

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 8th September, 2009

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

POINT OF ORDER

FINALIZATION OF REPORT ON RE-OPENING OF PAN-AFRICAN PAPER MILLS

Mr. Jamleck Irungu Kamau: Mr. Speaker, Sir, on 19th August, 2009, the Minister for Industrialization issued a Statement outlining the reasons for the delay in the reopening of Pan-African Paper Mills, Webuye. In the course of the clarifications sought by hon. Members, the Chair referred the matter and circumstances occasioning the delay to reopen Pan-African Paper Mills, Webuye, to the Departmental Committee on Implementation to investigate and report back within three weeks.

Mr. Speaker, Sir, let me take this opportunity to report to the House that the Departmental Committee on Implementation is actively dealing with the matter and, in its quest to give an opportunity to the Minister to appear before the Committee, a meeting is scheduled with the Minister on Friday, 11th September, 2009, before we submit the final report to the House.

Mr. Speaker, Sir, the Departmental Committee on Implementation realizes that this is the third week since the Chair referred the matter to us. It is in this respect that the Committee seeks the indulgence of the Chair to extend the period within which to report by a further two weeks to enable the Committee to finalize the matter and file a well considered and exhaustive report.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Order, hon. Members! Ms. A. Abdalla, you may proceed to lay the Report on the Table but, after that, please, approach the Chair.

PAPER LAID

The following Paper was laid on the Table:-

The Report of the Joint Sitting of the Departmental Committee on Justice and Legal Affairs and the Departmental Committee on Delegated Legislation on the Appointment of the Director and Assistant Directors of Kenya Anti-Corruption Commission.

(By Ms. A. Abdalla)

Ms. A. Abdalla: Mr. Speaker, Sir, I wish to give notice for the adoption of the Report that I have laid on the Table

Mr. Speaker: Order, Ms. A. Abdalla! Taking the provisions of the Standing Orders as they are, and our practice, you cannot, at this point in time, give notice of that Motion because the Motion has not yet been approved by the Chair. But you may be able to do so tomorrow morning after I have looked at the Motion and approved it as appropriate.

Next Order!

ORAL ANSWERS TO QUESTIONS

Question No.012

EQUIPPING/POSTING OF MEDICAL STAFF TO DISPENSARIES IN EMUHAYA

Dr. Otichilo asked the Minister for Medical Services:-

(a) when he will post staff (clinical officers and nurses) and equip Ebusubi, Mumboha, Ebukanga, Emutsuli and Emusenjeli dispensaries which were constructed under the CDF program; and,

(b) when he will also post clinical officers and nurses to Ebusiratsi, Ipali, Edwanda and Esiarambatsi health centers as well as Musitinyi Dispensary, which are understaffed?

The Assistant Minister for Medical Services (Dr. Gesami): Mr. Speaker, Sir, I beg to reply.

(a) My Ministry has already posted two nurses to Emutsuli dispensary and will consider deploying a clinical officer once the on-going process of recruitment is finalized. The other facilities that have been built through the CDF are not operational. They are Ebusubi, Mumboha, Ebukanga and Emusenjeli dispensaries. They are not gazetted at the moment. However, they will be considered for gazettelement in this Financial Year - 2009/2010.

(b) The Ministry has already posted clinical officers to Ebusiratsi, Ipali, Edwanda and Esiarambatsi health centers. However, Musitinyi Dispensary will be considered along with others for deployment of additional staff, once the process of recruitment is finalized.

Thank you, Mr. Speaker, Sir.

Dr. Otichilo: Mr. Speaker, Sir, I would like to take this opportunity to thank the Ministry for posting clinical officers to the named dispensaries which have been lacking them for a long time. I would like to find out from the Assistant Minister the conditions we are supposed to fulfill in order for us to have the gazettelement of the dispensaries that have been built using the CDF money.

Dr. Gesami: Mr. Speaker, Sir, I answered a similar Question in this House some time ago. I indicated that there were over 1,000 facilities across the country built by money from the CDF and they have not been gazetted. I also indicated that I had instructed all the Medical Officers of Health (MoHs) to inspect them for gazettelement so

that we can provide them with staff as soon as we recruit some. So, some of these facilities have been inspected and are ready for gazettelement.

Mr. K. Kilonzo: Mr. Speaker, Sir, this is a very important Question because it cuts across the 210 constituencies in this country. Money from the CDF has been used to build many dispensaries. Any time Questions are asked here, the Assistant Minister always says that they will provide staff. Could he indicate to us when these health facilities will have staff? Kenyans are suffering because there are no doctors although the physical structures are in place.

Dr. Gesami: Mr. Speaker, Sir, I have answered this Question before. I have said that we have about 36,000 nurses in this country. We have 17,000 nurses in Government facilities and another 17,000 in private facilities. We need 76,000 nurses to operate optimally. At the moment, we have about 6,000 nurses in the country, but we do not have money to recruit them. Indeed, we can only be provided money by this House. Therefore, we are unable to recruit more nurses and post them to these facilities.

Dr. Otichilo: Mr. Speaker, Sir, I would like to know when the Ministry plans to recruit nurses under the Economic Stimulus Package that was offered by the Deputy Prime Minister and Minister for Finance. What procedures will be followed and when do we expect this exercise to be completed?

Dr. Gesami: Mr. Speaker, Sir, we shall begin recruitment as soon as we receive the money from the Treasury. This exercise is normally done at the provincial level.

Question No.025

NUMBER OF DEATHS ON
KATITO-NYAKWERE ROAD

Mr. Ochieng asked the Minister for Roads:-

- (a) to confirm the number of deaths that have occurred on the recently constructed Katito-Nyakwere Road; and,
- (b) when the Ministry will erect bumps at the market centres along that road to reduce the deaths occasioned by speeding motor vehicles.

The Assistant Minister for Roads (Dr. Machage): Mr. Speaker, Sir, I beg to reply.

- (a) I confirm that there have been 12 deaths on the recently constructed Katito-Nyakwere Road.
- (b) My Ministry is monitoring the situation with a view of coming up with the most appropriate measure. Meanwhile, the Ministry has planned to install rumble strips in the markets along the road in the course of this financial year in order to slow down speeding motorists.

Mr. Ochieng: Mr. Speaker, Sir, I thank the Assistant Minister for the answer which is quite relevant, except that the number of people who have lost their lives on this road has been under quoted. Last month, a *matatu* and a lorry collided on the same road and 12 people lost their lives on the spot. Despite all that, could the Assistant Minister tell this House when this will be done as a matter of urgency?

Dr. Machage: Mr. Speaker, Sir, I understand and recognise the gravity of this issue. I send my condolences to the families of the people who lost their lives. However, it is important to know that the major causes of road accidents in this country are errors by

drivers. This is about 95 per cent. Only five per cent of the accidents are due to poor road conditions and other issues. I have promised to begin this work this financial year. Take my word. I will do it as soon as possible.

Mr. Speaker: Is anybody interested in asking a supplementary question? Mr. Ochieng, ask the last question!

Mr. Ochieng: Mr. Speaker, Sir, I do not want to ask any further question because I think the Assistant Minister has satisfied me in his answer.

Question No.438

LIST OF PEOPLE UNDER *KAZI*
KWA VIJANA PROGRAMME IN LIMURU

Mr. Mwathi asked the Minister for Roads:-

- (a) to provide a list of people who worked under the *Kazi kwa Vijana* Programme in Limuru Constituency showing the number of days each worked and how much was paid to each person;
- (b) to state the date when the *Kazi kwa Vijana* Programme started and when it ended, indicating the road works which were undertaken under this programme in Limuru Constituency; and,
- (c) when an audit for the work done will be undertaken and who will undertake it.

The Assistant Minister for Roads (Dr. Machage): Mr. Speaker, Sir, I beg to reply.

- (a) I beg to table a list and copies of payroll of people who worked in Limuru Constituency under the *Kazi kwa Vijana* Programme, showing the number of days and how much was paid to each person.

(Dr. Machage laid the documents on the Table)

- (b) The *Kazi kwa Vijana* Programme started on 13th May, 2009 and ended on 30th June, 2009.
- (c) The constitutional mandate to audit Government expenditure falls under the Kenya National Audit Office (KNAO). However, as part of internal controls, I have instructed my officers in internal audit office to commence this exercise immediately.

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

Mr. Speaker: Order, Mr. Mwathi! You have an opportunity to ask the first question. Please, incorporate your point of order in the question.

Mr. Mwathi: Mr. Speaker, Sir, I have noted that the Assistant Minister has carefully avoided to answer part “b” of my Question. This is because he has not stated the road works undertaken under that programme. He has only given us the dates when the programme started and ended.

Dr. Machage: Mr. Speaker, Sir, in an answer to the hon. Member’s question, I would like to table a list of all the roads that were undertaken under this programme.

(Dr. Machage laid the list on the Table)

Mr. Kioni: Mr. Speaker, Sir, in my constituency, a dam was allocated Kshs3 million under the *Kazi kwa Vijana* Programme. When Kshs1.7 had been used, the Ministry of Water and Irrigation indicated that it had exhausted the funds. What percentage of the *Kazi kwa Vijana* money is supposed to be used for administration costs?

Dr. Machage: Mr. Speaker, Sir, I am unable to answer that question considering the fact that he has mentioned the Ministry of Water and Irrigation. I have to compare notes before I answer it.

Mr. Kioni: Mr. Speaker, Sir, I mentioned the Ministry of Water and Irrigation but my question was: What percentage of the *Kazi kwa Vijana* money from the Ministry of Roads is supposed to be used to cater for administration costs? We should be told this so that we can know whether this money is used in the offices or to pay the young people who work in the field.

Dr. Machage: Mr. Speaker, Sir I do not have that information.

Mr. K. Kilonzo: Mr. Speaker, Sir, in view of the fact that this question about *Kazi kwa Vijana* cuts across many Ministries or many Ministries were involved at inception, could I be in order to request that this Question be “deferred” to the Office of the Prime Minister so that we can examine the amount of money used and how it has been audited?

Mr. Speaker: The Question cannot be deferred to the Office of the Prime Minister. If it is deferred, it is deferred to be responded to by the same Ministry. Let us see if anybody else is interested in asking a supplementary question.

Mr. Nyambati: Mr. Speaker, Sir, this programme is grossly abused in my constituency because most of the youth who do the roads are not paid. The administration gives ghost names so that they can pay extra money. What measures has the Ministry taken to ensure that the youth who do this work are properly paid and that there are no ghost workers who benefit under this programme?

Dr. Machage: I am not aware of that information; if the member has that information I would like to receive it. On the issue before me, I have carried with me all the documents that were used for payment of the workers. All the vouchers are here and I table them.

(Dr. Machage laid the documents on the Table)

Mr. Speaker: That is a satisfactory answer to that particular Question.

Mr. Abdirahman!

Mr. Abdirahman: I would want to know from the Assistant Minister what informs them in terms of allocation to constituencies for *Kazi Kwa Vijana* (KKV) and on average, how much they allocated to constituencies in the last financial year.

Dr. Machage: While I would like to give that information to the hon. Member, for the purposes of this Question, I did not carry that information.

Mr. Olago: Mr. Speaker, Sir, the KKV programme implemented by the Ministry of Roads caused very positive excitement amongst the youth in this country. But the Question we are now asking, which I am asking the assistant Minister before the House, is, why was it stopped and when is it likely to resume?

Dr. Machage: The programme was stopped because we exhausted the finances and it will resume when we get finances.

(Laughter)

Mr. Speaker: Order Hon. Members! Order! What is it Mr. Abdirahman?

Mr. Abdirahman: Mr. Speaker, Sir, it is very important for us to know how Ministries allocate funds, but the Assistant Minister simply evaded my question. We should be able to interrogate Ministers based on the information they give us. If we allow him to just get away like that, that will actually---

Mr. Speaker: Your point is made! Mr. Abdirahman, the Chair has heard you. I heard your question. You asked the Assistant Minister to indicate what criteria he applied. Hon. K. Kilonzo asked that the Question be deferred by reason of the Assistant Minister being unable to have an answer as to the proportion of KKV money that goes into roads. In those circumstances, and so that the Assistant Minister can deal with those two aspects, I will defer this Question to Thursday this week. Mr. Assistant Minister, please, come with that information, including the information on how the KKV money is shared out among other ministries, so that we can satisfy the House.

(Question deferred)

Mr. Mwathi: I had a chance of looking at the---

Mr. Speaker: Order, Mr. Mwathi! We have deferred this Question to Thursday this week; you can reserve further interrogation to that day.

Mr. Mwathi: Because this is not satisfactory Mr. Speaker, Sir---

Mr. Speaker: Order Mr. Mwathi! I have deferred this Question to Thursday!

Question No.031

EXISTENCE OF EXTRACTIVE INDUSTRY
TRANSPARENCY INITIATIVE

Mr. Speaker: The Hon. Shakila Abdalla is away on an emergency in Lamu following the fire in Faza Island. Question No 031 is deferred to Tuesday next week.

(Question deferred)

Question No.124

POSTING OF TEACHERS TO KALULU/ KANDOGO/
KILANGA/KAMAEMBE PRIMARY SCHOOLS

Mr. K. Kilonzo asked the Minister for Education what steps he was taking to ensure that trained teachers are posted to Kalulu, Kandongo, Kilanga and Kamaembe Primary Schools in Mutito Constituency, which are understaffed.

The Assistant Minister for Education (Prof. Olweny): Mr. Speaker, Sir, I beg to reply. The Ministry will address the shortage of teachers in the named schools in Mutito Constituency and other constituencies country-wide through recruitment of additional teachers once adequate funds are provided by the Treasury. In the meantime, the Ministry will continue replacing annually the teachers who leave service through natural attrition, and will also continue balancing the existing teachers to ensure optimal utilization and equitable distribution in all schools, including those in Mutito Constituency.

Mr. K. Kilonzo: Mr. Speaker, Sir, it is quite disappointing that now schools are being opened and there is shortage of teachers. Even the funds for free primary and secondary education have not been provided. Could the Assistant Minister tell us exactly when he expects to get this money, because there is nothing going on in the learning institutions?

Prof. Olweny: First, learning is going on in the institutions, and the hon. Member should go and verify this in his constituency, because I know schools are on. As regards the funds, when they come to us from the Treasury we will act accordingly.

(Loud consultations)

Mr. Ruteere: Mr. Speaker, sir, is it enough to have teachers in the classrooms and assume that there is learning?

Prof. Olweny: Mr. Speaker, Sir, may I ask the hon. Member, through you, to repeat that question?

Mr. Speaker: Hon. Ruteere, please repeat that Question. But Assistant Minister, please, note that you need to have all your attention in the House for as long as you are here.

Mr. Ruteere: Mr. Speaker, Sir, my question is: Is it enough to have pupils and students in the classrooms without teachers and assume that there is learning going on?

Prof. Olweny: Mr. Speaker, Sir, We have teachers in all public schools in this country, except that they are not enough. So, the teachers that we have in schools are providing the necessary training to our students.

Mr. Mwangi: On a point of Order. Is it in order for the Assistant Minister to say that the teachers are adequate? In which way could he prove---

Mr. Speaker: Order Mr. Mwangi! That is a question; you should rise and catch the Speaker's eye!

Mr. Shakeel: Could the Assistant Minister inform the House why in the circular that has been sent to education offices in constituencies there is Kshs6 million for ICT when it has not yet been approved by this House? Could he tell us why it is in the circular or is it another scam?

Prof. Olweny: ICT is handled by the Ministry of Information and Communication and not by our Ministry.

Mr. Speaker: Order Mr. Shakeel! This is not Webuye market.

(Laughter)

Dr. Eseli: Thank you Mr. Speaker, Sir. The Hon. Shakeel is not from Webuye.

The Assistant Minister said that they replace teachers who leave by natural attrition. When did they last replace teachers who left by natural attrition in the last one year?

Prof. Olweny: Mr. Speaker, Sir, that was done in the last financial year. We recruited 14,000 teachers.

(Mr. Koech stood up in his place)

Mr. Speaker: Order Mr. Koech! You are out of order! You seem to be grumbling. At any one time--- You read your Standing Orders, and will see that they say that only one hon. Member shall be on the Floor. As the Assistant Minister responded to a question you were on your feet, and you remained on your feet all the time. You cannot be allowed unfair advantage against your colleagues.

Mr. Nyammo: Is the Assistant Minister aware that it is not enough to have students in the classrooms, without teaching and learning materials, and, therefore, see the urgency of remitting funds for procurement of the same?

Prof. Olweny: Mr. Speaker, Sir, I am not sure that I got that question well; but I think we have the facilities and the equipment that are needed for teaching in all our schools.

Mr. Shakeel: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to mislead the House by saying that the ICT Bus is not part of the Ministry's programmes when it is clearly in the circular of the Ministry of Education at each level and the constituencies? Is it in order for him to mislead the House?

Prof. Olweny: Mr. Speaker, Sir, we looked through the Printed Estimates for the whole Government here and saw that the Budget line for ICT is in the Ministry of Information and Communication. Please, refer to the Printed Estimates.

Mr. Speaker: Last question, Mr. K. Kilonzo!

Mr. K. Kilonzo: Mr. Speaker, Sir, clearly, the Assistant Minister has no adequate answer for the Question. I want him to tell us when funds will be available. I want him to give a specific time because "very soon" is vague.

Prof. Olweny: Mr. Speaker, Sir, may I inform the hon. Member that nobody has indicated to him "very soon". I would now like to tell him that money will be availed as soon as the Ministry of Finance releases it to us. That means "very soon" or immediately we receive it.

(Laughter)

Mr. Speaker: Fair enough!

Hon. Members, Question No.138 is deferred to Thursday, this week, because the Member of Parliament for Mumias is away on Parliamentary Business in the Rift Valley Province.

Question No.138

SPORTS DEVELOPMENT PLANS
IN THE COUNTRY

(Question deferred)

Next Question, Mr. Ekwe Ethuro!

Question No.149

CAUSES OF POWER OUTAGES
IN LODWAR

Mr. Ethuro asked the Minister for Energy:-

(a) to explain the causes of the frequent power blackouts in Lodwar, which has caused damage to electrical appliances in business premises and posed a health hazard to the mortuary; and,

(b) what urgent steps he is taking to rectify the current situation and ensure a reliable and steady supply of electricity to the residents.

Mr. Speaker: Minister for Energy? Is there anybody holding brief for the Minister for Energy, so that we know where he is?

The Minister for Education (Prof. Onger): Mr. Speaker, Sir, I do not know where he is but I promise to tell him that there is a Question before the Floor of the House.

Mr. Speaker: We will leave the Question and return to it a little later, assuming that the Minister will be here by then, and have an explanation as to why he delayed.

Next Question, by Member of Parliament for Sigor!

Question No.303

DECENTRALISATION OF RECRUITMENT OF
CLERICAL OFFICERS/SUPPORT STAFF

Mr. Litole asked the Minister of State for Public Service:-

(a) whether he could consider decentralising the recruitment of Clerical Officers and Support Staff at district level; and,

(b) whether he could also do away with the requirement of computer knowledge for applicants from districts that do not have electricity supply.

The Minister of State for Public Service (Mr. Otieno): Mr. Speaker, Sir, I beg to reply.

(a) In order to address challenges presented by the practice whereby recruitment of lower cadre personnel was centralised, the Government approved the operationalisation of the district-based recruitment policy for Clerical Officers and Support Staff in Job Groups "A" to "F" in the entire Civil Service. Subsequently, my Ministry issued Circular No.NSPS18/A1/9120, dated 5th June, 2009 to Ministries' Provincial and District Commissioners for implementation of the new policy.

I beg to table that Circular.

(Mr. Otieno laid the document on the Table)

(b) My Ministry has also issued Circular DPM2/32/A1PY30, dated 10th September, 2008, advising Ministries that computer knowledge should not be a mandatory requirement but an added advantage.

I beg to also table that Circular.

(Mr. Otieno laid the document on the Table)

Mr. Speaker, Sir, I would like hon. Members to also note that although in recent advertisements, applicants for lower cadre jobs are still applying centrally, the applications will be aggregated by their respective districts and interviews conducted down at the district level.

Thank you, Mr. Speaker, Sir.

Mr. Litole: Mr. Speaker, Sir, I would like to thank the Minister for a job-well-done. However, we have several districts that do not have supply of electricity in this country. In the spirit of collective responsibility, could the Minister tell us when those districts are going to be supplied with electricity, so that they can be at par with other districts?

Mr. Otieno: Mr. Speaker, Sir, if I heard the hon. Member correctly, he is talking about electricity. I talk about human capital, and not electric energy.

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

Mr. Speaker: Order, Mr. Litole!

Yes, Dr. Eseli!

Dr. Eseli: Mr. Speaker, Sir, this is the second time the Minister has assured this House that recruitment of this cadre of staff is going to be decentralised to the district level. He is now telling us that they have applied for the jobs centrally but they are going to be disaggregated to the districts. Could he tell this House what informed the Ministry to still allow the central application and then disaggregate those applications to the districts?

Mr. Otieno: Mr. Speaker, Sir, my problem has been the quick separation of districts. I have not been able to recruit enough human resource management personnel to be posted to all the districts. That is why we are using the capacity available. We will then set up teams to do the interviews over there. Right now, so many districts do not have the relevant district personnel to undertake the decentralised work. Just give us time. We will catch up.

[Mr. Speaker left the Chair]

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

Dr. Kones: Mr. Temporary Deputy Speaker, Sir, may I know from the Minister whether the new districts are still legal, arising from the court ruling that was made recently?

Mr. Otieno: Mr. Temporary Deputy Speaker, Sir, mine is to look for personnel to work in what is constituted. If they are illegal, my responsibilities will be reduced.

Mr. Mungatana: Mr. Speaker, Sir, I am just looking at the Circulars that the Minister has tabled before the House. One of the things he is talking about is to ensure that there is regional balance, improvement of service, fair distribution in recruiting officers in the Civil Service at the lower levels. That is the reason as to why the Government has introduced the District-based Recruitment Policy. I want to follow up the same question, because we are dealing with a Minister of Government here. We are talking about recruitment at district level. We have been told by the High Court that there are some districts which are not legal.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Mungatana! It is Question Time!

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, let me ask the question: Can we have it authoritatively stated that the Minister will continue recruiting even at the level of those administrative units that have been declared districts even though we know that the High Court has said that some of them are illegal? We want that authoritative statement from the Minister.

Mr. Otieno: Mr. Speaker, Sir, my policy area is dispersion of recruitment. Whether the districts are legal or illegal, that is somebody else's responsibility. So long as an area is an administrative unit, it is my duty to recruit fairly in every geographical region; we will strive to implement the District-based Recruitment Policy. In any case, it is just a matter of dividing several districts. If there are still old districts, I will strive to implement this policy at that level.

Even at that level, where the districts are large enough, the recruitment teams will need to take into account the constituencies within those larger district areas. So, as far as the policy measure is concerned, it is to give opportunity to recruits to come from all geographical regions. Even within large districts, opportunity will be given to people in constituencies within such large districts. So, my policy measure will still be implemented, pending legalisation for whatever district boundaries exist and are acceptable to everybody.

Mr. Litole: Mr. Temporary Deputy Speaker, Sir, the Minister says the personnel officers will be recruited. However, he has not given us a time frame when these officers will be recruited because many districts are suffering.

Mr. Otieno: Mr. Temporary Deputy Speaker, Sir, because of the large numbers of human resource requirements it will take us up to as long as six months to be able to man or get the personnel in the regions to be able to implement this policy effectively.

Question No.315

FUNDS ALLOCATED FOR DEVELOPMENT
OF UNSDA IN 2008/2009

Mr. ole Lankas asked the Minister for Regional Development Authorities:-

- (a) how much development money was allocated to Uwaso Ng'iro South Development Authority in the 2008/2009 financial year,

- (b) how much of the amount was utilized; and,
- (c) what measures he will take to ensure the Authority efficiently uses allocated funds.

The Assistant Minister for Regional Development Authorities (Mr. ole Metito): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) The Government of Kenya Development Allocation for Uwaso Ng'iro South Development Authority for the Financial Year 2008/09 was as follows: Development Vote, Kshs46,500,000; UNEP grant for Maasai Mau Forest was Kshs9,258,892, totaling Kshs55,758,892.

Out of the said amount budgeted for development in the financial year, only Kshs30,067,072 was received. This translated to a deficit of Kshs16,632,928.

(b) The total amount utilized by the Authority on development programmes was Kshs39,325,962, inclusive of the UNEP grant.

(c) To ensure that the funds are utilized efficiently, the following measures have been put in place:

1. All development projects are drawn in line with Government policy and development goals and are based on the authority's five year strategic plan.
2. The Ministry has put the UNSDA under performance contract in which development programmes or projects and activities are part and parcel of the performance target that the board and management of the authority are expected to implement within the stipulated time frame.
3. In addition, the Ministry has put in place a monitoring and evaluation system that carries out regular progress status review of the projects for effective and timely implementation.

Mr. ole Lankas: Mr. Temporary Deputy Speaker, Sir, I want to thank the Assistant Minister for the answer. Could he go further and explain the criteria or procedure used to identify the 24 schools which benefitted from Kshs13 million of the original fund?

Mr. ole Metito: Mr. Temporary Deputy Speaker, Sir, the 24 schools benefitted from tree nursery planting around the Mau Forest. They were each provided with 5,000 litres of water tanks through the UNEP grant. The management plan for the forest was also done. They are from both Narok North and Narok South constituencies. The criteria used were in line with the UNEP grant. Part of that money was from UNEP grant. A baseline survey was done by the UNSDA around Narok only. They came up with those 24 schools for the two constituencies.

Mr. Bahari: Mr. Temporary Deputy Speaker, Sir, could the Assistant Minister tell the House what percentage of overall expenditure is the Development Expenditure?

Mr. ole Metito: Mr. Temporary Deputy Speaker, Sir, out of the Kshs39,325,964, Kshs30,067,072 went to Development Expenditure. The percentage is about 90 per cent. It is Kshs30 million out of the Kshs39 million budgeted for.

Mr. Bahari: On a point of order, Mr. Temporary Deputy Speaker, Sir. I thought the Question that was asked is about development money. The Assistant Minister said the total is Kshs55 million. I think he has given us the figures for Recurrent Expenditure, so that he gets the total. I think he is confusing us.

Mr. ole Metito: Mr. Temporary Deputy Speaker, Sir, the Question is on the Development Vote. The whole Kshs39 million is for Development Vote. In the figures I have given, there is no money for Recurrent Expenditure.

Mr. Olago: Mr. Temporary Deputy Speaker, Sir, in creating all regional development authorities in the Republic, the Government was motivated by a desire to spur development in these regions. As long as the regions are underfunded, this objective will never be met. What is the Ministry doing about the stalled headquarters of the Lake Basin Development Authority which this House recommended that the concept should be build, operate and transfer? What is being done?

Mr. ole Metito: Mr. Temporary Deputy Speaker, Sir, the hon. Member is quite right on the objective of the creation of this Regional Development Authorities. He is also quite right when he says that they are all under-funded. All the six of them are under-funded because they all rely on Treasury funding. We have recommended the system of build, operate and transfer. The Lake Basin Development Authority headquarters has stalled and requires Kshs800 million for it to be finished. We are considering that process of build, operate and transfer and it is in progress.

Mr. Kioni: Mr. Temporary Deputy Speaker, Sir, these authorities have the tendency to use money on the lower part of the areas under their jurisdiction. Part “b” of the answer says the amount was utilized. It is important for us to know how this money was utilized. How much of it was allocated to the upper zones that have the water towers which feed these authorities downstream?

Mr. ole Metito: Mr. Temporary Deputy Speaker, Sir, I really share the concern of the hon. Member, but unfortunately, the Regional Development Authority that is the subject of this Question, does not extent that far. With regard to how these funds were utilized, I hereby table the detailed report on each activity undertaken, the cost and status of the activities done. It is all totaling to the said amount.

(Mr. ole Metito laid the document on the table)

Mr. ole Lankas: Mr. Temporary Deputy Speaker, Sir, on the expenditure of the money, the Assistant Minister pointed out that over Kshs3 million was paid to contractors. Could he list the names of the contractors, and state what contractual works they were paid for?

Mr. ole Metito: Mr. Temporary Deputy Speaker, Sir, at the moment, I do not have the details of how much the contractors were paid. However, I welcome the hon. Member we go through the Kshs3 million that went to contractual jobs and see how it was paid. I can provide full information on that.

Question No.371

CRITERIA FOR RECRUITMENT
OF APS FROM NYS POOL

Dr. Eseli asked the Minister of State for Provincial Administration and Internal Security:-

- (a) what criteria was used in the recent recruitment of Administration Police Officers from the National Youth Service pool;
- (b) whether the criteria used adequately addressed the issue of fair distribution of recruits among all the districts in the country; and,
- (c) if he could provide the per district breakdown of the number recruited.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) The qualifying criteria used in the recruitment of Administration Police Recruits for the recently completed Administration Police recruits course number 12009 from the National Youth Service require that any prospective candidate must have successfully completed NYS basic course. In addition, candidates must possess the following basic requirements in order to be eligible for selection into the Administration Police force:-

1. They must be Kenyan citizens
2. Education qualification – KCSE, Grade D plus and above
3. They must be medically fit
4. They must not have a criminal record

They are required to have grade tests professions, specialization or talent. They are also required to be between 18 years and 28 years.

(b) The criteria is, therefore, based on NYS units, professional qualification and individual interest to join administrative police force and not on districts, as in the case of ordinary recruitment.

Dr. Eseli: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister has given a very evasive answer to the Question. I asked about the issue of fairness in the distribution of the recruitments. In Part “C” I asked about the per district breakdown of the number recruited. He has said that the recruitment was not based on districts. However, he can still give us the list as per the distributions per district. What he has shown here is the criteria for joining the Administration Police. That is the same criteria for joining NYS except for grade test, profession, specialization and talent. I believe the Assistant Minister has given a very evasive answer and unless he clarifies those issues, I would like him to go back and bring a list of the breakdown per district.

Mr. Lesrima: Mr. Temporary Deputy Speaker, Sir, we need to know that these candidates were originally recruited through another Ministry by the NYS. These are NYS trainees in various field stations. They were recruited because it is Government policy to also offer them opportunities in the Civil Service, military, police and administration police. But if you analyse and look at the people taken, in my view, they truly reflect the face of Kenya.

The Temporary Deputy Speaker (Mr. Ethuro): I think Dr. Eseli Simiyu made his case. Assistant Minister, you have not answered the Question. So, the Question shall be deferred. When are you ready to answer the Question?

Mr. Lesrima: Mr. Temporary Deputy Speaker, Sir, if it is required that I should go and check the identity cards and provide the list of all candidates as recruited by the NYS originally in all those stations, then I require a lot of time. I will possibly require two weeks or three weeks.

Dr. Eseli: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister in order to continue misleading this House, when the Ministry of State

for Defence, faced with the same Question, was able to give us a list that showed the breakdown to be equally distributed in all districts in the country yet they were recruiting from the same pool of the NYS?

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Assistant Minister, we do not need to squander the valuable time of the House. This Question is straightforward. It is your business to know where Kenyans come from. The Question is therefore, deferred until Thursday afternoon, this week.

(Applause)

Mr. Mungatana: On a point of order, Mr. Temporary Deputy Speaker, Sir. As the Assistant Minister gets more information on this Question, it would be useful for him to also tell us the criteria for the recruitment of the Commissioner of Police and if he is satisfied that a whole Commissioner of Police can also be---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Mungatana! This Question is about recruitment of Administration Police from the NYS.

Assistant Minister, ignore that!

(Laughter)

Mr. Lesrima: Mr. Temporary Deputy Speaker, Sir, to do justice to this House, I require a week to compile the list. What I have now is general distribution per province. So, I need to go into the details.

An hon. Member: Where is the list?

Mr. Lesrima: I do not have the list now! I am not in the Department of Defence (DoD)!

The Temporary Deputy Speaker (Mr. Ethuro): Assistant Minister, speak through the Chair!

I think the Chair will be considerate with the Assistant Minister. Let us give him a week and that is only but next Tuesday.

Question deferred to next Tuesday!

(Question deferred)

Next Question!

Question No.379

DIRECTOR OF PENSION'S FAILURE TO USE
ACTUARIAL REPORT IN IMPLEMENTING PENSION INCREASES

Mr. C. Kilonzo asked the Deputy Prime Minister and Minister for Finance:-

(a) why the Director of Pensions Department did not use the Actuarial Report prepared by the professional Actuaries in the year 2006 in implementing pension increases;

(b) how much the Government spent on its preparation and if he could table the said Actuarial Report; and

(c) when he will undertake the proper implementation of pension increment backdated to 1997 as recommended by the former Minister for Finance, Hon. Mwiraria.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) The Pensions Secretary/Director of Pensions relied on the Cabinet decision in implementing the pension increase in the year 2006. The Cabinet decision was informed by the report of a professional firm of actuaries dated August 2005.

(b) The Government spent a total of Kshs7, 500,000 in the production of the actuarial report. I hereby table the Report before the House.

(Dr. Oburu laid the document on the Table)

(c) The pension increase granted in the year 2006 was backdated to 1st July 2005 as directed by the Cabinet. No other pension increase has been approved by the Cabinet as yet.

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, does the Government have any plans to ever increase the pension for pensioners?

Dr. Oburu: Could you, please, repeat the question?

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, does the Government have any plans to increase the pensions?

Dr. Oburu: Mr. Temporary Deputy Speaker, Sir, the Government has increased pensions three times. The first increase was in 2006, when the Government raised minimum pensions from Kshs500 to Kshs2, 000. The same year, the Government increased that pension by Kshs300 to make it a minimum of Kshs2, 300. In 2009, the Government increased the pensions from Kshs2, 300 to Kshs2, 600.

Mr. Temporary Deputy Speaker, Sir, the Government has also incorporated a permanent increase which will be effected every year. This increase is 3 per cent every two years. That is the Government's plan.

Mr. Gondo: Mr. Temporary Deputy Speaker, Sir, what is the Ministry doing to minimize delays in the disbursement of pensions to pensioners?

Dr. Oburu: Mr. Temporary Deputy Speaker, Sir, the delays in disbursement in pensions are caused by several factors. One of the factors is the delay in processing documents at the source which is the Ministries or departments employing people. It is not necessarily from the Ministry of Finance. The pensions department is computerizing to make it more efficient in the disbursement of funds.

Mr. Twaha: Mr. Temporary Deputy Speaker, Sir, you heard the Assistant Minister say that the Government's policy is to increase pension by 3 per cent every two years. I am sure that he is aware that the inflation rate is well over 10 per cent per annum. Is this arrangement really fair?

Dr. Oburu: Mr. Temporary Deputy Speaker, Sir, this increase of 10 per cent, we are aware, is not sufficient. However, this token amount is informed by the fact that the pension bill increases by 25 per cent every year. This is a big burden on the Budget. Though it may not be fair, at the moment that is the much we can do.

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, is the Assistant Minister, Office of the Deputy Prime Minister and Minister for Finance, really serious when he talks about the pension being Kshs2300, and he says that he has raised pension by Kshs300 when we know that, that amount is still below the poverty line. He understands that living on a dollar per day is living below the poverty line? Is the Ministry of Finance comfortable keeping retirees below poverty line?

Dr. Oburu: Mr. Temporary Deputy Speaker, Sir, this policy was instituted after the research report I have just laid on the Table; there were people who were getting only Kshs100 for pension. Due to the concern to uplift the standards of living of Kenyans, the Government increased this amount to a minimum of Kshs2,000, which was many thousands per cent increase. We have now instituted a constant increase of 3 per cent every two years. I do not think we have done very badly.

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, in the year 2006, the Ministry of Finance recommended that pensioners' payments be increased and backdated to the year 1997. However, the then Minister for Finance made recommendations relying on the Actuarial Report, which was done by the professional firms. The Assistant Minister is misleading this House, saying that the Cabinet relied on the Report when the then Minister for Finance made recommendations based on the Report, which was disregarded by the Cabinet. My question is, therefore, why did the Government disregard the recommendations by the professional firms which did the Actuarial Report?

Dr. Oburu: Mr. Temporary Deputy Speaker, Sir, the recommendation by the Report was not binding on the Government. The Government is implementing it piecemeal, depending on our ability to meet our obligations contained in that Report. However, there was no recommendation by Ministry of Finance that these benefits be backdated to 1997. The only backdating which was done was from July, 2005 to July 2006.

Question No.408

MEASURES TO CUSHION TEA FARMERS
AGAINST TEA PRICES DECLINE

Mr. James Maina Kamau asked the Minister for Agriculture:-

- (a) what the Ministry is doing to cushion tea farmers against unpredictability and decline in tea prices and whether KTDA has any plans to link individual tea factories to tea buyers abroad to maximize on tea prices;
- (b) to confirm that tea factories continue to use firewood to dry tea, despite wood being uneconomical, and its use posing a major threat to environment protection efforts; and,
- (c) what steps the Government is taking to ensure that coal is available for use in tea factories as an alternative source of fuel.

The Assistant Minister for Agriculture (Mr. Ndambuki): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) To cushion tea farmers against any unequity and declining tea prices, my Ministry, in conjunction with the Tea Board of Kenya and other stakeholders, is undertaking the following activities: One, it is encouraging value addition of the

processed tea. Two, it is encouraging market and product diversification and promoting tea consumption locally.

(b) I am aware that some tea factories are still using firewood to generate steam to dry the green leaves. As these are private companies, the Ministry has no authority over them, hence cannot direct them on what to do. We are encouraging private companies, if they need any assistance from the Ministry, they should contact it.

(c) My Ministry will liaise with the Ministry of Energy and other stakeholders to explore alternative sources of fuel, including coal in tea factories.

Mr. James Maina Kamau: Mr. Temporary Deputy Speaker, Sir, I thank the Assistant Minister for trying to answer the Question. However, it is a pity that the country continues to use the old method of fuel. We all know that cutting down of trees in this country has taken us to a dangerous stage. For how long will they continue using firewood when we know that by using coal, you can cut costs by 60 per cent?

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, the cost of producing or drying tea leaves with firewood is Kshs8. When you use funnels and other methods, it costs Kshs18. We know that there has been exploration of coal. We are consulting with the Ministry of Energy to tell us whether what has been found can be used commercially before we start encouraging factories to use it. Some factories have started running their own mini-hydro factories and they are using their own electricity to dry these leaves. Therefore, we are very much aware and are concerned, although at the moment, we know that the acreage which has been planted with trees is 3,932. We intend to encourage that 2,255 acres be planted with trees this season.

Mr. Ruto: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Assistant Minister to tell us that there are things called hydro-power factories? What are they?

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, I talked about mini- hydro power generators. This is water used to generate power, which is used to dry the leaves.

Mr. Nyambati: Thank you, Mr. Temporary Deputy Speaker. It is very clear that the Government is killing the tea industry as it has killed the coffee industry and the pyrethrum industry in Kisii. Could the Assistant Minister tell us what value-adding measures he has put in place to ensure that small-scale farmers gain from tea? Where I come from, the farmers are about to uproot tea trees. Could the Assistant Minister explain this?

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, first, I would like to correct the hon. Member. The Government is not encouraging destruction of the tea industry in this country. In fact, we have put a lot of money into the tea industry to make sure that farmers get returns worth what they invest in their *shambas*. As far as value addition is concerned, we now have factories which are producing different types of tea. For example, we have the orthodox tea, green tea and the ice tea that is being produced. All these things are being done to make sure that the farmer gets more his tea.

Dr. Kones: Mr. Temporary Deputy Speaker, Sir, I am not happy with the way the Government is treating tea farmers and tea issues. One of the ways that tea farmers lose their proceeds is through levies to support Tea Board of Kenya and Tea Research Foundation. Could the Ministry consider funding those bodies through the Exchequer?

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, the Government has put a lot of money into the tea sector. We cannot afford to fund the levies. Those who are

levying the levies should make sure that the farmer gets reasonable returns, rather than collecting levies and leaving them with nothing.

Mr. Wambugu: Mr. Temporary Deputy Speaker, Sir, the core business of Kenya Tea Development Authority (KTDA) is to market tea that is produced in this country. But of late, I understand that KTDA has turned itself into a tea bank. Could the Assistant Minister confirm whether KTDA is changing from being a marketer to a banker?

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, KTDA is still a marketer. The bulk of the tea goes through the agency and is sold through the auction in Mombasa.

Mr. Wambugu: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Assistant Minister is avoiding my question. KTDA has already put aside Kshs160 million to start a tea bank. The Assistant Minister is now only telling us that---

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Wambugu! You only asked the Assistant Minister to confirm. He has confirmed that KTDA is a marketer. He did not deduce the information that you are giving now.

Mr. Olago: Mr. Temporary Deputy Speaker, Sir, this Question is about the prudent use of energy by the Ministry. But I have heard the feeble attempt by the Assistant Minister to say that the Ministry is impotent in advising tea factories on prudent use of energy. That is not the right way to go. What concrete steps is the Ministry taking to ensure that there is prudent use of energy? The Ministry should encourage tea factories to install hydro-electric generating plants and also harness sun power?

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, it is true that some factories are experimenting with solar and other sources of energy. We are encouraging tea factories to do that.

Mr. James Maina Kamau: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister has talked about value addition by processing tea, marketing and products diversification. Could the Assistant Minister tell this House whether that has started and if not, when it will start? At the same time, he should tell this House whether there is a possibility---

The Temporary Deputy Speaker (Mr. Ethuro): Order! Mr. Maina Kamau, ask one question at a time!

Mr. James Maina Kamau: Mr. Temporary Deputy Speaker, Sir, he should tell this House whether there is a possibility of farmers selling their tea through other agencies and not KTDA?

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, the things that I have highlighted are in progress. For instance, I have stated what is going on with regard to value addition. I have also talked about what is being done about market diversification. We used to have specific countries where we sold our tea. But now, we are selling it to other places like Iran, China, Russia, Poland and other Asian countries. The other thing is about product diversification---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Assistant Minister! The hon. Member wanted to know whether you have started that process and, if not, when you will start.

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, we have started.

The Temporary Deputy Speaker (Mr. Ethuro): When?

Mr. Ndambuki: Mr. Temporary Deputy Speaker, Sir, there are some factories which are doing that. Value addition was inaugurated by the Minister last month in Kangaita.

Mr. James M. Kamau: On a point of order, Mr. Temporary Deputy Speaker, Sir. Instead of farmers going through KTDA, could they be allowed to sell their produce directly in the market?

The Temporary Deputy Speaker (Mr. Ethuro): Order! That is not a point of order!

Question No.149

CAUSES OF POWER OUTAGES
IN LODWAR

Hon. Members, Question No.149 is deferred to tomorrow afternoon.

(Question deferred)

That is the end of Question Time!

POINTS OF ORDER

IMPORTATION OF NON-COMESA
DUTY FREE SUGAR

Mr. Ochieng: On a point of order, Mr. Temporary Deputy Speaker, Sir. I rise to seek for a Ministerial Statement from the Minister for Agriculture. First, could he clarify whether the current sugar shortage is real or artificial? Secondly, why is he allowing the importation of non-COMESA sugar into the country, duty-free, which is against the law? Thirdly, what would be the fate of the farmers, workers and their families within the sugar-belt, who are likely to be hurt by that free-for-all importation?

Mr. Kioni: On a point of order, Mr. Temporary Deputy Speaker, Sir. I rise to ask for a Ministerial Statement from the Minister for---

Mr. Yinda: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Member for Nyakach sought for a Ministerial Statement, but there was no communication from the Minister.

The Temporary Deputy Speaker (Mr. Ethuro): The point is made, but we have not concluded the session yet. Proceed, hon. Kioni.

MANDATE/EFFICIENCY
OF KACC

Mr. Kioni: Mr. Temporary Deputy Speaker, Sir, I wish to seek for a Ministerial Statement from the Minister for Justice, National Cohesion and Constitutional Affairs. The issue of the re-appointment of Justice Aaron Ringera, Dr. Wanjala and Ms. Fatuma Sichale has generated a lot of interest within this House and in the public. However, it has

not come out clearly whether or not Kenya Anti-Corruption Commission (KACC) under the leadership of Justice Ringera has performed or not. Could the Minister clarify the mandate of KACC and whether that mandate has been executed efficiently or otherwise, as per the statute? Secondly, how many cases has KACC forwarded to the Attorney-General for prosecution? Thirdly, could the Minister table a full list of the cases that KACC has investigated and forwarded the files to the Attorney-General for prosecution and their status? Finally, could he also table a list of the cases currently being investigated?

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

[Mr. Speaker took the Chair]

Mr. Olago: On a point of order, Mr. Speaker, Sir. Listening to the request for the Statement, clearly, this request is a set up and is meant to stop the Committee on Delegated Legislation from presenting its report. The subject of my friend's Ministerial Statement is the subject that the Committees are dealing with. The issue at the moment is not the competence or otherwise of Justice Ringera. The issue is whether the proper procedure was followed. This Statement is, in my humble view, meant to circumvent the report of the Committee and should be disallowed.

Mr. Speaker: Order, hon. Olago! Order, hon. Members! Hon. Members, there is a Communication on this subject and I want to urge the hon. Members to be patient and await that Communication. It will come presently.

Dr. Eseli: On a point of order, Mr. Speaker, Sir. I rise to seek for a Ministerial Statement from the Rt. Hon. Prime Minister---

Mr. Speaker: Order, Dr. Eseli! Dr. Eseli, you have not complied with the Standing Orders as they stand today in the sense that, if you want to request for a Ministerial Statement, then you must approach Mr. Speaker, at least, one hour before the Sitting commences. To the best of my knowledge, you have not approached me one hour before this Sitting commenced. The Standing Orders are very clear, unequivocal, categorical and so explicit. So, we cannot short-circuit those Standing Orders.

Hon. Ethuro has informed me that you approached him this afternoon, while he was on the Chair. That is just about 15 minutes ago. That does not comply with the Standing Orders. I am afraid you cannot make that request now. You may do so, perhaps, tomorrow after you have consulted the Chair.

Mr. Mbugua: Mr. Speaker, Sir, the remedy for any debt is to pay it.

Mr. Speaker: What are you doing, Mr. Mbugua?

Mr. Mbugua: Mr. Speaker, Sir, the First Lady has been dragged---

Mr. Speaker: Order, Mr. Mbugua! Whatever you want to do must find anchoring in the Standing Orders. So, you must satisfy the Chair that, first, your action is now within Order No.7, which relates to Statements. Up to where you are, I am afraid that I am not satisfied because I have not received any indication that you will request for a Ministerial Statement. To that extent unless you persuade me otherwise, you are actually out of order. So, do not proceed to say anything else that is outside Order No.7, because if you do so, then you must be prepared to take the consequences!

FATE OF MT. ELGON HOSPITAL

Mr. Wamalwa: On a point of order, Mr. Speaker, Sir. I had sought two Ministerial Statements from the Minister for Lands; one on the settlement of squatters in Solio Ranch, which was issued last week and the second one on the fate of Mt. Elgon Hospital in Kitale, which has not been issued for over three weeks.

Mr. Speaker: Fair enough! Is the Minister for Lands here? Are you ready to proceed with that Statement on the fate of Mt. Elgon Hospital?

The Assistant Minister for Lands (Mr. Bifwoli): I am not ready, Mr. Speaker, Sir.

Mr. Speaker: How long do you require to issue that Statement?

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Speaker, Sir, tomorrow afternoon.

Mr. Speaker: It is so directed!

Mr. Ochieng': On a point of order, Mr. Speaker, Sir. Two Minutes ago I sought a Ministerial Statement from the Minister for Agriculture but unfortunately, up to now, the Front Bench has not undertaken to respond. I do not know when that Ministerial Statement will be issued.

Mr. Speaker: The Minister for Agriculture or any other Minister holding his brief!

The Assistant Minister for Agriculture (Mr. Ndambuki): Mr. Speaker, Sir, I would like the hon. Member to give me the details of the Statement and we will issue it next week.

Mr. Speaker: Issue the Ministerial Statement on Tuesday, next week!

Mr. Kioni: On a point of order, Mr. Speaker, Sir. I sought for a Ministerial Statement from the Minister for Justice, National Cohesion and Constitutional Affairs. I would also like to know when he will issue it.

Mr. Speaker: The Minister for Justice, National Cohesion and Constitutional Affairs, when will you issue the Ministerial Statement on matters pertaining to the Kenya Anti-Corruption Commission (KACC) notwithstanding the Communication I will make just now?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, notwithstanding the Communication you will make now, I have requested you for leave to raise a further point of order. I will issue that Statement even tomorrow, if you allow.

Mr. Speaker: Tomorrow afternoon?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Yes, Mr. Speaker, Sir.

Mr. Speaker: Fair enough! It is so ordered!

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

Mr. Speaker: What is it, Mr. Mungatana? Is it on the same matter?

Mr. Mungatana: Yes, Mr. Speaker, Sir.

Mr. Speaker: Then, leave it at that!

MINISTERIAL STATEMENT

PROPOSED PRIVATIZATION
OF STATE CORPORATIONS

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Speaker, Sir, Mr. Mungatana had requested for a Ministerial Statement and I would like to make it.

Mr. Speaker: Are you sure that you can issue it within five minutes?

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Yes, Mr. Speaker, Sir.

Mr. Speaker: Then proceed!

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Speaker, Sir, the issue raised by Mr. Mungatana relates to whether the Government should sell profitable parastatals; how much money will be raised through the privatization of the parastatals; whether the institutions to be privatized are a burden to the Treasury to warrant their sale; whether the proposed privatization will protect employees who will be retrenched once investors have taken over the Government agencies and whether the Cabinet has reached consensus on the matter.

Mr. Speaker, Sir, the desired objectives of privatization of State corporations are clearly stated under Section 18(2) of the Privatization Act enacted by this House in 2005. These include, the improvement of infrastructure and delivery of public services by the involvement of the private capital and expertise; the reduction of the demand for Government resources; generation of additional Government revenues by receiving compensation for privatizing; the improvement of the regulation of the economy by reducing conflicts between public sector regulatory and commercial functions; the improvement of the efficiency of the Kenyan economy by making it more responsive to market forces; the broadening of the base of ownership in the Kenyan economy and the enhancement and development of capital markets. These objectives clearly demonstrate that a State corporation does not need to be loss making in order to be privatized as there are many benefits to be achieved through privatization. It is for this reason that in the Gazette Notice I have outlined specific objectives to be achieved in each of the State corporations to be privatized.

Mr. Speaker, Sir, one of the objectives of enacting the Privatization Act was to entrench the privatization process into law. The law, therefore, stipulates a very transparent process to be followed and disclosures to be made. Let me assure this House that this process is being strictly adhered to. Indeed, the Gazette Notice referred to by the hon. Member is a requirement of the Act under Section 17(3) of the Privatization Act, 2005.

With regard to the approvals required under the Privatization Act, there are two main approvals by the Cabinet. This includes the approval of the programme which was granted on 11th December, 2008. That is what has been gazetted in line with the requirement of the Act, as I have just indicated.

Some of the details sought by the hon. Member include expected proceeds. This will be known once the professional valuation of specific companies is undertaken as part of the preparatory work to be carried out by the Privatization Commission and once actual bids are received and evaluated. As part of the privatization process, the Act

requires that a detailed privatization proposal be submitted to the Cabinet for approval. The detailed proposal will address the following: The purpose of the establishment of the asset or operation proposed to be privatized; the extent of which the purpose has been made and the recommendation for continuing to meet that purpose; the right or entitlements and other resources that have been provided to meet that purpose; the financial position of the asset if it is a corporation; the recommended method of privatization; estimated cost of implementing the proposed transaction; the recommendation for dealing with employees directly affected by the proposed privatization including suggestions on how to deal with benefits owed to employees; the national benefit accruing from the proposed privatization; work plan for the proposed privatization process; information regarding any written law; the repeal, amendment or enactment of which will be necessary for the proposed privatization to be carried out and the proposal on how Kenyans are to be encouraged to participate.

The detailed proposal will, therefore, address most of the issues raised by the hon. Member for Garsen. To be able to prepare the detailed privatization process, a lot of work has to be carried out by the Privatization Commission. This work is currently on-going. Once approved by the Cabinet, I will table the specific detailed proposals before the relevant Committee of Parliament, as required by the law before any privatization is implemented.

Mr. Speaker, Sir, let me once again emphasize that the law requires that privatization be implemented transparently and through a competitive process. The law is being implemented strictly.

Thank you.

Mr. Mungatana: Mr. Speaker, Sir, I thank the Deputy Prime Minister and Minister for Finance for his Statement. However, I would like to table the Report of the Privatization of State Enterprises by the Government of Thailand, which is on-going. It is not just in Thailand, but also in the Hellenic Republic of Greece and the United Kingdom (UK).

Mr. Speaker, Sir, the main purpose of privatization which is stated in this Report, is to ensure that the fiscal burden of state enterprises is reduced. This is to say that the loss making parastatals are the ones that are supposed to be done away with for the benefit of the Republic. In the published Gazette Notice, we have the Numerical Machining Complex which we have no problem with. It is listed as having idle assets. We can privatize that parastatal and make it profitable. However, the Kenya Ports Authority (KPA) has declared a profit of Kshs5 billion and KenGen has carried one of the most successful Initial Public Offers (IPOs) in the country. What is the justification for selling these national assets? Why are we selling the family silver?

(Mr. Mungatana laid the document on the Table)

Mr. Jirongo: Mr. Speaker, Sir, In the Printed Estimates of this year, the Deputy Prime Minister and Minister for Finance never indicated that he required to raise funds by selling parastatals. I am wondering how he intends to account for the sale of parastatals that never appeared in the Printed Estimates of the year 2009/2010.

Mr. Kioni: Mr. Speaker, Sir, this exercise of privatization has taken place in the past. I would like the Deputy Prime Minister and Minister for Finance to clarify how

much has been received from previous privatizations, how those proceeds were used and how it has been beneficial to Kenyans. How have Kenyans also taken part in the privatization?

Mr. Speaker: Due to the mandate you carry, Dr. Khalwale, I will give you the last chance.

Dr. Khalwale: Mr. Speaker, Sir, in the past we have known that in this country, privatization has simply been an avenue to perpetuate further corruption by this Government. I notice from the Gazette Notice that there are a number of hotels that they intend to privatize including Golf Hotel in Kakamega and Sunset Hotel in Kisumu. The Golf Hotel has now realized beyond 100 per cent bed occupancy as has Sunset Hotel, purely because of the development of Masinde Muliro University and Maseno University. Is that not another attempt to remove these public assets so that in the same manner that the Government took over the Grand Regency Hotel, again, the public can lose its interest in these hotels?

Finally, how will the interests of the workers of those institutions be protected?

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Speaker, Sir, to respond to Mr. Mungatana, Mr. Jirongo and Dr. Khalwale, it is quite clear, as I stated in the Ministerial Statement, that the desired objectives of the privatization of State corporations are stated in an Act that was passed by this House. As clearly stipulated under Section 18(2) of the Privatization Act, we have said that part of the reason is not a question of just selling assets but it is undertaken to improve infrastructure, delivery of services, reduce the demand on Government resources, generation of additional resources that can be used for other development programmes, the improvement of the regulation environment by getting the Government out of business and allowing business to do what it does best and the Government to regulate. It is also to improve efficiency of some of those entities as well as the economy as a whole.

We are also hoping that through the same process, as has happened in a number of parastatals that have already been privatized, we will broaden the base of these enterprises and get Kenyans, through the Stock Exchange, to own shares and to participate in the family silver that the hon. Member is referring to.

Mr. Speaker, Sir, with regard to the question by Mr. Kioni, since 2001 and 2008 a number of State corporations have been privatized. There is Mumias Sugar Company that generated about Kshs2.2 billion; KenGen generated about Kshs7.8 billion; Kenya-Re generated Kshs1.9 billion; Telkom Kenya generated Kshs24.3 billion and Safaricom Limited generated about Kshs50.8 billion. Funds generated from these sales have been used to fund development projects throughout the country. These companies now have a broad shareholding for Kenyans from every corner who are participating in the Stock Exchange as owners and receiving dividends from these entities. It has also given Kenyans an opportunity to also invest and participate in the profits that these companies make.

In terms of performance, a number of companies have performed very well after privatization. Kenya Airways is an example. It has immensely supported the economy since privatization and is actually a case study of a successful privatization. Safaricom Limited was making profits but since privatization it has moved from 200,000 lines to over 14 million lines that we have today.

Mr. Jirongo: On a point of order, Mr. Speaker, Sir. Is the Deputy Prime Minister and Minister for Finance in order to continue taking us round without telling us exactly why he requires to raise extra money and how he intends to spend it without going through the process of this House. In his Printed Estimates, he never told us that he will sell parastatals in order to fund his Budget. Where is this money going to?

Mr. Speaker: Order, Mr. Jirongo! I am not so sure that, that follows from your point of order, but let me hear the Deputy Prime Minister and Minister for Finance.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Speaker, Sir, I think Mr. Jirongo might have been dozing at that particular time but I did mention in the Budget Speech that we do intend to raise money through privatization.

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

Mr. Speaker: Order, the Deputy Prime Minister and Minister for Finance is responding to a point of order. Have you finished?

Mr. Mungatana: That is not parliamentary language!

Mr. Speaker: Order, Mr. Mungatana! You are a fairly respectable Member of this House and the answer to what you are trying to do is to catch the Speaker's eye and not to talk from your sitting position.

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. Out there, the public is still crying that they have not been refunded the money they invested in the Initial Public Officer (IPO) of Safaricom Limited. The Minister is today misleading this House that one of the success stories is Safaricom Limited. Even the shares of Safaricom after the privatization plummeted from Kshs5 to Kshs3. Can we allow this Minister to continue misleading the House as if the House is full of computer errors the way his office is?

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Speaker, Sir, I continue to maintain that Safaricom Limited was a success even though the shares have plummeted. That is not a factor that is limited to Safaricom Limited but the entire global economy and the hon. Member is fully aware of that.

Mr. Olago: On a point of order, Mr. Speaker, Sir. I rise on a point of order, in respect of this Gazette Notice. It contains all the sugar factories in Nyanza. Is it in order for the hon. Minister to sit down having concluded what he was supposed to say without touching on how this is going to affect the sugar industry in Nyanza Province that has completely been taken?

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Speaker, Sir, I know that the Ministry of Agriculture has been working with the relevant Departmental Committee and I think the Minister for Agriculture is the most appropriate person to address that issue.

Mr. Speaker: Hon. Members, that completes Ministerial Statements. I want to direct that the request for extension of time to prepare the report on Pan African Paper Mills is granted a further two weeks from the deadline.

COMMUNICATION FROM THE CHAIR

RE-APPOINTMENT OF JUSTICE AARON RINGERA AS KACC DIRECTOR

Hon. Members, I have a communication to make before we go to the next Order.

Hon. Members, on Thursday 3rd September, 2009, the Honourable Isaac Ruto rose on a point of order and requested that the Chair directs that the Gazette Notice No.9300 of 2009 on the re-appointment of the Director of the Kenya Anti-Corruption Commission (KACC) be committed to the Committee on Delegated Legislation for scrutiny and that the Committee reports back to the House within seven days on its validity or otherwise. Following the request by the hon. Ruto, the hon. Minister for Justice, National Cohesion and Constitutional Affairs rose on a point of order and sought the guidance of the Chair as to whether the matter of the re-appointment of the Director of the KACC should be referred to the Committee on Delegated Legislation. Several hon. Members subsequently made their contributions on the matter.

Hon. Members, the Gazette Notice in question is Gazette Notice No. 9300 dated 26th August 2009 and issued on 31st August 2009 under the hand of His Excellency the President, in the following terms:-

“In exercise of the powers conferred by Section 8(4) and paragraph 3(2) of the First Schedule of the Anti-Corruption and Economic Crimes Act, I, Mwai Kibaki, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya re-appoint JUSTICE AARAON G. RINGERA to be the Director of the Kenya Anti-Corruption Commission for a period of five (5) years, with effect from 8th September, 2009.”

Dated the 26th August, 2009.

MWAI KIBAKI,
President.

Related to this notice is Gazette Notice No. 9301, bearing the same date and issued on the same day, re-appointing the two Assistant Directors of the Kenya Anti-Corruption Commission.

Hon. Members, from the request for directions made by the hon. Isaac Ruto and the contributions by hon. Members on this matter, the following three issues can be isolated for response:

1. Do Committees of the House require the direction of the House or the Chair to proceed with an inquiry into a matter?
2. Which Committee of the House will have the mandate to inquire into the matter of the re-appointment of the Director of the KACC?
3. Does the Gazette Notice No. 9300 dated 26th August 2009 re-appointing the Director of the KACC fall within the definition of subsidiary legislation?

Hon. Members, the matter of whether Committees of the House require the direction of the House or the Chair to proceed with an inquiry into any matter should not detain us for long. I have ruled before and I reiterate now that Committees of the House are creatures of the Standing Orders and do not require the authorization or direction of any person or body to inquire into matters that fall within their mandate.

Standing Order 198(3) empowers a committee to investigate and inquire into any matter falling within its mandate as it may deem necessary, or as may be referred to it by the House or a Minister. As I said in this House on Thursday 3rd September 2009, if a committee, in the interpretation of its mandate, comes to the conclusion that a particular matter falls within that mandate, it is open to such committee to commence an inquiry thereon. Some will argue that this view will give licence to committees to go beyond their terms of reference on the pretext that they perceive it to be within their mandate.

Such a fear is not founded. The committees are subordinate to the House and it is open to the House to rein them in if it should become apparent that they have gone on frolics of their own entirely removed from their legitimate mandate.

Hon. Members, the foregoing, in some way, answers the second question as to which committee will have the mandate to inquire into the matter of the re-appointment of the Director of the KACC.

Hon. Members, we will wait for hon. Emilio to walk in.

(Mr. Kathuri entered the Chamber)

(Applause)

Hon. Members, this question raises important constitutional issues regarding the functions of the Legislature. One of the key functions vested in the Legislature is oversight. By this oversight function, this House is entrusted with the key role of checking the activities of the Executive.

*(The Minister for Regional Development Authorities (Mr. Gumo)
entered the Chamber without bowing to the Chair)*

Order, hon. Member! Order, Member for Westlands! You are out of order and I am afraid you will have to withdraw.

(Applause)

Member for Westlands, you are a very senior Member of this House and you have been able to acquaint yourself with the Standing Orders, not just for one term, but I believe for four terms. So, in those circumstances, I am afraid you will have to withdraw for the rest of this sitting. The other hon. Members may walk in.

*(The Minister for Regional Development Authorities (Mr. Gumo)
withdrew from the Chamber)*

(Several hon. Members entered the Chamber)

(Loud consultations)

Order, hon. Members! Hon. Members, this question raises important constitutional issues regarding the functions of the Legislature. One of the key functions vested in the Legislature is oversight. By this oversight function, this House is entrusted with the key role of checking the activities of the Executive. An important instrument by which this House exercises this oversight role is through committees which are, by Standing Order 198(3), vested with a mandate that empowers them to-

- (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- (b) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- (c) study and review all legislation referred to it;
- (d) Study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- (e) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister; and
- (f) make reports and recommendations to the House as often as possible, including recommendations on proposed legislation.

Hon. Members, through the Committee system, the House has established an elaborate system for interrogating the exercise of Executive powers. Further, our Constitution and our Standing Orders avail to this House adequate instruments by which the House is enabled to ensure that the actions of the Executive remain in consonance with the very law that this House has enacted and seeks to protect.

Hon. Members, the matter at hand has raised considerable interest, not only in this House, but in the entire country as well. Important questions have been raised about the legitimate interplay between the Executive, the Legislature and to some extent the Judiciary in the exercise of certain powers. These are important constitutional questions and the country looks to this House to provide leadership in the matter. The mandate of the Departmental Committee on Justice and Legal Affairs is set out in the Second Schedule of the Standing Orders as covering the subjects of:

“Constitutional affairs, the administration of law and justice, public prosecutions, elections, ethics, integrity and anti-corruption and human rights”.

These are wide mandates and it is difficult to argue that the matter in issue does not concern “constitutional affairs” or “the administration of law and justice” or “integrity and anti-corruption.” On the other hand, the mandate of the Committee on Delegated Legislation is established under Standing Order No.197 and entrusted with the mandate to ensure that statutory instruments are laid before the House as may be provided under any written law and to scrutinize such instruments to ensure that they are consistent with parent statutes. The committee is further entrusted with the mandate of recommending that the House resolves that any particular subsidiary legislation be annulled. Again, it will be a strenuous argument to make that the matter concerning the re-appointment of the Director of the Kenya Anti-Corruption Commission (KACC) is entirely outside the conceivable mandate of this committee.

Hon. Members, the mandate of committees need not be exclusive. All committees work for this House and for the country at large. Numerous precedents exist in which two or more committees have jointly undertaken inquiries into a matter. It is not, therefore, necessary for the Chair to rule that this matter be exclusively handled by one or other committee. It is clear that it is legitimate for both the Departmental Committee on Justice and Legal Affairs and the Committee on Delegated Legislation, and possibly more committees, to inquire into the matter.

Hon. Members at the Bar may walk in.

(Several hon. Members entered the Chamber)

The final matter relates to the question as to whether Gazette Notice No.9300 dated 26th August 2009 re-appointing the Director of the KACC falls within the definition of subsidiary legislation. This matter has arisen severally in the course of debate in this House. Although Parliament is the supreme law-making body, it often delegates legislative power to the Executive by statute. However, even where legislative power is delegated, Parliament ensures that adequate mechanisms exist for the scrutiny of the Executive's power to make subsidiary legislation.

(Applause)

In this regard, Section 34 of the Interpretation and General Provisions Act, Cap.2 of the Laws of Kenya requires that:-

1. All rules and regulations made under an Act shall, unless a contrary intention appears in the Act, be laid before the National Assembly without unreasonable delay, and, if a resolution is passed by the Assembly within twenty days on which it next sits after the rule or regulation is laid before it, that rule or regulation be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done there under, or to the making of any new rule or regulation.
2. Subsection (1) shall not apply to rules or regulations a draft of which is laid before the National Assembly and is approved by resolution before the making thereof, nor to rules of court.
3. In this Section, "rules" and "regulations" mean respectively those forms of subsidiary legislation which may be cited as rules or regulations, as the case may be."

The Standing Orders do not provide a definition of either delegated legislation or subsidiary legislation. Under Section 3 of the Interpretation and General Provisions Act, subsidiary legislation is defined to mean:-

"Any legislative provision, (including a transfer or delegation of powers or duties,) made in exercise of a power in that behalf conferred by a written law, by way of by-law, notice, order, proclamation, regulation, rule, rule of court or other instrument."

It has been argued that by this definition, the re-appointment of the Director of the KACC, having been undertaken in exercise or purported exercise of a power conferred by this House, and the appointment having been made through the instrumentality of a Gazette Notice, it falls within the jurisdiction of this House to consider whether the power so delegated has been appropriately exercised and to take appropriate remedial action if it has not been so exercised.

A contrary argument is to the effect that the appointment or re-appointment of a person to a public office is, under our Constitution, the prerogative of the President and that unless express and unequivocal provisions exist requiring that a re-appointment be subjected to fresh approval by this House, no such approval is required and the exercise of the power of re-appointment is not a matter within the jurisdiction of this House to question. Linked to this argument is the view that the exercise of a power of appointment

or re-appointment is not legislative and is not, therefore, subsidiary legislation amenable to consideration by the House.

The reason that this House, through the Standing Orders, has established committees and appointed hon. Members to them is so that important matters that do not lend themselves to convenient consideration by the House in plenary can be given appropriate consideration in committee. To this end, Standing Order No.186 provides that committees may, with the approval of the Speaker, engage such experts as they may consider necessary in furtherance of their mandates.

(Applause)

Hon. Members, having found that it is open to any committee to commence an inquiry into a matter if in its interpretation of its mandate it comes to the conclusion that the matter properly falls within that mandate, and having further found that the mandates of the Departmental Committee on Justice and Legal Affairs and the Committee on Delegated Legislation touch on the matters in issue, it does not appear to the Chair that a pronouncement from the Chair on the question of whether the re-appointment of the Director of the KACC constitutes subsidiary legislation within the meaning of the Standing Orders, would be the most appropriate or efficient way for this House to proceed. It is not the intention of the Speaker to pre-empt the findings of Committees of the House or to take over their mandate. Indeed, it is arguable that it is these very questions that these committees, with the assistance of the expertise at their disposal, will be considering and advising this House upon. In taking this position I am guided by precedents from other jurisdictions, including the House of Commons of the United Kingdom and the Indian Lok Sabha.

Although I have previously ruled that committees do not require the direction of the Chair or the House to proceed with their mandate, this is not to say that the Chair or the House, for that matter, is prevented, in appropriate circumstances, from directing that any committee undertakes any particular task falling within its mandate. In light of this, and considering the immense public interest generated by this matter, and the important constitutional questions in issue, I direct that the Departmental Committee on Justice and Legal Affairs and the Committee on Delegated Legislation proceed, with dispatch, to consider the matter of the re-appointment of the Director of the KACC and to report to this House within two weeks of the date hereof.

(Applause)

Hon. Members, as you may be aware, this afternoon, a Report on this matter has been laid on the table of the House by the Chair of the Committee on Delegated Legislation. This development is not incompatible with the ruling that I have made.

Thank you.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): On a point of order, Mr. Speaker, Sir. I would like to thank you for that elaborate ruling and, particularly, on the references that you have made to the weighty constitutional issues that attach this issue on the Floor of the House.

Mr. Speaker, Sir, would I be in order to request your guidance yet again? I had suggested that in a letter that I wrote to you this morning, forwarding you certain documents. But, in your wisdom, which I respect, you suggested that I raise this point of order at this point and, therefore, I do so. In view of the material that has come into my hands, and which I have forwarded to your office, particularly High Court of Kenya at Nairobi Petition No.535 of 2009, together with the Certificate of Urgency attached thereto; together with the Supporting Affidavit attached thereto and, above all, together with the Annexure which is Exhibit AAA0001 which are the Gazette Notices that you have addressed – that is Gazette Notice Nos.9300 and 9301, would I be in order to suggest that in terms of Standing Order No.80 of this Honourable House, and in respect of the principle of separation of powers, you give directions that this matter is now *sub judice* pending the determination of that case?

Mr. Speaker, Sir, let me elaborate a bit, the orders that the litigants who have gone to Court, in terms of the Constitution, are applying under Sections 70, 75, 77 and 82 of the Constitution of Kenya. They are also relying on Sections 1, 1(a), 23, 30, 60, 84 and 123(8) of the Constitution.

Mr. Speaker, Sir, the reason why I bothered to trouble you, knowing how busy you are, are the prayers that have been sought in this petition. Question number one that has been proposed by the litigants is: Whether Section 8 and the First Schedule of the Anti-Corruption and Economic Crimes Act are consistent with Section 24 of the Constitution. The second question posed by those litigants is: Whether under Section 24 of the Constitution, Parliament can lawfully delimit the President's power to constitute and abolish offices for the Republic of Kenya, of making appointments to any such office and terminating any such appointments as has been legally exercised by Parliament to protect the independence of the Kenya Anti-Corruption Commission (KACC) and its Director under Section 10 of the Anti-Corruption and Economic Crimes Act, 2003.

Mr. Speaker, Sir, the third question that has been posed to the court is as follows: Whether under Section 24 of the Constitution, Parliament can validly delimit the President's powers---

(Mr. Mungatana stood up in his place)

Mr. Speaker: Order! Order! Order, hon. Member for Garsen! The honourable M. Kilonzo is actually on a point of order with the permission of the Chair. I think you should allow him to finish and you may, if you catch the Speaker's eye, have an opportunity to make your point.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Thank you, Mr. Speaker, Sir.

Mr. Speaker, Sir, the third question that has been posed to the court under the Constitution is: Whether under Section 24 of the Constitution, Parliament can validly delimit the President's powers to reappoint the Director and Assistant Directors of KACC, whom he has previously appointed in accordance with Section 8 of the Anti-Corruption and Economic Crimes Act, 2003.

Mr. Speaker, Sir, question number four is whether Paragraph 3, Sub-Paragraph 2 of the First Schedule to the Anti-corruption and Economic Crimes Act, 2003, empowers

the President to reappoint the Director and Assistant Directors of KACC without reference to the elaborate procedure of appointment set out in Section 8 of the Act.

Mr. Speaker, Sir, question number five is whether the President's unilateral re-appointment of the Director and Assistant Directors of KACC under Paragraph 3(2) of the said schedule compromises or negates the independence of KACC and the Director under Section 10 of the Act.

Mr. Speaker, Sir, question number six is whether the President's unilateral re-appointment of the Director and two Assistant Directors of KACC under Sub-Paragraph 3(2) of the Schedule compromises or negates the exclusive accountability of KACC and its Director to Parliament under Section 10.

Mr. Speaker, Sir, question number seven is whether the President's unilateral re-appointment of the Director and two Assistant Directors of KACC impunes or compromises the independence, credibility and efficacy of KACC and its Director.

Mr. Speaker, Sir, question number eight is whether the subjection of the President's power to appoint or re-appoint the Director and Assistant Directors of KACC to recommendations by the Anti-Corruption Advisory Board and approval by the National Assembly legally curtails the President's power to make appointments to offices of the Republic of Kenya and terminate any such appointments under Section 24 of the Constitution.

Mr. Speaker, Sir, question number nine is whether the subjection of the President's power to appoint or re-appoint the Director and Assistant Directors of KACC to recommendations of the Anti-Corruption Advisory Board and approval by the National Assembly of the persons to be appointed under Section 8 of the Act violates the doctrine of separation of powers embodied and implied in Sections 1(a), 23, 30, 60 and 123(8) of the Constitution.

Mr. Speaker, Sir, question number ten is whether the offices of the Director and Assistant Directors of KACC shall become or stand vacant on 8th September, 2009. Question number 11 is whether the President's unilateral re-appointment of the Director and two Assistant Directors of KACC undermines the rule of law and subverts constitutional democracy in Kenya. Question number 12 is whether the National Accord and Reconciliation Act, 2008, and the Constitution of Kenya (Amendment) Act, 2008 have any bearing or import on the exercise of the President's power under Section 24 of the Constitution.

Mr. Speaker, Sir, question number 13 is whether the spirit and intent of Section 8 of the Anti-Corruption and Economic Crimes Act requires that the reappointment of the Director and Assistant Directors of KACC be subject to recommendations of the Advisory Board and approval by the National Assembly, notwithstanding the ambiguity created by the silence of paragraph 3(2) of the First Schedule to the Act, implying that the President may reappoint without reference to the Advisory Board and the National Assembly.

Mr. Speaker, Sir, question number 14 is whether Paragraph 3(2) of the First Schedule to the Act would be superfluous for all intents and purposes if it were to be interpreted to require that a person who has been previously recommended to the appointment as Director or Assistant Director of KACC and such appointment approved by the National Assembly to serve the first term must, again, be subjected to the elaborate

appointment procedures under Section 8 of the Act in order to qualify for reappointment to serve a second term.

Mr. Speaker, Sir, question number 15 is whether it was superfluous for the re-appointment of Dr. John Mutonyi as KACC's Assistant Director for Investigations and Assets Tracing to be subjected to recommendations by the Advisory Board and approved by the National Assembly upon expiration of his first term on 8th September, 2009.

Mr. Speaker, Sir, question number 16 is whether the President may lawfully re-appoint the Director and Assistant Directors of KACC before their offices become vacant within the meaning of paragraph 2(1) of the First Schedule.

The last question, Mr. Speaker, Sir, is question number 17 - whether the President is stopped from re-appointing the Director and Assistant Directors of KACC who have served their first terms without the disapproval of Parliament or the Advisory Board within the meaning of Section 10 of the Act and First Schedule to the Act, respectively.

Mr. Speaker, Sir, I dare say that these are very fundamental issues and they are very relevant to the work of the House and, particularly, the committee, itself. As I mentioned in my letter to you, I felt that your direction in this matter would be very, very important. I will not bother reading you the orders that are sought because, trusting your long experience, you will understand the efficacy of the complexity of this matter.

Mr. Speaker, Sir, under Standing Order 80, it is my work and obligation to demonstrate to you that this matter is live and relevant. The documents I supplied to your Office and have been acknowledged, one of them is an affidavit sworn by one Andrew Okiya Omtata Okoiti who says that he is the second petitioner. He has sworn an elaborate affidavit comprising 17 paragraphs and he seeks to convince the court that the matter is urgent.

Similarly, in a certificate of urgency also dated 7th September, 2009 – that date is important because, apparently, the matter was filed in court yesterday – and signed by one Kibe Mungai, an advocate of the honorable court and a distinguished lawyer in this country, has also demonstrated how urgent this matter is.

There is also a Chamber summons attached to the documents I have forwarded to your Office. I did this out of courtesy because I did not want to take you by surprise. The Chamber summons is under Section 84 of the Constitution which this House, since Independence, has given power to the Chief Justice to make rules regarding Constitutional questions and references. The Chamber summons demonstrates, and I do not want to read it, that the parties feel that they are within the provision of that Act.

As a matter of fact, these are my concluding remarks. My information as I speak to you is that the Court has accepted the Certificate of Urgency and has set this matter for hearing inter parties on 15th September, 2009, which is next week. Therefore, could I be in order to say that I have satisfied you to seek your direction regarding this very important matter so that Parliament does not deny the honorable Court the opportunity to make decisions on questions that are far reaching than what honorable Members have been able to raise because they have not asked the questions that have been asked by these litigants?

One of the litigants here is the Nairobi Law Society of Kenya and another 10 or 15 people who have now filed this matter against the Attorney-General and the Kenya Anti-Corruption Commission (KACC). The petition is addressed to the High Court.

Having been accepted by the Court, I plead with you to give direction which as a country, we will appreciate because of the enormity of these issues.

Thank you.

Mr. Speaker: In a nutshell, Mr. M. Kilonzo, you have asked the Chair to find whether this matter is *sub judice* and, therefore, to withhold any further processing?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, indeed, it is not my work to make decisions for you, but Standing Order 80 which I cited, protects the conflict between Parliament and the Judiciary since the parliamentary system was established. The principle of *sub judice*, as I understand it and I stand to be corrected by the Chair, is that so long as the debate or issues before the Committee or the House would go to the merits or undermine the citizens' rights to a fair hearing, then Parliament should hold its horses and wait for the outcome of the Court case. That is what I believe and I request the honorable Chair to rule that this matter is *sub judice*. The questions posed are more far reaching than the questions that the Committee may be seeking.

Mr. Speaker: Fair enough. I have heard you, Mr. Minister. Do you want me to be persuaded that you have satisfied the Chair that this matter is *sub judice*?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, indeed, I am privileged to suggest that I have made a good case.

Mr. Speaker: Fair enough! Because of the importance of the matter, and it is obviously a very weighty matter as you have rightly said, I would like to listen to a few more hon. Members; both those who want to persuade me to be satisfied like you have endeavoured to do very ably and those who may want to persuade me otherwise.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang'): Mr. Speaker, Sir, I am sure that the Minister for Justice, National Cohesion and Constitutional Affairs must have been very happy when this matter was filed yesterday evening because he armed himself with a loaded gun to come and deal with us. However, that is on a light touch.

The most important point is to check whether this matter is actually *sub judice* within the meaning of Standing Order 80. I would like to give a small history. These are new Standing Orders which we adopted this year. When we were working on the new Standing Orders, we visited many countries and looked at many jurisdictions. I remember that the Minister for Justice, National Cohesion and Constitutional Affairs was a Member of this Committee. The matter that gave us sleepless nights was Standing Order No.80 on the *sub judice* rule. Why it bothered us most is that this rule had been used previously to stop Parliament from debating matters for decades.

(Applause)

This House tried to debate the Goldenberg issue several times, but could not because the matter was purportedly *sub judice* because it was in the High Court. So, the House was troubled when we were looking at this Standing Order. We made amendments to the previous position of the *sub judice* rule to bring us to the level of the jurisdiction on the matters now operating in Canada and Britain. One of the things that we thought would help the House to determine whether debate on a matter would prejudice a hearing

in the High Court was considered. Is it really true that if we debate this matter, it will injure the rights of a citizen or it will make the court not to come to a fair conclusion or determination? Standing Order 80 (1) says:-

“Subject to paragraph (5), no Member shall refer to any particular matter which is *sub judice* or which, by the operation of any written law, is secret.”

“(2) A matter shall be considered to be *sub judice* when it refers to an active criminal or civil proceedings - and I consider these to be civil proceedings - and the discussion of such matter is likely to prejudice its fair determination.”

So the issue is that we must be persuaded that if we discuss this matter and the Report of the Committee, we are likely to prejudice a fair determination of this matter which is in the High Court. I think that is a question which has not been ventilated properly by the hon. Member who is urging you to find so.

This matter also has to be active. Standing Order 80 (3) (c) defines what is “active”. This Standing Order states:

“Civil proceedings shall be deemed to be active when arrangements for hearing, such as setting down a case for trial, have been made, until the proceedings are ended by judgment or discontinuance.”

To that extent, the Minister has persuaded us that last evening or today because I have not seen the proceedings, a date was given for the hearing of this matter.

Mr. Speaker, Sir, even if we find that the matter has been set down for hearing, the cardinal principle that will persuade you is: If we debate this matter, is it likely to prejudice its fair determination? Even if the four corners of the *sub judice* rule were to be satisfied, we gave you a window, because we knew that this rule had disturbed this country. Since this is a matter of public interest, it is up to the Speaker to determine. That is why we start by saying “Subject to sub-paragraph (5)”

Notwithstanding this Standing Order, the Speaker may allow reference to any matter. You may allow debate on any matter before the House, or before a Committee. Therefore, I invite you because of the enormous public interest in this matter--- In fact, we are now almost suspicious that the filing of this case, and the setting of debate, was done to prejudice this House and, maybe, to gag or stop this House from determining the serious national issue that we are dealing with.

Mr. Speaker, Sir, I invite you to look at the *sub judice* rule and decide that our debating of the matter before the House will not, first of all, prejudice what is going on; but even if it does, because of the enormity of public interest, please, find that this matter should be dealt with by this House this afternoon.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: The Hon. Martha Karua.

Ms. Karua: Thank you, Mr. Speaker, Sir. I have looked at the papers that have been laid before the House by the Minister for Justice, National Cohesion and Constitutional Affairs pertaining to the court case. None of the prayers relate to this House or to the work of the Committee. It is the citizens who have gone before the court, and who want the law interpreted for them. Parliament is well within its mandate to conduct its business.

The principle of separation of powers demands that the three arms of the Government shall not interfere with each other. Parliament cannot stop the Executive from going on with its business. We cannot stop the Judiciary from doing its work, and

the Judiciary cannot stop Parliament from doing its work. In fact, the Judiciary cannot issue an injunction against Parliament. The lawyers who filed the suit know that none of the prayers relate to this House.

Mr. Speaker, Sir, it is noteworthy that when the citizens went to court, Parliament had discussed this matter in two previous sessions. The overwhelming views of Parliament are known to the public. They have been widely published in the newspapers and in the radio stations. Therefore, even the courts, and everybody, knows that Parliament is questioning this matter, and that Parliament has said that this is irregular. A report has already been laid on the Table of this House. It is no longer secret, although the report has not been adopted, that Parliament has found the appointment irregular. So, in what ways shall we prejudice the court case by proceeding with our business?

If we want to hold the view that we cannot discuss this matter because it is in court, then all that the Executive – or anybody unhappy with proceedings in Parliament – would have to do is look for a hiring to rush to court, and Parliament would have to shut down.

(Applause)

We have to jealously guard our independence as the House. As stated by my colleague who spoke before me, there is no prejudice that would be occasioned by Parliament adopting the Joint Committees' report. The Judiciary will not be stopped from its role of interpreting the law. What Parliament is doing is getting on with its business, so that if, in the opinion of Parliament, we find that the action of the Executive was irregular, we roundly state so.

Mr. Speaker, Sir, if we find that we need to have this Kenya Gazette Notice nullified, we state it. If, later on, the court wants to find that that is not within the law, the court is at liberty to do so. After all, we make laws without reference to the courts. Later on the courts interpret those laws. The courts can strike out a clause or two clauses or an entire law, but the courts can never stop the process of law-making.

Similarly, we deliberate and make pronouncements. We give our positions on matters of national importance. The courts can later give their views, if they wish. Any citizen can comment on it and disagree with what we have done or support what we have done. The Joint Committees and Parliament cannot be stopped from deliberating on this matter.

Mr. Speaker, Sir, the question that must operate in your mind is whether Parliament can be enjoined. No orders have been issued from this case, but can Parliament be enjoined from doing what it is mandated to do under the Constitution? We would then have to abolish this institution and leave it to the courts.

(Applause)

There cannot be any other view in respect of the principle of separation of powers but to let Parliament proceed. We cannot stop citizens from ventilating. They do not have a forum like this one. If they are impatient with the pace at which Parliament is moving, we cannot stop them from rushing elsewhere.

Mr. Speaker, Sir, I would urge you to also – you always do that, as you have just pronounced in the ruling that you have just read – look at the practice in other Commonwealth jurisdictions. The practice is that Parliament goes on with its business, unless a serious prejudice would be occasioned. In this case, it is the court's action, if we were to argue in the reverse, which appears to want to prejudice the business of Parliament.

(Applause)

Therefore, we are saying that we, truly, must go on and I repeat that none of the orders sought relates to this institution. Even the lawyers who filed the suit are learned enough to know that you can never injunct Parliament. Parliament is independent. It should proceed. We really must. Our views are known. The courts will also proceed in whatever way.

Mr. Speaker, Sir, in this matter, without fear of equivocation, there is no way our view and an honest view from the courts can clash because the conclusion, whichever way – vertically or horizontally – is going to be the same. Parliament insists on the matter. Let us conclude it.

(Applause)

Mr. Speaker: Order, hon. Members! Those of you going to contribute from now onwards, please, restrict your points of order to within not more than five minutes.

Yes, Mr. Wamalwa!

Mr. Wamalwa: Thank you very much, Mr. Speaker, Sir.

I have, very carefully, looked at Standing Order 80, particularly the issue of civil proceedings being active. The Standing Order presupposes that by the time the matter arises before this House, there should be pending litigation in court. Indeed, if you look at that provision, you will see that it provides that, provided that arrangements for hearing, such as setting down a case for trial, have been made---“

In this case, this matter came before this House on Thursday, last week. This case was only filed yesterday, when the House was already seized of the matter, and when the Joint Committees of the House had already deliberated upon the matter and subsequently tabled a Report before this House. Therefore, there was no pending litigation before the court at the time the matter arose before this House.

Mr. Speaker, Sir, we need to be very clear, so that in the event that any litigants were seeking to abuse the process of court by tying the hands of this House, they would have attempted to shut the stable long after the horse had bolted. We need to make that very clear, so that we guard the supremacy of this House against any abuse or attempted assault on its supremacy.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Yes, Mr. Mutava Musyimi!

Mr. Musyimi: Thank you, Mr. Speaker, Sir. I am happy to make a non-legal point because the points being canvassed today have been of legal nature. We are discussing a matter of corruption. Corruption has brought our people to their knees. Corruption has taken away the dignity and the pride from the faces of our people.

Corruption has humiliated our people. Corruption has taken away our name and our sense of pride. Corruption has impoverished our people.

Anybody who cares for the ordinary person, you go to the constituencies when you look at our people, they have no sense of pride and belonging. They belong to no one. We are here today as their representatives to present their case. We have been at the mercy of the Executive for a very long time. It is an authoritarian, all too powerful Executive. We have been at the mercy of the Judiciary. This matter has been before the court for a very long time. That is why we have been advocating for changes in the Judiciary.

Mr. Speaker, Sir, unless this hon. House claims its space and defends the rights of the poor and the needy, this country has no future. I beg the Chair to look at the views that have been raised and reclaim again on our behalf, our freedom and our place for the future of this country. If we are going to be at the mercy of the Executive and the Judiciary, then Kenya has no place today or tomorrow.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Order, hon. Members. Those of you who are contributing hereafter, should remember to bear in mind the rule pertaining to relevancy even if you are a lay person. The issue that I want to be assisted on is whether or not, this matter is *sub judice* and not the general policy on corruption. Bear that in mind.

Mr. Baiya: Mr. Speaker, Sir, I stand to argue and urge the Chair that the question as to whether the issue before the House is *sub judice* should also be considered in light of the fact that we have two institutions; that is, Parliament and the High Court. Clearly, none of the two institutions is superior to the other. Therefore, Parliament became seized of this matter long before the court came in. To talk about stopping Parliament from proceeding with this business is to confer superiority to one of the institutions.

Mr. Speaker, Sir, the other important issue I would urge the Chair to look into is the fact that Parliament is deliberating on its legislative agenda. The process of Committee looking into this delegated legislation is in pursuit of its legislative agenda. There is no way that can cause any prejudice to the proceedings in the High Court to stop Parliament from proceeding with its legislative agenda. If this were to happen, it would set a very dangerous precedent.

I have also looked at the various past rulings. Not every litigation before the court that will suffice to deem proceedings of this House *sub judice*. This is one particular case where the proceedings have been instituted right in the proceedings of Parliament. If this was to be allowed, it would, therefore, become an avenue for gagging Parliament and its independence. We need to ensure that no such avenue is allowed to gag Parliament and its independence. We must safeguard against such avenues.

Mr. Speaker, Sir, on the question of the Director and the procedures for the appointment, these are also clearly within the province and jurisdictions of the Committees. Therefore, there cannot be any question that what is being done is outside the mandate of the parliamentary Committees and also that of Parliament.

I, therefore, urge that the matter be considered as well said by Parliament and the committee to proceed.

Thank you.

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, I will not take very long because some of the points have been covered. I just want us to go back to the Standing

Orders. In referring to the Standing Orders, I would wish that you take into account that the *sub judice* rule is a rule of debate; it does not affect the substance of the business of the House. It is really a matter that provides what is to be said and how it is to be said in the House. It cannot be a rule that is used to stop Parliament from doing its ordinary work which is legislation or carrying out resolution.

Mr. Speaker, Sir, Standing Order No.80(2) is very clear on this matter. Again, I want to read it slowly and carefully. It can be broken into two components. It reads as follows:-

“A matter shall be considered to be *sub judice* when it refers to active criminal or civil proceedings and the discussion of such a matter is likely to prejudice its fair determination.”

The matter which is before the court on which Mr. Ruto rose did not refer to any matter which is active and before the Court. That is a fundamental distinction. If, for example, that on the day Mr. Ruto stood up and referred to a matter in court, or the questions which my learned friend Mr. M. Kilonzo has read out at the time when he raised the matter, then he would have been referring directly to a matter which is active before the court.

Up to now, Mr. M. Kilonzo has not juxtaposed what has been placed before this House since last week with the matter before the court. How have the points of order raised in this House referred to the matter in court? In fact, it is Mr. M. Kilonzo who has referred to the matter in court. Not the other way round. It is a very thin distinction, but I think it is an important distinction, nevertheless. It is not, therefore, nothing.

The second component is when the matter is likely to cause prejudice.

Mr. Speaker, Sir, you have said so many times that, that prejudice must be demonstrated. You know any matter before the court is adversarial; there are parties before a court of law. Mr. M. Kilonzo has not demonstrated that the matter which we are discussing, in any way other than reading the pleadings, will cause prejudice to any one of the parties. I think he needs to go a bit further and demonstrate that it is going to cause prejudice to any person. In this case, he should be holding the brief either of the Attorney-General who is a party in one way or another or the Kenya Anti-Corruption Commission (KACC) and showing how the discussion before the House is going to cause prejudice to any of those parties.

Mr. Speaker, Sir, finally, as has been noted in other jurisdictions, suppose today somebody went to the court and filed a matter in relation to a Bill which is pending, including the Appropriations Bill; do we wait until next year when the case will have been determined?

(Applause)

That will lead to an absurdity. In law, they say that anything that leads to an absurdity is not tenable. What Mr. M. Kilonzo is telling us is that in so far as this contest is before the court, Parliament cannot exercise its legitimate mandate.

Mr. Speaker, Sir, you remember that in your ruling, you were referring to the mandate of the Committees. This is something they are required in law to perform. So, despite being the Minister for Justice, National Cohesion and Constitutional Affairs, Mr. M. Kilonzo is inviting you to stop a constitutional organ from undertaking its legitimate

mandate just because some people have gone to court without going beyond what is required under the Standing Orders, to demonstrate to you, as a good lawyer, that this matter will prejudice So and So because the issues that are being raised are the same as those in court. All that Parliament is doing is examining its delegated authority and giving a report to the House.

Finally, the horse has left its stable. The Report has been laid before the House and how can Parliament now be stopped? This will only lead to an absurdity. I invite my honorable friend Mr. M. Kilonzo that, for the first time, be on the right side of history and history will absolve you.

(Applause)

Mr. Kioni: Mr. Speaker, Sir, I want to say one or two things. As we continue listening to this debate and taking part in it, I want to draw your attention to Section 17 of the Constitution. I do this because I have listened to Members of the Cabinet. It states:-

“17(1) There shall be a Cabinet consisting of the President, the Vice-President and the other Ministers.

(2) The function of the Cabinet shall be to aid and advise the President in the Government of Kenya.

(3) The Cabinet shall be collectively responsible to the National Assembly for all things done by or under the authority of the President or the Vice-President or any other Minister in the execution of his office”

Mr. Speaker, Sir, what we have been treated to by Members of the Cabinet is some interesting circus. They took an oath of office to protect this Constitution but what they have been doing, since a while back, is to make this country look like a failed State. Some of them are behaving like warlords, irrespective of what they are saying. It is important that we live by the law. If we are saying that we do not want impunity in this country, we cannot come here to demonstrate impunity to Kenyans. It is an embarrassment and I think it is import that they reconsider. If they think they are better off in the Back Bench, welcome!

Mr. Speaker: Mr. Kioni, the matters you have raised will be considered, even as we make that ruling.

Mr. Ruto!

Mr. Ruto: Mr. Speaker, Sir, I will restrict myself to the question of *sub judice*. Mr. M. Kilonzo has brought several issues before this House. However, the matter I raised last week is whether the Gazette Notice, a subsidiary legislation, conformed to the mother law. I invited the Committees to have a look at it on the question of the Gazette Notice. I did not invite that we discuss an individual; the appointment or disappoinment of the same. We are inviting ourselves to discuss the validity of that particular notice.

Mr. Speaker, Sir, there is nothing in court that is discussing the subsidiary legislation that was published the other week. I believe Mr. M. Kilonzo quickly understands that.

Further, of course, I believe that the question of *sub judice* is very important. I will not invite you to act with impunity and ignore it. Our friend Mr. Kajwang’ invited the Chair to use Standing Order No.80 (5), however, I do not think that that is necessary for now. It is important for us to find, within our functions, whether the publication of

that Gazette Notice as a subsidiary legislation was valid. Therefore, the effect of the same is not necessarily before the House right away.

Mr. Speaker, Sir, we will bear the consequences, as you normally say, when it happens. For now, I think Parliament cannot be stopped. The principle of *sub judice* is not in use so that some busy bodies can rush to court and stop the business before the House. This was done long after I had raised the issue. Therefore, I might suspect that the people who rushed to court were instructed to do so. This is because it is the first time that a Minister is rushing to Parliament to seek the protection by the *sub judice* rule. Usually, it is ordinary Members of Parliament and ordinary Kenyans who do this. Ministers have immense Executive powers which they can as well utilize.

Dr. Nuh: Mr. Speaker, Sir, this House is at cross-roads. The ruling you will give will determine whether in future, Committees of this House will have to exist and whether they will have any functions or we will have to pack and go home.

The timing of this court case, and without imputing any improper motive on any person, when Mr. Kilonzo was debating this issue last Thursday, he was very equivocal that this matter should not be taken to these Committees. Today, it is the same Minister tabling papers in front of this House that this matter is *sub judice*. On those two accounts, I would like to say that this is not an issue of whether this matter is *sub judice* or not.

I would want to refer you to the Standing Orders mentioned by Mr. Kajwang that this is a moral issue. The reason this window was given in the Standing Orders is to circumvent any attempt to gag this House or any attempt by people - I would not like to use un-Parliamentary language - who would want to gag the work of this House.

Mr. Speaker, Sir, I do not have better words to explain this but if I was to use the opposite of *sub judice* then I would say this is sub-Parliamentary.

Mr. Speaker: Hon. Members, those of you who will now contribute hereafter, avoid being repetitive. If you repeat what has previously been said, I am afraid I will stop you at your own chagrin!

Mr. Githae!

The Minister for Nairobi Metropolitan Development (Mr. Githae): Thank you Mr. Speaker, Sir. I wish to persuade you to rule that this matter is *sub judice*, and that it should not be discussed by this House. To do that, I will pose several questions. If the answer to any of those questions is "yes", then this matter is *sub judice*, and it should not be discussed by this House. One thing, you should ask yourself is if discussion of this matter is likely to prejudice a fair hearing,

Hon. Members: No!

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir to me, the answer is "yes". If you had answered that question in the positive, we would not have needed to go further. However, I will go to the next question. Is it the role of Parliament to interpret laws?

Hon. Members: Yes!

The Minister for Nairobi Metropolitan Development (Mr. Githae): No! It cannot be. It is the role of the Judiciary to interpret laws once a dispute has arisen. Clearly, a dispute has arisen.

The third question is, what are courts for? They are to resolve disputes. Clearly, this is a dispute that has arisen. The matter is already in court, and it has been set for hearing next week on Wednesday. Surely, we can wait for one week. Nothing much will

happen in one week. The world will not be coming to an end in a week's time; if at the end of Wednesday, after the hearing, the court---

I am beginning to put myself in a very embarrassing position. For example, if we rule that the appointment, as the Committee has said, was irregular and the court rules that it was regular? Then what next? That will just be embarrassing for this House. Question number four, are the issues in court the same issues that the Committee has dealt with? The answer is "yes". Therefore, the matter is *sub judice*. A colleague and a neighbour has said that in order to avoid dictatorship of the Executive, Parliament must assume a leadership role. My question is, would the Parliamentary dictatorship be better than the Executive dictatorship? The answer is "no". Dictatorship is dictatorship. It does not matter whether it is Parliamentary dictatorship or Executive dictatorship. The fifth question is: Is it proper to impute improper motive on the people who filed the case? It is the right of every citizen to go to court and to claim anything under the sky. It is the right of the court to issue a ruling. Lastly, I stood here very reluctantly because I was a bit embarrassed to see Cabinet Ministers arguing that the matter is *sub judice* while others were arguing that the matter is not.

The Cabinet is collectively responsible to Parliament as far as issues are concerned. I have decided to enter the mud. Really, if a Cabinet Minister was to enforce his docket, it is only proper that if other Cabinet Ministers have opposing views, they shut up and put their views in the cabinet.

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. With all due respect, is it in order for the hon. Minister to say that if the other Ministers are not in agreement with the position of hon. M Kilonzo, they should shut up? Is that Parliamentary language?

Mr. Speaker: Hon. Githae, that is not Parliamentary language. It demonstrates serious disrespect for your colleagues.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Githae, I had no intention of being disrespectful to my colleagues. Maybe, the right words would have been "to keep quiet" under the oath of secrecy.

Mr. Speaker: Very good! That is polite. However, withdraw the words "shut up" and apologise.

The Minister for Nairobi Metropolitan (Mr. Githae): Mr. Speaker, Sir, I have withdrawn the words "shut up", apologised and substituted therefor, the words "keep quiet".

Mr. Namwamba: Thank you Mr. Speaker, Sir. In making a ruling in this important matter, I invite you to consider two issues. One, is the extra-judicial issues that underpin this debate that go well beyond the law and the province of the Judiciary. I have the privilege of serving in the Committee of Delegated Legislation, and while seized of this matter, we have gone beyond law and looked at issues of integrity. We have looked at issues of Executive impunity. We have looked at issues of morality of Executive authority and exercise of Executive power. All these issues go beyond the dry legalese rules that the hon. Minister for Justice, National Cohesion and Constitutional Affairs wants to bind us by.

Secondly, we must remain alive to the fact that the rule of *sub judice* is not a *cateblanche*, a blank cheque or a loose canon ball that can be deployed by anybody, anyhow, in any situation. This rule has limits and its limits must be understood in the context of conflict of jurisdictions. Therefore, in making a ruling, you must address your mind as to

whether, indeed, there is any conflict of jurisdiction in the manner in which this House is seized of this matter, and in the manner in which the Judiciary is seized of the case that the Minister has referred to.

I want to remind you that it is not out of no reason that this House chose to refer this matter to the Committee on Delegated Legislation. In addressing this matter, as it has already been ventilated by Mr. Ruto, the Committee on Delegated Legislation has focused its mind on the exercise of the Executive authority by way of subsidiary legislation. As far as I know, and listening to the submission of the hon. Minister, nowhere has it been indicated that the matter in court, touches on anything subsidiary. Supposing there was conflict of jurisdiction; supposing that, indeed, there was conflict between this hon. House and the Judiciary, there are certain issues that you would have to address, nonetheless. One is the question of public interest, the enormous public interest in this matter that would require the supremacy of this House be upheld. I believe that is the reason why, in its wisdom, this House gave you the window, through Standing Order No.80(5), that you can use your discretion, notwithstanding conflict of any discretion, so that you can find that this House is properly seized of this matter.

In that regard, I urge you to tilt the scales of public interest in a manner that will allow this House to resolve this matter properly within the province of the rules of this House.

The Minister for Education (Prof. Onger): Mr. Speaker, Sir, I come here with humility, seeking your indulgence on a matter which I think is crucial for this nation. The issue that has arisen here is whether the law has been applied correctly or incorrectly, in the appointments of the Executive Director of KACC and his two assistant directors---

Hon. Members: That is not the issue!

The Minister for Education (Prof. Onger): Please, give me time! That is the issue! We are talking about the application of---

Mr. Speaker: Order Prof. Onger! Please, address the Chair!

The Minister for Education (Prof. Onger): Yes, Mr. Speaker, Sir. The issue is whether the subsidiary legislation which was applied - and I heard hon. Ruto clearly--- In fact, he indicated to you, Mr. Speaker, Sir, that you cannot even attempt to enter into *sub judice* law at this stage but rather, you can discuss the issue as to whether the subsidiary law, as it stands today, is correctly applied or not.

Mr. Speaker, Sir, let us be honest to each other. We should be transparent. As I speak to you now, some hon. Members have already filed a petition in court today. They should tell us what they have done, rather than arguing at cross purposes. We cannot use the platform of Parliament to hijack issues that rightly belong to another organ that is best suited to interpret the statutes. This Parliament has made a law. We feel as Parliament - and I think that is why Members are excited - that, maybe, that law has been flouted. Are we the ones to interpret that law? Is there another organ to interpret that law? This House has painfully gone through the process of making laws and, at some stage, creating organs like tribunals to interpret the laws that we have made. We have just gone through a battery of those after the recent post election violence.

Mr. Speaker, Sir, I plead with you that, in your ruling, we should not enter into another battlefield. Lets us not enter into a battlefield. I do not deny that Parliament is supreme, but when you have made a law, let somebody else interpret that law. We should give our judicial system the opportunity to interpret that law. There is always another

opportunity for Parliament to come back and review that law. I do not think we should jump start that. I plead with you.

Mr. Speaker: Fair enough! I will give a chance to Prof. Anyang'-Nyong'ong'o, one more Member from my left, and that will be it.

The Minister for Medical Services (Prof. Anyang'-Nyong'ong'o): Mr. Speaker, Sir, I beg to say three things. First, I do not think that the principle of collective responsibility means collective suicide. Secondly, I do not think that when we are exercising collective responsibility, we take leave of common sense. So, I feel that the Cabinet is actually adding richly to the debate in the House by not committing suicide nor taking leave of common sense.

There are a few questions that we should ask ourselves. The question before us is whether the debate already started in Parliament should continue to be handled by Parliament, or whether Parliament should outsource our responsibility to the courts. I believe that in the principle of separation of powers, it would be suicidal for Parliament to outsource our responsibility to the courts. Thirdly, why are the courts in a hurry to handle a matter that is already in the House?

When I was listening to hon. Githae, all the questions he asked could be summarised in one question. Why are the courts in a hurry to handle a matter that is already in Parliament and that could be concluded within a few days? The courts can take up the responsibility of interpreting the law according to those who have gone there? Fourthly, what record do our courts have in settling disputes like these? Are our courts very commendable in dealing with issues of corruption?

Hon. Members: No!

The Minister for Medical Services (Prof. Anyang'-Nyong'ong'o): Mr. Speaker, Sir, are they very commendable in expediting hearings before the courts? Are we not aware that petition cases which were filed after the elections are still pending before the courts and heading towards the next elections? So, our courts do not have a very good record in the public domain in handling issues like these. Outsourcing these problems to the courts is committing collective suicide.

Mr. Speaker, Sir, this is, indeed, a matter of public concern. The public is looking at Parliament and wondering whether, indeed, we are going to defend the Constitution under the Standing Orders and whether we are going to defend the laws that have been established in Parliament to guide its procedure. We have already said that this matter should be handled by the appropriate Parliamentary Committees and report to the House. This is a responsibility that the House must undertake. Then after that, if the House does not exercise its responsibility, both the courts and other organs of the State are in a position to exercise the principle of separation of powers to call Parliament to account. So, I think that we are being very responsible Parliamentarians in handling this matter. I do not think that a matter of pulling Members of Parliament to outsource their responsibility to the courts would succeed under these circumstances.

I have one more point. I think that the time when people had to sing like parrots behind an Executive Order is long gone. Indeed, if we try to do that, we will be reviving ghosts of the past. We are in a Coalition Government under-pinned by a National Accord. It means that consultations and agreements among the Coalition partners are extremely important in making important decisions. Unless my brain fails me, I do not remember any Cabinet meeting which has discussed this matter, so that we can take a responsible

collective position. That is why I would hesitate to take leave of my common senses and say that I am exercising collective responsibility, when I am not fully informed of the cardinal issues that underpin taking an action that is contrary to the law.

Mr. Mungatana: Mr. Speaker, Sir, I listened very carefully to hon. M. Kilonzo, Senior Counsel, when he was presenting his case before this House. I want to invite Mr. Speaker to see that in the most important aspect of his presentation, he failed to discharge the evidential burden that is upon his shoulders.

If you look at Standing Order 80(4), it says:-

“A Member alleging that a matter is *sub-judice* shall provide evidence to show that paragraphs (2) and (3) are applicable.”

Mr. Speaker, Sir, Paragraph 3 says that the proceedings must be active. What we expected is not just a filed chamber summons that says that we have gone to court. How many cases were filed on the same day? Going to court does not mean that, that matter is active in court. Going to court simply means that the matter has been brought before the court. We expected, by way of discharging his evidential burden today, to have brought a court order that either has given him a stay or whoever has filed a stay, or has given a date for hearing of those proceedings. There is no date that has been tabled before the House. In fact, he took a long time to read the proceedings so that he can confuse this House. But we have seen through that! There was no evidence presented before this House to show that this matter has a date in court. In fact, the first order that has been sought in the chamber summons is that it should be heard *ex-parte* in the first instance. They are not asking for a date at all. They have gone on to say that they want conservatory or temporary orders and so on, but they do not even ask for a date. I invite you to see that there are no active proceedings before the court.

Mr. Speaker, Sir, I also want to say something else. He is a senior lawyer and he knows that it is not enough to discharge evidential burden by standing at the bar and giving evidence yourself. He stood here and told us that he understands that the matter will come for hearing on 15th September. We need proper evidence. An advocate prosecuting a matter cannot be the same advocate giving evidence and saying that he has discharged the evidential evidence that is cast upon him. So, I invite the Chair to consider that as of now, we do not have any evidence of active proceedings before the court.

Secondly and lastly, the person who alleges that the matter is *sub judice* has the burden to show that discussions of that matter before this House will prejudice fair trial. The mood of this House and that of the nation is that there will be no discussions. In fact, once an hon. Member moves the Motion and it is seconded, we will vote on it. There will not be any debate. So, it is already decided. So, the question of saying that we will have discussions--- There will be no discussions.

Mr. Speaker: Order, Mr. Mungatana! You cannot validly say that this matter is already decided without breaching our Standing Orders, particularly the one on anticipating debate. So, I am afraid, you must withdraw that part.

Mr. Mungatana: Mr. Speaker, Sir, I am guided by your ruling. I would like to say that in deciding this matter, because the rules allow you to exercise Sub-Rule 1 (precedence and the mood of the nation), I beg that you find that this House has not been supplied with any evidence to show that these matters are active before the court. I will not repeat all the other arguments that have been placed before you.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Finally, Mr. Attorney-General, you have caught my eye!

The Attorney-General (Mr. Wako): Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute to this debate. This is because it is important that the debate appears balanced. Many Members from that side have spoken and I think you should also hear this side.

Hon. Members: Which side?

The Attorney-General (Mr. Wako): The side which says that the matter is *sub judice* .

Mr. Speaker, Sir, I am a party to the case which is before---

Mr. Speaker: Order, hon. Attorney-General! Are you saying that what Prof. Ongeru, Mr. M. Kilonzo, Mr. Githae and a few others said was in vain and it amounted to nothing?

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, it was not in vain, but four times the number that you have just mentioned spoke. So, it is good that I also add a voice to support them. They never spoke in vain.

Mr. Speaker: Order, Mr. Attorney-General! You must take this properly. If you say that and you want it to remain in the record of the House, then it will amount to an attitude that is condescending.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I stand guided by your comments.

Mr. Speaker: Thank you.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I am party to this case, which has been filed before the court and is active before the court. The type of evidence envisaged in these Standing Orders, evidence can be both oral or written. If you read the Evidence Act, in fact, most of the evidence is normally oral and then supported by documents where necessary. Therefore, to the extent that the Minister for Justice, National Cohesion and Constitutional Affairs, informed this House that the case came up for hearing today in court and that it is coming up for hearing on 15th , to me, that shows that the matter is active. I am also aware that another case has been filed this afternoon, again on the same matter. Therefore, there is no doubt that there is a case in court touching on matters which is a subject matter of what has been discussed in this House.

Mr. Speaker, Sir, it is not true, as somebody tried to say, that those who went to court must have been instructed to do so. Those who have gone to court have done so to assert what is the common view, as the Ms. Karua has stated, that people are already aware that the opinion of this House is to assert what Mr. Mungatana has said that there is no need for debate and we shall just pass it. This is the case and yet there has to be some debate, because this House has to uphold democracy. We must discuss these issues and there should never be any presumption that anything that comes here there will be no need for discussion because we have already decided and we shall enact it.

I also want to concede that it is not in every case which is *sub judice* that will stop this House from proceeding to debate a matter of national importance. It is not automatic. The issue is complex and it requires a balance of the roles played by the various organs of Government, which should not be seen to be interfering with each other, but working harmoniously to ensure that this country is truly a country which is based on constitutionalism. It is a very delicate balancing act that has to be done. That is

why the Standing Orders ultimately say that at the end of the day, you have the discretion to weigh the various interests and issues that are involved and come to a conclusion.

One of the issues that have been addressed, and which you really have to weigh is the one about prejudice. Prejudice is an issue that has to be addressed by you because at one time, the proceedings of this House or a Committee of this House were highly prejudicial to some cases that were in court and it took another three years for that issue to be resolved because the person who was in court said that the way the matter had been debated in Parliament was prejudicial to him. The cases are there and I can quote them. In the case of Kamlesh Pattni, the matter was discussed in the Committees of this House and he went to court and said: "No, I am being prejudiced now." So, prejudice is a matter that you have to weigh.

Another question that we really have to take into account is: How do we resolve this issue that is now engaging the national attention in a conclusive way? I am quite sure that the people who went to court had indicated that they were going to court, some as long as two weeks ago. So, do not accuse the Minister for Justice, National Cohesion and Constitutional Affairs that he might have instructed somebody to take these people to court. I read in the newspapers that people wanted to go to court and now they have done so. They have gone to court to assert a position which this Parliament is saying is the correct position. This is because they have said that there was an illegality in the re-appointment of Justice Ringera, which is what this Parliament is trying to say. Therefore, they must have gone to court with the knowledge that this Parliament cannot be the final determinant of that issue.

That is why they have gone to court to get a court ruling which will be binding on everybody. Therefore, the way forward to me, since it is the court under our rule of law which interprets the law, and people have gone to court and its decision will be final, at most, what this Parliament can do is to just render an opinion which will not necessarily be binding to anybody, let us leave it to the court to make a determination on this issue which will be binding on all of us. That is the submission that I wanted to make.

Mr. Speaker: Fair enough, Mr. Attorney-General. You have said your piece.

Hon. Members, I will make a communication on this matter as to whether or not the matter pertaining to the re-appointment of the Director of the Kenya Anti-Corruption Commission (KACC) is *sub judice* and that therefore, the Report of the Committee should not be debated by this House on Thursday at 2.30 p.m.

Next Order!

(Loud consultations)

Order, hon. Members! Those of you who are withdrawing, please, do so slowly and quietly and please note that this is the beginning of tangible House business and we want you to be here to participate in this business.

Proceed!

BILLS

First Readings

THE PENSIONS (AMENDMENT) BILL

THE COMMISSIONS OF INQUIRY (AMENDMENT) BILL

(Orders for the First Readings read – Read the First Time – Ordered to be referred to the relevant Departmental Committees)

[Mr. Speaker left the Chair]

*[The Temporary Deputy Speaker
(Prof. Kamar) took the Chair]*

MOTION

ADOPTION OF REPORT ON PERSONS KILLED BY VIGILANTE GROUPS

THAT, this House adopts the Report of the Committee on Administration and National Security on the number of persons killed by Vigilante Groups in the months of April and May, 2009 laid on the Table of the House on Tuesday 30th July, 2009.

(Mr. Kapondi on 27.8.2009)

(Resumption of Debate interrupted on 27.8.2009)

The Temporary Deputy Speaker (Prof. Kamar): Hon. Members, this is a continuation. Mr. Kioni was on the Floor and he still had a few minutes.

If he is not here, then hon. Members, it is now time to propose the Question.

(Question proposed)

Anybody wishing to debate?

Ms. Karua!

Ms. Karua: Madam Temporary Deputy Speaker, I want to commend the Committee for undertaking this very difficult job. At the same time, I want to point out that the Committee did not fully utilise their powers under the Standing Orders. Under Standing Order No.173, in their deliberations, Departmental Committees enjoy and exercise all the powers and privileges of Parliament, including the summoning of witnesses, receiving evidence and the request for and receipt of papers and documents from the Government and the public.

The question that was referred to this Committee was the number of the dead in Kirinyaga following this insecurity early this year. Prior to this matter being referred to the Committee, I had laid on the Table of this House, an authenticated paper indicating 43 persons had been murdered, 25 of them were hacked with *pangas* and 18 were hanged. I am very disappointed that the Committee concluded without summoning the doctor in charge of Kerugoya District Hospital or even the mortuary attendant. I clearly

told them in my evidence that the records I produced were from the mortuary. It was, therefore, the duty of the Committee to ensure that they get that evidence directly from the mortuary. But to conclude that the numbers of those killed was the number provided by the police, when the police themselves were the culprits, the Committee did not do the nation and this House good service. However, I know they worked well in a matter that was difficult. They have found as a fact that there were killings and that there was negligence by the police. They have also found that people were set against each other.

Madam Temporary Deputy Speaker, on page six of the Report, they have noted that the District Security Intelligence Committee mobilised the local residents in the troubled areas to ward off any criminal attacks. That is an admission that the Government set the residents of Kirinyaga against each other. That phrase that the security intelligence committee in the district mobilised residents to resist attacks is an admission that they mobilised vigilantes who, then went on a killing spree---

(Loud consultations)

The Temporary Deputy Speaker (Prof. Kamar): Order, hon. Members! If you are consulting, please, do so in low tones.

Continue!

Ms. Karua: Madam Temporary Deputy Speaker, it is quite clear that the initial reaction of the residents was spontaneous but thereafter with this admission by the District Security Intelligence Committee, they mobilised the residents. It clearly shows that all the murders that happened after the initial spate of violence were actually being encouraged by the State security agencies instead of them investigating, taking charge of the situation and ensuring that there is security for all, they mobilised the residents to rise against one another. As a result, even if we were to take only the numbers provided by the Committee which they got from the police, who are the culprits in this case, killing of 26 people, then you add the 29 massacred at Gathaithi, then you add one who was massacred by the vigilantes the next morning, it totals to 56 as opposed to the 73 that I gave.

The death of 56 Kenyans is not a trivial matter. The burning of 54 houses, which is the number the Minister of State for Provincial Administration and Internal Security gave, it is a shame upon our law enforcement agencies. Before the problem could escalate to 54 houses being burnt and 56 people dead, were the police asleep? I still believe that if the matter had not been raised in this House, the killings would be going on unabated. I still believe that there is unwillingness on the part of the police and the Government to be honest about the actual number of people dead. They know the actual number but they try to say that it is from other causes, although they know that it is violent-related to this incident.

We have since had a few incidences of people cut with pangas related to the same violence. However, I must admit the security and normalcy is slowly returning. While supporting the adoption of this Report, I would urge the Minister to take this report very seriously and to ensure that they restore security, not only in Kirinyaga, but also elsewhere in the Republic. It is idle for the Government to accuse Members of Parliament from Central Province of not condemning illegal gangs.

Madam Temporary Deputy Speaker, if what the Minister and the Government means is that we should support extra judicial killings, I stand here to say I will never support an illegality from whatever source. As I said when I raised this issue, two wrongs do not make a right. Even where criminals or suspects are concerned, they have to be accorded rights within the law, pending their trial. There cannot be justification of substituting the arrests of members of illegal gangs with executions. Police are not state executionists. They are State security agents to ensure the security of everyone, including a suspect. There are exceptional circumstances where they are allowed to open fire.

I want to tell the House that unless the Minister and the Government unequivocally condemn illegal activity by, not only the public, but also the law enforcement agencies, then we will continue losing lives as it will be clear to all that this Government does not value human life or puts a very small premium to it. If it was the contrary, then serious actions would have been taken. As it is, the provincial administrators who were in the area during this sad period that the Government admits, we lost 56 people, have since been promoted. So, what the Government is saying is well done for the killings and insecurity in Kirinyanga. It is a sad thing and gives a bad example to the rest of the people working in the provincial administration because they know that it is not merit that will count, but whether you obey orders by some political mandarins.

QUORUM

Mr. Ruto: On a point of order, Madam Temporary Deputy Speaker. It appears that there is no quorum.

The Temporary Deputy Speaker (Prof. Kamar): Hon. Members, it looks there is no quorum. So, let the quorum bell be rung.

(The Quorum bell was rung)

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kamar): Hon. Members, there being no quorum, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Wednesday, 9th September, 2009, at 9.00 a.m.

The House rose at 6.12 p.m.