

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 19th May, 2009

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

INQUIRY INTO 2008/2009 SUPPLEMENTARY ESTIMATES

Mr. Speaker: Hon. Members, I have the following Communication to make. You will recall that on Tuesday, 12th May, 2009, I directed that a Joint Committee of the Finance, Planning and Trade and Budget Committees table, on Wednesday 13th April, 2009, its Report on the inquiry into the Supplementary Estimates for the Fiscal Year, 2008/2009.

Indeed, I note with satisfaction that the Joint Committee tabled its Report as directed by the Chair. As you are aware, the House subsequently deliberated upon the Report and approved it on Wednesday, 13th April, 2009, during the afternoon Sitting. Among the findings of the Joint Committee was:-

That, whereas errors were detected in the details contained in the Supplementary Estimates, they did not have any impact on the overall figure as appearing in the Printed Estimates laid on the Table of the House in June, 2008, and that the difference of Kshs10,763,446,275 does not constitute any loss or misappropriation of public funds.

Hon. Members, on 5th July, 2005, the then Member of Parliament for Mandera Central, Mr. Billow Kerrow, had sought clarification on the format of the Printed Estimates for the Fiscal Year 2005/2006, which had changes in the classification of the "Item Code" and the description of the expenditure. The then Minister for Finance, hon. Mwiraria, stated, and I quote:-

"I wish to confirm that this matter has been sufficiently addressed by my office through the requirement that each Ministry provides district budgets with a detailed project list to the House to accompany the Revenue and Expenditure Estimates. Let me state that, as the Government, we are determined to maintain transparency and accountability."

Following that assurance, the then Chair ruled, and I quote:-

"First, it is clear that it is the duty of this Parliament to authorize taxation and approve the utilization of the taxation. Secondly, for Parliament to be able to discharge that responsibility, it ought and must have sufficient details to enable it make an informed judgement on the allocation of the resources."

The House then, as it is today, was concerned with the accuracy of the documents at its disposal in discharging its mandate. From the foregoing and arising from the adoption of the Joint Committee's Report by the House, I wish to make the following observations:-

- (i) That, one of the main functions of the House is to approve the Estimates of Expenditure based on authenticated documents with adequate details to enable it make informed judgement.
- (ii) I am satisfied that the matter touching on the discrepancies raised by hon. Imanyara has been attended to, save for further action as recommended by the Joint Committee
- (iii) That, the Supplementary Estimates that were tabled by the Deputy Prime Minister and Minister for Finance on 22nd April, 2009, had discrepancies which, however, did not impact on the overall figure of the Printed Estimates laid in the House in June, 2008.
- (iv) That, the Joint Committee considered this matter and confirmed the same.

That, once the Supplementary Estimates are corrected and resubmitted, pursuant to the House resolution when it approved the Report of the Joint Committee, such supplementary Estimates will be taken to have been correct *ab initio*.

That, the procedure in the House is supposed to facilitate the business rather than stifle it.

I wish, therefore, to direct as follows: -

- (a) That, the Deputy Prime Minister and Minister of Finance withdraws the Supplementary Estimates laid on the Table of the House on 22nd April, 2009, and re-submit the correct Supplementary Estimates.
- (b) That the Motion for consideration of the Supplementary Estimates for the Fiscal Year 2008/2009 approved by the House on 29th April, 2009, pursuant to provisions of Standing Order No.156 (1), stands valid and that the House proceeds to transact Supplementary Appropriation Bill as appropriate.

I thank you.

PAPERS LAID

The following Papers were laid on the Table: -

Supplementary Estimates Recurrent Expenditure, 2008/2009.

Supplementary Estimates Development Expenditure 2008/2009.

*(By the Deputy Prime Minister and
Minister for Finance)*

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Speaker, Sir, these Estimates supercede the Estimates laid on the Table on 22nd April, 2009.

Mr. Speaker: Order, Mr. Deputy Prime Minister and Minister for Finance! Can you be categorical that you have withdrawn the earlier Estimates that you laid in the House?

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Speaker, Sir, the earlier Estimates as laid are withdrawn and these Estimates supercede the Estimates laid on the Table of the House on 22nd April, 2009.

QUESTION BY PRIVATE NOTICE

COMMUNAL CLASHES ALONG MIGORI/TRANS MARA BORDER

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

(a) Could the Minister inform the House the circumstances surrounding the recent bloody clashes between the communities living along Migori/Trans Mara border, in which four lives were lost, houses burnt and several people injured?

(b) Could he confirm that guns were used to scare away the locals during the burning of Mr. Harrison Ondiek's home and at Remo area where Simeon Ayieta and his nephew, Joseph Omollo, were brutally murdered by raiders from Trans Mara, citing the source of the guns?

(c) Could he inform the House what immediate plans are in place to assist the injured families and those who lost their homes and who are camping at Thidhna and Mirunga centres, as well as his long-term plans to end such clashes once and for all?

Mr. Pesa: Mr. Speaker, Sir, while I was coming to the House, I received a telephone call from the Minister asking whether he could answer this Question tomorrow afternoon, which I accepted. I beg your indulgence.

Mr. Speaker: You concurred with the Minister?

Mr. Pesa: Mr. Speaker, Sir, I concurred with the Minister that the Question should be answered tomorrow in the afternoon.

Mr. Speaker: It will be deferred to tomorrow afternoon at 2.30 p.m.

Mr. Pesa: Thank you, Mr. Speaker, Sir.

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.001

GOVERNMENT DIRECTIVE ON MARRIED COUPLES WORKING IN PUBLIC SERVICE

Mr. Speaker: Mr. C. Kilonzo! He is not here? Maybe, we shall revisit the Question a little bit later.

Question No.005

EXTENSION OF LAND LEASE TO MATT INTERNATIONAL COMPANY

Ms. S. Abdalla asked the Minister for Lands:-

(a) whether he could explain to the House the criteria used to allocate land; and,
(b) whether the Government has extended the lease of land to Matt International Company in Lamu District and, if so, give the justification for the extension.

Ms. S. Abdalla: Mr. Speaker, Sir, I believe you must have received the letter from the Minister requesting for the deferment of this Question.

Mr. Speaker: Do you have a copy of the Minister's letter?

Ms. S. Abdalla: Mr. Speaker, Sir, I was shown the letter by the Assistant Minister and it is addressed to you!

Mr. Speaker: He requested the Question to be deferred until when?

Ms. S. Abdalla: Mr. Speaker, Sir, to a further date. He did not give the date. This is the second time this Question is being deferred. So, should I wait for the date from the Minister since he is the one who is not ready?

(Mr. Bifwoli stood up in his place)

Mr. Speaker: Order! Hon. Bifwoli, I have heard serious advocacy previously that Assistant Ministers are Ministers!

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Speaker, Sir, what the Member of Parliament is saying is correct. We have written to your office saying that we are not yet ready to answer this Question. I discussed the same with the hon. Member.

Mr. Speaker: So, is it the correct position that the Minister is not ready rather him not being here? That is because, hon. Bifwoli, you are here!

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

An hon. Member: He is a presidential candidate!

Mr. Speaker: So, can we defer this Question to Wednesday, next week?

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

Mr. Speaker: Very well. It is so ordered!

Hon. Martha Karua?

(Question deferred)

Question No.117

LEGAL STATUS OF ANGLO LEASING -
RELATED CONTRACTS

Ms. Karua asked the Attorney-General: -

(a) what is the legal status of each of the 12 Anglo Leasing-related contracts;
(b) how many cases have been filed against the Government arising from those contracts; and,
(c) what is the current status of each of those cases.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Speaker, Sir, if you could push the Question slightly forward, I am aware that the

Attorney-General is on his way here. He has possibly been delayed. So, if the Question could be pushed further down, he should be here very shortly.

Mr. Speaker: That is fair enough. We will revisit the Question at the end.

Mr. Pollyns Ochieng?

Question No.021

IMPROVEMENT OF CONDITIONS IN
KATITO/SONDU MARKETS

Mr. Ochieng asked the Deputy Prime Minister and Minister for Local Government:-

(a) what plans he has to provide clean water, toilet facilities and generally improve the conditions of Katito and Sondu markets, considering that the markets lack those facilities and become muddy during the rainy seasons; and

(b) when the Ministry plans to construct a market at Kolweny shopping centre along the Kisumu-Kendu Bay road.

Mr. Speaker: The hon. Member for Nyakach, the Chair has notification from the Minister that both he and his Assistant are not available, but I can see somebody that looks like his Assistant!

(Laughter)

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Thank you, Mr. Speaker, Sir.

I beg to reply. You are correct. I was not meant to be in, but the trip was postponed. So, I will be available this week.

Mr. Speaker: Are you able to reply?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Yes, Mr. Speaker, Sir.

Mr. Speaker, Sir, I beg to reply.

(a) My Ministry, through the County Council of Nyando, has constructed a total of four two-door pit latrines in both Sondu and Katito markets. In the 2009/2010 Financial Year, the County Council of Nyando intends to spend a total of Kshs4 million to murrum the two markets to guard against the muddy conditions witnessed during the rainy seasons. My Ministry will liaise with Nyando-Nandi South Water Services Board (NYANAS) Company Limited with a view to providing water to the two markets. The company's main water supply lines pass near the two markets. The council intends to set aside funds in the 2009/2010 Financial Year for water connection to the two markets.

(b) Construction of a shopping centre at Kolweny, along Kisumu-Kendu Bay Road, has been hindered by inter-clan rivalry. However, a designated council market, Kusa, exists just 500 metres from the main road.

Mr. Ochieng: Mr. Speaker, Sir, I want to say yes; the two toilets have been constructed. But, could the Assistant Minister indulge a bit and actually inform this House how much money has been spent on those toilets?

Mr. Speaker, Sir, the answer to part “b” is a bit misleading because, as far as I am concerned, there is no inter-clan rivalry at all! As it is now, people are trading along the main highway, which is very dangerous. Actually, they are endangering their lives! Could the Assistant Minister really tell us the truth? That is because the answer to part “b” of the Question is not correct.

Mr. Nguyai: Thank you, Mr. Speaker, Sir. As to the total amount spent, I would have to do the calculations. It comes to Kshs74,604. That is the money that was used to build the pit latrines.

On the other case of the inter-clan rivalry, we have quite a number of clans. There is the Kabudho Clan, the Kajimbo Clan and the Koguta Clan. Kusa Market is on the Kabudho Clan area. There are minutes which authorized the construction of the markets. But they were, however, rejected by the area councillor at a full council meeting on 1st April, because they were to purchase a piece of land for Kshs350,000. They felt that it would not benefit their clan.

Mr. Speaker: Last question, Mr. Ochieng!

Mr. Ochieng: Mr. Speaker, Sir, I still do not want to agree with the answer so far. This is because, actually, I belong to one clan which he has just mentioned. What I am saying is the truth because I come from that area. There is no rivalry at all. If that is the situation, why did the council set aside funds to buy a piece of land to construct a market nearby, if the other one exists?

Mr. Speaker: Order, Mr. Ochieng! You know it is Question Time! If you do not agree with the Assistant Minister, try and ask questions that can get the Assistant Minister to agree with you. Do not make statements! Ask questions that can push the Assistant Minister into the position that you desire.

Mr. Ochieng: Mr. Speaker, Sir, the question which I am posing is this: Why did the council set aside funds to buy a piece of land to construct a market within that centre, if another market exist nearby?

Mr. Speaker: That is fair enough! Proceed, Mr. Assistant Minister!

Mr. Nguyai: Mr. Speaker, Sir, I have here the full Finance Committee’s minutes. After the resolution was passed, one particular councillor, by the name of Michael Odongo Wathiaga, requested the council not to adopt the expenditure of Kshs350,000 and the matter has been referred back to the Finance Committee. So, really, that is an issue of the council and not for us. Until that issue has been resolved and the Finance Committee has approved, I think there is really nothing much we can do.

Question No.066

PAYMENT OF FUEL LEVY BY
KENYA RAILWAYS

Dr. Eseli asked the Minister for Transport whether he could clarify whether Kenya Railways pays Fuel Levy and, if so, state what measures the Government has taken to apply the funds to improve the railway transport.

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

The Kenya Railways Corporation operates locomotives and motor vehicles whose engines use petroleum fuels. After concessioning its operations to the Rift Valley Railways (RVR), the latter has continued to use the said locomotive fuels. The Fuel Levy is a statutory levy imposed on petroleum fuels. That is to say automotive diesels, ordinary petrol, super petrol or any other petroleum product as may be gazetted by the Minister for Roads from time to time.

The Fuel Levy is paid by the remitter at the time of importation of the petroleum fuel or, at the time of its delivery from the refinery. That is paid to the Kenya Revenue Authority (KRA) and, as such, I can confirm that the fuel used by the KRC is subjected to Fuel Levy at the point of importation or delivery from the refinery by the marketer. The funds are collected by the KRA and are administered by the Minister for Roads.

Dr. Eseli: Thank you, Mr. Speaker, Sir. The Assistant Minister has explained that the Ministry of Transport has no say over where the Fuel Levy money goes. Could the Assistant Minister explain to us whether, if he were to receive the Fuel Levy money paid by KRC or Concessionaire, he would, in any way, improve the railway system in this country?

Mr. Mwau: Thank you, Mr. Speaker, Sir. I can confirm to the hon. Member for Kimilili that, as a matter of fact, if some of the funds that are collected from the Fuel Levy were diverted to the railway system, the railway system would be extremely efficient.

Mr. Lang'at: Mr. Speaker, Sir, the Assistant Minister has said that the Fuel Levy money from KRC is taken to the Ministry of Roads. What programme or action is he taking to ensure that the money is re-routed back to repair the railway lines?

Mr. Mwau: Mr. Speaker, Sir, fortunately, the Ministry of Transport, under which Kenya Railways Corporation falls, is only a consumer of petroleum fuel. The recipient of that particular levy is the Ministry of Roads. So, as far as it relates to policy, it would be difficult for the Ministry of Transport to give any reason or articulate any policy in that regard. However, I can confirm that the Ministry of Transport would, really, appreciate if some of the levies that are collected were ploughed back into the railway system.

Mr. Ruto: Mr. Speaker, Sir, the Assistant Minister is being very casual. The issue is whether he is concerned about the railway system. Does he expect somebody to donate the money through goodwill? I thought it was the responsibility of the Ministry to make sure that they demand release of the money and use it to improve the railway system, which was built by the Indian coolies in 1900!

Mr. Mwau: Mr. Speaker, Sir, I would want to state categorically that the Fuel Levy Fund (FLF) is a statutory one. Unless the relevant statute is amended to enjoin the Ministry of Transport, the Ministry of Roads and the Minister responsible will continue administering the Fund.

Mr. Speaker: Last question, Dr. Eseli!

Dr. Eseli: Mr. Speaker, Sir, I beg your indulgence for direction. It appears that the FLF cross-cuts the Ministry of Roads, the Kenya Revenue Authority (KRA) and the Ministry of Transport. Probably, we should re-direct this Question to the Prime Minister, so that he can give direction!

Mr. Speaker: Order, Dr. Eseli! We have already spent seven minutes on the Question. The principal Question and two supplementary questions have been answered. So, we will have to finish with it now. Do you have a last question?

Dr. Eseli: No!

Mr. Speaker: Very well! Next Question, Mr. Hassan Joho!

Question No.65

EFFECTS OF GLOBAL ECONOMIC MELTDOWN
ON TOURISM IN KENYA

Mr. Joho asked the Minister for Tourism:-

(a) whether he could provide a projection of how severely the tourism sector is likely to be affected this year as a result of the current economic meltdown that is also affecting key sectors of the economy; and,

(b) whether he could state the steps he is taking to cushion hoteliers and tour operators from the effects of the global economic downturn, particularly in the coast region.

The Minister for Tourism (Mr. Balala): Mr. Speaker, Sir, I beg to reply.

(a) Kenya has been affected by the financial crunch globally. After the political crisis that we experienced in 2007/2008, we managed to record 729,000 arrivals, compared to 2007's over one million arrivals. So, we recorded a 30 per cent decline in the number of arrivals. We hope that we will improve on this. We have worked very hard. Fortunately, the number of arrivals only declined in the three months of January, February and March of this year by 16.5 per cent.

(b) We are taking steps to cushion the industry. We, as Government, have given the incentive of reduction of visa charges, so that we can encourage more people to come to the country. We have given a 50 per cent visa fees reduction for adults and given a zero visa charge for children, so that we can create a family destination.

We have been aggressive in marketing Kenya overseas. We have spent a lot of energy in marketing and promotion. My worry is that a 69 per cent Budget cut this financial year will lead to a decline in the performance of the tourism sector. Every US Dollar that is invested in marketing Kenya gives a return of US\$20. The beach destination is the worst affected. Given that, that is the major share of the pie, as Government, we are working out modalities of how we can create a revolving fund from which hoteliers can access loans that are cheaper than those available on the market, so that we can re-engineer the beach destination as a fresh product.

Mr. Joho: Mr. Speaker, Sir, from the written answer to the Question, I gather that many charter flights have been cancelled due to post-election violence. I wonder what efforts are being made by the Ministry to ensure that charter airlines regain confidence, so that they can resume flights to Kenya.

Mr. Balala: Mr. Speaker, Sir, the number of charter flights that arrived in Mombasa by December, 2007, were 21. Up to December, 2008, we managed to retain them at 21. The biggest challenge is the low season, which runs from April to July. This is the worst season in all markets, because it is summer season in Europe. That is where the source market is. So, we are going to be affected.

What we are doing, as a country, is trying to work on dynamic pricing. So, we have discounts, or 50 per cent reductions, so that we can bridge the gap in the low season.

The charter flights will resume from July. Fortunately, from the 3rd June, 2009, we are going to receive direct Delta Airline flights from the United States of America in Nairobi.

Mr. Kombo: Mr. Speaker, Sir, I think it is very well for the Minister to talk about a reduction in visa charges, but is he aware that when visitors arrive at the airport, issuance of visas takes a very long time? Recently, we had a delegation of Members of Parliament from the Zech Republic, who had to wait for two hours before they could be issued with visas! What is the Minister doing about working with the Department of Immigration to ensure that visa issuance is speedy?

Mr. Balala: Mr. Speaker, Sir, we know that we have given a 50 per cent reduction on visa fees and there are long queues at Jomo Kenyatta International Airport (JKIA). Unfortunately, the JKIA is not a good place in Kenya. It is an embarrassment! We, as a Cabinet, have established a task force, headed by the Prime Minister, to look into all the problems of the JKIA, including the long queues. The Department of Immigration should employ more staff to man the visa counters.

Mr. Gunda: Mr. Speaker, Sir, could the Minister tell the House what his Ministry is doing to tap into non-traditional tourist markets?

Mr. Balala: Mr. Speaker, Sir, I want to assure my colleague that we are diversifying the source market. We were recently in Durban, South Africa, for the first time. While there, the Kenya Tourist Board won an award as the best tourism board in Africa. We have also been to the Middle East. We are opening an office in Dubai. We are opening an office in Russia. We will very soon be traveling to Russia as well as to India. These are new markets that have not been seriously affected by the financial crunch.

Mr. Njuguna: Mr. Speaker, Sir, while appreciating the big role that is played by the tourism sector, I would like the Minister to tell us what is the Ministry's policy on development of tourist hotels, particularly where they have constructed new secondary schools, particularly in the coast region. When tourist hotels are constructed near schools, the learning environment is very much affected by the impact of tourists.

Mr. Balala: Mr. Speaker, Sir, while appreciating the comments by the hon. Member, I would like to inform him that the Tourism Bill will come to this House very soon. It is now at the Cabinet level for approval, after which it will come here for endorsement. That is when we will provide for all the incentives and raise issues such as to where to build hotels. We do not want conflict between the hotel industry and society.

Mr. Mwazo: Mr. Speaker, Sir, could the Minister consider promoting local tourism if the international market is declining?

Mr. Balala: Mr. Speaker, Sir, after realising the effects of the credit crunch, we thought it is important for us to promote domestic tourism. We are not only looking at tourism in Kenya, but the whole of Africa. That is why we thought of opening an office in South Africa and also relaxing the referral visas from western Africa. Many West Africans go to Asia via Jomo Kenyatta International Airport (JKIA). They stay for two days in our country as they transit to Asia. We thought we should relax their visas so that they can stay in Kenya and do a tour excursion. So, we are investing in domestic tourism.

In this regard, we have signed a joint venture with Kenya Airways (KQ) worth Kshs50 million to do the networking in Africa. Half of the cost of this venture is funded by the Kenya Tourism Board (KTB) and the other half by the KQ.

Mr. J.M. Kamau: Mr. Speaker, Sir, the Minister is aware that we have embassies all over the world. What has he done to make sure that our embassies act as conduits as far as bringing tourists to this country is concerned?

Mr. Balala: Mr. Speaker, Sir, I have travelled all over the world where I have met High Commissioners and Ambassadors. We are synchronizing efforts between tourism representatives in Europe and their embassies. As I speak here today, we have a seminar that is going on; from today to Thursday. The seminar brings together tour representatives to interact on trade matters. We have told them that they have a professional duty to perform in identifying the embassies as the core centres for promoting the image of Kenya.

Mr. Speaker, Sir, if you allow me, I would like to lay on the Table the recent tourism performance figures for 2008 and the first quarter of 2009.

Mr. Speaker: You may do so, Mr. Minister!

(Mr. Balala laid the document on the Table)

Mr. Mungatana: Mr. Speaker, Sir, recently, an international channel carried a very sad story about the effects of the global recession in Malindi Town, which happens to be the biggest town in the North Coast where we come from.

A lady called Mary Kai who, is 20 years old, runs a stall. It is shown how she goes to work everyday and supports her three siblings. The story revealed that she goes back home without having made any sales at the beach where she sells her wares to the tourists.

The number of tourists who visited this country in 2008 was 729,000 according to the Central Bank of Kenya (CBK). This is a drop from 1,048,000 tourists who visited this country in 2007. The real people who feel the immediate effects are people like Mary Kai, the taxi drivers and the beach boys. What has the Minister done to alleviate this problem? He has told us that he has given hoteliers loans. What has he done about the beach boys who are our voters?

Mr. Speaker: Order, Mr. Mungatana! Ask one question at a time!

Mr. Balala: Mr. Speaker, Sir, there will be no use of supporting a structure that does not have a ripple effect on our people. The beach boys and the local operators or the suppliers of the industry need to benefit. Unfortunately, they are the worst hit by the current credit crunch. All the promotions we are doing are aimed at bringing many tourists to this country and allow them to service the industry.

Mr. Mungatana: On a point of order, Mr. Speaker, Sir. The Minister has not addressed the question I have raised and he will not get away with it. All the Ministers of Tourism who have been there---

Mr. Speaker: Mr. Mungatana, which question has not been addressed?

Mr. Mungatana: Mr. Speaker, Sir, he has not addressed the problems affecting the local people! For example, does he even have the number of beach boys, tour operators and taxi drivers who directly depend on tourism? What has the Minister done to cushion them against the effects of global recession? He has not answered that question! He is dodging it!

Mr. Speaker: Mr. Minister, could you be more precise and answer that question? What have you done?

Mr. Balala: Mr. Speaker, Sir, the Question which was put to me does not refer to beach boys or how the local community will benefit from local tourism. My answer was specific to the Question that was put to me. Nevertheless, there are over 2,400 registered beach boys and we have allocated Kshs150 million in this Budget to cater for them. I hope the Deputy Prime Minister and Minister for Finance will release that money so that we can address the issues that affect them. We need to designate a place where they can do business and interact with the tourists. That is what we are doing through the small-scale industries that we support in Coast Province.

Mr. Joho: Mr. Speaker, Sir, first of all I would like to clarify that the people who operate at the beaches are not actually beach boys but beach operators.

Mr. Speaker: Then ask the last question!

Mr. Joho: Mr. Speaker, Sir, since the Minister has considered the effects of global recession on our tourism, could he tell us whether he has formulated some policies that will save the sector from imminent collapse? I am talking about taxi drivers, beach operators and curio dealers at the local level.

Mr. Balala: Mr. Speaker, Sir, I beg this House to allocate to the Ministry of Tourism enough funds to enable us implement our policies and strategies so that we can help, not only the economy of this country, but also the local people attached to this sector.

Mr. Speaker: Mr. Minister, you will notice that we have given you a lot of indulgence because of the importance of this matter. I urge you to take urgent action to ensure that tourism resumes its place.

(Applause)

Question No.069

CONSTRUCTION OF WATER PANS/DAMS/
BOREHOLES IN SAMBURU EAST

Mr. Letimalo asked the Minister for Regional Development Authorities:-

- (a) to state the number of water pans, dams, and boreholes scheduled to be constructed by Ewaso Ngiro Development Authority (ENDA) in Samburu East District in the current financial year; and,
- (b) what assurance he is giving that the said development projects will be effected and implemented before the end of this financial year.

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

- (a) The Ewaso Ngiro North Development Authority (ENDA) is in the process of undertaking the construction of 12 water pans, one small dam, and three boreholes in Samburu East District in the current financial year. The details of the above-mentioned projects are indicated in the attached Tables (I), (II) and (III) in my answer
- (b) I wish to inform the House that the ENDA has received approval from the African Development Bank (ADB) to commit the funds to the projects as I have indicated above. Meanwhile, the Authority is in the process of

advertising for the procurement of the required services and the contractors shall commence work on the site from August, 2009.

- (c) I wish to inform the House that the Ministry has put the ENDA under a performance contract in which development programmes, projects and activities are part and parcel of the performance targets that the Board and the management of the Authority are expected to implement within the stipulated time frame.

In addition, the Ministry has put in place a monitoring and evaluation system that will carry out regular progress status review of the projects for effective and timely implementation.

Mr. Letimalo: Mr. Speaker, Sir, I thank the Assistant Minister for that detailed answer. However, he has indicated that the works will commence in August, 2009. Considering that the Ministry has approved 12 projects, will it be able to cover all the projects within that period or will it stagger them within the financial year?

Mr. ole Metito: Mr. Speaker, Sir, the ADB has given the ENDA money for a period of six years. Three years have already been covered. The projects I have enumerated will be covered within a period of three years from July, 2009 to 2011. The total cost of the projects is Kshs116 million.

Mr. Letimalo: Mr. Speaker, Sir, considering that the water table in that area is too low to the extent that boreholes have been sunk without yielding any water, what is the point of sinking more boreholes instead of constructing surface dams?

Mr. ole Metito: Mr. Speaker, Sir, we are doing 12 dams against three boreholes. The survey and geological studies are yet to commence. They will be advertised in the next two weeks. If we find that the water tables, as the hon. Member has said, are not good enough, we may go through what we call the District Steering Group, reallocate the money and do more pans, if that is more viable than doing the boreholes.

Question No.052

REHABILITATION OF MZIMA
PHASE I PROJECT

Mr. Mwazo asked the Minister for Water and Irrigation:-

- (a) why it has taken so long to rehabilitate the remaining section of Mzima Phase I, and whether she could indicate when this will be done; and,
(b) when the works on the Mzima Phase II project will commence.

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Speaker, Sir, I beg to reply.

- (a) I agree with the hon. Member that the rehabilitation of Mzima Pipeline Phase I has taken a bit longer than anticipated. This has been due to the lengthy and bureaucratic procedures involved in the loan acquisition and procurement. The rehabilitation of Mzima Pipeline is being undertaken under the Water and Sanitation Improvement Programme, which is funded by a World Bank loan. The rehabilitation works are estimated to cost Kshs1.8 billion and the World Bank approved funding of the project in December, 2007. The loan agreement was signed in June, 2008. Detailed design and preparation of tender documents is

scheduled to be completed mid next month, and the tenders for rehabilitation works will be floated by the end of the same month, June 2009. Actual construction works will commence in October 2009 and are scheduled to be completed by May 2011. I have taken up the issue of lengthy procedures with the Treasury, so that in future such delays are eliminated.

- (b) My Ministry is currently preparing technical proposals for a major capital development programme for Mzima Phase II Pipeline, which is estimated to cost close to Kshs40 billion,; thereafter we will liaise with the Ministry of Finance for the purpose of identifying a development partner to fund this project.

Mr. Mwazo: Mr. Speaker, Sir, I would like to thank the Minister for this answer. Now that the work will start in October, could she confirm to this House that water will be supplied to Voi and Taita first before it flows to Mombasa?

Mrs. Ngilu: Mr. Speaker, Sir, I do not want to confirm that water will flow to Voi, but I want to say that the hon. Member knows that we visited the place and showed him what we were planning to do as the Ministry of Water and Irrigation. We expect that Mzima Phase II will give the whole of Voi, Taita and other places water. But this particular is rehabilitation of Phase I, is not enough for the whole area including Mombasa Town. We will continue looking for other ways of giving Voi water; we are already doing that.

Mr. Joho: Mr. Speaker, Sir, while I appreciate the answer from the Minister, I realize that it has taken about 18 months to do the designs. I wonder what measures the Minister is intending to put in place to ensure that the contractor, after getting the contract, will adhere to the time limits so that Mombasa people can start getting running water from their taps.

Mrs. Ngilu: Mr. Speaker, Sir, the harder part of it was getting the money, and doing the design and tendering. When the contract is awarded and the contractor is on site, I can assure the hon. Member that it will be done quite fast.

Mr. Mwazo: Mr. Speaker, Sir, could the Minister confirm to this House that when we visited in July last year, she assured the residents of Kishushe and Mwakitau that Mzima Phase II would include supplying them with water.?

Mrs. Ngilu: Mr. Speaker, Sir, I can assure the hon. Member that once Mzima Phase II is started, the design will include those two towns, Kishushe and Mwakitau.

Question No.126

TERMINAL DUES FOR KENYAN
EMPLOYEES OF DEFUNCT EAC

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

- (a) what became of the country's entitlement in the defunct East African Community as well as the terminal dues of the Kenyan employees in the defunct Community;
- (b) how much the British Government paid as terminal benefits for Kenyans working for the defunct Community;
- (c) the recipients, amounts paid and dates of payment to all ex-staff of the corporations of the defunct Community (among them E.A. Cargo Handling

Services, EA External Telecommunications, E.A. General Fund Services, E.A. Customs, E.A. Railways, E.A. Airways, E.A. Harbours and E.A. Posts and Telecommunications); and,

(d) the medium used to inform all the former employees or their beneficiaries.

a. **Mr. Yakub:** I have not received a written reply.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Speaker, Sir, we would request a deferment of this Question specifically because parts “a” and “b” were replied to by me under Question No.660; on parts “c” and “d”, we are not able to reply to them because they involve very many agencies and corporations. We need about three weeks to bring concrete answers.

Mr. Yakub: Mr. Speaker, Sir, I am very willing to wait for another three weeks, but the Question must be answered from part “a” to “d” and not just “c” and “d” .

Mr. Speaker: So, you are prepared to extend that indulgence for three weeks from today?

Mr. Yakub: Yes, Mr. Speaker, Sir, but on condition that the Question will be answered in full.

Mr. Speaker: I am certain that the Minister will take care.

Mr. Yakub: Thank you!

Mr. Speaker: It is so ordered! Three weeks from today!

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Thank you, Mr. Speaker, Sir. Has the hon. Member agreed to the three weeks?

Mr. Speaker: Yes, three weeks from today! So you compute the time from now to the third Tuesday from today.

(Question deferred)

Question No.122

NON-SUPPLY OF FERTILIZER TO
MUTITO FARMERS

Mr. K. Kilonzo asked the Minister for Agriculture:-

(a) why farmers in Mutito Constituency were not supplied with fertilizer during the last planting season; and,

(b) what measures he is taking to ensure that the fertilizer will be supplied to the farmers in the current planting season.

Mr. Speaker: Minister for Agriculture? Will somebody hold brief for the Minister for Agriculture?

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Speaker, Sir, I just want to say that we are going to inform him and he will come back to the House.

Mr. Speaker: Following my directions sometime last week, please, let the Minister know that he will not be allowed to transact any business in the House until he offers an explanation as to why he was not here to answer this Question.

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Speaker, Sir, I will do that.

(Applause)

(Question deferred)

Mr. Speaker: Very well! We will now go back to Question by Mr. C. Kilonzo!

Mr. C. Kilonzo: Mr. Speaker, Sir, I wish to apologize for being late. It is not usual for me to be late.

Question No.001

ADJUSTMENT OF MANDATORY RETIREMENT
AGE IN CIVIL SERVICE

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

- (a) what informed the Government's decision to increase retirement age from 55 to 60 years; and
- (b) whether by this move the Government is not contradiction its policies that encourage the employment of more youth in the Civil Service.

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

(Mr. C. Kilonzo stood up in his place)

Mr. Speaker: Order, Mr. C. Kilonzo! Hear the Minister first!

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

Mr. Speaker: Before you are given an answer after you have asked a Question?

Mr. C. Kilonzo: Mr. Speaker, Sir, it concerns the Standing Orders of the House.

Mr. Speaker: Fair enough!

Mr. C. Kilonzo: On a point of order Mr. Speaker, Sir. I wish to refer you to the following Standing Orders regarding the Prime Minister's Time; Standing Order No.42, which is on the Prime Minister's Question Time; Standing Order No.41 (1) and Standing Order No.42(4)(b).

Mr. Speaker, Sir, these Questions had the approval of your office and they were forwarded to the Prime Minister's Office. Later, they were copied to me and were to appear on the Order Paper on 6th. It is this Question and two others.

Mr. Speaker, Sir, it appears that the Prime Minister might be dodging some sensitive Questions. I say so because under Standing Order No.41, it is only your office which can communicate back to me if a Question does not fit a particular Ministry. Your office should have said that the Member concerned be informed that the Question is inadmissible. In this case, this was not done.

Mr. Speaker, Sir, Standing Order No.40 (2)(b) says: -

"Questions may be put to the Prime Minister relating to matters of Government policy or the general performance of the Government and Government agencies.

When the retirement age of civil servants was pushed to 60 years, it was a Government policy. It was a decision which was made in the Cabinet. When the Prime Minister moves here to answer a Question regarding the married couples, where the decision was made by the Ministry and refuses to answer a Question where decision was made by the Cabinet, is he in order?

Mr. Speaker, Sir, I seek your ruling and wish to refer you to Standing Order No.46 which concerns discipline. It states: -

"It shall be disorderly conduct for a Member to fail to ask or for a Minister to fail to answer a Question listed on the Order Paper without the leave of the Speaker."

I seek your ruling on this.

Mr. Speaker: Fair enough! Because this is a new provision that has taken effect since the commencement of the new Standing Orders, it is a matter in respect of which we need to proceed carefully and rationally. We are going to, at the end of the day, entrench a practice that will bind this House in future. So, in those circumstances, assuming that the Questioner is prepared to lose a little more time before the answer comes, I will defer this Question to Wednesday next week.

Mr. C. Kilonzo: Thank you, Mr. Speaker, Sir.

Mr. Speaker: I will give the directions appropriately that will help the House as to the *modus operandi* of Prime Minister's Time.

(Question deferred)

The Minister of State for Public Service (Mr. Otieno): On a point of order, Mr. Speaker, Sir. I remember very clearly that the Prime Minister did request that where Questions are not cross-cutting, they would be referred to the line Ministries. The Chair did not object. It is on the basis of that agreement from the Chair that a number of Questions were referred by the Office of the Prime Minister to the line Ministries.

Mr. Speaker: That will be so, Mr. Dalmas Otieno, but the direction which I want to give on this matter will cover a much wider scope than just this Question referred to your Ministry. So, please, oblige! It is for good measure.

We now want to deal with the Question by Ms. Karua which was earlier deferred!

Question No.117

LEGAL STATUS OF ANGLO LEASING
RELATED CONTRACTS

Ms. Karua asked the Attorney-General: -

- (a) what the legal status of each of the 12 Anglo Leasing-related contracts is;
- (b) how many cases have been filed against the Government arising from these contracts; and,
- (c) the current status of each of the cases.

Mr. Speaker, Sir, I am asking this Question for the second time.

Mr. Mbugua: On a point of order, Mr. Speaker, Sir. I am standing under Standing Order No.81. The former Minister was privy to a lot of information with regard to this Question. I am therefore, asking her to declare her interest. Her Permanent

Secretary was a member of this Committee and she is privy to a lot of information with regard to this Question.

Mr. Speaker: Ms. Karua, you are challenged that you have personal interest in this matter.

Ms. Karua: I have no interest to declare. The Member is most misguided!

(Laughter)

Mr. Speaker: Mr. Attorney-General, will you proceed!

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, first of all, I want to apologise for coming late. This is because I underestimated my time. This Question is number four on the Order Paper, so I thought that with each Question taking seven minutes, I would still be on time. I apologise for coming late.

Mr. Speaker: Fair enough, Mr. Attorney-General but do not work on presumptions!

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to reply.

- (a) The status of 12 of the Anglo Leasing related contracts is as follows:-
1. The Forensic Science Laboratories Project - terminated.
 2. The Immigration Security Documentation and Control Systems Project - terminated.
 3. The Kenya E-Cops Security Law and Order Systems Project - terminated.
 4. Export Lease Purchase of Security Vehicles for Police Project - terminated.
 5. Modernisation of Security Equipment and Accessories for Kenya Police Department - cancelled.
 6. Oceanographic Survey Vessel - the International Commercial Arbitration under auspices of the Permanent Court of Arbitration at the Hague.
 7. Project Nexus Contract - International Commercial Arbitration under the auspices of the Permanent Court of Arbitration at the Hague.
 8. The Bandwidth Spectrum and Network Operations Control Project (PCK Project) - before the High Court of Justice, Queens Bench Division Commercial Court in the United Kingdom (*Claim NO.2006 Folio 881*).
 9. The Broadband Communications Equipment Project for Postal Corporation of Kenya - before Geneva Court of First Instance (*Case No.C/1861/2008-17*).
 10. The Kenya Police Prisons Security and Telecommunications
 11. Project Phase (1) - concluded.
 12. The Kenya Police Airwing Project - concluded.
 13. The Kenya Police Security Equipment Addendum 2 -
 14. concluded.
- b. Ten cases have been fixed arising out of these contracts.
- c. The current status of these cases is as follows:-
1. H.CC PETITION NO.390 OF 2006 - NEDERMAR TECHNOLOGY BV VS. KACC& ATTORNEY GENERAL

The High Court on 30th October 2008 restrained both KACC and the Attorney General from continuing with the criminal investigations and prosecution arising out of

the contract. On 11th November 2008, the Attorney General filed a Notice of Appeal. Earlier by letter dated 5th November 2008, the Attorney General requested for certified copies of the proceedings and judgement for the purposes of appeal. We are waiting for the documents to proceed with the appeal.

2. H. C. C. PETITION NO.575 OF 2006: EUROMARINE INDUSTRIES INC. & OTHERS VS ATTORNEY-GENERAL AND KACC

The High Court on 18th April 2008 issued an interim order restraining KACC from carrying out criminal investigations and prosecutions arising out of the contract. The hearing of the petition is fixed for 21st July 2009.

3. H.CC MISC. APP. NO.359 OF 2007: MIDLAND FINANCE SECURITIES VS. ATTORNEY-GENERAL AND KACC

The claimants went to court seeking to quash the PWC contract with the Ministry of Finance to conduct forensic investigations on the grounds that under the Anti Corruption and Economic Crimes Act, the KACC was the only body statutorily empowered to undertake such investigations. The High Court on 10th July 2008 quashed the PWC contract in respect of the forensic investigations arising out of the contract. The Notice of Appeal was filed on 22nd July 2008 and the request for the certified copies of the proceedings filed on the same date.

4. H.CC MISC. APP. NO.114 OF 2007: ALLDEAN SATELLITE NETWORKS (K) LTD VS. KACC

The High Court granted applicant leave to apply for the Judicial Review of the decision of the Chief Magistrate, Kibera, allowing KACC to search the applicant's premise and seizure of equipment. The leave was to operate as a stay of the search warrant issued by the Chief Magistrate, Kibera. An application for contempt of court was heard and dismissed.

5. H.C.C. MISC. APP. NO.695 OF 2007: FIRST MERCANTILE SECURITIES CORP VS. KACC

The High Court on 20th December 2007 quashed the Mutual Legal Assistance sought by KACC from Switzerland and prohibited the implementation of the request for the Mutual Legal Assistance dated 3rd July 2007. The Notice of Appeal and request for certified copies of the proceedings and judgement were filed on 9th January 2008.

6. H. C. C. PETITION NO.1999 OF 2007: DEEPAK CHAMANLAL KAMANI VS. PRINCIPLE IMMIGRATION OFFICER & OTHERS

The applicant/petitioner moved to the court seeking to declare the decision of the Principle Immigration Officer canceling the applicant's passport, which was cancelled pursuant to the criminal investigations being carried out by the KACC, as being

unconstitutional. The applicant sought an order to quash the cancellation. An order to restrain the Principle Immigration Officer from interfering with his passport was declared under Section 31 of the Anti Corruption and Economic Crimes and declared that the cancelled passport be restored or issued to petitioner. The KACC has appealed against the said decision.

7. PROJECT NEXUS ARBITRATION

The Claim was filed against the Republic of Kenya amounting to Euros 36,851,998 as of 27th November 2006, plus penalty interest and costs. The Republic of Kenya filed its defence on 2nd July 2007, denying liability on the basis of alleged illegality in the contract and incorporated in the PWC report. The tribunal has issued procedural orders on the timetable of events. The parties are in process of carrying out discovery of documents in preparation for the hearing. The technical experts, on behalf of the claimants, and the technical experts, on behalf of the Republic, are currently reviewing their valuation reports with a view of establishing fair value of the project. The case is scheduled for hearing in June 2010.

8. OCEANOGRAPHIC SURVEY VESSEL ARBITRATION

The claimant claim is for Euros 57,119,597 as of 14th December 2005, plus penalty interest and cost. At the preliminary hearing, the matter was stayed to allow the parties establish the true and fair value of the vessel. The technical experts of the claimant and the technical experts on behalf of the Republic have held several meetings to establish the fair and true value of the vessel under the *quantum merruit* principles. The next meeting is scheduled for June 2009.

9. CLAIM NO.2006 FOLIO 881- IN THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION COMMERCIAL COURT- UNIVERSAL SATSPACE (North America) LLC VS. THE GOVERNMENT OF THE REPUBLIC OF KENYA

The claim was filed in July 2006 in the High Court of Justice, Commercial Division, United Kingdom, seeking US\$12,366,816, plus penalty interest and costs for the supply of PCK Bandwidth. A UK law firm M/s. Edwin Coe LLP and a local law firm M/s. Wambugu Motende and Company Advocates were engaged to represent the Republic. An application for summary judgement against the Republic was filed. But the same was opposed and replying affidavit and draft defence filed denying liability on the basis of alleged corruption and bribery. Under English Civil Procedure, parties to civil claims are obligated to submit claims to mediation. Our lawyers and technical experts (PWC) together with the claimant's lawyers and experts have agreed on the technical and legal mediators who are Mr. Geoffrey Raymond Daniel and William Wood, QC. It is estimated that they will complete their work at the end of August 2009.

Mr. K. Kilonzo: On a point of order, Mr. Speaker.

Mr. Speaker: Order, hon. Attorney General, there is a point of order.

Mr. K. Kilonzo: Mr. Speaker, Sir, listening to the Attorney-General, the answer he is giving to the House is very lengthy and we might not have time to effectively

interrogate him on this issue. Would I be in order to request this matter be referred to the Departmental Committee on Administration of Justice and Legal Affairs for in-depth scrutiny?

Mr. Speaker: We have not got to that point, yet. Let us see if your colleagues are more able than you are.

The Attorney General (Mr. Wako): Mr. Speaker, Sir, I am now on the Tenth case.

Mr. Speaker: Hon. Attorney General, you are a Senior Counsel. I am sure you know what brevity is all about. Could you summarize the information that you are giving?

The Attorney General (Mr. Wako): Let me summarize point number 10.

10. CASE NO.C/1861/2008-17: FIRST MERCANTILE SECURITIES
COROPATION VS. REPUBLIC OF KENYA

The claim was filed in January 2006 before the Geneva Tribunal of 1st Instance claiming US\$12,716,125, plus penalty interest and costs. We have filed a defence denying liability on the basis of illegality of the contracts. In May 2008, our Ms. Muthoni Kimani, Senior Deputy Solicitor-General gave evidence on the status of the contract and the criminal investigations by the KACC. In October 2008, the Republic filed a legal opinion by a leading expert on English Law, Mr. Collin Nicholas QC, on the effect of a contract founded on an illegality. The claimant filed their legal expert opinion in November 2008 and we are waiting for the ruling from the court.

Ms. Karua: Mr. Speaker, Sir, the Attorney-General, although with a lengthy answer, has failed to answer the Question. I have asked for the status of all the cases, which he has not given. For instance, in Case No.1, when he was answering part "C" of the Question, he gave us the current status of Petition 390 of 2006 - Nedermar Technology B.V. versus Kenya Anti-Corruption Authority (KACC) and the Attorney-General. He has talked about the case filed in the High Court on 30th October, 2008, the High Court having issued a restraining order and of him having filed a notice of appeal eleven days later. He does not tell us what, in that period of almost ten months happened to the substantive case? We are asking about the status of the case and not just the application. Another example is Case No.4 - Miscellaneous Application No.114 of 2007, Alldcan Satellite Networks, Kenya Limited Versus KACC. Orders were granted by the High Court for Judicial Review to apply as a stay. Leave to apply for judicial review was given on a date that is not specified but, probably in 2007 and the search warrant was stopped by the court. We are told that an application for contempt of court was heard and dismissed. What is the status of the actual case?

Mr. Speaker, Sir, therefore, it means that even as we proceed to ask supplementary questions, we are proceeding on an incomplete answer. Could the Attorney-General take time and give us proper answers such that we do not even need to ask supplementary questions, or that we ask proper supplementary questions?

Mr. Wako: Mr. Speaker, Sir, the Questioner has received the answer that she deserves. This is because her Question asked for the status of 12 cases. If I were to give details of each of these 12 contract cases, then I will come here with a book as big as that. Therefore, as a senior lawyer, I thought that I should summarise and just say what the status is.

As to Case No.1, the answer is there. We are awaiting the documents to proceed with the appeal.

Ms. Karua: On a point of order, Mr. Speaker, Sir. I think the Attorney-General is avoiding the Question. I am not asking about the appeal. I am asking about the substantive case, because orders were issued restraining the Attorney-General and they went to appeal. Is he confirming that the case has been heard and determined?

Case No.4 is just about leave to apply for judicial review. Has the judicial review application been filed and heard? This Question is about the status of the case and I am saying that the answer is incomplete.

Mr. Wako: Mr. Speaker, Sir, the learned Questioner is a lawyer. If she reads Case No.1 very carefully, she will know that the court actually issued a substantive order restraining both the KACC and the Attorney-General. It was not an interim order. It was a substantive order, which finalised the case as far as the High Court is concerned. Therefore, my duty and that of the KACC is to file the appeal. My learned Questioner knows that you file the appeal by filing a notice of appeal and then apply for certified copies of the proceedings. When you receive those documents, you file the appeal. The last sentence there says: "We are awaiting the documents from the court to proceed with the appeal substantively."

On Case No.4, the Attorney-General was not involved. It was the KACC that was involved. However, my understanding from what they briefed me was that with the disposal of the contempt of the court case, the applicant lost interest in the case and the KACC went ahead and did what they had done.

Mr. Linturi: Mr. Speaker, Sir, when these contracts were entered, the Attorney-General's opinion was sought by the various Government departments. The opinion that he gave was in a way that he gave a go-ahead on the performance of these contracts. That being the case, and in view of the matters that are pending in court, does the Attorney-General believe that he is morally right to prosecute these cases until they are completely determined by the court? This is because he is the Principal Government Legal Adviser and at the same time, the prosecutor.

Mr. Wako: Mr. Speaker, Sir, I am glad that the hon. Member has actually asked that question. Morally, professionally and experience-wise – not just local but international experience – I am capable of prosecuting these cases. In fact, I really want to prosecute these cases successfully.

As to the legal opinion, it has given rise to a lot of confusion in the public eye. The legal opinion which the Attorney-General signs normally after the contract has been concluded and executed by the relevant Ministry and Treasury is an opinion which authenticates the various signatures of the aggrieved, already executed by the relevant parties of which the Attorney-General is not. What does the legal opinion normally state? I am saying this because this is not something that we have even in the private sector. It is only in the Government and it is only the Attorney-General who signs these things anywhere. For example, if the contract had been executed by a Minister or a Permanent Secretary, the legal opinion normally states: "I am the Attorney General. The person who signed this contract was So-and-So. That person was duly appointed as a Minister or Permanent Secretary and was duly and properly occupying that position at the time the contract was entered into." I would like to refer to the law, whether it is the Exchequer Audit Act or the Government Loans Guarantee Act which states that under a specified

section, that person has the authority to bind the Government. That is the effect of the legal opinion. The legal opinion is not there to whitewash anything that may happen after the contract has been signed and misused for fraud. The legal opinion is merely to authenticate.

What happens after the contract has been entered into is another matter. That is why I am anxious that these matters be properly investigated and the culprits brought to book for misusing the agreements that were entered into. These agreements were---

Mr. Ruto: On a point of order, Mr. Speaker, Sir. Is the Attorney-General in order to attempt to run away from his moral responsibility of ensuring that the Government of Kenya is properly advised? His role is not only in signing or confirming that a certain Permanent Secretary is the Accounting Officer, but his other role is to give legal advice to the Government and President. The Kenyan Government and the public have lost so much money during the rein of this long serving Attorney-General. He keeps smiling here as if everything is in order. Is he morally right to pretend that everything is in order just because he has told us that a certain Permanent Secretary was duly appointed, while billions of money continues to be siphoned from the Treasury?

Mr. Speaker: Order, Mr. Ruto! From your expression, I do not see what is out of order. Which point of order are you referring to and what is it that the Attorney-General has not conducted in an orderly manner?

Mr. Ruto: Mr. Speaker, Sir, is the Attorney-General in order to mislead Parliament that his role is limited to signing and authenticating signatures? What is the role of an Attorney-General?

Mr. Speaker: Order! Mr. Attorney-General, are you misleading the House?

Mr. Wako: Mr. Speaker, Sir, the Attorney General is not misleading the House. The Attorney General continues smiling; it comes from an inner fuse--- It was said of some stateman that a smile can be that of steel and iron. In other words, when it comes to biting, it can bite. As the Attorney General, I am determined to go to the root of these Anglo Leasing cases and bite.

Mr. Mungatana: On a point of order, Mr. Speaker, Sir. The Attorney General has said that he can actually bite. First of all, I am not sure whether that is parliamentary language. However, in the event that your mind is clear that he can actually bite, how many of these corruption cases has he even prosecuted? Could he cite one successful prosecution and justify for him to continue being the Attorney General of the Republic of Kenya?

Mr. Speaker: Order! With regard to the aspect of whether or not the word "biting" is parliamentary language would depend on the context within which it is used. As the Attorney-General used it, I see it merely as being figurative which is admissible in the English Language and, therefore, in this House.

Mr. Attorney-General, proceed with the substantial part.

Mr. Wako: Mr. Speaker, Sir, to answer my learned colleague who is a Secretary General of a certain party, I would like to say that the Chair of that party who was the Minister for Justice, National Cohesion and Constitutional Affairs, answered a Question here, which gave the success rates of the cases that had been successfully prosecuted arising out of corruption. Not only that, but she also mentioned and gave the reasons we are having difficulties and problems in successfully concluding these cases.

Ms. Karua: On a point of order, Mr. Speaker, Sir. Is the Attorney General in order to mislead the House by saying that I answered without saying that I did so, on his behalf? Although he is the Attorney General of the Republic of Kenya, he lives abroad more than in the country.

(Applause)

Mr. Wako: Mr. Speaker, Sir, there goes another perception which is clearly wrong. The Government records are there to show when I make trips in and out of the country. The hon. Member is right. She answered the Question on my behalf. However, when she was answering, she had the figures with her. I am quite sure that the Secretary General of that party is aware of the figures.

Mr. Wamalwa: Thank you, Mr. Speaker Sir. The hon. Attorney General had indicated that several cases had been terminated. Could he indicate in those cases or projects that had been terminated, what result in loss was suffered by Kenyans? If so, to what extent? Who were the masterminds behind this fraud?

Mr. Wako: Mr. Speaker, Sir, on the cases that were terminated, my answer is as follows. Forensic science laboratory projects, an amount of US\$4.75 million was refunded. The original promissory notes to secure the finance were returned and cancelled. Secondly, the forensic security documents and control system terminated the commitment of Euros 956,700 that was paid and was refunded. The original promissory notes to secure the finance were also returned and cancelled.

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. The Attorney-General says the promissory notes were returned and cancelled. Therefore, the Government was not bound. Given that I have a copy of his legal opinion, which stated those promissory notes were binding, is he in order to mislead the House?

Is he also further in order to mislead the House when I have with me, three promissory notes, in respect of one Midland Finance and Security Limited? These promissory notes are very specific that they were expiring on 28th February 2009. Given that today is 19th May, 2009 and these promissory notes gave Midland Security the power to go to any legal financial institution and then come and be paid by the Government of Kenya---

Finally, I want to lay on the Table, these promissory notes. The first one is worth Euros 2.536 million. The second one is worth Euros 85,000 million and the last one is worth Euros 2.538 million.

Is he not misleading the House, given the Serious Crimes Office of the UK, when it approached the Government Kenya, felt that it could assist us in unveiling this jigsaw, but this Attorney General refused?

*(Dr. Khalwale laid the documents
on the Table)*

Mr. Speaker: Fairly well, Mr. Attorney-General, there is an assertion there that you are misleading the House.

Mr. Wako: Mr. Speaker, Sir, regarding the issue of the Serious Crimes Office of the United Kingdom, there is a Question pending before this House and I will answer in extensor on that. If I may just finish on that question, and then I will respond to the issue of promissory notes. The other one is the Kenya e-Cop Security Law and Order Systems. An amount of €5.3 million has been paid and refunded under the original promissory Notes to secure the finance work returned and cancelled.

Mr. Speaker, Sir, of the terminated contracts, we have recovered a sum of Kshs1 billion. That is a fact. On the issue of the legality of the promissory notes, yes, they were legal and enforceable.

Dr. Eseli: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! The Attorney-General is responding to a point of order raised by Dr. Khalwale. Could you, please, allow him to finish his response to that point of order before you can interfere?

Mr. Wako: Mr. Speaker, Sir, on the issue of promissory notes, yes, at the time they were signed, they were valid and binding. They were binding because the proper officials of Government who can bind the Government under our laws actually executed those promissory notes. So, they were binding at that time, but subsequently, when we discovered that these agreements were being used for fraud, on my advice, the Minister for Finance issued a caveat emptor which was published in all the international newspapers which was dated 20th December, 2007 and which includes some of the promissory notes referred to by the hon. Member. It is also illustrative to note that although it expired in February, nobody has raised a claim. I can inform this House and reiterate what the Minister for Finance said; that no claim is going to be paid on the issue of promissory notes.

Mr. Speaker: Fair enough! Last question by Ms. Karua! Now that you did not ask the first question, I will allow you two questions.

Mr. Wamalwa: On a point of order, Mr. Speaker, Sir. Is it in order for the Attorney-General to evade a question that I had asked him; as to how much money was lost and who the perpetrators of this fraud were?

Mr. Wako: Mr. Speaker, Sir, for now, I cannot give you the amount of money lost because of the nature of the Question that was asked but I am sure the Deputy Prime Minister and Minister for Finance can give it to you. As per who the perpetrators were, they are clearly set out in the various reports of the Controller and Auditor-General, PriceWaterHouseCoopers and so on.

I can inform you that in those reports and also in the arbitrations that we are handling, we have a Mr. Pereira and a Mr. Kamani as the main people behind these contracts.

Mr. Speaker: Mr. Attorney-General, are you saying that those reports are public documents?

Mr. Wako: Mr. Speaker, Sir, the reports of the Controller and Auditor-General are public documents and in fact, they were debated in this House.

Mr. Speaker: If that is the case, then hon. Members can obtain that information from those documents because they are public documents.

Ms. Karua!

Dr. Khalwale: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Allow the Questioner to ask her last question!

Ms. Karua: Mr. Speaker, Sir, I would like the Attorney-General to tell the House and I am very glad he has said that he can fight, looking at the cases enumerated; number one to ten, the cases that relate to the High Court in Kenya, it is clear that from numbers one to six, the applicants who are the Anglo Leasers, we able to quickly obtain orders to stop investigations. Why has the Attorney-General not taken advantage of the rules gazetted by the Chief Justice in January, 2006 to ensure that these cases are heard and concluded to enable the investigation agencies to proceed with investigations and also to enable prosecution of those cases?

Mr. Wako: Mr. Speaker, Sir, as to the answers which she kindly read on my behalf showed, a number of letters have been written to the Judiciary to expedite the typing out of proceedings and judgement so that we can proceed with it to expedite the mention of those cases so that we can have directions where the cases concern the appeal. That is where the problem is.

Ms. Karua: On a point of order, Mr. Speaker, Sir. My point of order is that the Attorney-General has not answered. He is purporting to rely on the answer that I gave to this House on his behalf. I want to state - the HANSARD will bear me right - the answer did not relate at all to the Anglo Leasing cases; not even one of them. It is related to other anti-corruption cases and especially of the Goldenberg type which are pending before the courts.

So, is the Attorney-General in order to avoid the question as to why his office is not taking advantage of the Chief Justice's rules to make sure that these preliminary applications are heard within two months and therefore, to release the cases to proceed, or is it that the Attorney-General's office and the Government do not want these cases to conclude?

Mr. Wako: Mr. Speaker, Sir, the Government and the Attorney-General want these cases to be concluded expeditiously. We want the Legal Mutual Assistance Bill which I have published to be enacted by this Parliament immediately. The list she tabled included these cases and I was not here when she was answering the Question but she may recall that I gave her a schedule and the last column showed when the applications were done and when the various reminders had been sent to the Judiciary. That information is here.

Dr. Khalwale: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! Let us hear the Attorney-General. Why have you not taken advantage of the rules promulgated by the Chief Justice to ensure that these cases are concluded?

Mr. Wako: Mr. Speaker, Sir, you take advantage by writing appropriate letters to the Judiciary to tick the case for hearing. I am saying that in the answer that the former hon. Minister gave at that time, I had given her the schedule, including the reminders that went to the Judiciary to seek hearing for these cases.

Mr. Wamalwa: On a point of order, Mr. Speaker, Sir. In view of the fact that the Attorney-General has not disclosed how much money Kenyans lost in this grand fraud, would I be in order to request that this matter---

(Dr. Khalwale consulted Mr. Wamalwa on the Floor)

Mr. Wamalwa: Pardon me, Mr. Speaker, Sir.

Mr. Speaker: Order! Dr. Khalwale, that conduct is out of order and I would like you to apologize to the House immediately.

Dr. Khalwale: Mr. Speaker, Sir, I profusely apologize for consulting Mr. Wamalwa.

Mr. Wamalwa: Mr. Speaker, Sir, would I be in order to request that this matter be referred to the Committee on Administration of Justice and Legal Affairs for further scrutiny in view of its gravity and the history of grand corruption in this country starting from Goldenberg, Anglo Leasing and the Grand Regency?

Mr. Speaker: Mr. Attorney-General, do you have any reaction to that request?

Mr. Wako: Mr. Speaker, Sir, my reaction is this; I do not have a problem at all in the Committee scrutinizing these matters because I have nothing to hide. Having said that, the reasons for asking for that do not really arise out of this Question because he said that: "In view of the fact that I am unable to disclose the amount of loss that has been incurred." That does not really arise out of this Question because this Question is about the status of the various cases. Just the current status! Therefore, that does not arise out of this Question.

That aside, I have no objection at any time for this matter being referred to the relevant Departmental Committee because the Government and the Attorney-General have nothing to hide in this matter. We are all here to ensure that the culprits behind Anglo Leasing and other people are brought to book. That is what we are here to do and any effort that the Committee or anybody can do to assist me in biting with my teeth of steel and iron will be welcome.

Mr. Speaker: That is fair enough.

Order, hon. Members! Given that the Attorney-General has no objection to this matter being referred to the relevant Departmental Committee and, further, bearing in mind the amount of monies involved and the possible loss that the Kenyan Government may have incurred or suffered, I order that this matter be referred to the Departmental Committee on Administration of Justice and Legal Affairs to inquire into it and file its report within two months from today.

(Applause)

Hon. Members, those of you who serve in Departmental Committees, please, take full responsibility! Among other things, please, remember that each of you is supposed to be bound by the findings of the Committee. So, we want to avoid situations where hon. Members of the same Committee come and differ on the Floor of the House after a report is laid on the Table.

(Applause)

Further, hon. Members, note that recommendations in your reports must emanate from the inquiries that you make and evidence tendered before the Committee. That an hon. Member will not tender evidence in the House which has not been adduced or tendered before the Committee.

(Applause)

That, really, is the practice and procedure. It is the common sense of doing an inquiry and preparing a report.

So, hon. Members, please note. That is important!

Hon. Members, we have run out of time even to take Ministerial Statements, but I understand that the Minister for Regional Development made an indication on a matter that is burning; a matter of immense public interest pertaining to Migingo Island and that he has given an undertaking that he can deliver that Statement in five minutes. If you confirm so, Mr. Minister, then we will allow you five minutes because of the public interest component in the matter. That is if you confirm that you will do so in five minutes.

(Mr. Clerk consulted with the Speaker)

It is supposed to be the Minister for East African Community, and this matter pertains to trade. Are you able to confirm that you will do that in five minutes?

The Minister for East African Community (Mr. Kingi): Thank you, Mr. Speaker, Sir.

Mr. Speaker: First, the confirmation!

The Minister for East African Community (Mr. Kingi): Mr. Speaker, Sir, my Statement was not on the Migingo issue and, therefore, I did not seek the five minutes to make a Statement on the Migingo issue. It could be the Minister for Foreign Affairs. My Statement is totally on a different issue.

Mr. Speaker: Yes. I have indicated that your Statement is on trade. I want your confirmation that you are going to do that in five minutes.

The Minister for East African Community (Mr. Kingi): Mr. Speaker, Sir, five minutes will not be adequate for me to make the kind of Statement that I wish to make now.

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

The Minister for East African Community (Mr. Kingi): At most, 15 minutes.

Mr. Speaker: We do not have 15 minutes!

The Minister for East African Community (Mr. Kingi): Mr. Speaker, Sir, what I intended to give out is the update to the negotiations of the East African Common Market, the progress of the East African Political Federation, the implementation status of the---

Mr. Speaker: Order, Mr. Minister! When are you next available?

The Minister for East African Community (Mr. Kingi): Mr. Speaker, Sir, I will be leaving tomorrow morning for Bujumbura, Burundi, and I will be back before 30th May. My Assistant is already there. I am joining him.

Mr. Speaker: Then I direct that, that Statement be made as at the time you return. That is because when you say 15 minutes, I am certain that you are going to do double that time, at the very minimum. We will, instead, take a Ministerial Statement from the Ministry of Youth Affairs and Sports. It is so ordered. The Ministerial Statement will be issued after the Minister returns.

Dr. Khalwale: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: What is it, Dr. Khalwale?

Dr. Khalwale: Mr. Speaker, Sir, I am the one who raised this issue. It is a very practical issue of trade because our goods and our business people are suffering as a result of the ambiguity in the implementation status of the Customs Union, the Common Market and, of course, the envisaged Monetary Union and Political Federation.

Mr. Speaker, Sir, I beg that you allow him the 15 minutes to thrash it out.

Mr. Speaker: Order, Dr. Khalwale! You will not direct the Chair on how to conduct the business of this House!

Mr. Minister, are you prepared to follow the footsteps of the Attorney-General by confirming that you have nothing to hide? In which case, I want to direct that you lay your Statement on the Table and do the remaining part when you return.

The Minister for East African Community (Mr. Kingi): Mr. Speaker, Sir, I have absolutely nothing to hide and, therefore, I am very able and willing to lay my written Statement on the Table. Upon my return, I undertake to give a vouching Statement on the same.

Mr. Speaker: Very well. Will you, please, lay the Statement on the Table so that hon. Members can have access to it?

(Mr. Kingi laid the Statement on the Table)

(Applause)

We will now---

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

Mr. Speaker: What is it, Mr. Mungatana?

Mr. Mungatana: Mr. Speaker, Sir, I am standing on a point of order under Standing Order No.97.

Mr. Speaker, Sir, on Sunday, 17th May, 2009, the nation woke up to very serious allegations of bribery and corruption---

Mr. Speaker: Order, Mr. Mungatana! Let us first take the Ministerial Statement from the Minister for Youth Affairs and Sports and then we will come to requests.

MINISTERIAL STATEMENT

CONSTITUENCY SPORTS DEVELOPMENT FUND

The Minister for Youth Affairs and Sports (Prof. Sambili): Thank you, Mr. Speaker, Sir. I stand here to make a Ministerial Statement on the Constituency Sports Development Fund. During the 2008/2009 Budget, the Government, through the Ministry of Youth Affairs and Sports, allocated Kshs210 million to promote sports---

Eng. Gumbo: On a point of order, Mr. Speaker, Sir. I thought it was procedural, when a Minister is issuing a Ministerial Statement, to state who requested the Statement.

Mr. Speaker: No. By our past precedents by our practices, the Statements by Ministers are not necessarily upon requests by hon. Members. Ministers are allowed to issue Statements of their own motion when warranted.

(Applause)

Please, ensure that you keep the institutional memory with you!
Proceed!

The Minister for Youth Affairs and Sports (Prof. Sambili): Thank you, Mr. Speaker, Sir. I was saying that each constituency was, therefore, to receive Kshs1 million. The objectives of those activities were to develop soccer at the grass root levels in the country, to enhance peace and create cohesiveness.

Mr. Speaker, Sir, the Ministry has so far developed and issued guidelines for the organization of those community sports activities. Each MP was issued with a copy of the said guidelines. As per the said guidelines, each constituency was allocated an initial amount of Kshs781,940 for activities within the constituency. Those funds have so far been disbursed to the constituency committees. The funds were to enable the constituencies to bring together teams to compete at the locational and divisional levels and select one team to represent each constituency. Constituencies were banded together in each province to compete and select one team to represent the province in the inter-provincial championships. The provincial championships will then select one team to represent the province in the national championships.

Mr. Speaker, Sir, the remaining amount of Kshs218,060 per constituency was to enable constituency teams to participate in subsequent matches after the selection of the constituency teams. Given the short time remaining before the end of the financial year, a decision has been made by my Ministry to release the remaining Kshs218,060 to the constituency committees to organize inter-constituency activities of their choice. All Members of Parliament have been informed of this decision through our letter Ref. MYS/SB/SO/87 of 13th May, 2009.

Each MP is the patron of his or her constituency committee that organizes competition at the constituency level. They are also members of the competition committees. These committees are responsible for organizing competitions within each part of the constituency to select the provincial teams.

In addition, they should mobilize more funds and resources from other stakeholders. I confirm that this remaining money is being released to hon. Members for that purpose

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Any hon. Members interested in clarifications?

Eng. Gumbo: Mr. Speaker, Sir, we note that of the sports money being disbursed to constituencies, the Ministry retains about Kshs48 million. I would like to know whether MPs have any role in the way that money is spent, and whether she could explain the purpose for which that money is retained.

Secondly, from the experience that we have got from organizing these sports – I am sure that the Minister has received feedback – Kshs1 million is not enough to organize tournaments in the constituencies. I would want to know from the Minister what plans she has to increase this allocation, so that we can have effective tournaments in the constituents.

Mr. Speaker: Is there anybody else interested?

Ms. Odhiambo: Mr. Speaker, Sir, could the Minister kindly clarify whether she has any intention of assigning some of that money to Nominated Members of Parliament?

(Laughter)

Mr. Speaker: Finally, Dr. Kones!

Dr. Kones: Mr. Speaker, Sir, there are some constituencies or districts that do not have Sports Officers. The Minister has made it mandatory that the Sports Officer is supposed to be a signatory to the Sports Fund. May I know from the Minister whether a Youth Officer can replace a Sports Officer in this regard?

Mr. Speaker: Madam Minister, can you deal with those clarifications?

The Minister for Youth Affairs and Sports (Prof. Sambili): Mr. Speaker, Sir, on the question of the Kshs48 million that the hon. Member has referred to, I believe that this is the total of the Kshs218,060; it this amount times the 210 constituencies. I said that we have decided to release this money to hon. Members for use in inter-constituencies competitions, following the guidelines that were given early by the Ministry.

As to the sum of Kshs1 million not being enough, I want to appreciate the feedback from hon. Members. I hope that hon. Members will support us when we ask for more money.

As for Nominated Members of Parliament, because this money is for constituencies, maybe, the hon. Members can work together with the elected Members in their neighbourhoods and support each other. However, I do not think we can allocate money for Nominated Members of Parliament.

Ms. Odhiambo: On a point of order, Mr. Speaker, Sir. Is the Minister in order to suggest that we have no constituencies when we have special interest constituencies?

An hon. Member: Which one is yours?

Ms. Odhiambo: Mr. Speaker, Sir, mine is children and women.

An hon. Member: They do not play football!

Ms. Odhiambo: Women play football!

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

The Minister for Youth Affairs and Sports (Prof. Sambili): Mr. Speaker, Sir, I was saying that Nominated Members of Parliament can work with their neighbours. I believe that it is important that we all work together to support the youth of this country. So, I said that with a good heart.

Finally, we know that some constituencies do not have Sports Officers. So, I confirm that in such constituencies, the Youth Officers can be a signatories to the Fund.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Order, hon. Members! We must come to the end of this now.

Dr. Eseli: On a point order, Mr. Speaker, Sir. The Minister has given the impression that she is releasing the money to us, Members of Parliament. Actually, we are not signatories to those accounts, although we are patrons. That impression is dangerous for us. If anything happens to those funds, Members of Parliament will be blamed for it. So, could she clarify very clearly that she is not releasing the money to hon. Members, but is releasing it to the constituencies committees?

Mr. Speaker: Madam Minister, that is important!

The Minister for Youth Affairs and Sports (Prof. Sambili): Mr. Speaker, Sir, I confirm that this money goes to a committee that is formed within the constituency, and

is under the patronage of hon. Members. This money is not administered by hon. Members. So, the public needs to know that.

(Mr. Mungatana stood up in his place)

Mr. Speaker: What is it, Mr. Mungatana?

Mr. Mungatana: On a point of order, Mr. Speaker, Sir. I stand on a point of order under Standing Order No.97.

Mr. Speaker: Order, Mr. Mungatana! Before you do that, I have something to do with Ministerial Statements that are ready.

Hon. Members, you will note that we have actually run out of time desperately. So, the Ministerial Statements by the Deputy Prime Minister and Minister for Finance, which was going to be given by Dr. Oburu, is deferred to Tuesday, next week.

The Ministerial Statement that was going to be forthcoming from the Ministry of Foreign Affairs on the Migingo Island issue will be deferred to Wednesday, next week, because the substantive Minister would have wanted to deal with it himself, and he has had to leave on a national emergency to Somalia.

The Minister of State for Provincial Administration and Internal Security, your Ministerial Statement will be deferred to Thursday, this week. Is that fine with you, or would you like to do it tomorrow?

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, that is acceptable.

Mr. Speaker: Thursday this week?

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Yes, Mr. Speaker, Sir.

Mr. Speaker: It is so ordered!

Now, hon. Mungatana!

POINTS OF ORDER

DIRECTION/ACTION ON ALLEGATIONS OF BRIBERY IN PARLIAMENT

Mr. Mungatana: Mr. Speaker, Sir, I rise on a point of order under Standing Order No.97.

On Sunday, 17th May, 2009, the country woke up to very prominent allegations of bribery and corruption directed at this House. Those allegations were repeated in the electronic media, and specifically, Citizen Television, during which some hon. Members were quoted as supporting those allegations.

Mr. Speaker, Sir, the allegations had the effect of condemning this whole House as a market place, where hon. Members only vote for Motions and Bills in consideration of financial or monetary gain. This exposed the House to ridicule, disrepute and public odium. This House has been hosting delegations of hon. Members of Parliament, including last week's delegation of hon. Members from the Parliament of Somalia, our next door neighbour .

This House produces the President, the Vice-President, the Prime Minister and yourself, as the presiding officer of this House.

Mr. Speaker, Sir, I rise under Standing Order No. 97(j) to seek your ruling with regard to the hon. Members who were quoted giving credence to those reports to be deemed to have been in breach of the Standing Orders of this House, and appropriate action be taken against them. This will restore the dignity of this House.

(Applause)

That Standing Order says that if any hon. Member conducts himself or acts in any way to the serious detriment of this House or orderly procedure of the House, he is disorderly.

Mr. Speaker, Sir, the other thing I would like to raise is under Standing Order No.1. You should exercise your general powers to preserve the dignity of this House by engaging the media responsible for this and expressing the concern this House has. I was speaking to one of the hon. Members who was in London at that time. He had been attending sessions in the House of Lords for one week, observing debates in that House. The Member told me that they received the information to the effect that the Kenyan Parliament is corrupt. This cannot go on and we request that appropriate action be taken against those hon. Members. The media should also be engaged because we are partners. It does not help anyone to embarrass this republic and this institution.

It has taken Somalia over 15 years to have a parliament. It does not pay any one to destroy an institution such as this House. This Parliament has hosted the Commonwealth Parliamentary Association (CPA) and the Inter-Parliamentary Union (IPU). It is a Parliament of international repute. Mr. Speaker, Sir, you have been elected to high positions in the world. It does not help us in any way to destroy this institution. I request for a ruling on this matter. We want a proper direction on how we should conduct ourselves and partner with the media out there.

Mr. Speaker: Very well! I will issue a communication on that matter at the opportune time. That means that we will not take too long to make that communication. However, in the meantime, I urge Mr. Mungatana to supply further information to my office. In legal jargon, I will say “further and better particulars”. Indicate the Members of Parliament who issued those statements even as we deal with the matter. Please, forward that information to the Speaker’s Office to assist us attend to that matter.

UTTERANCES MADE BY UGANDAN PRESIDENT
AGAINST A SECTION OF KENYANS

Mr. Ruto: On a point of order, Mr. Speaker, Sir. I sought a Ministerial Statement from the Minister for Foreign Affairs with regard to the utterances of the President of the friendly Republic of Uganda about a certain section of Kenyans. To date, I have received no indication when this Statement will be made.

Mr. Speaker: I urge the Minister for Foreign Affairs to avail that Ministerial Statement on Wednesday, next week.

The Assistant Minister for Water and Irrigation (Mr. Kiunjuri): On a point of order, Mr. Speaker, Sir. A point of order has been raised with regard to some Members destroying the reputation of this House, and you have promised that you will make a

communication. Since we know that you are a fair Speaker, once you are furnished with information about those Members of Parliament, get their side of the story before you take any action.

Mr. Speaker: Hon. Kiunjuri, that will be done. As a matter of fact, the Speaker will ensure that all laws including natural justice are applied. We will give them a hearing. Hon. Members, before we move to the next Order, I have two Communications to make.

COMMUNICATIONS FROM THE CHAIR

SENSITIZATION WORKSHOP FOR MEMBERS ON MDGs

A sensitization workshop on the Millennium Development Goals (MDGs) has been organized for Members of Parliament. The workshop will take place this Friday, 22nd May, 2009 at the Serena Beach Hotel, Mombasa. The workshop is jointly organized by the Kenya National Assembly and the Ministry of State for Planning, National Development and Vision 2030 with sponsorship from the United Nations Development Programme (UNDP).

Hon. Members wishing to attend the workshop are kindly requested to indicate their participation by signing against their names on the list provided at the Members' Reception Desk tomorrow, Wednesday, at or before 4.00 p.m.

Hon. Members will depart for Mombasa on Thursday, 21st May, 2009 and return on Saturday, 23rd May, 2009 by scheduled flights. Return Economy Class tickets will be provided by the sponsor. Please, note that the sponsor is UNDP. For further inquiries and clarifications, please, get in touch with Mrs. Phyllis Makau of the Budget Office on telephone extension number 32309. That is an important workshop. Please, give it due attention.

My second Communication is with respect to the Memorandum from His Excellency the President.

(Some hon. Members stood at the Bar)

Hon. Members at the Bar may walk in!

(Hon. Members walked into the Chamber)

PRESIDENTIAL MEMORANDUM ON FISCAL MANAGEMENT BILL

Hon. Members, before we proceed to Order No.8, which is the Committee of the Whole House to consider the Presidential Memorandum on the Fiscal Management Bill, 2008, I wish to take this opportunity, by way of a reminder, to set out the procedure applicable to deliberations on a Memorandum from His Excellency the President submitted in terms of Section 46(4) of the Constitution.

Hon. Members, you will recall that after the House passed the Fiscal Management Bill, 2008 on 10th December, 2008, His Excellency the President declined to give his

assent to the Bill pursuant to Section 46(4) of the Constitution. His Excellency the President submitted a Memorandum to my Office on 12th February, 2009, and which has been circulated to all hon. Members indicating specific provisions of the Bill which require to be reconsidered by the House. Section 46(5) of the Constitution provides as follows:

“The National Assembly shall reconsider a Bill referred to it by the President taking into account the comments of the President and shall either-

- (a) approve the recommendations proposed by the President with or without amendment and resubmit the Bill to the President for assent; or
- (b) refuse to accept the recommendations and approve the Bill in its original form by a resolution in that behalf supported by the votes of not less than sixty-five per cent of all the Members of the National Assembly (excluding *ex-officio* Members) in which case the President shall assent to the Bill within fourteen days of the passing of the resolution.”

Hon. Members, this provision gives this House two options when considering a Memorandum by His Excellency the President. First, this House may, in terms of Section 46(5) (a) of the Constitution approve the recommendations of His Excellency the President either with or without amendments. No special voting thresholds are prescribed in this case. Thus, in accordance with Section 54(1) of the Constitution, a majority of the votes of the Members present and voting will suffice.

Hon. Members, it is important to note that where under Section 46(5)(a) of the Constitution, the recommendations of His Excellency the President are passed with or without amendments by the Committee of the Whole House, these facts shall, as required under Standing Order No.116 (12) be reported to the House. Thereafter, Section 46(5) of the Constitution requires that the Bill be resubmitted to the President for his assent.

A Third Reading of the Bill is, therefore, not required.

Hon. Members, the second option available to the House in considering a Memorandum by His Excellency the President is provided for under Section 46(5)(b) of the Constitution. That provision allows the House to refuse to accept the recommendations of His Excellency the President in total and thus accept the Bill in its original form. In such an instance, a resolution supported by votes of not less than 65 per cent of all the hon. Members of the National Assembly, excluding *ex-officio* members, is required.

Standing Order No.60(2) will apply to voting where the House takes this second option. Standing Order No.60 (2) requires the Speaker to direct a Division to be taken in every instance where the Constitution lays down that a fixed majority is necessary to decide any question.

Section 46(5)(b) of the Constitution lays down a fixed majority, and thus falls within the ambit of Standing Order No.60 (2) of the Standing Orders. The procedure for a Division is set out at Standing Orders Nos.61, 62 and 63. Standing Order No.68 further provides that in every instance where the Constitution lays down that a fixed majority is necessary to decide any question, the House shall not proceed to a Division on that question unless and until a number of hon. Members equivalent to such fixed majority is present at the time of directing the Division.

Hon. Members, 65 per cent of 222 will add to 144.3 hon. Members, which is rounded upwards to 145 since the words used are “not less than 65 per cent of all hon.

Members of the Assembly excluding the ex-officio Members”. The ex-officio Members here are the Attorney-General and Mr. Speaker. This House will not proceed to Division unless there are, at least, 145 hon. Members present in the House at the time of directing the Division. On reporting procedure, the Bill will not be read a Third time as this was actually done and the Bill passed on 10th December, 2008.

It is, therefore, enough that a resolution of the House adopting or rejecting the report of the Committee of the Whole House in accordance with Standing Order No.121 (3), read together with Standing Order No.119 (1) and (2), which state, *inter alia*, “that the House doth agree with the Committee in the said report” will satisfy Section 45(5) of the Constitution and will be in conformity with the rules of procedure on re-committal of Bills as amplified by Standing Order No.121(1) and (2).

Hon. Members will, therefore, immediately proceed to the Committee of the Whole House to reconsider the Clauses referred to the House, but allow me to emphasize that the Committee cannot amend any other Section that is not subject to reconsideration since the same had been passed on Wednesday, 10th December, 2008, and the Bill read a Third Time.

Thank you!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the chair]

IN THE COMMITTEE

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

THE FISCAL MANAGEMENT BILL

*(Consideration of Memorandum from His Excellency
the President)*

The Temporary Deputy Chair (Prof. Kamar): Hon. Members, please, consult quietly. We are now in the Committee of the Whole House to consider the amendments as recommended by His Excellency the President pursuant to Section 46(4) of the Constitution of Kenya.

Clause 4

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Madam Temporary Deputy Chair, I beg to move:-

THAT, Clause 4 of the Bill be amended in Subclause (2) by deleting paragraph (e).

Section 4(2)(e) which confers powers on the Budget Office to advise appropriate organizational arrangements for planning, managing and co-ordinating budgetary policies and activities is harmless if taken in the context of the functions of the Budget Office, in its advisory role to the Budget Committee of Parliament. However, this context is not explicit and hence it is subject to the interpretation that Parliament can extend this role to the Executive. The Memorandum, therefore, proposes that since the functions of the Budget Office are already generally provided for elsewhere, it does no harm deleting this sub-clause to avoid other likely interpretations. I request that this House deletes the aforesaid clause.

(Question of the amendment proposed)

Mr. Mungatana: Madam Temporary Deputy Chair, looking at the explanations that the Minister has given us--- In fact, when you look at that proposal, it does not really take away any powers that we have gained through the Fiscal Management Bill.

Therefore, we support.

Mr. Mbau: Madam Temporary Deputy Chair, I want to thank the Minister for Finance for rising to the occasion, rather belatedly. We wish we had that contribution before this Bill was sent to the President for assent. This Bill went through this House for the first time as a Motion, and the second time as a Bill; it went through the Committee Stage. We went through all the motions, and I just want to thank the Minister for Finance, but to urge that it is good and courteous to consult with hon. Members. Put your input where you need it to be so that we do not have to come to this.

(Applause)

At some point it gives the wrong impression to the Chief Executive when we need not. I am not happy that we have come to this. I know hon. Members are here to support that this Bill, indeed, becomes law. Once it becomes law, we will not have instances as we had for ---

The Temporary Deputy Chair (Prof. Kamar): Mr. Mbau, you are now debating and you did that earlier!

Mr. Mbau: Madam Temporary Deputy Chair, I beg to support.

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

(Clause 4 as amended agreed to)

Clause 5

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Madam Temporary Deputy Chair, I beg to move:-

THAT, Clause 5 of the Bill be amended in Subclause (1) by deleting paragraph (h).

Section 5(1)(h), which confers powers on the Budget Office to perform other functions relating to the National Budget and the economy as may be assigned to it by the National Assembly may easily be misinterpreted to mean that Parliament can assign to the Budget Office functions already assigned by law to the Executive. To avoid doubt, therefore, the Memorandum requests that this House deletes the Subclause since the functions of the Budget Office, again, are already generally provided for elsewhere.

(Question of the amendment proposed)

Mr. Mungatana: Madam Temporary Deputy Chair, we need to say that, again, the proposal is harmless and good. We, from this side, do support.

(Applause)

Mr. Ogindo: Madam Temporary Deputy Chair, I also support this amendment. This is because this House will remain at liberty to direct its Committees on a need basis. I beg to support.

Mr. Ruto: While I support the amendment, Madam Temporary Deputy Chair, I want to caution the Office of the Deputy Prime Minister and Ministry of Finance and the Executive in general, from becoming reactionary. This is still a carry over of the bad old days. This time, we are willing to forgive you but please take note!

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

(Clause 5 as amended agreed to)

Clause 6

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Madam Temporary Deputy Chair, I beg to move: -

THAT, Clause 6 of the Bill be amended in Subclause (2) by inserting the following new paragraph immediately after paragraph (g)-

(h) Observance of the doctrine of separation of powers by ensuring that Parliament does not get involved in the management of public resources.

Madam Temporary Deputy Chair, Clause 6(2), which seeks to provide prudent fiscal management, is incomplete without addressing the area of conflict of interest. Therefore, while it is appreciated that we need to move in the direction of the new Fiscal Management Bill, it is necessary that for prudent financial management, we need to ensure that this does not interfere with the principle of separation of powers.

Madam Temporary Deputy Chairperson, the request is for the inclusion of paragraph (h) after paragraph (g).

(Question of the amendment proposed)

Mr. Ogindo: Madam Temporary Deputy Chairperson, I beg to move:-

THAT, the proposed amendment to Clause 6 Subclause (2) be further amended by deleting the words "does not get involved in the management of public resources" appearing immediately after the word "Parliament" and substituting therefor the words, "only gets involved in the management of public resources in the instances set out by the Constitution and any other written law".

Madam Temporary Deputy Chair, you will realise that this law is seeking to get Parliament involved in the Budget-making process. At the minimum risk of contradiction, Parliament includes His Excellency the President who is the Member of Parliament for Othaya.

Madam Temporary Deputy Chair, all we want is to have everybody in this Parliament involved in the Budget-making process. This is a noble request which is meant for the good of the country. Our Committee consulted the Minister and we agreed that this amendment be brought.

(Applause)

(Question of the amendment to the amendment proposed)

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Madam Temporary Deputy Chair, I rise to support the amendment to the amendment.

(Applause)

Madam Temporary Deputy Chair, as I had said previously, it is not the intention of the Executive not to work with Parliament. The only issue was to ensure that there is indeed separation of powers between the Executive and the National Assembly as enshrined in the Constitution. However, the amendment does refer to the Constitution itself and any written law. After consultation with the author of the Memorandum, His Excellency the President and, indeed, the Attorney-General, the Executive has no problem with the amendment to the amendment.

Mr. Mbau: Madam Temporary Deputy Chair, I can see that hon. Members are anxious to bring this matter to an end. I can observe the mood of the House is that we put the question so that we can have our law.

(Applause)

Madam Temporary Deputy Chair, this is going to be the first law moved by a private Member in the Tenth Parliament.

I want to thank the Deputy Prime Minister and Minister for Finance---

The Temporary Deputy Chair (Prof. Kamar): Mr. Mbau, do not start debating now!

Mr. Mbau: Madam Temporary Deputy Chair, I want to thank the Minister for owning up. I want to tell him, when he went to that Ministry, there were Ministers for Finance who never owned up or even came to the House. They never bothered to respect

the wishes, aspirations or objectives of Members of Parliament. We need to have leadership that is agreeable---

The Temporary Deputy Chair (Prof. Kamar): Order, Mr. Mbau! Do not start to debate!

Mr. Mbau: I beg to support.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Madam Temporary Deputy Chair, I support this amendment to the amendment. It has been established that there is separation of powers between Parliament and the Executive. It is the right thing to have happened.

Madam Temporary Deputy Chair, I need to make a small clarification on why it is important to say, "only gets involved in the management of the public resources in the instances set out by the Constitution and any other written law"

Madam Temporary Deputy Chair regarding any other written law, I have in mind here the CDF where a certain management roles have been given to Members of Parliament. So, if these amendments had not been done, then the involvement of Members of Parliament in the CDF, would have become illegal. I, therefore, thank the Committee for coming up with this very good compromise.

With those few remarks, I beg to support.

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

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

(Clause 6 as amended agreed to)

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Madam Temporary Deputy Chair, I beg to move that the Committee doth report to the House its consideration of the Presidential Memorandum on the Fiscal Management and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

[The House resumed]

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

REPORT, CONSIDERATION OF REPORT

Prof. Kamar: Mr. Temporary Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered the Presidential Memorandum on the Fiscal Management Bill and approved the same with amendments.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with Committee in the said Report.

The Minister for Nairobi Metropolitan Development (Mr. Githae) seconded.

(Question proposed)

Dr. Khalwale: Thank you, Mr. Temporary Deputy Speaker, Sir. This is a very wonderful decision that we have just made. I would like to congratulate hon. Ogindo for the ingenious amendment that he has made. This is because the word “management” is very broad. So, if we had completely carried the suggestion in the memorandum by the President we would have created a bottle-neck that would have made it difficult when we know that even in the day today running of Parliamentary affairs, we carry out scrutiny of how Government business have been done by the watchdog committees. We do general oversight. Therefore, it is very welcome.

Mr. Temporary Deputy Speaker, Sir, it reminds me of what is happening in other countries. I recently attended a World Bank/IMF conference. They have statistics to the effect that countries that have this kind of office surprisingly led by the Republic of Uganda, Migingo notwithstanding, are now ahead of the world in terms of management of fiscal resources.

I, therefore, wish to support

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, may I take this opportunity to congratulate you on the way you are handling the Chair.

Mr. Temporary Deputy Speaker, Sir, this has been a long journey. Parliament has been seeking for this kind of office for a long time. This is a beautiful day for this country. We will now have a Budget office, which will work in consultation with the Treasury and the Ministry of Finance.

Let me also commend the Deputy Prime Minister and Minister for Finance for the way he is handling the Ministry and Treasury. He is handling the office through consultations with the Departmental Committees of Parliament. This is the right way to go. It is the right thing to do. May I ask him to continue consulting the departmental committees as he handles this very important piece of legislation.

Thank you.

Mr. Ruto: Thank you, Mr. Temporary Deputy Speaker, Sir. While I agree that we pass the Bill as amended, I only want to caution Government that they should try as much as possible to avoid the same wordings that tend to belittle the role of the National Assembly. They seem to be interested in outlawing the role of Parliament in the management of resources. These are the same bad old habits and thinking that are refusing to go. I want to caution the Executive that they cannot hold the wheels of history from moving forward. They cannot continue to hold the country static. They must appreciate also that Parliament is the supreme organ of the three Arms of Government.

They should not be attempting to make it appear as if Parliament plays a subsidiary role. It plays a very important role because it is the voice of the people.

The Minister for Trade (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I just wish to congratulate the House for supporting the wisdom of His Excellency the President. When the Bill was sent to him he proved that he is a working President. He saw the faults and brought the Bill back to us. We have now agreed with him in his amendments. That is important, so the checks and balances are not just Parliament checking on the Executive, but also the Executive has actually been checking the role of Parliament. Any oversight by Parliament has actually been rectified.

Mr. Temporary Deputy Speaker, Sir, may I also clarify something, Contrary to some popular belief that there was lack of consultation on this matter in the past. Indeed, the Fiscal Management Bill first came to this House in the last Parliament, courtesy of hon. Aringo. We had intensive consultations and what came eventually through hon. Mbau was a major improvement on the original Bill, following those consultations. Indeed, the only matters of contention are what this Parliament has actually cleared out today. So, indeed, I believe there have been consultations. At that point when this Bill was passed, as you all know, I was on leave.

Dr. Eseli: Mr. Temporary Deputy Speaker, Sir, first of all, I would like to congratulate the House and His Excellency the President. Today, the Executive and Parliament have come together to make a better country for us in the sense of demystifying the making of the Budget. It is a momentous occasion because, for once, we are making a break from the past whereby a pig is always pig. You wash it, but when you turn your face the other side, it rolls in the mud. What used to happen was that we would talk about how Budget is so skewed in favour of some areas while other areas were being denied resources. People would debate and talk about it, but the next Budget would just be the same. The following one would also be the same. Our passing of this Bill, makes a break from that bad past, so that at least areas that have been neglected since Independence will now benefit with this new method of formulating the Budget.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Mr. Baiya): We will have one more contribution and then I put the Question.

Yes, Mr. Chanzu!

Mr. Chanzu: Thank you, Mr. Temporary Deputy Speaker, Sir. I also want to thank and congratulate the House and the Minister for Finance for the far we have gone today to pass the amendment to what we had discussed earlier on.

Mr. Temporary Deputy Speaker, Sir, what we are learning from this is what we have learnt before but we have ignored. I will give an example. A father should control his children as they grow up. Although we are grown ups, sometimes, we behave like children. Today, we have demonstrated that we will live up to consultations rather than believe that only one person can determine our destiny. I would like us to adopt this spirit so that we can forge ahead faster in the Ministry of Finance and other Ministries. We should do exactly what we have done with the Constituencies Development Fund (CDF) which has been running very well. However, money does not get to the few projects that are still run from the head office. There are many examples. I can talk about health, education and water without fear. This should be a lesson particularly to the people charged with the responsibility of running these Ministries.

Thank you, Mr. Temporary Deputy Speaker, Sir.

(Question put and agreed to)

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Baiya): Hon. Members, that concludes the business on the Order Paper. Therefore, the House stands adjourned until tomorrow, 20th May, 2009, at 9.00 a.m.

The House rose at 5.20 p.m.