

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 8th August 2019

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

CONSIDERED RULING: DETERMINATION OF THE CONSTITUTIONALITY OF A DIVISION OF REVENUE BILL ORIGINATED BY SENATE

Hon. Deputy Speaker: Hon. Members, I have a long Communication to make. I would have ordinarily given this Communication at the tail-end just before we get to Order No.14, but let me do it now. I hope you will keep it in mind as we go to Order No.14.

Hon. Members, as you would recall, during the afternoon sitting on Thursday, 1st August 2019, upon reading the Order for Second Reading of the Division of Revenue Bill (Senate Bill No.13 of 2019), the Mover of the Motion, Hon. Kimani Ichung’wah, MP, Chairperson of the Budget and Appropriations Committee commenced by stating that: “Even as I beg to move thus, I will be requesting you, Hon. Speaker and the House, to give us direction on certain pertinent constitutional matters.”

As the Speaker, my attention, and as I rightly supposed, that of the House, was captured by explicit reluctance in the opening statement made by the Mover of the Motion. Indeed, the Chairperson proceeded to pose a question as to whether the Division of Revenue Bill (Senate Bill No.13 of 2019) was constitutionally before the House, having emanated from the Senate. He also sought the guidance of the Speaker on whether the action of the Senate was an affront on the exclusive province of the National Assembly under Article 95(4)(a) of the Constitution of Kenya, which provides that the National Assembly “determines the allocation of national revenue between the levels of government, as provided in Part IV of Chapter Twelve.”

Hon. Members, before the Chairperson of the Budget and Appropriations Committee could conclude moving the Motion for Second Reading of the Bill, the Leader of the Majority Party, Hon. Aden Duale EGH, MP, rising on a point of order, sought the Speaker’s guidance on the same, and a finding that the Second Reading of the Division of Revenue Bill (Senate Bill No.13 of 2019) should not be proceeded with on grounds of constitutionality as it ought not to originate in the Senate, hence, it was improperly before the House.

The following other Members also ventilated on the matter: The Member for Kitui Central, Hon. (Dr.) Makali Mulu, MP; the Member for Kipipiri, Hon. Amos Kimunya EGH, MP; the Minority Whip, Hon. Junet Nuh CBS, MP; the Chairperson of the Departmental Committee on Finance and National Planning, Hon. Joseph Limo, MP; the Deputy Minority Party Whip,

Hon. (Dr.) Chrisanthus Wamalwa, CBS, MP and the Chairperson of the Public Investments Committee, Hon. Abdullswamad Nassir, MP.

The ensuing debate raised weighty issues touching on the provisions of Chapter 12 of the Constitution on public finance and Standing Order 233 of the National Assembly on the consideration of the Division of Revenue Bill. Accordingly, and pursuant to Standing Order 83(3), I undertook to render a considered ruling on the matter.

Hon. Members, before I proceed, permit me to first deal with two preliminary issues. The first issue is the point at which a Member may raise any question of constitutionality or otherwise of a Bill already before the House. The second issue is the competence of the Speaker to determine and decide on any question of constitutionality or otherwise of a Bill, without reference to the House.

On the first issue, it is public notoriety that ordinarily, a question of constitutionality or otherwise of any Bill before the House, should be resolved before it is introduced for consideration by the House. Indeed, the Standing Orders do not contain an explicit provision upon which a Member may rise on a point of order to raise a question of this nature during consideration of a Bill. As a matter of fact, in a bicameral set up like the one we have in Kenya, save for matters falling within the province of Article 114(2) of the Constitution, it is inconceivable for the Speaker of a House, by a decision made within the walls of the Speaker's Chambers, to curtail a Bill from the other House from being introduced in the receiving House on the basis of it being unconstitutional.

Even in the absence of clear provisions in the Standing Orders, Standing Order 1 grants latitude to the Speaker to decide any procedural question on matters not expressly provided for by the Standing Orders or other orders of the House based on, among other considerations, precedents.

Hon. Members, a precedent was already set by my predecessors and, indeed, myself, which precedent has been applied on various occasions when the Speaker has been invited to guide the House on questions of constitutionality of a Bill under consideration. For avoidance of doubt, I will enumerate a few instances. First, on 28th April 2009, my predecessor, the Hon. Kenneth Marende, EGH, MP, when confronted with a similar question of whether he should adjudicate a question of constitutionality of a matter that he, as the Speaker, had previously approved, he made the following determination, and I quote:

"... the view that since the Speaker had not raised the issue about the legality of the situation, he is prevented from adjudicating on it when it is raised by any Hon. Member, is therefore, not tenable... I rule that any Member can, at any time, raise a question on the constitutionality of any action or set of circumstances in this House and it is always open to the Chair to entertain and rule on the merits of such a question."

(Several Members walked into the Chamber)

This is a fairly long Communication Hon. Members. So, I want the Members who are just coming in to take their seats so that I can proceed. It should be quick. We can leave out those other formalities for now. You will have time to do it. I want to proceed with the Communication. I will be forced to proceed if you take more time and, you will have to wait there for some more time. I will proceed, Hon. Members.

Hon. Members, I have not deviated from this precedent set by my predecessor. You may recall that, in the 11th Parliament, I was called upon to rule on the admissibility of the National

Police Service (Amendment) Bill, 2013 and the National Police Service Commission (Amendment) Bill, 2013. On 25th September 2013, upholding the precedent set by my predecessors, I did rule in the following manner, and I quote:

“...my predecessors have previously ruled on numerous other occasions in the past, but notwithstanding the approval of any business by the Chair under the Standing Orders, the issue of constitutionality can be raised by any Member at any stage of consideration of any business by the House.”

I further ruled on 17th February 2016 in the matter of a question of constitutionality of the Money Bill implication of the Military Veterans Bill (National Assembly Bill No. 34 of 2013) that:

“...the question of constitutionality of a Bill can be entertained at any stage before the passage of a Bill.”

It is, therefore, clear that any question of constitutionality or otherwise of a Bill already before the House cannot be curtailed as long as a Bill is still under consideration. This settles the first preliminary issue.

Hon. Members, on the second preliminary issue on the competence of the Speaker to decide any question of constitutionality of a Bill under consideration without reference to the House, the answer is in the affirmative. Suffice it to say, that it is the duty of the Speaker to defend and protect the Constitution and should the Speaker be invited to apply his or her mind on a question of constitutionality or otherwise of a Bill or a Motion already seized by House, the Chair would not hesitate to do so.

Indeed, on 25th September 2013, during the consideration of the National Police Service (Amendment) Bill, 2013 and the National Police Service Commission (Amendment) Bill, 2013, I did find that:

“...a question of constitutionality of a proposal before the House cannot be subjected to a vote, but to the conscious decision of the Speaker.”

Hon. Members, having cleared the preliminary matters, I will now proceed to apply my conscious consideration and decision to the three questions relating to the constitutionality of the Division of Revenue Bill (Senate Bill No. 13 of 2019), which I have summarised as follows:

- (i) whether the Senate can originate a Division of Revenue Bill;
- (ii) if my finding is that the Senate can originate a Division of Revenue Bill, would that also imply that any Member of this House is also at liberty to introduce a County Allocation of Revenue Bill or even an Appropriations Bill; and,
- (iii) what options are available to unlock any stalemate between Houses of Parliament with respect to a Division of Revenue Bill, if mediation fails?

With regard to the first question on whether the Senate can originate a Division of Revenue Bill, I will revisit the roles of the respective Houses of Parliament as provided in the Constitution. Article 93 of the Constitution establishes the Parliament of Kenya as constitutive of both the National Assembly and the Senate. This Article also provides that both Houses shall perform their respective functions in accordance with the Constitution. Article 95 of the Constitution provides for the roles of the National Assembly. Specifically, Clause (4)(a) of this Article expressly provides that the National Assembly determines the allocation of national revenue between the levels of government as provided in Part 4 of Chapter 12 of the Constitution. On the other hand, Article 96 provides for the role of the Senate. Clause (3) expressly stipulates that the Senate determines the allocation of national revenue among

counties, as provided in Article 217, and exercises oversight over national revenue allocated to the county governments.

Hon. Members, a question would then arise as to what constitutes the term “determination of the allocation of revenue” as provided in Articles 95(4)(a) and 96(3). These Articles must be interpreted conjointly with Article 218. A prudent interpretation of the Constitution therefore means that the National Assembly performs its function of determining the allocation of national revenue between the levels of government by introducing a Division of Revenue Bill. Similarly, the Senate performs its function of determining the allocation of revenue among counties by introducing a County Allocation of Revenue Bill.

Indeed, Article 110(2) categorises the County Allocation of Revenue Bill as a special Bill concerning county governments, which is considered in accordance with Article 111. Under Article 111, the National Assembly requires a two-thirds majority to change or reject a County Allocation of Revenue Bill passed by the Senate. In originating the County Allocation of Revenue Bill, the Senate will be living up to its constitutional mandate as enshrined in Article 96(1) of the Constitution, which provides that the Senate represents the counties and serves to protect the interests of the counties and their governments.

(Several Members stood at the Bar)

I see more Members are standing there. So, please, take your seats then I will proceed with the Communication. Be quick.

Order, Members! I am resuming the Communication. Hon. Members, kindly take your seats. Order, Hon. Members! I will now proceed.

Hon. Members, a question would then arise as to what constitutes the term “determination of the allocation of revenue” as provided in Articles 95(4)(a) and 96(3). These Articles must be interpreted...

Order, Members! Let me confirm where I stopped. Well, I will start from there, anyway. If I had read it before, it will not affect anything. It will merely serve as emphasis on what I had stated before. Repetition is not allowed for Members, but for the Speaker, he can do as he wishes and I will do as I wish.

(Laughter)

So, Hon. Members, a question would then arise as to what constitutes the term “determination of the allocation of revenue” as provided in Articles 95(4)(a) and 96(3). These Articles must be interpreted conjointly with Article 218. A prudent interpretation of the Constitution, therefore, means that the National Assembly performs its function of determining the allocation of national revenue between the levels of government by introducing a Division of Revenue Bill. Similarly, the Senate performs its function of determining the allocation of revenue among counties by introducing a County Allocation of Revenue Bill.

Indeed, Article 110(2) categorises the County Allocation of Revenue Bill as a special Bill concerning county governments, which is considered in accordance with Article 111. Under Article 111, the National Assembly requires a two-thirds majority to change or reject a County Allocation of Revenue Bill passed by the Senate. In originating the County Allocation of Revenue Bill, the Senate will be living up to its constitutional mandate as enshrined in Article

96(1) of the Constitution, which provides that the Senate represents the counties, and serves to protect the interests of the counties and their governments.

Hon. Members, you will agree with me that no single provision in the Constitution can be read or interpreted in isolation. Indeed, Article 259 provides that the Constitution must be interpreted in a manner that, among others, promotes its purposes, values and principles; advances the rule of law; and permits the development of the law. In as much as Article 218(1) calls for the introduction in Parliament of a Division of Revenue Bill and the County Allocation of Revenue Bill, this Article cannot be read in isolation. If this isolated reading of the Constitution was to be adopted, it would then mean that the Senate would be permitted to violate the provisions of Article 95(4)(a) of the Constitution by introducing a legislation to determine the allocation of national revenue between the levels of government; or the National Assembly would be permitted to violate the provisions of Article 96(3) by introducing a legislation to determine the basis for allocating among the counties the share of national revenue that is annually allocated to the county level of government.

Therefore, it goes without saying that the interpretation of the Constitution must be done in a holistic manner. Parliament must lend credence to the doctrine of interpretation that the law is always speaking. The framers of the Constitution did not envisage a situation where the various Articles of the Constitution would be construed in the form of a staccato speech, consisting of several disjointed provisions. Rather, the manner of speech contemplated by the Constitution is that of a logical sequence, with a smooth ebb and flow.

Having said that, it is inconceivable that a House of Parliament would attempt to apply the provisions of Article 218 of the Constitution in wanton disregard of the provisions of Articles 93(2), 95(4), 96(3) and 217 of the same Constitution. Parliament must be at the forefront in demonstrating respect for the rule of law. As the institution in which legislative authority is vested, Parliament has a higher threshold with regard to the obligation to respect, uphold and defend the Constitution.

The architecture of the Constitution with regard to Public Finance Management, gives specific roles to the two Houses of Parliament. The thread that runs straight through Chapter 12 of the Constitution on Public Finance is the centrality of the National Assembly in the budget process, appropriation of public funds for the expenditure of the national government and national State organs and revenue raising measures by the national government.

Article 221 of the Constitution exclusively vests in the National Assembly the role of considering and approving the budget estimates of the revenue and expenditure of the national government and the estimates of expenditure submitted by the Parliamentary Service Commission and the Chief Registrar of the Judiciary. Drawing from the approved estimates, the National Assembly is further exclusively mandated to introduce an Appropriation Bill to appropriate the approved estimates for disbursement from the Consolidated Fund.

In addition, to finance the approved budget estimates and the expenditure for which public funds are appropriated, this House also exclusively legislates the proposals by the National Treasury to raise the revenue required to finance both levels of government. Article 209 of the Constitution empowers the national Government to exclusively impose income tax, value added tax, customs duties and other duties on import and export goods and excise tax as well as any other tax or duty, except property rates and entertainment taxes which are a preserve of the county governments. Every year a Finance Bill is introduced, considered and passed exclusively by this House, the National Assembly, with regard to the Government's proposed revenue-raising measures.

Hon. Members, in settling on the equitable share of the national revenue to be allocated to the counties, this House is required under Article 203 of the Constitution to allocate, at least, 15 percent of all national revenue collected by the national Government, based on the most recent audited accounts approved by the National Assembly. Again, Hon. Members, Article 203 outlines another critical function vested solely in the National Assembly, which is approving audits of the expenditure of all revenue received and spent by the national Government.

A clear reading of Article 218 of the Constitution together with Article 95(4)(a) and 96(3) points to a number of inescapable conclusions. First, Hon. Members, the framers of the Constitution were very deliberate in their assignment of the roles and functions of the two Houses of Parliament with regard to public finance, both at the national and county levels of government. The Constitution clearly establishes one House as representing the people, overseeing the budget process for the national Government and national State organs, appropriating monies for the national Government and national State organs, overseeing the process of revenue-raising through legislation, determining the allocation of the revenue collected between the two levels of government and auditing the collection and expenditure of revenue by the national Government and national State organs.

Conversely, Hon. Members, the Constitution mandates the other House of Parliament to represent and protect the interests of the counties, as geographic regions, and their county governments, participate in the making of certain laws as guided by Part 2 of the Fourth Schedule to the Constitution, determine the allocation of national revenue among counties and exercise oversight over that revenue.

With this background in mind, interrogating the provisions of Article 218(1) of the Constitution so as to know the House in which the annual Division of Revenue Bill and County Allocation of Revenue Bill are to be originated, ought not to be a question to belabour.

I see a few other Members at the entrance. Would you kindly take your seats quickly?

(Several Members walked into the Chamber)

I will proceed with the Communication, Hon. Members.

Hon. Members, in implementing Chapter 12 of the Constitution, this House enacted the Public Finance Management Act, 2012. The provisions of the Act outline in detail the procedures relating to the budget process. Section 38 of the Act expounds on the exclusive role of the National Assembly in initiating and determining division of revenue between the national and county governments. Under Section 38 of the Act, the CS for the National Treasury is required to submit Budget documents to the National Assembly. The National Assembly then considers the Budget Estimates in line with Section 39 of the Act. In addition, Section 40 of the Act requires that the Cabinet Secretary for the National Treasury submit the Budget Policy Highlights and Finance Bill to the National Assembly for consideration.

As I had stated earlier, Article 259(1)(a) of the Constitution obligates a person interpreting the Constitution to do so in a manner that “promotes its purposes, values and principles.” With this edict in mind, I personally would not ascribe to the argument that the Constitution can exclude one House of Parliament from budgeting, collecting, sharing between the levels of government and auditing the national revenue, and still allows such House to originate a Bill that takes into account majority of those processes. Several questions would arise with regard to the basis of all the Senate proposals in a Division of Revenue Bill, key among which would be the basis on which the figures contained in such a proposal have been arrived at.

As part of its general oversight function under Article 95(5)(b) of the Constitution, this House, through the Budget and Appropriations Committee, is exclusively and constantly in communication with the National Treasury over the finances of the country. The Senate does not bear the burden of passing taxation legislation to raise revenue required to support any allocation made by the Division of Revenue Bill. The question that arises then is: Which revenue collection forecast would the Senate rely on to reach the figures proposed? Further, a Division of Revenue Bill contains additional grants to be financed by the revenue share of the national government. On which authority is the additional grants contained in the Division of Revenue Bill originated by the Senate made? Consequently, a clear reading of the Constitution only supports the Division of Revenue Bill being originated by the National Assembly, as it has a ready answer to all those particular questions. On the same breath, I would not expect any Member of this House to imagine that he or she can introduce a Division of Revenue Bill, an Appropriations Bill or even a financial Bill in form of an individual Member Bill, previously referred to as “Private Member Bills”. Similarly, as your Speaker, I would not approve publication of any proposals made by a Member of this House to introduce a County Allocation of Revenue Bill. The same logic applies.

Articles 96 and 217 of the Constitution mandate the Senate to determine the basis for revenue allocation among counties, the counties’ share of the national revenue that is annually allocated to the county level of government. In addition, the Senate is mandated to audit the use of those funds allocated to counties. To change or reject a resolution of the Senate on the basis of allocating funds to the counties or, indeed, the County Allocation of Revenue Bill, the National Assembly is required to muster a two-thirds majority. That special “legislative protection” accorded to a County Allocation of Revenue Bill implies that there is no constitutional basis for the origination of the County Allocation of Revenue Bill in the National Assembly and further that, it was not meant to go through the vagaries of mediation process that other ordinary Bills are subjected to, with the possibility of failure. In my considered opinion, the Constitution went to great lengths to segregate two Bills to the Houses in line with their exclusive roles and functions.

Since the inception of the bicameral Parliament in March 2013, both Houses of Parliament have respected their exclusive mandates with regard to originating the Division of Revenue Bill and the County Allocation of Revenue Bill. The National Assembly has originated the Division of Revenue Bill in each of the six years. Even where the Division of Revenue Bill has been lost at mediation, it has been republished and reintroduced in the National Assembly.

The decision by the Senate to publish its own version of the Division of Revenue Bill is, therefore, unprecedented in the practice of bicameral Parliament. No excuse, therefore, justifies this inconceivable departure by the Senate from the established practice. Our Parliament operates within and is guided by usages, forms, precedents, customs, procedures, traditions and practices from comparable jurisdictions within the community of nations.

An analysis of the practice in comparative jurisdictions indicates that any legislation with regard to the sharing of revenue between two or more levels of government is originated in the House of Parliament charged with the responsibility of approving revenue-raising measures. Over and above, some of the jurisdictions present insights on available avenues of extricating the Houses of Parliament from any limitless disagreements or ping-pong on Bills.

Section 73(2)(b) of the Constitution of the Republic of South Africa provides that any Bill may be introduced in the National Assembly, but a Bill under Section 214 of the said Constitution, containing provisions on equitable share and allocation of revenue among national, provincial and local spheres of government, may only be introduced by the Cabinet Member

responsible for national financial matters and only in the National Assembly. The National Assembly of South Africa is the House tasked with approving the budget and any revenue-raising measures proposed by the national government. Indeed, Section 9 of the South Africa's Money Bills Amendment Procedure and Related Matters Act of 2009 provides as follows:

(1) After the adoption of the fiscal framework, the Division of Revenue Bill must be referred to the Committee on Appropriations of the National Assembly for consideration and report; and,

(2) After the Bill is referred to the National Council of Provinces, the Bill must be referred to the Committee on Appropriations of the Council for consideration and report.

Hon. Members, there are two pickings from the above quoted provisions from the Parliament of South Africa. First, there is an inviolable link between the revenue Bills and the budget fiscal framework, which in the case of Kenya is the Budget Policy Statement. It is therefore instructive that the formulation and introduction of a revenue Bill must be derived from and based on the fiscal framework.

Secondly, and most importantly, a revenue Bill is strictly introduced in the Committee on Appropriations of the National Assembly. The justification for introducing the revenue Bill in the National Assembly of South Africa, through the Committee on Appropriations, is based on the indisputable fact that it is the Committee and, indeed, the House which scrutinises and approves the fiscal framework, which is the bedrock for a revenue Bill.

Hon. Members, even with the lack of clarity in Article 218 of the Constitution, drawing from the above-cited pickings from South Africa, I would expect that there would be no contestation on which House of Parliament in Kenya reserves the original jurisdiction to originate the Division of Revenue Bill. Indeed, being the House in which the country's fiscal framework is considered, the National Assembly is the House that should originate the Division of Revenue Bill.

With respect to the National Diet of Japan, Section 60 of their Constitution provides that:

“The budget must, first, be submitted to the House of Representatives. Upon consideration of the budget, when the House of Councillors makes a decision different from the House of Representatives, and when no agreement can be reached even through a joint committee of both Houses, provided for by law, or in the case of failure by the House of Councillors to take final action within 30 days, the period of recess excluded, after the receipt of the budget passed by the House of Representatives, the decision of the House of Representatives shall be the decision of the National Diet (Parliament)”.

Hon. Members, I am inclined to believe that, in the context of Kenya, the Division of Revenue Bill is the legislation upon which the Houses of Parliament conclude vertical budget akin to what is provided for in Section 60 of the Constitution of Japan. I am further inclined to believe that the wisdom for granting the House of Representatives power to veto different decisions by the House of Councillors is premised on the understanding that the House of Representatives is best placed to translate the aspirations of the people in the budget process.

Further, a look at similar matters in the Commonwealth of Australia presents another insightful perspective for extricating the country from possible stalemate on such a Bill. Section 57 of the Constitution of Australia prescribes the procedure for resolving any irreconcilable disagreement between the two Houses. That procedure essentially involves the dissolution of both Houses of Parliament by the Governor-General, in what is commonly known as “double dissolution” in the event that the disagreement persists. This is followed by fresh elections for both the House of Representatives and the Senate.

Upon constitution of a new House of Representatives and the Senate, the Bill which led to the dissolution is re-considered and should the disagreement recur, the Governor-General may convene a joint sitting of the two Houses to consider and vote on the Bill. It is important to note that the Governor-General grants a double dissolution if he/she is satisfied that there is really a deadlock, and regard has been put to the importance of the Bill in question and the workability of Parliament (House of Representatives Practice, Australia, Fifth Edition, Page 454-455).

Hon. Members, regarding decision-making at a joint sitting, the said section 57 provides as follows:

“The members present at the joint sitting may deliberate and shall vote together upon the proposed law as proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of Members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen’s assent.”

From the foregoing, it is a constitutional principle in Section 57 of the Australian Constitution that, in all cases of disagreement between the House of Representatives and the Senate, it is the position of the House of Representatives that shall prevail.

The Members, who have frozen, please, take your seats quickly. We have just a few more pages to go. Let me allow the Member for Juja to step out.

Hon. Members, like Kenya’s devolved governance structure, the architecture of the Federal Government of Germany has various tiers of government. Moreover, the budget process in the Parliament of Germany closely mirrors that of the Parliament of Kenya in that it has a Division of Revenue Bill and a mediation process. In terms of mediation, it is important to point out that, whenever the *Bundestag*, the equivalent of the National Assembly, approves a compromise proposal of a Bill developed by the mediation committee, the *Bundesrat*, may raise an objection to the proposal only with absolute majority or even a double qualified majority.

It is important to note that even in cases where the *Bundesrat* musters an absolute majority to object to a compromise proposal on a Bill approved by the *Bundestag*, if the *Bundestag* rejects the objection with a similar threshold, the Bill is passed and can become law (The German *Bundestag* Functions and Procedures: 17th Electoral Term, page 121-122). As such, the procedure allows for unlocking of a deadlock that may arise from a mediation process by granting veto power to the *Bundestag*, the equivalent to Kenya’s National Assembly.

Hon. Members, as you may have noticed, the practice in Japan, Australia and Germany, does not contemplate a limitless ping-pong in the bicameral consideration of such important money bills, particularly critical bills relating to the budget process. The matter must come to rest, and the manner of resting it is through veto vested in the House of Parliament that represents the people. In our case, that House is the National Assembly. This scenario addresses the third question.

Hon. Members, while these practices are not explicitly provided for in the Constitution of Kenya, it ought not to be lost that the Constitution is a living document and its growth is catalysed when certain provisions therein are tested, as is the case now. It is perhaps the opportune time to re-examine specific provisions of our Constitution relating to financial procedures, especially the Division of Revenue Bill and likely stalemate on the Bill.

A reading of Article 113 of the Constitution reveals its terminal nature on a Bill, whose passage requires both Houses, and what has been referred to in Australia as “deadlock clause”. Indeed, this provision exposes legislation to a potentially limitless mediation cycle that sounds a death knell to any Bill whose bicameral consideration results in a disagreement between the Houses on certain provisions therein. Whereas this would not be seriously injurious on ordinary Bills whose enactment may be delayed, up to and including being re-introduced in a succeeding Parliament, it is perilous to subject a critical Bill like the Division of Revenue Bill to a limitless cycle of disagreement between the Houses of Parliament. This constitutional anomaly needs to be addressed, particularly so with regards to the Division of Revenue Bill.

Hon. Members, an avenue for concluding the legislative process of the County Allocation of Revenue Bill, which is a special Bill pursuant to Article 110(2)(a)(ii) of the Constitution, has been provided in that the National Assembly may only amend or veto it by a resolution supported by at least two thirds of the Members of the National Assembly. If the National Assembly is unable to muster this threshold, then the County Allocation of Revenue Bill as passed by the Senate becomes law.

Whereas the drafters of the Constitution ensured that the County Allocation of Revenue Bill is not deadlocked by a mediation process, the Constitution has not granted similar constitutional safeguard on how to unlock the Division of Revenue Bill from the shackles of a mediation process that has resulted in the defeat of the Bill.

It can, therefore, be reasonably argued that the drafters of the Constitution, in providing under Article 95(4)(a) of the Constitution that the National Assembly determines the allocation of national revenue between the levels of government without a proviso of overriding Senate's decision on it, they contemplated that the Division of Revenue Bill as passed by the National Assembly is the law.

As I conclude, Hon. Members, with respect to the county governments, the Constitution provides avenues through which the current delay in the enactment of the Division of Revenue Bill can be mitigated. Firstly, outside the Division of Revenue Act, county governments have recourse to the revenue generated by themselves and deposited in their respective County Revenue Funds pursuant to Article 207(1) of the Constitution. Secondly, county governments have recourse to re-appropriate and utilise revenue of the previous years, which is retained in the County Revenue Fund at the close of the preceding financial year.

Thirdly, and more importantly, Article 203(2) of the Constitution guarantees county governments an equitable allocation of a minimum of 15 percent of all national revenue based on the most recent audited accounts of national revenue received as approved by the National Assembly. This amount ought to be readily available to county governments as it is already charged, allocated and granted by the Constitution. It ought not to be subjected to the bicameral legislative process between the two Houses of Parliament with the possibility of protracted disagreements, mediation and even defeat within the framework of Article 113(4) of the Constitution. As this is a direct charge on the Constitution, Article 206(2)(c) empowers the Controller of Budget to authorise the withdrawal of this amount from the Consolidated Fund.

I urge the Houses to consider making appropriate amendments to the Public Finance Management Act in order to provide a comprehensive mechanism to enable county governments to access preliminary funding from the three options at their disposal. This will ensure that county governments sustain their operations in the event of any future protracted enactment of the Division of Revenue Bill.

Hon. Members, as your Speaker, I am enjoined to uphold and protect the Constitution and the Standing Orders of the House. This calls for ensuring that any proposed legislation for consideration by the House accords with the requirements of the Constitution. I am persuaded that the Division of Revenue Bill (Senate Bill No. 13 of 2019) offends not only the spirit of the Constitution, but also the customs and traditions of this House and other comparable parliamentary jurisdictions which Standing Order 1(2) obligates me to abide by, in making any decision in respect of a matter that is not expressly provided for in our Standing Orders.

Hon. Members, it is the duty of the Speaker to guide the House with respect to business before it. Having addressed the question of origination of a Division of Revenue Bill, it is, therefore, my finding that the motion for Second Reading of the Division of Revenue Bill (Senate Bill No. 13 of 2019) was, indeed, improperly before the House.

(Applause)

I make this direction in order to remove ambiguity and conflict arising out of the attempted parallel legislative process by this House and the Senate, and also to expedite the timely conclusion of the Annual Division of Revenue Bill through one process as contemplated by the Constitution.

The House is according guided and I thank you.

(Applause)

Yes, Leader of the Majority Party

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Deputy Speaker. This should be the best ruling that has been given by any Speaker. I am sure Hon. Olago Aluoch, Hon. Mbadi and many others who have been here with me since 2007 agree. Our Litigation Department should forward it to the Supreme Court so that it can be read to the governors.

Hon. Deputy Speaker, now the matter is settled. I ask you to direct the Table Office to make more copies for Members and the media to apprise themselves with this ruling.

Hon. Deputy Speaker: It is so ordered. I see we need to proceed because we are a bit behind in terms of our working. So, let us proceed. Next Order!

Just a minute! I did not see any Member wanting to comment. I will give the Member for Kilifi North, Hon. Baya Yaa briefly. Then, we will have two more Members.

Hon. Owen Baya (Kilifi North, ODM): Thank you, Hon. Deputy Speaker. I think this can be cited as a landmark ruling which upholds the constitutionalism of this country. That this House, other than the Senate, would like to abide by what the Constitution and other jurisdictions say. I sincerely thank you for coming out boldly with a well informed and researched ruling.

Thank you and congratulations.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Deputy Speaker for granting me this opportunity...

Hon. Deputy Speaker: You have taken it by default, but I allow you anyway.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Deputy Speaker. Though I expected, as traditions dictate, that immediately after the Leader of the Majority Party, it should be the Leader of the Minority Party.

Hon. Deputy Speaker: If he makes a request, I can assure you he will get it. Can I stop you from contributing on this so that I can give the Leader of the Minority Party?

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): I also want to thank you for this Solomonian ruling. Indeed, it is well researched and based on the traditions and customs of this House. Whatever you have said is what we have been talking about. I thank you and it is a good idea to avail this ruling to the media houses so that the public can be informed. More copies should be made for the Senators to have a look.

Thank you.

Hon. William Cheptumo (Baringo North, JP): Thank you, Hon. Deputy Speaker for that very comprehensive and well considered ruling. It is the business of this House and every Member to protect the Constitution. What you have done this afternoon is to reaffirm the position that this House has the powers to share the revenues of this country. I think this is the right direction. The so-called conflict between the National Assembly and the Senate is misconceived. We should be guided by the Constitution as the framers desired and Kenyans passed it in 2010. The powers of this House are well spelt out in the Constitution in so far as sharing of revenue is concerned.

Hon. Deputy Speaker, I appreciate your ruling and thank you for your considered ruling.

Hon. Deputy Speaker: Thank you very much. Next Order please!

MESSAGE

PASSAGE OF DIVISION OF REVENUE (NO. 2) BILL (NATIONAL ASSEMBLY BILL NO. 59 OF 2019)

Hon. Deputy Speaker: I have a message from the Senate. Hon. Members, pursuant to the provisions of Standing Order No. 41, I wish to report to the House that I have received a message from the Senate regarding the passage of the Division of Revenue (No. 2) Bill (National Assembly Bill No. 59 of 2019). The Message reads in part and I quote:

“The Senate considered and passed the said Bill on Wednesday 7th August 2019 with amendments. The Senate now seeks the concurrence of the National Assembly on the said Bill in accordance with the provisions of Article 110 (4) of the Constitution.”

Hon. Members, you will recall that the National Assembly passed the Bill recently providing the figure of Kshs316.5 billion to be allocated to the county governments. However, the Senate has amended that amount upwards, allocating the figure of Kshs355.67 billion to the county governments. Hon. Members, given the urgent need to pass this Bill and pursuant to provisions of Standing Order No. 41(6)(a), I have instructed the Clerk to prepare a Supplementary Order Paper to allow the House to consider the Senate amendments. In this regard, I urge the House to pay particular attention to Order Nos. 13 and 14 in the Supplementary Order Paper.

Hon. Members, I am aware that the Budget and Appropriations Committee is already seized of the matter and will guide the House during the consideration of the Senate amendments to the Bill when we finally reach that particular Order. I thank you. Next Order!

PAPERS LAID

Hon. Deputy Speaker: On this particular Order, let us start with the Whip of the Majority Party.

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Deputy Speaker. On behalf of the Leader of the Majority Party, I beg to lay the following Papers on the Table of the House today, 8th August, 2019:

The Report of the Auditor-General and the Financial Statements in respect of the Jubilee Party for the year ended 30th June, 2018, and the certificates therein.

Report of the National Gender and Quality Commission (NGEC) Strategic Plan 2019 to 2024;

Board Report on Project Proposals Approvals, Disbursement Status and Restrictions imposed on Constituency Account for the Fourth Quarter of 2018/2019 Financial Year (1st April, 2019 to 30th June, 2019) from the NG-CDF Board;

Report of the Auditor-General and the Financial Statements of National Constituencies Development Fund Board for the Year ended 30th June, 2018, and the certificates therein;

The Report of the Auditor-General and the Financial Statements in respect of the Kenya Post Office Savings Bank for the year ended 31st December, 2017, and the certificates therein;

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

- a) Inter-governmental Relations Technical Committee.
- b) Street Families Rehabilitation Trust Fund.
- c) National Crime Research Centre.
- d) Kenya Film Classification Board.
- e) Kenya Yearbook Editorial Board.
- f) Keroka Technical Training Institute.
- g) Kenya Wildlife Service.
- h) Kenya Forest Service.
- i) Anti- Counterfeit Agency.
- j) State Department for Public Service and Youth.
- k) Kenya Electricity Transmission Company Limited.
- l) Lake Victoria South Water Services Board.
- m) Konza Technopolis Development Authority.
- n) Lake Basin Development Authority.
- o) Tourism Regulatory Authority.
- p) Kenya Railways Corporation, and
- q) National Transport and Safety Authority.

Hon. Deputy Speaker: Let me stop you there because I see some students are getting out without being recognised. In the Public Gallery, let me recognise students from Golden Elites Primary School from Kisumu Central of Kisumu County; Nakuru Day Secondary School from Nakuru East Constituency of Nakuru County; Jitegemee Primary from Embakasi North of Nairobi County and Happy Valley Academy from Moiben Constituency of Uasin Gishu County.

In the Speaker's Gallery, we have Kaimosi Friends Primary School from Hamisi Constituency, Vihiga County; Kerita Kosyin Primary School from Kesses Constituency, Uasin Gishu County and Kenya Relief Primary School from Suna West, Migori County.

I just wanted to recognise those pupils before they leave.

Proceed.

Hon. Benjamin Washiali (Mumias East, JP): I was almost through with Paper No. 7. I request you to allow me to start afresh on Paper No. 7.

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

- a) Webuye West.
- b) Nambale.
- c) Embakasi East.
- d) Ndia.
- e) Lurambi.
- f) Kwanza.
- g) Budalangi.
- h) Teso North.
- i) Teso South.
- j) Awendo.
- k) Kuria East.
- l) Kuria West.
- m) Kiminini.
- n) Saboti, and
- o) Kimilili.

I thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Next is the chairperson of the Departmental Committee on Labour and Social Welfare.

Hon. Ali Wario (Bura, JP): Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House today Thursday, 8th August 2019:

Report of the Departmental Committee on Labour and Social Welfare on the Committee's Visit to Riyadh, Saudi Arabia on a fact-finding mission on the Welfare of Migrant Kenyan Workers in the Kingdom of Saudi Arabia from February 27th to 3rd March 2019;

The 3rd Session of the African Union Specialised Technical Committee on Social Development, Labour And Employment in Addis Ababa, Ethiopia from 1st to 5th April 2019;

The 12th Session of the Conference of States Parties to the Convention on the Rights of Persons with Disabilities, UN Headquarters, New York from 10th to 13th June 2019; and,

The 108th Session of the International Labour Conference in Geneva, Switzerland from 12th to 21st June, 2019.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Let us go to the Chairperson of the Regional Integration Committee.

Hon. (Ms.) Naisula Lesuuda (Samburu West, KANU): Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House today 8th August 2019:

Report of the Select Committee on Regional Integration on the Report of the East Africa Legislative Assembly (EALA) Committee on Communication, Trade and Investment on the East African Community Customs Management (Amendment) Bill, 2018 and the EALA Committee on General Purpose on Consideration of the East African Community Annual Report 2014/2015; and,

An Interactive Study visit to the East African Community Headquarters in Arusha, Tanzania from May 16th to 22nd May, 2019

Hon. Deputy Speaker: Very well. Next Order!

NOTICE OF MOTION

Hon. Deputy Speaker: The Chairperson, Departmental Committee on Labour and Social Welfare.

ADOPTION OF REPORT ON WELFARE OF MIGRANT
KENYAN WORKERS IN SAUDI ARABIA

Hon. Ali Wario (Bura, JP): Hon. Deputy Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Labour and Social Welfare on the Visit to Riyadh, Saudi Arabia, on a Fact-Finding Mission on the Welfare of Migrant Kenyan Workers in the Kingdom of Saudi Arabia from 27th February to 3rd March 2019, laid on the Table of the House on Thursday, 8th August, 2019.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Which Papers were laid? You have not laid the Paper.

(Laughter)

We will go to the next Order.

QUESTIONS AND STATEMENTS

Hon. Deputy Speaker: On this particular Order, we have both Questions and Statements. I want to start with Statements today. Let us have the Statement by the Chairperson, Departmental Committee on Transport, Public Works and Housing.

GOVERNMENT DIRECTIVE ON STANDARD GAUGE RAILWAY CARGO TRANSPORTATION

Hon. David Pkosing (Pokot South, JP): I thank you, Hon. Deputy Speaker. This Statement which I want to give is in relation to what the House directed, that the Cabinet Secretary (CS) for Transport, Infrastructure, Housing, Urban Development and Public Works appears before my Committee to respond to questions on the Standard Gauge Railway (SGR).

Hon. Deputy Speaker, pursuant to the provisions of Standing Order No. 43, Hon. Abdullswamad Sheriff Nassir sought the leave of the House during the afternoon Session of the National Assembly on Tuesday, 6th August 2019 to make a Statement on the containerised cargo which is transported from Mombasa to Nairobi through the SGR.

The House resolved to invite the CS, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works for a meeting with the Departmental Committee on Transport, Public Works and Housing to respond to the matters raised in the Statement. The meeting which was open to the members of the public was held on Thursday, 8th August 2019 in Committee Room on 5th floor, Continental House, at 10.00 a.m.

The CS, Mr. James Macharia, came in person as you directed and informed the meeting that the directive which had been signed by the Commissioner General of Kenya Revenue

Authority (KRA) and the Director General of Kenya Ports Authority (KPA) had been withdrawn and made public through the media.

Upon that, the meeting opened for discussion, particularly from Hon. Members who raised questions. We were guided by Standing Order No. 42C and at the end of discussion, the following were the conclusions or the way forward:

- (i) As a Committee, we confirmed that the order has been withdrawn;
- (ii) The Committee further observed that consultations between the Ministry and various stakeholders were ongoing. The Ministry should carry on structured consultations, particularly with the elected leadership or Members of Parliament from the coastal region;
- (iii) The Committee further noted that the matter at hand bore national interest since it is touching on national resources and not sectorial, as it may be deemed and thus, should be treated as such.

(Hon. (Ms.) Peris Tobiko stood in front of Hon. David Pkosing)

Hon. Deputy Speaker: Order. Who is this Member? You should not interrupt the view of the speaker. Proceed.

Hon. David Pkosing (Pokot South, JP): I thank you, Hon. Deputy Speaker.

Hon. Peter Kaluma (Homa Bay Town, ODM): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: Very well. We will have the Member for Molo, Hon. Kimani Kuria. What is your point of order, Hon. Kaluma?

Hon. Peter Kaluma (Homa Bay Town, ODM): The Chair has ruled on several occasions on the mode of dressing in the House. Can I ask whether the dressing of the Member for Kajiado East is for a Member of this House or the next governor of the great Kajiado County?

Hon. Deputy Speaker: You are asking whether your colleague is dressed as a governor or Member of Parliament? Both of them are supposed to dress in a smart manner. So, I consider that you are applauding her mode of dressing. I do not think that is an issue that we will pursue further than that. I understand your position, Hon. Kaluma.

Hon. Members, let us have the Member for Molo.

SUMMARY DISMISSAL OF EMPLOYEES BY TIMSALES LIMITED IN ELBURGON

Hon. Kuria Kimani (Molo, JP): I thank you, Hon. Deputy Speaker. I rise to raise a Statement regarding the summary dismissal of 528 employees of Timsales Company Limited in Elburgon, Molo Constituency.

Pursuant to Standing Order No. 44(2)(c), I wish to request for a Statement from the Chairperson, Departmental Committee on Labour and Social Welfare regarding the unfair dismissal of 528 employees of the said company in Elburgon Town, Molo Constituency.

Due to the excessive delays in payment of workers' salaries, close to 1,000 employees of Timsales Limited staged a sit-in on 25th July 2018 protesting the non-payment of June 2018 salaries. Subsequently, the company locked out all its employees and completely refused to negotiate an agreeable return to work formula, including partial payment of the employees' overdue salaries.

It is worth noting that the right of these employees to stage a sit-in is well protected in Article 37 of our Constitution and which the company chose to deliberately and conscientiously

circumvent. The sit-in as a way of resolving labour disputes is also protected in Section 2 of the Labour Relations Act of 2007.

The union representing these workers took this unfortunate matter to court on 3rd August 2018 and a determination was delivered on 21st June 2019, instructing Timsales Limited to proceed with the disciplinary process, but in strict conformity with the Collective Bargaining Agreement (CBA) and the Employment Act. Timsales Limited served summary dismissal letters to 528 employees on 2nd August 2019 without provision for gratuity or terminal benefits.

It is against this background that I seek a Statement from the Chairperson, Departmental Committee on Labour and Social Welfare to:

(i) Consider the issues of national unemployment, and whether there are other available mechanisms to resolve this labour dispute without victimising the said employees and, if possible, mediate on the same;

(ii) Consider the payment of gratuity and terminal benefits to 528 employees by Timsales Limited as is protected in the Employment Act of 2007.

I thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: The first Statement by the Chair of the Departmental Committee on Transport, Public Works and Housing is noted because it is basically giving a Statement as directed earlier. The Statement by Hon. Kuria Kimani is committed to the Departmental Committee on Labour and Social Welfare.

Before I give an opportunity to Leader of the Majority Party, let me recognise, in the Speaker's Gallery, pupils from Christ the King Primary School from Kanduyi Constituency, Bungoma County. That must be the constituency of Hon. Wamunyinyi. Kasioni Primary School from Mwingi North Constituency, Kitui County.

In the Public Gallery, we have Ogen Primary School, Muhoroni Constituency of Hon. Oyoo, Kisumu County. Maraigushu Secondary School in Naivasha Constituency which is represented by Hon. Kihara, Nakuru County and Father Adriano Primary School from Kilome Constituency, Makueni County. Kilome Constituency must be the one which is represented by Hon. Nzambia.

Next, let us have the Leader of the Majority Party. He has a Statement pursuant to Standing Order No. 44(2). Proceed.

BUSINESS FOR THE WEEK COMMENCING 10TH TO 12TH SEPTEMBER 2019

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, pursuant to the provisions of Standing Order No. 44(2), I rise to give the following Statement on behalf of the House Business Committee (HBC).

The Committee met on Tuesday, 9th May 2019 at the rise of the House. The House is scheduled to proceed on a long recess commencing tomorrow in accordance with the Calendar of the House. In this regard, the House Business Committee has not scheduled any business for next week save to indicate that upon resumption from recess on Tuesday, 10th September 2019, the following business will be of priority:

1. Consideration of the Finance Bill, 2019.
2. Consideration of the Public Finance Management (Amendment) Bill (National Assembly Bill No.63, 2019), which is scheduled for First Reading today.
3. Consideration of the Banking (Amendment) Bill, 2019 proposed by the Member for Kiambu Constituency, Hon. Jude Njomo. Indeed, the Member had beseeched the House Business

- Committee to ensure the Bill is considered before the Finance Bill as it responds to a judicial judgment on the capping of bank interest rates.
4. Consideration of the Senate Amendments to the Copyright Bill (National Assembly Bill No.33, 2017), and
 5. Consideration of the Senate Amendments to the County Government Retirement Benefits Bill.

Hon. Deputy Speaker, we will continue with any scheduled business that is not concluded today. Scheduling of Questions for reply before Committees will also continue upon resumption of our regular sittings.

Without anticipating debate, I hope that we will today conclude the consideration of the Senate Amendments to the Division of Revenue (No.2) Bill of 2019, should the amendments appearing on the Supplementary Order Paper be agreed on. In the event that another mediation process is necessary, I will request the Hon. Speaker to summon the House for a Special Sitting, pursuant to the provisions of Standing Order No.29 to consider the mediated version of the Division of Revenue Bill as soon as the Mediation Committee concludes its work.

Finally, the House Business Committee will re-convene on Tuesday, 10th September 2019, *Inshallah*, at the rise of the House to schedule business for the rest of that week. I wish to lay the Statement on the Table of the House.

Hon. Deputy Speaker: Let us proceed to Ordinary Questions. To start off today is Hon. Paul Nzengu, Member for Mwingi North.

ORDINARY QUESTIONS

Question No. 369/2019

TARMACKING OF ROAD BETWEEN KAMUWONGO AND KANDWIA MARKETS

Hon. Paul Nzengu (Mwingi North, WDM-K): Hon. Deputy Speaker, I rise to ask Question No.369/2019 to the Cabinet Secretary for Transport, Infrastructure, House and Urban Development:

(i) Could the Cabinet Secretary explain the rationale as to why there is a disjointed tarmac road between Kamuwongo Market and Kandwia Market in Mwingi North Constituency where a middle section on the said stretch of the road is not tarmacked?

(ii) What measures is the Ministry putting in place to resolve the inconsistency and ensure that the entire stretch of the said road is tarmacked and by when?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: The Question will be replied to before the Departmental Committee on Transport, Public Works and Housing.

Next would have been the Member for Nakuru County, Hon. Liza Chelule, but she is absent and has given us a good reason. Therefore, that Question will be deferred.

Question No. 375/2019

STATUS OF THE ELDERLY PERSONS CASH TRANSFER PROGRAMME IN NAKURU

(Question deferred)

Let us now go to the Member for Baringo Central, Hon. Joshua Chepyegon Kandie.

Question No.376/2019

INTRODUCTION OF SCHOOL FEEDING PROGRAMME IN ARID AND SEMI-ARID AREAS

Hon. Joshua Kandie (Baringo Central, MCCP): Hon. Deputy Speaker, I rise to ask Question No.376/2019 to the Cabinet Secretary for Education:

Considering that Baringo Central Constituency is an Arid and Semi-Arid Area and that most of the school going children face starvation and hunger which consequently affects their learning:

(i) Could the Cabinet Secretary consider introducing school feeding programmes in all primary and secondary day schools in Arid and Semi-Arid Areas?

(ii) What measures are being undertaken by the Ministry to ensure that school going children do not drop out of school as a result of hunger?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: The Question will be replied to before the Departmental Committee on Education and Research.

Let us now have Hon. Jacqueline Oduol.

(Question No.377/2019)

STATUS OF IMPLEMENTATION OF COUNTER-TRAFFICKING IN PERSONS ACT

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Hon. Deputy Speaker, I rise to ask Question No.377/2019 to the Cabinet Secretary for Labour and Social Protection:

(i) What is the status of implementation of the Counter-Trafficking in Persons Act and the National Plan of Action for Combating Human Trafficking with regard to establishment of a functional independent unit to assist in resolving and dealing with human trafficking in the country?

(ii) Could the Cabinet Secretary state the number of victims of human trafficking in the country since 2013 to date, and the number of perpetrators that have been convicted to date?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: That one will be replied to before the Departmental Committee on Labour and Social Welfare.

Next is the Member for Embakasi Central, Hon. Benjamin G. Mwangi.

Question No.378/2019

STATUS OF CONSTRUCTION OF KANGUNDO ROAD

Hon. Benjamin Mwangi (Embakasi Central, JP): Hon. Deputy Speaker, I rise to ask Question No.378/2019 to the Cabinet Secretary for Transport, Housing, Infrastructure, Urban Development and Public Works:

(i) Could the Cabinet Secretary provide details of the status of the construction of Kangundo Road in Nairobi City County by the National Government including scope of works, contract value, the firm awarded the contract and avail a copy of the Ministry's Engineer's Inspection Report, if any?

(ii) Could the Cabinet Secretary confirm whether the contractor is adhering to the standards and specifications as contained in the contract in the construction of the said road, particularly with regard to drainage, pedestrian walkways and crossings and marked diversions for ease of traffic flow?

(iii) What measures has the Ministry put in place to ensure that the said road is constructed to set standards and is completed on time?

Hon. Deputy Speaker: Next is the Member for Mumias East, Hon. Washiali. The previous Question will be replied to before the Departmental Committee on Transport, Public Works and Housing.

Question No.379/2019

STATUS REPORT ON CONTAMINATED SUGAR HELD
BY DIRECTORATE OF CRIMINAL INVESTIGATIONS

Hon. Benjamin Washiali (Mumias East, JP): Hon. Deputy Speaker, pursuant to Standing Order No.42A(5), I rise to ask Question No.379/2019 to the Cabinet Secretary for Interior and Coordination of National Government:

(i) Could the Cabinet Secretary provide the exact quantities of the contaminated sugar being held by the Directorate of Criminal Investigations impounded from factories and other stores across the country in 2018?

(ii) When is the Ministry expected to destroy the contaminated sugar and how will it be destroyed?

(iii) What measures has the Ministry put in place to ensure that such products do not find their way into the country again?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: That one will be replied to before the Departmental Committee on Administration and National Security.

Next Order.

PROCEDURAL MOTION

REDUCTION OF PUBLICATION PERIOD OF A SPECIFIED BILL

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, I beg to move the following Procedural Motion:

THAT, pursuant to the provisions of Standing Order 120, this House resolves to reduce the publication period of the Public Finance Management (Amendment) Bill (National Assembly Bill No. 63 of 2019) from 14 days to 7 days.

Hon. Deputy Speaker, we want to achieve two ends only. One, we want to reduce the publication period because we want to send this Bill to the Budget and Appropriations Committee (BAC) in order to resolve this mediation or the ping pong going on between the two

Houses with regard to the Division of Revenue Bill. As per your Communication today, the 15 per cent the Constitution has allocated to county governments is a direct charge on the Consolidated Fund. So, they can access the 15 per cent given to them by the Constitution. That is why the BAC Chairman and his Committee want to just legislate on that provision. We really want to reduce the publication period, so that this Bill can go to the BAC. When we come back, never again will we haggle over mediation on the Division of Revenue Bill. We do not want to have a situation where counties will not have resources.

I will ask Hon. Mbadi to second this Procedural Motion.

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

Hon. John Mbadi (Suba South, ODM): I second.

(Question proposed)

(Question put and agreed to)

Hon. Deputy Speaker: Hon. Members, for avoidance of any confusion, no Members will be allowed to stand close to where the Speaker is when the Speaker is standing.

Let us proceed. Next Order!

MOTION

REPORT OF COMMITTEE OF THE WHOLE HOUSE ON THE STATISTICS (AMENDMENT) BILL

THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Statistics (Amendment) Bill (National Assembly Bill No.37 of 2019).

(Hon. Aden Duale on 7.8.2019 - Afternoon Sitting)

(Debate concluded on 7.8.2019 - Afternoon Sitting)

Hon. Deputy Speaker: Let me put the Question because I can confirm we have the required quorum.

(Question put and agreed to)

We will now call upon the Mover.

THIRD READING

THE STATISTICS (AMENDMENT) BILL

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, I beg to move that the Statistics (Amendment) Bill (National Assembly Bill No.37 of 2019) be now read a Third Time.

I request Hon. Rachael Nyamai to second.

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Thank you, Hon. Deputy Speaker. I second.

(Question proposed)

(Question put and agreed to)

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

MOTION

APPOINTMENT OF HON. OCHIENG' MBEO AS CHAIRPERSON BOARD OF DIRECTORS OF KFMA

THAT, taking into consideration the findings of the Departmental Committee on Agriculture & Livestock in its Report on the Vetting of a Nominee for Appointment as the Chairperson of the Board of Directors of the Kenya Fish Marketing Authority, laid on the Table of the House on Wednesday, 7th August 2019 and pursuant to Section 201(1)(a) and (2) of the Fisheries Management and Development Act, 2016 and Section 8 of the Public Appointments (Parliamentary Approval) Act, 2011, this House approves the appointment of Hon. Ochieng' G. Mbeo as the Chairperson to the Board of Directors of the Kenya Fish Marketing Authority.

(Hon. Emmanuel Wangwe on 7.8.2019 - Afternoon Sitting)

(Debate Concluded on 7.8.2019 - Afternoon Sitting)

Hon. Deputy Speaker: Debate on this Motion had been finalised. What remained was putting of the Question, which I will proceed to do.

(Question put and agreed to)

Hon. Deputy Speaker: Next Order!

BILLS

Second Reading

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) (NO.3) BILL

(Question put and agreed to)

(The Bill was read a Second Time and committed)

to a Committee of the whole House tomorrow)

First Reading

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL

(Order for First Reading read - Read the First Time and ordered to be referred to the relevant Departmental Committee)

Hon. Deputy Speaker: Before we go to the next Order, let me recognise, in the Speaker's Gallery, Kapkuotenduo Primary School from Sigor Constituency of West Pokot. In the Public Gallery, Kapenguria Town View Academy from Pokot West Constituency of West Pokot County, and Kapset Secondary School from Konoin Constituency of Bomet County.

(Applause)

Hon. Moses Lessonet (Eldama Ravine, JP): On a Point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is it? I will give you the Floor. I had been informed that Hon. Liza Chelule is not in the House, but she has confirmed, beyond doubt, that she is in the House. She is the Member for Nakuru County. Since I know we are going for a very long recess, I will allow her to ask the Question. Quickly, Hon. Liza Chelule. After that we will go back to Hon. Lessonet.

ORDINARY QUESTION

Question No.375/2019

CRITERIA USED FOR IDENTIFICATION AND
REGISTRATION OF ELDERLY PERSONS IN NAKURU COUNTY

Hon. (Ms.) Liza Chelule (Nakuru CWR, JP): Thank you, Hon. Deputy Speaker for giving me this opportunity.

I beg to ask the Cabinet Secretary for Labour and Social Protection:

(i) Could the Cabinet Secretary provide the status and criteria used for identification and registration of elderly persons in Nakuru County who qualify to benefit from the Elderly Persons Cash-Transfer Programme?

(ii) What measures is the Ministry putting in place to ensure that the elderly persons receive their monthly stipends and any other services without having to travel for long distances?

Hon. Deputy Speaker: Well. That will be replied to before the Departmental Committee on Labour and Social Welfare.

Now, Hon. Lessonet, you have all the time to yourself.

MOTION

SENATE AMENDMENTS TO THE DIVISION OF REVENUE (NO.2) BILL

Hon. Moses Lessonet (Eldama Ravine, JP): Thank you, Hon. Deputy Speaker. We have now reached the most important business of the day. I am here to move the Motion in respect of the Senate amendments to the Division of Revenue Bill (National Assembly Bill No.59 of 2019).

Hon. Deputy Speaker, I beg to Move the following Motion:

THAT, the Senate amendments to the Division of Revenue (No.2) Bill (National Assembly No.59 of 2019) be now considered.

This Bill originated from this House as you had alluded earlier and went to the Senate as per the procedure.

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

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

As the Budget and Appropriations Committee, we have been seized of this Bill. You will be well aware that the first Division of Revenue Bill went through all the processes, all the way to mediation, and we were unable to agree, resulting in this Bill, Bill No.2 of 2019. The Senate, after going through this Bill, recommended an increase of the equitable share by Kshs19.17 billion leading to an equitable share in their proposal of Kshs335.67 billion to the counties, but they are unable to tell us where we will get that kind of money. There is a programme in terms of leasing medical equipment and in the Division of Revenue Bill, we have allocated Kshs6.2 billion. The Senate proposes to remove it even when an engagement between the various agencies of the Government and the counties is already happening.

The Senate is equally proposing an increase of Kshs385 million to the Water Tower Protection and Climate Change Mitigation and Adaptation Programme from an initial allocation of Kshs495 million. This is a European Union (EU) financed project, meaning it is specific and targeted. We shall not agree with that kind of proposal. You may recall that this House approved the Division of Revenue Bill No.2 of 2019 as county equitable share of Kshs316.5 billion from our original allocation of Kshs310 billion because we thought we can afford that much.

I just want to inform the Members briefly that in the Budget for the Financial Year 2019/2020, and the Appropriation Bill is already signed, the Teachers Service Commission (TSC), for example, has been given Kshs251 billion. That is untouchable. It is a no-go zone. The entire Ministry of Education including TVET, the free primary and secondary education and universities have a total allocation of Kshs235 billion that cannot be given to counties. We have an allocation of Kshs122 billion to Defence. It is also a no-go zone. We have Kshs140 billion to Internal Security, which cannot be touched. When you add just those four items, it gives you Kshs748 billion. When you bring in the Consolidated Fund Service, which this Parliament cannot reduce even Kshs1 of the Kshs805 billion, that brings to a total of Kshs1.553 trillion, which I can term as mandatory payments by this House.

I have not mentioned the National Government Constituencies Development Fund (NG-CDF), the Parliamentary Service Commission, the Judicial Service Commission, other commissions and all the other ministries. This is to tell you that when this House proposes Kshs316 billion, it means they cannot get any other money. We want the Senate to understand that.

If we look at the audited books of accounts as at 2014/2015, which this House has approved - and we are calling upon the Public Accounts Committee (PAC) to fast-track the review of all the accounts, so that we can move on - we are aware the Auditor-General has submitted reports up to past 2014/2015. We need the PAC to do their job. As per the law, we are required to give counties a 15 per cent minimum threshold as provided in the Constitution. So, if you look at the Kshs316.5 billion, it is already 30.4 per cent allocation to the counties. That is already double the amount provided in the Constitution.

I do not want to belabour this point because I know Members are already aware of where we are headed. After taking these important factors into consideration, the Budget and Appropriations Committee urges this House to reject these recommendations by the Senate and allow both Houses to proceed into mediation on this.

With those remarks, I ask Hon. Makali Mulu to second.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Speaker. I second. Without wasting a lot of time, your Communication this afternoon set the record clear in terms of this Bill. The Senate is playing around with Kenyans. What annoys me most is the fact that the first mediation process agreed at Kshs327 billion in the Senate and Kshs316 billion in the National Assembly. I do not understand what motivates them to go to Kshs335 billion.

With those remarks, I ask this House to reject the amendments.

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): I will give the first opportunity to Hon. Mbadi, but before he makes his contribution, it will be good for me to advise that it is important for the House to know that in the event you agree with this, then you will be agreeing to proceed with it. So, you need to be very clear in your minds on what you want to do.

Hon. Mbadi, proceed.

Hon. John Mbadi (Suba South, ODM): Hon. Temporary Deputy Speaker, I also want to urge the House to reject this proposal from the Senate. We have talked about this matter. We need to be very clear and categorical that even though county governments still need more funds, just like the national Government, we must admit and accept that as a country, we are overstretched. Hon. Lessonet spoke about some figures here. I want to re-emphasise that the projected revenue collection is Kshs1.877 trillion.

The amount that is allocated for debt repayment without the debt rollover of Ksh585 billion added to Kshs109 billion for Consolidated Fund Services to pay pensions and constitutional office holders' salary, added to Kshs261 billion that goes to constitutional commissions, added to Kshs73 billion that goes to Parliament, Judiciary and other independent offices and added to Kshs12 billion that goes to the Contingency Fund and the Equalisation funds comes to Kshs1.41 trillion. That leaves you with only Kshs836 billion. Then take out Ksh340 billion that we are allocating to counties in terms of equitable share and conditional grants. That will leave you with Kshs496 billion. If you total all the recurrent expenditures for all the ministries, you will get almost Kshs700 billion. That means, as a country, we are not able to cover our recurrent expenditure. So, why should we continue to live a lie that there is some money somewhere? I do not understand the rationale. I believe that if counties prudently use Kshs316 billion, we will not have starved counties.

There has been an argument that when a proposal comes from the Commission on Revenue Allocation (CRA) it should be final. The Senate is forgetting that every five years, it determines the formula for sharing revenue among the counties. In Article 217, before the Senate makes that determination, it has to request and consider the recommendations from CRA. It recently got the recommendation, but it has not passed the proposed formula because Senators disagreed on it. For us, the National Assembly, they want us to rubberstamp the County Revenue Allocation Bill.

Finally, before I sit down, I have been a supporter of CRA. However, they have disappointed me of late. Once CRA performs its constitutional mandate of making recommendations on how much should go to the national and county governments, they should stop there. The idea of CRA using public funds to be enjoined in a case in court and taking a partisan stand baffles me. I have realised that we are putting people who are political in positions they are supposed to be professional. The CRA is turning out to be a political organ and yet it is an important constitutional commission that should be neutral and offer only professional advice to this country. It is causing confusion and that saddens me.

Thank you, I oppose.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us now have the Leader of Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Speaker, we are back to the ping-pong.

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Leader of Majority Party, before you make your contribution, I want to recognise the presence of students in the Speaker's Gallery of Chebulu Secondary School from Emurua Dikirr Constituency, Narok County, Kipsinende Primary School from Ainabkoi Constituency, Uasin Gishu County, and Marell Academy from Kanduyi Constituency, Bungoma County. They are welcome to observe the proceedings of the National Assembly.

Proceed, Leader of Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Speaker, we are back to the ping-pong business. As Hon. Makali said, the Senate and the National Assembly were somewhere in the mediation process. We were at Ksh327 billion. Now, it has given an allocation of Ksh335 billion. That is not realistic. Let the country hear this. Already, we have a fiscal framework that we cannot deviate from. Our revenue projections are known. For the 2019/2020 Financial Year, it is Kshs2.1 trillion. Our total expenditure is projected at Kshs3 trillion. That is a serious figure. We know how much we have allocated to Parliament and the Judiciary. They are independent institutions and you cannot touch their budgets. You cannot touch a penny from the national Government. I tabled here over 543 stalled projects totalling to about Ksh28.9 billion, which we cannot fund. I ask this House to reject this Bill. The notion that counties will be in cash crisis is a fallacy.

Article 203(2) of the Constitution gives counties a minimum of 15 per cent. They should budget on the minimum of 15 per cent. If you read Article 206(2), the 15 per cent and the Equalisation Fund are the only two funds that the Controller of Budget does not need to approve. They are directly charged on the Consolidated Fund. So, the idea of telling us that counties will be in a crisis is a fallacy.

The Constitution says counties should get a minimum of 15 per cent. As we negotiate the other 15 per cent with the Senators, counties should get the 15 per cent for their salaries and development. That is a direct charge. The two funds that are a direct charge within the realm of

Article 206(2) are the Equalisation Fund and the 15 per cent for counties. Article 203 talks of the priorities to be charged. One of them is the national debt. As a country, we must pay our debt. We must pay for the national interest, including security. Paying for devolved system comes after the National Government Constituencies Development Fund (NG-CDF).

Finally, in the nine years of devolution, 85 per cent of what we sent to counties in terms of resources was from the equitable share. The question I want to ask is: What happened to the counties' own sources of revenue? The former Garissa County Council, which later became a Municipal Council, used to collect more than what Garissa County collects today. Muranga County Council used to loan money to the national Government. Today, all the 47 counties are collecting less money than their former county councils and municipal councils. Where is that money going? We must ask ourselves that question. We appropriate and oversee. Our business is to appropriate. We give money and it is our business to follow up and establish whether that money will be given to your brother, your sister, your grandfather, or you will steal it. In fact, this House should ask the Financial Reporting Centre, which is a creation of this House, to tell the Director of Public Prosecutions (DPP) and the Director of Criminal Investigations (DCI) how much money the governors are holding in their private accounts. We are aware of governors who have Kshs2 billion to Kshs3 billion in their accounts. During elections, we fundraised for them. We paid our money. Today, they have Kshs2 billion in their accounts. *Hapana!* We will not allow that.

Therefore, we must reject this Bill. When we go on recess, we will start the mediation process. The same team that mediated with the Senate last time, led by Hon. Mbadi, Hon. Ichung'wah, Hon. Makali, Hon. Cecily Mbarire and myself, will mediate. We have some institutional memory. We will not change that team. If we have to change, we will pick more hardliners like Hon. Kaluma. He brought a baby to this House yesterday. So, he is no longer our friend.

(Laughter)

So, I ask this House to reject that Bill. Where will we get this money? During the mediation, we will call the Chief Registrar of the Judiciary, the two Clerks of Parliament and representatives from the National Treasury and ask them: Among you, who is ready to give money? If we add money, it means we are going to borrow. Borrowing means taxing Kenyans more.

I oppose and ask that you put the Question.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, just allow me to recognise the presence, in the Public Gallery, of pupils from AIC Visa Oshwal Primary School, Baringo Central Constituency, Baringo County and students from Soliat Boys' High School, Sigowet-Soin Constituency, Kericho County.

Hon. Rachael Nyamai, what is out of order?

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Hon. Temporary Deputy Speaker, I rise to request for closure of debate because we have debated and re-debated this matter. So, I request that the Mover be called upon to reply.

Thank you, Hon. Temporary Deputy Speaker.

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

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Mover.

Hon. Moses Lessonet (Eldama Ravine, JP): Thank you, Hon. Temporary Deputy Speaker. I also thank Members. I beg to reply that this Motion be rejected.

I thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Order Members. Allow me to put the Question having confirmed that we have the requisite numbers to do so.

(Question put and negatived)

Hon. Members, having made the decision that you have just made, it means that the following direction is proper: The Order listed as No.14(i) will now become *otiose*; it will not be considered. I direct that we move to the next business.

COMMITTEE OF THE WHOLE HOUSE

(Order for the Committee read)

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

IN THE COMMITTEE

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

THE NATIONAL DROUGHT MANAGEMENT AUTHORITY (AMENDMENT) BILL

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, we are now in the Committee of the whole House to consider the National Drought Management Authority (Amendment) Bill (National Assembly Bill No.26 of 2019). It is notified that this Bill has no amendments. So, we shall proceed as follows.

(Clauses 3 and 4 agreed to)

(Clause 2 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Christopher Omulele): The Mover, you have the Floor.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the National Drought Management Authority (Amendment) Bill (National Assembly Bill No.26 of 2019) and its approval thereof without amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT AND THIRD READING

THE NATIONAL DROUGHT MANAGEMENT AUTHORITY (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. Christopher Omulele): Yes, Hon. Rachael Nyamai.

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the National Drought Management Authority (Amendment) Bill (National Assembly Bill No.26 of 2019) and approved the same without amendments.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Thank you, Hon. Rachael. Let us have the Mover.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said report. I request Hon. Wario, Chair of the Departmental Committee on Labour and Social Welfare to second the Motion.

Hon. Ali Wario (Bura, JP): I second, Hon. Temporary Deputy Speaker.

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, I will direct that the next necessary steps on this particular Bill be undertaken when the matter will be set down for consideration next time. I direct that we move to the next business in the Order Paper.

(Putting of the Question deferred)

BILL

Second Reading

THE SECTIONAL PROPERTIES BILL

Hon. Benjamin Washiali (Mumias East, JP): I thank you, Hon. Temporary Deputy Speaker. I rise to move that the Sectional Properties Bill (National Assembly Bill No.23 of 2019) be now read a Second Time.

This is a very important Bill. It seeks to repeal the Sectional Properties Act of 1987, which is an archaic law when it comes to ownership of units in a building or what we call apartments. This Bill comes at an opportune time when many Kenyans are crying foul of being defrauded upon buying units in buildings only to find that the original owners of the land where the buildings are do not hold their title. The Bill will ensure that Kenyans who buy apartments have their titles; what we call sectional plans registered, which will prove ownership. This will help many Kenyans to secure loans in banks using the titles.

Recently, we saw in the news a sad story of Kenyans who invested in Suraya Properties through the so-called off-plan scheme, but with nothing to show other than the deposits they had paid. Recently, we had a Petition by the Member for Lang'ata Constituency on Sifa Towers of Lang'ata near the Nairobi Dam. I will tell you something with a lot of confidence, because I belonged to a committee that handled issues on environment and, in fact, there was a petition that was brought here. All that the owners of Sifa Apartments had were the purchase agreements. They did not have any title deeds to show they were the owners of the apartments they had bought. We also heard of the Four Ways Junction on Kiambu Road, which many Kenyans invested in, but the property has wrangles with regard to ownership of the land where the many stand-alone houses and apartments are built. The Bill seeks to streamline all these by ensuring registration of units in a building to the individual owners upon purchase. Allow me to give a brief summary of the contents of the Bill.

The principle object of the Bill is to provide for the division of buildings into units to be owned by individual proprietors and common property to be owned by the proprietors of the units as tenants in common. The Bill is divided into five parts: Part I is the preliminary and consists of the short title, application and interpretation. The Bill shall apply only in respect of land held in freehold title or on a leasehold title where the unexpired residue of the term is not less than 21 years and there is an intention to confer ownership.

Part II deals with the preparation and registration of sectional plans and units. Clause 4 of the Bill in particular, provides that an existing structure may be designed as a building containing a unit or part of a unit or divided into two or more units by the registration of a sectional plan prepared by a surveyor from a building plan that has been approved by a county government.

Part III deals with the establishment of a corporation known as the "owners sectional plan number". The corporation shall consist of all the owners of the units. Clause 20 provides the duties of the corporation, which shall consist of controlling and managing common property. The corporation shall maintain a fund for administrative expenses. A corporation shall have a board of management that shall be constituted as provided by the by-laws of the corporation.

In Part IV, the Bill contains provisions on matters relating to units, including their sale, the entering of a management agreement and renting of the units. Clause 43, and I want Hon. Members to listen to me carefully, provides that a developer shall not sell or agree to sell a unit or proposed unit unless the developer has delivered to a purchaser a copy of the purchase agreement, the by-laws or proposed by-laws and the management agreement among other things.

Hon. Temporary Deputy Speaker, if you allow me, I will go back to this. It is important that Members relook at Clause 43, which proposes that the developer shall not sell or agree to sell a unit or proposed unit unless the developer has delivered to a purchaser a copy of the purchase agreement, the by-laws or proposed by-laws and the management agreement among other things. This is very important because developers, many times, have been entering agreements without many of these management agreements being put in place.

Part V contains miscellaneous provisions that provides for the termination of sectional property, dissolution, assessment and the taxation by the rating authority, public authority or persons authorised by either a county government or public authority, the service of the documents and notices, offences and penalties and the power of the cabinet secretary to make regulations. As I conclude, allow me to reiterate that this is a very important Bill as it will redefine the manner in which Kenyans own apartments by ensuring that their property and ownership interests are protected.

Hon. Temporary Deputy Speaker, I wish to end there and request Hon. Rachael Nyamai, who is the Chair of the Departmental Committee on Lands, to bring out the position of the Committee as they are the ones who did a Report on this Bill.

I thank you, and I beg to move.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. Let us have Hon. Rachael Nyamai.

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to second the Motion on the Departmental Committee on Lands on Sectional Properties Bill.

The Mover of this Bill has done a very good job by indicating to the House what this Bill is all about. He has tried to show how important this Bill is to the country. As you are aware, the Sectional Properties Bill 2019 was read the First Time in May 2019 and was referred to the Departmental Committee on Lands. We did public participation in accordance to Article 118 of the Constitution and also Standing Order No.127. Our Committee took a lot of time in indulging stakeholders from whom we received submissions. The stakeholders included the Ministry of Lands and Physical Planning, the Institution of Surveyors of Kenya and an individual Kenyan by the name Mr. John Gardner. We took much time to listen to what the stakeholders had to say with regard to this important Bill.

The Sectional Properties Bill is a very important Bill for this country at this time. The Majority Whip has explained that many Kenyans have fallen into traps laid by fraudulent developers leading to loss of property. He has given an example of Suraya, an outfit which sold property to individuals without knowing that there were many challenges regarding the ownership of property. Some of them lost money. This law is coming at a time when Kenyans are purchasing flats that are constructed on pieces of land that one cannot tell whether they are secure or not.

This Bill seeks to regulate the process of division of buildings into units to be owned by individual proprietors as tenants making use of common areas. In doing so, the Bill seeks to repeal the Sectional Properties Act of 1987, which we realised is an archaic law that refers to the defunct local authorities as opposed to counties being the institutions that are responsible for giving approvals for sub-division and consolidation of units through registering sectional plans.

The Sectional Properties Bill seeks to align the law of division of buildings into apartments with the Constitution. It is noteworthy that the Committee took a keen interest on this Bill and the submissions made by various stakeholders during public participation. We did this to allow for input to be given by people including investors and those experienced in construction of houses and those who have purchased flats constructed on pieces of land they do not own.

First, the Committee observed it would be important for purposes of registration of sectional plans for the unit plans to correlate with existing structures and also with approved building plans. There are opportunities where one realises that the flat they purchased does not

correlate to the approved building plans. This law will bring this to an end and ensure what is registered is not a non-existent structure.

Currently, it is very easy to see an apartment being described by the sellers as having lots of good quality features to entice people to purchase. In reality, when you go to the structure, you realise that it is a different structure not befitting the apartment advertised. This is happening mostly in areas where purchasers buy off-plan. The Committee also observed that county governments should issue endorsement of every plan presented for registration and must be satisfied that the structure conforms to the development scheme, control and land use laws among other considerations.

This House recently passed the Physical and Land Use Planning Bill, which is being used to regulate physical and land use matters in planning and development control. I recall we had a lot of back and forth with the Senate when we were passing this law, but at the end of the day, we came up with a very good law. It will be used to ensure that physical and development plans are put into consideration. When this Bill becomes law, it will go further to ensure that physical and development plans are adhered to.

The Sectional Properties Bill seeks to ensure that registration of plans conforms with land laws including matters relating to development control as contained in the physical plans and land use planning laws. The Committee further deliberated on the issue of whether the Bill should contain provisions of property managers. We discussed this matter at length with stakeholders who felt that managers of properties should belong to a certain profession and gave examples that property managers should be surveyors or quantity surveyors.

To this end, the Committee observed that although the proposal of appointing property managers was varied, the requirement that all property managers shall be surveyors or real estate agents was very limiting. The Committee further observed that property managers need to have managerial skills and not necessarily be surveyors or estate agents. This was limiting bearing in mind that these properties belong to individuals who have a right to make a decision on who they want to manage their properties. Others make a decision to have a kin they trust to manage their properties. For that reason, we felt it was not necessary to push towards having real estate agents or surveyors as was proposed.

The Committee received submissions during public participation requesting for establishment of a sectional properties tribunal. We looked at this matter as one that was likely to expose investors and purchasers to unnecessary judicial processes in matters that can easily be handled by the investors or owners of the building. On this one, the Committee observed that the proposal to establish a sectional properties tribunal was not in order. Clause 20(6) of the Bill has already provided for an Internal Dispute Resolution Committee to hear and determine disputes as opposed to putting people through judicial process that are likely to take a very long time and are expensive.

The Committee also observed that noting the nature of disputes that are likely to arise between owners of units, having a tribunal which is quasi-judicial in nature with strict rules and procedures, would not be appropriate for determination of disputes likely to arise on a day to day basis within the sectional properties. For example, you can imagine a dispute on a small matter like one playing very loud music in their apartment such that other apartment owners cannot sleep. For this to be taken through a judicial process, we felt it was unnecessary. Should such a dispute be transferred to a tribunal? Certainly not.

Another dispute is where every night one approaches the building hooting loudly and the noise causing the neighbours discomfort in their ears. Hon. Temporary Deputy Speaker, sorry, I

might have translated Kamba to English. I was trying to give a very simple dispute of a person who approaches the building hooting loudly. You can imagine such a matter being taken to the tribunal. We said it was not necessary to put people through such. Such disputes should not be taken to tribunals, but to a committee where they can be sorted out with ease without costing owners of buildings money and wasting time. The tribunal process is likely to be expensive and unnecessary.

Finally the Committee received submissions during public participation on the need to provide for registration and vetting of developers of buildings. The Committee observed that the Bill already provides for safeguards against fraud by requiring developers to deliver to the purchaser certain documents. So, it is not necessary that all people who are developing buildings in a certain county be put into a record. We feel that this is not necessary because by presenting the documents that they do present to the purchasers of the flats, they will have given enough information and they do not need to be put into a record. We also felt that this can be used by some individuals to expose investors and it is not necessary because they are registered with the Kenya Revenue Authority (KRA) and so it is an unnecessary process.

The Committee also observed that the requirements for registration and vetting of developers of buildings by the Cabinet Secretary is also bound to limit the ease of doing business in the country. So, we felt that it was not necessary to record people who are constructing buildings.

I will move on to the recommendations of the Committee. Having analysed the Bill vis-à-vis the memoranda submitted by the public, the Committee recommends that the Bill be approved and passed by the House subject to proposed amendments. I would also like to point out that when we had finalised, we got some more amendments from the Ministry of Lands and Physical Planning and we agreed that we could not go backwards. The Leader of the Majority Party will carry those amendments in the subsequent readings of the Bill.

As I conclude, allow me to thank the Members of my Committee. You realise that we have had many Bills this time. We are also receiving many petitions and Questions to be answered by the Ministry. I thank the Members of the Departmental Committee on Lands for being dedicated and sitting down to read through Bills, which is not a very interesting process, and also bringing amendments and engaging stakeholders to come up with the Report that we have. I would also like to take this opportunity to thank the Legal Department of Parliament for the support they give us. I also give very special thanks to the Secretariat of the Departmental Committee on Lands, led by Mr. Machira. They have been doing a very good job. I thank them very much for being dedicated in doing their work.

With those few remarks, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us have the Leader of the Minority Party.

Hon. John Mbadi (Suba South, ODM): Thank you, Mr. Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): It is Madam Speaker. Leader of the Minority Party, surely, and you are just looking at me. Is there any confusion?

Hon. John Mbadi (Suba South, ODM): Madam Temporary Deputy Speaker, some of these words are just embedded in people's heads. We never think about them seriously.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuyu): You better shift the thinking.

Hon. John Mbadi (Suba South, ODM): My apologies, Madam Temporary Deputy Speaker, I hope I will not make the mistake again. I thank you for giving me the opportunity to contribute to the Sectional Properties Bill (National Assembly Bill No.23 of 2019).

First of all, we need to ask ourselves why this Bill is necessary and what is it all about. We know that presently, we have a law in place called the Sectional Properties Act 1987. However, this Act is not responsive enough to emerging market needs such as the growing demand for affordable housing in the country and the mixed use of houses or buildings or for mortgage transactions. We are all aware that they are very many. In fact, the current trend of property development in this country is largely on property that is multi use property.

Apartments are the most preferred choice in terms of property acquisition especially for the middle income earners. There are cases where we even have one property being mixed use. It is both office and residential area. Therefore, this Bill will provide for the division of buildings into units that are owned by individuals, proprietors and common property to be owned by proprietors of the units as tenants in common.

Many of us reside in this kind of setup where there is a building which is divided into various residential units and again besides the building, there are common services. We have shops, swimming pools and many others that are shared jointly. When this Bill becomes law, it will provide clear mechanism on how to own a unit within a building and also go a step further to regulate how the common services can be managed by forming a corporation, which will manage and run the services that are jointly owned. When the lease period ends for one who owns a unit, then the Bill vests reversionary interest in which case the legal title to the property will revert back to the freeholder on individual unit owners and guarantees rights of property owners by conferring absolute rights to them.

The proposed law will enhance revenue collection. At the moment, for example if a building has 20 units of apartments, the payment of rates and rents will be done jointly. There is only payment of rates and rents as one unit. The 20 owners of various units will be contributing proportionately to what they own, but ensuring that that money is paid. This becomes the responsibility of the person who holds the mother title. The problem comes where, for example, ten people out of the 20 pay their share and the others do not pay. Then all of them are exposed to risk. This would lead to the Government losing rents and rates. Therefore, it is important that each unit is assessed separately and payment is made individually. It also gives someone pride just to feel that you own fully the unit that you have.

As I said, currently, rates and rents are paid by individual unit holders as service charge to the corporation and management companies. I am sure we all understand that individual owners would form themselves into a corporation apportioned among all other unit holders. As I said, the assessment will be done as one freehold property. However, in the event we have individual assessment and payment is made individually, it makes it easy for both the Ministry of Lands and KRA to follow up on defaulting unit holders. This, therefore, will enhance revenue collection.

Clause 5 of the Bill provides for the closure of the mother title to prevent mischief by property developers who seek to hold onto ownership arbitrarily even after selling off the units to end purchasers. We all know that properly marketers also become a very con sector of our economy. Kenyans have tried to purchase property off-plan and in the process, many have lost their hard earned income because of people who can sell one unit several times. If we do not

provide a legal framework where individual unit holders have a title and a system where they can claim ownership to the unit and the space that they have bought, then we expose them to possible fraud by mischievous developers.

Hon. Temporary Deputy Speaker, this Bill will have the effect of vesting absolute rights on the individual units' owners as they wish as opposed to being at the mercy of developers. Clause 6 provides for the preparation of a sectional plan by a surveyor from a building plan which is approved by the county government and the registration of the sectional plans by the registrar and the process of issuance of the certificate indicating share in common property. Once this Bill becomes law, it will be very clear on how individual unit owners will have their sectional plan surveyed and registered and even how they will form part of the ownership of the property that is held in common. I may mix the legal terms, but you understand that this is not an area where I have taken my academics. They are elsewhere.

The strength of this Bill is also on the strengthening of by-laws and how they can help in running and management of the affairs of the corporation when the owners form a corporation. The Chair of the Departmental Committee on Lands, Hon. Rachael, spoke about this very eloquently. Everything will not be referred to tribunals, which we all know cost a lot of money and they are judicial processes. They are always very laborious, lengthy and take time. The by-laws have given powers to the board of management which will be dealing with these matters more or less internally. They will be enforcing the regulations or rules as long as they are registered with the registrar. It will be very easy to manage the affairs of these units. As a country, we are moving to a system where most of our legal framework should more or less be managed internally, so that we do not always refer every other dispute to the court. We must have alternative dispute resolution mechanisms.

Clause 20, which I find very useful, provides that the corporation shall ensure that the buildings are insured. We all agree that it is very painful when you purchase or acquire a flat after taking a loan or working for very many years and it becomes your dream property and then all of a sudden, you lose it in the event of fire or any other thing. Then what happens? This clause provides that the corporation that is formed by the owners will ensure that the building is insured, so that in the event of loss, you can be compensated and you can start life again.

Clause 38 also requires the developer of a building to insure the units and the common property against loss resulting from destruction or damage caused by fire or any other perils where a sectional planner has not been registered prior to the sale of any units. We know that buying or purchasing off-plan has become very attractive to Kenyans although with attendant risk as I mentioned earlier of unscrupulous developers who take money from unsuspecting Kenyans and then do not deliver the property. However, we must still accept that a lot of property is still bought off-plan. If that is the case, what happens where, for example, the developer has received money from various potential buyers and before the units are given to the buyers, they are damaged when they are still under construction by fire or any other peril like natural calamity? What happens to those who had already paid money? You cannot say that the developer will pay because he may not have the financial capacity to do it. Even if you take them to jail, so what? You will still have lost your property.

Clause 38 of the Bill provides that the developer will be required by law to insure the units where a sectional planner has not been registered prior to the sale of any units. Therefore, these are very good provisions.

I support this Bill strongly. This is an area that has taken us a bit of time before we polish it. We all know that the middle class in this country are moving towards the communal

ownership of property. We need to provide very explicit legal framework on how to acquire the units, the rights to have, what happens in the event before taking possession of the property, what happens when they have property and what happens to the management of the property. There is a case that is going on, but I do not want to talk about it. A property was developed by someone and after that, it was sold. Then a company was formed and the person who sold the property retained the majority shareholding. Then what happens? Does it mean that that person still continues to dictate to others and yet he is probably one among the many? There are over 50 other people who own property and you are just one, but you end up being the only one who decides, dictates and controls what happens in that property. This Bill will tidy up this system of property ownership.

I support the Bill. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Well said, the Leader of the Minority Party. Let us have Hon. Mohamed Sheikh, the Member for Wajir South.

Hon. Mohamed Mohamud (Wajir South, JP): Thank you very much, Hon. Temporary Deputy Speaker. I will be quite brief. I support the Bill. People should not lose their properties because of poor registration and documentation. I support what the Leader of the Minority Party has emphasised on.

Clear cut legislation based on this requires that this country examines land ownership by communities. It has been a while before such a Bill has been brought forward. Every individual has the right to clear demarcation of his land and understanding within the legal measures.

Therefore, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Okuome Adipo, the Member for Karachuonyo, you have the Floor.

Hon. Adipo Okuome (Karachuonyo, ODM): Thank you, Hon. Temporary Deputy Speaker. I support the Bill knowing that the population of Kenya and the demand for houses is growing, but land is constant.

I will refer to the past when you wanted to own a house. You would need to buy a plot which was very costly. Such plots are almost impossible to come by. So, this Bill is trying to sort out problems for us with regard to acquisition of a place to live in. You can have 50 or 100 people in one block of flats or apartments each owning a unit. That way, you accommodate many people on one plot. The security situation in the country is getting worse. If you live in a stand-alone house or property, you risk getting attacked. In case of an attack, you are on your own. You will not know what to do and you will not ask for help from neighbours because there is none. So, having many people in one block provides security, which is very important. Because of that, I find this method very good. I totally support it. I believe we are moving in the right direction. I do not want to take more time. The idea is supportable.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us have the Member for Kandara.

Hon. (Ms.) Alice Wahome (Kandara, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to the Sectional Properties Bill. It is a timely Bill introduced by the Committee at this stage. I listened to the Chair of the Departmental Committee on Lands. It is critical that we protect consumers.

Kenyans have suffered for a long time in the hands of criminals, fraudsters and people who have no respect for dignity, human beings and integrity. We have seen many people lose

money because they invested in properties that are not clear or in places where the title is not clear. This Bill must address the recent cases of people conning Kenyans of their money.

The developers have a big challenge on how to deal with buyers. The off-plan purchase that Hon. Mbadi referred to is an area that needs to be scrutinised and tacked properly in law. Many times, it is after the structure has come up that you will tell whether a particular land parcel is genuine. Kenyans are very naive. They prefer going directly to the developers, pay the deposit even without consulting lawyers or seeking legal advice and fall into the wrong hands.

Therefore, the process of agreements being required as part of registration documentation has not been the case before. It is a very new innovation, according to the Bill. It is a welcome proposal. The most important thing is: At what stage should off-plan sales be allowed in law? I would like to see - and I hope the Chair is noting my point - off-plan purchase allowed at a certain stage when buildings have taken off. That can be controlled under the statute, so that we may propose when the off-plan purchases can be allowed, like when the building is 30 per cent completion after commencement of construction. This will enable people to assess the capacity of the developers. We have seen many of them take money and promise to hand over a flat in two years, but that does not happen even ten years down the line.

I have seen the proposal regarding the tribunal. The reason tribunals were encouraged and introduced into the judicial system, though they are quasi-judicial, was to make the process of litigation easy, less expensive and less litigious with clear, specific and easy language and rules and regulations, so that the litigation is concluded quickly without unnecessary cost. With that, we need to see whether the tribunal as established and proposed in this Bill encourages quick disposal of disputes. Therefore, removing disputes from tribunals will not be a solution because we have seen inefficiency in some committees. We have seen corruption in private business and Government transactions. I would like to see a situation where a tribunal is a better structure to resolve disputes. I believe this matter may require to be re-looked at, so that we allow for a quick and summary way of dealing with disputes in tribunals instead of committees. This law is timely. The lands office still has some challenges in terms of data and accessibility to details and documentation regarding titles. Sectional titles is a new way of handling block titling.

Hon. Temporary Deputy Speaker, the Bill proposes the surrender of original title, so that the sectional titles can be prepared quickly, but I know you understand this area. Management companies retain a lot of authority or power to collect other money from owners of blocks, in my view, against the law. Management fee has become like another rental income for original owners with proposal of shares. If you look at the control that owners of titles have against the management company, you will find that there is a gap. It exposes the owners of titles.

With those comments, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuyu): Let us hear Hon. Oduol Adhiambo.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to contribute.

From the outset, I support the Sectional Properties Bill. Kenyans face challenges given their ignorance when they purchase property. According to the Sectional Properties Bill, a Kenyan who would like to own property that is part of a larger one, like an apartment, is given clear focus. Indeed, they will not have problems of wondering whether or not they can get a loan using the property or a title deed and most importantly, if they should get an apartment or complex where there are others and how to deal with their neighbours. It is also clear that this is the way to go. As we look at the high cost of land and its scarcity in Kenya, we see that the

future of Kenya's real estate is going to be one where we need to have clear sectional property laws and regulations. We also need to get Kenyans to shift their paradigm from being so obsessed with looking at land from a horizontal perspective as it sometimes leads to conflicts that can even cause families to split, and begin to see the advantage of having a vertical perspective where we can have this kind of protection.

When we look at the 1987 Properties Act, which was hailed by a number of people including renowned scholars as being revolutionary, we can see that we are moving forward, we are not sitting back and being relaxed that the 1987 Sectional Properties Act was considered revolutionary and useful because it had picked different ideas. Therefore, it is dynamic, but in particular focusing on how can we improve so that the interests of purchasers are taken care of.

I also want to appreciate that we have had professions. I say this with humility. We have had contexts where Kenyans are completely lost because when they get professionals like surveyors and even lawyers as they choose to make investment, they are in a way inhibited and sometimes they tend to make very poor decisions. We heard from the Chair, Hon. Nyamai ways of ensuring that we do not lock out any opportunities to settle disputes to a tribunal or to a rigid legal framework. We should also ensure that the management of properties be opened up so that people are allowed to engage. This is very important. However, as I support, I would have requested that, perhaps, we get greater clarity.

The whole idea of devolution was power to the common man and woman and we wanted as much as possible that they would have greater confidence in terms of not only of direction the counties would go, but that their voice would matter.

The submission that we might not be so keen in this Bill is to have a register of investors who would like to put buildings with consideration or argument that we already have a situation where these investors will have registered with the KRA and therefore they would not need to have this kind of register. This is something I would ask the Committee to provide clarity on. As we debate, it would be useful to say we need greater transparency. If we were to have a situation where we even get to have greater clarity of whom it is investing in a particular county, it should not be seen as something that is negative.

I support this Bill because it is timely. The kinds of proposals that we are making are practical and timely. I believe that in the very same spirit, as we are looking at Kenya from the point of counties and devolution where we would like greater transparency. It would be useful to have a register of investors in the county to ensure that anybody investing will have the confidence and also be sure that those people who are there are aware.

With these remarks, I support. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Well put. Let us have Hon. Thuku Kwenya, the Member for Kinangop.

Hon. Zachary Thuku (Kinangop, JP): Thank you, Hon. Temporary Deputy Speaker, for this opportunity to speak on this Bill. From the outset, I wish to support and congratulate the Committee on Lands for this very timely Bill. Sectional property ownership is something whose time has come. We have had the Big Four agenda coming from the President. One of the issues

that he is trying to address is that of housing. From that point of view, you will find that land has become very dear, and not many Kenyans can afford land. The available chunks are within the hands of a few individuals. That being the case, this Bill gets its credit from that point. The reason is that many of the developers who are doing flats find it very difficult to sell part of the flats to would-be property owners. They are limited because we do not have a clear legislation like the one that is before us today.

We have had issues in the past where merchants who are in property development have come up with strategies of ripping off Kenyans. They come up with agreements that are not based anywhere in law. After you pay the money, you cannot claim it back because the transaction was illegal from the word go, and therefore, this Bill is addressing those pertinent issues. You find that from the Bill, if you are to look at Section 4(2), for a surveyor to register sectional title, original ownership must be proved. It means that property buyers will be cushioned against fraudulent practices.

I am supporting this Bill on two facets. The first one is the issue of security which I have spoken to in terms of not just losing the money but the peace of mind that comes with the fact that you hold the title of property that you claim ownership to.

Secondly, the other facet is the issue of that being collateral; many Kenyans own properties but it is just that. It is in a few sheets of papers that they cannot prove or that cannot be taken as security in banks. Having a registered sectional title gives you confidence to walk into any financial institution and secure yourself credit for further development or even for ownership of more properties. Kenya being a capitalist economy that it is, you can own as many properties as your creditworthiness can allow.

Therefore, I wish to support this Bill based on those two facets and also encourage Hon. Members to support the same and maybe strengthen it, through amendments of few areas that are of interest just to make sure that we safeguard and lock it completely. This will ensure that fraudsters who have been going round trying to convince Kenyans to buy properties that are not tied anywhere are stopped. I have a case study of myself. Hotels are also adopting the same motto whereby they are selling part of their apartments for a given period of time. You can occupy a hotel apartment for two weeks or a year and they purport to give you some leasehold for that particular apartment which does not materialise.

I am a victim. I lost money at one point with a promise of owning some property in Malindi. Supposedly, I was to occupy that property only for two weeks then have it leased for the rest of the year to someone else and I had a title to that effect. This is a game that has been played to very many of us. Therefore, this Bill could not have come at a better time. It is going to help Kenyans and cushion us against those conmen and also help the President in realisation of his Big Four agenda.

With those few remarks, I wish to support.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us have the Member of Funyula, Hon. Oundo.

(Dr.) Wilberforce Oundo (Funyula, ODM): Thank you Hon. Temporary Deputy Speaker for this opportunity to contribute on the Bill on sectional properties.

For record purposes, this Act is an update or upgrade to the existing Sectional Properties Act. I suppose this upgrade is as a result of the intention to align it to the new constitutional dispensation and to take account of the emerging challenges in the registration of partial or fractional interests.

The import of this Bill is to introduce a second legislation in respect of registration of properties. The principal or the main Act that registers properties or recognises rights and properties of the Land Act (No. 6) of 2012... Therefore, the Sectional Properties Act becomes the second principal Act under which a property right and interest can be registered.

All registration of land is under the main Land Registration Act (No.3) of 2012. The Sectional Properties Act has a very short history in this country but a long history elsewhere in the world. For many years, because we had a lot of land, the issue of flats, the so-called apartments, was not a common factor. Even when it became a common factor, because of the complex nature of registration of properties under the old or the existing Sectional Properties Act, many developers or sellers avoided registering their properties under this legislation. They opted to go for sub-leases under the Law of Contract or any other arrangement.

Most of the sectional properties that had been registered under the Sectional Properties Act are those developed by the National Housing Corporation (NHC) and Government-related bodies. The way this Bill is crafted, it offers simpler ways; it is less complicated. We hope that all other developers will be encouraged. I think, at the point we will be making the relevant amendments in the Committee of the whole House, we will need to discuss and agree, with the Chair of the Departmental Committee on Lands and related subjects, to find ways of tightening this Act. That is so that we make it compulsory that one cannot register sub-leases but register the so-called sub-leases under the Sectional Properties Act.

The issue of security of title and security of tenure becomes critical for any purchaser or any aspiring owner of a property. If you purchase a property that does not confer to you adequate rights and interest, that property causes insecurity. It might not be a good security for collateral or financial purposes. So, consequently, the real property sector has continuously developed land right regimes that confer adequate and safe titles. I reckon that the Sectional Properties Act will, indeed, confer adequate rights and interest on the property that can be used for collateral and other financial or economic activities. However, looking through the Act, there are some omissions that are either by design or lack of understanding about how the issues operate. We need to highlight that at the moment.

A good example is on the issue of the corporation. It is inconceivable that you can talk of a corporation that has shareholders, one that has share capital, a corporation that collects funds on regular basis and that undertakes specific functions yet say the corporation will be registered by the Registrar of Title or Registrar of Lands. The Registrar of Lands can never register a company. A corporation, whichever way you look at it, is a company. Worse enough, under Clause 17(6), the drafters of the Bill purport to insulate the corporation from the operations of the Companies Act. We will consider that at the most opportune time, based on the experience we have.

I declare my interest that I have administered or been in relation to property and related fields for over 25 years. So, I have a host of experience based on practice. I will discuss with the Chair to see how we can make it complaint with the operations of the Companies Act. That is so that it becomes easier and better to run. There are very many cases of these corporations or in the

other variant management companies that run and operate these companies as if they are personal assets, at the exclusion of everybody else. The only things you receive are continuous and endless demands for service charge and other levies to pay some common services. Therefore, we need to make it dynamic so that there is a right to call for an annual general meeting or a special general meeting at any given time. That is so that we are able to run these corporations in line with the international best practices.

Another matter that seems to have escaped the mind of the drafters is how to treat the question of land rates and ground rent which are common or arise as a result of the ownership of the principal or mother Act. That is an area that will require further clarification and clearly separated and put in this Bill. That is so that it becomes very clear to everybody concerned.

In the event we have developed on a lease hold title, again, it is not very clear who has the right of reversionary interest. Those are areas that we must clearly indicate. On a serious note, the issue of Sectional Properties Bill is going to cure the very many challenges that have bedeviled this industry. It is going to hasten property acquisition, property transactions, to an extent that the delays we have seen will not be a common occurrence. I know a number of people who are not so versed in the industry and even some of us who are versed in the industry have come across rogue developers who sell air with the pretext that they will develop within a certain period of time and get your titles and properties completed on time. I urge the buyers, potential buyers and potential home owners in this country, please, check on the integrity and the ability of the developer to deliver before you put pen on that dotted line. That is because I have heard very many cries of people who have lost money or people whose expected delivery of the property has not been achieved.

With these few remarks, I beg to support the Bill but, we will make necessary amendments at the most opportune time. That is to make it more workable, neater and align it to international best practices.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): That is well put. I believe the Chair is taking note of the very constructive contributions that keep coming from Members. That is for enrichment of the Bill.

The Member for Subukia, Hon. Gachobe, you have the Floor.

Hon. Kinuthia Gachobe (Subukia, JP): Thank you Hon. Temporary Deputy Speaker for giving me this opportunity to add my voice on the Sectional Properties Bill, 2019. This Bill has been long overdue since it seeks to bridge the gap that has existed for long whereas most of the unit owners did not have titles. It made them not access loans. If they would like to access loans, the only thing they would have was a paper; a mere paper onto which is an agreement which one cannot tell whether it is valid or not. Therefore, they could not use that as collateral or for security purposes.

Therefore, this Bill will solve most of the problems most Kenyans have been going through. It will stop property developers from misusing owners by misusing the mother title to secure loans without the knowledge of the unit owners and when they default the unit owners get into problems. Their property may be sold or auctioned without their knowledge thereby creating disturbances. When it comes to selling, you find that they still have problems because they cannot sell because some of the buyers would like to access loans and these people do not even have titles. Therefore, they cannot use these titles to secure loans. It becomes very difficult for

transfers to be done because they do not have titles. If you want to sell the property because you have a problem, you cannot because maybe the buyer would like to have the title.

The Bill is also a good guarantee that property owners will have absolute rights to use the property as theirs. Therefore, it will create an enabling environment for investors and property owners who may wish to invest, especially young people who would like to invest but do not have stable income. They will be guaranteed that they are the rightful owners of the property.

The Bill will also enhance revenue collection since each unit will be assessed separately for the purposes of payment of ground rent and rates. Therefore, it will help our country to generate more income. The other issue is that property owners will not fall into the trap of fraudulent developers, leading to loss of investment and income used in buying the apartments and the units. They will feel more secure to buy the units because they are guaranteed.

This Bill is also in line with the Physical and Land Use Planning Bill that we passed recently, which will regulate matters of physical and land use planning and development control. In terms of registration, this Bill also seeks to conform to the land laws that we passed recently. Therefore, most Kenyans who want to invest in housing will have confidence. As a country, more income will be generated.

I support the Bill because I strongly believe that most people were avoiding buying unit houses because they feared the developers were conning them because they do not know where the future lies since they do not have the security of titles. This Bill will be able to cater for all these fears.

Hon. Temporary Deputy Speaker, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us hear Hon. Sahal Ibrahim.

Hon. (Ms.) Nasri Ibrahim (Nominated, FORD-K): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to contribute to this important Bill. It intends to modernise ownership of sectional properties in Kenya, recognising the increased demand for affordable housing, mixed use and master plan communities as well as efficient mortgage transactions. Among other things, the Bill creates an enabling environment for investors and property owners by guaranteeing rights of property owners by conferring absolute rights to them. It provides a mechanism to the closure of the mother title or head lease. This vests absolute right on the individual unit owner as they can then deal in the property in such manner as they wish as opposed to being at the mercy of developers, hence revenue collection since each unit will be assessed separately for purposes of payment of ground rent and rates, assigning personal liability on unit owners for direct payment of both ground rent and rates of the government and the county governments respectively.

Having your own separate title gives you an easy time when you want to use it in transactions like for security or in sale. A lease or sub-lease ties you down, because when you want to transact you must always obtain consent of the leaser and the management company. Recently, I bought an apartment and I had issues with the sub-title and the share certificate.

With those remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us hear the Member for Ijara, Hon. Noor Sophia.

Hon. (Ms.) Sophia Noor (Ijara, PDR): Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to contribute to this Bill. First and foremost, I want to congratulate the Committee and the Chair for a job well done. We feel that you are saving many Kenyans who have been conned and who have faced a lot of challenges with land-related issues. My congratulations go to the Committee.

Land is something that has caused many problems in this country. There are many Kenyans who have suffered after losing their hard-earned income due to land-related issues. We are all aware that many Kenyans have fallen into traps of con developers. There are many briefcase developers who move in this City and all over the country. They have always given a lot of hope to Kenyans but at the end of the day it becomes con business, and therefore, a lot of resources have gone down the drain.

Apartments are being sold all over. When you buy those apartments, apparently it happens that you have bought them but the land on which the building stands is not yours. It becomes a challenge. It becomes difficult to transact business with that kind of investment.

Hon. Temporary Deputy Speaker, there are Kenyans who have struggled too much for over 30 years to save, yet they are conned. It becomes disastrous and I have seen people affected psychologically because of losing that kind of money that they have worked for many years.

This Bill deals with many issues that have affected Kenyans. We are urging county governments to look at the issues critically when they are approving the plans from investors. They should ensure that the plans presented meet all requirements of the law of this country. If they do not do that, we will continue in the same trap we are in now. So, I can see in the report that the Committee has looked critically at the plans, land control development and the development schemes. County governments must look at those issues, and they should have master plans that will address all the issues affecting Kenyans.

Recently, this House passed the Physical and Land use Planning Bill which will regulate matters of physical and land use planning for development control. That is what I mean when I talk about proper master plans being put in place for all counties and the country at large.

The Bill seeks to ensure there is legislation of plans to be in line with matters related to development control. That will help Kenyans who have been previously affected. Going forward, this Bill is going to address the challenges, and we will have few conmen and con-developers in this country. Many Kenyans will benefit from the investments they are making in this country and we will attract many investors to come on board. If our laws are not clear or straightforward, we will lose many investors. Already we are losing many investors because even those who have come have been conned. So, with this Bill we will attract many investors who will come to this country and partner with Kenyans who have worked hard to earn the little resources.

With those few remarks, I support this Bill.

Congratulations once more to the Chairperson and the Committee for addressing a problem that is land-related, and which has been a cancer to many Kenyans.

I thank you very much.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): The Chairperson is uploading herself or is it your membership? That is a good job done by the Committee.

Let us have Hon. Odhiambo Akoth.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I wish to support and also thank the Committee for the Report on the same.

This Bill seeks to repeal the Sectional Property Act of 1987 and in some way reminds some of us that we are not very young because, when the then Sectional Titles Act was being discussed in 1987, I was at the university. It sounded like the most outrageous thing, but also became a very interesting piece of legislation because it was doing something that was not known then, but several years later, there are different challenges and new developments that Kenyans have been confronted with. Therefore, it is only necessary that we review the laws.

I want to also thank the Executive because Kenya is doing very well in terms of legislation. I remember back then when I was in college, we would be talking about one issue for years. Now we are becoming much better than the USA because we are fast in keeping up with developments both nationally and regionally. The only challenge we face as a country sometimes is that even though we pass a lot of legislation... I want to only thank the Executive of Parliament because Parliament is doing a very good job on the issue of implementation. I would like to encourage the House leadership of the National Assembly, that even for Private Members Bills; this is one of the most vibrant Houses that I have seen since I have been here. This is my third term. Private Members Bills are doing an excellent job, but sometimes the House leadership slows down the effort of Private Members Bills. So, perhaps, in the same way we are churning out Bills from the Executive... If we can push at the same time Private Members Bills, this country would make great strides.

I know Hon. Washiali wants to challenge me, but I can tell him that if he looks at the National Assembly in terms of the Private Members Bills that have been brought, whether they are amendments or full Bills, he will find that they are very many. What we see on Wednesdays does not reflect what we have. Perhaps the House leadership could look at ways in which we can fast-track them.

This Bill also helps because we have a very big population increase. The rural-urban migration is very high and we have a housing challenge in the country. The reality is that we have cases where people need to acquire property especially struggling young people. This is an answer to several people, but at the same time brings sanity so that you do not have people being conned in this sector. There are very many people who have lost their life-savings to people who have done very bad schemes especially in the building industry.

Hon. Temporary Deputy Speaker, I like the concept of the cooperation to manage the common interests so that individual units can be held liable jointly or separately. This ensures sanity and responsibility by unit holders so that you do not think you can get away by creating chaos in a wholesome unit.

One of the challenges I have, and how we want to deal with it is very difficult is that if you asked me or if you were thinking cohesively, this should even have been a chapter in the Physical Planning Act. I know that the Sectional Properties Act as a stand-alone is also very good, but there are many things that are very similar. I will give this example. If you find that you have a whole unit as it is happening in many of our suburbs in Kileleshwa, Lavington and Kilimani; areas that have been fairly very good neighbourhoods and you find several units in one place, they get overwhelmed in terms of the services such as sewer, water and so on. This is spreading all over, and yet we are not planning properly. So, one of the things they should have done is that when you are coming up with a unit, and if it is a storeyed unit, they should ask how far it can go.

I am hoping as a country we should not be going the direction I recently saw in Hong Kong. I wish I had visited that country 20 years ago because Hong Kong looks like it was a picturesque many years before because of the undulating hills, the greenery but the high buildings completely blocks that. Because of the pollution, you can see the way people are covering their noses now. If we are not careful, Nairobi will go that direction. It is not enough that we protect the sectional units but also the grand unit which is Nairobi and Kenya as a whole. Kenya is not disappearing so, we need to think about how we can create satellite cities and plan them properly. For me it would have worked better if this was part of physical planning.

I like giving Africa as an example because there are very successful countries like Rwanda and Namibia. They are doing an excellent job and if only we can visit these counties and see what they are doing. If only the Nairobi County Governor would just spare a little more time instead of throwing tantrums and calling women names and go to Rwanda and Namibia, he could see what they are doing in those countries and make this place much better. On the name calling, some of us are able to bicker with him. I can also go intellectual which I am sure he cannot manage. I will not fear and will deal with him. I have no time to joke with people who demean women. I am ready, able and willing to deal with him.

The law needs to regulate gated communities. We are looking at sectional properties but other than this we should look at gated communities. What law regulates gated communities? Many Kenyans, because of insecurity issues are moving towards gated communities. First, how do we ensure there is uniformity because aesthetics are also important for cities? Secondly, how do we ensure the sobriety we are bringing into sectional properties will be in gated communities?

With those few remarks, I beg to support and thank the Mover and the Committee.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Chirchir Chepkut, you have the Floor.

Hon. William Chepkut (Ainabkoi, Independent): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Sectional Properties Bill, 2019. In fact, this will be a solution in my constituency where there was urban-rural migration. Munyaka was owned by one person and then it was divided into units and since independence the owners have not received their title deeds. Munyaka is now overwhelmed in terms of water and sanitation.

This Bill seeks to provide for the division of buildings into units to be owned by individual proprietors and common property to be owned by proprietors of the units as to tenants in common, and to provide for the use and management of units and common properties and address the contemporary challenges associated with the ownership of property in sectional property environment.

I met His Excellency the President since he is very keen on the four pillars, and especially housing. I told him about Munyaka which has over 15,000 people and they voted me in the elections. I want to make sure they get their title deeds to use as collateral to get loans. At the same time there are Internally Displaced Persons (IDPs) who were settled in Chemosha and up to now, they have not been given title deeds.

The Chairperson Hon. Rachael is a great person together with the Committee. I also wish to thank and appreciate in totality the efforts and input by the Majority Chief Whip Hon.

Washiali. He is a great person. Anyway, I am not here to praise him, but to tell the truth. In fact, I have deposited him in my heart, and so he should not worry. This brings sanity and responsibility to unit owners. The Bill also provides for registration of the sectional plans approved by the county government. In the law of contract, there are agreements, consideration and execution. A purchaser and vendor must be there to enter into an agreement. Land appreciates but motor vehicles depreciate.

The merits of the Bill are as follows. First, this Bill seeks to simplify the process of registering sectional properties and create an enabling environment for investors and property owners. Secondly, the Bill guarantees rights of property owners by conferring absolute rights to unit owners. The person who has been giving us problems and troubles is the Director of Survey. I have seen the Cabinet Secretary and Principal Secretary but the Director of Survey has conflict of interest. He wants to be given something so that he can release title deeds. Hon. Temporary Deputy Speaker, I want your office and Hon. Washiali's to move with speed and assist me.

The Bill also vests reversionary interest in individual unit's owners. Lawyer, Advocate of High Court and Member for Suba North, Hon. Millie this is your third term. You are a great person. I also told His Excellency that you are a great woman. You can ask him. You have been supporting me, and so I will tell the truth. Anyway you have talked about statute laws, and I want us to be serious with the Sectional Properties Bill because it will be the best solution in solving sectional property. You have seen Muraya. He was a great man but he is having many problems. If we pass this Bill with speed it will be the solution.

As I finish, this Bill also provides for revision of the term of lease from 45 years to 21 years to align it with the provision of land registration in terms of Section 30, Cap 2(b). The Bill provides for a dispute resolution mechanism through a dispute resolution committee established under Clause 2, unlike the Sectional Properties Act of 1987. Anyway, it is going to address the tribunal issues. In other ways, it is going to be the structured mechanism of providing solutions to conflicts regarding issues of properties.

The Chairperson, Hon. Rachael, and the entire committee have done a great job. We shall support them fully. I have no doubt in my mind that you have the capacity, ability and the structured communication. Move with speed to assist Members of Parliament like me. I have raised two issues. One, you must make sure that the 1,000 acres... There are over 15,000 individuals who took possession and occupation in the last over 50 years. Then what is it that is holding them from... I went to see the County commissioner. I have gone to several offices even to His Excellency the President who is in charge of everything. He called Dr. Muraguri and the Cabinet Secretary, Farida Karoney. So, what is the problem and yet we own this Government? Article 1 of our Constitution says the country belongs to citizens of this country. So, what is the problem? There is red tape and bureaucracy. We must get rid of bureaucracy. I want data to be digital. I want digitisation of data in the lands docket.

Thank you, Hon. Temporary Deputy Speaker. It is my honour to sit down. I truly and fully support.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Very well spoken, Hon. Chepkut. You know when Members are making contributions, sometimes it is easy to pick their professional background but it is not easy to pick Hon. Chepkut's professional background. Today at some point he was talking like a lawyer. Yesterday he was talking like a statistician. So, it is really difficult to place him. It is also good that he is paying glowing tribute to Members.

Hon. Chepkut, I will give you a minute.

Hon. William Chepkut (Ainabkoi, Independent): Thank you, Hon. Temporary Deputy Speaker. I was a gazetted officer of the Republic of Kenya under the Provincial Administration. When Hon. (Dr.) Nyikal was the Permanent Secretary in the Ministry of Gender, I was there. He is now a Member of Parliament for Seme.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us just say you have many hats, Hon. Chepkut.

Hon. William Chepkut (Ainabkoi, Independent): Correct. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us have Hon. Baya Yaa.

Hon. Owen Baya (Kilifi North, ODM): Thank you, Hon. Temporary Deputy Speaker. You know Hon. Chepkut has a new profession. He is a rising star in the social media. He always writes very nice tweets. I read them and I think he is a rising star. So, that is another hat he is wearing.

That notwithstanding, I would like to support this Bill and say that I proudly sat in this Committee as a member and I think we did a good job. This Bill has come at the right time to regulate this sector which is developing very fast, especially sectional properties. Presently, there are many apartments coming up for sale. More importantly, there are very many foreigners who are coming into this country to invest in properties. When you see people from other jurisdictions coming here to invest, then it is good that we lay good ground for them. They need to invest in a regulated area. That is why this Sectional Properties Bill is important.

I remember one time I wanted to buy property. I did all the paper work only to realise later that the owners of the property did not have all the approvals. That was dangerous to anybody who had made payments towards that property. The County Government of Nairobi, probably, would have demolished the property without us knowing. Who allowed them to put up a huge structure of around 140 apartments? But there it was. When my lawyer asked to see the approval from the county government, he was told there was none. The reason given was that the area was not properly regulated.

So, I think upon this law coming in place, we are going to have sanity in this area of property ownership. Kenyans have a lot of money. There are many cases that have been talked about concerning people who buy properties off plan. They make payments and one year after, they realise that the property they had paid for does not exist. There are many cases of Kenyans who actually pay for property of a certain design off plan. When it is completed, they go and check only to find that the rooms are probably 5 feet by 3 feet and yet they paid for 10 feet by 10

feet or 300 square feet. So, they are given what they never paid for. This Bill is coming at the right time.

From an economics point of view, when we liberate this sector and we actually give out titles to the sectional properties or apartments, we will actually be developing the economy further because there will be the power to borrow and invest more. If I have a property and a title deed, I will be able to walk into a bank and get a loan. I will be in a position to invest more within the same economy. That way, there will be further development of the economy and the Gross Domestic Product (GDP) of this country will increase. Interestingly, a country like Kenya measures certain square kilometres. When this property starts going up and you start to offer title deeds as buildings go up, you are actually in a way increasing the square kilometres of the country. You talk about the volume of the country instead of just the surface. When you do that, what you are doing is expanding the jurisdiction of the country to invest in. The business jurisdiction of the country is expanded. When you do that, there will be bigger and better development of the economy, especially the real estate where there is faster development in this country. You realise that Kenya's GDP will grow very fast. Why? This is because I own a property, say, on third floor and I can use the title deed to that property to get money from the bank and invest in the same economy. So, we are growing the width and lengths of this country and in doing that the country gets better.

This Bill that we are debating will bring sanity in planning. You realise that the many small buildings that we had in Nairobi are being phased out and giving way to high-end apartments and buildings. That brings sanity in planning and we are going to see even lesser informal settlements. This is because people can buy units in the tall buildings and stay there. People would rather, say, on one-acre plot, put up one tall building as opposed to putting up, say, 20 buildings on it. With this law, we are going to regulate physical planning of this country and make it even more beautiful. I saw what Singapore has done. I think it is one of the countries that are planned well. They have a rule that you cannot just put up a single unit. You must put up one huge unit of, say, about 3,000 apartments and out of those; you will be able to sell some of the units. Singapore, you realise, is one of the countries with well-planned cities. It is because of the effort they have put in sectional properties.

Hon. Temporary Deputy Speaker, this is a good thing for this country. One important element that I note in this Bill is the management of sectional properties. A lot of these properties that we have right now are being managed by owners who sold almost everything but they still want to make money through the management of those properties. The Sectional Properties Bill puts the management of the properties in the hands of the people who have bought them but not those who developed or sold the property. Therefore, people will have a say within the management of the property. If I own part of a property, I should be part of the committee that makes the decision. Today, the management teams or committees of these properties are people who do not know who the tenants are. A person owns part of the building but he is not part of the management. The open spaces and the other amenities of the building are managed by other people at an exorbitant fee. You realise sometimes that you are an owner of the apartment but the

service charge that comes on every month is so high that you wish you do not own it because you cannot afford it. You would rather rent a house because it is like you are paying rent for a property that you own. This Bill proposes to put the management of the property in the hands of the people who have bought it and they own it. It makes it easier to make sober decisions that are thought of very well.

I have seen people who are almost being evicted from a property they own because they cannot pay the service charge. If you ask what it entails, they tell you that they are fees, for example, the payment of security firm and people who clean corridors. When they eventually heap all that, you realise that you can actually use the money that you are paying every month to rent a house instead of paying the service charge.

The management structure that is proposed in this Bill gives an opportunity to the people who have bought the property to manage it prudently and in such a way that it is economical to stay in there. This brings a new chapter in the management of sectional properties. I know many of these people who develop and manage the properties will complain about this Bill. When we go to the Committee of the whole House, we will see a lot of vested interests in this Bill because it will remove people who have been earning a lot of money out of property. Some of them say that they have lawyers who manage the property who must be paid. They also say that there are estate managers who want to be paid. Everybody wants to be paid by the same people who own the building and yet those people do not have a say. The management structure which is proposed in this Bill gives an opportunity to the owners of the property to manage it. I know my time is up.

The other important thing which I must say is vetting of developers. It is not just anybody who can come into this country and develop property. They must be vetted so that we know what they are doing. There is a lot of money laundering in this country through real estate development and development of properties. When we vet developers before they develop properties, we will rescue this country from illicit money that comes and floods our economy and kills it.

I thank you for giving me the time to contribute. I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Wainaina, Member for Thika Town.

Hon. Wainaina Jungle (Thika Town, Independent): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Sectional Properties Bill, 2019.

I am very passionate about economic empowerment of our small-scale operators, especially the *jua kali* artisans. This Bill has come at the right time. If you go to a lot of *jua kali* artisans today, you find that the person who owns the field calls the shots. A lot of those people acquire those small areas. They are required to register their small sections so that they can run their businesses. You will find that because they are not able to do this, everything they earn is used to pay rent. This Bill will give those people freedom for doing what they need to do.

I am really enthusiastic about the Export Processing Zones (EPZs). If you want to be an operator or you want an operating licence in an EPZ, you have to get a lease of 30 years. You

find that the money that you pay is equivalent to buying a plot and setting up a factory. You find that people share godowns which they have to lease because they cannot own a section of it. When this Bill is passed, these operators will own a section of that godown, get registered and from that they can get EPZ licence or one for special economic zone. This is a great driver of the economy.

With these few remarks, I support this Bill which has come at the right moment. I thank the Mover and the Committee.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Nyikal Wambura.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this Bill. This is an extremely important Bill that I rise to support. It gives us an opportunity to control the growth of towns and ownership of property in the growing towns. With our devolution, a lot of towns will come into place. It is important to start managing how property will be owned in those towns at this early stage.

Land is becoming extremely expensive. Therefore, it will be very difficult for all of us to own it. We cannot subdivide infinitely. It will reach a point where we cannot subdivide it further. This Bill gives us the opportunity to own property not only on land but also in the air. We can start to own space as well when we deal with issues of flats. Moreover, it is becoming increasingly fashionable for people to live in gated communities which are single property units. In those circumstances, it is important for the people who live there to own those properties and be involved in their management. This has been extremely difficult for people who have been living in flats. This Bill solves that problem.

I, therefore, support this Bill. I am really impressed by the provision in part 2 of the Bill which says that right from the beginning when plans are being made, sectional plans will be made with clear knowledge and intention that when these units come into place, they will be owned by individuals, although they are in a single unit. Therefore, the plan takes that into consideration. They will also be managed. People will have titles and certificates of the properties. That planning is extremely important.

The Bill provides for the establishment of an entity that is owned together by all the people or families who have units in which they live and have invested in. The establishment and management of this entity, how it is constituted, and the role of the individual owners in it is clearly set out. As the Members have said, management agents have literally taken over units and have power over the owners. In this situation, this corporation takes the powers of the management agents to the hands of the owners of the units. However, of course, even the corporations themselves, if we are not careful, in their constitution, may become just as powerful and possessive. Those are the things we can look at in details. For example, Clause 17(6) indicates that the corporations are not subject to company law. I am not a lawyer, but that is one area we will have to look at and see if it is possible for the corporations to be excluded from that law. Clause 19 says that where there is a conflict between this Act and other laws, this Act will prevail. That sounds like something we need to look at so that in the Committee of the whole House, we can amend it.

Part IV lays out clearly how you can sell your properties, how you can invest them and how you can use them for mortgage or collateral.

This puts us in a situation where we can live in our congested town and reduce congestion. Hon. Millie talked about Hong Kong. There is a part of Hong Kong known as Kowloon where you cannot see the sun. They have 135-storey buildings. If we go in that direction, the capacity of our cities to contain people and provide services like sewage systems, water and roads will be impossible. So, as we do that, we must start thinking. There are cities that have solved this problem. Melbourne does not have high-rise flats, but it is very expansive and has boroughs that are managed. Brasilia was built as a new capital of Brazil because they could not cope in Sao Paulo with congestion. It is large, spread and well managed. There must be a balance between taking care of our environment and getting most people to own property. This Bill does just that.

I support the Bill. We will look at the issues we have raised and the amendments that may be required in the Committee of the whole House. Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us have the Member for Masinga, Hon. Mwalyo Mbithi.

Hon. Joshua Mwalyo (Masinga, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for the chance you have given me to air my views on this Bill. First of all, I would like to thank the Committee for a well-researched and timely Bill.

In Kenya because of devolved units, everybody, even in the rural areas, wants to invest in apartments. Therefore, the Bill will help people in rural areas to own their apartments. We need first to vote for it and make it law, then we save our people. The only affordable houses are apartments. The middle class and young people, who have finished university and have just been employed, can afford them. They feel honoured to own something at that age. To own an apartment means you have a title deed and can do whatever you want with it. You can sell it or use it to take a loan. As it is now, it is an area that is being exploited by developers.

The other day I saw in Athi River a block of 100 apartments on auction simply because the developer did not clear with the bank. Two weeks ago, they advertised the Sunset Boulevard Apartments in newspapers to be sold, including apartments that have already been bought but later it was stopped by a court. This is not a good practice. It can give someone a heart attack having spent all their salary or earnings to purchase the houses only to be told to move out. Therefore, this Bill will save many families a lot of agony because of what we are doing in the House. The House being a saviour of many parts of the country, institutions and private properties, I know we are going to move with speed pass this Bill.

It will create confidence in the minds of people when they own a property wholly. It is a good move. I support it because if we are not careful, this country might have many cases in courts than we have at the moment. The Chinese have come to develop skyscrapers here in Ngara and have started selling them off plan. That means that one buys them by faith because one does not know what they are going to own. Even today they were advertised in the papers. They are selling the ones at Athi River through an off plan at Kshs2.9 million. That means that

whether it will be built or not, one has already paid for it. So, one pays by faith. It is very important that if a person has struggled to pay for a House, he should, at the end of the day, own a piece of paper called a title deed so that he becomes proud of owing property in this lifetime. Property is at the heart of every family. So, to own houses is a good thing and these are the only properties that are affordable because they are sectional properties. If we regulate their ownership by passing this law, then we will save Kenyans and we will be a proud Parliament.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Obara Akinyi.

Hon. (Ms.) Eve Obara (Kabondo Kasipul, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to support this Bill. I stand to support the Bill and join my colleagues in appreciating the Committee for a job well-done. This Bill is timely as it seeks to grant title deeds or certificate of leases to owners of apartments and town houses which were previously issued on some leases. This country is replete with cases of Kenyans having lost money as a result of purchasing apartments that were not complete or those that were purchased off plan.

I, too, have a real-life experience of a block of apartments that were developed in Lavington with no parking spaces. It was a ridiculous case where even the parking space was supposed to be paid for by the purchaser of the apartment. Most of them lost their property. Even when your apartment did not have a tenant, you still had to pay for the parking lot. At the end of the day, the property developer ended up owning your property and taking you to court to pay for property that was initially yours. This Bill will create confidence in the property market with the issuance of what Kenyans generally consider as proper title deed.

Another point I would like to raise is that, as we have observed over the years, there are so many apartments coming up. You sometimes wonder where the money is coming from. Many of them are vacant yet many more are still coming up across the country. So, the issue of vetting of developers is critical. I suspect that these are monies which were obtained through unlawful means and are now being cleaned by purchasing these properties.

I, therefore, join my colleagues in supporting. I also note that, as a country, we will benefit from this Bill when revenue collection increases on rents and rates from these many apartments that are now in the hands of their owners. We now have an enabling environment that is giving property owners absolute right to their individual units and they can use them as they so wish.

Once again, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Members, this is by all means a very good Bill. Members will have more time to interact with it at the Committee of the whole House stage. There being no further interest to contribute, I call upon the Mover to reply.

Hon. Washiali.

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to reply to debate on this very important Bill.

First of all, I thank Members. As the Mover and whip, I should admit and declare that I am impressed by the participation of Members and the important comments that have been made during the debate. When I was moving debate on this Bill, and later on when the Chair of the Departmental Committee on Lands was seconding, I was worried that the Bill may not receive the attention it deserves. I am, however, glad to declare that this House has, again, proved to any doubting Thomas that it is up to the task and Members are ready to contribute as much as possible to improve any Bill.

I picked a few comments here. I am sure that the Chair of the Departmental Committee on Lands, Hon. Rachael Nyamai, also picked them. I am sure that she will go back to the Committee and try as much as possible to bring the Committee Members on board in terms of the fears that Members have expressed, starting with Hon. Eve Obara. She expressed fears that the purchase of these apartments and houses is being used to wash dirty money. I just thought this is a matter we have to deal with, as a House, even if it is through other means. This House has stood against corruption. I am sure that it will not want the use of purchase of property to wash dirty money.

The Central Bank of Kenya has done quite a bit. Cash payments have really been reduced even in terms of withdrawal. Given that most of the houses go for more than Kshs1million, it will be very difficult to explain that you are withdrawing more than Kshs1million in cash to go and pay for a house. I am sure there are other better and safer modes of payment which, of course, will be acceptable to the Banking Act.

Hon. Temporary Deputy Speaker, we have taken note of what Hon. (Dr.) Oundo said and we have also appreciated the comment made by the Leader of the Minority Party, Hon. John Mbadi. This Bill will help Government to raise more revenue in terms of rates and fees charged on title deeds. I heard what Hon. William Chepkut said. He raised fears about the Director of Survey. We will encourage him to raise questions so that if there is anything that the Director could be doing behind the backs of the Executive and against the interest of Parliament, then we should get him, through his Cabinet Secretary, to answer and respond to those issues. I hope the Chairperson has noted the issue of the title deeds of the 1,000 hectares that Hon. Chepkut talked about. Generally, this Bill has received 100 per cent support and more than 20 Members of Parliament debated it.

With that kind of support, I am sure that in the Committee of the whole House we will work on the little shortfalls in the Bill. We need Kenyans to have a law that will manage their interests in the purchase of property. Hon. Eve Obara said that with this law in place, people will get confidence in purchasing property.

The second last Member of Parliament, that is, Member for Masinga...

(Hon. Joshua Mwalyo consulted loudly)

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order! Order, Whip of the Majority Party. You cannot do that. You cannot have the Member just shout across the Floor. You have to do it through the Speaker.

Hon. Benjamin Washiali (Mumias East, JP): My apologies, Hon. Temporary Deputy Speaker. I was taking advantage of the situation to allow him to mention where he comes from. He took over from Hon. Benson Mbai who was my very good friend. Hon. Mwalyo raised

something that is very important. He talked of a developer, Erdemann. I have been going through the newspapers and I saw it. There is a developer who is selling flats at Kshs2.9 million in terms of cash payment. Now, Kshs2.9million is not small money. Therefore, for us to give confidence to those who are going to buy those flats, we must make sure that they have a document in return to safeguard their interest so that even when the prices of such property are going up, the buyers would get the advantage of the increased prices.

For the property in Ngara, this is the first time a residential flat will have 33 floors. I think it is important that we safeguard the buyers of these flats so they get value for their money.

Hon Temporary Deputy Speaker, I appreciate and thank all Members for their support. I wish to reply.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Very well, Members. I think it was a very constructive debate and very important issues have been raised. Like I said, we will have more deliberations on this Bill at the Committee of the whole House stage. I have to defer putting the Question on this Bill until such other time as it will come back through the Order Paper.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): There being no other business, it is time to adjourn. The time being 7.02 p.m., this House stands adjourned until Tuesday, 10th September 2019, at 2.30 p.m. That is after the long recess.

The House rose at 7.02 p.m.