

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 16th October, 2007

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

CONSIDERATION OF PRESIDENTIAL MEMORANDUM ON POLITICAL PARTIES BILL

Mr. Speaker: Order, hon. Members! Hon. Members, you will recall that on 27th September, 2007, this House passed the Political Parties Bill, 2007. Thereafter, upon presentation of the Bill to His Excellency the President for his assent, the President, pursuant to Section 46, Subsection 3 of the Constitution, refused to assent to the Bill. In accordance with Section 46, subsection 4 of the Constitution, His Excellency the President has submitted to me a Memorandum indicating specific provisions of the Bill which, in his opinion, should be reconsidered by this House, including his recommendations for amendments. I have ordered that the copies of the President's Memorandum be availed to hon. Members, and that the consideration of the Memorandum on the Political Parties Bill, 2007 by the Committee of the Whole of House be placed on the Order Paper on Wednesday, 17th October, 2007, during the afternoon Sitting.

Hon. Members, may I remind you that in terms of Section 46 paragraph 5 of the Constitution, this House shall be required to reconsider the Political Parties Bill, 2007, taking into account the comments of the President and to either:-

(a) Approve the recommendations proposed by the President with or without amendment and resubmit the Bill to the President for assent or;

(b) Refuse to accept the recommendations and approve the Bill in its original form by a Resolution of the House supported by votes of not less than 65 per cent of all Members of the National Assembly, excluding the ex-official Members.

I urge hon. Members to carefully consider the Memorandum and be ready for the Committee of the whole House on Wednesday, 17th October, 2007, during the afternoon Sitting.

Thank you!

PAPERS LAID

The following Papers were laid on the Table:-

Pursuant to Section 36(4) of the Anti-Corruption and Economic Crimes Act, Quarterly reports of the Kenya Anti-Corruption Commission

The Second Quarterly Report for the period 1st April to 30th June 2007

The Third Quarterly Report for the period 1st July 2007 to September 2007.

(By the Attorney-General)

Sessional Paper No.3 of 2007 on National Youth Policy for Youth Development.

(The Minister of State for Youth Affairs)

Report of the Departmental Committee on Finance, Planning and Trade on the appointment of members of the Public Procurement Oversight Advisory Board.

Report of the Departmental Committee on Finance, Planning and Trade on Equity Bank.

Report on the deliberations of the Departmental Committee on Finance, Planning and Trade with the Minister for Finance on the membership of the Privatisation Commission.

(By Dr. Oburu)

Mr. Speaker: Very well. It has stayed for a long time and there is no procedure for that. So, if it is agreed, I order that they be deemed to have been accepted by the House.

Yes, Dr. Kuti!

Annual Report and Accounts of the Kenya Reinsurance Corporation Limited for the year ended 31st December, 2006, and the certificate thereon by the Controller and Auditor General

Annual Report and Accounts on the Abstracts of Accounts of the Town Council of Taveta for the year ended 30th June, 2006, and the certificate thereon by the Controller and Auditor General

*(By the Minister of State for Youth
Affairs on behalf of the
Minister for Finance)*

NOTICE OF MOTION

ADOPTION OF SESSIONAL PAPER NO.3
OF 2007 ON NATIONAL YOUTH POLICY
FOR DEVELOPMENT

The Minister of State for Youth Affairs (Dr. Kuti): Mr. Speaker, Sir, I would like to give notice of a Motion on the National Policy for Youth Development. I have laid Sessional Paper No. 3 of 2007 on the Table of the House.

Mr. Speaker: You have not given the terms of the Motion.

The Minister of State for Youth Affairs (Dr. Kuti): Mr. Speaker, Sir---

Mr. Speaker: Order! You must state the terms of the Motion.

The Minister of State for Youth Affairs (Dr. Kuti): Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts Sessional Paper No.3 of 2007 on National Policy for Youth Development, laid on the Table of the House on Tuesday, October 16, 2007.

Mr. Speaker: Next Order!

QUESTIONS BY PRIVATE NOTICE

KILLING OF MR. WILSON ISUMBA

Mr. Khaniri: Mr. Speaker, Sir, I beg to ask the Minister of State, Office of the President, the following Question by Private Notice.

(a) Under what circumstances was Mr. Wilson Isumba gunned down on Saturday, 6th October, 2007, at Hamisi District Headquarters?

(b) How many suspects have been apprehended in connection with the incident?

(c) Could the Minister assure the House that proper investigations will be conducted to ensure that the perpetrators of the killing are brought to book?

Mr. Speaker: Minister of State, Office of the President! He is not here! Very well, I will go to the next Question as we wait to see whether he will come.

IRREGULAR ALLOCATION OF PUBLIC UTILITY PLOT
IN PLAINS VIEW ESTATE

Mr. Ndolo: Mr. Speaker, Sir, I beg to ask the Minister for Lands the following Question by Private Notice.

(a) Is the Minister aware that the land between Plainsview Estate and Mombasa Road in Nairobi, L.R.No.93/1418 has been allocated to a private developer?

(b) Is the Minister further aware that this piece of land is a buffer strip and was reserved for public utility?

(c) In view of the fact that the Government does not condone grabbing of public land, could the Minister annul the allocation and instruct the developer to vacate the site with immediate effect?

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

(a) I am not aware of the existence of plot L.R. No.93/1418.

(b) Given the answer in (a) above, I am further not able to establish if it is a buffer strip and was reserved for public utility.

(c) The Government does not condone grabbing of public land and will continue to annul such allocations, if any.

Mr. Ndolo: Mr. Speaker, Sir, I would like to thank the Assistant Minister for that answer, although you can see the arrogance with which he replied to the Question. Just two weeks ago, I spoke to the Vice-President and Minister for Home Affairs about this issue and he explained to this House that he was going to take action on what is happening to this piece of land.

Right now, the piece of land has been fenced. All the time, the police is there trying to protect that land. This is public land and I would like to ask the Assistant Minister to go with me, so that he can see for himself what is happening.

What action is the Assistant Minister going to take to make sure this public land is protected for the welfare of the people of Makadara?

Mr. Kamama: Mr. Speaker, Sir, first, I want to confirm to the hon. Member and to the House that L.R. No.93/1418 does not exist in our records. What exists, and I presume that this is what the hon. Member is trying to follow up, is Nairobi/Block93/1418, which is owned by a company called Moko African Limited of P.O. Box 76252, Nairobi. The land is held for a term of 99 years with effect from 1st February, 1996. So, this company owns this land legally and I do not think there is something irregular in this.

If the hon. Member wants me to visit the land as routine kind of work, I am ready to visit the site.

Capt. Nakitare: Mr. Speaker, Sir, if what the Assistant Minister is telling this House is true, then I presume that the Nairobi City Council is under the Ministry of Local Government. We know very well that land is allocated by councillors in this country.

Could the Assistant Minister tell us whether it is true that he is the one who allocates land in municipalities or it is the Ministry of Local Government through the councillors?

Mr. Kamama: Mr. Speaker, Sir, the mandate of allocating land to Kenyans is given to the Ministry of Lands and the Commissioner of Lands is the one who executes that. We work in consultation with the local authorities, especially in urban areas.

Mr. Ligale: Mr. Speaker, Sir, could the Assistant Minister tell us who the original owner of this piece of land was before it was allocated to the person he calls the "legal owner"? Could he also tell us what the user of that piece of land was before it was allocated?

Mr. Kamama: Mr. Speaker, Sir, this land was actually part of L.R. No.209/9080, which was later subdivided to form what the hon. Member has referred to. Our records indicate that L.R. No.209/9080 does not belong to anybody.

Mr. Ligale: On a point of order, Mr. Speaker, Sir. I specifically asked in whose ownership the original title deed was and what the user of that piece of land was before it was allocated to the current owner. The Assistant Minister has not answered that question. I want an answer to that question.

Mr. Kamama: Mr. Speaker, Sir, I want to say that I am operating on that assumption because the Question by Mr. Ndolo is about L.R. No.93/1418. So, I am only presuming that the hon. Member is asking about Nairobi/Block93/1418, which is a totally different land registration number. If there is anything wrong with these particular transaction, then the issue will be dealt with according to the recommendations of the Ndung'u Report.

Mr. Ligale: On a point of order, Mr. Speaker, Sir. The Assistant Minister is not answering my question. My question is very specific: Could the Assistant Minister tell us who owned that piece of land initially? Was it the Government or a private developer? If it was owned by the Government, what was its user before it was allocated? That is fairly simple!

Mr. Speaker: Order! There is really nothing to be agitated about all this! First of all, which piece of land do you want to know about? Is it L.R. No.1418 or are you interested in L.R. No.209/9080?

Mr. Ligale: Mr. Speaker, Sir, the Assistant Minister has talked about a piece of land that is owned by a company, which was allocated in 1996 for a term of 99 years. That is the one that I am interested in. Could he tell us who owned it initially and what was the user in the title deed?

Mr. Kamama: Mr. Speaker, Sir, I have indicated that L.R. No.93/1418 does not exist in our records. I repeat that it does not exist.

Mr. Ndolo: Mr. Speaker, Sir, as I have said, you can see the way the Assistant Minister is misleading this House. I have a sketch map of that piece of land and it exists under the City Council.

Could the Assistant Minister, with due respect, think twice and ensure that I personally take him there, so that he can see that the piece of land has been grabbed? The piece of land is on the road-side and the people of that area are always demonstrating because they do not have a way through to Mombasa Road.

If this piece of land belongs to the company that the Assistant Minister has stated, and it is on the road-side, what steps is the Assistant Minister going to take to make sure that the people of this area, who have no way through to Mombasa, have a way through to Mombasa Road?

Mr. Kamama: Mr. Speaker, Sir, we are actually deviating from the substance of this issue. We are talking about a different land registration number, altogether. Nevertheless, I want to assure the House that I will visit that place on Thursday morning.

Mr. Speaker: For the second time, Question by Mr. Khaniri!

KILLING OF MR. WILSON ISUMBA

Mr. Khaniri: Mr. Speaker, Sir, I beg to ask the Minister of State, Office of the President, the following Question by Private Notice.

(a) Under what circumstances was Mr. Wilson Isumba gunned down on Saturday, 6th October, 2007, at Hamisi District Headquarters?

(b) How many suspects have been apprehended in connection with the incident?

(c) Could the Minister assure the House that proper investigations will be conducted to ensure that the perpetrators of the killing are brought to book?

Mr. Speaker: For the second time, is the Minister of State, Office of the President here? I am afraid, I will have to defer this Question to tomorrow afternoon, Mr. Khaniri.

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.491

REPAIR OF CHEPTIRET-MOI
UNIVERSITY-LESSOS ROAD

Mr. Koros asked the Minister for Roads and Public Works:-

(a) whether he is aware that Road D305 (Cheptiret-Moi University-Lessos) is in a deplorable condition; and,

(b) when it will be repaired.

The Assistant Minister for Roads and Public Works (Eng. Toro): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the Cheptiret-Moi University Road is in a deplorable condition.

(b) The road has been earmarked for routine maintenance this Financial Year 2007/2008 and Kshs3 million has been issued on emergency basis to the Provincial Roads Engineer, North Rift, for the repair of the Cheptiret-Kesses Road.

(Loud consultations)

Mr. Speaker: Order, hon. Members! Order! We cannot transact business! Eng. Toro, have you finished or you want to continue?

The Assistant Minister for Roads and Public Works (Eng. Toro): Mr. Speaker, Sir, I will repeat the answer.

(a) I am aware that the Cheptiret-Moi University is in a deplorable condition.

(b) The road has been earmarked for routine maintenance this financial year. Therefore, Kshs3 million has been issued on emergency basis to the Provincial Roads Engineer, North Rift, for the repair of the road. The unpaved section of Road D305; Kesses-Lessos, is currently being rehabilitated at a cost of Kshs11.9 million under the African Development Bank funded Roads 2000 Project.

Mr. Koros: Mr. Speaker, Sir, I would like to thank the Assistant Minister for that answer. However, Road D.305 is a 20-kilometre road and only Kshs3 million has been provided for its repair. Is the money for gravelling or repairing the road?

Secondly, a contractor was awarded the contract to construct the road between Kesses and

Lessos one-and-a-half years ago. The road is only 12 kilometres long and so far, only a half of the work has been done. What action will the Assistant Minister take against this contractor?

Eng. Toro: Mr. Speaker, Sir, the Kshs3 million will basically be restricted to the tarmacked section of the road. With regard to the contractor who was awarded the contract to repair the road under the Roads 2000 Maintenance Programme, he has done about half the work. I will check to find out exactly why he has been slow. If there is no adequate reason for him being slow, then we will have to get another contractor.

Mr. Kipchumba: Mr. Speaker, Sir, the issue of this road was the subject of a Question that was raised here sometimes last year. We raised the fact that the base of this road has actually collapsed. I would like to state that Kshs3 million for a road that has totally collapsed is just peanuts.

When the President was in Uasin Gishu last year, he promised that, that road would be reconstructed. Could the Assistant Minister confirm that additional funds will be available, so that proper construction of that road can be done?

Eng. Toro: Mr. Speaker, Sir, what the hon. Member has said is true. The section between Cheptiret and Kesses is tarmacked, but is in deplorable condition. The section from Kesses to Moi University is tarmacked, but it is also in bad condition. However, the Ministry is designing the section between Kesses and Lessos. We want to upgrade the whole section to bitumen standards.

Currently, design work is going on, on the 12.4 kilometre section. Once the design is completed, we can do the new road on the 12.4 kilometres and total rehabilitation on the other section.

Mr. Sambu: Mr. Speaker, Sir, this year the North Rift districts of Uasin Gishu, Nandi and Trans Nzoia received rains much higher than normal---

(Loud consultations)

Mr. Speaker: Order, hon. Members! Do Members of the House require a little break? We cannot continue that way? What do you think Mr. N. Nyagah? Do you think we should continue that way?

Mr. N. Nyagah: Like yesterday, Mr. Speaker, Sir.

Mr. Speaker: Like what?

Hon. Members: We were not here yesterday!

Mr. N. Nyagah: Mr. Speaker, Sir, those that have learnt English know that if you said you need a break like yesterday, it is long overdue.

Mr. Speaker: What is he saying?

(Laughter)

Order, hon. Members! My good friend, Mr. N. Nyagah, has really not helped me because I have not got what he said. We did not have a sitting yesterday. But maybe he knows something about yesterday which I do not. Nevertheless, could we have some order out there?

Proceed, Mr. Sambu.

Mr. Sambu: Mr. Speaker, Sir, as I said, three or four districts in the North Rift have received rains this year which are much higher than normal. Consequently, most of the roads which are not tarmacked are in very poor condition. The rains have now subsided. When I demanded a Ministerial Statement from the Minister, Mr. Nyachae, promised that there would be emergency repairs of these Roads D305, D288, D289 (Mosoriot-Chepteruui-Rivatex-Kipkaren---

Mr. Speaker: Could you, please, ask your question now?

Mr. Sambu: Could the Assistant Minister direct the Provincial Roads Engineer in Eldoret to start emergency repairs as promised by the Minister?

Eng. Toro: Mr. Speaker, Sir, the Minister said there would be repairs on emergency basis. The contractor has not been able to work quickly because of the amount of rainfall that has been falling in that area. However, the Provincial Roads Engineer cannot start work until we send some emergency money to him. In my answer, I said that we have sent Kshs3 million. However, I would not be able to know how much money we have sent for the other roads.

Mr. Speaker: Last question, Mr. Koros.

Mr. Koros: Mr. Speaker, Sir, I have no further questions.

Mr. Speaker: Next question.

Mr. Osundwa: Mr. Speaker, Sir, I have not received the written reply.

Question No.490

CONFIRMATION OF GOVERNMENT PLEDGE
ON FREE SECONDARY EDUCATION

Mr. Osundwa asked the Minister for Education whether he could confirm that public secondary schools in the country will not charge school fees and other levies beginning January, 2008.

The Assistant Minister for Education (Dr. Mwiria): Mr. Speaker, Sir, I would like to apologise to the hon. Member if he did not get the written reply. I have a copy that I will share with him afterwards.

Mr. Speaker, Sir, I beg to reply.

Hon. Members will recall that we discussed Sessional Paper No.1 of 2005 and passed it in this House. The recommendations of this document were that we would have 14 years of basic education which would include---

Mr. Osundwa: On a point of order, Mr. Speaker, Sir. I am greatly disadvantaged because I cannot interrogate his answer.

Mr. Speaker: In that case, Mr. Assistant Minister, pass the written reply to the hon. Member. I will defer the Question to tomorrow.

(Question deferred)

Question No.055

NUMBER OF EARLY CHILDHOOD DEVELOPMENT TRAINING
CENTRES IN KENYA

Mr. Lesrima asked the Minister for Education:-

- (a) how many early childhood development training centres there are in Kenya;
- (b) what plans the Government has to employ trainers and teachers for early childhood development; and,
- (c) when the Ministry will start paying salaries to early childhood development teachers.

The Assistant Minister for Education (Mrs. Mugo): Mr. Speaker, Sir, I beg to reply.

(a) There are 114 early childhood training centres in the country which offer Early Childhood Development (ECD) in-service courses at certificate and diploma levels. Thirty-two of these, are Government centres while 82 are private centres.

(b) The trainers and teachers for the Government training centres are TSC employees who work at the district centres for early childhood education and, during the school holidays they are deployed to train the teachers in ECD training centres through in-service teacher training.

The Ministry is currently developing ECD implementation strategy and working out modalities of mainstreaming ECDE as part of basic education by 2010.

(c) Based on "b" above, the Government will decide when and how to recruit and pay salaries to ECD teachers once the implementation strategy and other modalities are ready.

Mr. Lesrima: Mr. Speaker, Sir, I thank the Assistant Minister for a very comprehensive answer. Is she aware that out of the 32 Government centres, 10 were funded by the World Bank, but they were not completed, except for the ones in Kericho and Nyeri districts? When will the Ministry provide hostels for the poor trainees who have not paid? When these trainees come for training, they are not provided with hostel facilities. Since they do not earn any salary, they suffer a lot of financial problems.

Mrs. Mugo: Mr. Speaker, Sir, the information in my possession is that we pay all the trainees who do the in-service training for the teachers because they are all employed by the TSC.

Mr. Angwenyi: Mr. Speaker, Sir, two months ago we approved a Motion in this Parliament requesting the Government to recruit these teachers for Early Childhood Education. The Government supported that Motion which was passed by this House. Could the Assistant Minister confirm today that from January, these teachers will be employed and paid by the Government?

Mrs. Mugo: Mr. Speaker, Sir, it is true that my Ministry supported that Motion. If the hon. Member recalls, we outlined in the Sessional Paper No.1 of 2005 on Policy Framework of Education that the ECD will be assimilated into the free primary education or basic education by the year 2010. These are the preparations we have made. The strategy will be ready by February, 2008. After that date, we will have a programme as to how the implementation will be done and when we will hire the staff. Everything will be in place by 2010 because this is the planning stage.

Mr. Boit: Mr. Speaker, Sir, could the Assistant Minister table the list of the Government ECD schools which she mentioned because there is one in my constituency which stalled. It was a very good and major project, but it is not functioning. We want it to be commissioned. Could she tell us when she will commission that project?

Mrs. Mugo: Mr. Speaker, Sir, we have set aside funds to complete all the infrastructure. This project will definitely be completed. We have money for improvement of infrastructure. I hereby table the list.

(Mrs. Mugo laid the list on the Table)

Mr. Lesrima: Mr. Speaker, Sir, one of the ten World Bank-funded centres is actually more or less like a regional centre for training ECD personnel and it is located in Maralal just next to my CDF office. I am aware that there are very low budgetary allocations amounting to Kshs18,000 per annum to run the office. Could the Assistant Minister consider supporting that ECD centre to make sure that it is sustainable?

Mrs. Mugo: Mr. Speaker, Sir, we will consider assisting it depending on the availability of funds, since it is already on our programme to enjoin all ECD schools in our programme.

Question No.479

NON-PAYMENT OF CASUAL LABOURERS
BY KANG'ETHE CONTRACTORS

Mr. Rai asked the Minister for Labour and Human Resource Development:-

(a) whether he is aware that over 40 people hired on casual basis by a sub-contractor (Kang'ethe Contractors) at Nyari Sisal Estate, Taru, between 2005-2006 have not been paid their dues; and,

(b) what steps he is taking to ensure that the workers are paid their dues.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Speaker, Sir, I answered this Question last week. All that was needed of me was to produce evidence that the contractor had paid the sub-contractor and that the sub-contractor paid the employees. Regrettably, I have a schedule of the contractor paying the sub-contractor, but there is no evidence that the sub-contractor paid the employees. So, on that basis, I have instructed the Commissioner of Labour to go to Mombasa and find out the situation on the ground. Otherwise, evidence of payment of the contractor to the sub-contractor is available here.

Mr. Rai: Mr. Speaker, Sir, the purpose of asking this Question is that the casual employees have not been paid. Furthermore, I would like to know from the Minister when these casual employees were hired by Mr. Kang'ethe, so that we can at least clear the issue of the outstanding amount which he is saying that has not been released because these people have not cleared the job which was given to them.

Dr. Kulundu: Mr. Speaker, Sir, it is true that these people were not paid. They were hired for a period of nearly one year. I did not know whether he would ask about when they were hired but those details are here. I can avail to him the details about when they were hired and when they were sacked.

Mr. Rai: Mr. Speaker, Sir, is the Minister satisfied that the casual employees were not being paid for one year and yet he is now saying that he has dispatched the labour officer to go to Mombasa to find out what is happening? He knows that Mr. Kang'ethe has been paid by the owner and he has not paid the casual employees. He owes them about Kshs12 million or Kshs19 million, yet he has not done anything about it. These employees were given the job of cutting grass. When you cut grass and clear [it, it only takes three months for it to recycle. What is the Minister doing to save these people from Mr. Kang'ethe, who is trying to deny them their dues?

Dr. Kulundu: Mr. Speaker, Sir, I sympathise with the workers. However, they have taken nearly three years to report the matter. There is a law which forbids settlement of such cases after two years. All the same, we want to help these workers by sending the Commissioner of Labour to see how he can help them.

Mr. Speaker: Mr. Rai, please, ask the last question!

Mr. Rai: Mr. Speaker, I wonder if you are satisfied with the answer that has been given by the Minister. These people have waited for almost one and a half years to be paid their dues. The amount involved is more than Kshs19 million. We do not know when the Labour Officer will be dispatched from here to Mombasa. The District Officer, Samburu, has been going to Nyari Estate almost after every three months and yet the Minister says that these people had not reported the matter to the authority. Could the Minister give an undertaking as to when this particular officer will be going to Nyari Estate so that the DO, the DC and the area Member of Parliament can be there to ensure that this matter is resolved and a report tabled in this House?

Dr. Kulundu: Mr. Speaker, Sir, the Labour Commissioner will be going there on Monday next week.

Question No.327

NON-PAYMENT OF DEATH GRATUITY TO
LATE ALANGO'S DEPENDANTS

Prof. Olweny asked the Minister of State for Administration and National Security:-

(a) whether he is aware that Mr. Stephen Okuto Alango, P/No.01792019087, who was the Assistant Chief of Wang'aya II Sub-location, Miwani Division, Muhoroni Constituency, died on 29th October, 1997;

(b) whether he is also aware that the death gratuity and benefits of the deceased have not been paid to his family; and,

(c) what efforts he is making to ensure that the benefits and the death gratuity of the late Alango are released to his wife, Mrs. Jane Juma Alango.

Mr. Speaker: Where is Mr. Michuki? Who is handling this Question?

The Assistant Minister, Office of the President (Mr. Munya): Mr. Speaker, Sir, we are still working on the answer. The answer is not ready.

Mr. Speaker: You are still working on the answer? When can you give the answer?

The Assistant Minister, Office of the President (Mr. Munya): Yes, Mr. Speaker, Sir. We can give the answer tomorrow.

Mr. Speaker: What is your reaction?

Prof. Olweny: Mr. Speaker, Sir, it is okay. However, it was interesting to realise that they were not aware that the Question was asked when they were sitting there. Anyway, it is okay with me.

Mr. Speaker: Okay, the Question is deferred to tomorrow.

(Question deferred)

Question No.472

ACQUISITION OF MWARIKI
FARM BY GOVERNMENT

Mr. Mirugi asked the Minister for Lands:-

(a) when the Government acquired the Mwariki Farm in Nakuru Town from Mwariki Farmers Company;

(b) if he could table authentic documents of acquisition and state who the directors of the company are; and,

(c) whether he could table all the documents of the company filed with the Registrar of Companies since its establishment to date.

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

(a) The Government acquired 246.132 acres of Mwariki farm in Nakuru in 1973.

(b) Yes, I can table authentic documents of the above acquisition as follows:

(i) A copy of Gazette Notice No.1791 of 11th June, 1973.

(ii) A copy of the Award.

(iii) Notice of Taking Possession.

(iv) A copy of the letter forwarding cheque No.53982 which was paid by the Municipal Council of Nakuru and forwarded to the company through their advocates, Messrs. Cresswell Man and Dodd Advocates, for compensation.

(v) The map of the affected sewerage site.

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

Mr. Mirugi: Mr. Speaker, Sir, I want to thank the Assistant Minister for the answer. This farm has thousands of acres. The parcel of land he has referred to is just a small portion which houses the sewerage system for the Nakuru Town. I would like to know from the Minister why the farm, which numbers thousands of acres, is still under leasehold instead of freehold yet it is owned by a private company. Why can the Minister not release title deeds to the shareholders? He should

also answer part "c" of my Question.

Mr. Kamama: Mr. Speaker, Sir, the farmers will be issued with title deeds once they make an official request. I would like to advise the hon. Member to inform his people to come to our office so that we can sort out the matter.

Mr. Waithaka: Thank you, Mr. Speaker, Sir. As it has been rightly said by the hon. Member for Nakuru, part "c" of this Question has not been answered. The Assistant Minister has been asked to answer it. Secondly, how much was paid as compensation? What was the value of the 246.132 acres of land which were compulsorily acquired from the company?

Mr. Kamama: Mr. Speaker Sir, I have given sufficient information to the hon. Member. However, for curiosity sake, I would like to confirm to the House that about Kshs189,838 was given out as compensation.

(Loud consultations)

Mr. Mirugi: Mr. Speaker, Sir, I had requested the Assistant Minister to lay on the Table the documents filed with the Office of the Registrar of Companies.

Mr. Speaker: Order! Order! Mr. Mirugi, you know that you are not entitled to do that. You can walk to the Office of the Registrar of Companies' and do a search. These are public documents and you are not allowed by the Standing Orders to request that they be tabled here.

Mr. Mirugi: Mr. Speaker, Sir, I had attempted to do that to no avail. I believe that the files have disappeared. The problem is that we can only ask the Assistant Minister to pursue that matter on behalf of this farm to confirm that everything is okay. **Mr. Speaker:** Meanwhile, do you have the last Question?

Mr. Mirugi: Mr. Speaker, Sir, part "c" of the Question has not been answered.

Mr. Speaker: Mr. Assistant Minister, have you attempted to see whether that file is available? Although, Mr. Mirugi, I cannot break the rules. You know I cannot compel him to do that.

Mr. Kamama: Mr. Speaker, Sir, I only have two parts of the Question. Part [Mr. Kamama]

(a) and part (b). I do not have part (c).

Mr. Speaker: Very well! Hon. Members, that is the end of Question Time! There are hon. Members who want to seek Ministerial Statements.

Mr. Keter!

POINTS OF ORDER

INSECURITY IN SONDU AREA

Mr. Keter: Mr. Speaker, Sir, I rise to request a Ministerial Statement from the Minister of State for Administration and National Security. On Sunday, 14th October,---

Mr. Speaker: Order, Mr. Keter! Mr. Michuki, could you listen to what Mr. Keter is saying? He is directing the Ministerial Statement to you!

Proceed!

Mr. Keter: Mr. Speaker, Sir, I would like to seek a Ministerial Statement concerning the state of insecurity around Sondu area. On Sunday, 14th October, 2007, three people from my constituency were shot at by police officers and killed instantly. I would like to know from the Minister:-

(i) Why did the police use live bullets against Kenyan citizens?

(ii) Where did those police officers come from?

I am told they came from a different police station and not Sondu Police Station.

(iii) Why were the bodies of the three victims taken to Kisumu instead of Kericho?

Mr. Speaker: Mr. Minister, would you like to respond?

The Minister of State for Administration and National Security (Mr. Michuki): Mr. Speaker, Sir, I have to find out the details of that matter. What I know---

(Loud consultations)

Mr. Speaker: Order, hon. Members! Could we listen? Is it not possible for you to keep quiet for one minute?

Proceed, Mr. Minister!

The Minister of State for Administration and National Security (Mr. Michuki): Mr. Speaker, Sir, what I know is that politicians in that area, who are preaching *majimbo* and hatred, are the cause of the problems in Sondu!

Hon. Members: No!

Prof. Anyang'-Nyong'o: That is not true!

Mr. Speaker: Will you sit down?

The Minister of State for Administration and National Security (Mr. Michuki): Deny it here or not, but that is a fact! That is the cause of that problem!

Mr. Speaker: Mr. Michuki, is that all you have to say or you want to come and make a---

Prof. Anyang'-Nyong'o: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Will you, please, sit down! Order all of you! Mr. Michuki, is that the end of the story or you want to---

The Minister of State for Administration and National Security (Mr. Michuki): Mr. Speaker, Sir, I did actually insinuate, and I am sure it was understood, that I would like to deal with that matter and get more details. But the initial report that I have is exactly what I have said.

People ought to restrain themselves not to cause trouble, and then come and bring them here in the House!

(Several hon. Members stood up in their places)

Mr. Speaker: Mr. Keter, what is it? Order, hon. Members! I hope everybody cools down!

Mr. Keter: Mr. Speaker, Sir, we are talking about peoples' lives which have been lost. We are talking about peoples' property which has been destroyed. The Minister has said that the cause of that problem is the politicians from that area who have been talking about *majimbo*. Could he substantiate? Who are the politicians who have been preaching *majimbo*?

The Minister of State for Administration and National Security (Mr. Michuki): Mr. Speaker, Sir, I said that I will be issuing a more detailed Ministerial Statement.

Hon. Members: When? Tomorrow?

Mr. Speaker: Order, hon. Members! The hon. Members over there seem to have all the answers! Why are we labouring in vain? Will you relax? You seem to have all the answers!

Mr. Michuki, when are you going to issue the Ministerial Statement?

The Minister of State for Administration and National Security (Mr. Michuki): Mr. Speaker, Sir, I will do so on Thursday. But let me add that if anybody is trying to promote his or her politics, it should not be through this Parliament. It should be out there!

Prof. Anyang'-Nyong'o: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! You will wait until Thursday!

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

Mr. Speaker: What is it?

Mr. Angwenyi: Mr. Speaker, Sir, the lives which have been lost there are the lives of "people"! It is the lives of the Kisiis! The houses which are being burnt belong to the Kisiis who have invested there! I would like the Minister to tell us how he is going to restore the lives which have been lost there!

Mr. Speaker: Order, Mr. Angwenyi! Order, hon. Members! These are very serious issues. I really do not want it to be treated lightly. I appeal to all of you, as I have done in the past, please, let us understand that the Kenyan people deserve to live to vote. They have a right to live to vote. Every hon. Member and politician must grant that right to the Kenyan people. That is the right to live to vote and live thereafter. Mr. Angwenyi, it does not really matter whether they are Kisiis, Luos, Kipsigis or Maasais. It is Kenyans who are losing their lives. Can we stop this tribal business?

Mr. J. M. Mutiso, can you proceed and ask for your Ministerial Statement?

RECRUITMENT OF MILITARY CADETS IN KIBWEZI DISTRICT

Mr. J. M. Mutiso: Mr. Speaker, Sir, I rise to demand two Ministerial Statements. One is from the Ministry of State for Defence pertaining to the recruitment of cadets that was done on 12th October, 2007 at Makindu in Kibwezi District. Several recruits, both men and women, attended the recruitment at Makindu on 12th October, 2007. The district has about six divisions.

Mr. Speaker, Sir, on that material day, those who were recruiting dismissed people from other divisions, including Kilome and Kasikeu. They were told they could not offer themselves for recruitment in Kibwezi District. I stand to demand from the Minister the following:-

(i) Why were people from other divisions, other than Kilome Division, sent away without a reason?

(ii) Why did the Ministry decide to discriminate on the recruitment?

STATUS OF CONTRACT OF ATHI WATER SERVICES BOARD CEO

Mr. Speaker, Sir, secondly, I rise to demand a Ministerial Statement from the Minister for Water and Irrigation on the issue of the Chief Executive of the Athi Water Services Board (AWSB), whose contract lapsed last month on 30th September, 2007. I understand that the Minister said he could not renew the contract because the chief executive has been acting illegally by drawing an illegal salary of Kshs556,000, contrary to the Board's recommendation of Kshs380,000.

Mr. Speaker, Sir, could the Minister explain the illegal contract which was being executed by the former Chief Executive of ASWB?

Mr. Speaker: Are the Ministers ready? Shall I ask them to do it tomorrow and Thursday?

Mr. J.M. Mutiso: Mr. Speaker, Sir, they are here!

Mr. Speaker: Mr. J.M. Mutiso, they need to know that you are asking this! Expecting them to be ready with the answers is expecting too much!

Mr. Karume, are you ready for it or shall I give you until Thursday?

The Minister of State for Defence (Mr. Karume): Mr. Speaker, Sir, I did not hear what the hon. Member requested. Could he repeat what he said?

Mr. Speaker: Mr. J.M. Mutiso, what did you say?

Mr. J.M. Mutiso: Mr. Speaker, Sir, my Ministerial Statement pertains to the recruitment of military cadet officers on Friday, 12th October, 2007 at Makindu, which is the district office headquarters of Kibwezi District. Both men and women who had presented themselves for the interview were sent back. They were told they do not belong to Kibwezi Division. Kibwezi District has six divisions. Only one division was considered. Could the Minister clarify why people from Kibwezi District were discriminated and denied recruitment into the army?

The Minister of State for Defence (Mr. Karume): Mr. Speaker, Sir, I am going to check out this because we have done a wonderful job this year. Many people have been very happy with the way we carried out the recruitment because we did it through the divisional level. It is not like before when it was done at the district level. I am going to check on this matter and report back.

Mr. Speaker: Very well! Do it on Thursday! Next Order! Mr. Mutiso!
Is the Minister for Water and Irrigation here? Is there any representative?

(Mr. Katuku stood up in his place)

Are you ready?

The Minister for Water and Irrigation (Mr. Katuku): Ready for what, Mr. Speaker, Sir?

Mr. Speaker: What?

The Minister for Water and Irrigation (Mr. Katuku): Ready for what?

Mr. Speaker: Where were you?

The Minister for Water and Irrigation (Mr. Katuku): Mr. Speaker, Sir, I was just seated here!

(Laughter)

(Loud consultations)

Mr. Speaker: Order, hon. Members! I cannot blame the Minister! Quite frankly, there is too much loud consultation. Mr. Bett, you must now keep quiet and that is an order! Everybody will keep quiet! You could not hear because there was too much consultation.

Mr. J.M. Mutiso, would you want to start again? And, please, everybody should listen.

STATUS OF CONTRACT OF ATHI
WATER SERVICES BOARD CEO

Mr. J.M. Mutiso: On a point of order, Mr. Speaker, Sir. I rise to demand a Ministerial Statement from the Minister for Water and Irrigation pertaining to the contract of the Chief Executive of Athi Water Service Board (ASWB) which expired on 30th September, 2007. It is alluded that the contract was not to be renewed because of an illegality in the contract in the sense that the CEO has been drawing a salary of Kshs566,000 contrary to the initial arrangement of the Board directive which was supposed to be about Kshs300,000. Could the Minister clarify whether such an illegal contract has been executed by the former CEO? Could he also explain to this House when a competent CEO will be appointed for the AWSB?

Mr. Speaker: Are you ready for it or do you want to do it tomorrow?

The Minister for Water and Irrigation (Mr. Katuku): Mr. Speaker, Sir, I will issue that Statement on Tuesday.

Hon. Members: No!

Mr. Speaker: Tuesday? You will do it on Thursday, Mr. Katuku!

The Minister for Water and Irrigation (Mr. Katuku): It is okay, Mr. Speaker, Sir. I can do it on Thursday.

OPERATIONALIZATION OF THE PERSONS
WITH DISABILITIES ACT

Mr. Weya: On a point of order, Mr. Speaker, Sir. It is now almost a month since the Ministry of Gender, Sports, Culture and Social Services promised to operationalize the Persons with Disabilities Act, the Persons with Disabilities Fund and the Persons with Disabilities Board but it has not done so. I do not know what is happening with the Government because they keep on saying that they will do it but they do not do it.

Mr. Speaker: I remember last time this issue was raised by His Excellency, the Vice-President. What is the position now? Why must we demand Acts of Parliament to be made operational?

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, may I first of all correct a misconception. I am always interested with the disabled and I have been involved with them for a long time. So, first, the Ministry that is concerned is the Ministry of Gender, Sports, Social and *etcetera*.

(Laughter)

Indeed, I asked the Minister concerned to come and give a statement as to why it has not been possible for him to actualise what is an Act of Parliament.

Thank you.

Mr. Sungu: On a point of order, Mr. Speaker, Sir. This is a very serious matter! When Parliament which is the voice of Kenyans passes a law and it is assented to by the President without it being referred to Parliament, it should be actualised. These Government Ministers are acting in defiance of Parliament and the people of Kenya. What do we do in the face of such intransigence by Ministers who are also hon. Members? This is not the first time that we have visited this issue. We did so with regard to the Minister for Finance the other day, now this one and maybe other laws that this Parliament has made but have not been made operational. What do we do?

Hon. Members: The Assistant Minister is here! *Simama!*

The Assistant Minister for Gender, Sports, Culture and Social Services (Mrs. Chelaite): Mr. Speaker, Sir, I want to thank the hon. Member. However, I want to ask for time so that we answer next Thursday.

Mr. Speaker: Order, hon. Members! I think my sentiments have been very clear and I do not think I need to keep repeating because it belittles the Chair. So, I want you to come here on Thursday and tell us when the Act is going to be operational. Not whether or not but when it will be. That is a direction!

Next Order!

COMMITTEE OF THE
WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Mr. Maore) took the Chair]*

THE FINANCE BILL

*(Resumption of Consideration
interrupted on 9.10.2007)*

Clause 81

The Temporary Deputy Chairman (Mr. Maore): Order, hon. Members! By the close of business on 9.10.2007, we had started on the amendments by Prof. Olweny on Clause 81 on page 725 and that is where we will start from. By the time we finished, Mr. Oparanya had moved the amendment and supported it. Does anybody have an interest on that issue? We may have to allow one person or I will put the Question.

I think we better deal with deletion first. If hon. Members succeed in deleting, then the Minister will not have a chance in his amendment. So, you will have to pay attention as I put the Question to Clause 81(b)12 and 81(c)12 to be deleted. That is the proposal by Prof. Olweny.

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

Hon. Members: Division! Division!

The Temporary Deputy Chairman (Mr. Maore): Order, hon. Members! You have a requisite number, I order that the Division Bell be rung.

(The Division Bell was rung)

Order, hon. Members! Take your seats! The Tellers for the Ayes are Mr. Keter and Ms. Ndung'u. The Tellers for the Noes are hon. Messrs Cheboi and Kanyingi. Now, could the bar be drawn and the Doors locked! Now, those who said Aye that Clause 81(b) 12 and 81(c) 12 be deleted will go to my right and those who said "No" will go to my left. Those who want to abstain will record their names with the Clerks-at-the-Table.

Proceed!

DIVISION

(Question put and the House Divided)

The Temporary Deputy Chairman (Mr. Maore): Order, hon. Members! We may now proceed to give the results of the Division

(Question carried by 37 votes to 33)

AYES: Messrs. Ahenda, Balala, Bifwoli, Biwott, Cheboi, Keter, Kilonzo J.K, Kosgey, Ligale, Maitha, Prof. Mango; Messrs. Maoka, Marende, Midiwo, Musyoka, Mutiso J.M., Mwanzia, Capt. Nakitare, Mr. Ndolo, Rev. Nyagudi, Dr. Oburu, Messrs. Ochilo-Ayacko, Odoyo, Ogur, Okemo, Eng. Okundi, Prof. Olweny, Mr. Omondi, Archbishop Ondiek, Messrs. Oparanya, Osundwa, Owino, Sungu, Tarus, and Weya.

Tellers for Ayes: Ms. Ndung'u and Mr. Keter.

NOES: Mrs. Chelaite, Messrs. Abdirahman, Angwenyi, Awori, Kagwe, Kamama, Kariuki G.G, Ms. Karua, Messrs. Karume, Katuku, Kenneth, Prof. Kibwana, Messrs. Kanyingi, Kimathi, Kimunya, Dr. Kutu, Dr. Manduku, Messrs. Mbau, Mohamed A.C, Mrs. Mugo, Messrs. Muiruri, Mungatana, Munya, Muturi, Mwakwere, Mwiraria, Nderitu, Ntutu, Nyachae, Obwocha, Sugow, Eng. Toro and Mr. Wambora.

Tellers for Noes: Messrs. Cheboi and Kanyingi.

Abstentions: Mr. Musila and Ms. Ndung'u.

(Applause)

(Clause 81 as amended agreed to)

(Clause 82 agreed to)

New Clause

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move that the new Clause 83 be read a Second Time.

THAT, the Bill be amended by inserting the following new Clause immediately after Clause 82

Amendment of section 22
of Act No.3 of 2005

- 83.** Section 22 of the Public Procurement and Disposal Act, 2005, is amended in Subsection (1) -
- (a) by inserting the following new paragraphs immediately after paragraph (a) -
 - (b) the Permanent Secretary to the Treasury, or his representative;
 - (c) the Attorney-General or his representative;
 - (c) by renumbering the existing paragraph (b) as paragraph (d).

(Question of the new Clause proposed)

(New Clause read the first time)

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

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, the Minister has moved that a new Clause 83 be read Second Time without even a single explanation as to the import of that new clause. We are actually in the dark. But, as I can see here, this Section is dealing with the Public Procurement and Disposal Act, 2005.

On the new people he is adding, that is the Permanent Secretary to the Treasury or his representative and the Attorney-General or his representative, this House is on record as directing

Ministers to give the names of people appointed to particular boards and not by positions. That is because the Permanent Secretary in charge of the Treasury is a very busy man! There will never be any continuity because anybody can be sacked at any time. There will be nothing like institutional memory! Therefore, I would like the Minister to explain why it is necessary for him to have this new clause added to this Section.

Thank you, Mr. Temporary Deputy Chairman, Sir.

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I thank hon. Sungu for highlighting the issue. Perhaps, I may not have explained exactly what we are attempting to do.

Mr. Temporary Deputy Chairman, Sir, as part of the operationalization of the Public Procurement and Disposal Act, and in selecting the names of the people to fit in that Act, it became very clear that there was a glaring omission of the offices of the Treasury and the Attorney-General, which are standard in every body that is set up by this House. It has to have the representation of the Treasury and the Attorney-General, so that appropriate advice is provided to those bodies. We have discussed this issue with the Committee and they were in concurrence. It is on that basis that we have brought this amendment here for purposes of operationalizing the Public Procurement and Disposal Act, which is very vital. We are giving it the teeth and the institutional framework that is necessary.

So, this amendment is, basically, a clean up of the Public Procurement and Disposal Act that was passed in this House. We are, currently, in the process of operationalizing. It is in that process that we discovered that weakness.

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

(The new Clause was read a Second Time)

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

(First Schedule agreed to)

Second Schedule

The Temporary Deputy Chairman (Mr. Maore): I think the Minister has several amendments. But we want to check on Dr. Oburu's amendments, to make sure that we do not have something that has been deleted---

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir---

The Temporary Deputy Chairman (Mr. Maore): Do you have something on the Second Schedule? Do you want to withdraw, Mr. Muturi?

Mr. Muturi: Thank you, Mr. Temporary Deputy Chairman, Sir. I had proposed to move an amendment to the Second Schedule as follows:-

THAT, the duty of Kshs6 per litre or 10 per cent under Tariff No.2201.10.00 in relation to Mineral waters be deleted.

But after consulting a number of people, I think that mineral water is a luxury and, therefore, I wish to withdraw my intended amendment.

(Amendment withdrawn)

Dr. Oburu: Mr. Temporary Deputy Chairman, Sir, the first amendment is on Tariff

No.2204.21.00 and hon. Oparanya will move it on behalf of the Committee.

Mr. Oparanya: Mr. Temporary Deputy Chairman, Sir, I beg to move -
THAT, the Second Schedule to the Bill be amended-

(a) in item (b)-

(i) by deleting the rate of duty of "Shs85 per litre or 65 per cent in Tariff
No.2204.21.00 and substituting therefor a rate of duty of "45 per cent";

This particular amendment affects the fortified wine. Fortified wine is supposed to serve the lower end of the market in the alcohol industry. The effect of this, if it is not amended, will mean that Excise Duty on fortified wine will move from 45 per cent to the high of Kshs85 per litre or 65 per cent. Fortified wine competes with non-malt beer. Non-malt beer, even attracts Excise Duty remission. The essence of tax is to ensure equity and this particular tax does not ensure equity and that is why I am saying that to promote the local industry, this Duty should be removed.

The Minister for Planning and National Development (Mr. Obwocha): Mr. Temporary Deputy Chairman, Sir, I rise to oppose. In this country, anybody who can afford a glass of wine, should be able to pay Duty. If he is talking about water for the poor, we agree but anything to do with wine--- When you need a glass of wine, you should be able to develop your country with one shilling or less.

I beg to oppose.

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, it is important that we take into cognisance the need to develop our local industries. There should not be a monopoly. East African Breweries Limited (EABL) is no longer a Kenyan company. We do not have a local Kenyan brewing company so it is a shocker to kill local entrepreneurs. I know that the Minister is on record saying that he will "kill" Keroche Industries. If this is the route, then it is the wrong route.

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment proposed by Mr. Oparanya. I would like to explain to the House so that we do not end up voting in confusion. The tariff code 2204.21.00 is an international code that refers to wine made from grapes. It is very important that we understand this. The wine that is made from a mix of fruit wine, other than grapes, is covered under tariff code 2206. Tariff code 2204 is wine made from grapes. That is an international description.

The issue here is not about a local industry or a multinational but about what code we are talking about. We took the view that the fortified wine that the hon. Members are talking about which is made by Keroche Industries is made from a mix of pineapple juice and alcohol. It becomes fortified wine categorised under international code 2206. We took that view and we have not raised the Duty on that code. But the code that we are talking about here, code 2204, refers to wine made from grapes and grape mast. That is what we need to be careful about. So, by trying to help the industry you are thinking of, you will actually be helping all the wine and champagne manufacturers out there who are covered by this code.

It is very important that by the time this House makes a decision, we do not do it out of confusion, because that is exactly the confusion that we got in the last Clause.

The Temporary Deputy Chairman (Mr. Maore): Mr. Temporary Deputy Chairman, Sir, there is a difference between the Pole Tax levied by King George or Queen Elizabeth on this country, where you do not have a question on it. The difference between our Minister for Finance and King George is that this Parliament is the one that has the power to impose taxation. So, do not have any insinuation that the House can vote in confusion.

Dr. Oburu: On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Maore): No! No! There is nothing out of

order yet, Dr. Oburu!

I just wanted to clarify to the Minister that when he is arguing his point, he should just talk of merits or demerits, but he should not insinuate that Parliament can make a wrong decision. Taxation is the role of Parliament.

Dr. Oburu: On a point of order, Mr. Temporary Deputy Chairman, Sir. The point of order that I want to raise is that the Minister is misleading the House. The issue of categorization was contested in court and the court ruled that Keroche Industries belongs to code 2204. That is why I think that the Minister is misleading the House.

The other issue that he is misleading the House on is that this is not only for wines from grapes. My Committee has gone through it very carefully and it reads:-

"Grapes and other---"

That "other" means any other which is not there.

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I think it is important to realise that anything in terms of description of tariff codes is not a matter for the courts. It is the Customs Union that determines what products go under what category. The issue that Dr. Oburu is talking about was a case in terms of, at what point does Keroche Industries start paying taxes. What is surprising me is that, we have all this time been consumed about just discussing not whether we should levy tax on wine, but about a specific industry.

This House is about the public interest which is best served when we first of all appreciate that the codes that we are talking about, are international. Code 2204 is described as wine made from grapes including fortified wine. Code 2206 is wine made from other fruits including fortified wine.

I have made my case and I have explained to the hon. Members and it is up to the House to either remove these taxes and lose the revenue. We need this money to pay for the education of children. So, the people who will benefit are the wine drinkers and not the people you are targeting.

The Temporary Deputy Chairman (Mr. Maore): With regard to clarity, the House intends to delete the duties of Kshs85 per litre or 65 per cent in that tariff. They have not deleted the tariff code. We are dealing with Clause (a)--- I can open debate on this and hon. Members can debate parts (i), (ii), (iii), (iv) and (v). Mr. Muturi, do you have a problem?

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, even as we vote, we should know what we are doing. Could we ask the Mover, Mr. Oparanya to move the rest. There are numbers (iii) to (v) which deal with plastic bags.

The Temporary Deputy Chairman (Mr. Maore): In exactly one sentence each, could you please explain what they are?

Mr. Oparanya: Mr. Temporary Deputy Chairman, Sir, it would be important that we vote on each because they refer to different items. But if you want me to move each, I would not mind.

The Temporary Deputy Chairman (Mr. Maore): I am not intending to change the rules of how it is done. So, explain.

Mr. Oparanya: Mr. Temporary Deputy Chairman, Sir, I need to withdraw the Clause(a) (ii) because the Minister has taken appropriate action in his amendment. Then I propose that parts (iii), (iv) and (v) are moved by Dr. Oburu.

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, the Mover is purporting to withdraw part (a)(ii) of the amendment because the Minister has taken care of it.

Mr. Temporary Deputy Chairman, Sir, I want to alert the House to the fact that once the whole of this amendment is approved or rejected, the Minister's amendment will not come into operation. Therefore, we might have a gap.

So, it is for him to move or not, or to explain to the House what it is that is being amended or not, so that we can be clear.

The Temporary Deputy Chairman (Mr. Maore): Hon. Members, the Movers are switching positions. Mr. Oparanya has moved part (a)(i) and withdrawn part (a)(ii) of the amendment. I will now put the Question that item (b) of the Second Schedule be amended as proposed by Mr. Oparanya.

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

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

Hon. Members: Division! Division!

The Temporary Deputy Chairman (Mr. Maore): Sit down, hon. Members! You have not raised the requisite number!

*(The hon. Members resumed
their seats)*

The Temporary Deputy Chairman (Mr. Maore): Hon. Members, part (a)(ii) of the amendment to the Second Schedule by Dr. Oburu has been withdrawn as requested by the Mover.

(Amendment withdrawn)

*(Mr. Sang was applauded as
he entered the Chamber)*

Second Schedule

The Temporary Deputy Chairman (Mr. Maore): I now call upon Dr. Oburu to move parts (a)(iii), (a)(iv) and (a)(v) of his amendment to the Second Schedule.

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

THAT, the Second Schedule to the Bill be amended-

(a) in item (b)-

(iii) by deleting Tariff No.3923.21.00 and the proposals relating thereto;

(iv) by deleting Tariff No.3923.29.00 and the proposals relating thereto;

(v) by deleting Tariff No.6305.33.00 and the proposals relating thereto;

Mr. Temporary Deputy Chairman, Sir, the deletions we have proposed to item (b) of the Second Schedule have to do with plastics. The Minister has levied a 120 per cent tax on plastics, under the tariff numbers referred to. It is the feeling of the Committee that the issue of plastics is environmental, and not a tax issue. The Committee was informed that the Minister for Environment and Natural Resources has already taken appropriate action with the stakeholders. They are establishing a levy, which will be used for disposal and recycling of plastics. This is the only way the plastics issue will be dealt with, and not through levying a tax, which will go into the general revenue kitty without specifically being earmarked for plastics disposal.

The Minister has already proposed amendments to the two items falling under Tariff Nos.3923.21.00 and 3923.29.00, which are captured under parts (a)(iii) and (a)(iv) of the Committee's amendment to the Second Schedule, leaving out the tariff number captured under part (a)(v), which is the most crucial being the type of paper bag used by the ordinary woman selling *mboga*. So, he is only trying to give relief to the rich, who use the bigger bags, and excluding the poor person, who uses the small plastic bags on the market. Therefore, I propose to delete all of them, and not just the two that the Minister has proposed.

I beg to move.

(Question of the amendment proposed)

Mr. Balala: Mr. Temporary Deputy Chairman, Sir, I support the amendment by Dr. Oburu. This is because the levies introduced have affected factories. As I speak, the affected factories have closed down. The costs of bread and other essential commodities are high. We are impoverishing our people. This is a serious issue. We can tax as much as we can, but we should not hurt the mwananchi at the grassroots level. There is already an understanding over a green levy between the Ministry of Environment and Natural Resources and producers of plastic bags. Why do we not give a chance for that levy to come into effect?

I beg to support.

The Minister for Planning and National Development (Mr. Obwocha): Mr. Temporary Deputy Chairman, Sir, before the Minister for Finance clarifies this, I would like to point out the fact that this issue has been raised by several people. Nobel Laureate, Prof. Maathai, has said that plastics are spoiling the environment, particularly in this country. There is no way we, as a country, can go back when we have been honoured by the world for our environmental conservation efforts. What is being proposed is not what Dr. Oburu has said. The Minister for Finance will clarify that fact. We are rejecting this particular amendment because we need to protect our environment.

The Temporary Deputy Chairman (Mr. Maore): Could the Minister clarify the matter before I put the Question?

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I just want to clarify that, in fact, there are three tariff codes affecting plastics. They are Tariff Nos.3923.21.00, 3923.29.00 and 6305.33.00. Tariff No.6305.33.00 refers to the bags that Dr. Oburu has referred to. We took cognizance of that when we consulted with the industry, and we have decided that we are going to remove those from the Excise Tax. However, in terms of the very thin plastic bags, which are a menace to the environment, and which are being swallowed by cows upcountry, who are dying, those are the ones we are saying, let us impose a duty on them if only to send a signal to the people that they must either recycle or reject. If we do not do so, we are then going to kill the industry.

Mr. Temporary Deputy Chairman, Sir, so, I would like to ask hon. Members of this House to oppose the suggestion by Dr. Oburu. I will then bring the amendment on what we shall be paying for and what we shall not be paying for.

The Temporary Deputy Chairman (Mr. Maore): Mr. Minister, what do you want to say about your amendment? You are also deleting the same, including the Tariff No.2207.10.00!

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, what I am doing is that I am removing them all in the first instance and then reinstating Tariff Nos.3923.21.00 and 3923.29.00, and exempting the bags, falling under Tariff No.6305.33.00, from taxation. So, there will be no tax on plastic bags but there will be a tax on all thin plastics,

which are a real menace.

The Temporary Deputy Chairman (Mr. Maore): Let us have a last and fast one from Mr. J.M. Mutiso!

Mr. J.M. Mutiso: Thank you, Mr. Temporary Deputy Chairman, Sir. I would like to give information to the Minister that as far as the environmental issue is concerned, the thin plastics and other plastics, have been provided for under the Environmental Management and Co-ordination Act, Chapter 899, which provides for a National Environmental Restoration Fund and, specifically, gives the mandate of environmental mitigation to the Minister for Environment and Natural Resources. Under Section 22B, the Minister for Environment and Natural Resources can levy such sums as may be donated or levied from industries and other institutions.

So, the Minister for Finance is over-stepping his mandate.

The Minister for Finance (Mr. Kimunya): I am not!

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

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Second Schedule to the Bill be amended-

(a) in paragraph (b) -

(i) by deleting tariff number 2207.10.00, 3923.21.00, 3923.29.00 and 6305.33.00, and their respective descriptions and

rates of duty;

(ii) by renumbering the existing provision as Subparagraph (i) and inserting new subparagraphs as follows -

(ii) insert the following new tariff numbers, descriptions and rates of Excise Duty in proper numerical sequence -

| Tariff No. | Goods Description | Rate of Excise Duty |
|------------|---|---------------------|
| 3923.21.00 | Sacks and bags (including cones) of polymers of ethylene. | 120% |
| 3923.29.00 | Sacks and bags of other plastics | 120% |

(iii) insert the following new tariff number, description and rate of duty in proper numerical sequence -

| Tariff No. | Goods Description | Rate of Excise Duty |
|------------|---|---------------------|
| 2207.10.00 | Undenatured ethyl alcoholic strength by Vol. of 80% or | 200 or 65% |

higher.

Mr. Temporary Deputy Chairman, Sir, this is, basically, to remove the bags under tariff number 6305.33.00 and leaving it as has just been passed by this House.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Mr. Maore): Hon. Members with regard to the Second Schedule in item (b), we have to start with hon. Dr. Oburu's amendment because he is seeking to delete. So, it is Dr. Oburu first!

Dr. Oburu: Mr. Temporary Deputy Chairman, Sir, hon. Oparanya will move the amendment.

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

THAT, the Second Schedule to the Bill be amended in (b) in item (c) by deleting the proposed new PART II and substituting therefor the following new PART

| II- | <i>Category</i> | <i>Retail Selling per Mile</i> | <i>Rate of Excise Duty per Mile (Kshs)</i> |
|-----|-----------------|------------------------------------|--|
| | A | Up to Kshs1,500 | 500 |
| | B | Kshs1,501 to Kshs2,500 | 800 |
| | C | Kshs2,501 to Kshs3,500 | 1,200 |
| | D | More than Kshs3,501 | 2,000 |

(c) by deleting item (d) and the proposals made thereunder.

Mr. Temporary Deputy Chairman, Sir, the Minister has proposed an increase in Excise Duty and this affects the local cigarette industry. We agree with the Minister's proposal to increase the Excise Duty. However, what we are rejecting is the Minister's proposal to use the characteristics of cigarettes to tax them. The Minister is changing from using the selling price or the factory price to the characteristics of cigarettes. By doing so, the Minister has affected the local industry as we said before, whereas in Uganda and Tanzania they look at the local content. The Minister has ignored that and changed the taxation from the selling price to the characteristics. That has affected one of the largest local industries in cigarettes manufacture in that its flagship cigarette has moved from Category B to Category C. The taxes have increased to 68 per cent with which you

cannot sustain that industry.

I beg to move.

*(Messrs. Kimunya and Kenneth
stood up in their places)*

The Temporary Deputy Chairman (Mr. Maore): I can see Mr. Kenneth on his feet, but his boss was on his feet first!

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment proposed by hon. Oparanya on the understanding that, basically, what we are trying to do is that we are moving from describing cigarettes based on their selling price, which is open to manipulation by all manner of traders, to describing cigarettes based on their characteristics. The specific concern of the impact that that has had on the local industry has been addressed in my amendment, wherein we are now changing. I am proposing to change the rate in Category C from Kshs1,200 to Kshs1,000, which now brings equity in terms of the taxation of all the cigarettes whether manufactured by the multinationals or the local industry. This is because we have been talking---

The Temporary Deputy Chairman (Mr. Maore): No! No! Mr. Minister, while you are on your feet, you need to explain whether you are helping the multinationals, like BAT, and destroying the local guys, as Mr. Oparanya has alleged, or you are not. If you are not, then why do you not support the amendment? That is the argument!

(Applause)

The Minister for Finance (Mr. Kimunya): Thank you, Mr. Temporary Deputy Chairman, Sir, for that. What we are trying to do is something that was started way back in 2004 where we said that cigarettes should be moved to a specific regime and they will be charged based on certain characteristics. However, to help migrate from the then regime to the current one, they were classified under four bands, that is, A, B, C, and D. The only thing that was reasonable to use at that point was the selling price. We have now moved to a point where we are saying that we need to be at par with the rest of the world. This is because we are opening our market to cigarettes coming from China and other countries. These cigarettes find their way in this country and yet we cannot assess what the Excise Duty on them should be because they are based on the selling price.

However, internationally, the rates that are being used are based on the characteristics. For example, does the cigarette have a filter or not? How is the cigarette packed and so on? Basically, we then apply the same rates. Now, what we intend to do is to migrate all the cigarettes into their various bands. Looking at the tax rates, it should make it so easy for each one of them to move across. Because of the specific concerns that were raised by the local industries *vis-a-vis* the multinationals, we have actually gone one step back and I am proposing, in my amendment, to actually lower the rate from Kshs1,200 to Kshs1,000 in order to accommodate one specific brand that is currently in Category C and ensure that there is equity within the cigarette industry.

The Temporary Deputy Chairman (Mr. Maore): I will give the Floor to Dr. Oburu and then to Mr. Jakoyo Midiwo!

Dr. Oburu: Mr. Temporary Deputy Chairman, Sir, the change from the selling price to physical characteristics has the effect of actually encouraging inefficiency. This is because when you sell at a lower price, you are actually still making money. If you can afford to sell your cigarettes at a lower price and you still make money, that means you are more efficient than the

person who is selling at a higher price. It is only at that higher price that he makes money.

Mr. Temporary Deputy Chairman, Sir, therefore, by changing to the use of the characteristics of cigarettes, we are, first of all trying to kill the local industry. Secondly, we are encouraging inefficiency. This is because if the multinationals, who are actually quite appealing for this change and have tried to convince us to agree with the Minister, are efficient, then they should also sell their cigarettes at a lower price and then attract lower tax. There is no reason why they cannot sell their cigarettes at a lower price and also attract lower tax.

Mr. Temporary Deputy Chairman, Sir, therefore, we, as a Committee, support this amendment. We agree with the Minister on the taxation. He should increase the tax as he wants, but he should not change from imposing tax based on the selling price to physical characteristics of the cigarettes.

Mr. Midiwo: Thank you, Mr. Temporary Deputy Chairman, Sir, for finally noticing me. The issue here is very fundamental. We dealt with this issue last year and nothing has changed.

Mr. Temporary Deputy Chairman, Sir, I would like to bring it to the attention of the House that we had a meeting some time back with the Commissioner-General of the Kenya Revenue Authority (KRA) and his team. They talked to us about the problems which they thought we had last year and they promised never to repeat them. They said that they were going to consult these people and help them just because they are our local and indigenous manufacturers.

What is coming out clear now is that this Minister is shaping out to be a friend of multinationals at the expense of our local manufacturers and yet they are our very own people. They are complaining about the Minister and yet he cannot give them audience. They admit that they want to pay taxes as long as they are not based on the characteristics of cigarettes because it is a war against Supermatch and Sportsman. This Parliament has no business in killing somebody's flagship just because the Minister is a friend of the multinational companies.

Mr. Temporary Deputy Chairman, Sir, based on that alone, this country and Government has the responsibility to protect the local industry and the Minister should take the lead. I do not think he is in order to take the House through this year in, year out even after we have tried to engage him in some constructive dialogue not to kill our local industry.

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

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

Hon. Members: Division! Division!

The Temporary Deputy Chairman (Mr. Maore): They have the requisite number! Ring the Division Bell!

(The Division Bell was rung)

DIVISION

(Question put and the House divided)

(Question tied by 25 to 25 votes)

The Temporary Deputy Chairman (Mr. Maore): Order, hon. Members! Hon. Members,

please, take your seats. Where are the tellers?

AYES: Messrs. Bahari, Gumo, Kajwang, Kipchumba, Koech, Kosgey, Ligale, Prof. Mango, Mr. Maore, Ms. Mbarire. Messrs. Midiwo, Munya, Mutiso J.M and Muturi, Mrs. Mwendwa, Rev. Nyagudi, Dr. Oburu, Prof. Ojiambo, Mr. Ojode, Eng. Okundi, Prof. Olweny, Mr. Omondi, Archbishop Ondiek, Messrs. Oparanya and Owino.

Teller of the Ayes: Mr. Kanyingi.

NOES: Messrs. Akaranga and Awori, Mrs. Chelaite, Messrs. Kagwe and Kariuki G.G, Ms. Karua, Messrs. Karume, Katuku, Kenneth, Kimunya and Konchella, Dr. Kulundu, Mr. Mohammed A.C, Mrs. Mugo, Messrs. Muiruri, Muniyao, Dr. Murungaru, Mr. Mwakwere, Ms. Ndong'u, Messrs. Nyachae, Obwocha, Salat, Shakombo, Maj. Sugow and Dr. Wekesa.

Tellers of the Noes: Mr. Midiwo and Ms. Ndong'u

ABSENTIONS: Messrs. Kamama, Musila, Mwiraria and Sungu.

The Minister for Finance (Mr. Kimunya): On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Maore): I think there is a point of order. I hope it is about the Division and nothing else.

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman Sir, I just want to seek clarification on whether, indeed, the Temporary Deputy Chairman voted.

The Temporary Deputy Chairman (Mr. Maore): What you are trying to inquire may not be in your favour! The rules give the Chair two options. The Chair, having voted and there is a tie, can choose to exercise the casting vote to break the tie or decline to do so. In this case, I would like to cast with the Ayes. So, the Ayes have it!

*(Question carried by
26 to 25 votes)*

(Applause)

The Minister for Finance (Mr. Kimunya): On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Maore): Not on that on!

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I think it is important, not just for today, but for the good order of this House to---

The Temporary Deputy Chairman (Mr. Maore): I hope you are familiar with the rules you are talking about!

The Minister of Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I am seeking a clarification. Let us get a clarification on whether the Chairman of a session is entitled to vote in a Division. If he is, I have no problem.

The Temporary Deputy Chairman (Mr. Maore): He is, and that is why I can exercise the option or decline. On this one, I have chosen to exercise it!

(Laughter)

Second Schedule (c)

Dr. Oburu: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the Second Schedule be amended in (c) by deleting item (d) and the proposals made thereunder.

The reason why we are proposing this deletion is because there is an imposition of 20 per cent tax on imported spare parts. In Kenya, new spare parts for used motor vehicles are very expensive. The imported spare parts are the ones sustaining our motor vehicles on the road. During his Budget Speech, the Minister said that most accidents in Kenya are caused by vehicles which use second-hand spare parts. Quite to the contrary, it is second-hand spare parts which are sustaining our vehicles on the roads.

(Applause)

By not supporting this, we are targeting ordinary people who are the owners of *matatus*, among others.

I beg to move.

*(Question of the amendment
proposed)*

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, the import of the tax was obviously to control the flooding of second hand spare parts into the country, whose origins are not known.

I have listened to the people and I am happy to withdraw the tax and support this amendment.

*(Item (d) of the Second
Schedule withdrawn)*

(Applause)

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

(Second Schedule as amended agreed to)

The Temporary Deputy Chairman (Mr. Maore): I just want to clarify some issues raised by Mr. Kimunya over the issue of Division over a constitutional issue about a House session.

Section 54(2) says:-

"On a question proposed for decision in the National Assembly, the person presiding in the Assembly shall-

(b) if he is not the Speaker, have both an original vote and a casting vote."

So, I do not want anybody to make any innuendoes that may be we did it unprocedurally.

(Applause)

Mr. Minister, your proposed the other one!

Let us move on!

(Third Schedule agreed to)

Fourth Schedule

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to

move:-

THAT, the Fourth Schedule to the Bill be amended, in Part I-

(a) by deleting item 1 and substituting therefor the following new item-

1. Delete the following tariff numbers and their respective descriptions thereof-

| Tariff No. | Goods Description | |
|------------|--|---|
| 3006.80.00 | Waste Pharmaceutical. | |
| 3808.10.20 | Mosquito coils, chips, mats and designed for use by burning or | similar insecticidal products heating. |
| 3808.10.31 | Pyrethrum based aerosol sprays. | |
| 3808.10.39 | Other aerosol sprays. | |
| 3808.10.90 | Other insecticides put up in retail sale or preparations or | forms or packings for articles. |
| 3808.20.00 | Fungicides. | |
| 3808.30.00 | Herbicides, anti-sprouting regulators. | products and plant-growth |
| 3808.40.00 | Disinfectants put up in forms or preparations or articles. | packings for retail sale or |
| 3808.90.00 | Rodenticides and other similar or packings for retail sale or as preparations or articles. | products, put in forms |
| | (b) by deleting the existing item 2(a) and inserting the following item- | new |
| | 2(a) Insert the following tariff numbers and their description thereof in numerical sequence- | proper |

| Tariff No. | Goods Description | |
|------------|--|--|
| 3006.91.00 | Appliances identifiable for | ostomy use. |
| 3006.92.00 | Waste Pharmaceutical. | |
| 3808.50.00 | Insecticides, rodenticides sprouting products and plant- similar products put up in forms or preparation or articles (for and candles and fly-papers) containing one or substances: aldrin (ISO); toxaphene); captafol (ISO); chlordane (ISO); chlorobenzilate (ISO); DDT trichloro- 2,2-bis(p-hlorophenyl ethane); (ISO), its salts or its esters; dibromoethane); ethylene flouroacetamide (ISO); (ISO); 1,2,3,4,5,6- including lindane (ISO, (ISO); monocrotophos (ISO); oxirane (ISO); parathion-methyl (ISO) (2,4,5- 3808.91.10 Naphthalene balls insecticides. 3808.91.20 Mosquito coils, chips, nets and designed for use by burning or | fungicides, herbicides, anti- growth regulators, disinfectants and packings for retail sale or as example, sulphur treated brands, wicks more of the following binpacryl (ISO); camphechlor (ISO) chlordimeform (ISO); (ISO) (clofenotane (INN), 1,1,1- dieldrin (ISOINN); dinoseb (1,2- dichloroethane); heptachlor (ISO); hexachlorobenzene (ISO); hexachlorocyclohexane (HCH (ISO); methamidophos (ethylene oxide); parathion (methyl-parathion); phosphamidon (ISO); 2,4,5-T (ISO) salts or its esters. |
| | | similar insecticidal products heating. |

| | | |
|------------|--|---|
| 3808.91.31 | Pyrethrum based aerosol spray | insecticides. |
| 3808.91.39 | Other aerosol spray insecticides. | |
| 3808.91.90 | Other insecticides put up in forms or packings for retail sale or preparations or articles. | |
| 3808.92.00 | Fungicides. | |
| 3808.93.00 | Herbicides, anti-sprouting regulators. | products and plant growth |
| 3808.94.00 | Disinfectants put up in forms or preparations or articles. | packings for retail sale or |
| 3808.99.00 | Rodenticides and other similar packings for retail sale or as sulphur-treated bands, wicks and candles and fly- | products put up in forms or preparations or articles (for example papers) |
| 8528.41.00 | Cathode-ray type monitors of a kind solely or principally used in an automatic data processing system of heading 8471. | |
| 8528.51.00 | Other monitors of a kind solely or principally used in an automatic data processing system of heading 8471. | |
| 8528.61.00 | Projectors of a kind solely or principally used in an automatic data processing system of heading 8471. | |

Mr. Temporary Deputy Chairman, Sir, this is to increase the number of items exempted after further consultations after the Budget.

(Question of the amendment proposed)

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

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

(Fourth Schedule as amended agreed to)

(Title agreed to)

Clause 1

Dr. Oburu: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 1 of the Bill be amended-

- (a) by deleting the figures "4, 11, 28" respectively appearing in paragraph "b";
- (b) by deleting the figures "73, 74, 75", respectively appearing in paragraph (d).

That is in accordance with the discussions that were held and the votes that were carried on those clauses earlier on.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Maore): Is the Minister satisfied with that?

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to

oppose the deletion of Clause 4 because it was passed by the House. The only clauses that were deleted were 11 and 28. But Clause 4 was actually passed by this House. We cannot delete it in Clause 1!

The Temporary Deputy Chairman (Mr. Maore): Does Dr. Oburu agree with that amendment?

Dr. Oburu: I agree, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Maore): So, you are withdrawing your amendment?

Dr. Oburu: Mr. Temporary Deputy Chairman, Sir, we withdrew the earlier amendment.

The Temporary Deputy Chairman (Mr. Maore): And this one also?

Dr. Oburu: Also this one!

The Temporary Deputy Chairman (Mr. Maore): *Sawa sawa!*

Dr. Oburu: Mr. Temporary Deputy Chairman, Sir, that only applies Clause 4. Clauses 11 and 28 are in respect of Value Added Tax (VAT) and Income Tax on properties which were accepted. Our amendments were accepted by the House. Therefore, these figures should be deleted.

The Temporary Deputy Chairman (Mr. Maore): Dr. Oburu, what do you want us to do with part (b) of the amendment?

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, could I just clarify something? The clauses the Committee wanted to delete - which are 11, 28, 73, 74 and 75 - were deleted by the House. So, they are actually not part of the Bill. When we come to Clause 1, they will not even be a matter for consideration anyway. This exercise is already overtaken by events - I mean the whole amendment by the Committee. That is because Figure 4 is now being deleted. The others have already been deleted. So, they are not part of the Bill, anyway!

The Temporary Deputy Chairman (Mr. Maore): So, are you happy with the amendments or not?

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, the amendments are of no consequence. I would like to ask the Committee to withdraw them in good faith because they are not of any use. Then, I can move my amendment to Clause 1.

Dr. Oburu: Mr. Temporary Deputy Chairman, Sir, the Minister cannot say they are of no consequence. These are consequential to what was passed by the House. It follows that these must also be deleted in order to conform with what was passed by the House. Since they are consequential, if we retain them without a formal---

The Temporary Deputy Chairman (Mr. Maore): I must now put the Question, which is that Clause 1 be amended, except for figure "4" as proposed by Dr. Oburu.

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

The Temporary Deputy Chairman (Mr. Maore): Hon. Members, the Minister has some proposals. I believe it is not appropriate for me to allow them here. No! No! Please, hold on! I would like to make some brief consultations.

(The Temporary Deputy Chairman

*(Mr. Maore) consulted Mr. Kimunya
and the Clerk-at-the-Table)*

The Temporary Deputy Chairman (Mr. Maore): The Minister has a further amendment

on Clause 1 on the commencement date, specifically on the issue of plastics but any other taxation measures the House has taken, he may not be able to back date.

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 1 of the Bill be amended by inserting new paragraphs immediately after paragraph (c) as follows -

(cc) sections 7(bb), on the 1st October, 2007;

(ccc) section 7(bbb) and 7(cc), on 4th October, 2007.

This was on the Order Paper on Tuesday but for some reason, it was inadvertently left out in the printing today. The House has just passed the implementation of the Excise Tax on plastics. We came to this House and had changed the date from 1st July, 2007 to 1st October, 2007. This amendment is to give that amendment that force of law. In fact, the tax will start from 1st October, 2007 and not 1st July, 2007, as we promised in this House.

There was also an issue that the implementation date for new rate that has just been passed by this House, the amendment we made on neutral spirits will only take effect from 4th October, 2007, and not 1st July, 2007.

The Temporary Deputy Chairman (Mr. Maore): For spirits or plastics?

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, on the plastics it is from 1st October, 2007, which is what we had promised. On the spirits, it is from today when this House has passed. So, that will be from 16th October, 2007.

The Temporary Deputy Chairman (Mr. Maore): Which means that if you have levied anything in between, you can make a refund on all the other tariffs. If you have levied anything between July and now, you are bound to refund if you have taxed---

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, the new rates take effect from when it has been adjusted by the House; today. But for the plastics, we had given an undertaking in this House that the rate will begin from 1st October, 2007, and not 1st July, 2007. So, anything on plastics has not been effected.

In terms of Section (ccc), the date will be 16th October, 2007, which is today. The new rate will take effect from when it has been amended. It is something that will be fixed at editing but for clarity and so that the House knows, this new rate that has been adjusted for neutral spirit from Kshs280 to Kshs200 will take effect from the time it has been amended, which is 16th October, 2007.

The Temporary Deputy Chairman (Mr. Maore): So, in essence, all the other tariffs on taxation may take effect on 1st July, 2007.

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, all the others take effect from 1st July, 2007, and has been taking place. But for this particular one, it is---

(Question of the further amendment proposed) (Question of the further amendment that the words to be inserted be inserted, put and agreed to)

(Clause 1 as amended agreed to)

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Finance Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

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

THE FINANCE BILL

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Finance Bill and approved the same with amendments.

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

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

(Question proposed)

Prof. Maathai: Mr. Temporary Deputy Speaker, Sir, I would like to congratulate the Minister and thank all hon. Members especially for the support on the issue of plastics. I would like to call upon our countrymen to realise that the environment is an extremely important issue and more and more, we are seeing in the world that the environment is being put as a priority at the national level and even at the global level.

I think we must resist the pressure from companies to pollute our environment and then leave our future generations to pay, either with their lives or with a lot of money trying to clean up the environment. So, I hope that we shall continue to support efforts for the protection of the environment.

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, just to say that The Finance Bill usually imposes taxes for different reasons. Sometimes the taxes are supposed to help the economy grow, to collect some money but also it should be used in such a way that it protects our local industries. We want the Government to be sensitive to the fact that any indigenous person who invests in this country needs the protection of this Government because every country protects its own.

(Applause)

I think it is important that we should not be driven by the multi-nationals when we come to consideration of tax proposals.

Thank you very much.

Mr. Midiwo: Mr. Temporary Deputy Speaker, Sir, I want to echo the sentiments by Mr.

Kajwang. I want to beseech the Minister that it is very important for other Ministers that when the House, in future, is faced with issues, particularly like tax issues which affect our locals, the Departmental Committee on Finance, Planning and Trade need to sit down and agree.

This particular Minister is elusive, arrogant, inconsiderate and cannot be the kind of Minister who can be used---

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Midiwo! I did not give you a chance to open debate on this matter. We have said here time and again that using offensive language is not necessary. You just make brief remarks about the Bill and sit down.

Mr. Midiwo: Mr. Temporary Deputy Speaker, Sir, that was not my intention but I withdraw.

All I want to say is that, it is important for this Parliament and our country that tax measures are used to further development of our locals and not foreigners. One last thing; as an hon. Member of the Departmental Committee on Finance, Planning and Trade, we must bring to the fore the kind of intimidation which we get from multi-nationals after they go behind us and agree with officers of this Ministry.

Mr. J.M. Mutiso: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this chance. First of all, I would like to congratulate the Minister. I stand here as a member of the Departmental Committee on Finance, Planning and Trade. I would like these sentiments to go into the annals of this House. We need to have a paradigm shift between the Executive and the Legislature. It has been a contest between the Departmental Committee on Finance, Planning and Trade and the Minister for Finance. We have sat in this House and the Committee Rooms endlessly. I think we need a paradigm shift in terms of the manner the Treasury imposes taxes and also the public relations of the Minister's office.

Mr. Temporary Deputy Speaker, Sir, today I would say that the Government has lost huge chunks of votes for Kibaki *kuendelea* because of its insensitive tax proposals and measures. Today as I speak, more than 88 companies---

The Temporary Deputy Speaker (Mr. Khamasi): Order! Wait a minute! I am not opening debate on this issue since you did so!

Mr. J.M. Mutiso: Mr. Temporary Deputy Speaker, Sir, I beg your indulgence. Also, the Treasury should rise up to the occasion that the court process cannot be substituted by co-policies in terms of fiscal measures by the Government. Therefore, collectively, we should improve the court system as far as the administration of justice is concerned and not the Minister through the back-door bringing proposals in the names of collective bargain.

I beg to support.

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I want to thank the House. It has been a long and tedious journey to come to this day today. I have lost weight and I am sure we can now all rest. However, I would like to assure this House that all the measures that we proposed in the Budget and in all other pronouncements are meant for the wider public good and to make this country a better country for all to thrive from the small to the big. It is also meant to make the environment for doing business better. I would like at this point with your indulgence to say special thanks to this House for having worked together with us in terms of making the environment for doing business so conducive that Kenya has won the coveted prize being the runner up in terms of winning the second prize in terms of the top reformers in Africa and number eight in the world. This prize is a concerted effort between the Executive and the House. If we did not have the legislation that we brought here we would not have won that prize. I want to say special thanks to the Members of this Ninth Parliament. You have contributed to making Kenya for doing business.

Thank you, Mr. Temporary Deputy Speaker, Sir.

(Applause)

(Question put and agreed to)

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

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

**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. Sungu) took the Chair]*

THE EMPLOYMENT BILL

Clause 2

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2 of
the Bill be amended-

- (a) in the definition of the term "authorised officer" by deleting the words "appointed under the Labour Institutions Act";
- (b) in the definition of the term "Board" by deleting the words "established by Section 5 of the Labour Institutions Act";
- (c) by deleting the definition of the term "collective agreement" and substituting therefor the following new definition-
"collective agreement" means a registered agreement concerning any terms and conditions of employment made in writing between a trade union and an employer, group of employers or employers organisation";
- (d) in the definition of the term "dependent" by inserting the words "or relative" immediately after the word "family" appearing in the second line;
- (e) in the definition of the term "Director" by deleting the words "under the Labour Institutions Act";
- (f) by deleting the definition of the term "disability" and substituting therefor the following new definition-
"disability" means a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on a person's social and economic participation",
- (g) by deleting the definition of the term "employee" and substituting therefor the following new definition-
"employee" means a person employed for wages or a salary and includes an apprentice and

- indentured lecturer";
- (h)by deleting the definition of the term "employer" and substituting therefor the following new definition-
- "employer" means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company";
- (i)in the definition of the term "industrial undertaking" by deleting paragraph (b) and substituting therefor the following new paragraph-
- (b) a factory or a place where raw materials are manufactured, processed or packaged;
- (j)in the definition of the term "labour inspector" by deleting the words "under the Labour Institutions Act";
- (k)by deleting the definition of the term "labour officer" and substituting therefor the following new definition-
- "labour officer" means a person appointed as the Commissioner of labour, a Senior Deputy Commissioner of labour, a Deputy Commissioner of Labour, an Assistant Commissioner of labour, a Chief Industrial Relations Officer, a Deputy Chief Industrial Relations Officer, a Senior Labour Officer, an Industrial Relations Officer or a Labour Officer;
- (l)by deleting the definition of the term "National Labour Court";
- (m)in the definition of the term "organisation" by deleting the words "registered under the Labour Relations Act";
- (n)by deleting the definition of the term "redundancy" and substituting therefor the following new definition-
- "redundancy" means the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as the abolition of office, job or occupation and loss of employment;
- (o)in the definition of the term "Registrar" by deleting the words "appointed under the Labour Institutions Act";
- (p)by deleting the definition of the term "strike" and substituting therefor the following new definition-
- "strike" means the cassation of work by employees acting in combination, or a concerted refusal or a refusal under a common understanding of employees to continue to work, for the purpose of compelling their employer or an employers' organisation of which their employer is a member, to accede to any demand in respect of a trade dispute;
- (q)by deleting the definition of the term "subordinate labour court";
- (r)by deleting the definition of the term "trade union" and inserting therefor the following new definition-
- "trade union" means an association of employees whose principal purpose is to regulate relations between employees and employers and includes an employer's organisation.

(Question of the amendment proposed)

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

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

(Clause 2 as amended agreed to)

(Clause 3 agreed to)

Clause 4

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

THAT, Clause 4(1) of the Bill be amended by inserting the words "recruiting trafficking or" immediately after the words "any other person".

This particular amendment is to include the issue of recruiting and trafficking in persons. Kenya is not only a country of origin of trafficked persons, but also transit and destination; akin to drug trafficking for contraband smuggling.

If we effect this amendment, we will put Kenya at the same international and global standards as international labour law practices.

*(Question of the amendment
proposed)*

The Minister for Labour and Human Resource (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I am in total agreement with Ms. Ndung'u.

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

(Clause 4 as amended agreed to)

Clause 5

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, Clause 5 of the Bill be amended in Subclause (1) by deleting the words "National Labour Court and the subordinate labour courts" and substituting therefor the words "Industrial Court."

*(Question of the amendment
proposed)*

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

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

(Clause 5 as amended agreed to)

Clause 6

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 6 of the Bill be amended in Subclause (1) by deleting the word "employee's" appearing in the second line and substituting therefor the words "employee or."

(Question of the amendment proposed)

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

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

(Clause 6 as amended agreed to)

(Clauses 7, 8 and 9 agreed to)

Clause 10

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 10 of the Bill be amended in Subclause (7) by deleting the word "priority" appearing in the third line and substituting therefor the word "proving."

(Question of the amendment proposed)

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

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

(Clause 10 as amended agreed to)

(Clauses 11, 12, 13, 14 and 15 agreed to)

Clause 16

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 16 be amended-

- (a) in Subclause (2) by deleting the words "a subordinate labour court or the National Labour Court" and substituting therefor the words "the Industrial Court";
- (b) in Subclause (3) by deleting the words "a subordinate labour court or the National Labour Court" wherever they appear and substituting therefor the words "the Industrial Court."

*(Question of the amendment
proposed)*

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

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

(Clause 16 as amended agreed to)

(Clause 17 agreed to)

Clause 18

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 18 of the Bill be amended in Subclause (3) by deleting the words "a subordinate labour court or the National Labour Court" and substituting therefor the words "the Industrial Court."

(Question of the amendment proposed)

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

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

(Clause 18 as amended agreed to)

Clause 19

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 19 of the Bill be amended-

- (a) by inserting the expression "(1)" immediately after expression 19;
- (b) in paragraph (a) by deleting the words "Labour Commissioner" and substituting

therefor the words "Commissioner of Labour."

*(Question of the amendment
proposed)*

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

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

(Clause 19 as amended agreed to)

*(Clauses 20, 21, 22, 23,
24 and 25 agreed to)*

Clause 26

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 26 of the Bill be amended in Subclause (2)-

- (a) by deleting the words "made under Part VII of the Labour Institutions Act";
- (b) by deleting the words "a subordinate labour court or judgement award or order of the Labour Court" and substituting therefor the words "award, or order of the Industrial Court."

(Question of the amendment proposed)

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

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

(Clause 26 as amended agreed to)

(Clauses 27 and 28 agreed to)

Clause 29

The Temporary Deputy Chairman (Mr. Sungu): Hon. Ndung'u, you have an amendment to Clause 29, at page 735. You are moving amendments to only Clause 29 and not the new clause because you are not the originator of the Bill. You can give a short explanation.

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

- (i) THAT, Clause 29(1) of the Bill be amended by deleting the word "two" and substituting therefor the word "three."
- (ii) THAT, Clause 29(2) be deleted.
- (iii) THAT, a new Subclause (9) be inserted as follows:

"A male employee shall be entitled to two weeks paternity leave with full pay."

Mr. Temporary Deputy Chairman, Sir, I think it is important for us to give women three months and not two months for the purposes of the woman's pre-natal and post-natal health, as well as looking after and weaning the child. There are very many women who have to milk their breasts in their offices which means that two months is not sufficient.

Then, there is Clause 29(2) which suggests that employers who give paid maternity leave should be reimbursed by the National Social Security Fund (NSSF). This is impossible because in a Third World country like ours, our economy cannot actually sustain this. This is not something that is actually done elsewhere.

Therefore, if we leave this provision in the Bill, it will negate the provision of this clause---

The Temporary Deputy Chairman (Mr. Sungu): Order, Ms. Ndung'u! Do you mean employee and not employers?

Ms. Ndung'u: No, Mr. Temporary Deputy Chairman, Sir. Let me read Clause 29(2) again.

It says:-

"An employer who has paid a female employee wages for two months during her maternity, shall be reimbursed by the NSSF."

That is what I am saying should be deleted. It does not even make any sense. Procreation is also part of the economic growth and I think that private companies should not demand from the Government what should be their corporate and social responsibility; which is to pay women for maternity leave.

Finally, I propose to insert a new Sub-clause 29(9) that a male employee should be entitled to two weeks paternity leave with full pay. This is to help young fathers because young men still take leave in order to help their wives and take care of their young families, but they do this from their annual leave. Why should they do this? Let the men also get leave for this particular special circumstance.

I beg to move.

The Temporary Deputy Chairman (Mr. Sungu): I wish that one had come earlier so that we could also take advantage!

*(Question of the amendment
proposed)*

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I rise to support this amendment.

(Applause)

As you know, I have very serious views on some of these issues. But, Mr. Temporary Deputy Chairman, Sir, I think it is important because we are talking about the health of a woman who has given birth. I want to agree with Ms. Njoki that two months are not enough. I think the proposal to increase maternity leave from two to three months is welcome.

Mr. Temporary Deputy Chairman, Sir, although I am past the age where I would have taken advantage of the two-week paternity leave, I wish to support that amendment because I have young boys who are likely to benefit from it. I think very many Kenyans will benefit from it.

Mr. Temporary Deputy Chairman, Sir, the proposed deletion of subclause (2), in my view, is very, very important. If we appreciate that the NSSF contributions are from both the employer and the employee, to require again that where the employer has paid the employee there will be a reimbursement, I think it may amount to fleecing the NSSF. Therefore, I want to support the proposal by Ms. Njoki to delete subclause (2).

The Temporary Deputy Chairman (Mr. Sungu): The Chair quite agrees with you. The only thing is that when I look at the watch there, I want to advise hon. Members to limit their comments so that we can finish this Bill today and, if possible, report to the House. That is with God's blessing, if you are in agreement.

Mr. Minister, please, respond very shortly.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I wish to appreciate the two hon. Members's concerns about NSSF. I wholly agree. But the law, as it stands now, stipulates that every female employee is entitled to two months maternity leave, but without the annual leave. Now, whereas I appreciate the need for a prolonged leave for the welfare of the child, the mother and the nation, I would suggest that we retain the two months maternity leave but, in addition, those female employees should be allowed to take their annual leave.

The Temporary Deputy Chairman (Mr. Sungu): Order, Mr. Minister! I have got an amendment from Ms. Ndung'u. If you want to propose an amendment, you can put it in writing. Then we can consider it.

Proceed, Mrs. Ngilu!

Mrs. Ngilu: Thank you, Mr. Temporary Deputy Chairman, Sir. The amendment that has been brought by Ms. Njoki is very timely. We all know the work that women in this country do. We all know the difficulties that they go through, especially when they have just got their young ones.

I want to support this amendment and say that even the three months that we are asking for are not enough.

Hon. Members: Yes!

Mrs. Ngilu: They are not enough because by the time a woman gets her child and goes through her "baby blues", she is just about to get ready to go back to work, leaving her baby behind with the others.

So, Mr. Temporary Deputy Chairman, Sir, I strongly recommend that this amendment be taken as recommended by Ms. Njoki.

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

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

(Clause 29 as amended agreed to)

*(Clauses 30, 31, 32, 33,
and 34 agreed to)*

The Temporary Deputy Chairman (Mr. Sungu): Ms. Njoki will note that the New Clause 29(A) will come at the end.

Clause 35

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr.

Temporary Deputy Chairman, Sir, I beg to move-

THAT, Clause 35 of the Bill be amended in Subclause (5) by deleting the words "under Part VII of the Labour Institutions Act";

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

(Clause 35 as amended agreed to)

(Clause 36 agreed to)

Clause 37

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move-

THAT, Clause 37 of the Bill be amended in Subclause (4) by deleting the words "a subordinate labour court or the National Labour Court" and substituting therefor the words "Industrial Court".

*(Question of the amendment
proposed)*

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

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

(Clause 37 as amended agreed to)

*(Clauses 38, 39, 40, 41, 42, 43,
44, 45 and 46 agreed to)*

Clause 47

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move-

THAT, Clause 47 of the Bill be amended in Subclause (3) by deleting the words "a subordinate labour court or the National Labour Court" and substituting therefor the words "Industrial Court".

(Question of the amendment proposed)

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

*(Question, that the words to be inserted
in place thereof be inserted,*

put and agreed to)

(Clause 47 as amended agreed to)

(Clauses 48 and 49 agreed to)

Clause 50

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move-

THAT, Clause 50 of the Bill be amended by deleting the words "a subordinate labour court or the National Labour Court" and substituting therefor the words "Industrial Court".

(Question of the amendment proposed)

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

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

(Clause 50 as amended agreed to)

(Clauses 51, 52, 53, and 54 agreed to)

Clause 55

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 55 of the Bill be amended-

(a) in Subclause (4) by deleting the words "National Labour Court" and substituting therefor the words "Industrial Court."

(b) in Subclause (6) by deleting the words "National Labour Court" and substituting therefor the words "Industrial Court."

(Question of the amendment proposed)

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

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

(Clause 55 as amended agreed to)

*(Clauses 56, 57, 58, 59, 60, 61, 62, 63,
64, 65, 66, 67, 68, 69 and 70 agreed to)*

Clause 71

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 71 of the Bill be amended-

(a) in the marginal note by deleting the words "National Labour Court" and substituting therefor the words "Industrial Court";

(b) in Subclause (2) by deleting the words "National Labour Court" and substituting therefor the words "Industrial Court";

(b) in Subclause (3) by deleting the words "National Labour Court" and substituting therefor the words "Industrial Court".

(Question of the amendment proposed)

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

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

(Clause 71 as amended agreed to)

Clause 72

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 72 of the Bill be amended in Subclause (1)(b) by deleting the words "National Labour Court" and substituting therefor the words "Industrial Court".

*(Question of the amendment
proposed)*

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

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

(Clause 72 as amended agreed to)

*(Clauses 73, 74, 75, 76, 77, 78,
79 and 80 agreed to)*

Clause 81

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 81 of the Bill be amended by deleting the word "fine" appearing in the fourth line and substituting therefor the word "term".

*(Question of the amendment
proposed)*

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

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

(Clause 81 as amended agreed to)

*(Clauses 82, 83, 84, 85
and 86 agreed to)*

Clause 87

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 87 of the Bill be amended-

(a) in Subclause (1) by deleting the words "and the Labour Institutions Act";

(b) in Subclause (2)-

(i) by deleting of the words subject to the "Labour Institutions Act";

(ii) by deleting the words "National Labour Court and a subordinate labour court" and substituting therefor the words "Industrial Court".

(Question of the amendment proposed)

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

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

(Clause 87 amended agreed to)

*(Clauses 88, 89, 90, 91,
92 and 93 agreed to)*

New Clause 29(A)

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

THAT, a new Clause 29(A) be inserted as follows:-

29(A) Where a female employee has been matched with a child for official adoption or is placed with a child for official adoption, that employee is entitled to adoption leave. The same rights, duties and obligations to employee and employer pertaining to maternity leave will apply in the case of adoption leave.

Mr. Temporary Deputy Chairman, Sir, the need for this new Clause is that we have already provided for maternity and paternity leave but we have not provided for adoption leave where the female employee has been officially matched with a child for official adoption. Most of those children are adopted just when they are born, so the need to take care of them is the same as if you have had a natural child-birth. There are very many cases of discord now that the adoption laws are much better.

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)*

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I would like to get some clarification. The first part is understandable that where a female employee has been matched with a child for official adoption then she is entitled to adoption leave. That is understandable but what about the other one which reads:-

"The same rights duties and obligations to employee and employer pertaining to maternity leave will apply in the case of adoption leave"?

Could Ms. Ndung'u explain to us, so that we do not just pass laws. It is a bit vague as it is. What are these duties and obligations pertaining to maternity or paternity leave which will apply in the case of adoption leave? Are you saying like payment for diapers?

(Ms. Ndung'u stood up in her place)

The Temporary Deputy Chairman (Mr. Sungu): Order, Ms. Ndung'u! You have a right to reply but no two hon. Members can be on their feet at the same time.

Proceed!

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, I just want to assure the hon. Member for Siakago and Senior Counsel that there is no hidden agenda in the way it has been drafted. It simply means that the rights that a woman receives after child-birth will apply to a woman who adopts a child in the same circumstances. There is no intention for any other rights. It is just to say that it would be the same. We said that it would be three months. So the three months shall apply. That is the intention.

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Temporary Deputy Chairman, Sir, I do sympathise with Ms. Ndung'u but I think we better be careful. If we can put a clause for a word as to age because if the child being adopted is five years or going to school, then you do not expect that the same rights should be extended to the adopting mother. I think we have to be careful on that.

*(Ms. Ndung'u stood up
in her place)*

The Temporary Deputy Chairman (Mr. Sungu): Hold on, Ms. Ndung'u! Give chance to other hon. Members to say what they have to say.

Yes, Prof. Oniang'o!

Prof. Oniang'o: Thank you, Mr. Temporary Deputy Chairman, Sir. I support anything that Ms. Ndung'u says and does. However, I have a problem with this issue. Truly, it needs a special consideration for adoption. If you are taking a child who is 16 years old into your household, and that child is coming in for the first time, there is need for time for adjustment. So, we can actually deal with adoption the same way we deal with a new child.

We also have to consider the responsibilities of a father. We also have single parents adopting children. So, I would like to see this done in such a way that it will benefit the adoption processes as well as the child and those adopting the child.

The Temporary Deputy Chairman (Mr. Sungu): We need to hear Ms. Ndung'u's response. She might say something which could make things a bit easier for all of us.

Mr. Omingo: Mr. Temporary Deputy Chairman, Sir, I also agree, in various respects, with Ms. Ndung'u's proposal. On this one, there are two things we also need to bring up. I think she should just propose an amendment. On the first part, as we believe, she is gender sensitive. She is not just talking about women. Secondly, I support what the Vice-President and Minister for Home Affairs has just said. We require to make an amendment to the proposed amendment to provide for age limit. Otherwise, this can also be abused.

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, having heard views from both sides of the House, I would like to propose a further amendment to my amendment.

The Temporary Deputy Chairman (Mr. Sungu): Can you read it out?

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

THAT, the proposed New Clause 29(A) be amended to read as follows-

"29(A) Where a female employee has been matched with an infant child for official adoption or is placed with an infant child for official adoption, the employee is entitled to adoption leave of three months."

Mr. Temporary Deputy Chairman, Sir, with this proposal, we leave out the remaining words in the original amendment.

The Temporary Deputy Chairman (Mr. Sungu): Well, that should now satisfy hon. Members, but I advise you to put that, amendment in writing.

*(Question of the further
amendment proposed)*

Prof. Oniang'o: On a point of order, Mr. Temporary Deputy Chairman, Sir. How about where a female employee has a spouse, in which case he would require a two-week paternity leave?

The Temporary Deputy Chairman (Mr. Sungu): That is not for me to answer. Ms. Ndung'u, do you have a response for that one? I have not really gotten the gist of your argument, professor. What should apply when making laws is *mutatis mutandis*. There should be a logical flow. Ms. Ndung'u is drafting the amendment, which I will take into consideration.

Mr. Minister, do you agree with Ms. Ndung'u's amendment to the amendment?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I do not agree with it. In addition to what His Excellency the Vice-President and Minister for Home Affairs has said, we must bear in mind that Kenya's economy is fairly weak. It cannot sustain the kind of monetary conditions we are putting on it. In

any case, as Prof. Oniang'o has said, if the woman adopting the child has a husband, are we surely in order to give him maternity leave?

The Temporary Deputy Chairman (Mr. Sungu): Hon. Members, mine is to make the House come to some sort of an agreement. The only way to resolve the argument is to put it to vote. You have heard arguments and the proposed further amendment by Ms. Ndung'u to the proposed New Clause 29(A), which we now have in writing, and which will be incorporated in our records. So, I will now put the Question.

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

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

(New clause as amended agreed to)

Mr. Omingo: On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Sungu): Order! Order, Mr. Omingo! You cannot raise a point of order when the Chair is putting a Question. Anyway, what is the matter? Note that we cannot go back to a matter we have already voted on!

Mr. Omingo: Mr. Temporary Deputy Chairman, Sir, actually, I raised my voice before the Question was put. The amendment the House is being made to adopt has not even been read out to us. I also raised the fundamental issue of discrimination. The Mover of this amendment talks only of female employees. We want to be gender sensitive. We know what an infant is, as is inferred, but can we know the age as well as the fate of gender sensitivity?

The Temporary Deputy Chairman (Mr. Sungu): Mr. Omingo, I suppose you know what an infant is. I want us to have some sort of agreement, so that when we make law, there is no dispute. I have got powers, under Standing Order No.1. So, I will go backwards and ask Ms. Ndung'u to read out the further amendment to the original New Clause 29(A).

The Vice-President and Minister for Home Affairs (Mr. Awori): On a point of order, Mr. Temporary Deputy Chairman, Sir. Notwithstanding the provisions of Standing Order No.17, I beg to move that this House resolves to sit until it concludes the consideration of the Employment Bill today.

The Temporary Deputy Chairman (Mr. Sungu): We are now in the Committee of the whole House. You can reserve your argument when the House resumes.

Mr. Muturi: On a point of order, Mr. Temporary Deputy Chairman, Sir. The Vice-President and Minister for Home Affairs did not follow the procedure. We are in Committee of the whole House.

The Committee cannot resolve to sit until we finish consideration of the foregoing Bill. It is only the House which has the mandate to do so.

The Temporary Deputy Chairman (Mr. Sungu): Order! Order, Mr. Muturi! The Chair is well aware of the fact that, in fact, the Vice-President and Minister for Home Affairs ought to move that the Committee do report progress to the House, at which point he should make such application. That is the normal procedure. Thank you, Mr. Muturi!

As we await for that procedure to be followed, Ms. Ndung'u, are you ready?

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, my amended proposed Clause 29(A)

reads as follows:-

"Where a female employee has been matched with an infant child for official adoption or is placed with an infant child for official adoption, that employee is entitled to adoption leave of three months."

I just want to clarify that the adoption laws in this country currently are the ones which do not favour placement with men. So, we would have to, first, address those laws before we come to the issue of men adopting infants children.

The Minister of State for Public Service (Mr. Akaranga): Mr. Temporary Deputy Chairman, Sir, I have just been reading through this amendment. When the hon. Member says: "the same rights, then duties and obligations to employee---", we are putting this country into problems.

The Temporary Deputy Chairman (Mr. Sungu): Order! That bit has been deleted. There is a further amendment to the original proposed Clause 29(A), which has just been read out.

The Minister of State for Public Service (Mr. Akaranga): Thank you, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Sungu): We can leave that argument for the time being, because there are some things we need to sort out. So, in the meantime, I will give chance to the Vice-President and Minister for Home Affairs to raise his point of order.

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee do report progress to the House and seek leave to sit again today.

The Temporary Deputy Chairman (Mr. Sungu): I will proceed to put the Question. However, I want to appeal to hon. Members that we need to finish these Bills. This Parliament has been accused of not passing laws. So, let us spend some time.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

PROGRESS REPORTED

THE EMPLOYMENT BILL

Mr. Sungu: Mr. Temporary Deputy Speaker, Sir, I beg to report that the Committee of the whole House is considering the Employment Bill and has instructed me to report progress and beg leave to sit again today.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Assistant Minister for Co-operative Development and Marketing (Mr. Mwenje) seconded.

(Question proposed)

(Question put and agreed to)

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, notwithstanding the provisions of Standing Order No.17, this House resolves to sit until it concludes its consideration of the business of the Employment Bill today.

The Assistant Minister for Gender, Sports, Culture and Social Services (Mrs. Chelaite) seconded.

(Question proposed)

(Question put and agreed to)

*(Resumption of consideration interrupted
in Committee of the whole House)*

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Mr. Sungu) took the Chair]*

THE EMPLOYMENT BILL

The Temporary Deputy Chairman (Mr. Sungu): Very well, hon. Members. We are now back in the Committee of the whole House with some time in our hands. I hope that we will finish in time, anyway.

We are still at New Clause 29(A), which was being read a Second Time. For the sake of clarity, I would wish to request hon. Njoki Ndung'u to state her point so that hon. Members can understand clearly what amendments she has proposed to be put in. That way, when I put the Question for the vote, hon. Members can make the right decision.

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

THAT, clause 29(A) be inserted as follows:-

29(A) Where a female employee has been matched with an infant child for official adoption, the employee is entitled to adoption leave of three months.

Mr. Temporary Deputy Chairman, Sir, I propose that the rest of the words in New Clause 29(A) should be deleted.

(Question of the new clause, as

*further amendment to be read
a Second Time, proposed)*

The Minister for Labour and Human Resources Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I think we are making a mistake here. For example, if a female employee gets maternity leave of three months and then one month later, she adopts a child and also claims a paid adoption leave of three months; I think this is something that will be open to abuse. We must, therefore, think carefully about it.

The Temporary Deputy Chairman (Mr. Sungu): I want to hear Dr. Kibunguchy!

The Assistant Minister for Health (Dr. Kibunguchy): Mr. Temporary Deputy Chairman, Sir, I think that we are standing on very slippery ground if we pass this proposed new amendment. This is because, for one, when you talk about adoption laws in this country, we always consider a child being adopted into a family that comprises of a man and a woman.

Secondly, the definition of an infant needs to be very clear. I want to urge hon. Njoki Ndung'u to define what an infant is. Probably, some of us might not understand it because in the medical terms, we might understand it differently from what she means. We need to seek a definite age.

Prof. Maathai: Mr. Temporary Deputy Chairman, Sir, if we really need to define the word "infant", it is quite possible for us to confine ourselves to the period when a child is six months old and below. However, the whole spirit of this clause is to support a woman or couple that has a child that needs attention. The parents need to be there at this very crucial time.

Mr. Temporary Deputy Chairman, Sir, there are many countries in the world now who give their women leave, even up to a year, to take care of their children. By doing so, a country is sure of having good citizens who do not miss their parents at a very crucial age. So, I think that this amendment is very important, but we can agree on the details of infancy.

The Temporary Deputy Chairman (Mr. Sungu): I think I will give a chance to Mr. Omingo and the right of reply to Ms. Ndung'u and then I will put the Question.

Mr. Omingo: Mr. Temporary Deputy Chairman, Sir, I am at pains to disagree with my colleague in the Departmental Committee on Administration of Justice and Legal Affairs. However, truly, let us not also stretch too far. If a parent adopts a child who is six months old and then you give that parent an adoption leave of, say, six months---

What we are saying is that maternity leave has its significance; that of having a mother to breast-feed. We know that the colostrum milk of a mother is critical to a child. How critical is this if the child is beyond the maternity leave period of three months? If we cannot be specific, I am inclined to oppose this amendment.

The Temporary Deputy Chairman (Mr. Sungu): Hon. Members, much as I want everybody to have a chance, we must also look at the time and the sacrifice that (we are making. So, let us make our arguments short so that we can make a decision. My job is to put the Question.

I will give a chance to Prof. Oniang'o, then the Minister and finally, Ms. Ndung'u.

Prof. Oniang'o: Mr. Temporary Deputy Chairman, Sir, there is a dictionary definition of the word "infancy". We need to look for it. A child who does not have biological parents needs the bonding of the new parents critically. So, in fact, we need to give the parents the adoption leave. I would really endorse this for as long as we get the dictionary definition of the word "infancy".

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I will be very brief. Medically speaking, an infant is a child who is either one year old or below. I have stood because my worry is that unless we put intervals, there will be employees who will claim to be---

The Temporary Deputy Chairman (Mr. Sungu): Very well, Mr. Minister, you have made

your point thank you. I would like to remind you that this is your Bill. If suddenly, hon. Members start leaving, we may not finish it!

Ms. Njoki Ndung'u, you have the right of reply!

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, I would like to tell hon. Members who came in a bit late that we have already passed three months maternity leave and two weeks paternity leave. What I am saying here is that if a person has gone through the process of adoption and is faced with a small baby, that baby needs the same care as one who came from childbirth. The step-mother, who is looking after that infant, needs to be given the same enough time.

I do not think mothers will give birth every year to get maternity allowance as alleged by the Minister. He is speaking from a male perspective. Motherhood is a very serious job! It is not possible for a woman to give birth to many children for cash. That is a male perspective.

Let me plea with hon. Members; this is a good initiative. Let us support this amendment.

The Temporary Deputy Chairman (Mr. Sungu): Thank you! I will now put the Question.

(Question, that new clause as further amended be read a Second Time put and negatived)

New Part VIIA

The Temporary Deputy Chairman (Mr. Sungu): New Part VIIA is on page 736 of the Order Paper.

Prof. Ojiambo, for your guidance, we will put the new clause all at once. However, you will explain in very short terms, what you are moving.

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

THAT, the Bill be amended by inserting New Part VIIA as follows:-

PART VIIA - THE GENDER ACTION DUTY

Interpretation of Part

65A. In this Part unless the context otherwise requires-

"Minister" means the Minister for the time being entrusted with the administration of this Part or such other Minister as may be expressly charged with any special matter which is otherwise dealt with under this Part;

"public service authority" has the meaning provided for in section 65B;

Application of Part

65B. (1) Subject to this section, this Part applies to all public service authorities.

(2) For the purposes of the application of this Part, a public service authority is any body which is publicly funded in whole or in part and whose functions are of a public nature, and includes-

- (a) the office of the Attorney-General;
- (b) all Government Ministries and Departments and any task force, committee or other body by whatever name known, established thereunder;
- (c) all State corporations;
- (d) the Parliamentary Service Commission;
- (e) the Judicial Service Commission;
- (f) the Teachers Service Commission; and,
- (g) the Electoral Commission.

but does not include any body which the Minister responsible for matters relating to the public service may by order exempt from the application of this Part.

(2) The Minister responsible for matters relating to the public service shall not exempt any body from the application of this Part unless he or she is satisfied that such exemption is in the national interest and is reasonably justifiable in a democratic

State.

- (3) The gender action duty does not apply where any written law has express provision to the contrary.

The gender action duty

65C. (1) There is established a duty to be known as gender action duty which shall be observed by all public service authorities, when carrying out their function in relation to employment.

- (2) Except as may be otherwise specifically provided, the gender action duty requires every public service authority when carrying out its functions in relation to employment to-

- (a) promote recognition and acceptance of the right of men and women to equality of opportunity in public service employment;
- (b) ensure that not less than thirty percent of all new employees recruited or appointed by the public service authority are women;
- (c) ensure through promotions and new appointments that women comprise not less than thirty percent of the composition of the public service authority at all levels; and observe all the provisions of this Part.

- (3) Nothing in this section shall be construed as permitting a public service authority to the depart from the need to ensure that all recruitments, appointments and promotions in the public service are based on merit and take into account national diversity.

Tax waiver and other privileges of complaint private bodies.

65D. The Minister responsible for matters relating to finance may on the recommendation of the Board and subject to such conditions as the Minister may specify, prescribe tax waivers, tax credits and other privileges to be enjoyed by any body not bound by this Part which voluntarily accepts to be bound by this part and complies with its provisions.

Enforcement of the gender action duty

65E. Any person or body affected by a failure by a public body to comply with the general duty by a public service authority may lodge a complaint with the Board in terms of section 65H or may bring an action to court in through judicial review proceedings.

Annual report of public service authority

65F. (1) A public service authority shall publish annually, as a separate document or within another published document, a report, summarizing the actions the public service authority has taken to implement its gender action duty.

Annual report of Board

65G. (1) The Board shall in each financial year, prepare and forward to the Minister and the President, a report of its operations in that year in relation to this Part and shall in such report set

out any recommendations the Board considers appropriate for the elimination or modification of discriminatory provisions of any Act relating to employment.

- (2) The Minister shall lay the report specified in subsection (1) before the National Assembly within twenty-one days after the National Assembly next sits after the Minister has received the report.

Complaints.

65H. (1) Any person who claims that another person has contravened a provision of this Part in relation to that person may complain to the Board.

(2) The Board shall by Regulations prescribe the procedure for lodging complaints

Decisions
of the Board

65I. After hearing the evidence and representations that the parties to a complaint desire to adduce or make, the Board may make either or both of the following orders-

- (a) an order that a person refrain from acting in contravention of this Part; or
- (b) an order that a person do anything specified in the order with a view to eliminating future contravention of this Part or redressing circumstances that have arisen from contravention

Offences and
penalties

65J. A person who-

- (a) subjects or threatens to subject another person to any detriment because the other person, or a person associated with the other person-
 - (i) has made a complaint against any person;
 - (ii) has brought any other proceedings under this Part against any person;
 - (iii) has given evidence or information, or produced a document, in connection with any proceedings under Part;
 - (iv) has otherwise done anything in accordance with this Part in relation to any person;
 - (v) has alleged that any person has contravened a provision of this Part, unless the allegation is false and was not made in good faith; or
 - (vi) has refused to do anything that would contravene a provision of this Part; or
- (b) hinders or obstructs a member or members of staff of the Board or the Board in the exercise of powers or the performance of functions under this Part;
- (c) uses insulting language towards a member or member of staff of the Board when the member is exercising powers or performing functions under this Part; or
- (d) gives any information or makes any statement to the Board or a person acting on behalf of the Board or in the exercise of powers or the performance of functions under this Part which the person knows is false or misleading in any material particular commits an offence and is liable to a fine of two hundred thousand shillings or to imprisonment for a term of twelve months or to both.

Regulations

65K. The Minister may make regulations for or with respect to-

- (a) prescribing matters in connection with the exercise of powers by the Board under this Part or;
- (b) prescribing forms for the purposes of this Part;
- (c) prescribing penalties, not exceeding a fine of fifty thousand shillings or imprisonment for a term of six months, for breaches of the Regulations made under this Part; or
- (d) generally prescribing any matters or things required or permitted by this Part to be prescribed or necessary to be prescribed to give effect to this Part.

The Employment Bill that we are considering, offers a good opportunity for this Parliament to assist the Kenyan Government to operationalise, what it is doing by policy, more effectively in terms of gender and employment.

This amendment will further assist the Government to safeguard women's gains through effective implementation of the 30 per cent rule. This rule has been accepted and is being applied

in various departments.

This new clause does not introduce anything new into the Employment Bill. However, it goes with the existing structures in the Bill.

I would like to mention the new clauses that we are bringing into the Bill. This pertains to the 30 per cent rule. In terms of public servants who are going to implement it, men and women who are affected, should give this nation an understanding of when, where, by who and what happens when those affected have any issues to raise.

Part 65A is an interpretation of this Part. It will be referring to the Minister, those entrusted with the administration of this Part of the new amendment.

Part 65B refers to those involved in the application who are the public service authorities, for the purpose of the application of that part of the amendment we are inserting. Public service authority is any body which is publicly funded in whole or part and whose functions will be of public nature. This will include the office of the Attorney-General, all Government Ministries and Departments, all State corporations, the Parliamentary Service Commission, the Judicial Service Commission, the Teachers Service Commission and the Electoral Commission.

Mr. Temporary Deputy Chairman, Sir, Part 65C says:-

"There is established a duty to be known as the gender action duty which shall be observed by all public service authorities, when carrying out their functions in relation to employment".

We have mentioned the aims of this amendment.

They include:- (a) To promote recognition and acceptance of the right of men and women of equality of opportunity in public service employment;

(b) To ensure that not less than 30 per cent of all new employees---

The Temporary Deputy Chairman (Mr. Sungu): Order, Prof. Ojiambo! We want you to move the amendment as per the Order Paper and then you can explain. This should be as short as possible. Do not read everything!

Prof. Ojiambo: Mr. Temporary Deputy Chairman, Sir, Part 65D talks about tax waivers and other privileges that relate to this activity.

Part 65E talks about enforcement of the gender action duty itself by the authorities that have been mentioned.

Mr. Temporary Deputy Chairman, Sir, Part 65F talks about annual reports. This means that all these activities will have to be reported annually as a separate document or within another published document. A report summarising the actions of various departments of the public service authority taking or implementing the gender action---

The Temporary Deputy Chairman (Mr. Sungu): Prof. Ojiambo, could you, please, conclude?

Prof. Ojiambo: Mr. Temporary Deputy Chairman, Sir, Part 65G, talks about annual report of the Board which is already part of the Employment Bill.

All this is to enlighten us on what is happening.

At 65J, we are talking about offences and where men and women who are affected can report.

Therefore, I beg to move.

*(Question of the amendment
proposed)*

The Temporary Deputy Chairman (Mr. Sungu): Hon. Members, as you debate, I would like to draw your attention to the fact that, this Section called "Gender Action Duty" is going to call

upon public service authorities and bodies to apply the 30 per cent affirmative action. They include Judicial Service Commission, Parliamentary Service Commission and so on.

So, please, I want to hear you.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I want to support this Part V11A very strongly. Already, there is a Presidential directive to give one-third consideration to women in all public service employment. This Part is very well crafted.

In Section 65A, it gives the Minister who is in charge of Public Service the power to exempt any public authority. So, if there are any worries that all public service authorities will employ in that manner, the Minister will be able to exempt. What this whole Section is doing is to enable the Minister to have legal powers to ensure that affirmative action for women, which is already adopted as a policy in this country, is applied in jobs. When it is a Presidential directive, there is no legal means of even auditing how it is done. It is wholly administrative.

So, this gives the legal muscle to the Minister in charge of Public Service to be able to enforce the directive. It also gives a mechanisms for complaints where that one-third content is not complied with. When we remember that our country is composed of both men and women--- We are parents to sons and daughters and this is something that we should support. It is something that would take the country forward. I urge all Members to support this very noble crafted Section and congratulate the hon. Member who has moved this Clause---

The Temporary Deputy Chairman (Mr. Sungu): Madam Minister, apart from being in charge of Justice and Constitutional Affairs, you are also a very prominent lawyer. The Bill at Section 65G(1) is talking about a "Board". I wonder where that "Board" is created in this Bill, if it is at all!

The Minister for Justice and Constitutional Affairs (Ms. Karua): I do not--- Recommendation of a Board--- Matters relating to finance---

The Temporary Deputy Chairman (Mr. Sungu): Perhaps, what you can do is to have a look as you sit down.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Yeah! I can then rise again.

The Temporary Deputy Chairman (Mr. Sungu): Yes, please! Mr. Minister.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I wholly accept the sentiments expressed in this Bill. But this Part is talking about public Service. As you can see, the listed things there are public service. The Minister of State for Public Service is here. So, I do not want to take away his responsibilities. I think this question should be re-directed to the Ministry of State for Public Service.

The Temporary Deputy Chairman (Mr. Sungu): Hon. Members as you contribute, let me just give you guidance. I think this is a very noble intention. But it is also very important that it also goes in line with the existing laws. The definition of "Minister"--- Please, look at it very carefully because it is not very clear. It also says that a public service authority is any body which is publicly funded, including Parliament. So, you may actually be going to the very gist of the Constitution of the Republic of Kenya. As you make these laws, please, Members, look at them carefully. That is because we do not want to be challenged in court tomorrow.

Yes, Mr. Akaranga.

The Minister of State for Public Service (Mr. Akaranga): Mr. Temporary Deputy Chairman, Sir, this is a good proposal by the hon. Member. The Public Service Reforms Bill is being prepared and will be brought to this House either during this Parliament or the next one. I do not want to support the amendment at this particular moment.

So, I oppose it.

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, we could have very good laws with very good intentions, but we must place those intentions within their proper perspective. I am having some difficulties. First of all, the title of PART VIII A reads: "The Gender Action Duty." We would expect naturally, because this is very new--- We were dealing with the Employment Bill and we have now introduced something we are calling the "Gender Action Duty". This idea was not captured in the Employment Bill. This particular part is now being read a Second Time and we are debating it. Therefore, we ought to begin by having a detailed explanation of what the Gender Action Duty entails.

I assume, as the Minister for Justice and Constitutional Affairs has said, that the intention is good. However, if you look through the clauses on page 737, Clause 65(C)(2) reads:-

"Except as may be otherwise specifically provided, the gender action duty requires every public service authority when carrying out its functions in relation to employment to -

- (a) promote recognition and acceptance of the right of men and women to equality of opportunity in public service employment;
- (b) ensure that not less than thirty per cent of all new employees recruited or appointed by the public service authority are women;
- (c) ensure through promotions and new appointments that women

comprise not less than thirty percent of the composition of the public service authority at all levels; and, observe all the provisions of this Part."

We have just said what the public service or authority that will be implementing the Gender Action Duty will be required to do. I wonder whether it is right for us to provide for this title; the "Gender Action Duty", without saying what exactly it is. If we just want to talk about the one-third, the gender parity or the equality, they have been asking about, then we need to be clear and specific. I am a bit worried that the main body of the Employment Bill has not addressed itself to these issues.

I want to agree with hon. Akaranga that because we are now introducing issues of public service employment, we needed to have began a little earlier when we were debating the Bill. In this Bill, we have already dealt with the issues which will be handled by the Industrial Court. We have talked about some other bodies---

As you have rightly observed, the Gender Action Duty does not apply where any written law has express provisions to the contrary. I do not think that other than the Constitution which forbids discrimination, there is any other written law would provide anything to the contrary.

Mr. Temporary Deputy Chairman, Sir, Clauses 65D and 65E state as follows:-

"The Minister responsible for matters relating to finance may on the recommendation of the Board and subject to such conditions as the Minister may specify, prescribe, tax waivers, tax credits and other privileges to be enjoyed by any body not bound by this part which voluntarily accepts to be bound by this part and complies with its provisions---

I do not know whether this is meant to entice the private sector to comply, so that they can get tax waivers. We should make it a duty of everybody to observe gender equality in employment. But the moment you start saying: "If you do this, you start getting recommendations by a board---

Do you know which board is going to recommend to the Minister for Finance: "This one should enjoy some tax waiver?"

The Minister for Justice and Constitutional Affairs (Ms. Karua): On a point of information, Mr. Temporary Deputy Chairman, Sir. I want to refer the hon. Member to the definition of the word "Board" in this Bill. Under Clause 2, "Board" means:-

"The National Labour Board established by Section 5 of the Labour Institutions

Act."

Actually the Board does exist!

The Temporary Deputy Chairman (Mr. Sungu): Mr. Muturi, as you proceed, I just want to have some sort of guided debate on this. As we make laws, we have to be serious about this. These are things that will affect our citizens for posterity. When you say 30 per cent gender parity--
- The other day, we had the Constitution (Amendment) Bill which did not pass in this House. It was requiring some gender distribution. At Clause 65B(2), it says:-

"For the purpose of the application of this Part, a public service authority is any body which is publicly funded in whole or in part, and whose functions are of a public nature, and includes-

- (a) the office of the Attorney-General;
- (b) all Government Ministries and Departments and any task force, committee or other body by whatever name known, established thereunder;
- (c) all state corporations;
- (d) the Parliamentary Service Commission;
- (e) the Judicial Service Commission;
- (f) the Teachers Service Commission; and
- (g) the Electoral Commission

That, in my opinion, might include even the National Assembly. When you say that all these will be taken into consideration, including Clause 65C(2) which says:-

"Except as may be otherwise specifically provided, the gender action duty requires every public service authority, when carrying out its functions in relation to employment to-

- (b) ensure that not less than thirty per cent of all new employees recruited or appointed by the public service authority are women;"

are we going to contravene the Constitution somewhere? These are some of the issues we should be addressing!

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, the Minister for Justice and Constitutional Affairs purported to give me some information. I think I should give her this correct information.

Earlier on, in Clause 2, if you look at the Order Paper at page 730, we have the amendment proposed by the Minister, which was carried. That amendment read:-

THAT, Clause 2 of the Bill be amended-

"(b) in the definition of the term "Board" by deleting the words "established by Section 5 of the Labour Institutions Act."

If there was a Board to be established under that non-existent Act, that has already been deleted. The Board you talking about--- Remember here, it is making reference to a Board that is going to make recommendations to the Minister for Finance with regard to who qualifies for tax waivers and credits. I think it is not right---

The Minister for Justice and Constitutional Affairs (Ms. Karua): Are you contributing?

Mr. Muturi: Yes! I am contributing! This part that has been proposed by the Chairman is to be read a second time!

The Temporary Deputy Chairman (Mr. Sungu): At the Committee Stage, you can actually do it twice. But we want to reach a common understanding. I am anxious to make sure that all sides are heard.

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I am actually just about to finish. What I am saying is this: Since this Board is not---

If we knew we are going to create a body when we were, first of all, crafting the

Employment Bill in its original form; if we knew we were going to get into this particular aspect, which is a financial aspect, the original Bill would have captured that aspect, so that, at least, we would then include, in the proposed Board, a specially qualified persons who would then be qualified to say: "Yes, given these circumstances, this one qualifies for tax waivers or credits as proposed here." I feel sad that I do not seem to agree with this proposal, not because of what people may think I may have, but because we need to be a bit more clearer so that, even if we needed some little time to propose some amendments, which would actually enable us to pass a good law, we will avoid a situation whereby we pass the law and the next day, we find that it is contradicting certain other existing legislations.

The Temporary Deputy Chairman (Mr. Sungu): I want us to look at the objects and reasons for this Bill as defined by the Bill at page 266. It says:-

"The principal object of the Bill is to repeal and replace the Employment Act and to establish minimum terms and conditions of employment." That is the principal object and reason for this Bill.

Proceed, Mr. Mwenje!

The Assistant Minister for Co-operative Development and Marketing (Mr. Mwenje): Mr. Temporary Deputy Chairman, Sir, while I agree that we need to take into consideration even what the President has been saying, we must also be very careful not to make some contradictory laws that will bring confusion at the end of the day to the Boards that we are trying to assist and for the individuals who will be applying them.

For example, if you say that this applies to the Teachers Service Commission (TSC), how many teachers do we have? How many are we going to employ when that situation comes and here is this particular kind of law? I think it is going to confuse! If we are making law, we must make laws which are applicable, can work and which will not bring complications to the Boards that are supposed to be employing people. Although they are giving a remedy, it will continue bringing more and more confusion. So, my position is that we must make this into law.

I oppose this amendment because I do not see the actual application of this particular law when it comes to the real thing. We will be confusing the Boards and they will not even understand. In any case, sometimes, it is 30 per cent of women. For instance, with teachers, it is more than 70 per or almost 50 per cent of women against men. Are we now going to change the same laws? Let us make a law that would apply to everybody and which is implementable by the Board. In any case, it will also apply to Parliament. How are you going to implement it in Parliament? I do not think it will work.

I oppose and I think we should oppose it.

Ms. Ndung'u: Mr. Temporary Deputy Chairman, Sir, I am supporting this amendment. I just want to say that as I listened to the discussion, I wish I could hear from hon. Members that we wish to introduce a further amendment to be drafted in a certain way. But I am getting a feeling, as I listen to the discussion, that this Parliament is continuing to pay lip service to women and the policy of affirmative action.

I think we are saying it in very good words like "let us do this another time". It is in this Parliament that people have complained that the Presidential directive has not been signed into legislation. We have an opportunity right here now, through this amendment to make it real for Kenyan women.

I think it is not fair to say that we want to take taxes from 51 per cent of the population that are women and at that time it is not discriminatory and we refuse to give them the jobs of which the taxes are collected. Let us be honest here and just say that either we do not want to support the affirmative action or we do. Those of us who are sincere in supporting this very noble cause, let us vote for the amendment. Those of us who do not want and who oppose affirmative action, do not

hide, just say you do not care about the women of Kenya.

The Assistant Minister for Health (Dr. Kibunguchy): Mr. Temporary Deputy Chairman, Sir, I will be very brief. First of all, I would not like a law passed that specifically addresses one part of the gender, especially when we look at Clause 45(c), which specifically talks about women. I think that is a bad law.

The Temporary Deputy Chairman (Mr. Sungu): We are talking about Clause 65 onwards, not Clause 45.

The Assistant Minister for Health (Dr. Kibunguchy): Mr. Temporary Deputy Chairman, Sir, I meant Clause 65(C). It is specifically talking about women and just for that reason I will oppose this because what will happen in future when we have a situation where we have more women employed?

The Temporary Deputy Chairman (Mr. Sungu): Order, Dr. Kibunguchy! Can you tell me exactly which Section talks about women in particular? What line and section?

The Assistant Minister for Health (Dr. Kibunguchy): Mr. Temporary Deputy Chairman, Sir, Clause 65(C)(2)(b) says:

"ensure that not less thirty per cent of all new employment employees recruited or appointed by the public service authority are women".

It specifically mentions women and yet, at the beginning, it is talking about gender. I wish the hon. Prof. Julia Ojiambo would have even talked about the opposite gender. I would, probably, accept it. It should not specifically talk about women. For that reason, I will oppose.

The Assistant Minister for Local Government (Mr. Muchiri): Mr. Temporary Deputy Chairman, Sir, this issue of gender has been with us for a long time. It is high time that we put it in our law books other than just giving it lip service. I am very much encouraged that this clause is talking about 30 per cent which we know and have tried to put our mind into. So, let us really put it in our law books. The only way we can do so, is by retaining this Clause 65 as it is. I know we are divided over this issue, but it is high time that we give what it takes to our women. What are we worried about? Literally, we know we are trying to pull them to a comfortable level in this country.

I beg to support.

The Assistant Minister for Gender, Sports, Culture and Social Services (Mrs. Chelaite): Thank you, Mr. Temporary Deputy Chairman, Sir. I rise to support the amendment, but I want to be very specific about the word "gender". Gender does not mean women only, but it means both men and women. The Presidential directive was geared towards the affirmative action on employment and promotion of women in this country. This particular clause which talks about women, does not mean the Bill is discriminating against men.

It is known everywhere that there are more men than women in the Civil Service and any other form of employment in this country. When will it be legalised? For example, if the words "gender action duty" do not apply and are suitable here so that the Minister for Labour and Human Resource Development can be comfortable then we can rephrase it.

At the same time, I heard the Minister of State for Public Service talk of reforms. Even if the reforms come, will they be implemented by his Ministry, my Ministry or any other Ministry? I suggest that these reforms be implemented by the Ministry of Labour and Human Resource Development where employment is general for this country. We, as the Ministry of Gender, Sports, Culture and Social Services, can monitor what is going on because the gender docket falls under our Ministry. However, we, as a Ministry, cannot implement those reforms. They can only be implemented by the Minister for Labour and Human Resource Development.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I think we are giving flimsy excuses here. If we look at Clause 65C(a), it clearly reads:-

"promote recognition and acceptance of the right of men and women to equality of opportunity in public service employment."

So, clearly, this Bill is balancing between men and women.

Clause 65C(b), which my colleague is complaining about, reads:-

"ensure that not less than thirty per cent of all new employees recruited or appointed by the public service authority are women."

This clause is not discriminative. As a matter of fact today, unless if we want to bury our heads in the sand, women do not even comprise 30 per cent of the total public service. So, this Bill is trying to ensure that the hiring or new appointments done are, at least, compliant of the Gender Action Duty.

If, indeed, in future women will overwhelm men in the public service, then our sons and daughters, whom we must entrust to have a good or better sense than ourselves, will move the requisite amendments. I want to plead with my colleagues, in the name of their daughters and daughters of Kenya, to accept this clause. If, tomorrow, it is not appropriate, then we can amend it.

I also want to say that contrary to my colleague's information that we deleted the reference to the Board, what was deleted is not reference to the Board. It is reference to Section 5 of the Labour Institutions Act. The simple reason it was deleted is because that Bill is yet to get assent and it is being refereed to as a Bill. So, it is not correct to say that there is no Board. The Board is in place. I want to plead with my colleagues to pass this clause as it is. Tomorrow, if we want to do another law, we shall do it.

Mr. Temporary Deputy Chairman, Sir, I beg to strongly support in the name of our daughters.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, we must go into the historical perspective of this Bill in order to understand the contradictions.

It is true that people were free to take their suggestions to the relevant Departmental Committee that was dealing with this Bill. But then, all of a sudden, two weeks ago when the Bill was here, we were informed that there were some amendments that were not included in the Bill.

So, we must give the hon. Member a chance to move---

The Temporary Deputy Chairman (Mr. Sungu): Mr. Minister, do you oppose or support the amendment?

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I oppose.

The Temporary Deputy Chairman (Mr. Sungu): Then, let us vote now. I now want to put the Question.

(Loud consultations)

Order, hon. Members!

Prof. Ojiambo: On a point of order, Mr. Temporary Deputy Chairman, Sir. I would like to inform the hon. Members that the Minister is derailing this House because these amendments have been in the House for a very long time.

Mr. Temporary Deputy Chairman, Sir, the fact that they did not appear on the Order Paper two weeks ago was not a mistake of the Mover.

The Temporary Deputy Chairman (Mr. Sungu): Okay! I will now exercise the powers of the Chair and put the Question!

(Question, that the words to be inserted)

be inserted, put and negatived)

The Temporary Deputy Chairman (Mr. Sungu): Order, hon. Members! I think I made a mistake there.

Hon. Members: Repeat it!

The Temporary Deputy Chairman (Mr. Sungu): Order, hon. Members! It cannot be repeated! Even the Chair can, sometimes, slip. It is not a fall. Once the Vote was negated, there was no need to put it again.

So, I think we will now go to the next part.

(Title agreed to)

(Clause 1 agreed to)

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Employment Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE EMPLOYMENT BILL

Mr. Sungu: Thank you, Mr. Temporary Deputy Chairman, Sir. I beg to report that the Committee of the whole House has considered the Employment Bill and approved the same with amendments.

Thank you, Mr. Temporary Deputy Chairman, Sir.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, 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 Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Employment Bill be now read the Third Time.

The Assistant Minister for Health (Dr. Kibunguchy) Seconded.

(Question proposed)

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, whereas I congratulate the Minister on the passing of the Bill, I want to regret that he led troupes to oppose crucial amendments which would have seen us go towards gender parity. It is indeed a happy and very sad occasion at the same time. The Minister would go down in history as having brought progressive labour laws but on the other hand brought some retrogression in rejecting the gender sensitive amendments.

I support.

(Dr. Kulundu stood up in his place)

The Temporary Deputy Speaker (Mr. Poghio): Mr. Minister, you cannot be the one standing.

Mr. Sungu!

Mr. Sungu: Mr. Temporary Deputy Speaker, Sir, having chaired the Committee, I want to congratulate the Minister for a job well-done. Regrettably, some issues became contentious but I must say that a journey of many miles begins with one step. I am sure that the plight of our women in terms of gender equality will become a vision one day.

I want to encourage our women and men to recognise that we also have children and that those people are entitled to equal rights and that one day we will make the right laws.

I beg to support.

The Temporary Deputy Speaker (Mr. Poghio): This is not the time to bring out those things.

The Assistant Minister for Co-operative Development and Marketing (Mr. Mwenje): Mr. Temporary Deputy Speaker, Sir, I also want to congratulate the Minister. In any case, I want to remind my colleague that this was only making of the law. So, it does not prevent taking percentages.

The fact that the law of that nature is not there, it does not prevent anybody, like the Ministries, the Public Service or Parliament to employ more than 30 per cent of women. We have now made a good law and I hope that it will be implemented and it will start working well.

I beg to support.

Ms. Ndung'u: Mr. Temporary Deputy Speaker, Sir, I would like to congratulate the Minister and say that this is a day of mixed fortunes for women. Although I regret that we were unable to pass the 30 per cent in terms of public appointments and the issue of adoption leave, I want to say that I recognise that this is a historic day for women. In this law, we have passed maternity and paternity leave. I think that women will be healthier and wealthier and better citizens.

The Temporary Deputy Speaker (Mr. Poghio): Order! This is not the time to try and introduce things that you would have said. This is the time to simply thank the Minister.

Mr. Muturi: Mr. Temporary Deputy Speaker, Sir, I want to say that with the passage of this Bill, we have done the work of updating of our employment and labour laws in this country. I want to congratulate the Minister and his team for this achievement.

When the five Bills were published and placed in our pigeon holes all at the same time, we thought that these Bills could never see the light of day. Therefore, I feel that today is a great day that we have been able to pass the last of the five Bills. I think it is good.

Also we should appreciate that the House like they have been saying in the country, has not voted through euphoria but has applied its logic and reason.

I beg to support.

Prof. Ojiambo: Mr. Temporary Deputy Speaker, Sir, I wish to congratulate the Minister for having passed the Employment Bill but I am very sad that this House, the Ninth Parliament is

going down in history as one Parliament that strongly opposed affirmative action for women.

Mr. Temporary Deputy Speaker, Sir, this was an opportunity for the Minister for Labour and Human Resource Development to allow his Ministry to help this country actualise 30 per cent employment for women. I hope that one day it will go through.

I beg to support.

The Assistant Minister for Local Government (Mr. Muchiri): Mr. Temporary Deputy Speaker, Sir, I also want to add my voice in congratulating the Minister for the passage of this Bill. But I want to remind Kenyans that the future of employment is not only in the Public Service but also in the private sector. I want to encourage Kenyans to set up businesses so that we can provide more employment opportunities because the Government is only required to give some favourable climate to do business.

(Question put and agreed to)

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

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Poghio): Order, hon. Members, that concludes the business on the Order Paper. The House is, therefore, adjourned until Wednesday, 17th October, 2007 at 9.00 a.m.

The House adjourned at 7.20 p.m.