you when you were in distress. There is need for this amendment Bill to ensure that the assets of the guarantor are protected. That is another principal objective of this Private Members' Bill. The assets of the guarantor should be protected and can only be realised once the assets of the borrower have been exhausted. In a case where the borrower's assets have been exhausted and the amount of money has not been recovered in full, you can then go for the assets of the guarantor of the loan.

Clause 1 of the Bill provides for a short title. Clause 2 provides for the amendment to Section 3 of the Law of Contract Act Cap.23 to provide that before a creditor pursues a guarantor in law, he or she should first realise the assets of the borrower.

The Chair of the Departmental Committee on Justice and Legal Affairs was here, the Committee Members are here too. The Departmental Committee on Justice and Legal Affairs tabled its Report on the Floor of the House on 30<sup>th</sup> April 2019 which contains recommendations that will guide the House in considering this Report. The Committee in its Report has also agreed with the Bill and I urge Members to do the same.

We will deal with the matter of the Senate later in the afternoon or on Tuesday. The Constitution is very clear. There is no lower House or upper House. The Constitution clearly states the mandate of the National Assembly and the mandate of the Senate. I was shocked yesterday when we were in Mediation Committee and the Senators were saying that wherever the word "Parliament" appears in a certain Bill, we must remove it and put the words "National Assembly and Senate". In fact, some were saying that we should rename the Senate as the National Senate. They have realised the issue.

This is a very important law. We are the ones who represent the people of Kenya. The sovereign power of the people is delegated to the National Assembly. The Senate is supposed to deal with a corporate entity called counties. The sovereign power of the people of Kenya has been delegated to their representatives in this House. For us to make sure that we protect guarantors and deal with borrowers, we must pass this law and support it.

I beg to move and ask the Member for Tharaka to second.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Deputy Speaker. I rise to second this very important amendment Bill which touches on the amendment of the Law of Contract and deals with the issue of borrowing by the principal borrower and the guarantor.

It is high time this House looked at the various laws that we inherited from England and India, especially those touching on contracts because in most cases, they are not in consonance with the practice of the people of Kenya and what they desire to see as the law being implemented by our courts.

While in law school, we learnt that there are two contracts in the contracts of borrowing. The first contract is the contract of the principal debt and the second is the contract of guarantee. We also learnt that these contracts are separately enforceable. It is for the borrower to choose

which contract he chooses to enforce because they are all in his favour. In reality, the contract of guarantee is a secondary contract. The principal borrowing contract is the first contract while the second contract is the contract of guarantee. The amendment sought seeks to enforce the fact that we must deal with the first contract first after which we would deal with the second contract.

This is very important because when I used to go to court, I would see guarantors arguing that you cannot come for their property until you have exhausted the realisation of the property of the principal debtor. To a great extent, I agreed with it, but the courts in Kenya would always say that we have to enforce the two contracts as this is what the law is. It now behoves on this House to put into statute what will be enforced by the courts without any question. This is what is being proposed in this amendment Bill which went through the Departmental Committee on Justice and Legal Affairs and was accepted as good law. We, therefore, have to enact a good law which our citizens will agree with and benefit from.

As it has been stated by the Leader of the Majority Party while moving this Bill, the person who benefits from a borrowing contract is the principal borrower. This is the person who gets the money and spends it in the way he wishes, whether lavishly, in a useful manner or selfishly. However, he is the beneficiary of the borrowing. Guarantors usually come in to assist because maybe this person does not have sufficient property to cover the indebtedness. This is why extra security must be taken from a person called a guarantor. For the guarantor to suffer the consequences of what he has done, it is vitally important that the principal debtor is held liable first. Let all his assets be realised. Let him pay with every penny or go to court and have him committed to civil jail. It is only after all the remedies are exhausted that we can go to the guarantor to say that he can come in to save his friend and must bear the consequences. This is what this good law is doing.

There is a good report which was prepared by the Departmental Committee on Justice and Legal Affairs. The Members can go through it and confirm that we had great deliberations to agree with this Bill. We made the law from the common law principle or the Indian position as envisaged by the Indian law of contracts. We must now come to what is Kenyan. The Kenyan position is that for the guarantor to be held liable, let the principal debtor bear all the consequences up to the end and it is only then, if there is a deficit, that the guarantor shall be called upon to meet the obligation. I am in full agreement with this proposed Bill. I urge the House to agree with it so that we can amend the Law of Contract Act Cap.23 and entrench all our thoughts into the statute for purposes of being enforced by the courts without any question.

With those few remarks, I beg to second. Thank you, Hon. Deputy Speaker.

*(Question proposed)*

**Hon. Deputy Speaker:** Hon. Junet.

**Hon. Junet Nuh** (Suna East, ODM): Thank you, Hon. Deputy Speaker. I stand to support this Bill. This is one of the best Bills this House will pass. Unfortunately, the media does not pick it up for a reason which I do not know. You will hear of other things, but you will never hear them serialising this Bill as important.

**Hon. Deputy Speaker:** Why are you anticipating what the media will pick? We will see it tomorrow.

**Hon. Junet Nuh** (Suna East, ODM): This Bill is timely. Many Kenyans are suffering because they have guaranteed someone a loan. A guarantor is supposed to be just like a referee. He is a person who says that he knows the person who is borrowing some money and that he is a good man and then he signs for him. He is not taking the loan on his behalf or he is not the one who is being given the loan.

Hon. Wamalwa was telling me that a lot of teachers in his place do not sleep in their homes because they have guaranteed some people loans. They hide in the farms because people come for them. If somebody has borrowed money from a SACCO or bank, the primary responsibility of paying that loan lies with the borrower. Within a short period, the bank or lender looks for the borrower and if he does not find him, they start harassing the guarantor and collecting his household items, utensils and *kukus* in the village. I saw one of the SACCOs which invaded a guarantor and took his everything, including his bed, mattress and chicken. That kind of mentality must stop in our country. The only place where that can be stopped is in this House.

I want to thank Hon. Wakapee for bringing this Bill at this time. He realised that Kenyans suffer through the lenders who only care about the interest they earn and the money they get from you. This Bill will go a long way to make credit cheap because banks will make sure they engage the borrower in a manner that he will be able to pay. Nowadays, a borrower defaults and in a month or two months they go for the guarantor because they know he is a rich man and can afford to pay on behalf of the borrower. So, they do not even bother with the borrower. They go for the guarantor immediately.

I want to support this Bill and urge the Members to support it. This is one of the best Bills that will be passed in this House. It will make the lives of Kenyans bearable. Kenyans are suffering. Under this economic hardship that we are going through, non-performing loans or loan defaulters are very many. People are unable to meet their obligations not because of their own making, but because of the economic conditions they are living under. Some of them have done work for counties and the national Government and there are pending bills which have not been paid. If they have not been paid, they cannot pay their loans. I want to thank His Excellency the President for saying that all the pending bills must be cleared by the end of this month. That will help the people who are suffering and have serious problems with banks from which they borrowed from.

With those few remarks, I support the Bill. I would like to thank Hon. Wakapee for bringing this Bill. Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Member for Mbeere North. He is not here. The next two Members are from the left side. Let me look for a Member on the right side. The top most is Hon. Washiali. You are number eight, which means there is a lot of interest on my left side. That is very interesting.

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Deputy Speaker. From the outset, I want to thank Hon. Waititu for bringing this Bill. It is very small in size, but what it carries will help Kenyans. Many borrowers who can easily get guarantors do not get them because they get scared because of the experience of previous guarantors. Therefore, honest

businesspeople who are looking for guarantors will easily get them. If the borrower is a genuine businessman, he will definitely pay. If he does not pay, then he will be subjected to forceful payment.

We need to look at the reasons that make one to borrow a loan or to be guaranteed to borrow. You get friends to guarantee a loan and sometimes even those friends are not very well known to the principal borrower. In other cases, in-laws come in to guarantee people who cannot repay their loans and this puts to risk their property.

I want to support my colleagues who thanked Hon. Waititu for bringing this Bill. Alongside this Bill, there is also the Bill related to sureties and bonds in courts of law. Sometimes people are arrested and they ask their friends to stand surety for them, but once released from court, they disappear. We have to think out of the box after we pass this Bill. We must look at the laws that manage the aspects of sureties and bonds in courts, so that we can be sure that those who give sureties in courts and police stations are protected by law. That will then mean that the person who has been arrested or the one who is supposed to be given a surety first of all faces the law or gives a counter surety, so that people do not endanger their property.

Otherwise, I want to thank the Members and request them to support Hon. Waititu for coming up with this Bill, so that he can go on record as the one who saved guarantors' property.

I thank you, Hon. Deputy Speaker.

**Hon. Samuel Atandi** (Alego-Usonga, ODM): Thank you, Hon. Deputy Speaker, for giving me this opportunity to contribute to this Bill.

This is a very good Bill. Products that require guarantors were introduced by financial institutions because of the realisation that some people have very good business ideas, but do not have capacity to implement them. So, banks decided to introduce guarantors to help such people acquire resources to implement their ideas. So, the applicant is not the person who is being appraised. The person to be appraised is the guarantor because the applicant is known not to have capacity to get the resources. Basically, the idea was very good because it was intended to help people have capacity to start businesses. That is the reason the solidity of the guarantor was very significant and banks went for the guarantors when there was default on the loan. That situation may not obtain now and that is the reason I support the amendment Bill.

As somebody who worked in the financial sector, the idea of having people guaranteeing others to get resources to start businesses is something which we need to support. Most of us are aware that you could have a relative who does not have money to begin a business and even if they were to begin the business with the resources you have given them, and in case they default and financial institutions come for their assets, the business collapses and the person goes to zero. To some extent, if the law is repealed the way we want to do it, we may discourage people from supporting others to start up business. That is something we may need to check.

Today, banks have sophisticated products that may not even require people to guarantee each other. We have unsecured facilities that were not there before. There are cases of teachers, for instance, in my village who cannot sleep in their houses because they guaranteed others. That is a realistic example of how guaranteeing has led to suffering. Some people who are guaranteed disappear and lenders go to the guarantors to attach their assets. So, guaranteeing has both positive and negative aspects. I want Parliament to check whether amending the law is going to

occasion a situation where we will not get people to support others who want to start businesses or people who want to begin life. I will not mind, for instance, if I guaranteed somebody and they are unable to pay the loan and the lending institution comes for my assets. That will be justifiable. Financial institutions need to make it very clear when they ask for guarantors. Guarantors must be made aware of the implications of guaranteeing.

I support the amendment Bill, but I want Parliament to re-look at the way it is because it has the potential of causing people to be mean to the society by stopping supporting others and we will not have a germane society.

Another issue is that ultimately, as Parliament, we need to agree on the need for security by financial institutions, which might not be sustainable in certain sectors. There are some businesses you may not need security to be given facilities. For instance, if you are in the business of supplying goods to Government and there is a system in place that pays suppliers in time, then we need to agree that such kind of businesses should not be required to supply security when they apply for facilities from financial institutions. Otherwise, we will not have businesses or start-ups because they will be very difficult to come by especially now that the Government does not pay in time. Most people in the business of supplying goods to Government find it very difficult to access financial facilities. It actually derails the performance of our economy. What we need to do as Parliament is to help the financial sector to have easy facilities and let the Government pay its suppliers on time. In that case, banks will modify their products in line with what the law provides especially for people supplying goods the Government.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Even if he is not top of the list, I give the chance to Hon. Mwirigi Paul. He is the topmost on my right side.

*(Hon. Josphat Kabinga Spoke off record)*

Indeed, he came after you, but you are No.9 on the list, Hon. Kabinga, while he is No.4. So, there are several other Members before you.

Proceed, Hon. Mwirigi.

**Hon. John Paul Mwirigi** (Igembe South, Independent): Thank you, Hon. Deputy Speaker, for giving me this opportunity to channel my voice to the Bill.

Many families live in worry when they guarantee someone to borrow money and they are followed by the lending institution. So, this amendment Bill has come at the right time when we are supposed to do something to curtail the lending institutions so that before they pursue the guarantor, they deal with the principal borrower.

*(Hon. David ole Sankok consulted loudly)*

**Hon. Deputy Speaker:** Order, Hon. Sankok! Proceed, Hon. Mwirigi.

**Hon. John Paul Mwirigi** (Igembe South, Independent): Before they pursue the guarantor, they should first deal with the principal borrower to the maximum. After they have done that, they should then follow another law which allows them to pursue the guarantor to pay.

This should be done after they have checked what the borrower has borrowed and looked at the terms set for the guarantor. In most cases, for people who normally borrow money, there is some way in which they force the guarantor to give them an okay so that they can borrow.

I support the amendment Bill since it will help many people to survive in business without being worried that they can be pursued any time or that their things can be taken away by the lending institutions. The lending institutions normally pursue the guarantors since they know that they are able to settle the debts even when they may not be aware that the borrower has failed to pay back.

I beg to support. Thank you.

**Hon. Deputy Speaker:** Hon. Mbui.

**Hon. Robert Mbui** (Kathiani, WDM-K): Thank you, Hon. Deputy Speaker, for giving me this opportunity. I also rise to support this Bill by Hon. Francis Waititu. I begin by thanking him because he has done what has brought us all into this House, namely, to legislate and represent the people. He has combined it very well. This is an excellent piece of legislation which helps to represent the people and ensure that they are protected. This is a good fight for Kenyans. This Bill is straightforward because it basically seeks to protect guarantors so that in case one guarantees somebody a loan, then their property will not be the first port of call when any defaulting takes place. Basically, this is an excellent idea. I have come across a number of people who have lost their property because of this kind of situation. I must confirm that my mother lost 10 acres of land because of guaranteeing an in-law.

In our traditional African culture, we are extremely generous to family, extended family, friends and in-laws. So, it is very unlikely that if one has a piece of property and a relative wants some assistance in the form of a guarantee, not by giving them the money, most of us will probably say “yes”. That is generally how we are, as Africans. It is something that has been used and abused by commercial banks for a long time. They look at the properties of the guarantor. If they look more attractive and easier to sell, they quickly get rid of them and pay back their loan. What Hon. Waititu has done today is to protect Kenyans and ensure that they operate without this fear.

We also understand that for us to grow our economy, we need to borrow money. But we have to do so in such a way that borrowers carry the liability for their loans so that they can inject it into their business and try to multiply the money. If borrowers are not held liable and we hold guarantors more liable than borrowers, honestly, it means that people will borrow money for luxurious purposes, and maybe the purpose for which it is meant will not be met.

Hon. Waititu, let us be prepared for backlash from the banks. Remember the last time we had the Bill on interest rate capping, commercial banks tried to manoeuvre their way and circumvent the law. I believe even on this one, we will have a lot of backlash but we will support you and stick with it all the way.

With those few remarks, I support.

**Hon. Deputy Speaker:** As I give the Floor to the next Member, let me recognise in the Gallery, Kinungi Primary School from Naivasha Constituency of Nakuru County. They are ably represented here by Hon. Jane Kihara. Going to my right, I give the Floor to Hon. Arbelle Malimo. Do you want to speak to this one or you are expecting another one?

**Hon. Marselino Arbelle** (Laisamis, JP): Let me say a word on this one, Hon. Deputy Speaker. Thank you for giving me this opportunity to support this Bill. Banks have always been lending money to borrowers in this country and by doing so; the borrowers are required to provide guarantors. When a borrower defaults on loan repayment, the banks go after the guarantors. So, it is very important that a guarantor should be protected in such a way that the bank should go after the person who has borrowed the money. The bank can ask the borrower to provide collateral. In the event that the borrower does not pay the money on time, then the bank, instead of frustrating the guarantor, can go after the property of the borrower. That way, the banks can easily recover their money.

The banks have also been trying to charge unnecessary interest from the person borrowing the money from the bank. By the time the borrower pays the amount of money that he or she has borrowed, it becomes very hard to survive. That is because the amount of interest accrued from the loan will become very cumbersome for the person to pay back the money.

With those few remarks, I support this Bill.

**Hon. Deputy Speaker:** It is your turn Hon. Wakhungu Wamalwa.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): Thank you, Hon. Deputy Speaker. First and foremost, I congratulate Mhe. Francis Waititu, the MP for Juja, for deciding to bring this Law of Contract (Amendment) Bill. The Bill deals with the issue of the guarantor and the borrower. We passed a law here on matrimonial property. As a spouse, you cannot sell family property without the spouse's consent. That was the reason why many families were losing their homes. You will find one of the spouses has gone to a bank and taken a loan without informing the other spouse. When you guarantee somebody, you do not seek your spouse's consent. It goes without saying that people can lose family property because of guaranteeing someone. The importance of this law is in the same spirit of the spouse consent.

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

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

Many times, when colleagues want to take loans, we guarantee them because of the issue of reference. We do not even go further to know how much they are borrowing from the Sacco. I have been guaranteeing everybody. I do not even know how much they normally collect from the Parliamentary Savings and Credit Co-operative Society (Pacoso). It is because of the trust that we have in each other, but if we allow the person giving you money to come for you, the guarantor, without exhausting the assets of the borrower, it will be unfair. So, this Bill is very critical. It will protect the guarantor.

In my village, I have had teachers coming to spend at my place just because they guaranteed some people who took loans. The lenders do not give them peace. They go to their homes at night and try to auction everything they have and yet, they have left the person who



borrowed. Borrowers have become sharper. They have even gone to an extent of conspiring with the people they borrowed money from. So, instead of the lender pursuing the borrower, he pursues the guarantor. Conspiracy has been going on. So, it becomes something that is very difficult.

This law will protect guarantors. We know very well that for us to have a successful business and do business, we must borrow money. We know very well that people do not have start-up capital. Small and Medium Enterprises (SMEs) need start-up capital to do business. For them to get money, they have to borrow from banks. The core business of a bank is to give out money. That is why when it comes to the issue of capping bank interest rates, we must resist what the Governor of Central Bank of Kenya (CBK) wants to put across. We cannot leave banks to regulate themselves. Banks cannot continue making abnormal profits at the expense of business people. If you look at the law of demand and supply, naturally, when a price of a commodity has gone down, the demand is supposed to go high because there will be many people who can afford that product. However, in the banking sector, it is now the opposite because banks have conspired and they are not giving SMEs money because they think it is risky. It is something to do with integrity. That is why CBK, as a regulator, has a role to play. Many commercial banks do not want to give money to SMEs.

The Government is also competing with the small *mwananchi* in terms of borrowing. The law that was passed, which was sponsored by Hon. Jude Njomo, the servant of the great people of Kiambu, is in the interest of SMEs. We want to tell whoever wants to amend the interest capping law that this House will not accept it. Commercial banks have categorised politicians as politically risky people. We are not given loans. So, we are only surviving by using our PACOSO loans that we have here. But they also have a limitation. You cannot borrow much. So, I am humbly requesting Hon. Members to support this Law of Contract (Amendment) Bill for the purposes of guaranteeing even peace in homes. It is in line with the Matrimonial Property Bill that we passed here. Today, you cannot just sell your house without the consent of your spouse. If you do not have a spouse, you must have an affidavit to prove that. Mothers most of the time see auctioneers coming and they get kicked out of the house without knowing that their husbands had used that family house as collateral.

This Bill is very critical. It is going to protect the interests of families. It is going to protect the interest of SMEs. But do you want to tell those borrowers who want to harvest where they never sowed that they can do what the rule of terms does not say? In a SACCO, they normally say: "Save regularly, borrow wisely and pay promptly." Those of you, who are borrowing money must put it into good use. I have seen people borrow money to go and marry many wives or many husbands, since we are nowadays also seeing women marrying. So, we are telling those borrowers to, please, borrow wisely, put the money into the business you want and pay back promptly.

With those few remarks, I support. I thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Shall we have Hon. Wachira Kabinga? No! No! We must have the Hon. Deputy Speaker before Hon. Wachira Kabinga.

Hon. Cheboi, you have the Floor.

**Hon. Moses Cheboi** (Kuresoi North, JP): Hon. Temporary Deputy Speaker, when Members are claiming some came here earliest, you recognise that I was the earliest here. I thank you for giving me the opportunity.

I take this opportunity to also support the Bill that is before us here. I am a student of contract. Like yourself and many other lawyers here, you understand what happens when you go to law school. The first case that comes before you, before you even start the process of studying law itself, is one case called: “*Carlisle v Carbolic Smoke Ball*” It is an 1893 case which is the basis of contract. As many of my colleagues have stated, it is extremely unfortunate that many institutions from which persons borrow and default, the first port of call is the guarantor. It is because they are the easiest option to get.

Of course, as I support this, I must warn members of the public to be very careful when they accept to be guarantors. Well, this Bill will make it a little better if it goes through. But we must also be careful when we are guaranteeing. Try to know the person you are guaranteeing. You heard the Member for Kiminini, just a few minutes ago say that he has guaranteed 101 Members here, every other day. In fact, that is something that should go public that Members, as they do whatever they do, are also borrowing like everybody else. They are looking for funds. We are not self-sufficient. We do not have everything. We keep borrowing from SACCOs and banks which declare us “politically exposed persons”.

In other words, they are trying to use a good language of saying that we are risky borrowers. It is very surprising. Being a Member of Parliament, you have a salary. That makes you one of the least risky persons. I think the only reason we are considered politically exposed and, therefore, risky is because we end up using even the money we borrow for our constituents.

I remember in the 9<sup>th</sup> Parliament when I borrowed some little money somewhere. It was from a bank here. I took the entire amount that I borrowed to *Harambees*. I remember it was about Kshs400,000. Immediately, I took it to a hospital in my constituency. It was called “Keringet”. They wanted Kshs100,000 and I gave out the money. That is probably what makes us a bit exposed in terms of risks. What I am saying is that we must be careful as the public. We must know the persons we guarantee.

This kind of amendment that we get from the Hon. Member here will give us an opportunity to first exhaust avenues against the person who has borrowed before we start thinking about the guarantors. That is so that, a guarantor will be somebody who would be coming to attest that “this person is of good standing” and not necessarily to say: “I am the one who is going to pay in case of default”. This is the case and yet he is not involved when it comes to consumption of whatever has been borrowed.

Thank you very much.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): I had called out Hon. Kabinga. You may use the Dispatch Box.

*(Hon. Wafula Wamunyinyi gestured)*

Hon. Wafula Wamunyinyi who is next on my left is claiming that Hon. Kabinga has just come. My machine is very correct.

**Hon. Josphat Kabinga** (Mwea, JP): I want to confirm that I was here at exactly 9.00 a.m. I had also come to attend to my Question. So, the Hon. Member is out of order.

Thank you, Hon. Temporary Deputy Speaker. I rise to support this amendment Bill by my good friend Hon. Wakapee from Juja Constituency. It is coming at the right time when many Kenyans are suffering because of banks wanting to go for guarantor as the first charge. What this Bill is simply saying is that the borrower and the properties or collaterals presented by the borrower should serve as the first charge. The guarantor should come in next. What we are saying is that when a borrower fails to honour his commitments, the banks are very good at rushing for the guarantor's properties. This has caused a lot of distress. Families have broken down, and some guarantors have even ended up in hospitals. Some of them are somewhere else and not in this world. Therefore, this is a very serious amendment that we will need to take very seriously.

I ask that we do not just focus on banks. There is also the co-operative movement where many guarantors are suffering. I have worked in an environment where I have been a member of a co-operative society for 20 years with the US Embassy. I have witnessed many guarantors suffering because of borrowers who, sometimes, leave their place of work and no longer care to service their loans from wherever they go. This ends up in the hands of the guarantors. I have seen many people whose houses and properties have been taken. I have seen guarantors who have been going without a salary. A whole family that has been getting a salary from the breadwinner ends up not getting it because somebody borrowed. You guaranteed that person and he is enjoying somewhere. Because you are the one who is left in employment, you are left without a salary.

It is high time we looked at some of these laws and amend them so that you only go to the guarantor when you have exhausted everything else. The guarantor should also be given a chance to also identify any other property that the borrower could be having and communicate the same to the bank. The bank should then cooperate. We should have a clause that compels bank to cooperate with a guarantor before action is taken. There are borrowers who have many properties out there, and are known by a guarantor but not by the bank and the guarantor could point them out. We should have a leeway where, even if such properties are not charged, they are followed up and taken before you move to a guarantor.

In the same way, I think it is important that banks handle matters properly with decorum. If I am a guarantor, I should also be able to give alternative properties to the bank as opposed to rushing in and taking matrimonial homes, something which increases distress in people. For example, the children in distressed families may not know when the deal was struck between the borrower and the guarantor. The guarantor may not have shared the same information with his family. Therefore, it is important that banks handle these issues with decorum and ensure that they cause minimum stress to the affected families.

With those few remarks, I support this amendment Bill. It will touch on the Law of Contract Act, Cap. 23. This should be done quickly because it is a proposal that is going to positively affect families out there that are just about to suffer from the existing law.

Thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Next, we shall have Hon. Wafula Wamunyinyi.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Thank you, Hon. Temporary Deputy Speaker. I rise to also support this Motion by Hon. Waititu. It is fairly straightforward. It provides for the lender or bank to first exhaust all measures, including going for the borrower's security assets, before going to the guarantor. Ordinarily, like my colleague, Hon. Chris Wamalwa has said we guarantee our colleagues in Parliament out of trust without bothering how much they are borrowing. I am sure the same extends to other members of the public. When they are guaranteeing their colleagues, it is out of trust. They know each other and they never expect that someone will default so that the lender comes after them. Usually, they help each other to realise their goals. So, this piece of legislation is important. It prevents the lender from going for the guarantor before exhausting other measures, including realising the security of the principal borrower.

I am not sure what the main Act provides for, but in Saccos, there is a provision for insurance cover of member's loans. In the event of death or default of any kind, it can be taken care of. There needs to be a provision to deal with cases where one dies while there is no cover. For example, if you borrow from a bank and then death visits you that will be unfortunate. One could possibly be on track in repaying a borrowed amount then death occurs. Usually that becomes a difficult issue if there is no provision or an insurance cover for it. That is something that we need to look at. We need to strengthen and improve the management of our SACCOs to increase their accountability and ensure that they are run transparently to help those who have invested savings in them.

This Bill deals with borrowing and lending and my colleagues have talked about interest rates. All of us borrow from banks, and we have suffered in their hands. We have been paying loans for years and they never reduce because we only pay interest rates. It is important that Members are reminded that if there will be an attempt to bring changes on interest rates to this House, we will reject them. We will join hands and ensure that they do not go anywhere.

As I said, this legislation is fairly straight forward from its objective of being brought to this House. I do not want to take too long on it, so that I can allow other colleagues to make their comments. I support the Bill. We will ensure that when the other Bill on interest rates is brought before this House, we will reject it.

Thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): It is your turn Hon. Tum, the Member for Nandi County.

**Hon. (Dr.) Tecla Tum** (Nandi CWR, JP): Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to speak on this Bill. If we pass this Bill, people will be responsible. They will utilise in the right way whatever they have been given. Many people in this nation are crying because they guaranteed people who borrowed loans. Their land and animals have been sold. I know of a particular woman in my county who guaranteed a politician and the only animal she had was sold to recover the money. That lady is still crying. So, people should be responsible when they take loans. They should utilise them in the right way. Let the

borrower be made to sweat for whatever they have been lent. The Bible says you should eat the bread of your own sweat.

The banks should be responsible and go after borrowers. They should be thorough with their work when they are giving out loans. They should not make Kenyans pay for what they have not utilised. The assets of the borrowers should be sold. When somebody asks for a loan, they should do so knowing that they will repay it. There are many people whose land has been sold and they are crying. So, this law is good. It will make Kenyans to be responsible when borrowing. They will borrow what they can repay. They should not make other people's children drop out of school and increase the landless people in our country.

Thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): We shall now have Hon. Mogaka Kemosi, the Member for West Mugirango Constituency.

**Hon. Vincent Kemosi** (West Mugirango, FORD-K): Thank you, Hon. Temporary Deputy Speaker. I also rise to support this important proposed amendment Bill for several reasons. I have been a student of contract law both at the University and in Law School. I clearly understand the burden several guarantors have been undergoing in this country. This provision of the guarantor coming in to stand for the principal debtor is not a new provision. It dates back to the year 1867. On several occasions, the courts have held it differently when it comes to guaranteeing the principal debtor. They have never shied from attaching the assets of the guarantors. This proposed amendment is important because it gives a provision that in case of default by the principal borrower, the creditor should first realise the assets of the principal borrower before proceeding to court to recover from the assets of the guarantor.

It should be noted that the law, as it stands today, does not have that provision. Therefore, the Hon. Member who has brought this Bill is well guided. If this provision is passed by this House, and I am sure it will, it will give peace to innocent guarantors who have been undergoing the burden of paying the amount that has been advanced to the principal debtors. Some of the principal debtors do not borrow money for good use. Some of them borrow to marry more women, travel abroad and such issues. When it comes to recovery, those people are unable to repay. This is where all the money is recovered from an innocent guarantor. It is, therefore, important that the principal debtor is held liable.

If the principal debtor has taken a loan, the lending institutions should first recover from his assets before proceeding to recover from the guarantor. This norm is all over in the Republic of Kenya. Where I come from, not only teachers, but innocent public servants and those working in the private sector, have been made to undergo a punishment that is not theirs. They have been made to pay for the debts that they never incurred; loans they never took. You should also know that some financial institutions are recovering the amounts defaulted from the accounts of the guarantors without following the due process of the law. This is an illegality from the beginning.

Some financial institutions are currently recovering from the tools of trade and livestock which are exempted from the law. I support this amendment. It is a very important amendment that will bring sanity to the financial institutions in terms of principal debtor versus guarantor as it is concerned.

I support.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Before I give the opportunity to the next speaker, allow me to introduce a number of schools in the galleries. In the Public Gallery, we have South Tetu Girls High School from Mukurweini Constituency, Nyeri County and Gatamaiu High School from Lari Constituency, Kiambu County. In the Speaker's Gallery, we have Kauwi Secondary School, Kitui West Constituency, Kitui County and Mogotio Girls High School, Mogotio Constituency, Baringo County. They are all welcome to observe the proceedings of the National Assembly.

Shall we have Hon. Sankok David.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker for giving me this opportunity to inject my voice to this very important law, the Law of Contract (Amendment) Bill (National Assembly Bill No.1 of 2019).

Let me begin by congratulating Hon. Waititu for bringing such an important Bill. Our laws are largely borrowed from India and UK. However, we should customize our laws to suit the needs of the Kenyan citizens. This Bill has gone through public participation and it is what Kenyans want. Let the borrower who is the principal beneficiary of the loan, who may have used this loan in ways that will not raise funds pay it back. He or she should be the first to pay it back. Some borrowers borrow for reasons that are not business oriented. As other Hon. Members have said, some borrow so that they can marry more wives; some borrow to travel abroad or to indulge in alcoholism and other uses that may not assist them in repayment of the loan. In all those ways, the guarantor is not involved. When the bank was giving loans, it did not involve the borrower and the guarantor.

Our laws say that when there is default, the bank chooses either to go for the property of the borrower or the guarantor. The bank did not choose who to give money to, when they were lending the money. So, they should not have the right to choose who they should go to; the borrower or the guarantor. It should be the borrower who is the principal beneficiary of the money that the banks should go for first and as a priority.

It pains Kenyans, especially when you are a guarantor because, sometimes, banks collude with borrowers. The borrowers intentionally hide money. Some of those borrowers are advised by banks who to choose as guarantors because they know their bank accounts and they know how much they deposit every now and then. Sometimes, it is collusion. The banks would advise a borrower to look for Hon. Kabinga because he has a fat bank account and when he defaults, they will go for the Member. We do not know if they share the borrowed money. Once the borrower defaults, the banks choose not the one they lend the money to – that is the principal borrower - but the guarantor who was not involved in the process of borrowing.

Some borrowers are very intelligent. When they borrow, they hide their assets in several companies with very funny names so that when they are not able to pay, the financial institutions will follow the guarantors. Some of them have many assets even outside the country, but the assets are in the names of companies, wives, daughters and sons and so, the banks do not go for them. They choose the easier route, which is the guarantor. The guarantor will not hide his property because he is not under any threat since he does not have any loan. Some of these banks collude. That is why for us, as a House that makes laws, we have seen the suffering of

guarantors. We just want to protect the guarantors and by extension, we are also protecting the borrower because with this trend, nobody will guarantee any Kenyan to get a loan. When we stop guaranteeing because of fear that our property will be confiscated there will be no borrowing in Kenya.

We know some borrowers are very intelligent, progressive business people that borrow money and make more profit, employ Kenyans, pay taxes to this country and economically change it. So, the issue of borrowing is all over the world. Some people have become rich. They have economically empowered their nations and families by borrowing and investing wisely. If we go by this trend, it will be very difficult for people to borrow because guarantors will not be there. Once we protect guarantors, all progressive borrowers will invest wisely. They will easily get guarantors. As long as a guarantor's assets can be confiscated, you will find that since we do not have spiritual eyes to know who is a wise investor and who is a progressive businessman, we will not guarantee anybody. This will economically affect our nation. That is why I support this Bill because it simply says: Let us first of all start with the principal borrower, who is the principal beneficiary. Let us exhaust his/her assets. The borrower chose the guarantor and the guarantor agreed to guarantee. So, I support this Bill because it protects both the guarantor and the borrower because borrowers will get guarantors. But with this trend, we will never get guarantors.

Thank you very much and I support this Bill.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Muli Fabian, the Member for Kangundo, you have the Floor.

**Hon. Fabian Muli** (Kangundo, Muungano): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to articulate and join my colleagues in appreciating the work of Hon. Francis Waititu, who has come up with this legislative proposal.

Hon. Temporary Deputy Speaker, in contract law, the contract comes through invitation to treat. This invitation to treat comes with the offer where the two *persona* would agree on the terms in the contract. But from our school of thought, when this contract law came to our Judiciary in Kenya, we were not in a position to establish whether one person can easily be identifiable or known. So, at that time, we did not have phones. We were not in the digital world and so, it was not easy to track one who had been given financial assistance or any kind of borrowing. My understanding is that we needed a guarantor at that time.

It has now gone to an extent where financial institutions are misusing this opportunity. The witness has now been forced to do the duties of the principal who was given the money. In the phenomena of maximisation and the exploitation of the principal, that is the person who has been given the loan. But the financial institutions are using closely related principals who can pay for the loan. That is why we said that this legislative proposal has come at the right time. All the institutions which are giving money should exploit all avenues before they think of a witness or guarantors.

The vision of the writer of the law is this: we want to bring this legislative proposal at this time. Do we still need a witness? It is the vision of the law of the writer to give us in terms of the agreement to treat the duties of that witness. What is the witness supposed to do? The witness should not be subject to guarantee the failure of somebody who was given money. I understand

that people look for loans in good faith. We do not want to make laws for criminals. We are making laws for a harmonised society. That is why we are saying Kenyans borrow in good faith.

What are the parameters this person is supposed to operate in as an individual, and not with guarantors? So, this one is solely left with the vision of the writer. He is the one who is supposed to show us because there is an invitation to treat. How did these two people come to operate within this law? I will support this legislative proposal because it is going to define and ensure that guarantors are not misused.

We are now a borrowing society. Kenyans are suffering because of M-Shwari and Fuliza. Everybody is borrowing but the problem is the economy. It is not that people cannot pay. The question is that our people are borrowing. Is this economy giving you an opportunity to borrow money and make profit?

We are living in a state where you get every phone has borrowed money and Members in this House can agree with me that many people operate with Fuliza. So, because the society has embraced economic borrowing, it is high time financial institutions understand this. They should see the capacity. It is high time that our young people were not exploited by being taken to the CRB. For the first time, before you give the loan, you should understand if that person has the capacity to borrow. Now, as long as you have a simcard, you can borrow through your phone. If that is the capacity to borrow, did you check the capacity to repay? So, it is high time the invitation to treat in terms of contract law was maximised by the first person who invited that treat to borrow. I support this legislative proposal and wish we could have more to promote economic factors which affect our citizens as individuals.

I thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Next to my right is Hon. Mutunga Kanyuithia, the Member for Tiganai West.

**Hon. John Mutunga** (Tigania West, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to the Contract Law (Amendment) Bill before the House this morning.

Hon. Temporary Deputy Speaker, the need to protect guarantors is paramount. We are a country that cannot employ as many people as we train. In that case, it applies that there will be many more, especially the younger people, requiring money to start businesses. So, we need to promote more support in terms of guarantee so that the youth can get into business. If this is abused as has occurred many times – that is according to many speakers and the experiences that we have had - I think we will not be in position to support our youth to start businesses.

I would also allude to the fact that when one gets into a contract especially to supply goods and services and it takes long to be paid, it pains that particular person in terms of realising the payments as per the agreement. I urge that whenever the contract is issued... When we have people having supplied goods and services in tune with what the President did in the second Supplementary Budget Estimates... I would like to laud his efforts in trying to clear the pending bills. Many people have been waiting for a long time, and some have suffered because the contracts have got specific deadlines and provisions that must be met. So, this amendment comes at the right time to try and secure those who are generous enough to extend their guarantees to those in need.



Hon. Temporary Deputy Speaker, in this land, we have a lot more of social guaranteeing before we get into economic guaranteeing. You guarantee somebody because probably you know them, you are in a process together, and working together or you belong to an association. In this House, we guarantee each other without even caring to know whether somebody has shares or not. Those who guarantee in most cases need to be protected because they may not even know or be keen to ascertain that the other can repay. So, there is need for us to protect the guarantors so that the first charge must pay the institutions that are lending. These institutions must ascertain that there is possibility for the first charge to repay.

May I highlight the fact that we need to protect property owners. Many people have lost their properties because of guaranteeing out of good faith. So, the law comes to put that safe guard so as to enable us guarantee each other in business.

Looking at the SACCOs in most cases, they normally rely on guarantees. You have to be guaranteed by two or three people before you get a loan. We have cases of people who are paying loans for others over a long time because the banks and lenders turn to guarantors to pay. In this particular case, I believe this amendment will secure guarantors in the sense that the first charge should exhaustively purpose to pay and put all the efforts in terms of paying so that they can redeem the money that they have borrowed from an institution.

There is the issue of interest rates that come up so often in our conversations in this House. I would like to add my voice to the fact that although we have interest rates capping, we have never seen banks going at a loss. That means banks were making supernormal profits out of very poor Kenyans. The idea of having interest capping is important so that we may not go the direction of impoverishing Kenyans as we enrich a few banks.

Hon. Temporary Deputy Speaker, it is important for us to open the economy through guaranteeing. It is only through protection of guarantors that we can open up this economy. Kenya is not creating many businesses and employment as it ought to. We need to put in a lot of money in terms of investment in businesses. We can only do this especially for those who do not have property and those who are unable to access the amount of guarantees required.

Today, almost all contracts, even the ones we deal with and those dwelt with in different places; require bank guarantees which, in most cases must be secure. I have experiences of youth who have won contracts because they are structured in terms of beneficiaries. There are some that are specialised for people living with disabilities and others targeting the youth. In most cases, you will realise that the youth may not have the ability to secure proper bank guarantees. In most cases, people argue that you can have bank guarantees through a contract. But before getting a contract, you have to show it is possible for you to issue a bank guarantee.

So, the Law of Contract (Amendment) Bill comes in at the right time. To protect those who are willing, ready and able to help other Kenyans do business. Unless we explore avenues of doing business in this country, we will not grow this economy.

Hon. Temporary Deputy Speaker, I support.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us now hear Hon. Milemba Omboko, the Member for Emuhaya.

**Hon. Milemba Omboko** (Emuhaya, ANC): Thank you, Hon. Temporary Deputy Speaker for giving me a chance to make a contribution on the law relating to contract borrowing.

I want to thank Hon. Waititu for bringing such a law which will affect every Kenyan, and is in tandem with what the wishes of Kenyans are. This is because each time a guarantor comes in to stand up for a principal borrower he believes that he is a witness and not the principal. That is why the social mind of the guarantor is very easy.

We should look at what borrowing itself is. It is the act or receiving something of value in an exchange for an obligation to pay back usually at a greater value at a particular time in future. In my background as a teacher of history, government and economics, borrowing has been in existence for a very long time. So, whereas the guarantor looks at it as a social understanding to guarantee, what is the position of the person giving out the money?

The person giving out the money whether a bank... I want our understanding to go beyond banks to the level of other financial institutions, including the current many mobile shylocks that have different names like Fuliza and others. This is because sooner or later, they shall start attaching properties of the people given as guarantors. I hear before you join a Fuliza, you give some names. Hon. Members, at one time or another, you will see yourselves getting a message that you guaranteed either your worker, somebody you know or your constituent and they possibly would like to attach your property.

If you look at the mindset of the person giving out the money in that broad understanding, you will see that the people giving out money whether banks or Fuliza are capital owners. The background of a capital owner is to make profit. So, the driving force of the institution giving out money is profit and nothing else. If you want to just juggle your mind, look at the old people who borrowed. I briefly want to refer to Shakespeare's writing in the '*Merchant of Venice*'. They go to an extent of believing you can take a piece of flesh from the heart of the person who owes you money because you need your profit.

That is the main reason why the guarantor must be protected. This is because given that the spirit of the person giving out the money – that is the financial institution - is to make profits, for him he will be randy and go for any property without understanding that he should go for the principal borrower first before going to the guarantor. That is because he wants to make profit out of it. He is not honest. He is a profit-maker and capitalist.

Therefore, this law has never come at the right time than now when Kenya is facing a mirage of borrowing online; a mirage of borrowing that has not been paid by Government in the form of pending Bills and many mushrooming financial institutions. One such financial institution is Kenya Women Finance Trust (KWFT), which has been very harsh in the villages whenever they give out money to women. They finally get more than they gave out as a loan because they attach all the guarantors and sell their property whether animals or houses. They even go to the extent of breaking down houses and taking the *mabati* or iron sheets and selling them. It is an orgy and wild party which I think the Hon. Member has come on time to bring to a stop. Therefore, I confidently and strongly support this law.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Milemba, did you quote the '*Merchant of Venice*'? That quote was pretty deep and very contextual to the matter we are dealing with.

Before I give to the next speaker, allow me to introduce other schools which have come. In the Speaker's Gallery, we have Asumbi Girls High School from Rangwe Constituency, Homa Bay County. We also have Chelsa Academy from Bomet Central Constituency, Bomet County. In the Public Gallery, we have Muroka Secondary School from Kandara Constituency, Murang'a County and ACK St. Joseph Kabete High School from Westlands Constituency, Nairobi County.

All these schools are welcome to follow the proceedings of the National Assembly. To my right, top on the list is Hon. Kimani Kuria.

**Hon. Kuria Kimani** (Molo, JP): Thank you, Hon. Temporary Deputy Speaker. At the outset, I would like to congratulate Hon. Francis Waititu for bringing this amendment to the Contract Bill. This is because many Kenyans out there are suffering as a result of their hard earned money and savings being deducted by banks and financial institutions because they guaranteed them.

I would like to discuss this further from an accounting point of view. The International Financial Reporting Standards (IFRS) No.9 by the International Accounting Standards Board (IABS) clearly illustrates that banks must realise the expected credit loss in their financial statements. But in the last financial year, many banks reported high and increased profits. Upon further investigations, this is mainly because the CBK allowed the banks not to use the IFRS No.9. Instead of charging expected credit loss to the Profit and Loss Account, they charged this to the Balance Sheet against the retained earnings and so the profits mushroomed.

Therefore, with that, the banks could be lying to us in terms of the profits they claim to have made. Their only refuge for the reasons they were under-performing is they were able to convince Central Bank to relax the IFRS No.9, so that the loss could not be charged in their profit and loss account but the balance sheet and, therefore, increasing their profit in the profit and loss account. They attributed this to the interest rates capping which was done by Hon. Jude Njomo.

I find this rather unfortunate because the access to credit in this country has gone down as far as financial banks are concerned. On the contrary, we have seen mushrooming mobile applications for money borrowing. Some of their interest rates are as high as 180 per cent. So, how come there is a market and demand for loans at 180 per cent per annum to be repaid within one week, two weeks or a month and there is no same demand from our banks? It is because commercial banks have taken a simple route of only lending to what they call secured borrowers. If you have a payslip or property, you are secured. Nowadays, when you have immovable property, for example, land, they will lend you. They also want a security of a new motor vehicle or something they know in case of a default, they will come and take it. It is not just that. There is the issue of guarantors. For example, if I have guaranteed a Member of this House a loan and that Member default, instead of coming to seek for that money from me first, they should try to recover it from his property.

That is what the Mover of this Motion wants to cure. Why should the bank not make an effort to reach out to that Member or employer and have the money recovered through the employer or take that contract to the loanee and go to the employer and say: "This loanee has this amount of money that they owe us and they have refused to pay", before deducting the money from the guarantor's account? It is because they have an easier way out.

I am waiting for the Finance Bill to come and see how the Government is lending in terms of external lending as opposed to internal borrowing. The banks have realised that they do not need to work hard. They can just buy Treasury Bills and Treasury Bonds from the Government at high rates. You realise the risk in the Treasury Bills and bonds is zero; that is, they are risk-free. Therefore, instead of going to that SME young person or that person who has an idea for business financing and wants to borrow from them, because the risk is higher, they end up only lending to Government through Treasury Bills and Treasury Bonds.

Most importantly, commercial banks in this country need to get patriotic. They should not just do business to make money, but spur economic growth. There is no sense for banks to just lend to people who have paylips or security and miss out on people who have great and brilliant ideas that could be funded and spur development, and increase employment of young people. It is said that if you do business to make money, you may not succeed as much as when you do business and make money. This is my appeal to our banks. Let us not just do business to make money. Let us do business and make money. If you do business not just to make money but because you have the right intentions for our people, you will not find these applications competing with you. It is very unfortunate that some banks, as a way of bypassing some of the regulations that we have passed in this House, have created their own mobile bank loan applications so that instead of the bank lending through the normal lending products that we know, they incorporate a different company and call it an app modelled as Tala, Branch or Fuliza, and lend to the public.

For example, Mshwari is a product of Safaricom and the Commercial Bank of Africa (CBA). So, we have a bank that is out there lending money at 180 per cent per annum, which is contrary to laws that have been passed in this House. If you want to go after them, you cannot because they are not directly lending, but they are lending through other people. That said and done, it is very unfortunate that our young people, women and businesspeople have been auctioned not because they took that money to benefit themselves through business, but because they innocently signed a form.

You know bank loan forms come with terms and conditions covering several pages in small print. Obviously, you cannot read them. In fact, sometimes, when you sign a loan application form, you are not told what the terms and conditions are. They tell you that the terms and conditions are available on their website. So, you just tick there to show that you have verified and you agree with the terms and conditions that are not even attached to the form that you are signing. By appending that simple signature, we have people who have lost their lives and a lot of money.

This amendment cannot be more-timely than now. I hope these regulations will tell our banks that it is high time they woke up and realised that Kenyans have become wiser, and that there is a better way of doing business. They can actually do good business for our country and still make money for themselves for the betterment of our economy and for a better tomorrow of our children.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): I will move on to my left. Next is Hon. Wanyonyi Kelvin.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): At long last, Hon. Temporary Deputy Speaker! Thank you for giving me the opportunity. I have been waiting.

I take this opportunity to thank Hon. Waititu for coming up with this amendment on the Law of Contract Act. It is very realistic. This is the most realistic amendment that we have had in this House.

First and foremost, we know that we have almost 16.9 million Kenyans today who have no jobs. Therefore, we do not have to sit and wait. We must do something. Most people actually have ideas of starting businesses. It is as good as getting a job. I want to caution creditors, particularly commercial banks and shylocks. Before they give out money, they should know who is borrowing because the reality is that people are becoming very smart. One comes to you and convinces you he wants to do this or that business. You know that he is not employed and he is able to do what he has told you. So, as a bank or financial institution, you give out the money. At the end of the day, this man is unable to repay. What happens? Sorry cases.

There are cases where people have lost title deeds. This has been said by many Members of Parliament here. Even families break up. Hon. Chris Wamalwa mentioned that and I quite agree with him. We have cases where people borrow to travel overseas. That is aimless borrowing. Then we end up having family break ups.

Therefore, as we pass this amendment, we should go deeper and say that if one has to borrow and he asks you to guarantee him, include your spouses. Those guaranteeing people to borrow must have their spouses and families involved. They should also know who is borrowing because at the end of the day, if he borrows and disappears, what happens? The burden is kept to you. We have had cases like that. I personally have been a victim of such situation. I have lost three vehicles. One vehicle was sold because I guaranteed a guy who was smarter than me. I thought I was just being a man of the people and a leader in my constituency. I gave out money and the guy disappeared. I cannot find him. That is exactly what is happening today.

I buy the idea of this Bill. We should not stop guaranteeing people who want to start businesses, but we should understand them. Commercial banks should understand what they are lending money for so that people can be disciplined. Another general thing is that Kenyans must be disciplined. We are not disciplined. That is the biggest problem. You must borrow for a good purpose. I did some business before I came to this House. I was a businessman. I borrowed to start a business. A business should have a balance sheet to show whether it is giving you returns. People who are not disciplined just borrow money for the sake of it.

As we move further, let us also look at the realistic part of it. Kenyans must also be disciplined. Some people are actually tricksters. They trick you and disappear.

I ask Kenyans to go to banks and other financial institution or friends to borrow money for a good purpose or do something that can give you good returns. I want to emphasise that creditors should also be smarter. Do not take it for granted. Sometimes, people come together because they want to default. Some people come to you for a loan not for a good reason, but because they are jealousy of what you have. So, borrowing from you and defaulting is one way of making you get punished. Therefore, let us be careful. I thank Hon. Waititu once again for coming up with this very realistic amendment Bill. I support it.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Before I move to the next speaker, I want to recognise other additional schools that are in the Public Gallery. There is Kerugoya Good Shepherd Academy from Kirinyaga Central Constituency, Kirinyaga County. There is also Aitong Boarding Primary School from Narok West Constituency, Narok County. Both schools are welcome to watch the proceedings of the National Assembly.

(Applause)

Let us have Hon. Jennifer. Hon. Alice, do not be anxious. You and other Members will still get a chance for sure. You will all still get a chance. Let us have Hon. Jennifer.

**Hon. (Ms.) Jennifer Shamalla** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill and take this opportunity to congratulate Hon. Waititu on the Law of Contract (Amendment) Bill.

It is an assumption that lenders exercise due diligence and control in lending and realisation of debts from principal debtors. It is noted that the guarantor's obligation is actually secondary and not primary. It has begun to appear that for these lending institutions, the assets or collateral of the guarantor appear more attractive to the lender than that of the principal borrower. In short, going forward, it is my considered opinion that the relevant committees of this House undertake an audit of these financial system lenders and the court cases that have been filed with regard to lenders engaging in inequitable and fraudulent conduct. Going forward, we must have an audit of this so that we take the necessary action on that.

I am stating this because when one reads the *Merchant of Venice*, more specifically in Part 4 Scene 1, Portia, whose husband, Antonio, owes money to Shylock, the money lender, says you can take a pound of flesh, but not a drop of blood. The institutions in this country are taking not only the "pound of flesh" but the "blood" of the guarantors. It is for that reason that I implore that the relevant committees investigate and audit these lenders.

With those few remarks, I wholeheartedly support Hon. Waititu with regard to this amendment Bill.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us have Hon. Baya Yaa.

**Hon. Owen Baya** (Kilifi North, ODM): Thank you, Hon. Temporary Deputy Speaker. I support this Bill by Hon. Waititu. I congratulate him for thinking about his legislative role to protect the common person.

This law is a good piece of legislation. It will safeguard our people. People who guarantee loans for others have been left with sleepless nights. When the hammer falls and this guy has not made any payment, they follow the guarantor and he loses money and assets. Like it has been said before, families have been left suffering because one person took a loan, ran away and they have to pay that loan. Now that we are changing the law, the first call should be the principal who took the money. He or she should be followed. This will help.

Many young people today want to start businesses. The only place they can go is to a bank, cooperative society or a financial institution so that they can get the money, go into business and realise their dreams. When they are told that they have to get guarantors for them to get the money, every person they ask tells them that they are not credit-worthy and cannot be

guaranteed. At the end of the day, this young person's dream to go into business flounders on the way. Therefore, he cannot go into business. If we make it easier such that if I guarantee a young man who wants to start a business, I will not be followed to pay that loan I will be more comfortable to guarantee him.

Secondly, this law places responsibility on the people who borrow so that they do not push the responsibility of the loan to the other person. If I have borrowed and I know I do not have any backup, I will work hard and use the money very well so that I can pay. The moment I know that if I default in payment someone else will pay for me, I will relax. I will take my time and not work hard. I will squander the money and say that I do not have anything to pay with because I do not have any assets and, therefore, the person who guaranteed must pay and should be followed.

This has happened to many women who borrow. My friend, Hon. Omboko Milemba, singled out the Kenya Women Finance Trust (KWFT). Many women borrow from that institution and when they do so, they are told to give a guarantor. You give a list. They go to the guarantors and check what they have in their homes and list down all the assets. Sometimes those people who take loans use the money in various ways and when they are confronted with repaying, they say they have guarantors whose assets the institution listed and, therefore, should be followed. Institutions like KWFT are losing business because people know that every time I am guaranteed a loan, the person who guaranteed me will have to pay. Therefore, some of these people do not take a loan responsibility seriously because they know they have somebody backing them. Therefore, thanks to my friend, Waititu, this law that is coming in will help and make people more responsible when they take credit facilities.

In the same way, the economy of this country will grow. The gross domestic product (GDP) of the small areas that people borrow from will grow because money will be put to good use. If I know that I have somebody who will back me up as a guarantor, I will not put the money to good use. When the money is not put to good use, the economy of the place does not grow. If I take a loan and invest in agriculture, the productivity of that area will benefit from that loan and, therefore, the economy of that place will grow.

There have been families in this country who have been very unhappy. By the stroke of a pen, a father decides to guarantee his friend. He is happy that he is helping a friend. Woe unto him because this person will not take greater responsibility on the credit facility and squanders it. The torch comes back to spotlight the family. Spouses have split and children have blamed their fathers because they guaranteed someone.

I have a case in my constituency where a father gladly gives a title deed saying that he is guaranteeing his friend. He says that the person is his friend and needs money so he is using his title deed to guarantee this person. This person takes the money, does whatever he does, gets nothing out of it and the bank comes calling. So, what happens? His farm has to be sold. They run to their Member of Parliament (MP) to ask for help. This person knows that the Kshs14 million he has taken from the bank is guaranteed by somebody's title deed so he can do whatever he wants with the money. This will stop with this kind of law. The first call for payment of a loan whether there is a default or not is the assets of the person who borrowed and not the person who guaranteed. If we do that, we will safeguard families and the economy. We will see prosperity

because people will be more responsible when handling money that has been borrowed from financial institutions. Hon. Temporary Deputy Speaker, I support the Bill and hope that it will be passed as fast as possible, so that the President can assent to it and it becomes law.

I thank you, Hon. Temporary Deputy Speaker.

*[The Temporary Deputy Speaker  
(Hon. Patrick Mariru) left the Chair]*

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

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Wanyonyi, Member for Westlands.

**Hon. Tim Wanyonyi** (Westlands, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to contribute to this Bill. The object of this Bill is to cure the ambiguity in the law so that businesses can operate in a predictable and secure environment. As my colleagues who have spoken earlier than me have alluded to; many times people borrow with good intentions and those who guarantee them do it because they know the borrower. He could be a friend and they are very sure that he won't default when they are appending their signature to that document. The primary objective of the lender or the financial institution should be to deal with the principal borrower, but not take shortcuts to go for the guarantor who is there to make sure that the person who is borrowing is provided with some security. This should not be the excuse for the financial institution to harass him in the end.

Many times we have seen Kenyans are being fleeced by online borrowing which comes very easily. Somebody borrows money that he does not have any use for and then he ends up in the Credit Reference Bureau (CRB) where he is listed as one who has defaulted in paying debts. You cannot really blame the person. We are here to make sure that a business is not operated in a way that is punitive to people who want to help others secure credit facilities. The financial institutions must make sure that they have the right information about the borrower and go an extra length to make sure that the borrower, who has defaulted, must be the one to be brought to book and not the guarantor. This Bill will make guarantors to be secure. When I guarantee somebody to borrow a loan, I will not be auctioned. The law will not be bent the other side and leave the principal borrower walking around free when the guarantor is being taken away.

We need to come up with very good legislation to protect Kenyans from this online borrowing because it is enticing. They send you pop-up messages and tell you that you qualify for a certain amount of money and before you know what you are doing, you are already engaged and you have borrowed some money. These people do not warn you, but they just come for you. Sometimes we have seen people who borrow and they are guaranteed by institutions. The financial institution ignores the principal borrower and goes for the guarantor by, say, raiding his accounts. Then they tell you that if you do not want to pay the loan, then you produce the other person. I do not think that is what the law was all about. That was not the wisdom of the people who crafted the Law of Contract Act. For us to cure the ambiguity in the Act, this Bill



is very important. We must remove the ambiguity and mischief in the law that has been exploited.

Hon. Milemba explained about the *Merchant of Venice*. When somebody comes around and wants a pound of flesh which is closest to your heart and you are pleading innocent. It is very difficult for you to come out of that situation because you signed consent freely. Sometimes the financial institutions fail to warn the guarantor about the consequences because there is always a clause about it. Before the guarantor appends his signature, if the person who is dealing with those documents is a lawyer, he is supposed to show him the clause that warns about the consequences of being a guarantor. We need to cure this ambiguity and make the law to be more predictable and also protect those who borrow and handle businesses. The business operates in a secure environment where whatever you are doing has some predictability. If it is not, then we will be doing something that is not legally viable.

Hon. Temporary Deputy Speaker, I support this amendment. I believe that once this Bill is passed, it will cure the mischief that is in the law. Thank you very much.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Wanyonyi, in the *Merchant of Venice*, did the lender extract his exact pound? Could he do it? That is a very nice analogy. Hon. Alice Wahome.

**Hon. (Ms.) Alice Wahome** (Kandara, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to the Law of Contract (Amendment) Bill by Hon. Francis Waititu. I want to confess that Hon. Waititu has been in conversation with me to support his Bill. I am the Vice Chair of the Departmental Committee on Justice and Legal Affairs. He came to the Committee and prosecuted his Bill very well. He expressed a lot of concern for the borrowers who have been borrowing using guarantors to support their security.

The essence of this Bill has been explained by most Members who have contributed. The concern of the Mover of this Bill is that, if the principal borrower takes a loan, gives a security and commits to pay the loan, but he is asked to further guarantee the loan or give additional security by a guarantor, then he has the responsibility to pay. It has occurred many times that the guarantor is the wife, son, daughter, family member, father or a close friend of the borrower. Because there is a security that initially was to guarantee this loan, many times you find that even the wife who has guaranteed this loan is basically not very well advised because she is agreeing to the request by her husband. When it comes to the information regarding the payment, maybe the address is the same, the person who receives the reminders for the loan could be same borrower and that the address that was given in terms of communication is that of the main borrower. Many times, the guarantors are sought for to meet the commitment without previous knowledge of the record of repayment and prior notice of the default. Therefore, they lose their properties and homes. They possibly could have contributed to push for repayment.

I do not think it is the business of any bank to sell homes or securities. The financial institutions should support the borrower and ensure that repayment is done. The banks must apply extra means to ensure that the borrower leads to the commitment. As a lawyer, I am aware that many guarantors have suffered. They are visited when the borrowers default and are forced to repay on their behalf. That is where the banks have a responsibility to engage the guarantor in better ways than selling their properties. Therefore, the idea which is being processed in this Bill

by Hon. Waititu is to secure the loan in the first instance, so that the principal borrower commits and completes his commitment to pay. The guarantor should not be made to pay where there is no proper due diligence and exhaustion of the security of the principal borrower. The borrowers have given their personal guarantees. Therefore before the guarantor is reached, have they exhausted all the securities and means of the borrower? Many times it has been found out that banks react very quickly and require the guarantor to meet the responsibility of the borrower. In the whole set up, the banking industry has the responsibility to assist the borrowers and guarantors in paying debts other than resorting in selling their homes or the securities that have been given.

Therefore, I support Hon. Francis Waititu. He has worked very hard and met the Departmental Committee on Justice and Legal Affairs more than once to seek their support. He wanted to know whether legally what he is proposing is viable. I was very sure that I have seen suffering because the law has a gap that after a borrower defaults first or second time, the lending institution rushes to liquidate the security of the guarantor. Up to now banks seem to be complaining about capping of interest rates. Before that was done, ordinary Kenyans were suffering. Borrowing money in this country is very expensive. Businesses are not affordable. The banking industry is always accessible. Women have suffered because they do not have securities they can provide and the little securities that they have are homes which wives hold on to. I am happy to support the Bill because I see a situation where the responsibility of repaying a loan lies with the borrower and the bank and not the guarantor.

Therefore, I support Hon. Francis Waititu. He has introduced a good Bill. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Alice Wahome, you must be aware that banks are making an attempt to unravel the caps we placed on them. When the time is right, it will come before the House.

I wish to recognise the presence of students in the Public Gallery from St. Joseph's Girls High School, Voi Constituency, and Taita Taveta County. They are welcome to observe the proceedings of their National Assembly.

I give this opportunity to Hon. Mwamkale Kamoti, Member for Rabai.

**Hon. William Mwamkale** (Rabai, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. First and foremost, I thank my friend Hon. Waititu for introducing this good amendment Bill that is long overdue to the Kenyan people.

This amendment Bill will go a long way in curing the *lacuna* that has been in the law of contract where banks and lending institutions have been going for anybody in the list of guarantors to offset a debt that is supposed to be paid by the borrower. Kenya is a society that people have faith in friends and colleagues thus they guarantee them to borrow out of good faith. We know the people we guarantee, but what has been happening is that you guarantee somebody without the knowledge that sometimes you could be getting into a collusion of some sort.

Hon. Temporary Deputy Speaker, I have been a victim of such a racket. I guaranteed a colleague in the Law Society Kenya Sacco and after I appended my signature, the colleague never paid the debt and I lost all my shares in that Sacco. So, this law will cure that anomaly. Guarantors should be the last people to be touched in such a transaction. Indeed, when one is

taking a loan, be it from Kenya Women Finance Trust (KWFT) or from a bank, they give collateral in the form of what they own. For us who guarantee these people, we know them, so before banks come to a guarantor should involve the guarantor in pursuing the borrower. But what has been happening is that people collude and before you say realise you see auctioneers in front of the House of the guarantor taking everything thus disorganizing the family of the guarantor who did it in good faith without blinking.

As it has been mentioned, here in Parliament, we do not turn the other page of the loan form when we guarantee our colleagues for Sacco loans. We are just shown where to sign and we do it without even knowing how much the colleague is borrowing. We do that in good faith, but it has been abused. That is why today everybody who has risen to contribute has congratulated Hon. Waititu because in the event of default, we know the colleagues we guarantee and know they are capable of paying. If a guarantor is contacted or given a notice and involved, he will show the financial institution be it a Sacco or any other institution on what to recover from the borrower before it gets to him.

So, I support the Bill and I believe from the mood of the House that the amendment Bill will sail through as Kenyans wait to be saved by it. I thank Hon. Waititu for the amendment and Hon. Temporary Deputy Speaker for the opportunity.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Liza Chepkorir, Member for Nakuru.

**Hon. (Ms.) Liza Chelule** (Nakuru CWR, JP): Thank you, Hon. Temporary Deputy, Speaker for giving me this opportunity to support the proposed amendment to the Contract Act by the Hon. Member for Juja Constituency.

We are discussing a very important amendment Bill which is about protecting guarantors. Under normal circumstances, guarantors and borrowers do not do this in bad faith. They do not take it as a bad decision. When you guarantee somebody, it is for the purpose of economic growth at the family level and at other levels. But at some point, there are challenges that force the principal borrower to default on the loan repayment. The reason I support the Bill is because many innocent guarantors who are very good people have been suffering because of this. There should be sensitisation on the purpose of guaranteeing. Most guarantors have been doing this innocently. They do not know why they are signing and why they are made to it. They do in it in good faith. Most have been guarantors of relatives and friends. They do not know of the consequences they would suffer later. So, there is need to educate the guarantors. Today, we are coming up with a Bill that will protect the interest of guarantors. This is a good initiative by the Member for Juja constituency. I congratulate him.

Most of us guarantee a borrower with the knowledge that tomorrow when you become a borrower, they will be your guarantor. This tells me that the CBK should come up with good regulations that will take into consideration the interests of the principal borrower and the guarantor. This is about regulations. I do not think it is about the mistake of either the borrower or the guarantor. The CBK should come up with good regulations that are friendly to take care of both the borrower and the guarantor. In most cases, banks have always been going directly to the guarantor without exhausting the recovery options from the borrower for reasons not known to

many people. We do not know why banks make guarantors suffer for nothing. It is a concern that CBK should come up with regulations that will protect both borrower and guarantor.

With those few remarks, I support this Bill.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Luyai Amisi, Member for Saboti.

**Hon. Caleb Luyai** (Saboti, ODM): Thank you, Hon. Temporary Deputy Speaker. I have been patiently waiting for this chance to voice my support to this very timely Bill. Some of the laws that guide our financial institutions were heavily borrowed from other jurisdictions. As much as I worked elsewhere, our cultural and social setup is quite different. You can see the mushrooming of banks around this country. Commercial banks have found an easier way of making profit out of some of the laws that cushion them against the risk of lending. That is why this Bill is timely. Most Kenyans have suffered for guaranteeing friends. Our culture is such that we are a friendly and harmonious society. We are mindful of each other. Some of us guarantee friends just out of courtesy - someone is in distress and has called upon you to guarantee him so that he can get some quick money for business or something else.

Regarding business, the status of our economy does not guarantee a return on investment. The whole lending process has faced myriads of problems. It is high time we looked at our laws in totality, including even the Constitution. Remember, we have an imbroglio between the Senate and the National Assembly because of laws that were literally airlifted from elsewhere. It is time we started assessing our own laws and guide our financial institutions whether they are plausible within our cultural, social and economic set up.

There is a case in point where a friend guaranteed a person who was vying for an elective seat. Of course, he lost the election. That person died from the shock of losing the seat. Even the person who guaranteed him to get the loan for campaign also died – probably from shock on realising that he was going to lose his entire investments. Here is a case of losing an innocent individual who came to help. A person who is not even interested in politics is suffering because he innocently went out of his way to help a person whom he did not even understand he has taken the money to politics. Our politics is risky.

This Bill will cushion many innocent Kenyans who have been guaranteeing friends out of courtesy and goodwill, but who eventually lose their properties and expose their families to poverty. You can ask yourself why we have so many banks in a country with a population of 45 million. We have about 50 banks. Empirically, it shows that for every one million Kenyans, there is one bank. It is because the banks have found it palatable to just give loans knowing very well that they are cushioned against risk. They use guarantors to cushion themselves from risks. That is why if you look at all the financial statements of most banks, their profit emanate from interest on borrowed money. Commercial banks will not be happy with some of these amendments, but it is for the good of the country. We must regulate our financial institutions to protect innocent borrowers who go on losing instead of making profit out of their investments. We have so many cases of that nature. This is a timely Bill. I congratulate Hon. Waititu for bringing it to the House.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Mose John, Member for Kitutu Masaba.

**Hon. John Mose** (Kitutu Masaba, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to add my voice to this very important amendment.

First and foremost, I congratulate my colleague, Hon. Waititu, for coming up with this timely amendment to the law on contract. What is evident is that people borrow money on the understanding that they would make good use of it. Unfortunately, many people borrow without having a good business model in place to enable them do business. Consequently, the businesses fail. Commercial banks are always interested in making profit. They are interested in ensuring that they make quick gains from guarantors. This particularly leaves guarantors in a very vulnerable position. It is my contribution that first and foremost, guarantors should be cautioned when they guarantee borrowers.

We have scenarios where one guarantees a borrower without first of all knowing the purpose of borrowing. They also go ahead to guarantee without even knowing the amount of money being borrowed. Therefore, it is a cautionary advice that as guarantors, we should not guarantee borrowers without knowing the essence of guaranteeing them. Nonetheless, it is always important for banks to try and recover their money from the collateral or security that the borrower provided while applying for the loan. There are many cunning people who borrow money from banks with an intention of not repaying the loan. Immediately such borrowers receive the money from the bank, they move to the next level of even hiding some of their properties. Therefore, this amendment is timely to the extent that we should be able to pursue principal borrowers fully to ensure that if they have any other properties, banks recover their money from those properties.

Secondly, such defaulters should be pursued with a view of committing them to civil jail before a bank moves to the next level of calling upon guarantors to respond to their onerous duty of guaranteeing. None of these, neither the borrower nor the guarantor, should be left loose. I see something that interests me on many occasions: People are very quick to append their signatures to documents that they do not even know their contents. It really goes against even the rule of law that *ignorantia juris non excusat*. Before you append your signature, it is always important to know the reasons why you are doing that.

However, what I am saying is that we should not let the principal borrower off the hook. The principal borrower should be made to carry his cross before we move to the next level.

Therefore, I move to support this amendment Bill. I also add that, while we are legislating, I am sure we are developing our law and, it is very clear in our minds that the law is dynamic. Therefore, we will continue to develop it as times call for. This is because I also know for a fact that there are those who have suffered innocently because of the cunning nature of the borrowers.

With those few remarks, I support.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Mose, you are absolutely right that ignorance of the law can never be an excuse. We all sign documents without reading them. We have admitted as such. So, Members, be warned. I see my brother Hon.

Gitonga Murugara who has fought many a battles in courts, with defaulters and guarantors such as the ones that we are seeking to protect, smiling broadly. I am sure he is not one of those who sign documents without reading them.

Hon. Aseka, you have the Floor.

**Hon. Christopher Wangaya** (Khwisero, ANC): Thank you, Hon. Temporary Deputy Speaker. Let me also join my colleagues in supporting this amendment to the Law of Contract.

As I support this, let me observe the following. The Law of Contract is an invitation to treat both the borrower and the lenders, and make them have obligations to meet. When you borrow and when you guarantee somebody, you should know that you are supposed to meet your part of the bargain to pay up. As much as we want to protect the guarantors, we should not do it in a way that we affect the financial institutions. Many people would hold on their money; they may not be able to lend people because of that fear over guarantors. What is important here is that our people who borrow and guarantors have lacked what we call financial discipline and ability to pay what they have borrowed.

Two, banks or lenders also have a responsibility to educate borrowers on prudent financial or investment options when they are borrowing money. The banks or lenders must also make a follow up between or within the contractual period before they start chasing borrowers or guarantors.

Lastly, we must also have a safeguard when we are legislating and doing this amendment. Who will guarantee, if for example, we say there will be no guarantee and the banks insist on having a guarantor? To me, it is the responsibility of the Government of the Republic of Kenya to come up... Maybe I will be proposing some additions to this amendment, if I am allowed. For the people who are within the brackets of youth and want to borrow from banks, the Government of Kenya must be ready to guarantee any loan that is being asked for by the Kenyan youth. In fact, let the Government pay when there is a default because it has failed to provide employment opportunities to these youths. If the youths fail to pay up, let the Government pay on their behalf.

I support. Thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): You have the Floor, Hon. Tonui Kiprotich, the Member for Bomet Central.

**Hon. Ronald Tonui** (Bomet Central, JP): Thank you Hon. Temporary Deputy Speaker for this opportunity to also make my contribution on this. I support this amendment by Hon. Waititu. I also commend him for coming up with this amendment Bill.

The amendment, in itself, is straightforward because it is trying to protect innocent guarantors from being exploited by banks. The banks should not be lazy; they need to, first of all, pursue the borrower before going ahead to harass guarantors. I believe all of us are normally victims of this. We normally sign documents to guarantee our friends and such without even looking at the details and the banks get excited with that. Once they see our signatures to guarantee, they do not verify more. So, the first issue which should happen is for banks and SACCOs to follow up before going for the resources of guarantors. Let them exhaust the resources of the borrowers, if it is land or whatever they liquidate before going after guarantors. This amendment is quite welcome.

At the same time, the guarantors also need to be warned. They should be aware of what they are doing, and what they are appending their signatures to. They should not be signing blindly. They also need to know the credit worthiness of the people they are guaranteeing. That is because some of them or many people these days want to get rich quickly. I believe we are in the gambling generation, where we want to have shortcuts. We are ever looking for money. We want to live the life which we cannot even afford. Therefore, we even borrow and do whatever to bet and do such things. We are also unfair as Parliament. We have also allowed some laws which are quite unfair to the public, like these ones on betting which allow a lot of borrowing through M-Shwari.

Nearly every youth is in the Credit Reference Bureau (CRB). This is because we adjusted the tax from 50 per cent on gambling and betting to 15 per cent. It is possibly because of vested interest from both the Executive and this House. We stand to be blamed, although the Executive stands to be blamed more. That adjustment was made by the Executive, through this House, which failed to get the two thirds majority to overwrite it.

There is also this issue of people who are living flashy lifestyles. I believe our people need to be made aware of these fellows who are living flashy lifestyles - fake millionaires. They are moving around even in choppers. You know, you can easily guarantee them because they look like they have lots of money and resources. Once you have guaranteed them, you will discover that they are fake and they do not have those monies which they seem to show off everywhere. They are not creditworthy.

The issue of assessing the creditworthiness of the borrowers needs to be re-emphasised. The banks should not simply be flashing their money around and then target guarantors without, first of all, assessing well the creditworthiness of their borrowers or creditors. The Government should also come in to assist in accessing cheaper credit. What we have in this country is very expensive credit. We understand that in a country like Japan, for one to deposit money in a bank, they have to pay the bank. The interest rates there are less than 5 per cent. Is there not a way the Government can guarantee banks that we have, especially Government banks and SACCOs to borrow directly and cheaply from those banks and lend to us so that we can have cheaper credit?

The current economic situation in this country is such that if you go to a bank to borrow money, and you are honest that you want to open a shop, certainly, you will never repay that loan. Your property will be sold to recover it. It is only people who get tenders and are connected with the national and county governments that are able to repay loans. Others who are struggling out there, without any boost cannot make more than 10 per cent profit. As we all know, the least interest rate is around 15 per cent. The cost of employees and operations cannot be taken care of by the profits made from such a business. Therefore, repaying the loan is next to impossible. So, we need the Government to come in and look for cheaper options of accessing money from outside that will enable its banks and SACCOs to have money, so that they can lend cheaply. That way we will invest and develop ourselves.

Thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well. The Hon. Koyi Waluke, the Member of Sirisia Constituency, you have the Floor.

**Hon. John Waluke** (Sirisia, JP): Thank you, Hon. Temporary Deputy Speaker for giving me a chance to contribute to this important Bill. We are talking about the borrower and the guarantor who are important to a bank. Members have spoken and are blaming, mostly the borrower for misusing money to the extent that at the end of the day the guarantor is punished. His assets are sold because he guaranteed a borrower. Sometimes you can borrow money then get a problem like getting sick. If you have received the money you will use it to save your life. Your life is more important than the money that you borrowed. So, nobody should blame me for not using money on the reason I intended to borrow it for. People cannot say that I have borrowed money and misused it by marrying a second wife or more wives. It is my business how I use money that I have borrowed from a bank. It is not their business to blame me. I will be to blame if I defaulted in repaying it. If I default for reasons I understand, I can talk to my guarantor. I can inform them that because of a given problem, I may default in repaying. It is always good to alert your guarantor. You talked in good faith and they guaranteed you in good faith. It is good for the two of you to talk.

What we also need to talk about is the bank interest rates. We still need to bring bank rates down. We thank Hon. Njomo who brought a Bill on capping of interest rates. The interest rate is still high. It is about 14 per cent. So, we need to check what we passed in this House and what the banks are charging their clients as interest. I am sure they have not complied with the Bill that we passed in this House. It is still high for borrowers. In the economy of this country, without borrowing, banks cannot make money. Although they made money before the Bill was passed, they are still insisting on the interest rates that they had before. Because of time – there are many Members who want to contribute on this Bill – I want to thank Hon. Waititu for bringing this Bill. We are going to pass it. I support it.

Thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Well-spoken Hon. Waluke. We shall now have Hon. Mwangaza Kawira, the Member for Meru County.

**Hon. (Ms.) Kawira Mwangaza** (Meru CWR, Independent): Thank you, Hon. Temporary Deputy Speaker, for this opportunity. I rise to support this Bill. It will make borrowers to be responsible enough to settle their loans knowing that they will be targets of creditors. I come from a county that has more than 15 banking institutions. The Central Bank of Kenya (CBK) has its third currency centre in Meru. That shows the level of money circulation in that County. We need to protect our people from lenders who take their properties. We also need to protect every person who after getting some amount from lenders, the lenders come and seize all that they have in the name of guarantors having not honoured their promise of securing loans. The lenders should be responsible and transparent to customers. They should ensure that borrowers understand all the terms and conditions before signing any agreement to borrow any amount of money. Guarantors should also be protected from lenders who after seizing their collaterals, go further to demand extra assets in the name of having not fully recovered what they have taken from them.

I support the Bill and urge this House to pass it so that our people are protected.

Thank you.



**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well. Hon. Nyoro, the Member for Kiharu Constituency, you have the Floor.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you, Hon. Temporary Deputy Speaker for the chance to contribute to this Bill. From the outset, I support Hon. Waititu for these amendments to the Law of Contract Act, Cap 23. When you borrow money from a bank and somebody guarantees you, the beneficiary of that money is not the guarantor. The beneficiary is always the borrower. Therefore, the buck has to stop with the person who enjoys the utility of the money. That person is the borrower. Therefore, it is only reasonable that before you go to take the assets of the guarantor, you have to first exhaust all the avenues of making the person who enjoyed the utility pay up the money. That is the natural thing to do.

As we talk about borrowing, we have to be aware of the current scenario in our country and the reason why defaulters list in our banks has increased. It is because of many reasons. First, as you know, the breadth of this matter is best displayed when you look at the major dailies. The best customers of our media houses are auctioneers. They buy pages and more pages in our newspapers. That is a clear show of how our financial market is, and basically, how our economy is doing. There are many reasons. One of them has been talked about by one of my colleagues. That is the cost of borrowing.

Our Central Bank Rate (CBR) is around 9 per cent. If you compare it with other countries that have more efficient financial sectors like the USA, you will find that their Federal Reserve range is around 2.5 per cent. If you go to a country like Japan that has been quoted by my colleague here, you will realise that their CBR equivalent is negative whereas ours is at 9 per cent. If you borrow money, you are actually added some money. That is the bank lending rate from their Central Bank to the commercial banks. Therefore, even if we have capped our lending rates, our rates are still a bit high. There has also been a fallacy in this country that business people do not get finances from our banks because of capping our lending rates. I think this is a fallacy because even very developed countries like the US, there is a federal law of capping rates and you cannot go beyond five per cent from the federal rate in terms of lending to the end customer. I, therefore, tend to believe that our commercial banks are only frustrating the borrowers and especially worthy borrowers, the business people to find a scapegoat.

As a country we need many ways of financing our businesses. If you look at our loan books in our banks, you will find that most of the loans are just for ostentatious expenditures. People borrow to buy sofa sets and big vehicles. I think, even as we talk about the cost of borrowing, we need to segment, so that the people who borrow money to drive our economy forward have less rates because they are doing worthy causes for our economy. You may borrow and you may qualify, but what are you borrowing for?

Borrowing is not necessarily the only way of growing businesses. If you look at the countries I have quoted, you will find that the major economies, most businesses go to bank as a last resort. You first exhaust avenues like private equity where you have a business and you can sell a part of it to the financier who may exit at a later date by selling their stakes from that entity. Avenues like venture capital, Scheme Information Document (SID) investments will take a lot of demand from the current borrowers especially those who borrow for the sake of growing their businesses.

As I wind up, I also think in our country we have to be honest with ourselves that a financial sector is always very much interlinked with how the economy is doing. The fact that we have very many defaulters in our country is a clear testimony that those people who are borrowing... As you know, you can only allow a commercial institution to come and take your property if you are totally unable. Therefore, it goes back to the point I am driving home. If you look at our newspapers the very many auctioneers are a clear testimony that because our financial sector is interlinked with the mainstream economy, there is a problem with our mainstream economy. The manifestation of that fact can only be seen from the financial sector.

With those points, I support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Your presentation finds a lot of resonance with the Speaker. It is true that nowadays, banks are feting auctioneers. Hon. Murugara, you have been here, but have you not spoken on this?

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Temporary Deputy Speaker. I have already spoken. I actually seconded.

I am rising under Standing Order No.95, so that I reply.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): So, you are intervening under Standing Order No.95. Very well, you are within your rights.

**Hon. Members:** On a point of order.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Murugara, you have put me in trouble because you have spoken on this. You cannot take the Floor on that. It is not available to you. We shall proceed. We shall now have Hon. Hulufu Oda, the Member for Isiolo North.

**Hon. Hassan Hulufu** (Isiolo North, KPP): Thank you very much, Hon. Temporary Deputy Speaker for the opportunity to speak to this amendment. It is a very significant amendment, although it only relates to one section of the Laws of Contract Bill. I would like to thank Hon. Waititu for bringing this amendment. We are a borrowing nation. At one time or another we borrow from various lending institutions such as commercial banks and cooperative societies for various reasons such as personal development and emergencies.

Most of the time, it is a requirement by the lender for a borrower to have people guarantee their applications. When we guarantee borrowers we do it in good faith, but from time to time various Kenyans who have guaranteed applications of their fellow Kenyans for loans have been exposed to many risks. This amendment is meant to cushion guarantors from this risk. We have had situations where borrowers have had their assets auctioned to recover bad loans by principal borrowers. We have also had situations where cooperative shares of guarantors have been used to offset bad loans. So, this amendment will give the responsibility of pursuing the principal borrowers on the lender. In most cases, even before they approve the loans, the lenders have their own ways of confirming credit worthiness of the borrowers.

I am sure if they were keen enough they will find that most of the people who have borrowed money from these institutions have assets which can be auctioned to recover the loans which have been defaulted. Therefore, this amendment is very timely and will help many Kenyans against the risk of losing their properties and their assets as a result of being guarantors.

With those few remarks, I support the amendment.

**Hon. (Ms.) Martha Wangari** (Gilgil, JP): On a point of order.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Wanjira Wangari, the Member for Gilgil what is out of order?

**Hon. (Ms.) Martha Wangari** (Gilgil, JP): Thank you, Hon. Temporary Deputy Speaker, I have seen that most Members have overwhelmingly supported this Bill. I rise under Standing Order No.95 to request that the Mover be now called upon to reply.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): It is well within your rights, Hon. Wangari. Allow me Members to put the Question.

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

Hon. Oyoo, the Member for Muhoroni, there can never be anything out of order when Hon. Speaker is on his feet. This is a basic thing that we should know.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Temporary Deputy Speaker. I rise to reply.

First and foremost, I thank the Members of this House for the overwhelming support they have given to this Bill regarding the proposed amendment. As I sat here, I received communication from various areas in the country; from teachers and other civil servants who have taken loans. They are saying that, in fact, this amendment is highly in consonance with what they have been expecting. As a House, today, we are enacting legislation that augurs very well with the population in the country. This is very commendable.

With those remarks, I beg to reply.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well, Hon. Members. The next necessary steps with regard to this Bill will be undertaken when the matter will be listed again for consideration, for obvious reasons.

I will, therefore, direct that the time now being 12:59 p.m. we call this matter to a close.

*(Putting of the Question deferred)*

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, the time being 1.00 p.m., this House stands adjourned until this afternoon at 2:30 p.m.

The House rose at 1:00 p.m.