

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 14th July, 2010

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

Mr. Muthama: On a point of order, Mr. Deputy Speaker, Sir. My point of order is based on the bomb blast that occurred in Uganda. Uganda is our neighbouring country and we all know what happened there a few days ago. Could I be in order to ask Parliament to observe one minute of silence in honour of those who lost their lives in Uganda?

Mr. Deputy Speaker: Indeed, you are very much in order, given that Ugandans are our brotherly neighbours. The Chair does accede to that and so, we will observe one minute of silence.

(Hon. Members observed a moment of silence)

QUESTION BY PRIVATE NOTICE

STALLING OF DARAJA MOJA BRIDGE PROJECT

Dr. Monda: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Roads the following Question by Private Notice.

(a) What has caused the stalling of the construction of the Daraja Moja Bridge in Kisii town?

(b) What is the Government doing to revive the construction of the bridge?

(c) What measures has the Government taken to stop the damage on the diversion road between Daraja Moja and Kisii Police Station, which is being destroyed as a result of the heavy trucks plying the route?

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

(a) The construction of the Daraja Moja Bridge has not stalled. However, in the last few weeks, there was minimal work going on as the contractor awaited for permission from the relevant authorities to explode the hard materials. The contractor has already done so, and the works are ongoing and are indeed ahead of schedule.

(b) As I stated above, the contractor has been on site and the construction works are ongoing.

(c) I have instructed the contractor to constantly maintain the diversion. However, it should be noted that the use of the diversion is inevitable due to the ongoing works at the bridge. For this reason, I appeal to members of the public to bear with us during this time of construction of the bridge.

Dr. Monda: Mr. Deputy Speaker, Sir, while I appreciate the answer given by the Assistant Minister, part “b” of his answer contracts part “a”. He says the contractor is on site. But the presence of the contractor on the site, if he does not do any work, is works that has stalled. This is the concern that we are raising. He should tell us the cost of the construction of the Daraja Moja Bridge in Kisii Town. When does he plan to have the bridge completed?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, I wish to refer you to part of the contract between my Ministry and the contractor. The contract was awarded to Walukati Investment Limited, at a cost of Kshs72 million on 1st February, 2010. The date to commence works was given as 1st March, 2010. The actual expected date of completion will be on 28th March, 2011. Therefore, as per our contract, the contractor is on schedule and the works are going on, as I have already indicated. Parts of the works that had stalled a little bit were to do with excavations and the contractor was waiting for permission from the relevant authorities to continue. As far as we are concerned, the contractor is on track and we invite the hon. Member to visit the site to verify the facts.

Mr. Mbugua: Mr. Deputy Speaker, Sir, you will realize that most of the officers in weigh bridges are lax in their duties. What is the Ministry doing to ensure that over-loading---

Mr. Deputy Speaker: Hon. Mbugua, what is the relevance of your question to Question one by Private Notice today? It is not relevant! The Question one by Private Notice regards Daraja Moja Bridge in Kisii Town. Do you have a supplementary question on the same? If you do not, then you know the procedure of the House. Just file in a Question. You should not hijack the hon. Member’s precious time to prosecute a Question from which his constituents are expecting some results.

Mr. Pesa: Mr. Deputy Speaker, Sir, the Assistant Minister has admitted that the works had stalled. He has also said that works are on course. What miracle is this contractor going to use to make sure that he completes the works according to schedule?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, as I have said in this House, the works that have stalled were to do with the demolition of the existing bridge as they awaited for the relevant permission for them to do the explosions. However, the other works to do with the excavations where the new bridge will be constructed have been ongoing. As I have said, our terms of contract with the contractor are very clear and my engineers are satisfied with the work so far.

Dr. Monda: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to continue misleading the House that work is going on in Kisii with regard to the construction of the bridge, and yet I was there yesterday and there is no work going on except the an excavator parked next to the bridge which they have demolished half way? Could he confirm that he will go there and inform the House afresh the findings he gets on the ground?

Mr. Deputy Speaker: Mr. Assistant Minister, what work is going on there?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, as per the report that we have, the works are ongoing but if the hon. Member has a contrary report---

Mr. Deputy Speaker: What works are ongoing?

Mr. Kinyanjui: Both the excavation and the construction of the new bridge. That is the report that we have and as I have said, I invite the hon. Member to visit the site at a date which we can organise with our officers on the ground to verify.

Mr. Deputy Speaker: Order, Mr. Assistant Minister! The Questioner is inviting you to go and see that there is no work going on there. According to the hon. Member you have been misled by your officers. Is that not so Dr. Monda? Could you ask the supplementary question?

Dr. Monda: Mr. Deputy Speaker, Sir, while I will appreciate the Assistant Minister's offer to visit Kisii and inspect the bridge, I also ask him if he could consider allocating funds to build the diversion road. I know that it is not practical to cut-off the bridge and use the same road. The usage of the diversion has caused a lot of damage to the Jogoo-Kisii Town Road that was meant for smaller vehicles and less traffic. What has the Minister done to ensure that the road that was not meant for heavy traffic is repaired and will be used when the bridge is complete?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, the maintenance of the diversion during the time of construction of this bridge will be undertaken by the contractor. I also want to take this opportunity to assure the hon. Member that upon completion of the bridge, we shall restore the road to the way it was before it was used as a diversion.

Mr. Deputy Speaker: Mr. Monda, the Assistant Minister has invited you to go with him and he has given an undertaking that he is prepared to show you that there is work going on there.

Dr. Monda: Mr. Deputy Speaker, Sir, he did not tell me when he will be in Kisii.

Mr. Kinyanjui: Mr. Assistant Minister, I will consult my diary together with my officers and I will be able to communicate with the hon. Member by next week.

Mr. Deputy Speaker: Next Question by Mr. Bahari.

ORAL ANSWERS TO QUESTIONS

Question No.065

CONTRIBUTION OF LIVESTOCK SECTOR TO KENYA'S GDP

He is not in so we will come back to that Question.
The Next Question is by Mr. Shakeel. Is he not here?

Question No.110

NACC CAMPAIGN STEERING COMMITTEE ACTION ON CORRUPTION CASES

We will come back to it at the end of Question time.
The Next Question is by Mr. Olago.

Question No.252

ISSUANCE OF TITLE DEEDS TO KALOLENI/MANYATTA-ARAB LAND OWNERS

Is he not here?
The next Question is by Mr. Wamalwa.

Question No.205

EVICITION OF PASTINA PICHU
FROM FAMILY LAND IN KAKAMEGA

Is Mr. Wamalwa not here?

The next Question is by Mr. Murgor. For once, hon. Members are not ready to ask Questions here. The provisions of the Standing Orders cut across; that is both ways. That is for hon. Members who fail to ask Questions and for Ministers who fail to answer the Questions appropriately.

Proceed, Mr. Murgor

Question No.213

BENEFITS FROM TRIPS AGREEMENT/INDUSTRIAL
PROPERTY ACT

Mr. Murgor asked the Minister for Medical Services:-

(a) whether he could inform the House how the country has benefited from the World Trade Organization TRIPS Agreement and the Industrial Property Act of 2001 in enhancing access to essential medicines, especially HIV/AIDS, considering that the pandemic had not been gazetted as a national disaster;

(b) whether he could explain how the country has benefited from the opportunity provided under the Agreement, particularly in the fight against the scourge and other opportunistic diseases; and,

(c) whether the distribution of these drugs has been done in Kapenguria Constituency and at what cost.

Mr. Deputy Speaker: Is there anyone from the Ministry of Medical Services ? We will come back to that Question.

Let us move on to the next Question by Mrs. Chepchumba.

Question No.245

PROVISION OF DATA ON HOUSING
DEMAND IN KENYA

Is Mrs. Chepchumba not here?

Let us move to the next Question by Mr. Cheruiyot.

Question No.251

LIST OF PROJECTS UNDERTAKEN
BY LBDA IN KURESOI

Is Mr. Cheruiyot not here?

Let us move on to the next Question by Mr. Kigen.

Question No.286

CONSTRUCTION OF POLICE STATION IN RONGAI

Is Mr. Kigen not here?

Let us move on to the next Question by Mr. Mwaita.

Question No.287

CONSTRUCTION OF DAM AT PERKERA RIVER

Is Mr. Mwaita not here?

Let us move on to the next Question by Mr. Njuguna.

Question No.291

COMPENSATION OF PLOT OWNERS FOR
PROVIDING WAY-LEAVE IN LARI

Mr. Njuguna asked the Minister for Energy:-

(a) whether he is aware that land owners who provided way-leave to facilitate the construction of a rural electrification line from Kirenga Market to Kirie Site–Nyamweru Sub-location in 2009 have not been compensated for the trees which were cut down; and,

(b) whether he could indicate the measures he is taking to compensate the plot owners.

Mr. Deputy Speaker: Is there anyone from the Ministry of Energy? Let us go back to Question No.065. Is Mr. Bahari not here? The Question is dropped!

Question No.065

CONTRIBUTION OF LIVESTOCK
SECTOR TO KENYA'S GDP

(Question dropped)

Let us move on to Question No.110 by Mr. Shakeel! Is Mr. Shakeel still not here? The Question dropped!

Question No.110

NACC CAMPAIGN STEERING COMMITTEE
ACTION ON CORRUPTION CASES

(Question dropped)

Let us move on to Question No.252 by Mr. Olago. Is Mr. Olago still not here? The Question is dropped!

Question No.252

ISSUANCE OF TITLE DEEDS TO KALOENI/
MANYATTA-ARAB LAND OWNERS

(Question dropped)

Let us move to Question No.205 by Mr. Wamalwa! Is Mr. Wamalwa still not here? The Question is dropped!

Question No.205

EVICITION OF PASTINA PICHO
FROM FAMILY LAND IN KAKAMEGA

(Question dropped)

The next Question is by Mr. Murgor.

Question No.213

BENEFITS FROM TRIPS AGREEMENT/INDUSTRIAL
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Mr. Murgor asked the Minister for Medical Services:-

(a) whether he could inform the House how the country has benefited from World Trade Organization TRIPS Agreement and the Industrial Property Act of 2001 in enhancing access to essential medicines, especially HIV/AIDS, considering that the pandemic had not been gazetted as a national disaster;

(b) whether he could explain how the country has benefited from the opportunity provided under the Agreement, particularly in the fight against the scourge and other opportunistic diseases; and,

(c) whether the distribution of these drugs has been done in Kapenguria Constituency and at what cost.

Mr. Deputy Speaker: Is there anyone from the Ministry of Medical Services?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, I undertake to inform the Minister to answer this Question on Tuesday, next week.

Mr. Deputy Speaker: Order, Mr. Assistant Minister! The moment the Questions appear on the Order Paper is an express demonstration of the fact that the undertaking is mandatory for Ministers to come and answer them. Do you have any reason why the Minister is not here to answer the Question or do you want to answer it yourself?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, I do not have any reasons and that is why I am undertaking to inform the Minister to make sure that he answers the Question by Tuesday, next week.

Mr. Deputy Speaker: Order, Mr. Assistant Minister! You are out of order.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. The Chair has punished all hon. Members who did not come up to ask their Questions. Should you also be seen to be fair by punishing the Ministers who have also failed to turn up?

Mr. Deputy Speaker: Indeed, the Chair is going to take up that matter.

COMMUNICATION FROM THE CHAIR

SANCTIONS AGAINST MEMBERS FOR FAILING TO ASK\ANSWER QUESTIONS

The Chair directs that the Minister for Medical Services will not transact any business until and unless he is able to satisfy the Chair on why he was not ready. Standing Order No.46 is also very express and explicit in that you not only punish the hon. Members by dropping the Question because a Question is a property of the House. Standing Order No.46 on failure to ask or answer Question states:-

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

I do not have any leave of the House communicated to me now on any of the Questions. Under the circumstances, not only will the sanction apply to the Ministers but also to hon. Members who have failed to ask their Questions this morning. They have also been disorderly and they will not transact any business on the Floor of the House including asking Questions until they are able to satisfy the Chair on why they have been able to ask their Questions.

Next Question, hon. Chepchumba!

Question No. 245

PROVISION OF DATA ON HOUSING DEMAND IN KENYA

Hon. Chepchumba is not here? The Question is dropped. She will need to offer an explanation on why she has not conformed to the provisions of the Standing Order.

(Question dropped)

Question No.251

LIST OF PROJECTS UNDERTAKEN BY LBDA IN KURESOI

Hon. Cheruiyot not here? His Question suffers the same consequence as the other hon. Members who fail to ask their Questions this morning and the same applies to hon. Kigen as well as hon. Mwaita. The Questions are dropped and the Members will not transact any business on the Floor of the House. They are disorderly.

(Question dropped)

Question No. 286

CONSTRUCTION OF POLICE STATION IN RONGAI

(Question dropped)

Question No. 287

CONSTRUCTION OF DAM AT PERKERA RIVER

(Question dropped)

The Assistant Minister for Water and Irrigation (Mr. Kiunjuri): Mr. Deputy Speaker, Sir, I am not on a point of order. I am just concerned because majority of those Members are in “No” campaign. I was just wondering whether they are also saying no to the constituents by not asking the Questions.

Mr. Mututho: On a point of order, Mr. Deputy Speaker, Sir. I seek your indulgence. Looking through these Questions, you will realize that some of them are so important to the lives of Kenyans. These Questions become the property of the House and most Kenyans. For example, this morning, over 75 percent of Kenyans were expecting to hear the answer from the Minister in response to Question No.065. Will I be in order to ask you to accommodate Question No.065 even if the chair of that particular committee would ask it? I know the Standing Orders do not expressly allow that but Standing Order No.1 gives you a leeway where you can give directions or orders which are not expressly given in any of the other Standing Orders.

Mr. Deputy Speaker: The rules are very clear and express. The traditions and the precedents are there. Much as the Question can be very relevant; that is a national question and it concerns every Member of Parliament. That Question can only be asked when it is listed on the Order Paper by the Questioner or another Member of Parliament authorized by the Questioner to ask it on his or her behalf. Under the circumstances, none of these has happened. So it is unfortunate because the Members know that the country and their constituents are watching them. Unless they are on a very important obligatory function elsewhere to justify this Question being put on the Order Paper another time, under the circumstances, the Questions are dropped.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): On a point of order, Mr. Deputy Speaker, Sir. I am ready with the answer to a Question which you have already dropped. I do not know what we are going to do. Will the same questioner come to reinstate this Question within two days or three days, or it will suffer the same fate as others?

Mr. Deputy Speaker: Order! Order! Do not anticipate the function or the exercise of an authority that is not in your office. Wait until you are asked. It is upon the Chair to decide based on the explanation by the hon. Member why he or she has not been here in the morning to ask the Question. If it is satisfactory and the Chair is satisfied, the Question will be reinstated. As soon as it is reinstated, of course, the procedure is that you will be informed and then you answer the Question at the right time. You cannot answer a Question without the Questioner asking it on the Floor of the House.

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. Given that some Ministers are in the House and they have ready answers, would you consider allowing them to stand up during Statements time and give those answers in the form of Ministerial Statements in the next Order because they have the information and information can be shared?

Mr. Deputy Speaker: The Standing Orders, the traditions and practices do not allow. Next Question by hon. Njuguna!

Question No.291

COMPENSATION OF PLOT OWNERS FOR PROVIDING WAY-LEAVE IN LARI

Mr. Njuguna asked the Minister for Energy-

(a) whether he is aware that land owners who provided way-leave to facilitate construction of rural electrification line from Kirenga Market to Kirie Site–Nyamweru Sub-Location in 2009 have not been compensated for the trees which were cut down; and,

(b) If he could indicate the measures he is taking to compensate the plot owners.

Mr. Deputy Speaker: Minister for Energy not here? Likewise, the Minister for Energy is not going to transact any business on the Floor of the House pending his satisfactory explanation for not being here this morning to answer Question No.291.

(Question deferred)

Next Order!

STATEMENTS

Mr. Deputy Speaker: It is, indeed, a very bad specter for the people of this country to have a situation which both sides of the House do not rise up to their mandate and responsibilities for which we are paid by the Kenyan taxpayers. But nonetheless, we have gone to the next Order. The Minister of State for Provincial Administration and Internal Security, you have some Statement to make.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): I have a Statement which I am going to give at 2.30 p.m., and not in the morning.

Mr. Deputy Speaker: Any Member seeking a Statement or any Minister giving a Statement this morning?

Next Order!

COMMITTEE OF THE WHOLE HOUSE

DEFERMENT OF COMMITTEE STAGE:
THE COUNTER-TRAFFICKING IN PERSONS BILL

Mr. Deputy Speaker: Hon. Millie Odhiambo-Mabona is not there. Under the circumstances, we cannot move into Committee Stage in the absence of the hon. Mover of the Motion. Ideally, under such circumstances, a whole Bill can be dropped but given the importance of the Bill and the fact that there must have been a presumption on the part of the hon. Member that Question Time will take at least one hour, which has been our tradition, the Chair defers the Committee of the Whole House to tomorrow afternoon.

MOTION

ADOPTION OF JOINT REPORT ON PROCUREMENT OF MEDICAL GOODS AND EQUIPMENT

Dr. Khalwale: Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts the Joint Report of the Public Accounts Committee and the Departmental Committee on Health on the Procurement of Medical Goods and Equipment for the Ministry of Medical Services by Dol International Limited and Associated Companies in the year 2006, table in the laid House on Tuesday, 13th July 2010---

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! Dr. Khalwale is moving a Motion, and when you consult loudly, the Chair can barely hear him. You have a choice yourselves not to listen to him, but let the Chair and those who have an interest listening to the Motion listen.

Proceed, Dr. Khalwale!

Dr. Khalwale: Thank you, Mr. Deputy Speaker, Sir. This Report was laid on the Table in the House on Tuesday, 13th July, 2010. These two committees held a total of three sittings where witnesses testified on the subject of the inquiry. Those who testified included the Permanent Secretary, Ministry of Medical Services, the Attorney-General and the Managing Director of Dol International Limited. The Director of Kenya Anti-Corruption Commission failed to appear on the two occasions that he was invited to come and give evidence.

Mr. Deputy Speaker, Sir, this Committee became seized of this matter after the matter had been directed to the Committees by the Chair. The Chair was prompted to direct this matter to the Committees because the matter was not conclusively dealt with when it came to the House.

The Member of Parliament for Ikolomani had raised a Question by Private Notice at that time, which led to a particular interest whereby the Public Accounts Committee (PAC) discovered that there was an alleged flawed procurement process which had contributed to the pending bills totaling to Kshs2, 094,188,014 relating to the 2007/2008 Financial Year as observed by the Controller and Auditor-General under paragraphs 530 to 532 of his Report on the accounts of 2007/2008 Financial Year.

The bills could not be cleared during the year and were carried over to the following year. Of particular interest, the Departmental Committee on Health was concerned that the delayed supply of the items in question to the intended users was hurting both the users and the economy. These were items that were urgently needed in all our provincial hospitals and district hospitals across the country.

Mr. Deputy Speaker, Sir, on the other hand, the PAC was concerned that taxpayers' money was going to be used to pay for items that had not been supplied in the first place. We found that the delay impacted negatively on the delivery of services by the Ministry of Health and had adverse effects on the country's economic development in general.

While discharging its mandate, the joint committee was guided by the existing procedures and modalities of operations of the National Assembly. The procedures and modalities were derived from the Constitution of Kenya, Acts of Parliament, Standing Orders and conventions, practices and rulings of the Chair.

Mr. Deputy Speaker, Sir, I want to confirm that this Report which I have tabled has received the total consent of all the Members of the two Committees. There has not been a dissenting voice.

I would like to clarify that those who gave evidence before the Committee included:-

(i) The Permanent Secretary, Ministry of Medical Services Prof. James ole Kiyapi, who was accompanied by senior Ministry officials.

(ii) Mrs. Muthoni Kimani who represented the Attorney-General of the Republic of Kenya.

(iii) Dr. Shadrack Githinji Mwitii, the Managing Director of Dol International who was accompanied by his advocate.

The Director of the Kenya Anti-Corruption Commission (KACC), as I have said above, failed to appear.

Mr. Deputy Speaker, Sir, the background is as follows: In the year 2005, the Ministry of Health flouted several tenders for the supply of medical equipment. Several companies participated in these tenders which were subsequently awarded between January and June 2006. Dol International Limited and its associated companies were awarded four tenders; LPO No.006180880 for the supply of X-ray developers' envelopes.

The second tender was No.0061967 for the supply of X-ray equipment and the next one was No.0061843 for supply of sutchers. The last one was No.860536 for the supply of medical equipment. The X-ray developers' envelopes were worth Kshs17.34 million and the X-ray equipment were worth Kshs123.4 million. The sutchers were worth Kshs40.3 million and finally the medical supplies were worth Kshs17.87 million.

Mr. Deputy Speaker, Sir, on the 20th of February 2006, M/s. Unimet Supplies and Services launched a complaint to the Public Procurement Complaints Review and Appeals Board against the award of those tenders above. The complaint was dismissed. In its ruling the Board observed that once a Local Purchase Order (LPO) was issued, a binding contractual relationship was established and the parties to the same were bound by the contract.

In May 2006, the Ministry of Health opened an irrevocable Letter of Credit worth Kshs123.4 million in favour of Dol International Limited to facilitate supplies in performance of its contractual obligations. Towards the end of May 2006, the Ministry cancelled the Letter of Credit and declined to receive and make payment to Dol International Limited and associated companies on the LPO of 0061843 for the supply of sutchers that was worth Kshs40.3 million.

Mr. Deputy Speaker, Sir, this was after the KACC notified the Ministry of its intention to investigate the matter on account of irregularities and/or corruption in the procurement process. Amongst the alleged irregularities in the procurement process was that when the Ministry's Technical Evaluation Committee carried out its evaluation, it was satisfied there were seven qualified suppliers of sutchers samples that were submitted by bidders and all were to be

submitted to the Ministerial Tender Committee for consideration. However, only the sample by Dol International Limited was submitted to the Ministerial Tender Committee for consideration.

In the meantime, Dol International Limited and its associated companies had procured all the contract items under that LPO and were in the process of delivering them to the Ministry. The items, in accordance with the tender standards and specifications, were marked Ministry of Health, Government of Kenya and further indicated that they were not for sale. They had been stored at the company offices in Kenya and abroad.

Items under that tender S/KE/RU – HEA – 2/98/25/I6 which were drugs and medical equipment had been received by the Ministry and had been distributed to various health facilities in the country. I have attached the letter dated 11th of August 2006 from the Ministry of Health to the KACC which I have referenced as Annex I.

Following the Ministry's action to cancel the LPO, Dol International Limited and its associated companies had no choice but to proceed to court to safeguard their interest. Through the Miscellaneous Civil Application No.273 of 2006 in the High Court of Kenya at Nairobi, the companies amongst others obtained the following orders:-

(i) They obtained leave to apply for order of statutory, quashing the unilateral decision of Permanent Secretary, Ministry of Health to cancel or terminate LPO Nos.0061843, 0061880, 0061967 and Tender Award No.SD/KEN/RU – HEA – 2/98/25/IS.

Mr. Deputy Speaker, Sir, the second order we obtained was leave to apply for an order of *mandamus* compelling the Permanent Secretary, Ministry of Health to accept medical equipment and drugs supplied under LPO Nos.0061843, 0061880, 0061967 and tender award No.SD/KEN/RU-HEA-2/98/25/IS. Further, they obtained the order of leave to apply for orders prohibiting the Kenya Anti-Corruption Commission (KACC) from interfering with the applicant's items of trade or its offices, and the items of trade confiscated on 29th March, 2006 be returned to the applicant's, save for the copies of documents required for their investigations. Finally, the order of prohibition directed to the KACC and the Attorney-General prohibiting them from filing criminal charges against Dr. Shadrack Mwititi Ithinji, the MD of Dol International Limited with respect to the LPOs. I have attached a copy of the court order and it is Annex 2.

Mr. Deputy Speaker, Sir, arising from the court ruling, the Office of the Attorney-General's professional assessment of the subject matter was that the Ministry takes appropriate action to avoid potential litigation for breach of contract without prejudicing investigations. The Attorney-General also observed that the doctrine of value for money be applied to this matter since the Ministry was satisfied with both quality and prices of the switches. He, however, pointed out that the Ministry's compliance with the contractual obligations depended on the outcome of his consultations with KACC. In its letter, reference KACC/Invoice 6/14 Vol.IV (82) dated 9th March, 2007 and KACC/Invoice 6/14 Vol.IV(87) dated 2nd April, 2007 - which I have attached as Annexes 3 and 4 - addressed to the Managing Director, Dol International, KACC made it clear that the decision on whether to, or not to accept the goods lay with the Ministry of Health as a matter of contractual obligations. The Commission's responsibility was merely to advise the Ministry to exercise caution in the matter in light of the ongoing criminal investigations. The Permanent Secretary Prof. James ole Kiyiapi told the Committee that the Ministry would be guided by the outcome of the KACC case that was awaiting action in due course.

In January 2009, KACC commenced anti-corruption case No.15 of 2009 at Makadara Criminal Courts whereby the Managing Director of Dol International and the associated

companies, Dr. Shadrack Mwititi Ithinji and others, namely; Andrew Oyira Nyambeche, Samwel Mwangi Ndirangu, Zacharia Bolo Awino and Julius Thairu Muraguri were all charged with different offences under the Anti-Corruption and Economic Crimes Act and the Penal Code relating to tendering and procurement of LPOs No.0061843, 0061880, 0061967 and tender award No.SD/KEN/RU-HEA-2/98/25/IS. On 22nd June, 2010, the anti-corruption case No.15 of 2009 at the Makadara Courts was finally determined and all the accused persons were acquitted under Section 210 of the Criminal Procedure Code. I have attached a copy of that court ruling and it is Annex 5.

The Joint Committee made the following observations:-

That arising from the evidence, the Joint Committee makes the following observations and conclusions.

(i) That, switches which Dol International Ltd procured under LPO No.0061843 at a cost of Kshs40.3 million in 2006 had a lifespan and would be expiring by December 2010.

(ii) The civil case on this matter was commenced in 2006 and it is not known when it will be concluded.

(iii) The Committee appreciates the role of KACC in the war against corruption, but was concerned with the time taken by the Commission to investigate this matter and institute criminal proceedings against the suspects.

(iv) The Committee observed that the delay impacted negatively on service delivery in the health sector, which was not in the interest of the public.

As a result of those observations and conclusions, the Joint Committee Sitting made the following recommendations:-

(i) The Ministry of Medical Services should take quick and immediate action aimed at safeguarding public funds from possible loss, considering that some of the goods like the switches will expire by December 2010, barely six months from now.

(ii) The PS, Ministry of Medical Services, should put in place sufficient measures to ensure that procurement of goods and services at the Ministry is transparent and accountable so as to avoid suspicion, leading to unnecessary investigations and court cases that end up delaying the whole process as evidenced in this particular case.

(iii) The KACC should, in future, ensure that investigations and prosecutions on such matters are fast-tracked to avoid inordinate delays which impact negatively on service delivery and, thereby, hurting the country's economic development.

Mr. Deputy Speaker, Sir, I have attached, so that hon. Members can get guided, copies of the minutes of all our three sittings. I have attached the letter from the Ministry of Health that alluded to the procurement that was supposed to be irregular. I have also attached the proceedings of the High Court matter that was used to determine the case. I have also attached a letter from KACC where it indicated that it had no objections for the goods to be received so long as it was done in accordance with the law. I have also attached the final case that led to the acquittal of the Directors of Dol International plus other co-accused where they had been involved in unsuspected criminal case, so that Members debate on this Motion can be fully informed.

With those few remarks, I request that the House passes this Motion as tabled before it.

With those few remarks, I beg to move and ask hon. Chairman of the Departmental Committee of Health to second me.

Dr. Monda: Mr. Deputy Speaker, Sir, I rise to second the Motion on adoption of this Report.

From the onset, let me thank hon. Dr. Khalwale who raised the Question on this transaction on the Floor of this House concerning the supply of equipment and materials for use in our health facilities. I want to register the fact that the transactions here-mentioned that took place in 2006, between the months of January and June, were to cost the Government over Kshs2 billion. These transactions are delayed to date. This threatens to make the public lose enormous amounts of funds.

The orders for these materials were made in 2006, because there was need for the same goods to be used by the public in our health facilities. To mention but a few, we need X-Ray equipment in our health facilities. Many of our hospitals do not have functional X-Ray equipment. This is a fact that Kenyans know. The Ministry of Medical Services placed these orders, knowing that there was need for the materials. The delay in supply of these materials up to now means that Kenyans would continue to suffer. They go to private hospitals to seek the same services that they are supposed to be offered in public health facilities if that equipment were procured.

The orders that were in question were for supply of sutures materials. It is clear that sutures materials do expire. The fact that these materials were ordered meant they were needed. These are the same materials that the public are asked to buy from private chemists, so as to get services.

Mr. Deputy Speaker, Sir, I want to register the fact that lack of these equipment and materials have made Kenyans suffer, while it is in full knowledge of the Ministry that it was their responsibility to deliver these materials that they ordered for using public funds. What is disturbing is the fact that after making these orders, there were confusions on who should be blamed on what. At some point, Government agencies started shifting blames and responsibilities. The Ministry of Medical Services turned their eyes to the Attorney-General and the Kenya Anti-corruption Commission (KACC). According to the correspondences we got in our deliberations, the Attorney-General ran from his responsibilities stating that it was not within his mandate to control the Minister as to whether they should receive the goods or not. The same case happened with the KACC. Therefore, none of the Government agencies were ready to take responsibility and give directions on whether the materials and equipment should be received to ensure that the public does not lose money and get services. The main function of the Ministry of Medical Services is to offer services to the public. They should have hastened the delivery of the materials, so that the public does not suffer. But this did not happen.

Mr. Deputy Speaker, Sir, as I conclude, I want to state that it would be important for the Government to ensure that whenever public resources have been directed to procuring of services, the same should come to close, to ensure the intended service is achieved.

With those many remarks, I beg to second.

(Question proposed)

Mr. C. Onyancha: Mr. Deputy Speaker, Sir, I rise to support this Motion for adoption of the report of the Joint Committees of Public Accounts Committee and the Departmental Committee on Health.

Mr. Deputy Speaker, Sir, I have a little concern on the issue about decision making in Government. As we have heard from our able Chairman, this matter commenced in 2006 and up to date has not come to conclusion for several reasons. The first one is the Ministry itself in

failing to actually make proper procurement procedures. They exposed themselves to questions by the KACC. That made the delay go even further.

Secondly, the KACC itself took up the matter and did nothing for three years. It took them three years to investigate before filing the case. The court took a whole year to make a decision. In total, there is five years gone since this tender was given out and the items in question are about to expire at the end of this year.

Mr. Deputy Speaker, Sir, the public stands to lose Kshs40 million as a result of these delays. These delays are arising from lack of decision making capacity in Government. It is of concern, therefore, that such matters involving people's health and lives should take so long. There is also the issue about the irrevocable letter of credit. My understanding of an irrevocable letter of credit which was issued to Dol International by the Ministry of Medical Services is that it is not revocable. We were unable to understand how, therefore, it was subsequently revoked after the items arrived in the country ready for delivery. These concerns should be addressed further and I hope that these sutures can be accepted immediately and if possible, put to good use before they go to waste.

With those few remarks, I wish to support.

Dr. Kones: Mr. Deputy Speaker, Sir, I also rise to support the adoption of this Report. I want to thank the joint Committees for the good work they did to investigate this matter that came on the Floor sometime last year. When we went through the evidence from the various people who appeared before the Committee, we noted several issues which are of concern as far as public procurement procedures are concerned. We noted that it is possible for unscrupulous suppliers to collude with Government officials at times to pursue deals that may not be in favour of the Government.

In this case, there is no clear mechanism on how the Government can dispose of controversial issues that pertain to tenders. This was a tender that was awarded in 2006, but it has taken forever to be decided. It was the feeling of the two Committees that one way or the other, the Government should make a decision on this matter. This is because the goods that were procured are about to expire. We do not know whether the supplier will go to court thereafter and make huge claims from the Government. We also want the Government to be certain that it has really adhered to procurement procedures. This Report tries to recommend to the Government that there must be a speedy process in making a decision as to whether to pay this supplier or not.

Mr. Deputy Speaker, Sir, may I hasten to state that in my view, there has to be some further investigations from the Government agencies to establish clearly, whether there were any malpractices by either the Government or the suppliers. This is the only way to clear any doubts arising from these transactions.

With those few remarks, I support the Report.

Ms. Odhiambo-Mabona: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute. Before I do so, I want to profusely apologise that I was not in the House when Order No.8 was read out. I would like to indicate at the outset that we have been negotiating with the Minister for Gender, Children and Social Development over certain amendments. That is why this Bill has been coming up severally and has been deferred.

Mr. Deputy Speaker: You have very adequately explained your case to the Chair. It will appear on the Order Paper tomorrow.

Ms. Odhiambo-Mabona: Thank you, Mr. Deputy Speaker, Sir. Actually, that is why the Minister was not here. We were given the impression that the Committee of the Whole House will come tomorrow.

I would like to thank the joint Committees for the Report. One thing that is clear is that there is need for very clear and thorough audit in the procurement process, especially for public goods. However, the concern that has been raised by the joint Committees, which I support, is the inordinate delay in this process, including the court process. This is especially, when you have goods that affect the poorer population of this country. I, therefore, urge the Ministries involved that in future, these processes should be fast-tracked so that the poor of the country do not suffer.

With those few remarks, I beg to support.

Mr. Njuguna: Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to also contribute to this very important Report. First, let me thank the Chairman of the Committee and its Members for developing this very timely Report.

Secondly, I wish to note that we cannot improve the quality of life in this nation unless the required services by wananchi are given timely. Denial of supply of these drugs to Government Ministries is tantamount to reducing the life expectancy of Kenyans. It is, therefore, important that any Government department or unit should perform its functions as expected. If you look at the issue of X-ray equipments which have not been supplied to our hospitals, you will find that it has affected proper health care of our people. That is an issue that ought to have been addressed long time ago.

I also wish to note that there are two bodies that were meant to supply the drugs; that is, Dol International and Associated Companies. They were not able to comply with the terms given. In my view, the continued contract with these bodies must be reviewed for the interest of Kenyans. Again, it is important that the Ministry of Medical Services must at all times take the lives of Kenyans seriously. These drugs were meant to be supplied in 2006 and have not been supplied up to now. This has affected even the productivity of this nation. This is because time and again, you will find people queuing for drugs at the Kenyatta National Hospital and other Government hospitals. We know these are the poor in the society who cannot afford these medicines. Therefore, this matter must be taken seriously if we really want to improve the lives of our people.

Mr. Deputy Speaker, Sir, remitting Kshs2 billion to a company that does not perform is like sabotaging the lives of our people. In my view, this is an issue that needs to be addressed. All relevant Government agencies should be called upon to investigate and act on this matter.

I beg to fully support the recommendations as per this Report.

Mr. Mureithi: On a point of order, Mr. Deputy Speaker, Sir. Could the Mover of the Motion be called upon to respond?

Mr. Deputy Speaker: Indeed, yes. There being no more Member willing to contribute, could the Mover of the Motion respond?

Dr. Khalwale: Mr. Deputy Speaker, Sir, I would like to use this opportunity to thank the Members of the Public Accounts Committee (PAC) and the Departmental Committee on Health for the commitment they demonstrated when we were tackling this matter. I would also like to thank Parliament for the way they have expediently handled this very important matter. I would also like to thank all the hon. Members who have been able to make contributions this morning in support of this very important Motion.

Mr. Deputy Speaker, Sir, as I make these acknowledgements, I would like to raise a great issue of concern that we at PAC come across, on an almost daily basis. It is the issue of co-ordination of Government ministries and departments. That lack of co-ordination ends up giving the impression that there is no respect for decisions made by institutions. Like in this case, we

have the Ministerial Tender Committee. As an institution, they mid-wifed the process of tendering and gave to the person who was most deserving. Somebody did not respect that. Somebody then went to the Public Procurement Complaints Review Board. Again, the Board professionally looked at the complaints and made a decision that things were done above board. Again, because of lack of co-ordination in the Ministry, nobody respected that. Then they went to the Kenya Anti-Corruption Commission (KACC); another institution, which actually wrote to the Ministry and told them that they had no problem in these medical equipment and items being received. Again, nobody took note of that. This again shows lack of co-ordination. Finally, they went on and wasted public funds by taking the matter to court.

It has taken all these years and the court has found the same thing; that right from the very beginning, the Ministerial Tender Committee, Public Procurement Complaints Review Board, KACC and even the recommendations by the Attorney-General were above board. It is important that we become cognizant of the fact that there is so much money being wasted by way of lack of co-ordination.

Mr. Deputy Speaker, Sir, the last thing which we observed is the issue of impunity. How would a senior accounting officer find that there was an irrevocable letter of credit which had been given and then goes on and revokes the same letter? I am glad that it is timely now. The sutchers have not expired and they are now hopefully going to be received by the Minister and they are going to be given to the needy patients in the hospitals so that operations in our theatres can go on.

With those many remarks, I move.

Mr. Deputy Speaker: I cannot see the Government Minister from the relevant Ministry. Would any Minister want to act as the Government responder? Can a senior Minister who is here respond on behalf of the Minister for Medical Services in line with collective responsibility? Minister Chris Obure, you are the only senior Minister who is in the House now. Can you come and respond on behalf of the Government?

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. According to the traditions of this House, the Minister should have come before the Mover of the Motion. So, I urge the Chair to find that he has been overtaken by events and to put the Question.

Mr. Deputy Speaker: Fair enough! Let us hear the Minister. He has been overtaken by events but nonetheless, it does not harm by having him respond. Support the mood of the House.

The Minister for Public Works (Mr. Obure): Mr. Deputy Speaker, Sir, I have listened to the various sentiments expressed. The Government will study the report and take into consideration the various points raised. We think that this is quite regrettable but action will be taken.

Mr. Deputy Speaker: Fair enough! You have helped the cause.

(Question put and agreed to)

ADJOURNMENT

Mr. Deputy Speaker: Hon. Members, given the fact that we do not have any other business and also given that Parliament, both the Front-Benchers and Back-Benchers have not shown a very good spectacle this morning, it is now time to interrupt the proceedings of the House and adjourn until this afternoon, at 2.30 p.m.

The House rose at 10.15 a.m.