

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 29th July, 1998

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.368

MEASURES TO SOLVE CHITAGO-GETENGA
BOUNDARY DISPUTES

Mr. Deputy Speaker: Is Mr. Magara not here? We will leave the Question until the end. Let us move on to the next Question, Mr. Wafula Wamunyinyi.

Question No.366

DISMISSAL OF DANIDA EMPLOYEES

Mr. Deputy Speaker: Is Mr. Wamunyinyi not here? The Question is stood over for the moment. Next Question, Mr. Samuel Kiminza.

Question No.496

QUALIFIED STAFF FOR KATILINI DISPENSARY

Mr. Deputy Speaker: Is Mr. Kiminza not here? The Question is stood over for the moment. Next Question, Mr. Njeru Kathangu.

Question No.286

CREATION OF RUNYENJES MUNICIPALITY

Mr. Kathangu asked the Minister for Local Authorities:-

(a) if he was aware that the creation of Runyenjes Municipality was against the wishes of the residents, who are still opposed to it; and,

(b) if the answer to "a" above is in the affirmative, and because of economic inability of Runyenjes people to pay higher taxes to maintain the municipality status, whether he could degazette Runyenjes Municipality immediately.

The Minister for Local Authorities (Prof. Ongeru): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The creation of Runyenjes Municipal Council was not done against the wishes of the local residents, but it was a direct request by the local residents to the Government. The request was made openly during a public meeting held on 29th January, 1997.

(b) There is no evidence of economic inability in paying fees and charges by the area residents. Indeed, the council rates have not changed since the municipality was created.

Mr. Kathangu: Mr. Deputy Speaker, Sir, I have not received the written reply from the Minister, but even then, the creation of Runyenjes Municipality was not as a result of a request made by the residents of Runyenjes, but a request of a Mr. Noah Ndwiga, who subsequently became the mayor and defected from the

Democratic Party (DP) to KANU, because of that. I would like to know why, when citizens have demanded that towns, like Mombasa, Kisumu and Nakuru, and the Local Authorities and the Government have continued to refuse, and then the Minister today insists on having Runyenjes as a municipality when the local residents are against that creation?

Prof. Ogeri: Mr. Deputy Speaker, Sir, that is a very strange request. Normally, people will accept and welcome any establishment which may be of immense benefit that accrues from the creation of municipalities. However, I have it on record that on 2nd June, 1997, only 13 people were against the creation of the municipality and they wrote a memorandum to the Minister requesting for the deregistration of the municipality. There have also been other isolated demands by a few people, which have been directed to the Ministry, requesting for the degazettement. I want to remind the hon. Members that the population of Runyenjes is over 49,527 and, therefore, the Ministry cannot be in a position to accede to a request of only 13 people.

Mr. Kathangu: Mr. Deputy Speaker, Sir, the population of Runyenjes Town is not 49,527, but 6,000. Those 6,000 people live in a tiny town called Runyenjes Town. The figure of 49,527 represented the total number of registered voters in Runyenjes Constituency in 1997. Embu is a tiny district with three councils, namely: Embu County Council, Embu Municipality and Runyenjes Municipality. The whole district has been taken up by the council. We cannot have a district composed of two municipalities, because that the whole area is occupied by municipalities. That is why we are asking as why the Minister would feel so overburdened to deregister Runyenjes Municipality so that Embu Town can be left with two councils, namely: Embu Municipality and Embu County Council, which are adequate for that district?

Prof. Ogeri: Mr. Deputy Speaker, Sir, I did not get that question because the hon. Member was making a speech. However, I want to remind him that if he wanted the whole of Runyenjes Constituency to be upgraded to a municipality, I have no difficulty with that. On the reverse, Runyenjes does and will enjoy immense facilities if it is accorded municipal status. I think it is the right of the Government to provide services to the people.

Mr. N. Nyagah: Mr. Deputy Speaker, Sir, I come from that part of the country. This happened during the by-elections in areas where eight by-elections were held and instructions were given that this urban council be turned into a municipality despite the fact that the residents of the area did not want a municipality. Those are facts that the Minister should investigate. I would like to ask the Minister whether he is satisfied that all the information was met. I would like him also to give us the criteria used in upgrading a town into a municipality as laid down under Cap. 265, where the people of the area have put forward a request at a full meeting and then the approval is given. Is he satisfied that this was met?

Prof. Ogeri: Yes, I am satisfied.

Question No.069

FINANCING OF KENYA FERRY SERVICES

Mr. Maitha asked the Minister for Transport and Communications:

- (a) why the Ministry is levying motorists a fee for using the Likoni Ferry; and,
- (b) whether he could consider financing the Kenya Ferry Services from the petroleum levy.

The Assistant Minister for Transport and Communications (Mr. Sankori): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Kenya Ferry Services charges motorists in order to pay for part of its operational costs which cannot be fully paid for due to budgetary constraints.

(b) I cannot consider financing the Kenya Ferry Services from the petroleum levy because my Ministry does not control the use of the funds accrued from the levy. That is the work of another Ministry.

Mr. Maitha: Mr. Deputy Speaker, Sir, the petroleum levy was introduced in place of all toll bridges, and I want the Assistant Minister to understand my English. The Kenya Ferry Services operates as a bridge because it assists people to cross the Indian Ocean, just like Mtwapa and Nyali bridges do. That is why these toll bridges were removed. Now, if the Likoni Ferry is like a bridge, then why did the Ministry not classify it as one of the toll bridges so that they could waive the levy which is being charged to motorists and substitute it with the petroleum levy, which is now being charged? Now the Ministry is overcharging the motorists after they have paid petroleum levy. Why does the Ministry not classify Likoni Ferry as one of the toll bridges?

Mr. Sankori: Mr. Deputy Speaker, Sir, I will ask the hon. Member to kindly put that Question to the relevant Ministry so that it can be answered adequately.

Mr. Deputy Speaker: Order! Hon. Sankori, the Question seems to be relevant to your Ministry.

Mr. Sankori: Mr. Deputy Speaker, Sir, when you were consulting there, I told the hon. Member that the petroleum levy comes under the Ministry of Public Works and Housing. I have also informed him that the second part of his Question can be well answered by the Ministry of Public Works and Housing.

Mr. Mwakiringo: Mr. Deputy Speaker, Sir, since Inter-Ministerial meetings are normally held, why does your Ministry not ask the Ministry of Public Works and Housing to give it some more money so that it can service that ferry?

Mr. Sankori: Mr. Deputy Speaker, Sir, it amounts to the same thing. If the hon. Member can put that Question to the right Ministry, he will get a full answer.

Mr. Mwenje: Mr. Deputy Speaker, Sir, since we all know that we have one Government in this country and a collective responsibility for all the Ministers, it was up to the Assistant Minister to consult his own colleagues in order to answer that Question. Could the Assistant Minister now answer that Question in the spirit of collective responsibility?

Mr. Sankori: Mr. Deputy Speaker, Sir, that is why I am telling him that he should put this Question properly to the relevant Ministry, which has got all the details and he will be answered.

Mr. Deputy Speaker: Order! I do appreciate that the issue arose after a supplementary Question was asked. Surely, if a Question is not relevant to your Ministry, your answer is not to come back here and tell us that it is not your responsibility, but to pass it on to the Ministry concerned in advance. So, hon. Maitha, if you want to re-direct that Question, I can have it back.

Mr. Maitha: Mr. Deputy Speaker, Sir, the Kenya Ferry Services is under the Ministry of Transport and Communications. The petroleum levy is under the Ministry of Public Works and Housing. The toll bridges were removed by the Ministry of Public Works and Housing. Why is it now that the Kenya Ferry Services remains with the transport? Since it serves as a toll bridge, it should be moved to the Ministry of Public Works and Housing. What I am asking the Assistant Minister is this: Can he assure this House that the Kenya Ferry Services will now fall under the Ministry of Public Works and Housing and not the Ministry of Transport and Communications? Can he assure the House that he is going to transfer the Kenya Ferry Services to the Ministry of Public Works and Housing, so that we can ask this Question?

Mr. Sankori: Mr. Deputy Speaker, Sir, we are actually not going to do that because it is not the Ministry of Transport and Communications that allocates duties to other Ministries.

Dr. Ochuodho: Mr. Deputy Speaker, Sir, the issue of the ferry is a very important and crucial one. However, this Assistant Minister was just sworn in the other day. Of course, his appointment has not been gazetted. He is behaving---

Mr. Deputy Speaker: Ask your question!

Dr. Ochuodho: Mr. Deputy Speaker, can the Assistant Minister reassure us that the Government is going to take action; otherwise, if he cannot deliver, he should resign?

Mr. Sankori: Mr. Deputy Speaker, Sir, whether I was appointed 10 years ago or yesterday, I still remain an Assistant Minister in the Government of Kenya. I sympathise with the Questioner and that is why I told him that if he can put his Question on the levy to the Ministry concerned, definitely, he is going to be answered adequately.

Question No.514

INSPECTION OF NAIROBI-MOMBASA
RAILWAY LINE

Mr. Mwakiringo asked the Minister for Minister for Transport and Communications:-

- (a) what steps he is taking to ensure that the railway line between Nairobi and Mombasa which was adversely affected by the recent *El Nino* induced rains, is inspected for any structural damages and repaired to avert accidents; and,
- (b) what further steps he is considering to take to enhance the service provided by train service to the passengers so as to attract more customers.

The Assistant Minister for Transport and Communications (Mr. Sankori): Mr. Deputy Speaker, Sir, may I ask for the indulgence of the House, that the Question be actually deferred to tomorrow so that we can actually give him a comprehensive reply.

Mr. Deputy Speaker: Hon. Mwakiringo, are you satisfied?

Mr. Mwakiringo: Mr. Deputy Speaker, Sir, I have no objection. Thank you.

(Question deferred)

Question No.281

ALLOCATION OF LAND TO JUA KALI PROJECT

Mr. Deputy Speaker: Hon. Members, the hon. Minister for Research and Technology is unavailable to answer this Question this morning. So, the Question has been deferred to tomorrow afternoon.

(Question deferred)

Question No.469

DESTRUCTION OF FORESTS IN MERU NORTH

Mr. Maore asked the Minister for Natural Resources:-

- (a) whether he is aware that Tamani Hill Forest is in the process of being depleted through illegal massive felling of trees that began early this year;
- (b) whether he is further aware that Ngaya Forest is in similar danger; and,
- (c) if the answers to "a" and "b" are in the affirmative, whether he could he prosecute all the culprits, including the Meru North District Forest personnel involved.

The Assistant Minister for Natural Resources (Mr. Lengees): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that Tamani Hill Forest is in the process of being depleted due to massive felling of trees. The Tamani Hill Forest is under the management of Nyambene County Council and my Ministry has been trying to have it gazetted as a Government forest but with little success. Until the gazettelement is accomplished, my Ministry has no control over the Tamani Hill Forest.

(b) I am further aware that Ngaya Forest is in similar danger, and again, Ngaya Forest is also under the management of Nyambene County Council. The county council should intensify its patrols in order to control the wanton destruction of these two important forests.

(c) Although my Ministry has been assisting the County Council of Nyambene to control illegal activities when requested to do so, a lot more could be achieved if the Nyambene County Council could allow the two forests to be managed by the forest department after gazettelement. In this way, the forest department will ensure that the illegal massive felling of trees is completely eradicated. At the moment, it is very difficult for the forest department to be involved with the management of Tamani and Ngaya forests since they are all under the jurisdiction of the Nyambene County council.

Mr. Maore: Mr. Deputy Speaker, Sir, the Assistant Minister has not read the last part of his answer which says:

"The county council askaris and forest personnel have arrested and prosecuted 26 people found felling trees illegally".

This is a blatant lie. The Assistant Minister, being the custodian of our natural resources, cannot talk about Nyambene County Council being another entity. The law recognises that the Minister for Natural Resources as the one responsible for all the forests. Can this Assistant Minister say where he comes in since the gazettelement does not need him to ask permission from the county council of Nyambene? Is it right to watch this Government commit almost the equivalent of environmental genocide on the people of this community because in the next 40 or 50 years, the area will be desert, since I live next to an ASAL area because these trees will dry up? Why is the Assistant Minister not coming up quickly to gazette this forest and stop it from destruction, even by using the Provincial Administration?

Mr. Lengees: As I said before, that will entirely depend on the County Council of Nyambene. If they can allow us to gazette the forest, we can do so, and manage it.

Mr. Maore: Mr. Deputy Speaker, Sir, I am just shocked because the Assistant Minister has said the Ministry is trying to gazette the forest but it is unable. The Ministry has never tried that. If it has, there is no evidence to that effect. I have followed this issue very closely because this forest and the Ngaya forest happen to be like an oasis in a desert. There are no other neighbouring forests near those two forests. Can the Assistant

Minister ignore these excuses he is giving because they are not real? He should gazette this forest tomorrow or next week, or within the next ten days, and then we can see who will bring this case to court! Nobody has ever sued you for attempting to gazette the forest.

Mr. Lengees: Mr. Deputy Speaker, Sir, I would refer the hon. Member to the Nyambene County Council to know why the county council is not letting the Ministry manage these forests. They are already being managed by the Nyambene County Council, but as soon as they give us the okay to manage them, we will do so!

Dr. Leakey: Mr. Deputy Speaker, Sir, I wonder whether the Assistant Minister will agree with me that the forests that are gazetted under the Forest Department are being denuded and the trees destroyed, and the land excised by the Forest Department of the Government. Maybe, it is better for the hon. Assistant Minister not to have them gazetted because the Forest Department cannot do its job clearly.

Mr. Lengees: Mr. Deputy, Speaker, Sir, I am not aware of that one.

Mr. Maore: Mr. Deputy Speaker, Sir, we have a Minister who is in charge of natural resources. But he now realises that whoever he has given the authority to be the custodian of the forest is a dangerous custodian. Just like we would have the Ministry of Home Affairs, National Heritage, Culture and Social Services punish errant parents for not taking care of their children, Nyambene County Council and the Forest Department Officers are the ones depleting the forests recklessly. What urgent measures is the Assistant Minister going take to save these forests?

Mr. Lengees: Mr. deputy Speaker, Sir, as I said before, legally, until these two forests are gazetted as Government forests, we cannot involve ourselves in their management. However, the council has lately been planning to sell the two forests to the Kenya Tea Development Authority. Is the Questioner aware of that one? We are not able manage those forests.

Mr. Maore: Mr. Deputy Speaker, Sir, the Nyambene County Council inherited these forests from our forefathers. Now, the Assistant Minister is giving the council permission to sell these forests so that they can get money to pay their arrears. He says he is not responsible for the management of these forests, but he will let the Nyambene County Council sell them. Is this a Government?

Mr. Lengees: Mr. Deputy Speaker, Sir, the Government of Kenya cannot be accused of this. The County Council of Nyambene is the one which has all the responsibility of managing those forests. Once given permission by the Nyambene County Council to gazette them, definitely, we will take over their management. I sure about that.

Question No.190

MAINTENANCE OF TEA ROADS

Mr. Michuki asked the Minister for Public Works and Housing:-

- (a) whether he is aware that all roads in the tea growing areas of Kangema are in a deplorable state of disrepair;
- (b) whether he is further aware that tea farmers are making huge financial losses due to non-delivery of their plucked tea to the factories because of unmaintained roads; and,
- (c) if the answers to "a" and "b" above are in the affirmative, what action he is taking to have these roads repaired and regularly maintained.

The Assistant Minister for Public Works and Housing (Mr. Khaniri): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that all roads in tea growing areas of Kangema are in a deplorable state of disrepair. However, I am aware that some of the roads are not in a good state of repair.

(b) I am aware that the tea farmers are making some financial losses due to non-delivery of plucked tea to factories as a result of some roads that are not in a good state of repair.

(c) The classified and tea roads that are affecting tea farmers in Kangema are included in the grading routine maintenance programme for the 1998/99 financial year.

Mr. Michuki: Mr. Deputy Speaker, Sir, the Assistant Minister says he is not aware of these roads. If I can make him aware, I would do so. The road from Kanyenyaini-Kiawambogo to Kihoya is impassable; so is the road from Rwathia to Kihoya. Rwathia is closer to a tea factory. The other one is the road from Kianjeru, through Kayu to Kihoya-Nyagatugu-Wanjerere and Wanjerere-Kiawambogo--- I can count all of them because I know them. Could the Assistant Minister tell us how much money the Ministry intends to spend on these roads as a matter of normal maintenance this financial year?

Mr. Khaniri: Mr. Deputy Speaker, Sir, this financial year, the Ministry is set to grade a total of 104 kilometres of road network in the said area, and we have budgeted Kshs1.5 million for this work.

Mr. Ndicho: Mr. Deputy Speaker, Sir, roads in all tea and coffee growing areas in the entire Central Province are in a deplorable condition. Last year, there were efforts which were put into place to have the cess money from coffee and tea managed by the farmers themselves. As a result of that, this Ministry is getting a relief because some of these roads are currently being repaired through the cess money. May I ask the Assistant Minister to use the collective responsibility within the Cabinet to advise the Minister for Local Authorities and the President to keep off the cess money affair. Consequently, this money can continue to be used to repair these roads, and your Ministry will be relieved of this problem.

Mr. Khaniri: Mr. Deputy Speaker, Sir, I will look into that.

Mr. Michuki: Mr. Deputy Speaker, Sir, the Assistant Minister says that in this financial year, 104 kilometres of these roads will be maintained as a normal routine, and that the expenditure will be Kshs1.5 million.

This amounts to less than Kshs15,000 per kilometre. Is the Assistant Minister satisfied that they can do that job at less than Kshs15,000 per kilometre, when we can only manage to buy two lorry-loads of quarry wastes at Kshs15,000 today? Is he satisfied or he is just answering the Question for the sake of it? Could the Assistant Minister be more realistic and tell us how much he is going to spend?

Mr. Khaniri: Mr. Deputy Speaker, Sir, I have already answered the question of how much we are going to spend. I said that we are going to spend Kshs1.5 million. As to whether I am satisfied, it is due to financial constraints that we cannot allocate sufficient funds to maintain these roads. However, we will look into the possibility of subsidising these funds with the Petroleum Levy.

Mr. Mwhia: Mr. Deputy Speaker, Sir, roads in this country are in a bad state. We are not only talking about a road in Kanyenyaini, but all roads in tea and coffee growing areas, which are in deplorable condition. The Assistant Minister has said that he has allocated Kshs1.5 million to do 104 kilometres. Is he satisfied that this amount of money will be enough in the maintenance of those roads? How much material can he purchase with Kshs14,000 per kilometre?

Mr. Khaniri: Mr. Deputy Speaker, Sir, I am getting worried at the level of concentration here. The question asked by the hon. Member is the same question that I have just answered from hon. Michuki. I said that I am not satisfied.

Question No.358

Gravelling of Sori-Masara Road

Mr. Ojode asked the Minister for Public Works and Housing:-

- (a) if he is aware that Sori-Masara Road, D210, in Migori District is impassable and needs gravelling;
- (b) if he is further aware that Angugo and Aloma bridges on this same road are damaged and need urgent repairs; and,
- (c) if the answers to "a" and "b" above are in the affirmative, what urgent measures are in place to have this road made passable.

The Assistant Minister for Public Works and Housing (Mr. Khaniri): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that there are some bad sections along Sori-Masara Road, D210, which became impassable during the last wet season.

(b) I am further aware that Angugo and Aloma bridges were washed away by floods as a result of *El Nino* rains and require repairing. The bridges will be repaired over two financial years. During the 1998/99 financial year, each of them will get a total of Kshs750,000 to start off repair work.

(c) The Ministry will gravel Sori-Masara Road and undertake the normal routine maintenance; that is, cleaning culverts and making drains in this financial year at a cost of Kshs100,000.

Mr. Ojode: Mr. Deputy Speaker, Sir, it is quite unfortunate that we have this kind of answer by the Assistant Minister. Fish dealers in Sori and Luanda cannot take their fish to Migori trading centre because there is no road between Sori and---

(Loud consultations)

Mr. Deputy Speaker: Order! Hon. Members, please, consult in low voices so that you can hear the

questions hon. Members are putting to Ministers. The hon. Members who are standing knows that, it is out of order to do so.

Mr. Ojode: Mr. Deputy Speaker, Sir, I was saying that there is no road from Sori to Onger. The Government is losing over Kshs500 million in terms of revenue from the sale of fish. This is very unfortunate because the Assistant Minister said that some sections of Sori-Masara Road are impassable. Two weeks ago, I used that road and I know that it is completely washed away. Could the Assistant Minister confirm to this House whether that road exists or not?

Mr. Khaniri: Mr. Deputy Speaker, Sir, I do confirm to the House that, that road exists. I said that I am aware that some sections of it are not passable. However, I have clearly stated that in this financial year we have set aside funds to grade this road. The Works on this road are expected to commence in September and they will take seven days.

Mr. Onyango: Mr. Deputy Speaker, Sir, this road is in my constituency. Could the Assistant Minister tell this House how much they are going to use to upgrade or murrum it? Is he further aware that this area, every year, earns the Kenya Government revenue to the tune of Kshs34 million and yet its roads are bad?

Mr. Ndicho: On a point of order, Mr. Deputy Speaker, Sir. You have heard hon. Onyango saying that this road is in his constituency. How come that hon. Ojode asked a Question about a road in somebody else's constituency?

Mr. Deputy Speaker: Order, Mr. Ndicho! The road must lead somewhere! Yes, Mr. Khaniri.

Mr. Khaniri: Mr. Deputy Speaker, Sir, if hon. Onyango was keen he would have heard what I said when answering this Question. I said that the Ministry has set aside Kshs100,000 to repair that road. However, this road has been recommended for consideration for funding through the disaster management fund programme, which is under the Office of the President.

Mr. Achola: Mr. Deputy Speaker, Sir, could the Assistant Minister explain the rationale of picking one bridge for repair and leaving the other bridge? At the end of repair of one bridge, that road will still be impassable!

Mr. Khaniri: Mr. Deputy Speaker, Sir, I am sorry. I did not hear the question by the hon. Member.

Mr. Achola: Mr. Deputy Speaker, Sir, if you have two bridges along one road which connects points "a" and "b", and you repair one of them, you will still not be able to move from one point to the other. What is the point of allocating money for repair of one bridge and leaving out the other unrepaired?

Mr. Khaniri: Mr. Deputy Speaker, Sir, I do not think the hon. Member got me right. I said that the two bridges will require Kshs4 million to be repaired, but due to financial constraints, these bridges will be done in two financial years. We have allocated each bridge Kshs750,000 in this financial year to start the works.

Dr. Oburu: Mr. Deputy Speaker, Sir, this road used to be very perfect during the colonial time. It was a well maintained road serving that area. The Assistant Minister says that he has allocated funds to repair the two bridges over a period of two years. Does he mean that the people of that area are not going to use that road for two years, and will have to await the repairs of those two bridges?

Mr. Khaniri: Mr. Deputy Speaker, Sir, that is exactly what I mean. Due to financial constraints, we will repair those two bridges in two financial years.

Mr. Ojode: Mr. Deputy Speaker, Sir, could the Assistant Minister tell this House whether we can have a temporary road which can be used by the fish dealers while the two bridges are being repaired?

Mr. Khaniri: Mr. Deputy Speaker, Sir, we will look into that.

Mr. Ojode: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is accepting that the Ministry is going to look into the matter, but when will that be? As I am talking to you, fish cannot be transported from Masara to market places.

Mr. Deputy Speaker: Order! Order! He was answering the question you asked. You did not ask him "when" but you asked "whether".

Mr. Ojode: Mr. Deputy Speaker, Sir, I am just asking when he is going to do the temporary road in order for the fish dealers to get access to the market places.

Mr. Deputy Speaker: Order! Hon. Ojode, you asked him whether they will agree to do a temporary road, but you did not ask him when they will do it. If you want to ask him "when", do not stand up on a point of order.

Mr. Ojode: Could the Assistant Minister confirm to us when he is going to do a temporary road so that the fish dealers can get access to the market places?

Mr. Khaniri: Mr. Deputy Speaker, Sir, we will give it priority and we will do it as soon as is practicable.

Mr. Deputy Speaker: Hon. Magara's Question for the second time!

Mr. Magara: I beg to apologise for coming late to the House.

*Question No.368*MEASURES TO SOLVE CHITAGO-GETENGA
BOUNDARY DISPUTE

Mr. Magara asked the Minister of State, Office of the President what measures he had taken concerning an administrative boundary dispute between Chitago and Getenga locations in Etago Division which had brought conflicts amongst the area residents.

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

We are aware that there is a boundary dispute, and a committee of elders has been established from the two locations to sort out this dispute. I believe they have already started work and as soon as they finish, we will resolve the problem.

Mr. Magara: Mr. Deputy Speaker, Sir, though I have not received the written answer to the Question---

(Loud consultations)

Mr. Deputy Speaker: Order! Hon. Magara, ask your question.

Mr. Magara: Thank you, Mr. Deputy Speaker, Sir. There is a lot of consultation going on and I cannot get through properly. On 1st June, 1998, there was a very serious crisis in this particular division. Could the Minister be specific and state categorically which panel of elders he has established to resolve this issue because the former DC curved some portions of this location and transferred them to a different location, an action that has brought a very serious crisis?

Maj. Madoka: Mr. Deputy Speaker, Sir, I will be able to give the names of the members of the panel tomorrow.

Mr. Magara: Mr. Deputy Speaker, Sir, there was a fight between two communities over this particular sub-division. There was a real fight on 1st June, 1998. I am asking the Minister to be serious on this issue and if he has no further information, he should state so and give us a clear answer---

Mr. Deputy Speaker: The Minister has said that he will bring the names of the members of that panel tomorrow. Are you satisfied with that, or do you want to have them during the afternoon session?

Mr. Magara: Mr. Deputy Speaker, Sir, I am not satisfied that he could bring the answer even tomorrow.

Mr. Deputy Speaker: Hon. Magara, you wanted to have the details of the panel that the Minister said has been set up to look into this matter. The Minister has undertaken to provide the names tomorrow. Thank you.

Mr. Wafula: Mr. Deputy Speaker, Sir, I should apologise for coming late to the House.

Mr. Deputy Speaker: You should, indeed, apologise for coming late.

Question No.366

DISMISSAL OF DANIDA EMPLOYEES

Mr. Wafula asked the Minister for Home Affairs, National Heritage, Culture and Social Services:-

(a) whether he is aware that the following employees of Family Life Training Programme which is funded by the Danish International Assistance (DANIDA), namely; Johnson Waweru, Wilfred Kungu, Larissa Kayonga, Winnie Kamau, Lydia Njuguna, William Malonza and Rosemary Wairagu; have illegally been sacked without any notice or payment of terminal benefits;

(b) If the answer to "a" is in the affirmative, whether he could take urgent steps to ensure that either the employees are reinstated or paid terminal benefits which should include compensation for loss of employment resulting from wrongful dismissal; and,

(c) what steps he is taking against the Danish adviser, Dr. Kinsten Haremann, and the Commissioner for Social Services who, jointly, conspired in encouraging unfair and harsh labour practices.

The Minister for Home Affairs, National Heritage, Culture and Social Services (Mr. Nassir): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that Messrs. Johnson Waweru, Mr. Wilfred Kungu, Ms. Larissa Kanyonga, Ms. Winnie Kamau, Ms. Lydia Njuguna, Mr. William Malonza and Miss Rosemary Wairagu were employed by the

Danish International Development Agency (DANIDA) at different times to work at the DANIDA Supportive Community Based Nutrition Programme, formerly Family Life Training Programme (FLTP).

Mr. Wafula: On a point of order, Mr. Deputy Speaker, Sir. Could the Minister speak loudly so that we can hear him because this is a very important Question.

(Mr. Nassir stood up in his place)

Mr. Deputy Speaker: Order! Order, Hon. Nassir! When you have a Member on a point of order, you are supposed to sit down. Hon. Members cannot hear what you are saying, so, please, adjust the microphone if that is the problem and speak up.

The Minister for Home Affairs, National Heritage, Culture and Social Services (Mr. Nassir): Mr. Deputy Speaker, Sir, the problem is not with me but the microphone. So, you can ask the machine operators to adjust it. When the machine operators do their job properly, you will hear my voice.

I beg to reply.

(a) All the said employees were serving contract terms and they left employment for various reasons, which are within the contractual and prevailing legal terms.

(b) The Ministry cannot take any steps to ensure reinstatement or payment of terminal benefits for the aforementioned persons because they each left employment with DANIDA for different reasons, and they have already been paid their terminal dues and benefits.

(c) The Ministry is not taking any steps against the Danish adviser, Dr. Kinsten Haremann, and the Commissioner of Social Services because there is no evidence that the two jointly conspired in encouraging unfair and harsh labour practices as the necessary employment contractual procedures were followed in terminating employment of the aforementioned employees.

Mr. Wafula: Mr. Deputy Speaker, Sir, I am aware that the Commissioner of Social Services colluded with the foreigner to intimidate Kenya citizens, and the Minister is not coming out clearly on this. I am also aware that the Commissioner was taken to the Coast for a trip and then she came around to sack the Kenya citizens. She treated them very unfairly and harshly. Could this Minister tell the House the reasons for which each of the employees was terminated?

Mr. Nassir: Mr. Deputy Speaker, Sir, I did not want to say the wrongs that these people had done but if the hon. Member feels that I should say them, I will go ahead and do so. The DANIDA supported community based nutritional programme has supported the country for nearly 20 years with a total grant of Kshs500 million. DANIDA has also included buildings, community-based nutritional centres---

Mr. Sifuna: On a point of order, Mr. Deputy Speaker, Sir. The hon. Minister is not answering what hon. Wafula asked. We are not asking how much DANIDA has done for this country. What we want to know is how much each **[Mr. Sifuna]**

employee was paid, and why they were dismissed?

Mr. Nassir: Mr. Deputy Speaker, Sir, usually, when you ask for something, you will get it. It is important to let the hon. Members know what DANIDA has done for this country so that they can understand the gravity of the mistakes these people committed. It is good to know what is going on. If you ask a question, you will get a reply and whatever reply you get, you must take it.

(Loud consultation)

Anyhow, starting with one of them---

Mr. Deputy Speaker: Order! Give the Hon. Minister a chance to answer that Question.

Mr. Nassir: Mr. Deputy Speaker, Sir, Mr. William Malonza was a former Government of Kenya driver who retired from Government service through the voluntarily early retirement scheme. He was hired by DANIDA community-based nutrition programme on contract terms. He was found submitting to DANIDA unacceptable high transport expenditure claims after every trip to the field. These expenditures, compared with those of other drivers were openly discussed with him without any significance improvement. In October, 1997, DANIDA refused to renew Mr. Malonza's contract and informed him accordingly. He was paid his final dues less imprest recoveries after his services were terminated. On 21st November, he was paid Kshs113,000.68

(Mr. Angwenyi stood up in his place)

Mr. Deputy Speaker: Order! Order, hon. Angwenyi!

Mr. Murungi: On a point of order Mr. Deputy Speaker, Sir. Is it in order for the Minister to read for us the life history of this character instead of answering the question which was asked by the hon. Member? He should just answer the Question and stop telling us the life history of the man.

Mr. Nassir: Mr. Speaker, Sir, when you become a politician, even if you are a lawyer, you remain a politician. In fact, the hon. Member knows exactly what I am talking about.

Mr. Deputy Speaker: Order! Order! Hon. Minister, try to shorten your reply and be faster, so that we can move on to the next item.

Mr. Nassir: Mr. Deputy Speaker, Sir, I will be brief. He was paid Kshs113,000.68. That is just one case but if you want me to go through the whole lot, I will do that. After these people were paid the benefits and agreed to lose their jobs, they went to their hon. Member of Parliament as if he were a labour officer.

Mr. Sifuna: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister aware that the seven employees were arrested and taken to court when they had gone to ask for their terminal benefits? The imperialist lady said that the innocent employees had threatened her life? Do you know that they were taken to court for that?

Mr. Nassir: Mr. Deputy Speaker, Sir, these people went and threatened the Danish people, who are giving us money. The police have taken action accordingly. Are we allowed to discuss in this House matters which are before court?

Dr. Ochuodho: On a point of order, Mr. Deputy Speaker, Sir. There is a very dangerous precedent that is emerging in this House. Ministers often come with answers that come from the interested parties. Is it right for this to happen? The answer the Minister is giving is from the DANIDA officials. Is he right to insinuate that these imperialists, as they are called, can continue dehumanising our people simply because they are giving us money?

Mr. Nassir: Mr. Deputy Speaker, Sir, I do not know whether it will be right to bring the DANIDA officials and the people who were sacked here to raise the issue. What we know is that the matter was dealt with properly and effectively.

Mr. Wafula: Mr. Deputy Speaker, Sir, the Question I put to the Minister has not been answered. I wanted him to give the reasons for which each of the employee's service was terminated. Secondly, I wanted him to give a breakdown of the terminal benefits paid to each employee. The Minister has not answered this Question. Can he answer it?

Mr. Deputy Speaker: Hon. Minister, why do you not just---

Mr. Nassir: Mr. Deputy Speaker, Sir, I replied to the whole Question. Once more, I do not want to advertise whatever wrong the DANIDA officials did, but the hon. Member can come to my office and then we can discuss the matter properly.

Mr. Deputy Speaker: Order! Order! Hon. Kiminza, you must apologise for coming late to this House.

Mr. Kiminza: Mr. Deputy Speaker, Sir, I have already apologised to the Minister for Health.

Question No.496

QUALIFIED STAFF FOR KATILINI DISPENSARY

Mr. Kiminza asked the Minister for Health:-

(a) whether he is aware that Katilini Dispensary in Kalivu Location, Kitui South Constituency, has not been operational due to lack of qualified staff and drugs since it was completed in 1989; and,

(b) if the answer to "a" above is in the affirmative, what measures he will take to ensure that a clinical officer/nurse and drugs are sent to the said dispensary so as to assist the local residents who have to travel a long distance for treatment.

The Assistant Minister for Health (Dr. Wako): Mr. Speaker, Sir, I beg to reply.

I am aware that Katilini Dispensary in Kalivu Locution in Kitui South Constituency has not been operational due to lack of qualified staff and drugs. However, the dispensary started full operation on 15th July, 1998. A nurse has been posted to the dispensary and a two months' drug supply has been delivered. Since action has been taken---

Mr. Deputy Speaker: Dr. Wako, I think you have been sworn in?

The Assistant Minister for Health (Dr. Wako): Yes.

Mr. Kiminza: It is true that action has been taken. But taking into consideration that the dispensary was completed in 1989, and that it is in the home area of the former hon. Member of Parliament, could the

Assistant Minister assure this House that the Minister will post nurses or clinical officers there and supply drugs to the rest of the dispensaries in the area as soon as it is requested to do so?

Dr. Wako: Mr. Deputy Speaker, Sir, the dispensary was not completed in 1989, as the hon. Member has claimed. The dispensary was supposed to be built on Harambee basis, and it was completed towards the end of 1997. So, the Ministry has taken action by posting a nurse and supplying drugs to the dispensary.

QUESTIONS BY PRIVATE NOTICE

ESTABLISHMENT OF ILLEGAL CELL BY APs

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

(a) Is the Minister aware that Administration Police (APs) at Igoji Market in South Imenti have established an illegal cell, where they are unlawfully confining innocent citizens, subjecting them to torture, cruel and degrading treatment, and intimidating and extorting money from them?

(b) Is he further aware that the said APs illegally locked up Mr. Antony Gikabi in the said cell from 3rd to 10th July, 1998, during which time they tortured him, and that the said APs assaulted and injured a *Nation* correspondent, a Mr. Imanene Imathiu, when he went to investigate the said illegal cell?

(c) If the answers to "a" and "b" above are in the affirmative, could the Minister close the said illegal cell and have the APs arrested and prosecuted for torture and extortion?

The Minister of State, Office of the President (Maj. Madoka): Mr. Speaker, Sir, while I appreciate the seriousness of this Question, I would like to seek the indulgence of the hon. Members because the information that has come to me is a bit scanty, and I am not comfortable to reply to the Question. I will be able to reply to it tomorrow.

Mr. Murungi: Thank you, Mr. Deputy Speaker, Sir. I must say that I am shocked by the inefficiency and incompetence of this Ministry. I asked this Question over two weeks ago. We are talking about the Office of the President, under which come the Special Branch, police officers and the APs. Therefore, communication in the Ministry should be very good. This is the Ministry on which the Government is spending a lot of money. If the answer the Minister has is unsatisfactory, he should have been able to confirm it with either the DC or the DO within a matter of hours. We should not allow the Minister to get off this matter just like that. Can the Minister tell this House the steps he has taken to make sure that he has got a good answer, and why he has not got it by now? If there are no good reasons then the Minister should be disciplined by this House.

Mr. Deputy Speaker: Order! Order! Very well, but the Minister has told you he does not have an adequate answer. The alternative is to get that unsatisfactory reply. Let us give him a chance to give you a satisfactory answer tomorrow.

Mr. Oloo-Aringo: The point which my hon. friend, Mr. Murungi, has raised is crucial; it is questioning the seriousness with which Ministers are treating matters in this House. It is our duty to ask them those Questions. Under the provisions of our Standing Orders, answers to Questions by Private Notice should be ready here within 48 hours. This is more than two weeks later and yet the Minister has not come to this House with the answer. We are duty-bound to ask what the system is doing. Why are we paying them so much money and yet they are not able to produce answers to the questions which we ask? We cannot allow them to get away with it. If they continue to repeat this habit, then this House will also tell them that they will not get away with it.

Maj. Madoka: Mr. Deputy Speaker, Sir, I appreciate the Members' concern, but they should appreciate that we get this information from the field. The officers who are concerned with getting the information from the field, sometimes, have to find their own way of cross-checking it. Sometimes that is what causes the delay.

Mr. Deputy Speaker: Order! Order, hon. Members! Of course, every Member here is duty-bound to obey the Standing Orders. Hon. Ministers, if Questions are asked under Private Notice, they must be answered in a timely manner. However, if hon. Members are not happy with a Minister's performance, of course, they can raise a Motion of censure against that Minister.

(Question deferred)

Next Question, hon. Kihara!

MISAPPROPRIATION OF SAND CESS MONEY

Mr. Kihara: Mr. Deputy 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 monies collected as cess from sand harvesting in Longonot Location for construction of a health centre in Mai Mahiu has been misappropriated by the Provincial Administration in Naivasha?

(b) Is he also aware that when the matter was raised with the Naivasha District Officer, he stopped the collection of the cess on 10th July, 1998, thereby jeopardizing the opening of the health centre?

(c) If the answers to "a" and "b" above are in the affirmative, could the Minister inform the House how much money has been collected from this source and its whereabouts?

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, again, I do apologise; I still do not have certain figures from the Provincial Administration. I will give a full answer tomorrow.

Mr. Deputy Speaker: Hon. Kihara, are you satisfied with that answer?

Mr. Kihara: Mr. Deputy Speaker, Sir, I am not happy with that answer. When I filed this Question more than two weeks ago, I warned the Minister that this Question was coming. I told him about the seriousness of the matter. Presently, our Government is broke. A local community manages to make arrangements to collect money to complete a facility, and that money is misappropriated and nothing is done. I will demand an answer now because I had warned the Minister about this Question coming up.

Mr. Deputy Speaker: Order! Order! I hope that the Leader of Government Business has listened and heard the Members' sentiments about the derogatory manner in which Questions are being treated, and that action will be taken to ensure that Questions are answered when they are due.

(Question deferred)

Next Question, hon. Osundwa!

MODERNIZATION OF MUMIAS SUGAR FACTORY

(Mr. Osundwa) to ask the Minister for Agriculture:-

(a) Is the Minister aware that Mumias Sugar Company Limited is on the verge of collapse?

(b) Could the Minister explain to the House the criteria that was used in awarding the Mumias Sugar Factory modernisation contracts to Fletcher Smith and H. Young companies?

(c) What was the overall project cost?

Mr. Deputy Speaker: Hon. Osundwa has asked that this Question be deferred until tomorrow, and he has already discussed it with the Minister. So, here is an occasion where the Questioner has not been ready to ask his Question.

(Question deferred)

EXPLOITATION OF FARMERS BY MIDDLEMEN

(Mr. Parpai) to ask the Minister for Agriculture:-

(a) Is the Minister aware that the National Cereals and Produce Board (NC & PB) has declined to buy maize from farmers in Loitoktok and hence left farmers to be exploited by middlemen?

(b) If the answer to "a" above is in the affirmative, could the Minister instruct the Board to purchase maize from the said farmers?

Mr. Mwenje: Mr. Deputy Speaker, Sir, I have information that Mr. Parpai is stuck somewhere. May I request that his Question be deferred to tomorrow? He had asked me to make this request on his behalf.

Mr. Deputy Speaker: Hon. Mwenje, after the way you have harangued these Ministers, it is not right for you to stand up and now ask for their indulgence.

(Question deferred)

POINTS OF ORDER

BANNING OF HARMFUL BREWS

Mr. Michuki: Mr. Deputy Speaker, Sir, I rise on a point of order to demand a Ministerial Statement from the Minister for Health who was responsible for the Motion that was passed by this House on 1st, July, outlawing all the drinks that have harmful effects. According to the Votes and Proceedings, the Motion was passed by the House. However, many of us who understand the dangers of these drinks and the damage they have caused are highly distressed to see that even after having shown that these drinks can kill, they have been re-introduced all over the districts of Central Province. We demand a Ministerial Statement from the Minister to confirm whether he wants to cause genocide in Central Province or not. We also want to know if the Government is unable to stand firm on its constitutional obligations, that is, to protect the lives of the people. Before we go to recess, would the Minister for Health, if he is serious enough, make a Statement tomorrow?

BANNING OF PUBLICATIONS

Mr. Maore: Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Leader of Government Business, on behalf of the Attorney-General, in regard to letters written by the Registrar-General last month, to three publications namely; *The Star* newspaper, the *Finance Magazine* and the *Post on Sunday*, purporting to reject their registration when they had already complied with all the provisions under the law that require them to file returns, execute a bond, and they have been doing that regularly. We want a clarification on what the purported de-registration or ban means.

There is also the issue of the police acting like a bunch of thugs, collecting newspapers, harassing the vendors and confiscating their wares without taking into consideration the economic consequence on the vendors, not the publishers. Thank you, Mr. Deputy Speaker, Sir.

THE STATUS OF DR. STONE IN KENYA

Dr. Kituyi: Mr. Deputy Speaker, Sir, two weeks ago, I requested the Minister for Health to present before this House the Government's position on Dr. Stone. He promised the House he would come with a Ministerial Statement. Last week he again said that he would come with a Ministerial Statement. Since then, the said Minister has held a Press conference to issue what he purported to be the Government position regarding the status of Dr. Stone in Kenya. This is getting worrisome. If the supremacy of Parliament is to be guarded, Ministerial Statements demanded here have to be first issued in here before they are issued elsewhere. It becomes particularly worrisome when another Minister bought space in newspapers yesterday, advertised something and then later on came to present it in Parliament. We would wish the Chair to clarify whether the Ministers think that those other audiences are immediate audiences, and then they can regurgitate what has been given to them, to bring it to the National Assembly.

Mr. Deputy Speaker: Order, hon. Members. There is a Question coming up this afternoon on Dr. Stone. I hope the Minister will take that opportunity to make further clarification. It is certainly a matter of concern that when certain issues have been raised here and Ministers are under obligation to make a statement in the House, they should choose another forum to make those statements. I would ask that where a commitment has been made to the House that a statement is going to be brought here, that commitment ought to be met.

DISPOSAL OF RADIOACTIVE WASTE

Mr. Leakey: Mr. Deputy Speaker, Sir, some weeks back, I raised a Question regarding the disposal of radioactive waste. The Chair directed that there should be consultations between the two Ministers, and a Ministerial Statement issued. We were promised that the statement would be given on Tuesday. It is now Wednesday and we have not received the statement.

Mr. Deputy Speaker, Sir, could you inform the House when the Minister will bring the Ministerial Statement?

Mr. Deputy Speaker: I do not see the Minister for Health here, but---

(Dr. Wako stood up in his place)

Order! When the promise was made, Dr. Wako was not an Assistant Minister in the Ministry. But I

will appreciate it if Dr. Wako could convey the sentiments to the Minister, and ask him to make amends either this afternoon or tomorrow.

RESPONSE TO QUESTION NO.024

Mr. Mutani: Mr. Deputy Speaker, Sir, I rise on a point of order to seek a proper answer to Question No.024, which I asked on 8th July, 1998, regarding the completion of the Mutonga Bridge. The Minister agreed to come with a proper answer on a Wednesday, two weeks ago. Could the Minister give us the answer now?

The Minister for Public Works and Housing (Mr. Kones): I do not remember making the promise!

Mr. Deputy Speaker: Order! The HANSARD shows quite clearly that the Minister undertook to bring a clear answer on that issue. Hon. Khaniri answered that question, and he gave that undertaking. So, we would like you to honour the Question either this afternoon or tomorrow afternoon.

The Minister for Public Works and Housing (Mr. Kones): We will come with an appropriate answer tomorrow afternoon.

Mr. Oloo Aringo: Mr. Deputy Speaker, Sir, I thank you for your wise ruling, and also for drawing the attention of the Leader of Government Business, to the fact that co-operation is both mutual and reciprocal; and that if Ministers want this House to take them seriously, they must take your ruling seriously, and also take us seriously. We are paying them very fat salaries to do their jobs. This money is coming from the Consolidated Fund, which is paid by the people of Kenya. So, we hope that they are going to take your warning very seriously.

(Applause)

Mr. Deputy Speaker: Order! Order, hon. Oloo Aringo! This is not an opportunity for us to lecture each other about our shortcomings. It was an occasion for you to raise issues that concern us, and which have not received satisfactory answers.

Next Order!

MOTIONS

PROVISION OF SECURITY TO MEMBERS OF PARLIAMENT

THAT, this House urges the Government to provide diplomatic passports, armed security for all Members of Parliament and firearms licences, particularly during this period of high insecurity being experienced in the country.

(Mr. N. Nyagah on 22.7.98)

(Resumption of Debate interrupted on 22.7.98)

Mr. Deputy Speaker: Hon. Members, when we last discussed this Motion, we reached a stage where the question was going to be put. I was going to do just that, but I felt that to put the question without any preamble to it, will make it hang in the air. So, I have decided to give hon. Nyagah one minute to wind up so that the House is set in a good mood for the vote.

Mr. N. Nyagah: Thank you, Mr. Deputy Speaker, Sir. I would like to thank all the wise Members of Parliament who supported my Motion. I am surprised that there is no security detail today belonging to the Cabinet. Obviously, it is because they must be guided by conscience, and not by the instructions that they received yesterday in the KANU Parliamentary Group Meeting. I would like to tell you that those who have eyes have refused to use them. Those that have ears have refused to hear because of instructions from elsewhere.

I would like to take this opportunity to table a man called hon. Kajwang', who was slashed two weeks ago. I would like him to come here---

*(Mr. Kajwang moved forward,
escorted by Ms. Karua)*

Mr. Deputy Speaker: Order! Order, hon. Members! I believe that hon. Kajwang was hurt in more

places than just the face. So, you will not lay him on the Table.

I will put the question now.

(Question put and agreed to)

Hon Members: Division! Division!

(Several hon. Members stood up)

Mr. Deputy Speaker: Order! There is no need to get excited because more than 20 hon. Members stood up demanding a Division. So, we shall have a Division. Ring the Division Bell.

(The Division Bell was rung)

DIVISION

(Question put and the House divided)

Mr. Deputy Speaker: Order! Order! Order, hon. Members! Just to get the procedure right, I will read the relevant Standing Order. I am sure some Members are not familiar with it. Now, Standing Order No.54(1) states as follows:-

"When Mr. Speaker directs a division to be taken, the Division Bell shall be rung for five minutes" which we have done now. Standing Order No.54(2) says:-"The names of the two tellers for the Ayes and two tellers for the Noes shall be submitted to Mr. Speaker." I have now got the names of two tellers from both sides. For the Ayes, we have Dr. Kituyi and Mr. Kamolleh and for the Noes, we have hon. Ojode and hon. Badawy. Standing Order No.54(3) says:- "At the end of five minutes, Mr. Speaker shall direct the doors to be locked and the Bar drawn. And no Member shall thereafter enter the House until after the division has been taken. "When the doors have been locked and the Bar drawn and the names of the tellers have been announced Mr. Speaker shall put the Question again and then direct the Ayes into the lobby on his right and the Noes similarly to his left and the doors of each lobby shall be locked ten minutes thereafter."

So, if after ten minutes of my saying "go into the lobby" you have not entered the lobby, thou shall not vote.

Mr. Speaker, or the Chairman of Committee shall, fifteen minutes after the locking of the lobby doors, call the House to Order and any Member who shall not have voted, then shall forfeit his right to vote. So, the voting must take place within 15 minutes.

Standing Order No.56 says:-

"No Member shall be obliged to vote in a division, but those present but not voting shall record their names with the Clerk.

I will ask the members to proceed to the lobby and start voting; the Ayes to my right and the Noes to my left. So, ten minutes start counting now.

Mr. Deputy Speaker: Order hon. Members. May the Tellers proceed and report the results of the Division.

(The Tellers announced the results of the Division)

(Question defeated by 78 votes to 77)

(Applause)

(Loud consultations)

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

(Some hon. Members on the Opposition)

side booed Mr. Shill)

(Mr. Shill started fighting with Mr. Tom Onyango)

Mr. Deputy Speaker: Order, hon. Members! Be seated, hon. Members!

(Mr. Wehliye grabbed Mr. Onyango from behind)

(The Deputy Sergeant-at-Arms) tried to separate them as Messrs. Wehliye and Maalim punched Mr. Onyango)

(Mr. Kamanda tried to grab the Mace but was restrained by one of the Principal Clerks Assistants).

(Mr. Sudi kicked another hon. Member)

(Mr. Haji grabbed a microphone stand from the Table but it was taken away from him by Prof. Saitoti)

(There followed pandemonium and confusion as some hon. Members tried to cool down Messrs. Shill, Onyango, Wehliye, Maalim, Sudi and Haji)

Mr. Deputy Speaker: Order! Order! Hon. Members, I did not believe that I would live to see such a scene in this House, coming, especially after a debate where we are supposed to win each other by reason.

(Loud consultations)

Order! Order! It does this House no credit when you even defy the Chair. You may not like the look of my face, but the Standing Orders confer on this Chair certain responsibilities, and one of them is to keep order. When the Chair calls the House to order, the House must return to order. Since you do not seem to convince each other by logic and argument, but rather by physical force, I will now read the results of the Division and immediately adjourn the House; because you have shown by our action, that you are not here to argue and win each other by reason---

(Loud consultations)

AYES: Messrs Achola, Prof. Anyang'-Nyong'o, Messrs. Dr. Awiti, Messrs. Ayoki, Bitta, Donde, Gitonga, Imanyara, Galgalo M.M. Kaindi, Messrs. Kajwang', Kamanda, Kamau, Kanyauchi, Dr. Leakey, Messrs. Kapten, Kariuki, Karua, Karume, Katuku, Kathangu, Keriri, Khamasi, Kibaki, Kibicho, Kihara, Kihoro, Kiminza, Dr. Kituyi, Messrs. Kiyonga, Dr. Kulundu, Messrs. Kuria, Magara, Maina, Maitha, Maore, Mboko, Michuki, Muchiri, Mugeke, Mrs. Mugo, Messrs. Muihia, Munyasia, Munyao, Murungi, Mutani, Mwakiringo, Mwangi O.K., Mwangi P.G., Mwangi P.K., Mwenda, Mwenje, Mwiraria, Muiruri, Ndicho, Ndwiga, Mrs. Ngilu, Messrs. Njuki, N. Nyagah, Dr. Oburu, Messrs. Obwocha, Dr. Ochuodho, Messrs. Ojode, Omamba, Dr. Omamo, Messrs. Onyango, Oloo-Arango, Otita, Otula, Shitanda, Sifuna, Mrs. Seii, Mr. Sungu, Eng.Toro, Wafula, Wambua and Wehliye

Tellers for the Ayes: Dr. Kituyi and Mr. Kamolleh.

NOES: Messrs. Achuka, Dr. Ali, Dr. Anangwe, Messrs. Angwenyi, Awori, Badawy, Biwott, Chanzu, Ekirapa, Ethuro, Dr. Galgalo G.B. Dr. Godana, Messrs. Gumo, Haji, Kamolleh, Karauri, Khaniri, Kimkung, Kirui, Mrs. Kittony, Messrs. Kitur, Kochalle, Kofa, Kones, Kosgey, Lagat, Lenges, Leshore, Leting arap, Lotodo P.L.F., Maj. Madoka, Messrs. Mais, Manga, Marrimoi, Masakhalia, Mbela, Mohamed H.M., Mohamed A.A., Mohamud M.A., Mkalla, Morogo E.T., Morogo W.C., Muchilwa, Mudavadi, Mugalla, Mrs. Mwewa, Messrs.

Nassir, Ndambuki, Ngala, Ng'eny, Ngutu, Noor, Ntimama, Ntutu, J. Nyagah, Obure, odongo, Ombasa, Osundwa, Prof. Onger, Messrs. Okemo, Opore, Poghiso, Rotich, Ruto, Sang', Sankori, Prof. Saitoti, Sasura, Shidiye, Shill, Sirma, Sudi, Sumbeiywo, Too, Dr. Wamukoya, Dr. Wako, Mr. Weirah.

Tellers for the Noes: Messrs. Ojode and Badawy.

[Mr. Deputy Speaker left the Chair]

[Mr. Speaker took the Chair]

Mr. Speaker: Next Order.

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. We would like to get clarification from you, because just before you took the Chair, the Deputy Speaker had declared that the House was going to adjourn. Are we now adjourning or are we continuing with the business of the House?

Mr. Speaker: Order! Mr. Ndicho, there is a difference between expressing a view and issuing an order. Proceed, Mr. Obwocha.

Mr. Obwocha: Mr. Speaker, Sir, I wish to move the following Motion---

*(Several Members withdrew from the Chamber
amid loud consultations)*

Mr. Speaker: Order! Order! Those hon. Members wishing to withdraw from the House are at liberty to do so, but they should do it in such a manner that they give those Members wishing to proceed with the proceedings of the House, the opportunity to do so. So, please, those Members taking their leave do it quietly. Proceed, Mr. Obwocha.

Mr. Obwocha: Thank you, Mr. Speaker, Sir. I wish to move the following Motion:-

THAT, in view of the fact that the Public Service---

Mr. Kapten: On a point of order, Mr. Speaker, Sir. Is it in order for any hon. Member of this House to carry a firearm into the Chambers?

Mr. Speaker: Who is he?

Mr. Kapten: There is one hon. Member in this House with a firearm!

Mr. Speaker: Order! Order, hon. Members! It is totally out of order for any Member to carry any offensive weapon into this House. I do not expect any Member to do so. If any Member has done that, he is totally out of order and he must withdraw from the Chamber immediately. An offensive weapon has been declared, as long ago as 1964, to include a fly-whisky.

Mr. Gitonga: On a point of order, Mr. Speaker, Sir. Could hon. Kapten name the hon. Member who has a gun?

Mr. Speaker: Mr. Kapten, name him.

Mr. Kapten: Mr. Speaker, Sir, I really do not intend to name him, but he is an hon. Member of this House. I saw him when he was being escorted by other Members. He had a firearm somewhere here in his coat.

The Assistant Minister for Planning and National Development (Mr. Sumbeiywo): On a point of order, Mr. Speaker, Sir. This is a very serious allegation that has been made by hon. Kapten. If he cannot substantiate, can he withdraw?

Hon. Members: Let him name him!

Mr. Speaker: Order! I am torn between forcing Mr. Kapten to substantiate and also on this issue of guns and security of hon. Members. Mr. Kapten, are you really sure having raised that issue on the Floor of the House that this House does not want to know the truth? This is because if a hon. Member comes to this House with a gun, it is a very serious breach of privilege and that amounts to endangering the lives of other Members taking into account, for example, what was going on prior to this particular occasion? In the interests of the House, what is your reaction, Mr. Kapten?

Mr. Kapten: Mr. Deputy Speaker, Sir, since it is in the interest of the House and, indeed, of this country, I saw an hon. Member with a firearm and I do not intend to name him. He knows that he is carrying a firearm.

Mr. Munyao: On a point of order, Mr. Speaker, Sir. This issue puts the House into a total chaotic situation. We are now debating a Motion at a time when I am feeling so scared. I do not know who has the firearm because some of you are looking at me so seriously. Can I propose that if the hon. Member does not want to name the hon. Member who has a firearm, he can tell me and then I will come here and advise the House accordingly.

He can write a small note to you because the House cannot operate under this tension?

Mr. Speaker: Mr. Munyao, of the two options which you are suggesting, I prefer the hon. Member to come and tell me. So, I now order that the comes to tell me. Proceed.

Mr. Obwocha: Mr. Speaker, Sir, I can move the Motion---

Mr. Katuku: On a point of order, Mr. Speaker, Sir. I am so worried. I cannot hear what the Member is saying when there is a gun around. Can we sort out that first because I cannot concentrate on what the hon. Member is saying?

Mr. Speaker: Order! Mr. Kapten, proceed to the Chair.

(Hon. Kapten consulted with the Chair)

The Minister for Natural Resources (Mr. Lotodo): On a point of order, Mr. Speaker, Sir. Since the Chair has been told by the Member for Kwanza the hon. Member who has a gun, are you going to reveal to the House the name of that Member?

Mr. Speaker: Order! I will not. What I propose to do is to have the hon. Member to put it in writing and I refer that matter to the Privileges Committee to be dealt with and then a report to be made to the House. Hon. Members, I do understand and I have in fact, warned you in the past that when hon. Members come to this House, those entitled to have guns and are licensed to have them. It is not illegal to come to Parliament with firearms, but they must surrender the guns to the Sergeant-at-arms for safe custody and in the interests of the security of all Members. So, I will ask hon. Kapten to put what he has told me in writing and I will refer this matter to the Privileges Committee so that it can deal with it. So, can we now take that as a matter of finality? I wish to assure the hon. Member that you are safe under my total guidance. Proceed!

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

Mr. Speaker: Order! You do not have to take away our time. I think hon Obwocha is raring to go. Any Member who has in his presence any offensive weapon, kindly withdraw and deposit the same with the Sergeant-at-arms or leave the Parliament Buildings altogether. I think that is the best that I can do. Now, proceed.

Mr. N. Nyagah: On a point of order, Mr. Speaker, Sir. Security is paramount. This House has been put to test. We do not know whether the Chair has been told the name of this hon. Member who had this gun, but we trust that the Chair knows who has that gun. The security of Parliament is in the hands of none other than the Speaker of the National Assembly. This issue has been brought many a times in this House. We have security men manning the doors with the machines to scan the weapons and they can identify these weapons. They have the capacity to identify these weapons. I feel personally that the security in the House is not adequate because the Sergeant-at-arms Division and the police are weak and I do envisage a situation where one of us will leave the Chamber dead. I request the Chair that more security men be posted at every corner where we have these machines and ensure - it does not matter whether it is the Leader of the Government Business or whoever it is that will be followed - that his gun is deposited with the Sergeant-at-arm. Thank you.

Mr. Speaker: Very well, Mr. Nyagah. I do agree with you that we have to ensure that Members do obey the rules as stipulated and I will ensure that any hon. Member passing through the gates of Parliament will be subjected to a physical check. If the machines are not working, you will undergo a manual check. However, please, hon. Members this is your sentiment which I am now being asked by the House to rule on and not complain. I am going to be very rough on the question of security. I am going to instruct the police and the Sergeant-at-arms to be absolutely strict to Members, staff and strangers. Without exception, all Members are entitled to the same rights and responsibility. So, no Member will be exempted and I am going to be very, very, very firm and I do instruct right now from where I am seated, that all the arms of security of Parliament must effect that directive from me immediately from wherever they are. Anybody entering Parliament either through the main gate, be it a stranger, or through the main entrances if they are members, should not have any dangerous weapons or any weapon at all. So, can we now proceed? I have undertaken to the House to do this. There is no point of debating it any further because you are not school children so that I can cane you. Can I? So, since you are hon. Members and you have already empowered your Speaker, can we be honourable and proceed?

If you still insist on this, the alternative will be that I order each one of you to go through the door and I search you.

Hon. Members: Correct! That is what we want!

Mr. Speaker: Order! But, in your estimation, is that the right thing for me to do to hon. Members?

Hon. Members: No! No! No!

Mr. Speaker: It is not! In my view, that is an undignified manner of dealing with hon. Members. I

accept hon. Members to be honourable. Anybody who has any weapon here, please leave now. I am giving you two minutes to do so. Anybody who has a gun here should move out! You have two minutes to leave quietly

The Minister for Agriculture (Mr. Mudavadi): Mr. Speaker, Sir, I would like to seek your guidance on a very important issue. It seems it has reached a stage where a Member who votes according to his conscience is actually facing intimidation. There has been some physical violence here and I think, as a matter of principle, the Speaker should make a very clear ruling on this issue; that if an hon. Member votes according to his conscience, he should not be subjected to physical violence.

Mr. Speaker: Can I hear what the hon. Minister said? Mr. Mudavadi, I was consulting. What were you saying?

The Minister for Agriculture (Mr. Mudavadi): Mr. Speaker, Sir, I am just raising an issue which has nothing to do with the question of guns inside here. That ruling has been made. I am talking about a serious principle; that of the right of a Member of Parliament to cast his vote as his conscience deems fit. Should he be subjected to violence because of the way he has cast his vote? That is wrong! It is intimidation and it negates the very principle of this Parliament and the principles of democracy. I think this should be condemned.

Mr. Speaker: Order, hon. Members! Unfortunately, I was not here when the voting took place. I did not know what happened but if by any chance any Member or group of Members have intimidated any Member as a result of the way a Member has voted, that is a terrible thing. It is a direct negation of the right of a Member to vote freely without duress or coercion. It is something that is likely to completely erode the principles of democracy which hon. Members, everyday, say they wish to enforce. I hope nothing like that happened. If it did happen, I think it is something that deserves the highest degree of condemnation.

(Applause)

I hope hon. Members will never recourse to those crude antics because this House is an honourable House and Hon. Members must vote according to the way they want to vote. It is a human right to express your opinions freely. I think that disposes off that issue. Proceed, Mr. Obwocha! I will not have any further points of order.

The Minister for Rural Development (Mr. Mohammed): On a point of order, Mr. Speaker, Sir. I am made to understand that the hon. Member who is being referred to as having a gun in this House is me. This is because these people believe that we people who come from North Eastern Province are primitive and we carry guns to the Chamber. I do not have a gun with me. I am informed that he told you that I have a gun. I do not have a gun! If you want, I can remove my clothes for you to see! I can even remove my underpants! I do not have it!

Hon. Members: He has it! It is there!

The Minister for Rural Development (Mr. Mohammed): Where is it? To hell with you!

(Mr. Mohammed lifted his Jacket to prove his point)

Mr. Speaker: Order, Order hon. Members! I do not know who has provoked hon. Maalim Mohammed. Hon. Members, you can now see the dilemma which you have the Speaker in.

Mr. Ndicho: But he is known to carry a gun?

Mr. Speaker: Order, Mr. Ndicho! Who has told you that the hon. Member whose name was whispered to me is not you?

(Laughter)

(Mr. Ndicho lifted up his jacket to prove that he had no gun)

Order, hon. Ndicho! Behave in an orderly manner. Hon. Members, I am not going to have any more of this. Can we now have Mr. Obwocha's Motion? I am sure everybody has heard our sentiments and the protest of the House has been registered. I am sure that you do not want to dilute further the ruling I have made about intimidating hon. Members to vote one way or the other.

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

Mr. Speaker: I will not allow that point of order. I am sorry.

Proceed, Mr. Obwocha!

AMENDMENT TO LOCAL GOVERNMENT ACT

Mr. Obwocha: Mr. Speaker, Sir, I hope I am now safe.

I beg to Move the following Motion:-

THAT, in view of the fact that the Public Service has been de-linked from party and partisan politics as was recommended by the Inter-Party Parliamentary Group Package (IPPG) and approved by this House under the Statute Law (Repeals and Miscellaneous Amendments) Act No.14 of 1997, and noting with concern that the Minister has continued to nominate civil servants to serve in various local authorities as per Gazette Notice No.863 of 23rd February, 1998, contrary to the IPPG resolutions, this House urges the Government to introduce an amendment Bill to repeal Sections 26(b), 39(1)c and 46(b) of the Local Government Act, Cap 265, Laws of Kenya; and that the nominations of Provincial/District Commissioners/District Officers gazetted as nominated councillors after the last General Elections be revoked.

Mr. Speaker, Sir, this is a very important Motion. Even though it comes at a time when the House has had its temper raised, I hope the hon. Members will give me a chance to be able to move this Motion.

Mr. Speaker, Sir, those of us who were in the Seventh Parliament know and do remember that when this House came together to discuss some of the statutes and administrative issues affecting our country, we did agree on a consensus as to what we want to do and how to proceed.

Mr. Speaker, Sir, basically my Motion intends to tackle two major issues. The first one is the issue of Public Service being de-linked from party and partisan politics. I would like to start from that angle before I move to the next one. Under the Code of Regulations, civil servants are not supposed to directly participate in politics. I would like to quote from the Code of Regulations, section G12(i) and (ii), on Prohibition of Membership of Political Association. It says:-

"Officers of Government are not permitted to form or to be members of any association of which the objectives and functions are in any way political. This does not imply that the Government considers membership of such associations in any way improper or undesirable, but merely it considers that membership of a political association is not consistent with the duties and obligations of a civil servant, who is required to carry out the Government policy unbiased by any political view he may hold."

So, Mr. Speaker, Sir, that tells you exactly the view of the Government and why they do not want civil servants to participate in any political activities directly. Section G13(i) and (ii) states as follows:-

"An officer is entitled to his own views in political matters, but he is not permitted to express those views publicly. Officers should, therefore, confine themselves to recording their votes at elections only. They should in no case, publicly, indicate their support of a particular candidate or policy, either by signing nomination papers or any other manner in particular, and making speeches or joining in demonstration in favour of any political party or propaganda is completely prohibited."

Mr. Speaker, Sir, I have read these two clauses to indicate that the civil servants who have currently been nominated by the Electoral Commission of Kenya and, of course, gazetted by the Minister should completely be de-linked from party politics in the country. Our desire when we were going through the process of the IPPG was that, as much as possible, the Provincial Administration should be de-linked from politics. We have seen for many years what damage the Provincial Administration has done to the process of elections, for example, in this country. I think it is gratifying that we have reached a stage where, at least, we have the Electoral Commission of Kenya that is completely different and de-linked from the Civil Service.

Mr. Speaker, Sir, in county councils, to which the Provincial Administration officers are members, they vote on matters concerning politics. They take sides with the councillors. In fact, some of them have manipulated some of the councils. I have an example of the former DC in Nyamira District. That DC was the nominated councillor in Nyamira County and Town Council, at the time when cess money was being administered by a committee chaired by him. He was the Chairman of the District Cess Committee. The DC manipulated the councillors. He also manipulated the orders of the council with the help of a former KANU Chairman, Nakuru Branch, and defrauded farmers' money that was supposed to be used to repair infrastructure in the district. They bought an old tractor---

Mr. Munyasia: On a point of order, Mr. Speaker, Sir. Nakuru District has had very many former chairmen of KANU. The hon. Member is saying that the DC, Nyamira District, colluded with a former Chairman of KANU, Nakuru Branch. Could he be asked to name which former KANU Chairman in Nakuru he is

referring to?

Mr. Speaker: Is it material for the debate?

Mr. Obwocha: Mr. Speaker, Sir, since I have the facts it is not difficult for me to say precisely that the former DC, Nakuru, Mr. William Kerario conspired with Mr. Geoffrey Asanyo and bought an old tractor for Nyamira County Council. By the time it was delivered to Nyamira District, they had paid for it Kshs4.9 million. But it just arrived and "died" on the corridors of the DC's office in Nyamira. Since that time that tractor has never been used. They used farmers' money to buy an old tractor. If that money was managed by the farmers themselves I do not think this kind of thing could have happened. That is why, personally, I am opposed to the Presidential directive that the cess money should be managed by councils. The cess money should be managed by the farmers themselves, so that it is not misused. This is an example of the involvement of civil servants in politics and how they misuse their positions, as nominated councillors, in the councils.

Mr. Speaker, Sir, it would be interesting for the House to know that this particular DC has been made to pay part of that money. But because of the level of their salaries, he has not been able to repay all of it. We are not going to leave him alone. The people of Nyamira District will not leave him alone. We want that money paid back to the council.

Mr. Speaker, Sir, I would like to touch on the recommendations of the Inter-Party Parliamentary Group (IPPG) meeting. Under Section 26(4)(9), number of nominated councillors, it was resolved and agreed that we amend that section as follows:- One, that the Electoral Commission replaces the Minister in nominating councillors. Two, that the number of nominated councillors be proportional to political parties represented in the council, provided that the number of nominated councillors does not exceed a third of the elected councillors. Section 3(i), states that the nomination of councillors for each local authority be proportional to the elected councillors from each political party, especially for the reasons of tapping talents and expertise.

Mr. Speaker, Sir, the Minister may argue that the DCs and DOs fall under "public officers". Fine, they fall under public officers, but the spirit of the IPPG was that we should nominate a public officer who would be beneficial to the council. In this case, we had in mind a public officer like the District Works Officer or an engineer who can help the council to resolve certain professional matters, not the DOs or the DCs who are bringing into the council the wider part of their administrative duties. So, the IPPG, in its own wisdom had in mind, a public officer who would be useful to the council in matters of professional work. I am surprised that the Minister, instead of consulting with the Electoral Commission and the Attorney-General, went ahead and nominated the DCs and the DOs. In fact, some of the DCs and the DOs are nominated councillors in more than one, two or three councils.

Mr. Speaker, Sir, under the IPPG recommendations, we even touched on other areas of civil servants. For example, under the Chief's Authority Act which we changed to the Chiefs Act, the chiefs are supposed---

QUORUM

Mr. Kimeto: On a point of order, Mr. Speaker, Sir. There is no Quorum in the House.

Mr. Speaker: Well, you are right. So, ring the Division Bell.

(The Division Bell was rung)

Mr. Speaker: Order! Order! You can proceed Mr. Obwocha!

Mr. Obwocha: Mr. Speaker, Sir, I was saying that in the IPPG recommendations we even restrained other civil servants like the chiefs--- For example, in the Chief's Act, we had provided that it shall be unlawful for a chief to engage in activities of any political nature, to act as an agent of a politician, or in any manner canvas for any political party. We cannot bar some civil servants from doing a,b,c,d and allow others to participate in politics. This is basically why we are saying that the Provincial Administration should be de-linked completely from councils' politics in the country. Many of us know that the problems in our councils is collection of revenue. For example, some councils lack revenue, while others have never prepared their accounts for many years. This has been the case for Nyahururu Municipal Council, which has never prepared its accounts since inception. The involvement of DCs and DOs has not even improved the situation. Therefore, you cannot argue that the administrators are doing a very good job for the councils. In fact, they have not been able to assist the councils to take off.

I would like to inform this House that under the administrative reforms, we had recommended in the IPPG the following - in clause 2(E)(iv) which touches on the Provincial Administration: "The PCs, DCs, DOs,

chiefs and other civil servants should be restrained from interfering with the electoral process and other related matters."

What we meant here is what is contained in the Motion before this House. We should remove all the civil servants from politics as much as we can. By "any other matter," we did not mean that they can only be removed from the electoral process and then be left to meddle in the affairs of local authorities. I would like to appeal to the Minister that in the spirit of the IPPG, the Government should bar the Provincial Administration from matters involving politics. Let us get the professional people to run our councils because what they need most are people who can advise them professionally on how to collect revenue and account for it. As it is at the moment, there are a lot of problems especially, corruption, facing the councils. The councillors "dip" their hands into the little revenue that is collected. If we had professionals running the councils, then we can be sure of improving the services they offer.

I would like to request the Minister - even if he cannot amend sections 26B, 39(1), 46B of the Local Authorities Act - to amend the whole Act. He should harmonise the whole IPPG package with it so that the councils can operate properly. The Ministry should be concerned about the allowances and salaries the councillors are paid. If this issue is resolved by the Central Government--- Councillors do not get good salaries, and are not paid on time. This makes them resort to illegal activities such as land grabbing or diverting revenue that has been collected by their councils to other purposes. For example, the services charge money, which is meant for particular services, is often diverted to other uses.

Mr. Speaker, Sir, before I finish moving this Motion, I would appeal to the Minister to understand that the spirit of the IPPG was not to give these officers a blanket authorisation but to de-link them from the politics of this country.

Now, I would like to request hon. Karua, who is the Member for Gichugu Constituency, to second this Motion.

Ms. Karua: Thank you Mr. Speaker, Sir. I rise to second this Motion and I am glad that the Minister for Local Authorities is keen and attentive. I begin by expressing regret that eight months after the law was amended, the National Assembly Library cannot avail a copy of the Statute Law (Miscellaneous Amendments) Act, 1997 to us, so that we can second this Motion with the knowledge and assistance of the Act. We have to rely on the Order Paper and the HANSARD reports of last year's debate. I think this is a sorry state of affairs and the library is failing us. While agreeing with what the mover of the Motion has said, I would like to say that the law is very clear and as it stands today, there is no room for nomination of public servants. The mover of the Motion, hon. Obwocha, has already referred to Section 26 of the Local Government Act. I would like to draw the attention of the House to the amendments to the Local Government Act, in particular, to Section 26(1) where during the amendments last year via the Statute law (Miscellaneous Amendments) Bill Section 26(1) was renumbered and a new sub-section inserted; that is Section 26(2). It reads as follows:-

"The criteria and principles for appointment of nominated Members of the National Assembly under Section 33 of the Constitution shall *Mutatis Mutandis* apply to the nomination of councillors under this section".

In plain language, what this means is that the principles of nomination of Members of Parliament are to be followed and applied in the nomination of councillors. What are these principles? It is quite obvious that political parties that participated in the elections were to be allocated the nominated seats for Parliamentarians, each according to its strength in Parliament. As a result, KANU nominated six Members while the other political parties shared six. When it came to the local authorities, the same principles applied. The parties that participated in the elections of a local authority were to share the nominated councillors seats according to their respective number of strength. Where then, did the Minister and the Electoral Commission get this idea that the Government had a slot for public officers? It is important that the Government be seen to uphold the rule of law. The standard measure to see whether the Government is upholding the rule of law is to see whether it applies and obeys the laws that are passed by this House. The Government, via the Ministry of Local Authorities and the Electoral Commission, has failed miserably. They are doing something which is illegal. They have nominated civil servants, namely, DCs, where they do not deserve appointment. Section 26---

The Minister for Local Authorities (Prof. Ongeru): On a point of order, Mr. Speaker, Sir. I have no intention of interrupting the hon. Member, but I wish that she could read the law in full, rather than in piece-meal. She is currently referring to Section 26(a) and 26(b). What is stipulated by those sections was done. I want her to also refer to various Sub-Sections that refer to Municipalities. There is Section 49 which refers to County Councils. Therefore, I do not want her to say that the Minister has misled the public. Is she in order to misguide this House, when there is a full knowledge of this?

Ms. Karua: Mr. Speaker, Sir, the Minister for Local Authorities is jumping the gun. He will have his chance to refute my argument. May he be patient and if he listens carefully, he may very well be persuaded and he

may have nothing to say at the conclusion of my debate. If one looks at the Local Government Act as amended, and I am once again regretting that the library did not have a copy to avail to us, it is quite clear that all the Sections relating to nominations namely; 26 and 28 refer to Section 33 of the Constitution as the guiding criteria to be followed.

I will once again emphasise the fact that the Ministry of Local Authorities and the Electoral Commission have actually disobeyed and disregarded the law in introducing civil servants in the nomination. It is assumed that the Government in power did participate in the elections of all local authorities in this country. They should, therefore, have gone for their respective number of seats where they won as per Section 33 of the Constitution. In areas where the Government did not get a single councillor like in Kirinyaga - pole sana - they should have missed having any nominated councillor. Through the back door, the Government has now introduced the DC. It has politicised these positions and the DCs are sitting as Government nominees and, by extension, as nominees of the ruling party in the local authorities. This is a very sorry state which should not be allowed to happen. This House should vote without emotion to uphold the law that was passed last year. Therefore, this Motion ought to be supported by all.

Section 26 deals with Municipal Authorities. Due to the introduction of a new Sub-Section, that is 26(2), where the criteria in Section 33 is borrowed, clearly in Municipal Councils the Government should not have any representation. The representation should be from political parties.

Mr. Speaker, Sir, Section 39 deals with Town Councils. But before we deal with Town Councils, there is Section 28 which was amended as follows. After Sub-section 28(ii), Section 28(ii)(a) was introduced. It reads:

"The criteria and principles for appointment of nominated members of the National Assembly under Section 33 of the Constitution shall *mutatis mutandis* apply to the nomination of councillors under this section".

What this means is that nominations for Town and County Councils as per Section 28 will go according to Section 33 of the Constitution. Even if Section 39(i)(c) was not amended, it also refers to Town Councils. But it is of no effect because the earlier Section 28 which refer to councils has already been amended. If a conflict arises between those two sections referring to councils, that is Section 28 and Section 39(i)(c), then obviously, the section that imports the Constitutional provisions prevails. This is because the Constitution is the supreme law of the land. The Constitution has been imported to the Local Government Act by the amendment to Sections 26, 28 and 46. Therefore, it is not correct for the Ministry of Local Authorities or the Electoral Commission to argue that because inadvertently, the IPPG did not delete Section 39(i)(c), it allows them to nominate Government officers. It does not allow the nomination of Government officers. If we respect the supremacy of the Constitution, the Minister ought to revoke all the nominations of Government officers. The seats should go to political parties that deserve them, according to their numbers in the local authorities.

Mr. Speaker, Sir, the Mover of the Motion underscored a very important point: That the Civil Service should be de-linked from politics. When the DCs are nominated to councils, they feel that they owe their loyalty and position of their nomination to the ruling party. It could be DP tomorrow, but if we were to nominate them, they will feel that they are affiliated to a particular political party. The Government is contradicting itself; on the one hand it passes laws that de-link the Civil Service from politics and on the other, it nominates DCs to go and mess up the local authorities.

Mr. Speaker, Sir, the Minister is aware that recently, in Kirinyaga County Council, the DC who is a nominated councillor, purported to call a meeting to share out South Ngariama Ranching Scheme, which is under the trusteeship of the Council. This situation would not have arisen if the DC was not a nominated councillor. He feels that he is greater than all the other councillors within the County Council. This happens in every County Council and Municipal Council where officers of the Provincial Administration are recruited as nominated councillors. I urge this House to enforce the law it passed by supporting this Motion, and ensure that all the civil servants are removed from the County Councils.

With those few remarks, I beg to second the Motion.

(Question proposed)

Mr. Ndicho: Thank you, Mr. Speaker, Sir. I stand to support the Motion. I wish to express my disgust over the way this House spent a lot of time last year, going through the IPPG meetings. First, it was aimed at lessening the tension which was very volatile between the Government, or KANU for that matter, and the Opposition. The Government was interested and almost went on its knees to beseech Members of the Opposition. Many agreed to go and have dialogue with the Government under the auspices of the IPPG. Some of us were a

bit sceptical on whether the Government was truly going to honour the resolutions that were reached between it and the Opposition. I remember that there were so many resolutions and recommendations that the IPPG passed.

Some of them have been implemented already, and some of us are enjoying their fruits. For example, the issue relating to chiefs and the application of licences for public meetings were implemented.

Mr. Speaker, Sir, what defeats me today is why the Government, through the Ministry of Local Authorities, has decided to go against the very same spirit, by refusing to honour some of the resolutions that were passed.

Mr. Speaker, Sir, as regards the issue of DOs, DCs, and PCs, being represented or attending council meetings, experience has shown that these public officers, whenever they attend council meetings, intimidate and force their way and will of the Government as far as the deliberations in the local authorities are concerned. Moreover, we felt that it was high time that elected councillors at the local level were left alone to manage the affairs of their local authorities without direct interference from the Government. That is why this recommendation was so important; to have the councils operating freely without gross interference from the Government. It was so sad, after the last General Elections, when we discovered that even after that strong recommendation, the Minister for Local Authorities continued with impunity to defy those resolutions. He went ahead and named DCs and DOs as councillors in local authorities.

Mr. Speaker, Sir, the local authorities could be equated to small Parliaments at the local level. The question which you may ask, because we are operating under the same law, since the Government in this Parliament is represented by the Members of Parliament who are elected through KANU--- Even the Members of Parliament who are nominated by the ruling party are not civil servants. Why is it now that at the lower level, the Government imposes the District Commissioner? This should be condemned. What I would propose is that, if the Government feels that it should be represented at the local level, the Town Clerk, who must attend all council meetings is himself a public servant. He is a direct employee of the Government and his presence is enough to represent the Government. Other senior staff in the local authorities are also present in the council meetings. These are enough people to represent the Government. I am going to ask the Ministry of Local Authorities to respect the resolutions made in this Parliament.

Mr. Speaker, Sir, many a time, we complain about the lack of teeth of this House. Many of the laws that are passed in this House are flouted and ignored with impunity by the same Government that is established by this Parliament. More often than not, when the District Commissioners go to attend these meetings, and this is the gist of this Motion, they even do not represent the interests of the Government *per se*. They represent the interests of a Parliamentary party called KANU, or themselves, for that matter. They do not represent the Government. They are representatives of KANU and this is why we feel that this should be stopped and this Motion must be supported by every leader in this country or in this Parliament who has love and respect for the rule of law. That is why the nomination of DCs and PCs should be revoked and we go back to the IPPG resolution of last year. If we do not do this, then we are going to have a Parliament that has no teeth.

Mr. Speaker, Sir, let me say that I was happy to read what you were saying yourself, about a week ago; that you would like to leave a legacy and an established Parliament which has got teeth. This Parliament has no teeth because, now it is a "kibogoyo Parliament." It has no teeth at all. Today this Parliament---

The Minister for Local Authorities (Prof. Onger): Could the House be enlightened on what "Kibogoyo" is because that sounds a very strange language to us? Could he define the word "kibogoyo"?

Mr. Speaker: Well, maybe, as Mr. Ndicho explains what "kibogoyo" is, these teeth that you require; are they for biting each other in the Chamber?

Mr. Ndicho: Mr. Speaker, Sir, first and foremost, a kibogoyo is a man who has got no teeth. Secondly---

The Assistant Minister for Finance (Mr. Keah): On a point of order, Mr. Speaker, Sir.

Mr. Ndicho: Mr. Speaker, Sir, I am responding to a point of order.

Mr. Speaker: Order, all of you! I have teeth. What is it?

The Assistant Minister for Finance (Mr. Keah): On a point of order, Mr. Speaker, Sir. You kind of anticipated what I was going to say. Is the hon. Ndicho in order to refer to this Parliament as a Parliament without teeth? I have my teeth, and I am a Member of this Parliament. I am sure, Mr. Speaker, you have teeth.

Mr. Speaker: Order! I was asking Mr. Ndicho whether he requires Parliament to have teeth for Members to bite each other in the Chamber.

Mr. Ndicho: Mr. Speaker, Sir, if we had the teeth I am referring to, right now, we could have bitten the Minister for Local Authorities for going against the resolutions of the IPPG; an institution that was established by this House to make sure that DCs and DOs are not Councillors.

Mr. Leshore: On a point of order, Mr. Speaker, Sir. Is hon. Ndicho not misleading us? According to the

IPPG package, we resolved that the Electoral Commission nominates certain individuals and public officers as nominated Councillors.

Mr. Obwocha: He was not there!

Mr. Ndicho: Mr. Speaker, Sir, I sympathise with that Member, but I beg to continue because my time is getting out.

Mr. Speaker: You continue, but I can also hear hon. Obwocha saying that you were not there.

Mr. Ndicho: Mr. Speaker, Sir, I am saying that, there were resolutions that were made by an institution that was established by this Parliament. Today, we could have disciplined the Minister for Local Authorities for going against the resolutions of a committee established by this Parliament. We can see that what is happening in Government, is that, this House---

Mr. Shidie: On a point of order, Mr. Speaker, Sir. I think the hon. Member does not understand the resolutions of the IPPG package well. In the IPPG reforms package, we resolved that public servants could be nominated as Councillors. A DC or a PC is a public servant. Is he in order to mislead the House?

An hon. Member: Alisomea wapi?

Mr. Ndicho: Mr. Speaker, Sir, protect me from those insults. If he continues, I will insult him and he will regret it.

Mr. Speaker, Sir, if what hon. Shidie is saying is true, then you could not have approved this Motion. I think Mr. Speaker approved this Motion because the actions of the Minister and the Electoral Commission are against the spirit of the IPPG. These people should be removed from the operations of the County Councils. In fact, in Thika, we have an uneven distribution of Councillors, because the DC is still a member.

I beg to support this Motion.

Mr. Haji: Mr. Speaker, Sir, I stand to oppose the Motion irrespective of KANU being the ruling party or any political party taking over. As we all know, the current Local Authorities comprise of many parties. Sometimes, there could be misunderstandings among the Councillors bringing the operations of the County Councils to a stand still. That notwithstanding, the Government of the day has interest in the Local Authorities, whether they are controlled by councillors from different parties or one party. Because of that, I think there is need for District Commissioners and other public officers to represent the interests of the Government in the Local Authorities. We particularly know that Local Authorities apply for loans from institutions that lend money, like the World Bank. In view of this fact, it is proper for the Government to be represented in those councils.

So, I stand to oppose this Motion, that seeks to bar public officers from being nominated to local authorities.

The Assistant Minister for Local Authorities (Mr. Sasura): Mr. Speaker, Sir, I stand to oppose this Motion. You will excuse me, this is just a coincidence because the Member who was on the Floor before me is a former Provincial Commissioner and I am a former Chief; it was not a planned issue. So, hon. Nyagah, do not worry.

Mr. N. Nyagah: I have not said anything!

The Assistant Minister for Local Authorities (Mr. Sasura): I said Mr. Speaker, not Mr. Nyagah.

Mr. Speaker, Sir, the role of the Provincial Administration should not be under-estimated, not only in reference to the Local Authorities. The Provincial Administration shoulders a huge burden in terms of development in social and even security aspects in this country. It is a focus for major Government policies at the District and Provincial levels. Local Authorities are the closest institutions to the common man in this country and they are very important entities. When we talk about basic infrastructure, there is no way it can be dis-entangled from the Local Authorities. We talk about hospitals which are being constructed and run by Local Authorities, roads maintained by Local Authorities and other social amenities. The role of the provincial administration in the Local Authorities is, least to say, indispensable.

Mr. Speaker, Sir, it is very interesting to hear that the nomination of a PC or DC is portraying a partisan view. Even the mode of nomination, which is not actually done by the Ministry of Local Authorities, but by the Electoral Commission, is not partisan. When the nominations were done for the councils, all the parties presented their nominees to the Electoral Commission, but there is no party that presented the officers of the Provincial Administration to the Electoral Commission. It was there in the books and it is very interesting that, Members who were there during the IPPG reform talks, are so divided over what was decided upon concerning nominations. So, the Electoral Commission was just abiding by the law, that officers of the Provincial Administration should be nominated in their capacity as public officers.

Mr. Speaker, Sir, the most important role of the public officers in the Local Authorities can be directly related to what I said. All the professionals at provincial or district levels are under the umbrella of the District

Development Committee, which is chaired by the DC. So, essentially, the DC or the PC as a nominated councillor is in one way a professional, because he is handling all the professions, whether they are surveyors, medical officers or physical planners. The DC is embracing all those.

Mr. Speaker, Sir, I totally disagree that the DCs as nominated councillors can manipulate the councils. The DC is only one out of the so many councillors in the council. If I could give you an example of Wajir County Council, there are 120 Councillors. It will take a very long time for anybody to convince me that, the DC will be able to influence or manipulate 119 people to take decisions in the council. So, the Provincial Administration is an asset to the councils because of the role they play in administration and as a focus for development, representing the central Government. So, there is no way we can do without the Provincial Administration. When we talk about public officers, the DC or the PC is an officer. So, if anybody suggests that we nominate other public officers, for example the District Works Officer or the District Physical Planner, we will only have the input of one professional in the council. But when we nominate the DC or the PC, we embrace all these, because the DC is the Chairman of the District Development Committee.

Mr. Speaker, Sir, I am afraid that the spirit of the Motion is not actually what is being debated. It is very clear that just before the elections, various parties came out and gave promises without blinking an eye-lid, that when they came to power, they would do away with the Provincial Administration. I am afraid that there is an agenda--- The issue is not the question of nomination of councillors or the nomination of Provincial Commissioners to the local authorities. I think, and believe, that the issue is to scrap the Provincial Administration in Kenya. If it were not for the Provincial Administration, we would not be discussing security matters here. If it were not for the Provincial Administration, we would not be discussing any development here pertaining to the youth, women and educational institutions at the district and provincial levels.

Mr. Speaker, Sir, with those few remarks, I beg to oppose the Motion. Thank you.

Mr. Munyao: Thank you, Mr. Speaker, Sir. I am standing here to support the Motion fully. But before I do so, I would like to thank the Mover, Seconder and all those who have actually, spoken in support of it.

Mr. Speaker, Sir, while I support this Motion, I would like to urge hon. Members to continue with the spirit they had last year during the Inter-Parties Parliamentary Group (IPPG) discussions. I would also like to remind the House that a lot of issues--- The Eighth Parliament is suffering because of the issues which were discussed by the IPPG. As you can see, everybody is making reference to those issues. Now, this shows very clearly that the hon. Members in this House at that time were just interested in going into the general elections, and then later refuse to do almost everything that was agreed upon during the IPPG talks. I can recall that the former Minister for Local Authorities, hon. Lotodo, at one time went round and urged people all over the country to watch--- He told them that there was a possibility of the councillors being paid salaries by the Government. He even gave them figures and numbers of the districts that were being created at that time and the additional councillors. But now, he is urging the Government not to take up an additional burden.

The Minister for Natural Resources (Mr. F. Lotodo): On a point of order, Mr. Speaker, Sir. Could hon. Munyao say categorically, when the former Minister for Local Authorities told the nation that the Central Government would be responsible for paying councillors' allowances?

Mr. Munyao: Mr. Speaker, Sir, the Minister did not give me time to explain myself. This is because, I was not even attacking him. I was praising him because he could foresee the over-nomination of councillors whom the Government would not be able to pay.

The Minister for Natural Resources (Mr. F. Lotodo): Mr. Speaker, Sir, I still insist that hon. Munyao must say when and where I said this. He should give the date and town in which I said this.

An hon. Member: And say what hour!

Mr. Munyao: Mr. Speaker, Sir, the reports were in the newspapers. Whatever reports appear in newspapers or public notices need not be proved here. If you give me time, I will go to the library and get this information. Since I will not complete my contribution to the Motion today, I will bring the newspapers in which the reports were published. I think the hon. Member just wants to take away my time. You can see the way he is throwing up his hands!

ADJOURNMENT

Mr. Speaker: Order! Order! I will now, save both of you the headache. Hon. Members, it is now time for us to interrupt our business. The House is adjourned until this afternoon at 2.30 p.m.

The House rose at 12.30 p.m.