

**PARLIAMENT OF KENYA****THE NATIONAL ASSEMBLY****THE HANSARD****Thursday, 2<sup>nd</sup> December 2021**

The House met at 2.30 p.m.

*[The Speaker (Hon. Justin Muturi) in the Chair]***PRAYERS****QUORUM****Hon. Speaker:** Ring the Quorum Bell.*(The Quorum Bell was rung)*

Proceed.

**COMMUNICATION FROM THE CHAIR****WITHDRAWAL OF THE ADVOCATES (AMENDMENT) BILL****Hon. Speaker:** Order, Members! Those of you standing, please, take your seats.

Hon. Members, you will recall that during the Afternoon Sitting of the House on Thursday, 25<sup>th</sup> November 2021, the First Chairperson of Committees did report to this House that my office was in receipt of a letter from the Chairperson of the Departmental Committee on Justice and Legal Affairs seeking leave of the Speaker to withdraw the Advocates (Amendment) Bill (National Assembly Bill No.43 of 2021) pursuant to Standing Order 140.

In her guidance to the House, the First Chairperson of Committees did remind the House that the said Bill had been published and introduced in the House under the sponsorship of the Departmental Committee on Justice and Legal Affairs, following the admission of the prayers sought by Mr. George Njenga Mwaniki and 12 others, through Public Petition No.20 of 2021, which sought “amendment of the Advocates Act, Cap 16, to allow admission of law practitioners from the Republics of Rwanda and Burundi to the Roll of Advocates in Kenya.”

Hon. Members, you may further recall that the First Chairperson did clarify to the House that the application of Standing Order 140 is subject to the discretion of the Speaker, who must weigh the merit or otherwise of a request for leave to withdraw a Bill. Accordingly, she deferred commencement of Second Reading of the Bill in question to await the Speaker’s determination of the request by the Chairperson of the Departmental Committee on Justice and Legal Affairs for leave to withdraw the Bill.

Hon. Members, I have reviewed the letter by the Chairperson of the Departmental Committee on Justice and Legal Affairs and established that the Chairperson cited two grounds for withdrawal of the Bill. These reasons are-

(i) That, the matter being addressed falls within the doctrine of reciprocity among the community of nations, in this case being the member states of the East African Community (EAC) as captured in Paragraph (ix) on Page 19 of the Committee's Report, which emphasises that "...without mutual and equivalent harmonisation, there should be no reciprocity" with regard to the admission of persons from other East African States to the Roll of Advocates; and,

(ii) That, the Office of the Attorney-General and Department of Justice of the Republic of Kenya had, during its consideration of the Petition, submitted that it was in the process of formulating two Bills, namely, the Kenya School of Law (Amendment) Bill and the Council of Legal Education (Amendment) Bill which would, among others, address the concerns of the petitioners.

Hon. Members, before I guide the House with regard to the request at hand, I wish to report to the House that the petitioners have, by way of a letter dated 26<sup>th</sup> November 2021, appealed to my office, objecting to the withdrawal of the Bill by the Chairperson of the Departmental Committee on Justice and Legal Affairs. For the benefit of the House, I have summarised the grounds on which the petitioners' appeal is premised as follows:

(i) That, the Committee's decision to legislate in the manner contained in the Bill signifies its acquiescence with their prayers and was arrived at after taking into account the views of the Attorney-General, the Judiciary and the Council of Legal Education, among other key stakeholders in the legal profession;

(ii) That, sections 12 and 13 of the Advocates Act had already been passed in the Statute Law (Miscellaneous Amendments) Act, 2012 but were, however, declared unconstitutional by the Court of Appeal in Civil Appeal No.96 of 2014 (Law Society of Kenya versus the Attorney-General and 2 Others) only for want of public participation; and,

(iii) That, the matter at hand is solely within the authority of Parliament, being the arm of Government with the exclusive power to legislate and that even in the instances when the courts applied themselves to the matter and granted certain orders in the affirmative, they still referred the petitioners to engage Parliament to legislate appropriately. Consequently, withdrawal of the Bill from the House is prejudicial as it would leave them with no other recourse.

Hon. Members, in considering the request by the Chairperson of the Departmental Committee on Justice and Legal Affairs against the plea by the petitioners, the right to petition Parliament on any matter, its authority which is anchored in Article 119 of the Constitution is instructive. As stated before, the Advocates (Amendment) Bill (National Assembly Bill No.43 of 2021) was introduced in this House following its exhaustive consideration of a public petition. The Bill was not voluntarily introduced by the Committee on its own motion. Part of the argument by the petitioners was the fact that they had exhausted all options available to them and were left with this House as the competent body of last resort. It was, therefore, their legitimate expectation that the House would address their prayers conclusively.

Hon. Members, with respect to public participation, I note that the Committee had invited the public to submit their views on the Bill between 11<sup>th</sup> and 23<sup>rd</sup> November 2021. It will be recalled that the courts have also affirmed the mandatory nature of public participation and emphasised the qualitative aspect of public participation and distinguishes it from a mere consultation or a public relations exercise without a meaningful purpose. As I have always stressed, public participation

ought to be approached as a qualitative and not cosmetic exercise. Indeed, the High Court recently observed in Constitutional Petition No.E001/2021 with respect to public participation, that:

“All parties interested in legislation should feel that they have been given a real opportunity to have their say; that they are taken seriously as citizens and their views matter and will receive due consideration at the moment when they could possibly influence decisions in a meaningful decision. The objective is both symbolical and practical. The persons concerned must be manifestly shown respect due to their concern and the legislators must have the benefit of all inputs that will enable them to produce the best possible laws.”

Hon. Members, the question that arises then is who between the petitioners and the Committee is competent to withdraw a matter for which the intervention of this House has been sought? You will agree with me that justice would demand that only a party seeking redress should be allowed to withdraw its request. In my view, allowing the Committee to abruptly discontinue the process of actualising the petitioners’ prayers without any reference to them negates the spirit of Article 119 of the Constitution. Notably, Hon. Members, I do observe that the recommendation of the Committee on Page 20 of its Report - that, Parliament amends the Advocates Act (Cap 16 Laws of Kenya - and its conscious decision to introduce the Bill in the House was made with the Committee having taken into account the submissions received from stakeholders, including the Attorney-General.

Hon. Members, in seeking to withdraw the said Bill, the Committee alluded to the fact that the Attorney-General and the Department of Justice of the Republic of Kenya were formulating two Bills, namely, the Kenya School of Law (Amendment) Bill and the Council of Legal Education (Amendment) Bill, which would encompass the proposals contained in the Advocates (Amendment) Bill, 2021. Perhaps the Committee would have noted the express provisions of Article 94(5) of the Constitution, which states as follows:

“94 (5) No person or body other than Parliament has the power to make provisions having the force of law in Kenya except under authority conferred by this Constitution or by legislation.”

Hon. Members, the petitioners approached this House well aware that no other body has power to anchor into law the prayers sought in their Petition. Clearly, the two draft Bills referred to in the letter by the Chair of the Departmental Committee on Justice and Legal Affairs have not been introduced in this House either under Standing Order 114 by a Member or under Standing Order 114A by the Leader of Majority Party. Consequently, the draft Bills referred to are unknown to this House and cannot be used as a reason to deny the petitioners the audience of the House as sought. Indeed, the claim is outside the prayers of the petitioners.

Hon. Members, majority of the work of a House is discharged through its various committees, which consider matters committed to them and recommend various actions for resolution by the House. At this point, the Committee is and remains an agent of the House and is not an end by itself in matters legislation. Hon. Members, the Committee, in the spirit of Article 119 of the Constitution, is required to respond conclusively to a legislative request from aggrieved members of the public. It had, by publishing the Bill, adhered to the first part of its legislative mandate in accordance with the recommendations of its own Report. The second part of its mandate would entail spearheading the processing of the Bill in the House through its various stages as if it originated the idea behind the Bill. However, it now seems that the Committee is either unable or unwilling to undertake this second part of its mandate.

Hon. Members, the Chairperson of the Departmental Committee on Justice and Legal Affairs has, through his letter, given formal indication that he is not desirous of prosecuting the

Bill further. To my mind, exercising the discretion under Standing Order 140, to decline the request would place the petitioners in a rather precarious position. Would the petitioners, for example, trust that the Bill will be moved in a manner that properly communicates their true intention?

Hon. Members, in view of the foregoing, I would urge the Chairperson of the Departmental Committee to reconsider his request to withdraw the Bill. The Chairperson, after taking into account the views of his Committee Members, should communicate the Committee's final decision on the matter to my office before commencement of the next Session. Alternatively, the Speaker will allow any other Member willing to sponsor the Bill to have it republished in his or her name.

Hon. Members, with respect to public participation so far undertaken, I do note that the Committee had invited the public to submit their views on the Bill between 11<sup>th</sup> and 23<sup>rd</sup> November 2021. Any memoranda received with regard to the Bill shall remain valid for consideration in the preparation of a report to this House either on the original Bill sponsored by the Chairperson, if he elects to proceed with the Bill, or a Bill sponsored by a Member, pursuant to this direction. In summary, I direct as follows:

- (i) That, the Chairperson of the Departmental Committee on Justice and Legal Affairs, after taking into account the views of his Committee Members, should communicate the Committee's final decision on the matter to my office on or before 24<sup>th</sup> January 2022;
- (ii) That, in order to adhere to the true intention of Article 119 of the Constitution as read together with the mandate of this House to deliberate on and resolve any issue of concern to the people, in default of the Chairperson sponsoring the Bill, any other Member may express interest to sponsor the Bill on the petitioners' behalf. Where a Member agrees to sponsor the Bill, it shall be republished at the earliest opportunity and introduced to the House for consideration; and,
- (iii) That, any memoranda received with regard to the Advocates (Amendment) Bill (National Assembly Bill No.43 of 2021) shall remain valid for consideration in the preparation of a report to this House either on the original Bill sponsored by the Chairperson of the Departmental Committee on Justice and Legal Affairs or a Bill sponsored by any other Member, pursuant to this direction.

The House is accordingly guided.

*(Several Hon. Members walked into the Chamber)*

Members who are coming in, please, make your way in. There are several other Communications.

*(The Speaker resumed his seat)*

Hon. Members, I indicated that I had some other Communication to make. I only resumed my seat to allow Members to make their way in, but I have seen others making their way out. They are those who have finished with the Session.

*(Laughter)*

#### REPUBLICATION OF THE GAMING BILL

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Hon. Members, the second Communication relates to the Gaming Bill (National Assembly Bill No.35 of 2019). Yesterday, Wednesday, 1<sup>st</sup> December 2021, I received a request from the Chairperson of the Departmental Committee on Sports, Culture and Tourism to consider scheduling the Gaming Bill (National Assembly Bill No.35 of 2019) in today's Order Paper for consideration by the House in the Committee of the whole House. My office conferred with the Leader of the Majority Party with respect to having the Bill included in the Supplementary Order Paper for this Afternoon Sitting. Ordinarily, the function of scheduling business is one of the mandates of the House Business Committee as envisaged in Standing Order 171(4)(e). However, in view of the imminent long recess, my intervention as your Speaker, in concurrence with the Leader of the Majority Party, would have sufficed in order to facilitate the business of the House today.

Hon. Members, you may recall that the Gaming Bill, 2019 was published on 27<sup>th</sup> May 2019 and read the First Time on 11<sup>th</sup> June 2019. It was thereafter committed to the Departmental Committee on Sports, Culture and Tourism for consideration, pursuant to Standing Order 127. The Committee tabled its Report in the House on 14<sup>th</sup> November 2020. In the said Report, the Committee proposed a raft of amendments to the Bill.

Sometime last year, the Ministry of Interior and Coordination of National Government further submitted to the Office of the Clerk further proposed amendments to the Bill. The amendments included the functions of the proposed National Gaming Authority, the functions and powers of gaming inspectors, gaming advertisement, application for licences and their issuance, and provision for offences. In addition, the Ministry proposed amendments for the protection of children and young persons. Consequently, the Committee considered the proposed amendments and tabled an addendum to its Report in the House on 8<sup>th</sup> October 2020.

Hon. Members, my office approved a request for the Committee to hold a sitting on Wednesday, 1<sup>st</sup> December 2021 at 10.00 a.m. to harmonise further proposed amendments to the Gaming Bill following submission of additional amendments from the Ministry of Interior and Coordination of National Government and the Ministry of Sports, Culture and Heritage. Consequent to this process, the Committee has come up with additional proposed Committee stage amendments. Indeed, at 10.15 a.m. today, Thursday, 2<sup>nd</sup> December 2021, the Office of the Clerk received a raft of amendments from the Chairperson of the Committee. Standing Order 133(2) reads in part as follows:

“No amendment shall be moved to any part of a Bill by any Member other than the Member in charge of the Bill unless written notification shall have been given to the Clerk twenty four hours before commencement of the sitting at which that part of the Bill is to be considered”.

A close scrutiny of the proposed amendments by the Committee disclosed that the Committee is proposing to amend over 110 clauses of the 162 clauses of the Bill. The Committee is also proposing amendments to five of the six schedules to the Bill. The Committee is also proposing to include a further 13 new clauses to the Bill. You will agree with me that the final Bill will therefore be fundamentally different from the published one.

Given that the Bill in question is a “repeal and enactment Bill”, the practice of the House requires that where the sponsor of a Bill is proposing amendments whose effect is to replace almost the entire text of a Bill, then the Bill ought to be republished afresh so as to accord an opportunity to Members and the public to familiarise themselves with the content of the new Bill. It is for this reason that this afternoon I declined a request to include the Bill in the Supplementary Order Paper for this Afternoon Sitting.

*(Applause)*

Therefore, I direct that the Bill be republished in the name of the Committee, incorporating all their proposed and additional amendments. That is for an expeditious consideration at the next opportunity, pursuant to the provisions of the Standing Orders of this House.

The House is, thus, accordingly guided.

*(Hon. Charles Kilonzo picked bottles of water)*

Member for Yatta, you appear like a supplier of water or a distributor of the same.

*(Laughter)*

Member for Kiharu, today you have come to the House quite early. Is it because the House is scheduled to go to recess?

#### SUSPENSION OF COMMITTEE SITTINGS AND CONSIDERATION OF PRIORITY BUSINESS DURING RECESS

Hon. Members, as you are aware, at the rise of this sitting today, the House is scheduled to proceed on its long recess from tomorrow, Friday, 3<sup>rd</sup> December 2021 to Monday, 24<sup>th</sup> January 2022. That is in accordance with its Calendar for the Fifth Session. You may further recall that when approving the Calendar on 10<sup>th</sup> February 2021, the House resolved that Committee sittings will stand suspended from 13<sup>th</sup> December 2021 to 24<sup>th</sup> January 2022. In this regard, all Committees will be required to suspend their sittings on the stated dates in order to allow Members to attend to their constituency duties and for staff to take leave.

It is important to note the following priority business currently pending before the House, and which ought to be disposed of at the earliest opportunity:

(i) Nomination of a person for appointment to the Equalisation Fund Advisory Board, which is before the Departmental Committee on Finance and National Planning.

(ii) The vetting of a nominee for appointment as the Chairperson of the Public Service Commission, which is before the Departmental Committee on Administration and National Security.

(iii) The vetting of nominees for appointment to the office of a member of the National Gender and Equality Commission, which is before the Departmental Committee on Labour and Social Welfare.

(iv) Consideration of the 2022 Budget Policy Statement for Financial Year 2022/2023, which is before the Budget and Appropriations Committee.

Hon. Members, it is instructive to note that the foregoing business has statutory timelines that will lapse during the recess period. In addition, you may recall that in his State of the Nation Address to Parliament on Tuesday, 30<sup>th</sup> November 2021, His Excellency the President appealed to Parliament to expedite and conclude certain pieces of legislation and statutory instruments. They include:

(i) The Government Contracts Bill.

(ii) The Kenya National Blood Transfusion Bill.

- (iii) The Irrigation (Amendment) Bill.
- (iv) The Kenya National Library Service Bill.
- (v) The Huduma Bill.
- (vi) The Political Parties (Amendment) Bill.
- (vii) The Proceeds of Crime and Anti-Money Laundering (Amendment) Bill.
- (viii) The Political Parties (Membership) Regulations, 2021.

The first four Bills were passed by this House and are now pending in the Senate. Indeed, the President did urge Parliament to consider adjusting its calendar to ensure that all the critical legislation and legal instruments, including those relating to elections, are concluded in good time. Fortunately, this House had, in its wisdom, adjusted its Calendar so as to commence the Sixth Session on 25<sup>th</sup> January 2022 instead of the second week of February as required under Standing Order 27 regarding regular sessions of the House. This adjustment affords the House three extra weeks, which comfortably accommodates the President's request.

So as to ensure that the House concludes the priority business mentioned above, I will consult with the Leaders of the Majority Party and the Minority Party with respect to the dates for holding Special Sittings of the House, should the need arise, and the dates will be communicated to all Members. With regard to the processing of the Budget Policy Statement for the Financial Year 2022/2023, the onus is on the Budget and Appropriations Committee to guide the House accordingly.

Hon. Members, as you may be aware, by practice of this House, certain business, particularly Questions and Statements ordinarily lapse at the end of every Session. However, I am cognisant of the unprecedented circumstances under which the House operated this year due to the COVID-19 disease. That meant committees held fewer sittings. Indeed, I am informed that more than half of the Questions asked and Statements requested by various Members are still pending before the relevant committees and have the fate of lapsing at the end of the Session. In this regard, I have been petitioned by various Members to authorise all pending Questions and Statements to be carried forward to the next Session.

In considering the foregoing request, I observed that, unlike Questions for which Committees simply obtain a response from the relevant ministries or Government agencies, some Statements ordinarily require a Committee to conduct an examination or inquiry into the issues for response. Indeed, I have established that a number of Committees had actually commenced inquiries into issues raised in the respective Requests for Statements under their consideration. Thereof, in order to guard Committees from appearing to have commenced inquiries in vain, I will exceptionally permit Statements pending before Committees to be carried forward to the Sixth Session and be dealt with upon resumption of the House next Session.

*(Applause)*

With regard to Questions, the existing practice applies. This implies that all pending Questions will lapse at the end of the Fifth Session, which is later this evening.

Finally, Hon Members, it is my highest privilege and honour to thank the leadership of the House, the Members of this House and staff for having braved the challenges posed by the COVID-19 pandemic to ensure that this House continues with its legislative business largely unimpeded.

In conclusion, I take this opportunity to wish you all a happy festive season. Allow me, at this early opportune, to wish you safe and happy festive season as well as a prosperous 2022.

(Applause)

## PETITION

### FORCEFUL EVICTION OF SQUATTERS FROM HARAKA SETTLEMENT SCHEME

**Hon. Speaker:** Hon. Members, Standing Order 225(2)(b) requires the Speaker to report to the House any petition other than those presented by a Member. Further, Article 119 of the Constitution provides for the right of any person to petition Parliament to consider any matter within its authority, including petitioning the House to enact, amend, add or repeal any legislation. In this regard, therefore, I wish to report to the House that my office has received a Petition signed by several residents of *Haraka* Settlement Scheme in Yatta and Masinga constituencies. The petitioners, who comprise of approximately 1,400 families, claim that they have been residing on 746 parcels of land within the settlement scheme comprising of the following:

- (i) Ndalani Phase I Settlement Scheme.
- (ii) Ndalani Phase II Settlement Scheme.
- (iii) Mamba Settlement Scheme.
- (iv) Nzukuni Phase I Settlement Scheme.
- (v) Nzukuni Phase II Settlement Scheme.
- (vi) Nzukuni Phase III Settlement Scheme.
- (vii) Nzukuni Phase IV Settlement Scheme.
- (viii) Ngoliba Phase II (B) Settlement Scheme.
- (ix) Ngoliba Phase IV (D) Settlement Scheme.
- (x) Ndithini Phase I Settlement Scheme in Masinga Sub-County.
- (xi) Ndithini Phase II Settlement Scheme in Masinga Sub-County.

The petitioners aver that their families have lived on the parcels of land within the above mentioned settlement schemes for over 45 years, but have never been issued with title deeds as proof of security of tenure and as a guarantee for them to realise full economic potential of their land. They state that in 1988, the Ministry of Lands, in conjunction with the then Eastern Provincial Administration, formed a Ministerial Plots Committee (MPC) to look into the matter and recommend appropriate solution to the long standing squatter issue.

Hon. Members, the petitioners claim that the Ministerial Plots Committee concluded its probe in 1994 in the settlement schemes within Ndalani Location, covering a total of 2,565 parcels of land, among them being the 746 plots that were identified as having squatter issues. In order to resolve the matter, the ministerial committee recommended sub-division and allocation of the plots to verified allottees and squatters in some cases and alternative plots for some squatters in other cases. In 2011/2012, ground verification of the 746 plots within Ndalani Phases I and II, Mamba and Nzukuni Phases I, II, III and IV was undertaken and allotment letters were issued to some allottees although some remained squatters. Their recent forceful eviction has caused hostilities between them and the allottees.

Hon. Members, the petitioners are, therefore, praying that the National Assembly –

(i) Investigates the circumstances behind the inordinate delay in facilitating the survey, sub-division and allocation within Haraka Settlement Scheme in Yatta and Masinga constituencies to deserving squatters since 1988 when the Ministerial Plots Committee recommended allotment of plots to verified squatters.



(ii) Recommends immediate cessation of ongoing evictions from Haraka Settlement Scheme and allocation of part or whole of Haraka Settlement Scheme until genuine squatters are authenticated.

(iii) Inquires into circumstances under which parts of the Haraka Settlement Scheme were allotted to unknown persons other than squatters who have lived on the land for over 45 years and recommend revocation of any such irregular allotment.

(iv) Makes any other recommendation deemed necessary in addressing the circumstances of the petitioners.

Hon. Members, having determined that the matters raised by the petitioners are well within the authority of this House, I order and direct that pursuant to provisions of Standing Order 227(1), this Petition be committed to the Departmental Committee on Lands. The Committee is required to consider the Petition and report its findings to the House and to the petitioners in accordance with Standing Order 227(2).

I thank you. Hon. Member for Ainamoi.

#### USE OF HEAVY MACHINES BY TEA COMPANIES IN KERICHO AND BOMET

**Hon. Sylvanus Maritim** (Ainamoi, JP): Hon. Speaker, this is Public Petition No.76 of 2021 regarding the use of heavy mechanisation in tea plucking and harvesting and declaration of employees redundant by multinational tea companies in Kericho and Bomet counties.

I, on behalf of concerned tea plantation workers and residents of Ainamoi Constituency and the entire Kericho and Bomet counties, draw the attention of the House to the following:

THAT, tea is the top foreign exchange earner to Kenya and supports livelihoods of close to five million Kenyans directly and indirectly;

THAT, the tea sector plays a crucial role in our Gross Domestic Product (GDP) and is estimated to employ over 200,000 workers directly;

THAT, the agricultural wages earned by labourers in the tea industry are a major source of livelihood for many households in Kericho and Bomet counties and other tea-growing areas in the country. The earnings constitute a major source of income for these households, enabling them to educate their children and access healthcare, thus improving the general quality of their lives;

THAT, the introduction and continued use of heavy machines by multinational companies such as James Finlay, Unilever Tea Kenya, George Williamsons and Sotik Company in the midst of the ravaging COVID-19 pandemic caused the layoff of over 50,000 workers, especially manual tea pickers;

THAT, the tea plantation workers are paid abysmally low wages despite enduring appalling working conditions, forcing them to turn to shylock money lenders, which has condemned them to an endless cycle of indebtedness and made them vulnerable to the detriment of their poor quality of life;

THAT, the continued redundancy of employees resulting from deployment of heavy mechanisation of tea harvesting has caused a sudden slump in the local economy by an estimated 20 per cent;

THAT, it is believed that apart from possible health hazards, the heavy tea-plucking machines compromise the quality of tea in the international market, which denies the country the much required foreign exchange;

THAT, if the issues raised by this Petition are not urgently addressed, many livelihoods that depend on the income of manual tea pickers stand the risk of deterioration due to massive

redundancy of their breadwinners, collapse of regional economies in the tea-growing zones and deterioration of Kenya's dominance in the international tea market; and,

THAT, none of the issues raised in this Petition are pending in a court of law, constitutional or any other legal body.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Labour and Social Welfare:

- (i) intervenes in the matter with a view of recommending phased introduction of heavy tea-harvesting machines in all tea-growing areas, particularly in Bomet and Kericho counties, so as to safeguard against inhuman and massive job losses due to redundancy;
- (ii) urgently reviews existing legislation and policies on mechanisation of tea harvesting in order to provide a framework to regulate mechanisation of tea plucking so as to safeguard tea plantation workers' livelihoods;
- (iii) recommends a mandatory setting aside of a minimum percentage of tea plantations that multinational tea firms must harvest mechanically in order to forestall further job losses;
- (iv) inquires into possibilities of hazardous effects that mechanised tea plucking has on the quality of Kenya's plucked tea and safety of tea plantation workers who run the machines, with a view of ascertaining whether they are in line with International Labour Organisation (ILO) Convention 184 on safety and health in agriculture;
- (v) recommends to the Ministry of Health and the Kenya Bureau of Standards (KEBS) to formulate and carry out periodic review of a coherent national policy on safety and health in tea plantations;
- (vi) inquires into serious breaches of law and human rights that multinational tea companies have been committing against tea plantation workers and recommend appropriate remedies to secure the right of manual tea pickers to fair labour practices as contemplated in Article 14 of the Constitution and in line with international and national labour laws; and,
- (vii) makes other recommendations it deems appropriate in addressing the plight of the petitioners.

And your petitioners will forever pray.

Thank you.

**Hon. Speaker:** Hon. Members, having observed what is happening, considering that a while ago we were quite many, and cognisant of the fact that if I allow comments on the petitions now, by the time we are through with the comments there will be no quorum, I will rearrange the business on the Order Paper. Preserve your comments on the two Petitions. We will, first, consider the business appearing as Order Nos. 10, 11, 12 and 13 in the Supplementary Order Paper. This is procedural. We want to put the Questions.

## CONSIDERATION OF REPORT AND THIRD READING

### THE ASIAN WIDOWS' AND ORPHANS' PENSIONS (REPEAL) BILL

*(Question put and agreed to)*

**Hon. Speaker:** Mover.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I beg to move that the Asian Widows' and Orphans' Pensions (Repeal) Bill (National Assembly Bill No.29 of 2021) be now read a Third Time.

I request Hon. Gladys Wanga to second.

**Hon. Speaker:** Hon. Wanga.

**Hon. (Ms.) Gladys Wanga** seconded.

*(Question proposed)*

**Hon. Members:** Put the Question.

*(Question put and agreed to)*

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

#### THE PROVIDENT FUND (REPEAL) BILL

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, there is a stranger occupying the seat of the Leader of the Minority Party.

**Hon. Speaker:** He is the Member for Soy, not a stranger.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I beg to move that the Provident Fund (Repeal) Bill (National Assembly Bill No.30 of 2021) be now read a Third Time.

I request Hon. Sankok to second.

**Hon. Speaker:** Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Hon. Speaker, I beg to second.

*(Loud consultations)*

*(Question proposed)*

**Hon. Speaker:** Members, it never happens that way.

**An Hon. Member:** Put the Question.

*(Question put and agreed to)*

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

#### THE KENYA ROADS (AMENDMENT) BILL

**Hon. Speaker:** Members, please, be in the House.

*(Question put and agreed to)*

Mover, Hon. Pkosing.

**Hon. David Pkosing** (Pokot South, JP): Hon. Speaker, I beg to move that the Kenya Roads (Amendment) Bill (National Assembly Bill No.13 of 2021), be now read a Third Time.

I request Hon. Dawood to second.

**Hon. Speaker:** Member for North Imenti.

**Hon. Rahim Dawood** (North Imenti, JP): Hon. Speaker, I beg to second.

*(Several Hon. Members left the Chamber)*

**Hon. Speaker:** What is this migration all about, Hon. Members? Very soon you are going on recess. So, you will have all the time in the bushes to consult.

*(Laughter)*

*(An Hon. Member attempted to withdraw from the Chamber)*

Look at that Member. Surely, is that Hon. Oda? Please, just be in the House for a while. I am sure you will be out soon.

*(Question proposed)*

**Hon. Members:** Put the Question!

*(Question put and agreed to)*

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

#### THE COUNTY GOVERNMENTS ADDITIONAL GRANTS ALLOCATION BILL

*(Question put and agreed to)*

**Hon. Speaker:** Mover, Hon. Shinali.

**Hon. Benard Shinali** (Ikolomani, JP): Hon. Speaker, I beg to move that the County Governments Additional Grants Allocation Bill (Senate Bill No.35 of 2021) be now read a Third Time.

I request Hon. Sankok to second.

**Hon. Speaker:** Hon. Sankok.

*(Loud consultations)*

**Hon. David ole Sankok** (Nominated, JP): Hon. Speaker, Hon. Kositany Caleb is giving our party a bad name. I have just seen your ruling and it was the best. You are, therefore, the future President.

I beg to second.

*(Question proposed)*

**Hon. Members:** Put the Question!

**Hon. Speaker:** As desired by the House, I will put the Question, having confirmed that you still quorate.

*(Question put and agreed to)*

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

Hon. Members, so as to clear these hurdles, let us go to Order No.8. I am aware that you still deserve your right to comment on the two Petitions, do not forget. However, let us clear Order Nos.8 and 9.

## PROCEDURAL MOTIONS

### EXEMPTION OF BILLS AND PETITIONS FROM LAPSING

**Hon. Speaker:** Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I beg to move the following Procedural Motion:

THAT, cognisant that this House will be proceeding for a long recess from 3<sup>rd</sup> December 2021 to 24<sup>th</sup> January 2022 in accordance with its Calendar (Regular Sessions-2021) and pursuant to the provisions of Standing Order 256 (Exemption of Business from the Standing Orders), this House resolves-

(i) To exempt all Bills which, having been read the First Time during the Fourth Session, Year 2020, are pending at various stages of consideration in the House, from the provisions of Standing Order No.141(2) (Lapse and Re-introduction of Bills); and,

(ii) That, with respect to all public petitions pending before Committees, the counting of the 60 days' consideration period prescribed under Standing Order 227(2) (Committal of Petitions) shall cease upon commencement of the recess and resume when the House next sits in the Sixth Session.

Hon. Speaker, you have just given a Communication to the House guiding on how we process business and basically the Bills that we can reasonably save. Hon. Members may recall that last year, at a time like this, we did save all the Bills that had been introduced in 2019 and were in various stages, because of COVID-19. Obviously, we cannot go back and save things of the past and the cut off period as the guidance by the Speaker has done. So, with the clear guidance that was given earlier in the day, I beg to move and ask Hon. Emmanuel Wangwe to second.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Speaker. I second. Thank you.

*(Question proposed)*

**Hon. Members:** Put the Question!

**Hon. Speaker:** Just for your information, this decision you are about to take, if you vote in the affirmative, will save a total of 25 Bills.

*(Question put and agreed to)*

### REDUCTION OF PUBLICATION PERIOD FOR SPECIFIED BILLS

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**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Order 120, this House resolves to reduce the publication period of the Sacco Societies (Amendment) Bill (National Assembly Bill No.55 of 2021) and the Political Parties (Amendment) Bill (National Assembly Bill No.56 of 2021) from 14 days to six days.

Just this morning, this House approved the procedure to be followed for Bills introduced between this evening and the time we come back. The House approved that a Bill can be referred to a Committee after three days from the date of publication, if the Speaker deems it priority. The House, having made that decision, indeed, the six days are already beyond the three days. So, these Bills could well have gone to the Committee based on the Motion that we passed, but because they were already here before we had gone, it is only prudent that we process them specifically in the House by reducing the publication period so that they can be referred to the respective Committees, so that the Committees can work on them and then we determine how fast we can expedite them. These Bills are critical. One of the Bills that were declared unconstitutional is the Sacco Societies (Amendment) Bill. We are only re-introducing it so that we can conform to the ruling of the Court of Appeal. The Political Parties (Amendment) Bill affects each one of you positively. So, it is important that we process it so that you can give your input to the Committee during the recess period, so that by the time you come to debate it, you will have interacted with it. It affects all of you. I would like us to facilitate the fast-tracking of these two Bills, so that we can move forward.

With few remarks, I beg to move and ask my predecessor, Hon. Duale, to second.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I am between a rock and a hard place. You know, I have been in this office. So, I still remember the tricks that the Leader of the Majority Party can apply. I once occupied the position of Leader of the Majority Party. I do not know why it is so urgent for the Political Parties (Amendment) Bill to be subjected to this process. However, since I am a ranking Member, let us give him the benefit of the doubt and allow the Committee to deal with the matter. However, the Leader of the Majority Party must assure us that this Bill will not be part of any other Bill that will be subjected to a special sitting. We have no problem if this Bill comes back in 2024. Let us be very honest. Maybe, Hon. Members have not read it. This Bill is “poisonous”, but because we are not discussing its substance since we are not in Second Reading debate, I want every member of a political party to read this Bill. Since the Leader of the Majority Party is asking for an opportunity for the Justice and Legal Affairs Committee to start working on it, I second it and ask the House to agree with him.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. Speaker:** You know, Hon. Members, when two or three people shout very loudly, it does not mean...

*(Laughter)*

## BILLS

### *First Readings*

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## THE SACCO SOCIETIES (AMENDMENT) BILL

## THE POLITICAL PARTIES (AMENDMENT) BILL

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

**Hon. Speaker:** Hon. Members, if you go to the Supplementary Order Paper, Order No.4, which is comments on petitions, they are going to be limited so that as many of you as possible can have something to say. Member for Kipkelion East, start us off.

*(Comments on Petitions resumed)*

**Hon. Hilary Kosgei** (Kipkelion East, JP): Thank you, Hon. Speaker, I want to comment on the first Petition on issues of squatters. The squatter issue in this country has been very serious. I want to encourage those officers who are responsible for resettling or handling this issue to only concentrate on ensuring that such issues are resolved before any squatters are evicted or moved. One of the biggest mistakes we have been doing in this country is to evict people to camps then when it comes to their verification, it becomes very difficult. We want to encourage the responsible officers to be very cautious when handling squatter issues.

The second Petition, on use of tea plucking machines in Kericho, Bomet and other tea growing areas, especially Nandi, there is a serious influx of big machines. If we are not careful, we will be struggling to create jobs for people in this country. Whereas technology is coming, it should be handled carefully or we will end up sacking our people and those in the tea industry are going to suffer. I do encourage the Committee responsible to handle this Petition very carefully and ensure that the influx of these machines is slowed down immediately as it is going to kill Kericho and other places, especially the businesses around, as they depend on the tea industry indirectly.

This is a serious matter and it should be handled quickly to save Kericho, Bomet, Nandi and other tea growing areas from being wiped by the tea plucking machines. Thank you.

**Hon. Speaker:** I believe all the Members who have placed interventions want to comment on the Petitions.

**Hon. Members:** Yes!

**Hon. Speaker:** Member for Kamukunji.

**Hon. Yusuf Hassan** (Kamukunji, JP): Thank you, Hon. Speaker. I wanted to comment on the Petitions as well as follow up on a Statement Request.

**Hon. Speaker:** We are not yet on Statements.

**Hon. Yusuf Hassan** (Kamukunji, JP): Okay.

**Hon. Speaker:** That is Order No.7. We are on Order No.4.

**Hon. Yusuf Hassan** (Kamukunji, JP): Thank you Hon. Speaker. I wanted to speak on the issue of squatters in particular. Given the fact that we are facing these problems in many parts of the country, it is very important for us to consider the problems of squatters in a humane way and within the context of our Constitution. In some parts of Nairobi, there have been evictions and displacements of squatters under difficult circumstances in these particular times when we have economic problems, the COVID-19 pandemic as well as climatic conditions. This should be handled very carefully and in a humane way within the context of our Constitution. Otherwise, we

will be violating the rights of those Kenyans. We have women and children and we must consider them very carefully before any action is taken against them. I sometimes consider the people who are used to evict the squatters as not being proper human beings because they do not look at the plight of the squatters. They simply bring in bulldozers, bring down their houses and render them homeless. It is the responsibility of our county governments and the national Government to look after all its citizens. Squatters have rights and they need to be looked after just like any other Kenyan. Thank you.

**Hon. Speaker:** Member for Mwea.

**Hon. Josphat Kabinga** (Mwea, JP): Thank you, Hon. Speaker. I would like to comment on both petitions. On the first Petition, this country has a number of settlement schemes that are yet to be concluded in terms of titling and this is causing anxiety amongst the people who were originally allocated the parcels of land. Some people are encroaching on the land while others are buying land in some of the settlement schemes. This is likely to cause a lot of conflict in the future. I have in mind a similar problem in Mwea Settlement Scheme, which to-date, has not been resolved. I urge the Committee, which has a number of petitions on the same, to move with speed and advise the Ministry on how to go about that settlement scheme and other schemes in this country.

On the other Petition, as the Chairperson of the Committee on Labour and Social Welfare, I would not want to comment much on it, but I would like to assure the petitioner that the Committee will make every effort to address the number of issues raised, including the health issues, malpractices by the multinational corporations and the application of highly mechanised equipment in the tea industry. We went through it in the rice industry and to-date, we are settled. I am sure the tea industry will also settle on the same. I promise that we will move with speed so that the anxiety amongst workers in the tea industry in Kericho is addressed and settled as quickly as possible.

Thank you.

**Hon. Speaker:** Member for Endebess.

**Dr. Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker. I would like to start by commenting on the Petition by the residents of Yatta on the issue of squatters who were settled in that area, but up to now, are complaining of people who have been sent there to encroach on the land. This is something that is happening countrywide, more so in Endebess and specifically in Chepchoina Settlement Scheme, where people have settled for the last 20 years, but the Government displaced some of them. We want to caution the Government. We want the Ministry of Lands to handle all these issues in a humane way and make sure that innocent Kenyans and those who have already settled there are protected. Every Kenyan has a right. We should not use political hoodwinks and positions to try and give rewards to some people in the hope that they will give us votes. All the people on those lands must be protected.

On the issue of mechanisation of tea picking in Kericho, it is good to allow technology, but also we must protect the workers so that they are not rendered redundant.

I support.

**Hon. Speaker:** Member for Mavoko.

**Hon. Patrick Makau** (WDM-K): Thank you, Hon. Speaker. I wish to comment on the two petitions. In advanced countries like China and India, mechanisation is controlled to give the citizens opportunity to earn a living. I have heard the Members who petitioned this House on this issue, Hon. Maritim. If tea picking is mechanised in Kericho, Nandi and other tea growing areas, the residents of those areas will be vulnerable because they will have no other way of eking a



living. It is upon us in this House to address that issue. We can even come up with an Act on agricultural mechanisation. To what extent are we supposed to mechanise? Most of our rural folk rely on the agriculture sector for their livelihoods.

The issue of squatters is a menace caused by our so-called *mabwenyenye*. We have seen people living on plots for 20 to 30 years and then one morning, bulldozers show up to bring down their houses. It is unfortunate. We must have laws on how we are supposed to title lands, be they public or community land. We must have legislation that protects the people. As Government, we must be sensitive to people who have been living in such areas for long. A case in mind is Mavoko. I know even Nairobi and other towns in this country are experiencing similar situations.

Thank you.

**Hon. Speaker:** Member for Mvita.

**Hon. Abdullswamad Nassir** (Mvita, ODM): Hon. Speaker, I beg your indulgence. I think my point of order had...

**Hon. Speaker:** Is it not a comment on the Petitions?

**Hon. Abdullswamad Nassir** (Mvita, ODM): No, Hon. Speaker. It is not in regard to this business.

**Hon. Speaker:** Okay. Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Speaker. I rise to comment on both Petitions. The first is the one that you have read on behalf of the petitioners. Surely, if people have lived on that land for more than 30 years and they are being evicted, it is unfair. The Government should protect the people. The other one is the issue of Kericho tea pickers. Yes, we want mechanisation, but also, as a country, we are signatories to the ILO. We know what the world labour laws say. So, we should let the people earn a living so that we do not make them poor in their own country simply because we are chasing mechanisation. Those multinational organisations should consider the workers first.

I would like to take this opportunity to also wish all the Members of this House a happy recess and Christmas Holidays. I know you will be campaigning. As you do so, remember that you have interacted one-on-one with our Speaker, who is a presidential candidate.

*(Laughter)*

You know his leadership skills. So, I implore all the Members, as you campaign for yourselves, to also campaign for our able Hon. Speaker of this House, the Rt. Hon. Justin Muturi, who has led us for the last nine years without fear, favour or bias. He has also been a mobile encyclopaedia when it comes to law. So, he is the best person to lead us.

Hon. Kabinga can second that one.

*(Laughter)*

**Hon. Speaker:** Member for North Imenti.

**Hon. Rahim Dawood** (North Imenti, JP): Thank you, Hon. Speaker. I want to comment on both Petitions. On the one of mechanisation of tea picking, we need to see how we can stop mechanisation of every part of the industry. As much as we need mechanisation, we do not need it in the tea farms. The second one regards squatters. The squatter problem is all over the country. I wish the Departmental Committee on Lands could have sorted it out. My colleague, Hon. G.G. Murugara, was just here. His people have been squatting on my land for the last 40 to 50 years, but they are not getting out, yet we have title deeds to that land. So, I wish the Departmental

Committee on Lands could have sorted out that matter once and for all so that my people can stay there. His people unleash bees and arrows on my people so that they do not occupy our lands yet they are squatters. The people of Tharaka need to get out of Kwang'ombe because that is North Imenti. Thank you.

**Hon. Speaker:** Member for Tinderet.

**Hon. Julius Melly** (Tinderet, JP): Thank you, Hon. Speaker, for giving me this time to comment on the Petitions. The issue of mechanisation of tea picking is very big. Mechanisation is important even in the First World countries, but in our country, especially in Nandi County, Tinderet Sub-county, Williamson Tea Company has decided to lay off almost 2,000 workers, which has caused unemployment and suffering. People in that particular area, especially in the Williamson Tinderet Tea Estate, cannot even pay school fees because they no longer have earnings. This is a company that has been having over 4,000 workers, but if you go there today, you will find nothing. It is only machines and the forests. People are really suffering right now. There will be a lot of theft around there.

The other issue is on squatters. We have so many squatters across the country; a problem which has been caused by poor land policies. We have squatters in places like Chemilil and in many parts of Tinderet. I urge the Departmental Committee on Lands to ensure that every Kenyan has some land to settle on across this country and feel free.

I support. Thank you.

**Hon. Speaker:** Member for Soy.

*(Hon. Caleb Kositany consulted with Hon. (Dr.) Patrick Musimba)*

Member for Soy.

**Hon. Caleb Kositany** (Soy, JP): I am sorry, Hon. Speaker. The Member for Kibwezi was consulting me on some issue. The issue of mechanisation of tea picking reminds me of the time when computers were introduced. We had a lot of opposition towards the introduction of computers. As a tea grower, I have looked at the profits that we will make once we mechanise. They will be good profits. So, we need to find a way to train the current tea pickers so that they may learn to do other things.

I can see the Leader of the Majority Party, Hon. Sankok and my neighbour, Hon. Abdullswamad, looking concerned as to why I am sitting on the seat of the Leader of the Minority Party. The reason is that many Kenyans have said that the opposition is dead. So, I am here to try and help them until they come and reoccupy it in 2022.

Thank you.

*(Laughter)*

**Hon. Speaker:** Member for Igembe Central.

**Hon. Kubai Iringo** (Igembe Central, JP): Thank you, Hon. Speaker. I rise to support the two Petitions. First and foremost, mechanising the plucking of tea will render many citizens of this country jobless or with no ways of earning a living. Tea being one of the main cash crops of this country, its farming employs many citizens. Most of the tea pickers are squatters and have very minimal earnings. They comprise of a very big number of citizens who are in the rural areas. If we introduce machines into the farms, we will render many families destitute and more so, they will not be able to cater for their needs like education, medicine and even housing. I am a tea farmer. I

have come to understand that the machines sometimes do not harvest good quality tea. So, if we introduce them, we will also drop the quality of our tea.

On the issue of squatters, many squatters have invaded my constituency, especially from Tharaka. We really want to ask them to stick to their land. Let them not come to our land in Meru. Thank you.

**Hon. Speaker:** Member for Kiharu.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you, Hon. Speaker. I want to comment on the issue of mechanisation of tea harvesting. Mechanisation is not a bad thing because technology increases productivity even per capita. The most mechanised economies are the ones that have the highest revenues per person. The issue is usually about timing because in an economy like ours, where a majority of the citizenry are unemployed, machines cannot come and replace human labour. Therefore, that is the only reason I support the Petition, but progressively, an economy thrives as we adopt and continue to embrace technology. The whole issue is about the fight between capital and labour, and between profits and wages. Mechanisation is a component of capital, and it increases the profit margin. We also have to be mindful of the fact that a progressive economy across the world is an economy that moves towards mechanisation. Nowadays, we see auto companies in economies like Germany and other developed economies deploying robots to do what human beings used to do.

That brings me to the issue of having a common wage for everyone. We are looking into a future where economies will be predominantly mechanised. Human labour will have very little to do in those economies. However, because we are not yet there, we need to embrace and spur economies and industries that are labour intensive to provide opportunities to the many people in the rural areas to be real agents of development.

**Hon. Speaker:** Member for Kabuchai.

**Hon. Majimbo Kalasinga** (Kabuchai, FORD-K): Thank you, Hon. Speaker. I also support the Petition on mechanisation of tea picking. Mechanising tea plucking is good because it saves on time, but it is done in areas where there are no casual labourers. My people from western Kenya are mostly relied upon to pick tea in Chebango, Kapsuser, Seretet and even in James Finlays Estate in Kericho. If machines are brought, many people will be laid-off and this will affect the economy at the bottom. When we pay tea workers well, we provide a strong base for people at the bottom layer of the economy to rise and have a bottom-up economy. When people at the bottom rise, we will have the best economy in the world. I do not want this to go further and affect sugarcane harvesting. If we use mechanised harvesting, workers will not be required to cut sugarcane and they will not have money.

I support the Petition.

**Hon. Speaker:** Member for Bureti.

**Hon. Japheth Mutai** (Bureti, JP): Thank you, Hon. Speaker. I rise to support this Petition. The coming of machines into tea growing areas has impacted negatively on the economy of those areas. First of all, majority of the population relies on working in tea plantations. As a result of mechanisation, many livelihoods have been affected. All sub-sectors have been affected. Tea pickers, transporters who ferry them to tea plantations, *mama mboga* and even food suppliers who provide them with food in the plantations have been affected. It is a whole chain that has been affected. The advent of the machines has a negative impact. That notwithstanding, the population in those areas is coming into terms with the economy that has been affected by the COVID-19 pandemic and they have to deal with the problem of mechanisation of tea picking.

Tea companies have not sensitised the population and they should not be trusted. There is a way in which they should have introduced mechanisation. Terminating employment is unwarranted. The economies of the areas are built by their large populations. The introduction of machines will undo what has been done for many generations. Currently, with the bottom-up economy, we need all the workers at the bottom to be employed. The wages should come from the bottom as we progress and when we get up, we can move to the machines. As at now, let us build the economy at the bottom.

**Hon. Speaker:** The last one on this is the Member for Tharaka.

**Hon. George Gitonga** (Tharaka, DP): Thank you very much, Hon. Speaker. I will comment on the first Petition. I support it and I would like it to be dealt with expeditiously, so that the issue of squatters can at least be addressed and possibly resolved.

Hon. Speaker, I had just retreated to the back chamber to discuss very important legal matters that are coming to the House. I heard the Member for North Imenti mention a place known as Kwang'ombe. He said that the area belongs to North Imenti, but it is occupied by squatters from Tharaka Constituency. Allow me to say that this is extremely frivolous and vexatious. In fact, Hon. Dawood does not know where Kwang'ombe is nor has he set foot there or sought for votes. He does not even have a single development in that area. The record will bear me witness that the market known as Kwang'ombe is in Tharaka Nithi County. The primary school at Kwang'ombe is in Tharaka Constituency, and that is the polling station where I was voted in.

The only reason why Hon. Dawood brought this claim is purely because he might have run out of land in Meru. He is now seeing untitled land in Tharaka and wishes to have his people occupy it. So, that is not true. Kwang'ombe and the other places along the boundary are in Tharaka. As far as Hon. Iringo is concerned, he comes from Igembe Central which does not border Tharaka at all.

*(Laughter)*

If there are any people from Tharaka in Igembe Central, they have bought land on willing buyer willing seller basis. Therefore, Hon. Iringo cannot complain.

**Hon. Speaker:** The Petitions stand committed to the respective Committees. Hon. Members, if someone says something that contradicts some facts, that is not in order. It is barely a point of argument. Please, let the Petitions be dealt with there. Let us move to the next Order.

### PAPERS LAID

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June 2021 and the certificates therein-

(i) The East Africa Trade and Transport Facilitation Project – IDA Credit No.4148-KE and Credit No.4977-KE (MOT Component).

(ii) The East Africa Trade and Transport Facilitation Project (MOT/KRC Component) Credit No.4148-KE and Credit No.4977-KE.

(iii) The Multiple Indicator Cluster Survey Project – UNICEF.

(iv) Support of Health Care Financing Strategy - Reproductive Health Output Based Approach Project (Credit BMZ No.Kenya 201065853) - Ministry Health.

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Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June 2020 and the certificates therein -

- (i) The Special Economic Zones Authority (SEZA). The Nuclear Power and Energy Agency.
- (iii) The Kenya Vision 2030 Delivery Secretariat.
- (iv) The Commission for University Education.
- (v) The Kenya Films and Classification Board.
- (vi) The Kenya Towns Sustainable Water Supply and Sanitation Project (AfDB Loan No.2000200000501) – Tana Water Works Development Agency.
- (vii) The University of Embu.
- (viii) The Jomo Kenyatta University of Agriculture and Technology.

Reports of the Auditor-General and Financial Statements in respect of the following constituencies for the year ended 30<sup>th</sup> June 2020 and the certificates therein:

- (i) Bondo.
- (ii) Tigania West.
- (iii) Ugenya.
- (iv) Seme.
- (v) Bureti.
- (vi) Mbeere South.
- (vii) Isiolo South.

Reports of the Auditor-General and Financial Statements in respect of the following constituencies for the year ended 30<sup>th</sup> June 2019, and the certificates therein:

- (i) Baringo Central.
- (ii) Chepalungu.
- (iii) Nakuru Town West.
- (iv) Baringo South.
- (v) Njoro.
- (vi) Mogotio.
- (vii) Ndia.

Reports of the Auditor-General and Financial Statements on the Kenya Film and Classification Board for the year ended 30<sup>th</sup> June 2019 and the certificates therein.

Thank you, Hon. Speaker.

**Hon. Speaker:** Chairperson of Departmental Committee on Lands, Hon. Nyamai.

**Hon. (Ms.) Racheal Nyamai** (Kitui South, JP): Thank you, Hon. Speaker. As you directed, the reports of the two Petitions that I am going to table were handled concurrently.

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

Reports of the Departmental Committee on Lands on:

(i) Public Petition No.45 of 2020 by residents of Garsen Constituency in Tana River County regarding subdivision of the Agricultural Development Corporation Land and Stakeholder's Consultation on Galana-Kulalu Food Security Project.

(ii) Public Petition No.31 of 2021 by residents of Garsen Constituency in Tana River County regarding de-gazettement of specified Agricultural Development Corporation land in Garsen Constituency.

Thank you, Hon. Speaker.

**Hon. Speaker:** Vice- Chairperson of the Committee on Trade, Industry and Cooperatives.

**Hon. (Ms). Wangari Mwaniki** (Kigumo, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Trade, Industry and Cooperatives on Public Petition No. 22 of 2021 by small-scale traders and businesspeople regarding closure of Jomo Kenyatta Public Beach and Mama Ngina Waterfront in Mombasa County.

Thank you Hon. Speaker.

**Hon. Speaker:** Chairperson or member, Special Funds Accounts Committee. Hon. Pukose!

**Hon. Dr. Robert Pukose** (Endebess, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

The 11<sup>th</sup> Report of the Special Funds Accounts Committee on the Audited Financial Statements for the National Government Constituencies Development Fund for 26 constituencies in the counties of Mombasa, Kilifi, Kwale, Taita Taveta, Lamu and Tana River for Financial Years 2013/2014, 2014/2015 and 2015/2016.

Thank you Hon. Speaker.

## QUESTIONS AND STATEMENTS

### QUESTION BY PRIVATE NOTICE

*Question No.012/2021*

#### DETENTION OF DECEASED BODIES OVER UNPAID HOSPITAL BILLS

**Hon. Speaker:** Question by Private Notice, Hon. Simba Arati.

**Hon. Simba Arati** (Dagoreti North, ODM): Hon. Speaker, notwithstanding your earlier communication on Questions, I rise to ask the Cabinet Secretary of Health:

- (i) What is the Government's policy regarding detention of deceased bodies by hospitals over unpaid bills?
- (ii) Could the Cabinet Secretary compel the Kenyatta National Hospital (KNH) to release the bodies of the late William Gisege Oira of Nyaribari Masaba who was admitted on 20<sup>th</sup> September 2021 and unfortunately passed on, on 22<sup>nd</sup> October 2021 and the late William Omagwa Siambe ID Number 37371221 orphan from Kiabugesi Sub-location, Kenya Subcounty, Kisii County who was admitted on 15<sup>th</sup> September 2021 and unfortunately passed on, on 6<sup>th</sup> October 2021. The bodies have been lying since then in the KNH Mortuary with a bill amounting to Kshs.2,676,564.50 million and Kshs.1,798,993.80 million respectively.
- (iii) When will the bodies of the said deceased persons be released for the burials?

**Hon. Speaker:** Very well. That Question will, of course, be replied to by the Committee on Health.

### ORDINARY QUESTIONS

**Hon. Speaker:** Hon. Joshua Kutuny.

**Hon. Joshua Kutuny** (Cherangany, JP): Hon. Speaker, first of all, before I ask this Question, I want to thank the Chair of the Departmental Committee on Agriculture for swiftly responding to my Question today. I want to report back to you that upon asking another Question yesterday, the Ministry appeared before the Committee today. They have responded though the

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answer was not satisfactory but we are still engaging and so next week by Wednesday as per the promise of the Ministry, farmers are going to have every reason to smile.

On the fears from Members that perhaps these Questions would lapse when we go for the recess, there is a possibility that the response would be positive so keep our spirits going.

**Hon. Speaker:** But that is not to say that the Standing Orders will not apply. Obviously we have every reason to want your spirits to be very high.

**Hon. Joshua Kutuny** (Cherangany, JP): Thank you.

**Hon. Speaker:** Proceed Hon. Kutuny!

*Question No.484/2021*

SHOOTING OF MR. BARNABAS LANGAT BY POLICE

**Hon. Joshua Kutuny** (Cherangany, JP): Hon. Speaker, I beg to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

- (i) Could the Cabinet Secretary explain the circumstances under which Mr. Barnabas Lagat of Identification Number 12418176 was allegedly attacked and shot by a police officer attached to Kapcherop Police Station at Kapsigilai Trading Centre in Cherangany Constituency in broad daylight on 27<sup>th</sup> September 2021, ostensibly because he was not wearing a facemask?
- (ii) Under what circumstances did the said police officer stray beyond his area of jurisdiction considering that the Kapcherop Police Station is in Elgeyo Marakwet County while Kapsigilai Trading Centre is in Trans Nzoia County?
- (iii) Are there any plans by the Government to meet the medical bills incurred by Mr. Lagat at the Moi Teaching and Referral Hospital and further compensate him for the shooting?

I have seen the Chair here and I am sure he is going to assure me that by tomorrow we will get a response.

**Hon. Speaker:** Well, the Question will be replied before that Committee whose Chair you have identified; Administration and National Security. Next Question is by the Member for North Imenti, Hon. Dawood.

*Question No.526/2021*

PAYMENT OF PENSION DUE TO MR. AUGUSTINE M'MUGWIKWA

**Hon. Rahim Dawood** (North Imenti, JP): Hon. Speaker, I beg to ask the Cabinet Secretary for National Treasury and Planning the following Question:

- (i) Could the Cabinet Secretary explain why Mr. Augustine M'mugwika, Pension No. APN/PC 126572, a retired teacher and a resident of North Imenti Constituency, is yet to paid his monthly pension dues for the months of January to May 2020 and March 2021?
- (ii) Could the Cabinet Secretary ensure that the said pensioner's dues are paid with accrued interest?

Hon. Speaker I would request for an email reply. I would not mind it instead of the Question dying.

**Hon. Speaker:** That would be sorted out by the Departmental Committee on Finance and National Planning. Next Question is by the Member for Mavoko.

*Question No.529/2021*

WATER PROJECTS IMPLEMENTED BY NATIONAL  
GOVERNMENT IN MAVOKO CONSTITUENCY

**Hon. Patrick Makau** (Mavoko, WDM – Kenya): Hon. Speaker, I beg to ask the Cabinet Secretary for Water, Sanitation and Irrigation the following Question:

- (i) Could the Cabinet Secretary provide a detailed report on water projects implemented from 2017 to date as well as ongoing ones across the country indicating the location of the said projects in terms of constituency and county?
- (ii) Could the Cabinet Secretary further provide details of water projects implemented by the National Government in Machakos County, particularly in Mavoko Constituency including the names of contractors, scope of works done and amount paid to each contractor?
- (iii) Could the Cabinet Secretary explain why the construction of Ng'alalya Borehole and Kavomboni Dam in Machakos County has stalled since 2019 to date despite funds having been allocated?

Hon. Speaker, could the Cabinet Secretary also tell us why the PS, one Joseph Irungu, is campaigning with taxpayers' money?

**Hon. Speaker:** Question will be replied to before the Departmental Committee on Environment and Natural Resources. Next is by the Member for Kirinyaga Central, Hon. John Wambugu.

*Question No.530/2021*

DELAYED ISSUANCE OF KCSE CERTIFICATES  
TO STUDENTS OF SACRED HEART KANGAITA SECONDARY SCHOOL

**Hon. Munene Wambugu** (Kirinyaga Central, JP): Hon. Speaker, I beg to ask the Cabinet Secretary for Education the following Question:

- (i) Could the Cabinet Secretary explain the circumstances under which forty-one (41) students who sat for the Kenya Certificate of Secondary Education (KCSE) in 2012 at Sacred Heart Kangaita Secondary School in Kirinyaga Central Constituency were denied their certificates by the Kenya National Examinations Council (KNEC)?
- (ii) Could the Cabinet Secretary also explain why the KNEC has failed to issue KCSE certificates to Githae John Kariuki (Index No. 09203422035) and Kinyua D. Muriithi (Index No. 09203422005) who sat for the KCSE in 2012 in the said school despite the two having made numerous follow-ups and submitting all the requirements?
- (iii) When will the affected students be issued with their KCSE certificates to enable them pursue their careers?

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



**Hon. (Ms.) Fatuma Gedi** (Wajir CWR, PDR): On a point of order.

**Hon. Speaker:** What is your point of order, Hon. Fatuma Gedi?

**Hon. (Ms.) Fatuma Gedi** (Wajir CWR, PDR): Hon. Speaker, I listened to the Member for Mavoko Constituency as he asked a Question to the CS in the Ministry of Water, Sanitation and Irrigation. While reading his Question, he mentioned at the last part that the PS is campaigning using taxpayers' money. I think that needs to be removed from the record of the House because it is not in the Question that he asked and the PS is not here to defend himself. The PS of the Ministry of Water, Sanitation and Irrigation is not in the House and what he said is not in the Question.

**Hon. Speaker:** Now, let me tell you. The last part of the Question reads as follows: "Could the Cabinet Secretary explain why the construction of the Ng'alalya Borehole and the Kavomboni Dam in Machakos County has stalled since 2019 to date despite funds having been allocated?" So, anything said beyond that is superfluous and it is ordered to be expunged from the record. What will be presented to the CS is that. Those other words are meant for entertainment. Hon. Fatuma Gedi, do not worry. It was said by the Americans that "Parliament in plenary is parliament in exhibition". This is part of the exhibition.

*(Laughter)*

So, do not worry about the exhibition. What will be sent is what is written in the Question. Hon. Kabinga Wachira, what is the issue?

**Hon. Josphat Kabinga** (Mwea, JP): Thank you, Hon. Speaker, for your ruling on that but, this cannot go just like that. The Member included something that was not in his Question. This has character-assassinated somebody who is not in this House. I think he needs to either apologise or officially withdraw what he has said. This is a very serious allegation.

**Hon. Speaker:** Has somebody been assassinated?

*(Laughter)*

**Hon. Josphat Kabinga** (Mwea, JP): Well, it is his character.

**Hon. Speaker:** Let us forget about the assassination. They will survive. They do not have their heads chopped off. It has been expunged, anyhow. It is expunged from the record. The last Question is by the Member for Lang'ata, Hon. Nixon Korir.

*Question No. 531/2021*

#### REHABILITATION OF ROADS IN LANG'ATA CONSTITUENCY

**Hon. Nixon Korir** (Lang'ata, JP): Hon. Speaker, I beg to ask the Cabinet Secretary for Devolution the following Question:

- (i) What plans are there to rehabilitate all the dilapidated roads in Lang'ata Constituency, particularly the roads within estates under the Nairobi Metropolitan Services?
- (ii) Could the Service provide a list of the roads that have been rehabilitated, improved or constructed in Lang'ata Constituency since the establishment of the Nairobi Metropolitan Services?

**Hon. Speaker:** That one is to be replied to before the Departmental Committee on Administration and National Security. The next segment is Responses to Statements. The Departmental Committee on Administration and National Security, are you ready? Do you have the response ready?

## STATEMENTS

### BANDITRY ATTACKS IN LAIKIPIA COUNTY

*(Hon. (Ms.) Sara Korere was not in the Chamber)*

The Member is not present. Just table the Report; that is enough.

**Hon. Peter Mwathi** (Limuru, JP): I hereby table the Response to the Request for Statement which was sought in regard to information on banditry attacks in Laikipia County.

*(Hon. Peter Mwathi laid the Report on the Table)*

**Hon. Speaker:** The next one is by the Member for Lafey, Hon. Ibrahim Mude.

### KIDNAPPING AND DISAPPEARANCE OF PERSONS IN THE COUNTRY

*(Hon. Ibrahim Abdi was not in the Chamber)*

He has already gone on recess. You can just table the Report.

**Hon. Peter Mwathi** (Limuru, JP): Hon. Speaker I, therefore, table the Response to a Request for Statement which was sought regarding kidnapping and disappearance of persons in the country which was sought by Hon. Ibrahim Mude, the Member of Parliament for Lafey Constituency. Thank you.

*(Hon. Peter Mwathi laid the Report on the Table)*

**Hon. Speaker:** The next one is the Response to a Request for a Statement by Hon. Caleb Amisi Luyai. That one must have gone on recess at the beginning of the week, I think. Just table it.

### DELAYED ISSUANCE OF NATIONAL IDENTITY CARDS

*(Hon. Caleb Luyai was not in the Chamber)*

**Hon. Peter Mwathi** (Limuru, JP): Hon. Speaker, allow me to table the Response to a Request for a Statement which was sought by the Member for Saboti Constituency, Hon. Caleb Amisi Luyai, regarding delays in the issuance of national identity cards. Thank you, Hon. Speaker.

*(Hon. Peter Mwathi laid the Report on the Table)*

## POINT OF ORDER

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## DELAYED RESPONSE TO REQUEST FOR STATEMENT

**Hon. Speaker:** Hon. Abdullswamwad.

**Hon. Abdullswamwad Nassir** (Mvita, ODM): Thank you very much. I have raised this matter.

**Hon. Speaker:** Which matter?

**Hon. Abdullswamwad Nassir** (Mvita, ODM): On the issues that I am about to explain.

**Hon. Speaker:** But you cannot say you have raised a matter which you have not. You have not said it. You should say it first then you can say you have raised it.

**Hon. Abdullswamwad Nassir** (Mvita, ODM): Hon. Speaker, we had raised issues with the Departmental Committee on Finance and National Planning and the Departmental Committee on Labour and Social Welfare. These matters regarded issues to do with reinstatement of 247 employees of the Kenya Ports Authority (KPA). The issue to do with the Departmental Committee on Finance and National Planning was on why the Kenya Revenue Authority (KRA) is enforcing PINs that are not from Mombasa and, therefore, they cannot collect their cargo the way they want. It is basically trying to imply that Mombasa is not part of Kenya.

I have raised this concern several times, with both Chairpersons, on the Floor of this House, considering that we are going on a long recess. I have waited until this very moment—the last moment feasible—for me to get a Response. I am yet to get a Response. I think I will leave it at that. The onus is on the Chairpersons to explain it themselves. They are here. They also feel very disturbed by what the Ministry is doing and the kind of cat and mouse games that the Executive is playing.

I would like you to give a ruling on this matter because, every single day that passes, the livelihoods of the people of Mombasa are being jeopardised. Jobs are being lost, people are closing up factories, warehouses are being shut down, CFSs are being shut down, and livelihoods are being affected. It is just becoming too unbearable. If this House does not take the necessary action, we are once again looking at having Mombasa eventually become a ghost town whilst its representatives have raised these matters in the National Assembly.

**Hon. Speaker:** Well. Who is supposed to respond?

**Hon. Abdullswamwad Nassir** (Mvita, ODM): It was both the Chairperson of the Departmental Committee on Labour and Social Welfare and the Chairperson of the Departmental Committee on Finance and National Planning.

**Hon. Speaker:** Hon. Wanga, do you have anything to say? This is good for end of term.

*(Laughter)*

It is good, is it not?

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Speaker.

I empathise with Hon. Abdullswamwad because one of the most important responsibilities we have as Members of Parliament is to stand up for our people, especially during times of difficulty. But, we are, as a Committee, also frustrated. We send all the Questions to the National Treasury. If you can remember, you directed that summons be issued for the Cabinet Secretary, National Treasury, to appear before our Committee but he has been travelling outside the country to represent His Excellency the President and so, we have not been able to act. For example, Hon.

Abdullswamad's feedback does not need the CS. We just need to know what is exactly happening on this matter. The National Treasury has not sent back that feedback. We are equally frustrated.

Hon. Abdullswamad raised this matter with me at a personal level and I have been following it up almost every single day with my secretariat that has been calling the National Treasury. Apparently, the response is lying on somebody's desk who has not signed it. At this juncture, we are not sure what more to do. Summons have been issued and at the moment, that is where we are as a Committee on this matter. The last we heard about it yesterday is that the report has been done and it is on somebody's desk who has not signed it for it to be brought before this House. Unfortunately, I cannot give a commitment to Hon. Abdullswamad because it may not happen. Hopefully, if the House goes on recess today, we will have obtained the response for the period of time committees will still be sitting and invite Hon. Abdullswamad together with the National Treasury, as we will be guided by you, so that the response can be given before the House goes on recess.

Thank you.

**Hon. Speaker:** Hon. Kabinga.

**Hon. Josphat Kabinga** (Mwea, JP): Thank you, Hon. Speaker. Indeed, as Hon. Wanga has stated, we have been trying to address the issue of the 247 employees that were laid off. One week ago, the Member for Mvita raised the same issue and we, again, raised it with the National Treasury. We do not understand why such a simple matter is taking that long. I want to congratulate the Member for Mvita because he has been consistent in following up on this matter. We have had Petitions, Questions and Statements that Members forget about and we kind of sit on them but on this one, he has been consistent. It is high time you gave a ruling and allow us, for the period that we will be on recess, to have a joint sitting with the Departmental Committee on Finance and National Planning, and the CS so that these two issues can be dispensed with at the same time. I beg for your indulgence on this.

**Hon. Speaker:** Unless we do it in the course of next week... Hon. Abdullswamad, you cannot make this a debate. It is not going to be a debate. Hon. Wanga has said the CS is out of the country. Where you are not able to get a response, there is a Permanent Secretary in that Ministry. We just got the Budget Policy Statement the other day notwithstanding the fact that we, as Parliament, notified the National Treasury that next Financial Year is a general elections year. Therefore, failure to get the Budget Policy Statement in good time speaks volumes about the calibre of fellows there. They have either gone to bed or they need some jolting. We can only deal with them when we are sitting in plenary.

**Hon. Member:** A Special Sitting!

**Hon. Speaker:** No! We cannot have a Special Sitting. We need to do business. The Member for Kamukunji had an issue. He had seen me about the issue.

**Hon. Yusuf Hassan** (Kamukunji, JP): Thank you, Hon. Speaker. I had requested for a Statement from the Chair of the Departmental Committee on Administration and National Security on the frequent fires in my neighbourhood, Gikomba Market. We have now reached the end of this Session. I had asked for that Statement on 21<sup>st</sup> of October. Since then, we have heard three more fires with no response from the Ministry. I am concerned with this extraordinary lack of response. Does it mean that the Ministry does not give a damn about the plight of the people of Gikomba? Many of them have lost livelihoods and are destitute. There is no form of action that has been done by the Government to reinforce security and protect the properties and goods of the communities that were affected by these fires. I am requesting for your guidance on what we need to do about that. This is not acceptable. It is quite frustrating and I will not get tired of raising their

voice here and bringing their cases in this august House. I will be grateful if you give us guidance on that.

I had also raised a problem about Kinyago and Kanuku in my constituency. These are elderly members of my community who have been seeking title deeds from the Government since 2018. They paid their dues and they have been waiting but there is no response. Last month, I had asked the Ministry of Lands this Question on their behalf and I have not received a reply or an acknowledgement. Again, I am seeking your assistance in making sure that this issue is raised and these two important Government departments take this issues seriously and respond to the demands and cries of the citizens of Gikomba, Kinyago and Kanuku in my constituency.

Thank you.

**Hon. Speaker:** At least on one issue the Chair of the Committee is here. Hon. Mwathi, you can respond to that issue.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Speaker. I appreciate the weight of the matter that has been raised regarding the frequent fires in Gikomba market. That matter was transmitted to the Ministry immediately it was brought before this House. As you may notice – and you have been here yesterday and today – I have frantically tried to make sure that I bring before this House as many Statements and answers to Questions as possible except that I did not get the Statement response in regard to this matter. This morning, I got five Statements. I read two in the morning and I have read three this afternoon. At 2.00 p.m. I was still looking for the remaining balance of those Statements but they were not forthcoming. So, I did my best. That is the much I can respond. The bulk of the work was supposed to be done by the Ministries and mine was to transmit and deliver them to this House.

Thank you.

**Hon. Speaker:** Well, you see if the House was sitting, you could say that you will get a response next week, but now the House will not be sitting. Hon. Yusuf, you may have just to wait or use other avenues. As a long serving Member of Parliament, you know how best to deal with such situations. On the other issue, because the Chair of the Departmental Committee on Lands is not here now to respond, that can be communicated through the Office of the Leader of the Majority Party to follow up. Even on the first issue, the Leader of the Majority Party will help you to follow up.

**Hon. Yusuf Hassan** (Kamukunji, JP): Thank you, Hon. Speaker. I shudder to think about what could happen in case of another fire outbreak while we are still waiting for a response from the responsible Government department.

**Hon. Speaker:** I think the response would be to go to the fire brigade, is it not?

**Hon. Yusuf Hassan** (Kamukunji, JP): No. There is a necessity to protect the property and goods of the people of Gikomba. They are citizens of Kenya and they pay tax. At least even if there is no immediate reply, the Government should enhance security so that people can see there is concern about their plight by their elected Government. They have made a lot of losses, but there is no attempt to compensate them or support the struggling communities, given the fact that Gikomba is not just a market. It is a massive area that provides employment and livelihood to thousands of people.

**Hon. Speaker:** Hon. Yusuf, you are asking me what to do when there is fire. Now, I have never trained in handling fire myself. I never even desire to because I do not like fire. So, I am in similar difficulties as yourself. But let us follow up with the relevant people through the Office of the Leader of the Majority Party, because the House will be on recess.

Hon. Sankok, you also have a Statement?

**Hon. David ole Sankok** (Nominated, JP): Hon. Speaker, I had asked the Cabinet Secretary for Interior and Coordination of National Government to give me the land registration number of the 15,000 acres of land in Laikipia he claimed is owned by the Deputy President. You gave a directive that I should be answered on Thursday. That day, Ministry officials came here but they did not have an answer. They have called me three times, all the way from Narok, but they have refused to give me any answer.

Given that you are the third in command, Hon. Speaker, I urge you to declare that His Excellency William Ruto is innocent of all accusations that have been levelled against him. The Cabinet Secretary claimed on *Hansard* that William Ruto owns the 15,000 acres of land. William Ruto, through the media, claimed that he does not have 15,000 acres of land in Laikipia and, if it is there, let the Government distribute it to the landless of Laikipia. When I ask that Question so that we know where the truth lies, the Cabinet Secretary is playing monkey games. He has refused to come and answer even after you gave directive. I think he does not know that you are the third in command. You can even issue a more severe directive that I be answered. Now that we are going on recess, God will not forgive me if I go knowing that my Question has not been answered. The people of Laikipia are waiting to be allocated the land that the Deputy President has already surrendered to them. Please, let them answer my Question or you use your powers and declare that William Ruto is innocent not only of this accusation but also of others they have levelled against him.

**Hon. Speaker:** Did you say the claim was made on the *Hansard*?

**Hon. David ole Sankok** (Nominated, JP): Yes, the Cabinet Secretary, Dr. Fred Matiang'i, came before a Committee of the House and claimed that the 15,000 acres in Laikipia are owned by the Deputy President. That is a false accusation because the Cabinet Secretary has refused to table a report on the same. We can excuse such people.

**Hon. Speaker:** Maybe Hon. Mwathi can respond to that if it was on the *Hansard*.

**Hon. Peter Mwathi** (Limuru, JP): Hon. Speaker, when Hon. David Sankok came to this Chamber, because the Committee was seated here, a response was supposed to have been given by the Cabinet Secretary. You had instructed that the Cabinet Secretary responds to the Question, but it is the Chief Administrative Secretary who came. He said he was under no instruction to answer that Question and that the Question was going to be answered by the Cabinet Secretary himself. Subsequently, we have not been able to interact with the Cabinet Secretary to pursue that matter. They said the answer was to be brought, as per your direction, by the Cabinet Secretary himself.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Sankok, I think you should be persuaded by Hon. Mwathi. If the matter was on the *Hansard*, it will be dealt with. Hon. Mwathi, you want to add something?

**Hon. Peter Mwathi** (Limuru, JP): Hon. Speaker, I am aware that we shall interact with the Cabinet Secretary tomorrow. I undertake to give Hon. Sankok a written response so that he can interact with it even while on recess. I know the Ministry is committed to bringing an answer.

**Hon. Speaker:** You say you are sure you are going to interact with the Cabinet Secretary. Is it as a Committee or as Hon. Mwathi? You could be interacting somewhere else.

*(Laughter)*

**Hon. Peter Mwathi** (Limuru, JP): Hon. Speaker, I want to make it very clear that occasionally when there are issues, including the balance of Questions that we are not able to get

responses to, I have to directly reach out to him so that I am able to present issues that Members raise. As the Chairman of the Committee, with the authority of its members, when I get answers I transmit them to the members.

**Hon. Speaker:** Including the one by Hon. Yusuf?

**Hon. Peter Mwathi** (Limuru, JP): Yes, all pending Questions. It is my desire that we have an output that befits the Committee. It is only that sometimes we are let down by the Ministry.

Thank you.

**Hon. Speaker:** Hon. Ichung'wah, you appear to be itching to say something. And today you unusually came after 4.00 p.m.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, fortunately I had a sitting with *boda boda* chairman and secretary in the constituency. That is why I am late. I profusely apologise. Thank you for the indulgence.

Listening to all the issues that have been raised, you must agree with me that there seems to be a problem. If you listened to what Hon. Abdullswamad raised, the Chairlady of the Departmental Committee on Finance and National Planning was at pains to enumerate the kind of struggles she has had to go through. It is indeed clear that there is a problem. I sit on the Committee on Members' Welfare and Facilities. One of its cardinal responsibilities is to promote and entrench parliamentary democracy. I see a danger to our parliamentary democracy from the Executive. I remember speaking to the issue Hon. Abdullswamad raised the first time he raised. It is a matter that affects the people that we represent in this House. You have clearly heard the struggle Hon. Wanga has had with the Cabinet Secretary for the National Treasury particularly.

We went to great lengths in the course of this Session, taking a lot of taxpayers' time and money, debating the Motion on fuel prices. I am aware the Chair has tabled a report today, only after interacting with the Ministry yesterday. I am rather concerned that the National Treasury is taking this House for granted. And it is not only on the question by Hon. Abdullswamad. It is also on the issue that was raised by Hon. Duale and issues around petroleum prices. You have just spoken to the issue of Budget Policy Statement, a matter that is of serious concern to Kenyans. Even if we come back next year two weeks earlier than the mid-February scheduled resumption date, we may not have time to clearly interrogate the BPS as we ought to do. I find it deliberate. That is why I see a danger to parliamentary democracy. When we come back in January, we will look at the BPS and, possibly, a supplementary budget.

I am aware from other quarters that there are indications that they may even want to recall us from recess to come and probably, look at these issues like a Supplementary Budget. It is within their rights. However, we must be firm as a House, that if that CS is to table a Supplementary Budget before this House, we should not consider it until some of the issues that we have addressed in this House like the one Hon. Abdullswamad is raising, that touches the people we represent, are addressed. People out here are suffering. They are being forced to get goods from Nairobi and carry them to their destinations. Imagine you operating from Mariakani or Changamwe and you are forced to come for your goods from Nairobi and transport them back by road to Mombasa. Those are some of the issues the Member for Mvita had raised.

The issue on petroleum is a matter that this House took its time because it affected not just the livelihoods but also the cost of living of the people who have sent us here. We are going into an election next year. If the people see us not representing them and acting in their interest, they will punish us. And before they do so, I want to implore the House that we punish this Cabinet Secretary to stop taking the House for granted. I dare say and I want to encourage the House that if there is a Supplementary Budget that is being brought in the course of recess, if the issues that

have been raised by Members, the issues by Hon. Abdullswamad, Hon. Aden Duale, and petroleum business that we were to do... I am happy that we have had procedural motions that allow us to consider some of these things and go to committee in the course of the recess.

I was reading the Order Paper this morning and was telling myself that if there is any business that this House should have prioritised, it was that Bill on fuel prices by the Committee led by Hon. Gladys Wanga. If you have a Cabinet Secretary and a National Treasury that is taking the House for granted, we must have a recourse. Otherwise, if the Chair sits here and laments and the Speaker too is lamenting that the BPS was only brought the other day, what then are Kenyans bound to do? We are at danger - and that is the point I want to raise, just to raise our consciousness - of our Parliamentary democracy being threatened by an overbearing Executive that seems to be very keen to capture even the Legislature. We must stand up as a House to protect our parliamentary democracy as the people's representatives.

Thank you, Hon. Speaker.

**Hon. Speaker:** Committees are at liberty to propose any of the sanctions that are available so that... I have said, time without number, that Committees should not feel frustrated. You are at liberty to propose sanctions. The law is there. You have everything in your hands so, it is only you who is... If you do not want to apply those sanctions, then I wish you well.

There is a request from Hon. Shinali.

**Hon. Benard Shinali** (Ikolomani, JP): Leader of the Majority Party, emeritus, I have been with you here since morning, today, even when you were seconding the Leader of the Majority Party, but I wish to make a Statement.

#### BUDGET POLICY STATEMENT

Hon. Speaker, as you are aware, the 2022 Budget Policy Statement submitted and tabled on Wednesday, 1<sup>st</sup> December 2021, is a statutory document with strict timeliness as provided under Section 25 of Public Finance Management Act and National Assembly Standing Order No.232.

Section 25 of the PFM Act provides that the Cabinet Secretary, National Treasury, should submit the BPS by 15<sup>th</sup> February each year. Thereafter, Parliament shall, not later than 14 days, after the BPS is submitted, table and discuss a report containing its recommendation and pass a resolution to adopt it with or without amendments.

In view of the revised Budget calendar to accommodate the general elections scheduled for August 2022, the 2022 BPS was submitted to Parliament by 30<sup>th</sup> November 2021. The Cabinet Secretary, National Treasury and Planning, shall take into account resolutions passed by Parliament in finalising the Budget for the Financial Year 2022/2023 and the Medium Term.

Noting the BPS forms the basis for preparation of 2022/2023 Annual Estimates which are expected to be brought early February next year, it is imperative to process the 2022 BPS before end of this year. In that regard, I would request your indulgence as well as that of the House, so that I table a calendar of timelines in processing 2022 BPS and request the relevant departmental committees adhere to the set timelines. In addition, I will be liaising with the House leadership and the House to agree on it. I hope the House will consider our request and approve.

*(Loud consultation)*

I am the Vice-Chair.

**Hon. Speaker:** You said you will be tabling a calendar?



**Hon. Benard Shinali** (Ikolomani, JP): Yes, it is the one I want to table.

**Hon. Speaker:** Calendar?

Leader of the Majority Party, what is proposed? The House as per the resolution of the 10<sup>th</sup> February this year, is scheduled to go on recess this evening.

**Hon. Benard Shinali** (Ikolomani, JP): Yes, I just want to table for you so that you go through it to see whether it is agreeable.

**Hon. Speaker:** You could have read it out so that we hear what it is?

**Hon. Benard Shinali** (Ikolomani, JP): Hon. Speaker, I wish to read the submission of the 2022 Budget Policy Statement to Parliament, which was done on 1<sup>st</sup> December 2021:

Public participation of the 2022 BPS pursuant to Article 118(1)(b)(a) and 201(a) of the Constitution on 6<sup>th</sup> to 10 December 2021;

Briefing and consideration of the BPS by relevant Committees, 8<sup>th</sup> December 2021;

Presentation and unpacking of the BPS to Budget and Appropriations Committee, 14<sup>th</sup> December 2021;

Receiving submissions from Departmental Committees of the National Assembly, 16<sup>th</sup> to 17<sup>th</sup> December 2021;

Meeting with the Parliamentary Service Commission, the Auditor-General and the National Treasury to discuss the proposed ceilings, 18<sup>th</sup> December 2021;

Budget and Appropriations Committee considering the Draft Report on the 2022 BPS on 20<sup>th</sup> December 2021;

Special Sitting day to approve the Budget and Appropriations Committee Report, 21<sup>st</sup> or 22<sup>nd</sup> December 2021...

*(Loud consultations)*

**Hon. Speaker:** I will tell you this for free: The Calendar of this House can only be altered by the House resolution. The National Treasury of the Republic of Kenya has no authority to come and propose those kinds of things. It is not possible. People cannot sit on their job and then want to hold Parliament to ransom. That is wrong. They were warned long ago that the House was due to go on recess on 2<sup>nd</sup> of December. The BPS was then tabled on 1<sup>st</sup> December and then someone starts to propose that I do not know date 8<sup>th</sup> or 6<sup>th</sup> and so on.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I think we Members and Chairs must protect the independence and the integrity of this House. This afternoon, among the many Communications that you issued, was that the Committee sittings will end on 13<sup>th</sup> December, and they will resume sometime in January. This is why sometimes we are accused of Executive capture. A Vice-Chair of Budget and Appropriations Committee cannot come... Hon. Shinali is a second timer. He participated in the approval of the Calendar. Today, after the Speaker has read a Communication, without a Motion, he wants this House to deliberate on behalf of one Ukur Yatani until 25<sup>th</sup> December. That is an abuse of parliamentary privileges. In fact, this Member should be cited for contempt. I think he is a good man. He is a good friend of mine. I have a feeling the Budget Office prepared this. If they are listening to me, Mrs. Makau and the team she works with constitute one of the best departments. I do not want them to mislead Members.

Hon. Speaker, you know, Hon. Shinali walked in, looked at you a number of times and he had a paper. I was wondering, this is a decent man, why is he being harassed? Little did I know that he had a document. I think he was not here earlier. If he was he would have heard you read the many Communications. The House is going on recess this evening. This is for the records. The

Speaker has made a communication. The last Committee sitting is on 13<sup>th</sup> and it is not only for Members, even our staff must go on holiday. So, Yattani can look for another Parliament whether it is the Parliament of Somalia or Djibouti to discuss those things. We will only deal with his matter when we come back on 24<sup>th</sup>.

**Hon. Speaker:** Hon. Shinali, we will treat that as if it never happened. It is not possible. We passed the Calendar on 10<sup>th</sup> of February. Whoever gave you the paper is the one who is trying to mislead you. They just accosted you on the gangways and gave you a paper. Is it from the Budget Office? I will tell you for free. If the House is so minded, it can make any resolution including resolving to sit, but that is only the House but not somebody coming to propose some calendar here. The reason why Parliament has been in constant touch with the National Treasury about this issue of the BPS, is because we did not want them to interfere with the Calendar of the House, which we gave them. It is never done that way. So, just take it back to them; they say, RTS, Return to Sender.

*(Laughter)*

Treat it as though it never happened. The Leader of the Majority Party.

## STATEMENT

### BUSINESS FOR CONSIDERATION BY THE HOUSE BUSINESS COMMITTEE

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Speaker. It is closing day so, there are light moments like this.

Pursuant to the provisions of Standing Order No. 44 (2) (a), I rise to give the following Statement on behalf of the House Business Committee (HBC) which met on Tuesday 30<sup>th</sup> November to prioritise the business for consideration:

I wish to take this opportunity to thank you, Hon. Members of this House as well as your staff for the sacrifice, active participation and overall contribution to the improvement of law-making at every stage of the process, representation of our people and critically exercising our crucial oversight role. I also commend the chairpersons for the diligence in leading the Committees in concluding a lot of pending business before them and in retrospect, I believe it has been a wonderful Session in which we have achieved a lot; dared greatly, known great enthusiasm and great devotion. This is the first Session ever in the history of this Parliament that we have had to work into the night. Thanks to the Members for devoting that time. There have also been a number of key developments one of which was our attempt at effecting constitutional change. We all know that we were actually to surpass a threshold, we tried but for the last about 10 years we never achieved. We did our part and we know how that went and we leave it at that.

What more can we aspire to do? We deserve to pat ourselves on the back and be proud of the legislative year that has been. As we recollect and appreciate what has been achieved, I wish to point out that the mission of the 12<sup>th</sup> Parliament is not over yet. We still have a significant number of good legislative proposals, Bills and other statutory instruments that more certainly need our keen attention including the 25 Bills that we have just saved to process between end of January and April. Unfortunately, time and tide wait for no man and therefore, to complete our mission, before we head to electioneering period, we need a collective effort of every Member and every Committee.

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I am reliably informed that there are no Questions scheduled to be responded to by the Cabinet Secretaries obviously as communicated by you, Hon. Speaker. The Committees will not be meeting and in fact this gives them ample time to take this time to expedite their pending business before they also break for the long recess.

As we proceed for the long recess later today, it is important to note that in case of any urgent business that requires the attention of this House, Members may be recalled for a Special Sitting pursuant to the provisions of Standing Order No. 29. This special business may well include the passage of the constitutional names that Members have been processing plus anything else the the Speakers' office and the Leader of Minority will consider important enough to recall you so that we can process during the break.

On behalf of the HBC, and indeed the people of Kipipiri who give me the time to sit with you every day, I wish you all a Merry Christmas and a happy festive season as you interact with your families, constituents and other Kenyans. I look forward to seeing you all as we come back in good health, so that together, we can face the electorate and hopefully have a bigger turnaround threshold than the traditional one. I wish to lay this Statement on the Table of the House.

*(Applause)*

*(Hon. Amos Kimunya laid the Statement on the Table)*

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

#### IN THE COMMITTEE

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

#### THE KENYA INDUSTRIAL RESEARCH AND DEVELOPMENT INSTITUTE BILL

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order Members! We are now in the Committee of the whole House to consider the Kenya Industrial Research and Development Institute Bill (National Assembly Bill No.44 of 2021).

#### *Clause 3*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We have an amendment by the Chairperson. Where is the Chairperson? We have the Vice-Chair, please proceed.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 3 of the Bill be amended by deleting paragraphs (a) and (b) and substituting therefor the following new paragraphs—

- (a) the establishment of the Kenya Industrial Research and Development Institute;
- (b) the recognition of the Kenya Industrial Research and Development Institute as a body responsible for carrying out industrial research, development, technology and innovation;
- (c) the establishment of internationally recognised industrial research infrastructure; and
- (d) promotion of research, technology, innovation and incubation to facilitate industrial development.

The justification for this amendment is to establish and outline the purpose of the Bill, which is the establishment of Kenya Industrial Research and Development Institute (KIRDI) and giving it mandate.

*(Question of the amendment proposed)*

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

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

*(Clause 3 as amended agreed to)*

*(Clause 4 agreed to)*

#### *Clause 5*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We have an amendment by the Vice-Chairperson. Please proceed.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 5 of the Bill be amended in subsection (1) by inserting the following new paragraph immediately after paragraph (m)—

“(n) building materials technology.

The reason is we want to include building materials as part of the research the institute will be undertaking. Thank you.

*(Question of the amendment proposed)*

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Members! Even the Vice-Chairperson. At the very least the Vice-Chairperson should be able to vote on her amendments.

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

*(Clause 5 as amended agreed)*

*(Clauses 6 and 7 agreed to)*

*Clause 8*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We have an amendment, Hon. Vice-Chairperson.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 8 of the Bill be amended in sub clause (1) by—

(a) deleting the words “industrial research and development” appearing in paragraph (b) and substituting therefor the word, “industry”;

(b) inserting the following new paragraphs immediately after paragraph (c)—

“(ca) a representative of the National Commission for Science Technology and Innovation appointed by the Cabinet Secretary;

“(cb) a representative of the Kenya Industrial Property Institute appointed by the Cabinet Secretary; and

“(cc) a representative of the office of the Attorney General.

(c) deleting paragraphs (d) and substituting thereof the following new paragraph—

“(d) Three members appointed by the Cabinet Secretary from each category of the following institutions—

i. public universities;

ii. the Kenya Association of Manufacturers; and

iii. the Consumer Federation of Kenya.

The import of this is to increase Government representation in the Board particularly, the Office of the Attorney-General, so as to offer legal advice. Thank you

*(Question of the amendment proposed)*

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

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

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

*(Clause 8 as amended agreed)*

*(Clause 9 agreed to)*

*Clause 10*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Vice-Chair, you have an amendment.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 10 and substituting there of the following new clause.

Functions of the Board

10. The Board shall—

- (a) determine the organisation’s mission, vision, purpose and core values;
- (b) set and oversee the overall strategy and approve significant policies of the organisation;
- (c) approve the organisational structure;
- (d) approve the annual budget of the organisation;
- (e) enhance the corporate image of the organisation;
- (f) ensure availability of adequate resources for achievement of the organisation’s objectives; and
- (g) hire the Chief Executive Officer on such terms and conditions of service as may be approved by the relevant Government organs.

The reason is we want to align the functions of the Board with the *Mwongozo* code which obviously, guides the operations of Boards in State corporations.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Yes, Hon. T.J. Kajwang’.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): Hon. Temporary Deputy Chairman, I must confess I was not putting my head into this, but I heard certain things being mentioned and I happen to be an authority in them. The gracious lady moving this amendment is a person I hold in very high esteem. The word ‘*mwongozo*’ has never been defined in law. So, when there are references to it giving it some type of activity, is in contrast to written law. Would the Vice-Chairperson explain the term ‘*mwongozo*’ and is it in tandem with the rest of the books of law?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Vice-Chairperson, do you want to speak to it? Hon. T.J. Kajwang’ has said he is an expert in this. Is it on *mwongozo* or in law generally?

**Hon. T.J. Kajwang’** (Ruaraka, ODM): On delegated legislation and regulatory making.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I am reliably informed that you have written a lot. The Leader of the Majority Party and then the Vice-Chairperson.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Chairman, I am not sure whether Hon Kajwang’... He was a Member in the 11<sup>th</sup> Parliament as well. The *Mwongozo* code was actually tabled in this House by my predecessor and became part of the records of this House. Hence, the continuous reference to the *Mwongozo* code is because it was tabled and accepted as a document of the House. That is why we keep referring to it. I have heard what you have said and at some point in future we need to codify it within law and give it a reference. It was actually tabled in this House and became part of the documentation of this House.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I will come to you Hon. T.J. Kajwang’ but let us have Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Hon. Temporary Deputy Chairman, I may not be an expert like Hon. T.J. Kajwang’ whom we popularly refer to as ‘Chief Justice (CJ) *bonoko*’

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although he swore in the Rt. Hon. Raila Odinga who is now performing all the duties of that office. I have been a chairperson of a State corporation and we have been using the *Mwongozo* code of conduct because it is part of law.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): On a point of order.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Sankok. What is out of order, Hon. Wanga? Give her the microphone.

*(Hon. (Ms.) Gladys Wanga spoke off record)*

Just wait. You need to be on record. You are now on record.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, is the Member in uniform in order to refer to the people's CJ, that is, Hon. T.J. Kajwang', as 'bonoko'? 'Bonoko' actually means a mad man. Is the Member in order to refer to a fellow Member of this House as a mad man? For us to listen to the Member, he has to withdraw that very obnoxious statement against the people's CJ. I find him out of order.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): You cannot find him out of order, but I may. Hon. T.J. Kajwang' seems not to have an issue with that.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, I am his advocate.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): You are his advocate?

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Yes.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Sankok, let us not get there. Let us focus.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Temporary Deputy Chairman, where was his boss when the "People's President" was being sworn in? Where was he? Was he in that congregation? He should not take lightly some of these things. We have worked for this country with pain and blood. He should know that.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. T.J. Kajwang', the issue of swearing in takes it even on another tangent.

Hon. Sankok, please, let us focus.

**Hon. David ole Sankok** (Nominated, JP): Hon. Temporary Deputy Chairman, in fact, I have just said that he swore in the Rt. Hon. Raila Odinga, but he seems to be now doing what...

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Sankok, focus on the Bill. Let us deal with the Bill. We can deal with the others elsewhere.

**Hon. David ole Sankok** (Nominated, JP): However, all of them were like Nyasuguta. Is it Nyasuguta or Nyasuna?

Hon. Temporary Deputy Chairman, the *Mwongozo* code of conduct is used in State corporations. According to the proposed Clause 10(g), the Board hires the Chief Executive Officer (CEO). Long time ago, the minister of the relevant ministry used to hire CEOs as is the case with the current Cabinet Secretaries (CSs). When we bring that role to the Board according to the proposed clause, then the CEO will be more answerable to the Board. However, when the Chairperson or the Directors of the Board as well as the CEO are answerable to the CS, there is a lot of clashing because it is like having two centres of power. So, I support this amendment.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us hear Hon. T.J. Kajwang' then we make progress on this.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Temporary Deputy Chairman, I asked this issue of *Mwongozo* to the Chairperson, and the Leader of the Majority Party rose to explain, but I do not know whether he got the substance. I think he did. *Mwongozo* code was brought to this House as a policy paper which, therefore, was the basis upon which legislation was made. However, the word *Mwongozo* itself must be defined by statute law so that when you are referring to it in this legislation that we are talking about, you know exactly, with certainty, what you are talking about. It is just a simple thing. It does not even require debate. I do not know why clear issues such as these should lead us to a debate.

The Chairperson should just come to Clause 2 of this Bill and attempt to define it. After we have run through the clauses, we will come back to the definition section which is Clause 2. In that clause, she should define, with clarity, what *Mwongozo* literally means so that anybody reading that legislation will know what this thing is all about. In my view, all of us who are legislation practitioners will understand that that is common sense.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. I am sure the Chairperson has taken note but, you should define what is in the Bill in the first place. She has to check whether there is actually a reference to *Mwongozo*. Maybe she was just speaking and mentioned the word "*Mwongozo*", but if it is in the Bill, you may want to consider that. Anyway, that is up to you with the advice from Hon. T.J. Kajwang'.

Hon. Members, let us make progress on that.

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

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

*(Clause 10 as amended agreed to)*

*(Loud consultations)*

Order! At the very least, I said that the Chairperson should be able to vote.

**Hon. Members:** Yes.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I will carry that again.

*(Clause 11 agreed to)*

*Clause 12*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We have an amendment. Let us have the Chairperson.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Thank you, Hon. Temporary Deputy Chairman. On Clause 10, when I alluded to *Mwongozo*, it is just like the way we do benchmarking in other countries. It was just to explain. It was not part of the Bill. It was just an explanation.

Now, moving to Clause 12, I beg to move:

THAT, Clause 12 of the Bill be amended by—

(a) renumbering the existing provision as subclause (1);

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(b) inserting the following new sub-clause immediately after the renumbered sub-clause (2) —

“(2) The members of the Board shall be appointed at different times so that their terms of office expire at different intervals”.

The justification is that, a lot of the times, we appoint a full board and then we retire them altogether, after which we lose the memory of the board. So, we are saying that we stagger appointments as well as retirement so that there is a continuous board memory.

*(Hon. (Ms.) Odhiambo-Mabona spoke off record)*

There is institutional memory and also the board’s memory because...

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Is that also *Mwongozo*?

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): It is good practice.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Anyway, Hon. Chairperson, do not cross engage Members before I propose the Question.

*(Question of the amendment proposed)*

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

The Temporary Deputy Chairman must hear. You see, my eyes go straight to the Chairperson again. So, I will put that Question again.

*(Clause 12 as amended agreed to)*

### *Clause 13*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chairperson, you still have an amendment.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 13 of the Bill be amended by—

(a) renumbering the existing provision as subclause (1);

(b) inserting the following new sub-clause immediately after the renumbered sub-clause (1) —

“(2) Notwithstanding the generality of the foregoing, the Board shall ensure that any member suspected to have committed an offence under the Constitution or any other written law, vacates office to pave way for investigations.”

The justification is that it is a punitive clause which provides for the action to be taken against Members who are found to have committed offences. We are saying that there is need for a fair and independent investigation before any action is taken upon them. So, it is actually a good practice when you introduce a punitive clause in law.

Thank you.

*(Hon. (Ms.) Odhiambo-Mabona spoke off record)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Millie, let me propose the Question first.

*(Question of the amendment proposed)*

Hon. Millie.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I can see the intention of the Member, but I am just fearful that the way it is worded is subject to abuse. It reads: “any member suspected to have committed...” Should it be “suspected” or “accused”? This is because “accused” is of a slightly higher threshold than “suspected”. At what point do you say a person is suspected? Is it when a person dreams or imagines because suspecting is a very fluid term? The Chairperson, perhaps you would want to consider putting a stronger word like “accused” because it is a legal term. “Suspected” is a very fluid term.

So, perhaps the Chairperson of the Committee, because you are the one who can amend at this juncture and it is your amendment, if you could consider replacing the word “suspected” with “accused” to read: “any member accused to have committed an offence” because you are setting aside. You are not actually removing. Removal is upon conviction, but suspicion... What is suspicion in law? There is no suspicion in law.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chairperson, I will give you a chance and you can still consult with your team here as we hear from the Member for Seme.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, I do not support this basically for the same reason. “Accuse” is too general. It should either be “under investigation” or “on trial” because those are specifics. You know what to do and when, but, in this case, who is accusing? If a Member of the Board is accused and someone goes to the Press and says: “we suspect”, is that enough reason? I think we need better terminology or just drop it all together.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Sankok.

Hon. Chair, I will give you an opportunity.

**Hon. David ole Sankok** (Nominated, JP): It seems Hon. (Dr.) Nyikal has read my mind. Hon. Millie had brought up something very important, that being suspected is too general. She has come up with the word ‘accuse’ but again, you can be accused by your detractors. A mere accusation cannot make you to step aside. What we need is a legal term that the person is already on trial so that on conviction they will be summarily dismissed. However, when they are on trial, they can step aside so that they do not interfere with investigations. This should be once the investigations have commenced. It is not about being accused, being suspected or being looked into because will they be using spiritual eyes to know who is suspected and who is not? All of us are suspects.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is out of order, Hon. Millie? Then we have the Chair, I am sure she has a way out. Yes, Hon. Millie.

**Hon. (Ms.) Odhiambo-Mabona** (Suba South, ODM): Sorry, Hon. Temporary Deputy Chairman, I know that the Chairperson is going to comment. Because we are trying to do a lot before we go for recess, you will excuse us for not being overly vigilant. However, you notice that even when you say ‘vacate office’, what is to vacate office legally? You are saying that a person can be removed from office on suspicion. That is not proper at all. I had not even

mentioned that one on vacating office. I would strongly urge the Chairperson to either drop this amendment or reword it or if that is not possible, we should just oppose it so that it drops.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chairperson, depending on what you say, I want to give you guidance that there is nothing that stops you from further amending and replacing.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Temporary Deputy Chairman, I agree. I want to move a further amendment on that clause. This Bill belongs to this House so the comments are well taken. I move a further amendment so that we replace the word ‘suspected’ with the word ‘accused’. Suspected is extremely broad. Now, that becomes more focused.

On ‘vacate office’, I agree that we should use the word ‘step aside to allow for investigations.’ ‘Step aside’ maybe a better word. We are going to amend that as well.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very good. Now that you are on record, I am sure that the clean-up will happen.

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

*(Clause 13 as amended agreed to)*

*(Clauses 14, 15, 16, 17, 18 and 19 agreed to)*

#### *Clause 20*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We have an amendment from the Chairperson.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Temporary Deputy Chairman, I beg to move-

THAT, Clause 20 of the Bill be amended in subclause (1) by deleting the words “the Board” and substituting therefor the words, “the Cabinet Secretary”

This is to allow that once the Director General is recommended by the Board to the respective Cabinet Secretary, then the gazettelement should be done by the respective Cabinet Secretary and not the Board. The other reason is, for separation. Once the Board has interviewed and recruited – I am talking from practice, you know I come from that area – the Cabinet Secretary should then appoint and gazette the three names recommended to him or her.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Yes, Hon. Sankok then we make progress.

**Hon. David ole Sankok** (Nominated, JP): We had said that for separation of powers, the CEO should be appointed by the Board. Now, we are giving three names to the Cabinet Secretary to select and appoint one person. This is negating what we have earlier said and from *Mwongozo*. It is either that the Board gazettes and gives a letter or then let the Cabinet Secretary recruit. I oppose this amendment. It is wrong.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Millie.

**Hon. (Ms.) Odhiambo-Mabona** (Suba South, ODM): Thank you, Hon. Temporary Deputy Chairman. What I noticed is that, what the Chairperson said is very good but it is not what is in the proposed amendment. The proposed amendment does not provide any role for the Board at all. According to the proposed amendment, it shall now read: “There shall be a Director General of the institute who shall be competitively recruited and appointed by the Cabinet Secretary.” What you are saying conforms to *Mwongozo* standards, is not what you are doing. You are giving sole responsibility to the Cabinet Secretary. Why? If there is a reason, for instance, if you want the power in here to be in the Cabinet Secretary alone, that is okay but, at least we need to have a good reason for that.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Member for Seme.

**Hon. (Dr.) James Nyikal** (Seme, ODM): I oppose this amendment. We cannot institute boards, put them in place then emasculate them. It is not necessary because you now have a Board and now the Cabinet Secretary is the one that is appointing the Chief Executive Officer of the Board. Who then is the Director General answerable to? If there is a question, who does... I think we should drop this.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Members. Hon. Chairperson, it is good for you to read the clause. The clause reads: “There shall be a Director General of the institute who shall be competitively recruited and appointed by the Board.” So, the amendment is replacing the ‘Board’ with the ‘Cabinet Secretary’.

Hon. Chairperson, you have another chance. What do you have to say?

**Hon. Member:** Drop.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): No, I am not dropping. We can just cancel the word ‘appointment’ and say ‘gazettement’. I know that separation is very important.

*(Several Hon. Members spoke off record)*

If that is the case, then we can drop it. It will not alter the...

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, that amendment is dropped.

*(Proposed amendment by Hon. (Ms.) Wangari Mwaniki dropped)*

*(Clause 20 agreed to)*

#### *Clause 21*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We have an amendment by the Hon. Chairperson.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 21 of the Bill be amended by—

(a) by deleting the word, “masters” appearing in paragraph (a) and substituting therefor the word “doctorate”;

(b) by deleting the word, “ten” appearing in paragraph (b) and substituting therefor the word “fifteen”; and

(c) by deleting the word, “five” appearing in paragraph (c) and substituting therefor the word “eight”.

This is to give experience to the person appointed to the Office of the Director General. Given that this is a research institute, it requires a person of greater experience. That is the import of that proposed amendment.

*(Question of the amendment proposed)*

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

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

*(Clause 21 as amended agreed to)*

#### Clause 22

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 22 of the Bill be amended by—

- (a) deleting paragraph (b) and substituting therefor the following new paragraph—  
“(b) develop an economic, efficient and cost-effective internal management structure”;
- (b) deleting paragraph (d) and substituting therefor the following new paragraph—  
“(d) cooperate with other entities and organisations in the sector;
- (c) deleting paragraph (f) and substituting therefor the following new paragraph—  
“(f) provide advice as required on matters within the Institute’s responsibility”; and
- (d) deleting the word, “of” appearing immediately after the words, “such other duties” in paragraph (g).

Again, it is an addition of functions of the Director General, to ensure proper dispensation of services of the institute. It is the prescriptive functions that have been provided in the Bill being removed so that it can be contained in the Director General’s letters of employment. The final amendment is seeking to correct the typo appearing in paragraph (g).

*(Question of the amendment proposed)*

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

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

*(Clause 22 as amended agreed to)*

#### Clause 23

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 23 of the Bill be amended by deleting the word “three” appearing immediately after the words “not exceeding” and substituting therefor the word “five”.

Again, the justification is that we have been having CEOs appointed for three years. Before they even do a strategic plan, they are making their way out. So, we decided it is better for an institute of research to propose the five-year term as opposed to three.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Yes, Hon. Odhiambo.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): I can see that the Chair is very worried. She thinks I am going to oppose. I think this is a very good amendment. The practice has been doing these three-year terms. By the time you become a CEO, getting another job is very difficult. It is almost putting people’s careers at a dead end. If you do five years and another five, it will be 10 years; at least, somebody will already have organised their lives. I support.

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

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

*(Clause 23 as amended agreed to)*

*(Clause 24 agreed to)*

#### *Clause 25*

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 25 of the Bill be amended by deleting the words “as the Board may on the advice of the Salaries and Remuneration Commission determine” appearing immediately after the words “such terms” and substituting therefor the words “and conditions as the Board may determine”.

It is to give independence to the Board. The amendment gives the Board exclusive powers to appoint a Corporation Secretary who will be its legal advisor.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): No, we are dealing with Clause 25. It is about the Salaries and Remuneration Commission and the Board.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Sorry. I think I have mixed up my notes. We want to give the Board independence. We are removing such terms and substituting thereof with the words “as the Board may determine”. We are giving the Board the independence to make those decisions on salaries.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Are you done with moving? I need to propose it.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): The Leader of the Majority Party is advising me that we can remove it and I have no objection to that. It contradicts the role of the Salaries and Remuneration Commission.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): You do not need to be advised by the Leader of the Majority Party. You should be convinced.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): I am convinced. I am dropping it.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, the amendment is dropped.

*(Proposed amendment by Hon. (Ms.) Wangari Mwaniki dropped)*

*(Clause 25 agreed to)*

#### Clause 26

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 26 of the Bill be amended by deleting the words, “a relevant field” appearing in paragraph (b) and substituting therefor the word “law”.

This is to create clarity on qualifications of the office of the Corporation Secretary which is a degree in law. It is a legal requirement.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Yes, Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): This is according to *Mwongozo*. It is very normal that in a State corporation, the Corporation Secretary should be a legal mind. It should be a lawyer because he or she will act as legal advisor. The Board will be making policies and laws. It is just imperative that the secretary has a background in law. We support that one and I think you can put the Question.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): No. You cannot put it before Hon. Ng’eno has spoken. Hon. Ng’eno, did you want to speak on this? Proceed.

**Hon. Kipyegon Ng’eno** (Emurua Dikirr, KANU): Thank you, Hon. Temporary Deputy Speaker. I support. Only that when you talk about “relevant”, it should have been specific. It is okay because I can see it is putting a degree in law as a qualification. I am well guided.

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

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

*(Clause 26 as amended agreed to)*

#### Clause 27

*(Hon. Joseph Nduati gestured to Hon. (Ms.) Wangari Mwaniki)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Nduati. Give space to the Chair to move the amendment. I see that you are advising and supporting her. That is good. Hon. Chair, you now have the space.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 27 of the Bill be amended by—

(a) renumbering the existing provision as sub clause (1);

(b) deleting paragraph (b);

(c) inserting the following new sub-clause immediately after the renumbered sub clause (1)

—

“(2) The Corporation Secretary shall be responsible to the Director General.

This has been a very thorny issue. That is what my colleague was saying. It is the issue of the Corporation Secretary reporting directly to the Board but functionally to the Director General. That is what the amendment is about. We are saying that the Corporation Secretary will be reporting to the Board because he or she is an advisor of the Board. Functionally, on the day to day running of the organisation, the CEO is the Director General.

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

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is out of order, Hon. Odhiambo?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): I think the Chair is a little confused and she is confusing the House. She is talking about functionalities and the law but what she is amending makes it not just functional but also legal. The Chair is saying that the Corporation Secretary shall be responsible to the Director General. That therefore makes it legal. It will not just be functional; it will be legal. The Corporation Secretary shall not then be answerable to anybody other than the Director General. If that is your intention, that they be answerable to the Director General, that is okay. It is for order. If your intention is for them to be functionally responsible to the Director General but legally to the Board, then it is the Board you should put here and maybe say “functionally responsible”. What you are saying is different from what you are proposing. You are proposing a legal responsibility, directly to the Director General. Be clear about what you want. Personally, I will support you because you are experienced in the sector and you know what works. So, tell us what you want. What you are saying is not what is in the amendment.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Millie, maybe she is not confused. Maybe she is not as clear as she ought to be. Hon. Chair, do you want to be as clear to Hon. Millie Odhiambo and to the House on your intent of amendment of Clause 27?

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Yes. The intention of this proposed amendment is to bring clarity. The office of the Corporation Secretary is supposed to be answerable to the Board in terms of advice and advising on legal issues. The Corporation Secretary should be an independent advisor to the Board. He or she should be an independent adviser to the board functionally.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): You have to move then I propose the Question so that we can give Members a chance to...

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): I thought you had asked me to clarify why I am proposing the amendment.



**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Proceed and move it so that I can open up the debate for Members to engage. Hon. Chairlady, do not raise anything directly to Hon. Millie so that you can finish by moving, then I will propose the Question for Members to contribute. Hon. Chairlady, you have the Floor.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): The Members can vote either way, but for me, the correct thing is what is being proposed. The Corporation Secretary will be answerable to the Board because he is an adviser.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Chairlady! I told you not to listen to Hon. Millie Odhiambo. Just move. You are partly listening to Hon. Millie.

*(Hon. David Sankok spoke off-record.)*

Do not listen to Hon. Sankok. Do not be distracted by any Member. Just move.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): This work belongs to this country. So, we have to do it together. We can go and relook at it. If we need to bring it to the House we will still do it. So, I drop it for now.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): So, is it dropped?

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Yes.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, that stands dropped.

*(Proposed amendment by Hon. (Ms.) Wangari Mwaniki dropped)*

*(Clause 27 agreed to)*

*(Clauses 28 and 29 agreed to)*

*Clause 30*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chairlady, you have an amendment to Clause 30.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 30 of the Bill be amended by inserting the words “and may be released” immediately after the words, “properly withheld”.

This is on the release of information by the institute. This amendment is necessary for clarity to allow release of information in line with the requirements of the Communication and Information Act, given that some of the information will be proprietary information.

*(Question of the amendment proposed)*

*(Question, that the words to be inserted)*

*be inserted, put and agreed to)*

*(Clause 30 as amended agreed to)*

*Clause 31*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chairlady, you have an amendment to Clause 30.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 31 of the Bill be amended by deleting the word “Parliament” appearing immediately after the words “allocated by” in paragraph (a) and substituting therefor the words “the National Assembly”.

The import is to give timelines to the Cabinet Secretary...

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): No! It is Clause 31, Hon. Chairlady.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Sorry, Hon. Temporary Deputy Chairman. I think it is a typographical error.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, let us give the Hon. Chairlady space to move.

*(Hon. (Ms.) Odhiambo-Mabona spoke off-record)*

Hon. Millie, you are not helping her, give her space.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): The law is to help this country not an individual or the Committee. So, in Clause 31 we are clarifying to give the National Assembly powers that is vested in it to allocate and appropriate funds and not Parliament. This is because Parliament includes the Senate. That is the clarity we are seeking to make.

*(Question of the amendment proposed)*

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

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

*(Clause 31 as amended agreed to)*

*(Clauses 32, 33, 34, 35, 36 and 37 agreed to)*

*Clause 38*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chairlady.

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**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Thank you, Hon. Temporary Deputy Chairman. I beg to move:

THAT, Clause 38 of the Bill be amended by—

(a) deleting Sub-Clause (1) and substituting therefor the following new Sub-Clause —

“(1) The Cabinet Secretary may within six months upon enactment of this Act, make Regulations generally for the better carrying out of the provisions of this Act.

(b) deleting the expression 9(6) appearing in Sub-Clause (2) and substituting therefore the expression 94 (6).

The justification is to give the Cabinet Secretary the right to make laws that will operationalise this Bill once it is passed as an Act of Parliament. We are giving him a six-month timeline.

Thank you.

*(Question of the amendment proposed)*

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

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

*(Clause 38 as amended agreed to)*

#### Clause 39

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chairlady, are you proposing a deletion?

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Yes, Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Bill be amended by deleting clause 39.

We want Clause 39 to be deleted because it has been captured in the interpretation of terms in Clause 2.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Millie.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Chairman, though Members are in a hurry, I want clarity from the Chairlady. This is a transitional provision. Sometimes when we are in a hurry, we make grave mistakes that make us look like we are not serious as a House. Can we have clarity because her proposal is seeking to remove a transitional clause? What then will happen?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Duale.

**Hon. Aden Duale** (Garissa Township, JP): I am sure that is provided for maybe in the Act. The Vice-Chairperson can tell us. I am sure the Committee cannot delete that. There must be a provision somewhere else within the main Act. This is a transitional clause. I do not think a Committee of this House can...

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**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Temporary Deputy Chairman, this is a new Bill. We are not amending...

*(Hon. Aden Duale spoke off-record)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chairlady, please proceed.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): I was explaining that this is a new Bill. On the issue that Hon. Millie is referring to, it is like it is the appointed day that operationalises the Act and the former institute. There was no Act on the creation of this institute. This is an initial law and that is why this amendment becomes necessary.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): So, the amendment is superfluous?

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Yes.

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

*(Clause 39 deleted)*

*(Clause 40 agreed to)*

*Clause 41*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): There is an amendment to the clause.

*(Hon. (Ms.) Odhiambo-Mabona spoke off record)*

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Temporary Deputy Chairman, please protect me from Hon. Millie.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Millie, let the Mover have her time. You can tell the effect of your interruption on her.

Let her finish.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Thank you, Hon. Temporary Deputy Chairman. I beg to move:

THAT, Clause 41 of the Bill be amended by deleting the words “on the appointed day” wherever they appear and substituting therefor the words “upon commencement of this Act”.

The justification is that the Constitution provides for when a law becomes operational upon assent by the President.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Millie.

**Hon. (Ms.) Odhiambo-Mabona** (Suba South, ODM): Thank you, Hon. Temporary Deputy Chairman. Members appear to be eager to deal with the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill. I think they want to make sure they stop money laundering.

That is why they want us to move fast. But we make grave mistakes when we consider a Bill with that kind of speed.

If you look at the amendment that the Chairlady of the Committee is proposing to Clause 41, which is on the appointed day for coming into effect, that is okay. I connect it to what I was saying before, which were the deletions in Clause 39, yet the Chairlady has not proposed any amendment to Clause 42, which talks about a person who was a member of the former institute. I am sure when the Chairlady sits down later, she will understand what I am talking about.

In Clause 42, you are making reference to a provision you are not amending. You are only amending a portion of Clause 39. You have deleted Clause 39, which is in two parts. We are now making a further amendment with this amendment, which speaks to the deletion we made to Clause 39 (a). But the deletion we made to Clause 39 (b) should also have ensured that we delete Clause 42. That has not been done. We are now making reference to a ‘former institute’, but we have deleted its decision. I urge Members to not be in a hurry then we make mistakes that will make us look unserious in this House. I can see the Leader of the Majority Party knocking his head. Clause 42 says that any person who was a member of the former institute shall become a member of the institute, but we have deleted definition of ‘former institute’.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Indeed, Hon. Millie is right to highlight some of these things. Clause 39 had two sub-clauses defining “former institute” and “appointed day”. The former institute is now defined under Clause 2 through an amendment that we will consider. Appointed day is now being changed to ‘upon commencement of the Act.’ One of the matters that were in Clause 39 is transferred to Clause 2, where other definitions are. The other one is being changed under Clause 41. So, I think we are all together now.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): The Member for Seme.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, mine is not about Clause 42. Whereas I support the amendment to provide for commencement of the Act, I just need a clarification, because we know many laws have been assented to by the President, but are yet to be implemented. For example, the Health Act, 2017. Can I be educated on that so that I know we are safe? We can have a law that stays on the shelves and is never implemented.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): The Leader of the Majority Party, say something about the appointed date and commencement date so that we make progress.

**Hon. Amos Kimunya** (Kipipiri, JP): For clarity, the responsibility of this House is to enact the Bill, which is then transmitted to the Head of State for assent. Once that is done, it is the responsibility of the Executive to implement. It leaves this House. If it is not implemented, the Departmental Committee on Trade, Industry and Cooperatives can summon the Cabinet Secretary to ask why certain sections have not been implemented. Our role as a House is to legislate.

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

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

*(Clause 41 as amended agreed to)*

*(Clauses 42 and 43 agreed to)*

*New Clause 4A*

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 4—

Objectives of the Institute.

4A. The objectives of the institute shall be to—

(a) undertake research, development and innovation in industrial and allied technologies; and

(b) disseminate research findings to support industrial development.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chairlady, move for Second Reading.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Temporary Deputy Chairman, I beg to move that the new clause be read a Second Time. The reason for it is to have a clause that provides for the object or mandate of the institute. I want to clarify that this is a new law establishing the institute. That is why we removed some of the clauses that were creating confusion, like Clause 39.

*(Question of the new clause proposed)*

*(New Clause read the Second Time)*

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

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

*(The new clause was read a Second Time)*

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

*(Schedule agreed to)*

*Clause 2*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chairlady, you have an amendment.

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

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is out of order?

**Hon. (Ms.) Odhiambo-Mabona** (Suba South, ODM): Hon. Temporary Deputy Chairman, you do realise that in this amendment we are introducing many definitions. If we decide to make corporate amendments at the Committee of the whole House, it is not in order. They are singular

amendments. I would propose that, procedurally, we take the definitions one by one, so that if we have an issue with one then we raise it. I may not have an issue with the definition of ‘former Institute’ but I may have with that of ‘incubation’. We have previously considered one definition at a time. I seek your guidance, but I think that would be the proper order to take.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Millie Odhiambo, you are right to ask for that. All it does is to ensure that the Chairlady moves one definition after the other. There are quite a number of them, that is why we are here. Is that so?

*(Loud consultations)*

The Clerk will read them, then you put the import. We will then put the Question. It will take a bit of time, but it is better. There are several definitions. For example, there is “former Institute”, “incubation” and “indigenous knowledge”.

*(Loud consultations)*

They are in the Order Paper. What is it Hon. Sankok?

**Hon. David ole Sankok** (Nominated, JP): We are given the Order Paper in advance so that we can go through it, see where we have a problem then raise it. However, the Question is put together unless, Hon. Millie has a problem with this. We had this Order Paper since yesterday. I think we have already gone through it. Some of us are faster than others and we have already read it and we cannot continue going one by one because it is organised in the Order Paper. It is not one by one, rather it is Clause 2 and all the amendments follow, then we do it together.

Hon. Millie, you are the professional heckler, not me and everybody knows.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Sankok. We have to keep the lane. Let us hear from Hon. Duale.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I think what Hon. Millie is saying...

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is it Hon. Wanga?

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairman, there are things Hon. Sankok keeps saying and are on record, and they are unacceptable. Even when I said this earlier, you did not ask him to withdraw. For example, he refers to Hon. Millie as a professional heckler.

*(Loud consultations)*

No, she was not on record. Hon. Sankok stands and says things in jest, refers people as clowns, *bonokos*, hecklers and he is on record. This is a House of records. Our children, grandchildren and the people who will be in this House will see these records. It is unacceptable and cannot be let to pass. He must grow up and take responsibility for the things he says on the Floor of this House.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Members. We are dealing with a Bill here. Hon. Millie may have said something that is not on record and Hon. Sankok responded on record. Members, please, let us keep the lane. Hon. Sankok, you remember this was raised again earlier.

*(Loud consultations)*

**Hon. David ole Sankok** (Nominated, JP): I withdraw and apologise to Hon. Millie Odhiambo Mabona. I am very sorry.

I withdraw.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We had Hon. Duale on the Floor. I will give direction on how we will deal with Clause 2 in a minute.

Hon. Duale.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, outside the shenanigans, I agree with Hon. Millie. However, to save on time, there are about five definitions...

*(Hon. (Ms.) Odhiambo Mabona spoke off-record)*

Let me finish. The Vice-Chairperson can move all of them together and then when you give Members the chance to contribute, Hon. Millie can say the one where she wants a further explanation on so that we deal with it as one. This has been happening to save on time. It is only Hon. Millie then you gave her a chance on the one that she wants expounded.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I will give the Member for Suba South and then give direction after so that we make progress.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, I want to support Hon. Millie's position.

The whole of this Bill is based on Clause 2. When you talk of patent, intellectual property rights and innovations, we will interact with the whole world. If we do not get that right...

I was in Geneva in a meeting one time where a definition took 24 hours. So, these definitions have such serious meanings that we should go one by one and agree on them.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Mwathi. This is a small procedural issue that I will give direction on, then we move on.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Temporary Deputy Chairman. You are saying it is a small issue as it is, but it has been here with us.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): It is a small issue in the sense that I will give direction. It is fundamental too in the sense that it has been raised by the Members.

**Hon. Peter Mwathi** (Limuru, JP): This is not the first time. We have done it before by considering clause by clause. There were other provisions in some clauses which were more than this, but were read as a clause. Let those who want an explanation come out and ask for it. Otherwise, you will be treating this as a special case which we have not been doing before.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, I have been the Chairperson in certain situations where we have had specific definitions and many other instances and we have put them together as it is today.

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The suggestion by Hon. Millie Odhiambo is a good one. Moving forward, it may be helpful to sort them out and put them item by item, but not on this. This is so that Members can then have an opportunity to speak to each amendment. However, for now, they are not three definitions. They are more because even on innovation and the next page on No. 121, there are quite a number.

I direct that the Chairlady moves it in totality. I will give Hon. Millie a specific opportunity to speak to whichever, and probably convince the Chairlady to her direction. However, Hon. Millie, your suggestion is taken.

Chairlady.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Thank you, Hon. Temporary Deputy Chairman. I beg to move:

THAT, Clause 2 of the Bill be amended by—

(a) inserting the definition of the following terms in proper alphabetical sequence—

“former Institute” means the Kenya Industrial Research and Development Institute existing immediately before the commencement of this Act;

“incubation” means the maintenance of enabling environment conditions for the purpose of facilitating the growth or development of infant technologies ideas or industries;

“indigenous knowledge” means the wisdom developed over generations of holistic traditional scientific utilisation of the lands, natural resources and environment;

“innovation” means

(a) a technology and innovation model, utility model or industrial design within the meaning of the Industrial Property Act, 2001;

(b) a product, process, service or ideal which is novel;

(c) an improved use of a new product service or method in industry, business or society;

(d) indigenous or traditional knowledge by a community of beneficial properties of land, natural resources, including plant and animal resources and the environment; or

(e) any other non-patentable creations of improvements which may be deemed as deserving promotion and protection or *sui generis* intellectual property rights and innovator shall be construed accordingly.

“invention” means a new and useful process, machine, manufacture or composition of matter, living or inanimate, or any invention of discovery which or may be patentable or otherwise protectable or any novel variety of plant which is or may be protectable;

“innovation” means doing something new to improve a product, process or service.

“intellectual property” means intangible property that is the result of creativity such as patents, copyrights, industrial designs, utility models and trademarks;

“patent” means government authority or license conferring a right or title for a set period especially the sole right to exclude others from making, using or selling an invention;

“secretary” means the corporation secretary appointed by the Board appointed under section 25; and

“technology” means the application of knowledge to meet the goals, goods and services for sustainable development.

(b) deleting the definition of the term “Cabinet Secretary” and substituting therefor the following new definition—

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to industry.

We are justifying that these are technical terms. Some of them are used in context and need to be properly explained for clarity when used as they interact with users in the industry.

“Innovation” has been defined twice. I was proposing that the “innovation” appearing directly above the definition of “invention” and “intellectual property” be deleted.

Thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Millie, you have a singular opportunity to speak to this.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman.

Just for record, I want to indicate because I am always in this stage including my own Bill, that we have gone definition by definition. The reason is because of what the Chairlady herself has done. She has dropped one.

Secondly, there are definitions I do not agree with. If you put a global question to it, I may be forced to vote no when in fact, I support all.

We are suffering the effects of money laundering. Be it as it may, let me just go to the specific issues that are of concern to me. I have concerns over various issues:

One is the issues of “former Institute”. The Chairlady had indicated to us that legally, the Kenya Industrial Research Development Institute did not exist.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): (Off-record) It existed, but not by law.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Millie, proceed, do not be distracted. The other time the distraction came from the other direction.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Chairman, they are balancing and so, I am allowing.

The former institute did not exist by law. So, when making reference to what did not exist by law, it then becomes strange legally.

Secondly, when you talk about indigenous knowledge, it is usually knowledge from our fathers in communities. So a definition of indigenous knowledge should have incorporated that. For example, we have indigenous knowledge on beneficial properties of certain plants which you get in research. Wisdom does not capture the concept. When you talk about invention, innovation, intellectual property and patent and even technology, those are terminologies that are already defined under the Industrial Property Act. So, normally the way you define it is by making reference to the Act, so that you do not create different definitions in a new law. If the Industrial Property Act already defines all these definitions, what we are likely to do is to come with conflicting definitions that will create problems when we are implementing the law.

There are times when laws are operating concurrently, which they are likely to, because the components of these Acts are likely to come into contact with the Industrial Property Act. So,

when you have differing definitions without making reference to an existing law with similar terminology, it creates a problem. I will leave it at that. You understand what I am saying.

I may not have an issue with the definition of secretary, deleting Cabinet Secretary, but if we went one by one, I would have requested the Chairlady to then make reference as defined under the Industrial Property Act, instead of coming up with new definitions. This makes it difficult for me to even vote.

I would want to encourage my good friend Hon. Sankok; I think he took a lot of chocolate today because he has sugar rash.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us not get there because you are on record and he is not. Hon. Member for Seme, you have a minute.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, for example, on indigenous knowledge, the definitions we have here assume what we know of the environment. It does not take into consideration what we do. For example, in Kisii there are people who do brain surgery. That is indigenous knowledge. It would then even include “practised”. I would then say “and practised”. When you then come to Cabinet Secretary, you are saying industry and leaving out research. In fact, it would be important because sometimes we may have Cabinet Secretaries, one who may be responsible in industry and another responsible for research. Where will this thing lie? What about research? So in my view, I do not see why we are leaving out research and just taking industry.

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

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

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

*(Clause 2 as amended agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee does report to the House its consideration of the Kenya Industrial Research and Development Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker*

*(Hon. Christopher Omulele) in the Chair]*

## REPORT

### KENYA INDUSTRIAL RESEARCH AND DEVELOPMENT BILL

**Hon. Patrick Mariru** (Laikipia West, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Kenya Industrial Research and Development Bill and approved the same with amendments.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move that the House does agree with the Committee in the said Report. I request the Vice-Chairperson of the Committee to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. (Ms.) Wangari Mwaniki** (Kigumo, JP): Hon. Temporary Deputy Speaker, I beg to second.

*(Question proposed)*

**Hon. David ole Sankok** (Nominated, JP): Put the Question.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Sankok, I will not grant your wish at this time. I direct that that action will be undertaken when this particular business will be set down on the Order Paper again.

*(Putting of the Question deferred)*

I, therefore, direct that we move on to the next business.

## BILL

### *Second Reading*

#### THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (AMENDMENT) BILL

**Hon. George Gitonga** (Tharaka, DP): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Murugara, what is out of order?

**Hon. George Gitonga** (Tharaka, DP): Hon. Temporary Deputy Speaker, before the Second Reading of this Particular Bill, allow me to raise several pertinent issues which in my view go to the substratum of the Bill.

The Speaker has ruled on several occasions that the House cannot debate and deal with a Bill that is unconstitutional. All laws that we pass in the estimation of this House have to be within the parameters of the Constitution. We risk at all times...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Murugara, before you proceed, I understand you are rising on a point of order to raise a constitutional issue with regard to the business that we want to consider.

**Hon. George Gitonga** (Tharaka, DP): Yes, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Alright. Proceed. You may do that at any time.

### POINT OF ORDER

#### CONSIDERED RULING SOUGHT: CONSTITUTIONALITY OF THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (AMENDMENT)

**Hon. George Gitonga** (Tharaka, DP): Hon. Temporary Deputy Speaker, if we proceed to debate on Bills that are unconstitutional, we risk having laws that are made by this House struck out and declared null and void by the courts. We cannot lead ourselves into this.

May I rise under the Standing Order No. 1 so that I ask, from the Speaker's Chair, a direction and a ruling regarding this Bill. I have gone through the Bill and I am of the opinion that there are clauses proposed to be introduced as amendments that are unconstitutional. I, therefore, seek a ruling regarding those clauses.

Allow me to kindly point out the clauses which I seek to impugn in the Bill. These are clauses in the Bill which seek to amend certain sections of the Act. The Bill we are discussing and seeking to have some clauses impugned is the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No. 39 of 2021).

The clauses that have unconstitutional provisions are Clauses 2 and 9 of the Bill. Clause 2 proposes to amend Section 2 of the principal Act, while Clause 9 proposes to amend Section 48 of the principal Act. The purport of the amendment is to introduce advocates, notaries and other independent legal professionals who are sole practitioners, partners or employees within professional firms to become designated non-financial businesses or professions that are obligated to report money laundering and related activities, including what would be termed as proceeds of crime estates.

By dint of these two provisions, therefore, advocates join accountants only. This is because, under those two clauses, the advocates are coming after accountants to be reporting persons relating to crimes under the principal Act.

In my own estimation, there is unconstitutionality in these particular provisions. First, the proposed amendments have not borne in mind the fact that advocates and their practice are regulated by the Advocates Act. What is being proposed here may not be in consonance with what is provided in the Advocates Act. Be that as it may, and relating to the two factors that are most important in legal practice, let me go to what is unconstitutional. I refer to Chapter 4 of the Constitution which is on the Bill of Rights.

*(Applause)*

Article 27 of the Constitution protects advocates and accountants from discrimination. So, when we have advocates being introduced here as professions that must report this particular incident, it does appear that we are leaving out the other professions. All the other professions are regulated by statutes. By so doing, we are actually lowering the standing of the advocates. A tidier way of doing this should have been to introduce all professions that are regulated by statutes so that they also become reporting persons.

*(Hon. Amos Kimunya spoke off record)*

The only one that is there is accountants, if you have read the Bill.

Secondly, to single out advocates and accountants, the status of these is reduced when viewed against the other professions. By singling out these two professions, the State is actually discriminating directly against them on the basis of their profession solely, contrary to Article 27(4) of the Constitution.

I know the Speaker of this House is a guru in constitutional matters. He is actually backed by the Speaker's Panel which is composed of lawyers who are also of the highest standing. Therefore, allow me to invite you, the Temporary Deputy Speaker and the substantive Speaker, to also consider the following:

One, what is the effect of the proposed amendments to the cardinal legal principle of advocate-client confidentiality *vis-à-vis* what we are proposing?

Two, what is the effect of the fiduciary relationship between an advocate and a client as the foundation and pillar of the legal profession practised worldwide, and Kenya in particular?

The reason why I say so is this; this Bill is being introduced by the Departmental Committee on Finance and National Planning, but the Departmental Committee on Justice and Legal Affairs was actually invited to Mombasa where the Treasury made some presentations on this Bill. When we pointed out the unconstitutionality of this Bill, the answer we got from the Treasury was that there was pressure from certain quarters that we must pass this Bill within a given period of time.

The question we ask is this: Which pressure is that and who is exerting it, on what basis and, most importantly, to an independent country? This is because, previously, we had made fundamental mistakes in our laws by listening to people who were putting pressure on us. Such people are now telling us to pass a law that is unconstitutional. To that, I urge this House to reject absolutely so that we now get a ruling. We are seeking a ruling from the Speaker which, in particular, should tell us whether this Bill is within or out of the Constitution because it is fundamental that before we proceed, we are accordingly guided.

Thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Murugara has raised very fundamental matters. I will allow a few others to weigh in. I will definitely start with Hon. Otiende Amollo.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Temporary Deputy Speaker. I see Hon. Kaluma eyeing me badly, but I will have him know that my right to raise a point of order was actually reserved by the Speaker on 29<sup>th</sup> September 2021, when this matter first came for the First Reading. I indicated to the substantive Speaker that I had certain constitutional concerns and the Speaker directed that, before commencement of the Second Reading, we would raise them.

Therefore, I join Hon. Murugara in raising constitutional issues. I will not repeat the parts that Hon. Murugara has covered. Hon. Murugara has covered Clause 9(b) and Clause 2(b), and he has cited the issue of discrimination and the legal principle of advocate-client confidentiality. I will only point out further clauses that also fall within that category.

However, to cap Clause 2(b) of this amendment Bill, which proposes to include advocates as reporting agents, the first question to be asked is: Why only advocates in addition to accountants? There are many professions that receive and deal with money.

If it was a question of dealing with professions, then it would have dealt with it the way the Act already deals with it now. If you look at the substantive Act in Section 2 (g), it allows the Minister's discretion to add such other businesses or professions in which a risk of money

laundering exists as the Minister may, on the advice of the Centre, declare. It is broader and it invites the possibility that there must be a demonstration. So, if then you want to focus on advocates, then you must demonstrate why it is only advocates being included. That is discrimination. It is not only discrimination of advocates, but when it comes to its own definition, it has further discrimination to advocates in two ways. It only talks of advocates, notaries and what it calls independent legal practitioners. It introduces a term not known to our law. That term is not in the Advocates Act or the Law Society of Kenya (LSK) Act. Whatever it is, we do not know what it is because it is not defined in the amendments. The term 'independent legal practitioners' we do not know who these are.

Also, in its conclusions in definitions in Clause 2, it talks of advocates, notaries and other independent legal practitioners within the professional firms. Again, it only restricts to advocates within professional firms. Generally, it is discriminatory of advocates and even within that category, it only refers to those within professional firms. It is interesting to note that in the definition of the reporting agents, the advocates are now supposed to join other people like casino operators, estate agents, dealers in precious stones and such other businesses which ordinarily do not come with grace.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. (Dr.) Otiende, which clause are you referring to? Can you read all of it?

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): I am reading the definition in Clause 2 (b), in conjunction with Schedule 1, of the substantive Act. If you read Schedule 1 of the substantive Act, it already enumerates the reporting agents. You will see that those reporting agents include casino operators, dealers in precious stones, estate agents and such other professions. Now, advocates are supposed to join that hallowed list. It is quite telling for a profession that is usually described as noble to be put in that category.

The fundamental point is, other than being unconstitutional, is it unnecessary? If the intention is to give an authority to include any other profession, it can be demonstrated and justified. Then it already exists in the substantive Act in Section 2 (g) as I referred to, which gives the Minister the advice of the centre. But in including the lawyers, then it does not depend on advice or anything - they are just included.

Hon. Murugara did not mention Section 9 (b) and I want it included in that consideration because the issues are similar to those in Section 2. Clause 10 (c) (3)(a) again when it comes to qualification for appointment, that is also to be considered. But of greater concern is Clause 130A - the limitation clause. This clause now limits the right to privacy in Article 31 of the Constitution. I will come back to that.

As Clause 130A talks of the limitations, Clause 130B (1) and (2) gives the limitation and a discretion to be searched, for seizure of property, to reveal financial information of family and not even of the advocates. It also allows interference with communication without due process. There is nothing in this amendment that talks of any due process. You want to subject advocates to the possibility of seizure, search, disclosure of financial information of the family and even communication without due process. That is unconstitutional.

Clause 16 (i) then brings in LSK as one of the other supervisory bodies without examining the capacity of the LSK to be a supervisory body in financial transactions. The LSK so far regulates who can practise law and not how. In doing so, it now requires the LSK to do two further things: One, under Section 44 of the Act as it is now, it places an obligation to start monitoring lawyers in terms of how they do their work.

In Section 45 of the existing Act, it places an obligation on the individual advocates to verify customer information which is indicated as identity including; birth certificates and driving licences. Those are the kinds of things that this proposal wants advocates to do. This is not only discriminatory but burdensome and infringes on the age-old custom of client-advocate confidentiality.

Article 31 of the Constitution is very specific and it protects privacy. In Article 31(c) information on private affairs and under (d) privacy of communication. The Bill specifically seeks to bring information on family under Clause 130 and communication under Clause 130 (2). It is to be noted that Article 24(5) of the Constitution tellingly allows limitation of the right to privacy, for members serving in the Kenya Defence Forces (KDF) and the National Police Service (NPS). Why does Article 24 (5) of the Constitution take the trouble to say that right to privacy for those in the armed and discipline forces can be limited? It is because the right to privacy is fundamental. You cannot just derogate it as in Article 25 of the Constitution, but is fundamental.

If you want to limit the right to privacy under Article 24 of the Constitution, you must do at least three things. First, you must limit it by law as they are seeking to do. Second, that limitation has to be reasonable and justifiable in an open and democratic society. I have read the entire Bill; the purposes, the reports and it does not seek to demonstrate the justification in an open and democratic society. It might look easy and one might say that it concerns lawyers, but let it be remembered that the client-advocate confidentiality is not for the benefit of the advocate, it is for the benefit of the client. When you look into it, it will not only affect the lawyers but everyone else.

It might be remembered that as we seek to curtail and diminish the standing of the legal profession in this country, we are members of the East African Community (EAC) and Common Market for Eastern and Southern Africa (COMESA). The constitutive instruments allow cross-border practice. We are coming to a place where we are diminishing client's confidence in advocates in this country. As a result they will just use other practitioners in other sister countries. I want to suggest that as we lose on this issue, it should be remembered already we have very stringent regulations both under this Act and others where any professional, not just advocates who deals with any bank is required to disclose information, when they receive and send money. That is sufficient and there can be no justification for isolating and bringing the lawyers to this.

Hon. Temporary Deputy Speaker, I want to submit that this proposal, however well-intentioned it is, is ill-advised, ill-conceived and the text is such that it cannot pass the test. Indeed, rather than have long debates on this matter, I urge the substantive Speaker, to find these proposals completely unconstitutional and be dropped at this stage.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. (Dr.) Otiende, you have asked; 'in whose hands are we safe?' Hon. Duale.

*(Laughter)*

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, I rise under Standing Order No. 83 to join my colleagues to raise a point of order on a very fundamental constitutional question touching on the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No. 39 of 2021).

As you are aware and my colleagues have said it, I want to repeat, this Bill seeks to, among other things, expand the definition of reporting institutions. It says: "These will include advocates,



notaries, and other independent legal professionals and their employees as persons of interest.” They will report and cooperate with investigative and enforcement agencies where transactions they are handling are suspected to be related to proceeds of crime and money laundering.

Two, this Bill seeks to, among other things, apply the provisions of the Act to advocates, notaries and other independent legal professionals and their employees when preparing or carrying out transactions for their clients - including securities, management of banks and savings, security accounts, organisation of contribution for the creation or operation of the management of companies and creation and operation and management of buying and selling of business entities or legal arrangements.

Three, this Bill seeks to include the Law Society of Kenya (LSK) and the Sacco Societies Regulatory Authority, in the First Schedule to the Act, as a supervisory body responsible for advocates and the Sacco Societies Act for the application and enforcement of the Act.

*(Hon. Amos Kimunya spoke off record)*

Hon. Temporary Deputy Speaker, you need to protect me from the Leader of the Majority Party. I have been with him since the 10<sup>th</sup> Parliament. You have to wait for your time. I am on my feet. We have invested in this. You are trying to talk to me. Please, wait for your time. He was talking to me when he was leaving.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Duale, it is true I heard him murmur something. Just concentrate on what you are saying. I think it is very important.

**Hon. Aden Duale** (Garissa Township, JP): We have spent time and energy to rise on a point of order. So, you wait for your time and use your time efficiently. Leave us. As the Member of Parliament for Garissa Township, I have the freedom of speech and thoughts. I, with Hon. Millie Odhiambo and the Hon. Leader of the Majority Party, participated in the formulation of the Terrorism Act, the Proceeds of Crime and Anti-Money Laundering (Amendment) Act and the establishment of the Financial Reporting Centre in the 10<sup>th</sup> Parliament. All these pieces of legislation were geared to deal with money laundering, proceeds of crime and anti-terrorism financing.

Allow me to first observe that this is not the first time I am raising this. I want to go on record that the amendments to the Proceeds of Crime and Anti-Money Laundering Act contained in this Bill found their way here. In the Finance Bill of 2019, these amendments were withdrawn and expunged from the Bill for serious constitutional issues. First forward, in 2020, the same amendments were expunged from the Bill. Indeed, the honourable substantive Speaker - allow me to refresh the minds of my colleagues in this House - in his Communication dated 15<sup>th</sup> July 2020, communicated the withdrawal of the proposed amendments to the Proceeds of Crime and Anti-Money Laundering Act from the Statute Law (Miscellaneous Amendments) Bill of 2020.

The question I want to ask this evening is: What has changed? I am not a constitutional lawyer, but it is obvious to everyone that any Bill that fails the constitutional test cannot be cured even if one keeps on reintroducing that Bill and bringing the same amendments and sneaking them through various Bills, whether it is through amending the Statute Law or through the Finance Bill. Why do I say so? Before I even say what I want, reintroducing these amendments many times, in my opinion, is like putting poison in different cups and hoping to tell us it is not poison. Why do I say so?

Allow me to just follow my colleagues and highlight the following provisions of the Constitution which are, in my opinion, offended by the amendments: I will start with Article 31 of

the Constitution. It provides that every person has the right to privacy, which includes the right not to have information relating to their private affairs unnecessarily required or revealed to any person. This Bill makes the advocates reporting institutions. That means it obligates every lawyer and advocate to report any transaction they deem suspicious. We are not being told what the definition of the term “suspicious” is when they engage with their clients and the citizens of this country. This clearly violates Article 31 of the Constitution. I submit.

Two, Article 48 of the Constitution provides that the State shall ensure access to justice for all persons. These amendments, in the reading of the Constitution, clearly violate Article 48 because they are making advocates report every transaction they deem suspicious. One wonders what the definition of “suspicious” is. It can be anything. Many people shall shy away from dealing with advocates as their communication and transactions shall not be privileged and confidential. I want this House and my colleagues to listen to me. This matter is not about advocates. This matter is about your privacy. The eternal chapter in the Constitution is Chapter Four - the Bill of Rights. It protects the basic fundamental freedoms of the citizens of this country. What are we saying? Next, this House is going to legislate that a medical doctor can violate your privacy and give your medical history to whoever he or she wants. This is the route we are taking.

Third, in the reading of the Constitution, Article 49 (1) (c) provides that an arrested person has the right to communicate with an advocate. The obligation on advocates to report transactions they deem suspect also violates the right of arrested persons to freely communicate with advocates. Advocates will no longer communicate with their clients. Even those who commit serious crimes like terrorism and murder have, under the Constitution and the Bill of Rights, the right to communicate with their advocates. It is a guarantee. Article 50(2)(k) of the Constitution on the rights of fair hearing provides that an accused person has a right to refuse to give self-incriminating evidence. The obligation to advocates to report suspicious transactions also violates Article 50 as accused persons shall, in essence, be giving out information that can be used against them. So, these amendments violate the Constitution and are contrary to Article 50 of the Constitution, more so, Article 50 (2) (k).

Finally, Article 50(4) of the Constitution on the right to fair hearing provides that evidence obtained in a manner that violates any right or freedom in the Bill of Rights shall be excluded. The obligation to report suspicious transactions by advocates, to the extent that it violates Articles 31, 48, 49 and 50, means the Bill fails as such evidence cannot be admissible. The Bill of Rights forms the basic structure of our Constitution. This House should not participate in considering a Bill that has the effect of negating, in a blatant manner, very fundamental human rights protected by the Constitution. World over, it is common practice and general principle that advocate-client relationships are privileged and any ensuing communication is confidential.

I want to urge this House: Today you might think it is about advocates. One of the basic principles that those who fought for the Constitution pursued was for Kenyans to enjoy their privacy and freedoms. That is why the Bill of Rights is so fundamental. It is the pillar that holds our Constitution. It is an eternal chapter. This is the third time this matter is being pushed. I read through the Bill. What we want to do this afternoon does not happen in democracies similar to ours, like the United States of America and Canada. Supreme courts of many countries have annulled similar provisions. No country, however powerful it is, can dictate to us. Everything we do in this country must be within our own Constitution. We cannot operate outside the Constitution.

As a former Leader of the Majority Party, I remember this matter was included in the Finance Bill of 2019. It was included in the Statute Laws (Miscellaneous Amendments) Bill of last

year. The Speaker made a communication. I do not know why this poison cannot leave the corridors of Parliament. Who is interested in it? The Central Bank of Kenya (CBK), the Financial Reporting Centre (FCC), the Assets Recovery Authority (ARA) and all private financial institutions can in a minute, with the touch of a button, detect, monitor and flag any proceeds of crime, whether it is from narcotics, terrorism financing, money laundering or stealing. The other day I saw a young lady ran to Germany after her account was credited with over Ksh120 million. It is very easy. That is why you cannot withdraw or deposit Ksh1 million without providing justification. This House will be remembered like before. And you will be remembered. We should not allow this House to negate the rights and freedoms given to us by many people who sacrificed their lives in the attainment of the Constitution.

Hon. Temporary Deputy Speaker, I seek your guidance on the constitutionality of the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill. I ask you to rise to the occasion, just like the substantive Speaker has done. You should direct that we cannot discuss this Bill until you make a ruling. You listen to us. We are not speaking street propaganda. And the Leader of the Majority Party cannot rush me. You cannot tell me to wind up. You are talking to the wrong person, my friend. I can continue talking. The only person who can stop me is the Speaker or the clock. I am not under you. You are the one who said the House would sit up to 9.00 p.m. So, why are you in a hurry? Relax. We represent people.

Hon. Temporary Deputy Speaker, I want you to make a communication just like the substantive Speaker has done, so that those of us who want to write memoirs make your ruling a part of them. I urge you to rule that these amendments touch on the Bill of Rights and must be dropped for the Bill to proceed.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very serious submissions by Hon. Duale. Hon. Kaluma, as you speak I want you to tell me in which law school they teach this subject known as ‘suspicious character’ or ‘behaviour’.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): I thank you, Hon. Temporary Deputy Speaker. A culture is developing in this House which needs to be forestalled. It is a culture where instead of allowing Members of Parliament to debate a Bill on its merits, some Members flag off a matter of constitutionality which they cannot substantiate. They end up debating the Bill on its merits. We must develop a tradition where when you say a provision of a Bill is unconstitutional, you can, without groping around, tell us which provision of the Constitution it violates and you leave it at that. You cannot second guess by interpretation of constitutionality. It should be something clear.

I have read very many constitutional documents across the world. In fact, in my postgraduate studies, I undertook public law, the main core of which was comparative constitutional law. We are the only country with a whole Article of the Constitution talking about national values and principles of governance. As I respond to this issue, let me remind the House of provisions of Article 10(2) (c) of the Constitution.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kaluma, have you looked at the Constitution of Uganda?

**Hon. Peter Kaluma** (Homa Bay Town, ODM): I do not need to. We look at constitutions of more progressive countries. Article 10(2) (c) of the Constitution says that the national values and principles of governance include good governance, integrity, transparency and accountability. What we are dealing with is a law relating to proceeds of crime and money laundering. You are being told that lawyers are being discriminated against because they are not being enlisted alongside other professionals other than accountants.

Look at page 1221 of the Bill, which provides section 48 being amended by the clause some Members are talking about. Accountants are already covered. The current section 48(b) provides for a whole array of service providers. It is very wide. It is not only about lawyers and accountants. It includes a trust or a company service provider not otherwise covered elsewhere in this Act and which, as a business, provides any of the listed services to third parties. You are being told about accountants and lawyers. Remember all these service providers are, of necessity, professionals like we provide legal services. Anybody, so long as you provide the services listed, is covered.

So, the first point I am making is that these presenters before you are misleading the House. There is an array of services listed which, for the sake of time, I will not read. If you interpret those services, they are wide and cut across so many professions. Do not tell us only lawyers and accountants are targeted.

Hon. Temporary Deputy Speaker, when you are dealing with the matter of fishing, you deal with fishermen, fishmongers and fish eaters like me. If we are dealing with proceeds of crime and how they are handled, money laundering, you will target those professions and service lines which may interact with such money. I may not be clear to you but in my old life, I was lucky to be a partner of a man called Prof. PLO Lumumba. That is the time when robbers were being caught around here.

One evening we were approached by a senior criminal investigation officer to keep for them money in our client's account. We thought it was coming in cheque form as we waited for it in the evening, only for money which amounted to Kshs3 million then to come in a canter.

*(Loud consultations)*

We made our reporting as necessary about him. I will not talk much on that. When people have proceeds of crime, like you remember police officers would reach a robbery scene but nothing could be recovered, they run with those monies to accountants and lawyers.

We may talk about the right to privacy. Our Constitution is very rich. The array of fundamental rights that we have are compared to only a few countries in the world. In fact, human rights are a national value and principle of governance under Article 10.

Look at what the Constitution also does. Article 24 of the Constitution provides for limitation of rights and fundamental freedoms, and very stringent conditions are there. I will go into it, but remember, a short while ago, we dealt with Narcotic Drugs and Psychotropic Substances (Amendment) Bill. We made provisions there allowing interception of communication which on the face of it would be a violation to the right of privacy. What had we to do? Look at the provisions we put there. We ensured that those limitations to the right of privacy had to be in full accord with prescriptions under Article 24 of the Constitution.

I request my learned colleagues, we may say lawyers are being attacked, how can you help the House? Look at those provisions bringing lawyers as reporting agents and ensure, because it is a limitation of rights, it accords us with strictures of Article 24.

I am answering this then I go to the meat of the matter. In Article 250 of the Constitution, four sets of rights are incapable of limitation. Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited. I can tell you they do not include privacy on these ones you are talking about. If you look at Article 24(5), privacy is the first one they are telling you will be necessarily limited for police officers, KDF among others. These rights are freedom from torture, cruel inhumane or degrading treatment or punishment. That is inviolable.

You cannot limit it. You know the amendment that freedom of slavery servitude is under in USA and what our ancestors who were taken there went through, being thrown at times in the Atlantic Ocean, having things you cannot eat for eternity in your mouth, and you will be a slave. That cannot be restricted or limited.

Where is Hon. Duale? The right to fair trial incapable of limitation. He is shouting “right to fair trial”, but he does not connect it to a single provision of this Bill which is either unconstitutional or cannot be amended to be unconstitutional.

When you disappear with Mr. Miguna, even if you do not like him, I will go to court and we will ask you to produce his body whether alive or not. I want to say this as the person who argued the bail application of Mr. Miguna before Judge Wakiaga. I paid his bail money from my own pocket. He calls me a juvenile despot, but he has not refunded my money. However, that is a right that is inviolable.

We have to make choices. We must reach a level as Parliament where a matter can be debated on the merits and a decision made. I am confirming to you that instead of addressing us on privacy, discrimination which do not arise by my explanations, you are now told there is something called advocate-client confidentiality. Under which provisions of the Constitution is it provided for? So, when you are raising a constitutional issue, tie it.

I studied professional ethics and trial advocacy at the Kenya School of Law.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kaluma, you talked of suspicion and I want you to come to it.

**Hon. Peter Kaluma** (Homa Bay, ODM): This Bill does not just say suspicion, it obligates the lawyers to report---

**The Temporary Deputy Speaker** (Hon. Christopher Kaluma): Hon. Kaluma, for my own education, when you talk about fair trial which is inviolable under Chapter 4, does the right to an advocate not integral in a fair trial?

**Hon. Peter Kaluma** (Homa Bay, ODM): It is there. Article 24(3) is the answer to the provision for limitations of rights.

It says that the State or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this Article have been complied with. The point I am making is that, if you fear, there may be a violation of the right to fair trial, make an amendment to the specific clause which is not mentioned here and we will delete it at the Committee stage. However, do not torpedo debate by the people.

When we had the National Youth Service issues in the country, how many lawyers were mentioned and how did they avoid the trap? They did so under the advocate-client confidentiality.

Recently, Governor Sonko, the title is still in what he calls the “Sonko leaks”. If you go to *YouTube* Part 5, in a single day, an advocate’s account is getting remissions in terms of hundreds of millions. Would that not raise suspicions? Should that advocate in keeping with an open society not tell us the source of the money and what it is meant for? What is the problem in doing that? What is the problem with that?

We can count and count but the fact of the matter is that the advocate-client confidentiality we were talking about in the old days, is not the circumstance which we are operating under today. It is a big issue.

You intercepted with clarification when I was going to the first question you raised. That provision does not say “on suspicion”. There is a phrase before it called, “on reasonable suspicion”.

Hon. Temporary Deputy Speaker, you had the benefit of studying in better schools than me. You studied in a school owned by our second President, Kabarak High School, while I was in

some village somewhere struggling. Tell these people being senior to me that there is a way in law we define “reasonable”. This is something Hon. Duale cannot understand. So, before you say “reasonable”, and remember in first year we could study it for a whole semester what a “reasonable man’s test” is, the man on a *matatu* going somewhere, those tests have to be met. However, that has to be read together with the provisions of Article 47 on the right to fair administrative action. Go and look at the ideals there. This is so that whether it is a court, or a Parliament as we are sitting now, we are waiting for Hon. Kimunya to persuade us whether the limitation of the right to privacy is something that complies with Article 24. We do not need to intercept them. This confidentiality thing was a rule in England and I can tell you I will be speaking later on this matter on the merits. Even in the United Kingdom, they have done this thing. Subject to compliance with their constitutional regime, which is unwritten, I will tell you how many states even in Africa are here.

Hon. Temporary Deputy Speaker, as I end, let us make a choice as a House. I want to beg we make a choice as a House. We are either joining Kenyans in fighting corruption or we want to be people to sustain avenues of purveying it. It is as simple as that. Therefore, the line is drawn on this Bill. You are either a money launderer or an advocate keeping those monies or you are a well-meaning Kenyan knowing the place of money laundering and you are making provisions to improve these Bill to ensure those things you call confidentiality can be allowed to some extent while we also require lawyers to make disclosures where necessary.

In addition, I can confirm I will be supporting this Bill, however, with the amendments I will speak to. Let us not kill the Bill unless you are on the other side. We are losing so much money to corruption and our business environment is no longer competitive. If you compare the losses in business we are having to Rwanda, Uganda and even small countries, this is because our environment allows money laundering and these small things. I beg you Hon. Temporary Deputy Speaker.

Hon. Temporary Deputy Speaker, you were with me when piracy started in Somalia. These maisonettes in South B were going for between Kshs3 and 4 million in 2004 and 2005. When piracy started, people would come and while you are still negotiating, they were offering Kshs18 million. They ran to Kshs30 million. They are walking towards Kshs60 million. Those are piracy monies from Somalia did not just come and land here. They came through advocates' accounts and you know those advocates. Let us not pretend. Therefore, we may take it for granted that this money-laundering thing is overturning our entire economy and making dirty our business environment.

Hon. Temporary Deputy Speaker, I urge you to rule against this Bill being unconstitutional. Nothing has been clearly demonstrated. Secondly, the matters being raised can be dealt with on the merits and we make amendments, if necessary. Thirdly, that past the Second Reading, we will have a chance, more so as lawyers, to look at this thing, word for word against Article 24 and fine-tune it to ensure that the profession continues as we also comply with other national values.

Hon. Temporary Deputy Speaker, dismiss this objection.

I thank you Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kaluma you must be alive to the two principles of natural justice, which are inviolable that you will not be judged as guilty unless you have been heard. In addition, the right to hearing is the greatest. This is a constitutional issue. I will allow Members to ventilate on this. Therefore, do not worry. I am not in a hurry. This is a very fundamental issue. I will allow Members to debate this. However, I was

just musing with the Hon. Kaluma about the right to hearing, which is the primary fundamental rule, which is unwritten anywhere, and which cannot be violated by anyone.

However, nevertheless, I will now allow the next Member, Hon. Ichung'wah, Member for Kikuyu.

He is not here? He is on top here

The next one is Hon. Mwathi. Member for Limuru.

**Hon. Peter Mwathi** (Limuru, JP): Thank you Hon. Temporary Deputy Speaker. From the outset, I want to say I am not an advocate of the High Court or any other advocate anywhere. However, I will listen to the arguments from the lawyers and I have always seen cases that are conducted and argued by advocates where when one stands, you are almost convinced that they are winning. Moreover, when the reply comes, you again agree with that reply. I have listened to the other Members who have spoken. My very good friend, Hon. Dr. Otiende Amollo almost convinced me that his route was the way to go. However, the provisions which have been quoted by Hon. Kaluma and obviously extensively so - clause by clause, article-by-article in the Constitution - begs the question as to why the people who were against the continuation of this Bill will not also come with those articles quoted which I did not get.

This is so that they convince those of us who are not lawyers not to debate. However, if the key critical rights that have been mentioned have not been violated – if indeed, at the Committee of the whole House we can amend any one of those clauses that make the advocates feel offended; by virtue of my right, I am also a professional, I do not mind. If it is the advocates and the accountants who feel that they are the only ones who have been locked in, it only means that if we really have to save this country from proceeds of crime, money laundering and such, then all we need to do is simple, we include all professionals, if they are not there.

I am very happy to be included there as an architect and planner. I will support that amendment. However, why do you want to say, and I am not sure that is the case... If it is only a mention of the lawyers and advocates, then it is quite unconstitutional. It is as if we cannot at the stage of the Committee of the whole House, amend the law to ensure that we are all obligated to report.

Hon. Temporary Deputy Speaker, if we have to save this country, and I have listened to arguments out there how money comes in... I am even hearing the revelations from Hon. Kaluma how millions came in trucks and canters. In this country prices of property have soared. Moreover, it is a fact you cannot hide. Those properties are where a Member of Parliament cannot even afford to buy a house. They have been propped up by money, which has found itself in an unethical way into our economy.

Hon. Temporary Deputy Speaker, we just have to save ourselves. We have to save this nation. We have to create it and make it for our future generation. For us to do that, we must pass laws that will bite both ways. If it is going to bite a lawyer, let it bite an architect like myself. If it is going to bite an accountant, let it bite any other advocate or any other profession. However, we cannot say because we have two professions which are only mentioned, then we will throw the baby with the bath water. We just have to fight corruption in the best way possible. We have to fight money laundering.

To that extent, I want to persuade all of us that let us also persuade you Chair, even as you make the determination, that you please allow us to debate this issue. If there is any amendment at the Committee of the whole House stage persuaded by the argument of one, Hon. Kaluma, then we can incorporate everybody. However, let us not remove everybody from reporting obligations just because we think two groups have been put there. Therefore, if a non-advocate has ever

persuaded you, let me persuade you as an architect. I want to be included in the reporting groups and that everybody else in this country should. Therefore, we should persuade you to rule that we should continue with debate on the Bill as it is, with amendments to follow.

I thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Mwathi, the real issue was... Hon. Members, as you continue to speak to this, the issue that was raised by Hon. Murugara and Hon. Dr. Otiende in their constitutional argument was the advocate-client relationship. The confidentiality of the advocate is not the advocate *per se*, but the client. The confidentiality of the client's information in possession of the advocate. That is the crux of the matter, is it not? The Hon. Wanga.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Speaker. I have listened to very senior counsels here. I also had a chance yesterday - as the Chair of the Finance and National Planning Committee - to listen to very many stakeholders who appeared before the Committee to bring their views with regard to this Bill. We listened to the Governor of the Central Bank of Kenya, the National Treasury, the Assets Recovery Agency (ARA), the Director of Public Prosecutions (DPP), the Ethics and Anti-Corruption Commission (EACC), the Law Society of Kenya (LSK), Institute of Certified Public Accountants of Kenya (ICPAK) and several others.

We also had the privilege of having a very senior counsel from this very House who was my father's lawyer, Hon. Olago Aluoch, also coming before the Committee. He made very strong arguments in support of these amendments. I just want to make two points. What exactly are lawyers supposed to report on, under these amendments? It is made to look like lawyers are supposed to report on every litigation commission they have with their clients. That is not the case. Lawyers under this amendment, are expected to report on transactional activities that are specified, which are not at the core of litigation; buying and selling of real estate, managing of clients' money, security and other assets, management of banks savings or securities accounts, organisation of contributions for the creation, operation or management of companies. Then there is the creation, operation and management of legal person's arrangement, and buying and selling of business entities.

As a lawyer yourself, litigation is not specified as an activity that you are supposed to report on as a lawyer. So, this should not be taken as an amendment that is bringing each and every activity that a lawyer practices in to the ambit of reporting.

Secondly, Article 2(6) of the Constitution requires that our international obligations or treaties that we ratify internationally shall become part of our domestic obligations. Kenya is a founder member of the Eastern and Southern Africa Anti-Money Laundering Group. We are guided by the financial action taskforce recommendations which were brought forward by the United Nations Security Council (UNSC). Right now, Kenya has a seat in the Security Council. That is a privileged position. It is those financial taskforce regulations that require the amendments that are being made at this point in time. Are we going to throw away our constitutional obligations? By the way, we are 18 Members of the Eastern and Southern African Anti-Money Laundering Group. All the countries except Kenya have passed this law. All the countries in the East African Community (EAC) and COMESA have passed this law. Why are we different? We are not.

It has also been raised on the Floor of this House that this Bill has been withdrawn several times and Hon. Duale went to the extent of saying that this Bill is being sneaked into the House. This Bill is properly before the House. There is no sneaking what is happening. In any case, the



amendments that have been withdrawn in the past were the amendment in the Finance Bill and the amendment in the Statute Law (Miscellaneous Amendments) Bill. In fact, it is this time that this Bill is properly before the House as an amendment to Proceeds of Crime and Anti-Money Laundering (Amendment) Bill. Therefore, we should debate this Bill. There are several issues that were raised including this issue on advocate-client confidentiality. There were proposals that were made to the Committee; which the Committee was favourably considering, including the one to include a high threshold for purposes of the reporting by advocates. I think that is the direction to go. Let us make amendments where we deem necessary. As has been said, we have this international obligation. This is not being imposed by anybody. Let it be clear, it is us who are in this treaty and in this agreement. We are not being told by anybody. So, it should not be said that somebody is imposing this on us. This is an obligation which we entered with our eyes wide open and we must, therefore, fulfil. If by January we remain the only country; the island that has not passed this law, then...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Wanga, I would like you to speak to the constitutional question that was raised. As you speak to the treaty that you are speaking to, you should inform the Speaker, whether that treaty is superior to our Constitution.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Speaker, let me read that section of the Constitution.

Article 2(5) and (6) says:

“5. The general rules of international law shall form part of the laws of Kenya.

6. Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.”

*(Hon. Patrick Musimba consulted loudly)*

This is why I am speaking to those issues. These are international obligations that Kenya got itself into. If we do not pass this law by January, we are going into the grey list. Once we get into the grey list and progress into the blacklist, then every Kenyan will be affected because every financial transaction that you try to make that leaves this country will come under inordinately high scrutiny. I know that my brother Musimba has been heckling unusually today. He is a fairly quiet and fine gentleman as we know, but today...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Musimba, just hold your horses, I will allow you the next slot so that you can contribute.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity.

Finally, let me ask: is client-advocate privilege or confidentiality protected by the Kenyan law? The answer is yes. The Proceeds of Crime and Anti-Money Laundering (Amendment) Bill Section 18(1) expressly protects the client-advocate privilege relationship with regard to communication of privileged information between the advocate and the client. Let us read that section. It openly protects that.

We are dealing with a global issue here. About five years ago, we had a bombing here. When lives are lost, nobody thinks about the issues we are discussing here today. They say that Parliament should have protected those lives. This is the opportunity that we have to do it today.

As Hon. Kaluma correctly pointed out, if there is anything within this law that can be amended so that we can accommodate the fears that have been raised, let us bring the amendments

and we shall support them as we have discussed off-record with many of the advocates in this House.

Thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us have Hon. Musimba. As Hon. Musimba contributes, Hon. Odhiambo-Mabona, prepare yourself, and when you will be speaking, I would like you to speak to me on the hierarchy of the laws in this country from the Constitution to the statute law to treaties to rules and other regulations.

Proceed, Hon. Musimba.

**Hon. (Dr.) Patrick Musimba** (Kibwezi West, Independent): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I have listened quite intently to the arguments which have been put forth. The fundamental things in this House are, one, before we even go to the Second Reading, there ought to be a report on this particular Bill as we move through.

The second import...

*(Hon. (Ms.) Gladys Wanga spoke off-record)*

Hon. Temporary Deputy Speaker, I allowed them their time. So, Hon. Gladys, kindly allow me my time.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Order, Members! Allow Hon. Musimba to speak.

**Hon. (Dr.) Patrick Musimba** (Kibwezi West, Independent): I was listening very intently to all of you. The reason why I was also listening to the Chairperson of the Departmental Committee on Finance and National Planning, Hon. Gladys Wanga is, one, the fact that people are ratifying things abroad like for example the biggest issue in this House which was about the Gay, Lesbian, Bisexual and Transgender (GLBT) movement and their rights, does not mean that we have to copy. None other than His Excellency the President said that this is not a priority in this country at the moment.

When we look at these things about lawyers, it is about transactions. Accountants will report what is ongoing. They act as whistle-blowers. However, when it comes to lawyers, we are talking about transactions in process. It is a going concern as a nation and what should concern us is this: Are we halting transactions for posterity or for continued process because lawyers are not a repository of cash? They are only conveyors and all cash transactions or otherwise go through banks. Those banks are mandated by law to report to the Financial Reporting Centre any transaction which takes place. That means that there is a footprint as you do every transaction. As such, we have recourse.

When you look at the Bill, it talks about having the ability to hold cash for 48 hours. So, when people are in a transactional mood, then it negates stories which are heroic in this country like the late Naushad Merali and the deals he did with KenCell moving to Airtel. He was able, in a span of 12 hours, to put up a monumental deal together because it had legal guarantees and the monies were expressed. These were across borders. If you could say, at that point, that this is a suspicious transaction that someone has to report, we could have lost an entrepreneurial opportunity which was posterity for Kenya. We can herald the things which have gone on in terms of inclusion and, in fact, financial posterity of this nation because of the actions that were done by Naushad Merali at the time to rescue, otherwise, a deal which would have gone away from this country.

As such, and this is what I am imploring to the Chairperson, it does not hurt this House to be able to get a substantial ruling on these issues that have been raised and the way forward because the history, when we head towards the Third Reading in this House, is that we cannot bring propositions on the Floor of the House that are, otherwise, deemed to negate the law that is being proposed. This is because there are substantial moves we are making to say that we cannot include lawyers since it will go against privacy issues.

More importantly, and I listened to my brother, Hon. Kaluma, is about the rights which are immune. Once such right is cruelty! There is no greater cruelty than being able to be excluded from financial transaction. There is absolutely no greater cruelty that you can put or subject someone to than to deny them what is, otherwise, a hard process to make their money. There is absolutely nothing.

So, we can sit here in comfort and say that you can report a suspicion. A suspicion can even be on the basis of what we refer to as utmost good faith in law. If I am not showing that utmost good faith, I will simply say that a deal that so and so is doing does not seem right. So, at that point, that escalation leads to irreparable damage to the parties, and this is what is of concern. Even that definition of what is suspicious is also a concern. It is suspicious to whom? The fact that someone is engaged in a deal which is above a certain threshold does not mean there is suspicion. We have heard of cases, for example, of a lady who was sent a gift of, say, USD2 million. A sum of USD2 million outside this country is just a gift of a gold necklace. But in Kenya...

*(An Hon. Member spoke off-record)*

Somebody has said oh! USD2 million is Kshs200 million to whoever gets such a gift.

It is a double standard. So, I implore you, Hon. Temporary Deputy Speaker, from your Chair, to please apply your discretion and give us time. We still have time to be able to move on and make this discourse.

Thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Odhiambo Akoth, Member for Suba North.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I want to say, as a lawyer, and especially a human rights lawyer, that these are not very easy issues because it is a question that pits rights against rights. It pits the right against discrimination, the right to privacy and the right to self-incrimination against the social and economic rights, as well as the right to good governance. Whichever way we look at it, one may have to give way, and the Constitution has a solution on who must give way.

I am actually happy that Hon. Kaluma referred to good governance under Article 10 of the Constitution on accountability, but beyond that, if you are dealing with issues of money laundering, it actually negates my own right to fair trade practices. I may not be able to access services and contracts or have a good life. So, it affects a whole spectrum of my rights because of a bad practice. However, nonetheless, we still have other rights which constitutionally must be protected. That is why I am saying that it is not an easy issue, but we must deal with it.

We must, in the process, also distinguish between what is constitutional and what is undesirable. There may be things which are undesirable, but are not necessarily unconstitutional and *vice versa*.

Since Members have spoken a lot to some of these issues, I will just pick one by one. The first one is the issue of discrimination against lawyers or advocates and accountants under Article 27(4) of the Constitution. I would actually call on your office to declare that unconstitutional if it is not amended to include other professions. If it is amended to include other professions, then there is nothing unconstitutional. But if you pinpoint on lawyers or advocates and accountants, then it is unconstitutional.

So, the way to cure that is to give a ruling stating that amendments should include morticians, therapists, bankers, beauticians and all those other professions so that it is not unconstitutional. We must safeguard this country.

Again, I want to talk to the other issue that has been spoken to, and which is the issue of privacy. Hon. Kaluma has spoken to it. Maybe, because I do not have time, I cannot look at it. But the Constitution, under Article 24 gives the threshold for limitation of privacy. What it provides is very clear that we shall look at the nature of the right or fundamental freedom, the importance and the purpose of limitation, which is protecting lives as well as the nature and extent of the limitation. So, if you are protecting lives, then there is even no issue that is up for discussion. They need to ensure that the enjoyment of the rights and fundamental freedoms by any individual does not prejudice the rights of others. So, where my rights begin, I must take into account other people's lives. You cannot look at rights from one side. They must be balanced so that everybody's rights are looked into.

What we should be looking at in terms of privacy is this: Have we met the threshold of limitations? If you look at how the amendments are provided, then the threshold is met. I will not speak to the issues that were raised by Hon. Duale because, to me, they do not meet the threshold of constitutionality. He spoke on one thing that I picked up - the issue on self-incrimination under Article 49(1)(d) of the Constitution. One of the things we should look at is this: Does a lawyer reporting mean self-incrimination. This is a moot issue which could be the elephant in the room, and I do not want to speak to it.

I want to speak to the issue of client-advocate privilege. By practice in the Commonwealth, it is a privilege, but it is not constitutional. Perhaps, this is something that lawyers missed. If we have another Building Bridges Initiative (BBI), we should provide for it constitutionally. However, the lawyer-client privilege is not constitutional. Therefore, it may be undesirable, an issue for debate and not for declaration of unconstitutionality. We may defeat it or not, but it is not an issue of unconstitutionality.

Hon. Temporary Deputy Speaker, you have asked me to speak to the issue of supremacy of laws. I am happy to be one of the founding mothers of the Constitution. I can tell you that I am one of the people who brought Articles 25 and 26 of the Constitution. This was because of my interest in the convention and elimination of all forms of discrimination against women, convention on the rights of the children and other conventions. I was not thinking about these ones. I wanted to protect the rights that Kenya has provided for women and children internationally. If you read what Hon. Gladys read, it clear says:

“(5) The general rules of international law shall form part of the law of Kenya; and,

(6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution.”

What this means is that as soon as a treaty is ratified, it becomes a law of Kenya. This was a very thorny issue for the church and they wanted the Constitution to be defeated because of Articles 25 and 26 of the Constitution. I made a promise to the church that I will bring a law to ensure that Parliament is involved in the process of treaty-making. So, we cannot say that these treaties are

made without our input. If there is one law that comes to Parliament so many times it is the Treaty Making and Ratification Act, 2012. Therefore, Parliament is involved. Unfortunately, for us, the East and Southern Africa Anti-Money Laundering Group was formed in 1999 and is not subject to the Treaty Making and Ratification Act. Hence, all the decisions and recommendations made thereto and the United Nations Security Council Resolution 2462 that buttresses these 40 recommendations, that calls on us to do this, is law in Kenya by virtue of Articles 25 and 26 of the Constitution. If we want to undo this, it means we have to undo our ratification of this. We must also look at Article 25...

**The Temporary Deputy Speaker** (Hon. Christophe Omulele): Hon. Millie, the question was not whether the treaties form part of the law but, the hierarchy. If there is a stipulation in the Constitution that is express and a stipulation in a treaty that is contrary to what is stipulated in the Constitution, which one is superior to the other?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Speaker that is a very interesting question. By virtue and dint of Articles 25 and 26 of the Constitution, the moment we ratify a treaty, it automatically becomes law. The Constitution gives it that clothing. That is why under the Treaty Making and Ratification Act, Parliament must be involved. Before, this was the role of the Executive and there was always a clash because the Executive did not look at what our Constitution provides. Since it comes to Parliament this means we must look at the issue of constitutionality before we go out there. So, in terms of ranking, any treaty that is ratified by Kenya takes on a constitutional standard immediately by dint of Articles 25 and 26 of the Constitution.

I see my time it up, I said these are not very easy issues. I have clearly indicated that some of the amendments are clearly unconstitutional and you can make a ruling that they be passed with amendments. Also, there are some which are undesirable but not necessarily unconstitutional. It will require us to convince each other.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christophe Omulele): Very well spoken. Hon. Makali.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Speaker. I have been listening to the lawyers make their presentations and arguments. I will not focus on the constitutional issues.

**The Temporary Deputy Speaker** (Hon. Christophe Omulele): Hon. Makali, do you want to speak on the constitutionality?

**Hon. Makali Mulu** (Kitui Central, WDM-K): No! I want to make one or two general statements.

**The Temporary Deputy Speaker** (Hon. Christophe Omulele): Hon. Makali, you will forgive me because I want you to speak to the constitutionality issue. If you are not...

**Hon. Makali Mulu** (Kitui Central, WDM-K): I am just referring to the Bill.

**The Temporary Deputy Speaker** (Hon. Christophe Omulele): I will give you the first opportunity and then we proceed.

**Hon. Makali Mulu** (Kitui Central, WDM-K): I just want to speak briefly on one or two things. I will not take two minutes because I am just reading the Bill and looking at two sentences. The Bill says: "Limiting the rights to privacy as far as prevention, detection and investigation of money laundering and financing of terrorism is concerned." I think this is a very specific issue which means other issues might not matter much. I like what Hon. Kaluma said. I think this is

why law is a social science because there is no formula. You know for us the mathematicians; we just use the formula and get an answer. Nevertheless, I like their arguments.

However, having listened to everyone, the world is a global village and we cannot live in isolation. It is important we do what other people are doing. The issues of terrorism and corruption are critical to this country. So, it is important as legislators, we ensure we protect Kenyans against those two. If we do that, we will be helping this country. Even as you make your ruling on this constitutional matter, let us also not forget that Kenyans out there will want to benefit from some of the decisions we make here.

Hon. Temporary Deputy Speaker, I submit.

**The Temporary Deputy Speaker** (Hon. Christophe Omulele): Hon. Members, I think we have had quite a bit on this. This is a preliminary issue and we have not done anything to the business as set out in the Order Paper.

Hon. Members, Hon. Murugara rose in his place and raised a constitutional tangent to the business that is to be considered in Order No.17. For almost two hours, we have been canvassing the matter that he raised, which is weighty and fundamental. There have been so many takes on it from Hon. Kaluma. I appreciate Hon. (Dr.) Otiende's contribution. Hon. Millie Odhiambo and the Chair has contributed.

Hon. Members, I think this is a matter that requires a considered ruling that will be delivered on the issue of constitutionality and whether this proposed legislation meets the constitutional threshold. At any point before the matter is concluded, if it is found that it does not meet the threshold, definitely the matter will be stopped right there. But as of the moment, I think the fair thing to do as we prepare that ruling that will be delivered would be to allow the Mover to move. Then the ruling will come. It will deal with all the issues that have been raised by the various Hon. Members of this honourable House. My direction is that we allow the Mover to move. The ruling will be considered and delivered. At that point, we will determine whichever way this business follows.

Hon. Chair of the Committee, you may now proceed to move. Just hold on, Chair!

*(The Temporary Deputy Speaker consulted with the Clerks-at-the-Table)*

Before you move, I will have the Leader of the Majority Party lay Papers.

### PAPERS LAID

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to lay the following additional Papers on the Table of the House:

The Legal Notice No.236 of 2021 on the Sectional Properties Regulations, 2021 and the Explanatory Memorandum.

The Legal Notice No.238 of 2021 on Physical and Land Use Planning (Institutions) Regulations, 2021 and the Explanatory Memorandum.

The Legal Notice No.239 of 2021 on Physical and Land Use Planning (Building) Regulations, 2021 and the Explanatory Memorandum.

The Legal Notice No.240 of 2021 on Physical and Land Use Planning (County Physical and Land Use Development Plan) Regulations, 2021 and the Explanatory Memorandum.

The Legal Notice No.241 of 2021 on Physical and Land Use Planning (National Physical and Land Use Development Plan) Regulations, 2021 and the Explanatory Memorandum.

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The Legal Notice No.242 of 2021 on Physical and Land Use Planning (Advertisement Regulations, 2021 and the Explanatory Memorandum.

The Legal Notice No.243 of 2021 on Physical and Land Use Planning (Planning Fees) Regulations, 2021 and the Explanatory Memorandum.

The Legal Notice No.244 of 2021 on Physical and Land Use Planning (Inter-County Physical and Land Use Development Plan) Regulations, 2021 and the Explanatory Memorandum.

The Legal Notice No 245 of 2021 on Physical and Land Use Planning (Development Control for Inter-County Projects) Regulations, 2021 and the Explanatory Memorandum.

The Legal Notice No.246 of 2021 on Physical and Land Use Planning (Development Control for Strategic National Projects) Regulations, 2021 and the Explanatory Memorandum.

The Legal Notice No.247 of 2021 on Physical and Land Use Planning (Development Control around Strategic Installations) Regulations, 2021 and the Explanatory Memorandum.

The Legal Notice No.248 of 2021 on Physical and Land Use Planning (Local and Physical Development Plan) Regulations, 2021 and the Explanatory Memorandum.

The Legal Notice No.249 of 2021 on Physical and Land Use Planning (Special Planning Area) Regulations, 2021 and the Explanatory Memorandum.

Thank you, Hon. Temporary Deputy Speaker. I am sure the relevant Committee will now be able to do justice on this in the course of the break.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well. We shall now have the Mover of Order No.17. It is still the Leader of the Majority Party. Proceed, Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move that the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No. 39 of 2021), be now Read a Second Time.

Before I even move, I want to thank the Members who have endured the dilatory Motion that has been brought before this House for the last two hours. I ask them to endure the balance of time so that we can achieve what we came here to achieve. As you will notice, all the Members who came taking advantage of the Standing Orders and spending all the time have since disappeared. Basically, they were filibustering to ensure that we do not start this Motion.

*(Applause)*

This House is the supreme law-making body. It is recognised in the Constitution. It does not legislate for the rich or for the poor; for money launders or for other people. It legislates for the people of Kenya and for the welfare of society and the just government of the people. Nobody can take away that responsibility from this House. In moving this Motion, we are persuaded by the ordinary pain of the ordinary Kenyan that they have to endure because of the effects of corruption on their lives.

I hear issues about limitation of rights and that there is a doctor-patient relationship. Hon. (Dr.) Nyikal is an expert in that matter. If you take your COVID-19 test today and you turn positive, that result is reported to the Ministry of Health (MoH) without your concurrence. It is in public interest.

*(Applause)*

These are the things we need to start thinking of. We are not doing this because of individuals. It is to protect that Kenyan; that suffering Kenyan, who is suffering because our country has been made a pariah. We passed this law because we are surrounded by all those neighbours. Putting Kenya and Somalia in the same basket is the worst thing that can happen. It is something that we need to clean up our image. We are the financial centre for this area and region. In the course of all those arguments, I know the Chair of the Departmental Committee on Finance and National Planning will reiterate, and she mentioned, that if we do not pass this law which we committed ourselves to, we will get blacklisted. Even the money the lawyers are trying to protect will not be moving because we will have closed our financial system to the international financial system. Then we are here talking about some people who are fearing for nothing.

*(Applause)*

Let me also say that we have had interactions with the various agencies. Some of the people, including Hon. Murugara who raised this issue, were with us in Mombasa. At that point, he committed to support this Bill. When he did the turn around, I do not know.

Let me get to the Bill. The principal object of this Bill can be summarised as being the imposition of reporting obligations and expanding the number of people with reporting obligations to now include advocates. One may ask: Why are we talking of advocates? I do not even want to think of the history of this Proceeds of Crime and Anti-Money Laundering (Amendment) Bill. We know it came here in 2018 through the wrong route, in miscellaneous amendments. It was ruled out. It came back in 2019, again through another route. It was reversed and Members were told to bring it as a substantive law which is what we have done. I do not even want to ask because we are looking at it.

When the Financial Action Task Force carried out a study to identify the risk groups – the most vulnerable, the legal profession in Kenya was identified as a high risk profession. For the record, between the year 2012 and 8<sup>th</sup> September 2021, the number of suspicious transactions that were reported on lawyers in this country were 326. The number of suspicious transactions where a lawyer assisted in this country were 579. This is growing. So, basically, we are not talking of lawyers not being included from the blues. It is because every time a transaction takes place, a lawyer – there is no lawyer who owns a bank – will take that money to the bank and the bank will flag that transaction to the Financial Reporting Centre that has its own mechanisms of tracing all these issues. Eventually, they are traced to most of the lawyers. So, why are we putting our lawyers at risk? They do it innocently but what they do not realise is that they handle proceeds of crime in the process. It is our duty to protect the legal professionals who do things in good faith.

*(Applause)*

For those who do underhand things, their ploy does not go to a bank anywhere. That is where we need to come in and say: For the good lawyers who are doing things innocently, we must protect them by law so that when they discover, for example, a client who normally deposits Kshs10 million in a month all of a sudden brings Kshs100 million and the client tells them not to report because they have a confidential relationship, they can flag that out to the Financial Reporting Centre. That they are suspicious of a client whose money has changed in patterns. That is all they are required to do. It is not to investigate where the money came from. What they are supposed to do is to flag it out.



When you put money in a bank and convince the bank that it is from the proceeds of selling chicken, meat or from a petrol station operation, the bank will be satisfied. However, they may realise that you do not look like you are making that much from, for example, your kiosk. We saw a similar thing during the vetting of policemen. The policemen who were caught with money in their M-Pesa tried to justify it with all manner of things that they do. Even if they were working on a day-to-day basis, their business could not accumulate the amount of money that they were accused to have.

*(Applause)*

It is just that vetting brought that out. So, what we are trying to do is to let everyone have an obligation to the society. That, in the interest of the greater public, you will not be a conveyor belt through which proceeds of crime flow – like the money that came and killed people in Dusit D2 Hotel.

*(Applause)*

The kind of money that was used to finance terrorism in West Gate Mall and the kind of money that was used to bring down the twin towers of New York City's World Trade Centre. This is what we should not allow in our Kenyan banking system. When we look at our neighbourhood, our big competitors are waiting for Kenya to fail. I can tell you that all the headquarters of the big banks will soon move to Rwanda, including Kenya Commercial Bank Limited (KCB Bank) and Equity Bank. If we continue in Kenya and people are blacklisted and removed from the International Financial System where Kenyan banks cannot have corresponding relationships with international banks, it means that banks will not trust Kenyans. They will move out and there will be unemployment here. You, Members of Parliament, will not be able to access visas. How will you pay for your visas and you will be asked to pay hotel bills using credit cards? Who will guarantee those credit cards? These are the kind of things that people who are talking here just because they have a client or an audience to please are not looking at. They are not looking at the pain that ordinary Kenyans will be put through if we are blacklisted.

*(Applause)*

All other countries have done it within the Eastern and Southern Africa, except Kenya and Somalia. Surely, we must rise above Somalia, criminals and “wash wash” generation, protect the good lawyers and give Kenya legitimate businesspeople.

I am proud as an accountant that we took the bold step and said that as accountants, there will be no money moving anywhere where an accountant has not been involved. We said we will be part of the reporting. So, even where a lawyer will fear, an accountant will have reported the transaction, anyway. The bank and the estate agent given money for purchase of a house will have reported. However, the innocent lawyer who would have held the money will soon be deemed to have held proceeds of crime and money laundering.

Hon. Speaker, I do not want to talk about client-advocate confidentiality. We know that that has been canvassed. This law is not cast in stone. We are debating the Second Reading. Let people canvass the issues they want to be considered in the Third Reading. We will be sitting here as a House and we will look at each and every of those clauses and see which ones we can amend

and which ones we can live with. When we do that, we will collectively, as a House, and not as a Departmental Committee on Finance and National Planning or myself as the Mover, pass a law and it will be an Act of Parliament that has been enacted collectively by the Parliament of Kenya that has 349 Members. So, people should not fear. Just because they are the minority and they will not carry the day, they want to forestall the Bill like what some people did with the BBI Bill. It was passed by 5 million Kenyans and when they realised they could lose in the referendum, they went to court to meet certain judges. I am glad that you made the decision to allow this debate to proceed so that this august House that is constitutionally empowered to legislate can make a decision on behalf of the people of Kenya.

On other critical aspects, the Bill is clear. We have dwelt so much on lawyers but the Bill also addresses giving of power to the Assets Recovery Agency to have its own standing. Right now, we have the EACC and DCI doing investigations, the DPP doing prosecution and the courts that decide whether one is guilty or not. We also have an Asset Recovery Agency hanging somewhere in the Office of the Attorney General. It is doing a great job in terms of recovering money. Crime should not pay. We have a tendency in this country of people saying they can steal billions because they will be fined Kshs100 million which they will use part of the billions to pay and go and enjoy the rest forever. The world has moved. No person should benefit from crime. It is a fundamental issue in law. That, you cannot benefit from your own mischief. This has been happening in Kenya. So, the Assets Recovery Agency will now have more power to intercept some of those assets and hold them until a decision is made. We are also giving it legal teeth so that it has investigators, prosecutors and adjudicators. When you are guilty, you will be given over to the Commissioner of Prisons to handle you. Your assets will be recovered through the Assets Recovery Agency so that nobody benefits from stealing public property. I am surprised that this House that swore to uphold the Constitution which includes protection of public property has Members who are telling us that this is the wrong thing to do.

On the one hand, I have said lawyers are at risk if we do not pass this law. There are good lawyers who handle matters in good faith. We also said we stand the risk of being blacklisted and the entire country would lose. The future of our children will be in jeopardy. I do not want to belabour the point. This matter is straightforward. I would urge that we conclude it today. The Question can be put another day. But for Members who have endured being here the whole afternoon, at least, let their wait not be in vain.

In terms of limitation of rights, a series of stakeholders have appeared before the Departmental Committee on Finance and National Planning since December. The Committee has brought a Report which Members, including some of those raising issues, have read and accepted. This is Kenya at test. The whole world is watching. Kenya was given the honour of chairing the United Nations Security Council. I was there and saw the President presiding over the UNSC. Immediately after that, we were invited to visit Joe Biden in the oval office. I could see how our President was being seen as the stabiliser for the region. They will now say Kenya is a country of money launderers who cannot even pass a simple law. Let us not bring ourselves down when we have been lifted and given global honour. During the State of the Nation Address, the President enumerated investors lining up to come to Kenya. How do you get an investor to construct the road from Rironi to Mau Summit, under public-private partnership, to put in so much money when he cannot move the money through the international financial system because we are money launderers? We are basically saying we kill all investments just because a few people are not happy with what we are doing. Let us look at the bigger picture of where we want to put Kenya, not the half-empty glass that people are looking at. Let us look at what we can do to fill our glass. As the

Mover of the Bill together with the Chairperson of the Committee, we will be happy to look at all amendments by Members to make sure that we pass a law that is good for everyone and not just for a few.

Hon. Temporary Deputy Speaker, with those remarks, I beg to move and ask Hon. Kaluma, a seasoned lawyer, to second. Then we will hear from the Chairperson. I beg to move.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): The Leader of the Majority Party, you have said you were very happy to be hosted at the White House and that is why you are moving the Bill.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Hon. Temporary Deputy Speaker, it is very difficult to speak after the Leader of the Majority Party. A short while ago, he got a PhD on matters finance. So, he understands this matter deeply. Most of the matters I wanted to address have been canvassed during the constitutional issues debate and, so, I will not take much time. Allow me to mention two issues so that I allow other Members to contribute.

When the Westgate attack happened, among the soldiers who were directed to intervene was Jacktone Puodi from Katuma Village in Kanyada. That is my village. We cried with Hon. Gladys Wanga when we were burying him next to Arunda Primary School. He died at Westgate. When our students were being killed at Garissa University College, the first young man who was shot on the head so badly we could not even look at his body at the graveside was Philip Puodi, whose home is next to Marindi. So, when I see a provision stopping situations where money laundering can be used to prevent and detect terrorism, I feel it deeply. Hon. Wanga, I did not tell you when we were burying Philip Puodi that he was a boy I educated at Wiobiero Primary School. It is painful.

Without saying much, I want to request fellow Members: We are not an island as a country. There are international conventions. Let us not exclude ourselves from the global community by seeking cover under some amorphous things like advocate-client confidentiality. Advocate-client confidentiality is a good thing, but it can be limited. And it is not a constitutional issue. Reasons for limitation are well explained in the Bill. If there are grounds for improvement, that will be done at the Committee of the whole House stage.

I thank the Leader of the Majority Party for choosing me to second. Without much ado, I accept the honour and bow to your Chair to say I second. I request Members to support this Bill. If there are amendments, let us deal with them at the Committee of the whole House. I support the Bill fully. I did not mention that all these lawyers - and you can see only two have remained in the House... There is Hon. Anthony Kiai, Hon. Jennifer Shamalla and you who is honoured to chair the Sitting. All those lawyers who were telling us about privilege are not here.

*(Hon. (Ms.) Odhiambo-Mabona spoke off-record)*

Oh! Hon. Millie is also there. Let me confirm that only lawyers who see the sense in supporting this Bill have remained. I do not want to say much. I support and second.

I thank you very much.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): The first person will be Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill.

*(Applause)*

In my simple mind, I have listened to lawyers talk about all the issues - rights, international commitments and all that - but to me this is a fight against corruption. The danger that corruption poses to our society is great. Services like healthcare cannot run. You saw what happened to supplies at the Kenya Medical Supplies Authority (KEMSA) when COVID-19 hit us. When we talk about people's rights, what about when corruption denies our people from getting healthcare? Are they not denying our people the right under Article 43? So, it cannot just be one side.

People can hardly survive businesswise. Investors are going to other countries. We have left few opportunities to do businesses. We lost the oil pipeline that was to run from Uganda-Kenya-Tanzania; a loss to us merely because of corruption. We cannot have manufacturing sectors started quickly so that our children can get employment, again, that is because of corruption.

Our banking system as you have been told is under threat because of corruption. If you look at politics of governance and our electoral system, in as much as we try, people who have money whose sources we do not understand have a big sway in the electoral system. They corrupt the decision of the people using money. We cannot go on and support that.

Hon. Kaluma has indicated here how gravely our children and people have died, and that is money that comes to us through corrupt means. The main stay of all that damage to our society is the use of corruption proceeds. If people could steal money and get stranded with it and not know how to use it, it would not have that impact.

I support this Bill because it makes provision for people who steal to stop them from enjoying the loot. This is desirable if we have to deal with corruption.

It looks discriminatory because, as the lawyers have put it, why is it only for the lawyers and accountants? If it is necessary, let us amend it when it comes to the Committee of the whole House to involve all professionals who are regulated by law when it comes to handling money.

I know about the client-advocate confidentiality but how do we measure that against public interest? Whose confidentiality are we talking about? Is it for the advocate or the thief who is using the law and is now being protected by the lawyer? In fact, they are abusing our lawyers. We should go ahead and protect our lawyers so that the thieves - as Hon. Kaluma was saying - if they have a canter of money, they should deal with it. They should not run to our lawyers and say they use the confidentiality between you and them to hide that money. It is hurting the country. So, public interest, in my view, will outweigh confidentiality. Even in medicine, we know that if there are communicable diseases and a patient has one, you are bound to report. You cannot hide it and say this is patient-doctor relationship and the disease is going to affect other people. There are times that these confidentiality are to be breached so that we protect public interest.

If we do not pass this, this House cannot stand in public and say it is against corruption.

With that, support this Bill.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Gichimu, Member for Gichugu. He is not in. Hon. Chair of the Departmental Committee on Finance and Planning.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Speaker for your ruling to allow this Bill to proceed. I can confirm to this House that you are a firm person but fair. I thank you because you have allowed this Bill to proceed.

I had spoken to other issues earlier; and for the record, to anticipate any litigation, the Departmental Committee on Finance and Planning conducted public participation on this Bill. We met several stakeholders face to face and we had several memoranda also sent to us. Those whom we met and they showed support to the Bill were: Institute of Certified Public Accountants; Kenya Bankers Association, Insurance Underwriters and Brokers Association; the Central Bank of Kenya; the Financial Reporting Centre; the National Treasury; the Law Society of Kenya who expressed their dissent with the Bill but were, perhaps, the only stakeholders, and Assets and Recovery Agency also appeared before us.

From the Office of the Director of Public Prosecution, the DPP appeared personally; and Ethics and Anti-corruption Commission. We held a broad-based public participation and all the input that was given is indicated in our Report.

The other issue we have not deliberated is this: The Assets Recovery Oversight Board (ARA). ARA made submissions to change this from oversight to advisory, so that they can retain their independent role in assets recovery. There is also a case made in this board that the DPP be removed because this is investigative rather than prosecution related. We will be debating it further, as we move along.

The Ethics and Anti-Corruption Commission made a case to be included in this vote. ARA asked that the Central Bank Governor be included in the Board. These are issues that we will look into during the Third Reading of the Bill. I wanted to take note of them during this Second Reading so that the House is notified of that.

I beg to support.

*(Applause)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. ole Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you so much Hon. Temporary Deputy Speaker.

I rise to support this Bill 100 per cent. I have heard some arguments from some lawyers that there is client-lawyer confidentiality, and that there are some rights that they thought are infringed. However, remember your rights stop where mine begins.

This country in terms of corruption has denied our mothers the opportunity for free maternity. Because of corruption, it has denied our children proper education. The poor go hungry and yet, there are billions of shillings stashed in banks by the corrupt. The National Youth Service 1 and 2 took a lot of money because some people did not want to report those proceeds of crime.

Hon. Temporary Deputy Speaker, if we have known that among the conduits of the proceeds of crime, one of them is lawyers, what is wrong for us to tell them to report and flag out that there are proceeds of crime passing through them? We are not telling them to investigate. We are only telling them to report. Why are they feeling guilty? In addition, you can see the lawyers that are opposed to this have suddenly disappeared. We have only been left with a few lawyers like Hon. Shamalla, Hon. Millie Odhiambo and Hon. Kaluma, who are very sober. They are the lawyers who want to protect this country from thieves.

Hon. Temporary Deputy Speaker, we must protect this country because thieves in this country are worse than terrorists. They have stolen from COVID-19. We have COVID-19 billionaires. They have...

**Hon. Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Sankok, you will withdraw that part of your statement that the other Members who have opposed or raised issues are not sober.

**Hon. David ole Sankok** (Nominated, JP): I do withdraw.

**Hon. Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well. Proceed.

**Hon. David ole Sankok** (Nominated, JP): Therefore, Hon. Temporary Deputy Speaker... I am sorry I have withdrawn. However, they should have stayed to the end. Today, I can assure you *nimekuvulia kofia* because the ruling was timely and it will save this country.

The last one, we will be blacklisted. If we are blacklisted, investments will not come in this country. We will face problems. Therefore, today, this House is divided among those who want to fight corruption and those who want to benefit from corruption. Choose which side you are today in this House. Choose which side of history you want to be because those who will support this Bill will be in the golden pages of Kenyan history books. Those who will oppose will be in the dark pages of Kenya's history books. This is because corruption is a cancer that is ailing our country.

I support, Hon. Temporary Deputy Speaker.

*(Applause)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Odhiambo Akoth, Member for Suba North.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you Hon. Temporary Deputy Speaker. Let me rise to support because I have spoken at length on the issue of constitutionality. I just want to say that if we are minded in dealing with corruption in this country, we must take very difficult choices even for us as lawyers because this law affects me. We must balance between rights and doing the right thing. We will not limit our rights to an extent that is not allowed constitutionally, but we will ensure that we deal with corruption.

I only urge the agencies that are designated to deal with corruption and crime to focus on the core issues and not politicising fighting corruption.

With those few remarks, Hon. Temporary Deputy Speaker, I support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): The Hon. Mwathi Mungai. Member for Limuru.

**Hon. Peter Mwathi** (Limuru, JP): Thank you Hon. Temporary Deputy Speaker. I also want to associate myself with the contributions of the other members without having to repeat. However, most importantly, thank you for your ruling. You being an advocate of high standing, you have allowed debate to continue and, at an opportune time, you will be able to give us direction on the ruling that was sought regarding the matters that were raised and so, we thank you.

Second, is to say that I want - just as Hon. Sankok has said and I said before - to be part of the people who will be counted that they stand for this nation. I stand for the future of our children and that they will know in the 12<sup>th</sup> Parliament, there were people who cared about their lives by ensuring they legislated about money laundering which, of course, finally ends up creating a lot of corruption and, therefore, spoiling and messing the entire society.

Therefore, Hon. Temporary Deputy Speaker, without further ado and as we wait for your ruling, I support and also wish to state that since I am also a professional, and if the lawyers here can listen to me, there is that one clause that will speak to only lawyers and accountants being the only ones who are going to have the obligations to report and not all of us, I will not support that. Let us all be hooked in so that we have an obligation to report.

I thank you Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Shamalla.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you Hon. Temporary Deputy Speaker. I rise to support. Everything that has been said has already been said. I just want to state that I am very passionate about this matter because I am personally a victim of terrorism. I have an uncle who died in the 1998 bomb last. I have my colleague and my friend Peter Simani who died at the West Gate Terror attack. Therefore, this matter is very close to my heart. I feel extreme pain when I think that Kenya and Somalia today are lumped in one basket. We have a funny maritime decision that took place somewhere else but, as Kenyans, we have said: "Not an inch more and not an inch less." Is it deliberate? This is because I want to state and I will read it out, the definition of what is 'state capture.' It is a system where you use political corruption in which private interest significantly influences a state's decision-making process.

What is happening for those who will oppose a Bill like this and oppose treaties that we have signed are actually working to state capture? Is it a coincidence that it is only Somalia and Kenya which are in this situation and that our country and as the Leader of the Majority Party has very succinctly stated we will not be able to do any business past a particular date? As was stated to us in Mombasa, if we do not pass this Bill, the blood will be on our hands. The blood of Kenyans who have died and those who might die in future terrorist attacks will be on our hands.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): The Hon. Wangwe.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you Hon. Temporary Deputy Speaker. At the outset, I want to support this Bill and say in 1998, I happened to be a victim of the bomb blast at Cooperative Building. Luckily enough, God saved me and I am still alive. I just want to echo my old folks who have said *vindu vichenjanga* meaning things change. I also want to go to the Bible and say the Bible talks about the 40 days. When the 40 pass, it must change. Therefore, I want to suggest that 40 days have come. Let things change and let us all agree that we include all the professions, including the advocates, so that we can save the country from acts of terrorism and money laundering.

With those few remarks, I wish to support this amendment.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Ng'eno, Member for Emurua Dikirr

**Hon. Kipyegon Ng'eno** (Emurua Dikirr, KANU): Thank you Hon. Temporary Deputy Speaker. I also wish to state, at the outset, that I support the amendment with reservations. I support with reservations. You know sometimes we do not wish to be coerced into making laws that will, at times, come back to haunt us. I support the fact that we want to kill and finish the question of money laundering. It is not for us. Even for those who are lawyers, they can prevent the country from ascending to good leadership. We can have a situation where we can curb terrorism in the country and prevent proceeds of crimes. However, we must also be guarded on the way we make these laws. This is so that we do not make laws that will be like the laws that we did sometimes back in this House, the Security Laws, which came to haunt many Members of this House.

Therefore, I support, but with reservations.

Thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Ndirangu, you had something to say to this? Proceed.

**Hon. Isaac Ndirangu** (Roysambu, JP): Thank you Hon. Temporary Deputy Speaker.

I also wish to join my colleagues in supporting this law and indicate that Kenya is a member of the international law. There is a narrative that has been pursued that by passing this law, Kenya

is bending to some international pressure. Kenya is a signatory to many international treaties. I want to give an example. The other day, the World Anti-Doping Agency sanctioned Kenya's athletes from participating in the Olympics and other international athletics and sports competitions. This House had to be called upon to adopt the anti-doping law so that our Kenyan athletes could be allowed to go and participate at the world stage. So, we are not an isolated nation. We do not want to be a pariah in world financial systems. So, I want to thank Members of our Committee and Members of the House who have supported this Bill.

I beg to support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): There being no other Member interested to speak to this, I now call upon the Mover to reply.

*(Applause)*

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I will go on recess a very happy person. I am sure the Members here who have endured the whole afternoon, the shenanigans and the rigmarole, will go home feeling that their time was not in vain. Those Kenyans suffering will now feel that there is a 12<sup>th</sup> Parliament that puts their welfare at the forefront and there is a just Government of the people at the forefront. Nobody shall think that Kenya shall be a home for illicit money.

I wish to thank you, Hon. Temporary Deputy Speaker. You have really taken quite a testing phase. You had to endure all that. At this point, I want to say I am elated and I want to thank everyone who has been here.

With those few remarks, I beg to reply.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, I want to thank you. I would just like to say that what has happened in the House today is what should be. Sometimes, we will have different opinions on different things. It does not mean that the interest of the country will suffer because you might carry a different opinion. This Floor is where those opinions must be expressed. Under my speakership in this seat, every voice will be heard. It does not mean that those voices that I hear are pleasing to me, but it is my duty to listen to them and they will be heard.

*(Laughter)*

Kenyans demand that those voices be heard. Our Constitution and people require that those who remain on the Floor and do their business and are in the majority, carry the day. That is the way it is.

So, well done Members. We have had a fair fight here and very interesting elucidations on the Constitution, stipulations and different takes on the issues that were before all of us. I thank Members for being brave and being the representatives of the people in what they have done. I am glad to have sat through all this and I am happy that I am part of this debate.

So, Hon. Members, I want to wish you all happy holidays and a Merry Christmas that is free of all the troubles, shenanigans and bad illnesses that have come to encumber us. I hope you enjoy this period with a little restraint and care for yourselves so that we shall see each other on 25<sup>th</sup> of January, the year of our Lord 2022. It will be a great and heavy year as you all know.

Thank you, Hon. Members, for allowing me to be here and hear all of you.



**ADJOURNMENT**

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Therefore, Hon. Members, the time being 8.55 p.m., this House stands adjourned until Tuesday, 25<sup>th</sup> January 2022, at 2.30 p.m.

God bless you all.

The House rose at 8.55 p.m.