

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 29th July, 2004

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

QUESTIONS BY PRIVATE NOTICE

Mr. Speaker: Hon. Members, for the benefit of the House, we must complete Question Time by 3.30 p.m. as usual. I think there are several hon. Members who have fairly urgent Ministerial Statements that they wish to seek. I think we should be able to go through those in 15 minutes. We must be in business at 3.45 p.m! I will begin with Questions by Private Notice!

Question number one by Private Notice! Mr. Muiruri is not here? Question dropped!

ARREST/PROSECUTION OF MR. JAMES MUIRURI

(Mr. Muiruri) to ask the Minister of State, Office of the President:-

(a) Is the Minister aware that Mr. James Muiruri was on 14th March, 2004, arrested and detained in Makindu Police Station until 5th April, 2004, without being charged?

(b) If the answer to (a) above is in the affirmative, under what circumstances was the said person arraigned in court, charged with indecent assault and now in remand prison having spent a further 23 days in police cells?

(c) What action does the Minister intend to take against the officers involved in the illegal arrest, detention and malicious prosecution of the said James Muiruri?

(Question dropped)

ARREST OF IRAQI REFUGEE

(Mr. Mwandawiro) to ask the Minister of State, Office of the President:-

(a) Is the Minister aware that a 55 year old refugee from Iraq by the name Adel Mohamed Al-Dahas, presently at Kileleshwa Police Station, Nairobi, has been in police cells in the country since October, 2001?

(b) If the answer to above is affirmative, why is the refugee being held?

(c) When will he be released and accorded his right as a refugee and human being?

Mr. Speaker: Question No.2 by Mr. Mwandawiro Mganga was completed. It is wrongly on the Order Paper! So, it is removed!

Mr. Mwandawiro: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Mr. Mwandawiro! The Question is removed from the Order Paper! I have looked at pages 17 to 22 of the HANSARD of that day and the Question was answered!

(Question withdrawn)

Question No.3 by Mr. Wycliff Oparanya!

DEATH OF MR. NIMROD SHIANJE

Mr. Oparanya: Mr. Speaker, Sir, I have not received a written answer!

However, I beg to ask the Minister of State, Office of the President, the following Question by Private Notice.

(a) Is the Minister aware that Administration Police officers attached to Ebushitinji Chief's Camp in Butere Division arrested and tortured to death Mr. Nimrod Shianje on 9th June, 2004?

(b) Is he further aware that the same officers confronted mourners at the deceased's funeral and shot dead Mr. Esau Ochango, critically injuring Mr. Paul Anjiri and Robert Sakwa before confiscating videotape of the proceedings on 26th June, 2004?

(c) What action has been taken against the officers involved?

Mr. Speaker: Mr. Assistant Minister, why has he not received a written answer?

The Assistant Minister, Office of the President (Prof. Kibwana): Mr. Speaker, Sir, all those answers were brought to the National Assembly.

Mr. Speaker: Do you have an extra copy, so that the hon. Member could participate in the Question?

The Assistant Minister, Office of the President (Prof. Kibwana): Mr. Speaker, Sir, we have only one copy to use in answering the Question.

Mr. Speaker: You do not have an extra copy?

The Assistant Minister, Office of the President (Prof. Kibwana): Mr. Speaker, Sir, not here!

An hon. Member: Then, how shall he reply?

Mr. Speaker: Well, Prof. Kibwana, I am told that the Clerks have not received your reply!

Mr. Oparanya, are you comfortable without a written reply?

Mr. Oparanya: Mr. Speaker, Sir, since that is a detailed case, I would prefer having a written reply.

Mr. Speaker: So, could I put it on Tuesday then?

Mr. Oparanya: No!

Mr. Speaker: You cannot have it both ways!

Mr. Oparanya: Okay, Mr. Speaker, Sir, I agree! Let it be there on Tuesday.

Mr. Speaker: All right! I think that is the best way forward. I reiterate, and it is actually in our Standing Orders, that copies of replies must be given to hon. Members and the Clerk.

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.543

ACCOMMODATION FOR UKWALA DO

Archbishop Ondiek asked the Minister of State, Office of the President:-

(a) whether he is aware that the District Officer's (DO's) house at Ukwala in Siaya District is condemned as inhabitable; and,

(b) what action he is taking to provide appropriate accommodation for the officer.

The Assistant Minister, Office of the President (Mr. Mungatana): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that the DO's house at Ukwala has been condemned as inhabitable. But I am aware that the said house is in need of repair and refurbishment.

(b) The DO's house is among the residences for civil servants in the division that have been earmarked for refurbishment during this financial year.

Archbishop Ondiek: Mr. Speaker, Sir, arising from that reply, could the Assistant Minister tell this House when he will issue Authority to Incur Expenditure (AIE) for the repair of those houses within the division?

Mr. Mungatana: Mr. Speaker, Sir, the AIE will be presented in the course of this financial year. We have just passed the Vote of the Office of the President. So, we will process it in the normal manner and it will be received in time for the exercise.

Capt. Nakitare: Mr. Speaker, Sir, it is good to hear from the Assistant Minister that they will issue an AIE. The status of civil servants in the provinces is questionable. They hold the same qualifications as those who are based in cities and towns. They qualify to have better housing. The Kitale District Headquarters stalled many years ago, even before I came to Parliament. What is the Assistant Minister doing to complete the buildings?

Mr. Mungatana: Mr. Speaker, Sir, if I heard the hon. Member right, we have made a specific provision for the Trans Nzoia District Headquarters. So, that will be accomplished within this financial year.

Mr. Speaker: Last question, Archbishop Ondiek!

Archbishop Ondiek: Mr. Speaker, Sir, the Assistant Minister knows that in Ukwala Division, DO's come and run away because of lack of accommodation. The house he is talking about is not there! It is completely dilapidated. They have been with the Question since we approved the budget. Could he give this House the date when the AIE will be sent to the division?

Mr. Mungatana: Mr. Speaker, Sir, the hon. Member can be assured that when he sources the funding from the Government, it would take, normally, about a month or so. However, we shall be able to sort out that problem.

Question No.491

CONSTRUCTION OF PROPOSED
BY-PASS ROADS IN NAIROBI

Mr. Speaker: Mr. Sasura's Question is deferred.

(Question deferred)

Question No.676

INADEQUATE FUNDING FROM
ROADS MAINTENANCE LEVY

Mr. Speaker: Dr. Kibunguchy is not in? His Question is then dropped.

(Question dropped)

Question No.599

PERMANENT EMPLOYMENT FOR
KOIBATEK DEB WORKERS

Mr. Sirma asked the Minister for Education, Science and Technology:-

(a) whether he is aware that the Koibatek District Education Board has retained 22 employees on casual basis since 1987 contrary to the provision of the existing labour laws; and,

(b) when the Ministry is going to employ the affected workers on permanent basis.

The Assistant Minister for Education, Science and Technology (Dr. Mwiria): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the Koibatek DEB had employed 22 casual workers who had been working in the DEOs, AEOs and the zonal offices. The workers were employed between 1986 and the year 2000.

(b) The Ministry has no intention of employing the workers on a permanent basis since it is currently down-sizing its workforce in order to conform to the current Government policy of Voluntary Early Retirement.

Mr. Sirma: Mr. Speaker, Sir, the 22 employees have actually been on employment until early this year, and yet they have not been paid salary arrears of about six months. How can the Assistant Minister talk of Voluntary Early Retirement for casual workers? Under what terms were the casual workers recruited?

Dr. Mwiria: Mr. Speaker, Sir, that is a good point. However, I would like to say that these workers were not really employed through the official channels. So, the hon. Member is quite correct that the idea of early retirement does not apply to their situation. The point we should make, however, is that the Ministry is under no obligation at all to employ them on permanent terms. With regard to their arrears, after their services were terminated in November, 2003, they have since been cleared.

Mr. Boit: On a point of order, Mr. Speaker, Sir. You heard the Assistant Minister say that the workers were not properly employed. What actually does he imply?

Dr. Mwiria: Mr. Speaker, Sir, that was a slip of the tongue. They were employed as casuals and not on permanent terms.

Mr. Bahari: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to tell us that the Ministry is under no obligation to employ the 22 casual employees when we know very well, according to the labour laws, that after 90 days in employment, the Ministry is obliged to take them aboard, especially given the fact that the board is the agent of the Ministry?

Dr. Mwiria: Mr. Speaker, Sir, it was made clear to them that they would not be recruited and so their arrears were cleared. The agreement that was reached between the Ministry and the casual workers was respected. When it came to the point whereby they could not be employed permanently, they were relieved of their duties, but paid their arrears duly.

Mr. Sirma: Mr. Speaker, Sir, the Government cannot say that it has no obligation to pay

somebody who has been in employment for 19 years. This is contrary to the labour laws. Could the Assistant Minister consider absorbing the 22 casual employees because the positions they were holding are still vacant? Under what conditions were the workers laid off?

Dr. Mwiria: Mr. Speaker, Sir, these people have already been laid off. That was done in November, 2003. Whatever arrears that were due to them were paid. So, if we were to advertise the positions, they would be quite free to apply. I am sure, based on their experience, they will have an advantage over other applicants.

Mr. Leshore: Mr. Speaker, Sir, this problem is not only in Koibatek. It is also in Samburu. Some of these workers have families, and yet they go for five or six months without salaries. The Assistant Minister cannot escape from this issue because DEBs are created by law under the Education Act. Could the Assistant Minister tell us when the Ministry will pay the workers and employ them permanently?

Dr. Mwiria: Mr. Speaker, Sir, I, of course, sympathise with the situation that those workers are facing, and I agree absolutely that some of them have families. However, we must not assume that all of them have families. If there are professions that are permanent and they are advertised, they will be considered. Secondly, whoever is owed money by the Ministry has been paid. Those who have not been relieved of their duties are still employed and being paid their wages.

Question No.657

ERADICATION OF ETHNICITY/NEPOTISM
IN THE EDUCATION MINISTRY

Mr. Kajwang asked the Minister for Education, Science and Technology:-

- (a) whether he is aware that there is a high concentration of members of one ethnic community in the senior staff positions of the Ministry;
- (b) whether it is prudent for a strategic Ministry like education, which disburses huge resources to institutions of learning countrywide, to be predominantly staffed by members of one ethnic community; and,
- (c) what he is doing to eradicate ethnicity and nepotism in the Ministry.

The Minister for Education, Science and Technology (Prof. Saitoti): Mr. Speaker, Sir, I beg to reply.

(a) The senior staff positions in the Ministry of Education, Science and Technology are not predominantly staffed by members of one ethnic community, but by qualified Kenyans who have the technical competence to handle the tasks of their offices.

(b) The resources allocated to the Ministry are always disbursed in a transparent manner to all learning institutions in the country.

(c) There is no problem of ethnicity and nepotism in the Ministry whatsoever.

Mr. Kajwang: Mr. Speaker, Sir, the Minister is aware that he is not saying the truth. Although officers in the Ministry of Education, Science and Technology are competent, of course, they largely come from one ethnic community, including the Minister, his Assistant Minister, the Permanent Secretary, the Director of Education and so on. Does it not look ugly that one community should dominate this Ministry?

Prof. Saitoti: Mr. Speaker, Sir, I am sure you heard what he said: That the Minister and his two Assistant Ministers and all other senior officers are from one ethnic group. It is a well known fact that I am not a man who believes in tribalism. However, the hon. Member himself is a well known tribalist. I want to make it clear that---

(Loud consultations)

Mr. Kajwang: On a point of order, Mr. Speaker, Sir. The Minister has made an assertion which he must either substantiate or withdraw. He said that I am a well known tribalist. Could he, please, substantiate or withdraw that remark?

Prof. Saitoti: Mr. Speaker, Sir, there is very little to substantiate other than point out the manner in which the hon. Member has himself presented his substantive Question.

(Mr. Kiunjuri stood up in his place)

Mr. Speaker: Mr. Kiunjuri, you are an Assistant Minister; or have you forgotten that?

(Laughter)

Mr. Ndile: Bw. Spika, ninafikiria kwamba hili Swali ni muhimu kwa vile linahusu maswala ya wafanyakazi. Badala ya kupoteza wakati tukiongea mambo ya ukabila, ningetaka kujua ikiwa Waziri alimrudisha shuleni yule mtoto ambaye alikuwa ameolewa na mama mzee---

(Laughter)

Waziri alikuwa ameulizwa ni lini atawaajiri wale wafanyakazi walioachishwa kazi. Hilo ndilo swali aliulizwa. Je, sasa anaweza kulijibu?

Mr. Speaker: That question is irrelevant.

Mr. Wanjala: Mr. Speaker, Sir, while each one of us in this House does not believe in tribalism, there are 42 tribes in this country. Every tribe needs to feel to be involved in the running of the Government. Look at the Ministry of Education, Science and Technology. The Minister is Prof. "Muthengi" and the Assistant Ministers are Dr. Mwiria and Mrs. Mugo. Also the Permanent Secretary, the Director of Education and the three Deputy Secretaries are all from one ethnic community. The presentation in that Ministry is worrying us, especially when we need scholarships to be awarded to members of other communities. What urgent measures is the Minister taking to ensure that transfers are done in that Ministry so that other people from other communities are absorbed in that Ministry?

(Applause)

Prof. Saitoti: Mr. Speaker, Sir, it is quite clear that it is impossible to answer a question which, incidentally, has been brought so low that---

Mr. Speaker: Order!

Prof. Saitoti: Mr. Speaker, Sir, I believe you heard what the hon. Member said regarding my name. Whereas I do not entertain or worry about petty issues, my official name is well known in this House. Am I in a position to answer what the hon. Member is asking, when he is referring to me as an hon. Member without using my official name?

Mr. Speaker: Order, Members! Order! Order! Can we bring back some seriousness? Hon. Wanjala, you will refer to hon. Members using their correct names, but not imaginary names.

The Assistant Minister for Energy (Mr. Kiunjuri): On a point of order, Mr. Speaker, Sir. I

require clarification whether I can inform the Minister, if he so wishes. Would it be in order for the House, and especially those Members who are questioning the Minister, especially Mr. Wanjala and Mr. Kajwang, to insinuate that it is only the Ministry of Education, Science and Technology which has Members of the same community working in high levels while, for example, in my own Ministry, the Minister for Energy was Mr. Ochilo-Ayacko, with Dr. Ochuodho as the Managing Director, Kenya Pipeline Company (KPC); Assistant Managing Director, Mr. Okungu; Chief Finance Manager, Mr. Ogata; Chief Management Engineer, Mr. Manyara and the Information and Communication Technology (ICT) Manager also being a Luo? Those are the five people occupying the top management positions among the eight posts in KPC. Is that in order?

Hon. Members: *Toboa! Toboa!*

Mr. Speaker: Order, Members! Order! Order! Order, Members! There is something called-- Let me keep it for now. But let me say the following to this hon. House: Once again, for record purposes, in the past Parliaments, I have asked this House to devoid itself from tribal politics in the Chamber. If we begin from here, it must spread to the country. Let us address national issues devoid of tribalism. Let us also relax, because you can see how emotive tribalism is. So, please, put your questions.

(Several Members stood up in their places)

Mr. Speaker: Order! What is your point of order, Mr. Khalwale?

Mr. Khalwale: On a point of order, Mr. Speaker, Sir. Once again, I want to humbly seek your guidance, since it has become very clear, from the utterances of Prof. Saitoti and Mr. Kiunjuri, that the only way that members from various communities can get Government jobs is to have hon. Members claiming or justifying which community should benefit. Can the Luhya also be allowed to run one full Ministry?

(Applause)

Mr. Speaker: Order! Order! Order! I am not so sure whether we are seeking Ministries or tribal fiefdoms. What about those communities who are not represented in Parliament; what happens to them? What happens, for example, to those Kenyans who, because of their numbers, will never be elected to Parliament? What hon. Members must do from the Floor of this House is to portray a national outlook and image. But you are now actually sowing a very dangerous seed of tribalism.

(Several Members stood up in their places)

Order! You will all sit down now! I will only allow questions now, and not any more points of order! I have not yet finished with the questions. But we will do this thing soberly.

Prof. Oniang'o: Whether we like it or not, tribalism is the worst vice of this country. Any time Kenyans out there see two people from the same community in the same office, they perceive that to be tribalism. That is what happens, whether we like it or not. Will it be all right if we asked all the Ministers to table in this House a list of the names of all their key managers and where they come from?

Prof. Saitoti: I do believe that Prof. Oniang'o has asked all Ministers to table the names of all the senior officials in their Ministries. There is no reason why we cannot do so. To be more fundamental, I would like to state the following in respect of my Ministry: I am the Minister, and

you can associate with me any tribe you want. Indeed, when it becomes necessary to protect big tribes, I have been referred to as a Maasai so that we are marginalized. That is true! Then, when they want to hit the Kikuyus, they say that I am a Kikuyu because my mother is a Kikuyu.

So, as far as my tribe is concerned, my professionalism and integrity does not, in any way, allow me to incidentally talk in terms of tribes. Other hon. Members can do so. We have two hon. Assistant Ministers---

Mr. Speaker: Order, Minister!

Prof. Saitoti: I want to give you the facts here! We have two Assistant Ministers; one of them is Mrs. Mugo. Yes, she is a Kikuyu, if that is what you want to hear. The other one is Dr. Mwiria, who is a Meru from Eastern Province!

(Loud consultations)

Mr. Speaker: Order!

Prof. Saitoti: I do not care what you say, but there are two distinct things. It is, indeed, true that my Permanent Secretary is Prof. Karega who is from Central Province. The reason for his appointment is because of his professionalism. He is a scholar and a great academic of international repute. Whether or not you like it, that is your problem!

(Loud consultations)

The Director of Education is Mrs. Wangai.

With your permission, Mr. Speaker, Sir, can I read a number of names so that they can hear them?

Mr. Speaker: Yes.

Prof. Saitoti: The Permanent Secretary is Prof. Mutahi Karega, appointed purely on merit. He is a well-educated professor and you are not in a position to argue with that. The Director of Education is Mrs. Wangai. The Chief Inspector of Schools, who is a "Kikuyu", according to you, is Mr. Oyaya. But he is a Luo! The Chief Procurement Officer is Ms Ruth Wamae. The Chief Economist is Mr. James Kesa from Busia, a very senior person.

Hon. Members: Aah!

Prof. Saitoti: Mr. Speaker, Sir, you can hear tribalism. The person in charge of primary education is Mr. Karaba.

Hon. Members: Aah!

Prof. Saitoti: Yes. He is a Kikuyu.

Mr. Speaker: Order!

Prof. Saitoti: Mr. Speaker, Sir, let me read out this list!

Mr. Speaker: Order! Whatever you feel about this issue, I think the Chair is nauseated by tribal talk in the House. I am nauseated and will bring that Question to an end!

Hon. Members: On a point of order, Mr. Speaker, Sir!

Mr. Speaker: The last one, Mr. Kajwang.

Mr. Kajwang: Mr. Speaker, Sir---

(Loud consultations)

Mr. Speaker: Order! I have said, and I repeat, I am nauseated by the tribal talk in the House.

Proceed, Mr. Kajwang.

Mr. Kajwang: Mr. Speaker, Sir, as much as you are nauseated, we are also nauseated. That is why we have brought this Question to the House. We do not want to see one Ministry which is dispensing billions of shillings of Kenyan taxpayers' money in the hands of one community. It is not right. It nauseates you and also nauseates us. Could the Minister tell us that he will reshuffle officers in this Ministry, so that we can have other people employed? Those officers will get jobs elsewhere. There are many professors out there. Prof. Oniang'o is a better teacher than that Prof. Mutahi of yours.

(Applause)

Prof. Saitoti: Mr. Speaker, Sir, you did actually stop me from reading out the entire list of those who are fairly senior, even though this is important. I must proceed because you ought to know who is who.

The Secretary-General of the Kenya National Commission for UNESCO is Monica Kilonzo, a Kamba. The Secretary, TSC, is a Samburu.

(Loud consultations)

Mr. Speaker: Order! I again plead with the House. Let us keep this behaviour out of this House.

Next Question!

Question No.610

CONVERSION OF MWIHILA
MISSION HOSPITAL INTO
GOVERNMENT HOSPITAL

Dr. Khalwale asked the Minister for Health:-

- (a) whether she is aware that Mwiwila Mission Hospital that serves residents of Ikolomani and Khwisero Constituencies is on the verge of collapse; and,
- (b) what urgent plans she has to convert it to a fully fledged Government hospital.

The Assistant Minister for Health (Mr. Konchella): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that Mwiwila Mission Hospital that serves the residents of Ikolomani and Khwisero Constituencies is on the verge of collapse. However, during the District Health Management Board meeting, the management requested the secondment of a doctor, two clinical officers and four nurses to it by the Government. It also requested mattresses, blankets and bed sheets.

(b) We have no immediate plans to convert the mission hospital to a fully fledged Government hospital at the moment, since the management has not made a formal request for the hospital to be taken over by the Government.

Dr. Khalwale: Mr. Speaker, Sir, may I thank the Assistant Minister for that answer. Now that the District Health Management Board has requested a doctor, nurses and materials, could he state here categorically that he will send those staff members to our hospital?

Mr. Konchella: Mr. Speaker, Sir, I have directed the Permanent Secretary to look into ways of getting the staff required by the hospital, so that we will second some to the hospital in the course of the year.

Dr. Galgalo: Mr. Speaker, Sir, most of our mission hospitals are actually on the verge of collapse. That is where many of our rural people go to seek medical care when we lack medicines in Government facilities. Could the Assistant Minister consider giving financial support to all mission hospitals because they are not for profit and serve poor people? Could the Ministry consider giving them some money every financial year to support them?

Mr. Konchella: Mr. Speaker, Sir, currently, it is not the Ministry's policy to support mission hospitals financially. But we are able to support them materially, either by giving them staff or providing equipment and ambulances. Should that be necessary in the future, we will request that the management boards request the Government to take over the hospitals so that we can budget for them. For now, we cannot budget for mission hospitals because they are under private hands, and some of them are profit-making organisations.

Mr. Arungah: Mr. Speaker, Sir, before the introduction of computers, this hospital served the entire East African region. It had a fully fledged theatre, X-ray equipment and a fully equipped laboratory. At some stage a private doctor was allowed to run the hospital. After he left, all the equipment went missing. Could the Assistant Minister tell this House what action he has taken to track down the people who looted this particular hospital?

Mr. Konchella: Mr. Speaker, Sir, the problem with this hospital is purely related to management and community interest. It was in the hands of the Government since 1987 to 1992. After 1992, the community asked the Government to give it back to the mission. When this was done, instead of the mission taking care of the hospital, it gave it to a private practitioner to run. This practitioner ran down the hospital and looted some equipment. It is the responsibility of the management board to report that theft to the police to enable them track down the looters and deal with them.

Mr. Munya: Mr. Speaker, Sir, many medical institutions in the country are about to collapse because of the withdrawal of cost-sharing without the Ministry giving alternative funds to support staff who were being paid with cost-sharing money. What is the Assistant Minister doing to restore the earlier situation?

Mr. Konchella: Mr. Speaker, Sir, it is only at the dispensaries and health centres where cost-sharing is not being levied at the moment. All hospitals in the country still have cost-sharing. So, it is not really a crisis. The Government will look into ways and means of financing health centres and dispensaries. These are supposed to receive money to replace the cost-sharing money they used to receive. This will be done in the course of time.

Mr. Manoti: Mr. Speaker, Sir, most of the mission hospitals have done a very good job in this nation. As you have heard from the hon. Members, most of them have got a problem because they do not make enough money. Can the Ministry employ or second medical staff to mission hospitals?

Mr. Konchella: Mr. Speaker, Sir, the main problem with mission hospitals is overcharging patients. Since the Ministry is providing free medical care at dispensaries and health centres, most patients go to Government facilities. They do not go to mission hospitals. Therefore, mission hospitals are not able to provide services because they are not making money. One piece of advice I could give them is that they should reduce their charges so that more and more people can afford medical care at them. This will enable them to make some money.

Dr. Khalwale: Mr. Speaker, Sir, the Assistant Minister has been very accurate in his response. However, the most serious problem in Mwiwila Mission Hospital is lack of a well equipped operating theatre. The anaesthetic machine in the theatre was stolen by the doctor who Mr. Arungah has referred to. Could he kindly provide an anaesthetic machine to that hospital so that operations can continue?

Mr. Konchella: Mr. Speaker, Sir, this is a private hospital. Therefore, the Government has no direct responsibility. However, since it is helping Kenyans, we will look at its needs when the request comes to the Ministry.

Mr. Speaker: Next Question, Mr. Mbai!

Question No.428

CLEAN WATER FOR MASINGA RESIDENTS

Mr. Mbai asked the Minister for Water:-

- (a) if she is aware that Masinga-Kitui water pipeline has only three water *kiosks* on the side of Masinga Division; and,
- (b) what urgent measures she is taking to ensure that Masinga people get clean water for their animals and domestic use.

The Assistant Minister for Water (Maj. Sugow): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that Masinga Division has only three water *kiosks* along the Masinga-Kitui Water Pipeline. The water *kiosks* were constructed during the implementation of the Masinga-Kitui Water Pipeline contract, which provided for only three *kiosks* due to financial limitations.

(b) My Ministry is aware of the need to increase water coverage in Masinga Division to meet both livestock and domestic needs. Towards this end, my Ministry is currently constructing an additional four water *kiosks*, two along the pipeline to Mukunzu Market, and the other two along the pipeline to Kathothia Market. All these projects will be completed by December, 2004.

In addition to the above urgent measures, my Ministry has already completed design for a 150-millimetre diameter rising main from the existing Masinga-Katheka pipeline, to a proposed storage of 150 cubic metre tank at Masinga Hill. This is planned to serve Masinga Township, parts of Kangonde and Ekalakala areas by gravity. Construction of the works is planned to commence this financial year, and it is estimated to cost Kshs15 million.

Mr. Mbai: Mr. Speaker, Sir, I thank the Assistant for that comprehensive answer. I am satisfied with response given by him.

(Loud consultations)

Mr. Speaker: Order, hon. Members! We are unable to transact the business of the House. Business of this House must be transacted. Let us have some order. Had you finished, Mr. Mbai?

Mr. Mbai: Mr. Speaker, Sir, I would like to thank the Assistant Minister for the answer. I will be satisfied if this Ministry undertakes these projects within that specified time.

Maj. Sugow: Mr. Speaker, Sir, I would like to assure the hon. Member that we have already provided Kshs15 million in our current Development Estimates. Therefore, this project will be completed within this financial year.

Mrs. Mwendwa: Mr. Speaker, Sir, I would like the Assistant Minister to tell us whether it would be possible for the Ministry to use emergency funds to provide water to the people of Kitui District. Currently, water is being supplied using trucks. That area is very badly hit by the prevailing drought situation. I believe the Ministry could use emergency funds to supply water to our people instead of using trucks.

Maj. Sugow: Mr. Speaker, Sir, the funds available for emergency need co-ordination by this Ministry and other Ministries. This is because, despite the fact that this Ministry is solely responsible for water services in this country, it is quite clear that a number of other Ministries are actually involved in the delivery of this particular service. We are now trying to co-ordinate with

them, so that, together, we would be able to respond to this kind of emergency.

Mr. Speaker: Mr. Mbai, are you further interested in this Question?

Mr. Mbai: No, Mr. Speaker, Sir.

Mr. Speaker: Very well. Proceed, Mr. C. Kilonzo.

Mr. C. Kilonzo: Mr. Speaker, Sir, I do not know whether the Assistant Minister is aware that there is a pipeline from Matuu Treatment Works connecting to the Masinga-Kitui Water Project, about 18 kilometres away. Could the Ministry consider connecting Yatta-Matuu Treatment Works to the Kitui Water Project?

Maj. Sugow: Mr. Speaker, Sir, I am not aware of that particular pipeline. However, if the hon. Member will come up with that proposal when funds are available, we will consider it.

Mr. Speaker: Next Question, Mr. Osundwa. I was looking for you on the Government side!

Mr. Osundwa: Mr. Speaker, Sir, I left that side when they acquired "voting machines" from this side! However, I beg to ask Question No.647.

Question No.647

INTRODUCTION OF SIGN LANGUAGE
ON LOCAL TELEVISION BROADCASTS

Mr. Osundwa asked the Minister for Information and Communications, in view of the increasing number of deaf and dumb people in the country, if he could consider introducing sign language on local television broadcasts.

Capt. Nakitare: On a point of order, Mr. Speaker Sir. Is it in order for the hon. Member to refer to other hon. Members as "voting machines"?

Mr. Speaker: Order! Mr. Osundwa, is that what you referred to your colleagues? Is that what you said?

Mr. Osundwa: Mr. Speaker, Sir, I beg to apologise and withdraw the use of the words "voting machines". However, that is exactly what happened.

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. Hon. Members who raise questions to question our integrity. We may have to give our documentation as to what is our background in this House. The hon. Member cannot question our integrity!

Mr. Speaker: Order, Mr. Angwenyi! It is very undignified and dishonourable for hon. Members to use insulting and demeaning epithets on others. The hon. Member must understand that. It is my duty to make this House dignified. Every time hon. Members use undignified words in this

House, it erodes the dignity of this House. I am not so sure, if we allowed it to go full blast and everybody is dissected, the background thereof may be that some hon. Members will not like it. Mr. Osundwa, you apologized and then retracted---

Hon. Members: Send him out!

Mr. Speaker: Order, hon. Members! I do not take any commands. I actually issue commands. It is a one-way traffic!

Mr. Osundwa, will you unreservedly apologise, so that we deal with your Question?

Mr. Osundwa: Mr. Speaker, Sir, I apologise and withdraw my statement that the Government side acquired "voting machines" from this side.

The Assistant Minister for Finance (Mr. Obwocha): On a point of order, Mr. Speaker, Sir. With all sincerity and seriousness of this House, I do not think that is a good apology. By saying that this side acquired "voting machines" from the Opposition side---

(Loud consultations)

Mr. Speaker: Order, hon. Members! The dignity of this House rests on both sides of the House. So, Mr. Osundwa, you have no business implying even your side has no dignity. So, will you keep the dignity of this House by now being serious. Now, apologise and stop at that!

Mr. Osundwa: Mr. Speaker, Sir, I apologise.

Mr. Speaker: Very well. Where is the Minister?

The Minister for Education, Science and Technology (Prof. Saitoti): Mr. Speaker, Sir, the Minister for Tourism and Wildlife is out of town. He is in Kisumu accompanying His Excellency the President.

Mr. Speaker: Where are his Assistants?

(Loud consultations)

Order, hon. Members! It may be very well that a Minister has good reasons to be out of town. But he must inform the House through the Speaker! The hon. Member must also be informed. In any case, where are the Assistant Ministers? Mr. Mganga.

Mr. Osundwa: On a point of order, Mr. Speaker, Sir. This Question is directed to the Ministry of Information and Communications and not to the Ministry of Tourism and Wildlife.

Mr. Speaker: It was at that time. You all know that there have been several changes. But it is understood that it is in the Ministry of Information and Communications.

Mr. Mganga, are you from the Ministry of Information and Communications?

The Assistant Minister for Tourism and Wildlife (Mr. Mganga): Mr. Speaker, Sir, I am from the Ministry of Tourism and Wildlife.

Mr. Speaker: What do I do, Mr. Osundwa? Could I put it for you on Tuesday?

Mr. Osundwa: Mr. Speaker, Sir, this Question is very important because it affects the disabled members of our society.

Mr. Speaker: Very well, I will put it on Tuesday and make an exception because I had said---

(Loud consultations)

Order, hon. Members! You can sit down, Mr. Osundwa. Yesterday, I had directed and informed the House that next week, we will attempt to deal with all pending Questions by Private Notice. I will make an exception to that. Your Question will be on Tuesday, in addition to Questions by Private Notice.

(Question deferred)

That is the end of Question Time.

POINTS OF ORDER

SUPPLY OF FAKE DRUGS TO
MINISTRY OF HEALTH

Dr. Galgalo: Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Ministry of Health. Recently, a pharmaceutical company called Gesto Pharmaceutical Limited of P O Box 43375, Nairobi, supplied the Ministry of Health with paracetamols worth US\$2 million, which is approximately Kshs160 million. As it turned out, the paracetamols were found to be rotting chalk dust which was growing moulds. Those were distributed to our health facilities country-wide. Since that firm was blacklisted in 1997, why did the Ministry give it a tender to supply those medicines? Were there other bidders, or was that done through single-sourcing? Why was the Ministry not able to do quality testing and detect that the drugs were of poor quality? Could the Ministry carry out chemical analysis on the consignment and determine the exact composition of the so-called paracetamols? What action will the Ministry take against that pharmaceutical company and the Ministry of Health workers who allowed that useless and dangerous concoction into our country, endangering the lives of our people?

Mr. Speaker: Is there any response from the Ministry of Health?

The Assistant Minister for Health (Mr. Konchella): Mr. Speaker, Sir, we will issue the Ministerial Statement on Thursday next week.

Mr. Speaker: You will bring it on Tuesday. Mr. Omingo Magara!

ABDUCTION OF TWO CHILDREN IN KISII

Mr. Omingo: Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Office of the President regarding two children who have been abducted in Kisii. One was abducted on Sunday, 25th July, 2004, as she was going to church. I think she must have been used to go and remove her own brother from school the following day. The family is desperate. The abductors want a ransom price of Kshs700,000. The abductors have given a deadline of today at 5.30 p.m. The girl's name is Emma Rabera Kengere, aged 20 years. Her brother is called Felix Osiemo Kengere, aged 18 years. He was taken from school on 26th July, 2004. The father is in the United States of America (USA) and the mother is deceased. Could the Minister bring to this House a very urgent Ministerial Statement regarding the state of those children? We must be able to contain security within our country as opposed to what is happening in Iraq.

Mr. Speaker: Does the Office of the President have any response? Are you aware, Mr. Mungatana?

The Assistant Minister, Office of the President (Mr. Mungatana): Mr. Speaker, Sir, I will give the Ministerial Statement on Tuesday.

MEASURES TO CURB DESTRUCTION OF CROPS BY LOCUSTS

Mr. Bahari: Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Ministry of Agriculture in regard to locust-like insects which have invaded parts of Isiolo South; namely, Gotu, Kula Mawe and Kachurushadi areas. They have, consequently, destroyed the entire vegetation at this time of the year, when we are already facing a serious drought. In his statement, he should tell us what counter-measures he is taking to combat that menace, and whether they are environmentally friendly.

An hon. Member: What about Mr. Wanjala?

Mr. Speaker: Mr. Wanjala, you did not see the Chair about anything at all! I do not recall!

Mr. Wanjala: I saw you yesterday.

Mr. Speaker: What is it? Go ahead!

PRESENCE OF UGANDAN SECURITY
FORCES IN LAKE VICTORIA

Mr. Wanjala: Mr. Speaker, Sir, I rise to demand a Ministerial Statement from the Office of the President. It is now two weeks since Uganda sent its security officers to Lake Victoria. As you know very well, we are facing drought and famine. But today, our fishermen cannot access the lake because the Ugandan security forces are criss-crossing even in Kenyan waters. I would like to remind the House that Lake Victoria is fed by water from Kenya. It is Kenya that has got 11 rivers that flow into Lake Victoria. Tanzania has only one river. Uganda has none! Kenyans have been denied the right to fish in the lake although the fish breeds in Kenya. I would like to hear from the Minister what steps he is taking to protect Kenyan fishermen who fish in Lake Victoria to earn their daily living. Without our people accessing the lake, and with drought and famine that is facing our people along the shores of Lake Victoria, we are done for.

Mr. Speaker: Very well! Indeed, you were right, Mr. Wanjala. You saw me yesterday. You are very right. Mr. Mungatana!

The Assistant Minister, Office of the President (Mr. Mungatana): Mr. Speaker, Sir, I will bring it on Wednesday afternoon.

Mr. Speaker: Very well! Wednesday afternoon, Mr. Wanjala.

Mr. Bahari: On a point of order, Mr. Speaker, Sir. I sought a Ministerial Statement, but I did not see anybody from the Ministry of Agriculture!

Mr. Speaker: Is there anybody from the Ministry of Agriculture?

The Assistant Minister for Agriculture (Mr. Akaranga): Mr. Speaker, Sir, I will bring a Ministerial Statement on Thursday next week.

Mr. Speaker: Could you bring it on Wednesday?

The Assistant Minister for Agriculture (Mr. Akaranga): Mr. Speaker, Sir, that is all right.

Mr. Speaker: All right. Next Order!

MOTION

APPROVAL OF NOMINATION
OF KACC DIRECTORS

THAT, pursuant to Section 8(3) of the Anti-Corruption and Economic Crimes Act No.4 of 2003 and on recommendation of the Kenya Anti-Corruption Advisory Board, this House approves the following nominations to the Kenya Anti-Corruption Commission:-

Hon. Justice A. Aron G. Ringera - Director of the Anti-Corruption Commission.

Dr. Julius Tangu Rotich -Assistant - Director, Finance and Administration.

Dr. John Parmenas Mutonyi-Assistant Director, Investigations and Assets Recovery.

Dr. Smokin C. Wanjala -Assistant Director, Research, Policy and Preventive Services.

Ms. Fatuma Sichale -Assistant Director Legal Services.

*The Minister for Justice and
Constitutional Affairs on 22.7.2004)*

*(Resumption of Debate interrupted
on 22.7.2004)*

Mr. Speaker: If there is nobody interested to contribute, shall I call upon the Mover to reply? Mr. M. Kilonzo! You will recall that Mr. M. Kilonzo moved an amendment, but that does not bar him from talking on the main Motion.

Mr. M. Kilonzo: Mr. Speaker, Sir, I am very much obliged to you. I stand to oppose the Motion.

Mr. Munya: On a point of order, Mr. Speaker, Sir. Mr. M. Kilonzo has been reported in the newspapers as having debated this Motion outside the House, when it is already going on here! Is that not contrary to Standing Orders of this House?

Mr. Speaker: Order, hon. Members! Before you respond, Members have an opportunity and the right to talk in this House. Do it here. Some strange things have been emerging lately, that will, ultimately, have a negative effect in this House. Members have been debating issues that are before this House outside! Another strange phenomenon is that of enlisting signatures for hon. Members to come and vote in one way or the other in this House. That is totally out of order!

Mr. M. Kilonzo: Mr. Speaker, Sir, I rise to oppose the Motion. I would like to urge this august House to vote it out for a number of reasons. One of the reasons is the fact that if you look at the Motion seriously, you will notice that the name proposed for Director is that of a sitting judge in the Republic of Kenya.

Mr. Speaker, Sir, it is the practice in the Commonwealth that when judges hold substantive positions in the Judiciary, they should not, at the same time, accept extra-judicial functions. It is my position, and I urge this august House to accept that position, that the directorship of the Kenya Anti-Corruption Commission (KACC) is a direct confrontation on that principle.

I would also like to say that, indeed, on 22nd December, 2000, a Constitutional Court of this country ruled that for a judge to accept a position of the nature that is proposed for the hon. Mr. Justice Ringera, is, in fact, also a direct affront on the doctrine of separation of powers.

(Applause)

Mr. Speaker, Sir, you will appreciate, and this House, no doubt, will note, that as a judge who has now presented his name here through this Motion, Mr. Justice Ringera is, in fact, not only going to be the Chief Officer at the KACC, but also a judge of the Court of Appeal, because, as I speak in this august House, the hon. Mr. Justice Ringera has neither retired nor otherwise resigned from his position.

(Applause)

I would like to make one point very clear. I am totally and completely opposed to corruption. We joined the Government side in voting in and legislating for law establishing the KACC, and in fact, the Official Opposition moved certain amendments to make that law as effective as possible. In that light, it must be understood that when you ask this House to appoint a Director who is at the same time holding the position of a Judge of the Court of Appeal, without in any way then saying what will become of his position, it is, in fact, an effort to abuse the intelligence of this country. I think it is totally unfair and should not be allowed.

I would also like to say that the findings of that honourable court coincide with decisions as

well as observations made throughout the Commonwealth, particularly Canada, where it has been said that a judge who is holding on to an extra-judicial position is, in fact, abusing the Constitutional position that he holds as a judge.

There is another grievous point. On 23rd March, this year, the hon. Mr. Justice Ringera sitting in High Court Constitutional Reference Application No.82 of 2004 made a number of declarations regarding a new Constitution for this country. I say this, with the utmost respect to judges and the Judiciary, that it is important that we note that the hon. Mr. Justice Ringera ruled that the people of this country cannot, in fact, have a new Constitution unless they ratify it under a referendum.

Now, I have no quarrels with that. I sincerely believe that a referendum, in any country, is a proper method of determining issues of a constitutional nature. I dare say that during the Bomas Conference, I supported the idea of a referendum. Even now, I do. In fact, I have joined other people who have been saying that the Bomas Draft should be---

Mr. Speaker: Do you know what we are talking about?

Mr. M. Kilonzo: Yes, I know what we are talking about.

Mr. Speaker: Well, I think you better come back to it.

Mr. M. Kilonzo: I will concentrate on it, Mr. Speaker, Sir, with your kind permission. Let me say this. At the time that the hon. Judge ruled that the only way to have a new Constitution is through a referendum, he knew that this country did not, and even now, does not have a law on referendum. I dare say, without any fear of contradiction, that such a finding is both intellectually, morally, mentally and juridically corrupt. It is corruption in itself!

(Applause)

I want to say again, that when we talk about corruption, it is not enough to condemn the taking of money or the grabbing of a piece of land. For that matter, it is not enough to talk about manipulation of a contract or a tender. I believe, and I believe this very strongly, that the corruption of the mind, the corruption of ideas, the corruption of intellectual capacity is, in fact, a more dangerous corruption in a country like this.

(Applause)

Therefore, when that Judge asked this country to comply with a law that did not exist, he was acting through corruption.

The Assistant Minister, Office of the President (Prof. Kibwana): On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member, and for Parliament for that matter, to go into the merits or demerits of a judicial decision? The role of Parliament is to change any law which the Judiciary establishes. It is not for Parliament, because of the doctrine of separation of powers, to criticise the judgement as such.

Mr. Speaker: Order! Order, Members! I think we can rewind to last Thursday. These are the kind of problems we anticipated. We are dealing with the appointment of certain individuals. By the way, it is not only one individual that is being proposed to be appointed and, therefore, the House must look at all of them. In appointment, you look at the merits and the capacity of the proposed person to hold the office. I think, maybe, he should not go too far. So far I think he is all right.

(Applause)

Mr. M. Kilonzo: Mr. Speaker, Sir, I will never go too far, and I will be guided by your very good and able hand.

Mr. Wanjala: On a point of order, Mr. Speaker, Sir. With due respect to the hon. Member who I know very well, he is one of the people who have used their intellects to get money corruptly from the National Social Security Fund (NSSF). He was paid Kshs200 million for writing just one letter! Is he also in order to talk about corruption?

(Applause)

Mr. Speaker: Order! Order, Members! Let us keep this sober. As far as I know, hon. M. Kilonzo is not a candidate. If he offers himself for any post that requires this Parliament's approval, I will allow you to say what you want to say about him.

Mr. Poghisi: On a point of order, Mr. Speaker, Sir. You heard Mr. Wanjala not only using insulting language but imputing improper motive on an hon. Member of Parliament. Could he please withdraw and apologise for drawing the other hon. Member of Parliament to that kind of disrepute?

Mr. Speaker: Order! I want this debate to be conducted soberly! I do not want emotions any more and I do not want counter-accusations. Let us do this in a sober manner! Please, from now on, keep your tempers low!

(Mr. Wanjala stood up in his place)

Will you sit down, Mr. Wanjala? You know you are becoming like a pendulum; up and down! You must sit down!

(Mrs. Mugo stood up in her place)

Who is this again? Order, Mrs. Mugo! You must sit down! Please obey the laws of gravity!

(Laughter)

Let us proceed!

Mr. M. Kilonzo: Mr. Speaker, Sir, I would like to take this opportunity before I go further to remind this honourable Chamber of the famous philosophical principle of *argumentum ad hominem*. It means an attempt to disprove what a person holds by attacking that person. I will not subscribe to that and I would urge the honourable House to remember that I will debate this from an issue point of view. Let me go back to my argument. It is very simple; that if, indeed, as Prof. Kibwana believes, you cannot analyze a judgement as I have said in the Njoya case in a situation like this and if he suggests to this honourable Chamber that then that decision should be accepted, then---

(Prof. Kibwana stood up in his place)

Mr. Speaker: Could we hear what he has to say? What is it?

The Assistant Minister, Office of the President (Prof. Kibwana): On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member to suggest that I am against analyzing judicial

decisions? What I stated, and I think it is very important for this House to appreciate the jurisprudence of what I was saying, Parliament cannot go into what the Judiciary does in terms of the decision of the Judiciary because that is a third arm of Government. However, Parliament can annul a decision of the Judiciary by passing a law against it. However, when the Judiciary is making its decisions just like when we are doing our own work, the Judiciary cannot question our work.

Mr. Speaker: Order! I ruled on this and let us now keep sober! Let us get into the heart of the matter. Let us look at the merits and demerits of the appointees. So far, I think this House must now consider the list before it as candidates for approval and forget about what they are.

Mr. M. Kilonzo: With your kind permission, Mr. Speaker, Sir, and subject to interruptions which I am not worried about, the issue of eliminating corruption in a Third World country like ours is critical. Therefore, at an opportunity like this, any personalisation of debate of candidates, is in my view, unwarranted. However, I say this; that as I speak to you now, the hon. Mr. Justice Ringera on 19th March, 2003, was appointed to Chair a Committee called the Integrity and Anti-Corruption Committee of the Judiciary. That was on 19th March, 2003! I am demonstrating that this man is not fit to be the sort of Director and independent man that we want for this country.

(Applause)

The hon. Mr. Justice Ringera, as Chairman of that Committee, filed a report with the Chief Justice in September 2003. By virtue of that report, 80 magistrates and 23 judges were found and declared to be corrupt. Unfortunately, and if anybody wants I will show the report, the hon. Mr. Justice Ringera did not, at any time, allow any one of those 103 Kenyans to appear before his Committee to comment on the allegations that were filed against them. As a result of that act, 80 magistrates were then sent on compulsory leave and 23 judges were suspended by His Excellency the President. As I speak to you now, five judges are still waiting for their tribunals to sit and only one judge has in fact, been tried by his tribunal. During his sworn testimony before the tribunal, unchallenged, he said that the hon. Mr. Justice Ringera did not invite him to comment on the allegations against him.

(Mr. Murungi stood up in his place)

Mr. Speaker: Order! What is it?

The Minister for Justice and Constitutional Affairs (Mr. Murungi): On a point of order, Mr. Speaker, Sir. Is the hon. Member in order to continue referring to matters which are pending before a tribunal whose proceedings are still going on?

(Loud consultations)

Mr. Speaker: Order, hon. Members! Sometimes you put the Chair into a quandary. Mr. Minister, if you were the Speaker and among the list you brought for discussion are people who hon. Members would like to say they are not fit for that position, what would you do?

(Applause)

My mind is the following; that when an applicant chooses to come to Parliament for approval of the House, he ceases, in my view, as far as Parliament is concerned, to be holding that post for the duration of the scrutiny of Parliament. What is the corollary? The corollary would be

that Parliament would not discuss and, therefore, why bring it in the first place?

(Applause)

Therefore, it is a very delicate balance and I have asked the hon. Member to take into account that fact. It is only fair that this House, and I repeat, knows any reason why each one of the five, and I insist, should not be allowed to hold that position. We must do this in a dignified manner.

When you passed this law as Parliament, did you anticipate that we would be in a position where we must talk about a judge, contrary to the Standing Orders? Did you anticipate that we would talk about issues that are pending? I think Mr. M. Kilonzo, you may show reasons why you think the judge is not qualified, but please do not go into the merits of the pending cases. That, certainly, I will refuse. I will not allow you to do that.

Mr. M. Kilonzo: I am much obliged, Mr. Speaker, Sir. I appreciate how delicate this matter is.

The Assistant Minister for Energy (Mr. Kiunjuri): On a point of order, Mr. Speaker, Sir. Is the hon. Member in order to mislead the House that the 80 magistrates who were implicated in corruption were never given a fair hearing? The letter stated clearly, and I can table one, that they should show cause why they should not be dismissed. He is a lawyer and you are also one and you can interpret that. It means that it was open to them to challenge that decision.

Mr. Speaker: Why do you not table it?

The Assistant Minister for Energy (Mr. Kiunjuri): Mr. Speaker, Sir, I will table that letter on Tuesday.

(Laughter)

It is true that I have a letter. One of the magistrates who had come to my office, gave me the application for a job and I asked him to give me his dismissal letter and I have it.

Mr. Speaker: Order! First, hon. Members, as I said, let us cool down. Let us approach this issue with sobriety and let us not do unnecessary interruptions. Also, Mr. M. Kilonzo, on the Floor, you must not provoke your colleagues to stand on points of order!

Mr. M. Kilonzo: Mr. Speaker, Sir, where I was born, there is a famous saying which goes: "When you mention old bones, old ladies are likely to start jumping up." But I will not draw any parallel to this saying.

Mr. Speaker: What are you saying? Are you provoking old ladies?

(Laughter)

Mr. M. Kilonzo: No, Mr. Speaker, Sir. I have a lot of respect for them.

Mr. Speaker, Sir, allow me to say this---

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. Section 18 of the Anti-Corruption and Economic Crimes Act, under which we are now discussing the approval of the Kenya Anti-Corruption Commission (KACC) Director and its Assistant Directors, provides as follows:-

"The Advisory Board shall not be subject to the direction or control of any person or authority, and shall be accountable only to Parliament."

Hon. Members: That is what is being done!

Mr. Angwenyi: Mr. Speaker, Sir, I hold the view that we set up that body to interview and identify candidates for these positions. Under this Parliament---

Mr. Speaker: Order! Order! Unless you are raising an objection, in my view, that is untenable. First, we are not doing the Board's job. We are doing Parliament's job, which is to approve the list submitted to us in accordance with the law. In any case, the section that you have quoted has the rider that "the Authority shall only be accountable to Parliament." Where are we now?

Hon. Members: We are in Parliament!

Mr. Speaker: Proceed, Mr. M. Kilonzo!

Mr. M. Kilonzo: Thank you, Mr. Speaker, Sir. I would like to say that when I refer to the hon. Justice Ringera as the Chairman of the Integrity Committee against Corruption in the Judiciary, I am referring to his own report, in which he has openly, at page 6.21, admitted and stated:-

"The judicial officials who were the subject of this investigation were not given an opportunity to be heard."

Hon. Members on the Government side may think that I am making this contribution purely from the perspective of the Opposition. It is only the wearer of a shoe who knows where it pinches. You do not know what will happen tomorrow. I want to ask every hon. Member in this House: Would you want, if you are under investigations, to be put before Justice Ringera, the way the 103 judicial officials were? Would you like to be sent to a person who will condemn you without giving you a hearing? Do you know whether it will be you, yourself, who will be the subject of a corrupt investigation? Would you, again, want to be taken before a person who cannot even recognise the common sense requirement of calling you to comment on the allegations levelled against you? On that ground alone, the hon. Justice Ringera is not qualified to be the Director of the Kenya Anti-Corruption Commission.

Mr. Speaker, Sir, an hon. Member said that he has a letter saying that people were asked to show cause why. I have the letter written to some of the judges and if he wants, he can see it. They were not given an opportunity to be heard. Indeed, their wigs, cars and houses were withdrawn. As I address this House, the only thing that is happening is that their salaries---

Mr. Speaker: Order! Order, Mr. M. Kilonzo! I think you are going beyond your limit.

Mr. M. Kilonzo: That is all right, Mr. Speaker, Sir.

(Loud consultations)

Mr. Speaker: Order! Order, hon. Members!

Mr. Ndile: Hoja ya nidhamu!

Mr. Speaker: Order, Mr. Ndile! Mr. M. Kilonzo, I want you to understand why I think you have gone beyond your limit. The hon. Justice Ringera may have carried out the investigations, but he is not the one who suspended the judges. So, please, keep that away!

(Applause)

Mr. M. Kilonzo: I accept your ruling, Mr. Speaker, Sir. I will leave that point because I think I have made it emphatically.

Mr. Speaker, Sir, it is on these grounds that I oppose the appointment of the hon. Justice Ringera. These grounds are based purely on law. I will not introduce politics into this issue. Indeed, with regard to the appointment of the other nominees, I have no objection. I say this without fear of contradiction. I have looked at their curriculum vitae, and I am comfortable that they can do a good job. I will not oppose their appointment. I dare say again that if the Government or Parliament merely appoints a stooge, who will pretend to be investigating corruption, but the word "corruption"

only arises only when he deals with people in the Opposition; and does not investigate those in Government.

There is an acronym going round the country known as "AGIP", meaning "Any Government in Power." I dare say that if this House approves the appointment of the hon. Justice Ringera---

Mr. Munya: On a point of order, Mr. Speaker, Sir. Mr. M. Kilonzo is talking about the Government appointing the Director and the Assistant Directors of the KACC. The Director and his assistants are not appointed by the Government. They are appointed by the Board and approved by this House. So, the Government does not come in anywhere!

Mr. M. Kilonzo: Mr. Speaker, Sir, I believe, I have made my case. I have had the opportunity to discuss a sitting judge, and sincerely, I have not cherished it. I believe this House has a responsibility to protect the integrity of the Judiciary. I believe that the attempted nomination of the hon. Justice Ringera is interfering with that independence of the Judiciary. I believe that the hon. Justice Ringera is not qualified for this job. His conduct in those two cases and the decision of the Gachiengo case are enough, with utmost respect to my honourable colleagues, for this House to say that the name of the hon. Justice Ringera be removed from this list. The Motion should be dismissed by this august House.

With those few remarks, I beg to oppose.

The Assistant Minister for Finance (Mr. Obwocha): On a point of order, Mr. Speaker, Sir. I hate to interrupt my colleague; Mr. M. Kilonzo. However, I think we have a duty to declare our interest when we present our views in this House. If Mr. M. Kilonzo appeared before the hon. Justice Ringera when he was the head of the defunct Kenya Anti-Corruption Authority (KACA), he should have declared it. Secondly, if he was representing a client, where the hon. Justice Ringera was involved in terms of decision making, he should have declared that interest as well. We must be honest.

(Applause)

Mr. Speaker: Order! Order! I am not sure about the bit of representing a client. I think that is not an interest. However, Mr. M. Kilonzo, did you ever appear before him when he was the Director of the defunct KACA?

Mr. M. Kilonzo: Mr. Speaker, Sir, as a matter of fact, I have never had the privilege of appearing before the hon. Justice Ringera when he was the Director of the defunct KACA. There was no reason for me to do so. Secondly, indeed, right now, I have a pending case before the hon. Justice Ringera, which he has conducted extremely well. I would like to say that, that case is not yet determined, and my contribution here has nothing to do with that case. I am contributing on the basis of principle. Again, it is the reason I have advanced; that, the Judiciary should be protected.

The Minister for Water (Ms. Karua): Mr. Speaker, Sir, I rise to support this Motion. I have looked at the five names presented. I notice that two of the names, the hon. Justice A. Aaron Ringera and Dr. Julius Tangu Rotich, were in the previous KACA that was outlawed by the courts in a decision, which I do not agree with, but which was not appealed from. That, to me, does not make them disqualified to be nominated.

I have looked at the curriculum vitae of the rest, and I think that the Board has, indeed, done a very commendable job. I have also listened to those opposing the appointment of only one nominee; the hon. Justice Ringera. With respect, no credible reason has been given. When a judge sits in judgement and gives judgement in a case, not everybody will agree with that decision, maybe, 80 per cent or 90 per cent; sometimes, very little. That is why there is the process of appeal.

The decision that the hon. Justice Ringera made in the Gachiengo case, and which he did not make alone - it was two and one dissenting - could have been appealed from but, up to date, nobody has. We may, or may not agree with it. The fact that someone does not agree with the decision does not mean that it is corrupt.

Mr. Speaker, Sir, it may amount to intellectual dishonesty for somebody to say that because he disagrees with something, it is corrupt. There has to be a better reason. The integrity of this House is now in question. If we are going to dismiss matters merely because one person or two or three people do not agree with it, then we are not discharging our duty to Kenyans. I am prepared, and I know hon. Members are, to hear of credible reasons why any of these names should not be approved.

The other reason given to discredit the hon. Justice Ringera, a very eminent lawyer, in my view, is that he did not give the judges and the magistrates he was probing a chance to rebut the allegations he was hearing. The hon. Justice Ringera was not conducting a tribunal. It was an in-house committee investigating the allegations. His mandate did not extend to entertaining the persons against whom the allegations were made. His mandate extended to receiving the evidence, making his remarks and handing them to the Chief Justice. Then the Chief Justice in his wisdom, together with the Judicial Service Commission, would act on that report. Justice Ringera was not holding a trial.

Mr. Speaker, Sir, it is at the stage of either disputing or not disputing those allegations that a person would be given a chance to defend himself or herself. In the case of the judges, anybody who seriously disagreed with the findings of the internal committee headed by Justice Ringera, has an opportunity now to defend himself before the tribunal. That is why we have been reading in the newspapers of, at least, two trials; one concluded pending judgement, one is on-going and three are pending. The judges involved have all the chances and the time in this world to put forward their cases. It may again amount to intellectual dishonesty to claim that Justice Ringera was under obligation to make a trial court out of his committee, which was not his mandate at all. As a person who practised in the courts daily, I dare say that Justice Ringera did a splendid job. However, like any other human being, he is prone to error. What you look for in a good judge is not a person who makes judgements that are always correct because no human being can do something without a certain margin of error. You look at a person who makes decisions honestly based on evidence. Sometimes the margin of error will make an Appellate Court overturn the ruling. We do not sack judges when their rulings are overturned. We check whether they have arrived at the rulings professionally and according to the law. I think Justice Ringera has acquitted himself before the eyes of Kenyans and the litigants in the way he has handled his job ever since he was appointed.

Mr. Speaker, Sir, I would only recommend that a Ringera like committee should be a permanent feature in the Judiciary. There were very many who were not netted. At that stage, Kenyans did not believe that any action would be taken. When we are now trying to perform our work for Kenyans, we have a very grave problem in the Government, Ministries and everywhere. Every Kenyan has a stake in establishing an incorruptible and a serious anti-corruption body. We, in the Ministry of Water, need it. I want to agree with Justice Ringera's critics. If I was under investigation, I would not want him to be appointed the Chairman of the Kenya Anti-Corruption Commission. Justice Ringera is thorough. As a human being, I would have reason not to want him. He is not a man who can easily be compromised and hence he may acquire the title "rigid". Where we are as a country, we need to put our meagre resources into good use for the many uses that we have. We need to safeguard our meagre resources, so that practices that have entrenched themselves in almost all our lives are expunged. We need a serious broom. We many fall casualties to the broom that we create, but so be it. We have to rescue ourselves. It is time we put personal interests

aside. Whether you have a relative under investigation, or you, yourself, know that your turn is coming, whatever the matter, let us agree to submit to have a Director of the Kenya Anti-Corruption Commission and a Kenya Anti-Corruption Advisory Board that is good. In my view, these names are good. I want to persuade you to approve them.

Mr. Speaker, Sir, I am looking at the list of these names and I realise that all these people are working.

Mr. Speaker: Order! I would like to get a certain clarification from the Minister. Looking at the list of speakers, it appears like you had spoken. Did you speak on the amendment or on the main Motion?

The Minister for Water (Ms. Karua): Mr. Speaker, Sir, I restricted myself strictly to the amendment, which I opposed.

Mr. Speaker: Very well. Like Mr. M. Kilonzo.
Proceed!

The Minister for Water (Ms. Karua): Mr. Speaker, Sir, looking at the five names, all these gentlemen and a lady are working somewhere. They may not be working for the Government. I am seeing a name of a lecturer in the university, a name of a person working for the Government and a name of a Judge of the High Court. We do not expect these five people to resign before they are offered a job. When you are offered a job, that is the critical moment when you decide whether you are going forth, or you are going to remain in the comfort zone. We cannot in honesty call upon any one of them to relinquish their jobs. If they were to relinquish and they do not get the jobs, are we being honest that this is the way business is done?

We have certain expectations that if these names are approved, and I want to persuade you that we approve them, it means that each one of them, wherever they are, because I can also see a colleague of mine who is in private practice, they will be called upon to choose. The moment of choice has not come. Let us respect the independence of the Judiciary. Where we do not agree with a judicial decision, we should exhaust the appeal machinery. I have been in those courts for a while and sometimes you exhaust the appeal machinery and you are left feeling that the decision did not go the way you believed in. We all have minds. I will apply the law to the verse and I will say: "Although I am bound by that decision, I do not believe in it at all". That does not mean that it has been corruptly arrived at. Let us be honest with ourselves and let us not find fault where there is none.

I just want to say one thing about the decision which was made by some three judges, and which is not related to the Kenya Anti-Corruption court. As a person, I do not agree with it. That does not mean that I have to imply improper motive on the three judges who made that decision and who happen to have fallen to Justice Ringera's axe. I would say that it was their view applying the law at that time. If I were the judge, I would have arrived at a different decision. That is neither here nor there.

Mr. Speaker, Sir, I want to end by saying that we should decide this matter on its merit. We should not decide it on flimsy excuses. We are called upon to stand up and be counted. I want to remind us that the Anti-Corruption and Economic Crimes Act, under whose authority we are now discussing these names, gives the Kenya Anti-Corruption Advisory Board the sole mandate of recommending names for Parliament to approve or disapprove. It is our right to either say, "Yes" or "No" to them. I am persuaded that we should say "Yes". I am also persuaded that we cannot single out one; we should accept the names as they are or return them for re-looking at one or two of the names, so that they compile their list and come back again. Otherwise, we might be viewed by Kenyans as, again, falling to ethnicity. I am convinced that the professional qualifications of all these five candidates; four men and one woman; looking at all of them critically, including that one

of Justice Ringera are impeccable. I want to congratulate the Board for a job well done and persuade you, my dear colleagues that we accept these names.

(Applause)

Mr. Speaker: I have a suggestion here! I will hear from Prof. Oniang'o, and on this other side of the House, Mr. M'Mukindia and after that, I will call upon Mr. Owidi---

(Mr. Owidi stood up in his place)

Sit down please! I will call upon Mr. Owidi after those hon. Members have spoken to move his amendment so that we dispose of it of as quickly as possible.

Proceed, Prof. Oniang'o!

Prof. Oniang'o: Thank you, Mr. Speaker, Sir. I am on record as saying that I do not understand how any Kenyan could earn more than the President of this country, the Prime Minister of Canada and one thousand times more than the policemen who will work under him and we do not call that corruption.

(Applause)

I have a big problem looking at the salary package here and comparing it with the television pictures of starving people; a woman licking her plate. Those people do not have anything.

Mr. Speaker: Order! There is a rule of relevance!

(Prof. Oniang'o stood up in her place)

Could you sit down? There is a rule of relevance! What has a salary got to do with the qualifications of the five people? So, come back to the qualifications and not the salary!

Prof. Oniang'o: Mr. Speaker, Sir, I am saying this because it is these kind of inequities in our society which lead to corruption. The very people we want to serve; the poor are not corrupt.

Mr. Speaker: Could you be relevant now? Under the Standing Order, I am actually warning you of being irrelevant! So, be relevant.

Prof. Oniang'o: It is okay, Mr. Speaker, Sir.

My problem with this appointment is that it was not done according to good practices of appointment. I would like to know who else applied for the job, whether they were all interviewed, how they were ranked and whether there were not any other Kenyans who qualified to hold this position.

(Applause)

This will constitute competitive selection and appointment which I think the democratic space we have in this country allows us to have.

We are also looking for Kenyans of integrity. These Kenyans are perceived by the population. I am not sure that Justice Ringera as the Director of the Kenya Anti-Corruption Commission (KACC) is perceived as a person of total integrity when he caused his colleagues, whether guilty or not, to resign, to be stopped from work and to declare them guilty until they proved themselves innocent. So, in terms of the public perception, if we appoint him, Kenyans will

believe that he is being rewarded for serving somebody else. So, I would rather see us objectively select somebody who does not render himself to attack by Kenyans, and whom we believe that Kenyans will believe that after they fight corruption, the money which will be brought back will actually serve the many Kenyans who are poor. The other thing is just fighting corruption itself. This Government tells us that it is fighting corruption, but we have not seen where the money that has been brought back has gone.

(Laughter)

So, if we put up some huge structure which will take up a lot of money, will we really get value for our money and all the works which will go into it? So, if we set up this structure, it has to fall within the general structure of Kenyans.

Mr. Speaker: Order, Prof. Oniang'o! Again, be relevant! You passed the law to create this Commission. So, unless you are talking about repealing it, you cannot revisit it. The law is already there. Talk about the qualifications or non-qualifications of the five individuals!

Prof. Oniang'o: Thank you, Mr. Speaker, Sir. Regarding the qualifications of the individuals, unfortunately, it is the captain of the ship who will steer it. That is why the focus is on Justice Ringera. That is why he is being targeted right now because, how the organisation will work will depend very much on how Kenyans perceive him, and on his integrity. I cannot say that I have looked at the curriculum vitae (CV) of the other candidates and compared them with anybody else who was interviewed. I will be lying if I said so. But the fact of the matter is that we have not followed proper appointment procedures which are acceptable internationally. We do not want to appear here to be put under pressure to put this structure in place before we are ready to actually put it in place. I urge this House that, in fact, we completely, oppose and defeat this Motion and ask the Government to go, do it properly and bring us all the other Kenyans who are qualified.

Mr. Speaker, Sir, with those few remarks, I oppose the Motion.

Mr. M'Mukindia: Thank you, Mr. Speaker, Sir. At the outset, let me also declare my interest. I declare my interest because Justice Ringera is somebody I have known for very many years, and not only that; he comes from my constituency.

Hon. Members: Oh! Oh!

Mr. Speaker: Order, hon. Members to my left hand side! Relax completely. He is declaring his interest. If he did not, you will be up in uproar. So, what do you want?

Proceed, Mr. M'Mukindia!

Mr. M'Mukindia: Thank you, Mr. Speaker, Sir. I wanted to make it very clear that I even went to school with Justice Ringera. He comes from my constituency and not from Mr. Murungi's constituency. He comes from the same village I come from and I have known him since childhood. I want to make that very clear to hon. Members.

Secondly, I believe that today is an important day in the history of this country, and especially the history of this Parliament. We are here and will be judged by not only the Kenyans who are listening to us right now, but the generations to come. Since Parliament wants to be powerful, independent, and approve certain appointments made by the Executive, we either have to create standards of qualifications and approve people who meet the qualifications or we set other standards which are likely to cause problems in future. It is a challenge to all of us to ensure that we choose qualifications and merit against ethnicity.

(Applause)

We must chose professionalism against political expediency. There is a saying from where I come from which goes: "The judgement of a case of a good man sets the judgement of an evil man." What we are going to do about the five very eminent people today, will determine what Parliament will do in future. This is because these are not the only appointments that this Parliament will approve in future. What we do today will determine how much public support we are going to get from the citizens of this country. It will either enhance our stature as Parliament or severely erode our credibility. I urge hon. Members, just as Mr. Speaker said earlier, to deliberate on this issue soberly. We should not have certain associated fears! We should not oppose Justice Ringera simply because he comes from Mr. M'Mukindia's constituency. We should look at him as a Kenya! Is he qualified?

(Applause)

Mr. Speaker, Sir, if we have an opinion that Justice Ringera is not qualified for that post, then the Advisory Board itself is not qualified for having made that decision. How then, do we balance the fact that we will approve the four people forwarded by the Board, and reject one? On what basis will we be doing that, if it is not on dishonesty basis? Therefore, if there is going to be a rejection or approval of what the Advisory Board has brought before this House, then it should be in total, unless we have a very particular reason why one particular person from that list cannot be accepted by this House.

[Mr. Speaker left the Chair]

*[The Temporary Deputy Speaker
(Mr. Poghisio) took the Chair]*

Mr. Temporary Deputy Speaker, Sir, I, personally, have full support for the Advisory Board. I think the Advisory Board is qualified and has the necessary people to do a good job. For that reason, let us support this Motion.

I have had occasions in the last one and half years to feel ashamed of being a Kenyan. We live in what I would call a cartographic accident called Kenya. There is no reason for me to be a Kenyan, were it not for a *mzungu* who decided 100 years ago that Meru people must live in a place called Kenya. If we are going to live in this cartographic accident called Kenya, then we must have a reasonable way of engaging one another. I cannot be happy, as somebody coming from Meru, to be judged adversely merely because I come from Meru. That is totally unacceptable to me as a Kenyan! Therefore, in support of this Motion, it is totally unacceptable to anybody from my constituency to be regarded as unsuitable, merely because he comes from there. Then I would ask you hon. Members: "Where do you want the Meru people in this country to go? That is the question!"

(Laughter)

Where do you want us to go? We are part and parcel of this country and must stand firm. We have every right to every job like any other Kenyan, as long as we have the qualifications. We have a right to hold any job like anybody else.

[The Temporary Deputy Speaker]

(Mr. Poghisio) left the Chair]

[Mr. Speaker resumed the Chair]

Mr. Speaker, Sir, we are doomed to live in a country called Kenya. Having said that, it is neither our fault nor your fault. But I would like to make clear the issue of ethnicity that we are faced with. For those new hon. Members who may not know this, the Ameru are a distinct ethnic group. They are as distinct as the Maragolis are to the Bukusus, or the Samburus to the Masaais. We, therefore, would like to be judged on that basis, and no other basis.

Mr. Speaker, Sir, many Kenyans for sure merit to be directors of the Kenya Anti-Corruption Commission (KACC). The five individuals that we have on this list are not the only ones who are capable of doing that job. But, out of the list of all the people who applied for that job, the Advisory Board found it fit to short-list five of them. I have confidence, and this House has confidence that the interviewing panel was okay in short listing those five candidates. All of them must have met certain requirements, for them to have been approved.

An hon. Member: Anataka maji!

*(The Minister for Health (Mrs. Ngilu)
passed a glass of water to Mr. M'Mukindia)*

Mr. M'Mukindia: Thank you very much, Madam Minister. I think I am the only Back Bencher who has had the privilege of being served by an hon. Minister, and a Lady Minister for that matter. Thank you very much.

(Laughter)

Mr. Speaker, Sir, I was saying that many Kenyans merit to be appointed as directors of KACC. Justice Ringera, Dr. Rotich, Dr. Mutonyi, Dr. Wanjala and Ms. Fatuma Sichale are not the only qualified Kenyans to hold those jobs. Many others are capable of doing those jobs. Nevertheless, out of the wisdom of the Advisory Board, which we all agree is qualified, they decided to give us this list. On that basis alone, if we have confidence in the Board, then we should have confidence in its choices. We cannot, therefore, oppose this Motion without passing a motion of no confidence on the Advisory Board itself. For that reason we must---

Mr. Speaker: Order, Mr. M'Mukindia! For the record, I think that argument is flawed! This House, in deliberating whether to approve or disapprove a list by any authority, is not compelled to agree with the appointing authority. It can refuse, and that is not a vote of no confidence! It is an exercise of the duty of this House as bestowed upon it by the relevant Act.

So, proceed, Mr. M'Mukindia!

(Applause)

Mr. M'Mukindia: Mr. Speaker, Sir, I agree with your advice and direction. But the perception out there will be that we voted against them because they did not do a good job. I think Parliament has no option but to approve the list of the lady and gentlemen. That should be done on the basis of merit and not ethnic, political or other unspecified reasons.

Mr. Speaker, Sir, I would like to say that having known Justice Ringera, I would agree with Ms. Karua that, perhaps, his only demerit is one. He can be very stubborn. Anybody who knows

Justice Ringera knows that the man can be very stubborn. But he is stubborn on the basis of principles, and not on the basis of unspecified reasons. We know that the man is principled. We know that he will follow the law to its logical course. I know, and I share Ms. Karua's judgement, that if I were to appear in front of Justice Ringera, coming as I do from his village, I will tremble in my trousers because I know he will not give me any chance whatsoever. Therefore, corrupt people in this country have a true reason to fear Justice Ringera's appointment in the KACC.

(Applause)

Anybody who has anything to do with corruption, has a lot to fear for that. But the question that we must ask is: What is in the national interest? Are we serious about fighting corruption or not? Are we serious about eliminating that evil that has touched everybody? None of us is safe as long as corruption is being practised in this country! It is a serious matter! We have a chance, as Members of this House--- For the first time, we have the chance to eliminate that evil from our society.

Mr. Speaker, Sir, only people of merit and those who cannot be swayed by emotions and ethnicity need to be members of KACC. That way, we shall be able to eliminate the evil that is afflicting our society.

Mr. Speaker, Sir, finally, I regard this as a benchmark of this honourable House. It is a benchmark upon which approvals or rejections of any proposals which will be made, in this House, in the future will be based on. When the time to vote comes, I would appeal to each hon. Member to search his conscience and ask himself why he is voting the way he is doing. Will you be voting because you want a better Kenya or is it because you are afraid of someone else?

Mr. Speaker, Sir, with those remarks, I beg to support.

Mr. Kajwang: Mr. Speaker, Sir, last week we were agonizing whether to discuss or not to discuss hon. Ringera, but after arriving at the resolution that we made last week, we now have to discuss him. I am discussing my former lecturer, my former colleague at the bar and a Judge of the highest court in Kenya. It has been imposed on me that I discuss him. So, I will discuss the Judge.

Mr. Speaker, Sir, when I was still a young man, Justice Ringera was my teacher, but when they had parted ways with the Minister for Justice and Constitutional Affairs, just as he said it here last week, he was on the Government side and we were always on the Opposition with hon. Karua. So, one time the court was dealing with a very serious matter concerning the liberation of this country towards multipartyism. Messrs. Matiba and Raila had been detained and so were some of our colleague lawyers. I was sitting with Justice Ringera at the back of the court. He was on the Government side and 50 or so lawyers were on the side of the Opposition then. I want to share with you what he told me because you have said that we discuss him. I will confess! Hon. Ringera told me that he sympathised with his colleagues, Dr. Gibson Kamau Kuria and Mr. Kiraitu Murungi for having chosen to follow a militant path. He told me that he had read many autobiographies and all of them showed him that for one to rise to any level in any system, one must be aligned to the Government. I was shocked, but I thought I was right for a moment because most of the people who have risen have been aligned to the Government and that is why hon. Kajwang has not risen. He has always been against the Government.

Mr. Speaker, Sir, I asked him why he thought that Mr. Murungi and Dr. Kuria will not at one time align themselves to the Government.

The Assistant Minister, Office of the President (Prof. Kibwana): On a point of order, Mr. Speaker, Sir. Is it in order for hon. Kajwang to say that he and hon. Ringera had a protracted conversation in court when the court was actually in session? It is not possible to have such a protracted conversation in court which is in session!

(Laughter)

Mr. Speaker: Well, I suppose they would have been behind bars.

Mr. Kajwang: Mr. Speaker, Sir, at that time, Prof. Kibwana was with us.

(Laughter)

So, I asked hon. Ringera: "What makes you think that Mr. Murungi and Dr. Kuria will never at one time be in the Government and you in the Opposition?" He told me that, that would never happen because the two are too militant. Later on, hon. Ringera parted ways with the Kamau Kuria, Kiraitu and Ringera Advocates firm and joined Oraro and Rachier Advocates firm. He then become Government-correct. After working there for a while, he became so Government-correct that he was promoted to the position of a Judge. When he was a Judge, he became even more Government correct that he was appointed Solicitor-General while he was still a Judge. I was in this House then and I asked how possible it is to have one man as Judge and at the same time a Solicitor-General; a civil service position in the office of the Attorney-General. How could a Judge, in a way, be a deputy to the Attorney-General? This disturbed me and when the other Judges realised this anomaly, that is why they made the decision they made. In fact, he became a Judge, Solicitor-General and Director of the Kenya Anti-Corruption Authority (KACA) on the same day.

Mr. Bifwoli: Mr. Speaker, Sir, I am made to think that hon. Ringera was competent and that is why he was being promoted! He was unlike the speaker who was sent away from the Law Society of Kenya!

(Loud consultations)

Mr. Speaker: Order, Members! Mr. Bifwoli, I warned this House much earlier. We will not have that again and it should be the last time. If I hear any more of that language from you, you will see the back of this House. Hon. Members, please, let us discuss this matter soberly. I have no doubt that we are going to have a division on this issue and for that reason alone I do not want, ever, to see someone being sent away on a day of division. But that is not a licence to breach the House rules. If I must, I will for that is why I am paid. Proceed!

Mr. Kajwang: Thank you, Mr. Speaker, Sir. The line was coming nicely. When hon. Ringera was appointed the Director of KACA, he was still performing some functions of the Solicitor-General. I know that for a fact. Also, he was a Judge at the same time. This embarrassed everybody and that is why his fellow Judges who sat down as a Constitutional Court decided that there is no way one could be a Judge and a prosecutor at the same time and heading an organisation called KACA. If there is any one person who is honourable, I agree that hon. Ringera is honourable indeed, but how can he hold two offices at the same time? It is clear that the Judiciary and the Executive are separate organs of the Government and yet hon. Ringera was serving in the Judiciary, the Executive and sometimes investigating as a police investigating officer. After all that is what KACA is all about.

Secondly, hon. Ringera was recently appointed by the Chief Justice to do what my learned friend called "radical surgery". You know, as much as I do, that the Constitution does not allow us to discuss the conduct of a Judge. Of course, today we have been allowed. The Constitution does not allow that because it protects the person and office of a Judge.

Mr. Speaker: May I make a correction for the purpose of record. We are discussing a potential appointee.

Mr. Kajwang: Who happens to be a Judge of the Court of Appeal!

(Laughter)

Mr. Speaker, Sir, hon. Ringera accepted this appointment and he went round the country listening to witnesses after which he compiled certain findings against his own brethren. The findings were used in the disciplinary proceedings that are now being carried out by the tribunal that was appointed by the President. But let me ask: How does a Judge, without any legal provision, discuss and purport to write a report about another Judge? That is exactly what hon. Ringera did. The Constitution is very clear on how to discipline a Judge.

If a matter of incompetence or morality arises, then, of course, the President can appoint a tribunal. It is not said how the President will know that. But somehow, it is the President who can appoint the tribunal. In this case, it is provided in the Constitution that the office of the Judge will be protected, and no other judge, including the Chief Justice; who is just another judge, can look at the personality or character of another judge. It is not provided for, because he is protected! But honourable Ringera took his job very seriously and went round the country, he listened to some people and some hearsay also, and wrote a big report about his fellow judges and brought it to the Chief Justice, who advised the President that he should now appoint a tribunal. How can a judge take evidence against another judge unlawfully and unconstitutionally so that the President can exercise his constitutional authority against those judges? How can he do it? If he did it unconstitutionally and illegally as I submit, unless somebody tells me that he had any legal basis of doing this, then this is not a man whom we can entrust with the job that you want to give him.

(Applause)

I do not care what else he does in his private life. I do not care what else he did when he was in high school and at the university. But I have seen him twice in his professional life; when he accepted to be a Solicitor-General in the Executive when he was a judge and secondly, listening to evidence and writing a report against other judges when the Constitution does not allow him to do what he did. This is the man we want to give the job. I am telling you that this man is being given this job to protect the new corruption in this Government.

(Applause)

There is no other qualification other than that he wants to be Government-correct. That is why hon. Murungi is pleading for him. Hon. Murungi knows that we are already complaining against the new corruption in the Government, and he is the Minister in charge.

(Applause)

Sooner or later, Mr. Murungi himself will need protection from his friend, and we are not going to give you that privilege.

(Laughter)

Mr. Speaker: Order! Order! Order! Hon. Kajwang, hon. Murungi is not a candidate! You are out of order! So, do not discuss him, all right?

Mr. Kajwang: I accept that, Mr. Speaker.

The Minister for Co-operative Development and Marketing (Mr. Ndwiga): On a point of order, Mr. Speaker, Sir. Is it in order for the contributor, first of all, not to declare his interest in this case? The truth is that hon. Ringera was the Chairman of the Board that threw him out of legal practice for professional misconduct! Can he declare his interest?

(Applause)

Mr. Speaker: Order! Order! Is that so, Mr. Kajwang?

Mr. Kajwang: First of all, Mr. Speaker, Sir, yes he was.

Hon. Members: No!

Mr. Kajwang: That is the first point. The second point is that he was then a judge, a Solicitor-General and the Chairman of the Anti-Corruption Authority and he was not qualified.

(Applause)

Mr. Speaker: Order! The reason why Members are required to declare their interest is because sometimes your interest may vitiate your judgement, and you should have done that at the very initial stage like hon. M'Mukindia did. You should have done that much earlier. So, please, let us continue.

Mr. Kajwang: You know, Mr. Speaker, Sir, I had even forgotten about it, if he did not remind of it. I knew the circumstances under which it was done. I also know what was involved, and I do not have to defend myself here. But that was not on my mind.

I am dealing here with an issue of legality. I am dealing here with an issue of a judge who accepted to be a Solicitor-General. I am dealing with the Constitution and the issue of separation of powers. I am dealing here with---

Mr. Speaker: Order, Mr. Kajwang! Have you ever heard of the provisions of the Standing Orders regarding repetitions? Now, do not repeat what you have said!

Mr. Kajwang: Mr. Speaker, Sir, I will not need to repeat myself. But I think it was necessary to bring the debate where it belongs, because---

Mr. Mwenje: But, on a point of order, Mr. Speaker, Sir.

Mr. Speaker: What is called "But on a point of order"? Order! This House does not know anything called "But on a point of order".

(Laughter)

Mr. Mwenje: On a serious point of order, Mr. Speaker, Sir.

Mr. Speaker: There is no such a thing!

Mr. Mwenje: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Now you are right! What is it?

Mr. Mwenje: Now that hon. Kajwang has admitted that, that is what happened, does he have any moral authority to challenge the person of Justice Ringera in this House? Should he continue discussing him?

Mr. Speaker: Order! It is for you, his peers, to judge.

Mr. Kajwang: Thank you, Mr. Speaker, Sir. Talking about morality, of course, my friend became a Christian recently.

(Laughter)

So, he can preach about morality. But all I want to say is this: We are not talking against Justice Ringera because he is a Meru or because he comes from hon. M'Mukindia's constituency. We are talking about him because we want to give him one of the highest and most senior jobs in this country; to deal with corruption. Mark you, we even want to deal with the Office of the President; so, we need---

Mr. Wanjala: On a point of order, Mr. Speaker, Sir.

(Loud consultations)

Mr. Speaker: Order! What is it?

Mr. Wanjala: Mr. Speaker, Sir, now that the hon. Member has already accepted that Justice Ringera is actually against corruption and did suspend him from the Law Society of Kenya (LSK), am I not in order to suggest that he should sit down because he has no moral authority to talk about Justice Ringera who performed his duty and is able?

(Applause)

Mr. Ndile: *Alikula pesa!*

Mr. Speaker: Order! Actually, I am telling you to sit down!

Mr. Kajwang: Mr. Speaker, Sir, the hon. Member does not know the difference between corruption and what Justice Ringera did. There was nothing corrupt about what he decided about me.

Now, let me tell you this in conclusion. Hon. M'Mukindia asked a very good question: Where will the Merus go? Of course, we are not saying that if Justice Ringera is not appointed, the Merus have nowhere to go. In fact, they are already everywhere. Thank you very much.

(Applause)

Mr. Speaker: Order, Members! I must dispose of the proposed amendment.

Hon. Members: Yes! Yes!

Mr. Speaker: I will, therefore, call upon hon. Owidi to move his amendment.

Mr. Owidi: Thank you, Mr. Speaker, Sir. I will be very brief because people are anxious to vote.

Mr. Speaker Sir, I beg to move that the Motion be amended as follows:-

By deleting the words "Justice A. Aaron G. Ringera" from the list of the nominees by the Board.

(Applause)

Mr. Speaker, Sir, I want to bring to the attention of this Parliament to the fact that we cannot be used as a rubberstamp as the Chairman of the Board was trying to imply. It is good to say that we should not think along ethnic lines, but we should also not try to practise it. The top 15 people in line of fighting corruption all come from the same ethnic community. There should be a balance.

Mr. Speaker, Sir, I beg to propose that the name of Justice Ringera should be removed. I will not go further than that because hon. Members want to dispose of this Motion.

Mr. Speaker, Sir, I will ask Mr. M. Kilonzo to second me.

Mr. M. Kilonzo: Mr. Speaker, Sir, I beg to second that amendment for a number of reasons. One is that, it is a matter of public knowledge that Justice Ringera did not, in fact, apply for this position. It is a matter of common knowledge that the record of Mr. Ringera shows that he will continue to be a Government stooge.

Mr. Mukiri: On a point of order, Mr. Speaker, Sir. Could Mr. M. Kilonzo substantiate his remarks? He has just said that Justice Ringera did not apply for the job. Does he have evidence?

Hon. Members: Yes!

Mr. Speaker: Order! Mr. Mukiri is within his rights. In fact, since Mr. M. Kilonzo has made that claim the onus has shifted directly to him. If you make an assertion, the onus is upon you to prove the truth of the same. So, can you prove the truth?

Mr. M. Kilonzo: Mr. Speaker, Sir, the reason is that it was the Chairman of the Nominating Board who said that Justice Ringera did not apply for this position. It went head-hunting. Why should I be asked to prove that there is oxygen in the air? There is oxygen in the air and Justice Ringera did not apply for this position!

The third point I wish to make is simple.

Mr. Mukiri: On a point of order, Mr. Speaker, Sir. That does not amount to a substantiation. He is just quoting hearsay here. Could he then withdraw his contention?

Mr. Speaker: Order, all of you! As a matter of fact, we have received, as a House, recommendations from the Board and that is all we are supposed to do. We can only receive recommendations and debate them here to decide whether to approve them or not. We cannot go behind the recommendations.

Proceed!

Mr. M. Kilonzo: Mr. Speaker, Sir, the other point I want to make is this. This country is extremely large. We have more than 30 million people. Justice Ringera was given an opportunity to serve in the same position as Director of the defunct Kenya Anti-Corruption Authority. It is also a matter of public record that he did not prosecute a single person for corruption during a time when it was alleged that there was a tremendous amount of corruption in this country. This is a good reason why his name should be withdrawn from this list.

The Minister for Justice and Constitutional Affairs (Mr. Murungi): On a point of order, Mr. Speaker, Sir. Is it in order for Mr. M. Kilonzo to continue misleading the House by alleging that Justice Ringera did not prosecute anybody when he was the director of KACA when we all know, especially those of us who were in the last Parliament, that he did? He prosecuted the former Minister for Water and some Permanent Secretaries before KACA was disbanded by the High Court!

Mr. Speaker: That, indeed, is correct.

Mr. M. Kilonzo: Mr. Speaker, Sir, I wish to amend my remark and say that he did not successfully prosecute anybody because KACA lost the cases against all the people whom it took to court.

The Minister for Co-operative Development and Marketing (Mr. Ndwiga): On a point of order, Mr. Speaker, Sir. How can Mr. M. Kilonzo say that Justice Ringera did not successfully prosecute anyone when we have heard an admission in this House from one hon. Member that he was prosecuted for theft and barred from legal practice by the same Justice Ringera?

(Laughter)

Mr. Speaker: Order, hon. Members!

(Mr. Ndile stood up in his place)

Order, Mr. Ndile! What are you doing there?

Hon. Members, let us now get to the facts. Mr. M. Kilonzo, this is actually your third time to contribute. So, please get to new facts.

Mr. M. Kilonzo: Mr. Speaker, Sir, just merely to set the record straight, Mr. Kajwang did not appear before a criminal court. He appeared before the Law Society of Kenya Disciplinary Committee, which was not conducting a prosecution. Not only that, this was not during the term of Justice Ringera as Director of KACA.

My final point is this. I urge this House to adopt the words of Shakespeare who said that we must follow the principle of Ceasar's wife. The KACC should be like Ceasar's wife. It should be above suspicion. Justice Ringera is very suspect on moral grounds and many other grounds.

Mr. Speaker, Sir, I beg to support the amendment.

*(Question, that the words to be left
be left out, proposed)*

The Assistant Minister for Foreign Affairs (Mr. M. Kariuki): Mr. Speaker, Sir, I rise to oppose the proposed amendment. Before I do so, I would also like to declare my interest in this matter. I happen to have attended High School and the University of Nairobi with Justice Ringera. He was one class ahead of me, and I think Mr. Mwenje was somewhere behind us in Form II or III.

(Laughter)

Secondly, let me also say that I appeared before Justice Ringera during the time when he was taking evidence on the conduct of judges and submitted evidence, some of it documentary and some of it in video form, to support allegations of corruption. I think this is a great day for this House and the nation. This is a full House and there is an expression of concern. This particular debate has evoked passions and emotions. I would like us to address the question of the parameters within which Parliament should exercise its powers.

(Loud consultations)

Mr. Speaker: Order, hon. Members! The Standing Orders state that an hon. Member should either be seated or transiting. Hon. Members are not allowed to stand all over the place doing nothing! So please, either be seated or be in transit.

Proceed!

The Assistant Minister for Foreign Affairs (Mr. M. Kariuki): Thank you, Mr. Speaker, Sir.

It is important to be guided by Sections 8 and 19 of the Anti-Corruption and Economic Crimes Act. As Mr. M'Mukindia has said, it is important that we set a precedent. This is not the last time that this House will be called upon to exercise its powers of approving a recommendation for a particular appointment. Therefore, it is important that the parameters be set within which the discretion of this House will be exercised. We passed this Act last year. One of the things that we underpinned in the Act is the independence of the Advisory Board; that they will act without any direction, or interference, from any power or authority. Therefore, once the recommendation of the

Advisory Board comes before this House, it is my submission that we can only fault it on the basis of procedures; that is, if certain procedures were overlooked by the Board in exercise of its powers under Section 19. That is the only way we can ensure that, once we set this precedent, then in the next Motion that we will be called upon to approve, we would have already set our parameters and we do not exceed those parameters. Parliament cannot sit as a Court of Appeal on a decision of the Advisory Board. Parliament, in exercising the power of approval, can look at possibilities of flaws within the Act. I think this is what we are not addressing.

Mr. Marende: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Yes, what is it?

Mr. Marende: Mr. Speaker, Sir, is it in order for the hon. Member to mislead this House that a precedent has not been set on vetting appointments when, in fact, we have previously appointed Commissioners to the Kenya Human Rights Commission (KHRC). We also appointed members of the Advisory Board! We, as the Committee on the Administration of Justice and Legal Affairs, of which the learned friend is a member, did exactly so.

Mr. Speaker: Order! I think we dealt with that issue last week. However, let me repeat this, for the benefit of everybody in this House. When the House is called upon to approve persons to be appointed to certain bodies in this country, I do not think we will restrict the House to procedures. I think the House will be free, based on all available evidence, to evaluate both procedure and merit unless we have a glaring reason why a person should not hold office. However, we will not conduct the interviews or look at the minutes of the interviewing board. That must be clear. However, if there is anything glaring that makes it necessary for this House to refuse that appointment, then it is open to the House.

Proceed, Mr. M. Kariuki!

The Assistant Minister for Foreign Affairs (Mr. M. Kariuki): Thank you, Mr. Speaker, Sir, for that clarification. However, Mr. Marende should remember that, when this House was called upon to look at the list of the Commissioners, it was looking at the recommendations of a Parliamentary Committee, not a statutory body. We are dealing with---

Mr. Speaker: Mr. M. Kariuki, I encourage you to leave that out because we finished with it on Thursday. Just deal with the merit on this one.

The Assistant Minister for Foreign Affairs (Mr. M. Kariuki): Mr. Speaker, Sir, the position of a judge---

(Loud consultations)

Mr. Speaker: Order, hon. Members! Could we hear Mr. M. Kariuki?

Proceed, Mr. M. Kariuki!

The Assistant Minister for Foreign Affairs (Mr. M. Kariuki): Mr. Speaker, Sir, I was saying that a judge, in the course of his or her work, makes enemies and friends. I know that Justice Ringera, in the course of his work, has made enemies and friends. So, when we are looking at the issues before this House today, we must put emotions aside and look at the whole issue in terms of whether his integrity has been called to question. Let me say that I have listened with a lot of keenness to the allegations that have been made. One is that he never convicted anyone when he was the Director of Kenya Anti-Corruption Authority (KACA). We all know what was the fate of that particular authority; it was actually stopped because the prosecutions had begun and the top people in the establishment were beginning to appear in court. So, that is a credit for Justice Ringera.

Secondly, the issue of Justice Ringera being appointed by the Chief Justice to lead the

inquiry into the conduct of judges was an in-house matter and the Chief Justice said so. Any particular institution under the law has the right to look at itself; to evaluate its performance. So, that was not strictly speaking a tribunal set up in accordance with the Constitution. It was an in-house matter set up by the Chief Justice. I think that the results of what he did, in my view, are commendable.

Mr. Speaker, Sir, it has also been alleged that one cannot be a member of the Judiciary and something else. I would only like to cite the example of the United Kingdom. There is a Lord Chancellor who heads the Judiciary. He is also a member of House of Lords. He also sits as a judge of the House of Lords and appears as a member of the Cabinet. Near here at home, we have Ministers who are members of this House and of the Executive because they head Ministries which fall under the Executive. So, there is really nothing new. The basis upon which KACA was actually disbanded, in my view, was more political than legal.

Mr. Speaker, Sir, I would like to appeal to my fellow colleagues here, that it is important that we put hatred aside. We seem to be moved by hatred other than actually looking at the larger interest of this particular country. Issues of corruption are of great concern to Kenyans and Kenyans are looking for the best person who can do the job without being compromised. I think that Justice Ringera is among those top people in this country.

Mr. Speaker, Sir, you will see that the Motion covers several other people. In fact, there are five people. However, the debate has been on Justice Ringera and it must be for a good reason. It is that those corrupt people in this society have been unable to compromise a judge of Justice Ringera's integrity. That is really a credit to him.

Mr. Speaker, Sir, with those remarks, I beg to oppose the proposed amendment and say that it should be thrown out and we proceed with the business of the House.

Mr. Speaker: Order, hon. Members! By the way, we do not throw out Motions, we defeat them! Hon. Members, do you not think we should dispose of this issue and then, after the amendment, we return to the Motion?

Hon. Members: Yes!

Mr. Maore: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Mr. Maore, you have something special to say?

Mr. Maore: Yes, Mr. Speaker, Sir!

Mr. Speaker: Okay! Do so briefly and then I will put the Question.

Mr. Maore: Mr. Speaker, Sir, I never thought, at any one time, after all this, that we need the House to be vetting executive appointments. The House will be able to portray itself in a mood like we are likely to travel the low road. The low road instead of picking the high moral ground on which to put the House at the pedestal of appointments in this House in future, we will create fear in this country, for those names that will always be coming here, that people will be subjects of hate, mischief, intrigue and tribalism---

Mr. Midiwo: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: What is it?

Mr. Midiwo: Mr. Speaker, Sir, is the hon. Member on the Floor in order to take us back to last week's arguments? I thought we made resolution---

Mr. Speaker: Order! Hon. Members, I thought that today, after my advice, the House has behaved very well! I do not think the House has been petty or sober. I think the House listened to the Chair and it is now sober. So, Mr. Maore, proceed also in a sober manner!

Mr. Maore: Mr. Speaker, Sir, I am very sober. What we are faced with here is the issue of procedure and merit. The name of Justice Ringera has been brought before us here, together with his record in the Judiciary. It is about his moral standing vis-a-vis the issue of corruption. If you could

recall in 1991, when there were Senate hearings in the United States of America (USA) about Clarence Thomas, regarding allegations from a university professor from Oklahoma, Prof. Anita Hill, the Senate rose above petty stories and cleared Clarence Thomas. Today, I would like to vehemently describe this amendment to remove the name of Justice Ringera as malicious, mischievous, tribal, an intrigue and a bad thing for this House to do.

(Applause)

If you are dissatisfied with one name, let us return the whole package to the Advisory Board, so that they can be able to sort out the problem for us.

Mr. Speaker, Sir, lastly, I need to explain the following: I come from 100 kilometres away from Katheri, where Mr. M'Mukindia and Justice Ringera come from. So, I have no interests to declare. The fellows who cannot rise above tribalism are fighting somebody because of where he was born.

(Applause)

Mr. Speaker: Order! Mr. Maore, there is really nothing to apologise about being a Mumeru!

(Laughter)

So, it is perfectly in order to be a Mumeru!

An hon. Member: Reply!

Mr. Speaker: There is no reason to reply. I see no merit in asking for a reply. I will now put the Question. Order, Maj. Madoka! Relax!

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

*(Several hon. Members stood
up in their places)*

Mr. Speaker: What is it you are standing for? You should call for a Division! You just do not stand! Is there anybody calling for a Division?

Hon. Members: Yes!

Mr. Speaker: Then, say so! Dr. Godana, are you calling for a Division?

Dr. Godana: Yes, Mr. Speaker, Sir!

Mr. Speaker: Very good! Now, how many are for the Division?

*(Several hon. Members stood
up in their places)*

Order, hon. Members! The rules require that when a Member calls for a Division, there will be 20 others in support. Having looked at the Members standing, I decide that it is not necessary to count. That is because they are more than sufficient to sustain a call for a Division. I, therefore,

order that there will be a Division, and order further that the Division Bell be rung now for five minutes!

(The Division Bell was rung)

Order! Order, Members! Will you draw the Bars please, and lock all the doors, including those behind me? All the doors should be closed now. There will not be entry or exit from this time on.

Hon. Members, we are now going into Division. I now wish to announce the Tellers. The Tellers for the Ayes will be hon. Ndile and hon. Boit. The Tellers for the Noes will be hon. Bahari and hon. Mbarire. When I put the Question, you will proceed to vote. Order! You know, I can open that door for one purpose only; to send you out! Those for the Ayes will proceed to the lobby to my right. Those for the Noes will proceed to the lobby to my left. The Noes will be those who are against the Motion, that the Motion be amended to delete the name of hon. Ringera. Those opposed to that will go to the left. Those for that idea, that we amend the Motion to remove the name of hon. Ringera, will go and vote to my right. You have limited time. After I have directed you to go to your lobbies, within 15 minutes, I will order that the doors to the lobbies be closed, and anybody who will not have been to the lobby to vote will not be allowed to go and vote. So, this demands that you proceed to vote with due diligence and as quickly as you can.

You are not obligated to vote either way. You may wish to abstain from voting. If that be the position, that you do not wish to vote either way, then you are requested to proceed to the Table and record your name with the Clerk at the Table.

DIVISION

(Question put and House Divided)

(Question negated by 88 votes to 79)

AYES: Mr. Abdirahman, Dr. Ali, Messrs. Awiti, Bahari, Bett, Boit, Cheboi, Chepkitony, Choge, Dr. Galgallo, Dr. Godana, Messrs. Y. Haji, Ivuti, Kajembe, Kajwang, Dr. Keino, Keter, Dr. Khalwale, Messrs. Khamisi, Dr. Kibunguchy, Messrs. J.K. Kilonzo, M. Kilonzo, M.C. Kilonzo, Kimeto, Kipchumba, S.C. Koech, Kofa, Korir, Koros, Kosgey, L.B.M. Maitha, M. M. Maitha, Prof. Mango, Messrs. Marende, Mbai, Midiwo, H.M. Mohamed, M.A. Mohamed, Moroto, J.M. Mutiso, Muturi, Mwandawiro, Mwanzia, Mrs. Mwendwa, Messrs. Ndambuki, Ndolo, Ngoyoni, Maj-Gen. Nkaiserry, Messrs. Ntutu, Dr. Oburu, Messrs. Ogur, Ojaamong, Okemo, Dr. Ojiambo, Eng. Okundi, Messrs. Oloo-Aringo, Prof. Olweny, Messrs. Omamba, Omondi, Archbishop Ondiek, Prof. Oniang'o, Messrs. Osundwa, Owidi, Owino, Poghio, Rotino, Dr. Rutto, Messrs. Salat, Samoei, Sang, Serut, Shaaban, Dr. Shaban, Messrs. Shakombo, Sirma, Sudi, Sungu, Wario and Weya.

Tellers of Ayes: Messrs Boit and Ndile. **NOES:** Messrs. Akaranga, Angwenyi, Arungah, Awori, Bifwoli, Mrs. Chelaite, Messrs. Dzero, Gachagua, Githae, Kagwe, Kaindi, Kamanda, Karaba, M. Kariuki, Ms. Karua, Messrs. Karume, Katuku, Prof. Kibwana, Mrs. Kilomo, Mrs. Kihara, Messrs. Kimathi, Kimunya, Kingi, Dr. Kituyi, Messrs. Kiunjuri, J.K. Koech, Konchella, Kones, Dr. Kulundu, Dr. Kutu, Messrs. Leshore, Lesrima, Prof. Maathai, Dr. Machege, Dr. Manduku, Messrs Manoti, Maore, Masanya, ole Metito, Ms. Mbarire, Messrs. Mbau, Michuki, Miriti, M'Mukindia, A.C. Mohamed, H.M. Mohamed, Muchiri, Mrs. Mugo, Messrs. Muiruri, Mukiri, Mungatana, Munya, Munyes, Muriithi, Eng. Muriuki, Messrs. Muriungi, Dr. Murungaru,

Messrs. Murungi, Mwakwere, Mwangi, Ms. Mwau, Messrs. Mwenje, Mwiraria, Dr. Mwiria, Capt. Nakitare, Messrs. Nderitu, Ndile, Ndwiga, Ms. Ndung'u, Messrs. ole Ntimama, Nyachae, N. Nyagah, Obwocha, Onyancha, Oparanya, Opore, Rai, Prof. Saitoti, Maj. Sugow, Mr. Tarus, Mrs. Tett, Eng. Toro, Messrs. Twaha, Waithaka, Wambora, Wamwere, Wanjala and Wetangula.

Abstention: Maj. Madoka.

Tellers of the Noes: Mr. Bahari and Ms. Mbarire.

(Debate on the original Motion resumed)

The Minister for Education, Science and Technology (Prof. Saitoti): On a point of order, Mr. Speaker, Sir. I believe we are back to the original Motion. Given the fact that the contentious issue in this Motion has been decided upon, may I request that the Mover be now called upon to reply?

(Applause)

Dr. Godana: On a point of order, Mr. Speaker, Sir. I stand to object the request by the Deputy Leader of Government Business. This is a very serious matter and he should not have an interest in suffocating the House from debating and ventilating in full, before we finally pass the resolution.

The Minister for Trade and Industry (Dr. Kituyi): On a point of order, Mr. Speaker, Sir. Whereas it may be part of the normal procedure that an hon. Member can request that the Motion that the Mover be called upon to reply be deferred, is it in order for an hon. Member who has contributed to the Motion to be the one to raise that matter?

Dr. Godana: Mr. Speaker, Sir, for the record, I have not contributed to this Motion.

Mr. Speaker: Order, hon. Members! It is for me to decide whether or not we have had a reasonable ventilation on this issue. Hon. Members will recall that this is the second day that we are dealing with this issue. I am satisfied that we have had reasonable views. I, therefore, accede to the request.

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

(Several hon. Members stood up in their places)

Order, hon. Members! For the benefit of the House, if you want a Division, you must stand up and claim a Division! It is not sufficient for you to just to stand up! So, you claim a Division!

Hon. Members: Division! Division! Division!

Mr. Speaker: That is all right. Why have you sat down before I counted you?

Order, hon. Members! The rules of the House are there to guide the business of the House. If they are complied with, the Chair enforces them. The rules of the House give hon. Members the right to claim for a Division. It was claimed and it was earned. I, therefore, order that there be a Division! This is to the question whether or not the Mover be called upon to reply. Open the Bars and the doors. The Division is over.

(Loud Consultations)

The Minister for Trade and Industry (Dr. Kituyi): On a point of order, Mr. Speaker, Sir. I wish to move that the business of the House be exempted from the provisions of the normal sitting hours. We should continue until the business of the day is finished.

Dr. Godana: Mr. Speaker, Sir, it is important that this House sets the example of following procedures. You ruled that the hon. Members who had asked for a Division had the numbers and you said that we would have a Division. I submit that any other business will be out of order!

(Loud consultations)

Mr. Speaker: Order, hon. Members! I have said before that we must be guided by the rules of the House. The rules of the House confer on hon. Members the opportunity and the right to extend time if they so feel within the sitting of the House. The sitting of the House is mandated until 6.30 p.m., so we are still within the time. I would like to know from Dr. Godana on what grounds he is objecting the Motion and under what Standing Order.

Dr. Godana: Mr. Speaker, Sir, I object to the Motion on the ground that the Chair has made a ruling that the House shall have a Division. Before the House disposes of that matter, it shall not go into any other business. That has always been our tradition. It is common sense!

Mr. Speaker: Order! Under what Standing Order have you raised that?

Dr. Godana: Mr. Speaker, Sir, it is common sense; our tradition and the tradition of all Parliaments of this type! When the Chair makes a ruling, all have to respect it, otherwise, it will erode the authority of the Chair.

The Minister of State, Office of the President (Dr. Murungaru): Mr. Speaker, Sir, nobody is disputing your ruling. Nobody is saying that this House should not go into Division. However, Dr. Kituyi has invoked a Standing Order which provides for request for extension of time during the business of the House. That is all that has been done. We will go into the Division and extend the sitting time of the House.

Mr. Speaker: Order, all of you! You must get the rules right. I have not so far called for the Division Bell to be rung. Have I?

Hon. Members: No! No!

Mr. Speaker: Order! I have not! The Division Bell has not been rung. Under what Standing Order were you asking for the extension? We must be guided by the rules.

The Minister for Trade and Industry (Dr. Kituyi): Mr. Speaker, Sir, you have just referred to a Standing Order which bestows unto me the right to call for a Division. I am invoking the same authority of the Chair. I want to congratulate you for clarifying that the House is not in abeyance. You are still in the Chair and you have not called for a Division. Therefore, the normal rule under which you allow us to call for an extension applies.

Mr. Kosgey: Mr. Speaker, Sir, when you put a question, which you have done, by calling for a Division, you cannot put another question until you have disposed of the first one!

(Applause)

So, whereas the Minister is in order to ask for an extension of the sitting time of the House, we have to dispose of this matter first before he moves his Motion.

Mr. Speaker: By the way, Mr. Kosgey, you are absolutely right!

Mr. Mukiri: On a point of order, Mr. Speaker, Sir. We have to follow the rules. I do not

know the Standing Order under which he is saying that you cannot ask for another--- The doors are still open---

Mr. Speaker: Order, hon. Members! Sometimes, you get yourself into a quandary because you do not read your Standing Orders and it is actually not my fault. Any Member who wishes to benefit from the House must understand the rules. I think an issue was raised by Mr. Kosgey and it strikes me as being correct. The issue is: I had put the question as to whether or not the Mover should be now called upon to reply and I had ruled that the "AYES" have it. There was a claim for a Division, which matter has not been decided. So, we must decide that because even on reasonable interpretation of the rules--- If, for example, we were to proceed on the Motion proposed to extend the time, we cannot possibly do that before we have decided on the first question, which is that the Mover be now called upon to reply. To avoid this problem in future, I encourage hon. Members who wish to extend the time of the House to bring those Motions at a very early stage so that we can extend it. I am afraid, I must order for a Division now. Ring the Division Bell!

The Minister for Lands and Housing (Mr. Kimunya): On a point of order, Mr. Speaker, Sir.

(Loud consultations)

Mr. Speaker: Order! Will you sit down please?

The Minister for Lands and Housing (Mr. Kimunya): Mr. Speaker, Sir, now that we should follow the procedures as they are, by the time the question was put, the Bars were still closed and that means that we had still not finished the first Division. I think we had better get that right for the record.

(Laughter)

Mr. Speaker: Order! Order! By the way, let us finish this matter! But let us get everything right! A Division ends after the announcement of the results and not opening of Bars.

Mr. N. Nyagah: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: What is it, Mr. Nyagah? You know we are taking a lot of time with those points of order!

Mr. N. Nyagah: Thank you, Mr. Speaker, Sir.

(Loud consultations)

Mr. Speaker: Order, hon. Members! The House is still sitting!

(Mr. N. Nyagah stood up in his place)

Order! You must sit down, Mr. N. Nyagah! Let us keep order all the time! What is it, Mr. N. Nyagah?

Mr. N. Nyagah: Thank you, Mr. Speaker, Sir. I am delighted that you have said from the Chair that certain procedures must be followed to the letter, and I believe that, that is what you are doing. At the same time, while following the same procedure, it is also good to remind my friends on the other side of the House that when they first rose up they did not call for a Division.

Hon. Members: Aah! No!

Mr. N. Nyagah: Mr. Speaker, Sir, therefore, it was a nullity until the Chair reminded that

side that they should say "Division!" In actual fact, that was a nullity in the first place. It was only after a second thought that the Division was called!

(Several hon. Members stood up in their places)

Mr. Speaker: Order, all of you! Order, Mr. M. Kariuki! Do you know what you are doing? We are actually eating into time unnecessarily. So, ring the Division Bell!

(The Division Bell was rung)

DIVISION

(Question put and House Divided)

(Question carried by 88 votes to 76)

AYES: Messrs. Akaranga, Angwenyi, Arungah, Awori, Mrs. Chelaite, Messrs. Dzoro, Gachagua, Githae, Kagwe, Kaindi, Kamanda, Karaba, M. Kariuki, Ms. Karua, Messrs. Karume, Katuku, Dr. Kibunguchy, Prof. Kibwana, Mrs. Kilomo, Mrs. J. Kihara, Messrs. Kimathi, Kimunya, Kingi, Kiunjuri, J.K. Koech, Konchella, Kones, Dr. Kulundu, Dr. Kuti, Messrs. Leshore, Lesrima, Ligale, Prof. Maathai, Dr. Machage, Mr. E.M. Maitha, Dr. Manduku, Messrs. Manoti, Maore, Masanya, ole Metito, Ms. Mbarire, Messrs. Mbau, Michuki, Miriti, M'Mukindia, A.C. Mohamed, A.M. Mohamed, Muchiri, Mrs. Mugo, Messrs. Muiruri, Mukiri, Mungatana, Munya, Munyes, Muriithi, Eng. Muriuki, Messrs. Muriungi, Dr. Murungaru, Messrs. Murungi, Mwakwere, O.K. Mwangi, Ms. Mwau, Messrs. Mwenje, Mwiraria, Dr. Mwiria, Capt. Nakitare, Messrs. Nderitu, Ndile, Ndwiga, Ms. Ndungu, Messrs. ole Ntimama, Nyachae, N.G.K. Nyagah, Obwocha, Onyancha, Oparanya, Opore, Rai, Prof. Saitoti, Maj. Sugow, Mr. Tarus, Mrs. Tett, Eng. Toro, Messrs. Waithaka, Wambora, Wamwere, Wanjala and Wetangula.

Tellers of Ayes: Mr. Midiwo and Mrs. J. Kihara.

NOES: Mr. Abdirahman, Dr. Ali, Dr. Awiti, Messrs. Bahari, Bett, Boit, Cheboi, Chepkitony, Choge, Dr. Galgallo, Dr. Godana, Messrs. Y. Haji, Ivuti, Kajembe, Kajwang, Dr. Keino, Keter, Dr. Khalwale, Messrs. Khamisi, J.K. Kilonzo, M. Kilonzo, M.C. Kilonzo, Kimeto, Kipchumba, S.C. Koech, Kofa, Korir, Koros, Kosgey, Maj. Madoka, Messrs. L.B.M. Maitha, M. M. Maitha, Prof. Mango, Messrs. Marende, Mbai, Midiwo, H.M. Mohamed, Moroto, J.M. Mutiso, Muturi, Mwandawiro, Mwanzia, Mrs. Mwendwa, Messrs., Ndambuki, Ndolo, Ngoyoni, Maj-Gen. Nkaisserry, Mr. Ntutu, Dr. Oburu, Messrs. Ogur, Ojaamong, Okemo, Dr. Ojiambo, Eng. Okundi, Prof. Olweny, Messrs. Omamba, Omondi, Archbishop Ondiek, Prof. Oniang'o, Messrs. Osundwa, Owidi, Owino, Poghisi, Rotino, Samoei, Dr. Rutto, Messrs.. Salat, Sang, Serut, Shaaban, Dr. Shaban, Messrs. Shakombo, Sirma, Sudi, Sungu, Wario and Weya.

Tellers of the Noes: Messrs. Keter and Waithaka.

Mr. Speaker: Hon. Members, the question has been carried and when this debate resumes next week, the Minister will straight away reply. This is the course of democracy. We have to follow and obey the rules. We have to respect the results of our Divisions.

ADJOURNMENT

Mr. Speaker: Hon. Members, it is now time for the interruption of business. The House is, therefore adjourned until Tuesday, 3rd August, 2004, at 2.30 p.m.

The House rose at 6.45 p.m.