

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 6th June, 2000

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

The Economic Survey, 2000.

(By the Minister for Planning)

ORAL ANSWERS TO QUESTIONS

Question No.188

UPGRADING OF LOITOKITOK DIVISION

Mr. Parpai asked the Minister of State, Office of the President what has delayed the implementation of Government decision to upgrade Loitokitok Division to a sub-district.

The Minister of State, Office of the President (Maj. Madoka): Mr. Speaker, Sir, I beg to reply.

Loitokitok is already a sub-district. However, due to lack of funds, the sub-district treasury is not fully operational. As soon as funds will be available, the sub-district will operate like any other.

Mr. Parpai: Mr. Speaker, Sir, could the Minister explain what he means by saying "when funds become available?" Is it in terms of personnel or money, and how much money is this that makes the sub-district Treasury not fully operational?

Maj. Madoka: Mr. Speaker, Sir, it is basically in terms of personnel, but it will be fully operational from 1st July.

Mr. Sungu: Mr. Speaker, Sir, the problems related to the sub-division of locations, sub-locations, divisions and so on, are prevalent all over the country. We have discussed this issue almost in every DDC meeting in the country, and particularly in Kisumu. Is it an exercise in futility that we spend a lot of time discussing these issues without implementation, and is it intended Government policy that this sub-division will take place? If so, when will these sub-divisions take place, particularly in Kisumu where we are supposed to have four new divisions?

Maj. Madoka: Mr. Speaker, Sir, I think I would have wanted to be more specific. Maybe, I will look at the specific divisions in Kisumu District, but as I said, Loitokitok Sub-district will be fully operational in July.

Mr. Sungu: On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to avoid my question? I asked him whether it is Government policy that we carry out an exercise in futility by spending endless hours discussing these matters in DDCs without being implemented.

Mr. Speaker: Order! The Minister is quite in order. You are the one who is out of order. That is not a point of order. That is a supplementary question.

Mr. Parpai: Mr. Speaker, Sir, let me thank the Minister for his answer, and only hope that he means what he is telling the House.

Mr. Speaker: Mr. Parpai, what did you say?

Mr. Parpai: Mr. Speaker, Sir, I would like to thank the Minister for the assurance he has given me. My only prayer is that he sticks to what he has told the House.

Mr. Speaker: We have no provision for thanking Ministers during Question Time.

Next Question!

Question No.068

TELEPHONE FACILITIES FOR
KITHYOKO/EKALAKALA MARKETS

Col. Kiluta asked the Minister for Information, Transport and Communications when he will provide telephone facilities to Kithyoko and Ekalakala markets.

Mr. Speaker: Is the Minister for Information, Transport and Communications in the House?

Next Question!

Question No.033

IMPLEMENTATION OF KEBIRIGO
WATER PROJECT

Mr. Obwocha is not in? Next Question!

Question No.174

AFFORESTATION OF TULIMANI HILLS

Mr. Kalulu: Bw. Spika, tulikubaliana na Waziri anayehusika kwamba atazuru mahali palipo na milima hiyo. Kwa hivyo, ningependa kuliondoa Swali hili.

(Question withdrawn)

Question No.060

STATUS OF KWAMBURI LAND

Mr. Kiunjuri asked the Minister for Lands and Settlement what is the status of Kwamburi land in Nanyuki Town, formerly occupied by squatters.

The Assistant Minister for Lands and Settlement (Mr. Opo): Mr. Speaker, Sir, I beg to request that we wait for the Minister to come, since he is the one who has the answer.

Mr. Speaker: Order! Mr. Opo, where did you ever get the idea that Mr. Speaker waits for Ministers?

The Assistant Minister for Lands and Settlement (Mr. Opo): Sorry, Mr. Speaker, Sir. What I meant to say is that we wait for the second round.

Mr. Speaker: Anyway, I will wait!

Mr. M.M. Galgalo: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister not running away from the collective responsibility rule when he passes the buck to the Minister?

Mr. Speaker: I think he has discharged the little he could.

Next Question!

Question No.050

COMPLETION OF SURVEY WORKS IN IKALAASA

Mr. Wambua: Mr. Speaker, Sir, Mr. Katuku, who is on a trip to the United States of America, requested me to beg the Chair to defer the Question.

Mr. Speaker: Obligated!

(Question deferred)

Question No.054

COMPLETION OF KATITO-HOMA BAY ROAD

Mr. Ojode asked the Minister for Roads and Public Works when he will avail funds to complete Katito-Homa Bay Road (C19), whose construction was discontinued at Kendu Bay ten years ago.

The Assistant Minister for Roads and Public Works (Eng. Rotich): Mr. Speaker, Sir, I beg to reply.

The Ministry will complete Katito-Homa Bay Road as soon as the Homa Bay District Development Committee prioritises the road, and after we have adequately budgeted for it. Meanwhile, the Ministry is taking routine maintenance works on the road to improve it and make it passable.

Mr. Ojode: Mr. Speaker, Sir, this is the most useless answer I have ever heard. This road was prioritised before I was even born, and here is the Assistant Minister talking about prioritization. Is he in order to say that this road has not been prioritised?

Eng. Rotich: Mr. Speaker, Sir, if the road has been prioritised, then it will be completed after it has been adequately budgeted for. At the moment, we are not able to do it because of budgetary problems.

Mr. Ojode: Mr. Speaker, Sir, could the Assistant Minister tell the House how much money is needed for recarpeting of the part which has already been tarmacked and doing the one which was discontinued?

Eng. Rotich: Mr. Speaker, Sir, works on the road were never discontinued. The contract was for the road from Katito to Kendu Bay, and not up to Homa Bay.

Mr. Raila: Mr. Speaker, Sir, the contract for this road was awarded for Katito-Homa Bay Road, and according to the road map of Kenya, this Road C19 is shown as a tarmacked road from Katito to Homa Bay. Is the Assistant Minister in order to mislead the House that the contract was for the road from Katito to Kendu Bay only, while the contractor pulled out of the road because of non-payment?

Eng. Rotich: Mr. Speaker, Sir, I think I am in order. The information I have is that the contract was for the road up to Katito and not Homa Bay. This was about 40 kilometres, and it has been finished.

Mr. Sungu: Mr. Speaker, Sir, you would agree with me that for a road to stall for ten years is, indeed, a very long time. For the last five years, the Ministry has been collecting Fuel Levy funds from motorists. Could the Assistant Minister undertake to use those funds to do that road once and for all, so that people can use the road?

Eng. Rotich: Mr. Speaker, Sir, according to the records we have, the road never stalled. It was done up to Katito as scheduled.

(Loud consultations)

Mr. Speaker: Order! Order, hon. Members! I know this is the first day after our recess, but that is not an excuse to disrupt business. You can say hallo to each other quietly.

Mr. Ojode: Mr. Speaker, Sir, could the Assistant Minister consider allocating funds to do the recarpeting from Katito to Kendu Bay and then get funds from the Fuel Levy Fund to do the Kendu Bay-Homa Bay Road?

Eng. Rotich: Mr. Speaker, Sir, we shall evaluate and find out the cost implications, and if it is within our budget, we shall do that. However, the section between Katito and Homa Bay will be spot-gravelled. A contract has been awarded to Kichauri Construction Company through the *El Nino* Emergency Fund, funded by ADB.

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

Mr. Speaker: Order, Mr. Ojode! You are taking too much liberty of the House! Next Question, Col. Kiluta, for the second time!

Mr. Ojode: Mr. Speaker, Sir, my Question is on the tarmacking of the road and not gravelling. The Assistant Minister is misleading the House and you are in the Chair! Why do you not order him to answer the Question as asked on the Order Paper?

Mr. Speaker: I cannot ask him to do that because I am not the Questioner! You are the Questioner and I am the Chair. You can ask him that Question!

Mr. Ojode: Mr. Speaker, Sir, my Question was a straightforward one. I asked whether the Assistant Minister is aware that the road from Kendu Bay to Homa Bay has not been tarmacked. If he is aware, when is he going to avail the funds for the tarmacking and not gravelling of that road?

Eng. Rotich: Mr. Speaker, Sir, I am aware that 33 kilometres of that road, up to Homa Bay, are gravelled. However, at the moment, the budgetary provisions do not allow us to tarmac the road. But as soon as we are able, we shall consider it.

Mr. Speaker: Next Question, Col. Kiluta, for the second time!

*Question No.068*TELEPHONE FACILITIES FOR
KITHYOKO/EKALAKALA MARKETS

Col. Kiluta asked the Minister for Information, Transport and Communications when he will provide telephone facilities to Kithyoko and Ekalakala Markets.

Mr. Speaker, Sir, I would like to register the fact that I have not been given any written reply.

The Assistant Minister for Information, Transport and Communications (Mr. Keah): Mr. Speaker, Sir, I beg to apologise for coming in late. Secondly, I am aware that the hon. Member does not have the written answer, but it is on its way because we wanted a perfect answer.

Mr. Speaker: Of what use will it be after the Question has been answered?

The Assistant Minister for Information, Transport and Communications (Mr. Keah): Mr. Speaker, Sir, I now have the correct answer and I beg to reply.

Mr. Speaker, Sir, Telkom Kenya Limited has planned to provide Kithyoko Market with telephone facilities within the 2001/2002 Financial Year. This is because the current financial year could not have accommodated the facility because no land was available. However, land has now been provided and in the 2001/2002 Financial Year, we will construct a connectivity line from Mwingi to Kithyoko Market, and also construct a rural exchange at Kithyoko Market, comprising of a building, provision of electricity and the equipment for the project, as well as providing telephone distribution network lines.

Mr. Speaker, Sir, Telkom Kenya Limited availed this opportunity, through my Ministry, to thank the councillors and other leaders of the area for allocating a plot for this purpose through their letter of 10th February, 2000. Telkom Kenya Limited is now awaiting a title deed for the plot.

Ekalakala Market is already in the Telkom Kenya Limited programme, awaiting survey to establish the best type of service to serve the community. This survey is to be provided in the Telkom Kenya Limited Development Programme in the period 1999/2000 to 2004/2005. It would not be possible at this juncture to specify the exact date for implementation of the Ekalakala Market facility.

Col. Kiluta: Mr. Speaker, Sir, I am very disappointed with that answer because this issue started way back in 1995. The Ministry's excuse at that time was that they did not have land but we provided them with land and they stated that they would put up that facility this year. But you have heard him say here that they will not start it until the next financial year. Where do you get money to fuel 20 vehicles like you did over the weekend? The President was accompanied by a Minister who went to call me names at Masinga and yet, when we want facilities, the Government says there is no money. Where did you get the money which you used to travel to Masinga over the weekend? Why did you not give us that money?

Mr. Speaker: Order, Col. Kiluta! You are addressing the Minister for Information, Transport and Communications and I suppose he does not fuel the President's cars. So, your question should be directed to that extent.

Col. Kiluta: Mr. Speaker, Sir, I am addressing the Government. If the Government can afford to fuel 20 vehicles---

Mr. Speaker: Order, Col. Kiluta! If you want to answer yourself, then go ahead! Proceed, Mr. Keah.

Mr. Keah: Mr. Speaker, Sir, as I said, the land was availed in February, 2000 and our financial year begins in July 2000 and ends in 30th June, 2001. We could not have provided the financial accommodation within Telkom Kenya Limited for the project to be in place within this financial year. Therefore, having received the land, it will now be provided in the year 2001/2002, QED (?)

Mr. Ndilinge: Mr. Speaker, Sir, arising from what the Assistant Minister has said, could he confirm or deny that this project was to start by 1995, but because the Government treats the Kamba community like a robot which is only of use during elections---You have been telling the hon. Member that this project will be undertaken when funds will be available. Could you tell us when these funds will be available?

Mr. Keah: Mr. Speaker, Sir, in fact, this project was not conceived in 1995 but 1994, according to the records that I have. But if I were to give the details of the political wrangles that have pervaded this project, it would be embarrassing to some hon. Members here. I would rather we accept the fact that land is available now, and they should accept the proposal that has been given, and we stop at that. Otherwise, the information I have is embarrassing.

Mr. Speaker: Order, hon. Members! I would like to bring this to the attention of Mr. Ndilinge. He should look at Standing Order No.37(3), which states as follows:

"A Question shall not contain any arguments, inference, opinion, imputation or controversial, ironical or offensive expressions or epithet."

So, set aside your opinions and ask questions.

Col. Kiluta: Mr. Speaker, Sir, the Assistant Minister has stated that he has not told the story behind this Question. So, he has not told us what happened. What happened here is that this facility was supposed to have been done in 1994---

Mr. Speaker: Can you ask your question? I have just read the relevant Standing Order! I am sure you are interested in hon. Col. Kiluta's Question. Question Time is supposed to prod Ministers to get the information and press for action. It is not a place where we come and spur on arguments. I have just read to you Standing Order No.37(3). This is not argument time. So, ask your question!

Col. Kiluta: Could the Assistant Minister confirm or deny that the delay has been occasioned because his men who came to instal the facility were compromised by one of the businessmen there, until I wrote a letter bringing this to their attention? So, they were embarrassed because I revealed the truth and they decided not to put up the exchange facility.

Mr. Keah: Mr. Speaker, Sir, I was avoiding to mention what bedeviled this project, but since he wants me to say it, then I will say it. The officers from Telkom Kenya Limited had already done 50 per cent of the project when hon. Col. Kiluta stopped it for his own personal reasons.

Mr. Ndilinge: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to mislead this House by claiming that it is hon. Col. Kiluta who stopped the project, when, in his earlier reply, he said something which is quite different from what he is saying now?

Mr. Speaker: Order, Mr. Ndilinge! If you stand on a point of order, please, be very clear. Do you want me to rule on something which I do not understand?

Col. Kiluta: Mr. Speaker, Sir, does the Assistant Minister deny or agree that it is I who brought the whole mess to their attention after their officers were compromised?

Mr. Speaker: May I ask the two of you, what are we dealing with? Are we dealing with the provision of telephone services or the conduct of Col. Kiluta? I now rule that, that will not be answered! Just confine yourself to the Question on the provision of telephone services.

Col. Kiluta: Mr. Speaker, Sir, could he tell us what he is going to do to the officers who were compromised, hence occasioning the delay in the implementation of the project?

Mr. Keah: Mr. Speaker, Sir, there is no disciplinary action that will be taken against the officers because there is nobody in Telkom Kenya Limited who was compromised.

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

Mr. Speaker: Order, Mr. Angwenyi! The Chair expects you to conduct yourself with decorum. Next Question, Mr. Obwocha!

Mr. Obwocha: Mr. Speaker, Sir, I apologise for coming late. I would also like to state that I have got a written answer.

Question No.033

IMPLEMENTATION OF KEBIRIGO WATER PROJECT

Mr. Obwocha asked the Minister for Water Development:-

(a) whether he is aware that residents of Kebirigo Trading Centre in Nyamira District do not have clean drinking water; and,

(b) when he will assist the residents to access clean drinking water through the locally initiated Kebirigo Water Project.

The Minister for Water Development (Mr. Ng'eny): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware.

(b) My Ministry will give technical support to the self-help water project of Kebirigo to supply clean drinking water to the residents of Kebirigo Trading Centre. However, Kebirigo Trading Centre is covered under Nyamira Water Supply, presently operating below designed capacity, and its coverage has been earmarked for rehabilitation under the *El Nino* Emergency Programme.

Mr. Obwocha: Mr. Speaker, Sir, this is absurd! This Ministry promised Kenyans clean water by the year 2002. If you cannot provide water even to trading centres, how are you going to provide to the local mwananchi? He has said that this project is earmarked for rehabilitation under the *El Nino* Emergency Programme.

Could he tell this House how much money has been set aside for the rehabilitation of this programme?

Mr. Ngeny: Mr. Speaker, Sir, the estimated amount of money required for that rehabilitation is Kshs40 million.

Mr. Anyona: Mr. Speaker, Sir, it is the responsibility of this Ministry to provide Kenyans with water. Wananchi are merely helping to initiate the projects on Harambee basis and they have no resources with which they can run the projects. Could the Ministry consider taking over this project as a Government project?

Mr. Ngeny: Mr. Speaker, Sir, while it is true that the Government should assist, on the other hand, where wananchi are ready and prepared to undertake the management and the operations of water schemes, the Government is ready to hand over those schemes. In this case, according to information available, the Kebirigo society is prepared to operate and manage that water scheme.

Mr. Obwocha: Mr. Speaker, Sir, the Minister has also said that this project is operating below the designed capacity. Could he also tell this House what the Ministry is doing to achieve the designed capacity so that people of Nyamira and Kebirigo areas can benefit from this scheme?

Mr. Ngeny: Mr. Speaker, Sir, the scheme presently being considered for expansion takes care of all those requirements. It is projected, for at least five years, to take care of any other eventuality.

Mr. Murungi: Mr. Speaker, Sir, the Minister has said that his Ministry will give technical support to this water project. We have very many water projects in this country where this Ministry has promised to offer technical support. Mr. Speaker, Sir, could the Minister tell the House what this technical support includes, and especially whether it includes the provision of pipes?

Mr. Ngeny: Mr. Speaker, Sir, technical support means the provision of survey. The survey would include the amount of water required for certain areas; the amount of water available; who would use that water; the types of pipes; pumps, and all those other issues associated with the design, up to the completion of that water scheme. It does not include financing.

Question No.060

STATUS OF KWAMBURI LAND

Mr. Kiunjuri asked the Minister for Lands and Settlement what is the status of Kwamburi land in Nanyuki Town, formerly occupied by squatters.

The Minister for Lands and Settlement (Mr. J. Nyagah): Mr. Speaker, Sir, I wish to apologise to the House for being late. I was not there when this Question was first called out.

Mr. Speaker, Sir, I beg to reply.

Kwamburi land in Nanyuki Municipality has been planned for the military, residential and commercial purposes.

Mr. Kiunjuri: Mr. Speaker, Sir, the answer given by the Minister is unconstitutional. Section 82 of our Constitution provides that no Kenyan shall be discriminated against by virtue of his status. The land in question was given by the Government to the squatters between 1963 and 1967. There was an agreement--

Mr. Speaker: Order! Mr. Kiunjuri, Question Time is for you to ask the Minister things that you do not know. If you know all that, why are you asking?

Mr. Kiunjuri: Mr. Speaker, Sir, this Question has generated a lot of interest. This is the fourth time that the Minister has evaded answering this Question and there is some interest. People will have to die out of this Question. In 1984, Nanyuki Municipal Council, through a full council meeting, made an agreement with the squatters, that they would not be removed from the said land until the council had another piece of land to settle them on, and settlement plans were accomplished. Why did the Government decide to repudiate the agreement?

Mr. J. Nyagah: Mr. Speaker, Sir, I wish to confirm several things. The last time this Question came up, two days before the end of the last Session, the hon. Member for Laikipia East was in court. He telephoned the House and asked that this Question be not answered because he wanted to personally be there. At least, that was the official information that we were given. I just wanted to be sure that we are clear that, that is why the Question has come up again.

I wish to confirm that this land has not yet been allocated. Out of the approximately 800 hectares, 170 hectares have been set aside for settlement of Kenyans. I am confident that some of those Kenyans will be the squatters hon. Kiunjuri has talked about.

Mr. Wamae: Mr. Speaker, Sir, could the hon. Minister tell us why the squatters have been removed from there? If they will be settled there, why have they been removed from there? Now, these squatters are settling in Nanyuki Town.

Mr. J. Nyagah: Mr. Speaker, Sir, following the request of the Opposition Members of Parliament, the Government banned allocation of land to the public last July. So, part of the problem that I have at the moment is that, given that there is a ban on Government land following their request, it is very difficult for me to conclude this particular exercise. I have finished everything, and the only thing that is remaining, at the moment, is sorting out the applicants, and the applicants include those squatters. This needs to be done so that we can finish this exercise, and allocate to Kenyans this land, including some of the squatters.

Dr. Ali: Mr. Speaker, Sir, could the Minister confirm or deny that some of this land was allocated to senior Government officials and that they have allotment letters?

Mr. J. Nyagah: Mr. Speaker, Sir, I will repeat that because of the ban, I am in an unfortunate situation due to my inability to conclude the allocation of this land. It has not been allocated, but we have planned it, so that I know where the wananchi and the military will occupy. I have not concluded the exercise and so it is not fair to accuse us of allocating the land when we have not. The hon. Member should be lobbying to ensure that his squatters are included in the list that will be used to allocate the land to Kenyans.

Mr. Ndicho: Thank you, Mr. Speaker, Sir. I thought all along that the Minister for Lands and Settlement would be influenced by the ranging debate regarding our land, and which is also touching on squatters and the landless. You have heard his answer. He has said that this piece of land will be allocated to the military and for residential and commercial purposes. We know that the poor people in this country will never get any land for residential and commercial purposes there. It will only go to the rich people. He has said that out of the 800 hectares, only 170 hectares will be allocated to the squatters. This is an area that I visited in Nanyuki Town when I was looking for you to say "hey", and I saw the desperate situation of these squatters. Given that situation, could the Minister now consider doing away with the residential and commercial purposes, and giving the entire area to the squatters? This is because this area belongs to the squatters. If the land is allocated for the residential and commercial purposes, it will still go to the rich people.

Mr. J. Nyagah: Mr. Speaker, Sir, as I have stated on three occasions, the squatters will not be forgotten. However, when the allocation process begins, Kenyans will be considered. I want to assure this House that some of the squatters will be included, in keeping with the Government policy of accommodating squatters and---

(Mr. Ndicho stood up in his place)

Mr. Speaker: Order! Order, Mr. Ndicho! You have no business standing there like this is a stadium. It is not! You only have the mouth to speak when given permission by me. I hold your mouth. So, please, recognise me to allow you to speak.

Mr. Kiunjuri: Mr. Speaker, Sir, how can the Minister tell this House that squatters are supposed to apply for the land while it belongs to them? There are 366 families which were evicted from the land. Could he now withdraw that statement and confirm to this House that the land will only be given to genuine squatters, and there should be no question of applications being made?

Mr. J. Nyagah: Mr. Speaker, Sir, let me remove a few misconceptions. The bulk of the people who have benefited from land allocations by the Government since Independence are the poor. That is a statement of fact. If you count the acreage you will discover that this is true. I know several rich people here and they have large acreages of this land. I know that. However, on average, in terms of--- If you want me to table the list, I will do it one of these days, if you challenge me.

Mr. Kihoro: On a point of order, Mr. Speaker, Sir. I think it is disinformation to state that most of the squatters and landless people have benefited from land allocations in this country since Independence. It is totally misleading because, in fact, if that was the case, there would be no squatters, landless and homeless people in this country.

Mr. Speaker: Order, Mr. Kihoro! That is not a point of order. It is a point of argument.

Hon. Members: On a point of order, Mr. Speaker, Sir!

Mr. Speaker: Order! I think I have become very lenient today. It is the first day, but, please, let us stick to the rules now. If you have a question, please, put it. If you have an opinion, look for the right forum and express that opinion fully.

Mr. Kibaki: Mr. Speaker, Sir, for the avoidance of doubt, it is true this particular land was given to the squatters in the years 1963 to 1965. Now, that is a fact which the Minister cannot change because it is a historical one. The question that I want to ask him is: At what time did he change that fact? He is now telling us that some land will be given to some other squatters, and for those who were given the land initially, only a few of them will benefit. This

designates a change of mind to rob those who were given the land in 1963, 1964 and 1965, and to now give it to new people. That is actually the centre of this issue.

Mr. Speaker: I know that you know about this issue because you know the history of Nanyuki. Can the Minister be honest? At what time did he change his mind to rob those who were given the land in 1963 to 1965, to now give it to new people, including the military and everybody else? Why can he not get land for the military from somewhere else?

Mr. J. Nyagah: Mr. Speaker, Sir, I wish to confirm the following; that many Kenyans, from time to time, have been allocated land on a temporary basis. When permanent land in settlement schemes and elsewhere has been found, we have solved the problem and issued them with title deeds. So, in this case, I am aware that on a temporary basis, these people were put in that corner. We are busy looking for where to house them, and I would urge the Member of Parliament to ask the squatters, when the ban is lifted, to apply for this land. At the moment, the other complication I have is that they have taken the Commissioner of Lands and the Nanyuki Municipality to court. I think they should also know that by going to court, they might jeopardise the discussions that are going on. However, I would like the squatters to apply, and we will consider them.

Mr. Ndicho: On a point of order, Mr. Speaker!

Mr. Speaker: Order! Questions by Private Notice. Hon. Ochilo-Ayacko!

Mr. Kiunjuri: On a point of order, Mr. Speaker, Sir. I have not finished with my Question.

Mr. Speaker: Order, Mr. Kiunjuri!

Mr. Ndicho: On a point of order, Mr. Speaker, Sir!

Mr. Speaker: Order, Mr. Ndicho! Next Question!

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

The Minister is denying that the land is not allocated while I have allotment letters and a list of those allocated this land. Some are in prison; others are dead, while others are serving officers in this Government. These are: Mutuma Kathurima, Fares Kuindwa, Solomon Boit, Mr. Saleh, the District Commissioner, Kisii; Joseph Korir, District Commissioner; *et cetera*. The list goes on and on, and I can table it and the original letters of allotment. How can the Minister mislead this House?

(Applause)

I challenge the Minister, and I will table the list on Tuesday. Could he deny or confirm this?

Mr. J. Nyagah: Mr. Speaker, Sir, I am not aware of the list that he has just talked about. I would be very happy to see it and take appropriate action.

Hon. Members: On a point of order, Mr. Speaker, Sir!

Mr. Speaker: Order! We must make progress.

QUESTIONS BY PRIVATE NOTICE

ACTION AGAINST MIGORI OCPD

Mr. Ochilo-Ayacko: Mr. Speaker, Sir, I beg to ask the Minister of State, Office of the President the following Question by Private Notice.

(a) Is the Minister aware that the OCPD, Migori District, and the OCS, Awendo, have declined to allow public functions organised by the area Member of Parliament?

(b) How is the Member of Parliament going to organise his public functions if he must submit to the discretion of the police?

(c) What action is the Minister considering against these officers?

The Minister of State, Office of the President (Maj. Madoka): Mr. Speaker, Sir, arising from the answer I gave the hon. Member, he feels that he has additional information which will help me give him a more detailed answer. So, we have agreed that this Question, be deferred.

Mr. Ochilo-Ayacko: Mr. Speaker, Sir, since this is a very important Question touching on the security and conduct of business of a Member of this House, I agree that the Question be postponed to Tuesday next week, so that the Minister can give me a better answer.

Mr. Speaker: Very well; the Question is deferred to next week.

(Question deferred)

Next Question, Mr. Muiruri!
DEFILING OF MINOR BY POLICE OFFICER

Mr. Muiruri: Mr. Speaker, Sir, I beg to ask the Minister of State, Office of the President, the following Question by Private Notice.

(a) Is the Minister aware that on 14th April, 2000, at about 11.00 p.m., an Administration Police Officer, namely David Ngugi, forcibly defiled a ten-year old girl at Ngorongo Village, Chania Location, in Gatundu North Division and the matter was reported to the OCPD, Thika?

(b) What action has the Minister taken to have the officer arrested and charged in court?

The Minister of State, Office of the President (Maj. Madoka): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that APC David Ngugi is alleged to have defiled a ten-year old girl on the night of the 15th, and not on the night of the 14th.

(b) The suspect was arrested and charged with the offence and the matter is now in court.

Mr. Muiruri: Mr. Speaker, Sir, I have just received the Minister's answer. However, when was he arrested? This is because I asked this Question three or four days before we went on recess. When was this man arrested? Could the Minister confirm that this man was arrested about three weeks after the incident and after I asked this Question in Parliament?

Maj. Madoka: Mr. Speaker, Sir, he was arrested on 11th May and charged in court on 17th May.

Mr. Ndicho: Mr. Speaker, Sir, the Minister has said that this fellow defiled this girl on 15th April and he was arrested on 11th May, and yet this incident was reported to the OCPD immediately. This is one of the many cases happening all over this country. Can the Minister tell us what occasioned the delay from 15th April to 11th May, when the case was reported almost immediately?

Maj. Madoka: Mr. Speaker, Sir, the suspect went into hiding. We had to look for him until we arrested him.

Mr. Speaker: Hon. Muiruri, I hope you will not go to the details of the case!

Mr. Muiruri: No! Mr. Speaker, Sir, this poor little girl is an orphan. She lives with her elder sister in the same room---

Mr. Speaker: Order, hon. Muiruri! As much as I would like you to ventilate on this, we do not want you to go to the background of the case because that should happen in court and not here. You are likely to prejudice what happens in court. It is called *sub judice*. So, could you keep clear of it?

Mr. Muiruri: Mr. Speaker, Sir, what I am saying is that, this is a very pathetic case. The girl is an orphan and her mother died sometime ago!

Mr. Speaker: Order, hon. Muiruri! In other words, what you are attempting to do is to tell the magistrate who is trying that case to go ahead and find the person guilty! In essence, that is what you are trying to do. You are not allowed to do that. You are getting into an area that you are not competent. I will overrule that question!

Mr. Muiruri: Mr. Speaker, Sir, is the Minister aware that the same policeman is still in uniform and working? Nothing administrative has been done against him. The man was not hiding; he was protected by the corporal in charge of that police post. That is not the first thing that has happened in that area, and nothing has ever been done!

Maj. Madoka: Mr. Speaker, Sir, I am not aware that he is still in uniform. I will certainly investigate that.

DETENTION OF PATIENTS AT KNH

Mr. Muchiri: Mr. Speaker, Sir, I beg to ask the Minister for Medical Services the following Question by Private Notice.

(a) Is the Minister aware that Mr. Dickson Oduor Onyango, ID.No.0645397, and Ms. Margaret Ngoiri Mureiithi, ID.No.0650940, have been detained at the Kenyatta National Hospital (KNH) for several days for failing to pay hospital charges?

(b) What is the Government position over poor Kenyans who cannot afford cost-sharing charges in hospitals?

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

(a) I am not aware that Mr. Dickson Oduor Onyango and Ms. Margaret Ngoiri Mureiithi have been detained at the KNH for failing to pay hospital charges.

(b) The Government has put in place a policy of waivers and exemptions for those who cannot afford the cost of treatment in public hospitals.

Mr. Muchiri: Mr. Speaker, Sir, I am very disappointed by the answer given by the Minister. Everybody in this country knows that there are thousands of Kenyans detained in Government hospitals for non-payment of hospital

charges. The Government hospitals are now charging title deeds and demanding tangible security---

Mr. Speaker: Mr. Muchiri, put those questions straight!

Mr. Muchiri: Mr. Speaker, Sir, my question is: Could the Minister order that all the persons, title deeds and tangible securities detained in Government hospitals be released forthwith?

Dr. Anangwe: Mr. Speaker, Sir, the hon. Member asked me a specific Question. He has now deviated from that specific Question whose answer I have already given. I am expecting to be probed on it. I have got facts on it here, but he has now gone into generalities.

But let me state that the Government policy is that, those who cannot afford to pay for treatment cannot be denied treatment. No hospital, according to the Government policy, is allowed to detain anybody. The hon. Member should come up with a specific incident; bring the in-patient number; the name of the hospital and the name of the patient, and I will be willing to be helpful!

Mr. Ndilinge: Mr. Speaker, Sir, now that the Minister has been made aware that there are two patients who are detained at the KNH, and we all know there are others, could he kindly send out a circular to all Government hospitals instructing them that no single patient should be detained for non-payment of hospital charges? If there is any patient detained, he or she should be released forthwith.

Dr. Anangwe: Mr. Speaker, Sir, let me assure the hon. Member that, in respect of this particular Question, the two patients have not been detained. What happened is that the said Mr. Onyango was admitted at the KNH on the 9th of March, 2000, and was discharged on the 28th of March, 2000. But on the 29th of March, he absconded and never told anybody that he was leaving. He just disappeared into the thin air. On the other hand, Ms. Margaret Ngoiri Mureiithi was admitted on the 5th of April, and on 5th of May, without being discharged, absconded. So, the issue of being detained does not arise. In fact, I have a problem of tracing them to explain what happened. We need to recover the charges. It costs money to run health services. Until and unless I am convinced that they were unable to pay, I cannot exempt them. We might not be able to discuss about the exemptions and waivers if they are not traced.

Mr. Muchiri: Mr. Speaker, Sir, now that the Minister has said that the Government has a policy of waiver for the poor people who cannot afford to pay the charges, could he inform the House who are the recommended people; whether Members of Parliament, councillors or headmen should write to the hospitals and certify that a particular patient is a poor person and cannot afford to pay the hospital charges?

Dr. Anangwe: Mr. Speaker, Sir, we cannot operate the way the hon. Member has suggested. When it comes to exemptions, we have procedures in hospitals. For the benefit of the House, let me clarify that on exemptions, the following people can be exempted: A child under the age of five years; anybody being admitted after the same episode within 40 days; patients from charitable and destitute homes; patients or clients attending family planning clinics; those suffering from STI and HIV/AIDS; those suffering from tuberculosis and leprosy, prisoners and persons under police custody; those on upward referral and those from the National Youth Service. Also, after 14 days, a patient may be exempted on discharge in in-patient cases.

On waivers, there is a system. It is not automatic. There are social workers who are trained to assess each particular case. Until and unless they reach that kind of decision, it cannot be automatic. So, the procedure the hon. Member has suggested is totally unacceptable.

Mr. Speaker, Sir, to underscore the point that the hospitals do give some waivers and exemptions, in 1998/99 alone, the KNH waived or exempted fees amounting to Kshs65 million.

MISAPPROPRIATION OF FUNDS BY CHIEF OFFICERS

Mr. Otula: Mr. Speaker, Sir, I beg to ask the Minister for Local Government the following Question by Private Notice.

(a) Is the Minister aware that the money from the Local Government Transfer Fund (LGTF), which was given to Oyugis Town Council, has been misappropriated by the chief officers?

(b) What action is the Minister taking against the said officers?

The Assistant Minister for Local Government (Mr. Sirma): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware.

(b) The council has already suspended the Town Clerk and the Treasurer, for being implicated in the misappropriation of the funds. In addition to the action already taken by the council, I have ordered a full audit of the council's books of accounts. I am expecting a report of the overall performance of the council, and especially the involvement of the two officers in the misappropriation of the LGTF funds. Those implicated in the report will be dealt with in accordance with the laid down procedures.

Mr. Otula: Mr. Speaker, Sir, the LGTF money was supposed to be used on specific areas within the council.

Now that the Assistant Minister has confirmed that the money was misappropriated by his own officers, could he confirm to the House that the same amount of misappropriated money will be given to the council?

Mr. Sirma: Mr. Speaker, Sir, the Ministry cannot provide more money to the council since the money was used by the officers for different purposes. Although the money was not used for the intended purpose, according to the Local Authority Transfer Fund Act, a mistake like that should have warranted the Ministry to suspend giving any more funds to that council; but since there was no minute prepared by the councillors on the same, we are not going to punish the council, instead we are going to deal with the officers, including dismissing them.

Mr. Raila: Mr. Speaker, Sir, the Assistant Minister has confirmed to this House that the money was misappropriated by his officers. The local authorities do not employ chief officers; they are employed by the Ministry. Why does the Assistant Minister want the people of Oyugis to suffer and the council to bear the burden of the theft that has been performed by its officers?

Mr. Sirma: Mr. Speaker, Sir, the money which was used by the officers was not just approved by the council, but it was used on reimbursements, because the council had taken money from the DC's office. Some money was used to pay salaries to the councillors and staff. But the intended purpose was supposed to be for the payment of the NSSF and Provident Fund, which was not done. Also contributions for PAYE, the Kenya Local Authority Workers Union and payments of pending salaries were not paid. The debts which had already been incurred by the council were not cleared. These officers misused the money instead of looking for other sources of revenue to pay these debts. But since they had used the LGTF funds irregularly, that is why disciplinary action is going to be taken against them.

Mr. Raila: On a point of order, Mr. Speaker, Sir. The Assistant Minister said in his answer that, he has ordered full investigation of the council finances. Now he is telling the House that, he actually knows how the money was used. Is he in order to mislead this House that, this money was stolen and that he has ordered an audit team to investigate, when, in fact, he knows how this money was used?

Mr. Speaker: That is not a point of order!

Mr. Sungu: Thank you very much, Mr. Speaker, Sir. I would like to thank the Assistant Minister for a very good answer. I think that is a fact. But the main issue here is that, cases of misappropriation of funds in local authorities have become rampant and endemic in this country. What positive action is going to be taken? Could the Assistant Minister undertake to have these officers charged in a court of law and have them refund the money that was misappropriated?

Mr. Sirma: Mr. Speaker, Sir, since we have launched a new audit--- This is just a provisional report which we are acting upon. Once a full report has been delivered to the Ministry by the audit team, disciplinary action will be meted out on the officers, including dismissal and probably charging them in a court of law.

Mr. Wamae: Mr. Speaker, Sir, it has already been stated that, these officers spent the money in an unauthorized manner, a thing which is very common in local authorities. What is the Assistant Minister going to do to ensure that, in future, these chief officers do not misappropriate the council funds? Was there a resolution of the council for this money to be spent the way they did?

Mr. Sirma: Mr. Speaker, Sir, the audit teams which have been put in place by the Ministry are going to monitor the expenditure of the local authorities money and special reports are going to be forwarded to the Ministry from time to time. We are not going to sit back and watch the chief officers misappropriate the public funds.

Mr. Speaker: Very well. Next Order!

POINTS OF ORDER

NON-PAYMENT OF DUES TO COFFEE FARMERS

Mr. Ndwiga: On a point of order, Mr. Speaker, Sir. I stand on a point of order to seek a Ministerial Statement from the Minister for Agriculture. The issue is about lack of payment of coffee money to the farmers.

In the last two months, coffee delivered to the Coffee Board of Kenya and sold has not been paid for. There is a lot of hardship facing the farmers because their children have been sent away from schools. There is a lot of poverty in coffee farming areas because coffee has been sold, but money has not been remitted to the farmers. It is even worse when we get to hear that the Government is now borrowing coffee farmers' money. We need a clarification! This is because coffee is sold in the auction and money is paid within seven days. But for two months farmers have not been

paid and rumour is doing the rounds that the Government is---

Mr. Speaker: Order, Mr. Ndwiga! Mr. Ndwiga, you stood correctly to seek a Ministerial Statement. The minute you propagate rumour, you are out of order! So, please, do not propagate rumour here!

Mr. Ndwiga: Mr. Speaker, Sir, since the information is emanating from the farming community, and they tell us that their money is being borrowed to pay salaries by the Government, this is very serious because, whereas the Government is using their money, their children are not going to school. Could we, therefore, get the Minister to clarify this position?

Mr. Speaker: Is the Minister for Agriculture here?

An hon. Member: He is not here!

GRAZING ON SMALL-SCALE HOLDINGS
BY ISIOLO HERDSMEN

Mr. Mwiraria: On a point of order, Mr. Speaker, Sir. I rise to seek Ministerial Statements from the Minister of State, Office of the President, in charge of Internal Security, on the following issues.

About ten days ago, herdsmen from Isiolo drove their camels and cattle into small-scale holdings in three locations of North Imenti, where farmers are struggling to eke out a living. When the farmers went to ask these people why they were grazing on their small shambas, they were shown AK-47s and they shut up. This is a very dry season and the farmers have been unable to grow anything. Those who have gone out and brought water to their shambas are losing everything to the camels and cattle. Could the Minister tell this House when he proposes to move these illegal grazers from Ntirimiti, Kirua, and Rwarera Locations which border Isiolo?

PROVISION OF FAMINE RELIEF
TO THE STARVING

Mr. Speaker, Sir, I would also like to seek a Ministerial Statement from another Minister when the Government proposes to give the already starving people famine relief food?

GOVERNMENT POLICY ON GRAZING
IN CATCHMENT AREAS

Finally, I would like to hear from the Minister for Environment what the Government policy is on grazing in catchment areas, particularly, on Mt. Kenya.

(Applause)

I would also like to know whether we prefer to save animals and let people die when water dries up, and whether grazing in the forest is open to all Kenyans living around the mountain. Thank you, Mr. Speaker, Sir.

Mr. Speaker: Is there a Minister to respond?

Mr. Mwenje: The Chair should catch our eyes on this side!

Mr. Speaker: Order! By the way, Mr. Mwenje, there is no point of you asking Mr. Speaker to recognise you on a matter you handed over to Mr. Speaker only 45 minutes before time of the sitting of---

Mr. Mwenje: On a point of order, Mr. Speaker, Sir!

Mr. Speaker: Order! Mr. Mwenje, it does not pay for you to become unnecessarily quarrelsome to Mr. Speaker. The law requires you, for example, if you want, to move any Motion under Standing Order No.20, to hand over to Mr. Speaker that notification two hours before the sitting. Therefore, I am seeing, first of all, Mr. Oloo-Aringo.

Mr. Mwenje: Mr. Speaker, Sir, I verbally told you more than three hours ago. I gave you this notice that---

Mr. Speaker: Order! Order! Mr. Mwenje, if you really just want to argue and waste your time, I will see you. But there is a difference, for your information, between handing over a written notification to Mr. Speaker and seeing Mr. Speaker. Those are two different things.

(Mr. Oloo-Aringo stood up in his place)

Just a moment, Mr. Oloo-Aringo. Mr. Minister, are you prepared to respond to Mr. Mwiraria?

The Minister of State, Office of the President (Maj. Madoka): Mr. Speaker, Sir, I think there are three of

us involved. I would agree to make a Ministerial Statement on the section which concerns my department next week.

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. Hon. Mwiraria has raised a very serious issue---

Mr. Speaker: Order! Order! Mr. Ndicho, do you want to take over the management of the House from the Back Bench there?

Proceed, Mr. Oloo-Aringo?

KILLING OF SERGEANT OCHIENG' BY APs

Mr. Oloo-Aringo: Thank you very much, Mr. Speaker, Sir. I rise on a point of order to demand a Ministerial Statement regarding a tragic incident which took place in my constituency, but which is recurrent in this country. On 27th May, administration policemen from the Chief's Camp at Mwer in West Alego in my constituency raided a homestead in Komenya Sub-Location, attacked and assaulted the villagers. In the process, they arrested and clobbered to death a senior serjeant by the name Anthony Ochieng', who is attached to the Department of Defence (DOD) Headquarters. The serjeant had gone home on behalf of his brother who is also with the DOD and he is at the moment in Sierra Leone, but who had sent Kshs28,000, to pay school fees for his two children; one of whom is called Brian Ochieng' and the other one is Collins Ochieng'; one at Mwer Secondary School and the other one at Malomba Secondary School.

Mr. Speaker, Sir, the tragedy of this is that, the administration policemen, five of them in number, beat Serjeant Ochieng' to death, dragged and confined him in the so-called chief's camp. Not only did they beat him physically to death, but in the following mayhem, when the villagers objected, they actually shot eight people ranging from a six-year old child to an 80-year old elder of our village, one of my political advisers! This is very serious because one of the people shot---

Mr. Speaker: Order! I like all that, but you have to be brief. There is something I want to move to.

Mr. Oloo-Aringo: I will be very brief, Mr. Speaker, Sir. The tragedy here is that there is total abuse of human rights where an innocent senior serjeant at the DOD, who had been sent by his brother who is in Sierra Leone to pay fees for his children, is literally beaten like a snake to death by the administration policemen. That left a lot of mayhem in the area and there was a battle the whole day. Instead of arresting those APs, local people some of whom had bullet wounds were arrested, taken to the police station and then were denied P3 forms.

This is a very serious issue. I am very glad I have already discussed it with the Minister and I do hope he understands my sentiments in this issue. So, I am demanding a Ministerial Statement.

Mr. Speaker: Are you ready, Mr. Minister?

The Minister of State, Office of the President (Maj. Madoka): Mr. Speaker, Sir, indeed, the incident is regrettable. I will issue a full Ministerial Statement on Thursday.

Mr. Speaker: Very well. Next Order!

NOTICE OF MOTION UNDER SO 20 ON ELECTRICITY RATIONING

Mr. Mwenje: On a point of order, Mr. Speaker, Sir. I had given a notice under Standing Order No.20 that I would be raising a Motion of Adjournment on a matter of urgent national importance. It is so serious.

Mr. Speaker, Sir, I brought a letter to the Clerk of the National Assembly yesterday, and I saw you--- I would like 15 Members to stand up in support of this Motion---

Mr. Speaker: Order! Order! There is no point of asking hon. Members to stand to nothing. Unless Mr. Speaker considers and approves your application, then that second step does not arise. So, it must be step one first, to be followed by step two.

Mr. Speaker, Sir, Mr. Mwenje, you came to see me, correctly, as you say. Now that you have disclosed what is normally confidential communication between the Chair and Members--- If you choose to waive that confidentiality, I may be inclined to give you a little background.

Mr. Speaker, Sir, you came to see the Speaker this afternoon, just before one o'clock, and alleged that you handed in your application to the Office of the Clerk. You remember the Speaker told you correctly that he had not seen any of that application. Indeed, you promised that you would see the Chair in due course later in the day, to see whether your application has ever been retraced and handed over to Mr. Speaker. You are going back upon your own promise to the Chair.

Mr. Speaker, Sir, I wish to confirm to this House that after Mr. Mwenje left my office at 12.45 p.m., I received what he calls his application to move this Motion for Adjournment under Standing Order No.20. Hon. Members will look at the Standing Order; it enjoins the Member himself not to send even, but to hand over to Mr. Speaker that application two hours before the sitting. Calculate back from 2.30 p.m. and you will know what time you

are supposed to have handed over that notification.

Mr. Speaker, Sir, The essence of the matter is that your application was received, but you did not even hand over to Mr. Speaker. So, in fact, you are even wrong. Your application was somehow received by Mr. Speaker, not within two hours. I was trying to assist you, Mr. Mwenje, when I asked you to see me today, so that I may consider advising you to hand over to me in good time tomorrow, or later today, at least, two hours before the sitting of the House. Now that you have refused the counsel of Mr. Speaker, what would you do when I declare, as I am inclined to do, that you are out of order? Therefore, I have nothing to respond to you. Always take the counsel of Mr. Speaker. This is a grave matter; I do not want to make a definite ruling. To leave the door open for my further consideration is that, any attempt by you to send in an application for adjournment of the House was outside the specified time. Therefore, it cannot be raised now. I still leave the option open for you to check and follow the law.

Mr. Mwenje, please, next time you have advice from Mr. Speaker, do not backtrack. You are likely to be the loser.

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. Yesterday, when I watched news on television and saw the efforts you had made to assist find a livelihood for the impoverished pastoralists, I

[Dr. Kituyi]

was very impressed. It showed that a national leader saw a crisis that needed immediate attention; it showed his solidarity with the victims of the crisis, and that he was doing something about it. In that same spirit by which you helped to create a solution for those pastoralists with their dying livestock, could you also help us at the earliest opportunity to show solidarity with Kenyans who are suffering from the electricity problem?

(Applause)

Mr. Speaker: Did I not tell you---

Dr. Kituyi: It is as bad as the matter affecting the Maasais and other pastoralists,

Mr. Speaker: Order! Dr. Kituyi, you are, again, tribalising the Chair. The Chair is neither a pastoralist, an industrialist, a commercial, nor residential; it has no compartmentalised action. If you heard me correctly, I told Mr. Mwenje not to jeopardise what, probably, is a good cause. Please, listen: I did not close the door but if you insist, then I may be forced to do so. I have not closed the door.

Very well, let us proceed with the next Order!

(Mr. Ndicho stood up in his place)

Mr. Speaker: Oh, I am sorry. Is the hon. Member standing Mr. Kimetto?

An. hon. Member: It is hon. Ndicho, Mr. Speaker, Sir.

Mr. Speaker: I do not know of a Mr. Ndicho; he has not consulted me over anything.

Mr. Ndicho: Mr. Speaker, Sir, thank you very much.

Mr. Speaker: For what?

(Laughter)

Order! What are you thanking me for, Mr. Ndicho?

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. You have just received commendations from hon. Kituyi for what you have done. I was going to ask you to---

Mr. Speaker: Order, Mr. Ndicho! The minute the Speaker becomes part of the debate of this House, we destroy the Chair. If a Mr. Kaparo did whatever he did out there, he did not do so as the Speaker of this House; he did so as a village elder. So, do not bring that issue here.

(Applause)

Let us proceed with the next Order!

Mr. Sambu: On a point of order, Mr. Speaker, Sir. It was reported in the media that whatever you did there, you did so as the Speaker of the National Assembly, an elder and a pastoralist.

Mr. Speaker: Order! Mr. Sambu, I know what you are up to. However, let that wait for next time around.

Next Order!

BILLS*First Readings*

THE TRAFFIC (AMENDMENT) BILL

*(Order for the First Reading read -
Read the First Time -
Ordered to be read the Second Time tomorrow)*

*(The Traffic Amendment Bill was committed
to the Committee on Energy, Communication
and Public Works)*

THE CONSTITUTION OF KENYA
REVIEW (AMENDMENT) BILL

*(Order for the First Reading read -
Read the First Time -
Ordered to be read the Second Time tomorrow)*

*(The Constitution of Kenya Review (Amendment) Bill was committed to the Committee on Administration
of Justice and Legal Affairs)*

*Second Reading*THE TREATY FOR THE ESTABLISHMENT OF THE
EAST AFRICAN COMMUNITY BILL

*(The Minister for Tourism, Trade and Industry
on 10.5.2000)*

(Resumption of Debate interrupted on 10.5.2000)

Mr. Speaker: Hon. Members, I think Prof. Anyang'-Nyong'o was on the Floor when the business of the House was interrupted last time.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, before the House went on recess, I was contributing to the debate on the Treaty for the Establishment of the East African Community Bill.

Mr. Speaker: Prof. Anyang'-Nyong'o, I guess you have 15 minutes left.

Prof. Anyang'-Nyong'o: Yes, Mr. Speaker, Sir. I was contributing to the Treaty for the Establishment of the East African Community Bill. I was observing that one of the most important aspects of this Treaty is that, contrary to what happened to the defunct East African Community, we would like to lay a firm foundation for a future Federation of East Africa. You will remember that one of the reasons why the European Union (EU) succeeded was because it was originally based on economic co-operation. The Iron and Steel Union, 1958, was the beginning, or the foundation, of the EU.

Likewise, the East African Community (EAC), this time round, if it is to succeed, it must not only be based on common services such as railways, postal, and others, but it must be based on economic co-operation at a productive level. If this had been the case, we would not, for example, be having the energy crisis in Kenya today. This is because, the Owen Falls Dam, if properly developed with enough turbines and a proper arrangement to ensure that alluvial deposits do not sink into the dam, the dam can generate sufficient electricity for the East African countries. Secondly, the East African region has enough potential for geothermal generation to supply energy for East Africa.

Mr. Speaker, Sir, at the moment, an argument is being raised that Kenya cannot rely on energy supply from the Owen Falls Dam, for political reasons. That argument goes against the fundamental assumptions for building co-operation in East Africa. The success of the EAC must be based on shared economic interests. One area which is

proposed in the Treaty already is the common approach to environmental, energy and economic development matters. I would, therefore, like to urge the three East African countries that, as soon as the Treaty is ratified in all the Parliaments, one area that must be emphasised is co-operation on economic matters.

Unless there is a shared economic destiny among the three East African countries, we can easily deteriorate into what I might call "a superstructural community" rather than a sub-structural community. It was that superstructural approach that made it very easy for the defunct EAC to break up between 1977 and 1978. Secondly, last time I did intimate or indicate, that the setting up of the East African Legislative Assembly has been done in a very shy way in the sense that we have taken the least common denominator to establish the Assembly - a denominator that was used during the days of the defunct EAC. Almost two decades later, we are still using the same formula. This is the formula whereby we are saying that the three Parliaments will nominate representatives to the Assembly, rather than asking the representatives to the Assembly to be elected directly by the people. We cannot commit ourselves to popular participation in political affairs in our three nations, and when it comes to the East African level we retrogress two decades backwards; we use a system which will result to paternalism and, at best, indirect representation.

Mr. Speaker, Sir, the three East African countries are mature enough to ensure that those who will sit in the Assembly will be elected directly by the people. If we say that each nation sends there nine people, we can divide Kenya into nine constituencies and get those people elected directly by the people.

I remember in 1957, the first election to the Legislative Council, we had only seven Africans elected to Parliament from all over Kenya. One person was representing a whole province. Now, if we cannot do what we did in 1957, in the year 2000, we are not making any headway. So, I would like to request this House that one of the amendments that should be made in this Treaty is that those who sit in the Legislative Assembly should be elected directly by Kenyans.

Secondly, I would like to propose that five years after that, so that at least we have an experience of electing these people, those who sit in the Legislative Assembly should be of two types: First, they should be what I call "national representatives", for example, those elected within the three nations, and; secondly, what I call "territorial representatives". I would like to say that "territorial representatives" are those people who should be elected by East Africa, as a whole and as one constituency. That is, if my dear friend, hon. Kihoro, wants to be a territorial representative, he should campaign in Kenya, Uganda and Tanzania, so that all East African countries get to know who their representatives are in the Assembly, so that Kenyans, Ugandans and Tanzanians begin to practise the politics of representation and participation as a single entity. That will be one of the best steps to take towards future political federation as is said in the Treaty. At the moment, that proposal for future political federation seems to be very theoretical. There is nothing in the Treaty which lays down the political steps to be taken towards federation. This is where the Europeans did a better job than we have done, and I think that is one of the biggest weaknesses of the Treaty. We should have been bold enough to lay certain steps in the Treaty which have a building block mechanism towards federation because, to me, federation in East Africa is perhaps one of the most urgent steps towards realising the economic development.

Mr. Speaker, Sir, we have been talking for a long time about African unity and it remains a rhetoric. Unless there are certain concrete steps with milestones and targets that move us towards one political unity, we shall be a laughing stock in the whole world, because elsewhere where initiatives for economic co-operation have been taken in tandem with political unity, there has always been documented steps written into law and passed by various political or legislative entities that show where we are going and that can provide a check list from year to year that show the progress we are making. At the moment, I think we are talking about political federation, but we have hardly any check list that can show us where we are going.

The other point I wanted to point out is that of shared resources, and I would like to emphasise this point because when I spoke about it last time when we were going on recess, maybe, hon. Members and the public were not very attentive. One of the most important shared resources in East Africa is agriculture. So far, in all the three countries of East Africa, agricultural and land policies have been very backward. Unless agricultural and land policies are harmonised, it will be nonsensical to harmonise the Budgets of the three territories. It is a ritual only important to those who calculate foreign exchange in the Central Banks to read the three Budgets on the same day, especially when we know that the three economies are liberalised and the dynamics of globalisation dictate the internal monetary policies of these nations. What will make a difference is harmonising policies at the basic level with regard to the basic means of production of the three nations. The major means of production for the three nations is land and agriculture. If you go to Kampala, as a city, you will find that it is impossible to plan it. This is because in Kampala, there are three different land laws operating at the same time: There is a minor land law which is under the Kabaka; there is the land law which is to the city itself, and then there is the land law by the Central Government. You can build your house in Kololo, but if the land down there was once owned by Asabasaja, then the law does not apply to you at all; somebody can come and build a kiosk there or put his cows there and then the next day you do not know where the road will pass.

Unless we harmonise land laws in these countries, a Kenyan will find it very difficult to go and invest in housing development in Kampala. In other words, if the same Treaty is talking about free movement of labour and capital, the non-harmonisation of land laws in the three territories will make it impossible for capital to move from Kenya to Uganda to invest in real estates in Kampala. At the same time, we know that today, the whole of northern Tanzania is like the wild west in the United States of America (USA) many years ago and, yet, here we have hon. Ndicho and hon. Criticos fighting against small tinny pieces of land in Kenya. But were we to harmonise land laws and land ownership in East Africa; and were we to be faithful to the movement of labour and capital in East Africa, a lot of land-hungry Kenyans would be given 20, 25 or 30 years leases in Tanzania to go and work on agriculture and make it productive for the purposes of economic development of East Africa.

So, I would like to go to that Legislative Assembly one day, not as somebody nominated by this House but as somebody who has been voted for in Tanzania, Uganda and Kenya, to make sure that the future of East Africa is what we dreamt about in 1970. But I would like the Treaty of East Africa Co-operation that we are debating today to have within it those fundamental laws and regulations that will make it possible that when I am a Member of the East African Legislative Assembly in the year 2007, to ensure that we are legislating about rational economic development in East Africa.

Likewise, when we are talking about the free movement of capital and labour in East Africa, and the regulations and laws governing the Capital Markets Authority in the three countries do not have harmony, then we are talking a lot of balderdash. It is important that in this Treaty, that in that section that deals with the free movement of capital in the three territories, we ensure that the laws within each nation governing capital markets are harmonised and are in tandem with each other. We know that a Kenyan, at the moment, is the Chairman of, more or less, an Association of African Capital Markets Authority.

Mr. Speaker, Sir, I beg to support.

Mr. Muite: Mr. Speaker, Sir, I would like to clarify that, in principle, I support a Treaty to bring about greater co-operation between the three States. What I will say should not be misunderstood as opposition to seeking closer co-operation between the East African States. I do have a few difficulties with the Bill before this House which I would like to point out, one of them which you actually pointed out in terms of the Title to the Bill. It appears to me that the objective of this Bill is two-fold. First, it seeks to ratify the provisions of the Treaty. The second objective is to make the provisions part of the municipal or domestic laws of the Republic of Kenya. If it is accepted that those are the twin objectives of this Bill, then the question arises as to whether the Bill is in fact achieving those two objectives.

You will see, for example, that on page 187 the title to the Bill is: "The Treaty for the Establishment of the East African Community Bill". The title given on page 188 is: "An Act of Parliament for giving effect to certain provisions of the Treaty for the Establishment of the East African Community and for connected purposes". I can see that the Attorney-General is not present in the House and I do hope that the hon. Member for Kerio South will follow the legal arguments that are being advanced and communicate them to the Attorney-General. There is need to harmonise these two titles and find out which is which. One talks about giving effect to certain provisions. Which provisions are these? In fact, the entire Treaty is annexed to the Bill. It is like they want to bring the entire provisions as part of the laws of Kenya and yet the Bill talks about certain provisions. There appears to be a contradiction between the Title on page 188 and the one on page 187.

In any event, if it is agreed that the objective of this Bill is to, first of all, ratify the Treaty and secondly, to make the provisions of the Treaty part of the laws of Kenya, should the Title not be suitably re-worded so as to accord the objects of the Bill with the Title? The Title should not be misleading at all. Perhaps the Attorney-General will give some thought to whether the Title cannot be re-worded so as to correctly reflect the twin objectives of the Bill. It should be something like: "A Bill to make the provisions of the Treaty part of the municipal laws of Kenya and to ratify the Treaty". It should reflect the objective of the Bill.

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

Coming to the Bill itself, Clause 8 of the Bill which appears on page 192 is a very profound Clause. It says: "The provisions of any Act of the Community shall from the date of publication of that Act in the Gazette, have the force of law in Kenya." There is also need here to synchronise these with our constitutional provisions. In terms of the current Kenya Constitutional arrangement, the power to enact laws is exclusively vested in this House. That is the current constitutional position. We are departing from that constitutional position and vesting legislative authority in the East African Community that any Act which they will pass there will automatically have the force of law in this country and become part of our laws. How can that be done constitutionally and legally without amending the current

Constitution?

The current Constitution says that the only way a law can be enacted is, if it is debated by this House in three Stages; a Bill is published, it is read the First Time, the Second Time and the Third Time. That is a constitutional requirement. Is the Minister in charge satisfied that Clause 8 is actually legal and constitutional? I would like to think that there is need to re-think on whether constitutional amendments are called for in order to provide for the Acts of the Community to have the force of law in this country without there being enacted in accordance with the current constitutional provisions.

Clause 9 of the Bill is equally causing grave concern. It is vesting legislative authority in the Attorney-General. It provides that the Attorney-General may, by order, publish in the Gazette at any time before the expiration of 24 months from the commencement of this Act, make such amendments to any written law, as may appear to the Attorney-General necessary or expedient, to bring that written law into conformity with the provisions of the Treaty or otherwise for enabling effect to be given to those provisions. These are very great powers being taken away from this House and vested in the Attorney-General. This is a clause that surely calls for amendment. Under our laws it is the business of this House to amend laws and not that of the Attorney-General. Why are we removing authority and legislative powers from this House and vesting them in the Attorney-General?

Even under the existing current constitutional arrangement, if the Attorney-General wants to amend any of our laws under the Miscellaneous Statute Laws (Amendment) Act, he will bring a law to this House pointing out which Act or what sections he wants amended and in what manner. It is because of the acceptance under our existing constitutional arrangement of the supremacy of Parliament when it comes to enacting, amending or deleting laws. This is a power which, in my humble submission, should be retained by this House in order for us to remain consonant with the current constitutional arrangements. Therefore, these powers should not be vested in one Minister at all.

Mr. Deputy Speaker, Sir, my next point is that I also wish in a rather certain manner, make a very fundamental shift in the current constitutional arrangement because if this Bill is passed in its present form, then the Kenya National Assembly will no longer be sovereign. These are two clauses that go to the very core of the doctrine of the supremacy of Parliament. In fact, the sovereignty of Kenya as a nation is also called into question because we are ceding our sovereignty and legislative power to another body. One would like to see an approach that preserves the sovereignty of Kenya as a nation and authority and supremacy of this Parliament in terms of the current constitutional order, so that whatever is desired to be enacted by the East African Community is subject to debate, ratified and passed by the National Assembly here, like, indeed, we are trying to do with the East African Treaty. That is the sort of thing one would want to see is in consonant with the constitutional arrangement that is in place at the moment.

Mr. Deputy Speaker, Sir, this is truly the only opportunity that this Parliament has of perusing and scrutinising the small prints in the Treaty. We do not have any other opportunity. For that purpose, **[Mr. Muite]** I really would like to see a situation where this Bill and the Treaty annexed to it as a Schedule are submitted to a Committee of this House, so that the Committee can very carefully go through each and every Article of the Treaty.

Mr. Musila: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Member to mislead the House that the Committee of this House has not gone through the Treaty in detail when, in fact, I, as the Chairman of the Defence and Foreign Relations Committee, brought a Motion to this House on the provisions of the Treaty and it was approved by this House?

Mr. Muite: Mr. Deputy Speaker, Sir, this is the first time that this House is debating this Bill. It is the Second Reading of this Bill. I am not aware that the provision of the Schedule to this Bill, which is the Treaty, has actually gone through the Committee of this House. This is the time it should be before the Committee because it is the first time that we are debating its provisions.

The point I am making is that the Treaty does, in fact, have very technical provisions. For example, if you turn to page 205, part of one Chapter One - interpretation, you will see the "principle of asymmetry", "principle of complementarity", "principle of subsidiarity" and "principle of variable geometry" among other technical terms. These are issues of money. There are many technical things that are listed in this Treaty. What I am saying is that for us as the House is to responsibly ratify this Treaty and make it part of the domestic laws of Kenya. There is need for a Committee of this House to go through each and every one of these Articles and probably seek the assistance and advice from experts, so that we will be told by that Committee that they have perused it and nothing in it is controversial or compromises the long-term interest of the Republic of Kenya. Therefore, when we enact this Treaty, we should not do so as a rubber-stamp. I confess that some of the technical provisions here do require elaboration from experts and without subjecting the Treaty to scrutiny by a Committee of this House, we could find out in due course that what we have passed or enacted here is actually not in the best interest of the Republic of Kenya.

Mr. Deputy Speaker, Sir, the other point I would like to raise is that when you look into the ten clauses of this Bill, you do not see any that actually seeks to either ratify the Treaty or make it as part of the domestic laws of Kenya.

Certainly, clause one does not do so because it is on short title and commencement. It says:- "This Act may be cited as the Treaty for the Establishment of the East African Community Act---". All the way to clause 10, one does not see any clause in the Bill that in specific terms, seeks to either ratify the Treaty or make its provisions part of the laws of Kenya. And yet, that I would have thought, is the primary objective of bringing this Bill. So, this is a matter that the Attorney-General needs to look into so that this schedule as it is now, does not become part of the Laws of Kenya because it has got far-reaching provisions. It is just a Schedule to the Act. But we do not find a clause saying that this Treaty from the date of the enactment of this Bill will be part and parcel of the laws of Kenya. One does not see any specific provision in this Bill saying that when this Bill is passed, this House shall be deemed to have ratified the provisions of the Treaty for the East African Community. One would like to see those two matters which are very fundamental being specifically addressed in very clear language in clauses in this Bill.

I have looked into our Constitution and I have not found the specific constitutional authority or any law that legalises the Treaty. I am not here attacking what has been done; I am merely pointing that out as a matter of law. This is because when you do something you want to know that you have the legal or constitutional authority for doing so. I have not found any authority---

(Loud consultations)

Mr. Deputy Speaker: Order! Order! Continue, hon. Muite!

Mr. Muite: Mr. Deputy Speaker, Sir, I have not seen any constitutional authority that actually vests constitutional power and authority on the President as the Chief Executive, to go and sign a Treaty without the authority of this House. What happens, for example, if this House rejects this Bill and yet the Treaty has been signed? What is the legal or constitutional position? These are fundamental matters that the Office of the Attorney-General needs to address, so that we do not embarrass the President and our sovereignty. Let the law be enacted giving specific authority to the Chief Executive of the day and to provide him on how, perhaps, before the Treaty is signed, that it must go before the House. It must be debated and the authority be given to him to go and sign it rather than the other way round.

So, subject to those matters that I hope the Attorney-General and the Minister in charge will look into and bring the appropriate amendments in order to enable us to support this Bill, I certainly support the spirit of the Bill, but I have got certain reservations. I think that the three East African States should tone down their expectations. I think we should not be over-ambitious in terms of what we are going to achieve. We should go slowly, step by step. Instead of over-concentrating at the top, let us begin with the practical measures at the bottom. On page 208 on the Objectives of the Community, paragraph 2 says:-

"In pursuance of the provisions of paragraph 1 of this Article, the Partner States undertake to establish among themselves and in accordance with the provisions of this Treaty, a Customs Union, a Common Market, subsequently a Monetary Union and ultimately a Political Federation..."

Mr. Deputy Speaker, Sir, these are very high ambitions. We are saying that if we are to sign a Treaty which commits us to a political federation and a monetary union, is it truly a matter that the chief executive should precede by signing the Treaty before the House has given the authority? That is a very fundamental direction we have adopted. I am saying that let the three states not be over-ambitious and begin to bring down the Berlin Wall that we have constructed around them. Sometimes, it is easier to travel to Europe than to travel within these countries. Why do we not take immediate practical measures at the grassroots to simplify the movement of goods and people across the three countries? Once you show your passport to the customs authorities at the border, you should be allowed to move with your goods into any country. Let us make it possible for ordinary men and women to go and buy bananas, beans, maize and other sort of things from Uganda. Let us extend the commerce and trade co-operation to the ordinary people. That is when we will truly succeed.

I support the higher aspirations of the EAC, but let us appreciate the fact it is a marathon and a long journey that will take time. However, if we started from the bottom rather than from the top, we would arrive there a little faster. We need, in fact, to encourage the countries to harmonise internally the management of each country, including the fiscal discipline, the rate of inflation and the GDP. Even in the European Union, there are laid down criteria for admission. You cannot be admitted as a member of the EU before they look at all your economic indices; how you are managing your economy; your rate of taxation; your GDP and the value and rate of your currency exchange. They go into all these things very carefully, because otherwise, it is impossible to create a union when you have got internal disharmony in the respective countries.

Mr. Deputy Speaker, Sir, that is where lies the core of the collapse of the former EAC back in 1977, because Tanzania was ideologically and philosophically pursuing socialist policy; while Kenya was pursuing some form of free market enterprise, and those internal contradictions bred jealousy. Even at the political level, you need to have systems

of Government that are harmonious. When you have got some countries practising what they call the no-party state and prohibiting multi-partysim and what-have-you, it means that any dream of having the three countries working as one will not succeed. We must, first of all, aim and encourage each country to truly have internal institutions that nurture and regulate free enterprise, democracy and a high level of economic development. Then if those conditions are met, you can begin to talk about moving towards a political union, a monetary union and other sort of things.

In the Bill, there is clause on telecommunications that says that we will pursue common telecommunications policy, and yet, when you go to Tanzania and Uganda, the matatu touts and women in the market have got mobile phones, and the cost is as low as Kshs6,000 for a mobile unit. If the cost of a mobile phone was to be brought down in this country, it is the small traders; or is the people who bring cabbages and other produce, like milk from Uplands, or Kericho, who will need them in order to communicate with their colleagues, and say: "I am at the City Market, and I have sold the entire pick-up of cabbages. Can you send very quickly another pick-up?" In that way, the Telkom Kenya Limited will even make more money. But what do we have in Kenya? If you look at page 253, it reads:

"The partner states shall adopt common telecommunications policies to be developed..."

What is Kenya doing to begin to implement the spirit and the letter of that obligation, when the cost of our telephones are way out of tune with the cost in the other two countries? These are the small things that we need to do. The Telkom Kenya Limited has been given the monopoly of five years to control the telecommunications sector. Currently, I have noticed something different in the telephone bills, because previously, if you try to send a fax, you would only be charged when the fax connects to the other end. But now, without any notification to their customers and the public, they have adjusted their machines. You know that the telephone lines are very congested here because, for example, it is very difficult to get a line to London when you try to send a fax, or outside the country. So, your secretary can try even for an hour before the fax connects, and yet the minute you start sending a fax, they start charging you. Look at the current postal bills and you will find that change. This is something that was not happening before. Today, when the fax has not gone and you continue to redial five times, and it still does not go, you are charged almost Kshs1000. That is almost robbery, and that is why we must open up. Indeed, this five-year monopoly must be taken away. Let us bring down the cost of telephones, and once you do that, you will make more money.

Mr. Deputy Speaker, Sir, so, I do hope that we will amend this Bill and pass it very quickly, because if this Treaty had actually become law 10 years ago, we as a country, would have borrowed money---

Mr. Deputy Speaker: Order, Mr. Muite! Your time is over.

Mr. Kihoro: Thank you, Mr. Deputy Speaker, Sir.

At the onset, I would start by saying that I am unhappy with the provisions of the Treaty and the Bill because of the way the Treaty proceeded to provide absolutely nothing. The Bill itself makes an attempt which when compared with a similar Bill passed by this Parliament in 1967, is totally inadequate.

I will start by looking at our Constitution as it is today. I also agree with the previous speaker and Prof. Anyang'-Nyong'o that what is being proposed by the Bill and the Treaty is unconstitutional. If we look at Section 30 of the Constitution of Kenya, we will see that it states very clearly that the legislative power of the Republic shall vest in the Parliament of Kenya, which shall consist of the President and the National Assembly. Mr. Deputy Speaker, Sir, I find that the Treaty here derogates from that very important principle that the sole legislative power in this country is vested in Kenya's legislature and no law can be made in this country without coming into this Parliament. I find according to the Treaty that very many laws will be made in Arusha and in this country without Kenya's Parliament having passed these laws. On that basis, I hold the Treaty to be unconstitutional. I also hold the proposed Bill, which also has got a wrong name, to be unconstitutional.

It is important to streamline that irregularity today. If a mistake was made in 1967, 33 years later, we do not have to repeat the same mistake. This is because in front of me, I have the Treaty for the East African Co-operation Act that was passed by this Parliament in 1967. Appended to that Act, which was called then "The Treaty for the East African Co-operation Act", which is actually supposed to be similar to the Bill that we have here, is the new Treaty. In 1967, a Treaty was signed by the three Presidents at that point; namely, the late Presidents Kenyatta, Obote and Nyerere, but that Treaty was also unconstitutional, unless the Constitution of Kenya has also changed since that time. My concern today is the present Kenyan Constitution which states very clearly in Section 30 that:-

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

No law can be made anywhere else, whether in this country or outside this country, and be applied in this country without having come from Kenya's Parliaments. That is very fundamental because the history of where our three countries have come from is a long one. I speak like an East African and an African who would want to see a meaningful treaty being signed by the three countries that will eventually bring about our political union. But I do not think that it is proper for us to proceed the wrong way. Indeed, by doing it the wrong way, we are putting further and further away the dream of East African union.

Mr. Deputy Speaker, Sir, it is important that I look back to 1999 when the Treaty for the Establishment of the East African Community was signed in Arusha by President Moi, President Museveni and President Mkapa, and state clearly that that Treaty was not made available for debate in this House. I only saw Draft No.7 that was signed as the Treaty in Arusha on 30th November, 1999. A week before the signing of the Treaty in Arusha there was debate here going on, on the adoption of a Report that had been made by the House Departmental Committee on Foreign Affairs and Defence. That is when for the first time, I saw the draft Treaty No.7 that has now become the Treaty for the Establishment of the East African Community.

I, as a legislator representing my constituency out of 210 constituencies, take exception to a situation where my constituents will be confronted by laws which will be strange to them and also to their hon. Member of Parliament. The laws will be strange to people in Nyeri Town because neither they nor their hon. Member of Parliament were consulted before this Treaty was signed in Arusha. I speak as a good East African. I do not want to put anybody off, but I also believe that doing things the wrong way in the hope that we will accept them, is very misleading and erroneous. This is the time to accept that things have been done the wrong way. We have got the experience from 1967 up to 1977 when the previous East African Community collapsed. This was an experiment of only 10 years. I find that from what happened then, we have not learnt from yesterday's mistakes because we have repeated them in so many ways in the Treaty that has been proposed. I find that the people of East Africa, 85 million people, have not been consulted in terms of making the necessary provisions in the Treaty.

It is very important to consult those who are interested in the East African unity, in Kenya, especially, Tanzania and Uganda. I believe that East Africans are dead serious about our unity. We would want to get closer, but the way it has been done, is very unfortunate. It is very unfortunate because it does not give East Africans an opportunity to express themselves. Mr. Deputy Speaker, Sir, I have with me the Treaty of 1967 and I got the present Bill that has been proposed plus the Treaty, I would want to look at what I feel is a situation where we are being confronted with a Treaty here, that maybe just to be polite, is an agreed minute. It can be an agreed communique. The Treaty, as proposed, looks into the future. It does not look into the present and it does not provide anything in the present, but everything will have to come in the future. We want to put the burden of unity on the future generation in East Africa. There is nothing that has been agreed in the present Treaty as it has been signed. There is nothing that has been agreed upon about the current matters, but it is all about the future. It is about the dream for the East African unity, but there is nothing present that has been agreed upon. How come it is impossible for East Africans to agree today, but we put the duty to agree on the future generation? Why do we want to put it on the future generation? Why can we not use our experience from 1967 up to 1977 to agree? Have we not learnt anything?

Mr. Deputy Speaker, Sir, I thought that if we looked at the economies of East Africa in 1977, we would have seen how well the three economies were doing. All of them were in better forms than they are today. That has not acted as catalyst for us to agree. We have the so-called sovereignty in East Africa, the sovereignty of Kenya, Uganda and Tanzania. National sovereignty is as closely guarded as it was when it broke up the community in 1977. Today we continue holding the same positions and agree about nothing. We only manage to put the dream of East African unity further and further away. We should look at the Treaty that I have got here of 1967. It was necessary then to pass the Act of Parliament, the Treaty for the East African Community Act 1967. The Bill that we have got in front of us today is as a result of various things that were agreed upon in 1967 about the three states. In 1967 the Treaty provided for the establishment of common Customs tariff and a common Excise tariff. That was agreed upon and it was never implemented. Therefore, it was important in 1967 to enact this Treaty so that we could make provisions for Arusha to levy the common Customs tariff and the common Excise tariff.

Mr. Deputy Speaker, Sir, the Treaty of 1967 abolished trade barriers. The Treaty established a common agricultural policy. Prof. Anyang'-Nyong'o spoke about it about an hour ago. He spoke about the need for us to look at our agricultural policies in the three countries and see what can be done and what needs to be done to harmonise the agricultural policies in the three states. That will be very beneficial to Kenyans. That is what they do not want to talk about. Also, in 1967, the Treaty established the East African Development Bank (EADB) which we have today with us. That is a surviving structure that was established by the previous Treaty and it survived even after the breakdown of the Community in 1977. Although Kenyan banks have been collapsing, that one has grown strong. Also, the Treaty in 1967 allowed the use of current accounts payments. In other words, you can go to a bank and make a payment to Tanzania, either from Dar-es-Salaam or to Kampala. That happened under the previous Treaty.

Mr. Deputy Speaker, Sir, another provision in the previous Treaty was the harmonisation and proper functioning of the common market and operations of a common services in East Africa. It also allowed for co-ordination in economic planning, transport, and the streamlining of the commercial law.

Overall, there were 15 services that were provided for in the Treaty that were to be run jointly. That is why it became necessary then to effect that Treaty with municipal registration in the three territories.

Mr. Deputy Speaker, Sir, now, my question is: Why is it necessary to bring a Bill in Kenya's Parliament when there is no joint service that is going to be run under this Treaty? This Treaty provides for the future. It does not

provide for the present. So, if it does not provide for the present, if our services like Kenya Railways, harbours and telecom are all Kenyan-run, why do you want another Bill outside of what is there being passed by the Kenya's Parliament to meet provisions for that? Tanzanians are not coming in; neither are the Ugandans. They will stay out. Why is it necessary then to have this Bill? What I am saying is that the Treaty is inadequate. The treaty does not provide for any joint service which we can call "East African" so that we can have a Bill passed by Kenya's Parliament to provide for that. I have already said that it is also unconstitutional.

Mr. Deputy Speaker, Sir, another important aspect to look at in the Treaty as proposed, is the way in which the same problems that cropped up in 1977 can be avoided this time round. We have already laid a very good foundation for us to repeat the same mistakes. In 1967, because Nyerere could not meet Idi Amin, that contributed in a big way towards the collapse of the previous Community. We have made the same provisions in this treaty. In Section 12, there is veto power given to every President to stop the Community when he wishes to do so. Article 12 (3) of the present Treaty reads as follows:-

"The decisions of the Summit shall be by consensus".

That means that one President will be able to veto the other two. So, each one of the President has got a veto.

Mr. Deputy Speaker, Sir, there is also another veto. Article 150 (1) reads:- "The treaty may be amended at any time by agreement of all the partner states". That means that unless all the three partner states and Presidents agree, you cannot have an amendment however beneficial it will be to the Community. That is another veto given to the three Presidents. There is still another one. If these two cannot work, any of the President can try a third one. Article 63 (1) reads that:- "Heads of State can withhold assent to a Bill". That is Article 63 (1) to (4).

Part (4) of that Article provides that if a Head of State does not assent to a Bill called the Act of the Community or if any of the Heads of State withholds his assent to a Bill, the Bill could be referred to Arusha. If he withholds his assent for a second time, Part (4) of Article 63 provides that the Bill lapses. So, that is the third veto power. Anyone of the President can use it if he feels that he does not want to go along with his colleagues".

Mr. Deputy Speaker, Sir, what we have got is a Treaty that is going to take the dream of East African unity further and further away. If I was asked as a good East African - and I can see the Minister in charge for East African Co-operation is around - I might say: We needed to work on this Treaty pretty more. It is not that they have not tried because I know the signing of the Treaty was postponed and I do not how many times. However, I know they have been trying, but surely also if we cannot agree, I think it will be difficult to declare that we can agree. Maybe that is what the Treaty is actually saying.

Mr. Deputy Speaker, Sir, I have been looking through the Treaty to see if there are provisions from that will bring our East African unity nearer. I have been comparing the provisions of this Treaty with the Treaty that was signed in West Africa; that is ECOWAS. I have been looking at the provisions from further north from the European Community. I have also been looking at the provisions of COMESA. Maybe, there are various overlaps in the East African Treaty of Co-operation and COMESA. However, most important is that after looking at what is happening across the world, I find there is no provision in the Treaty in front of us talking about a common East African citizenship although we have over 85 million East Africans. When we started in 1963, the total population of East African was 25 million. Now, each one of the countries in East Africa has got a bigger population than the whole of East Africa had in 1965.

Mr. Deputy Speaker, Sir, what I am saying is: What is the problem about providing a common East African citizenship? We do not need a passport. We do not need travel documents. If we are serious about it, let us have this East African citizenship under a common East African nationality and you build from there. We can have these interactions among East Africans without one being stopped at the border. The borders can be abolished if surely we are serious about having the East African Community that will lead to an eventual East African Federation. It does not happen in America, Canada or in the European Community where you have a Community because there is no free movement of people. We can have an East African identification card. That also would be beneficial to East Africans so that they de-emphasise as much as possible the boundaries between the three territories. The Uganda police can patrol our western border while Tanzania patrols the South Western border and, maybe, the Indian Ocean while the Kenyan police patrols the Northern and Eastern borders. Then we can truly have a community of 85 million East Africans, and Africans will feel that there is a lasting legacy that has come out of the presidencies of President Moi, Museveni and Mkapa. That is the three "Ms" of East Africa. That would be beneficial.

Mr. Deputy Speaker, Sir, I support one very important principle in the provisions about East Africa that we should have a voters roll that will apply across East Africa. This is not difficult to do. Just today, Kenya is going through a process of updating her voters register. Tanzania will have elections in October. Sometimes ago, Uganda had her own elections. They are planning to have elections in the year, 2000. So, the point is about synchronising our elections, just like we have got budgets that have been synchronised. When we have our Budget Days on 15th, it will be Budget Day in the whole of East Africa. Why can we not also have elections in a similar way, so that we start queuing our people towards an East African unity, without spending a penny more? When we go to the polls in

Kenya, Tanzania and Uganda, I do not see why we cannot give a second, third or fourth ballot to an East African, so that he can be able to elect the person who will represent him or her in Arusha.

Mr. Deputy Speaker, Sir, I am saying that the provisions that we have in the Treaty, whereby the Members of the East African Legislative Assembly will be nominated by the various political parties is not good.

[Mr. Deputy Speaker left the Chair]

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

I know that hon. Biwott will be guaranteed a seat in Arusha. But I would rather have him elected! In the future, Mr. Kihoro, will come to join you in Arusha! But nobody else. KANU will have five out of nine seats.

The Temporary Deputy Speaker (Mr. Musila): Order, hon. Kihoro! Address the Chair!

Mr. Kihoro: My apologies, Mr. Temporary Deputy Speaker, Sir.

The fourth point that I would like to talk about is the need for an East African passport. I am told that the document is available, but I have not laid my eyes on a single document called the East African travel document. But if I support the idea of having East African citizenship and identity card, I also do support the idea of having an East African passport. That will take us places.

I do support the idea of having an East African currency. When I was growing up, I used to see a note that was issued by the East African Currency Board and I have never forgotten it. The East African Currency Board was abolished in 1966. At that point I must admit that I thought the Kenyan currency was funny. I really could not trust it. But now, I am so used to the Kenyan currency that, when I start thinking about the East African currency, I think it is the one that I should not accept. But it shows how much we have been able to degenerate on the things that we could be able to provide for. The first East African currency was made available in East Africa in 1905. That was when the first currency was circulated in East Africa. It was abolished in 1966. I do propose that the idea of an East African currency is very important. They are doing it in Europe. They have the Euro. In West Africa, they have got the PTA. Many countries like Ghana and Nigeria have said that they would like to join the common currency zone in West Africa. It is called the CFA currency zone. Countries like Ghana have proposed to adopt that currency. It strengthens it. Eventually, the currency will be backed up by production. But I am saying that, this is a good idea which should be seriously thought of.

There are very many other things that we can try to strengthen in a Treaty; like an East African Court of Human Rights. I know Article 27 provides for the establishment of an East African Court of Appeal. But, unfortunately, the court that will be established under Article 27 will only have jurisdiction over the Treaty. It reads:

"The court shall initially have jurisdiction over the interpretation and application of the Treaty."

What I thought is that matters like human rights and the application of criminal law in East Africa are very important that, if we do not revert back to what we had in 1977, when we had the East African Court of Appeal that was abolished, we might not go far. Justice is equal amongst East Africans. That is how it should be among human beings across the world. So, I do not see any difficulties in having the East African Court of Appeal restored to its previous jurisdiction, have judges appointed from across East Africa and met out justice the way they know. That would be an added advantage to our unity. It would be more demonstrative, as a way of showing that, we are all equal in East Africa.

Mr. Temporary Deputy Speaker, Sir, another aspect that needs to be put into the Treaty is the common land law. I know Kenya is reviewing her land laws. It is different in Uganda and Tanzania. If we could only harmonise our land laws, things would be fine. We all look forward to that. We should harmonise common labour laws. When I went to the University of Nairobi in 1972, I had very many East Africans from Uganda and Tanzania. We had five Ugandans in a class of 40 students. We had three Tanzanians in a class of 40 students. It was a good provision. When all those students finished their studies and went home, they spoke good about Kenya. This operated vice-versa. There are very many Kenyans who were educated in the two countries. We have the hon. Attorney-General who was educated in Dar-es-Salaam. That has been beneficial to do. As we think about reforms on education in Kenya, we need to think about how we can collaborate more with Tanzania and Uganda, and make our education relevant to what is happening across the world.

Mr. Temporary Deputy Speaker, Sir, a common East African Research is another area which I think is very important. It has been left out, but I know there are institutions that survived the 1967-77 experiment. The common East African Research had a common approach. There is something about IGADD but I am not sure. But I think that is also very important.

Thank you.

Mr. Kibicho: Mr. Temporary Deputy Speaker, Sir, the establishment of the East African Community can

only succeed if it will not plunge into the same troubles that it did in the mid-seventies. If the people of East Africa are to integrate, the three Governments must have policies under which the people of the three States may integrate. I remember the days when we had the East African Common Services. In those days in 1963, I happened to have worked for the Community as a Customs Officer. It was very exciting to work with men from Tanzania and Uganda. In those years, if you lived in a place like the Railway Headquarters in Muthurwa, your neighbour would be a Ugandan or a Tanzanian. There was that oneness. That oneness could only be brought about if the services, which are common to our three States, were strengthened. So, within such services, some East Africans can mingle amongst themselves and work together.

Mr. Temporary Deputy Speaker, Sir, whereas I accept that it is important to bring the East African Community back so that it may last, I must also state that for the economic growth of Kenya, Uganda and Tanzania, the policies of the three countries must be harmonised, so that the jealousies that we had in the 1970s and which brought about the collapse of the then East African Community may not recur. That calls for the political will of the three Governments, to the extent that they may have to sacrifice a bit of their sovereignty.

Mr. Temporary Deputy Speaker, Sir, in Tanzania and Uganda there is a lot of arable land which is not occupied, and in Kenya there is only one-quarter of arable land. The Governments must create a conducive climate so that people may migrate from an overpopulated state to a place which is not overpopulated so that the natural resources can be fully exploited.

One hopes that a day will come when people from East Africa will never starve again, and where they will not flock to the south to get maize when there are a lot of bananas in Uganda, and when there is excess maize in Tanzania. All these benefits can be brought about not by this Bill, this Bill falls short of that; it must be nothing short of political integration of these states. What I have in my mind is that the Governments and the peoples of East Africa must work towards creating a federation or some political union, where people from Kenya, Tanzania and Uganda may feel that they belong to one country called East Africa.

Mr. Temporary Deputy Speaker, Sir, if you look at what is happening today in Kenya, we have an economy which is going to grind to a standstill unless this Governments takes remedial steps immediately. We have an economy which is faced with drought, and the crops have failed. We have an economy whereby the industrial sector is not growing. Electricity is an important component of economic growth and it is being rationed presently. This is happening in Kenya when we have a lot of electricity in Uganda. So, all these benefits can come about if East African countries sacrificed and agreed that, they exist as one economy. So, while I support this Bill, I am calling upon the Governments of Kenya, Uganda and Tanzania to work towards creating an environment where we shall have a political union.

The benefits of the East African Community cannot be overstated. We will have a market of nearly 100 million people. With that purchasing power, we shall be able to grow very fast. We must encourage what we have in Kenya, Tanzania and Uganda so that we can feel that this community is necessary.

I only regret the day when an hon. Member stood up in this House and said: "We are going to break this Community tonight!" and it did happen. Why did this happen? It did happen because what governed that particular person was self ego. We, as East Africans must live above that type of attitude. So, we are expressing all these sentiments because we do not want to repeat our past mistakes.

Mr. Temporary Deputy Speaker, Sir, we know that, in Tanzania, they are about to strike oil. At least, they have better prospects of striking oil than Kenya.

Land in Uganda is so good, as I said earlier on. Indeed, if the land in Uganda was not so good, when they had a civil war, they would have died all of them. If there was a civil war in Kenya, with the type of climate and land that we have, so many of us would have died. So, we are saying that, we Kenyans must be in the forefront in creating a conducive climate for a federation because we require it more than anybody else.

I remember the days when we had the Makerere College which drew students from, as far as the then Rhodesia, Kenya Uganda and Tanzania. When time came for agitating for Independence, all the people from those countries were able to relate very well and that helped to fight colonialism. Since the former East African Community was broken, we Kenyans must be forewarned that we do not repeat the same mistake. How can that happen? That can only happen if, we here in Kenya change our political philosophy. It can only happen if we have to change the way we look at things. What I am fearing is that, we are talking about a Treaty between Kenya, Uganda and Tanzania so that the three different States can come together. In the year 2000; instead of us Kenyans encouraging ourselves to think as one unity, we are encouraging ourselves to think like people from various places. That is what we are doing and the unfortunate part of it, is that, this is being spearheaded by us leaders. This is because it is we leaders who talk of tribalism. We are the people who must be showing others the way. But we are the ones who are promoting tribalism which must be buried. You cannot think of buying a car, if you cannot afford a bicycle. So, we have to reconsider the values which bring us together, if we are to relate to others.

Mr. Temporary Deputy Speaker, Sir, as I speak here today, it is very unfortunate that, when we talk of

integration, we are forgetting that it must start from the grassroots. We have to continue encouraging students from different areas to go to schools in their own places in the name of the quota system so that, you may feel that, in my district, I have more educated people than other districts. That tendency must come to an end if we are going to build the East Africa Community.

If you look at East Africa, as it was even during colonial days; what mattered is promotion of talents than promotion of personal egos. I do not want to digress from the Bill, but I am saying this because unless those tendencies are, once and for all buried, we shall not have a similar East African Community. We will only have a piece of paper and soon or later, something will happen in East Africa and we will be told here that: "This afternoon, Kenya is not going to be party to that Treaty and we want to abrogate whatever we signed."

Mr. Temporary Deputy Speaker, Sir, if Kenya is to grow, the Community by itself is not going to be the solution. We must open northern Kenya to southern Ethiopia. As regard all those people who live in northern Kenya, their culture and background is very much similar to the people of Ethiopia. Unless this Government tarmacks the road from Isiolo upto the boundary of Ethiopia, whatever we think are the gains we are going to get by creating this Community are going to be inadequate. We must think further than only talking of Kenya, Uganda and Tanzania. Way back when we got Independence, when the first Government took over and managed the affairs of Kenya, it did recognise that unless southern Ethiopia was opened up; Kenya will never develop. If you look at the arable part of Kenya, it is only one-third and all that area in northern Kenya is lying fallow. Trade there can only be encouraged by good communication. Unless the security in those areas is improved, we will one day be talking of policies intended to uplift the standard of living of our people when we cannot reach them. For example, whereas a man from Nakuru may benefit from this Community, what about the one in Mandera and Marsabit? We must be thinking not only on one side, but we must think far, so that Kenya one day may benefit from the policies we put together.

Mr. Temporary Deputy Speaker, Sir, I have noticed that there would be an Assembly which will be legislating on matters touching on this Community. In my view, so that Kenyans, Tanzanians and Ugandans, may feel that they are part and parcel of this process, the constituencies should be drawn right from the ground and the locals allowed to elect people to that Assembly, instead of nominating or proposing candidates when people have no direct say. By exercising that right, they will feel that they are part and parcel of that Assembly. It is one thing to create a Community and it is another thing for that Community to succeed. It is another thing for that Community to be fully utilised by the people it is intended to serve. I submit that, the governments of Kenya, Uganda and Tanzania, should negotiate and put a provision which allows locals to elect representatives to that Assembly.

Mr. Temporary Deputy Speaker, Sir, I notice that because past tendencies where Kenya had been accused of taking advantage of its position in development as far as Uganda and Tanzania are concerned, it has conceded to a lot of things which are not beneficial to Kenyans. The time has come where Kenyans who negotiate on behalf of Kenyans must negotiate from the point of strength instead of giving in whenever there is a threat that other parties may pull out.

The Assistant Minister for Roads and Public Works (Mr. Mwakalu): On a point of order, Mr. Temporary Deputy Speaker, Sir. The law of diminishing returns seems to have set in on the debate on this Bill. Therefore, I am standing on this point of order, to request that the Mover be called upon to reply.

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

The Minister for Tourism, Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Speaker, Sir---

QUORUM

Mr. Kibicho: On a point of order, Mr. Temporary Deputy Speaker, Sir. Whereas I should not be accused of being selfish, is it in order for the Mover to reply when there is no quorum in the House?

The Temporary Deputy Speaker (Mr. Musila): You have the right to draw the attention of the Chair that there is no quorum.

Mr. Kibicho: On a point of order, Mr. Temporary Deputy Speaker, Sir. There is no quorum in the House.

The Temporary Deputy Speaker (Mr. Musila): Yes, there is no quorum. Ring the division bell.

(The Division Bell was rung)

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Musila): Order! Order, hon. Members! The Division Bell has been rung for the required time, but we have not managed to raise a quorum. Therefore, this House stands adjourned until

tomorrow, Wednesday, 7th June, 2000, at 9.00 a.m.

The House rose at 5.35 p.m.