

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 23rd April, 2009

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

MOTION

APPOINTMENT OF HOUSE BUSINESS COMMITTEE

THAT, pursuant to the provisions of Standing Order No.158, the following be appointed as Members of the House Business Committee:-

1. Hon. Stephen Kalonzo Musyoka, MP
2. Hon. Uhuru Kenyatta, MP
3. Hon. Kiraitu Murungi, MP
4. Hon. Shakila Abdalla, MP
5. Hon. Esther Murugi, MP
6. Hon. (Prof.) George Saitoti, MP
7. Hon. Mutula Kilonzo, MP
8. Hon. Moses Wetangula, MP
9. Hon. Adan Keynan, MP
10. Hon. George Thuo, MP
11. Hon. Musalia Mudavadi, MP
12. Hon. William Ruto, MP
13. Hon. (Prof.) Anyang'-Nyong'o, MP
14. Hon. Charity Ngilu, MP
15. Hon. Henry Kosgey, MP
16. Hon. (Dr.) Sally Kosgei, MP
17. Hon. Mohamud Maalim Mohamed, MP
18. Hon. Francis Chachu Ganya, MP
19. Hon. Thomas Ludindi Mwadeghu, MP
20. Hon. (Dr.) Robert Monda, MP
21. Hon. Jakoyo Midiwo, MP

(The Vice-President and Minister for Home Affairs on 22.4.2009)

(Resumption of Debate interrupted on 22.4.2009)

Mr. Speaker: Where is the Leader of Government Business?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir---

(Loud Consultations)

Mr. Speaker: Order, hon. Members! You will note that we are resuming the business of the House today on Order No.8 from where we left off yesterday. The position as at where we left off is that the Motion under Order No.8 was moved and seconded and hon. Members have made some contributions to it. So, that debate will continue from that point. Hon. Members will note that, that Motion was moved in that form by Mr. Musyoka, then Leader of Government Business as the Chair understood it.

Proceed!

Mr. Olago: On a point of order, Mr. Speaker, Sir. Before the Vice-President resumes debate on Order No.8, I have a matter of grave constitutional consequences with regard to the debate before this House. I wish to ask the Chair to make a ruling before we resume debate. The issue that I want to seek your direction on is so fundamental that unless it is resolved before we resume, then debate in the House may not be conducted in the way---

Mr. Speaker: Order, Mr. Aluoch! Before the hon. Member for Kisumu West continues with his contribution on the point of order, which I want to believe pertains to this matter, so that the record is clear, I have explained where we will proceed from. In a nutshell, I have said that it is resumption of debate from where we left off yesterday. The Vice-President and Minister for Home Affairs has stood up to begin to contribute. That is not permissible because he had already contributed to this Motion. So, I just want to make the record straight, hon. Members, so that it is clearly understood and properly captured on the HANSARD.

Mr. Olago: I am much obliged, Mr. Speaker, Sir. The issue that I wish to raise touches on the ability of the House to defend the Constitution and comply with Standing Orders. The Motion that we are resuming debate on is presented by the Vice-President and as appears on the Order Paper, as the Leader of Government Business. The fundamental issue that I wish to raise on that aspect is under our Constitution; who is supposed to move the Motion that has been moved before this House? I wish to refer to the definition of the words "Leader of Government Business". Leader of Government Business is defined under Standing Order No.2 at page two of the Standing Orders.

It reads: -

"The Leader of Government Business" means the Minister designated by the Government as the Leader of Government Business in the House."

The issue of relevance here is: Who "is the Government" in the context of the Kenyan situation? "Government" in the context of the Kenyan situation is defined by the Constitution of this Republic.

Mr. Speaker, Sir, the Constitution, the National Accord and Reconciliation Act and the pre-amble to that Act is very clear and it reads as follows:-

"It is an Act of Parliament to give effect to the agreement on the principles of partnership on the Coalition Government to foster national accord and reconciliation; to provide for formation of a Coalition Government and the establishment of the Offices of the Prime Minister, Deputy Prime Ministers and

Ministers of the Government of Kenya, their functions, various matters connected with and incidental to the foregoing.”

Mr. Speaker, Sir, that is the Government that we have in place. In that preamble, the Office of the Prime Minister is set out and the duties of the Office of the Prime Minister are clearly defined in Section 4(1). I wish to quote the functions of the Office of the Prime Minister, Section 4(1) (a):-

“The Prime Minister shall have authority to co-ordinate and supervise the execution of the functions and affairs of the Government including those of Ministries.”

Mr. Speaker, Sir, if that is the function of the Prime Minister, then we have to look at Section 4(1)(b) which says that the Prime Minister may assign any of the co-ordination responsibilities of his office to Deputy Prime Ministers as well as one of them to deputize for him. What is of relevance is that *ipso facto*, and the inference is that from the National Accord, the Leader of Government Business (LGB) and the Chairman of the House Business Committee (HBC) is a constitutional affair.

In the context of the Grand Coalition Government, the option to appoint the LGB is not for His Excellency the President or the Rt. Hon. Prime Minister but a constitutional matter and we have got no discretion at all. As Members of this House, we should ensure that there is no violation of the Constitution. In my opinion, to have anybody else apart from the one designated by the Constitution to the office of the Chairman of HBC would be unconstitutional. I wish to ask you, with all humility, that this issue be resolved before debate proceeds.

Mr. Speaker, Sir, in your speech at the State Opening of this Session, you made it clear what role Parliament needs to play. I wish to make it clear that, in raising this matter for your direction, I do not wish to give the impression that I am holding the country or business of the House at ransom. I would wish this House to proceed as mandated by the Constitution and no less. To that extent, I wish to state categorically that once the National Accord was enacted by this Parliament on the 30th May, 2008, His Excellency the President issued Presidential Circular No.1 of 2008 in which he set out the duties and responsibilities of the Government. With your permission, I wish to lay a copy of the Presidential Circular on the Table.

(Mr. Olago laid the document on the Table)

Mr. Speaker, Sir, on page 11 of the Presidential Circular No.1, His Excellency the President defined the duties and responsibilities of the Office of the Prime Minister, amongst others, as follows:-

“He is accountable to Parliament on the overall performance of the functions of the Office of the Prime Minister”.

My understanding is that by the National Accord and by the Presidential Circular No.1, he acknowledged that the person who is responsible for the performance of Parliament is the Prime Minister. Under those circumstances, I humbly seek your direction on who is to be the LGB. In my humble opinion, it must be none other than the Prime Minister or any other person designated by him.

Mr. Speaker: Hon. Members, in view of the nature of the matters that have been canvassed by the hon. Member for Kisumu West, I am obliged to hear a few more contributions from the House before I indicate which way we shall proceed.

The Minister for Nairobi Metropolitan Development (Mr. M. Kilonzo): Mr. Speaker, Sir, I would like to say, from the outset, that my learned friend and the distinguished hon. Member has not only misread the Act that he has read out, but he is also misleading the House. I would like to say that the Standing Orders No.2 and No.158 (6) that he is interpreting were adopted by this House not very long ago. In fact, it was four months ago, on 10th December, 2008.

By the time these Standing Orders were being adopted by us and by the time they came into force two days ago, the Grand Coalition as well as the Office of the Prime Minister were in existence. We all knew that this is a Grand Coalition Government and that the Office of the Prime Minister is in existence. Allow me to read the definition of the LGB at page two of the Standing Orders that I have just referred to and which were passed on 10th December, 2008:-

“Leader of Government Business” means the Minister designated by the Government as LGB in the House.”

Mr. Speaker, Sir, it has come to my knowledge that, that is the main reason that this House has not yet appointed the HBC. There is a tug-of-war. So, I welcome the opportunity for you to make a ruling. Standing Order No.158 (6) states as follows:-

“The Chairperson of the HBC shall be a Member nominated by the Government.”

The point that I want to make is that the Standing Orders that we formulate under the Constitution are subject to the interpretation of law. The law governing the interpretation of these Standing Orders is not as my learned friend is attempting to do by using the National Accord. The law for interpreting this statute was passed in 1949 and it has been revised so many times. The first one was Act No.57 of 1949 and it is called the Interpretation and General Provisions Act. The Clerk of the National Assembly will be able to find that in Volume IV of the books in front of you so that you can look at what I am trying to show you. That Act has been amended countless times. The last amendment was in 2004 when you were a Member of this honourable House. Section 3 of that Act states:-

“The interpretation of terms in this Act and every other written law and all other public documents enacted, made or used before or after the commencement of this Act, the following word and expression shall have meanings hereby assigned to them respectively except if there is something in the subject of context inconsistent with the construction and/or interpretation except where it is expressly provided.”

The Government is defined in that Act to mean “the Government of Kenya”. Moreover, the “President” is also defined and it says:-

“The President” means the person elected as President of the Republic under the Constitution.” That is what I understood my learned friend, the hon. Member, to say.

Mr. Speaker, Sir, the truth of the matter, as I speak to you now, is that I am not aware that there is any dispute as to who is the elected President of the Republic under the Constitution!

(Applause)

Nor did I understand him to be saying that there is any such dispute.

Mr. Speaker, Sir, in making your ruling, I want to invite you, very politely and humbly, to the Constitution itself. The Act that my learned friend read out to you was passed by this honourable House unanimously. It was us speaking with one voice last year. When we passed it at that time, Kenya had enjoyed a Constitution negotiated in Lancaster House in conferences in 1962 and enacted by this honourable House since 1963. That document remains the basic law of this lovely country. At the time we were passing the statute that my learned friend seeks to get interpreted, that Constitution had certain sections as to what is the "Government" and what is the "President". Therefore, without wasting too much time, I want to read to you again, and this is in Volume IX---

Mr. Clerk, if you want to give it to the Speaker. The sections that tell us what the Executive authority of the Government is in Part 3 of the Constitution. It is headed very clearly. I wish you could give the Speaker the Constitution, Mr. Clerk, so that he can see the section that I am referring to. Part 3 deals specifically with the Executive power.

Mr. Speaker, Sir, I say without fear of contradiction that, at the time we were passing the new Act and the amendments creating the Office of the Prime Minister, we did not refer to this section at all and, therefore, under a constitutional interpretation, it has complete priority. It has absolute supremacy over and above any sections introduced in the Constitution!

(Applause)

What Section 23 says, and my learned friend did not refer to it, is:-

"(1) The executive authority of the Government of Kenya shall vest". It does not say "may vest" but says "shall vest" "in the President and, subject to this Constitution, may be exercised by him either directly or through officers subordinate to him."

Allow me now to read the most important section here, again, Section 24:-

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

Mr. Speaker, Sir, sadly for me, it has come to my knowledge that there is a flurry of correspondence emanating from both the Office of the President and the Office of the Prime Minister, and my learned friend here has not disclosed that. It is up to you, Mr. Speaker, Sir, to tell the country, because I think we ought to be transparent about what it is they are saying in those letters.

I believe, Mr. Speaker, Sir, that on Tuesday, when His Excellency the President launched this Third Session, you turned to the Vice-President and Minister for Home Affairs and told him: "Leader of Government Business, move your Motion." You were doing so in the knowledge and understanding that the President had appointed him as the Leader of Government Business!

(Applause)

If, Mr. Speaker, Sir, what I am saying is not correct, I must apologize to you. As a Senior Counsel, I cannot stand here and tell lies! But that is my understanding. You turned on him because you knew that the President had appointed him. It is up to you to tell us whether that was in writing or orally. But since then, it has come to my knowledge that somebody in the Office of the Prime Minister has written a letter to you, Mr. Speaker, Sir, saying that the Prime Minister shall be the Leader of Government Business. That alone constitutes a violation of Sections 23 and 24 of the Constitution. This country has a right to know from you, Mr. Speaker, if that is correct.

(Applause)

That is because speaking as a lawyer, there is no doubt that the “Government” referred to in Standing Orders No.2 and No.158 is the Government headed by His Excellency President Kibaki.

(Applause)

Mr. Speaker, Sir, that is the person who should designate the Minister under Standing Order No. 2. He is the person who should nominate the Chair of the House Business Committee under Standing Order No. 158. So, therefore, I would like--- Yesterday, I said, and I want to repeat again that really, this is a matter that should not concern you as our Chair. But you have an obligation – and it is a big obligation – to interpret the Standing Orders of 10th December, 2008 and tell us whether, in fact, it is the function of the Government, under those Standing Orders, to say who is the Chair. The invitation by the hon. Member that you say that the Leader of Government Business is the Prime Minister is as much out of order as I can possibly imagine something that is out of order. That is because it is not for this House to say so. It is not a function of the National Assembly!

(Applause)

Similarly, Mr. Speaker, Sir, a Circular from the President, particularly when such a Circular is addressed to Permanent Secretaries and other Government officers, is not a Circular that is directed to the work of Parliament under the Standing Orders, as I understand them.

So, therefore, Mr. Speaker, Sir, my invitation to you is to accept the definition of what a Government is. That is because, apart from the generalized definition in the Act, we have a definition of the Government in dictionaries. One of them simply says:-

“The organization, machinery or agency through which a political unit exercises authority and performs functions which are usually classified according to the distribution of power within it.”

The Prime Minister was given the power “to co-ordinate and to supervise”. I was there when the drafting was done. That power does not include the executive authority of this Government of this wonderful country.

So, Mr. Speaker, Sir, I invite you, and I join him, in beseeching you to make a clarification, because once you clarify, I will have no doubt. I want to assure you that we will be able to give you that which you require for the House Business Committee.

Mr. Speaker, Sir, I want to point out something else briefly before I conclude. If it was intended that this House or the Office of the Prime Minister participates in the nomination of the Leader of Government Business, nothing would have been easier for this House on 10th December, 2008 than to say so in these Standing Orders. We were all here! We did not say so! I am afraid we made the bed and we must sleep on it, even if it has thorns!

So, therefore, Mr. Speaker, Sir, the function of appointing officers is captured in Chapter 3 of the Constitution and it is limited to the election of the Speaker, the Deputy Speaker and the Speaker's Panel and so on. I believe that a ruling by you on this issue, Mr. Speaker, will enable this country to move forward.

Mr. Speaker, Sir, we have enormous challenges in this country and unless there is clarity, then we are all headed for trouble and the country is watching. I can assure you that my constituents in Mbooni have told me this morning: "Mutula, if you cannot even produce a House Business Committee, what are you doing in Parliament?" I believe that every hon. Member of this House ought to be asked the same question; what it is that we are doing here if we cannot nominate people to serve in the House Business Committee? What are we doing here if we cannot allow the President to do that which has been given by the Constitution and which, as recently as last year, we did not take away?

Mr. Speaker, Sir, I invite you to make a finding on the interpretation of this section.

Thank you, Mr. Speaker, Sir.

(Applause)

Mr. Speaker: Mr. James Orengo!

The Minister for Lands (Mr. Orengo): Thank you, Mr. Speaker, Sir. I stand here with a very heavy heart. The exhibition that we are subjecting the whole country to is a big shame. We should apologize to the country for this exhibition. We are being seen all over the country haggling over the composition of the House Business Committee and, more particularly, who is to become the Leader of Government Business.

It would have been understandable – and I say this with a lot of respect – if an hon. Member who is not in the Government raised questions as to whether or not there is a proper House Business Committee or the persons nominated as Members of the House Business Committee are properly placed before Parliament. Indeed, I did on one occasion rise on a point of order as a Member of the Opposition, to question whether or not there was a Government in place in the Republic, because, at that time, the President had not been appointed.

A lot of times when I am in this situation I say to myself: What is former President Moi thinking about this entire exhibition that we are subjecting the country to? What I can reluctantly praise former President Moi about is that when there were constitutional questions of this nature, he would respond expeditiously by taking certain decisions, however difficult they were. I rose in this House and challenged the Speaker at that time, whether there was a proper Government in place because the Vice-President

had not been appointed. Within two days, President Moi obliged and appointed hon. Prof. Saitoti as the Vice-President. I asked him to commend me because, at that time, he was just an ordinary Minister.

Mr. Speaker, Sir, the starting point for us is whether the Government of Kenya today is doing what it is supposed to do according to the constitutional mandate it has been given by this country or is this Government messing up the country? It is something that we cannot mess around with and try to evade because the Constitution is there in place!

Coming to the substantive point, I respect Mr. M. Kilonzo a lot. He is a Senior Counsel. I cannot doubt him for his knowledge of the law. Sometimes I doubt him on matters of democracy and governance. I doubt him because he is a late comer in these issues. With respect, the hon. Member saw democracy when KANU lost the elections. Before then, democracy did not mean anything to him. Therefore, he is misleading this House by using the Interpretation and General Provisions Act as an aid to interpretation.

The Constitution itself is a superior law. Cap 2 of the Laws of Kenya is a subsidiary legislation. The starting point is the section quoted by Mr. M. Kilonzo which defines what government is. That section says: "government" means the Government of Kenya." It does not say that the Government means the President of Kenya. If the law wanted to be clear about that, it would have said so, in that Interpretation and General Provisions Act. Indeed, when you sue the Government today, there is another Act of Parliament which provides that you do not sue the President. You sue the Attorney-General on behalf of the Republic of Kenya. So, as a democrat, things do not begin and end with the President. So long as we can realize that fact, we can build a great democracy in this country.

That is the first point, which Mr. M. Kilonzo is misleading us on. If you want to enact a Constitution in this country, you do not go to Nairobi City Council and ask the councilors to enact the Constitution. You come to this Parliament. Similarly, when you want to interpret the Constitution, you do not go to an ordinary law. You go to the Constitution itself for purposes of interpretation.

Mr. Speaker, Sir, I am glad Mr. M. Kilonzo was part of the team that drafted the National Accord. It was agreed that the Accord shall be read as part of the Constitution. It also said that where there is conflict between the Accord and any part of the Constitution - leave alone that subsidiary legislation that Mr. M. Kilonzo was talking about - the Accord will prevail. For purposes of the constitutional governance and democracy we have today, the Accord is superior to the Constitution. What does the Accord say about the Government? The Government of Kenya as established today is a Coalition Government which is defined in the Constitution. You cannot tell us today that if the Government makes a decision, then that decision has been made by the President of the Republic of Kenya. We know how the Government makes decisions.

There was supposed to be a Cabinet meeting today and we did not attend it. Mr. M. Kilonzo should have told us that this morning the Cabinet met and the Government of Kenya decided that So-and-so is the Leader of Government Business. Obviously, he knows, that did not happen, and probably, convening a Cabinet meeting for purposes of nominating who should be the Leader of Government Business will never arise. That kind of meeting will never take place. If it was possible, we could have resolved this in a Cabinet meeting today. However, that was not done!

The principles of the Accord are provided in Section 9. During the drafting of the Accord there was a big debate on the question of interpretation of the Accord. Since the Act was being drafted after the two principals had already signed the agreement on the Accord, it was generally agreed that if you had an interpretation clause, which had not been discussed by the two principals, we would be going beyond our mandate. That is why the agreement of partnership is part of the Constitution of this country as we speak today, which was signed by ODM and PNU. If the truth be told, this contest should be about PNU and ODM and not any other party. These are the two parties that are putting us in this mess. Mr. M. Kilonzo and Mr. Musyoka – I am saying this with a lot of respect – were really not part of this Accord. The Accord is clearly between the PNU and ODM. It says that each side cannot govern without the other. PNU cannot govern without ODM. Therefore, there must be constant consultations in making any decisions by the two principals.

I am glad Mr. M. Kilonzo has pointed out, that Mr. Speaker has two letters before him. One is written by the President and the other one is written by the Prime Minister. You cannot claim that the Prime Minister is not part of this Government just as you cannot claim that the President is not part of this Government. You cannot also claim that under Section 23 of the Constitution, the executive authority of the Republic of Kenya vests on the President alone. That section says that this House can take those powers from the President. This Parliament has taken away the powers to co-ordinate and supervise the execution of the functions of the affairs of the Republic of Kenya, including Ministries, from the Prime Minister.

Mr. Speaker, Sir, finally, this is not a matter that you really cannot invite the House to vote on. Strictly speaking, this is for the Speaker to give guidance on the way forward. The way forward is for the Government that is in place to fix the mess we are now witnessing. In the spirit of the National Accord, the Government should go back and consult and reach concurrence not only on the question of the composition of the House Business Committee but also on the question of who is to become the Leader of Government. That is what the Accord requires. If we are to be true to the spirit of the Accord, we should be able to resolve this matter very expeditiously.

Let us not live in the past. Kenyans have sacrificed to put us where we are today. Kenyans want a better country. Kenyans do not want us to be in this stalemate. They want the country to move forward, so that we can bring to this House Agenda Four and the various subjects we are going to deal with under Agenda Four for legislation or resolution. In order to do that, the Government must work as one Government, and not as two Governments. What has been exhibited here since yesterday is that there are two Governments.

I dare say that if this continues and we have an electoral commission in place, like in other democracies, we will have no alternative but go for an election, because the Government has become totally dysfunctional. That is the truth of the matter. We are dysfunctional. We cannot agree even on a single Motion relating to establishment of a Committee of this House.

Mr. Speaker, Sir, therefore, this is not a matter on which we can vote but rather it is one that requires interpretation on your part.

Thank you.

Mr. Imanyara: Mr. Speaker, Sir, in my view, the issue is very simple. With regard to who is the Leader of Government Business, this is an issue I have raised in this House. It is an issue that has been determined in a Considered Ruling by the Deputy Speaker. The Leader of Government Business is such person as the Government nominates. So, to that extent, Mr. M. Kilonzo is right. The question is: Has the Government informed you who is the Leader of Government Business? If you have been informed by the Government that the Leader of Government Business in the House is the Prime Minister, then it must be the Prime Minister. If you have been informed by the Government that the Leader of Government Business is the Vice-President and Minister for Home Affairs, then it must be the Vice-President and Minister for Home Affairs.

Mr. Speaker, Sir, in a situation where you have two letters from the same Government, then you must go beyond the communication that you received. Who is the "Government?" This is not the Government in the ordinary sense. This is a special Grand Coalition Government that was formed in very special circumstances for a very limited period of five years. During those five years, the normal rules of procedure that govern House business and the Constitution of Kenya stand to give way the agreements that created this Grand Coalition. In this Grand Coalition, the only party that is not in Government is the one headed by Mr. Cyrus Jirongo. All the other hon. Members from the two sides of the House constituted this Grand Coalition.

Therefore, when you are determining who is the "Government", because there is no definition of the "Government" in any of the statutes that you have been referred to, although there has been a definition of the "President"--- Let us not beat about the bush about the executive authority or the Executive. We are talking about the Legislative arm of Government. So, Mr. M. Kilonzo is absolutely right, but we are not talking about the Executive arm of Government. We are talking about the Legislative arm of Government. The Legislative arm of Government is Parliament. A Committee of Parliament is a Committee of Parliament. The leadership of that Committee cannot be determined from State House. It must be a leader of this House, who enjoys the confidence of the House, and not one who is imposed from outside the House.

(Applause)

Mr. Speaker, Sir, therefore, if you have two letters indicating to you who is the Leader of Government Business, what you should do is make a ruling and call this House to a vote. Let us vote, because a Committee of the a House cannot supersede the House itself. The House Business Committee is just one of the Committees of the House. Its leadership must be subject to the House. It must enjoy the confidence of the House. Therefore, the person who does not sit in this House, except on ceremonial occasions, cannot determine for us who is going to be the Leader of Government Business. We know, from the Government Circular that has been the subject of interpretation in this House, that the Leader of Government Business in this House – the one who supervises and co-ordinates Government Ministries – is the Prime Minister. We cannot escape from that fact. If we are to escape from that fact, then we must as well abrogate the agreement that was so painstakingly done by the former Secretary-General of the United Nations.

We cannot ignore the National Accord and pretend that the President sitting in State House can determine for us, as he used to do in the days before the Grand Coalition

Government, who is going to be the Leader of Government Business. Just let this House go into Committee. Let this House determine the matter, so that the Leader of Government Business can enjoy the confidence of the House.

The Assistant Minister for Roads (Dr. Machage): Mr. Speaker, Sir, unless we are careful, this House will stand accused by the Kenyan people of the crime of collective irresponsibility. We are setting precedent. You need to be careful in the ruling requested by the Member of Parliament for Kisumu West Constituency. As we know very well, somebody may tomorrow rise up in this House and say: "I declare myself the Commander-in-Chief of the Armed Forces." Somebody else might say: "I am the Chief Justice." That is exactly what is happening!

When the Coalition Government was created, exactly one year ago, there were several facts that we knew. The Prime Minister was appointed by the President. On that day, when the President ably stated that he was appointing a Cabinet and that he was considering regional distribution, during which I was demoted as the Minister for the East African Community, the Prime Minister was appointed. He is, therefore, a creature of the President. The impression that we have created here is that we cannot, as a House, elect a Committee of this House as provided for by the Standing Order No.158, which simply says: "The House shall elect a House Business Committee."

Mr. Speaker, Sir, why should we be forced into semantics by two people fighting for power in Government? It is, sometimes, so embarrassing to see these two gentlemen, when they walk with the President in the middle, outpacing each other to see who will be in front of the other. It is a shame! If I were one of the two, I would simply say: "Take all the powers! Be the Chairman of the Committee! Be the Leader of Government Business! Be Chairman of all Committees in Parliament, if you are able to do so!"

(Applause)

These are egos must not be entertained in Kenya! The problem we have is, really, a constitutional deficiency. It is this constitutional deficiency that led to the skirmishes after the last elections. It is because our Constitution could not address everything. What we should address now is how fast we can change the Constitution to address the maturity of political development in this country. We need nothing more, nothing less!

(Applause)

A whole House of respected hon. Members has been made to discuss people's egos! The people should elect you their boss and not yourself to dictate that you must be this or that, or you must have a toilet and a carpet!

(Laughter)

Mr. Speaker, Sir, these are the so-called leaders who want to be elected as the President of this country in 2012. We are watching! Kenyans are watching the level of maturity of politicians in this country. Let us come back to our senses. Let us bring back our wisdom. As hon. Members of this House, let us address the situation that is on the

Table and Floor of this House. Let us elect the House Business Committee. If they so wish to continue with their wars out there, that is their problem.

The Constitution clearly says that the Leader of Government is the President. May I request that the President comes and sits on this Chair until this crisis is solved because there is no contention on that. The President should come and sit with us until they sort out their problems out there where I do not go.

We are debating and arguing on a non-issue. We have now spent two days. We adjourned yesterday for one basic reason; that is to go and consult on the names of Members who will be in the House Business Committee. We can see the Order Paper with several names, which have not been laid on the Table as an amendment. However, if somebody was itching to include the Prime Minister's name as a Member of this Committee, why is his name not on this amended list? That is all we need. If somebody wants another person to be in this Committee, then he should go to his party and propose the name of that person instead of taking the country for a ride. Hon. Members, let us not spoil our name before the public. Let us live to their expectations. Let us be hon. Members!

Thank you, Mr. Speaker, Sir.

(Applause)

Dr. Nuh: Mr. Speaker, Sir, I seem to share the sentiments of Dr. Machage. The formation of a Back Bench Opposition Caucus is overdue. There is a Government and we are told that all of us are in it. However, there are Ministers and Assistant Ministers charged with the responsibility of being in the Government, but are unable to come together and agree to play as a team. The only way they can play as a team is by us setting up a Back Bench Caucus. That is the only time they will realize that they have to come together.

Mr. Speaker, Sir, it has come out openly, from the party leaders, that they will not allow us to serve in the Back Bench Caucus that is recognized by Parliament. They have had ample time. Kenyans cannot wait a minute or an hour to see this House bickering over who should become the Leader of Government Business or who should be part of the House Business Committee.

The political party leaders in this nation had ample time to marshal hon. Members to mudsling one another when it came to the issue of a red carpet or a toilet for the Prime Minister. Parties came together at that time. Others said that they would hold demonstrations. They had ample time to do that. However, they did not see the importance of putting in place the House Business Committee before this House resumed. That is why I am at a loss and Kenyans are watching.

In the old tradition, there was a Cushitic leader, and I want to share this story with hon. Members. He was a perfect leader who was supposed to give a ruling whenever contentious matters arose. The rule at that time was that when cows went and grazed on a maize farm, the height of the maize stalk was measured. Since there were no tape measures then, they used sticks to measure. The person whose cows ate the maize would be forced to fill the maize to the height of the maize stalk. I am saying this because when it comes to interpretation of the law, I am not a lawyer. The learned friends have spoken. I will call them "my learned brothers" because I am not a learned friend. There are as

many interpretations as there are many lawyers and interests at a particular time. That is why we are having all this circus.

When the leader was told to give a ruling he gave a smart ruling by saying, "The law says that you fill the maize to the height of the maize stalk". After that a little boy went to him and whispered, "Dad, you know the cows belong to us." The ruler said that it is permissible to lay down the stick or keep it "standing". He did this to the convenience of his ruling. Because Kenyans cannot sit here waiting for lawyers who are our learned friends, brothers and sisters to argue over what interpretation we have, I urge that you allow no more contributions and instead guide us. Give us your ruling on this specific matter!

Mr. Speaker: Order, Dr. Nuh! You are estopped from making that request after you have contributed!

(Laughter)

The Minister for Energy (Mr. Murungi): Thank you, Mr. Speaker, Sir, for giving me this opportunity. I think we have all sworn to defend the Constitution and the Standing Orders of this House. We are very many friends and opponents as politicians in this House. However, we are bound by one common thing, and that is to defend the Constitution and to follow the Standing Orders of this House.

The issue we are discussing, about the appointment of the Leader of Government Business in the House, is covered by Standing Order No.11. The relevant Standing Order reads as follows:-

"Appointment of Leader of Government Business and Government Panel.

11. (1) The Leader of Government Business shall be appointed in accordance with Standing Order No.2."

Standing Order No.2 reads as follows:-

"The Leader of Government Business means the Minister designated by the Government as the Leader of Government Business in the House."

The only test that we should apply is whether there is a Minister who has been designated by the Government to be the Leader of Government Business in the House. In my very humble submission, the Government has designated a Minister to be the Leader of Government Business in the House. As the Speaker, you have accepted the Government's appointment of the Leader of Government Business in this House.

Mr. Speaker, Sir, it is in our knowledge that you are in receipt of a letter from His Excellency President Mwai Kibaki appointing---

Eng. Gumbo: On a point of order Mr. Speaker, Sir. I know and understand that the rules of this House bar repetitions. These things we are being told have been said over and over again.

Mr. Speaker: Order, Eng. Gumbo! I am familiar with that provision in the Standing Orders. However, the discretion to determine what is repetitive and what is not is exclusively for the Speaker.

Mr. Murungi, please, proceed!

The Minister for Energy (Mr. Murungi): Mr. Speaker, Sir, just before I was interrupted by the hon. engineer, I was saying that the Government has designated a Minister to serve as the Leader of Government Business in this House.

Mr. Speaker, Sir, you have accepted that designation. After delivery of the Speech by His Excellency the President, at the opening of this Session of Parliament, you invited the Leader of Government Business to move a Motion. You did that because you had already received a letter from the Head of Government designating the Minister to be the Leader of Government. On that day, no Member of Parliament from that side or this side, stood up to object to hon. Kalonzo Musyoka moving the Motion as the Leader of Government Business. The sitting was adjourned for that day.

Mr. Speaker, Sir, yesterday at the beginning of the day, you called upon the Leader of Government Business, Mr. Kalonzo Musyoka, to move the Motion on the constitution of the House Business Committee and; again, nobody objected. Up to this point, there is no person who has challenged the appointment of Mr. Kalonzo Musyoka as the Leader of Government Business. If there is any person who is not happy with the appointment of Kalonzo Musyoka as the Leader of Government Business, the correct procedure is for that person to move a substantive Motion in this House to get hon. Kalonzo Musyoka removed as the Leader of Government Business because he is already serving. I think we have to be very clear about that.

Mr. Speaker, Sir, you cannot entertain a point of order seeking to remove a Leader of Government Business who has been appointed in accordance with the Standing Orders of this House. The point of order is not the correct way to proceed. If the Member is not happy, let him move a substantive Motion.

Mr. Speaker, Sir, the issue and Motion before us, on which this point of order arose, regards the constitution of the House Business Committee (HBC); it is not about the Leader of Government Business.

Mr. Speaker, Sir, the appointment of the House Business Committee is governed by Standing Order No.158. I would like to refresh hon. Members' memories by reading Standing Order No.158 (1), which reads: -

“There shall be a select committee, to be designated the House Business Committee, consisting of not less than 15 and not more than 21 Members who shall be nominated by each political party and approved by the House.”

This is what is before this House. It is for us, as political parties, to nominate 21 Members who will serve in the HBC. I think the contentious issue and for which we require interpretation is Standing Order No.158 (6). It reads: -

“The Chairperson of the House Business Committee shall be a Member nominated by the Government”.

These are new Standing Orders, which also say that the Chair of the HBC shall be a Member nominated by the Government. It is for the Government to nominate the Chair of this Committee just as they have nominated the Leader of Government Business in this House. So, let us not confuse ourselves.

Mr. Speaker, Sir, in my own reading, the political parties should nominate 20 Members of Parliament. Then one Member who is going to be the Chairperson is going to be nominated by the Government. For now, in accordance with Section 23 of the Constitution, we know that the Head of Government is the President. He is the one who writes and represents Government abroad.

Mr. Speaker, Sir, let us be honest as lawyers. His Excellency, President Mwai Kibaki, is both the Head of State and Head of Government. Sections 23 and 24 have not been amended even by the National Accord.

Mr. Chanzu: On a point of order Mr. Speaker, Sir. Is it in order for the Minister to mislead this House that the Head of Government is the President when he knows very well that this is a Grand Coalition Government where there is a Vice-President and a Prime Minister?

The Minister for Energy (Mr. Murungi): Mr. Speaker, Sir, there is a general assumption that Members of this House are familiar with the Constitution and the Standing Orders. The Constitution makes it very clear that the President is the Head of State and Head of Government. I am, therefore, not misleading the House. Please, hon. Chanzu, read the Constitution, the National Accord and the Standing Orders!

(Applause)

Mr. Speaker, Sir, we are requesting you to make your own ruling as to whether the number that political parties should nominate is 21 or 20 in view of Standing Order No.158(6). It is for the Government to appoint the Chairman of the HBC.

Thank you.

Mr. Ruto: Thank you Mr. Speaker, Sir. Today, we are faced with a very difficult question. However, I want to ask ourselves to look at the question before us more seriously. It is, indeed, a matter that is very weighty. The actual issue before us should be to ensure that this House is properly in Session. For us to have this House properly in Session, we have to have the HBC properly appointed. What is in contention is the question of the Leader of Government Business. That, in my understanding, is not a matter for the Legislature, unless it is brought to us.

(Applause)

That is a matter that must be handled by the Government outside this House.

Mr. Speaker, Sir, the Government is, at the moment, dysfunctional. It is not our fault as Members of Parliament that this Government is not functioning. We do not expect to be dragged through this mud!

The Government is not capable of functioning and; we should move a vote of no confidence in all of them and they go out!

(Applause)

Mr. Speaker, Sir, we are not going to waste Kenyans' time. At this particular point in time, 36 people have been massacred in Karatina and apart of the territory of this country is under foreign occupation.

Mr. Speaker, Sir, this Government is busy fighting and jostling over positions. There are times when we must rise above petty issues. I consider this issue as petty. We should constitute the House Business Committee as it is normally done. Whether the list of the House Business Committee has been forwarded to us by a Minister or the various Whips of the different parties or not, we want Parliament to be properly in Session. These are matters that will be determined by you and the Government. Indeed, if you are unable to do that, you should bring the issue to Parliament substantially, using the right procedures. We shall dispense with it.

We are aware that we have a Grand Coalition Government. We are also aware that we passed the National Reconciliation and Peace Accord. We are also aware that this Government is torn in between both parliamentary and presidential systems. That should be the first agenda, probably next week. It is also true that it is only the Bomas Draft that defined, clearly, who “Government” is. The current one does not define properly who “Government” is. It is confusing! In the Bomas Draft, we had clearly defined that the “Government” comprised of the President and the cardinals and none of them would act separately. Now, the lawyers are falling over themselves trying to define who “Government” is and what next. I suggest that this matter be substantively brought before the House. First, we should be properly in Session. The only thing to do is to accept the House Business Committee and agree that, next week, we will deal with the issue of who is the Leader of Government Business. If the Government is unable to do that, we, as Parliament, are ready to rise up and clean them up!

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Thank you, Mr. Speaker, Sir. Let us call a spade a spade. Enough is enough! Kenyans are watching us and are disappointed with us! That is the bottomline. We are all in the Government, save for Mr. Jirongo. All of us are in Government. We can no longer continue having a debate as to who is greater than the other. As it stands now, the Government is unable to release monies to attend to critical and crucial matters facing this nation and to feed our people because we cannot get on with the Business of this House, pass the Supplementary Estimates and other legislations as laid down by His Excellency the President.

I want to agree with my brother, Mr. Ruto, that we need to establish who is the leader of Government Business and there is an interpretation that has been sought from you. But while that is being done, let us not allow our country to continue suffering. Let us present the list of the names of the House Business Committee and approve it, go out, set the business of the House and go on with the pressing business of running Government and this nation. I think we have had enough. We all agree that we have a Grand Coalition Government and we all agree that we have two principals in that Government. My own interpretation is that we have a President who is both Head of State and Head of Government and that is why he was sitting in your Chair, just the other day, giving his exposition on Government policy for this Session.

(Applause)

The country can no longer continue to wait and watch us play games. We are colleagues. We are sitting here with Mr. Ruto and Kenyans are watching us. Kenyans have had enough and they are saying that enough is enough. Please, let us bring an end to this. Let us present the names that we have. Let us go on with the business or make the ruling now so that we move forward.

Mr. Speaker, Sir, please, bring order to this House and this nation and let us move on with the business! Otherwise, let us dissolve this House and go home and allow Kenyans an opportunity to elect the leaders they want!

(Several hon. Members stood up in their places)

Mr. Speaker: Order, hon. Members! The first person who catches the Speaker's eye is the one who was on his feet first!

Mr. C. Kilonzo, proceed!

Mr. C. Kilonzo: Thank you, Mr. Speaker, Sir. Some of us were in school when most of these senior politicians were seated right where they are. At that time, there was a professor of politics who was none other than the former Head of State, Daniel Toroitich arap Moi. Perhaps, we should look at how the man used to do his things. He knew that the seat of Leader of Government Business was very sensitive. Therefore, he devised ways to keep his students in tow

. So, he came up with a system of shifts. One person would be the Leader of Government Business for one month and another one in the following month. However, since this Government is unique, and it is not just a Government but a Coalition Government where power is shared on a 50:50 basis, let us rise and agree that it is not a Government of the people from one party. It is a Government that was formed by two parties, and not even my party. My party is only a guest. They should take this country seriously and know that there are no people who are more Kenyan than the others. Let a Member of the PNU serve in the first term as the Leader of Government Business. The next Session should go to ODM and the other Session to another party. What is wrong? We are all Kenyans! Are we going to stand here and fight over the position of the Leader of Government Business? We saw this when we were students and these leaders were seated there. It is very unfair. They went to Kilaguni and could not agree. They are now bringing their battles into this House. Most of the Members here will not claim to be part of the Opposition purely because they want to make themselves very powerful. Their days are numbered and the people are tired! Kenyans out there are tired and we, Backbenchers here, are fed up.

Mr. Speaker, Sir, I want to refer you to Standing Order No.35 and request, before I read, that this House should pass the names. Standing Order No.35 refers to the Order Paper and how it should be circulated. It reads:

“The Order Paper shall be prepared by the Clerk showing the business to be placed before or taken by the House in the order in which it is to be taken, together with such other information as the Speaker may from time to time direct to be shown therein.”

What I am suggesting is very simple. We should pass the names because I believe that all the parties have consulted and leave the Government out there to sort out its mess. The House should continue with its business, regardless of whether they will agree or not.

The Minister for Agriculture (Mr. Samoei): Thank you, Mr. Speaker, Sir. I want to make my contribution brief. There are certain facts that we cannot run away from. One, we have a President who is the Head of State and Head of Government. That is a fact!

(Applause)

Two, we have a Grand Coalition Government. That is also a fact. When the Standing Orders refer to “the Government”, they do not refer to the President but to the Grand Coalition Government. These are facts that we cannot run away from.

As hon. Members of this House, and, as leaders, it is time we called a spade a spade so that we can solve the problems that bedevil this country. The problem with us is that we keep sweeping these problems under the carpet and thereby creating more confusion because we are unable or unwilling, or too scared to confront these problems head-on. We need to settle this matter because, for the past one year, this Government has been faced with a lot of problems because there are issues we are unable to resolve. That is why it is time we resolved these issues once and for all so that we can have a functioning Government, a Government that has synergy. If we are unable to resolve this problem, let us be honest with ourselves and say; "sorry, we are unable to solve this problem and, therefore, we should go to an election." It happens! We have to conclude this matter one way or the other. This House, today, is faced with arguments. We are busy arguing as to who is Government. The Grand Coalition Government that we set up in the Constitution clearly states that the National Reconciliation and Peace Accord that established the Grand Coalition Government supercedes any section of the Constitution that is not consistent with the provisions of the Accord. The Accord is very clear that the Government is the Grand Coalition Government.

Mr. Speaker, Sir, in your possession are two letters from the Government. Therefore, we have to decide; either you make a ruling, and if the Grand Coalition is unable to agree on who will be the leader, so that we can proceed, then we have to take the hard option. As we sit here today, there are very pressing and urgent issues that need to be dealt with by this House. Therefore, I propose that this issue of the Leader of Government Business and the issue of who chairs the House Business Committee, is an issue that now has been brought to you. I am sure it is still seized with the Government. But for this House, so that we do not drag this House and the country through the mud, let us agree on the list of the House Business Committee. Let the House Business Committee meet and provide the agenda for this House to proceed. Let the Government continue consulting and the Speaker continue researching on who actually is the Leader of the Government in the House.

Mr. Speaker, Sir, I think we must confront this issue. We must not sweep under the carpet what is bedeviling this country, so that we can all move forward. Until and unless we have the courage to confront these issues head-on, and provide the leadership that is required, we will continue to be in a circus. We are subjecting Kenyans to a lot of suffering. This is an issue on which the Chair needs to take a decision, so that we can move forward.

Mr. Nyambati: Thank you, Mr. Speaker, Sir. I wish also to say that this is a very sad day for the country because we, as a House, are supposed to debate things, which are necessary for this country. There are many things that this House is supposed to address. Yet we are now discussing a matter, which we should not be discussing. As we have said, this is a matter which is specified in the Standing Orders.

Mr. Speaker, Sir, I sometimes wonder whether we have Government of Grand Coalition or "grand confusion." I am saying this because what we are seeing here is total confusion on th part of the Government. The Members of the Cabinet are supposed to be talking and come up with something that they agree on. This is a matter which they should be discussing in the Cabinet and come up with something that we should work on. Leaders must continue agitating for essential and basic needs, which will help the people of this nation.

Mr. Speaker, Sir, I want to support some of my colleagues who have clearly said that we are here today, not to discuss who will be the head or the Chair of the House Business Committee, but the composition of the House Business Committee itself. We need to move on with the important matters before this House. However, we are bogged down with matters which are really not necessary in this House. It is important that we do not exhibit what we are exhibiting here; wasting time. Kenyans are watching us. It is important that we, as Members of this respectable House, come up with policies which are essential for this nation. We have many things which we should be doing. We have the Constitution which we should be working on. We want to come up with a Constitution, which will give us a framework on how to move this country forward. We should not be wasting time on who should chair the House Business Committee.

It is very specific in the Standing Orders, and Constitution, on who should be appointing the Chair of the House Business Committee. We should, therefore, agree here that we leave this matter to the Government. We are clear who is the "Government." If we are saying that we are not clear who is heading the Government, then we are cheating ourselves because the Government is in place. We have a President, a Prime Minister, and everybody else in place. So, we should let this matter be handled by the relevant authorities in Government. Since we have the President and the Prime Minister and if they cannot sit down and agree on who will be the chair of this Committee, then they have no business leading this country. We can as well remove them and come up with new ones! It is their prerogative to come up and guide us accordingly. Kenyans are sick and tired of seeing this Government fighting over positions and power, instead of leading this country.

With those few remarks, I beg to end it there.

(Several hon. Members stood up in their places)

Mr. Speaker: Order, hon. Members! We want to come to a close on points of order on this matter. I will, therefore, take two more persons, each from both sides.

So, hon. ole Ntimama is the first to my right!

The Minister of State for National Heritage (Mr. ole Ntimama): Thank you very much, Mr. Speaker, Sir. I am going to be very brief in my contribution.

Mr. Speaker, Sir, people who think we are operating on the Constitution, are behind us. We are operating on the Coalition Government. It is said very clearly that if there is a conflict between the old Constitution and the Coalition Government, then definitely the Coalition must take precedence. We are in this condition because this country got itself into big problems. If we were not organized, if we did not create the Coalition Government, if our friends outside this country did not help us, we would be in the deep heats of the world today. Definitely, this is what people must understand. We were saved. We thought we would continue with this Coalition maybe, for a good time until 2012 when Kenyans would elect their own Government and Parliament. However, we already have problems. This is why when hon. Members here, with respect to lawyers who have a lot of reputation, refer to the Constitution, I feel a little bit unsafe. We were not able to get a new Constitution from Bomas. It was scuttled. We know what happened. Is it that the Lancaster House Constitution or Majimbo Constitution were not good enough? The President, who took over at that time, abrogated that Constitution. We know

it was abrogated. The Senate was sent home. The Regional Assemblies were scuttled. We got into a unitary centralist Government. Of course, we ended up with an imperial presidency. That is what we do not want today! We do not want these decrees. We do not want these pronouncements. This is why we are really looking for a Constitution in which we can get ourselves a good fundamental law, which is agreeable to all Kenyans. We need a fundamental law that considers equity, respects the rights of other people and provides freedom and justice for everybody.

Mr. Speaker, Sir, we cannot go on being ordered as Parliament. The Government needs to agree on this issue. I may not be a lawyer, but what is the "Government" now and not that of yesterday? The Government now are the two Principals. That is what I consider the Government to be. Not one of them can give orders to Parliament or to anybody or say this should be done. There has to be consensus or considered opinion by both of them. This one is not. You can see where the weakness is. We must now understand that an imperial President is not ruling us. A Principal who must work clearly with the other Principal to give us a lot of time to be able to work, is ruling us!

Mr. Speaker, Sir, this issue of saying that somebody is the Head of State and Government and the other Principal supervises the Government and so on--- They must agree. That is the problem that we are having now. It is very difficult for people to go back to the old days of the rule of men and not law. That is where we are now. We have people who are ruling us without knowing that we are in trouble.

Mr. Speaker, Sir, I still want this agreement to be reached by these two Principals, because if they do not do so, then they will put us in the kind of confusion that we are in now. We must push our two Principals, probably with the mediation of Mr. Speaker, so that we can get this little matter of the Leader of Government Business sorted out.

I agree with hon. Imanyara that this is Parliament. We are a separate institution. There is the Executive and the Judiciary. Normally, although they are supposed to agree and co-ordinate and co-operate, not one of them is supposed to bully and really order the other to do what is right.

Thank you, Mr. Speaker, Sir.

Ms. Odhiambo: Thank you, Mr. Speaker, Sir. What this country lacks is firm, decisive, consultative and sacrificial leadership. If we had a leader in this country with those qualities, we would not be seeing the bickering that we are seeing in this Government. To the public, this Parliament has become one of the most unpopular parliaments. We do understand that this Parliament came at a time when none of us wanted this country to cry for a firm, decisive, consultative and sacrificial leadership.

Mr. Speaker, Sir, I want to challenge our President that, as a President, he must take the mantle and lead this country using those qualities. Again, as some hon. Members have said, we are facing several crises. There are issues of insecurity in this country and several other issues. Only yesterday, the *Mungiki* in his own backyard, killed 26 people. He must show firm and decisive leadership to this country. The reason we are having bickering is because of what hon. Samoei has alluded to. This list is something that this Parliament would have passed in a record one minute, because I do not think anybody has a problem with it. But what we are seeing here is play-out of dissatisfaction with the way the Government is being run. Unless we call a spade, a spade and not a big spoon, we will be wasting the time of Kenyans. Therefore, I am squarely challenging the President of this country to show firm leadership!

Thank you, Mr. Speaker, Sir.

Mr. Bahari: Mr. Speaker, Sir, this House was recalled through the Kenya Gazette. That was sufficient notice for anybody who was interested in the business of the House to consult and then agree on what was required of them. This House was formally opened on 21st April 2009. At that point, in accordance with Standing Order No.18 (2), you required the Leader of Government Business to lay the Speech of the President on the Table, which he did. If anybody, again, was interested in the welfare of Kenyans, then they should have raised an issue at that particular point, but that was not raised. We are now being dragged back.

Mr. Speaker, Sir, we have heard the arguments of our lawyers who have been trying to interpret the Constitution and the Standing Orders. If they are very keen on doing that, they can go and seek constitutional interpretation in court and have that matter settled there, because they are making reference to constitutional matters. The matter that has been brought to the Floor of the House is one that the Government should have decided on. Because they were unable to decide or agree, this matter was brought to your attention unnecessarily.

Mr. Speaker, Sir, you are in a privileged position. In that privileged position of yours, I am sure you would not want to be dragged into unnecessary debate, because the law does not say at any point that the House shall decide who the Leader of Government Business will be. It is said that the "Government" is the one to decide who is to be the Leader of Government Business. It does not say that it is the House to do so. The House and your leadership have now been dragged into this matter.

I tend to agree with the hon. Members who say that we should proceed with the list of Members, so that this House can have its business transacted. If the Government still continues with its confusion, then you can invoke Standing Order No.1, because the word "Government" has not been defined in the Constitution or the Standing Orders. Therefore, there is a gap in understanding what the Government is, or maybe a different interpretation. In the circumstances, then you can now invoke Standing Order No.1 and move this country forward in your privileged position.

Thank you, Mr. Speaker, Sir.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, I rise to, first of all, support very strongly, namely that as we sit here, we need to reflect seriously on what the Kenyans who brought us here are thinking of us today. We spent a lot of time yesterday and we have spent a lot of time today, yet we appear to be giving the impression that we, as legislators, are unable to agree on the appointment of the House Business Committee (HBC). We should draw a programme of work that can address the problems and challenges that Kenyans face. We are speaking at a time when the majority of Kenyans are today facing a famine that is more severe than they have ever faced before. We are meeting at a time when we have some of the internally displaced persons (IDPs) still languishing in camps without shelter and food. We are spending time here when we have a lot of unemployed youth; our boys and girls. We are also talking at a time when the global financial crisis is against us and it is trickling deeply and creating difficulties of unemployment. All Kenyans have placed their hopes on us, as hon. Members, to formulate total reforms and provide answers to their problems.

What is before us now, in this Motion, is for us to appoint a HBC but not other extraneous issues. You have stated that, indeed, you received a letter from His Excellency the President appointing the Vice-President and Minister for Home Affairs to be the Leader of Government Business. It is on that basis that you called upon him during the State Opening of Parliament. It is also for that very reason that you allowed the Leader of Government Business then, the Vice-President and Minister for Home Affairs, to move this Motion. The Motion is before us and it is not asking for anything else. It is not asking who is the Leader of Government Business. That is not the issue and we cannot turn Parliament into a court of law. This should be accepted and it has been the tradition that, indeed, this Parliament is not the one that interprets the law. What is before us is to appoint Members of the HBC and I hope we can do that. That is the only way we can salvage the reputation of this Parliament. Let us agree on one thing: We have become unpopular. I have never known another Parliament, for the many years I have been here, which has been so much disparaged by members of the public as this one here.

We have been perceived as a House consisting of hon. Members who are only interested in themselves and not worried about the welfare of Kenyans. For goodness sake, let us use this opportunity today and appoint the HBC. Maybe, that way, we will salvage, to a certain extent, the bad perceptions that we have had. I, therefore, want to say that we do not leave this House today until we have appointed Members of the HBC so that tomorrow or Tuesday, that team can draw up the business of this House and we can start addressing the issues that are haunting Kenyans today.

Thank you.

Mr. Speaker: Mr. Okemo!

The Vice-President and Minister for Home Affairs (Mr. Musyoka): On a point of order, Mr. Speaker, Sir.

Mr. Speaker: What is it, Mr. Vice-President and Minister for Home Affairs, because we are finishing with Mr. Okemo?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, noting the mood of this dialogue and the tone of it, I realize that so many people still want to contribute. To the best of my knowledge, in accordance with your ruling, Mr. Okemo will probably be the last speaker. Will I be in order to humbly suggest to you that you give a few more people time because this is very useful dialogue?

(Applause)

Mr. Speaker: Order, hon. Members! As I have ruled in the past, the Speaker is awake to circumstances as they may be today and as they develop and vary. So, given the mood of the House, I will allow a few more contributions but we will restrict them to not more than five Members from the right and not more than five from the left, beginning now!

(Mrs. Kilimo stood up in her place)

Mr. Okemo: Mr. Speaker, Sir, I believe what we are dealing with today is a much bigger problem---

Mr. Speaker: Order, Mrs. Kilimo! I have noticed that I need to respect gender balance. At the beginning, for the first 40 minutes, no hon. Lady Member stood up to catch the Speaker's eye. That is a fact! The Speaker is accurate in his evaluation!

Proceed, Mr. Okemo!

Mr. Okemo: Mr. Speaker, Sir, what I said was that the problem that is confronting Parliament today is much bigger than we are looking at. I think the problem goes way beyond just the leadership or chairmanship of the HBC. What we see here is the virus that exists in the Government that has made it dysfunctional and unable to work as one unit. Now the virus is beginning to come to Parliament to infect its functioning.

We have allowed ourselves to be sucked into a problem that is purely a problem of the Executive arm of Government. The truth of the matter is that the Government that exists today is not a Government in the ordinary sense of the word but it is a special Grand Coalition. We must live to that reality! We must recognize the fact that this is not just an ordinary Government voted in, in the normal way. I think it would be very short-sighted of us to forget what happened in December 2007. We should never forget what happened in 2007 and how we had a problem that paralysed this country. Now that we have peace that was brought about by the Coalition Government, we are behaving as if things are normal. What we have is a temporary solution and it cannot last forever. In fact, it will only survive if we are able to come up with a new Constitution in the next one year, otherwise; this temporary solution is not sustainable.

Mr. Speaker, Sir, my understanding of the Standing Orders of this House and the Constitution is that the Leader of "Government" Business is nominated by the Government. The Chair of the HBC is nominated by the Government. We have tried very unsuccessfully today to define what Government is because we are assuming that it is what exists in normal circumstances. We have a Grand Coalition Government; a new experience in Kenya, something we have never had before. So, we cannot continue as if we have a normal Government that was elected by a majority and has the mandate to rule. This is a Government that was put together to solve a temporary problem. Therefore, what we are seeing are manifestations of the workings of a failed Grand Coalition Government. Those are the facts of the matter!

Mr. Speaker, Sir, we cannot sit here and pretend that the Government is composed of the President as Head of Government and Head of State with the Prime Minister as being appointed by the President. The reality of the matter is that we have two equal partners. One is Party of National Unity (PNU) and the other is Orange Democratic Movement (ODM). The other parties are appendages.

However, that being the case, even common courtesy demands that if you have two partners, there must be some element of consultation. I do not know what is so difficult for President Kibaki and Mr. Raila to consult instead of subjecting Kenyans to all these worries and suspension. Why can they not just sit and agree? Yesterday, we suspended the House for consultations and we are coming back today and nothing has happened. Why? Because the two principal parties have failed to consult. By the way, this is going to continue even if we solve today's problem. The question of two principals consulting is going to continue. I do not even see why we are bringing you into this thing. It has nothing to do with you. You are supposed to be given the name of the Leader of Government Business (LGB) and the name of the Chairman of the Committee. There is nothing here for you to do. The two parties should go and consult and if there is any

delay, it must be placed squarely on the shoulders of Mr. Kibaki and Mr. Raila. My opinion is that you just tell us to go and the two parties to go and consult and come up with the names.

The Assistant Minister for Youth and Sports (Ms. Ndeti): Mr. Speaker, Sir, I am very disappointed today. If you look at what has been happening since 2007, the country has not been stable politically. We are not really thinking about the future of Kenya. We can go on talking about Committees and all that, but let me tell you that the other countries around us are looking for ways of how they can take business away from Kenya! We do business with countries like Uganda, Tanzania and Congo. While we are here talking and fighting, they are looking for ways on how to cripple us.

I think we should look at matters that are very important. This is a small thing. We should not be talking about Committees. We have bigger things to deal with in this country. So, it is very important for the two principals to sit down and sort out this issue once and for all. We want this country to function for the benefit of the youths of this country. So many people do not want to come and invest in this country now because they are not seeing stability. What are we doing to the future of our children? This is not fair! It is time we stopped all this and started thinking about the future of our country. Some of the people here, their sun is setting but we have others whose sun is rising. So, we cannot cut the future of the youth of this country and make it unstable. If we really care and love Kenya, it is time we did something. If we do not sort ourselves out as Members of Parliament, none of us will come back here again because Kenyans are sick and tired of us fighting everyday. The people who should make decisions should do so. We should stop all the squabbles.

I kindly request the President and the Prime Minister to sit down and think about the future of the youth of this country. About 75 per cent of the population of this country is composed of youth.

(Several hon. Members stood up in their places)

Mr. Speaker: Order, hon. Members! We must not have more than one hon. Member at any given time on their feet.

The Assistant Minister for Youth and Sports (Ms. Ndeti): Mr. Speaker, Sir, I need your protection because they are trying to intimidate me.

Mr. Speaker: Will you please proceed to conclude? I want to urge hon. Members to henceforth last a maximum of three minutes.

The Assistant Minister for Youth and Sports (Ms. Ndeti): Mr. Speaker, Sir, the bottomline is that the two principals should take control of this country and make sure that the country moves forward.

Mr. Koech: Mr. Speaker, Sir, this is a very sad day for this country. Having listened to my colleagues, I want to say that this country requires unity. The country is yearning for its leadership to give direction. I want to say that we, as hon. Members, must rise up to the occasion and ensure that we correct the mess inside this House. The country is looking up to its leaders and we cannot continue being insensitive to the people's wishes and feelings. I want to remind the Front Bench that they should not bring their mess to this House to the extent of making us not perform the duties that we came here for.

Mr. Speaker, Sir, listening to our lawyers, the Constitution of this country is a product of this House. So, when we hear people interpreting the Constitution differently, then this country is in serious pain. We hear some hon. Members interpreting the “Head of Government” differently. I want to believe that the “Head” that I have has eyes for seeing, ears for listening and the mouth to speak. If leaders are interpreting the “Head of Government” differently and we are in a Grand Coalition, we are becoming too insensitive.

Mr. Speaker, Sir, I come from a community that was very good in hunting. In hunting, we used dogs to assist us catch antelopes. Dogs from different families never see eye to eye but in order to make them look at the antelope, our forefathers used to lock them in one room for one day and the next day, all of them would be looking at the antelope and not at each other. That is something that we never did as a House when we formed the Grand Coalition. We should have locked the President and the Prime Minister in one room so that they can be one!

Mr. Speaker: Your time is up! Mr. Munya!

The Assistant Minister for East African Community (Mr. Munya): Mr. Speaker, Sir, most of the issues have been highlighted by those who have contributed before me but where we need to look at this matter is the issue of who has the power to appoint the Leader of Government Business. Provisions of the law have been specifically quoted but there is a generalization that people have been making as to what the National Accord says vis-à-vis the Constitution. The National Accord did not remove other powers of the President that are in the Constitution except those specific powers given to the Prime Minister to supervise and co-ordinate Government activities. In fact, the National Accord says that he will do those duties and any other duties that may be given to him by the President. So, if the President chose to appoint the Prime Minister as the LGB there would be no problem. But as long as the President has not appointed him, even if he wished or desired to be, he cannot be until the President appoints him. That is the law! So, if the President decides to fire the Vice-President from that position tomorrow--- I am told he has already appointed him - if, in his wisdom, he decides that he wants the Prime Minister to serve in that position tomorrow, nobody will question him.

So, Mr. Speaker, Sir, as much as we want to ventilate this issue in this House and talk about it, we cannot decide on it as a House. It is a power that is outside the province of this House. It is a power that is exercised by the Head of the Executive, who is the President of this Republic!

Mr. Speaker, Sir, as we go on, we have to be very careful! Many people, especially Cabinet Ministers and people working in the Government, really need to read the law and understand it carefully! That is because I am hearing people say: “Equal powers, two Principals!” The law does not talk about the two Principals! They were two Principals when they were negotiating the Accord. Once they negotiated the accord, we can only talk of what is specifically mentioned in the Accord and in the law!

Mr. Speaker, Sir, what I am stating is that I do not want to be involved in the politics of the two Principals, equal powers and all that business! I am stating the law. If you want to talk about the law, come and give us the specific provisions in the Accord or in the Constitution that say that the Prime Minister can appoint the Leader of Government Business! But when you talk in generalities, that we need to go and consult, let them go and consult! Consult over what? You cannot consult on a specific power that is already

given to the President – the power to appoint and abolish offices! It has already been read here. The provisions are specific in the Constitution; that it is the President who appoints and disappoints! In fact, the Vice-President already has a letter signed by the President appointing him! So, how can the Prime Minister appoint himself the Leader of Government Business?

Mr. Speaker: Order! Your time is up!

Proceed, Mr. Musyimi!

Mr. Musyimi: Thank you very much, Mr. Speaker, Sir. As you are aware, the Government has three arms. We have the Executive that seems to have its challenges. We have the Judiciary, and it is on record that our Judiciary needs serious overhaul. It would appear Mr. Speaker, Sir, that the only other arm where there may be hope for this country is the National Assembly, which you head. I cannot help thinking of the day we elected you early last year. I think we made a decision that could prove to be the savior of this country over the next four or five years. What am I trying to say? We have you seated there, and as you sit there, I am reminded of a certain book that talks about two ladies. Each of those two ladies had a child. During the night, one child died. In the following morning, they began quarrelling over whose baby that child was. Eventually, what happened is that somebody asked for a sword. It is the sword that solved the problem of who the mother of the child was. I have no doubt that you have the wisdom of that man. That is why we chose you. So, we ask you to call for the sword. But as you threaten with the sword, please, remember that this lady whose child had died was also a mother. She gave birth and she felt the pain of a mother, although her child eventually died.

So, Mr. Speaker, Sir, we look up to you for leadership.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Order, your time is up!

Proceed, Ms. Ongoro!

The Assistant Minister for Nairobi Metropolitan Development (Ms. Ongoro): Thank you, Mr. Speaker, Sir. I want to start by saying that the matter that is before us is very weighty, and we have built upon a foundation. That foundation was called national unity or the Grand Coalition. As a House, we cannot build upon any other foundation. This Government was formed on the basis of an understanding that there will be constant consultation between the two Principals. We cannot continue building on any other foundation but that which has already been agreed upon.

Considering what has been happening from yesterday, it is apparent that there was no consultation between the two Principals. As the two parties, PNU and ODM, and as hon. Members of this House, we cannot then sit and start talking about a child that was already born! We all agreed on the formation of a national unity Government. We cannot sit here and listen to some hon. Members of this House insinuate that one Principal is lesser than the other!

(Applause)

If that is the case, then we do not have any reason for sitting here! If that is the case, then can we all go back to the foundation so that we can really critically look at that foundation and critically deal with issues that, maybe, were not dealt with at that time.

Mr. Speaker, Sir, I am amazed that we have Standing Orders. In my Standing Orders, it implies that the Leader of the House Business Committee could as well be the Leader of Government Business in this House. But as we sit here, that House Business Committee has not yet been formed! How can we then---

Mr. Speaker: Order, your time is up!

Proceed, Dr. Shaban!

The Minister of State for Special Programmes (Dr. Shaban): Ahsante sana, Bw. Spika, kwa kunipa nafasi hii ili nizungumze juu ya jambo hili ambalo linawakera Wakenya sana. Siku hii ni ya pili. Tumekaa hapa na Bunge hili la Kumi limekuwa ni la wanasarakasi badala ya kufanya kazi iliyotuleta hapa. Tumekuwa tukifanya shughuli ambazo ni za kisiasa badala ya kufanya shughuli za Bunge hili.

Bw. Spika, mwaka jana baada ya uchaguzi, Wakenya waliteseka sana! Wakenya walifurushwa makwao; Wakenya wameuana na Wakenya wengine wamebaki kiholela-holela, hawajui kama wao ni Wakenya au sio Wakenya!

Bw. Spika, wakati huo huo, Wakenya walitulazimisha kukaa kwenye meza moja ili tuwe na Serikali ya mseto. Sasa hivi, Serikali ipo lakini kazi ambazo tunatakikana kuzifanya, tumesahau kuzifanya. Badala yake, tumeamua kufanya biashara kichaa kuwadanganya Wakenya badala ya kufanya kazi!

Kila kukicha, Bw. Spika, wakati tunatakikana kutengeneza kamati hii ambayo itaendesha shughuli za Bunge, tumeamua kuwa kila mtu anataka kuligawia kiwango cha shughuli hii, ama ile ama ile nyingine! Na kila mtu yuko tayari kuja hapa kuweza kuzungumza lake na kusoma Katiba kiasi ya vile ambavyo amejaribu kuielewa ama kujifurahisha; yeye na huyo mkubwa wake ambaye amemtuma!

Bw. Speaker, nafikiria kuwa kwenye Katiba, ni wazi kwamba tuna Raisi mmoja na Waziri Mkuu mmoja na, vile vile, tuna Makamu wa Raisi mmoja. Tunaomba kwamba, wakati huu ambapo Bunge la Kumi liko kazini kwa Muhula huu wake wa Tatu--- Muhula wa Kwanza na wa Pili, hatukusikia kukuru kakara hizi! Lakini, sasa hivi, tumeamka na tulikuwa ndotoni na tumegundua kuwa anayetakikana kusimamia shughuli hizi za Bunge hawezi kuwa ni yule yule!

Bw. Spika, naomba utuonyeshe njia moja kwa moja!

Ahsante sana, Bw. Spika.

Mr. Mbadi: Thank you, Mr. Speaker, Sir. Listening to lawyers, the first question I asked myself was: Do we really need lawyers in interpreting this? The people who are confusing this country are lawyers. We make laws then they come up and give their own interpretations. I doubt if most of them went to Lancaster House. In fact, the Committee of Experts reviewing the Constitution should not include lawyers. We should put people who are sober; people who will give us a good Constitution.

There was a reason why the Accord was negotiated. We passed the Accord in this House because neither side believed that the other won in the elections. If somebody can stand here today and tell us that all the powers are with one side of the Coalition, that person is living in the past.

Mr. Speaker, Sir, we cannot, as a party, accept to share the responsibility and the dirt of mismanagement of this country, but when it comes to leadership you tell us that the person with the executive authority is So-and-so. When it comes to *Mungiki* killing people in Karatina, there is a Prime Minister. When it comes to hunger, there is a Prime Minister. When it comes to corruption, where is Kibaki and Raila? Today you come here

and tell us that all the powers in this Constitution are with Kibaki. Then why are you telling the Prime Minister to make changes in this country?

Mr. Speaker, Sir, the question here is not who is superior, between the Prime Minister and the Vice-President. We know who is superior. Somebody who is being supervised can never be superior to the person who is supervising him. Mr. Musyoka is being supervised by the Prime Minister. We know it for a fact. Even children know that Mr. Musyoka is subordinate to the Prime Minister. So we are not fighting here over who is superior to the other. What we are asking---

Mr. Speaker: Order, Mr. Mbadi. Your time is up!

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

The Minister for Education (Prof. Onger): Mr. Speaker, Sir, last year I stood in this august House and said that the country was bleeding. This year, this time and yesterday, I said that the country continues to bleed. It is bleeding much more than even last year. What are the issues that the Chair has been called upon to adjudicate this afternoon? One, there was a point of order which was raised by the MP for Kisumu Town West, of the *bona fide* reconstituting of the House Business Committee. I think institutional memory will help you in making that decision.

Last year, my colleagues who were with me at Serena will bear me testimony; one of the most acrimonious and hotly debated issue was who should be the Leader of Government Business and who should subsequently be Chairman of the House Business Committee. I think it is only fair that we lay this matter before this House. At that time, the two sides had the two issues in the bracket. We could not agree and adjudicate on who should be the Leader of Government Business. I want to put it to you squarely that when there was an Accord signed by the two principals, the two square brackets were removed. Therefore, the position remained and the tradition was continued as we know it, the whole of last year, and part of this year.

I want to beg you that sometimes if you cannot beat through the law, then traditions speak louder than the law. In many countries it is the traditions that help to resolve some of the most complex issues like the one we are having here today.

Mr. Speaker, Sir, one of the decisions you have to make---

Mr. Speaker: Your time is up!

The Minister for Education (Prof. Onger): I wish I had more time like others. Anyway, please do make that decision.

Mr. Namwamba: Mr. Speaker, Sir, sometimes it is appropriate for one to stand here and speak for their constituents. Sometimes it is even appropriate to stand here and speak as a Member of a political party. This is one of those times when you must stand here and speak for Kenya. As we speak and reflect for Kenya, I want hon. Members to reflect on these three issues: One, I have heard statements to the effect that if this stalemate continues, we could go for fresh elections. I want to caution Members of Parliament here that we should not even contemplate that because as we stand right now, we do not even have a body that could supervise an electoral contest in this country.

Secondly, this House should reflect and take note of the fact that it is not the responsibility of this House to determine the Leader of Government Business. So, we could sit here until kingdom come, but this House does not have the legal, or any other mandate, to resolve this matter. It is not a matter that we could even put to the vote and determine.

Thirdly, there is nowhere in the Standing Orders, or in any legal provision, to indicate that if we had a House Business Committee, we cannot continue to transact the business of this House without the Leader of Government Business.

What we should have been determining here is how to put in place a House Business Committee, so that we can get moving with the business of this House and let the Government determine for us the Leader of Government Business.

I want to caution hon. Members that if we are not careful, Kenyans will storm the precincts of this House. Kenyans are frustrated and disillusioned. Let us rise to that honour of responsibility and act responsibly. Kenyans want us to move this country forward. Please, give us guidance that directs us in the direction to realize that this is a matter over which this House cannot make a decision.

Mr. Speaker: I must exercise my discretion for two hon. Members to share five minutes. Hon. Amos Kimunya, first.

An hon. Member: The rest will have to lobby.

(Laughter)

Mr. Speaker: Order, hon. Members! Mr. Kimunya caught the Speaker's eye.

The Minister for Trade (Mr. Kimunya): Mr. Speaker, Sir, listening to the arguments this afternoon, it is all about a challenge to the Chair. As the Chair, you have confirmed that you have received a letter from the appointing authority and you have gone ahead to recognize a Minister as Leader of Government Business. That decision is being challenged on the Floor of this House. All the arguments have been placed here in terms of who appoints, and what the constitutional provisions are. We are asking you to make a ruling on a decision you have already made. It is actually a challenge to your authority. I sympathize with your position because, for three days, we have actually wasted the taxpayers' money.

As Kenyans sit out there, starving, killing one another and waiting for this House to do business, we are sitting here collecting allowances of Kshs5,000 per sitting, without giving value to Kenyans. I would like to ask the Clerk not to pay me for all the sittings I have attended here until we can properly transact business in this House. This is a fraud on the Kenyan people! If we start on that basis, then we shall start doing proper business rather than coming here, making all manner of arguments and we do not do any business. We then get paid and Kenyans are starving.

Mr. Speaker: Order, Mr. Kimunya. Before you sit, the word "fraud" is unparliamentary in the absence of any evidence. So, you must withdraw or table evidence of fraud.

The Minister for Trade (Mr. Kimunya): Mr. Speaker, Sir, I withdraw the use of the word "fraud" and apologize for that.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Thank you, Mr. Speaker, Sir. Let me start by commending my friend, Mr. Chris Okemo, who made an extremely important contribution in this House today. For the many years I have been in this House, I have always pointed to that saying at the main door into this Chamber: "For the welfare of society and the just Government of men". It is in that spirit that I would like to plead with the House. Please, let us not intimidate ourselves by saying: "Kenyans are watching us; power-hungry individuals", *et cetera*.

Obviously, Kenyans are watching us, but they are watching us to make good laws. Kenyans are watching us to ensure that we run this country constitutionally. Kenyans are watching us to ensure that we honour the agreement we have committed ourselves to. We must understand, as Mr. Okemo said, that this Grand Coalition Government was established by an Accord. One of the problems that have bedeviled us in this country is that, from time to time, we make agreements and then we go against them. Tension then builds up in the country and, finally, there is social conflict. When there is a social conflict, we cannot have food or development. We cannot have peace. Therefore, today, we are being called upon to do two things: One, can we run Government on the basis of established laws and on the basis of the agreements that we have arrived at?

Mr. Speaker, Sir, when this Government was being formed, the two principals went to Sagana State Lodge and constituted the Cabinet. The Government that exists today must recognize the fact that it was a result of two principals exercising equal power to make it be. Therefore, to all kinds of people who have said things that are intimidatory, let us cease this and make sure that we govern ourselves according to the Constitution, and according to the agreements and rules we committed ourselves to.

Thank you.

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker: Order, hon. Members! You have a new Chair! So, there is going to be a new discretion!

Mr. Lenny Kivuti!

Mr. Kivuti: Thank you, Mr. Deputy Speaker, Sir. I will be quite brief.

Mr. Deputy Speaker, Sir, I believe that the definition of "Government" is very clear. We have three arms of Government. We have the Executive, which is led by the President. We have the Judiciary led by the Chief Justice, and the Legislature which is led by the Speaker. To me, it is not in order that we should be spending so much time defining who is "Government". For that reason, I would concur that, for the time being, we need to very much focus on what Kenyans need from us. When Kenyans watch us debate for three days on the constitution of one House Committee, it is not good for us. Speaking as a leader for Kenya, I strongly believe that we should be able to close this debate and form the Committee that we started forming yesterday. Once we form that Committee, let us, first of all, bring the other business, particularly that which affects the passage of the Supplementary Estimates, so that we are able to transact the business we came to transact in this House.

Without repeating what has already been said, I would like---

Mr. Deputy Speaker: Order, Mr. Kivuti! You have run out of time!

Mr. Wakoli Bifwoli!

The Assistant Minister for Lands (Mr. Bifwoli): Thank you, Mr. Deputy Speaker, Sir. I think the issue on the Order Paper today is not to know who should be the Head of Government. The agenda of our debate today is to have the list of the Membership of the House Business Committee. It is not the duty of this House to know who is the Government. If the Government is quarreling, that is not your business. I am

an Assistant Minister. I know my roles. Very soon, we are going to ask you to give me my work in the Ministry of Lands. Your work is to transact the business of the House. The business of the House today is to get the names of the Membership of the House Business Committee. If there are any amendments, let them be brought forward. Defer the ruling until next year. When the House Business Committee is in place, we will know who is the Leader of Government Business. Who between Mr. Raila and Mr. Kibaki is above the other is not for us to say right now.

When we campaigned, we promised Kenyans Heaven, but we are now delivering Hell, because we are here, quarreling over nothing! Therefore, I suggest that you defer this matter until next year.

[Mr. Deputy Speaker left the Chair]

[Mr. Speaker resumed the Chair]

COMMUNICATION FROM THE CHAIR

RULING ON MR. OLAGO'S POINT OF ORDER TO BE
DELIVERED ON TUESDAY 28TH APRIL, 2009

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

Hon. Members, the point of order raised by the Member of Parliament for Kisumu Town West has been addressed very extensively. I think we must come to the end of the contributions, as I desired. The Chair is reasonably guided. We have listened to the contributions made by you, hon. Members, and we will take those contributions into account.

The matters canvassed are weighty in law. They are of far-reaching constitutional implications. Those matters are equally involving and complex, in fact. Therefore, the Chair will have to consider all those matters. So, I will make my ruling on the matter and deliver the necessary Communication on Tuesday next week. On Tuesday, at 2.30 p.m., the Chair will hold the sword but it will issue no threats. The Chair shall rule.

(Applause)

Hon. Members, we shall now revert to Order No.8.

POINT OF ORDER

IMPLICATIONS OF DEFEATING MOTION ON APPOINTMENT
OF HOUSE BUSINESS COMMITTEE

Mr. Farah: On a point of order, Mr. Speaker, Sir. I rise under Standing Order No.25 (1). It is important for the House to understand the consequences, as I mentioned yesterday, which the Chair had also mentioned, of the determination of this matter or this Motion.

If this Motion is passed, because of the nature of the divide on positions on this Motion, this House will be split right down the middle, and it is going to be very difficult for any Bills to be passed by this House. This is a reform Parliament. The acrimony is going to be high, and we are going to be in a situation that will essentially be untenable. Should the Motion be lost, then it is important for hon. Members to understand that it cannot be brought to the Floor of the House for the next six months, and that without the House Business Committee, there is no business that can be transacted on the Floor of the House, which means, essentially, that we will not have a Parliament for six months, except if the Speaker decides to rescind that position. Only the Speaker can rescind that position. The President or the Prime Minister, or any other Member of the Executive has no authority to recall Parliament again to debate this issue.

So, the Members of this House today are faced with a situation in which, and rightly so, they are not able to deliver services to their constituents back home, because we are not able to pass the Supplementary Estimates. The Supplementary Estimates cannot be passed now. So, I cannot get water, because Mrs. Ngilu does not have money now. Until Parliament passes the Supplementary Estimates, there is no way our people, who are faced with drought in the constituencies, can be helped with water. The Government will be shut down. I am sure you heard of a Government shut down when it happened in the United States of America a good number of years back.

Mr. Speaker, Sir, I am pleading with Members of Parliament. As everybody has said, Kenyans are looking up to us. They are also looking up to the leadership of this House. The debate has got its merits on both sides. I could certainly say that we are in a constitutional crisis. When you have a constitutional crisis, the only thing to do is to have sober minds, come together and offer leadership and statesmanship.

If the two principals were able to come together before, then they should be able to come together again and resolve this issue, failure to which somebody has got to take the moral high ground and dissolve Parliament. But even then, we cannot do that because we do not have an Interim Independent Electoral Commission (IIEC) in place. We do not have sufficient constitutional amendments right now to make us have free and fair elections that we all intend to have in this country.

MOTION

ADJOURNMENT OF DEBATE ON APPOINTMENT OF HOUSE BUSINESS COMMITTEE

Mr. Speaker, Sir, the myriad problems we have will be even worse than they were in 2007. It is on that basis that I beg to move: -

THAT, debate be now adjourned until 28th April, 2009 at 2.30 p.m.

Mr. Speaker: Order, hon. Members. The Chair received a Motion from Mr. Farah Maalim in the terms that he has moved. The Chair has very reluctantly accepted the Motion, largely because, in accordance with our Standing Orders, this House has a right to move a Motion of Adjournment without restriction, save as maybe provided under the Standing Orders or any other relevant law. Under those circumstances, I have accepted that Motion. I have approved it and if there is a Secunder, we will listen to him.

Mr. Thuo: Mr. Speaker, Sir, I rise to second the Motion of Adjournment. I have heard the sentiments of the hon. Members who have spoken. It is very easy to wish away this problem and suggest that it is a problem of the Executive. However, I intend to agree with Prof. Anyang'-Nyong'o; that it is important that we do things in the right way. It is critical that these things be ruled on because even though we say they belong to the Executive, they rightly belong to this House. This is because it is the Committee that determines the business that would be transacted in this august House, whose primary purpose is to transact Government Business.

The implications of proceeding without either carrying the House with us or proceeding to the point of failure in passing the names are dire. The potential implications of that are not things we want to deal with. If you think about it, even though we are saying that we adjourn until next Tuesday, in the afternoon, the reality is that we adjourn to the next sitting day, which happens to be Tuesday. Therefore, we shall lose the next one-and-a-half hours. Nothing stops us, after consulting all we can, from coming here and passing this list, or whichever other amended list we shall agree on, on Tuesday as the first item. This desire to have a quick fix will just not work. I think it is critical that, that ruling be made.

Mr. Speaker, Sir, the other thing we seem to have forgotten is that one of the Members also asked for a ruling as to the actual composition of that particular Committee. He also wanted to know whether that extra person nominated by the Government constitutes part of the total or is surplus to the figure we have set. How then do we hope to pass names today in anticipation of a ruling which we have not heard?

In my opinion, I strongly support that we adjourn this debate because it will also allow us a lot of consultation. I am also an elected Member of Parliament and I appreciate that people out there have a problem with what is happening. But, again, there is a time to accept that, that is your role as a leader; that we will have to pay that price if that helps us to achieve a smoother way of transacting business. Do not ignore the fact that we have, hopefully, three-and-a-half years to go. If we get this right by waiting for one weekend, then, hopefully, it means we will have a smoother period within which we can transact much more business.

Mr Speaker, Sir, with those few remarks, I beg to support.

(Question proposed)

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, I rise to support the Motion of Adjournment and appeal to the House that consultation and concurrence on the decisions that we make in this House as a Grand Coalition Government, is important and will be in line with the National Accord.

For some of us who have been in the struggle for democracy in this country, we have known times when limiting opinion and discourse, and refusing to listen to the silent voices of the minority so that this country can go to the right direction, has been very costly to this nation. I remember, in 1997, when we were in the Inter Parties Parliamentary Group (IPPG) where we agreed on how the former Electoral Commission of Kenya (ECK) would be composed so that all parties could come together---

Mr. Ruto: On a point of order, Mr. Speaker, Sir. It is not clear why we are adjourning. This is because we have not disagreed with the Motion about the list---

Mr. Speaker: Order, Mr. Ruto! You have stood on a point of order and you cannot begin by saying that it is not clear why we are adjourning. It would be as if you want to question the Motion, which has already been moved and seconded. If you want to question the Motion, then you can do so by your contribution. So, you are out of order! As far as you have come, I do not see you getting into order any time soon!

(Laughter)

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Thank you, Mr. Speaker, Sir. My contribution is going to be very brief. All I want to bring to the attention of this House is the importance of the Motion, both in the manner in which the hon. Deputy Speaker has moved it and the manner in which the Chief Whip has supported it. I really want to tell this House that this adjournment is necessary to give us enough time to consult and have a concurrence on how we shall appoint the House Business Committee. It is not the House Business Committee in terms of individuals, but a House Business Committee in terms of procedure.

Laws are about procedures and are independent of the persons they affect. This is because, when laws are followed properly independent of our subjective feelings, we have good governance. What has been demonstrated in this House today is that this House needs, on this particular issue, to live to the spirit and letter of the National Accord. The National Accord says very clearly, that it is between two parties who signed it so that peace and good governance could return to this country in a Coalition Government that shall exist for a period of five years. During that period, the letter of the National Accord is very important in guiding the governance of this country. That is why the National Accord is very clear.

We understand that there is a Constitution that assigns power to the President and all organs of the Government. However, for the time being while this Grand Coalition is in existence, certain procedures must be followed so that we can create political space to undertake certain reforms.

As we begin to establish a very important committee of this House, and wait for your ruling on who the Leader of Government Business is, it is important that we go out there and consult, so that all of us are fully aware of the meaning and implications of the National Accord in the context of the reforms that we want to undertake. This is so that we do not come back to this House on Tuesday, not understanding what we are doing.

Mr. Speaker, Sir, the time that is being asked for is not too long for this House to consult. The time being asked for is not too long for the people of Kenya to wait so that we do the correct thing. This House has the responsibility, as I said earlier, to make good laws and make sure that they are not against the principles and agreement we have committed ourselves to in this Grand Coalition Government so that it can run this country democratically.

I beg to support.

Mr. Gunda: Mr. Speaker, Sir, thank you for giving me this opportunity. I oppose the Motion of Adjournment.

Mr. Speaker, Sir, the mood in this House now is, that we want to have the House Business Committee (HBC) in place. If we were to vote, we would have the Committee. What we may not have is the Chairman. That issue can be discussed during the weekend

so that when we come on Tuesday, the Committee will be in place and we will be told who the Chairman is as we wait for your ruling.

Mr. Speaker: Order, Mr. Gunda! As I sense from your contribution this far, you are out of order!

Hon. Members: Why? Why?

Mr. Speaker: The Standing Orders provide for what you could do if you want this Motion to proceed to the vote. I do not think I want to allow you to go beyond where you are, if you are going to continue in that direction!

Mr. Githae, please, proceed!

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Githae): Mr. Speaker, Sir, initially I was going to oppose this Motion of Adjournment. I have just come from Machakos where we had a meeting with five representatives from every local authority. Their message was not very pleasant. They are saying that Kenyans are tired. Kenyans are fed up with the way Parliamentary business is being conducted in this House. They say, for the last two days, this Parliament has not conducted any useful business. We have been unable to agree on a simple list of names. It is as if, if one's name is not in the HBC, it is the end of the world!

Mr. Speaker, Sir, Kenya is bigger than all of us. Kenya is bigger than your name being in the HBC. However, I know the implications of proceedings when we have not agreed. In the event that the list is rejected, I know the implications as specified in the Standing Orders. It would mean that this issue would not come again until after six months. In effect, it will be like having---

Mr. Gabbow: On a point of order, Mr. Speaker, Sir. It is not true that we disagreed on the list for Members of the HBC!

(Applause)

Mr. Speaker: Order, Mr. Gabbow! For you to proceed appropriately, on your point of order, if you have facts or information which show that the hon. Githae is misleading the House, then you should challenge him as such. Do not relate to what happened in a meeting that you had. If you think the Member is factually wrong, then challenge him accordingly.

Proceed on your point of order, if you are able!

Mr. Gabbow: On a point of order Mr. Speaker, Sir. Is it in order for the Member to mislead the House that we are unable to constitute the Membership of the HBC?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Githae): Mr. Speaker, Sir, I am a lawyer by profession and I am very exact to the words. I said that "in the event a Member objects to any of the names".

Mr. Speaker, Sir, I know the implications of what would happen in the unlikely event of one Member objecting to a particular name and we have to go for a vote. If it is lost, it means that in effect, we would be forced to go on a six-month compulsory recess.

Mr. Speaker, Sir, I am saying that the message I was given to bring to Parliament is that we have enough problems in this country without adding more. We have enough problems without having power games in this House.

Mr. Speaker, Sir, we have problems of the Internally Displaced Persons (IDPs), famine, we have criminal gangs like *Mungiki*, *Taliban*, *Musumbiji* and the rest,

terrorizing this country. If it requires that the party leaders and Chief Whips be given another two days to consult so that they come up with a list of names which are acceptable to all Members, so be it. Two days is not a long time. Nothing much will happen in two days. After all, our next sitting is on Tuesday.

I am supporting the Motion. Let us give our party leaders time to come with a proper list, which is acceptable to all the Members.

Mr. Speaker: Order, hon. Members, after listening to the last three contributions, the Chair is of the opinion that no new issues are being canvassed. Members are tending to be repetitive. So, I will put the Question!

(Question put and agreed to)

COMMUNICATIONS FROM THE CHAIR

FORFEITURE OF MR. KIMUNYA'S SITTING ALLOWANCE

Mr. Speaker: Hon. Members, before we adjourn, I have one or two matters that I have to communicate on.

First, hon. Members you will have heard this afternoon, in his contribution, Mr. Kimunya volunteered to forfeit his allowance for today because it is his feeling that he has not worked for it. Hon. Members, because this has gone on record, I have verified with Mr. Kimunya and he confirms that indeed, that is his intention. I therefore, direct the Clerk to withhold payment to the hon. Kimunya for today.

Those hon. Members who wish to follow suit are at liberty to do so because the Kenyan public has previously asked me what I will do if a Member volunteered to forfeit his income. So, in compliance and with respect to what the members of public wanted to know, this is what I will do. So the Clerk is accordingly directed.

MR. SPEAKER TO CONSULT PRESIDENT/PRIME MINISTER OVER HBC/LGB STALEMATE

Hon. Members, the Motion for adjournment has been carried. I have reflected long and hard and it is with a heavy heart that I have to make this communication.

As you are all aware, the Third Session of the Tenth Parliament commenced on Tuesday, 21st April 2009 with the State Opening by His Excellency the President. Thereafter, the House met yesterday morning, Wednesday, 22nd, at 9.00 a.m. As it has been the tradition of this House, a Motion was moved, pursuant to Standing Order No.158 for this House to approve the names of Members to serve on the House Business Committee.

Hon. Members, you will recall that after debate on this Motion, the House, at the instance of a dilatory Motion by Dr. Khalwale, adjourned to allow for further consultations and possible consensus on the proposed names. You will, hon. Members, recall further, that when the House met again at 2.30 p.m., yesterday to continue with debate on the adjourned Motion, still no consensus had been achieved leading to a further

dilatory Motion by the Minister for Agriculture, Mr. Samoei, and, therefore, a further adjournment of this House.

Hon. Members, as it has become evident at this sitting, the House is still not yet of one mind on the matter of the Members to serve on the Committee that will set the agenda for this House. At this point, let me indicate, that I had received a proposed amendment of the Motion from Mr. Midiwo, who is one of our Joint Chief Whips but that list was not exhaustive because it had the names for amendment with respect to the list submitted by the ODM Parliamentary Party, which is in order. So, that will have been a successful amendment.

Hon. Members, I did not receive an agreed proposed amendment of names in respect of the other parties in the Grand Coalition and, therefore, there was no valid amendment. The Chair did not receive a valid signed amendment in accordance with the Standing Orders. So, no valid list was before the House.

As you are all aware, this House remains paralyzed as no other business can be transacted before the Committee is constituted. As your Speaker, I feel duty bound to inform the House that I have received correspondence from both His Excellency the President and from the Right Hon. Prime Minister on a matter at the heart of the constitution of the House Business Committee. His Excellency the President has advised my office that the Government has designated the hon. Vice-President and Minister for Home Affairs to be the Leader of Government Business and the Chairperson of the of the House Business Committee. Similarly, the Right hon. Prime Minister has advised me that the Grand Coalition Government has designated the Right hon. Prime Minister to serve in both capacities.

As your Speaker, and as I promised in my Acceptance Speech on 15th January, 2008; that I am your servant, I took it upon myself to address both His Excellency the President and the Right hon. Prime Minister. I implored on them, in a letter dated yesterday, to seek consensus on this matter so as to enable the business of this House to be unlocked. Correspondence to this effect was dispatched this morning and my office continues to await a response. However, as we sat here this afternoon, I received a letter from the Prime Minister in reply to my letter dated yesterday and he indicated that they require time to consult further. I have not yet received a response from His Excellency the President. However, it is possible that for as long as we have sat here, maybe there is a response on my desk in the office.

Hon. Members, the office of the Speaker is singularly ill equipped to advise or determine for the Executive arm of the Government how it shall run its affairs and, note what I am saying. I want that to be clear and to be understood by hon. Members. I, therefore, want to repeat that the office of the Speaker is singularly ill equipped to advise or determine for the Executive arm of the Government how it shall run its affairs.

(Applause)

The Speaker is equally ill equipped to advise or determine for political parties how they shall run their affairs. The Speaker, therefore, cannot and will not endeavor to involve himself in this exercise except with respect to matters pertaining to constitutionality or Statutes or the Standing Orders as are already in place. We owe it to Kenyans to explain why we should expend public resources when we are not conducting

the business that they entrusted us to do. Certainly, we will be hard-pressed to justify any emoluments for the period since the State Opening.

It has been said that extra-ordinary times call for extraordinary measures. I wish to inform the House that immediately after the adjournment of this sitting, without prejudice to the ruling that I will deliver on Tuesday, which I will, I shall, in the national interest, seek direct audience with both His Excellency the President and the Right hon. Prime Minister with a view to bringing the matter of the constitution of the House Business Committee, its Chairperson, and the Leader of Government of Business to a speedy and amicable conclusion.

(Applause)

I will repeat that, hon. Members. Without prejudice to the ruling that I will make and deliver on Tuesday, I shall endeavor to make contact and seek audience with His Excellency the President and the Right hon. Prime Minister with a view to arriving at an amicable conclusion of this matter.

May I state, hon. Members, that I undertake to make known to this House the results of my initiative at the next sitting of the House.

Finally, hon. Members, as I undertake this initiative, I plead with you to reflect on the sacred trust bestowed upon all of us by our people. I request that we all work towards attainment of consensus for the sake of this nation. The agenda awaiting this House including matters of constitutional reform, the establishment of an electoral body and the passage of the Budget are far too weighty to be sacrificed at the altar of political expediency.

Thank you.

(Applause)

The Minister for Agriculture (Mr. Samoei): On a point of order, Mr. Speaker, Sir. I have no intention whatsoever to raise issue with any part of the ruling you have made. However, you have raised a very pertinent issue, which I think is proper for us, as a House, to address ourselves to.

You have raised the issue of being unable to justify the allowances that we would be paid as hon. Members of Parliament ever since the President inaugurated this Session on Tuesday. Many hon. Members here have spoken to that particular issue in their contributions; raising the issue that, indeed, Kenyans are concerned that we are spending public money without them seeing value for it.

Mr. Speaker, Sir, I beg to move that, in that spirit, we, as Members of Parliament, agree to forfeit our allowances---

Mr. Speaker: Order, hon. William Ruto!

Hon. William Samoei Ruto, you are a seasoned Member of Parliament. If I am not wrong, I believe you are doing your third term. You do not know, so as to move a Motion of that nature, that Motion must be prepared and forwarded to the Clerk who in turn passes it on to the Speaker, to approve. You then proceed and give notice of the Motion and you are allowed to move it.

I am afraid we have to live within our rules. It may be a genuine attempt. It may be legitimate and, indeed, can be lawful. However, you must fall within the realm of our rules of procedure. The House would then consider the matter appropriately.

(Mr. Orengo stood up in his place)

Order hon. James Orengo. The Chair is aware that you can expeditiously draft a Motion. But as I stand on my feet now, I have no Motion in my possession.

ADJOURNMENT

Mr. Speaker: Hon. Members, that brings us to the end of business for this afternoon. The House, therefore, stands adjourned until Tuesday, 28th April 2009 at 2.30 p.m.

The House rose at 5.35 p.m.