

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 13th September, 2007

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

### PRAYERS

### QUESTION BY PRIVATE NOTICE

#### EVICION OF TENANTS FROM NEW KCC BUILDING

**(Mr. Bett)** to ask the Minister for Co-operative Development and Marketing:-

(a) Is the Minister aware that the New KCC Ltd is in the process of evicting tenants in one of its buildings in Kericho Town?

(b) Could the Minister confirm that the New KCC Ltd has sold the building situated on Kenyatta Road in the town?

(c) When was the sale advertised and at what price was it sold?

**Mr. Deputy Speaker:** Hon. Members, Mr. Bett has informed the Chair that he is attending a funeral in his constituency and requested that the Question be deferred. Is the Minister for Co-operative Development and Marketing here?

**The Assistant Minister for Co-operative Development** (Mr. Mwenje): Mr. Deputy Speaker, Sir, I am very much here.

**Mr. Deputy Speaker:** What do you have to say about that?

**The Assistant Minister for Co-operative Development** (Mr. Mwenje): Mr. Deputy Speaker, Sir, if an hon. Member is attending a funeral, then I do not have much to say. When we are not here to answer Questions, these hon. Members make a lot of noise. When they are not here, what happens?

**Mr. Deputy Speaker:** Mr. Mwenje, first of all, withdraw the word "noise"!

**The Assistant Minister for Co-operative Development** (Mr. Mwenje): Mr. Deputy Speaker, Sir, I withdraw the word "noise" and replace it with the word "complain". I was ready to answer the Question.

**Mr. Deputy Speaker:** Mr. Mwenje, I think you just started off very well. You stated that the hon. Member is attending a funeral and, therefore, you understand why he is not in today. So, let us defer the Question.

**Mr. Sang:** On a point of order, Mr. Deputy Speaker, Sir. Did I hear you say that hon. Bett is attending a funeral in his "constituency"? He does not have a constituency!

**Mr. Deputy Speaker:** No, I beg your pardon!

*(Laughter)*

He is attending a funeral in his home area. I agree with you that he has no constituency. He lives in Mr. Sang's Constituency. It is not his constituency. Mr. Sang, I agree with you. Therefore, the Question is deferred to Tuesday afternoon.

*(Question deferred)*

## ORAL ANSWERS TO QUESTIONS

*Question No.149*

### SHORTAGE OF HOUSING FOR HEALTH WORKERS

**Mr. Khamisi** asked the Minister for Health:-

(a) whether he is aware that there is a serious shortage of housing for doctors, nurses and other health workers throughout the country; and,

(b) what plans he has to ensure that these essential workers are adequately housed within close proximity to health facilities.

**The Assistant Minister for Health** (Dr. Kibunguchy): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware.

(b) The existing policy on housing for all public servants is that they should be paid a monthly housing allowance which they should use to rent the accommodation they consider appropriate for their needs. Since most of our hospitals are situated in towns, our staff have not encountered difficulties in finding appropriate accommodation in the towns nearby the hospitals. For rural health facilities, our staff are housed within the compounds while others operate from their own homes.

Mr. Deputy Speaker, Sir, may I also add that the situation is, however, challenging in the new districts where even the structures to work from are scanty. All Government Ministries face this handicap equally. The Ministry of Health would like to have staff houses in these new administrative units but due to financial constraints, the priority in the short-term is the infrastructure to work from. To bridge the gap, the communities in these districts are encouraged to take advantage of the presence of our staff there and put up appropriate houses to lease to them.

**Mr. Khamisi:** Mr. Deputy Speaker, Sir, I am shocked to hear that the Assistant Minister is not aware that there is a serious shortage of accommodation for doctors and nurses. I want to inform him that there is, indeed, a very serious shortage. However, in any case, could he tell us how many of these doctors and nurses are housed by the Government? Secondly, could he tell us how many of them are actually dependent on their own personal and rented houses?

**Dr. Kibunguchy:** Mr. Deputy Speaker, Sir, I think we understand the policy of the Government. At the moment, even those who are housed in Government houses have to pay a certain amount of rent to the Government. Many health workers find that the rent they pay for Government houses is much more than what they would pay for houses of private developers. This has led to a situation where there are quite a number of hospitals in this country where even Government houses that are available are not being occupied. This is because of the high rent that is being charged that was assigned from the Ministry of Roads and Public Works.

**Mr. Poghio:** Mr. Deputy Speaker, Sir, when the Assistant Minister says that he is not aware, it must be very technical because, really, everybody knows that there is a shortage of housing. Could the Assistant Minister synchronise his policies because when we ask them to

gazette health facilities, they insist that we must have housing for doctors? Is the Assistant Minister therefore not being contradictory if he cannot even gazette those health facilities which have no housing? Even though there is availability of accommodation in the shopping centre, they still insist that we have them in the health facilities. Could he tell us what is the true policy in that matter and why he does not want to just gazette the health centres?

**Dr. Kibunguchy:** Mr. Deputy Speaker, Sir, I think there are two issues where I am probably not making myself clear on. One, all our health workers are paid house allowance. Let us start from that premise. Then after that, if there are Government houses within the compound of the hospital, these health workers are then required to pay rent to the Government from their house allowance. So, most of the health workers find that it is much more expensive to pay rent to the Government than what they will pay for private houses. I think that is another point. So, we are encouraging our workers to stay within the compounds but then we find that because of the house allowance we are giving them, they realise that they would save a little more if they stayed in private rented houses. So, our priority at the moment is not to put up houses for our workers but to make sure that we increase the house allowance. We are working towards that to make sure that housing allowance will be uniform irrespective of whether somebody is working in town or in the rural area so that we encourage most of our health workers to work in the rural areas.

**Mr. Poghisi:** On a point of order, Mr. Deputy Speaker, Sir. The issue that I raised is not being addressed by the Assistant Minister. We put up facilities even using the Constituencies Development Fund (CDF) but the Ministry still insists that we must have housing before they can actually gazette them. That is my insistence. Is that not a contradiction in terms of policy? Why can you not post people there and gazette the facilities so that they can get the accommodation in the trading centres around the facilities?

**Dr. Kibunguchy:** Mr. Deputy Speaker, Sir, I think it depends on which facilities the hon. Member is talking about. If it is a dispensary, then we do not insist that there must be houses within the compound. If it is a slightly bigger facility like a health centre or a sub-district hospital, that is when we insist that there must be houses for our health workers.

**Mr. Khamisi:** Mr. Deputy Speaker, Sir, as much as the Assistant Minister is telling us that house allowance is being paid, could he also assure this House that, as a matter of long term planning, the Government will actually provide proper housing for doctors and not allow them to stay in the shopping centres around this country?

**Dr. Kibunguchy:** Mr. Deputy Speaker, Sir, that will require a complete overhaul of the Government policy. The Government policy, in not only the Ministry of Health but in all the other Ministries, is that our public servants are paid house allowance. That is the policy that was passed.

**Mr. Deputy Speaker:** Next Question by Prof. Olweny!

**Mr. Odoyo:** Mr. Deputy Speaker, Sir, on behalf of Prof. Olweny---

**Mr. Deputy Speaker:** Mr. Odoyo, do you have permission from Prof. Olweny to ask his Question?

**Mr. Odoyo:** Yes, Mr. Deputy Speaker, Sir, I have permission, being a member of the district. We come from the same district.

**Mr. Deputy Speaker:** Order! Mr. Odoyo, that is not the point. The Question is listed for Prof. Olweny. Did you get his permission to ask this Question on his behalf? That was the question from the Chair.

**Mr. Odoyo:** Yes, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Very well! In future, as a matter of courtesy, you need to inform the Chair in advance. I will now allow you to ask the Question.

**Mr. Odoyo:** I will do so, Mr. Deputy Speaker, Sir.

*Question No.445*SUPPLY OF ELECTRICITY TO  
PUBLIC FACILITIES IN MUHORONI

**Mr. Odoyo**, on behalf of **Prof. Olweny**, asked the Minister for Energy:-

(a) whether he is aware that Songhor Market, Songhor Secondary School, Achego Girls Secondary School, Tamu Market, Tamu Health Centre and Makindu Dispensary have not been supplied with electricity; and,

(b) when these areas and institutions will be supplied with electricity.

**The Assistant Minister for Energy (Mr. Kiunjuri):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware that Songhor Market and Secondary School, Achego Girls Secondary School, Tamu Market and Health Centre and Makindu Dispensary have not been supplied with electricity.

(b) The market centres and other institutions mentioned by the hon. Member are among schemes earmarked for implementation under Phase II of the French Government Loan Funded Projects whose implementation has already started in Nyanza Province. It is also anticipated that Songhor Market and Secondary School, Achego Girls Secondary School, Tamu Market and Health Centre and Makindu Dispensary in Muhoroni Constituency will be supplied with electricity by February, 2008.

**Mr. Odoyo:** Mr. Deputy Speaker, Sir, while thanking the Assistant Minister for his answer, perhaps, he may demonstrate his seriousness by telling the House, and the constituents of Muhoroni, how much money has been budgeted for those particular market centres, health facilities and secondary schools.

**Mr. Kiunjuri:** Mr. Deputy Speaker, Sir, I have said clearly that this is a French Government funded project. Therefore, it is a turnkey project. All that he can ask is how much all those projects are going to cost. I do not have the breakdown of how much each project in particular area is costing. It will be done, if so required. However, I can assure him the breakdown will not be like we could say that the Government of Kenya gave Kenya Power and Lighting Company Kshs5 million for this market or Kshs2 million for that a market, because everything, including transformers, will be purchased together for the projects.

**Dr. Manduku:** Mr. Deputy Speaker, Sir, you have heard the Assistant Minister say that the French programme has started in Nyanza. We come from Nyanza. We have been asking when it is going to start. We have not seen it start. Could he confirm whether the programme has started? If it has started, where has it started and when will it be completed?

**Mr. Kiunjuri:** Mr. Deputy Speaker, Sir, yesterday, I answered that Question. We have started the programme in Rarieda and Alego Usonga Constituencies.

**Mr. Salat:** Mr. Deputy Speaker, Sir, while appreciating the Ministry for the good work it has continued to do, we have contractors. In Bomet, there is a contract which was issued in the last financial year, but up to now, it has not been completed. Our people have been reminded of an incident which happened in Kipipiri, where some poles were brought on site, but when the people did not vote in a particular manner, the poles were taken away. What is the Minister doing about those contractors who have just put up poles, but who have not completed the project?

**Mr. Kiunjuri:** Mr. Deputy Speaker, Sir, first of all, I want to assure the hon. Member, who is in KANU, and not in ODM, that we have a very good relationship with KANU, and that, that

will not happen.

**Mr. Deputy Speaker:** Mr. Kiunjuri, what does the Government's good relationship with KANU have to do with the question you are answering?

**Mr. Kiunjuri:** Mr. Deputy Speaker, Sir, the thrust of his question was that it might be another Kipipiri. That is why I want to assure him that he is very safe, and that we should continue with that good relationship.

However, it is true that we have projects all over the country, which have not taken off because of one reason or another other. It might be due to shortage of materials or inefficiency of the contractors. It would, however, be good for us, as a Government, to implement those projects in the shortest time possible, so that they can give us political mileage. So, I want to assure the House that we shall do everything possible to ensure that we complete the project.

**Mr. Odoyo:** Mr. Deputy Speaker, Sir, I believe that the Rural Electrification Programme has over Kshs5 billion, most of which appears not to be utilised in areas such as Lake Victoria shores. When is the Minister going to supplement the efforts of donors like the French, by utilising Government funds that have been earmarked for rural electrification?

**Mr. Kiunjuri:** Mr. Deputy Speaker, Sir, as a Ministry, we are now experiencing a shortage of money. We have no money as of now. That is why we sometimes do not have materials with which to construct the lines. I would like the hon. Member to visit us. He will see that we have so many on-going projects on the shores of Lake Victoria and Nyanza Province as a whole.

**Mr. Deputy Speaker:** Next Question by the Member for Kerugoya/Kutus.

*Question No.464*

UPGRADING OF KIRINYAGA TECHNICAL  
INSTITUTE TO UNIVERSITY STATUS

**Mr. Karaba** asked the Minister for Education what plans he has to upgrade Kirinyaga Technical Institute (KTI) to university status.

**The Assistant Minister for Education** (Dr. Mwiria): Mr. Deputy Speaker, Sir, I beg to reply.

The Ministry of Education has no immediate plans to upgrade Kirinyaga Technical Institute to university status. The current policy of the Ministry is to upgrade institutes to national polytechnics before they can attain university status. Polytechnics are the ones which offer diploma and Higher National Diploma courses.

**Mr. Karaba:** Mr. Deputy Speaker, Sir, I would like thank the Assistant Minister for that short answer. The Assistant Minister seems to be ignorant of what is happening on the ground. Kirinyaga Technical Institute is already collaborating with the Jomo Kenyatta University of Agriculture and Technology. We have received a lot of correspondence from the University. The collaboration status is already on course. Could he confirm whether the information we have on the ground has not even been communicated to the Ministry of Education? The collaboration is already on-going.

**Dr. Mwiria:** Mr. Deputy Speaker, Sir, Mr. Karaba knows that there are many institutions which are collaborating with universities that are not constituent colleges of universities. I answered a Question here on this matter before. The point is that universities can collaborate with institutions, but it is up to the Ministry, and the Government to gazette institutions as constituent colleges of universities before they can gain university status. So, collaboration with a university is not a guarantee that the institution will gain university status. A university cannot decide that an institution becomes its constituent college just because there is collaboration between the two.

**Mr. Maore:** Mr. Deputy Speaker, Sir, what is the Ministry's policy regarding the historical values of nurturing tertiary institutions to last longer before they start upgrading them to universities, which are mushrooming in almost every village or wherever the President visits? This is destroying the communities which would benefit from those tertiary institutions if they are not elevated to universities. The Government should build new universities and retain tertiary institutions for, at least, 100 years?

**Dr. Mwiria:** Mr. Deputy Speaker, Sir, first of all, universities are not mushrooming in every village. Where institutions have been upgraded, it was after consultation and recommendations of the Universities Inspection Board. Secondly, I agree with the hon. Member that---

*(Mr. Maore consulted the Chair)*

Mr. Deputy Speaker, Sir, apparently, this answer was not of any interest to the Member of Parliament, because he has come to speak to you. He asked the question! I thought he would be interested in listening to the answer.

*(Applause)*

**Mr. Deputy Speaker:** What did you say, Dr. Mwiria?

**Dr. Mwiria:** Mr. Deputy Speaker, Sir, I was complaining that you were encouraging the hon. Member not to listen to the answer to the question he asked.

**Mr. Deputy Speaker:** It would have made more sense for Mr. Maore to listen to what the Assistant Minister was saying but he chose to, instead, come and consult the Chair. Be that as it may, you have answered the question.

**Mr. Odoyo:** Mr. Deputy Speaker, Sir, the Minister, who is a former trade unionist with the University Academic Staff Union, is fully aware that in the recent ranking of universities in Africa, Kenyan universities were particularly not highly rated. What is the Ministry doing to ensure that our universities offer quality programmes to compete with similar institutions in the world?

**Dr. Mwiria:** Mr. Deputy Speaker, Sir, it is true that when you compare our universities with universities like Harvard University or Stanford University or Cambridge University, we cannot expect to be as highly rated as those institutions, because universities in the world also have a great deal to do with the resources that are available. We must appreciate that our universities will never be of those standards, because we have never met those standards in anything else. What we are doing, though, is to put measures in place to ensure that we can gradually improve the quality of education in our universities. I would like to tell this House that our students who leave undergraduate degree programmes to pursue further studies in the United States, Europe and other places do particularly well. The rating has more to do with other things than with teaching. The rating is about publications and many other things that we do not consider. I agree that we have to do better but, again, compared to universities in Africa, because this is also relative, our universities are not doing so badly. However, we need to complete with the best universities in the world, and we are doing our best.

**Mr. Karaba:** Mr. Deputy Speaker, Sir, how much money is going to be used to prepare the Institute for that objective, given the funds available to step up the structures in various Institutes?

**Dr. Mwiria:** Mr. Deputy Speaker, Sir, I do not have details of the exact allocation to every Institute, but there is an allocation for every Institute. It is not anywhere close to being adequate in terms of supporting an Institute to become a university. However, the money is good enough for the current status of the institution. We are doing the best we can to ensure that we have more

resources for those institutions that are being upgraded to university status, as well as providing more resources for technical institutes, if they have to be upgraded to national polytechnic status.

**Mr. Deputy Speaker:** Hon. Members, that is the end of Question Time. All the Questions we have on the Order Paper have been answered.

### POINT OF ORDER

#### FATE OF FISCAL MANAGEMENT BILL, 2007

**Mr. Mbau:** Mr. Deputy Speaker, Sir, I rise on a point of order, on behalf of the Fiscal Analysis and Appropriations Committee, which seeks a Ministerial Statement from the Leader of Government Business, in his capacity as the Chairman of the House Business Committee, on the fate of the Fiscal Management Bill, 2007. In the recent past, the Minister for Finance has been quoted extensively in the media commenting on matters related to the Bill. This has raised concerns, and the Bill has already gone through the Second Reading, and is now awaiting the Third Reading.

Mr. Deputy Speaker, Sir, as you know, when the Budget was being discussed, many hon. Members did not participate aggressively and, invariably, absented themselves. This is attributed to the fact that many hon. Members did not participate in the Budget-making process. Even when they brought amendments and contributed to debate, those amendments and contributions did not, of necessity---

**Mr. Deputy Speaker:** Mr. Mbau, can you be precise on what you want?

**Mr. Mbau:** Mr. Deputy Speaker, Sir, we need to know the status of this Bill as soon as we can receive that information.

**Mr. Deputy Speaker:** We do not have the Leader of Government Business here, but we have his deputy.

**The Minister for Justice and Constitutional Affairs (Ms. Karua):** Mr. Deputy Speaker, Sir, I do not know whether this is a matter which needs a Ministerial Statement but, in case, you rule that it does, it will be done on Thursday, next week.

**Mr. Deputy Speaker:** I think the matter needs to be addressed through a Communication from the Chair or a Statement from the House Business Committee.

Hon. Members, when the hon. Member brought that issue to my office, I attempted to make an inquiry as to how many Bills have gone through the Second Reading and have not gone to the Committee Stage, and I managed to count up to eight. That is the Political Parties Bill, 2007, the Nutritionists and Dieticians Bill, 2007, The Fiscal Management Bill, 2007, The Employment Bill, 2007, The Labour Relations Bill, 2007, The Labour Institutions Bill, 2007, The Occupational Safety and Health Bill, 2007 and The Work Injury Benefits Bill, 2007.

The House has spent a lot of time debating these Bills up to the Second Reading Stage. Therefore, it is incumbent upon the House Business Committee to ensure that these Bills be concluded by going to the Committee Stage and Third Reading, because all the time that has been spent on these Bills by this House must be justified by concluding these Bills.

Therefore, I ask the House Business Committee to provide an explanation and, possibly, make the necessary arrangements to have these Bills concluded. You have heard, and I have read it from the Press, that the House has only been able to pass a few Bills, yet here we have eight Bills debated by the House, passed in Second Reading and are only waiting for Committee Stage and Third Reading. Therefore, I think the House Business Committee has some work to do on these Bills.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Deputy Speaker, Sir, if only we were not plagued by lack of quorum all the time! The Bills have already been listed for hearing---

**Hon. Members:** Ahh!

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): If there is no quorum, Bills cannot be discussed.

**Mr. Deputy Speaker:** That answer by the Deputy Leader of Government Business does not correspond with the Statement that I have made from the Chair.

*(Applause)*

These Bills have been concluded. Therefore, the question of quorum does not arise. They have gone up to the Second Reading, the vote was taken and they were passed. It is just a matter of going to the Committee and then Third Reading. Therefore, the Question of lack of quorum does not arise.

Therefore, Deputy Leader of Government Business, please, may the House Business Committee go and deliberate on this, because this House would like to go on record as having utilised its time effectively.

On another matter, Mr. Muite wants to make a Personal Statement.

**Mr. Muite:** Mr. Speaker, Sir, my name was---

*(Mr. Kimunya stood up in his place)*

**Hon. Members:** *Kaa chini!*

**Mr. Deputy Speaker:** Mr. Muite, could you sit down? Let me hear the Minister for Finance. I will give you an opportunity to speak.

**The Minister for Finance** (Mr. Kimunya): Mr. Deputy Speaker, Sir, an hon. Member, while asking for a Ministerial Statement did indicate that I have been making comments on that Bill. Indeed, we have been making comments in the context of the importance of the Bill and why we need to broaden it. For the record, it is important to note that we have communicated the issues that we have regarding the Bill for consideration by a committee of the House, and I am still waiting for a meeting with the relevant committee, so that we can discuss the issues we have before we can even think of the Committee Stage and the Third Reading on the matter.

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

**Mr. Deputy Speaker:** Order! Can you sit down!

It is very strange how Ministers want us to handle the business of the House. The relevant committee was given seven days to deal with the Bill. It was during that time that discussions ought to have taken place. In this case, if the Minister has any issues with the Bill he should bring them to the Committee Stage, possibly move amendments to the Bill and ensure that he achieves what the Ministry wants to achieve in that Bill.

I really do not understand, because the Bill went through the Second Reading. It was concluded in the Second Reading. Therefore, there is no question of saying that it cannot go to Committee Stage because there are issues. The issues should be raised at the Committee Stage. This is as far as procedures of the House are concerned.

**Dr. Oburu:** Mr. Deputy Speaker, Sir, the Finance Bill was committed to my Committee.



The Committee has discussed this issue with the Minister---

**Ms. Abdalla:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to mislead the House when our Committee invited him in April when we were considering the Bill and he declined to come to our meeting? At this point, he should just come to the Third Reading with the amendments. The issue here is to convince people to vote for what he wants to be in the Bill that is not in it now.

**Mr. Deputy Speaker:** Ms. Abdalla, which committee are you referring to?

**Ms. Abdalla:** It is the Committee on Fiscal Analysis.

**Mr. Deputy Speaker:** By the way, I do not think we are really utilising our time usefully. I have said here, from the Chair, that the procedure is that the Bill went through Second Reading. This is the only time that I am finding Bills being held after Second Reading. They should go to the Committee Stage and then be concluded, either way.

### PERSONAL STATEMENT

MR. MUIITE'S DECLARATION THAT HE HAS  
NO PERSONAL INTEREST IN AMENDMENTS  
TO ANTI-CORRUPTION AND ECONOMIC  
CRIMES ACT

**Mr. Muite:** Mr. Deputy Speaker, Sir, I stand under the provisions of Standing Order No.69 to make the following Personal Statement.

You will recollect that during the debate on the Statute Law (Miscellaneous Amendments) Bill, in particular on the amendments relating to the Anti-Corruption and Economic Crimes Act, the Minister for Justice and Constitutional Affairs, on more than two occasions claimed that the Member for Kabete had a personal interest in the amendments proposed. I have here the minutes of the Committee on the Administration of Justice and Legal Affairs which considered the amendments and made its report to this House. I would like to table these minutes. You will note that, in fact, I was absent; I did not attend the meeting where the Committee considered these amendments.

I would also like to add that I have absolutely no personal interest in this issue. We all want to fight corruption, but we want the war on corruption to be fought within the four parameters of the Constitution and the law. I would also like to table the letter which I circulated to hon. Members in response to a letter that had been circulated to hon. Members by an NGO called "the Kenya Private Sector Alliance", and which addresses the reasoning of the Committee, and what informed the Committee in making the recommendations it made. I have no personal interest. The criminal case for the client I represented was terminated. It is finished. So, I have no personal interest in the matter. I would like to table these two documents.

*(Mr. Muite laid the documents  
on the Table)*

**Mr. Deputy Speaker:** Very well. As hon. Members know, under Standing Order No.69, the Statement that has been made is a personal one, and it is not open to debate.

**Mr. Angwenyi:** On a point of order, Mr. Deputy Speaker, Sir. Did we conclude the matter of the Fiscal Management Bill? Could you kindly give us a ruling and, for a change, rein in some of our Ministers, who disregard the procedures and rules of this House.

**Mr. Deputy Speaker:** I think the matter was concluded, because a statement will be

forthcoming from the Leader of Government Business, who is also the chair of the House Business Committee. The statement will be on the matter of the Fiscal Management Bill and also the other seven Bills.

### POINT OF ORDER

#### MR. OJODE'S REFERENCE TO MEMBERS AS KIKUYUS

**Mr. Maore:** On a point of order, Mr. Deputy Speaker, Sir. I would like to raise an issue that transpired yesterday during debate on the Motion moved by Mr. Ojode. There was an exchange between the hon. Member and hon. Members across the Floor, and he uttered words that were not appropriate to matters of decorum and the dignity of the House. When I raised the matter, that he had uttered the same words, he denied categorically ever uttering them. I would like to invite the Chair to peruse the HANSARD and give us a ruling as pertains to the utterances by Mr. Ojode and his subsequent denial to the effect that he uttered the words: "Why are these Kikuyus up?" during his debate. He denied ever saying that. Now the HANSARD is here. I would like to invite the Chair to do the necessary censure.

**Mr. Deputy Speaker:** Indeed, I listened to that debate. Mr. Ojode said that he did not utter such words. The Chair did not hear the words. As I have said, in parliamentary practice we have to go to the HANSARD, and if it is true that Mr. Ojode uttered those words, he will be dealt with in accordance with the rules of the House.

Next Order.

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee Read)*

*[Mr. Deputy Speaker left the Chair]*

#### IN THE COMMITTEE

*[The Temporary Deputy Chairman  
(Mr. M'Mukindia) took the Chair]*

#### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

*(Resumption of consideration  
interrupted on 12.9.2007)*

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Hon. Members, we will continue from where we left off yesterday. We are in the Committee of the Whole House, and are considering amendments to the Statute Law (Miscellaneous Amendments) Bill, I would like to refer you to the Order Paper on page 523, Item (i), where we are dealing with the Anti-Corruption and Economic Crimes Act, 2003. I want to draw the attention of the Attorney-General to the fact that the proposed amendments to Section 23(4) were actually deleted yesterday. Therefore, we are unable to move any more amendments to that. That is no longer open to debate. Let us move

directly to Section 56A(1).

Hon. Members, again I draw your attention to the fact that Mr. Muite has given notice to move an amendment to Section 56A. If you look at page 525 you will see the proposal to delete the proposed Section 56A. I would like Mr. Muite to move that amendment, because if we agree to delete it then we cannot change anything else after that. So, let us deal with the deletion first.

*Section 56A*

**Mr. Cheboi:** Mr. Temporary Deputy Chairman, Sir, on behalf of the Committee, I beg to move:-

THAT, the provisions relating to the Anti-Corruption and Economic Crimes Act be amended-

(j) By deleting the proposed section 56A.

Mr. Temporary Deputy Chairman, Sir, for the benefit of the House, this is the particular section which intends to give the Kenya Anti-Corruption Commission (KACC) an option to appoint a receiver to manage properties on issues of mere suspicion. First, part (i) says that:-

"The Commission may at any time, before or after instituting civil proceedings, appoint a receiver".

We have a problem with that kind of appointment and, in fact, as far as we are concerned, they will not even go to court to seek any orders of appointment of a receiver. We have looked at the proposed amendment by the Attorney-General, in which he has proposed that a receiver can be appointed by leave of the court. We really have a major problem, and I think, of all the amendments that have been proposed, this is the most dangerous. It is open to vendetta.

This is an issue of suspicion. I do not know how we can litmus suspicion, and by who? The Director of KACC or even the Assistant Director, on mere suspicion, can appoint a receiver to manage a property. First, that will obviously, reverse the burden of proof from the person instituting the investigations to the suspect. Not even the accused, but a mere suspect. I want to beseech the House to very quickly throw away this amendment, because it is an extremely dangerous way of dealing with things.

If we place power on one particular individual, we will be creating a monster that will be used for political reasons and to settle personal vendetta. This is a very dangerous move.

**Mr. Bifwoli:** Mr. Temporary Deputy Speaker, Sir, I beg to second the amendment. We should not allow a body like this one to work on suspicion because some human beings suspect others in their dreams. If somebody just dreamt that you acquired your property wrongly and appoints a receiver, by the time you go to court to prove that you acquired it legally, the receiver might have disposed of your property to recover the money that you are suspected to have stolen. How will you get back your property?

This House cannot make laws and empower certain human beings to operate the courts. Otherwise, where are we going? Are we leading in the name of fighting corruption? We want to end up being dictators or people in power directing others what to do.

With those few remarks, I beg to second.

*(Question of the amendment proposed)*

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Chairman, Sir, I oppose this amendment. This amendment was subject of very extensive comments during the Committee Stage. It was because of the various views that had been expressed in this House on this amendment, which made it appear that it could be subject to arbitrariness and abuse, that---

**Mr. Muite:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Did you hear the Attorney-General say that this Section was subject of very intensive consultations during the Committee Stage? Which Committee Stage?

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I would like to have the HANSARD Report on this one, because it was subject to very intensive comments during the Second Reading of the Bill. It was so obvious, that I wonder why the hon. Member is raising the issue. He knows very well that what I am saying is true, that this proposal was subject to very extensive comments from both sides of the House on the fact that it could be abused and the exercise of the powers could be arbitrarily abused by the Director of KACC.

That is why I have proposed an amendment which will allay the fears that were expressed during the Second Reading of this Bill. I have introduced the words "with leave of the court", it is before the court that KACC will have to assert and prove the suspicion that they have, which must, of course, be reasonable. It is before the court that they will have to show that they are entitled to the orders that they are seeking and only if they are seeking those orders correctly and in accordance to the law, will an official receiver be appointed. Therefore, the fears that were expressed during the Second Reading and the fears that have been expressed by the Mover and the seconder of the amendment from the Committee, have already been dealt with by my proposed amendment.

Therefore, I propose that we vote against this proposal to delete the entire clause, and instead you support me in the amendment which I have proposed, which will come thereafter.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I oppose the amendment by the Committee and support the amendment by the hon. Attorney-General. This section is trying to give the Commission power, as a body, but not as a director or an assistant director, to appoint a receiver of property suspected to have been corruptly acquired, pending conclusion of investigations.

This section does not leave the owner of the property helpless. This Section is needed because when a person realises that he or she is under investigation, they may be tempted to move to liquidate the suspected looted property or to change it to other hands. This Section will help to preserve the assets. If you look at the entire Clause, you will see that in Sub-clause 10 of the proposed Section 56, a person aggrieved by the appointment of a receiver under this section, may request the Commission in writing to put aside that appointment, and if they refuse, a person may apply to court.

You will recall that on many occasions, hon. Members as well as the public, wonder why looted property is not being recovered. This is precisely the reason why this section is being brought, so that the Commission can have powers to preserve and to eventually recover looted property. Voting against the Attorney-General's amendment and passing the proposed amendment is standing with the looters.

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

*(Proposed Section 56A deleted)*

**The Temporary Deputy Chairman** (Mr. M'Mukindia): I wish to point out to the Attorney-General that now that we have deleted Section 56A, his proposed amendment is no longer valid. Therefore, you may strike it out of the Order Paper.

Let us move on to Section 56B.

*Section 56B*

**Mr. Cheboi:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, the provisions relating to the Anti-Corruption and Economic Crimes Act be amended-

(k) By deleting the proposed Section 56B.

This is fairly straightforward. What informed us in trying to have this particular section deleted is that, the amendment he is proposing to bring will be removing the fact that it should be mandatory for any crime to be investigated before civil proceedings are brought forth. What everybody should then be asking themselves is on what basis the civil proceedings will be carried out if there are no investigations, whatsoever. This is fairly straightforward and we do not need to speak so much on it. We need investigations to be carried out before any proceedings are brought to fore.

I beg to move.

*(Question of the amendment proposed)*

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I rise to oppose the amendment by the Committee and support the amendment by the Attorney-General. The amendment by the Attorney-General seeks to bring clarity, that it is not necessarily to undertake a criminal investigation before instituting a suit for civil recovery. We all know that we do not institute criminal proceedings any time we are suing people who owe us money or who we believe have wronged us. Similarly, the KACC may not have sufficient evidence to institute criminal proceedings, but it may have enough evidence for civil recovery. Noting that any lawyer, worth their salt knows that the burden of proof in civil cases is much lower than that in criminal cases.

So, where the people of Kenya, because of scarcity of evidence or different circumstances, are unable to pursue a person guilty of economic crimes in a criminal court, they should be able to, at least, recover the looted property through civil proceedings. This Section is actually just bringing that clarity.

I beg to support the Attorney-General's amendment and to oppose the Committee's amendment, and say that it is mischievous and deliberately designed to help looters.

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

*(Proposed Section 56B deleted)*

*Section 61A*

**Mr. Cheboi:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, the provisions relating to the Anti-Corruption and Economic Crimes Act, 200, be amended -

(l) By deleting the proposed Section 61A;

Mr. Temporary Deputy Chairman, Sir, this is a Section which is dealing with courts. The proposal is saying that, if you are successful against the Commission, costs will not be awarded. I am surprised that the Attorney-General participated in this when he knows very well, even from the Government itself, where he is the Chief Legal Advisor, costs are recoverable!

Mr. Temporary Deputy Chairman, Sir, we should leave the issue of court costs to the discretion of a particular court.

So, Mr. Temporary Deputy Chairman, Sir, I do not think I need to dwell so much on this issue. It is an issue of recovery of costs. The Commission is a body corporate capable of being sued and capable of suing. If they sue, costs should be recovered if the courts so agree.

Thank you, Mr. Temporary Deputy Chairman, Sir. I beg to move.

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, on this one, I do agree.

*(Applause)*

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

*(Proposed Section 61A deleted)*

**Mr. Cheboi:** Mr. Temporary Deputy Chairman, Sir, I had proposed a certain amendment to Section 61B. I had given the requisite notice on a personal capacity.

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Well, as you know, hon. Cheboi, the item is not on the Order Paper and, therefore, anything that is not on the Order Paper cannot be debated. We do not have that one. I am afraid you will have to go to the next one, which is Part "m".

#### *First Schedule*

**Mr. Cheboi:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the provisions relating to the Anti-Corruption and Economic Crimes Act, 200, be amended-

(m) In the amendments relating to the First Schedule, by deleting the proposed amendment and inserting the following new amendment -

Insert the following proviso immediately after subparagraph 2(1)-

`Provided that if the President refuses or fails to appoint the person recommended by the Advisory Board within fourteen days of the recommendations, the appointment shall be deemed to have been made upon expiration of that period'.

Mr. Temporary Deputy Chairman, Sir, on this Item "m", we are proposing--- If you can remember, sometimes ago, we debated at length the issue of the appointment of the Director and Assistant Directors to Kenya Anti-Corruption Commission (KACC). When that was done here and the names taken to the President, one name was rejected. What we are proposing here is to make the appointment of the Director and his assistants merely ceremonial on the part of the President, so that once Parliament has decided--- There is no point to bring those issues to Parliament to be discussed and then, taken to another institution and rejected. So, we are proposing that, for example, in the case of Dr. Julius Rotich, whose appointment was rejected, there should have been no opportunity to reject and, within fourteen days, the appointment should have been automatic.

I beg to move.

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I stand to strongly oppose this proposal for very many reasons, some of which are constitutional and others that relate to the wording of the phraseology itself.

Mr. Temporary Deputy Chairman, Sir, under our Constitution, the executive authority which deals with the appointment of all public officers is vested in the President. The core function of Parliament of this National Assembly is to legislate. We should never separate--- We should be very, very clear in our minds, at all times, that the executive authority is vested in the President, and the core function of Parliament of this National Assembly is to legislate - not to appoint. That is the first point that I would like to make.

Mr. Temporary Deputy Chairman, Sir, the second point that I would like to make regards the example that has given, that is of Mr. Rotich. It was quite clear that both the Advisory Board and the Committee of this House had not done their functions and duties, which were to recommend somebody who, at the time of recommendation, did not have anything against him. At the time they made the recommendation, investigations were going on before KACC on issues relating to National Cereals and Produce Board (NCPB). Therefore, they ought not to have made the recommendation at that time. The fact that the investigations were going on was within the knowledge of the Advisory Board. Therefore, they ought not to have made the recommendation to Parliament. Parliament ought not to have made the recommendation to the President to appoint. That is the second point that I would like to make. So, they never carried out their duties. So, by the fact that the Advisory Board did not carry out its duty, it should not now turn around and blame the President for having refused to appoint Dr. Rotich.

Mr. Temporary Deputy Chairman, Sir, the third point that I would like to make here is: Even in a situation where Parliament is exercising its core function to legislate, the Constitution does provide that the President can refuse to give consent to the Bill. The same Constitution also provides the procedures which must be followed. In other words, when he refuses, it comes back to the House, so that the House can have the benefit of the President's wisdom, and make a decision accordingly. It is only last week that this august Assembly - the National Assembly - saw the benefit of the President's wisdom on the issue of the Media Bill, and agreed with the President, although two weeks before, they had passed the legislation.

Mr. Temporary Deputy Chairman, Sir, the phraseology that we have now does not give this House any opportunity to benefit from the wisdom of the President. All it says is that, as soon as the name goes there, within fourteen days, whether or not the President has assented, the person will be deemed to have been appointed. It does not give an opportunity for this House to find out the following: Why has the President refused to give assent? That way, they can benefit from his wisdom. The history of this House - and not just the Media Bill - has been that anything that has been referred back to this House by the President in terms of the Bill, this House has always agreed with it. It has benefitted from that wisdom. We need to have a phraseology here under which this House can benefit from that wisdom.

Mr. Temporary Deputy Chairman, Sir, on those three grounds, I totally and strongly oppose this proposed amendment.

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, I appreciate that the Attorney-General, besides being the Chief Legal Advisor to the Government, is also a Senior Counsel and, therefore, I expected him to agree with his colleague Senior Counsel that, in order to understand a section, you read it as a whole. That is how you can understand the intention of the Legislature.

Mr. Temporary Deputy Chairman, Sir, the Attorney-General has talked about executive authority, which is to be found in Section 23 of the Constitution. With your permission, Section 23

Sub-section (1) says:-

"The executive authority of the Government of Kenya shall vest in the President and, subject to this Constitution, may be exercised by him either directly or through other officers subordinate to him."

What the Attorney-General did not draw the attention of this House to, is Sub-section (2) of the same Section 23, which says:-

"Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the President!"

*(Applause)*

So, when we enacted the Anti-Corruption and Economic Crimes Act, we exercised our powers under Section 23(2) to confer functions and authority on a person other than the President.

Mr. Temporary Deputy Chairman, Sir, how long have we complained about the over-concentration of powers in the institution of the Presidency? We want powers to be shared between the institution of Parliament and the institution of the Presidency. In fact, Section 24 goes on to say:-

"Subject to this Constitution and any other written law, the powers of constituting and abolishing offices for the Republic of Kenya, or of making appointments to any such office and terminating any such appointment, shall vest in the President."

It says: "Subject to this Constitution and any other written law!" The other written law is the Anti-Corruption and Economic Crimes Act.

Now, Mr. Temporary Deputy Chairman, Sir, look at the recent debacle we had about the judges. Who appoints judges in this country? Is it the Judicial Service Commission or the President? In the case of Director and Deputy Director of KACC, the Act tells us very, very clearly that, once the Advisory Board has been constituted, it is them who will advertise for the position of Director and Assistant Director. They vet them, they interview them and then, they bring those names to Parliament. Once Parliament has vetted, that is the end of the matter!

Mr. Temporary Deputy Chairman, Sir, the position of His Excellency the President in gazetting is similar to the position of Mr. Speaker. If the people of Kabete elect me, I become Member-elect for Kabete. But I cannot transact business until I am sworn in by the Speaker! Is it tenable that the Speaker can turn around and say: "I am not going to swear in the hon. Member for Kabete?" Of course, not! His role is ceremonial and formal! Therefore, while Parliament has cleared the person, the role of the President is actually to gazette. The Government is represented here in this Parliament. If it had any objection about Dr. Rotich, it should have said on the Floor of this House.

*(Applause)*

They should have defeated us on the Floor of this House, instead of maligning peoples' names. Dr. Rotich sold the strategic stock of maize on the instructions from the Cabinet!

**Hon. Members:** Yes!

**Mr. Muite:** He was directed in writing to sell. He even wrote to say: "Given the prices that we bought this maize from the farmers, if we sell the maize at the current world market prices, the Board is going to incur a loss of Kshs2 billion."

He received a letter signed by the then Secretary to the Cabinet, Dr. Sally Kosgei. She told him: "This is not a request! This is a Government directive. Sell!"

Mr. Temporary Deputy Chairman, Sir, what would you have done if you were in Dr.



Rotich's position? That is the information that was used by a Minister from the Front Bench to tell the President to ignore a decision of this House.

Mr. Temporary Deputy Chairman, Sir, we are moving forward to vet public positions in order to avoid the abuse by the Executive. There is no clause that is more important than this one. I urge hon. Members to exercise the authority of this House. There is no violation of Sections 23 or 24, because both Sections give authority to this House to do exactly what we are doing. I urge hon. Members to vote in favour of the proposed amendment.

*(Applause)*

**Mr. Wambora:** Thank you, Mr. Temporary Deputy Chairman, Sir. I will not argue as a lawyer, but as a political scientist. This is a very, very dangerous amendment and I am opposing it because it is going to wreck the entire Statute Law (Miscellaneous Amendments) Bill. We cannot afford this Bill to be rejected by the President because we are overriding his executive powers. We are talking about the executive role. I have been in the Civil Service for over 20 years, and I know when the role is executive and when it is legislative. This is an executive role and the moment we override the executive role with the legislative role, it will be rejected. We cannot afford to have this Bill thrown away.

So, Mr. Temporary Deputy Chairman, Sir, I support the Attorney-General and reject this amendment.

**The Minister for Finance (Mr. Kimunya):** Mr. Temporary Deputy Chairman, Sir, I rise to oppose this amendment. Yesterday, I said that even as we move the emotions of the day, we are legislating for the future. We should, therefore, not have any law that tries to take away the powers of the President and bring them through deeming provisions. As Mr. Muite has described it, it reduces the President to a "gazetting clerk". The role of the President, when Parliament has passed these appointments would purely be to gazette the names. Within the Act, the President carries out his job in two functions; one, as head of the Executive and two, as the Head of State. Parliament is one of the three arms of the Government. Parliament, can therefore, not purport to do everything on its own, including hiring people for the Executive and the entire State. It is co-operation between Parliament and the Executive. The Head of State endorses appointments on behalf of the people of Kenya. This body is supposed to be fighting corruption on behalf of the people of Kenya.

Mr. Temporary Deputy Chairman, Sir, you may recall that yesterday we said that we do not even want the Government to sit in the Advisory Board. We want to have a very independent body that does its work, presents names to Parliament which then says: "These are the people to be appointed". Nobody is supposed to vet those people. Nobody knows why they were appointed and we then tell the President: "You must sign these names or within 14 days, they become the officers and do the job under you". We then hold the President responsible for the operations of the Kenya Anti-Corruption Commission (KACC). I think here, we are failing in our legislative duties.

Mr. Temporary Deputy Chairman, Sir, we need to look at what is involved in the appointment of public servants. Beyond the vetting in Parliament in terms of technical qualifications, there is a security vetting that has to be done. There are tax compliance issues that have to be done. There are issues in terms of, "does this person have any investigation taking place?", as was the case with Dr. Rotich. In fact, when Dr. Rotich was cleared of the issues that were surrounding him, he was appointed the Deputy Secretary-General representing Kenya within the East African Community (EAC). He was appointed by the President!

Mr. Temporary Deputy Chairman, Sir, it is not the person! It is the issues involved. At that point, there was a pending issue against Dr. Rotich. When that issue was cleared---

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

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, hon. Members! Allow Mr. Kimunya to say his piece, I will give you time to say yours! Please, allow him to say his piece without interruption. If you want to interrupt, do it through me as the Chair.

Mr. Kimunya, please, proceed!

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, the Attorney-General has clearly identified that at the point of the appointment, there was a pending investigation by the body where he was being proposed to be the Deputy Director. When that was cleared, he was appointed by the President to represent Kenya within the EAC. Therefore, there is nothing wrong with Dr. Rotich. We are talking about a process here. I think that is why we need to distinguish between a process and the person.

Mr. Temporary Deputy Chairman, Sir, I am not a lawyer but I am a lawmaker. The sections quoted within the Constitution are being selective. Every public servant holds office at the pleasure of the President. That is in the Constitution. How do we then start forcing the President that he must have a particular person. He can also use his powers within the Constitution to say: "It is not my pleasure to have that person under my service". Let us not create conflicts between the institutions of Government. Let us have proper equilibrium between Parliament, the Executive and the Judiciary because KACC is such an important body.

Never mind that we have removed all its powers. Never mind that we have mutilated all the powers that we had given it. In fact, I am not even sure what these people we are appointing will be doing after we have watered down all the laws that we had to create it. However, I would guide that we get back our collective thinking on this. Are we doing it to get even on some issues or are we doing it for posterity as we delete this provision by the Committee?

**Mr. Kosgey:** Mr. Temporary Deputy Chairman, Sir, I was not going to rise to make a contribution but the fact that the name of Dr. Rotich has been mentioned--- It is quite unfair that an individual, now serving as a Deputy Secretary-General of the EAC, is being discussed here. However, I want to put it on record that Dr. Rotich was given an appointment the other day after a delegation visited State House. It was done for political reasons. They knew this all along and it is just because politics is around the corner that they think they can---

**The Assistant Minister for East African Community** (Dr. Khalwale): On a point of order, Mr. Temporary Deputy Chairman, Sir.

**Mr. Kosgey:** Let me finish!

Mr. Temporary Deputy Chairman, Sir, I have to put the records---

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, Mr. Kosgey! What is your point of order, Dr. Khalwale?

**The Assistant Minister for East African Community** (Dr. Khalwale): Mr. Temporary Deputy Chairman, Sir, I am the Assistant Minister for East African Community which is responsible for hiring of personnel at the Secretariat of the EAC. I am aware that the hiring of Dr. Rotich was done competitively. Therefore, I am wondering, whether it is in order for the hon. Member to suggest that Dr. Rotich was hired through lobbying by some Kalenjin elders.

**Mr. Kosgey:** Mr. Temporary Deputy Chairman, Sir, let me just finish what I wanted to say. I think I have made my point. Everybody knows and it is quite clear why the appointment was made the other day.

Mr. Temporary Deputy Chairman, Sir, the Minister for Finance also knows and knew all along that Dr. Rotich was clean. However, he chose to make sure that Dr. Rotich did not get the appointment.

*(Applause)*

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, hon. Members! I am very surprised and disappointed that on one hand, you say we should not discuss a person who cannot defend himself or herself or who is not in this House and quite rightly so, and on the other hand, we are discussing a very important personality in our country as well as the EAC. Please, I urge you as we move forward, to leave Dr. Rotich to do his job in peace!

*(Applause)*

**The Minister for Trade and Industry** (Dr. Kituyi): On a point of order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Yes, as long as you do not discuss other people's personality.

**The Minister for Trade and Industry** (Dr. Kituyi): Mr. Temporary Deputy Chairman, Sir, I am not discussing any personality.

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Okay, go on!

**The Minister for Trade and Industry** (Dr. Kituyi): Mr. Temporary Deputy Chairman, Sir, I am a member of the Council of the EAC. I know the integrity with which Kenya's representation in that organ is supposed to be held. There was nothing in the statement by Mr. Kimunya to discuss the character and mode of recruitment of a very senior officer. That position was filled by a Kenyan when the tenure of the earlier occupant of the office; Mr. Cheluget, came to an end. It was not according to any political time table.

Mr. Temporary Deputy Chairman, Sir, if an hon. Member stands on the Floor of the House under the guise of answering an allegation and makes aspersions at the integrity and the procedure of hiring a senior officer, do not make a general ruling. Demand that Mr. Kosgey withdraws such irresponsible utterances.

*(Applause)*

**Mr. Kosgey**: Mr. Temporary Deputy Chairman, Sir, there are people who can be witnesses that after they visited State House, the appointment came. Really, the facts speak for themselves. I think we should not continue dwelling on this. As you rightly said, we are not discussing Dr. Rotich.

**An hon. Member**: Withdraw!

**Mr. Kosgey**: I will not!

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Hon. Members, I think we shall move on. He has not really maligned him. He has not! It is entirely the opinion of hon. Kosgey that the process was carried out in a certain way. That does not mean that he is maligning anybody.

**Mr. Angwenyi**: Mr. Temporary Deputy Chairman, Sir, this House should not try to amend the Constitution through an Act of Parliament. Let this House not enact laws which are meant to embarrass the President of the Republic of Kenya. The Constitution states very clearly how public appointments are supposed to be made. If you want to amend the Constitution, which is within the powers of this House, then we should go ahead and do so. We should also provide the procedures and rules to govern those appointments. For once, I happen to find myself in the same compartment with hon. Kimunya, whom I do not like being with in the same compartment most times. So, I would like to oppose this amendment. I hope that this House will support me in opposing this

amendment.

*(Laughter)*

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

*(First Schedule agreed to)*

*Second Schedule*

**Mr. Syongo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the provisions relating to the Anti-Corruption and Economic Crimes Act be amended-

(n) By deleting the proposed amendment to the Second Schedule;

Mr. Temporary Deputy Chairman, Sir, I would like to draw the attention of the House to the fact that the drafting might have been a purely typographical mistake. This is because if you go to the original Act, as it is today, under the Second Schedule, Section 2(1) says:

"The term of each nominated member of the Advisory Board shall be five years."

Emphasis is: "Shall be five years." The intended amendment, which I believe was by mistake reads:

"A member of the Advisory Board shall, unless his office becomes vacant, continue in office until he is reappointed or replaced."

It has used the word "shall" again. What that means is that whereas Section 2(1) says that the term shall be five years, the proposed amendment is tantamount to contradicting the provisions under Section 2(1). I think this is a mistake. I have drawn the attention of the Attorney-General to that obvious lack of internal consistency and, therefore, beg to request that he actually accepts that this proposed amendment be deleted in order to have internal consistency in the provisions of the Second Schedule.

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I oppose this amendment because it is really for the sake of continuity. Even under our Constitution, it is stated that the President shall hold office for five years, but at the end of the five years, we have to wait until he hands over to a newly elected person. Otherwise, at times you can have a vacuum, which you cannot fulfil if, somehow, the newly elected person is not there to take over at that time.

Mr. Temporary Deputy Chairman, Sir, so, both the amendment to the First Schedule, which relates to the Director and the amendment to the Second Schedule, which relates to members of the Advisory Board are actually there for the sake of continuity.

**Mr. Syongo:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I need your guidance here. If you look at Section 1, there is a clear timeframe provided for in the Second Schedule in terms of the process of appointing members to the Advisory Board. The timeframe is such that it ensures that there will be no extension beyond the five years. So, that way, Section 2(1) is actually complied with.

Mr. Temporary Deputy Chairman, Sir, there would be no reason, if the timeframe is adhered to, as stipulated under Section 1, to go beyond the five years. I beg that this House agrees that this be deleted.

**The Temporary Deputy Chairman** (Mr. M'mukindia): Order, Mr. Syongo! That is not a point of order. Basically, what the Attorney-General is saying is that he does not agree with you.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I oppose the amendment by Mr. Syongo and agree with the Attorney-General that this Clause--- The amendment by the Attorney-General is intended to allow a holding over pending the process of appointment of new Board members or the reappointment of existing ones to ensure that the work of the Commission and that of the Advisory Board continues without interruption. This is because experience has shown that the process of appointment sometimes takes a little longer than the time required.

I beg to oppose the amendment by Mr. Syongo and support the amendment by the Attorney-General.

**Mr. Cheboi:** Mr. Temporary Deputy Chairman, Sir, what the Committee is seeking to get out of this is that there should be no extension of a contract through the back door. Recently, when, as a Committee, we interviewed commissioners for the Kenya National Commission on Human Rights (KNCHR) - that was not the first time - the Minister herself delayed in causing the appointment of those commissioners. What we are saying is that the---

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): On a point of order, Mr. Temporary Deputy Chairman, Sir. Is the hon. Member in order to give half-truths to this House that I delayed appointments to the Commission, when, indeed, the appointments did not last on my desk for more than a week after receiving them from Parliament? Could he, please, substantiate that I delayed the appointments?

**Mr. Cheboi:** Mr. Temporary Deputy Chairman, Sir, once the Committee has conducted the interviews and referred the names to the relevant Minister, it is incumbent upon her to cause these commissioners to be appointed. As we speak now, we do not have---

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, Mr. Cheboi! I am not aware of the actual provisions of that legislation, but is there a time limit that was set? Did the Minister exceed the time limit?

**Mr. Cheboi:** Mr. Temporary Deputy Chairman, Sir, there is a timeframe, but it has been violated by the Ministry of Justice and Constitutional Affairs. What will happen to this particular one is that we shall be saying, "Extend the time because the Minister and particular departments have not been able to fill those positions". So, what I am saying is that we should not extend time.

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, Mr. Cheboi! You have made very clear statements that certain provisions have been violated and, therefore, it is incumbent upon you to substantiate. If you are not ready to substantiate now, I can give you time to do it next week. I have no problem. However, you need to do it now.

**Mr. Cheboi:** Mr. Temporary Deputy Chairman, Sir, as we speak now - I am substantiating - the term of office has expired and we do not have Commissioners in place. I do not know what more substantiation I should give other than to say that the time is over and we have not been able to fill those positions. In fact, there is difficulty in raising quorum. But let me not pursue that line.

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, Madam Minister and Mr. Cheboi! I have given you up to Tuesday to bring the substantiation in writing.

**Mr. Cheboi:** Mr. Temporary Deputy Chairman, Sir, I will be very happy to do that. In fact, in very big detail. But what I am saying is that, we need to be more efficient as Parliament and make sure that when it is about six months or so to the end of the term of the Commissioner and the Advisory Board of the Kenya Anti-Corruption Commission (KACC), we should cause the process to start. We will

be able to fill those positions in good time. We should not legislate against our own laziness. That is what I am saying.

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

*(Second Schedule agreed to)*

*Fourth Schedule*

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the provisions relating to the Anti-Corruption and Economic Crimes Act be amended -

(O) By deleting the proposed amendment to the Fourth Schedule.

Mr. Temporary Deputy Chairman, Sir, the rationale for that is that the Fourth Schedule would have been an amendment that follows and flows from an amendment that would have introduced in Section 7(A) of the Act as was anticipated and proposed by the Attorney-General on page 1350 of the Bill. That having failed to see the light of day, the Fourth Schedule, therefore, becomes unnecessary and is irrelevant for all practical purposes.

For all those reasons, I beg to move.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Mr. Attorney-General, do you have any observation on that?

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, although the Fourth Schedule was a very important proposal moved by me, but in view of the decision of the House, I agree with the Mover that, in view of the decision of the House yesterday to delete proposed Section 7(A), then this cannot stand on its own because it is part of that Section that was "killed" yesterday, unfortunately.

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

*(Proposed amendment to the Fourth Schedule deleted)*

*(Fourth Schedule agreed to)*

*(The Anti-Corruption and Economic Crimes Act, 2003 as amended agreed to)*

*The Public Officer Ethics Act, 2003*

*Section 2*

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Hon. Members we now move on

to the Public Officer Ethics Act, 2003 (No.4). There are proposed amendments. We shall start with the Attorney-General, if he has anything to say.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the provisions relating to the Public Officer Ethics Act, be amended by deleting the proposed amendment to Section 2 and substituting therefor the following-

<sup>s.2</sup> Insert the following proviso at the end of paragraph (e) of the definition of "public officer"-

Provided that this Act shall apply to an officer of a co-operative society within the meaning of that Act.

(k) by inserting the following new amendments in proper numerical sequence-

Mr. Temporary Deputy Chairman, Sir, the purpose of this amendment is to make clear that officers in co-operative societies are covered under the Public Officer Ethics Act but it does not apply to people who have been voted in, in the management committees but only to people who work in the co-operative societies. It came from the Ministry of Co-operative Development.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I rise to second this amendment. It is necessary because of the volume of the number of returns that are filed by officers within the co-operatives. If it is not restricted to the very top, then it becomes totally impossible to even store or scrutinise. This is something that has been found necessary after the experience of the last three years.

I beg to second.

*(Question of the amendment proposed)*

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

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

*(Section 2 as amended agreed to)*

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Hon. Members, turn to page 525 of the Order Paper - the Public Officer Ethics Act, 2003 (No.4). I believe the Committee is responsible for moving this amendments.

### *Section 30*

**Mr. Bifwoli:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the provisions relating to the Public Officer Ethics Act be amended -

(a) By deleting the proposed amendment to Section 30.

Mr. Temporary Deputy Chairman, Sir, Section 30 states:-

"That the contents of the declaration or clarification under this Act, shall be accessible to any person upon application to the responsible commission.

No information obtained pursuant to Sub-section 1 shall be published or in any way made public except by prior written authority of the responsible commission."

Mr. Temporary Deputy Chairman, Sir, if we are going to bring this amendment, it means that the right of one's privacy will never be respected. That one can only be done if you apply through the courts. We feel that, that information should only be released to the public when somebody goes to court and declares interest as to why he wants to know what property I own. Again, even when you are sick and they know that you are sick, somebody who wants to know about your sickness must go to court because it is supposed to be private. Some of these human beings in Kenya are polygamous. If you are going to allow anybody to access my property, what about those wives that I have hidden the information from? Are you suggesting that they should all know what properties I have? How is my privacy going to be guarded? So, I stand to say that we delete that Section.

I beg to move.

*(Question of the amendment proposed)*

**Ms. Ndung'u:** Mr. Temporary Deputy Chairman, Sir, I would like to support this amendment as proposed by Mr. Wakoli. I think it is important for me to take you through the parent Act, because one of the things that happened yesterday--- I realised, when I saw the coverage by the Fourth Estate of yesterday's proceedings, that it is obvious that people are not making reference to the parent Act. Yesterday, we were not taking away any powers from the Commission. Actually, the Commission was trying to give itself some more powers, which we declined to grant. The Commission still has powers.

Therefore, in the case of the Public Officer Ethics Act, I would like us to go to the parent Act. The parent Act, which we carefully passed in 2003, talks about the manner in which people can access the information in the declarations. We said that the information can be accessed, or acquired, by authorised staff of the Commission, the police or any other law enforcement agency, a person authorised by an order of a judge of the High Court or a person who provided that information or his representative. In other words, we are not saying that this information is closed, but we are exercising caution, while respecting the right to privacy *vis-a-vis* public interest. We need to also protect people from malicious people. The information is only necessary if one is suspected of "x", "y" and "z". Really, this is not constitutional. It is unconstitutional; it goes against the right to privacy, and does not take away the intention that we had in terms of giving our declarations away. We have already provided the manner in which that information can be accessed. Therefore, this proposed Section is dangerous and should be deleted.

*(Applause)*

**The Minister for Justice and Constitutional Affairs (Ms. Karua):** Mr. Temporary Deputy Chairman, Sir, I stand to oppose the amendment. It is quite obvious that the Public Officer Ethics Act has turned into a useless piece of legislation due to the opaqueness of the manner in which we handle declarations. Unless they are opened up, an individual can even put a blank piece of paper in a sealed envelope and we will never know whether they actually declared their wealth or failed to do so.

This legislation will not merit remaining in the statute books unless we can open the declarations to scrutiny. I do not see any danger to any individual whatsoever, if the fact of their wealth, or lack of it, got into the public arena. It is a measure that will help enhance transparency and put leaders on the spotlight, so that if you amass wealth that is beyond your means within a given period, then people can, in public interest, follow. This is a clause put in, in public interest to enhance transparency and accountability and smoke out looters.



It is not correct to say that yesterday we did not take away powers of the Commission. When you delete whole sections that allow investigations, you are destroying the powers of the Commission. Let people have courage of their conviction. When you stand and propose to delete a section, be courageous enough and say: I would rather opaque declarations. Open declarations are harmful to me or to a group". But it is in the interest of the public that these declarations be opened.

Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment proposed by Mr. Wakoli and support the amendment proposed by the Attorney-General.

**Mr. Angwenyi:** Mr. Temporary Deputy Chairman, Sir, the piece of legislation that we passed in 2003 under Mr. Murungi with these provisions was among the best, because today, with carjackers and hijackers, if you tell them that you have Kshs300,000 in your bank, they will get hold of your wife and child and put a price on them. That is what we are doing! The people proposing this amendment should declare publicly---- I want to know the Attorney-General's assets. Let him declare them in the newspapers, and then we will know he is serious.

*(Applause)*

The amendment proposed by the Committee through Mr. Wakoli should be supported by everybody of integrity in this House.

I beg to support the amendment.

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

*(Proposed amendment to Section 30 deleted)*

*(Section 30 agreed to)*

#### *Section 30A*

**Mr. Bifwoli:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the provisions relating to the Public Officer Ethics Act be amended -

b) by deleting the proposed Section 30A.

The proposed Section 30A reads:-

"Each responsible commission shall prepare and submit to the Minister a return of all declarations or clarifications made under this Act within a period of three months."

We want to delete this thing, because it is very dangerous. Suppose your Minister is your enemy, what will happen? He will kill you!

*(Applause)*

Secondly, the position of a Minister is not constitutional. It is the prerogative of the President. How do we give such a responsibility to the Ministry that is always "twisting" or "changing places"?

*(Laughter)*

Let us make law that we can subscribe to, and not law that can make us start crying tomorrow.  
I beg to move that we delete the amendment brought forward by the Attorney-General.  
**An hon. Member:** Wakoli, my hero!

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I oppose this amendment. Actually, he should have moved amendments to proposed Sections 30A and 30B, because they follow each other, and maybe he should do so now.

I oppose this amendment because on careful reading of this Section, what will be returned to the Minister will not be the actual declaration forms. I think hon. Members here are under the apprehension that the Minister is going to receive actual declaration forms. What will be returned will be all declarations. What that means is that if, for example, in, say, the Judiciary, there are 100 employees who are supposed to fill in forms, the return will just say: "In the Judicial Department, 100 employees; of these, 67 have returned the forms, 33 have not".

That is the type of information that the Minister needs to find out the rate of compliance in this particular provision. I think it is a good one. Then, of course, the person who have not filled his forms can now be followed by the relevant Commission. So, I oppose this amendment.

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

*(Proposed Section 30A deleted)*

### *Section 30B*

**Mr. Bifwoli:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the provisions relating to the Public Officer Ethics Act be amended-

(c) By deleting the proposed Section 30B.

Let me read what it says. You know, as a teacher, you have to read and tell the students what it means!

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, Mr. Bifwoli! While I agree that it is important for you to move it and explain, please, be brief because we have a long way to go. Make it brief. It can be similar to Section 30A as well.

**Mr. Bifwoli:** Mr. Temporary Deputy Chairman, Sir, I withdraw.

Mr. Temporary Chairman, Sir, the Section reads:-

"The Minister may, whenever necessary, by notice in the Kenya Gazette, appoint and assign functions to a public body or suitably qualified person to verify the declaration forms."

Mr. Temporary Deputy Chairman, Sir, now that we have removed the responsibility of the Minister looking at the forms, we cannot have the Minister assigning that function to somebody or a body that he thinks is suitable. So, we feel this Section should be deleted.

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, actually, in view of Section 30A, I think Section 30B becomes irrelevant. Therefore, I agree.

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

*(Proposed Section 30B deleted)*

*Section 35(1)*

**Mr. Bifwoli:** Mr. Temporary Deputy Chairman, Sir, I wish to move:-

THAT, the provisions relating to the Public Officer Ethics Act be amended-

(d) By deleting the proposed amendment to Section 35(1).

The reason is that Section 35(1) reads:-

"Insert the words "the Kenya Anti-Corruption Commission" immediately after the words "Public Officers."

Mr. Temporary Deputy Chairman, Sir, we feel that the words "public officers" should remain so that, if the Parliamentary Service Commission is investigating me, we do not need to refer to Kenya Anti-Corruption Commission.

With those few remarks, I beg to move.

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I oppose this amendment because, as we all know, Kenya Anti-Corruption Commission is the premier body to investigate crimes under the Anti-Corruption and Economic Crimes Act. All we are doing in Section 35(1) is to say that the responsible commission, which may be the Parliamentary Service Commission, the Judicial Service Commission and the Public Service Commission should be the responsible commission, in addition to Kenya Anti-Corruption Commission. It may do "a", "b" and "c". So, really, it is to make the Kenya Anti-Corruption Commission also do the work that is done by responsible commissions.

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Just as clarification, Mr. Attorney-General, if you look at the following amendments which are proposed by the Committee, there is 35(2), 35(3) and 35(6). Are they similar in content or different? Each is different. Is that correct?

**The Attorney-General** (Mr. Wako): Each is different. But they are also similar in the sense that we are adding. In addition to the commission which is responsible for that, we are also saying the Kenya Anti-Corruption Commission in all of them.

**The Temporary Deputy Chairman** (Mr. M'Mukindia): That means they are all very similar. Very well, let us hear from Ms. Karua.

**The Attorney-General** (Mr. Wako): Apart from the very last one there: "Insert the new Sub-section!"

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Very well! We will consider each one of them separately.

Ms. Karua!

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I stand to oppose the amendment by hon. Bifwoli, and support the amendment by the Attorney-General. If you look at Section 35 in the Act as it is, on the

investigations, only the responsible commission for a public officer may investigate to determine whether the public officer has contravened the code of conduct and ethics. Let us take the Parliamentary Service Commission, has it, in the last four years, been able to investigate our compliance as Members of Parliament? If you take any other commission, whether the Public Service Commission, the Teachers Service Commission or any other Commission, it is difficult for people to investigate themselves. So, when you add the Kenya Anti-Corruption Commission, it means that the rate of compliance will go high automatically. That is because there will be an independent body auditing commissions and officers under them, and finding out whether they are complying. Like I said, these amendments are expected to bring light to an Act of Parliament that is, otherwise, a dead letter.

Mr. Temporary Deputy Chairman, Sir, I beg to support. I urge hon. Members to support, so that the Act can serve the purpose for which it was intended, and ensure that public officers are under scrutiny all the time.

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Hon. Members, before I call upon another Member to contribute, I am informed that the business of looking at how Members of Parliament behave falls under the Powers and Privileges Committee, and not the Parliamentary Service Commission. That is my information.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I did not talk about how we behave. It is just the rate of compliance under the Public Officer Ethics Act. Compliance with the declarations. It is not about powers and privileges; it is about compliance with the declarations. I beg to be understood in that light.

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

*(Proposed amendment Section 35(1) deleted)*

*(Section 35 (1) agreed to)*

*Section 35(2)*

**Mr. Bifwoli:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the provisions relating to the Public Officer Ethics Act be amended-(e) by deleting the proposed amendment to Section 35(2).

It reads:-

"An investigation may be made on the initiative of the responsible Commission or the Kenya Anti-Corruption Commission or pursuant to a complaint by any person!"

Mr. Temporary Deputy Chairman, Sir, that means that one person is going to be investigated by two commissions. If the Parliamentary Service Commission is investigating one of us and it has not concluded, the Kenya Anti-Corruption Commission can also start investigating. That is duplication of jobs by two different people. Why do we not leave it either to the Parliamentary Service Commission or the Teachers Service Commission to investigate and take the recommendations to the Kenya Anti-Corruption Commission? It is a waste of time to ask the Kenya Anti-Corruption Commission to go everywhere, even where there is no problem.

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to oppose the proposed amendment because the reason stated by the Mover is not what is in the proposal. The investigations may be carried out at the initiative of the responsible Commission. It does not say "and the Kenya Anti-Corruption Commission." It says "or the Kenya Anti-Corruption Commission." So, it is the alternative in this amendment for the reasons well-set-out by the Minister for Justice and Constitutional Affairs, because sometimes you require to invest in the very Commissioners who are supposed to carry out an investigation, if they are employees. So, we require a body like the Kenya Anti-Corruption Commission (KACC) to be able to do that. Otherwise, who else will do it?

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

*(Proposed amendments to Section 35(2) deleted)*

*(Section 35(2) agreed to)*

*Section 35(3)*

**Mr. Bifwoli:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the provisions relating to the Public Officer Ethics Act be amended-

By deleting the proposed amendment to Section 35(3).

Mr. Temporary Deputy Chairman, Sir, the proposed amendment to Section 35(3) reads:-

"Delete the word "Commission" and insert the words "responsible Commission or the Kenya Anti-Corruption Commission."

This is for the same reason because it is the Commission that employs you that is responsible for your character. Using the words "or the Kenya Anti-Corruption Commission" is actually empowering the KACC to interfere with other commissions.

I beg to move.

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I oppose the proposed amendment for the reasons already stated. The same principle applies to all these.

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

*(Proposed amendment to Section 35(3) deleted)*

*(Section 35 (3) agreed to)*

*Section 35(6)*

**Mr. Bifwoli:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the provisions relating to the Public Officer Ethics Act be amended-  
By deleting the proposed amendment to Section 35(6).

Mr. Temporary Deputy Chairman, Sir, the proposed amendment to Section 35(6) reads:-  
"After an investigation by the Kenya Anti-Corruption Commission or by another body pursuant to a reference by the Kenya Anti-Corruption Commission, pursuant to Section 3, the Kenya Anti-Corruption Commission shall make its recommendations thereon to the person or body that exercises disciplinary action."

Mr. Temporary Deputy Chairman, Sir, surely, if you are employed by the Teachers Service Commission or the Public Service Commission and they have found you wrong, why should they recommend to another body to take disciplinary action against you? I thought they should take disciplinary action against you immediately they find you wrong. This amendment actually creates loopholes and interference.

I beg to move.

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I oppose the proposed amendment for the reasons that I have already stated.

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

*(Proposed amendments to Section 35(6) deleted)*

*(Section 35(6) agreed to)*

*(The Public Officer Ethics Act, 2003 as amended agreed to)*

*(The Public Audit Act, 2003 agreed to)*

*(The National Commission on Gender and Development Act, 2003 agreed to)*

*The Sexual Offences Act, 2006*

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Hon. Members, we will start with the amendments proposed by hon. Ndung'u which appear on page 526 of the Order Paper.

**An hon. Member:** What about the one before?

**The Temporary Deputy Chairman** (Mr. M'Mukindia): The one before is from the Committee. We will consider that after hon. Ndung'u has moved her amendment.

**An hon. Member:** What about the proposed amendment to Section 11?

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order! We are considering Section 2(1) first! The amendment by the Committee pertains to Section 11.

You may continue, hon. Ndung'u!

*Section 2(1)*

**Ms. Ndung'u:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, the provisions relating to the Sexual Offences Act be amended by inserting the following new amendment in proper numerical sequence:-

In section 2(1)-

(i) by deleting the definition of "gang-rape" and inserting the following new definition in proper alphabetical sequence-

"gang" means two or more persons.

(ii) by inserting the word "unlawful" immediately before the word "intentional" in the definition of the expression "indecent act";

This amendment has been recommended by the prosecutors and police officers in terms of defining gang-rape. They have advised me that in order to structure the charge sheet, they would like it to be worded in the same way as robbery with violence. Therefore, we are simply just changing the wording to ensure that the charge sheet is similar to the one involving robbery with violence cases.

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I accept this amendment. It is a good amendment. It is making the defilement of a child separate from that of an adult. As I see it, it is putting them into two separate sections. That is important.

I support the amendment.

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, I have read the amendment. Are we dealing with Section 11A?

**The Temporary Deputy Chairman** (Mr. M'Mukindia): No! We are on Section 2(1)!

**Mr. Kajwang:** Okay! Thank you!

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

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

*(Section 2(1) as amended agreed to)*

*Section 5(1)(b)*

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Let us move on Section 5(1)(b).

**Ms. Ndung'u:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the provisions relating to the Sexual Offences Act be amended by inserting the following new amendments in proper numerical sequence:-

Section 5(1)(b) Insert the words "into or" immediately after the words "genital organ".

Mr. Temporary Deputy Chairman, Sir, this is to include oral sex as a method in which one can commit a sexual offence. This is something that we left out.

**Hon. Members:** Oral sex?

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, hon. Members! Let us listen to the hon. Member!

**Ms. Ndung'u:** Mr. Temporary Deputy Chairman, Sir, it has been pointed out to me by police investigators and prosecutors that it is possible to penetrate genital organs in other parts of the body. We had not actually included that.

*(Question of the amendment proposed)*

**Mr. Angwenyi:** Mr. Temporary Deputy Chairman, Sir, I need some clarification. Is there oral sex in Kenya?

Secondly, if it is there, it is already an offence. We must define it by some form. We should not allow the words, "oral sex" to come into our vocabulary. We know about the natural sex only! If we are introducing "oral sex" in Kenya, I would like to oppose this amendment!

*(Laughter)*

**Ms. Ndung'u:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Ms. Ndung'u, what is your point of order?

**Ms. Ndung'u:** Mr. Temporary Deputy Chairman, Sir, this is why it is important for hon. Members to look at the current Act. What we are trying to amend is Section 5. Section 5 already provides for the offence of sexual assault. We had talked about objects which are inserted into other parts of the body. This is just to clarify that somebody forcefully uses--- It is not legalising oral sex. But it is to make sure if somebody uses oral sex on another forcefully, it will be an offence. Please, let me not be misunderstood!

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I support this amendment because it will do away with that obnoxious practice. It may not be here already, but we do not want it to be here. This amendment will help us to do away with it.

**Mr. Angwenyi:** Oh! Okay!

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

*(Section 5(1)(b) as amended agreed to)*

### *Section 10*

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Hon. Members, let us move on to Section 10.

**Ms. Ndung'u:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the provisions relating to the Sexual Offences Act be amended by inserting the following new amendments in proper numerical sequence:-

Section 10 Delete the word "others" appearing immediately after the words "in association with" and insert the words "another or others, or any person who, with common intention, is in the company of another or others who commit the offence of rape and defilement."

Mr. Temporary Deputy Chairman, Sir, I am moving this amendment to delete the word



"others". This is to reflect the changes that we made in Section 2(1), so that the two are corresponding in relation to gang-rape.

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I second, support and do anything that is possible!

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

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

*(Section 10 as amended agreed to)*

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Hon. Members, we will skip the First Schedule and move on to the amendment to Section 11. We will then deal with the First Schedule.

Mr. Wako, let us deal with Section 11!

### *Section 11*

**Ms. Ndung'u**: Mr. Temporary Deputy Chairman, Sir, it is not the Attorney-General. It is the Committee to move! I will move it!

Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the provisions relating to the Sexual Offences Act be amended by inserting the following new amendments in proper numerical sequence:-

Section 11 Delete Subsection (6)-

Insert the following new section immediately after Section 11-

11A Any person who commits an indecent act with an adult is guilty of an offence and liable to imprisonment for a term not exceeding five years or a fine not exceeding fifty thousand shillings or to both.

Mr. Temporary Deputy Chairman, Sir, I have heard many hon. Members talk about this Order Paper today. What I want to be clear is that this is not an offence that is being introduced today. This is an offence that already exists in the Sexual Offences Act. However, the way it has been captured in the Sexual Offences Act, Chapter 11, is not neat. It is put together with indecent acts to children. Therefore, this amendment is simply to re-word. The offence is still in existence whether hon. Members agree with me or not. This amendment is to re-word, not to introduce a new amendment!

Therefore, I beg to move the amendment.

*(Question of the amendment proposed)*

**The Minister for Trade and Industry** (Dr. Kituyi): Mr. Temporary Deputy Chairman, Sir, all that the amendment attempts to do is to convert Section 11(6) into Section 11A. There is nothing controversial about it.

I support the amendment.

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, unless an indecent act is defined somewhere else, this is a very vague thing! To say that any person who commits an indecent act with an adult--- What is an "indecent act" with an adult? If it is defined somewhere, we will be comfortable. But if it is not, then we cannot accept it!

**The Minister for Trade and Industry (Dr. Kituyi):** On a point of order, Mr. Temporary Deputy Chairman, Sir. This amendment is just re-numbering. Section 11(6) to become Section 11(A). Every word in this amendment exists in the parent legislation as it exists today. If the hon. Member has problems with the definition of "indecent act", he should check the first paragraph of Section 11 and Section 11(6). They use exactly the same words. Indeed, there is a definition of "indecent acts" in the legislation, with the amendments that we have adopted this afternoon!

**Mr. Kajwang:** In fact, Dr. Kituyi---

**Ms. Ndung'u:** On a point of information, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman (Mr. M'Mukindia):** Mr. Kajwang, let us hear the point of information from Ms. Ndung'u!

**Ms. Ndung'u:** Mr. Temporary Deputy Chairman, Sir, as I am giving this point of information, let me encourage hon. Members to read the Sexual Offences Act. It is something that is important. If we do not know what is in it, that is a bit dangerous. Indecent act is defined in the interpretation section. This is what it says:-

"indecent act" means any wilful act which causes-

- (a) direct or indirect contact between the genital organs of a person or, in the case of a female, her breasts and buttocks or any other part of the body of another person, including any part of the body of an animal;
- (b) exposure or display of genital organs of a person to another person without the consent of that person; or,
- (c) exposure or display of any pornographic material to any person against his or her will, but does not include an act which causes penetration;

That is what this House passed!

**The Assistant Minister for Transport (Mr. Githae):** Mr. Temporary Deputy Chairman, Sir, I stand to support this amendment. We all know what an indecent act is. There is no standard. An indecent act can never be anything else. All that we are doing is basically re-numbering, and also saying that an indecent act with an adult is also an offence. This will protect adults from acts of indecency!

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

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

*(Section 11 as amended agreed to)*

**The Temporary Deputy Chairman (Mr. M'Mukindia):** Hon. Members, let us now move on to the amendments to the First Schedule at the bottom of page 526!

Proceed, Ms. Ndung'u!

*First Schedule*

**Ms. Ndung'u:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the provisions relating to the Sexual Offences Act be amended by inserting the following new amendments in proper numerical sequence:-

Delete Paragraph 3 and substitute therefor the following new paragraph-

3. Any proceedings commenced under any written law or part thereof repealed by this Act shall continue to their logical conclusion under those written laws.

Mr. Temporary Deputy Chairman, Sir, I am moving this amendment for the sake of clarity. Many prosecutors and magistrates have been asking about what they should do in terms of past heard cases. The Schedule was not clear on this. This is just to make it clear, about the transitional positions of the Sexual Offences Act.

*(Question of the amendment proposed)*

**The Assistant Minister for Transport** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I rise to support this amendment. This amendment could not have come at a better time than today. There have been two cases where a smart lawyer has argued that, in view of the Sexual Offences Act, all the offences that were being tried under the Penal Code have been annulled. Therefore, this clarifies the position; that those prosecutions that are currently going on are legal and they should be brought to their logical conclusion. This basically clarifies the law.

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

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

*(First Schedule as amended agreed to)*

*(The Sexual Offences Act, 2006,  
as amended agreed to)*

*(The Licensing Law Act, 2006,  
agreed to)*

*The Kenya Maritime Authority Act, 2006*

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Let us turn to page 524 of the Order Paper, the Kenya Maritime Authority Act, 2006. This is a new Clause. It has not been read a Second Time. So, I shall move that it be read a Second Time, and then we can go through the process again.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move that The Kenya Maritime Authority Act, 2006, be now read a Second Time.

The Kenya s.5(1)Insert the following paragraph

Maritime

immediately after paragraph (p) -

Authority Act,  
2006(No.5 of  
2006)

- (pp) implement and undertake co-ordination in maritime security;
- s.11(4) Delete the word "appointment" and substitute therefor the word "appointed."
- s.14(c) Delete the word Principal and substitute it therefor the word Chief.
- s.14(d) Delete the word "Principal" and substitute therefor the word "Chief."
- s.14(2) Insert the word on immediately after the word "Authority" appearing in the third line.
- s.22(2) Delete the word "four" and substitute it therefor the word "three."
- First  
Schedule Delete Paragraph (4) and substitute therefor the following new paragraph -
- Staff 4. Any person who is an officer of the former Authority immediately before the appointment day shall be deemed to be an officer of the Authority.
- Second  
Schedule Delete the word indirect appearing in paragraph (4)(1) and substitute therefor the word "indirectly."

The proposed amendments are really draft amendments such as changing of names and so on. I think they are self-explanatory and so I will not take too much time of the Committee on this.

I beg to move.

*(Question of the New Clause proposed)*

*(New Clause read the First Time)*

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

*(The New Clause was read a Second Time)*

*(Question, that the New Clause be added to the Bill, put and agreed to)*

*(The Act was read a Second Time and committed to the whole House today by leave of the House)*

*(The Kenya Maritime Authority Act,  
2006, as amended agreed to)*

*The National Assembly Remuneration Act (Cap.5)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Schedule which incorporates the National Assembly Remuneration Act (Cap. 5) be read a Second Time.

THAT, the Schedule to the Bill be amended -  
(a) by inserting the following new amendment -

The National Assembly Remuneration Act (Cap.5)	Second Schedule	Insert the following new item and corresponding entry immediately after the entries relating to item 4.
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5. Every Member of the National Assembly A severance allowance at the rate of Kshs300,000 for every year in service.

As you all know, this was the recommendation of the Cockar Committee that was approved by this House.

*(Question of amendment proposed)*

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

*(The National Assembly Remuneration Act  
(Cap. 5) as amended agreed to)*

*(Schedule as amended agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Statute Law (Miscellaneous Amendments) Bill No.20 and its approval thereof with amendments subject to recommittal of the Bill today, in respect of the provisions relating to Section 17 of the National Assembly and

Presidential Elections Act, to a Committee of the whole House pursuant to Standing Order 109(2).

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker  
(Mr. Khamasi) in the Chair]*

## REPORT

### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**Mr. M'Mukindia:** Mr. Temporary Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered The Statute Law (Miscellaneous Amendments) Bill and its approval thereof with amendments subject to re-committal of the Bill, today, in respect of the provisions relating to Section 17 of the National Assembly and Presidential Elections Act (Cap.7), to a Committee of the whole House, pursuant to Standing Order No.109(2).

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said report subject to re-committal of the Bill today, in respect of the provisions relating to Section 17 of the National Assembly and Presidential Elections Act to a Committee of the whole House, pursuant to Standing Order No.109(2).

*(Question proposed)*

**Mr. Muite:** Mr. Temporary Deputy Speaker, Sir, am I right in my understanding that once the House agrees with the Report of the Committee, we will go back to a Committee of the whole House in order to re-examine the amendment that had been proposed by Mr. Muturi and which was overwhelmingly voted in favour of by us? Is that the procedure we will be following so that we will be voting again on that amendment? Is my understanding right?

Mr. Temporary Deputy Speaker, Sir, as you remember, this amendment is to the National Assembly and Presidential Elections Act which says:-

"If a Member of a party accepts appointment as a Minister without the written concurrence of his or her party, he or she will be deemed to have resigned and will, therefore---"

Is it the one that the Attorney-General

wants to re-open? Are we going to debate it again at a Committee of the whole House and vote?

**The Temporary Deputy Speaker** (Mr. Khamasi): Yes, that is my understanding! Once we re-commit it to the Committee of the whole House, we shall go through the normal process. We shall vote on it in the normal way. I do not think there is any other way we can do it other than that. That is the way I understand it!

*(Question put and agreed to)*

Hon. Members, we are going back to the Committee of the whole House to consider that

particular aspect of the National Assembly and Presidential Elections Act (Cap.7) as I have explained. We are going back to the Committee of the whole House to specifically deal with that, and then, thereafter, the House will resume.

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[The Temporary Deputy Speaker  
(Mr. Khamasi) left the Chair]*

#### IN THE COMMITTEE

*[The Temporary Deputy Chairman  
(Mr. M'Mukindia) took the Chair]*

#### THE NATIONAL ASSEMBLY AND PRESIDENTIAL ELECTIONS ACT CAP.7)

*(Loud consultations)*

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, hon. Members! Could you resume your seats and listen to what the proposed amendment is? It is important that all of us should listen! This is something to do with the National Assembly and Presidential Elections Act! For that reason, I think all of us should take a very keen interest.

Mr. Wako, please, proceed!

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, let me first of all explain what happened. Mr. Muturi moved this amendment. As the House may recall, I pointed out that, in my view, although the spirit was good, the way it--

*(Loud consultations)*

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, hon. Members!

Mr. Wako, please, proceed!

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, although the spirit behind the amendment was good, nevertheless, the way it had been drafted, to me, it was unconstitutional. I can repeat those arguments. However, the House overruled me and voted for the amendment.

Mr. Temporary Deputy Chairman, Sir, yesterday, the hon. Member approached me and more or less stated that he saw the good reasoning that I had made on the Floor of the House and that he would be asking for a re-committal of the Clause to be considered again. In fact, he got the assistance of the Clerk of the National Assembly to draft the re-committal of that particular Clause. He saw the sense that the way it had been drafted was unconstitutional. It brought in parties who are not party to the issue which was the subject matter of the clause.

Mr. Temporary Deputy Speaker, Sir, that is why I have now been asked to move the re-submission. I would have loved him to be here to state it himself. However, since he is not here I beg to move:-

"THAT, new Subclause 17(7) be deleted".

**Hon. Members:** And change with what?

**The Attorney-General** (Mr. Wako): It is just deletion!

Mr. Temporary Deputy Speaker, Sir, it is the new Subclause 17(7) which this House passed either yesterday or the day before and which read as follows:-

"THAT, the concurrence referred to in Subsection 5 shall be communicated in writing to the Speaker of the National Assembly by the recognised leader of the political party concerned, naming all Members of the party in respect of whom there is concurrence. The Speaker, shall, in writing, notify the Chief Justice accordingly before such Members are sworn-in".

That is Paragraph VI. You may recall that I stated clearly that the Chief Justice has no role, whatsoever, to play in this matter because in the Promissory Oath Act, Cabinet Ministers and Assistant

Ministers are sworn-in by the President himself and not the Chief Justice.

Paragraph VII states:-

"Any Member of the National Assembly who, having been elected into the National Assembly through the support, or as a supporter of a political party, accepts an appointment in contravention of Subsection V of this section shall be deemed to have resigned from that party".

That is the clause I said was clearly unconstitutional.

**Hon. Members:** How?

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, it is clearly unconstitutional, particularly in reference to Section 40 of the Constitution in as much as the provision is stated here. I reminded this august Assembly that this is the same argument that we had. This National Assembly had passed the Election Rules of the Members of the East African Legislative Assembly and had stated that as soon as the House Business Committee finds the nine Members and the Leader of Government Business lays the names of those nine Members on the Table, those Members shall be "deemed" to have been elected. That was found to be in contravention of the Treaty of the East Africa Community (EAC).

In as much as the Treaty of EAC said, "elected", it did not provide for election. Here, also, Section 40 does not provide--- You either resign or you do not resign! There is no question of "deeming" their resignation. So, those are the arguments I made then. This House passed them and I went away. It is hon. Muturi who said - I think he saw the reasoning in my submissions - that he will be asking for this particular clause, which we had passed, to be recommitted. I believe he was helped by the Clerk, who gave me the things that I read out. Mr. Muturi is not here. Had he been here, I am sure he would have moved that this new subclause, which you passed, be deleted.

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Very well! Before I propose the Question, I would like hon. Members to understand that this amendment is related only to Section 17(7). It relates to a Minister being appointed by the President from a different party without the concurrence of the party which sponsored him to Parliament. I would have wished very strongly for hon. Muturi to be here. However, since he is not here, I shall propose the Question.

*(Question of the amendment proposed)*

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, let us look at the spirit of the recommittal. If the Attorney-General is correct that the spirit was right, except that the drafting was such that it could be construed to be unconstitutional or interpreted as unconstitutional or in conflict with Section 40 of the Constitution, then he should have brought an amendment that captures the spirit and which is within the Constitution. By merely deleting this amendment, it is



taking us where we do not want to be. This House does not just move in a certain direction. We move into a certain direction because we know the problems that we are getting away from. Members of this House were elected according to certain parties. I think KANU even went to court and argued that their its Members were appointed to the Government unconstitutionally.

Mr. Temporary Deputy Chairman, Sir, there is a provision in the Constitution itself on how to appoint Ministers from the party of the Government in power. However, if you want to appoint Ministers from other parties, then it must be in concurrence with that party. So, this concurrence, and the way we argued last time, is what was disobeyed by the Government. That is what we wanted to clarify in this amendment. Concurrence means that you get a letter from that party you want to "poach" from. If the Attorney-General is really serious that this provision is unconstitutional, but the spirit is right, we would have expected him to say, "Delete this, but replace it with this, which captures the spirit." He knows the spirit. So, I think the Attorney-General is not coming here with clean hands.

**The Attorney-General** (Mr. Wako): On a point of order, Mr. Temporary Deputy Chairman, Sir. Is the hon. Member in order, when I have really explained that I am moving it here, but, clearly, it is Mr. Muturi who should have moved it? That is why I have explained what the position was very clearly. In other words, it was not for me to come up with a draft which meets the Constitution. It was for the hon. Member to come up with a draft which meets with the constitutional provision.

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

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, Members! Let us hear arguments from both sides, rather than having points of order.

Mr. Kajwang!

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, just to finish what I was saying, if it is hon. Muturi who was supposed to recommit this amendment and explain to us why he now wants to recommit it, of course, we would have asked him to bring an appropriate amendment. The way he may have agreed with the Attorney-General would capture the spirit and would have been within the framework of the four corners of the Constitution. However, Mr. Muturi is not here! In normal circumstances, when there is nobody to move a Motion, it collapses. We cannot then listen to the Attorney-General and when we put him to task, he says, "It was not mine".

Mr. Temporary Deputy Chairman, Sir, I oppose.

**Dr. Oburu:** On a point of order, Mr. Temporary Deputy Speaker, Sir. It is a procedure that when a Member has moved an amendment, he has to come here to move the amendment himself. Otherwise, he has to authorise the other person moving it in writing. So, does the Attorney-General have the authority of hon. Muturi to move this amendment on his behalf? Has the Clerk been notified to that effect?

*(Applause)*

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Hon. Members, I think let us---

*(Dr. Oburu consulted loudly)*

Order, Members! Dr. Oburu, you asked a question and I am trying to answer you, but you are not listening! The amendment has been properly brought before the House. There is no

question about that one. It has been brought by the Attorney-General. This amendment properly belongs to the Attorney-General. He cannot push the responsibility to hon. Muturi. It belongs to the Attorney-General.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, according to my brief, it was a very strong suggestion from hon. Muturi. He acted in accordance with those instructions, but it is I who has moved it in this House. Rather than just argue about it, let us vote on it and move on.

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Very well! That is what I wanted to get; that you actually own it. For that reason, we will move on to hear the argument of hon. Muite.

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, first and foremost, I had the privilege of having lunch, at the same table, with hon. Muturi. Whatever he may have discussed earlier, hon. Muturi, today at lunch hour, was very clear in his mind that the amendment he moved is not unconstitutional. He did not even wish to move for recommittal or reconsideration.

Mr. Temporary Deputy Chairman, Sir, once an amendment is on the Floor of this House, it is the property of the House. A little background is in order. In the Inter-Parties Parliamentary Group (IPPG) of 1997, when that was being negotiated, the Democratic Party (DP) was apprehensive that the then President would poach its Members and appoint them to the Cabinet. That is why, in those negotiations, they moved an amendment to Section 16. If you look at the marginal note, you will see "1997". The amendment was:-

"Subject to the provisions of any written law"

Those words were put in 1997. They then went and amended the National Assembly and Presidential Elections Act to require the concurrence of a political party before its Members could be appointed into Government. That is the basis on which KANU went to court. For some reason, the Chief Justice never set up a Bench to hear that case. I am not going into the merits.

So, it is quite clear that we cannot just read Section 40 alone. You read it together with Section 15 and together with the National Assembly and Presidential Elections Act. The idea was to stop poaching and to strengthen Parliamentary multiparty democracy.

*(Applause)*

The purpose of the amendment that the Attorney-General is moving is to enable whoever is going to be elected President in the next election to continue cannibalising the Opposition. The amendment by Mr. Muturi now makes it clear that if you accept appointment without your party confirming in writing, then you will be deemed to have resigned, which is the correct position. This is a very good development in our multiparty parliamentary democracy. It is not unconstitutional. We debated, voted and passed it. I appeal to hon. Members to again vote in favour of that amendment and to reject the proposal by the Attorney-General.

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Order, hon. Members! I will give a few hon. Members a chance to contribute. But you know that we have already debated this at length. So, let us not go back to the same old arguments that you went through at length.

Ms. Karua, very briefly!

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I adopt the arguments by the Attorney-General but I want to correct one thing. During the IPPG, I was the sole representative of the Democratic Party which was my party then, in the committee that did the constitutional and legal amendments. It is not true or correct to state that DP moved the amendment because it feared that its Members would be poached. DP had no such fears. The reason why we brought that amendment, not as DP, but as IPPG, is that we were

envisaging the creation of a Government of National Unity (GNU). The time was just like now and we could foresee that there may be need for coalition building after the 1997 elections. When we could not put the provision in the Constitution--- At this time, we are agreeable, just like everybody else, that the law should tame Members from migrating from one party to another in order to nurture democracy. The only argument here is where does that clause fall and how should it be couched? Just for the record!

**The Temporary Deputy Chairman** (Mr. M'Mukindia): Hon. Members, just to clarify matters, let me just read to you what this clause says or how I am going to put the Question. The Question would read:-

"That the new Subclause 17(7) be deleted"

This means that if you say "Aye" we delete what we already have which is:-

"Any Member of the National Assembly who having been elected into the National Assembly through the support or as a supporter of a political party accepts and appointment as a Minister in contravention of Subsection 5 of this Section, shall be deemed to have resigned from the party."

So, if you agree with the Attorney-General's proposal, it means that you have deleted this. If you do not agree, then you go back to what Mr. Muturi had proposed and what we agreed on. Is that understood? I shall now put the Question.

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

Mr. Attorney-General, please move that the Committee do report to the House.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I move that the Committee doth report to the House its consideration of the National Assembly and Presidential Elections Act and its approval thereof without amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker  
(Mr. Khamasi) in the Chair]*

## **REPORT, CONSIDERATION OF REPORT AND THIRD READING**

THE NATIONAL ASSEMBLY  
PRESIDENTIAL AND ELECTIONS ACT, CAP.7

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, hon. Members! Mr. M'Mukindia!

**Mr. M'Mukindia:** Mr. Temporary Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered the National Assembly and Presidential Elections Act, Cap.7, and approved the same without amendments.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to move

that the House doth agree with the Committee in the said Report.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua) seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members! We need to be together to get the procedures right. Now we are going back to the main Bill and then I will ask the Attorney-General to move the Bill for the Third Reading.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Statute Law (Miscellaneous Amendments) Bill be now read the Third Time.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua) seconded.

*(Question proposed)*

*(Prof. Kibwana stood up in his place)*

**The Temporary Deputy Speaker** (Mr. Khamasi): I will allow you to go on, but you should have stood up immediately I finished proposing the Question.

**The Minister for Lands** (Prof. Kibwana): Mr. Temporary Deputy Speaker, Sir, I am sorry that I was not fast enough in terms of coming to my feet.

Of course, as a Parliament, we have passed the Statute Law (Miscellaneous amendments) Bill. But I just want to state, as a matter of record, that the National Assembly and Presidential Elections Act, the amendment to Section 17, that the direction to the Chief Justice, who does not swear-in Ministers, is obviously a problem that, perhaps, will come before a Constitutional Court.

Secondly, Mr. Temporary Deputy Speaker, Sir, you cannot have somebody constructively resigning from a party, because every person must have the right to be in a party or not, or it should be for the party itself to follow the procedures of removing somebody from it. That is for record.

Finally, in terms of the anti-corruption law, this Parliament has emasculated that law in terms of the amendments that we have proposed. I think that if, as a country, we need to consider past corruption, just like in the Bomas, Kilifi and Wako Drafts there were provisions for dealing with past corruption, the proper way is not to emasculate the law.

**Hon. Members:** *Keti chini!*

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, Prof. Kibwana!

**Mr. Wamunyinyi:** Put the Question!

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, Mr. Wamunyinyi!

Prof. Kibwana, debate on this matter ended a long time ago. If I may put it, we cannot revisit it! I cannot open debate on a matter like that one at this time.

*(Applause)*

All that I need are brief comments, congratulate, rejoice or do whatever, and that is it! I cannot open debate on it!

**The Minister for Lands** (Prof. Kibwana): Mr. Temporary Deputy Speaker, Sir, I am advised by you, but I want to say that for the future, this country may want to consider a justice and reconciliation commission to really deal with corruption instead of us castrating the anti-corruption law.

Thank you.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, the Bill that has just gone through the Committee Stage has some very good provisions relating to various Acts. But it has terrible provisions, or lack of them, deletions of important clauses in the Anti-Corruption and Economic Crimes Act and the Public Officer Ethics Act. I just wish to re-emphasise my disagreement with those.

I beg to oppose!

**Hon. Members:** Aah!

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, hon. Members!

**Mr. Midiwo:** Mr. Temporary Deputy Speaker, Sir, I want to congratulate hon. Members for passing this Act, and also say that it is not fair to demonise hon. Members. The Attorney-General is here and so is the Minister for Justice and Constitutional Affairs. Let them use the existing laws to prosecute thieves in this country. Let them not hide behind the so-called Kenya Anti-Corruption Commission (KACC) to try to hurt people who are merely expressing differing opinions from those of the Government.

Thank you very much.

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

**Ms. Ndung'u:** Mr. Temporary Deputy Speaker, Sir, thank you very much. I would like to congratulate the Minister and the Attorney-General for bringing this Bill here. Let me also congratulate hon. Members for being sober and for helping the country, because we were about to make KACC a monster.

*(Applause)*

We want it to do its work but we do not want to create a monster. I think that the Committee on Administration of Justice and Legal Affairs should be commended for looking at all the 41 laws and being able to present proper amendments.

**Mr. Marende:** Mr. Temporary Deputy Speaker, Sir, allow me to also associate myself with those complimenting hon. Members for passing a very good Bill. Allow me also to urge the Minister for Justice and Constitutional Affairs to embrace the Departmental Committee on Administration of Justice and Legal Affairs as being of value to her Ministry. By the Standing Orders, the Departmental Committee on Administration of Justice and Legal Affairs is, among other things, mandated to exercise an oversight role in matters pertaining to the Constitution, administration of justice, police and prosecution. The Minister should learn to respect and work with the Committee.

*(Applause)*

**The Assistant Minister for Tourism and Wildlife** (Mr. Ndile): Bw. Naibu Spika wa Muda, pia nami ningependa kuchukua nafasi hii kuwashukuru wale ambao wameuchangia Mswada huu. Ningependa kusema kwamba sisi upande wa Serikali ni lazima tujifunze kusikizana na kuelewana. Hilo ni jambo muhimu sana.

*(Applause)*

Mama akitaka wazee na watoto wasile, yeye hutia chumvi nyingi katika chakula. Yeye hukitia chakula chumvi nyingi kikiwa jikoni na kukichemsha, ndipo hata ukiiosha hiyo nyama, haiwezi kulika.

*(Laughter)*

Kwa hivyo ni vizuri wakati mwingine tuwe tunaelewana kabla ya kuleta Miswada hapa. Inafaa tujue vile tunavyofanya kazi, na hilo litaisaidia nchi hii, kwa sababu sitaki kuwa katika upande ambao unashindwa kila wakati katika mambo ambayo tungeshinda.

Ahsante sana!

*(Applause)*

**Mr. Owino:** Mr. Temporary Deputy Speaker, Sir, let me join my colleagues in thanking the Attorney-General, the Minister for Justice and Constitutional Affairs and all the hon. Members for having passed this Bill. I have only one comment, that if only we embraced a little dialogue amongst ourselves, we would not go this far. My appeal goes to the Minister for Justice and Constitutional Affairs, that, dear Madam, some of us are very genuine to this country. Some of us are very humble. Be smiling to us, talk with us and we will be able to support you any time.

*(Applause)*

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, hon. Members! We now want to finish by me putting the Question.

*(Question put and agreed to)*

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

**The Temporary Deputy Speaker** (Mr. Khamasi): Next Order!

## BILL

*Second Reading*

THE FINANCE BILL

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Finance Bill, 2007, be now read a Second Time.

I am very grateful to hon. Members for their continued support to Government policies.

*(Loud consultations as several  
hon. Members started withdrawing  
from the Chamber)*

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, hon. Members! Hon. Members vacating the Chamber, please, do so quietly, so that the business can continue.

Proceed, Mr. Minister!

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I wish to thank hon. Members for supporting Government policies that are aimed at sustaining and enhancing the rate of economic growth in this country. To be more specific, I thank hon. Members for the support they have given to the taxation proposals during this year's Budget, which were exhaustively discussed during the debate on the Budget. The debate on the taxation proposals was passed by this House.

Mr. Temporary Deputy Speaker, Sir, we are here today to continue with the debate that was overwhelmingly supported by the House, and ensure that we put into law the proposals that this House has already approved.

Mr. Temporary Deputy Speaker, Sir, hon. Members will recall that when I delivered the Budget Speech this year, I stated that the Budget is intended to define the power to facilitate and harness the participation of all Kenyans in helping to build a strong economy and, thereby, help us achieve our Vision 2030 objectives. While still within the first quarter of the fiscal year, I would like to assure this House that we have not deviated from this year's Budget - Vision 2030 - working together on the path to prosperity.

Mr. Temporary Deputy Speaker, Sir, as I pointed out in my Budget Speech, the economic outlook for the medium-term is very bright, buoyed largely by consumer and investor confidence and continued strong growth in our trading partners' economies. A growth rate of 6.5 per cent to 7 per cent is expected in 2007. As of now, in the first quarter of 2007, we have already recorded a growth of 6.3 per cent. We expect that rate to gradually rise to 10 per cent by the year 2012.

Mr. Temporary Deputy Speaker, Sir, the taxation measures that I proposed during this year's Budget are intended mainly to consolidate and accelerate the rate of economic growth, while ensuring that we address the needs of our people.

Mr. Temporary Deputy Speaker, Sir, the Finance Bill of 2007 contains various proposals relating to Excise Duty, Valued Added Tax (VAT), Income Tax and miscellaneous fees and taxes. I will highlight only a few of those proposals, as hon. Members will have time to debate the proposals during this Second Reading. Indeed, I want to confirm that we have held several discussions with the Departmental Committee on Finance, Planning and Trade. I am aware that they have tabled their Report. We will continue engaging until we bring all the amendments together during the Committee Stage at some point in the not too distant future.

Mr. Temporary Deputy Speaker, Sir, due to high production cost, and in order to encourage growth in the manufacturing sector, I have proposed a number of custom measures. Import Declaration Fees were reduced from 2.75 per cent to 2.25 per cent on all goods imported from outside the East African countries, and no IDF will be charged on goods imported from within the East Africa Community countries. Import Duty of 20 per cent or Kshs10 per kilogramme was also imposed on used lead acid batteries in order to protect the jobs within the battery recycling plants, a measure which is already yielding dividends. I also did propose to increase Export Duty on raw hides and skins from 20 per cent or Kshs10 per kilogramme to 40 per cent or Kshs20 per kilogramme to encourage local value-addition and ensure availability of raw materials for the local tanneries and create employment.

Mr. Temporary Deputy Speaker, Sir, in order to discourage the importation of second-hand motor vehicle spare parts, and to ensure the safety of Kenyans on our roads, I also proposed to impose a 20 per cent Excise Duty on all imported used motor vehicle spares. I have also proposed an Excise Duty of 120 per cent on plastic bags and imposed a ban on very thin plastics.

Mr. Temporary Deputy Speaker, Sir, in dealing with the issues that were coming out from the consultations with the industry, we also gave the industries adequate time to make the necessary adjustments in terms of their manufacturing processes; to ensure that the banned plastics are phased out with minimum disruption to the production process. The imposition of Excise Tax does not lead to unnecessary issues in terms of its collection.

Mr. Temporary Deputy Speaker, Sir, I have also proposed to adjust upwards Excise Duty on portable spirits as well sorting out the destinations to make it internationally acceptable; from Kshs200 per litre or 65 per cent, whichever is higher, to Kshs280 per litre or 65 per cent, whichever is higher, as well as the Excise Duty on wines. It was also adjusted upwards to be at par, at Kshs54 per litre or 65 per cent, basically creating the parity between wines and spirits in terms of the Excise Duty contributed per percentage of alcohol or volume. All those measures are expected to provide equity and integration of all alcohol beverages.

Mr. Temporary Deputy Speaker, Sir, I have also made a number of proposals under the VAT Act. All those proposals are positive and are intended to encourage issues either in terms of affordability or in terms of the competitiveness of our goods. Further, I have proposed some amendments to the VAT Act on rental and residential buildings, to just bring those measures into parity with what is happening and to help those who are in residential buildings to recoup input taxes paid through VAT.

We have also proposed some measures to revamp the construction industry, especially for the under-privileged, by ensuring that we have provided the right fiscal incentives.

Under the Income Tax Act, I have also proposed several measures. Among them is a couple of allowances for the middle income earners and exemptions to ensure that people do have all those incentives to revamp our economy. We are also bringing in our partners within the East African Community (EAC) who invest into the stock exchange. They will be treated just like Kenyans.

Mr. Temporary Deputy Speaker, Sir, like I said, we went through this during the Budget Speech itself. We went through this during the debate on the Budget. We went through this during the Motion on taxation proposals. All this has been approved by this House. What we are asking is the approval of this Finance Bill, so that we can implement them and create----

### QUORUM

**Mr. C. Kilonzo:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Khamasi): Who is that?

**Mr. C. Kilonzo:** Mr. Temporary Deputy Speaker, Sir, it is me!

**The Temporary Deputy Speaker** (Mr. Khamasi): Sorry!

**Mr. C. Kilonzo:** Mr. Temporary Deputy Speaker, Sir, I wish to bring it to the attention of the Chair that we do not have a quorum!

**The Temporary Deputy Speaker** (Mr. Khamasi): Order! Apparently, I do think we have a quorum here. I order that the Division bell be rung!

*(The Division Bell was rung)*

### ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Khamasi): Order! Order!

Hon. Members, due to lack of quorum, we must interrupt our business today. The House is, therefore, adjourned until Tuesday, 18th September, 2007, at 2.30 p.m.

The House rose at 6.00 p.m.