

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 16<sup>th</sup> September, 2009

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### QUESTIONS BY PRIVATE NOTICE

#### ALLOCATION OF FUNDS TO NOMINATED MEMBERS

**Mr. Mbadi:** Mr. Speaker, Sir, I beg to ask the Deputy Prime Minister and Minister for Finance the following Question by Private Notice.

Could the Minister clarify whether he has allocated Kshs100 million (or any amount at all) in the 2009/2010 Financial Year for disbursement to Nominated Members of Parliament and if so, explain the purpose for the allocation, state under which Vote and provide the legal justification for such allocation?

**Mr. Speaker:** Is anyone here from the Office of the Deputy Prime Minister and Minister for Finance? We will leave the Question and come back to it later on.

Let us move on to the Question by the Member for Ikolomani!

#### LEGALITY/VIABILITY OF NEWLY CREATED DISTRICTS

**(Dr. Khalwale)** to ask the Minister of State for Provincial Administration and Internal Security:-

What is the legality and viability of the newly created districts in view of the recent judgment by the Kisii Resident Judge declaring them illegal?

**Mr. Speaker:** Is Dr. Khalwale not here? Hon. Members, I am afraid we have to give that Question the same treatment. We shall revisit it a little later.

Let us move on to the Question by the Member for Sigor!

### ORAL ANSWERS TO QUESTIONS

*Question No.377*

#### ALLOCATION OF FUNDS TO PURCHASE LIVESTOCK IN DROUGHT-RAVAGED AREAS

**Mr. Speaker:** Is Mr. Litole not here? That Question will also be revisited later on.

Let us move on to Mrs. Noor's Question!

*Question No.308*

RESETTLEMENT/COMPENSATION  
OF IDPS IN GARISSA

**Mr. Speaker:** Is Mrs. Noor also not here? What is not happening this afternoon? Let us move on to the Question by Mr. ole Lankas!

*Question No.420*

NUMBER OF AIRSTRIPS  
IN THE MARA

**Mr. ole Lankas** asked the Minister for Transport:-

(a) how many airstrips there are in the Mara as well as their respective locations and capacities; and,

(b) whether the Government could consider upgrading and modernizing Narok Airstrip to serve the entire Southern Rift region?

**Mr. Speaker:** Is anyone here from the Ministry of Transport? We will revisit that Question a little later.

Let us move on to the Question by the Member for Limuru!

*Question No.427*

CRITERIA FOR SELECTING BENEFICIARIES OF  
SCHOOL FEEDING PROGRAMME IN ASALS

**Mr. Speaker:** Is the Member for Limuru also not here?

We will do the second round and I am afraid this time round we will have to take action against those who are absent both ways!

Yes, Mr. Mbadi!

**QUESTIONS BY PRIVATE NOTICE**

ALLOCATION OF FUNDS TO  
NOMINATED MEMBERS

**Mr. Mbadi:** Mr. Speaker, Sir, for the second time, I beg to ask the Deputy Prime Minister and Minister for Finance the following Question by Private Notice.

Could the Minister clarify whether he has allocated Kshs.100 million (or any amount at all) in the 2009/2010 Financial Year for disbursement to Nominated Members of Parliament and if so, explain the purpose for the

allocation, state under which Vote and provide the legal justification for such allocation?

**Mr. Speaker:** Could a Member of the Front Bench take some responsibility and call the Deputy Prime Minister and Minister for Finance?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Speaker, Sir, I take that responsibility. I will try to get the Deputy Prime Minister and Minister for Finance.

**Mr. Speaker:** This is a Question by Private Notice and by its nature, it is urgent!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Speaker, Sir, I appreciate that fact.

**Mr. Speaker:** We will revisit it once again.

Let us move on to the Question by the Member for Ikolomani!

#### LEGALITY/VIABILITY OF NEWLY CREATED DISTRICTS

**Dr. Khalwale:** Mr. Speaker, Sir, I apologise for arriving late. I was being frisked at the security desk.

I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

What is the legality and viability of the newly created districts, in view of the recent judgment by the Kisii Resident Judge declaring them illegal?

**Mr. Speaker:** Is the Minister of State for Provincial Administration and National Security not here? The Minister for Justice, National Cohesion and Constitutional Affairs, do you have any explanation on their absence?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Speaker, Sir, if you will forgive me, I think it is a matter of record that the Minister of State for Provincial Administration and Internal Security is dealing with the emergency in Samburu. Although I have not checked this morning whether he is around, I wish you could allow me the same indulgence as you did with the Deputy Prime Minister and Minister for Finance so that I can call him to come and deal with this. Kindly, call out the Questions for the third round once you call them for the second time if you do not mind.

**Mr. Speaker:** I am afraid the circumstances are such that I will have to do so.

The Member for Sigor!

#### ORAL ANSWERS TO QUESTIONS

##### *Question No.377*

#### ALLOCATION OF FUNDS TO PURCHASE LIVESTOCK IN DROUGHT-RAVAGED AREAS

**Mr. Speaker:** Is Mr. Litole still not here? We have to balance this. I am afraid I have to leave this Question also for the third round.

Yes, Mrs. Noor!

*Question No.308*RESETTLEMENT/COMPENSATION  
OF IDPS IN GARISSA

**Mr. Speaker:** Is Mrs. Noor also not here?  
Let us move on to Mr. ole Lankas' Question!

*Question No.420*NUMBER OF AIRSTRIPS  
IN THE MARA

**Mr. ole Lankas** asked the Minister for Transport:-

(a) how many airstrips there are in the Mara as well as their respective locations and capacities; and,

(b) whether the Government could consider upgrading and modernising Narok Airstrip to serve the entire Southern Rift region.

**Mr. Speaker:** Is the Minister for Transport still not here? I think the Minister for Justice, National Cohesion and Constitutional Affairs is endeavouring to do what he can.

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

Let us move on to the Question by the Member for Gwasi!

**QUESTIONS BY PRIVATE NOTICE**ALLOCATION OF FUNDS TO  
NOMINATED MEMBERS

**Mr. Mbadi:** Mr. Speaker, Sir, I want to thank the Minister for Justice, National Cohesion and Constitutional Affairs for literary pulling the Deputy Prime Minister and Minister for Finance into the House.

For the third time, I beg to ask the Deputy Prime Minister and Minister for Finance the following Question by Private Notice.

Could the Minister clarify whether he has allocated Kshs.100 million (or any amount at all) in the 2009/2010 Financial Year for disbursement to Nominated Members of Parliament and if so, explain the purpose for the allocation, state under which Vote and provide the legal justification for such allocation?

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Speaker, Sir, I apologise for walking in late.

However, I beg to reply.

I wish to clarify that my Ministry has not allocated Kshs100 million or any amount at all in Financial Year 2009/20010 for disbursement to nominated Members of Parliament or any other Member of Parliament. However, I wish to clarify that my

Ministry made a provision of Kshs100 million in the Vote of the National Assembly to cater for special interest groups which are represented by nominated Members of Parliament. The modalities for disbursement of these funds will be subject to the rules and regulations which will be developed and laid before this House for approval.

**Mr. Mbadi:** Mr. Speaker, Sir, the Budget process involves the line Ministries and various departments forwarding their Budget Estimates to the Ministry which then rationalises the same and compiles the Annual Budget Estimates. Who asked for this money from the Ministry of Finance? We all know the CDF funds are governed by an Act of Parliament. Where is an Act governing this particular fund?

**Mr. Kenyatta:** Mr. Speaker, Sir, all monies in the Budget are subject to the approval of the National Assembly. Treasury does receive requests for numerous special interest groups. I did receive representation from nominated Members of Parliament who requested that we provide funds to allow them equally to undertake activities, not just in the House, but also outside the House with regard to interest groups throughout the country for a national constituency. We found the same request reasonable and provided funds. But the authority as to whether those funds shall be approved lie with this House. If the House deems it not to approve, the same can be reallocated by the very same House.

**Mr. Gunda:** Mr. Speaker, Sir, could the Deputy Prime Minister and Minister for Finance clarify which these interests groups are?

**Mr. Kenyatta:** Mr. Speaker, Sir, such groups are orphans, HIV/AIDS victims, people with disability, marginalised groups, youths, drugs related issues and the like.

**Dr. Khalwale:** Mr. Speaker, Sir, I have no doubt that the 12 nominated Members of Parliament, when they are given these funds, will handle them in the same manner that we handle the CDF. However, it is important, so that we do not confuse Kenyans who will be waiting to draw from these funds - that the Minister tables in this House a list showing the nominated Member plus the interest group they represent. At that time, when the money is disbursed, that particular interest group can go to that particular nominated Member. Otherwise, just leaving it in a blanket manner will open it up to abuse.

**Mr. Speaker:** Order, Dr. Khalwale! Do not attempt to answer your own question.

**Mr. Kenyatta:** Thank you, Mr. Speaker, Sir. I have taken the comments by the hon. Dr. Khalwale. As I said, the rules and regulations are being developed and will be tabled before this very House for approval. They should include some of the issues that he is raising.

**Dr. Kones:** Mr. Speaker, Sir, it is very important that we scrutinise these rules before the funds are disbursed. We know that nominated Members of Parliament are actually dealing with interest groups who are not catered for elsewhere. When will these rules be tabled in the House?

**Mr. Kenyatta:** Mr. Speaker, Sir, as I said, the rules are being developed. Before any disbursement is made, those rules will be tabled before this House for debate.

**Mr. Yinda:** Mr. Speaker, Sir, could the Deputy Prime Minister and Minister for Finance clarify to this House, the real position as the so called interest groups are already represented by sitting Members of Parliament. Why can this money not be channelled through CDF funds, so that CDF can take care of these interest groups?

**Mr. Kenyatta:** Mr. Speaker, Sir, as I said, nominated Members of Parliament are really supposed to represent a national constituency. Not to say that Members of

Parliament do not have the same within their constituencies. I am sure they do allocate funds from CDF to cater for these interests. But given the fact these are the neediest in society, we did believe at the Treasury that there was need to allocate additional resources to be given to nominated Members of Parliaments in order to properly target these vulnerable groups in society.

**Mr. James Maina Kamau:** Mr. Speaker, Sir, I find it very difficult to comprehend what the Minister is talking about here because things like HIV/AIDS are taken care of by another relevant authority. The interest of youth groups is also taken care of by the Government. Does he not think this will be a duplication of the same?

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Speaker, Sir. Is the Member in order to mislead the House when the Constitution itself provides that nominated Members shall represent special interest groups?

**Mr. Speaker:** Order! That is out of order because the Member asked a question. He did not make a statement. So, it is for the Deputy Prime Minister and Minister for Finance to give an appropriate response.

**Mr. Kenyatta:** Mr. Speaker, Sir, the fact that monies were allocated, if we are to allocate a little bit more to these vulnerable groups, I do not think it hurts anybody. As I said, it is still subject to the approval of this House.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, could the Minister tell us how he will ensure that all regions will benefit from these amounts which will be allocated to Nominated Members of Parliament? For the first time since 1963, Ukambani has had no nominated MP; thanks to ODM-Kenya. What will he do to make sure that this region which has no nominated Member benefits?

**Mr. Kenyatta:** Mr. Speaker, Sir, as I said, a nominated Member of Parliament is not supposed to represent constituencies, but a national constituency. I am sure that constitutes also include parts of Ukambani. But as I said, the rules and regulations shall be tabled for debate before this House. Some of those comments that the hon. K. Kilonzo has raised should and must be included.

**Mr. Mbadi:** Mr. Speaker, Sir, when the Minister presented his Budget here on 11<sup>th</sup> of June, he talked about economic stimulus and specifically he said that the economic stimulus package will go through line Ministries. These special interest groups are represented by line Ministries. Why did the Deputy Prime Minister and Minister for Finance not see it fit to allocate these monies also through the line Ministries as he did with the economic stimulus package? Why did he see it fit to give it as pocket money to the nominated Members of Parliament?

**Mr. Olago:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order! The Deputy Prime Minister and Minister for Finance has the ability to respond to that.

Proceed, Mr. Kenyatta.

**Mr. Kenyatta:** Mr. Speaker, Sir, this is not pocket money. This is money that belongs to the Kenyan taxpayer. These are monies that shall and would be---

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. Is the Deputy Prime Minister and Minister for Finance in order to deny the obvious because he has given out money without rules which he says will be developed? Is that not equal to saying he is giving pocket money to nominated Members of Parliament? Why is he denying the obvious?

**Mr. Speaker:** Order! As I see, that is a question. Mr. Minister, do not respond to that unless you feel obliged.

**Mr. Kenyatta:** Thank you, Mr. Speaker, Sir. I repeat that these monies are not pocket monies. These are taxpayers' money and the Nominated Members are accountable, not just to this Parliament, but to the people of the Republic of Kenya. Once the rules and regulations are in place and tabled before this House and deliberated, they should include what this money shall be used for and how they shall be used by the relevant hon. Members.

*(Applause)*

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. Is it in order for the Deputy Prime Minister and Minister for Finance to complete answering this Question without disclosing that he is aware that the Budget of the National Assembly must come from the Parliamentary Service Commission and nobody else?

**Mr. Kenyatta:** Mr. Speaker, Sir, like I said, what we have is a provision that can be approved or deleted by this very same House.

LEGALITY/VIABILITY OF NEWLY  
CREATED DISTRICTS

**Dr. Khalwale:** Mr. Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

What is the legality and viability of the newly created districts, in view of the recent judgment by the Kisii Resident Judge declaring them illegal?

**Mr. Speaker:** Where is the Minister of State for Provincial Administration and Internal Security?

Order, hon. Members! We thought that the Minister or one of his Assistant Ministers will be here this afternoon but, unfortunately, they are not here. But like I indicated yesterday, there was an incident in Samburu that has cost 33 lives of Kenyans and the Minister has been away leading an operation to redress that matter. So, this Question will have to be deferred to Tuesday, next week. I am sorry, Dr. Khalwale.

*(Question deferred)*

ORAL ANSWERS TO QUESTIONS

*Question No.377*

ALLOCATION OF FUNDS TO PURCHASE LIVESTOCK  
IN DROUGHT-RAVAGED AREAS

**Mr. Speaker:** Next Question by the hon. Member for Sigor! Is the hon. Member not here? His Question is dropped!

*(Question dropped)*

\ Next Question by Mrs. Noor!

**Mrs. Noor:** Mr. Speaker, Sir---

**Mr. Speaker:** Order, Mrs. Noor! You were late; we have called this Question out twice and you must tender an explanation as to why you were not present to ask this Question. Otherwise, you are out of order and I will take action immediately!

**Mrs. Noor:** Mr. Speaker, Sir, I apologize for coming late. I was caught up in a jam. I do apologize honestly.

**Mr. Speaker:** That is fair enough!  
Proceed and ask your Question, Mrs. Noor; do not be intimidated!

*Question No.308*

RESETTLEMENT/ COMPENSATION  
OF IDPS IN GARISSA

**Mrs. Noor** asked the Minister of State for Special Programmes:-

(a) whether she is aware that there are internally displaced persons affected by drought in 1992 and floods in 1997 who are currently living in the outskirts of Garissa Town; and,

(b) what plans she has to resettle and compensate the IDPs in line with Vision 2030.

**The Assistant Minister, Ministry of State for Special Programmes** (Mr. M.M. Ali): Mr. Speaker, Sir, I beg to reply.

(a) I am aware of the Internally Displaced Persons (IDPs) who were affected by the drought in 1992 and those affected by floods in 1997 and are currently living in the outskirts of Garissa Town.

(b) The current resettlement program being undertaken by the Government focuses on the IDPs resulting from the post 2007 election violence. However, once funds are allocated to settle all IDPs then, those who were displaced by the drought in 1992 and those affected by floods in 1997 currently living in the outskirts of Garissa Town will be settled alongside other IDPs who may be living in similar situations across the country.

Thank you, Mr. Speaker, Sir.

**Mrs. Noor:** Mr. Speaker, Sir, I want to take this chance to thank the Assistant Minister for acknowledging that there are IDPs living in the peripheries of Garissa Town and who were affected by the drought in 1992 and by the floods in 1997. Could the Assistant Minister explain why it has taken long for these IDPs to be resettled? The answer given is that once funds are available, those IDPs and other IDPs will be resettled. Mr. Assistant Minister, these people are suffering. What immediate measures are you putting in place to address this issue, particularly their shelter, food and several other issues?

**Mr. M.M. Ali:** Mr. Speaker, Sir, as far as food is concerned, we do provide food regularly, just like any other ordinary citizens all over the country to ensure that Kenyans are provided with enough food whenever need arises.

As to what action we are taking to ensure that funds will be availed, Mr. Speaker, Sir, the current Fund which we are using to resettle the IDPs was created through a



Gazette Notice by the Minister for Finance and it is strictly for the IDPs who were displaced by the post election violence. We have, however, communicated to the Minister and we are in the process of having discussions such that the same Gazette Notice may be amended to accommodate other IDPs across the country so that they can as well be resettled. It might as well be imperative that hon. Members in the House help us follow the same so that the honorable Minister, for the time being, will be able to amend the same notice to accommodate other IDPs.

Thank you, Mr. Speaker, Sir.

**Mr. Chachu:** Mr. Speaker, Sir, the Government was able to find funds to resettle the IDPs that were affected after the crisis we had during the last General Election. Now, we are being told that the IDPs in Garissa will only be settled after funds are available. IDPs are IDPs, regardless of the cause of the displacement. If the Government is able to find funds for the IDPs displaced after the post election violence, are the IDPs in Garissa lesser Kenyans than the other Kenyans? Can the funds not be available for them?

*(Applause)*

**Mr. M.M. Ali:** Mr. Speaker, Sir, I do agree with my friend, hon. Chachu and, indeed, the rest of the hon. Members who spoke. It is true; IDPs are IDPs, regardless of the situation that occasioned the displacement of the IDPs. However, the magnitude of the post election violence was too much. I think that is what occasioned the Government to quickly set up that fund. We are addressing this situation and I have similar situations in my own constituency. So, I agree with the hon. Members and we are moving with speed to ensure that the plight of these IDPs will be addressed.

Thank you, Mr. Speaker, Sir.

**Mr. Njuguna:** Mr. Speaker, Sir, while the Assistant Minister admits that the plight of the IDPs in this community has been the same for the last 17 years, it is really very disappointing. What has the Ministry or the Government been doing to allow the IDPs to access education and health care for the last 17 years? Could the Assistant Minister specifically indicate to us what the Ministry has been doing about this area?

**Mr. M.M. Ali:** Mr. Speaker, Sir, my Ministry has not been in existence for the last 17 years, as the hon. Member is saying. However, the Government has been able to allow or provide education and health facilities for the affected IDPs in whichever part of the country, just like the rest of the citizens of this nation.

**Mrs. Noor:** Thank you, Mr. Speaker, Sir. The IDPs in Garissa have been affected for the last 17 years. These people are given rations, as the Assistant Minister has said, but that ration is not adequate and it is not serving them properly. What immediate measures is the Assistant Minister taking to ensure that these IDPs are provided with adequate rations?

**Mr. M.M. Ali:** Mr. Speaker, Sir, the food situation generally in the country is bad and, indeed, it is worsening. So, what the hon. Member is saying is true. We are trying to see how we can increase food rations to many parts of the country, that have been hard hit by drought, and not only in Garissa.

Equally, the people affected in Garissa, such as the ones he has mentioned, will be catered for adequately.

**Mr. Speaker:** Let us move on to Mr. ole Lankas' Question!

**Mr. Ole Lankas:** Mr. Speaker, Sir, for the third time, I beg to ask Question No.420.

*Question No.420*

NUMBER OF AIRSTRIPS  
IN THE MARA

**Mr. ole Lankas** asked the Minister for Transport:-

- (a) how many airstrips there are in the Mara as well as their respective locations and capacities; and,
- (b) whether the Government could consider upgrading and modernising Narok Airstrip to serve the entire Southern Rift Region.

**The Minister for Transport** (Mr. Mwakwere): Mr. Speaker, Sir, first and foremost, I would like to apologise to the Chair and the House for arriving here late. I was attending to matters relating to an air accident which occurred this week. I am, however, ready to answer the Question.

**Mr. Speaker:** Proceed Mr. Minister! That is a satisfactory explanation.

**The Minister for Transport** (Mr. Mwakwere): Mr. Speaker, Sir, I beg to reply.

- (a) The Mara ecosystem has a total of 40 airstrips with Narok having 34 airstrips while Trans Mara has six. I hereby table the matrix which indicates the location and capacity of each airstrip since it will take long to give the details for all the 40 airstrips.

*(Mr. Mwakwere laid the document on the Table)*

- (b) Narok Airstrip is centrally located and is the alternate airstrip for air traffic flying to the Maasai Mara Game Reserve and neighbourhoods. The establishment of airstrips and subsequent maintenance is guided by various factors such as:-
  - (i) frequency of use;
  - (ii) geographical spread;
  - (iii) remoteness of communication facilities;
  - (iv) economic potential;
  - (v) development needs;
  - (vi) availability of funds;
  - (vii) interest from private operators;
  - (viii) emergency access;
  - (ix) National security and other strategic reasons.

Based on analysis which takes into account the aforementioned factors, we shall consider upgrading the facility.

**Mr. ole Lankas:** Mr. Speaker, Sir, I would like to thank the Minister for his answer. However, he has not stated the capacity of Narok Airstrip and its current physical state.

**Mr. Mwakwere:** Mr. Speaker, Sir, as I have said earlier on, there was no specific airstrip in Narok that was mentioned when the hon. Member talked about Narok. We do

not have one airstrip in Narok. In fact, we have 40 of them. I have given the dimensions of each airstrip, the names of the companies that run the airstrips, the operating authority; whether it is the Government or the private sector and, remarks on the matrix that I have laid on the Table. I will be pleased to make a comment if the hon. Member specifies the exact airstrip in Narok.

**Mr. ole Lankas:** On a point of order, Mr. Speaker, Sir. The Minister has said that he has treated my Question generally, but if you look at part “b” of his answer, he has talked about Narok Airstrip as being centrally located. So, he cannot say that it is in the general list of airstrips in the Maasai Mara.

**Mr. Mwakwere:** Mr. Speaker, Sir, I was responding to part “a” of the Question. However, on part “b” of the Question, it is true that the airstrip has a dimension of 1,830 metres by 40metres. This is a grass airstrip that is operated by the Government of Kenya under the District Commissioner (DC) and the Kenya Police. The runway is rough and requires upgrading and gravelling. I confirm that once we do a thorough analysis under the factors that I have already mentioned, we will spread bitumen on the airstrip.

**Ms. A. Abdalla:** Mr. Speaker, Sir, the Minister has told this House that there are 40 airstrips in the vicinity of Narok which is the home of the Maasai Mara Game Reserve and the endangered animals could be affected by the noise from the 40 airstrips. Does the Minister have any requirement that anybody who wants to establish an airstrip must carry out an Environmental Impact Assessment (EIA) before the airstrip is commissioned?

**Mr. Mwakwere:** Mr. Speaker, Sir, these are airstrips that are used by very small aircraft. Those airstrips have been in existence for more than 30 years on the average and it appears as if the animals are used to the noise made by those aircraft. Wild animals are attracted to the airstrips for tourists to view them.

**Mr. Magerer:** Mr. Speaker, Sir, I wonder why the Minister finds it necessary to have 40 airstrips within the same vicinity as opposed to having maybe one or two which are fully developed to the extent that they can serve the public reasonably.

**Mr. Mwakwere:** Mr. Speaker, Sir, I will be prepared if hon. Members of Parliament from the area and the local authority recommend to me that they have only one or three airstrips. That will not be a problem. However, as I have said earlier on, there are some factors we consider before we license airstrips. I have read them out, but I will repeat them. These factors are:-

- (i) frequency of use;
- (ii) geographical spread;
- (iii) remoteness of communication facilities;
- (iv) economic potential;
- (v) development needs;
- (vi) availability of funds;
- (vii) interest from private operators;
- (viii) emergency access;
- (ix) national security and other strategic reasons.

This was done long before some of us got interested in politics. The rationale was established and justified unless the leaders want me to consider otherwise.

**Mr. ole Lankas:** Mr. Speaker, Sir, as I said earlier on, the answer that the Minister has given is full of hope. Could the Minister attempt to give the time frame? This is because the last part of the answer says that he will take into account the

aforementioned factors and consider upgrading the facility. Could he give a time frame as to when he will start upgrading this facility?

**Mr. Mwakwere:** Mr. Speaker, Sir, the earliest that can be done will be in the 2010/2011 Financial Year. This is because we are already committed in this financial year.

**Mr. Speaker:** Let us move on to Mr. Mwathi's Question!

**Mr. Mwathi:** Mr. Speaker, Sir, I would like to apologise for coming late because I was attending to matters relating to the welfare of staff of Parliament.

**Mr. Speaker:** Fair enough. You can proceed!

*Question No.427*

CRITERIA FOR SELECTING BENEFICIARIES OF  
SCHOOL FEEDING PROGRAMME IN ASALS

**Mr. Mwathi** asked the Minister for Education:-

- (a) to state the criteria used to select schools to benefit from the School Feeding Programme (SFP) in Arid and Semi Arid areas; and,
- (b) why no schools in Ndeiya Division in Limuru Constituency benefitted from the programme, considering that the division is in a semi-arid area.

**The Assistant Minister for Education** (Mr. Mwatela): Mr. Speaker, Sir, I also apologise for coming late.

I have looked at the answer I was given and I have not had time to examine it properly. I am not satisfied with the answer and I communicated to the hon. Member that we need to provide a more comprehensive answer at a later stage.

**Mr. Speaker:** Fair enough!

**Mr. Mwathi:** Mr. Speaker, Sir, indeed, we have consulted and we have agreed to defer the Question until next week so that we can have an adequate answer.

**Mr. Speaker:** It is ordered that the Question is placed on the Order Paper on Tuesday, next week!

Let us move on to the next Order!

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

**Mr. Speaker:** Order, Minister for Industrialization! Just hold your horses!

**MINISTERIAL STATEMENTS**

**Mr. Speaker:** Hon. Members, we have two Ministerial Statements to be delivered this afternoon, beginning with the Minister for Transport.

SAFETY OF JET-LINK AND OTHER  
AIRLINES OPERATING IN KENYA

**The Minister for Transport** (Mr. Mwakwere): Mr. Speaker, Sir, on Wednesday, 9<sup>th</sup> September, 2009, the Member of Parliament for Rarieda Constituency, Hon. Nicholas

Gumbo, rose on a point of order and requested a Ministerial Statement on the Safety of Jet-Link and other airlines operating on Kenya. The hon. Member requested for many issues to be dealt with in one Ministerial Statement. Even though I will be brief; I have documents here that will cover all aspects of the Question. I will summarise what I would have read for 15 minutes in only five minutes.

**Mr. Speaker:** Fair enough!

**The Minister for Transport** (Mr. Mwakwere): Mr. Speaker, Sir, I wish to state that Jet-Link Aviation is a Kenyan registered company that operates both international and domestic schedule services, among others. The airline has Air Service Licence No.0627, which is valid up to 14<sup>th</sup> February, 2010. The company has a valid Air Operator Certificate No.184 and Approved Maintenance Organisation Certificate No.K/AMO/L/034. The company has a staff complement of 256 comprising of 32 pilots, 20 engineers, ten technicians and 194 other staff comprising of 240 Kenyans and 40 foreigners, who are seven pilots and seven engineers. The company has a fleet of 6 aircraft, details of which I wish to table in the House.

Jet-Link Aviation does not operate any aircraft manufactured in the Eastern bloc. The CRJ aircraft is manufactured in Canada. The Fokker 28 aircraft is manufactured in the Netherlands. The BAE146 aircraft is from the United Kingdom. The circumstances, under which two flights aborted on 7<sup>th</sup> and 8<sup>th</sup> September, 2009 are as follows.

On 7<sup>th</sup> September, 2009, a Fokker 28 aircraft, registration Flight JO357, boarded passengers for the afternoon flight to Eldoret, at 4.00 p.m. and experienced a return-to-base incident. During taxing, the pilot encountered abnormally low taxing speed and returned to the Parking Bay and disembarked passengers. On operation, the aircraft's brakes were found to be binding. After about one hour, arrangements were made to fly the passengers to Eldoret on another aircraft.

Mr. Speaker, Sir, on the same day, BAE146 aircraft, registration Flight JO757 took off from Jomo Kenyatta International Airport (JKIA) to Kisumu at 5.00 p.m. and landed back at JKIA at 5.27 p.m. After take-off, the Captain noticed a difference of speed indication between that of the Captain and the First Officer. Due to safety consideration, the Captain decided to return to base and requested the Air Traffic Control for clearance and briefed the passengers. Upon landing, the aircraft was inspected and the fault traced to a defective airspeed indicator.

On 8<sup>th</sup> September, 2009, a Fokker 28 aircraft, Flight J0853, failed to leave. This was not an aborted take-off by definition. The passengers had boarded the aircraft for the morning flight to Eldoret, at 7.45 a.m. However, during the engine start, the Captain noticed unusually low pressure indication, and the engine start was discontinued. The passengers were disembarked. Jet-Link engineers solved the problem expeditiously and the flight to Eldoret resumed without further problems.

Mr. Speaker, Sir, the two incidents that occurred on 7<sup>th</sup> September, 2009 were reported by Jet-Link Aviation to the Kenya Civil Aviation Authority (KCAA) within the stipulated 42 hours time-frame. The incident of 8<sup>th</sup> September was spotted internally as required by the Airline's internal quality system.

Finally, with regard to the Airline's flight safety audits on Jet-Link's aircrafts, I wish to report that as per statutory requirement, each aircraft operating in Kenya must have a valid Certificate of Airworthiness from the KCAA before it can be used for public

transport. The validity of each certificate of airworthiness is 12 months. All Jet-Link aircrafts have valid Certificates of Airworthiness.

In the document that I have with me here, we have a tabulation of the inspections carried out for Jet-Link Express aircrafts over the last one year. The last approved Maintenance Organisation Audit was carried out on 25<sup>th</sup> September, 2008.

I beg to table the documents.

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

Mr. Speaker, Sir, the hon. Member also requested to be informed of the qualifications of the Airline's Chief Pilot, Engineer and its training programme. I wish to state that the Chief Engineer is a licensed Aircraft Maintenance engineer with 28 years' experience in aviation, and has worked for various airlines. He has undergone vigorous training in aircraft maintenance, covering propeller and gas turbine engine aircraft, which includes 80R42, FK27/27, B767, DHC8 and CRJ100/200. In addition, he has undergone the United States of America Federal Aviation Administration (FAA) Government Safety Inspectors' Course.

The Chief Pilot is a retired Colonel from the Kenya Air Force, with 11 years experience in the Civil Aviation Authority. He holds a Kenyan Airline Transport Pilots' Licence with over 7,500 flying hours. He is an Instruments Rating Examiner with rating in DC9, FK28, CRJ100 commercial jetliners. In addition, he was a UN Peace Observer in Yugoslavia and an FK70-8 Presidential Pilot.

Mr. Speaker, Sir, for all the other points that were raised by the hon. Member, I beg to table documents in support.

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

**Mr. Speaker:** Could you seek clarifications, Eng. Gumbo?

**Eng. Gumbo:** Thank you, Mr. Speaker, Sir. First of all, allow me to start by thanking the Minister for the timely response and for dealing with the matter with the seriousness it deserves.

However, I notice that in addressing the issues that I had raised, the Minister has not talked about the safety precautions being taken to avoid a recurrence of the incidents. He has also not stated – which to me is fundamental – whether Jet-Link, indeed, has an anchor at JKIA, and if they do not, how they maintain their aircraft. The Minister has also not stated what steps Jet-Link Aviation is taking to compensate the passengers. This is also a fundamental matter, because it touches on the rights of passengers.

Mr. Speaker, Sir, lastly, the Minister misquoted me. All I said in the my request for the Ministerial Statement was that Jet-Link Aviation did receive an aircraft from a former Eastern bloc country. I did not say that it was made there. What I wanted to know was whether the particular aircraft was certified by the KCAA as airworthy to be used in Kenya. Having said that, I want to seek the following clarifications from the Minister.

Airports in all the countries of the world levy what we call "Passenger Tax". The main reason for levying this tax is to make passengers to contribute towards maintenance of facilities at airports. Facilities at airports include ground facilities and facilities for navigation. In Kenya, ground facilities are maintained by the Kenya Airports Authority

(KAA), and navigation facilities by the KCAA. By any proportion, facilities for air navigation are by far the most important compared to facilities on the ground. Could the Minister clarify---

**Mr. Speaker:** Eng. Gumbo, this is time for you to seek clarification on the Ministerial Statement delivered! It is not time for debate or arguments, or time for you to give an opinion, professional as you are doing!

**Eng. Gumbo:** Mr. Speaker, Sir, could the Minister clarify why in Kenya, it is the Kenya Airports Authority (KAA) and not the Kenya Civil Aviation Authority (KCAA) which collects the passenger tax?

Secondly, he knows very well that the process of landing involves both instruments and the tarmac. Could he clarify why in Kenya, whereas the KCAA is the one that has the biggest responsibility for landing, why is it that the KAA is the one that collects the landing fees and not the KCAA?

Finally, there appears to be a deliberate effort in this country to under-capacitate the KCAA. In whose interest is this?

**Mr. Speaker:** Anybody else interested in a clarification on this one?

**Mr. Mureithi:** Mr. Speaker, Sir, I would also like to seek clarification on Jet-link. The experience we have had is that Jet-link was fueling when the customers were lining up to enter the aircraft. Is it really safe for passengers to be next to an aircraft as it is being fueled considering that jet fuel is very flammable? That is the experience we had because they fueled the aircraft when we were queuing to enter into the Jet-link aircraft.

**Eng. Rege:** Mr. Speaker, Sir, I would like to ask the Minister who was my mathematics teacher why the Civil Aviation equipment has not been upgraded lately.

**Mr. Speaker:** Mr. Minister, you may now respond.

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

Order, Mr. Mwatela. Do you want to seek for a clarification?

**The Assistant Minister Education** (Mr. Mwatela): Yes, Mr. Speaker, Sir.

*(Laughter)*

**Mr. Speaker:** I am afraid you cannot. You are an Assistant Minister. These Ministers speak for you. Order, you cannot.

Respond, Mr. Minister.

**The Minister for Transport** (Mr. Mwakwere): Thank you, Mr. Speaker, Sir, for prevailing on my colleague Assistant Minister from making a point of order. Maybe it was a point of information. We should have contributed to this.

The issue that Eng. Gumbo asked for clarification deserves another Ministerial Statement. It is extremely broad. It is all in here in the long statement which would have taken about 15 minutes to read, but I am ready to present it as another Ministerial Statement. It is a very important subject.

**Mr. Speaker:** Mr. Minister, what you could do is to table your detailed Statement in addition to the documents that you have tabled, so that the hon. Member has time to peruse it. If he still thinks there are further areas where he wants to interrogate, then we will grant him time to do so, another time.

**The Minister for Transport** (Mr. Mwakwere): Mr. Speaker, Sir, I will do just that.

Mr. Speaker, Sir, on the brief questions that I have been asked, there is a clear division in responsibility between the KAA and the KCAA. The KAA does the infrastructure and management of the airport on the ground. Whatever is payable to them relates to the activities on the ground. The KCAA is in charge of the safety of our skies and whatever fees are to be paid as coded by the International Civil Aviation Organisation remain payable to the KCAA. There has been no conflict in the functions of the two and it is the practice internationally.

As regards Jet-link fueling an aircraft on the runway, this is an issue that I have just heard. I have no information on this issue. It is a serious matter and I will investigate and report accordingly alongside the Statement that I will make for Eng. Gumbo if he does not find the details that I shall table here, comprehensive enough.

*(Mr. Mwakwere laid the document on the Table)*

Finally, kindly allow me to hear the question for Eng. Rege again.

**Mr. Speaker:** Eng. Rege, could you repeat your clarification?

**Eng. Rege:** Mr. Speaker, Sir, I would like to ask the Minister again, who was my mathematics teacher to tell this House when the equipment of the control tower which is run by the Civil Aviation Authority will be upgraded to the most modern equipment?

**The Minister for Transport** (Mr. Mwakwere): Mr. Speaker, Sir, I want to thank Eng. Rege for recognizing that I taught him pure mathematics and applied mathematics when he was a student many years back. He was a brilliant student and he passed with straight As. He will give you details because I did not want to divulge it; it makes me look older than what I am supposed to be. He will give you details. He is not the only one I taught here. There are two others.

*(Laughter)*

**Mr. Speaker:** Order, Mr. Minister. Address the Chair.

Proceed, Mr. Minister.

**The Minister for Transport** (Mr. Mwakwere): Mr. Speaker, Sir, last year we conducted an audit of the equipment that must be upgraded and we floated a tender internationally. The tender was won by two companies; one from Italy and another one from France. These companies are now in the process of delivering their equipment and by the end of the year, we shall have fully modernized our air navigation equipment in the country.

**Mr. Speaker:** Fair enough! Eng. Gumbo, you will have access to that Statement. If you have further issues, then we will give you time at a suitable opportunity.

**Eng. Gumbo:** Most, obliged, Mr. Speaker, Sir.

**Mr. Speaker:** Hon. Members, we will take one more Statement which is urgent; an emergency that has arisen from the Minister for Livestock Development.

DEATHS OF LIVESTOCK ON KMC  
HOLDING GROUND



**The Minister for Livestock Development (Dr. Kuti):** Mr. Speaker, Sir, I would like to be very brief, to let this House and the nation at large know that there has been some news about cattle deaths in a holding ground near the Kenya Meat Commission (KMC).

Mr. Speaker, Sir, I have just come back from that holding ground. From the onset, I would like to be very clearly understood that these are animals bought by the Government for off-take. These are animals which we decided as the Government to take the loss and cushion livestock farmers of the losses that they are incurring currently.

Mr. Speaker, Sir, at this time, livestock farmers are faced with a major challenge. Some of them who had up to 500 animals have had their stock reduced to about 50 or even 10 animals. Some of them have only been left with the sticks that they use to look after their animals.

The Government has, therefore, decided to buy those animals and allow the livestock farmers to sell to us those animals that they think will die today, tomorrow, next week or any time before the rains come. These are pregnant animals, old animals or animals that are weak because of lack of water and pasture. Therefore, we have taken these animals to a holding ground in Athi River. It is not at the KMC.

I want to be very clear that these animals are not at the KMC; they are at a holding ground belonging to the Kenya Portland Cement. They are being held there and being given hay and water.

Some of them die while we are buying them. I would like the country to know that for every dying animal, a farmer is given Kshs8,000. Therefore, we have cushioned that farmer to the tune of Kshs8,000.

Mr. Speaker, Sir, what was seen in the newspapers is a very sorry situation. This is the sorry situation livestock farmers are facing right now in this country.

Mr. Speaker, Sir, I had a crisis meeting at the Kenya Meat Commission (KMC) and we have so far off-taken livestock from 24 districts within 14 days. About 11,000 animals have been off-taken and 7,000 are currently at the holding ground. About 1,500 have died either at the market, en route or at the holding ground.

Of course there are shortcomings because the matter is urgent. We are trying to save and buy the livestock as quickly as possible so that the losses are to the Government and not to the farmer. Therefore, we are off-taking a large number at the same time because the crisis is very serious. We found some shortcomings. For example, at the market place, there is no hay or fodder for the animals as they wait to be transported. That weakens them further and we have put into place a system to deal with that. There has also been a backlog at KMC but it must be understood that it is because of the nature of animals that we are buying.

Mr. Speaker, Sir, the business of KMC is to supply the market with quality meat. I would like to assure all Kenyans and the House that the meat sold is got from ranches and other farmers who meet the minimum quality requirement by the KMC. Therefore, Kenyans are assured that even those animals that are bought through the off-take programme that do not meet the minimum quality requirement are not slaughtered. At the market place, there is a veterinary officer to vet the animals. There are those that are sick. However, being thin is not equal to being sick. It is just the reduction of flesh and fat. Those that are not sick are taken.

The standard at the market is such that we buy all the animals that come but the standard for those that are taken to the KMC is done by veterinary doctors from the KMC who have a minimum standard. Those which do not meet minimum standards are kept at the holding ground to decide which way they go. Some die as a result of their condition when they came in. Others are given water, hay and supplements to improve their health. They are then fed until they meet the minimum standards of the KMC. Only then are they taken for processing at the KMC. I would, therefore, like to assure the country that the meat they are eating from KMC has passed the test by veterinary officers and the quality control people at the factory.

Mr. Speaker, Sir, the other challenge is the disposal of dead animals. There is a major challenge because of the rate of death. We have involved the county council and the provincial administration so that disposal is done at a speed that does not create public health issues. The deaths are on-going, be it on the farmer's *boma* or en route to the market or the Portland Cement holding ground. This is the sorry situation of livestock farmers.

Mr. Speaker, Sir, we are also accompanying this programme with vaccination---

**Mr. Speaker:** Order, Minister! You were allowed five minutes but now you are doing minute number nine!

**The Minister for Livestock Development (Dr. Kuti):** Mr. Speaker, Sir, with your permission, I would like to say that vaccination is accompanying this off-take programme. I am sure the Members of Parliament who represent pastoralist areas are aware that the programme is on-going and those who have not been reached will be reached within the course of the month because we are making it an emergency programme.

Thank you for giving me the chance.

**Mr. Speaker:** I will allow three clarifications beginning with Dr. Nuh!

**Dr. Nuh:** Mr. Speaker, Sir, while appreciating the efforts by the Minister to cushion farmers, it is understood that the off-take programme is taking place when the farmers deliver the animals to KMC. Could the Minister consider the request by many Members of Parliament; that you do the actual purchasing from the ground rather than purchasing when delivered?

**Mr. Speaker:** Order, Minister! Please, take notes!

**The Minister for Livestock Development (Dr. Kuti):** Mr. Speaker, Sir, I am taking notes.

**Mr. Yinda:** Mr. Speaker, Sir, I would like to thank the Minister for the good gesture the Government has put in place, trying to cushion farmers for losses owing to the drought. However, could the Minister confirm that they will also buy sheep, goats and chicken from farmers?

*(Applause)*

**Mr. Ngugi:** Mr. Speaker, Sir, while we thank the Government for this intervention, drought will always come. Certainly this Ministry has learnt that there are challenges when we have only one abattoir at KMC. What is the Ministry doing to have abattoirs in other regions so that if drought occurs, they can buy the cows from those areas, slaughter them and minimize losses?

**Mr. Speaker:** Order, hon. Members! Avoid being repetitive.

**Mr. Letimalo:** Mr. Speaker, Sir, while we appreciate the initiative taken by the Ministry, could the Minister consider that districts which have sold their animals can be allowed to sell for the second time because the impact is too little, considering the number of animals that have already been sold?

**Mr. Speaker:** The Chairman of the Committee on Agriculture, Livestock and Co-operatives will be the last one to seek clarification!

**Mr. Mututho:** Mr. Speaker, Sir, the Minister says that Kshs8, 000 is given to farmers for compensation per animal. This is public money. Why can they not slaughter the animals in Wajir and get them processed for feed or something else? You could also have mass killings there instead of exposing the whole nation of Kenya to bad images of animals dying at Athi River.

**The Minister for Livestock Development (Dr. Kuti):** Mr. Speaker, Sir, I appreciate the response by Members. The off-take programme is happening at the markets. The Government pays for transport. I want to make that very clear. That is the answer to the question by Dr. Nuh. It is at the location or district headquarters depending on the size. Arrangements are made by the District Livestock Officers and District Veterinary Officers.

There is the issue of sheep, goats and chicken. If we had the funds, we could buy all these. However, you will realize that sheep and goats browse. The drought affects cattle more than sheep, goats and camels. This is because cattle can only graze and grass is unavailable. This exposes them to deaths. The animals that are now dying in large numbers are not goats and sheep but the cattle. That is why we are directing our attention to the cattle. Chicken run around and even take care of "human whatever". They can, therefore, survive better.

Mr. Speaker, Sir, the issue of satellite abattoirs is a very good one. It is a wrong idea to have a meat factory in Nairobi when we have tea factories in tea farms and coffee factories in coffee farms. That is a misplaced thing. We now have satellite abattoirs coming up in areas in like Isiolo and Garissa. There is already one at Mombasa and Lokichoggio. We intend to increase these numbers in areas where livestock are, so that we bring factories closer to the raw materials.

The issue of slaughtering animals is very important. We are now slaughtering 10 per cent of the animals at the buying point. But, today, I have announced that we should increase that to 20 per cent. In actual fact, we can increase that percentage where veterinary or livestock officers on the ground feel that the animals cannot arrive in good shape. They should be slaughtered in the areas that they are being bought.

**Mr. Speaker:** Order hon. Members. We will now take statements! What is it Mr. Ole Lankas? It must be a point of order. That is because we are short of time.

**Mr. ole Lankas:** On a point of order, Mr. Speaker, Sir. The Minister has attempted to address the economics of this problem. But my point of Order is: While he is talking of the handling of the problem at the site, he has not talked about the issue of morality. What is happening there is that we have seen live animals being loaded into tipper lorries. We have seen them being knocked down by tractors ferrying other dead animals. Is it morally right to mix live animals with dead ones? The Minister has avoided to address that issue?

**Mr. Speaker:** That, to me, is a question. But since you do not have a lot of experience, I will take that kindly. Otherwise, I would have ordered you to withdraw for the rest of this Sitting. That is why I had cautioned you that you must be sure it is a point of order. I am afraid it is not. At best, it is a question. At worst, I cannot say. Minister for Industrialization!

APPOINTMENT/DISMISSAL OF  
DIRECTOR OF KEBS

**The Minister for Industrialization** (Mr. Kosgey): Mr. Speaker, Sir, on 10<sup>th</sup> September, 2009, the Member for Mutito, Mr. K. Kilonzo, sought a Ministerial Statement on the appointment of the Managing Director and Chief Executive of the Kenya Bureau of Standards (KEBS) and also on the letter dated 8<sup>th</sup> September, 2009 by Ambassador Francis Muthaura, PS and Secretary to the Cabinet and Head of Public Service, addressed to Prof. John Krop Lonyangapuo, Permanent Secretary in my Ministry. The same letter was copied to me and also Dr. Isahakia, who is the PS in the Office of the Prime Minister. It was also copied to Prof. Nick Wanjohi, Personal Secretary to the President.

Mr. Speaker, Sir, Mr. K. Kilonzo wanted to know the status and facts surrounding the appointment and subsequent dismissal of the Managing Director of KEBS. He also wanted a clarification on the said letter dated 8<sup>th</sup> September, 2009 relieving Engineer Mang'eli of his duties as the Managing Director in public interest.

KEBS is a body corporate responsible for standardization and has powers to enter into contracts with any person, among other powers. It performs its functions under the direction of the National Standards Council. The appointment of the Managing Director is done by the Minister on the advice of the Council. The procedure for the appointment of the Managing Director of KEBS is laid down by Section 5 of the Standards Act, Cap 486 of the Laws of Kenya, which provide that the Minister shall, on the advice of the Council, by notice in the Kenya Gazette, appoint a Managing Director of KEBS who shall be the Chief Executive of the Bureau.

The council convened a special National Standards Council meeting on 31<sup>st</sup> July, 2009 to discuss the Managing Director's contract, which was due to expire on 31<sup>st</sup> August, 2009, as well as the issue of recruitment of a new Managing Director or reappointment of Dr. Kioko Mang'eli for another term, so as to avoid a vacuum. At that meeting, the Council set up the scope, conditions and parameters within which Dr. Mang'eli's contract could be extended.

The Council decided to audit and rate his past contract performance and set a minimum score of 75 per cent. If he achieved a score of 75 per cent, the Council would advise the Minister – that is me - to reappoint him. However, in the event he scored less than 75 per cent, then it would advise that the post be advertised. On evaluation, Dr. Mang'eli scored 86.12 per cent and the National Standards Council, on 31<sup>st</sup> July, 2009, unanimously agreed and resolved to advise the Minister that Dr. Mang'eli be reappointed as the MD for another term of three years.

Mr. Speaker, Sir, I table here the evaluation report, the score sheet and what was being evaluated.

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

At that time, there were no adverse reports, allegations, complaints, disciplinary action or any deficiency of any nature, which had been reported against the Managing Director that could be termed as being against public interest. On the contrary, Dr. Mang'eli should have been commended for having resuscitated a moribund institution that was on its knees, to a vibrant institution that it is today. When he became the Managing Director of the organization, KEBS had a deficit of Kshs300 million. But, today, it has a surplus of Kshs640 million.

*(Applause)*

The National Standards Council should also be commended for a thorough scrutiny and the evaluation that it carried out on the performance of the Managing Director, which informed its decision to recommend the reappointment based on competence, integrity and equity. The procedure was in accordance with the law. Based on the advice of the Council, by Gazette Notice 8740 dated 12th August, 2009, I appointed Dr. Mang'eli for a period of three years with effect from 1<sup>st</sup> September, 2009.

*(Mr. Kosgey laid the Gazette Notice on the Table)*

Mr. Speaker, Sir, I am aware of the circular dated 22<sup>nd</sup> June, 2009 Ref:PMO/IRCA (/097.02) from the Right Honourable Prime Minister, and another one dated 19<sup>th</sup> May, 2009 from the PS and Head of the Public Service, affirming that it is the responsibility of the Minister to appoint the managing directors of parastatals that fall under the Ministry, and which are in accord with the legal position on the appointment of CEOs and MDs under the jurisdiction of the Ministry.

That circular clarified who should have the say on who should be the Managing Director (MD) and the procedure is quite simple. The Board interviews and recommends three names and the Minister picks one name. If it is a re-appointment, the same board meets and recommends. In this case, the board went ahead and set certain criteria for evaluating the performance of the MD. They also set up a rule that if he scores less than 75 per cent, they are not going to recommend his reappointment. If he scores more than 75 per cent, they will recommend and this particular individual scored 86 per cent and so they recommended.

The advice to the Minister by the National Standards Council (NSC) to appoint Mr. Mang'eli for a term of three years was within the law and mandate. As I have said, when we received the letter, in fact, it arrived in this House before it arrived in my office, I do not know how---

*(Laughter)*

When we received the letter, of course, the letter talks of - because I am required to explain it and I am not the author but I will try and attempt to explain it - when I proceeded to try and find out what could be termed "public interest" and also because the letter was stated as "directed", I proceeded to find out who was the director. But with respect to the direction, I am told consultation in the Government---

**Hon. Members:** Are you not in the Government?

**The Minister for Industrialization** (Mr. Kosgey): Mr. Speaker, Sir, I am not the only person in the Government before the direction was issued. I am also told that there were certain issues which could be termed as being public interest, which I am not privy to.

**Mr. Speaker:** I am afraid it has to be four clarifications beginning with the sponsor of the request, Mr. K. Kilonzo.

Mr. Minister, please, take notes!

**Mr. K. Kilonzo:** Mr. Speaker, Sir, before I seek clarification, I want to thank the Minister for a job well done and for his honesty. I want to ask the Minister to tell this House and the country at large who is the MD of the Kenya Bureau of Standards (KEBS) as it stands now.

Secondly, I would like the Minister to clarify to this House, indeed, what “public interest” is and whether Dr. Mang’eli was given time to respond to the so-called “public interest”.

**Mr. Mungatana:** Mr. Speaker, Sir, again, I just want to acknowledge the honesty of the Minister. I have in my possession a letter from the Office of the Prime Minister dated 12 August, 2009 which I wish to lay on the Table.

*(Mr. Mungatana laid the document  
on the table of the House)*

In that letter, there is a direction to Prof. John Lonyangapuo, who is the Permanent Secretary in the Ministry of Industrialization, directing him that the Government does not wish to renew or extend the tenure of both the chairman and the MD of KEBS. Therefore, writing to communicate the following instructions: That the new members of the board of directors be appointed in respect of KEBS. A new chairman of the board of directors be appointed in respect of KEBS and a new MD for KEBS be appointed through, I do not know, a public process yet there is a clear provision that, first of all, there is no board of directors according to the Standards Act, Cap.496. There is a council established under Section 6. Secondly, it is the Minister who has all the powers to do the process of appointing. The letter is signed by Dr. Mohammed Isahakhia, Permanent Secretary and copied to Amb. Muthaura. The clarification I want to seek from the Minister is: Is it proper that the Office of the Prime Minister can be used to give, first of all, false instructions – there is no board of directors – to be effected by a permanent secretary? Is it proper that an office such as that can be utilized to circumvent the existing law? What action is the Minister going to take against that civil servant who is intimidating a Minister like him who is properly executing his duties?

**Mr. Midiwo:** Mr. Speaker, Sir, I just wish to seek a very short clarification from the Minister, arising from the reports which have been coming out in the media as regards the appointment of Dr. Mangeli. I want the Minister to clarify if the Kenya Association of Manufacturers (KAM) and the USA Ambassador, representing the American investors have petitioned the President as regards to the mismanagement of the KEBS---

**Hon. Members:** Oh! The US Ambassador?

**Mr. Midiwo:** You are not the Minister!

Mr. Speaker, Sir, protect me from these guys!

*(Loud consultations)*

**The Assistant Minister for Lands** (Mr. Bifwoli): On a point of order, Mr. Speaker, Sir. Is the hon. Member in order to seek clarification on an issue that is not from the Minister's Statement?

*(Applause)*

**Mr. Speaker:** Order! The Minister is equal to the task; I am sure he will respond!

**Mr. Midiwo:** Mr. Speaker, Sir, in any case, it is in the public domain! Are those the issues that the Minister is calling issues of concern that pertain to this appointment of Dr. Mang'eli?

**Mr. Speaker:** Mr. C. Kilonzo! And that should really rest the matter, but gauging the interest in the matter, I will allow a second round after the Minister has responded.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, for a PS in the Office of the Prime Minister to write a letter to the Minister is taking us to the days of "I received orders from above!" We want to thank the Minister for the position he has taken but my questions are very clear. The law is very clear: It was meant to ensure who advises the Minister. Could the Minister assure this House that he will follow the law and take the advice from the council? Secondly, when the Office of the Prime Minister realized that the current council will go ahead and appoint Dr. Mang'eli, they decided also to get rid of it?

Finally, I wish to lay on the Table of the House a performance review from the year 2004 to 2009. When Eng. Mang'eli took over, as the Minister rightly said, they had a deficit of Kshs300 million. Today, according to this report, we are talking about Kshs1.2 billion. I am just curious. Does that mean that now that there is money at the KEBS they want to get hold of the money and do the usual?

*(Mr. C. Kilonzo laid the document on the Table)*

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

**Mr. Speaker:** Order, Mr. Ruto! The Minister will respond and then we will do another round of three.

**The Minister for Industrialization** (Mr. Kosgey): Mr. Speaker, Sir, hon. C. Kilonzo has raised an issue regarding who the current MD of KEBS is. For the time being, Eng. Mang'eli is the MD of KEBS. However, we are consulting and we have legal issues to look at before we take further action. With respect to public interest, I said that I am not privy to what public interest matters were contained in the letter of Amb. Muthaura. As you know, the Government has various sources of information and unless I am told exactly what public interest led to that letter being written, I would not know.

The letter from the Prime Minister's Office, which has been laid on the Table, and which has already been read by Mr. Mungatana, directed that the MD and the Chairman's contracts should not be renewed. I have not received it; it was probably addressed to my PS, but was not copied to me. I have not been made aware of it. I do not think that there is anyone who is trying to intimidate me. I cannot be intimidated by anyone. However,

we will work as a team. If anyone has any information that we can use, of course, we will use it to renew or terminate the contract. There is nobody who is not dispensable.

Hon. Midiwo talked about complaints from the Kenya Association of Manufacturers (KAM) and from the US Ambassador. I am not aware about the complaints from the US Ambassador. However, I am aware of the complaints from the KAM and the Kenya Private Sector Alliance (KEPSA). We have had occasion to discuss these issues. We have also held round table meetings with the Prime Minister to discuss aspects of substandard goods and counterfeit goods coming into the country. Allow me to explain this.

A counterfeit is a product item which looks exactly the same as the genuine product. In other words, if I may use examples – I have a problem with biro pens – if someone else was to manufacture this biro pen and label it “BIC” then that would be a counterfeit. However, if someone came up with a different item and called it a pen, that would be a different item and it would be substandard item. So, there is a difference between a counterfeit item, which pretends to be the original item and a substandard item. In this country, we have to deal with counterfeit and substandard batteries. There is a difference between counterfeit and substandard batteries. We have held meetings with the KAM and the KEPSA, so that they can deal with these issues of counterfeit and substandard items. This is an ongoing war. The Kenyan border is porous and one individual cannot be the policeman of each and every item that comes into the country. We have other Government agencies, including the Kenya Revenue Authority (KRA), which are the main entities that deal with entry of goods.

I am aware that there is an existing problem, and when we moved the Anti-Counterfeit Act, when it was still a Bill, we said that we would set up a body, so that it could address the issue of counterfeits in this country. We are in the process of setting up that body and it will be fully in charge of addressing the issue of counterfeit items.

Mr. C. Kilonzo talked about orders from above and advice from the council. Who gives orders from above? That belongs to the past.

*(Applause)*

What we do is consult. Consultations take place, particularly in this Grand Coalition Government. I am not privy to the consultations. I take advice from the council. I also take advice from individuals and hon. Members.

**Mr. Abdiraham:** Thank you, Mr. Speaker, Sir. I want to thank the Minister for his very good response that has shed a lot of light on what is happening. It is going to be unfortunate if individuals heading parastatals will be removed just because someone does not want their presence, or because of some matters which Ministers are not privy to, including this one. There are institutions including the Inspectorate of State Corporations that deal with parastatals. This is not a security matter. Many times we hear people telling us of security matters; that they are not supposed to be known to many people. We want to know, as interested Kenyans and as leaders, if there is any information that touches on the KEBS from any Government institution, including the Inspectorate of State Corporations that mentions adversely this MD, so that we do not set bad precedents in this country? We would like people to work and meet their targets.



**Mr. Wamalwa:** Mr. Speaker, Sir, Kenya is supposed to be a country that embraces the rule of law. The law is supreme and not the whims of an individual. Mr. Minister, what are you intending to do to ensure that the obvious interference that has been there in your Ministry and the usurpation of your powers, powers bestowed upon you by an Act, is not repeated? What are you doing about it?

**Mr. Kioni:** On a point of order, Mr. Speaker, Sir. The first paragraph of the letter that was tabled by hon. Mungatana reads: "The Government has received various complaints from the Kenya Association of Manufacturers, the Kenya Private Sector Alliance (KEPSA), the Public Procurement Oversight Authority (PPOA) and the Administration Review Board." There was a whipping on behalf of the American Ambassador by one of the Whips. I would like the Minister to tell the House when he met those Boards? Was it before or after the evaluation? Were the complaints from the Office of the Prime Minister of the magnitude to warrant the disregard of the law? Were they of the magnitude to warrant the instructions to dismiss the Managing Director?

**Mr. Speaker:** Hon. Members, it must end there. Minister, will you, please, make your responses?

**Mr. Ruto:** On a point of order, Mr. Speaker, Sir. The hon. Member has alluded to an involvement by a foreign envoy. Indeed, hon. Midiwo leaned quite heavily along that line. It is now in our minds and on record in the HANSARD. Standing Order No.82(1) puts the responsibility of giving the House the facts on the Member who has made the allegation. Am I in order to request you to ask hon. Midiwo to lay on the Table the documents that can prove what he has said? It is these side shows and intrigues that are actually interfering with the smooth running of our institutions.

Would I be in order to ask the Chair to ask hon. Midiwo to prove the accuracy of his allegations under Standing Order No.82(1)? He is responsible for the accuracy of any facts which he alleges.

**Mr. Speaker:** Order, hon. Members! Hon. Ruto is in order because we are still on this subject. So, hon. Midiwo, can you, please, substantiate your claim?

**Mr. Midiwo:** Mr. Speaker, Sir, I am perplexed by the trivializing of this very big issue.

**Hon. Members:** No!

**Mr. Midiwo:** Mr. Speaker, Sir, I asked the Minister for clarification on a matter that is out there in the media.

**Dr. Khalwale:** We do not know!

**Mr. Midiwo:** You do not have to know! Mr. Speaker, Sir, I asked the Minister just to clarify whether the Ambassador acted on behalf of the American investors in the country. How could that be out of order?

**Mr. Speaker:** Order, hon. Midiwo! Indeed, I let that pass and the Minister made a response to the effect that he is not aware. If he is not aware, then the burden still rests with you to substantiate that allegation.

**Mr. Thuo:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order! Hon. Midiwo will have to respond!

**Mr. Midiwo:** Mr. Speaker, Sir, I was not providing the information. I was seeking clarification and I think the difference is as clear. I never made a statement of fact.

**Mr. Speaker:** Order! Then from what you say, you are unable to substantiate. But you are saying that you are seeking to have confirmation from the Minister. In other words, you are looking for information.

**Mr. Midiwo:** Exactly!

**Mr. Speaker:** Now that you are unable to substantiate, and the Minister says that he is not aware, can you then withdraw that assertion?

**Mr. Midiwo:** Mr. Speaker, Sir, I think you are taking this the wrong way, kindly. Because---

**Mr. Speaker:** Order, hon. Midiwo! Hon. Midiwo, this matter has gone on record in the HANSARD. If you want to insist that the assertions that you made are valid; that you did not make any assertion, then I will leave the matter there. But I will want to verify from the HANSARD what the record exactly is and, depending on that verification, I will be under compulsion to take appropriate action as I will deem necessary.

**Mr. Midiwo:** Mr. Speaker, Sir, I have no problem with that. I am clear about what I said.

**Mr. Speaker:** Fair enough! That is what I will do.

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

Order, hon. Members! I have made a finding on that matter which, I believe, accords with our Standing Orders. If a Member makes a claim that the observation of the Chair does not reflect the statement that he made, then it is incumbent upon the Chair to verify the HANSARD record. We have plenty of precedents on that in this House. So, I will want to give myself the benefit of verifying the HANSARD record and dealing with the matter thereafter. The consequences will just be as severe as they would have been now.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. I agree with you on the need to re-confirm from the HANSARD. But what is concerning Members is what he has just pronounced; that he disagrees with you. As you ponder over this, you should be directed by the fact that you are our Chair, your past notwithstanding. Given that it is only last week when you made a monumental ruling in this House and the Vice-President and Minister for Home Affairs was out there speaking in a manner that we all know he did, it is important that you direct us whether, when we are out of this House, we should not also accord you the same respect that we accord you when you are in the Chair.

**The Minister for Environment and Mineral Resources (Mr. Michuki):** On a point of order, Mr. Speaker, Sir. I wish to seek your guidance. As clarification was being sought from the Minister, hon. Wamalwa stood up and said, and I will paraphrase his statement: "Kenya is supposed to be governed under the rule of law." For the sake of our records, is Kenya supposed to be governed under the rule of law or it is a fact that Kenya is governed under the rule of law?

**Mr. K. Kilonzo:** On a point of order, Mr. Speaker, Sir. It is quite unfortunate that the Government's side has decided not to show respect to the Chair. It is just the other day that, after you made a ruling on a matter in this House, none other than the Vice-President and Minister for Home Affairs criticized your ruling outside this House. Today, again, the Chief Whip, who is now the Leader of Government Business, has answered

you in a disrespectful way. This is setting a very bad precedent to the Members of Parliament and, more so, to the Back Benchers. We are seeing Ministers and Chief Whips disrespecting the Chair. As you make your ruling, I want you to give a ruling which will deter further disrespect to the Chair.

**Mr. Speaker:** Hon. Midiwo, do you have anything further to say?

**Mr. Midiwo:** Mr. Speaker, Sir, I just wanted to say that, if I may have said anything that is causing all this fury, I withdraw it. I withdraw that particular one which is irking hon. K. Kilonzo because he is jittery about something else. He is trying to further his tribal interests.

**Mr. Ruto:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order! Order! Hon. Members, I can deal with some of the points that you have raised summarily.

With regard to the matter raised by Mr. Michuki, the Minister for Environment and Mineral Resources, it is clear that this country is governed in accordance with the doctrine of the rule of law. There is no doubt about that. However, what Mr. Wamalwa alluded to was that given the facts which the Minister for Industrialization has disclosed, could we really say that this Government is upholding the rule of law? So, he was not doubting that the rule of law applies in this country. However, he says that where the rule of law applies, these kind of incidences ought not to have arisen. I think that is the point the hon. Member was making.

*(Applause)*

With regard to Mr. Midiwo's position, I still insist that I will verify from the HANSARD what that the hon. Member has said. In making my finding and giving directions on that matter, I will take into account whether or not he had any valid basis to disagree with the Chair. If he is keeping those words, obviously, he will have to live with the consequences. I can assure you that your Chair will remain firm and fearless. I do not see that I am under obligation to favour anybody. That is how I will proceed.

Hon. Members, with regard to the comments by the Vice-President and Minister for Home Affairs elsewhere, I was faced with those comments and the best that I could do and say was that I have endeavoured to live within my oath of office. His Excellency the Vice-President and Minister for Home Affairs was entitled to his opinion, which is personal. I stand by that position. I just want to reiterate to all hon. Members that I have made directions on this matter before as to what hon. Members ought to do in respect of the business which is pending and is before the House. Those of you who are straying from the rule of thumb, we will deal with you, again, fearlessly. That includes the Vice-President and Minister for Home Affairs, Ministers, Assistant Ministers and all Members of Parliament. That also includes the Minister for Justice, National Cohesion and Constitutional Affairs. That will remain the position. Hon. Members just watch this space!

Mr. Minister, you may respond now!

**The Minister for Industrialization** (Mr. Kosgey): Thank you, Mr. Speaker, Sir. Mr. Abdirahman has asked whether this is a security matter or not. Since I do not know which public interest is in this case, I cannot say whether or not it is a security matter.

Mr. Wamalwa also asked about what I will do now that my powers have been whittled down or usurped. There is really not much you can do because we do not have absolute powers. However, I can always do public relations to make sure that my powers are restored.

I am not aware whether there was any whipping of anybody. I do not know whether the complaints were of a magnitude to warrant drastic action being taken. The word "magnitude" is a subjective word. Somebody can do something and get away with it while another one will do half of that and not get away with it. So, that is a subjective word. I cannot say that the nature of the complaints was of this magnitude or grave to the extent that action had to be taken.

**Mr. Speaker:** Yes, Hon. Leshomo!

## POINT OF ORDER

### INSECURITY IN SAMBURU DISTRICT

**Ms. Leshomo:** Bw. Spika, ninaomba Taarifa kutoka kwa Waziri wa Utawala wa Mikoa na Usalama wa Ndani kuhusu vita vilivyotokea jana huko Samburu. Waziri anaweza kutuambia ni watu wangapi, waliopata majeraha na ni ng'ombe wangapi waliokufa jana? Pia, anaweza kujulisha Bunge hili wale waliohusika walitoka upande gani? Ni hatua gani Waziri atachukua kuhakikisha kwamba usalama unapatikana huko Samburu? Hakuna kitu kibaya kama mauaji yaliyotokea jana kule Samburu.

Pia, Waziri anaweza kuliambia Bunge watoto na akina mama walikuwa na hatia gani ili wau awe kama wanyama? Tunaongea mambo yanayohusu usalama katika Bunge kila wakati lakini hatuoni hatua zikichukuliwa za kuwasaidia Wakenya kupunguza hali ya ukosefu wa usalama, hasa katika Samburu. Kama Waziri angekuwa hapa ningemuomba atoe Taarifa ya kweli ambayo inaweza kusikika na Wakenya wote.

**Mr. Speaker:** Order! Is that the end of Ministerial requests?

The Minister of State for Provincial Administration and Internal Security, when will this Statement be ready?

**The Minister of State for Public Service (Mr. Otieno):** Mr. Speaker, Sir, on Wednesday, next week.

**Mr. Thuo:** On a point of order, Mr. Speaker, Sir. I had sought your permission to issue a Personal Statement under Standing Order No.76.

**Mr. Speaker:** You can proceed. That is not a request but a Personal Statement.

## PERSONAL STATEMENT

### ALLEGED SECRET MEETINGS OVER MAU FOREST/JUSTICE RINGERA ISSUES

**Mr. Thuo:** Mr. Speaker, Sir, I rise to issue a Personal Statement in respect to allegations of meetings that did occur yesterday where purported deals were struck between Mau and Ringera issues.

Mr. Speaker, Sir, I was party to a meeting that was held yesterday at the Boulevard Hotel, at 8.30 a.m. I have permission from my colleagues to say that the

meeting was attended by Mr. Robinson Githae, Mr. Nemesyus Warugongo, Eng. Ephraim Maina, Mr. David Ngugi, Mr. Erastus Mureithi, Mr. Jeremiah Kioni, Mr. Uhuru Kenyatta, Mr. Kathuri Emilio, Mr. M'Mithiaru, Mr. Ruteere, Mr. Mbiuki, Mr. Mwiru, Mr. Muriithi Nderitu, Mr. Mututho, Mr. Kiuna, Mr. Gaichuhie, Mr. Dick Wathika, Mr. Simon Mbugua, Mrs. Beth Mugo, Mr. Peter Mwathi and Mr. Linturi. We had 13 apologies.

Mr. Speaker, Sir, at these meetings we discussed many issues. I want to clarify that at the end of the meeting, I was requested to issue a Press Statement which I did. In that statement, I stated and wish to confirm here today that the item that took most time was to do with Internally Displaced Persons (IDPs). Indeed, the Ministers who were present were mandated and tasked to actually go and make representation for the faster resettlement of the IDPs.

Mr. Speaker, Sir, we discussed many other issues, including drugs and alcohol. It is, therefore, not right to purport or state that this was about making deals. I was there throughout, and at no time did I hear discussion on any deal to do with Mau or Ringera.

As I conclude, I wish to state that yesterday I was present in this House when the question of the matter of Mau was put to vote. I may be wrong, but my memory tells me that it was carried by this House unanimously, suggesting, therefore, that any small grouping could not have been responsible for an entire House voting on a matter unanimously.

Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Order! Next Order!

*[Mr. Speaker left the Chair]*

*(Mr. Deputy Speaker took the Chair)*

## PROCEDURAL MOTION

### EXTENSION OF SITTING TIME

**Mr. Midiwo:** Mr. Speaker, Sir, I beg to move the following procedural Motion:-

THAT, notwithstanding the provisions of Standing Order 20(2) this House resolves that the adjournment time of today's sitting be extended from 6.30 p.m. until the business appearing on the Order Paper is concluded.

Mr. Speaker, Sir, we are moving this Motion because we want to deal with the Appropriation Bill. We also want to finish with the report of the Committee on Delegated Legislation and thereafter we propose that we deal with the adjournment Motion.

With those few remarks, I beg to move.

Mr. Thuo seconded.

*(Question proposed)*

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, since this is purely a Procedural Motion, I would like to support it. However, we are very cautious as Members of the Backbench. Much as we are given the impression that the sole intention is to make sure that we finish this urgent business, which we all support that it should be resolved, we are worried that in the recent past, there has been a lot of deal cutting, under-hand activities, backroom consultations and so on. We are hoping that nobody is scheming to ambush us.

With those few remarks, I beg to support.

*(Question put and agreed to)*

### MOTION

#### ADOPTION OF REPORT ON REAPPOINTMENT OF KACC DIRECTOR/ASSISTANTS

THAT, this House adopts the Report of the joint sittings of the Departmental Committees on Justice and Legal Affairs and the Committee on Delegated Legislation on the appointment of the Director and two Assistant Directors of the Kenya Anti-Corruption Commission laid on the Table of the House on Tuesday, 8th September, 2009.

*(Ms. A. Abdalla on 15.9.2009)*

*(Resumption of Debate interrupted on 15.9.2009)*

**Ms. A. Abdalla:** Mr. Deputy Speaker, Sir, I wish to continue from where I left yesterday when I was moving this Motion on the adoption of the Report of the joint Committees on Justice and Legal Affairs and the Committee on Delegated Legislation.

Mr. Deputy Speaker, Sir, yesterday, I alluded to Standing Order No.198 from which the Committee on Justice and Legal Affairs derives its mandate and Standing Order No.197 from which the Committee on Delegated Legislation derives its mandate. I was then going ahead to give reasons why the Committees decided to have a joint meeting which is basically because the Committee on Justice and Legal affairs is the Committee that deals with the Kenya Anti Corruption Commission (KACC) while the gazette notice on which the appointments were made were deemed to be subsidiary legislation. So, the Committee decided----

*(Loud consultations)*

**Dr. Nuh:** On a point of order, Mr. Deputy Speaker, Sir.

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

What is your point of order, Dr. Nuh!

**Dr. Nuh:** Mr. Deputy Speaker, Sir, I just want to draw your attention to the fact there is so much loud consultations. We are unable to hear the Member on the Floor.

**Mr. Deputy Speaker:** Order! Hon. Members, you need to consult in very low tones so that the hon. Member is heard.

**Ms. A. Abdalla:** Mr. Deputy Speaker, Sir, I was explaining why the two Committees opted to use the provisions of Standing Order No.185 to hold joint meetings. The Committees held two meetings. The following Members of the two Committees attended these meetings. There are: Hon. A. Abdalla, Chair for Delegated Legislation, Hon. Abdikadir Mohamed, Chair, Department Committee on Administration of Justice and Legal Affairs, hon. Milie Odhiambo, hon. George Nyamwea, hon. Olago Alouch, hon. I. Ruto, hon. Sohia Abdi Noor, hon. Philip Kaloki, hon. Mutava Musyimi, hon. Abwabu Namwamba, hon. Peter Njoroge Baiya, hon. Gitobu Imanyara, hon. K. Kilonzo, hon. Fahim Twaha, hon. Dr. J. Kones and hon. Muturi Mwangi.

Mr. Deputy Speaker, Sir, you will note that the Members are 16 instead of 20 because four Members serve in both of the Committees.

From the onset, I wish to thank the Office of the Speaker and that of the Clerk of the National Assembly for the support extended to the two Committees.

*(Loud consultations)*

**Mr. Deputy Speaker:** Order hon. Members! The hon. Member is supposed to be heard. Order, Dr. Mwiria!

Proceed, Ms. A. Abdalla!

**Ms. A. Abdalla:** Mr. Deputy Speaker, Sir, finally, it is my pleasant duty and privilege on behalf of the two Committees to present and commend this report to the House for adoption.

The attention of the two Committees was drawn to Gazette Notice, Volume 61, No.77, 93900 and 9301 which was laid on the Table of the House on 3<sup>rd</sup> September, 2009 by the hon. Ruto, Member of Parliament for Chepalungu. The two gazette notices were on the reappointment of the Directors and two Assistant Directors of the KACC.

Mr. Deputy Speaker, Sir, the two Committees then held two meetings where they were able to hear oral presentations from the Minister for Justice, National Cohesion and Constitutional Affairs. The Committees also received and considered written memoranda from the International Commission of Jurists, Kenya Section and the Law Society of Kenya. Upon deliberation and consideration of the presentations, the Committees found as follows. One, that the procedure for the appointment of the Director and Assistant Directors of the KACC is set out in Section 8(3)(4)(5) of the Anti-Corruption and Economic Crimes Act, Act No.3 of 2003 and Paragraph 3 subsection (1)(2) of the First Schedule of the same Act.

Mr. Deputy Speaker, Sir, for the avoidance of doubt by the Members who might not have read this report, I wish to take this opportunity to read the content of Section 8(3). It says:-

“The Director and Assistant Directors shall be persons recommended by the Advisory Board and approved by the National Assembly for appointment to their respective positions”.

(4) “On the approval of a person by the National Assembly under Subsection (3) the President shall appoint the person concerned to the office in respect of which the approval was given”.

Sub clause 5 states that the terms and conditions of service for the Director and Assistant Director shall be determined by the Advisory Board.

Mr. Deputy Speaker, Sir, Paragraph 3(1) states that the term of office of the Director or Assistant Director shall be five years provided that an Assistant Director may be appointed for a minimum of four years to avoid having the Assistant Director's term expiring around the same time as that of the Director. Two, a person who has held the Office of the Director and Assistant Director may be reappointed, but may not serve as Director for more than two terms or as an Assistant Director.

Mr. Deputy Speaker, Sir, having been a Member of the Ninth Parliament, I wish to confirm that the procedures laid out in Section 8(3) and (4) were followed in the initial appointments of the Director and Assistant Directors. In fact, the same procedures were again recently followed in the reappointment and appointments of two Assistant Directors. In fact, one of the serving Assistant Directors, Dr. Mutonyi, served a full term of four years which came to an end in June, 2008, and was reappointed for a second term by the President after the Kenya Anti-Corruption Commission (KACC) Advisory Board recommended him and the National Assembly approved him.

Mr. Deputy Speaker, Sir, the question the Committees then asked was whether the procedures as stipulated in Section 8 were followed in the present reappointments. The Committees, therefore, found out that the procedures were not followed in making the reappointments. It was noted that the wording of the Gazette Notice referred to Section 8 (3) and (4) of the Act, implying that those appointments were made on the recommendation of the KACC Advisory Board and the approval of the House, an impression the Committees found erroneous.

Indeed, Mr. Deputy Speaker, Sir, the Committees received a letter dated 2<sup>nd</sup> September, 2009, from the KACC Advisory Board which stated and I quote:-

“These appointments were done in complete disregard of the Anti-Corruption and Economic Crimes Act, Sections 3 and 4 that state that the Assistant Director and Director shall be persons recommended by the KACC Advisory Board and approved by the National Assembly”

Mr. Deputy Speaker, Sir, the KACC Advisory Board goes further to ask the Committees, and I quote:-

“We wish to make a special appeal to your Committee to do all that is possible to nullify these appointments to preserve the integrity and independence of the Commission and the role given to the President and to Parliament under this Act.”

*(Applause)*

Mr. Deputy Speaker, Sir, we then had submissions from the Minister for Justice, National Cohesion and Constitutional Affairs telling the Committees that the President did not require to seek the recommendation of the Advisory Board or the National Assembly because the persons concerned had undergone a similar initial appointment and they were already vetted. According to the Minister, under the First Schedule, Section 3(2), there was no need to follow the procedure as stipulated by Section 8(3) and (4) and that the precedence that had been set by the reappointment of Dr. Mutonyi could not be used as precedence. Having considered the presentations by the Minister, the Committees considered and rejected his presentation and affirmed that Paragraph 3(2) could not be read in isolation of the main body of the statute, especially Section 8(3) and (4).



Mr. Deputy Speaker, Sir, the Committees, therefore, concluded that if Paragraph 3 of the Annex was read on its own, it did not also state that there will be a different methodology to be used for the reappointments of the Director and Assistant Directors. In fact, the Committees went further to look through Section 51 of the Interpretation and General Provisions Act, which provides as follows. Section 51(1):-

“Where, or under a written law, a power or duty is conferred or imposed upon a person to make an appointment or to constitute or establish a board, commission, committee or similar body, then unless a contrary intention appears, the person having that power or duty shall also have the power to remove, suspend, dismiss or revoke the appointment of and to reappoint or reinstate a person appointed in the exercise of the power or duty or to revoke the appointment, constitution or establishment of or dissolve a board, commission, committee or similar body appointed, constituted or established in exercise of the power or duty and to reappoint, reconstitute or re-establish it.”

Mr. Deputy Speaker, Sir, Section 1 and Paragraph 3 of the Schedule is what has been used to justify the reappointment under that paragraph. But Section 51(2) provides a proviso that I wish to read to the House. It reads:-

“Where the power or duty of a person under this section is exercisable only upon the recommendation, or is subject to the approval or consent, of another person, then the powers shall, unless a contrary intention appears, be exercisable only upon that recommendation or subject to the approval or consent”

Mr. Deputy Speaker, Sir, the Committees felt that since Paragraph 3 of the First Schedule does not provide for a different procedure for reappointment, as such, the appointing authority is bound by the expression of the Anti-Corruption and Economic Crimes Act as reinforced by Section 51(2) of Cap.2 that I have quoted.

*(Applause)*

Mr. Deputy Speaker, Sir, the other area that the Committees looked into was whether the President was exercising his Executive prerogative of appointment as stipulated in the Constitution. In fact, the Committees looked and examined the said Section 24 of the Constitution and the power of appointment that the section gives to the President. It was clear that even appointments under this section are subject to the Constitution and any other law.

Mr. Deputy Speaker, Sir, I wish to read to the House Section 24, which states as follows:-

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

It was the view of the Committees that in these circumstances, the “any other law” referred to in the Constitution is the Anti-Corruption and Economic Crimes Act that sets out the process of appointments. So, the issue of whether it was the Executive prerogative was also dealt with.

Fourthly and finally, Mr. Deputy Speaker, Sir, the Committee dealt with the issue of whether the Gazette Notice was a subsidiary legislation.

We note that Standing Order No.197 makes reference to subsidiary legislation without specifically defining the same. In fact, subsidiary legislation in our Standing

Orders is interchangeably used with delegated legislation. In the absence of such a definition, we again went to the Interpretation and General Provisions Act to get a definition of subsidiary legislation, and I read:-

“Subsidiary legislation is 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 a bylaw”

and, in bold:-

**“notice, order, proclamation, regulation, rule, rule of court or other instrument”.**

From the above, the Committee concluded that the Gazette Notices 9300 and 9301 are subsidiary legislations because the notices were issued by the President in exercise of the power conferred by an Act of Parliament which is the Anti-Corruption and Economic Crimes Act. As such, the notices fall within the mandate of the Committee on Delegated Legislation and are liable for recommendation for annulment under Standing Order No.197(4).

Mr. Deputy Speaker, Sir, in fact, the Committee felt very strongly that a Parliament that has the power to amend the Constitution, enact statutes and annul rules and regulations should not be questioned on the power to annul a mere Gazette Notice, especially if it is published in disregard of the enabling law.

In conclusion, the Committee felt that the appointment as stipulated in Gazette Notice Vol. 61 No.77 and Gazette Notices 9300 and 9301 were made under Section 8(4) of the Anti-Corruption and Economics Crime Act and Regulation 3(2) of the First Schedule of the Act. It is the view of the Committee that in making the re-appointment, the President did not follow the procedures set out in the relevant law and as such the appointments are unprocedural.

The approval that Parliament gave in 2004 when the Director and his Assistants were appointed lapsed with the expiry of their first contract. As such, the Committee expected the President to come back to Parliament to seek new approval for the new appointments. With those conclusions, the Committee recommends as follows:-

- (a) The House resolves that the reappointment of the Director and the Assistant Directors of the KACC as contained in Gazette Notice Vol.61, No.77, Gazette Notices.9300 and 9301 respectively was not done in accordance with the procedures set out in Section 8(3) and Section 8(4) of the Anti-Corruption and Economics Crime Act, 2003 as read together with Paragraph 3(2) of the First Schedule to the Act.
- (b) The Joint Committee hereby urges this House to resolve that the Gazette Notices 9300 and 9301 containing Gazette Notices Vol. 61, No. 77 be annulled.
- (c) The Committee urges that due process of the law be followed in the appointment of the Director and the Assistant Directors respectively.

Mr. Deputy Speaker, Sir, having read the Report of the Committee, I wish to make a few statements that will clear the issues that were not addressed by the Committee and which have been used to justify the different positions held on this matter. Right from the outset, I would like to declare that the matters raised in this Report are issues of complying with legislation. They are issues as to whether this House wants to continue legislating in vain. That is looking at the procedures that were used in the appointments; whether they were right or wrong.

I wish to address the areas where people have made emotional contributions that are not part of this Report. I am sorry that I have been mentioning the Minister for Justice, National Cohesion and Constitutional Affairs a lot because he has been the general in diverting the true attention of what we are addressing.

First, we need to determine whether Ringera is competent or not. Even if Ringera was the most competent of the Chief Executive Officers, for example, if he was the Michael Joseph of the public sector who has made his institution very profitable, if the procedures of appointing him were wrong, then this Report should be voted for. For those who are against Ringera and have said that he is incompetent--- I would like to note that maybe many of us have not worked in situations where our performance is appraised by the person who has appointed us. You can only judge somebody's competence by looking at the performance indicators that he had signed with his employer. So, if you advance an argument that we will vote for this Report because Ringera is incompetent and has not been able to prosecute enough people, then that is the wrong argument. This is because the performance indicator for prosecution is one that we should use to judge the Attorney-General. In the same vein, Mr. M. Kilonzo has said that Ringera is competent because the Reports from the Kenya Anti-Corruption Commission (KACC) say so. The Reports are not the basis of performance appraisals. We know that performance appraisals are personal target-based appraisals for somebody's performance.

The other element that has been used to judge whether this annulment should go on or not is whether Ringera earns a lot of money. I wish to be protected from Mr. Michuki because the Minister for Justice, National Cohesion and Constitutional Affairs, Mr. M. Kilonzo, said in a statement that was recorded by the media that those of us who are supporting the annulment are doing so because we want our relatives to get Ringera's job. So, I must address those issues, Mr. Michuki.

Mr. M. Kilonzo said that those of us who are against the re-appointments are doing so because we want our relatives to get these well-paying jobs. For a person who is the most highly public servant, the standards of his appointment must be higher than any other, but because of the sensitive nature of the job that the retired Judge holds, even if his salary was a minimal wage, we would still have the right to question the procedure of his re-appointment. Therefore, I am raising these issues so that we can deal with institutional strengthening and not the individuals holding that office or the amount of money they earn at the end of the day.

Mr. Deputy Speaker, Sir, the Vice-President and Minister for Home Affairs did a great disservice to this argument when he questioned the ruling by the Speaker. He said, "Look at the Chairpersons of the Committees spearheading this matter." I take great offence in that statement. In looking at the Chairpersons, he was actually questioning our loyalty. I wish to remind him that I am a nominated Member of Parliament from KANU and Mr. Abdikadir is the Chair of Safina. Those are two parties that are the original signatories to the Party of National Unity (PNU) Coalition. So, if it is a matter of loyalty, we should ask him to tell us why when we went round this country to campaign for Mwai Kibaki to be President, he was campaigning for himself thereby chasing away Mr. Kibaki's voters. This is not a matter of loyalty but a matter of dealing with the issues at hand.

The mistake does not lie in the test of loyalty within the PNU. Our colleagues in ODM this weekend went to their region and stated that this is a fight, that they will use

their numerical strength to teach Mwai Kibaki a lesson. This is the first annulment that this Committee has called for. If you think that it is a matter of numerical strength---

**Mr. Kioni:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order, Ms. A. Abdalla! What is your point of order, Mr. Kioni?

**Mr. Kioni:** Mr. Deputy Speaker, Sir, I rise on a point of order---

**Hon. Members:** Under what Standing Order?

**Mr. Kioni:** I will name the Standing Order plus the subsection.

Mr. Deputy Speaker, Sir, page three of this Report that is being presented by this Committee states that the Committee held two meetings and the minutes are appended on to the Report.

Mr. Deputy Speaker, Sir, Standing Order No.181(3) reads as follows:-

“A report of a select committee, together with the minutes of the proceedings of the Committee, and with such notes or record of any evidence by the Committee, as the Committee may deem fit, shall be laid on the Table of the House by the Chairperson of the Select Committee---

This Report does not have minutes. For that reason, this Report is incomplete. It is not proper for this House to debate a Report that is incomplete, and which is completely against the Standing Orders of this House. We are talking about the rule of law. We must be guided by our own rules.

Secondly, the Report that we are discussing talks about appointment. The *Kenya Gazette* Notice talks about re-appointment. This Report is not the Report that we are supposed to be discussing. Even the Motion that we have is different.

Thank you, Mr. Deputy Speaker, Sir.

**Ms. A. Abdalla:** Mr. Deputy Speaker, Sir, I wish to respond to the points of order raised by the Member of Parliament for Ndaragwa. Firstly, he said that the Gazette Notice reads “Re-appointment”. I think he does not have a copy of the Gazette Notice, because the top reads “Appointment”. The inside part of it is what talks about “Re-appointment”. In fact, I wish to urge hon. Members that we have already discussed most of the issues they may want to raise here.

On the issue of the minutes, the Report that was laid on the Table of this House did have minutes. The one that I currently have has minutes of one of the meetings.

So, I wish to go back to the issue of whether this debate is about---

**Mr. Kioni:** On a point of order, Mr. Deputy Speaker, Sir. The Report that I have, which is the Report that most hon. Members have, does not have the minutes. So, we have no evidence that the recommendations contained in this Report actually took place in the meetings of the Committee. Certainly, persons could easily have come up with them.

Secondly, our Standing Orders also talk of signing of the minutes. The minutes that are appended to this Report are not signed.

**Mr. Olago:** On a point of order, Mr. Deputy Speaker, Sir. With all due respect to Hon. Kioni, I believe that the issues he is raising now are issues that should be raised during the debate on this Report because the Report has already been tabled. The Standing Order does not say that the copies to be given to hon. Members must have the minutes appended to them. What must have the minutes appended to is the copy of the

Report that is tabled here. If Hon. Kioni does not have a copy of the minutes, he should check in Room 8, and not on the Floor of the House.

**Mr. Mungatana:** On a point of order, Mr. Deputy Speaker, Sir. I want to bring to the attention of the Chair the fact that the hon. Member who is trying to interrupt the moving of the Motion is in breach of Standing Order No.25. You cannot interrupt debate at the point where the Mover is on the Floor. If there is a wish to adjourn this debate to a further date, a dilatory Motion must be moved in accordance with the provisions of Standing Order No.25. That stage has not been reached. Therefore, I urge you to find that we cannot interrupt this debate at this stage. It is premature. If they wish to move---

**Mr. Deputy Speaker:** What Standing Order are you referring to?

**Mr. Mungatana:** Mr. Deputy Speaking Speaker, Sir, I am quoting Standing Order No.25.

**Mr. Deputy Speaker:** What paragraph of Standing Order No.25?

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, Standing Order No.25(1), (2), (3) and (4) deal with the same issue of dilatory Motions. If the hon. Member wishes to interrupt--

**Mr. Deputy Speaker:** Order, Mr. Mungatana! I do not think the hon. Member is seeking the adjournment of the debate itself. He is questioning whether the right procedure has been used in tabling the Report. This is a matter for the Chair to rule on.

**The Minister for Nairobi Metropolitan Development (Mr. Githae):** On a point of order, Mr. Speaker, Sir. In view of the fact that the Member of Parliament for Ndaragwa, Mr. Jeremiah Kioni, has raised very serious issues, that the Report that was laid on the Table of the House may not have contained the minutes, and that the Report talks of appointment whereas the Gazette Notice talks of re-appointment, as we wait to get the Report that was tabled, I request that we move to the next Order, pending verification.

**Hon. Members:** No! No!

**Mr. Deputy Speaker:** Order! Order, hon. Members! Mr. Kioni, the Report that I have does have minutes. In any case, we will allow the Mover to move and be seconded, and then you can raise the issues that you feel are pertinent.

**Ms. A. Abdalla:** Thank you, Mr. Deputy Speaker, Sir. He interrupted my trend of thoughts on the issue of whether this Report should be debated on the basis of numerical strength.

Mr. Deputy Speaker, Sir, one side might be having the numerical strength today because it is a person from the opposite side of the Grand Coalition that they think they will be fixing. However, if we are going to deal with this matter as a matter of ensuring that the rule of law is upheld, and that we do not legislate in vain, I wish to inform my colleagues from the ODM side that tomorrow, when we come here to annul Gazette Notices of the many appointments – in fact, there are five at this point – made by ODM Ministers that are in contravention of legislation, they will not then go back to their cocoons and make it an ODM/PNU fight.

So, as the Chairperson of the Committee on Delegated Legislation, I would like to urge that if hon. Members are voting on this matter, they should do so because there is a problem that we need to address. If you are going to vote for this matter because it is convenient for you, just note that we will be going on division for any debate on

annulment, so that we can record that you only use your numerical strength to make political scores.

Mr. Deputy Speaker, Sir, the last one is on what the Member of Parliament for Gem, Mr. Jakoyo Midiwo, said as his reason for opposing these appointments. Mr. Midiwo declared that the reason as to why he opposes the appointment of Justice Ringera was because the Prime Minister was not consulted. I wish to let him note that the Prime Minister is not party to the appointment process as per the law. Even if the Prime Minister was consulted, that would not make what was done unprocedurally become procedural. The Prime Minister is not a magician.

So, having mentioned the things that have been raised in this debate, I wish to urge the House to adopt this Report for the right reasons – that, we, as a House, would like not to legislate in vain, and that the procedures stipulated in the laws that we pass need to be followed. This is a matter of adhering to procedure, and is not about the side issues.

With those many remarks, I beg to move and ask hon. Abdikadir to second the Motion.

**Mr. Abdikadir:** Thank you, Mr. Deputy Speaker, Sir. I have the honour to second this Motion. I believe the hon. gracious lady has clearly laid down the legal basis for the appointments. There is absolutely no doubt that the appointments were contrary to statutes. The straw that the other side is hanging on in terms of disappointment is the re-appointment that is mentioned in the schedule.

I just want to point out that any schedule in any Act always has the ruling section and the top of that schedule. The ruling section for this schedule is Section 8. Section 8 is very clear on the appointment procedure.

Mr. Deputy Speaker, Sir, secondly, nowhere in the schedule does it talk about the President appointing anyone. It says one may be re-appointed. Nowhere does it say it is the President that appoints.

This issue is not about the President. It is not about the Executive. It is about this House. Today, this House has a date with destiny. As to whether as a House we will uphold the rule of law, or whether we will flounder on the altar of politics every time this nation requires leadership.

Mr. Deputy Speaker, Sir, the issue of Executive prerogative has been mentioned. We have been informed that this House wishes to take away powers from the Executive. No, this House has enough powers of its own without having to grab any powers from anybody.

On the issue of separation of powers, let me, first of all, say that as a fused system ourselves, we do not have a very clear system of separation of powers in this country, by law. The very fact that on the Front Bench are Members of the Executive who are also Members of Parliament; the very fact that the President and Prime Minister are elected Members of this House, that clearly shows that by law we do not have a system that is clear on separation of powers. We are closer to the system called fusion of powers.

Mr. Deputy Speaker, Sir, parliamentary systems of government have fusion of powers where the Executive resides in parliament. Then parliament is absolutely supreme. In terms of presidential system of government, you have very clear separation of powers where the Executive has very little to do with Parliament.

Even in presidential systems, parliament has a very critical role. In fact, the most clear presidential system, the American system of government, the Congress appears before the Executive in their constitution.

Mr. Deputy Speaker, Sir, on whether this House is taking over the work of the courts and whether it is only the courts that should interpret law, the Executive interprets law every day through tribunals. For example, the Law Society of Kenya or the Attorney-General Chambers has the disciplinary committee where matters are taken, adjudicated on and determined. That is not a court.

On issues of taxation, the Kenya Revenue Authority (KRA) and the Minister for Finance interpret the law.

On issues of immigration, the Minister for Immigration and immigration officers everywhere interpret the law. Regulatory authorities, every day, in this country interpret the law.

On the issue of whether Parliament can interpret the law, Parliament must interpret the law for itself because we cannot decide.

Now that we have been given a duty by a law, to shirk it and say: "Let the court go and interpret the law for us--- is wrong. Parliaments, sometimes, even become courts. The highest court in the United Kingdom is the House of Lords, the Upper Chamber of the House of Parliament. That might shock a few people, but it is true, that the Upper Chamber of the House of Lords in the United Kingdom is actually the highest court in the land where you go for appeals.

Mr. Deputy Speaker, Sir, in terms of the US Congress, in case we go to the other side which is the presidential system, the House of Senate turns itself into a court when the President is being impeached. The Chief Justice actually comes to sit in the Chair. The Chief Justice of the Supreme Court comes to Parliament and sits in the Speaker's Chair. The senate actually becomes the court.

These fears that we are creating that we are running amok is not true absolutely. This House has the role to interpret the law for itself. In fact, nobody else can interpret for it those laws. That is why we have Section 57 of the Constitution and a whole Act of Parliament that deals with privileges. That is why no court can interfere with the resolutions of this House. Litigants can litigate on issues of constitutionality of Bills and statutes passed by this House and the court can strike them down. That is their mandate. We, as a House, once the responsibility is given by this House to itself, we have to interpret for ourselves whether it is the Standing Orders or other Acts.

On the issue of the Kenya Anti-Corruption Commission (KACC), in 2003 after the glory of the NARC win, this Parliament decided to usher in a whole new way of doing things. That is what led to the bringing into force of this Act and the creation of the KACC.

The KACC is a creature of this House and is a special institution. It is not a department in the Ministry of Justice, National Cohesion and Constitutional Affairs. It is not a parastatal. It is a special institution for a special purpose. That is why in setting it up, Parliament went to great lengths to create systems special for that institution.

Mr. Deputy Speaker, Sir, it is exempt from a lot of the Acts that parastatals fall under. That is why we created special salaries for that institution. That is why the officers of that institution are employed in a different manner than those in the general Civil Service. The procedure is very clear. It is not Parliament that appoints those people.

The procedure is three-tiered. We have an institution called the Advisory Board. This is the who is who of the professional institutions in this country. Currently, the Chairman of the Law Society of Kenya serves on that board. The Chairperson of FIDA, Kenya, serves on that board. The Chief Executive of the Federation of Kenya Employees serves on that board. The KMA serves on that board. The who is who of all the institutions that we look up to as far as professionalism is concerned serve in that board.

These people are not busybodies. They are the ones to vet and recommend. In terms of re-appointment, they are the ones to appraise. It is not for the Minister of Justice, National Cohesion and Constitutional Affairs to appraise. In fact, the Minister appears nowhere in that chain. It is up to them to appraise and recommend to this House. The duty of this House is not subject to anyone. It is an original duty to this House; a legal duty to have a role in this process.

Mr. Deputy Speaker, Sir, if the advisory board comes to a Committee of this House and says: "We are of the view that the law was not followed and we need your assistance" what do we say? "Please, go to the courts, our hands are tied." No. This House must provide answers.

When there is an original duty on this House to play a role in that process, what do we say, that we will sit back and leave that role to go away so that the courts can interpret the law? The law is very clear. The view is not just for the Advisory Board. It is the same view of the LSK, the International Commission of Jurists, FIDA and any other serious institution that deals with the law. Unfortunately, it is not the view of the Minister for Justice, National Cohesion and Constitutional Affairs or the Attorney-General. We are not surprised as a Committee about those views. They are, however, a minority view.

Having come to that conclusion, the proposal from the Committee was intervention in two ways: one, was on the process of the Appropriations Bill. Two, was the issue of subsidiary legislation. A gazette notice is not a page from the Holy Bible or the Holy Quran. Where does it get its authority? Why does the Minister not just put a notice in any of the newspapers? In fact, newspapers have larger circulation. If it is just a matter of giving notice, why do you not do it in any of the newspapers? Why do you have to do it in the *Kenya Gazette*? Why? Because it has some force of law.

When the Gazette Notice is dealing with supplementary Bills, it is an instrument of law. That is where it gets its force. That law does not come from the Executive. It is subsidiary legislation. When that instrumentality uses powers conferred by this House through subsidiary legislation which is the gazette notice - a notice is very clear in the definition of Gazette Notice, irrespective of what you will be told, this is subsidiary legislation.

This House has primary responsibility of supervising subsidiary legislation. That is why we have a Committee of Parliament that has no other role other than supervision of subsidiary legislation. And yes, this House has the powers to annul. In fact, nobody has better powers to annul. Not even the courts!

Mr. Deputy Speaker, Sir, as far as the Appropriations Bill is concerned, in 1848 the Americans went to war with Mexico. This war is what led California, Arizona, Utah and many States in west to come to the United States of America (USA). One congress man from Pennsylvania had this amendment attached to the Appropriations Bill.

It read:-



“Providing that neither slavery nor involuntary servitude shall ever exist in any part of the said territory acquired from Mexico”

It famously came to be called the Wilmot Proviso. This was a war on Appropriations Bill which had very little to do with slavery. However, the hottest issue at hand at that time was slavery. This was parliament using Appropriations Bill to impact on policy. That is exactly what we are proposing. As a Committee we intend to use the Appropriations Bill to impact on this policy.

*(Applause)*

Mr. Deputy Speaker, Sir, it is absolutely in no doubt that this House has the absolute right to look at the Appropriations Bill and amend it. The Appropriations Bill is like any other Bill of Parliament. There is absolutely nothing special about it! The Deputy Prime Minister and Minister for Finance said today that any appropriation made will be made with the permission of this House. Credit to him! However, how can you even say that you cannot amend the Appropriations Bill? How can anybody say that you cannot nullify subsidiary legislation? This House can go further. This House, if it so wishes can actually---

**Mr. Deputy Speaker:** Order, Mr. Abdikadir! You are out of order! You are debating Order No.10 yet we are on Order No.9. The Appropriations Bill will come on its own. Right now, you are seconding the Motion that is brought by your Committee and the other Committee.

**Mr. Abdikadir:** Mr. Deputy Speaker, Sir, I was just showing the interventions that the Committee had decided. However, I will agree with your direction.

This country is undertaking a lot of reforms. These reforms have to bear fruits. The Kenya Anti-Corruption Commission (KACC) was part of the reforms introduced by the NARC Government. Parliament is right now a reformed institution. Parliament has a whole new set of Standing Orders. I beg that Ministers familiarize themselves with these Standing Orders. Parliament has a Financial Management Act in place. Parliament is free through the Parliamentary Service Commission (PSC). This is a reformed institution. It is time that Kenyans got the dividends of these reforms. If this reformed institution cannot uphold the rule of law--- This is about the rule of law. This country has to decide whether we will be under the rule of law or under the rule of man. If then this reformed institution cannot uphold the rule of law, then we are in a very dangerous institution. There will be no reason for going through all the other reforms we are talking about including reforming the Constitution.

I urge this House to adopt the Report. I beg to second.

*(Question proposed)*

**The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo):** Mr. Deputy Speaker, Sir, as I stand to oppose this Motion I want to highlight a number of things.

The first one is that the two Committees - I say this with complete respect and humility - have deliberately left out the single most important section of the Interpretation and General Provisions Act, Chapter 2. That is Section 34. I would like to ask hon.

Members to look at the Report very carefully and you will notice that the two Committees do not refer to that section either by reference or quotation or otherwise. It is important that we remove emotionalism of politics out of this debate. Section 34(1) of the Interpretation and General Provisions Act that the Committees are seeking to rely on reads as follows:-

“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 the rule or regulations be annulled, it shall henceforth be void, but without prejudice to the validity of anything previously done thereunder or to the making of any new rule or regulation.

(2) Subsection (1) shall not apply to rules or regulations of a draft 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”.

Mr. Deputy Speaker, Sir, Section 8 of the Act that is the substance of this debate is also a product of this House. Regulation 3(ii) of Schedule I are products of this House. I expected the two Committees of very eminent lawyers, politicians and leaders to table before this House the requirement that President Kibaki had to table a Gazette Notice in this House as subsidiary legislation under Section 34. This is a very serious issue because this is the first debate arising from the new Standing Orders. If we set a bad precedent now, it will not only mislead the country but also cause enormous confusion.

Mr. Deputy Speaker, Sir, Gazette Notices are very well known by Kenyans. In fact, if you want to change your name from Mr. Olago to Mr. Mutula, you just publish a notice in the *Kenya Gazette*. With respect and complete humility, I want to ask; is that subsidiary legislation?

I will go further; all of us sitting in this House and this is the reason this debate must be addressed carefully, were gazetted by the Electoral Commission of Kenya (ECK). The Gazette Notice for Mbooni read that Mutula is the winner. Was that subsidiary legislation? Is it not a fact that of all my colleagues inside this Chamber who were facing election petitions, when the matter goes to court, the issue of the Gazette Notice only refers to date? What you do is to challenge the election itself.

I will again go further because this is very important, and it underlines the question I have asked: Was President Kibaki required by law to table the Gazette Notice? Political parties nominate councillors on a regular basis, I can see my friend, Ms. Karua, looking and thinking because she has nominated councilors. The nomination by the Minister for Local Government comes through a Gazette Notice. Is that subsidiary legislation? Why do you want to reduce Presidential authority to the level of paper?

Mr. Deputy Speaker, Sir, Section 34 that I have read is very clear that there is a distinction between what we normally call regulations that require approval of Parliament and regulations that do not require approval of Parliament. I want to go to the section that the Committees have used. Again, I want to plead with hon. Members because this is an institution being watched live, we must tell the country the truth. If you look at the definition that they have relied on, it is in the definition clause of the Interpretations and General Provisions Act. It says:

“subsidiary legislation means 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.”

Hon. Members must forgive me because I want to use a Latin principle called the *ejusdem generis* rule. Under the principle of *ejusdem generis* rule, Mr. Olago will confirm, I have no doubt that whenever you are reading an Act of Parliament--- Whenever an institution, a tribunal, a court or an agency is interpreting law where words follow in sequence, you are required to assign the principal objective of that regulation to all words. Therefore, the Committees appears to have relied on the word “notice” to mean that the two notices that President Kibaki published in the Kenya Gazette are subsidiary legislation forgetting and ignoring the words, and I want to emphasize, “means any legislative provision”. Now that brings me, with utmost respect, to the Constitution itself. Let me read for the avoidance of doubt Section 30 of our Constitution. It says:-

“The legislative power of the Republic shall vest in the Parliament of Kenya, which shall consist of the President and the National Assembly.”

That means that it is the two of them. Therefore, it means that even when you apply the principle of annulment that we have used in Standing Orders, you must keep in mind that Parliament is not the National Assembly alone. Allow me to illustrate what I am saying. Section 46 of the same Constitution reads as follows:-

“Subject to this Constitution, the legislative---”

And this is where the word in the Standing Orders is derived from, I say so without fear of contradiction, you cannot have the word “legislative” invented or plucked from the air.

“Subject to this Constitution, the legislative power of Parliament shall be exercisable by Bills passed by the National Assembly.”

Therefore, what am I saying? I am saying that when Parliament wants to exercise its legislative authority, it has an obligation to say clearly what it means. So, if it wants whenever the President or the Prime Minister or any Minister gazetting in the Kenya Gazette an appointment of a person, if it wants that to be a subsidiary legislation, Parliament must say so. To the extent that it is not, let me take you now to sub-section 46(6) at Page 36 of our Constitution. It says, and listen to me carefully:-

“A law made by Parliament shall not come into operation until it has been published in the *Kenya Gazette*, but Parliament may postpone the coming into operation of a law and subject to Section 77, may make laws with retrospective effect.”

Mr. Deputy Speaker, Sir, if these two Committees, which I respect so much because I appeared before them, are saying that President Kibaki made a law, they must cite it to us, say clause No.1, No.2, No.3 and No.4. It is my submission it cannot be done. Let me also show you another section and this is also very critical. Section 54 of the Constitution, to draw distinction although some people may have misunderstood me when I said the court would be the best--- Listen to this; Section 54:-

“Except as otherwise provided in this Constitution, any question proposed for decision in the National Assembly shall be determined by a majority of the votes of the Members present and voting.”

Is that interpretation of law? My learned friend, Mr. Abdikadir has gone to great length about the House of Lords and the Senate. Can you really say that when you say “those in favour say aye and those not in favour say nay” that at that point you are

interpreting law? You are using politics! You are using numbers! You are not using logic! You are not using evidence! You are not using the opportunity of judicial authority. In fact, I will go further because I have it here. The Promissory Oath Act, Cap.100 of our laws has the two oaths that members of Parliament swear and the one sworn by the Judiciary. Listen carefully, I beg you, please! The oath sworn by Members of Parliament is the oath of allegiance and it reads as follows:-

“I, Mutula Kilonzo, do swear that I will be faithful and bear true allegiance to the President and to the Republic of Kenya and shall preserve, protect and defend the Constitution of Kenya as by law established.”

Now listen carefully to the one by judicial officers to see the distinction as to why we must oppose these recommendations. *Inaitwa* the Judicial Oath! Listen to this and I am speaking very humbly and calmly. It says:-

“I, Justice Gicheru, do swear that I will well and truly serve the Republic of Kenya in the Office of Judge and that I will do justice in accordance with the Constitution of Kenya as by law established and in accordance with the laws and customs of the Republic without fear or favour, affection or ill will, so help me God!”

You can see the difference! One, a Motion, a proposal or a Question put to the House is decided by numbers and a Motion or a Question put before a Judge is decided by justice. Interpretation of the law!

*(Applause)*

Therefore, I speak with absolute confidence that President Kibaki in the Gazette Notices, these two eminent Committees have looked at; and I speak for history because there will be other opportunities for these Committees to serve, Gazette Notices No.9300 and No.9301 cite the sections of law that the President was relying on. He said, and if you allow me I will just read one of them because this is very important; it goes to the fundamental issues that this House must determine. What the President said with insight is very informative. He cited the Anti-Corruption and Economic Crimes Act, Act No.4 of 2003.

“In EXERCISE of the powers conferred by Section 84 (4)(2) 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 reappoint Justice Ringera to be Director of the Kenya Anti-Corruption Commission.”

Now, he has cited those sections and, therefore, when Parliament presupposes, perhaps with reason, because I understand the anger, to pass the following resolution, is that the Committee recommends that the House resolves that the reappointment of the Director and two Assistant Directors contained in these Gazette Notices was not done in accordance with the law and procedure”, it presupposes that these two Committees have used Section 58 with regard to voting, where those in favour say “aye” and those not in favour say “nay”. Is that interpretation of law? Do we want, as a House, to tell the country that is how we would be regarding interpretation of law? Would it not be better to say that, perhaps, President Kibaki might have misunderstood the import of those sections? Therefore, if he did, we should express our opinion and let the courts decide.

Similarly, the Joint Committee here urges the House to resolve that Gazette Notices be annulled.

If you look at Section 123 of the Constitution--- I would like hon. Members to listen carefully to what I am reading. Section 123(2) appears on page 96 of our Constitution. It says,

“Except where the context otherwise requires, any powers conferred upon Parliament by this Constitution to establish, provide for or prescribe any matter or thing shall be exercisable by Act of Parliament”.

**The Minister for Environment and Mineral Resources** (Mr. Michuki): By what?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): By an Act of Parliament, hon. Michuki. That is what it says.

“Except where the context otherwise requires, any powers conferred upon Parliament by this Constitution to establish, provide for or prescribe any matter or thing shall be exercisable by Act of Parliament.”

We passed Section 8 of the Anti-Corruption law and we established Third Schedule. In Section 8, we said that for an appointment, one requires recommendation from the Board. When hon. Abdikadir says that these organizations are unanimous--- I do not want to join a crowd. At that point in time under Section 8, we said that the Board recommends, Parliament approves and the President appoints. When we were dealing with the First Schedule, we said that the appointing authority, who is the President, may reappoint any person who has served as a Director or in those other positions. I dare say, without fear of contradiction, I am even ready to go to the House of Lords, and will tell the Law Lords that President Kibaki was right. Therefore, I urge anyone who differs with President Kibaki that we go and meet in the House of Lords or the Senate and interpret these laws. Let me ask something.

*(Mr. M. Kilonzo laid documents on the Table)*

**An hon. Member:** The Law Lords are here!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, so I hear.

I want to say this with a lot of humility. The fact that Section 51 says what the Committee has quoted, it cannot apply to the circumstances here, because, as I have said, under Section 123(6), Parliament can only act through an Act of Parliament. When you pass a resolution, what that section says--- I have a lot of respect for the principle of supremacy of Parliament. That supremacy is derived from the Constitution and it is driven by law, and not by what any person may think or do.

Let me give you some facts. When President Kibaki was elected President in 2002, the first thing that he did, because an impression had been created that he is not interested in fighting corruption, was that in May he made sure that we passed the Anti-Corruption law. During the same year, we also passed the Public Officer Ethics Law. To make matters worse, in December, 191 countries assembled to pass the United Nations Convention against Corruption. Kenya, under the guidance of the President, was the only country, and remains the only country, to adopt and sign this Treaty on the same day, and I lay the Convention on the Table of this House. As I speak to you right now, in addition

to those laws, President Kibaki has presided over the Witness Protection Law, which has been passed. He has also presided over the Mutual Legal Assistance Bill, which is pending debate in this House. He is also presiding over the money laundering law, which is also before this House. I want to say that if that is not a leader who fights corruption, then who fights corruption?

Therefore, it is my very humble view that the fact of the matter is that the President acted within his authority. A *Kenya Gazette* Notice is not subsidiary legislation of any nature, and it will never be. I want to assure hon. Members that. If you say that a Gazette Notice is subsidiary law, your opponent, in your constituency, after you have been gazetted an MP will no longer need to file an election petition. He will only need to come and organize Parliament to pass a Motion nullifying that Gazette Notice and you will go home. That is an absurdity that we cannot accept. Similarly, when a person dies and the estate wants to---

*(Loud consultations)*

**Mr. Deputy Speaker:** Order! Conclude hon. Minister!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, with those many, and more issues that I would have wanted to raise, I beg to oppose.

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): Thank you, Mr. Deputy Speaker, Sir. I want, on the outset, to declare my greatest respect and humility to the President. However, I cannot support the reappointment of hon. Ringera.

Lawyers have argued here and I do not want to take that route. In taking this decision, not to support the reappointment of Mr. Ringera, I asked myself four questions. The first question was, during the time that Mr. Ringera served as the Director of KACC, has he been successful? The answer to my question was “no”. My second question was whether Mr. Ringera’s reappointment will help in any way in fighting corruption in this country and my answer was “no”. Thirdly, I asked myself---

**Mr. Kioni:** On a point of order, Mr. Deputy Speaker, Sir. We have a Constitution and we all took an oath to protect it. I want to read Section 17(1) of the Constitution. I will read it again and again. It says, “There shall be a Cabinet consisting of the President, the Vice-President and other Ministers.” Subsection 3 says, “The Cabinet shall be collectively responsible to the National Assembly for all things done by or under the authority of the President---”

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

**Mr. Deputy Speaker:** Order! Hon. Ruto, hon. Namwamba, you are all out of order! Hon. Kioni is a Member of Parliament just as you are Members of Parliament, and he has a right to be heard.

Proceed!

**Mr. Kioni:** Thank you Mr. Deputy Speaker for that protection. I will read Subsection 3 again for them to hear. The Section reads in part that,

“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.”

We have a Cabinet Minister going contrary to what has been done by the President. Point number two, Standing Order No.79,

“Neither the personal conduct of the President, nor the conduct of the Speaker or any Judge, nor the judicial conduct of any other person performing judicial functions, nor any conduct of the Head of State or Government or the representative in Kenya of any friendly country shall be referred adversely, except upon a specific substantive Motion, of which at least three days’ notice has been given.”

Is this Minister in order, one to go against collective responsibility, two, to discuss the conduct of a person whose duties are of judicial nature as contained in Standing Order No.79?

**The Minister for Environment and Mineral Resources (Mr. Michuki):** On a point of order, Mr. Deputy Speaker, Sir. I wish to seek your guidance because I want to understand the way this debate is going, so that I can internalize the issue. A section of the Constitution has just been read with regard to the collective responsibility of Cabinet Ministers. Is it constitutional to allow any Member who is in that category to infringe the Constitution, which he has vowed to defend?

**Ms. Karua:** On a point of order, Mr. Deputy Speaker, Sir. I just want to draw your attention to the fact that the same Constitution guarantees the freedom of expression and conscience. In the Oath of Allegiance, a Minister or a Member of Parliament swears allegiance to the President and the Constitution. The Constitution is greater because it sets up the institution of the Presidency. Therefore, if the Constitution is infringed, as an act of loyalty, a Minister must tell the President. Any Member must tell the President. Is it in order to try and intimidate the loyal servants of this country who want to call a spade a spade?

**The Minister for Nairobi Metropolitan Development (Mr. Githae):** On a point of order, Mr. Deputy Speaker, Sir. I rise to seek your guidance on this matter. It is a fact that the Minister for Justice, National Cohesion and Constitutional Affairs tabled a list of people who have been investigated by Justice Ringera. Would it be in order for a person who is on that list to contribute to this debate without declaring his interest that he has actually been investigated? Before he says anything, he is not being genuine.

**The Assistant Minister, Ministry of State for Defence (Mr. Musila):** Mr. Deputy Speaker, Sir, can I proceed?

**Mr. Deputy Speaker:** Order, Mr. Musila! The Chair is going to take a few clarifications in terms of points of order.

**Mr. Ruto:** On a point of order, Mr. Deputy Speaker, Sir. It is obvious that some Members of the Cabinet in the Coalition Government do not seem to realize that this is Parliament and not the Executive. They are attempting to sort out the indiscipline in the Government inside Parliament. These are two separate institutions and this is the institution of the National Assembly. We are Parliament and if there is indiscipline in the Government, the Ministers should go back and sort it out where they should sort it out. Is it in order for them to drag their indiscipline to the Floor of the House?

**The Minister for Lands** (Mr. Orengo): On a point of order, Mr. Deputy Speaker, Sir. There has been an attempt to mislead the House on this issue of collective responsibility. I want to be heard round and clear. Indeed, today, I was very proud of hon. Kosgey because of the Statement that he made in this House. This is not a House of fools, but a House of hon. Members of Parliament. If we insist that this is going to be a House of fools, then we are in the wrong forum and the wrong arena.

**Mr. Deputy Speaker:** Order, hon. Orengo! The word “fools” is not parliamentary language! Use parliamentary language!

**The Minister for Lands** (Mr. Orengo): Mr. Deputy Speaker, Sir, I am making a supposition “if”, but I hope that nobody supposes that this is a House of fools.

**Mr. Deputy Speaker:** I am sure you can find a better word than that!

**The Minister for Lands** (Mr. Orengo): Yes, Mr. Deputy Speaker, Sir. I would even say that it is not a House of idiots! That is a term that Churchill, who was a great Parliamentarian, used in the House of Commons. It is wrong to read the Constitution selectively. If you want to read the Constitution, read it out in full, so that what you are saying can be understood. If you read Section 17(3) and leave out Sub-Sections 1 and 2, it does not make any sense. In fact, the hierarchy of those sections is not by accident that what hon. Kioni has been reading is an inferior provision of Section 17. The superior sections of Section 17 are Sub-Sections 1 and 2 and I want to read them very loudly.

**Mr. Kioni:** On a point of order, Mr. Deputy Speaker, Sir.

**The Minister for Lands** (Mr. Orengo): Mr. Deputy Speaker, Sir, I am on a point of order.

**Mr. Deputy Speaker:** He is on a point of order!

**The Minister for Lands** (Mr. Orengo): Mr. Deputy Speaker, Sir, now you can understand how he does--- If he does not know what a point of order is, how can he understand the Constitution? Section 17(1) says:-

“There shall be a Cabinet consisting of the President, the Vice-President and other Ministers---”.

If I may just pause there, a Cabinet consisting of the President is a creature that does not exist in the Constitution. So, do not take Ministers for granted. They are there by dint of Section 17 of the Constitution and not to sit as passengers in the Cabinet. Section 17(2) says:-

“The function of the Cabinet shall be to aid and advise the President in the Government of Kenya.”

So, if the President requires me to be collectively responsible for his decisions, it is presupposed that my advice must be sought. But if the advice of hon. Musila, who I normally call the Provincial Commissioner (PC) because I respect him for being a good PC--- If he was acting by not interpreting the Constitution and the law clearly, he would be in a lot of trouble. But he was a good PC. The collective responsibility requires consultations. In this Parliament, we cannot act alone. We must act together.

Finally, my point is this: I am a Member of this Parliament just as other Cabinet Ministers are hon. Members. My first duty is to defend and protect the Constitution as a whole. Not selectively like those who are living in the past when there was an imperial Presidency and when the word “President” is mentioned, they feel that God Almighty has come back to earth. That is not the position in Kenya today. It is a Government by the Cabinet.



**Mr. Kioni:** On a point of order, Mr. Deputy Speaker, Sir. There is one thing that I think hon. Orengo needs to familiarize himself with. If you look at the HANSARD, I have read Section 17 in full, so that we do not advance idiotic arguments. Secondly, I share---

**Mr. Deputy Speaker:** Order, hon. Kioni! Order, hon. Members! Hon. Members, the law cuts in both ways. There is no selective application of the law. When the Chair keeps on insisting and telling Ministers and Backbenchers to conduct themselves in a dignified manner, it presumes and presupposes that in the event that, that is allowed to continue, it will become a free for all. So, hon. Kioni, I did not take kindly the language that was used by hon. Orengo before you. I will not take kindly yours either. Please, hon. Members, conduct yourselves in a dignified manner.

Proceed, hon. Kioni.

**Mr. Kioni:** Mr. Deputy Speaker, Sir, I withdraw and apologize for that. I only did it because, as senior as he is, he thought that it is important to use it. Having said that, I share the sentiments of hon. Ruto; that the purpose of this section in the Constitution is to ensure that Members of the Cabinet do not to bring their disagreements to the Floor of the House. They need to come here with one voice. In the event that they do not agree with the goings on in the Cabinet, you have a very soft option: Resign and come to the Back Bench. That is the spirit of this provision.

**The Minister of State for Immigration and Registration of Persons (Mr. Kajwang):** On a point of order, Mr. Deputy Speaker, Sir. Mr. Kioni has repeatedly suggested that the Cabinet is disagreeing here on a matter which they have agreed on somewhere. I would have thought that they had some facts to suggest that on this matter, which we are now discussing, there was a Cabinet decision and that the Cabinet decision says that we will re-appoint – in the words of the notice – Justice Ringera, and that we have now come here to oppose that position. If they did that, we would have understood it. However, to suggest that merely because I am a Cabinet Minister, I must support whatever is done---

**The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo):** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order! He is on a point of order! What is your point of order, hon. Kajwang?

**The Minister of State for Immigration and Registration of Persons (Mr. Kajwang):** Mr. Deputy Speaker, Sir, my point of order is that although that section has been read out, it does not seem to give us the foundation on which it wants to stand. The foundation would have been that this was a Cabinet decision and, therefore, all Cabinet Ministers are bound by it. However, that foundation is lacking. He merely says that when you are a Minister, you are bound by any action done by a Minister. So, if I were to do something wrong, I would expect all Cabinet Ministers to support me, merely because they are also Cabinet Ministers. It could be absurd and that is the point. He should withdraw that point.

**Mr. Deputy Speaker:** Order! Order! Mr. Kioni did seek the direction of the Chair. Indeed, it is sad that our moods of interpretation of the law and the Constitution changes with our political expediencies. The Chair has a responsibility to interpret or state the Constitution to the best of its ability, conscience and perception. Indeed, it is a fact that the Chair says that Ministers are supposed to--- As Mr. Orengo had put it, there

shall be a Cabinet consisting of the President, Vice-President and other Ministers. Then, sub-section 2 says:-

“The function of the Cabinet shall be to aid and advise the President in the Government of Kenya.”

It is not the role of Parliament to determine how much that is being done. Parliament does not have a role to scrutinise whether the Ministers and the President are working together. Sub-section 3 say:-

“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.”

Hon. Members, the Chair notes that the debate we have before us right now is on the fact that a Committee as well as a section of Parliament here believed that the President violated the law. We cannot be debating a situation in which the debate goes on as to whether or not the President has violated the law, when Parliament openly violates the provisions of the Constitution.

I take a lot of pain in this because this is one thing that the Chair did make an effort. Be that as it may, I am reminded that there is a tradition that when the debate on the death of the late J.M. Kariuki was on the Chair allowed Ministers to oppose the Government without indicating on the Floor of the House whether they have resigned or not. It is morally, in the opinion of the Chair, repugnant for Members of the Government to have the best of both worlds; to be Government in the Executive and exercising power as part of the Executive and at the same time, to come and play as Backbenchers here who are supposed to hold the Government accountable for its actions.

Be that as it may be, the Chair---

*(Mr. Mbugua consulted loudly)*

Order, hon. Mbugua! Hon. Mbugua, you will be out of the House for the remainder of the Session! That is the direction of the Chair!

*(Mr. Mbugua withdrew from  
the Chamber)*

Hon. Members, there are areas that the Chair has no role to play. Whereas, I have said, what I have said, I am again guided by rulings that were before me which were done at the death of the late J.M. Kariuki when Ministers opposed the Government and the Chair allowed it. There was also a ruling that was made by the Chair a few days ago. I do not know when it was, but I think it was last week. Under the circumstances, I leave it to the way it was done before. Much as I have said what the law says, there are generalities in the law; the freedom of speech, freedom of thoughts and freedom of association. There are generalities and there are specifics. As long the specifics are provided, the generalities do not occur. Under the circumstances and because of tradition, leave it to the Executive to be able to be Executive proper.

Proceed, hon. Member!

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): Mr. Deputy Speaker, Sir, much obliged.

**Mr. Nyameya:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** What is your point of order, hon. Nyamweya?

**Mr. Nyamweya:** Mr. Deputy Speaker, Sir, you have ruled and I have listened very attentively. I am a member of the Committee on Justice and Legal Affairs. You have just ruled that you are not going to infringe on the Cabinet and whatever they have done. Would also that ruling, therefore, apply to members of the Committee that if we now feel--- What is on the Floor is no longer a question of whether the procedure of reappointing Justice Ringera and the two Assistants was correct or not. The mood now as you can see is, let us settle scores. The other day, we got rid of the Electoral Commission without even following the tribunal---

**Mr. Deputy Speaker:** What is your point of order, hon. Nyamweya?

**Mr. Nyamweya:** Mr. Deputy Speaker, Sir, even though we did not record our difference in the Committee, we will now differ with the Committee because the Motion is being driven in a different way.

**The Assistant Minister, Ministry of State for Defence (Mr. Musila):** Mr. Deputy Speaker, Sir, may I continue. I said--

**The Assistant Minister for Public Works (Mr. Wathika):** On a point of order, Mr. Deputy Speaker, Sir. You have just made a ruling that constitutionally members of Cabinet should, under the collective responsibility, not debate against the Government. However, you have cited the J.M. Kariuki's case. Now you have thrown this House into disarray. Is it that we are going to follow the law and the Constitution or the precedence of this House? Nobody has died today, so therefore, these people can go back to Cabinet. The Cabinet can convene and come up with one collective decision, so that it comes here with one voice.

**Mr. Deputy Speaker:** Order! Hon. Members, as the tradition and for the stability of countries, traditions have been--- At the time of J.M. Kariuki, Ministers were moved by their own conscience and opposed the Government on the Floor of the House. The Executive did what every Executive should do. The Ministers were sacked. The Chair will not play the role of the Executive for the Executive.

*(Applause)*

Order! I say this with a heavy heart because it is not for the tradition. I have done it before and I would have ruled that the Minister cannot oppose the Government on the Floor of the House, but be that as it may, proceed!

**The Minister for Nairobi Metropolitan Development (Mr. Githae):** On a point of order, Mr. Deputy Speaker, Sir. I had sought some guidance whether those who have been mentioned by Justice Ringera can be allowed to contribute to the debate. You have not made that ruling.

**Mr. Deputy Speaker:** Order! Order! Order!

Hon. Members, the Chair also wants to give a direction. There was an issue which was raised by hon. Kioni in which he said that the personal conduct of the President was questioned or debated. That one is not the case. It is actually the performance of the President in his capacity as the Chief Executive Officer.

*(Applause)*

Order!

On the issue of the declaration of interest, indeed, yes, it is only fair that based on the matter that is under discussion right now, anybody who has been adversely affected in it in one way or the other has got to, first of all, declare his or her interest before you proceed to contribute! That is in conformity with the Standing Orders.

Proceed!

*(Applause)*

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

Order! Order! Order!

**Mr. Linturi:** On a point of order, Mr. Deputy Speaker, Sir. We really respect the Chair. In view of the ruling that you have just made out of a point of order from hon. Githae, would I then be in order to ask hon. M. Kilonzo to declare his interest in this matter because he has been mentioned adversely?

*(Applause)*

Mr. Deputy Speaker, Sir, we are made to understand that he is under investigation because of Kshs500 million from the National Social Security Fund (NSSF) that he was paid as legal fees.

*(Applause)*

**Mr. Deputy Speaker:** Order! Order! Order!

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): Mr. Deputy Speaker, Sir, on a more serious note, I want to repeat that I said in clear conscience that I cannot support the reappointment of Justice Ringera. That is what I said. So, I am speaking with my conscience.

Secondly, Mr. Deputy Speaker, Sir, I am an elected Member for Mwingi South first and foremost and all other things come thereafter. It does not matter to me as long as I remain the hon. Member for Mwingi South and I speak the truth.

Mr. Deputy Speaker, Sir, to continue, I will address the issue raised by hon. Githae, but I was interrupted when I was asking four fundamental questions. The first question was: During the time when Justice Ringera has been the Director of KACC, has he been successful in his work?

**Hon. Members:** No!

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): The answer is no!

Two, Mr. Deputy Speaker, Sir, what is the mood regarding Justice Ringera's reappointment? Law aside, what is the mood in the country? Do Kenyans support Justice Ringera's reappointment?

**Hon. Members:** No!

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): The answer is no!

Mr. Deputy Speaker, Sir, the third question is: Would the reappointment of Justice Ringera help this country in any way to fight corruption? The answer is no!

Fourthly, Mr. Deputy Speaker, Sir, would Justice Ringera enjoy the confidence of Kenyans while performing the duties that he has been reappointed to perform? Confidence is very important if he is to succeed in his work and, again, the answer is no!

Mr. Deputy Speaker, Sir, for these four reasons, after getting “no” to the four questions, I made a conclusion that Justice Ringera is not fit to be reappointed the Director of KACC.

*(Applause)*

Mr. Deputy Speaker, Sir, hon. Members will recall that prior to Justice Ringera’s appointment as the Director of KACC at the Judiciary---

**Mr. Nyamweya:** On a point of order, Mr. Deputy Speaker, Sir. We are not just debating the performance of Justice Ringera; that is a fact. We are not debating the performance!

This is not a tribunal to remove Justice Ringera from office. Was the proper procedure used to re-appoint him? That is what we are supposed to discuss. So, if you want to discuss the conduct or evaluate his performance, that is a different thing altogether.

**Mr. Deputy Speaker:** Mr. Musila, confine yourself to the subject matter of the Motion itself.

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): Mr. Deputy Speaker, Sir, I was about to address the issue that was raised by Mr. Githae on declaration of interest.

I would like to say that Justice Ringera has destroyed the careers of many Kenyans, including 23 Judges. Therefore, you cannot simply say that because Mr. M. Kilonzo, who I respect very much, came here with a list that was authored by none other than Justice Ringera, who has totally failed in his duty, can be justified by not speaking. Justice Ringera has been telling us that he is unable to function because of the Attorney-General. He also says that he has no powers to prosecute. One wonders, if he knows that he cannot function because of the Attorney-General or lack of statutes, why does he accept to be re-appointed in a situation he knows very well that he will not perform? Is it that he wants to continue earning public money and deliver nothing?

Mr. Deputy Speaker, Sir, I have been interrupted many times and I want to conclude by saying that the only option Justice Ringera has is to do the President a favour and resign from the position he has been re-appointed. He should allow Kenyans to select, through a proper process, a person who will help this country move forward in the fight against corruption.

I beg to support.

**The Assistant Minister for East African Community** (Mr. Munya): Mr. Deputy Speaker, Sir, the issue about the re-appointment of Justice Ringera is very clear in the provisions of the law and the structure of our Constitution, for those who care to look at it. This is a dispute between Parliament and the Executive. Parliament is questioning the

power of the Executive to appoint an officer under the existing provisions of the law. Parliament is saying that the Executive does not have the powers to appoint while the Executive insists that it has the power to appoint. So, this is a classic dispute where we need the other arm of the Government that is supposed to resolve disputes between the two arms of the Government to come in and resolve the dispute. Our Constitution is very clear. If Parliament and the Executive disagree on a very fundamental issue like this one, then the courts are supposed to come in and resolve that dispute.

Mr. Deputy Speaker, Sir, Parliament will be over-reaching, just as it accuses the Executive of doing this, when it attempts to be a judge in its court.

Mr. Speaker, Sir, Parliament passed the law under which the head of the anti-corruption body is supposed to be appointed. Now the same Parliament, which passed that law, is sitting here, trying to interpret that law to the detriment of one arm of the Government. When it is asked to give space to the other arm of Government to play its role by resolving this dispute, Parliament is saying "No". It is this same Parliament that passed that law and gave itself some powers to vet those who would be appointed. Those who have been appointed, especially the specific persons who are being discussed today, have had an opportunity to investigate many hon. Members of this House.

Many of us are interested parties in this particular matter, because our names are mentioned adversely. Whether the allegations raised against us are true or not, we have interest in this matter by the fact that we have been investigated by that body. So, instead of withdrawing from the debate we want to occupy that high moral ground; we want to sit here again in judgement. This is similar to a case where you ask the monkey to make a decision on the case of the forest, where the money lives. If you invite the monkey to make a decision on the case involving the forest, where the monkey lives, the monkey will always rule in favour of the forest.

So, whatever debate may go on here, Justice Ringera and his two deputies, will never get justice from this House. They can never get it because some of us are being investigated. Others are potential candidates for investigation.

**Mr. Yinda:** On a point of order, Mr. Deputy Speaker, Sir. The hon. Member referred to respective hon. Members as monkeys.

**Hon. Members:** No! No!

**Mr. Deputy Speaker:** Proceed, Mr. Munya!

**The Assistant Minister for East African Community** (Mr. Munya): Mr. Speaker, Sir, if hon. Members of this House are not even able to appreciate analogies, then it is up to them to sit down and judge.

I was saying if we wanted to occupy that high moral ground that we are trying to occupy, the best thing we would do is to allow the courts to interpret the law for us and tell us whether, indeed, the President overreached himself or not by appointing Justice Ringera and his deputies.

This House is in extreme hurry, for whatever reason. I have not seen them hurry lately over any other matter. Even when the Mau Forest issue came up yesterday, there were about-turns. Some of the people I have seen here interpret the Constitution walked out when the Mau Forest issue was being debated. We saw them walking out and when they stood, they did not stand the way they stand today. We are now being told that on this particular person, we must be in a hurry to hang him before we close the House today. A Gazette Notice---

**The Minister for Medical Services** (Prof. Anyang'-Nyong'o): On a point of order, Mr. Temporary Deputy Speaker, Sir. I would not like to interrupt my dear friend, Hon. Peter Munya. Surely, is the hon. Member in order to impute improper motives on hon. Members of this House by saying that since they are just about to be investigated by the KACC, they cannot debate this matter? I find this rather imputing improper motive on hon. Members.

**Mr. Deputy Speaker:** Proceed, Mr. Munya!

**The Assistant Minister for East African Community** (Mr. Munya): Mr. Deputy Speaker, Sir, I have not imputed any improper motive. Somebody is trying to impute it for me. All I have said is that many of us, having been investigated – the list was tabled here and nobody is disputing that fact – are interested parties in this matter; why is it that we are in a hurry to make a decision on it without giving the courts the first opportunity to play the role that they were established for – interpretation of the law?

We are trying, as Parliament, to assume and usurp all the powers that we can get for ourselves. As we do that, we are busy accusing the Executive of usurping power, when Parliament is busy usurping and gathering any power that it is able to gather.

**Mr. Musyimi:** On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order, Mr. Musyimi! From the mood of Mr. Munya, he is not interested in your information because he keeps going on.

Mr. Munya, are you interested in being informed by Rev. Musyimi?

**Mr. Munya:** Not at all, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Proceed, Mr. Munya.

**The Assistant Minister for East African Community** (Mr. Munya): Mr. Deputy Speaker, Sir, I am a fairly informed man on these issues.

I was saying that it is all very well for the two Committees of the House to sit down and make a report for Parliament. Parliament is playing its oversight role of scrutinizing the actions of the Executive. It is all very well for the two Committees to compile reports and bring them to the House for debate. It is all very well for the two Committees to say that the Executive erred. That is in order because it is our role as an oversight body to question actions and behaviour of the Executive.

When we purport to take over the responsibilities of the Executive by trying to imagine that we can annul a Gazette Notice which can only be challenged in the courts because they have the instruments of annulling them, we are overreaching, as a House.

**Mr. Ruto:** On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to purport that Parliament is actually attempting to act beyond its powers while it is clear in Standing Order No.197(3) that the Committee of Delegated Legislation may recommend to the House that it resolves that any particular subsidiary legislation be annulled? This is within the functions of Parliament. The hon. Member is actually challenging that.

**The Assistant Minister for East African Community** (Mr. Munya): Mr. Deputy Speaker, Sir, Mr. Ruto seems to be even supporting what I am saying that we do not have the powers of annulment of a Gazette Notice. We can recommend. We can make a decision and say we are not happy with particular actions of the Executive. To purport that we can actually annul a Gazette Notice as a House when we are not a court of law, is where we are overreaching ourselves.

I am not saying that this Parliament does not interpret. There are certain positions we interpret. We interpret our own rules of procedure. So, when we argue that there are laws we interpret, yes, there are certain provisions of law we interpret like our own rules of procedure. When we want to interpret a substantive action of the Executive, a Gazette Notice that can only be challenged by the Executive and annulled there, that is why I am saying we are overreaching and that is where I will part ways. To that point, I want to part ways with Members of this House. I want to confine myself within the boundaries that this Constitution that we all say we are defending---

Mr. Deputy Speaker, Sir, without repeating what many others have said, moral responsibility is a very important issue and many of us like talking and pontificating about it. This is only one person that we saw recently. We are yet to see somebody who says, "because this collective responsibility is happening, in my conscience, I now want to resign from the Government."

That is why I said some of them have been able to do that. There are others who talk about it every day, but will never take the first step. They will never say, "now I want to move out because I disagree with these policies. I want to be a gentleman and move out." We have not seen that. I hope we can see that light now or even soon, so that we can trust some of these people who break this law today, break another one tomorrow, break another one the day after, but will not bother.

The last point I want to raise---

**The Assistant Minister for Co-operative Development and Marketing** (Mrs. Kilimo): On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Mr. Munya, do you want some information from Mrs. Kilimo?

**The Assistant Minister for Co-operative Development and Marketing** (Mrs. Kilimo): Mr. Deputy Speaker, Sir, the hon. Member does not seem to know that Ms. Karua did resign. He is misleading the House.

**The Assistant Minister for East African Community** (Mr. Munya): Thank you Mrs. Kilimo, I have already acknowledged that Ms. Karua and my friend and classmate Mr. Mungatana were able to take that step of faith and resign. I would like to see some of my seniors here taking that step instead of challenging the law all the time and trying to trash the law whenever it does not suit them. Whenever the law does not suit them, it will be challenged. The principle of collective responsibility will be thrown out through the window as trash as long as it does not serve their interests.

Mr. Deputy Speaker, Sir, I want to conclude by appealing to the House that even as we may be annoyed, even as we may be very unhappy with what we think is an affront from the Executive, in trying to right this which we think is not right, let us not go beyond the powers that we are given by the same Constitution and law that we are defending. Let us not do a job that is not for this House. This is especially when we, ourselves, are interested parties in this matter. We should give room to the courts to play their role so that the stability of our constitutional order can continue to be maintained.

Thank you.

**Ms. Karua:** Mr. Deputy Speaker, Sir, I rise to support this Motion. The Standing Orders are very clear. Perhaps, some of us never read them when we passed them. The Committees of this House can indeed annul subsidiary legislation.



*(Applause)*

If any Member is unhappy with that, and I do not need to read the Standing Order because it was read by Ms. A. Abdalla when she was moving; we would have to amend that Standing Order. We gave ourselves that power and therefore, this debate is not idle and we are not misleading.

Mr. Deputy Speaker, Sir, because we must talk in a way we are understood, even though we are lawyers, this is not a court of law. This is Parliament and now that we are live on air - Kenyans are watching - we need to go in a way we do not confuse people. First and foremost, everybody including those opposing the Motion agrees that to make an appointment for the Director or Assistant Director of the Kenya Anti-Corruption Commission (KACC) the Advisory Board has to recommend and Parliament has to approve. The only point of departure is that those in the Government are arguing that to re-appoint, you do not need to follow the same procedure. I think we are playing semantics. What is to re-appoint in English?

I want to read the Oxford Dictionary definition of the word "re-appoint". This was obtained from [www.encyclopedia.com](http://www.encyclopedia.com).

It says:-

"To re-appoint means to appoint again"

*(Applause)*

If you are truthful and it is because English is not our mother tongue and it was failing you and you thought a re-appointment is something else, may I here now tell you that that the dictionary says that to "re-appoint" is to appoint again.

*(Applause)*

Mr. Deputy Speaker, Sir, when you appoint again, the law is very clear. Section 8(3) says you begin where you began last time. The Advisory Board recommends, Parliament approves and the President appoints again. Let us not split hairs. On all fronts, the President failed to follow the right procedure. Section 17(2) has been read. The role of the Cabinet is to aid and advise. The Cabinet has failed the President.

The Cabinet has failed the President or that section of it that wants to mislead him and continue telling him that he is right when he is wrong.

*(Applause)*

As an act of loyalty, to both the President and the Constitution of this country, each hon. Member and each Minister, even more, is obligated to tell the President the truth. The days of sycophancy are over. We do not have to argue until we froth insisting that the President is right when he is wrong. I believe that if he was sincerely told: "Mr. President, sorry, you are wrong here", he would have corrected this error a long time ago but hear how loudly everybody is telling him that he is right and congratulating him. I know the debate is not about Mr. Ringera and his two deputies, Fatuma and Smokin. I am disappointed in the three of them for only one reason; as a Commission that takes people

to court for abuse of office, they are accepting an appointment which is in itself an abuse of office.

*(Applause)*

I think this is totally wrong! And we are not, as Parliament, even taking over what the courts do. We do not need the court to read for us what is in black and white. Nobody is saying that Section 8(3) which we used for the appointment needs interpretation but they are telling us to go for interpretation of “re-appointing” because it is supposed that the word “reappoint” means something different. We have now settled that. It means “appoint once again.” So, how do you appoint? The Interpretation and General Provisions Act, Cap.2, Section 51(1) and (2) on all forms, clearly stipulates that where a statute or an Act of Parliament fails to provide the manner of either dismissal or reappointment, then the same procedure you used to appoint is what is used. Therefore, even to sack the Director or to impeach him, you have to get a recommendation from the board. Even to appraise him, you have to start again. So, let us not mislead the public. The National Assembly means we are national leaders. We are assembled here as the national leaders of this great country called Kenya. Let us leave ethnicity, friendship or partisanship from this debate. It does not matter where Ringera, Smokin or Fatuma comes from. It is about procedures. We promised Kenyans when we passed the National Accord to usher in the Coalition Government that we, as Parliament, are going to ensure that the Executive carries out the reform agenda. We are showing ourselves to be an anti-reform institution even on a matter as clear as this if we continue to insist that what the President did is right when it is clearly wrong. Those who can stand up and say: “Mr. President, sorry, this is wrong!”, those are the loyal servants of Kenya.

*(Applause)*

The rest, if you cannot call a spade a spade, then that is not loyalty; it is sycophancy. I am asking Parliament to remember that over the years, Kenya has suffered because of dishonest advice and dishonest interpretation of the law. Throughout the Moi era and partly during the Kibaki era, about Goldenberg and Anglo Leasing, if it were not for advice that was not as candid as it should have been, both Governments would have known that, that was absolutely wrong.

Even with regard to other procedures which are not subject to debate today, I think it is wrong for any one of us to use the knowledge we gained in school and in life dishonestly to mislead either the country or the President. We swore to defend the Constitution and I want to defend the Constitution.

I am not interested in who will be appointed. I am not under investigation and I do not suppose that I am a candidate. If I am investigated, I will not care less. I would want to face my accuser. Therefore, I am guided by my conscience and the law. The debate has been on whether a Gazette Notice is subsidiary legislation. We again want to cloud it with legal jargon to mystify everybody. Today, I have decided to argue from the other side. I will not rely on legal jargon. I will read the dictionary. The dictionary clearly says that subsidiary legislation means any proclamation. What is a Gazette Notice, if it is not a proclamation? It is any proclamation, rule, regulation, order, resolution, notice, rule

of law court, by-law or other instrument made under or by virtue of any ordinance, and having legislative effect. It is subject to the approval of the counsel which may be given.

A Gazette Notice gives legal effect to the appointment and, therefore, it falls within the ordinary meaning of subsidiary legislation. We, as Parliament, one good thing we did--- I mentioned it yesterday when we were celebrating the first International Day of Democracy; one of the key highlights I thought our Parliament had made was to amend our Standing Orders, so as to allow the public to see us debating, enlarge the rules, so that we are able to check on the Executive. Surely, how can we pass these rules and then say that they are too much? Why can we not move an amendment to the rules? We are playing by the rules when we say that this appointment was not carried out within the law. I want to refer to Section 23---

**The Minister for Lands** (Mr. Orengo): On a point of information, Mr. Temporary Deputy Speaker, Sir.

*[Mr. Deputy Speaker left the Chair]*

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

**Ms. Karua:** Yes.

**The Minister for Lands** (Mr. Orengo): Yes, she has agreed to be informed. Whereas Ms. Karua said that she would use ordinary language as found in ordinary English dictionaries, I want to inform her that even the Black's Dictionary of Law on delegated legislation repeats word for word what we have found in the Oxford Dictionary. Therefore, good English is found in law as much as it is found in good English dictionaries.

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, I appreciate that very much and the House certainly does.

Let us look at the President's authority under the Constitution. Indeed, Section 23 of our Constitution vests the Executive authority of the Government in the President. The Executive authority of the Government of Kenya shall vest in the President and, subject to this Constitution may be exercised by him either directly or through officers subordinate to him. Subsection (2) says:

“Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the President.”

Even though Section 23, vests Executive authority in the President, its Subsection (2) allows this House to delegate that power to any other authority or person.

When you look at the Kenya Anti-Corruption and Economic Crimes Act, Section 8(3) says that the authority to hire and fire a director is delegated to the KACC Advisory Board, working together with parliament and the President only exercising the ceremonial role of appointing.

*(Applause)*

Mr. Temporary Deputy Speaker, Sir, therefore, the Constitution has allowed and this Parliament has delegated the President authority to appoint without a

recommendation from the Board and the approval of the House. For those who are, therefore, arguing that we swore allegiance to the President, and we did, it does not mean that we, therefore, disobey the Constitution. In fact, we swear a twin oath, namely, allegiance to the President and the Constitution. Therefore, the Constitution is greater because it is the one that sets up the institution of the Presidency, Parliament and any other arm of the Government. Therefore, if the President goes against the Constitution, as an act of allegiance, we are obliged to let him know so.

I hope and trust that each Member will find or summon enough moral courage to say that this is a new beginning and the President needs to know that he exercised the authority wrongly. This afternoon, it has been posed by a Member whether this is a country that practises the rule of law. The Speaker said that this country is definitely governed by the rule of law. I want to say that a country that is governed by the rule of law respects the law, the citizens and the Executive, including the Chief Executive who is the President. It will be against the rule of law for the President to continue with that appointment knowing very well that it is irregular. This is not a game of words. It is a very serious issue and it ought to provide a turning point for us.

Mr. Temporary Deputy Speaker, Sir, it has been embarrassing because there are three or four other appointments that have been made recently. Those now insisting that those appointments are regular have been on record to condemn the attempted removal of the Managing Director of Kenya Bureau of Standards (KEBS). That is what I am calling ethnicization of debate. You cannot accept it just because the person involved is from your backyard, and refuse the other one because you want to protect the Executive. It has to be wrong in all cases because the law has not been followed. I am calling upon Parliament to rise above any partisan considerations and declare those appointments wrong by adopting the Report.

With those many remarks, I beg to support.

**Mr. Kioni:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this Motion by way of amendment. I beg to move that the Motion be amended:-

By inserting the following words after the expressions “8<sup>th</sup> September, 2009”, “subject to deletion of Paragraph (b) of the recommendations on Page 11 of the Report.”

Mr. Deputy Speaker, Sir, many of the things that I would have wanted to say have been said. Many of the reasons that I would have adduced for that have already been said by my colleagues who have opposed this Motion. I want to just mention one or two things. Section 23 of the Constitution says that the Executive authority of the Government of Kenya shall vest in the President. In my opinion, the action that has been taken is in exercise of Executive power and not legislative power. Secondly, as was mentioned a little bit earlier by hon. M. Kilonzo, the Minister for Justice, National Cohesion and Constitutional Affairs, Section 34, Cap.2 of Interpretation and General Provisions Act says:-

“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 National Assembly within twenty one days on which it next sits after the rule or regulation is laid before it that the 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 regulation.”

Even if we were to move and annual this, we will not undo that which has already been done.

Mr. Temporary Deputy Speaker, Sir, we have also talked about the Second Schedule, because I believe that the President was exercising his power under the First Schedule, Section 3(2). Section 33 of the same Act says:-

“An act shall be deemed to be done under an Act or by virtue of the powers conferred by an Act or in pursuance or execution of the powers of or under the authority of an Act, if it is done under or by virtue of or in pursuance of the subsidiary legislation, made under a power contained in that Act.”

That which is done under the Schedules should be taken to have been done under the Act.

Mr. Temporary Deputy Speaker, Sir, in the event that our annulment does not help us send any of the appointed Directors home--- For this to happen, we will have to rely on the Schedules of the Anti-Corruption Act. Section 5 provides the procedure that must be followed. The removal of the appointed Directors can only be done through a Tribunal.

**Mr. Mungatana:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Under Standing Order No.55, I invite you to find that the proposed amendment is, in fact, out of order.

Mr. Temporary Deputy Speaker, Sir, the proposed amendment contravenes Standing Order 55(2) which says:-

“No amendment shall be permitted if in the opinion of the Speaker, it represents a direct negative of the Question proposed.”

Mr. Temporary Deputy Speaker, Sir, the issue is the annulment of the Gazette Notice. We cannot have an amendment at this stage to try and cut short the Question which has already been proposed. I invite you to rule that the hon. Member is out of order. Let us debate this matter until the cows come down, they die or wake up. Even if it is tomorrow, let us debate it. We do not want amendments which are misinformed.

Mr. Temporary Deputy Speaker, Sir, I pray that you rule and find that, that amendment is completely out of order.

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

**The Temporary Deputy Speaker** (Prof. Kaloki): Order! Order, hon. Kioni!

Hon. Mungatana, thank you for bringing that up. But, indeed, the Speaker himself has been gracious enough and has approved that amendment. So, we would be able to continue with it.

Hon. Kioni, can you proceed!

**Mr. Kioni:** Thank you, Mr. Temporary Deputy Speaker, Sir, for that clarification. I followed that route. I was saying we cannot undo what the Gazette Notice did. That can only be done as provided for in Schedule 1 of the Anti Corruption and Economic Crimes Act. Section 5 provides that a tribunal must be appointed for the reasons listed thereon.

Mr. Temporary Deputy Speaker, Sir, I mentioned a little bit earlier, we do not have the minutes attached to it. It is difficult for us, as Members of Parliament, to conclude as to what was discussed in the minutes. The fact that the document was tabled may be, have the minutes attached to it, does not mean we know the deliberations that

went on in those meetings. We want to know how they discussed. Was it even an Item on the Agenda or is it something else that we are looking at? That is not imputing any improper motives. The Standing Orders do require that any report that we are discussing be accompanied with the minutes. It is there on Standing Order No.181 (3), if I get it right.

The minutes that I received from Room 8 attached to this Report are not signed. That is what we have here. We have no evidence that that was done.

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Kioni to introduce matters that he had raised earlier when the Deputy Speaker was on the Chair and a ruling was made? Is it in order for him to take advantage of you having just come when the Deputy Speaker has properly ruled over that matter.

*(Applause)*

**Mr. Kioni:** Mr. Temporary Deputy Speaker, Sir, I did introduce those things earlier. I did allude to that even before I said what I have just said. If I recollect well, the Speaker mentioned that those things should be raised later. What he actually said was that his report indicates that he has a signed copy. The fact is, we do not have signed copies. Our copies of the report do not have minutes indicating the proceedings that took place.

Many of the things that I would have said have been said, with those few remarks, I wish to move that amendment and call upon the gracious lady, hon. Naomi Shaban to second.

**The Minister of State for Immigration and Registration of Persons** (Mr. Kajwang'): On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not want to disobey the orders that you have made or the rulings you have made. But really, what is the direction that we are taking? Assuming that hon. Kioni's amendment is actually accepted that this House should not debate the question of annulment, then the debate is over. Assuming that we actually agree with him, then the Motion is over. So, are we suggesting that hon. Kioni is actually bringing this debate to a halt, so that we know that when we vote and he loses, then that is the end of this thing? We are being put in a situation in which we are going to debate something we have already voted on. If he loses on the issue of annulment, then there is nothing to debate anymore. So, we are being put in a very awkward situation. We seek your direction.

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, hon. Kajwan'g! Order, Ms. Odhiambo! Actually, we need to proceed on. This amendment, and I repeat, has been approved. All we have to do is to get somebody to second this particular amendment and then we are going to be able to vote and we will be able to proceed on! So, that is the way we are going to proceed on this matter.

*(Applause)*

Hon. Kioni, who is going to second the Motion?

**Mr. Kioni:** Mr. Temporary Deputy Speaker, Sir, Dr. Naomi Shaban.

**The Minister of State for Special Programmes** (Dr. Shaban): Asante sana, Bw. Naibu Spika wa Muda, kwa kunipa nafasi hii kuzungumzia urekebishaji wa Ripoti hii ambayo imeleta *mushkil* kidogo.

Bw. Naibu Spika wa Muda, kwanza tuanzie kwenye Kanuni za Bunge. Kanuni za Bunge Kifungu cha 197---

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

**The Temporary Deputy Speaker** (Prof. Kaloki): Dr. Shaban, continue!

**The Minister of State for Special Programmes** (Dr. Shaban): Bw. Naibu Spika wa Muda, Kanuni za Bunge Kifungu cha 197 ndicho kinasimamia Kamati ya kufuatilizia Sheria zinazotungwa na Bunge na jukumu la kuhakikisha kuwa Sheria zinazotungwa na Bunge zinafuatwa kikamilifu na Serikali. Kwa mujibu wa Sheria za Kenya, Gazeti Rasmi la Kiserikali la Kenya ndilo linapeana ilani zote za sheria kwa Serikali kwa sababu ndilo Gazeti Rasmi la nchi yetu.

Bw. Naibu Spika wa Muda, kama nilivyosema hapo awali, jambo hili limeleta *mushkil* kidogo kwa sababu Kamati hii ya kufuatilizia Sheria zinazotungwa na Bunge kuwa zitaweza kufuatwa kikamilifu ndiyo mara yake ya kwanza kuanza kazi. Na kwa sababu ndio mara ya kwanza kuanza kazi, tumegundua kwamba Kamati hii iko na mamlaka mazito sana. Sisi Wabunge ndio tumeipatia Kamati hiyo mamlaka hayo. Lakini kwa sababu ndio wameanza kazi, ningependa tu kuwasihhi wenzangu ya kuwa katika hali yao ya kuanza kazi, tayari wameanza jukumu zito – jukumu lenyewe ni kukumbusha Serikali kuwa Bunge lipo na Wabunge wanafuata kile ambacho Serikali inatekeleza kwa mujibu wa Sheria zilizotungwa hapa.

Bw. Naibu Spika wa Muda, kitambo, kuna wakati mwingine labda sheria zilikuwa zikiminywa-minywa kidogo ili Serikali iweze kutekeleza maswala fulani. Nataka kuwaomba wenzangu, kwa sababu ndio mara ya kwanza kwa swala hili, ningependa kuwa tuheshimu Gazeti Rasmi la Kiserikali, lakini heshima yenyewe kwanza tumpatie Rais wetu, mhe. Mwai Kibaki. Na heshima yenyewe ni kwa sababu ya vile alivyofanya uamuzi – ijapokuwa yeye ni mbunge wa Othaya – alisahau kuwa Kamati hii inamwagalia na inamweka kwenye darubini kuhakikisha kuwa amefuata sheria zote. Mimi sio mwanasheria, lakini naweza kutunga sheria.

Na kwa vile, Bw. Naibu Spika wa Muda, hapa tumejaliwa kuwa na mawakili wengi ambao wanaelewa sheria, na kila anayesoma sheria anaelewa kivyake. Vile vile, nina imani kuwa hata Rais wetu alipoiangalia hiyo sheria, aliisoma na akaielewa kivyake. Pia, Waziri wake wa Maswala ya Haki, Umoja wa Kitaifa na Katiba amesimama hapa na akaeleza na ungeweza kumwelewa kinaganaga kuwa na yeye pia, alivyoielewa ile sheria, imetofautiana kidogo na vile Kamati hii ilivyoielewa hiyo sheria.

Bw. Naibu Spika wa Muda, kuambatana na hayo, sisi tuko hapa kwa sababu tumeorodheshwa rasmi kwenye Gazeti Rasmi la Serikali ya Kenya. Wabunge Maalum wako hapa vile vile kwa sababu waliorodheshwa kwenye Gazeti hili. Hakuna njia nyingine ya hao Wabunge kuteuliwa, ila kupitia Gazeti Rasmi la Serikali ya Kenya. Itakuwaje basi kama Wabunge Maalum na Madiwani Maalum--- Hata mimi nilichaguliwa katika Wasilisho la Taveta lakini kama singewekwa katika Gazeti Rasmi la Serikali, kamwe nisingeapishwa ili nitekeleze jukumu langu.

Mimi si mwanasheria kama wenzangu ambao wamezungumza. Hata hivyo, naangalia jambo hili kiutu na jinsi nchi yetu ilivyo. Tuko katika wakati gani katika nchi yetu? Majukumu ya Bunge ni mazito sana na Wabunge wamejaribu kubadilisha kanuni

za Bunge hili. Pia, Bunge limeeleza Serikali ifuate sheria kikamilifu. Serikali imeambiwa isome na ielewe sheria kinaganaga jinsi Bunge linavyoelewa sheria. Naomba Bunge hili la Kumi lifanye hisani tu. Kutokana na kazi anayoifanya Jaji Ringera na wenzake, hakika sisi sote hatuwezi kuwapenda. Hii ni kwa sababu anavuruga na kusaga kila mtu. Huo ndio uweli wa mambo na hivyo ndivyo ilivyo kazi yake.

Bw. Naibu Spika wa Muda, tukisimama hapa kumkasirikia yule bwana kwa sababu ya kazi anayoifanya, basi tutakuwa tunakiuka sheria tulizozitengeneza sisi. Kwa hisani yetu, heshima kwa Rais na upendo kwa nchi yetu ya Kenya, ninaomba kwamba--- Waingereza husema kwamba “*Warning shot*” imeshapigwa. Bunge linatuangalia sisi tuliomo Serikalini kikamilifu na limetuweka kwenye darubini. Mimi ninaunga mkono juhudi za kurekebisha Ripoti hii. Baadaye, tutasema kuwa tumeipasha habari Serikali vilivyo na lazima ifuate sheria vile ilivyo. Kwa heshima ya Rais, naomba tuondoe suala hilo la kuchanachana Gazeti Rasmi la Serikali ya Kenya kwa sababu tukifanya hivyo, hatutamalizia hapo. Tutaendelea kufanya hivyo kila kunapokucha.

Sisi katika Baraza la Mawaziri tumepewa uwezo na Rais kupitia Gazeti Rasmi la Serikali. Kwa mfano, Waziri anaweza kuteua bodi zinazosimamia mashirika ya Serikali. Tukianza kuchanachana Gazeti Rasmi la Serikali kwa sababu hatujaifurahia bodi ambayo labda mimi nimeiteua, basi tutafanya hivyo kila kukicha. Itabidi tuchunge kwa sababu tutajichanachana wakati tutaendelea kuyachana mambo haya.

Ninaunga mkono urekebishaji na maoni yaliyotolewa na Bw. Kioni.

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

**Mr. Mbadi:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this amendment. I wish to oppose the amendment to this Motion. Listening carefully to my friend, Hon. Kioni, proposing the amendment, if this amendment goes through, then the substance of this Motion will be lost. Therefore, the Motion will be of no significance, even if we support it finally. Therefore, I oppose the amendment to this Motion, and my reasons are as follows.

Firstly, this country has gone through two autocratic regimes We are in the third regime of dictatorship. If we need to put a stop to this, the “imperial” Executive, an Executive that has no respect for Parliament, has to be told that it has to toe the line. I listened very carefully to the Mover of the Motion, who talked with a lot of honour and a lot of motherly advice. She advised us to show respect to the President but I would advise her equally – to kindly go and advise the Executive to respect Parliament and the people of Kenya.

Mr. Temporary Deputy Speaker, Sir, a lot has been said about the Executive authority that vests in the Presidency, but the proponents of this argument forget that, that Executive authority is exercised on behalf of the people of Kenya. When this particular Act was passed by this House, the reason as to why it was insisting that Members of Parliament must approve the appointment of the Director and his assistants was because it recognised the fact that the people of Kenya had the ultimate power to hire the KACC Director and his assistants. Any attempt to deny the people of Kenya this particular right is fraudulent, illegal and unfair to the people of this country. So, I urge this House to show some teeth. A lot has been said: That this is an act in futility. Even if we pass this particular annulment, it will not be implemented.



I am seeking the indulgence of the Chair to advise this House, without pre-empting debate, that we do not stop here. After passing this particular Motion, we will go ahead and deal with the Executive properly in the another Motion that is coming up. We have to deny KACC money.

**The Temporary Deputy Speaker** (Prof. Kaloki): Order! Could you stick to the Motion before the House, please?

**Mr. Mbadi:** Thank you, Mr. Temporary Deputy Speaker, Sir. That is why I begged for your indulgence.

The Minister for Justice, National Cohesion and Constitutional Affairs argued a lot about the First Schedule to the Act and Section 3(2). He based his argument on that, because that Schedule is silent about consulting Parliament and getting recommendations from the Board; then the President has the express authority to go ahead and make the appointments. From where does the President get that authority? He gets it from Section 8(3).

Why is it that the Minister for Justice, National Cohesion and Constitutional Affairs is applying the same Section selectively? I think the reason is because he is guilty of misadvising the Executive. He is defending his incompetence in advising the Executive properly. We would urge the Minister that it is not a weakness to accept that he is wrong.

Could you, please, stand and apologise to the people of Kenya and tell them that you will now advise the President to do the right thing? If you do so, we will forgive you. But if you insist in taking this line, no hon. Member will now, or in future, respect any advice that you give to the people of this country.

Thank you, Mr. Temporary Deputy Speaker, Sir. I beg to oppose.

**The Minister for Lands** (Mr. Orenge): Mr. Temporary Deputy Speaker, Sir, I want to stick to the question which is before the House. I will be very brief because the substantial questions have been addressed by other hon. Members of Parliament.

The hon. Minister for Justice, National Cohesion and Constitutional Affairs did quote Section 30 of the Constitution as a basis of laying the foundation of what is the authority and mandate of this House with regard to legislative power and authority.

It should be well understood that the powers of Parliament are not only found in Section 30 of the Constitution; the powers of Parliament can be collected and gathered from various sections of the Constitution. This Constitution gives Parliament various powers, even to revoke Executive.

Mr. Temporary Deputy Speaker, Sir, I want to give as an example, Section 85 of the Constitution which makes provisions for the preservation of public security. Section 85(4) refers to certain powers the President has authority and power to make under that section. Parliament does not need a Bill to revoke the decision of the President on an order made under Section 85 of the Constitution. It says:-

“An order made under this Section and approved by a resolution of the National Assembly in accordance with Sub-Section 2 may, at any time be revoked by a resolution of the Assembly.”

This means that Parliament can revoke by resolution. You do not need to enact a Bill.

Secondly, in relation to the powers of Parliament under the Standing Orders, it should be noted that Standing Orders are very important regulations because they flow

from the Constitution; they do not flow from an ordinary Act of Parliament. The foundation for purposes of the special powers of the committee on delegated legislation can be found under this Section 56(1) of the Constitution:

Subject to this Constitution, the National Assembly

(a) May make Standing Orders regulating the procedure of the Assembly including in particular orders for the orderly conduct of the proceedings;

(b) Subject to standing Orders made under paragraph

(a), establish committees in such manner and for such general or special purposes as it deems fit---

So, Parliament can give any Committee of the House powers that it deems fit or for any special purposes. There is a reason why this is important. In 1991, this Parliament enacted a law that required nomination of Members of Parliament by political parties to be done within a certain period of time. The Attorney-General went and promulgated the rules which went contrary to what Parliament had enacted. Instead of using the words "Not less than", the Attorney-General changed those words to "Not less than" which put the entire electoral process into confusion.

I think the amendment of these Standing Orders was to address this mischief. Some authority within the Government may misuse the powers donated by the Constitution or by a Statute and make rules which are contrary to the substantive legislation.

I oppose this Motion on the basis that this Parliament can amend. If you run away from this responsibility, your roles as Members of Parliament will have been compromised.

I beg to oppose.

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Thank you, Mr. Temporary Deputy, Speaker, Sir. I rise to support the amendment. This is because I think the ruling to annul will be made from the wrong premise.

If you listen to the debate going on here, even the lawyers themselves are not in agreement as to the interpretation of this law. We Members who are not lawyers; the laymen, are even more lost. When you listen to the debate, all of us are giving different reasons. Some say it is the procedure followed, others the law and others the performance of Ringera. So, what is it that we are judging in this House?

Mr. Temporary Deputy Speaker, Sir, we are the conscience of the nation. We are supposed to give hope and peace to this nation. From what is going on here, we may have different reasons why we are opposing this amendment. One might not be very happy with Justice Ringera for something he did or did not do. Others are unhappy with the President for something he did or did not do while some are settling scores. Others might be very genuine. However, is that the environment in which this House should make such an important decision?

I think separation of powers was done for a purpose. I am sure those who did that Constitution were not stupid at all. They knew what they were doing. I think our major role is to make laws and not to interpret them. Otherwise, we would all be interpreting the same here. Others' roles are to implement. The Executive's role is to evaluate because it has the process. Parliament does not have the process to evaluate performance of KACC officials because they are working according to the mandate given to them. Parliament's role was to vet.

Mr. Temporary Deputy Speaker, Sir, I believe the names were brought here and I was in that Parliament which was meant to vet, not to appoint. The President appointed, while we vetted. My simple understanding of vetting is to vet the character and integrity. We found that group; the Assistant Directors and Justice Ringera, fit for that job. We told the President: "You may appoint them". As far as evaluating what they have done is concerned or whether they have delivered or not, this House has no machinery. All we can do is hearsay. The machinery lies with the Executive, not with Parliament. We should look at the mandate. Unless we change the law--- What we should be doing as Parliament that maybe, we did not do, is to give more powers to KACC to prosecute.

Mr. Temporary Deputy Speaker, Sir, so we are asking Ringera how many big fish he has prosecuted. He has never had that mandate to prosecute. We can give him that meat now if we want. If you appoint another one, maybe, some of us have names of those we would like to see appointed. If they are appointed by the same law, they will perform the same or worse. So, what are we doing here? I would urge my colleagues that we be honest; that we are not the forum to decide to annul or not, to decide whether they have done a good job or not because the President, just like we are all interpreting this law our own way, each lawyer has said this and another one something else; another hon. Member has said this and even the President could have interpreted that law genuinely that we recommended these people, so he can reappoint them because they have not turned thieves overnight. We said they are people of integrity! If they have not performed, it is machinery.

The role of interpreting whether it was done correctly; whether the President did the right thing; whether he interpreted the law properly, not this House because I think differently, you think differently, so by a higher number, will that mean it is wrong or right? No! It is almost like mob justice and I would really urge hon. Members to be honourable and honest enough to admit that it is not our role. The President did his role, which was to reappoint the director and his two assistants, and he interpreted the law that way. We also have a right to interpret it a different way. The only people now who can come and say: "President, you erred; or Parliament, you are right or wrong", is the court. The judges are the ones, I think now and that is the separation of powers. Are we just justified because it will be the majority saying, yes, it was done wrongly? Does it make the minority hon. Members that their judgment was wrong? No! Let us not play ball. That is why our different roles are such that we cannot hurt somebody wrongly; make the wrong judgment and hurt somebody just because we do not like them or just because we are interested in this House to treat all Kenyans equally, regardless of their ethnicity or whether we like them or not. We should judge the work done and not the person. I do not think we have that machinery to judge.

So, I really want to support this amendment by saying, let us give it the benefit of doubt; that the President acted. He is the Chief Executive of this country. He did it in good faith, so let us not embarrass him as a Parliament. Let us think about this country and our children. What message are we sending to the world? The institution of the Presidency is the one that gives respect to a country. It is the unity of the country; everybody--- I was in Rwanda a week ago and the Minister for Health from Swaziland asked: "Kenyans, are you having elections next week or next month?" Because to the world, we are living like we have elections next month or the month after. Let us give the correct image of our country. Let us tell the children that it is not just about fighting.

Parliament is more respectable for making laws and supporting the President, unless somebody has died. I do not think somebody has died like J.M. Kariuki as we were told earlier. I am not belittling what has happened but I think we have blown it out of all proportion. I think it is something that can tear this country and it is not worth tearing us. We should not forget there are also many people who are supporting Ringera, Smokin and the other lady. We cannot tell them what it is they have. So, we cannot stand here and say: "That person is not fit to be this in this country!" We are saying through what evidence! Hatred only is not enough! We are either all Christians or Muslims and we believe in God who sees right inside us.

Do not be holier than thou. Please, let us respect our country. The President is the image of our nation. Let us give pride to our nation.

I support.

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

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

**The Temporary Deputy Speaker** (Prof. Kaloki): I can see that you have the numbers. Please, ring the Division Bell.

*(The Division Bell was rung)*

### DIVISION

*(Question put and the House divided)*

*(Question put and negatived by 86 to 45)*

**AYES:** Messrs. Baya, Githae, Haji, Kamau James Maina, Kambi, Kathuri, Kenyatta, Mrs. Kilimo, Messrs. Kilonzo M, Kimunya, Kioni, Kiuna, Dr. Kutu, Mrs. Leshomo, Messrs. Linturi, M’Mithiaru, Mrs. Mathenge, Messrs. Mbai, Mbiuki, Michuki, Mrs. Mugo, Messrs. Munya, Muoki D.M., Muriithi, Muthama, Mwakwere, Mwangi D.W., Mwathi, Mwiru, Ngugi, Njuguna, Nyambati, Nyamweya, Ombui, Prof. Ongeru, Messrs. Poghio, Rai, Ruteere, Prof. Sambili, Dr. Shaban, Messrs. Thuo, Waibara, Waititu, Dr. Wekesa and Mr. Wetangula.

**Tellers of the Ayes:** Messrs. Mwathi and Mungatana

**NOES:** Ms. A. Abdalla, Messrs. Abdikadir, Ali H.M, Anyanga, Prof. Anyang’-Nyongo, Messrs. Baiya, Bett, Chachu, Chepkitony, Cheruiyot, Ethuro, Dr. Gesami, Messrs. Githunguri, Godhana, Eng. Gumbo, Messrs. Gunda, Kajwang’, Prof. Kamar, Mr. Kapondi, Ms. Karua, Mr. Keya, Dr. Khalwale, Messrs. Khang’ati, Khaniri, Kigen, Kiilu, Kilonzo C., Kingi, Kipkorir, Kizito, Koech, Kombo, Konchela, Dr. Kones, Dr. Laboso, Messrs. ole Lankas, Lessonet, Letimalo, Magerer, Magwanga, Mbadi, Mbau, Midiwo, Dr. Monda, Messrs. Mudavadi, Mung’aro, Mungatana, Murgor, Musila, Musyimi, Mwaita, Mwakulegwa, Mwatela, Ms. Ndeti, Mrs. Ngilu, Maj-Gen. Nkaiserry, Mr. Namwamba, Dr. Nuh, Messrs. Nyamai, Obure, Dr. Oburu, Mr. Odhiambo, Ms.

Odhiambo, Eng. Ogari, Messrs. Ogindo, Ojaamong, Okemo, Olago, Prof. Olweny, Mr. Omollo, Mrs. Ongoro, Messrs. Onyonka, Orengo, Otieno, Outa, Pesa, Eng. Rege, Messrs. Ruto, Sambu, Shakeel, Shitanda, Sirma, Wamalwa, Washiali, Yinda and Zonga

**Tellers for Noes:** Messrs. Ruto and Kazungu.

**ABSENTION:** Mr. Kiunjuri.

*(Debate on the original Motion resumed)*

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Going by the mood of the House as it is evidenced even by the voting and the contributions that we have given, would I be in order to call upon the Mover to reply?

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, I will proceed to put the Question, that the Mover be now called upon to reply.

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

**Ms. A. Abdalla:** Thank you, Mr. Temporary Deputy Speaker, Sir, I wish to take this opportunity to thank all the hon. Members for participating in this historic move. However, every historic move comes with responsibilities. Today, we are united in voting on this annulment; let it not be that next time we vote on an annulment of another unprocedural matter, we go back to our ethnic cocoons or our political cocoons. All that can be said on this matter has already been said. However, I wish to donate the remaining time to the Chair of the Departmental Committee on Justice and Legal Affairs.

**Hon. Members:** Just put the Question.

*(Question put and agreed to)*

Next Order!

*[The Temporary Deputy Speaker  
(Prof. Kaloki) left the Chair]*

*[Mr. Speaker took the Chair]*

**Mr. Speaker:** Order, hon. Members! The Deputy Prime Minister and Minister for Finance has indicated to the Chair that he is unable to transact the businesses under Order Nos.10, 11 and 12 for the reasons that he needs time to undertake consultations and prepare himself, particularly in the light of the business that has been transacted by the House this afternoon in respect of Order No.9, and the amendments which are proposed in Order Nos.11 and 12.

Hon. Members, the Chair has considered the reasons advanced by the Deputy Prime Minister and Minister for Finance and finds that there is substance in the reasons that he has advanced.

Therefore, hon. Members, I invoke the provisions of Standing Order No.36 and defer Order Nos. 10, 11 and 12 to another day when the Deputy Prime Minister and Minister for Finance will be ready.

*(Orders No. 10, 11 and 12 deferred)*

Next Order!

### MOTION FOR ADJOURNMENT

ADJOURNMENT TO A DAY OTHER THAN THE NEXT  
NORMAL SITTING DAY

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Speaker, Sir, I beg to move that this House do adjourn until Tuesday, 10<sup>th</sup> November, 2009.

The House postponed its adjournment because of the very crucial issues that we have been dealing with, namely, the debate on Mau and Kenya Anti-Corruption Commission (KACC).

It is clear that there is an element of exhaustion which has now set in. But, at the same time, the adjournment will also provide the various Committees with ample time to look at the various aspects of Government affairs and report to the House when it resumes on Tuesday, 10<sup>th</sup> November, 2009. I just want to take this opportunity to say that the message that has been sent by this House to the nation and to the people at large is that Parliament can no longer be taken for granted. It is one of the strongest statements to the Executive that, if we make the laws, it is important that we adhere to them. Parliament has, on this occasion, proved that it is completely different from what it has been in the past. The House has always been accused of providing a rubber stamp, but the very important statement that the House has made on issues surrounding the Mau Forests and KACC has sent a strong message that we must now look at Parliament as a different entity that must be respected.

Mr. Speaker, Sir, at the same time, the break, which is roughly a month, will also provide Members with the opportunity to interact further with their constituents, particularly on matters that relate to CDF programmes. They have been having very little time to attend to those matters because of the nature of the parliamentary programme. So, this adjournment, which I strongly hope will be supported by Members, will allow them to have more time with their constituents and support them in whatever way is definitely desired. This is a straightforward Motion and I see no reason to belabour it, but just to seek that the House supports the Motion for Adjournment. I would like to request Prof. Anyang'-Nyong'o to second the Motion.

Mr. Speaker, Sir, I beg to move.

**The Minister for Medical Services** (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, I beg to second the Motion for Adjournment which has been moved by the Deputy Prime Minister and Minister for Local Government, Mr. Mudavadi who is my dear friend.

Mr. Speaker, Sir, let me take this opportunity to congratulate the House for very lively and constructive debates that we have had during this Sitting and that we have had today regarding the Motion that has just been passed. The road to democracy is long and torturous. It is, indeed, like the road to Heaven. Many try to travel along it but few succeed. Indeed, that is why this country has taken too long to reach the level of openness and accountability on the part of the Government.

It was not an easy task when we started to struggle for the second liberation in the 1980s. It was tough because people lost their lives and spent many hours, days and years in detention and police cells. People were also kept away from their families for many days but we are happy today that we can stand in this House with our heads high and shoulders tall, and say that we are free at last. We are free at last to discuss these things openly in Parliament and put the President – the highest office on this land – accountable to the National Assembly.

Mr. Speaker, Sir, those of us in the Cabinet who supported the Motion that has just been passed did not do so from the point of view of disloyalty to the highest Executive in this land, but from the point of view of honesty and transparency. That is the basis of good advice and counsel that this nation requires of us. My most famous and preferred theologian, Bishop Augustine of Hippo and not Oginda as my friend, Mr. Murungi, referred to him the other day, once said that in the court of conscience, there is no obligation to obey an unjust law. Conscience is not an easy thing. Indeed, when people simplify it to the effect that when you disagree you must resign from the Government, perhaps, you have more responsibility to be in Government and make sure that the right things are done.

It is important to understand that we are in a very interesting experiment in Kenya. We have an experiment where we have a Coalition Government and the other Coalition Government that I know in Africa is in Zimbabwe. These are Governments which are formed after a crisis, where two opposing forces are joined together to ensure that peace, prosperity and the struggle for democracy continues. It is like a ceasefire between wars. When the fire is ceased, you must make sure that the terms of the ceasefire are obeyed and observed; otherwise, you go back to war again. There are those of us who have been in the struggle for a long time and who would like to give Kenyans a chance to build democracy. We would like the ceasefire not to lead to another war, but to lead to a long period of peace and prosperity during which the economy can grow and the architecture of democracy can be put down. It is not going to be easy. It will be full of contradictions, but we must make sure that society only develops when major contradictions are resolved. The major contradiction in this society is between the rich and poor; those who have and those who have not; those who make decisions based on a small power elite and those who want decisions to be made on the basis of a democratic process that brings in the majority of the people and that in the final analysis, is based on the rule of law.

Mr. Speaker, Sir, these contradictions must be resolved by adopting a Constitution for which the people of Kenya have been struggling for a long time. It is on the basis of a new Constitution that we will respect democracy, nurture human rights, keep corruption at bay and ensure that this country develops fast and becomes, indeed, a democratic and prosperous nation.

What we have been looking for, for a long time is a national developmental state. That national developmental state is now in the process of being born in this House, as the Coalition Government struggles to ensure that there is political space for Kenyans to build that developmental state democratically.

Mr. Speaker, Sir, I beg to second.

*(Question proposed)*

**Ms. Karua:** Mr. Speaker, Sir, I wish to support the Motion.

I wish to say that Executive should take the displeasure of Parliament seriously. We should not just say we are a country under the rule law. We must demonstrate respect for our laws. I hope that the Executive will take time to reflect and correct those issues. I also want to appeal to Ministers. Ministers of both sides of the Coalition Government: Look at your dockets. Look at what you have done wrong in Board appointments and correct them. Do not wait for Parliament to correct you. We must uphold the rule of law. It is right that we begin with the Chief Executive. But it is also important that Ministers also adhere to the law when executing their duties.

Mr. Speaker, Sir, we, as Parliament, also should not play double speak. We must henceforth show seriousness as a reform institution. I take it that it is a new birth and together, we will move to ensure that the reform agenda is moved forward in this country. We do not have to be playing push and pull. We should all be pulling together to ensure that Agenda 4 is effected.

It is regrettable that we will go home before my request for Ministerial Statement on IDPs is responded to. I want to appeal to the Government to ensure that the IDPs are resettled forthwith and in any event, before the *El Nino* rains. Majority of those in the camps were squatters without any land. They belong to Kenya. It is the responsibility of the Government to facilitate them to settle somewhere, so that life can continue.

Mr. Speaker, Sir, there are many things unattended. Let the Executive reflect and come back with renewed vigour to serve the people of this country.

I want to stand here and give my condolence to the family of the late Mary Ngoyoni whom we are going to bury tomorrow in Kargi in Laisamis.

I also want to say that this the time when we will not only work in our respective committees, but also find time to do things in our constituencies.

With those very few remarks, I beg to support the Motion at hand.

**The Minister for Trade** (Mr. Kimunya): Thank you, Mr. Speaker, Sir, for this opportunity to add my voice to support the Motion for Adjournment.

I believe that this House has gone through a lot of tension. We are going through trying times. Even when you watch cooking going on in the house, there is a time that you need to lift the lid for the pot to simmer and for the food to cook properly. I believe that we are at that kind of point. We, as leaders, need to have that break so that we can start talking to each other and looking at where we are taking this country. We, as leaders, are called upon by our people to shape the destiny of this country in unison. We should ask ourselves what are some of the things that we need to think beyond what we are talking in Parliament. I believe the challenge ahead is bigger than, perhaps what we are looking at now, especially looking at the poverty levels, joblessness and economic situation in our country as part of the adverse effects coming from the global situation. I



believe we, as leaders, need that time to get there. As we come back in November, what is it that we can do to actually prepare Kenya for the full impact of the global economic challenge? What are we going to do to all the people who are losing jobs? Companies are constantly giving us notices that they will lay off people because the market is bad. What are we going to do with all these youths who will be getting out to the streets? I believe it is time that we, as leaders, took that time off. What investments can we make through the stimulus packages? What investments can we make through the CDF to cushion some of those adverse effects that will be coming to us very soon? It is time we go out there to dig dams to absorb the *El nino* waters.

I believe that we, as a House, deserve this break, mainly to also reflect on where we are going as a country. What are some of the things that we need to do to save this country and avoid the kind of tension we have witnessed this afternoon? I believe we, as leaders, could, probably have handled that situation in a better way and achieve the same results. During this break, we may well be able to come with those innovative ways of looking at the way we handle this country.

Kenya is watching. I wish you a good break. I hope that we shall meet in the cause of the break and reflect our thinking on where we take this country in the future.

With those few remarks, I beg to support.

**Mr. Speaker:** The hon. Member for Shinyalu!

*(Applause)*

**The Member for Shinyalu** (Mr. Justus Mugali Kizito): Thank you, Mr. Speaker, Sir, for giving me this opportunity. In the first place, I would like, for the benefit of those hon. Members who were not here or whom I have not interacted with, my names are Mugali Justus Kizito; a new Member of Parliament from Shinyalu.

*(Applause)*

First of all, Mr. Speaker, Sir, I want to pass my tribute to the late hon. Charles Lilechi Lugano, to whom I was his campaign manager. I want to say that he had very good programs for Shinyalu. Unfortunately, immediately he got to Parliament, he became sick and he was unable to proceed on with the programs. As I stand here in his honor, I want to promise Kenyans and my people in Shinyalu that I am going to start where he left. I will take over from there.

*(Applause)*

Secondly, Mr. Speaker, Sir, I would like to thank the people of Shinyalu for accepting to elect me to this very august House and I feel dignified as I stand here. Thirdly, I would like to thank my party, ODM, for allowing democracy to flourish in Shinyalu. I was little known in the party but the party allowed me to contest using their ticket. When I won the election with ODM as a surprise candidate, they did not muzzle my way; they allowed me to come on.

Mr. Speaker, Sir, I would also like to thank my party leader, the Right Honorable Prime Minister, hon. Raila Odinga, who never abandoned me and who actually came and

campaigned for me and made sure I am here. I would also like to thank and commend the Deputy Prime Minister and Minister for Local Government, hon. Musalia Mudavadi, for his assistance and all those who came over or who had time to come to Shinyalu to support me and even those who prayed for me. I am very grateful to them.

Mr. Speaker, Sir, I would like to take this opportunity to tell Parliament that I would like to work with all hon. Members to help and develop Kenya right from Shinyalu. We have so many problems in Shinyalu. Shinyalu is a very vast constituency which is in-between, a big forest that makes it difficult to get to the other side. So, I would like to work with hon. Members, the Government and everybody else to develop Kenya from Shinyalu. My constituency has a number of problems, difficulties and challenges. Those challenges include the youth, who are almost despairing for lack of employment or lack of somebody to listen to them. Shinyalu has many youth who are very much talented in sports and academically, but they have despaired because of lack of jobs, opportunities and even self-employment opportunities. That is why I have come here to work with other hon. Members here and all Kenyans to help those people.

This also applies to the women of Shinyalu who need help. There is rampant poverty which is rocking the entire Shinyalu Constituency because of the factors that I have just mentioned.

Ladies and gentlemen---

*(Laughter)*

I am sorry, Mr. Speaker, Sir. Am I allowed to say, ladies and gentlemen? I am now learning.

Mr. Speaker, Sir, the biggest problem in Shinyalu is with regard to poor roads and the Prime Minister and Deputy Prime Minister and Minister for Local Government can attest to this fact. They know that you can even get stuck in the middle of the road, not when driving, but when you are walking. This is what has hampered development in Shinyalu Constituency. I would like to work with my colleagues and the Chair so that those roads can be done. Shinyalu is the only district in this country that does not have a single tarmac road and we kindly request for the same. Shinyalu, which is also known as Kakamega East---

Mr. Speaker, Sir, I beg to support the Motion for Adjournment.

Thank you very much.

**The Minister for Information and Communications** (Mr. Poghio): Thank you, Mr. Speaker, Sir, for giving me this opportunity to support the Motion for Adjournment. I wish to join my colleagues in appreciating your role as the Speaker and also hon. Members for the democratic process that we have seen today.

In a democratic process, there are winners and losers. On the side of those who lost this evening, we have to recollect and understand that those who convinced more hon. Members to join the opposite side did so and we must now speak with one voice after the vote.

*(Applause)*

Mr. Speaker, Sir, we know our weaknesses and I think we lost collective conscience. I hope that we will use the opportunity during recess to work on that collective conscience, especially on the Cabinet. We have seen a division of a magnitude that requires urgent attention. I have not been in the Cabinet before and being there now, I think I have learnt my lessons. I have also realised that it is possible to have within the same Cabinet, Ministers who are substantive and others shadow. So, the kind of strength that we have is very interesting.

If the right side of this House is not strong and together, we lose something in democracy and in the practice of Parliament. It is important that when Mr. Speaker sits there, he knows the level of consciousness of both the right side and the left side of the House. It is important, therefore, that for the purpose of democracy, we work on those balances. I do not think it is anyone's mistake but ours. It is up to us to work hard and ensure that we stand for a particular position.

I wish hon. Members a successful and peaceful recess. I wish them strength and health that they need as they go to their constituencies. We can use this opportunity to visit one another and each other's constituency. It is very important, for example, for those who have not been to Kacheliba Constituency to come and visit the place so that they can see for themselves the rich history that Kacheliba Constituency has. So, I take this opportunity to invite hon. Members to visit Kacheliba Constituency so that they can learn a thing or two about the rich history of this constituency.

Therefore, I want to take this opportunity to also wish peace in this country. Regarding the problem that we saw about the Samburu and the Pokots, I want to announce to members of the two communities to get together and strengthen the peace that existed. Historically, the Pokot and the Samburu communities never used to fight at all. In fact, they had taken certain oath never to allow the Pokots to fight the Samburu. We need to ask the Samburu and the Pokots to trace back and find out where the rain started beating them, and when they started fighting each other and get back to the original relationship that was there between the two communities.

Mr. Speaker, Sir, I want to thank my colleagues for the way they have upped the standards and the capacity of this House to resolve issues and debate issues. I also want to say that, in the event that we do disagree, let us do it knowing that we are not in a physical fight or in tribal fights. We are the august House. If you vote with your conscience today, let that be your conscience for tomorrow. Let it not be a conscience that is specific to your tribal needs or ethnic situations. Let it be a conscience for conscience's sake. Let it be a conscience that is democratic and a moral conscience.

I have also seen what happens in this House sometimes. When a vote is put that is really morally correct, people retreat into their ethnic cocoons. So, my challenge is to hon. Members that we develop a conscience, so that we are together with one William Wilberforce, who did two things for his country: One, he abolished slavery; two, he reformed mannerisms. I have been trying to be a Wilberforce. Sometimes, of course, you get your name amongst those of bad people. I say that I am as clean as anyone can be. I do not have a corruption issue, and I just want to clear my name and wish everybody well.

**Mr. Speaker:** Mr. Ruteere!

**Mr. Ruteere:** Mr. Speaker, Sir, my correct name is Silas Ruteere.

**Mr. Speaker:** At least, I got one name right!

**Mr. Ruteere:** Yes, Mr. Speaker, Sir. Otherwise, I thank you for giving me the opportunity to support this Motion of adjournment, so that we can go back to our constituencies and also attend to other issues that we are not able to attend to when we are in Parliament.

The country is ravaged by famine, especially in areas where drought has hit seriously. As Members of Parliament, we need to go and work with the people, advise them and also consult with the Ministry of State for Special Programmes to see that relief food reaches all corners of the constituencies, because at times, when it is given out and we are not there, it goes into the wrong hands. So, it is time that Members of Parliament are also involved to see who are in great need of food and what can be done.

Mr. Speaker, Sir, I also appeal for the release of Constituencies Development Fund (CDF) money for this particular year. We are going home at a time when CDF money has not been released. We have a lot of problems that need CDF's attention. Schools need infrastructure. Dispensaries need to be done. There is no preparation for the expected *El Nino* rains. We need some dams to be done. We need watering. We need storage of various things. So, I appeal to the CDF Management Board to see that they release CDF funds.

Also, the much talked about economic stimulus package, where schools and health centres are to get money for planting of trees, we are about to go to the planting season. We need to know when this money will be released, so that planting can be done on time. We also need seeds. Farmers are preparing their *shambas*. Some of them will not be able to buy seeds. We need to have farmers assisted with seeds. We also need to have the subsidized fertilizers reaching all corners of the constituencies, where there is farming going on.

It is time that this is done before the rains start because some of the roads become impassable when it rains. Therefore, this is the time to access all these inputs to the farmers at the right time.

Mr. Speaker, Sir, as has been said, this House has done a lot of work and our stay here had also attracted a lot of people from the constituencies. I started noticing that constituents had filled the offices at Continental House. They were almost overtaking the whole area. So, hon. Members should go to their constituencies, so that they attend to the needs of these *wananchi* who come towards Parliament and their offices, so that they see them closer in the constituencies.

Mr. Speaker, Sir, it is time that we went and appealed to those preparing students for examinations to prepare them for examinations which are coming next month. The students should know that we are with them. We pray for them and encourage them so that they do their examinations well and succeed.

Mr. Speaker, Sir, I also want to appeal to the Ministry of Youth Affairs and Sports to organise their programmes properly. There are those youth groups that were given money and have denied others the opportunity to be given money. I would appeal to this Ministry not to give a condition of releasing new refunds to groups depending on how much those others have repaid because we do not know how those others were selected. Some may not have been selected the right way and that is why they are not paying.

A criteria should be given which will make MPs identify the correct youth groups because for the last two years, we have not received youth funding. The youth are becoming many. This money was only given to a few groups and it did not reach all

locations. An area like mine which has got more than 30 locations needs more than the 20 groups. I have two districts with two District Commissioners, so I also need double allocation.

With those remarks, I beg to support.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Thank you, Mr. Speaker, Sir, for giving me this opportunity to air my views. I rise to support the Motion For Adjournment. It has come at the right time. Actually, we should have gone on recess about two weeks ago, but it is never too late.

As we prepare to go on recess, it is important that we utilize it in a most beneficial manner, visiting our constituents and CDF projects. We should visit our constituents so that they do not have to come at Continental House. I am glad that no constituent of mine has ever come to Continental House to look for me. I go to where they are. I think that is important.

As Ministers, this recess will give us a chance to work in our offices without parliamentary business interrupting the official business. For example, I promised the House that my Ministry will sort out the traffic problems in Nairobi. Studies have been done and concluded. We are now just preparing the drains on the way we want to sort out this issue. Since I have been preparing a Ministerial Statement on the issue and now that we are going on recess, I think it would be good that I mention to hon. Members some of the thinking that is going into this area.

Mr. Speaker, Sir, the first thing we will do is that we will convert the major roads into one-way streets, starting with Harambee Avenue. You will be able to approach Harambee Avenue only from Uhuru Highway. It will be a one-way street. Parliament Road will be a one way street towards Hotel Intercontinental. City Hall Way will be a one Way Street. Moi Avenue will be a one way street going towards the north. This will ensure that the main entry of the City Centre will be Harambee Avenue. The main exit will be Kenyatta Avenue.

Entry into the city from the other side, Moi Avenue will also be one way. On the other side of Moi, Tom Mboya Street will be one way. River Road will be one way and Kirinyaga Road will also be one way.

Mr. Speaker, Sir, we have also identified what we call bus corridors. It has come out very clearly that we blame *matatus* for congesting the City Centre. It is not the *matatus* that congest the City Centre. It is the private motorists who congest the City Centre. Therefore, we have reversed the previous policies. We now want to implement policies that will make you leave your car at home and enter into a Public Service Vehicle (PSV). Those are the plans we have.

On bus routes, we want to reinstate the old Kenya Bus Services (KBS) routes that we had. The old KBS routes used to start on the outskirts of the City Centre and end up at the outskirts of the City Centre but they would transit through the City Centre. That is the correct way to go about it. We should not tell commuters that if you are coming from western Kenya, they alight at Westlands roundabout and take another vehicle to the City Centre. That is inconveniencing to the commuters and also very expensive. We have had cases where somebody who had come from Kisumu and it was their first time in Nairobi alighted at the Westlands roundabout and got lost. The person who was to meet them was to meet them at the country bus station. The disabled have also been complaining that it is inconvenient for them. We are going to allow PSVs to transit through the City Centre.

The journeys will start at the outskirts and end up in the outskirts. There will be no parking in the City Centre for PSVs.

Mr. Speaker, Sir, since we are going to enlarge the roads, we are going to lose about 900 parking slots but we are going to construct storied parking. Therefore, we will get 2,400 parking slots. The net result is that we will have more parking than we lost.

I support.

**Mr. Namwamba:** Mr. Speaker, Sir, from the outset, let me say that I support the Motion for Adjournment. Indeed, it is true that it has been a long session and we more than deserve a break.

As we rise to take this well deserved break, I dare say that we do so proudly, having raised the bar for this House to historic levels. Indeed, today I am proud to have been part of a big blow that we have struck for the rule of law in this House. All of us can proceed to take this break, knowing that we have re-ignited the belief of the people of Kenya and the confidence of the people of Kenya in the institution of Parliament. Today, we have made it absolutely clear that we shall stand up as an institution to uphold the tenets of democracy and the rule of law in its purest sense.

Mr. Speaker, Sir, I want to take this opportunity to urge the House that as we go to busy ourselves with our respective constituency business, let us focus our minds on some key agenda for business that remains unresolved. We have the Constitution making process on the Table. I have the honour of serving as the Vice-chairman to the Parliamentary Select Committee on Constitution Review.

Mr. Temporary Deputy Speaker, Sir, I am aware that the Committee of Experts is already at an advanced stage of considering various views coming from various sectors. May I urge hon. Members that wherever we will be, may we continue to be robust participants in that process. This is also a good opportunity for us to engage in disaster preparedness because the Department of Meteorology has warned us in advance of impending *El Nino* and as I prepare myself to roll up my sleeves and my trousers to head to Budalang'i and prepare for this *El Nino* phenomenon. I want to send a message of good will to all my colleagues and all Kenyans in the hope that we shall be found prepared when this *El Nino* hits the country.

I also want to urge the Government to fast track the economic stimulus package (ESP) because the Government has laid out an ambitious programme under this agenda but so far, not much has been seen. So, we want to see stuff like the model school, upgrading of health centres, construction of markets and all those nice things that the Deputy Prime Minister and Minister for Finance outlined in the Budget statements last June and because this stimulus package had a six months deadline, we would like this whole programme to take off.

Finally, I want to urge the Government to also utilize this time while we are on recess to be prepared for tasks and I particularly want to touch on sports. There are various sporting activities that this country is scheduled to host. There is the African Athletics Meet that this country is supposed to host next year. There is the East Africa Soccer Tournament and we do not see any activity towards preparedness for those tournaments. I want, therefore, to urge the Government that may we use this opportunity to prepare for this, so that we can host our name high. Of course, during this Recess, some of us will also be representing this National Assembly at the International Half Marathon for Members of Parliament in Poland. We hope, led by our Captain, Maj-Gen.

Nkaisserry, that we will hold the name of the National Assembly and the country high at that competition.

With those few remarks, I beg to support.

**The Minister for Forestry and Wildlife** (Dr. Wekesa): Thank you, Mr. Speaker, Sir. First of all, I want to congratulate the new Members of Parliament represented here by Mr. Justus Kizito and Eng. Simon Ogari. I would also like to say that I spent a week in Shinyalu and I can attest the fact that Mr. Kizito was elected democratically. The election was very peaceful and I can assure the hon. Member that I will work together with him to uplift the lifestyles of Shinyalu people who are my relatives in one way or the other.

I want to commend my colleagues for voting for the Mau Task Force report yesterday. It was a happy day for me and the spirit that I saw emanating from hon. Members here is that they recognized the importance of environment and saving our forests; our five water towers. The only thing I want to urge them is that let all of us talk to people about planting trees.

Those with land should donate 10 per cent of it for planting of trees. To schools, we are saying that each child should plant five trees at school and three trees at home. With 35,000 primary schools, and an average of 500,000 pupils, those will be many trees.

Drought has been with us for two years now. We see our people dying and our animals dying. Hippos and elephants have been dying, because of drought. So, it is important that we, in Kenya, are aware that destruction of forests contributes, to some extent, to the lack of rain that we are having. This has caused a lot of poverty among our people. We see people dying and we are experiencing shortage of food. Last year, we experienced shortage of food. Trans Nzoia is the granary of Kenya and I can attest to the fact that this year, Trans Nzoia will get only half of the crop. So, we have a problem and we should be prepared to make sure that the little maize that is harvested is bought by the Kenya National Cereals and Produce Board (NCPB). The NCPB should have enough money to ensure that as soon as farmers deliver, they are paid.

I want to join the Member for Kacheliba in saying that we are one Government. We should not forget the fact that this is a Coalition Government. I look forward to the day when Mr. Olago will be voting with me. We should not always retreat to our political parties when we have a national issues such as the one we had yesterday. It is one Government and we have to make sure that it survives for the next three years, because our people want service from us and not politics. We have conducted enough politics, and I think we should now reach out to each other. Let us visit each other. I was very happy when I had a home coming, with six Members of ODM in Kwanza. This is the sort of thing we want to see so that we can persuade each other. I should persuade ODM people to come to the side of PNU people and PNU the same. Elections are funny things. People who refuse to vote for you this year will vote for you next year. I do not see much of that. I do not see us engaging together.

Insecurity still continues in my constituency. Cattle rustling is common.

I support the Motion.

**Mr. Njuguna:** Thank you, Mr. Speaker, Sir. I also support this Motion of Adjournment. I would like to make a few remarks.

First, I would like to raise a point on insecurity in this country. The Government should increase security agencies in our urban and rural areas. Recently, we have noted some kidnappings and abductions and even murders. The transport industry has also been

affected. We recognize that even taxi operators do not have the confidence to operate at night. Therefore, security must be improved tremendously.

My other observation concerns the Ministry of Education. We noted that this Ministry has already released money for secondary schools. However, money to primary schools has not been released.

It is, therefore, imperative for the Ministry to act very decisively and release the same. If the money is not released, the quality of learning in our schools will be affected. Even the required equipment will not be there. The end of the year examination performance will also be very poor.

Mr. Speaker, Sir, the other observation concerns relief food distribution. The entire nation is ailing. We are suffering and the Ministry concerned must, therefore, put extra efforts in the provision of relief food. All the regions of this nation must be considered and the distribution must be equitably done.

Finally, Kenya Wildlife Service (KWS) must also rise up and make sure that areas with crops are protected from the threat of wild animals.

With those few remarks, I support the Motion.

**Mrs. Odhiambo-Mabona:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I will try to be very brief. Today was a very historic moment in this country. It was historic because this Parliament has been known as the club of 222. We have been known as a club of 222 against the country because we have not been feeling the pulse of the nation. We seem to be always going against the grain. Today, we have not gone against the grain and for those of us who have been listening to the media and to the mood of the country, we have listened to the country.

One of the reasons why this moment is historic is because we took a bi-partisan approach today. If you actually saw the people who voted in support of the Report of the joint Committees, you will realize that they were across party lines. That is very encouraging. Secondly, we also voted cross ethnic lines. I know that there are many people who say that we vote along ethnic lines. But, for once, we voted across ethnic lines. There was no PNU, ODM, Luo, Kikuyu or Kisii. We voted with our conscience.

One of the other reasons why today is historic is because we have lifted the jurisprudence of this country to a higher level. When I was a student of law, one of the things that we researched on in this country - and we were a source of authority on - is the issue of the separation of powers. Today, we have seen the separation of powers at play and at excellence. I am saying that because there are many people who are saying that we are practicing parliamentary dictatorship. It is not dictatorship. It is new to us, but in reality, what we are basically exercising is the separation of powers as it should be. If we think that the Executive is going beyond its limits, then Parliament must come in and indicate where the Executive limits stops and ours begins.

Mr. Speaker, Sir, I would like to say that, as the Biblical Moses, at one point, we have to be like the Israelites. Moses said: "At this point, I am making a decision. As for me and my house, we will serve the Lord." Many of us today made a similar decision. For me, and I am sure it may go for the Speaker as well---That for you and this House, you chose to serve the Lord.

With those few remarks, I support the Motion.



**The Minister for Livestock Development** (Dr. Kuti): Thank you, Mr. Speaker, Sir, I rise to support this Adjournment Motion. It is time to go back and “touch base” with our constituents.

I am going to Isiolo North Constituency at a time when we have experienced one of the worst insecurity situations. About 70 people have died between April last year and this time. Animals worth millions of shillings have been stolen and relations between my constituency and the neighbouring constituency has not been one of the best. I would like to urge my fellow colleagues who are neighbouring Isiolo North that we get together and look at the situation, so that we can serve our people. It is only when there is peace that development can take place. The foundation of development is peace.

I would like to urge all Members who are neighbouring my constituency to come together and take full charge of the situation and try to bring sanity to the area.

Mr. Speaker, Sir, I also urge the Government to take its role seriously and try to incise and analyse the root cause of insecurity in that area and come up with appropriate solutions. This is because the roles played by the Government are wanting. I am sure those who have been following the media reports have observed situations where Government security forces watch armed gangs in a Government protected area and nothing is done. This is a wanting situation on the part of the Government. Therefore, I would like the Government, especially the Office of the President and the Ministry that deals with internal security to take this matter, analyse it and come up with appropriate measures. As a Member for Isiolo North, I will be very co-operative both with the Government when the intention is correct and is in terms of bringing sanity and peace in the area. I will also collaborate with my colleagues. I invite all of them, so that we can solve the security situation in Isiolo and the neighbouring districts.

I would like the Committee on Administration and National Security, as it visits us, to really take time, analyse and come up with the issues which are disturbing these areas. The Committee should bring us together. I appeal to the Chairman of that Committee to involve us, as Members of Parliament. I am willing and ready to participate in a reconciliatory approach and programme that will bring sanity to this area. This is because without that, we will be going back with no major activity or maybe, running up and down after stolen animals, burying those who have died and wasting our time instead of bringing development. This is because the area I have mentioned is one of the most marginalised areas that needs a fast-track in development. We should be in the forefront in the fast-tracking of development in that area.

I would also like to be with the livestock farmers, as the Minister for Livestock Development and understand the challenges that they face, for example, drought, deaths and impoverishment. People with large heads of animals are now coming back from Mt. Kenya Forest and various places empty handed. I am sure that the scene at the holding ground that I mentioned today is just a replica of the scenario countrywide. I am grateful that the Government has done what it is able to do, although this is not the main solution. We should focus on the issues of re-stocking after the drought. I will try to bring up this matter before the Cabinet, so that we can support livestock farmers after this drought.

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

**Dr. Khalwale:** Mr. Speaker, Sir, I would like to support this Motion for the simple reason that it is very well that we go home at this point when our rating is very high.

Mr. Speaker, Sir, after the Motion of yesterday, some of us who believe in the supremacy of this House were very worried when the electronic and print media started implying that all was not well in Parliament. So, we have used this opportunity, once again, to prove that we believe in the rule of law and that we are above compromise.

On a day like this, it will be nice to reflect. President John Kennedy, before he was killed, wrote shortly in his diary that Members of Parliament and Congress should appreciate that change is a way of life. He said if you fail to appreciate change, you end up living with the consequences. If you are lucky, change changes you. Today, we have an opportunity to remember that the economies of the western countries were once upon a time dependent on slave trade. But it took hon. Sir. William Wilberforce a moment in Parliament in the House of Commons to move a Motion which changed slave trade and the world went on.

Mr. Speaker, Sir, in South Africa, apartheid had really thrived. But Steve Biko decided to pay with his life. Mr. Nelson Mandela survived 27 years in prison just to make sure men and women in South Africa were given an equal opportunity.

In the whole of Africa, colonialism ravaged, but the founding fathers of the African nation stood up and gave us freedom. More recently, in this country, totalitarianism by KANU and dictatorship had oppressed and visited a lot of poverty on most Kenyans. Not many of us any more remember that it was Kenneth Matiba and Charles Rubia who stood up in this House and made sure that we enjoy multipartism and various freedoms that we are enjoying today.

Mr. Speaker, Sir, I am remembering these things because today, the House with great support from the Front Bench said that the President was wrong. It is not because we thought the President was not competent. But we thought the President is a well educated person; a person who went into office on the assumption that he was going to uphold the rule of law and he is well exposed. He knows what has taken place in this Parliament is something that happened in Uganda. Ugandans decided the way this House has decided today. It happened in Ghana and the Ghanaian Parliament also decided the way we have decided today. So, I am hoping that the President will be able to realize that this Parliament wants him to leave a good legacy.

Mr. Speaker, Sir, since we are in the mood for reforms, we want to tell the Executive about the issue of insecurity in this country. Our police officers are not performing because of low morale. If you dissect the structure of leadership in the Kenya Police, you will forgive some of our senior officers if they demonstrate lethargy. With the indulgence of the Chair, may I just share with Members how the structure is today. I will not mention communities, but I would refer to geographical areas.

Today, the Commissioner of Police is from Mt. Kenya; the Deputy is from the largest community in Nyanza Province; the second Deputy is from the largest community in Rift Valley, the third in command is from Mt. Kenya. When you go to the PPOs in charge of provinces, the in charge in Central Province is from Mt. Kenya. His deputy is from the largest community in Nyanza Province. The PPO in Nairobi area is from Mt. Kenya. His deputy is from the largest community in Nyanza. In Coast Province, the PPO is from a small community from Western Province. His deputy is from the largest community in Rift Valley. In Eastern Province, the PPO is from the largest community in Nyanza and his deputy from Central Province.

**Mr. Speaker:** Order, Dr. Khalwale! You have run out of time!

**Dr. Khalwale:** Yes, Mr. Speaker, Sir, I wish to support this Motion and say that the Executive should make sure that he corrects this, otherwise the rest of the Kenyan communities feel that they are left out of the police force.

Thank you, Mr. Speaker, Sir.

**The Assistant Minister for Co-operatives Development (Ms. Kilimo):** Thank you, Mr. Speaker, Sir. I rise to support this Motion of Adjournment, which is quite overdue, considering that there is a lot that we need to go and do on the ground, especially laying out the proposals for the Constituency Development Fund (CDF) money that we anticipate to be allocated very soon.

Mr. Speaker, Sir, I also hope that as we go for recess, I will be able to host the Minister for Forestry and Wildlife, Dr. Wekesa, to come and see what we have done in Embobut Forest; namely, persuading people, removing them from forests and now, they are in 16 holding grounds. I also hope that we will be able to use this recess to resettle the people in Embobut who have willingly moved out of the forest before the El-Nino rains come.

Mr. Speaker, Sir, there is the issue of hunger, especially from the Arid and Semi-Arid Lands (ASALS) communities and we have seen people dying. So, I really appreciate this recess so that we can go and update ourselves on the situation to avoid people dying because of hunger. Considering that hon. Members seem to do more than what the Provincial Administration could be doing – checking on what is happening in people's lives, it has to be us and I think it is high time that we go on recess.

Finally, Mr. Speaker, Sir, I want to use this opportunity on the Floor of the House to call on my community, the pastoralists; I come from a pastoralist community where we have been killing each other because of animals – because of cows that look like goats! When I remember the Samburu West killings, I want to send my condolences to the Samburu people and call on the Pokot, Samburu, Marakwet and Turkana that it is high time they changed their way of life. I also hope that this opportunity, before we go on recess, that hon. Members of the Departmental Committee on Administration and National Security will be able to get enough time to go and spend time with these communities and talk to them on the importance of living as brothers and the importance of changing lives.

Mr. Speaker, Sir, I also hope that with what we have just seen happening in Samburu, the police and the Provincial Administration will be facilitated enough. Sometimes, we blame the security officers but sometimes, you find District Officers who have to walk 200 kilometers to go and see to a situation. What is happening in the pastoralist areas is fire fighting, where the Government arrives when people have died. What is happening? I really hope that we will be able to stop such things from happening; may this be the last one in the pastoralist communities.

Mr. Speaker, Sir, with these few remarks, I beg to support the Motion.

**Mr. Linturi:** Mr. Speaker, Sir, I will be very brief and I will start by really congratulating this House for this historic day; for seriously having passed the Motion that was before us. This Motion was not about a tribe, a community or an individual. It was about whether the Executive, really, upheld the rule of law in dealing with the appointments that were before this House.

Mr. Speaker, Sir, I also want to really state very clearly that this is the beginning of the end of the culture of impunity. I am happy because Parliament has really exercised

its authority. With this kind of atmosphere, we will really achieve serious milestones in the development and in the change of this country.

The institution of the Kenya Anti-Corruption Commission (KACC) has a spear as its logo. These people are the bearers of the spear of integrity. Since the people who were re-appointed irregularly or contrary to the law are charged with the responsibility of charging people with the offences of abuse of office, if they had the moral authority, they should have resigned and let the matter decided by following the right procedure.

Mr. Speaker, Sir, we should go to recess because we know that Parliament operates through Committees. We will now have time to attend to our Committee work and have time to interact with the people who elected us to represent them in this House, especially this time when there is serious drought and as we prepare for the *El Nino* rains. We will do great service to this country by going on recess.

*(Question put and agreed to)*

**Mr. Speaker:** Hon. Members, before we adjourn, I have a Communication to make. It is important that I do so this time because it gives us some directions on what will happen presently.

### COMMUNICATION FROM THE CHAIR

#### HOUSE SITTINGS TO BE MOVED TO OLD CHAMBER

Hon. Members, I wish to make the following Communication from the Chair. As Members are aware, the beginning of this Session marked a watershed in the operations of our Parliamentary business as new Standing Orders came into force. These new Standing Orders have had a far reaching effect, particularly on the budgetary process, initiation of legislation by private Members, opening of Committee proceedings to the public along with live broadcast of House proceedings and filing of petitions by Members. Hon. Members are commended for their commitment in ensuring that the provisions of the new Standing Orders have been operationalized.

Of particular mention is the consideration and review of Estimates of all Government Ministries, Departments and Agencies which was highly successful. Even though it was a new concept, Committee Members and their colleagues in the Cabinet took the challenge with dedication and commitment. Indeed, for the first time, all the budgetary estimates were scrutinized. Out of these, 25 Votes were discussed in the Plenary while 27 were passed through the Guillotine Procedure. I can say with confidence that this new Budgetary process has actualized the intention of our founding fathers who in Section 100 of the Constitution of Kenya stated that the National Assembly shall approve the Estimates of revenues and expenditure of the Government of Kenya. The Chair is well aware of the challenges the Committees faced as they considered the Estimates which included lack of adequate Committee rooms. The challenges have been brought to the attention of the Parliamentary Service Commission which is addressing them.

Hon. Members may also wish to note that lack of space and other logistics face us here in the Chamber, particularly, the public address system and inadequate sitting space. It is for this reason that the sittings of the House will soon be moved to the Old Chamber to allow rehabilitation of this Chamber, whose works include setting up studios for broadcasting purposes, recasting the sitting arrangement to create more room, installation of the public address and electronic voting systems. The Chair intends to call for a Speaker's Kamkunji on Thursday, 15<sup>th</sup> October, 2009 at 10.00 a.m. when the consultants will make a presentation on the proposed rehabilitation of this Chamber.

Hon. Members, the Chair wishes to also commend the public for taking a keen interest in Parliamentary business, including attending the sittings of the Committees. The public now assesses the performance of this House through live broadcast television and radio broasts and, indeed, on the Inter-net – a facility that Kenyans in the diaspora are making use of. We have received positive comments from the public on the opening of Committees' proceedings and live coverage of the House. The public should rest assured that we will endeavour to provide more space and ensure more accessibility to Parliamentary proceedings.

As hon. Members may have noted, the budgetary process has almost entirely taken all available sitting time of the months of June, July, August and September. In fact, the House extended its sitting time during the allotted days and in most cases, adjourned late in the night. Therefore, as we move on to the next Sitting of this Third Session, legislative process will take a centre stage. Hon. Members will be called upon to scrutinise pending Bills, discharge their mandate as per the provisions of the Constitution of Kenya Review Act and introduce other legislation as necessary with even more vigour and commitment.

Hon. Members are called upon to make use of legal services available. I wish to inform you that the Parliamentary Service Commission has recruited more draft persons to assist Members of Parliament come up with well researched legislative proposals. As earlier stated, the new Standing Orders have facilitated the process of introducing Bills in the House.

However, I do observe that hon. Members have found the rules for implementing these provisions of the Standing Orders a bit tedious. In order to address this issue, among other concerns, the Legislative Department is preparing a half-day workshop on Drafting of Legislation, which will lead to development of user-friendly rules.

As we prepare to go on recess, I call upon Committees to discharge their mandates fully and conclude any pending business before them during the break. In view of the long sittings the Committees have had, it is advisable that Committees take a two-week break to resume on 30<sup>th</sup> September, 2009 in order to allow hon. Members to meet their constituents and members of staff to re-energise and also take a break in preparation for the next Sitting.

Hon. Members, I wish you success during this break. Indeed, let it be fruitful and happy.

I thank you.

**ADJOURNMENT**

**Mr. Speaker:** Hon. Members, it is now time to interrupt the business of the House. The House, therefore, stands adjourned until Tuesday, 10<sup>th</sup> November, 2009, at 2.30 p.m.

The House rose at 9.48 p.m.