

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 13<sup>th</sup> October, 2011

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### ERRORS IN THE PUBLISHED ELECTIONS ACT, 2011

**Mr. Deputy Speaker:** Hon. Members, on Tuesday 11<sup>th</sup> October, 2011, hon. Mungatana rose on a point of order seeking urgent corrective measures on what he described as “a grave error” reflected at Section 34(9) of the Elections Act of 2011. He further sought directions of the Chair as to the consequences that ought to be visited on the officer, or officers, offending the integrity of the work in Parliament.

Hon. Mungatana went on to allege that it had come to his attention that the Elections Act, as published, had been added in Section 34(9) the words, “not”, “Presidential” and “Deputy Presidential” which words were not in the Committee Stage amendments that he had moved nor, indeed, anywhere else and that the effect of this was to alter completely the intent of the amendments that Parliament passed.

To support his claims, hon. Mungatana tabled the following documents:-

(a) A copy of the relevant page of the Elections Bill, 2011 showing the text of Clause 35 of the Bill.

(b) A copy of his Notice of Motion as it appeared on the Order Paper of Friday 26<sup>th</sup> of August, 2011, the day that the House proceeded into the Committee Stage and passed the Elections Bill.

(c) A copy of the relevant page of the HANSARD of 26<sup>th</sup> August, 2011, showing the amendments as passed by Parliament.

(d) A copy of the Elections Act as published showing Section 34(9) with the words, ‘not’, ‘Presidential’ and ‘Deputy Presidential’ allegedly added to the law.

Hon. Mungatana requested that the Speaker rules that the Elections Act, 2011, be immediately returned to the Government Printer and corrigenda be done. Secondly, that an investigation be conducted both in Parliament and the Government Printer with a view to identifying and taking disciplinary action against the officers who may be found to have inserted into the Act words not passed by the House.

*(Several hon. Members stood at the Bar)*

Hon. Members at the Bar, you may move in and take your seats!

*(Hon. Members at the Bar entered the Chamber)*

The Member for Gichugu, hon. Martha Karua, supported the point of order by the Member for Garsen, hon. Mungatana, but also added a further claim that having gone through the Elections Act as published, she was struck that the penalties for offences related to elections contained in the Act were not the same penalties passed by the House. She claimed, in particular, that the House had passed a provision that, after serving a three-year jail term for an election offence, a person would not be eligible to serve in the Public Service for ten years. She called for thorough scrutiny of the Elections Act to reveal what she termed as “many other errors” which to her appeared to be a deliberate scheme to alter the contents of the Act. She also called for scrutiny of the Bills passed during the same season.

The Member for Kisumu Town, hon. Olago Aluoch weighed in claiming that the discrepancy in respect of Section 34(9) was not an innocent error, but was rather a deliberate and well-orchestrated attempt by public officers, either in Parliament or at the Government Printer, to falsify what the House had deliberated and agreed upon. He supported the call for an investigation and taking of appropriate action.

Hon. Members, the Chair agreed that the matters raised by the three Members were weighty and serious and undertook to go through the documentation tabled and the HANSARD and then give a Communication today.

Hon. Members, I wish to state, at the outset, that owing to our recent history in the country, it is quite obvious that any matter that relates to elections needs to be approached with great sobriety and careful attention. Indeed, all Members will be aware that this matter has been given extensive coverage in the print and electronic media with each media house giving a different perspective to it. Some media houses even went so far as to lay the blame at the feet of the Government Printer and carried the photograph of the individual holding that office. I, therefore, feel that regardless of the audit undertaken and findings which I am about to pronounce, it is important that all Members of this House, the media, and the general public, approach claims made relating to elections with caution.

Hon. Members, as I had promised, I have carefully examined the claims made by hon. Mungatana and studied the documents tabled by him. Similarly, I have carefully examined the claims made by hon. Karua. I have also examined the documents entailed in the processing of the Elections Bill from the proceedings on the Floor up to the publication of the Elections Act. The process can be summarized as follows:

After a Bill is passed by this House, the Order Paper, the Bill, the HANSARD Report on the proceedings of the day, and the amendments passed as contained in the Votes and Proceedings for the day, are compiled by the Office of the Clerk and sent to the Office of the Attorney-General for preparation of the Draft Act to be assented to by the President.

*(Several hon. Members stood at the Bar)*

The hon. Member at the Bar may walk in!

*(Hon. Members at the Bar entered the Chamber)*

Hon. Members, the Attorney-General uses the documents sent to that Office to prepare the Draft Act. When complete, he sends it to the Clerk of the National Assembly for verification and certification. Once certified by the Clerk, the Draft Act is sent to the Attorney-General who then presents it to the President for Assent. Once the Draft Act is assented to, the Attorney-General forwards it to the Government Printer for publication as an Act of Parliament. I hope you have heard and understood the procedure that we follow in dealing with our Bills, which finally become Acts of Parliament.

An audit of this process and the pertinent documentation has revealed the following:-

On the claim by hon. Mungatana that the Elections Bill had provided at Clause 35(9) as follows:-

“The party list shall not contain a name of any candidate nominated for an election under this Act.”

Hon. Mungatana gave notice of an amendment to this clause which appeared on the Order Paper of the day seeking to delete the words, “shall not” and substitute therefor the word, “may”. However, when the opportunity to move the amendment on the Floor came, the records of this House show that hon. Mungatana moved his amendment in a further amended form.

*(Several hon. Members stood at the Bar)*

Hon. Members at the Bar, could you walk in and take your seats?

*(Hon. Members at the Bar entered the Chamber)*

I hope you realize that the Chair has no powers to stop somebody from going out of this House! The video and the audio-recording of the relevant part of the proceedings which have been made available to the Chair, and which are available to every hon. Member and the public goes as follows, and I am quoting this verbatim:-

**“The Temporary Deputy Chairlady (Dr. Laboso):** Hon. Mungatana!

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, I move to amend Clause 34, Subclause 9---

**The Temporary Deputy Chairlady (Dr. Laboso):** 35!

**Mr. Mungatana:** Clause 35, sorry, I stand corrected, Subclause 9 by saying that - and I have given notice that it will be an amended version – “the party list may contain a name of any Presidential or Deputy Presidential candidate nominated for an election under this Act.”

Madam Temporary Deputy Chairlady, I was explaining this and, now if the point I wanted to make---

**Hon. Members:** It is okay! *Sawa!*

**Mr. Mungatana:** If it is okay then I do not need to explain!

**The Temporary Deputy Chairlady (Dr. Laboso):** Mr. Minister, hon. Members, I therefore propose the Question which is that Clause 39 be amended as proposed by Mr. Mungatana.

*(Question of the amendment proposed)*

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

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

*(Clause 35 as amended agreed to)”*

This is our own procedure of disposing of Bills.

Clause 35(9) of the Bill as passed by the House then became Section 34(9) of the Elections Act and should have read as follows:-

“The party list may contain a name of any Presidential or Deputy Presidential candidate nominated for an election under this Act.”

Instead, the Act as now published shows that the word “not”, which this House deleted, remained in the text of this subsection. I hope you understand, hon. Members. From these findings, it is clear that other than the failure to delete the word “not” none of the other claims of a very serious nature made by Mr. Mungatana are true. It is not true that the words “Presidential and Deputy Presidential” were inserted elsewhere into a law passed by Parliament. These words were inserted by the House itself under a Motion by the very same Mr. Mungatana. It is also not true that the word “not” was inserted into the Act by outside forces. This word was in the Elections Bill as it was presented before the House. While the House passed an amendment deleting it, the word was not deleted in the course of the preparation of the Draft Act. This is a different proposition from the allegation that it was a word not found anywhere in the Bill. The word was initially in the Bill, but it was deleted by the House, then someone suspiciously introduced it and inserted it into the Act. That point is key to the understanding of this matter and I repeat this: This is a different proposition from the allegation that it was a word not found anywhere in the Bill, which someone then suspiciously introduced and inserted into the Act. This point is key to understanding this matter.

By relying on the Order Paper of the day which contained his initial amendments, as he had proposed to move, rather than as he actually moved them, Mr. Mungatana erroneously came to the conclusion that the words which he himself moved and which the House moved were inserted into the law by persons outside this House. Matters were not helped by his failure to verify the Hansard copy he tabled with the office of the Clerk and to consult the Votes and Proceedings of the day, where the decisions of the House are recorded.

On the claims by Ms. Karua, the audit has found no merit in them. She had claimed that penalties passed by this House were altered in the published Act. It is difficult to establish the basis of that claim because no reference was made by the hon. Member either to the Clause of the Bill which this House amended, the amendment which the House passed and its Mover or to the purportedly altered section as now it appears in the published Act. Be that as it may, the audit of documents suggests that Ms. Karua may have been referring to Section 160 of the Elections Act, titled “General

Penalties” which was originally Clause 108 in the Bill. That Section provides in Subsection 3---

*(Several hon. Members stood at the Bar)*

Hon. Members at the Bar may walk in.

*(Hon. Members at the Bar entered the Chamber)*

That Section provides, in Subsection 3, that a person who is convicted of an offence under this Act shall not be eligible for election or nomination in an election under this Act for a period of five years, following the date of the conviction. The HANSARD shows that Ms. Karua spoke in support of an earlier amendment by Mr. Mbadi which sought to make the period of ineligibility to ten years. That amendment was, however, further amended and passed by this House on the Motion of the Minister for Lands, Mr. Orengo, reducing the period of ineligibility to five years. There was no amendment passed by this House to bar a person from Public Service for ten years, as Ms. Karua had alleged. It is, therefore, also not true that the penalty passed by this House was altered by persons outside this House.

Hon. Members, the Elections Act was one of the many statutes passed on the last day of the Constitutional deadline for enactment of certain legislations. There was extensive debate on it and numerous amendments were made to it, including amendments on the Floor in a form other than that for which notice had been given on the Order Paper. All the amendment to all the Acts needed to be harmonized and incorporated in the Draft Acts so as to have them presented to the President for assent before midnight on 27<sup>th</sup> August, 2011. The Chair is aware that work on those Bill went on well into the small hours of the morning for several days during that week in August. In those circumstances, one can see how a typographical error resulting in the non-deletion of the word “not” could occur at the Office of the Attorney-General in the preparation of the Draft Elections Act. The error was similarly not detected by the officers of Parliament during the verification and certification of the Draft Act. The Chair should not appear to and will, indeed, not tolerate or downplay such errors.

The public officers of the Office of the Attorney-General and Parliament who process Draft Acts after passage must be reminded to always be on the alert to ensure that no such errors occur. But the Chair is always alive to the fact that those officers are only human and an error can occur. Perhaps, this House should also pose and reflect on whether such errors could have been avoided in this House, had all the other parties concerned not waited until the very last minute to transact a myriad of key legislations. That said, the Chair agrees with Ms. Karua that it is important that all the documentation relating to the Bills passed during that season be scrutinized again to make sure that there are no other errors.

Hon. Members, the findings of this audit suggest that there may be more appropriate means of dealing with matters relating to this House and its records, than to sensationalize and, sometimes, make very serious claims on the Floor of the House. The matters in respect of which those claims were made could easily have been administratively verified in the first instance by recourse to the records and journals of

this House. The proceedings of this House are available, as Members are aware, in both video and audio form in the custody of the Clerk. Good practice would demand that where there is an issue in our own records, before we resort to the Floor of the House, Mr. Speaker would be approached to order the necessary verification by the Office of the Clerk. This is particularly critical when the claims relate to a matter as sensitive as a law relating to elections in our country.

In response to the concerns raised by the three hon. Members, I therefore, wish to pronounce and direct as follows:-

The allegations made by Mr. Mungatana relating to the insertion of the word “not”, “Presidential” and “Deputy Presidential” to the Elections Act, have been found to be misleading. The allegations made by Ms. Karua relating to the alterations to penalties passed by the House have also been found to be misleading. On the basis of Mr. Mungatana’s claims, a typographical error has been noted in Section 34(9) of the Elections Act, arising from failure during the process of preparation of the Draft Act, to delete the word “not” which was deleted by the House. Considering all the circumstances, it has not been shown that the typographical error was a result of a deliberate action by any person to subvert the legislative process. Indeed, the attention of the Chair has been drawn to Legal Notice No.142 contained in the special issue of the *Kenya Gazette Supplement* No.132 dated 12<sup>th</sup> October, 2011 by which the Attorney-General has moved with expedition to invoke the powers conferred upon him by Section 13 of the Revision of Laws Act and has issued a rectification order deleting the word “not” in Section 34(9) of the Elections Act. Considering the circumstances in which the Bills required to be enacted by Parliament before the first anniversary of the promulgation of the Constitution were passed, the Clerk of the National Assembly is directed to liaise with the Office of the Attorney-General and other appropriate offices and scrutinize all the relevant documentation and published Acts to ensure that no other errors are contained in the published Acts. That scrutiny should be concluded and the results reported to the Speaker within 14 days from today.

*(Several hon. Members stood at the Bar)*

Hon. Members at the Bar, please walk in!

*(Hon. Members at the Bar entered the Chamber)*

Hon. Members, we are all conscious of the fact that there are civil servants who are working in our country, and who do not have the opportunity available to Members of Parliament to defend themselves on the Floor of the House, and that includes the Government Printer. The scrutiny has found absolutely no foul play or otherwise on the part of the Government Printer. It is important as Members of Parliament to protect the civil servants who cannot essentially protect themselves on the Floor of the House. In future we will deal with this differently.

Finally, I wish to thank Mr. Mungatana for his vigilance which has resulted in the detection of this error. In the same breath, I would also wish to urge all hon. Members that if any such matter should come to their attention, they should consider, in the first instance, approaching the Office of the Speaker, so that the matter is appropriately

addressed. We have a responsibility not to heighten any tempers or any apprehension in the minds and hearts of the Kenyan people. That is because we know where we have come from in our history as a result of elections that were not done right.

Thank you, hon. Members.

**Ms. Karua:** On a point of order, Mr. Deputy Speaker, Sir. While thanking you for the ruling and noting that, correctly, you have thanked Mr. Mungatana for his vigilance, I am a bit lost and I need your clarification. This is the era of openness to the extent that proceedings of Parliament are televised. How may we then raise matters of errors in the printing quietly and then, suddenly, Kenyans wake up to learn that a word has been deleted from a published Act without the benefit of the debate leading to that deletion? That will be taking us back to the dark era. It would heighten suspicion and, therefore, raising it in the House ought not to be seen as sensational. It ought to be seen as the only way. I, therefore, request that you weigh that and give further directions.

Secondly, when I stood here and supported the point raised by Mr. Mungatana, I did say that I had not been as meticulous as he was. So, I was admitting that I had not completely gone through the Bill. But I called for a scrutiny of all the Bills passed during that period, which you have adopted and made part of your ruling. Therefore, one gets a little lost when that call is said to be misleading and yet, it has been adopted by the House. I think it would be laudable to recognize anybody who “bells the cat” and makes it possible for us to see the errors; that should be something encouraged and appreciated in this House. The fact that it is only the word “not” which has been found to have been inserted, does not mean it is innocent. It is true that we were working under pressure. But until there are investigations, how can we know it is innocent when it has been happening repeatedly? We need directions whether, henceforth, we should not voice our views on the Floor of the House, or whether voicing suspicion is now going to be outlawed in this House.

**Mr. Deputy Speaker:** This being a ruling from the Chair, I will entertain that from you.

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, I am just a little bit worried. So that in future this does not happen--- That is because from your ruling, which I do respect a lot, it appears you have given a window to allow people to use the excuse of human error. So, I would have really appreciated it more if you had added that human errors will not be entertained. I believe none of the offices are lacking in manpower to proceed. Finally, what would happen when, even after the Presidential Assent has been given to the Bill, there are errors? We would want to know your position on that matter!

**Mr. Deputy Speaker:** Order! Hon. Members, this is the moment in which every Member of Parliament is expected--- Every hon. Member is supposed to exhibit and demonstrate, as much as possible, his or her statesmanship and our own patriotism. We have come from a history that we cannot be proud of. We are proceeding towards another election. By and large, in most cases when such things happen--- I applaud this for hon. Members, they would always come up and consult the Speaker. You have always come to the Office of the Speaker to consult. If a matter can be dealt with expeditiously and corrected; it is corrected. That is as opposed to raising it here on the Floor of the House without giving that notice to the Speaker. Not that you do not have the right to do that, but we have to think way beyond what we have been generally accustomed to. That is because we are going through a landmark period in our own history on matters of

elections. You can imagine what the media has done and the hyping that has been there. There is the population out there that does not have the information that is available to us. In any case, there was nothing that was deleted. There was a “not” which was supposed to have been deleted. That “not” was in the original Bill. It was even in the original amendment of Mr. Mungatana. But in the subsequent amendment that was moved on the Floor of the House, that is when it was removed by the House. That is not to say that the Chair is giving a window to any State officer, either in the Speaker’s Office or the Attorney-General’s Office, to claim that there are human errors. That has only been one error. But, essentially, the Chair is concerned that in the media and the public opinion, the matter has been hyped to a level or a situation that we cannot be proud of. But other than that, Mr. Mungatana, Ms. Karua and every other hon. Member who contributed to the same did a good job; a commendable job. We would want the sensationalization, as much as possible, not to be done before you are able to approach the Speaker’s Office and clarify that. That is because this would have been dealt with appropriately and immediately without the stuff we got in the media.

Next Order!

*(Prof. Olweny entered and then withdrew from the Chamber)*

**Mr. Olago:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Not on the same! Not on the ruling of the Chair!

**Mr. Olago:** This is completely different, Mr. Deputy Speaker, Sir. As you were delivering your ruling, I saw Prof. Olweny walk in through the doors of the Chamber, he stood at the Bar, looked at you for a moment and then turned round and walked out! Is that proper conduct in the usage of the customs of the House?

*(Laughter)*

**Mr. Deputy Speaker:** That is improper conduct! Where is Prof. Olweny? This is your second term in Parliament!

**The Assistant Minister for Education (Prof. Olweny):** Mr. Deputy Speaker, Sir, but I had not bowed to come in because you were on your feet!

**Mr. Deputy Speaker:** Order! The moment you come in, you freeze at the Bar until the Chair---

*(Laughter)*

Next Order!

## **PAPER LAID**

The following Paper was laid on the table:-

Report of the Departmental Committee on Transport, Public Works and Housing on the National Construction Authority Bill, 2011.



(By Mr. Were)

## QUESTIONS BY PRIVATE NOTICE

SHOOTING OF MESSRS. FREDRICK NYAGA NDUBAI/  
PATRICK MWANGI WAWERU

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

(a) Is the Minister aware that police officers shot and injured Messrs. Fredrick Nyaga Ndubai and Patrick Mwangi Waweru at Njathaini Kasarani on 3rd August, 2011?

(b) Is the Minister also aware that Mr. Patrick Mwangi Waweru subsequently died of gunshot injuries?

(c) What action has the Minister taken against the police officer(s) involved and what plans does the Minister have to compensate Mr. Ndubai as well as the family of the late Patrick Mwangi Waweru?

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware that on 4<sup>th</sup> August, 2011 at 8.00 a.m. in the morning, Messrs. Fredrick Nyaga Ndubai and Patrick Mwangi Waweru sustained gunshot injuries during a shooting incident at Pick End Estate at Njathaini Kasarani by police officers who had gone to rescue a robbery suspect from being lynched by members of the public.

(b) I am also aware that Patrick Mwangi Waweru succumbed to gunshot injuries while undergoing treatment at Kiambu District Hospital.

(c) Following the shooting incident, Kasarani Inquest File No.8/2011 was opened and once investigations are complete, the file will be forwarded to the Director of Public Prosecutions (DPP) for further action. In the meantime, I am awaiting the outcome of the investigations that I had ordered; upon which appropriate action will be taken against the police officers. With regard to compensation, the Government will rely on the outcome of the investigation and subsequent court rulings.

**Ms. Karua:** Mr. Deputy Speaker, Sir, while thanking the Minister for that answer, and also noting that the police are dragging their feet over the investigations--- That incident happened in early August. We are now in October and investigations are still going on. Now that Fredrick Nyaga, who survived has, a bullet lodged in his lungs and he is not able to afford medical treatment, what is the Minister and the Government going to do to ensure that Fredrick Nyaga does not also lose his life and that the bullet lodged in his lungs is removed pending all those investigations?

**Prof. Saitoti:** Mr. Deputy Speaker, Sir, I would like to assure the august House that I am going to direct that the investigations be expedited as quickly as possible. That is an extremely unfortunate act. We want to determine exactly the circumstances in which the bullets were fired at the person in question. But, in the meantime, we can look into the issue of medical treatment.

**Mr. Mwangi:** Mr. Deputy Speaker, Sir, I am surprised that the Minister can tell us that they are going to investigate. Wherever there have been those investigations--- I was promised that investigations will be done in April and yet, up to now, nothing has

been laid before this House. Are we going to trust that he is going to carry out investigations when he has not been able to investigate cases that happened almost eight months back?

**Prof. Saitoti:** Mr. Deputy Speaker, Sir, I am sure the House will appreciate that circumstances vary from case to case. Depending on the complexity of the case, time can be longer. But I believe this is a fairly straightforward case. The situation is that the police had been called to arrest a thief who had been apprehended by wananchi. When the police went and rescued that thief as is in accordance with the law, there was a reaction on the part of the public. They started throwing stones at the police. I agree that what the police should have done is to shoot in the air. That is what we are now trying to find out. How come the police in question fired at the people directly?

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, while we commend the Commissioner of Police, Mr. Iteere, for the good job that he is doing, what is the police doing to ensure that there is an interim report when matters like that happen, before they even do conclusive investigations? Have you got an interim report since August to show the circumstances in which the shooting happened?

**Prof. Saitoti:** Mr. Deputy Speaker, Sir, I have already stated that I am making efforts to ensure that the investigations are carried out expeditiously. I believe that will entail an outcome of a report or a preliminary report.

**Mr. K. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. My question was very clear! I asked: While we appreciate that investigations are going on--- Three months have elapsed since August. Have you received any interim report? That is the answer we want!

**Mr. Deputy Speaker:** Prof. Saitoti, it is now three months since this occurred and up to now, you do not know whether the police fired in the air or not?

**Prof. Saitoti:** Mr. Deputy Speaker, Sir, I have been waiting for a report. As a result of the fact that I am still waiting for that report, I have said--- I will ask the police to expedite investigations and present a report to me. That is precisely what I am doing! I want a proper report on this matter.

**Mr. Mbadi:** Mr. Deputy Speaker, Sir, it is, indeed, sad that the police officers, in an attempt to rescue a thief, shot two innocent people. Since the Minister has acknowledged that this is a fairly straightforward matter, can he give a commitment to this House on when we expect a response from the Ministry as to what action has been taken against the police officers who killed one innocent person and injured another one in a bid to rescue a thief?

**Prof. Saitoti:** Mr. Deputy Speaker, Sir, let me state clearly that it is a matter of regret. We are now talking of a person who died in the course of the police trying to rescue the life of another Kenyan. You cannot say that he was a thief; he was a suspected thief. He may very well not have been a thief and, therefore, the police went to try and rescue that person from mob justice. The issue here is to ascertain the reasons why the police did not fire in the air. Even if they fired in the air, how come some bullets not only injured one person, but killed another one? This is an important matter and I am going to have a report as quickly as possible.

**Mr. Affey:** Mr. Deputy Speaker, Sir, the Minister has confirmed that, actually, the Kenyan who died and the one who is in critical condition were not suspects at all; they were innocent people. One Kenyan is already dead as a result of police shooting.

Another one has a bullet lodged in his body since August. Does the Government also want the second one to succumb to death so that they can look for compensation? Why can the Minister not immediately instruct, in consultation with his colleague, the Minister for Medical Services, that, that bullet be removed today so that you can save his life which has been in jeopardy since August?

**Prof. Saitoti:** Mr. Deputy Speaker, Sir, you will agree with me that we are basically repeating the same question that was put to me. I am on record as saying that the medical treatment of the person with an injury is going to be looked into.

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to avoid the question? If the Assistant Minister was answering this Question, he would have said the following: "I will ensure the injured person is treated today!" Now, the Minister is saying that he will look into it. Could he clarify what this "look into" business is all about?

**Prof. Saitoti:** Mr. Deputy Speaker, Sir, I think I have been explicit enough. I have said that the medical treatment of that person will be looked into. That statement covers now and onwards. I am going to do that!

**Mr. Affey:** On a point of order, Mr. Deputy Speaker, Sir. What the Minister, therefore, is suggesting--- Is he in order to suggest it? His department was not concerned in the first place to establish and treat that Kenyan who is suffering as a result of a bullet. He is looking at his case in a futuristic manner! What have they done about this man's condition since August? You caused it yourselves!

**Prof. Saitoti:** Mr. Deputy Speaker, Sir, you will appreciate the fact that the Question put to me reads:-

"What am I going to do to ensure that the patient is going to be treated properly, and to ensure that the bullet is removed from the body? I have said that, that is precisely what I am going to do; rather than why I had not done that before.

**Ms. Karua:** Mr. Deputy Speaker, Sir, it is quite clear that the police were not shooting to disable, but to kill, and one man succumbed to injuries, while the other one is in hospital. Therefore, it appears it is a clear case where the Minister ought to take action. When is he going to take action? Could he promise to have a letter tomorrow morning, to be picked by Fredrick Nyaga for treatment at the Kenyatta National Hospital? That is what we are looking for.

**Prof. Saitoti:** Mr. Deputy Speaker, Sir, I cannot go back on what I have said. If, indeed, it is tomorrow, I will ensure that the letter can be picked. Even if I will not be there, I will have given the directive to the appropriate officer in my office.

**Ms. Karua:** On a point of order, Mr. Deputy Speaker, Sir. I thank the Minister for the letter and it will be collected by 10.00 a.m., tomorrow morning, but what about taking action? It appears they shot to kill and not to disable.

**Prof. Saitoti:** Mr. Deputy Speaker, Sir, it is important that I must follow the law. The rationale of ordering an investigation is to establish a number of things. First, whether the person who died was among the 30 people who were throwing stones at the police. The next thing is to establish whether the police should not have used this method and should have shot in the air. Once I get those facts, I will be in a much better position to direct what action should be taken against the police.

#### OUTBREAK OF DENGUE FEVER IN MANDERA COUNTY

**Mr. Affey:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Public Health and Sanitation the following Question by Private Notice.

(a) Is the Minister aware of an outbreak of “*Dengue Fever*” in Mandera County, which has so far led to the death of 15 people?

(b) What emergency measure has been put into place to stop its spread and avert more deaths?

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Deputy Speaker, Sir, with your permission, we have agreed with the Member that this Question be answered comprehensively on Tuesday next week. I also had written to the Chair this morning.

**Mr. Shakeel:** On a point of order, Mr. Deputy Speaker, Sir. As much as I respect the Minister, Dengue Fever is a very dangerous disease. People die within three days of contracting the fever if they are not treated immediately. Is the Minister in order to say that she will answer the Question on Tuesday next week? I hope, in the meantime, they are taking emergency actions. Could she clarify that?

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Mr. Deputy Speaker, Sir, meanwhile, we have taken emergency actions which we continue to take. It is a continuous deterrent process and we are doing it.

**Mr. Deputy Speaker:** That is fair enough, in the circumstances. The Chair, indeed, is in possession of a letter from the Minister asking for more time!

**Mr. Affey:** Mr. Deputy Speaker, Sir, indeed, I also received a copy of that letter and I appreciate it, but as my colleague has said, the situation is such that we might lose more people. The same is also happening in North Horr. So, it is not only in Mandera County but also in Marsabit County where there are incidents of Dengue Fever which kills fairly fast. I was just going to request the Minister that, to save more lives, they must move in before Tuesday, so that by Tuesday she can report progress to the House.

**Mr. Deputy Speaker:** Tuesday is the next Parliamentary day and I thought the Minister did give an undertaking on that.

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Yes, Mr. Deputy Speaker, Sir. I would like to assure the House that urgent measures are being taken. We will continue to take them in that whole region.

**Mr. Deputy Speaker:** Fair enough! The Chair directs that the Question be listed on the Order Paper on Tuesday next week.

*(Question deferred)*

#### REHABILITATION OF CHOGORIA ROAD IN INDUSTRIAL AREA

**Eng. Gumbo:** Mr. Deputy Speaker, Sir, I beg to ask the Deputy Prime Minister and Minister for Local Government the following Question by Private Notice.

(a) Is the Minister aware that Chogoria Road within Nairobi Industrial Area is currently in a deplorable state of disrepair, with vegetation sprouting in the middle, despite the road having been tarmacked only recently?

(b) What urgent measures will the Minister take to rehabilitate the road, in view of the economic losses being occasioned to the many businesses in the area?

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Nguyai): Mr. Deputy Speaker, Sir, this particular Question had raised issues regarding the Chogoria Road within the Nairobi Industrial Area. Under the Roads Act, the City Council of Nairobi is no longer a roads agency. The responsibility for roads development, rehabilitation and maintenance in cities and municipalities is vested on the Kenya Urban Roads Authority (KURA).

We have liaised with the Member and the Assistant Minister for Roads and we have agreed that this Question can be adequately addressed by the Ministry of Roads at the next available sitting which will be Tuesday afternoon.

**Mr. Deputy Speaker:** You should have discussed between yourselves before coming to the Floor of the House to determine where the Question should be addressed appropriately. But nonetheless, I hope the Assistant Minister is in agreement that this Question will be handled by him. Can you say that?

**The Assistant Minister for Roads** (Mr. Kinjanjui): Mr. Deputy Speaker, Sir, it is true that we have consulted with the Member together with the Assistant Minister and I will answer that Question on Tuesday afternoon.

**Mr. Deputy Speaker:** Fair enough!

**Eng. Gumbo:** Mr. Deputy Speaker, Sir, I have discussed this matter with the two Assistant Ministers, but as they go to answer the Question, it is important they appreciate the gravity. The state of Chogoria Road is a shame to the people of Kenya. You have *sukuma wiki* growing in the middle of the road and part of the road is being used as a garbage dumping site. There is a big pool in the middle of the road. This is a shame!

As the Assistant Minister comes to answer the Question, one of the most important things that he should tell us on Tuesday is what immediate steps he is taking to make sure that these people who pay levies can access their business premises. As it stands now, they cannot.

**Mr. Deputy Speaker:** Fair enough! The Chair directs that the Question be listed on the Order Paper on Tuesday next week. I hope the Assistant Minister has taken note of the concerns of the hon. Questioner.

*(Question deferred)*

## ORAL ANSWERS TO QUESTIONS

*Question No.901*

### BLOCKAGE OF SEWERAGE SYSTEM IN THIKA

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

(a) whether he is aware that the sewerage system in Majengo Estate in Thika has been blocked for over three years resulting in waste drainage into Chania River and increasing the risk of water-borne diseases to residents of Thika; and,

(b) when the Thika Municipal Council will repair the sewer.

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Nguyai): Mr. Deputy Speaker, Sir I answered this Question yesterday, but you directed that I visit the particular site today. I did so today at noon and I was only able to come back without a written answer. But I can give you my observations.

I went there with the Town Clerk, an officer of the sewerage company and we visited the area where the waste is being poured into the open system. The way those buildings were designed is that---

**Mr. Deputy Speaker:** Are you answering the Question now?

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Nguyai): Mr. Deputy Speaker, Sir, yesterday I answered the Question and I am giving the specific clarifications.

**Mr. Deputy Speaker:** Are you sure you do not need to go back and write a proper answer based on the new findings?

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Nguyai): Mr. Deputy Speaker, Sir, it is because of the urgency that you had urged me to observe, but if you allow me, I will come with a comprehensive written answer in the next sitting.

**Mr. Deputy Speaker:** It is the presumption of the Chair that you are making a remedial effort, of course.

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

**Mr. Deputy Speaker:** You cannot just come here straight from the site and give an adequate answer! You need to sit down with your officers and talk about money and everything else!

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

**Mr. Deputy Speaker:** The Chair directs that this Question be listed on the Order Paper on Tuesday next week.

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

**Mr. Kabogo:** Mr. Deputy Speaker, Sir, I agree with your sentiments, but I have an issue that I would like to bring to the notice of the House. After it was ordered that hon. Nguyai and I visit the site this morning, when we went out of Parliament yesterday, he followed me outside and said that he would not be able to put a team together to go to the ground today. He asked me to agree that he comes to the House and makes an undertaking today; that works to correct this problem will be done.

So, this morning at 9.59 a.m., which I came to learn later, he called a girl who is a photographer in my office and said he was visiting the site. He never called me! He did not send me a short message until 12.00 when he told me that he was on his way to Thika. So, really, the behaviour of the Assistant Minister, in as far as that issue is concerned, is serious because he did not want me to accompany him, so that I could show him exactly what the problem is! Neither did he invite the public health officer! He has now come here and told me that what he has found is kitchen waste and not sewer waste, yet we know it is sewer! As we speak, the Public Health Officer in Thika and the National Environment Management Authority (NEMA) officer have gone to the site.

**Mr. Deputy Speaker:** Order! You cannot prosecute the same Question for two days! This is sufficient information you will get on Tuesday afternoon. In any case, the presumption of the Chair is that the Assistant Minister is seeking this more time, so that he can come up with a comprehensive programme.

**Mr. Kabogo:** Mr. Deputy Speaker, Sir, I was building a question to seek the indulgence of the Chair that a visit be made by the Substantive Minister – the Minister for Public Health and Sanitation - or her representative! That was the request that I was trying to make; I am available now, tomorrow and at the weekend. This is not a joke! This is the same Assistant Minister who came to this House and said that he had not paid allowances to councillors in Thika, yet the Substantive Minister came here and claimed that he had already done so! He got away with that and he should not get away with this one!

**Mr. Deputy Speaker:** Mr. Assistant Minister, I hope that you have a lot of information, much more than you---

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai):** Mr. Deputy Speaker, Sir, the information that we are going to put together will satisfy the House that enough work is being done.

**Mr. Kabogo:** On a point of order, Mr. Deputy Speaker, Sir. I have requested that the Minister for Public Health and Sanitation visits the site, if we have the lives of Kenyans in our minds!

**Mr. Deputy Speaker:** Mr. Kabogo, when the Government gives an undertaking based on a direction given from the Chair, then the Government is going to bring the answer. It is only after your own interrogation of the answer that the Chair will be satisfied that sufficient work has not been done by the Government, and then the Chair can give further directions. As of now, the Question will be listed on the Order Paper of Tuesday next week.

*(Question deferred)*

**Mr. Deputy Speaker:** Next Question by Dr. Otichilo.

*Question No.851*

LEVEL OF SUCCESS OF TREE PLANTING EXERCISE  
IN EMUHAYA CONSTITUENCY

**Dr. Otichilo** asked the Minister for Education:-

(a) how successful the programme to establish tree nurseries in 20 primary schools in each constituency, particularly in Emuhaya Constituency was, considering that Kshs.60,000 was allocated to each school through the Economic Stimulus Programme (ESP) in 2009/2010; and,

(b) how successful the programme to purchase and plant seedlings in 50 schools in every constituency was, particularly in Emuhaya Constituency, considering that Kshs.30,000 was allocated for this purpose.

**The Assistant Minister for Education** (Mr. Mwatela): Mr. Deputy Speaker, Sir, while I rise to give a reply, I would like to thank the hon. Member for raising this fundamental issue of funds. I would like to state from the outset that I spent two days in Emuhaya looking at different schools where the Economic Stimulus Programme (ESP) projects were going on. The Question seeks to find out whether the programme was successful.

Mr. Deputy Speaker, Sir, I beg to reply.

(a) The establishment of tree nurseries in the primary schools as I saw on the ground was really successful. However, the actual tree planting programme faced many challenges and is generally unsuccessful. One of such challenges that I established was that there was no ownership by the community. There was also lack of ownership by the students, and as such we cannot rate the programme as having been successful, even though we have seen very many nurseries. In Emuhaya, 20 schools were allocated Kshs60,000 each through the ESP, and they started their projects, which are in various stages of development.

(b) The programme to purchase and plant seedlings in the 50 schools, which was to be subsequent to the earlier programme, did not take off as planned because the Ministry did not receive funds earmarked for the programme in the Financial Year 2010/2011. So, that one has not taken off.

*[Mr. Deputy Speaker left the Chair]*

*[The Temporary Deputy Speaker (Dr. Laboso)  
took the Chair]*

**Dr. Otichilo:** Madam Temporary Deputy Speaker, first I want to thank the Assistant Minister for visiting Emuhaya and satisfying himself regarding what was going on, on the ground. Secondly, I want to thank the Assistant Minister for being honest that, overall, this programme has failed, not only in Emuhaya but in the entire country. This was a project that was not well thought out. It is a project that was just given to the schools, and overall it has not succeeded. Could the Assistant Minister inform the House, upon receiving ESP money from the Ministry of Finance, what action they took before this project was implemented? My assumption is that there should have been some training programme, to ensure that the teachers and pupils knew the purpose of the project rather than just having the project given to the schools without proper planning.

**Mr. Mwatela:** Madam Temporary Deputy Speaker, you realize that the ESP programme came up as a measure to mitigate certain circumstances in the economy of the country. The Ministry was not given much choice by the Ministry of Finance. We were given the programme to start tree planting in schools. Yes, there was some training that was undertaken, particularly in the establishment of nurseries. But as I said, the issue of ownership where communities were to be involved, I think, did not take place. This is unfortunate because tree planting is such a major thing. It is not something that should have been handled the way we handled it. I think in future, all programmes should emanate from the community, and then the Government should facilitate the communities; it should not be top down; it should be from down up. We will then get people to do things. What happened was that this was a dictation from above rather than



the people being given the opportunity to decide what was really good for them. That was really where the problem is.

**Mr. Mureithi:** Madam Temporary Deputy Speaker, I am very happy with the honesty of the Assistant Minister. He himself, together with the current Minister for Higher Education, Science and Technology, came to my constituency to initiate this programme; it was supposed to be a stimulus programme of greening the schools. So, I was with them the whole day and we planted 1,000 trees. But from that time, we have not had any follow up in those schools to ascertain whether the objectives for which those trees were planted were met. What is the Assistant Minister going to do because quite a lot of money was injected into the project and yet, no follow up has been done to ascertain whether the objectives were met?

**Mr. Mwatela:** Madam Temporary Deputy Speaker, I think there is a bit of confusion. The hon. Member is talking about a different programme, but which is of the same type; that is, the Green Schools Programme. That programme is much more successful than the programme that we are talking about. That is because, again, in that particular case, the community is more involved and there is greater success than in that particular one. Maybe, the follow up has not been that good, but I will be very much willing to revisit his constituency again and see how successful it is there. But that programme is much better than this schools one.

**Mr. Duale:** Madam Temporary Deputy Speaker, I come from an area that needs to be “greened”. If I do my mathematics - and it is good that the Assistant Minister is very honest. He has told the House that the project has failed. In that sense, if 50 schools in every constituency were given Kshs60,000 each, that comes to over Kshs315 million. Could he confirm to this House and the nation that the Government that he serves in, has lost Kshs315 million?

**Mr. Mwatela:** Madam Temporary Deputy Speaker, hon. Duale has just been in the Government.

**Mr. Duale:** On a point of order, Madam Temporary Deputy Speaker. I do not deny that. I served in the Government very well. I was not removed from the Government because of non-performance. But today, I stand here to represent the people of Dujis and the nation at large.

**Mr. Mwatela:** Madam Temporary Deputy Speaker, the pertinent issue here is that money was disbursed. How well was that money used? I am stating, in no uncertain terms that, yes, in some cases, money was well spent. But in very many cases, the money was not well spent. So, do you want me to say that money was spent well when it was not?

**Mr. Mwangi:** Madam Temporary Deputy Speaker, we all now understand. I want to appreciate the Assistant Minister because he has told the House the truth. He has accepted that the Ministry failed in the implementation of the project. Now that they have failed, could the Ministry hand over those kinds of projects to the appropriate Ministry that may be able to implement them better than they can do?

**Mr. Mwatela:** Madam Temporary Deputy Speaker, first of all, the issue of tree planting should be an issue of Kenyans and schools are really relevant channels to teach our community about tree planting. I agree that several Ministries are relevant in terms of trees. There is the Ministry of Environment and Mineral Resources and the Ministry of Forestry and Wildlife. Both of them should have been involved. We should have

networked to see that, that project was successful, but we did not do that. I think, in future, we should think through the plans properly, so that our money is spent in a better way than those kinds of programmes.

**Mr. Konchella:** Madam Temporary Deputy Speaker, now that the Assistant Minister has agreed that the money was misused, could he, therefore, undertake an audit of the misused money, so that he can take appropriate action to recover it? This is Government money and it should not be lost. Somebody must pay for it.

**Mr. Mwatela:** Madam Temporary Deputy Speaker, it is not just a case where money was stolen. It is a case where lack of proper skills and planning led to the losses. So, our own audit is there. We have actually done a lot of auditing of that project. It is not a case where we are saying that a teacher, principal or headmaster stole the funds. But if you do not equip the person in terms of knowledge and proper arrangement, then no proper implementation of the project will be carried out. Therefore, money was not well spent. It is different from stealing. I am not accusing the teachers of stealing.

**Mr. Konchella:** On a point of order, Madam Temporary Deputy Speaker. Surely, somebody must be held accountable for whatever action. That is because that money was not just sent to the air. It was sent to somebody who was responsible. That person who received the money and put it in his books should be held accountable. Therefore, he should tell us where the money is.

**Mr. Mwatela:** Madam Temporary Deputy Speaker, that is possible. That is why I said that in the case of tree nurseries, they are there. People spent the money correctly in as far as tree nurseries were concerned. But whether that translated into planting of trees – because it is the community which is actually involved in planting trees – that is different.

**The Temporary Deputy Speaker (Dr. Laboso):** Last question, Dr. Otichilo!

**Dr. Otichilo:** Madam Temporary Deputy Speaker, I want to thank the Assistant Minister for being very honest; that the project failed. Could the Assistant Minister tell this House the following? There are schools that have good nurseries and the seedlings are there. But no planting is going on. What action is he going to take to ensure that those seedlings are re-planted either in the schools or in the community, or they are sold and the money given back to the school?

**Mr. Mwatela:** Madam Temporary Deputy Speaker, the Ministry has already started a programme of training the officers who will, in turn, train the relevant people on the ground. That way, we will maximize on the nurseries that are already in place. That will ensure that, in the final analysis, that programme will not be totally lost.

#### *Question No.964*

#### ENFORCEMENT OF SECTION 53 OF EMPLOYMENT ACT

**Mrs. Odhiambo-Mabona** asked the Minister for Labour:-

(a) when he will make regulations under Section 53 of the Employment Act on the activities that are deemed harmful to the health, safety and morals of a child between 13-16 years of age; and,

(b) what is considered “light work” that a child can undertake under the law.

**The Assistant Minister for Labour** (Mr. Ojaamong): Madam Temporary Deputy Speaker, the last time we were here, I had indicated to the House that the draft regulations and rules were in the Attorney-General's Office, awaiting his advice. Since the change of guard just recently, we called the Attorney-General's office today and the State Counsel who is handling this issue said that we should give the Attorney-General some time, at least, to conceptualize these things before he returns them back to us for gazette. So, I beg the hon. Member to be patient enough.

**Mr. Odhiambo-Mabona:** Thank you, Madam Temporary Deputy Speaker. I am willing to be patient only if the Minister can tell me how long I should be patient. Could I be patient for two weeks or for one year? I think I am willing to be patient for two weeks.

**The Temporary Deputy Speaker** (Dr. Laboso): I do not think you are also in a position to give the timeframe to the Attorney-General. Maybe, he could give us some indication on how long he requires.

**The Attorney-General** (Prof. Muigai): Thank you, Madam Temporary Deputy Speaker. This matter had not been brought to my attention. Now that it has, I would require a month. I would be more than happy to deal with it within a month.

*(Mr. Mbadi stood up in his place)*

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Mbadi, could you either sit or stand and talk to the House?

Hon. Millie, are you satisfied?

**Mrs. Odhiambo-Mabona:** Madam Temporary Deputy Speaker, first of all, I want to congratulate the hon. Attorney-General. He became the Attorney-General when I was absent. But having said that, I want to say that he was Professor in jurisprudence. When he was my professor, he was very fast, and good at his work. Could we see that speed now? One month is too long! Regulations are very simple things. Could he give us two weeks?

**The Attorney-General** (Prof. Muigai): Madam Temporary Deputy Speaker, I thank the hon. Member for her kind comments about my past. I am an older man now, and I am moving more slowly!

*(Laughter)*

Could I have three weeks, Madam Temporary Deputy Speaker?

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Millie Odhiambo, I think the House can allow the Attorney-General, being in a new position, the three weeks, and being an older person than when he was your Professor. I think we can allow him the three weeks and I believe he would be able to give us the answer.

**Mrs. Odhiambo-Mabona:** Madam Temporary Deputy Speaker, so long as he is not suggesting that I am older!

**The Temporary Deputy Speaker** (Dr. Laboso): You are not older!  
Next Question!

*Question No.1107*

NUMBER OF EXPATRIATE MANAGERS  
AT HOTEL INTER-CONTINENTAL

**Mr. Njuguna** asked the Minister for Labour:-

(a) whether he could provide a list of all expatriates working in managerial positions at the Intercontinental Hotel, Nairobi, indicating their respective qualifications and positions held;

(b) Why the General Manager, one Mr. Karl Hala, continued to harass and dismiss Kenyans from managerial positions, and whether he is he aware that the motive is to create employment for expatriates; and,

(c) What steps the Ministry will take to ensure qualified Kenyans are accorded opportunity to work at the hotel.

**The Assistant Minister for Labour** (Mr. Ojaamong): Madam Temporary Deputy Speaker, I beg to reply.

(a) Hotel Inter-continental, Nairobi has six expatriates working in managerial positions as indicated in the answer, which the hon. Member has.

(1) Mr. Karl Hala, the Director of Operations for African Region, as well as the General Manager, Nairobi Inter-continental Hotel. He is the Chief Executive Officer, Inter-continental Hotels Group (IHG) properties within Africa. He is a hotel management graduate from Austria with over 25 years working experience.

(2) Mr. Karim Ben Amor is the Director of Systems for Africa, responsible for information technology systems in all Inter-continental Group of hotels within Africa; he is an IT Engineering graduate with over 15 years working experience.

(3) Ms. Marie France Domarin who is the Regional Director of Human Resources and Training, Africa, whose responsibility is human resource and training in all Inter-continental Hotels Group properties within Africa; she is a Hotel and Restaurant Management graduate with over 15 years working experience.

(4) Ms. Janine Gerlich, who is the Director of Food and Beverage in Nairobi. She is a hotel management graduate with ten years working experience.

(5) Mr. Jitrenda Prasad, Sous Chef, North Indian Food cuisine. He has a culinary Arts Indian certification with ten years working experience.

(6) Divesh Triveni is an Executive Sous Chef. He has 14 years working experience.

(b) It is not true that Mr. Karl Hala has been harassing and dismissing Kenyans from managerial positions. The Ministry of Labour is aware that the following Kenyans are in the hotels management team:-

1. Jaswant Babra
2. Jackie Mwaura
3. Peter Magara
4. Barnabas Wamoto
5. Florence Mwaisaka
6. Kevin Kamau

Madam Temporary Deputy Speaker, since January, 2011, the Ministry is aware that the following Kenyans have joined the executive management.

1. Reuben Kagai
2. Christine Njeremani

3. Moses Owiti
4. Zipporah Murungi
5. Karen Wanjiku
6. Siamanta Kabeke
7. Peter Olale
8. Edwin Christopher Aviha
9. Aurelius Makuna
10. Beatrice Sallat
11. Eric Karuga.

Madam Temporary Deputy Speaker, the Ministry is further aware that the hotel has a programme of understudy to replace the expatriates as follows:-

1. Marie France Damarin, that is the name of the expatriate, designation is the Area Human Resource Training Director. The name of a Kenyan understudying her is Florence Mwaisaka. The understudy will be able to replace the expatriate after 12 months.

2. We have Dinesh Triven, designation, Executive Sous Chef, being understudied by Sylvia Kishao for two years; that is the duration for the understudy.

3. There is Ben Karim Amor, Area System Manager, Africa, being understudied by Leland Salano, four years.

4. Jitrenda Prasad, designation is Indian Chef, being understudied by Mati Kathioni, two years.

5. Janine Gerlich is a Food and Beverage Director. The name of Kenyan understudying him is Fred Ogutu for two years.

Madam Temporary Deputy Speaker, it should be noted that since 2008, 31 people from managerial positions have left the employment of Hotel Inter-continental within the region. Out of that 31, only two employees, Mr. David Mburu, Director of Engineering, and Mr. Josiah Nyakundi, Assistant Beverage Manager were terminated due to gross misconduct. Two retired; that is Mr. James Mwaniki and John Kibwago. They were all replaced by Kenyans. The rest resigned on their own volition and moved to greener pastures.

(c) The Ministry has started a databank of all competencies and qualifications in the country. This will ensure that qualifications are matched with the needs of the country. The Ministry will continue to encourage foreign investors to have Kenyans understudy expatriate workers, especially those in managerial and technical positions. The Ministry will ensure compliance by periodically checking on the expatriates' work permits, and durations of understudies to replace the expatriates.

**Mr. Njuguna:** Madam Temporary Deputy Speaker, while thanking the Assistant Minister for that very elaborate answer, is he in order to mislead the House that there are only six top executives or expatriates at the Inter-continental Hotel, while, indeed, I have documentary evidence duly signed by the General Manager of Inter-continental Hotel certifying that there are ten expatriates?

Madam Temporary Deputy Speaker, I will now lay on the Table of the House the names as tabulated and certified by the General Manager of Hotel Inter-continental.

*(Mr. Njuguna laid the document on the table)*

Now coming back to my question, could he inform this House very clearly, why 22 qualified Kenyans have had their services terminated by the Hotel management thus killing the spirit of Kenyanization, and Africanization at the Hotel?

Madam Temporary Deputy Speaker, I wish to table a detail list of the 22 very qualified Kenyans, already harassed and frustrated by the top management of the Hotel. The list and the names are already annexed to that document. Could he now inform the House why only Kenyans of African origin have had their services terminated?

**Mr. Ojaamong:** Madam Temporary Deputy Speaker, regarding the first list of expatriate managers, I think I should also be given time to check on the list and then cross check with my officers to find out if the records provided to us by the Intercontinental Hotel tally.

Madam Temporary Deputy Speaker, as for the second case, I had indicated that since 2008, 31 people in managerial positions have left the employment of Intercontinental Hotel. Out of those, the two people I mentioned, Messrs Mburu and Nyakundi, were dismissed due to gross misconduct. The other two retired. The rest resigned voluntarily to look for greener pastures elsewhere.

**Mr. Mwangi:** On a point of order, Madam Temporary Deputy Speaker. The Assistant Minister is seeking time to go and study the document. Shall I be in order to say that the Question be deferred so that he can come back with whatever information he is seeking?

**Mr. Koech:** On a point of order, Madam Temporary Deputy Speaker. Misleading the House is such a grave mistake, and the Assistant Minister is actually admitting that there could be some errors, which is so unfortunate. As we seek the deferment of this Question, this is a hotel where the Government has some shares. It looks as if it is run from outside this Republic, and that is frustrating Kenyans. Would I be in order to request that the Minister also indicates, when he comes back, what action he shall have taken against the officers who might have misled him?

**Mr. Mbadi:** On a point of order, Madam Temporary Deputy Speaker. As you consider a ruling on whether this Question should be deferred or not, I would also urge that if the ruling be that the Question is deferred, then the Assistant Minister should, further, bring to this House job descriptions of the positions that these expatriates occupy; just telling us that someone is a director of food and beverages is not enough; he could as well just be a mere cook! So, we would like to know the job descriptions of these expatriates, so that we may know whether, really, Kenyans do not have, or are lacking in, expertise to be able to make a judgment on whether we are employing expatriates procedurally or not.

**Mr. Konchellah:** On a point of order, Madam Temporary Deputy Speaker. I would also wish that your ruling be what my honourable colleague has said. Under the immigration law, usually the expatriates must have a work permit under which they should train Kenyans to take over. So, could the Assistant Minister also explain to the House why some had extensions for four years? In other words, for somebody to study for four years--- We believe that you can go to Utalii College for four years; surely, to work for four years under somebody, I think there was something wrong there!

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, I believe---

*(Mr. Kiuna stood up in his place)*

Do you also want to add something, hon. Kiuna?

**Mr. Kiuna:** Yes, Madam Temporary Deputy Speaker. While I do appreciate that the Assistant Minister---

**The Temporary Deputy Speaker** (Dr. Laboso): I hope that the Assistant Minister is taking note of the various points that are being raised here.

**Mr. Kiuna:** Madam Temporary Deputy Speaker, I would like him, when he comes back to this House, to come with a record of those Kenyans who have been dismissed; he should have a full record of their misdeeds. We feel that there is more to it than meets the eye!

*(Applause)*

*(Mr. James Maina Kamau stood up in his place)*

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Kamau, do you still want further clarification?

**Mr. James Maina Kamau:** Madam Temporary Deputy Speaker, this should be the last one!

Madam Temporary Deputy Speaker, some of the so-called expatriates working in this country have outlived their usefulness. Can the Assistant Minister tell us when the Government is going to review the laws relating to expatriates working in this country?

**The Temporary Deputy Speaker** (Dr. Laboso): That is a different Question!

Assistant Minister, on your own admission, you have indicated that you may have been misled. Therefore, it means that you have not given us the full information required for this Question.

*(Applause)*

I, therefore, ask you how much time you require to give us a full and comprehensive answer, noting the comments that have been made by hon. Members.

**Mr. Ojaamong:** Madam Temporary Deputy Speaker, indeed, the answer was very suspect, when I saw it!

*(Laughter)*

**The Temporary Deputy Speaker** (Dr. Laboso): How do you come to the House to tell us that the answer is suspect? You are the Minister!

**Mr. Ojaamong:** 28 people---

**Mr. Mwangi:** On a point of order, Madam Temporary Deputy Speaker. Can the Assistant Minister apologize for coming here with a suspicious answer?

*(Laughter)*

**The Temporary Deputy Speaker** (Dr. Laboso): Yes, Mr. Assistant Minister, you really need to apologize to the hon. Members; you were the one coming to answer the Question and the House should be taken seriously.

*(Several hon. Members stood up in their places)*

I think the Assistant Minister has got the point; let him give us the timeframe he requires.

**Mr. Ojaamong:** Madam Temporary Deputy Speaker, indeed, this is a debating Chamber. We should also provoke debate from hon. Members so that the issues they raised – like the ones they have raised – guide us appropriately. Considering that this is a very grave matter, give me two weeks so that I can come with an appropriate answer. This is an issue affecting employment for Kenyans. Twenty-eight people purported to have resigned voluntarily to go for greener pastures is just unworkable. So, give me time to go and do a proper research.

**The Temporary Deputy Speaker** (Dr. Laboso): Okay, Mr. Assistant Minister, you have been given two weeks within which time to give us a comprehensive answer to all the questions. Please, take note of what the hon. Members have asked so that it can enrich your answer.

*Question No. 803*

DELAYED PAYMENT OF COURT AWARD TO OMAR SALIM MOHAMMED

**Mr. Chachu** asked the Attorney-General:-

(a) whether he is aware of the judgment of the court in Nairobi, Milimani Civil Case No. 5324 of 2004 and the decree dated 3rd August, 2006 and, if so, why the Government has not paid Mr. Omar Salim Mohammed as per the judgment/decree; and,

(b) when the Government will pay the decree-holder.

**The Temporary Deputy Speaker** (Dr. Laboso): Minister? Sorry, the Attorney-General.

**The Attorney-General** (Prof. Muigai): Madam Temporary Deputy Speaker, I beg to reply.

(a) The Attorney-General is aware of the judgment in favour of Mr. Omar Salim Mohammed against the Attorney-General who acted on behalf of the Commissioner of Police, but regrets that the Ministry of State for Provincial Administration and Internal Security has so far not paid the decretal amount. I am sorry to report that despite several reminders, the latest of which I made on 10<sup>th</sup> October, 2011 to the said Ministry, the decree remains unsettled to date.

(b) I have directed the Solicitor-General to take up this matter immediately with the Permanent Secretary, and to ensure that the payment is effected as soon as is practically possible.

Thank you, Madam Temporary Deputy Speaker.

**Mr. Chachu:** Madam Temporary Deputy Speaker, I want to congratulate the Attorney-General and wish him a lot of success in his work.



Madam Temporary Deputy Speaker, this judgment was made in favour of Mr. Omar Salim Mohammed on 3<sup>rd</sup> August, 2006; this is six years ago. Justice delayed is justice denied. This issue was brought to court and was determined, but six years down the road, nothing has been done. I brought this issue to the august House, the Parliament of Kenya, and again, the response I am getting is non-committal. The same stories that have been going on for the last six years are what is coming up. If you cannot get justice in a court; if you cannot get justice in Parliament, where will you take the Executive and make it accountable?

*(Applause)*

Madam Temporary Deputy Speaker, I want the Attorney-General to commit himself and tell us when he is going to avail the cheque to Omar Salim Mohammed.

**The Temporary Deputy Speaker** (Dr. Laboso): Mr. Attorney-General, could you commit yourself?

**Prof. Muigai:** Madam Temporary Deputy Speaker, I very deeply sympathize with Mr. Omar Salim Mohammed. Regrettably, I am only an attorney to the Ministry, and the funds must be availed by the Ministry. I will use all my powers – persuasive powers and all other legal powers - to try and expedite this payment. I will be the first to admit that six years is, indeed, a long time.

**Ms. Karua:** Madam Temporary Deputy Speaker, I also want to congratulate the Attorney-General and tell him that he is capable of doing better than he is giving on this one. Yes, he is the Attorney to the Ministry but there is collective responsibility in Government. He can commit and in case he fails to commit, I will turn to the Chair.

Could Madam Temporary Deputy Speaker direct that the cheque be availed here in Parliament within a month? That is enough time for the Government, through their internal procedures, to produce the cheque. This is a case of impunity where a judgment is ignored by a Government agency. We cannot continue with the same impunity even after the promulgation of our Constitution and a new Attorney-General!

Madam Temporary Deputy Speaker, would it be in order for you to order that the cheque be produced here in a month's time?

**The Temporary Deputy Speaker** (Dr. Laboso): Mr. Attorney-General, what do you think of Ms. Karua's request? Is that a deed that can be accomplished?

**Prof. Muigai:** Madam Temporary Deputy Speaker, I want to meet the hon. Member half way. I want to amend my answer by saying, I shall personally take up this matter with the Minister in charge and I shall pursue the cheque myself.

As to when this will be possible, I would not wish to commit, safe to say, I would do everything in my power.

**The Temporary Deputy Speaker** (Dr. Laboso): I think that is a good assurance from the Attorney-General.

**Mr. Duale:** Madam Temporary Deputy Speaker, I have a lot of respect for the new Attorney-General. We expect him to be better than the previous Attorney-General who served us here. As Ms. Martha Karua has said, this is the highest sense of impunity. The Attorney-General is the legal officer of the Government. Parliament can order the Attorney-General to produce a cheque. We want the Attorney-General of this country to give us a deadline, and not to go and see the Minister of State for Provincial

Administration and Internal Security. Give us a deadline and tell us the cheque of Mr. Salim Omar will be here on that day.

**The Temporary Deputy Speaker** (Dr. Laboso): Attorney-General, you had given your undertaking to take up the matter.

**Prof. Muigai:** Yes, I have Madam Temporary Deputy Speaker.

I would like to add this; there are numerous claims pending against the Republic of Kenya. I would not wish that the channel for obtaining satisfaction of decrees should be by an order of the Speaker. I would wish to be able to pursue individual Ministries with all the available channels. I think that would give us a more orderly fashion. There are several hon. Members here who have written to me and those who have spoken to me about similar situations. I would like to assure the House that I will do my very best. I want this to be one of the new changes that my chambers undertake.

*(Several hon. Members stood up in their places)*

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, with that assurance, I think we can give the Attorney-General the benefit of the doubt.

**Ms. Karua:** On a point of order, Madam Temporary Deputy Speaker. When the Attorney-General says that he does not wish this to be the channel of getting decrees, if only in one instance Parliament compelled payment of the cheque, all Ministries in this county would shape up and impunity would have been broken. Is it in order that the Chair helps the Attorney-General by directing that the cheque be here by the 10<sup>th</sup> of November, which is a month from today?

**The Temporary Deputy Speaker** (Dr. Laboso): Can you raise your point of order, so that he gives the last answer to all of them?

**Mr. Mungatana:** Madam Temporary Deputy Speaker, it is not the personal effort of the Attorney-General that is going to solve this problem. With my little experience in Government, what I know is that Ministries have not been budgeting. They never have a certain percentage or any amount of money put aside to satisfy the sums against claims that the Government has lost in court. So, I think in terms of policy changes, the Attorney-General must have this passed in the Cabinet so that all Ministries and departments of Government that are independently operating, must put a certain percentage of their funds aside. This is something that I think the good Attorney-General can achieve.

A proper Cabinet Paper needs to be prepared and then on the basis of the undertaking that you have given in this House, we get this thing resolved. Too many Kenyans are suffering.

**Mr. Olago:** On a point of order, Madam Temporary Deputy Speaker. Neither the hon. Attorney-General nor my learned brothers and sisters who have spoken have addressed the root cause of the problem. The root cause of the problem the Attorney-General is facing in his office is the Government Proceedings Act that came into force on 18<sup>th</sup> December 1956. The Government Proceedings Act specifically provides in Section 21(4) that:-

“Save as provided in this section, no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Government of any money or costs, and no person shall be individually liable under any order for the

payment by the Government or any Government department, or any officer of the Government as such, of any money or costs.”

Madam Temporary Deputy Speaker, under these circumstances, would it not be in order to ask the Attorney-General to sweep the Attorney-General’s chambers by initiating the process of making an amendment to this Act so that there would be a staggered process under which the Government can have attachments against it?

**Prof. Muigai:** Madam Temporary Deputy Speaker, I thank the three hon. Members for their advice. I shall take the suggestions very seriously. In the specific case brought this afternoon, I shall endeavour that within a month, I procure a payment from that Ministry.

**The Temporary Deputy Speaker (Dr. Laboso):** Attorney-General, by the 10<sup>th</sup> of next month we shall expect, if not the cheque then the progress report on what has taken place so that we can know where the problem is.

Next Question!

*Question No.952*

#### STATUS OF NYAYO PIONEER MOTOR VEHICLE PROJECT

**The Temporary Deputy Speaker (Dr. Laboso):** Mr. Boaz Kaino! Is anyone aware whether Mr. Kaino is out on Parliamentary business?

The Question is dropped!

*(Question dropped)*

Next Question!

*Question No.1097*

#### DETAILS OF CASES ARBITRATED BY SUGAR ARBITRATION COURT

**Mr. Ochieng** asked the Minister for Agriculture:-

(a) whether he could provide details of cases that have been successfully arbitrated by the Sugar Arbitration Court in favour of sugarcane farmers since 2006;

(b) which sugar companies, if any, have failed to honour the awards; and,

(c) what disciplinary action he will take against sugarcane millers who have failed to honour the awards.

**The Assistant Minister for Agriculture (Mr. Ndambuki):** Madam Temporary Deputy Speaker, I beg to reply.

(a) Out of 50 cases concluded by the Sugar Arbitration Tribunal, I hereby table details of 40 cases successfully arbitrated in favour of sugarcane farmers since 2006.

*(Mr. Ndambuki laid the document on the Table)*

I also table a list of cases which have been dismissed by the Arbitration Tribunal.

*(Mr. Ndambuki laid the document on the Table)*

Madam Temporary Deputy Speaker, I also table the amounts awarded to various complainants.

*(Mr. Ndambuki laid the document on the Table)*

(b) All sugar companies honour and pay farmers except in cases where sugar companies have challenged the ruling made by the Sugar Arbitration Tribunal in the High Court.

(c) I cannot take disciplinary action on millers who have filed an appeal at the High Court.

Madam Temporary Deputy Speaker, we have a Bill in this House called the Sugar (Amendment) Bill of 2011. In it, we have put an amendment whereby we are giving the Arbitration Tribunal some powers to deal with millers who are not honouring awards made by the arbitration.

**Mr. Ochieng:** Madam Temporary Deputy Speaker, I am still not satisfied with the answer to part “c” of the Question. The Question is very clear. I wanted to know what steps the Ministry will take against sugar companies which have failed to satisfy those awards.

**The Temporary Deputy Speaker** (Dr. Laboso): Assistant Minister, you have not answered that part of the Question.

**Mr. Ndambuki:** Madam Temporary Deputy Speaker, currently, the tribunal has no powers to enforce some of these awards. However, as a Ministry, we are now involved. For instance, today I talked to the management of some of the sugar companies and demanded to know when these payments will be made. Also, as I said, we have a Bill awaiting legislation by this House to give more powers to the tribunal, so that it can deal with those millers who are not honouring the payments.

**Ms. Karua:** Madam Temporary Deputy Speaker, could the Assistant Minister consider liaising with the Office of the Attorney-General to see whether, through subsidiary legislation, they could find a way of enforcing the Sugar Arbitration Tribunal judgments as we await those amendments? This matter is urgent and the number of cases pending enforcement is just too big.

**Mr. Ndambuki:** Mr. Temporary Deputy Speaker, it will not take more than three weeks before the Bill I am talking about comes here. It is published and is in this House. We are waiting to deal with it. I am requesting that once it comes up for debate, hon. Members come up with amendments so that we can strengthen the tribunal, because we are experiencing a lot of problems in the sugar industry.

*(Mr. Mututho stood up in his place)*

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Mututho, are you on a point of order, or do you want to ask a supplementary question?

**Mr. Mututho:** I am on a point of order, Madam Temporary Deputy Speaker. It is, indeed, true that the Bill the Assistant Minister is referring to is within this Chamber, and is coming next week. Would I be in order, therefore, to suggest that you order that we

have that Bill for Second Reading next week, so that we can finish up this matter? We have already done the First Reading.

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Mututho, that one will follow the order of Parliamentary Business as it has been set out.

Can we have the last question, Mr. Ochieng?

**Mr. Ochieng:** Madam Temporary Deputy Speaker, could the Assistant Minister confirm when he will force these sugar companies to pay up for all those cases which have been concluded and tell us by what time this will be done?

**Mr. Ndambuki:** Madam Temporary Deputy Speaker, in fact, some of the companies were ready to fax documentary evidence showing what they have already paid when we requested for this information. I am sure that a lot more is going to be paid very quickly.

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, the Question by hon. Hassan Joho has been deferred to next Wednesday. Therefore, the last Question is the one by hon. Chanzu.

*Question No.1120*

EXCLUSION OF KISAUNI CONSTITUENCY FROM REP

*(Question deferred)*

*Question No.1135*

STALLING OF WORKS ON MAJENGO-LUANDA ROAD

**Mr. Chanzu** asked the Minister for Roads:-

(a) why the rehabilitation works on Majengo–Luanda Road have stalled;

(b) what the contract sum and scope of the rehabilitation works for the Road were; and,

(c) what action the Minister will take to ensure that rehabilitation works recommence and are completed on time.

**The Temporary Deputy Speaker** (Dr. Laboso): Yes, Minister for Roads. Deputy Leader of Government Business, where is the Minister for Roads? I thought he was here!

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Speaker, the Assistant Minister was here. He was challenged to go and look at Chogoria Road. I hope he has not gone to Chogoria Road. He had the photographs that were produced by Eng. Gumbo and I saw them looking in that direction. So, they may have gone to look at that road in Industrial Area. Therefore, I will ask him to respond to this Question next Tuesday.

**Mr. Chanzu:** On a point of order, Madam Temporary Deputy Speaker. I was with the Assistant Minister earlier on, and he had given me a copy of the answer. I do not know whether the Deputy Leader of Government can take this copy and answer the Question in order to save time for this House. The answer is here.

**The Temporary Deputy Speaker** (Dr. Laboso): Will he be able to answer supplementary questions?

**Mr. Chanzu:** Madam Temporary Deputy Speaker, as Deputy Leader of Government Business, he should be able to do so.

**The Temporary Deputy Speaker** (Dr. Laboso): Deputy Leader of Government Business, are you competent enough to respond to the Question?

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Speaker, I beg to reply.

(a) The rehabilitation of the Majengo-Luanda Road has not stalled but the contractor has moved out of site after exhausting the contracted quantities in the current contract.

(b) The contract sum was Kshs34,867,644 and was to cover a three-kilometre section of the road. The scope of the work was to do base repairs, pothole patching and regulation, overlaying using asphaltic concrete type one, 35 millimetres thick; and shoulder reinstatement.

(c) The Ministry, through the Kenya National Highways Authority (KeNHA) has advertised tenders for the rehabilitation of the remaining section and the works are expected to commence once the procurement process is finalised.

**Mr. Chanzu:** Madam Temporary Deputy Speaker, the problem with the answer is that the original scope of the contract was subsequently changed. The contract was supposed to be patching up of about 18 kilometres and the amount that was allocated was Kshs45 million. However, they tendered and changed the scope of work, and they are now tendering again. I want the Minister to give us assurance that the amount that is available for the job is sufficient to complete the job and tell this House how long it will take for this to be done.

**Mr. Kimunya:** Madam Temporary Deputy Speaker, we said that the procurement process is about to commence. The works are expected to commence once the procurement process is finalised. It is only when we complete that process that we will be able to determine the exact amount of the tender and the period the contractor will have quoted and which will have been accepted. So, this may not be the appropriate time to commit ourselves on the amount and the timing. The important thing for him is to know that there is commitment to do the works.

**Mr. Ochieng:** Madam Temporary Deputy Speaker, I fail to understand why the Ministry failed to give out the entire contract once and for all, so that this road could be done to the satisfaction of the people who use it.

**Mr. Kimunya:** Madam Temporary Deputy Speaker, we have said, the Ministry did not fail. The contractor moved out of site when the quantities which were in that contract got exhausted and the works were to be re-started. So, the most important thing is to know that the work will be done. That is more positive. The history is unfortunate.

*(Mr. Kinyanjui stood up in his place)*

**The Temporary Deputy Speaker** (Dr. Laboso): Is the Assistant Minister allowed to answer the same Question?

**Mr. Kimunya:** Madam Temporary Deputy Speaker, he can only inform me!

**The Assistant Minister for Roads** (Mr. Kinyanjui): On a point of information, Madam Temporary Deputy Speaker.

**Mr. Kimunya:** Madam Temporary Deputy Speaker, Sir, I will take the information.

**The Assistant Minister for Roads** (Mr. Kinyanjui): Madam Temporary Deputy Speaker, I wish to inform the Deputy Leader of Government Business that it is, indeed, true that this contract has been awarded, but it so happened that at the time when the quantities were taken and when the contract went to tender, it took such a long time that by the time the contractor was on the ground, the road had deteriorated remarkably. Therefore, the amount that had been set aside could only do the work that the contractor actually did. However, the work has already been re-tendered – that was on 29<sup>th</sup> September – and there was a site visit on 4<sup>th</sup> October. The Ministry has set aside a total of Kshs180 million. We hope to award the tender and the contract will be completed.

Thank you.

**The Temporary Deputy Speaker** (Dr. Laboso): Are you well informed, Minister?

**Mr. Kimunya:** Madam Temporary Deputy Speaker, I thank my colleague for that information.

**The Temporary Deputy Speaker** (Dr. Laboso): Last question, hon. Chanzu.

**Mr. Chanzu:** Madam Temporary Deputy Speaker, given the information that has been given by the Assistant Minister, I just want assurance from the Minister that the amount of money they have mentioned will be sufficient to complete the work. The road is in a pathetic condition.

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Speaker, Sir, the information we have is that the Kshs118 million provided will be sufficient for the works.

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, that brings us to the end of that Order. We now move on to the next Order on Statements. We have one statement to be read by the Minister and then one request.

## MINISTERIAL STATEMENT

### TERMINATION OF EMPLOYEES' SERVICES BY MINISTRY OF EDUCATION

**The Assistant Minister, Ministry of State for Public Service** (Maj. Sugow): Madam Temporary Deputy Speaker, on 10<sup>th</sup> October, 2011, Mr. Olago asked for a Ministerial Statement on the matter of employees whose services were terminated by the Ministry of Education from August 2011. Specifically, the hon. Member wanted to know why the Public Service Commission is perpetuating impunity by failing to comply with the order of the Industrial Court; why the PSC backdated the termination of the services of the staff involved disregarding the period they had worked; and, why the PSC has failed to recognize the interest of the Union and the Ministry of Education to isolate issues pertaining to those who were irregularly engaged and to stop further irregular engagement of staff to replace the ones whose services were terminated.

Madam Temporary Deputy Speaker, the issue of recruitment of lower cadre staff in the Ministry of Education has been long and complicated. The information I have specifically regarding the court order is that whereas it was issued on the 29<sup>th</sup> of August, 2011 and served accordingly, by that time the PSC had already made its decision which had been conveyed to the Ministry of Education on 16<sup>th</sup> March, 2011.

The termination was to take effect from 1<sup>st</sup> May, 2011. However, the Ministry of Education took time before implementing the decision to terminate the 837 irregularly recruited candidates. The 837 are those who did not turn up for the mandatory screening exercise which was conducted when the issue came to the fore and failed various screening requirements such as; lack of required qualifications; being in possession of fake certificates; failure to go for interview and failing the recruitment interview, but were nevertheless appointed.

The Public Service Commission has maintained that it did not backdate its decision. It, therefore, did not expect these persons to be in the service after 30<sup>th</sup> April, 2011. That is why its position is that the court order came too late.

Madam Temporary Deputy Speaker, the PSC has not disregarded the interests of the Ministry of Education in that it rescinded its earlier decision to cancel the appointment of all the 2,588 persons and allowed a screening process. It is out of this process that a total of 2,073 candidates were allowed to remain in the service. This accounts for 80 per cent of the applicants.

The Government wishes to assure the House and the public that the screening exercise was undertaken with due care and it has ensured that as far as practicable, the eligible candidates got a fair chance to join the Civil Service. The House also needs to note that those terminated and are now demonstrating against the Government's decision are among those who came in irregularly or had outright fake certificates. Those persons will be unsuitable for public service under the new constitutional dispensation where the issue of integrity is paramount.

I also wish to confirm that discussions will continue between my Ministry, the Ministry of Education and the Public Service Commission to ensure that no eligible Kenyan unjustly loses his or her chance for employment in this exercise. Consideration will also be given to ensure that those whose services have been terminated are paid for the services rendered.

**Mr. Olago:** Madam Temporary Deputy Speaker, I raised the issue on Tuesday. The hon. Assistant Minister must be aware that the Public Service Commission delegates its authority to PSs and other senior civil servants in relation to junior staff. The circumstances we are dealing with in the House today, the PSC delegated its powers to the PS, Ministry of Education. The PS Ministry of Education was acting as an agent of the PSC. As an agent of the PSC, whatever actions the agent takes binds the principal fully. So, when the PSC decided on 16<sup>th</sup> March, 2011, to terminate the services of these staff and communicated this decision to the agent, the Ministry of Education by 29<sup>th</sup> August this year the Ministry had not taken any action on that order of the PSC. The failure of the Ministry to take action binds the PSC. So, therefore, the Industrial Court issued the order on 29<sup>th</sup> August, which I wish to table before the House.

*(Mr. Olago laid the document on the Table)*



The Order reads as follows:-

“The Respondent’s, Public Service Commission, decision to terminate and re-advertise the grievance employment positions is hereby stayed pending the hearing and determination of this application.”

Madam Temporary Deputy Speaker, my understanding of this is that the order stopped the PSC from enforcing that decision that communicates to the Ministry and which action had not been taken. That being the case, therefore, the PSC was grossly out of order to proceed to ignore this order of the court. That is impunity.

Second point, way back on 16<sup>th</sup> December, 2010, the agent of the PSC and that is the PS, Ministry of Education wrote to the PSC advising amongst others as follows:-

“Nullification of these employments would have social, psychological, political and even economical consequences, including disruption of programmes of the Ministry given that the staff concerned is already deployed to our offices all over the country.”

Madam Temporary Deputy Speaker, I wish to table this letter of the PS.

*(Mr. Olago laid the document on the Table)*

Under those circumstances, how proper was it for the PSC to decide only this week to enforce a decision they had made in March when there is a valid court order standing against it?

**The Assistant Minister, Ministry of State for Public Service** (Maj. Sugow): Madam Temporary Deputy Speaker, I want to reiterate an earlier statement I made here that the court order was given on 29<sup>th</sup> August. As far as PSC is concerned, that decision had already been made and staff were not supposed to have been working by 1<sup>st</sup> May. By the time the order came, as far as PSC was concerned, the staff was supposed to have been out of service for nearly three months.

**Mr. Olago:** On a point of order, Madam Temporary Deputy Speaker. I do understand the handicap the Assistant Minister may be having in relation to the interpretation of that order. I do understand; I appreciate it. However, he must understand that, that order is very clear. The decision of the PSC had not been effected by the time the order was issued. Is it in order for him to proceed before the House as if the decision of the PSC had been implemented by the time the order was issued?

**The Assistant Minister, Ministry of State for Public Service** (Maj. Sugow): The PSC gives delegated authority which it supervises authorized officers on. When a decision is made by the PSC following an audit on the conduct of the authorized officers, its decision is binding and can only be contested in a court of law. It cannot be ordered by either the Ministry that is the policy setting organ or any other. It is independent. Hon. Olago has said probably I do not understand, but I am following the documentation that is available from the court pertaining to the dates. As to whether the Ministry fails to implement, that is a different matter currently going on. I will repeat my last paragraph which states that:-

“I also wish to confirm that discussions will continue between my Ministry, the Ministry of Education and the Public Service Commission to ensure that no eligible Kenyans unjustly lose their chance for employment in this exercise. Consideration will

also be given to ensure that those whose services have been terminated are paid for services rendered”.

There is a discussion still going on between these three parties regarding the difference in the time when the PSC indicated that those members of staff were supposed to be out and the time when the Ministry effected this, which was August. That difference is still being discussed and I am using this discussion issue because the PSC is an independent body and it implements its mandate independent of the Ministry. Therefore, if a party is aggrieved after that, the court is the open forum which an aggrieved person can seek redress. However, that discussion that is going on will ensure that justice is done for those who already have rendered their services.

**Mr. Olago:** On a point of order, Madam Temporary Deputy Speaker. It is gratifying to hear that discussions are going on. I hope that this has been captured in the HANSARD and the Assistant Minister is genuine about it. However, this afternoon at about 2.25 p.m., the aggrieved civil servants came to Parliament. Clause 37 of the Constitution allows every Kenyan the right to peacefully, unarmed to assemble, demonstrate, picket and to present petitions to public authorities. While at the gate of Parliament, riot police from Central Police Station descended on them and arrested their leaders and the ones who were arrested include Rehema Ibrahim, Fernice Makori, Alvin Jared, Rhoda Okeyo and Janet Onyango. As I speak, these Kenyans are in custody. Could the Assistant Minister then tell the House that when he leaves the Chamber, he will co-ordinate with his counterpart in the Ministry of State for Provincial Administration and Internal Security to ask for the release of these persons? They were exercising a constitutional right.

**The Assistant Minister, Ministry of State for Public Service (Maj. Sugow):** Madam Temporary Deputy Speaker, I am not aware of this incident but as the Member has asked, I will liaise with my counterpart to find out why they were arrested. As far as I am concerned, it is only if they break the law or do anything that is contrary to the Constitution or law that they can be arrested. But exercising purely their right to demonstrate, I do not think there is any justification for arrest or incarceration. I will pick up that matter with the relevant Ministry to find out why those members of the public were arrested.

## POINTS OF ORDER

### EVICION NOTICE TO GENERAL SERVICE UNIT OFFICERS

**Ms. Karua:** Madam Temporary Deputy Speaker, I am requesting for a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security. I appreciate that the Deputy Leader of Government Business is listening. There are General Service Unit (GSU) officers who have been given an eviction notice. They have been residing at Kabarnet Gardens here in Nairobi. They are still in service. It is not clear why they have been given an eviction notice from their quarters. They were given the notice on Tuesday, 11<sup>th</sup> October, 2011, and asked to move within two days, I suppose by today.

Could the Minister give this House a statement explaining the circumstances surrounding this eviction notice? In that statement, he should explain which other

quarters these officers are going to move into and whether that notice has taken into account that they have families and some of their children are candidates in the examinations which are just about to begin in a week. Could he consider enlarging the time of notice to the end of this year, so that he can find alternative accommodation for these hard working officers, who are still on duty and are being treated in such a hostile manner?

Finally, could the Minister assure the House that pending this Ministerial Statement, these officers and their families will not be disturbed and will continue to reside where they have been residing while the Minister satisfactorily explains this matter to the House?

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Speaker, I will communicate the request to the Minister of State for Provincial Administration and Internal Security. We will ensure that an answer is brought to the House next Tuesday, which then reduces the need for even the undertaking on what action will be taken between now and Tuesday because the notice will not have expired, so that within the comprehensive statement, then we will cover what next.

**Ms. Karua:** On a point of order, Madam Temporary Deputy Speaker. The Deputy Leader of Government Business appears not to have understood. Two days are ending today. So, an undertaking is required that the Government minds the welfare of these officers who are still in service and will withhold any precipitate action pending the satisfactory answer on Tuesday. It is within their powers. These are Government quarters.

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Minister, I think you can give an undertaking. Tuesday is not very far away for people to stop whatever action was being taken.

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Speaker, I am trying to think over the limited information that has been given by the Member for Gichugu, that there is an eviction notice. I am not sure who has issued it. So, I do not know who will be the enforcing authority for that notice. If that was tabled, then I would look at it.

**Ms. Karua:** On a point of information, Madam Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Dr. Laboso): Are you willing to be informed?

**The Minister for Transport** (Mr. Kimunya): Yes.

**Ms. Karua:** Madam Temporary Deputy Speaker, I am sorry that I was not clear from whom the notice is. It is from the head of the General Service Unit. It is from their superior.

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Speaker, if the head of the unit has asked the officers to move to a certain place – because the officers serve under the Head of GSU – it would be wrong of me to then come and give different information to the House without communicating or at least, discussing the matter with the person who has given that notice. I would rather we stick to a comprehensive statement to be given on Tuesday and then administratively, we will also be looking at the matter requested by the Member for Gichugu.

**Mr. Mbadi:** On a point of order, Madam Temporary Deputy Speaker. The Deputy Leader of Government Business is trying to issue a statement before the time comes. He was asked to stay this order until the comprehensive statement is given regardless of where the statement has come from.

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Speaker, let me give my undertaking for the statement to be here on Tuesday; but in terms of the action, I will communicate the sentiments of the House to the Minister to look at it administratively. I would hesitate to give an undertaking to the House reversing an action that has been taken, and on which I do not have the background information.

**Mr. Ruto:** On a point of order, Madam Temporary Deputy Speaker. The Minister is operating as if the General Service Unit (GSU) Commandant does not report to the Government. Is he operating outside Parliament? Does this House report to the GSU Commandant, or is he not subordinate to this Parliament? Parliament is expressing a view that Government should stay execution of any actions it intends to undertake in our exercise of oversight over yourselves, which is a constitutional responsibility. So, we have made it clear that we expect that the GSU Commandant, who should even be listening now to Parliament, will stay that execution; Mr. Minister, we will hold you accountable for that. Can you give an undertaking, if, indeed, you are the Deputy Leader of Government Business? Can you confirm?

**The Assistant Minister for Roads** (Mr. Kinyanjui): On a point of order, Madam Temporary Deputy Speaker. It does not mean that if hon. Kimunya does not give an undertaking he ceases to be the Deputy Leader of Government Business. What he is saying is that he does not have the full facts, other than the statement presented by the honourable Member. How can he assure a stay when he has no facts? So, we also need to be fair to the hon. Minister. Thank you.

**Mr. Ochieng:** On a point of order, Madam Temporary Deputy Speaker. Is hon. Kinyanjui right to impute improper motive on the Member who raised the statement? Did they doubt her integrity when she raised the statement?

**Ms. Karua:** On a point of order, Madam Temporary Deputy Speaker. Members of Parliament must be taken seriously in this House. If there is a junior Minister who thinks differently, then he better be advised accordingly. Therefore, let the Deputy Leader of Government Business give a firm undertaking that these officers, who are officers of the Government, will not be evicted. There will be no precipitate action until Tuesday; that is by the GSU Commandant. That is all we are asking.

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Minister, surely you can give that undertaking. Tuesday is not a long time away.

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Speaker, the police officers serve under the command of the GSU Commandant. Kabarnet Gardens also has a private component of the residential quarters, which are occupied by the former president; there are also Government quarters. Now, unless I have the full information as to whether these officers are being moved from the personal quarters or from the public quarters, it will not be proper for me to give that undertaking; the action that has been taken by the GSU Commandant---

**Prof. Kaloki:** On a point of order, Madam Temporary Deputy Speaker. The request from hon. Karua is very fair to the Government. The request is very sensitive since it involves families. There are small children involved here. These are not just regular officers. They are living with their families and the request here is, can the Government give some undertaking, at least, to give some relief for the families to be able to stay in those particular quarters, and then you can proceed and give the Ministerial Statement. That is the request and it is very fair.

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Minister, let us come to the end of this matter. All we are asking is an undertaking that no injurious action will be undertaken before your statement on Tuesday.

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Speaker, I will endeavour to communicate those sentiments to the Commandant that no action can be taken until Tuesday.

**The Temporary Deputy Speaker** (Dr. Laboso): Thank you.

#### CONTINUED DEPRECIATION OF KENYA SHILLING

**Mr. Mbadi:** Madam Temporary Deputy Speaker, on 16<sup>th</sup> June 2011, I sought a Ministerial Statement from the Minister for Finance with regard to the continued depreciation of the Kenya Shilling. On 21<sup>st</sup> July, 2011, hon. Njoroge Baiya also sought the same Ministerial Statement. Again on 8<sup>th</sup> September, we reminded the Minister to supply the statement and he committed himself that the statement would be given on Tuesday the following week. We proceeded on recess and Tuesday the following week, according to parliamentary language, was last Tuesday. To date, this statement has not been supplied to this House. At the time I was asking for this statement, the exchange rate was Kshs89.4. Today, the exchange rate is Kshs107. The depreciation of the Kenya shilling is seriously hurting the economy of this country. This morning, I attempted to bring a Motion to discuss this matter in this House but I was told that, that could not happen because there was already a pending Ministerial Statement. Therefore my request to the Chair is that you impose sanctions on this Minister, so that before this statement is supplied to this House--- If possible it should be supplied on Tuesday. Before this statement is supplied to this House, I think he should be stopped from transacting business in this House. This is a very important issue that needs to be addressed urgently. He is taking it lightly. He is not concerned, yet there is panic in the economy, which may cost us a lot.

**The Temporary Deputy Speaker** (Dr. Laboso): Deputy Leader of Government Business, in the absence of the Deputy Prime Minister and Minister for Finance, could you respond on this?

**The Minister for Transport** (Mr. Kimunya): Yes, Madam Temporary Deputy Speaker. I am aware of the request and the pledge that it was actually supposed to have been given on Tuesday. But we have also received some request from the Treasury that because of all the issues, the meetings with the parliamentary committees and all the other stakeholders on this matter, all business be stood over until next week. So, if the Member can be patient enough, we can have this on Tuesday. I want to appreciate the fact that he has been persistent on this matter; Tuesday is not too far. We can have this matter finally resolved.

**The Temporary Deputy Speaker** (Dr. Laboso): Okay. I believe the hon. Member is satisfied. Yes, we will not transact any further business with the Deputy Prime Minister and Minister for Finance until this Ministerial Statement is given.

Next Order!

#### COMMUNICATION FROM THE CHAIR

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 18<sup>TH</sup> OCTOBER, 2011

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Speaker, I wish to take this opportunity to make the following statement with regard to the business for next week in accordance with Standing Order No36(4). The following key Bills are expected to be read for a Second Time next week: The Finance Bill, Bill No.12 of 2011; The Capital Markets (Amendment) Bill, Bill No.13; and, The Central Depositories (Amendment) Bill, Bill No.14 of 2011. The House will also be considering, in the course of next week, at the Committee Stage, The Limited Liability Partnership Bill, Bill No.21 of 2010, The Insolvency Bill, Bill No.22 of 2010, The Malaria Prevention Bill, Bill No.8 of 2010, in addition to the Private Members' Motion on Wednesday morning.

Finally, the House Business Committee (HBC) will again be meeting on 18<sup>th</sup> October to consider business for the rest of the week. Thank you.

**COMMITTEE OF THE WHOLE HOUSE**

*(Order for Committee read)*

*[The Temporary Deputy Speaker  
(Dr. Laboso) left the Chair]*

**IN THE COMMITTEE**

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

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Members, we are now in the Committee of the whole House to deliberate on the following Bills: The National Construction Authority Bill, Bill No.4 of 2011, The Industrial Training (Amendment) Bill, Bill No.18 of 2009 and The Public Appointments (Parliamentary Approval) Bill, Bill No.3 of 2011.

We will now begin with The National Construction Authority Bill.

**THE NATIONAL CONSTRUCTION AUTHORITY BILL**

*Clause 2*

**Mr. Were:** Mr. Temporary Deputy Chairman, Sir, I beg to move: -

THAT, Clause 2 of the Bill be amended by deleting the definition of "committee."

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out,*

*put and agreed to)*

*(Clause 2 as amended agreed to)*

*(Clause 3 agreed to)*

*Clause 4*

**Mr. Were:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 4 of the Bill be amended by renumbering the existing provision as Subclause (1) and inserting a new Subclause (2) as follows-

“(2) The Authority may establish such other “Offices” anywhere in Kenya as it may consider necessary for the discharge of its functions.

*(Question of the amendment proposed)*

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

*(Clause 4 as amended agreed to)*

*Clause 5*

**The Minister for Public Works** (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, I beg to move: -

THAT, Clause 5 of the Bill be amended in Subclause (2) (g) by inserting the words “and ensure” immediately after the word “promote”.

*(Question of the amendment proposed)*

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

**The Temporary Deputy Chairman** (Prof. Kaloki): There is a further amendment by hon. Were. You may proceed!

**Mr. Were:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5 of the Bill be amended in Subclause (2),

(a) by inserting the following new paragraphs immediately after paragraph (L)-

(m) develop and publish a code of conduct for the construction industry;

(n) do all other things that may be necessary for the better carrying out of its functions under the Act.

(b) by deleting subclause (3);

(c) by inserting the words “construction” immediately before the word “of” in paragraph (e).

*(Question of the further amendment proposed)*

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

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

*(Clause 5 as amended agreed to)*

#### *Clause 6*

**Mr. Were:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 6 of the Bill be amended -

(a) by deleting the word “to” appearing immediately after the word “power” and by inserting the word “to” immediately before the word “award” appearing in paragraph (a)

(b) by deleting the words “establish and expand” appearing in paragraph (c) and substituting therefor the word “facilitate”;

*(Question of the amendment proposed)*

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

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

*(Clause 6 as amended agreed to)*

#### *Clause 7*

**Mr. Were:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 7 of the Bill be amended-

(a) in subclause (1)-

(i) by deleting the word “to” appearing in paragraph (a) ;

(ii) by inserting the word “being” immediately after the word “time” in paragraph (b);

(iii) by inserting the word “being” immediately after the word “time” in paragraph (c)

(b) by inserting the following new paragraph immediately after paragraph (e)-



“the Permanent Secretary of the ministry for the time being responsible for Housing”;

(c) by deleting the word “seven” appearing in paragraph (f) and substituting therefor the word “six”;

(d) by deleting the words “one member” appearing in paragraph (g) and substituting therefor the word “two members”

(e) by inserting the following new subclause immediately after subclause (1)—

“(1A) in appointing persons as members, the Minister shall have regard to the principle of gender, equity and regional balance”;

(f) in subclause (3)-

(i) by inserting a “coma” immediately after the figure “(b)” and figure “(c)”;

(ii) by deleting the word “and” appearing after the figure “(c)”;

(g) in Subclause (4), by deleting the word “Kenya Certificate of Secondary Education” and substituting therefor the word “a minimum of a Higher National Diploma in a relevant field”.

*(Question of the amendment proposed)*

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

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

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Gumbo, would you like to withdraw your amendment if it is similar?

**Eng. Gumbo:** Mr. Temporary Deputy Chairman, Sir, I think other than the wording, it is basically similar. What we are trying to do is just to---

**The Temporary Deputy Speaker** (Prof. Kaloki): So, are you withdrawing your amendment?

**Eng. Gumbo:** Mr. Temporary Deputy Chairman, Sir, I would like to withdraw mine for the record!

**The Temporary Deputy Speaker** (Prof. Kaloki): Very well!

*(Eng. Gumbo’s proposed amendment withdrawn)*

*(Clause 7 as amended agreed to)*

*(Clauses 8 and 9 agreed to)*

*Clause 10*

**The Temporary Deputy Chairman** (Prof. Kaloki): There is an amendment there to be moved by hon. David Were!

**Mr. Were:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 10 and substituting therefor the following new clause-

10. There shall be paid to the members of the Board such remuneration, fees or allowances as the Minister, in consultation with the Salaries and Remuneration Commission, may determine.

*(Question of the amendment proposed)*

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

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

*(Clause 10 as amended agreed to)*

*(Clause 11 agreed to)*

*Clause 12*

**The Temporary Deputy Chairman** (Prof. Kaloki): There is an amendment there to be moved by hon. David Were.

**Mr. Were:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 12 of the Bill be amended in Subclause (1), by inserting the words “competitively recruited and” immediately after the words “shall be”

*(Question of the amendment proposed)*

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

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Members, there is a further amendment to Clause 12 by hon. Nicholas Gumbo.

**Eng. Gumbo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 12 of the Bill be amended in Subclause (2) by inserting the words “post-registration” immediately after the words “ten years”

*(Question of the further amendment proposed)*

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

*(Clause 12 as amended agreed to)*

*Clause 13*

*(Mr. Were stood up in his place)*

**The Temporary Deputy Chairman** (Prof. Kaloki): Go ahead if there is something you want to contribute!

**Mr. Were:** Mr. Temporary Deputy Chairman, Sir, I move that Clause 13 be amended by adding---

**The Temporary Deputy Chairman** (Prof. Kaloki): Order! Mr. Were, the Chair does not have any information from your Committee or yourself that you want to move an amendment to Clause 13!

*(Clause 13 agreed to)*

*Clause 14*

**Mr. Were:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 14 of the Bill be amended by inserting the following new subclause immediately after subclause (2)—

“(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a fine not exceeding one hundred thousand shillings for every day or part thereof during which the offence continues after conviction.”

*(Question of the amendment proposed)*

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

**The Temporary Deputy Chairman** (Prof. Kaloki): There is a further amendment there to be moved by hon. Gumbo.

*(Mr. Githae stood up in his place)*

Yes, proceed, hon. Minister!

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Thank you, Mr. Temporary Deputy Chairman, Sir. I am just wondering why you said you have no information on Clause 13, because it is actually on the Order Paper. I do not know what you have done. Have we amended it or not? Have you ignored or what has happened?

**The Temporary Deputy Chairman** (Prof. Kaloki): That will come at the end, hon. Minister, as a new clause. It will be there. You are right. Your question is valid. It will come at the end as a new clause. Hon. Gumbo, could you move your further amendment?

**Eng. Gumbo:** Mr. Temporary Deputy Speaker, Sir, the essence of that amendment was an appeal by local contractors to be given some protection. However, I have discussed with the Minister. We have just had an extensive discussion and he says

that the amendment that I had proposed has serious implication. He would like to consult further in Government before we can bring it.

We have agreed at the end of Clause 17, I will amend my proposed amendment, so that it allows for consideration by local contractors.

Mr. Temporary Deputy Speaker, in that event, I, therefore, wish to withdraw the amendment as proposed in Clause 14.

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Members, the further amendment by hon. Nicholas Gumbo has been withdrawn.

*(Eng. Gumbo's proposed amendment withdrawn)*

*(Clause 14 as amended agreed to)*

*(Clause 15 agreed to)*

*Clause 16*

**The Temporary Deputy Chairman** (Prof. Kaloki): There is an amendment by hon. Gumbo!

**Mr. Were:** Mr. Temporary Deputy Chairman, Sir, I beg to move that Clause 16 be amended as per the Order Paper.

**The Temporary Deputy Chairman** (Prof. Kaloki): Order! Order! Let us just use the Order Paper! The procedure and how it is appearing here, hon. Gumbo, you are supposed to go first!

**Eng. Gumbo:** Mr. Temporary Deputy Chairman, Sir, for the same reasons that I gave for Clause 14; I have withdrawn my amendment for Clause 16.

*(Eng. Gumbo's proposed amendment withdrawn)*

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Members, the amendment by hon. Gumbo has been withdrawn. There is a further amendment by hon. David Were. Now you may move!

**Mr. Were:** Mr. Temporary Deputy Chairman, I beg to move:-

THAT Clause 16 of the Bill be amended-

(a) in Subsection (3) by deleting the words "is authorized to seek such registration by the respective registration board" appearing in paragraph (b) and substituting therefor the words "declares interest during application for registration and does not carry out functions of consultancy and construction in the same project unless expressly specified"

(b) by inserting a new subclause immediately after subclause (3) as follows-

(3A) The Board shall where it refuses to register a person under subsection (3) communicate in writing its decision to the person within fourteen days of the date of its decision and shall state the reasons for the refusal of registration.

*(Question of the amendment proposed)*

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

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

*(Clause 16 as amended agreed to)*

*Clause 17*

**The Temporary Deputy Chairman** (Prof. Kaloki): There is an amendment by hon. Nicholas Gumbo.

**Eng. Gumbo:** Mr. Temporary Deputy Chairman, Sir, as I said, we have had very extensive discussions with the Minister on that proposed amendment. We have proposed a way to make it relevant to what I want to seek. Therefore, the Minister will move a further amendment just now. It thus implies the amendment I have proposed here is now withdrawn subject to the Minister moving a further amendment.

*(Eng. Gumbo's proposed amendment withdrawn)*

**The Temporary Deputy Chairman** (Prof. Kaloki): Very well! Mr. Minister, you may now move your amendment.

**The Minister for Public Works** (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, I wish to move the following amendment immediately after Clause 17; it will read as follows:-

“Notwithstanding the provisions in Clauses 14 and 16, the Minister, in consultation with the Board, shall introduce regulations stipulating ownership structures of foreign firms seeking registration under this Act. Such regulations shall clearly state categories of contracts for which foreign firms may apply and those that shall be strictly reserved for local contractors.”

*(Applause)*

**The Temporary Deputy Chairman** (Prof. Kaloki): Mr. Minister, could you pass that document? We need to sign and understand what it is!

*(Mr. Obure passed the document to the Chair)*

Mr. Minister, could you approach the Chair?

*(Mr. Obure approached the Chair)*

On that amendment by the Minister, we have consulted and he has to move it afresh. Mr. Minister, you may now move the proposed amendment to Clause 17.

**The Minister for Public Works** (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

“THAT, a new Subclause (5) be introduced as follows:-

(5) Notwithstanding the provisions in Clauses 14, 16 and 17, the Minister, in consultation with the Board, shall introduce regulations stipulating ownership structures of foreign firms seeking registration under this Act. Such regulations shall clearly state categories of contracts for which foreign firms may apply and those that shall be strictly reserved for local contractors”.

**The Minister for Public Works** (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, I will sign this.

*(Question of the amendment proposed)*

**Eng. Gumbo:** Mr. Temporary Deputy Chairman, Sir, I wish to thank the Minister. I think we all know the problems that local contractors have been going through. Much as it has been said that local contractors have been responsible for some of their own problems, I think it is incumbent upon us, as a country, to provide some level of protection for them. The essence of this amendment, which we have discussed with the Minister, is just to ensure that certain very low value contracts that should be done by our locals are strictly reserved for them. As for the big contracts, when foreigners come here, we have a structure that stipulates how much of that is to be done in conjunction with locals.

Thank you, Mr. Temporary Deputy Chairman, Sir.

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

*(Clause 17 as amended agreed to)*

*(Clauses 18, 19 and 20 agreed to)*

*Clause 21*

**Eng. Gumbo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 21 be amended-

(a) in Subclause (7) by deleting the words “ten thousand shillings or to imprisonment for a term not exceeding one” and substituting therefor the words “one million shillings or to imprisonment for a term not exceeding three”;

(b) in Subclause (9) by inserting the word “contractor” immediately after the words “direct the” appearing in paragraph (b).

*(Question of the amendment proposed)*

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

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

**The Temporary Deputy Chairman** (Prof. Kaloki): There is a further amendment there by hon. David Were. Hon. Were, you may now move!

Hon. Were, part “b” of your amendment has been withdrawn by the amendments by Eng. Gumbo; it is part of the comprehensive amendments that he moved.

**Mr. Were:** Mr. Temporary Deputy Chairman, Sir, I accept your directive. But in relation to part “a” I beg to move-

THAT, Clause 21 of the Bill be amended -

(a) in Subclause (7) by deleting the word “than” appearing after the word “exceeding.”

*(Question of the further amendment proposed)*

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

*(Clause 21 as further amended agreed to)*

#### *Clause 22*

**Mr. Were:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 22 of the Bill be amended by inserting the following Subclause immediately after Subclause (2)-

(3) The Board shall communicate its decision under Subclause (1) to the suspended contractor in writing not later than fourteen days from the date of the decision.”

*(Question of the amendment proposed)*

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

*(Clause 22 as amended agreed to)*

*(Clause 23 agreed to)*

#### *Clause 24*

**Mr. Were:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 24 be amended in Subclause (4) by inserting the words “within thirty days from the date of the decision of the Board” immediately after the word “may”

*(Question of the amendment proposed)*

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

*(Clause 24 as amended agreed to)*

*Clause 25*

**Mr. Were:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 25 of the Bill be amended in Subclause (4) by inserting the words “within thirty days from the date of the decision of the Appeals Board” after the word “may”.

*(Question of the amendment proposed)*

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

*(Clause 25 as amended agreed to)*

*(Clauses 26, 27 and 28 agreed to)*

*Clause 29*

**Eng. Gumbo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 29 of the Bill be amended in Subclause (2) by deleting the figure “0.25” and substituting therefor the figure “0.5”

*(Question of the amendment proposed)*

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

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

*(Clause 29 as amended agreed to)*

*(Clauses 30, 31, 32, 33, 34 and 35 agreed to)*

*Clause 36*



**Eng. Gumbo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 36 of the Bill be amended in Subclause (3) by deleting the word “Council” and substituting therefor the word “Board”

*(Question of the amendment proposed)*

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

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

*(Clause 36 as amended agreed to)*

*Clause 37*

**Eng. Gumbo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 37 of the Bill be amended by deleting the word  
“Council” wherever it appears and substituting therefor the word “Board”  
Mr. Temporary Deputy Chairman, Sir, this is just procedural; we are removing  
the word “Council” and replacing it with the word, “Board”.

*(Question of the amendment proposed)*

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

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

*(Clause 37 as amended agreed to)*

*Clause 38*

**The Minister for Public Works** (Mr. Obure): That has been taken on board already.

**Eng. Gumbo:** Has it been taken on board?

**The Temporary Deputy Chairman** (Prof. Kaloki): Do you have an agreement with the Minister? That way, he can move it on your behalf.

**Eng. Gumbo:** Mr. Minister, do you want to move it on my behalf? You do not have that amendment yourself.

Mr. Temporary Deputy Chairman, Sir, I do not seem to see that amendment!

**The Temporary Deputy Chairman** (Prof. Kaloki): Eng. Gumbo, for procedure’s sake, go ahead and move your amendment! If the Minister is not agreeing with you or he has an amendment or is challenging you, he can do that later!

**Eng. Gumbo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 38 of the Bill be amended by deleting the words “twelve months or a fine not exceeding thirty thousand” and substituting therefor the words “three years or to a fine not exceeding one million”

*(Question of the amendment proposed)*

**The Minister for Public Works** (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, I thought that this had been taken care of by one of the amendments by the Chairman of the Committee when he moved an amendment raising the amount of penalties!

**The Temporary Deputy Chairman** (Prof. Kaloki): Order, Mr. Minister! What do you mean you “thought”?

**The Minister for Public Works** (Mr. Obure): Okay, if it is not there, I will support him.

**The Temporary Deputy Chairman** (Prof. Kaloki): Do you want to consult the hon. Member? I can allow some time to consult to make sure you do the right thing.

Mr. Minister, I will allow you some time to consult. Do not be rushed!

Eng. Gumbo, could you sit down and consult? We are at the Committee Stage. You can just make the Minister comfortable.

**Eng. Gumbo:** Mr. Temporary Deputy Chairman, Sir, we discussed this with the Minister---

**The Temporary Deputy Chairman** (Prof. Kaloki): Order! Just consult! I have allowed the two of you to consult.

*(Mr. Obure consulted the Ministry officials)*

**The Minister for Public Works** (Mr. Obure): Mr. Temporary Deputy Speaker, Sir, I have consulted on this and I find that it has not been incorporated. Therefore, I will support the amendment.

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

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

*(Clause 38 as amended agreed to)*

*(Clause 39 agreed to)*

*Clause 40*

**Eng. Gumbo:** Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, Clause 40 of the Bill be amended by inserting a new Subclause (3) as follows-

“(3) Regulations made under this section shall be tabled before Parliament for approval debate before taking effect”

*(Question of the amendment proposed)*

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

**The Minister for Nairobi Metropolis Development** (Mr. Githae): On a point of order, Mr. Temporary Deputy Chairman, Sir. I would like to have a clarification because this amendment says “the regulations made under this Section shall be tabled before Parliament for approval debate before taking effect.”

I am wondering what it means by “approval debate”. What is “approval debate”? The amendment does not make any grammatical sense!

**Eng. Gumbo:** Mr. Temporary Deputy Chairman, Sir, this is actually a typographical error! I noticed it today! So, the words “for approval debate” should actually read “for approval.”

**The Temporary Deputy Chairman** (Prof. Kaloki): Eng. Gumbo, could you read out the whole amendment the way it should be?

**Eng. Gumbo:** Mr. Temporary Deputy Chairman, Sir, the amendment should read as follows:-

THAT, Clause 40 of the Bill be amended by inserting a new Subclause (3) as follows-

“(3) Regulations made under this section shall be tabled before Parliament for approval before taking effect”

So, we delete the word “debate”.

**The Temporary Deputy Chairman** (Prof. Kaloki): Very well!

*(Clause 40 as amended agreed to)*

*New Clause 13A*

**Mr. Were:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 13—

13A (1) The Board may co-opt such experts and consultants as may be necessary to assist in the discharge of its functions;

(2) The Board may establish such committees as may be necessary for the performance of its functions and may, subject to the provisions of this Act, delegate powers conferred on it to such committees.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be*

*read a Second Time, proposed)*

*(Question, that the new clause be read  
a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added  
to the Bill, put and agreed to)*

*New Clause 21A*

**The Minister for Public Works** (Mr. Obure): Mr. Temporary Deputy Chairman,  
Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause  
immediately after Clause 21-

**Appointment of  
Investigation  
Officers**

21A. (1) The Board may, for the purposes of the performance  
of its functions under Section 21, appoint such number of  
investigating officers, to be known as investigating officers of the  
Board, as it considers necessary for the purposes of carrying out the  
investigation of any offence or inspection under this Act.

(2) An investigating officer shall, for the purposes of ascertaining  
whether the provisions of this Act or any regulations made there under are  
being complied with, have power at all reasonable times to enter into any  
construction site where construction works are being carried out, and  
make such enquiry or inspection as may be necessary for the purposes of  
the functions of the investigating officer.

(3) In the course of an investigation or inspection under this  
section an investigating officer may –

(a) put questions concerning the registration of any contract, the  
accreditation and certification of the skilled construction workers and  
construction site supervisors or the payment of levy, and all the persons to  
whom the questions are addressed shall be legally bound to answer such  
questions truthfully to the best of their ability;

(b) require any person to produce to him any records required to be  
kept under this Act, and may seize them or take copies of them, or

(c) by notice in writing, order the suspension of all or any part of  
the works in respect of which the provisions of this Act have not been  
complied with until the time of such compliance.

(4) Every investigating officer when exercising any powers under  
this Act shall identify himself as such to the person affected and produce  
written authority for the exercise of such powers.

(5) Upon completion of an investigation, the investigation officer  
shall, where the investigation reveals an offence under this Act or any

regulations made there under, immediately give all information relating to the offence to an officer in charge of a police station, and that officer may, by warrant, arrest any person who may have committed such offence.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read  
a Second Time, proposed)*

**Eng. Gumbo:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I do not know whether it is a question of semantics but paragraph 3(a) of the proposed new clause says “put questions concerning the registration of any contract---“ Is it “any contract” or “any contractor”? I thought it should be to put questions concerning the registration of any contractor and not contract.

**The Temporary Deputy Chairman** (Prof. Kaloki): Minister, could you make that correction on record?

**The Minister for Public Works** (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, I wish to clarify that the correct word should not be “contract” but should be “contractor”.

**The Temporary Deputy Chairman** (Prof. Kaloki): Very well.

*(Question, that the new clause be read  
a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added  
to the Bill, put and agreed to)*

*New Clause 41*

**The Minister for Public Works** (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following clause immediately after Clause 40 –

**Supercession** 41. Where any conflict arises between the provisions of this Act and the provisions of any other law on the training, registration and regulation of contractors and construction workers, the provisions of this Act shall prevail.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

**Eng. Gumbo:** Mr. Temporary Deputy Chairman, Sir, I do not have problems *per se* with the proposed new clause, but I think we need to look at this globally in the context of our laws and even the Constitution. I have seen many cases of Acts which come here and say “on matters relating to this, this Act will supercede any other Act.” What I have in mind is, for instance, the Procurement and Disposal Act, which tends to be in conflict with many other Acts, especially Acts governing professional institutions that work on matters of procurement. So, much as the Minister has proposed this, as a House, it is important that we take a holistic look at all the other Acts. I really do not see why an Act of Parliament should supercede another Act of Parliament.

**The Temporary Deputy Chairman** (Prof. Kaloki): Minister, do you want to comment on that observation?

**The Minister for Public Works** (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, it is really an issue of interpretation. In cases where we have done this, we are really talking about a specific Act governing a specific area such as this one. The law we are passing today will be taking care of all aspects of construction. In this case, we are saying that there should be no other law which supersedes this particular one, particularly in as far as it relates to issues of construction. That is really what we are talking about in this particular area, so that if there is a conflict between this law and any other law on matters of construction, regulating contractors, training and oversight--- On matters of construction, this should be the law that should take precedence.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I would just like to clarify and give assurance to this House that under the rules of interpretation, it is presumed that when you have two Acts of Parliament that are in conflict, the one that was enacted by Parliament last supersedes the one that was enacted by Parliament previously. So, this is actually correct.

*(Mr. Githae said something off record)*

**The Temporary Deputy Chairman** (Prof. Kaloki): Do you want to say that one on record, Mr. Minister?

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, Asbury is a famous author who deals with law of evidence. He says that if you have two Acts of Parliament that conflict, the one that was enacted last supersedes the one before it. So, what basically we are saying is that as far as training and registration of engineers is concerned, if there is any other Act that is in conflict with what we have passed, this one takes preference.

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new Clause was read a Second Time)*

*(Question, that the new Clause be added to the Bill, put and agreed to)*

*First Schedule*

**Eng. Gumbo:** Mr. Temporary Deputy Chairman, Sir, I beg to move that:-  
THAT the First Schedule be amended in paragraph (4) by deleting the words “ Law Society of Kenya” and substituting therefor the words “The Association of Consulting Engineers of Kenya”

*(Question of the amendment proposed)*

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

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

**The Minister for Public Works** (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, I was saying---

**The Temporary Deputy Chairman** (Prof. Kaloki): Order!

**Eng. Gumbo:** Mr. Temporary Deputy Chairman, Sir, you have already put the Question! How can you put it again?

**The Temporary Deputy Chairman** (Prof. Kaloki): Actually, I had already moved. But I had not put the Question.

Mr. Minister, since I did not put the question, go ahead.

**Mr. Mungatana:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Prof. Kaloki): Order! I have not put the Question yet!

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, you can check the HANSARD. You had put the question!

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Minister, I think you are late!

**The Minister for Public Works** (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, you know I had earlier raised this issue, but I was a little ahead of time. I was hoping that I would get an opportunity to raise this particular issue. I know we can consult with Eng. Gumbo, but we did not quite consult on this particular one. I was going to raise some objections saying this will be double representation.

**The Temporary Deputy Chairman** (Prof. Kaloki): That is okay. Let us vote and see whether you will mobilize enough support. Then we will be able to tell. That is why we are voting. All we have to do now is to vote.

Hon. Members, I want to repeat, that the question for that amendment by hon. Gumbo is on the First schedule. I will, therefore, put the question which is that the First Schedule be amended as proposed by hon. Gumbo.

*(Question put and negatived)*

**Hon. Members:** There is a further amendment!

**The Temporary Deputy Chairman** (Prof. Kaloki): There is a further amendment there by Mr. Were.

**Mr. Were:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the First Schedule to the Bill be amended in Part 1-

(a) by deleting the word “institution” appearing in paragraph 2 and substituting thereof the word “Institute”;

(b) by deleting paragraph 4.

*(Question of the further amendment proposed)*

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

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

*(First Schedule as amended agreed to)*

#### *Second Schedule*

**Mr. Were:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Second Schedule to the Bill be amended-

(a) by deleting paragraph (1) and substituting therefor the following new paragraph –

“(a) The Board shall meet at most six times every financial year and not more than three months shall elapse between one meeting and the next meeting”.

(b) by inserting the following new paragraph immediately after paragraph (2)-

(2A) The members of the Board shall, at the first meeting of the Board, elect from amongst their number, a vice-chairperson.

(c) in paragraph (4) by deleting the words “in the absence of the chairperson” and substituting thereof the words “in his absence, the vice-chairperson shall preside”

*(Question of the amendment proposed)*

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

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



**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Members, Eng. Gumbo's amendment has been taken over by Mr. Were's amendment. I think they have an agreement. So, Eng. Gumbo, is that the true statement?

**Eng. Gumbo:** Mr. Temporary Deputy Chairman, Sir, I have not seen Mr. Were's amendment. I have not read it; it is there. But I think mine was just ensuring that if it is quarterly, it is every three months.

**The Temporary Deputy Chairman** (Prof. Kaloki): So, it has been withdrawn?

**Eng. Gumbo:** They complement each other really.

**The Temporary Deputy Chairman** (Prof. Kaloki): So, you say you are withdrawing yours?

**Eng. Gumbo:** I withdraw mine.

*(Eng. Gumbo's proposed amendment withdrawn)*

*(Second Schedule as amended agreed to)*

### *Third Schedule*

**Eng. Gumbo:** Mr. Temporary Deputy Chairman, Sir, I beg to move :-

THAT, the Third Schedule be amended

(i) in Item C

(a) by deleting the word "Telecommunications 9PABX" appearing in paragraph (b) (i) and substituting therefor the word "PABX"

(b) by deleting the words "Security Surveillance Systems (CCTV and intruder Alarm systems)" appearing in paragraph (b)(v) and substituting therefor the words "Security Surveillance Systems (CCTV), intruder alarm and access control systems"

(c) by deleting the words "Lift and Escalator Installation" appearing in paragraph (b) and substituting therefor "Lifts, Hoists, Escalators, Mechanical Ramps, Travolators, Conveyors and Conveyor Belts Installations"

(d) by deleting the words "Solar Power Generations" appearing in paragraph (e) and substituting therefor the words "Solar Power Generations and Photovoltaic Cells Installation"

(e) by deleting paragraph (f).

(f) by adding the following paragraphs immediately after subparagraph (e)-

(g) Installation of Uninterrupted Powers Supply Systems (UPS), Automatic Voltage Regulators (AVR) AND Surge Protectors.

(h) Retrofitting for improving energy efficiency.

(i) Construction of Power Transmission Lines and installation of power distribution equipment.

(ii) in Item D

(a) by deleting the word "plumping" appearing in paragraph (a) and substituting therefor the word "plumbing"

(b) by deleting paragraph (b) and substituting therefor the following new paragraph-

“(b) Refrigeration, Cold-rooms, Air-Conditioning and Ventilation”

(c) by inserting the following new item immediately after paragraph (m)-

(n) Roof rain-water harvesting.

(o) Laboratory Installations and Fume Cupboards.

(p) Swimming Pools Installation.

(q) Oil storage, Pumping Reticulation.

*(Question of the amendment proposed)*

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

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

*(Third Schedule as amended agreed to)*

**The Temporary Deputy Chairman** (Prof. Kaloki): We are allowing some time for the Minister to consult the Clerks-at-The Table for some clarification before we can proceed to the Title.

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Minister for Public Works** (Mr. Obure): Mr. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of The National Construction Authority Bill, Bill No.4 of 2011, and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Members, we have completed The National Construction Authority Bill, Bill No.4 of 2011. Let us now we move to the second one, which is the Industrial Training (Amendment) Bill, Bill No.18 of 2009.

Next Order!

THE INDUSTRIAL TRAINING (AMENDMENT) BILL

*Clause 2*

**Mr. Ochieng:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2 be amended by—

(a) deleting the words “other trainee” appearing in the definition of the term “employee”;

(b) deleting the definition of the term “employer” and substituting therefor the following new definition—

“employer” means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any person, and includes—

(a) an agent, foreman or manager; and

(b) an heir, successor, assignee or transferee, of that person, public body, firm, corporation or company;

(c) deleting the definition of the term “Minister”;

(d) inserting the following new definition in its proper alphabetical sequence—

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to labour.

*(Question of the amendment proposed)*

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

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

*(Clause 2 as amended agreed to)*

**The Temporary Deputy Chairman** (Prof. Kaloki): Mr. Assistant Minister since you are in agreement with the amendments proposed by the Committee, I think, for the record, you can move and state that you are in agreement.

**The Assistant Minister for Labour** (Mr. Ojaamong): Mr. Temporary Deputy Chairman, Sir, we are in agreement with all the amendments that have been proposed.

*Clause 3*

**Mr. Ochieng:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3 of the Bill be amended-

(a) in the proposed new Section 3A, by inserting the following new paragraph immediately after paragraph (d)-

“(da) integrating labour market information into skills development.”

(b) by inserting the following new section immediately after the proposed

new Section 3A-

**Headquarters.** 3B. (1) The headquarters of the Authority shall be in Nairobi, or such other place as the Board may, with the approval of the Cabinet Secretary, determine.

(2) The Authority shall establish, manage and promote industrial training centres in the counties.

*(Question of the amendment proposed)*

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

*(Clause 3 as amended agreed to)*

#### *Clause 4*

**Mr. Ochieng:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 4 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) by deleting Subsection (1) and substituting therefor the following new subsections—

“(1) There shall be a Board to be known as the National Industrial Training Board which shall consist of—

(a) a chairperson appointed by the Cabinet Secretary;

(b) the Principal Secretary of the Ministry for the time being responsible for matters relating to labour or a representative duly appointed in writing;

(c) the Principal Secretary of the Ministry for the time being responsible for matters relating to science and technology or a representative duly appointed in writing;

(d) the Principal Secretary of the Ministry for the time being responsible for matters relating to finance or a representative duly appointed in writing;

(e) members nominated as follows and appointed by the Cabinet Secretary—

(i) three persons nominated by the Federation of Kenya Employers;

(ii) three persons nominated by the Central Organisation of Trade Unions;

(f) one other member appointed by the Cabinet Secretary.

“(1A) A person shall not be eligible for appointment as the chairperson or member of the Board, other than an *ex-officio* member, unless that person—

(a) has at least five years experience in matters relating to technical education, industrial training, technology, finance, law, human resource management, financial management, public administration, public policy advocacy or education administration; and

(b) has a proven record of personal integrity, competency and accountability.

“(1B) In appointing the members of the Board, the Cabinet Secretary shall ensure that not more than two thirds of the members are of one gender and at least one member represents persons with disabilities.

*(Question of the amendment proposed)*

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

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

*(Clause 4 as amended agreed to)*

#### *Clause 5*

**Mr. Ochieng:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5 be amended by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) by deleting subsection (2) and substituting therefor the following new subsection—

(2) A Committee shall consist of such number of persons appointed in writing as the Board may determine, to represent—

- (a) employers in the industry concerned;
- (b) employees in the industry concerned; and
- (c) other interests,

and the Board shall appoint a chairperson and vice-chairperson of such Committee from amongst its members.

*(Question of the amendment proposed)*

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

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

*(Clause 5 as amended agreed to)*

#### *Clause 6*

**Mr. Ochieng:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 6 of the Bill be amended—

(a) in the proposed new section 4A, by inserting the word “funds” immediately after the word “levy” appearing in paragraph (e);

- (b) in the proposed new section 4C (4), by—
- (i) deleting the words “No person shall” and substituting therefor the words “A person shall not”;
  - (ii) inserting the words “administration, finance” immediately after the word “technology” appearing in paragraph (a);
  - (iii) in the proposed new section 4G(1), by inserting the following new paragraphs immediately after paragraph (b)—
    - (ba) trade testing fees;
    - (bb) course and hostel fees.

*(Question of the amendment proposed)*

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

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

*(Clause 6 as amended agreed to)*

*(Clauses 7 and 8 agreed to)*

#### *Clause 9*

**Mr. Ochieng:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 9 of the Bill be amended by in paragraph (d), by deleting the expression “subsection (2)” appearing in the proposed new subsection (5) and substituting therefor the expression “subsection (4)”.

*(Question of the amendment proposed)*

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

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

*(Clause 9 as amended agreed to)*

#### *Clause 10*

**Mr. Ochieng:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 10 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) by deleting subsection (1) and substituting therefor the following new subsections—

“(1) There is established a fund in respect of each industry, as may be determined by the Board, to be known as a Training Levy Fund.

(1A) There shall be paid into the Fund all industrial training levy contributions for each industry, as may be determined by the Board.”

*(Question of the amendment proposed)*

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

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

*(Clause 10 as amended agreed to)*

*(Clauses 11 and 12 agreed to)*

### *Clause 13*

**Mr. Ochieng:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 13 of the Bill be amended in the proposed new section 7B, by deleting subsection (5) and substituting therefor the following new subsection (5)—

“(5) A person who purports to be—

(a) on industrial attachment; or

(b) an employer offering industrial attachment, otherwise than as provided by this section, commits an offence and shall be liable, on conviction, to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months, or to both.”

*(Question of the amendment proposed)*

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

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

*(Clause 13 as amended agreed to)*

*(Clauses 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 agreed to)*

*Clause 39*

**Mr. Ochieng:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 39 be amended by inserting the following new section immediately after the proposed new section 34—

Chairman, vice-chairman and **35.** Any person who at the commencement of this member of the Council Act was a Chairman, Vice-chairman or Member of the Council shall, on the commencement date, be deemed to be the Chairman, Vice-chairman or member of the Board respectively until a new Board is constituted under this Act.

*(Question of the amendment proposed)*

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

*(Clause 39 as amended agreed to)*

*Clause 40*

**Mr. Ochieng:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 40 be amended by deleting the words “An member” appearing in the first line of paragraph (5) (1) of the proposed new Schedule, and substituting therefor the words “A member”.

*(Question of the amendment proposed)*

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

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

*(Clause 40 as amended agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Temporary Deputy Chairman** (Prof. Kaloki): The relevant Minister, please, you can now move---



**The Assistant Minister for Labour** (Mr. Ojaamong): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Industrial Training, (Amendment Bill), Bill No.18 of 2009 and its approval thereof with amendment.

*(Question proposed)*

*(Question put and agreed to)*

THE PUBLIC APPOINTMENT (PARLIAMENTARY APPROVAL) BILL

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Members, we are now going to consider The Public Appointment (Parliamentary Approval) Bill, Bill No.3 of 2011.

*Clause 2*

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2 be amended in the definition of the term “Committee” by inserting the words “or such other Committee as the Speaker may, for good reasons, direct” immediately after the word “Parliament”.

*(Question of the amendment proposed)*

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

*(Clause 2 as amended agreed to)*

*Schedule*

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, I was going to propose that we go a bit slowly on this because there are two things that I need to amend. I propose to withdraw part “a” of the proposed amendments to the Schedule.

**An hon. Member:** And then renumber!

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, we are still on that. If you go to part “d”, the proposed amendment is supposed to be for sub-paragraph 27, and not where it has been put under sub-paragraph 28. If you look at part “d”, you will see that there is “d (ii)”, the word “instances.” You can see that. Now, that is supposed to be for sub-paragraph 27. They should follow that order. So, it should read: “In sub-paragraph 27” after the word “instances.”

**The Temporary Deputy Chairman** (Prof. Kaloki): Now, read it the way it is supposed to be.

**Mr. Mungatana:** Yes, Mr. Temporary Deputy Chairman, Sir. In sub-paragraph 27 insert the expression “donations to charity” immediately after the expression “*pro*

*bono* charity work”; then insert the words “amount contributed” immediately after the word “instances.” Is it clear?

**The Clerk-at-the-Table:** In both “c” and “d” of sub-paragraph 27.

**Mr. Mungatana:** Yes. So, it is under “c” and “d (ii)” of sub-paragraph 27. The rest is okay.

**The Temporary Deputy Chairman** (Prof. Kaloki): Clerks, is that clear?

**Clerk-at-the-Table:** Yes.

**Mr. Mungatana:** It is clear now. Thank you.

**The Temporary Deputy Chairman** (Prof. Kaloki): I think it is clear.

**Mr. Mungatana:** So, Mr. Temporary Deputy Chairman, Sir, I move the corrected amendment to the amendment.

**The Temporary Deputy Chairman** (Prof. Kaloki): All right; you have done well.

*(Question of the amendment proposed)*

*Question, that the words to be inserted  
be inserted, put and agreed to)*

*(Schedule as amended agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Public Appointments (Parliamentary Approval) Bill (Bill No.3 of 2011) and its approval thereof with amendment.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker  
(Dr. Laboso) in the Chair]*

## **REPORT, CONSIDERATION OF REPORT AND THIRD READING**

### **THE NATIONAL CONSTRUCTION AUTHORITY BILL**

**Prof. Kaloki:** Madam Temporary Deputy Speaker, can I consult?

**The Temporary Deputy Speaker** (Dr. Laboso): Go ahead!

*(Prof. Kaloki consulted the Clerks-at-the-Table)*

**Prof. Kaloki:** Madam Temporary Deputy Speaker, I beg to report that the Committee of the Whole House has considered the National Construction Authority Bill (Bill No.4 of 2011) and approved the same with amendments.

**The Minister for Public Works** (Mr. Obure): Madam Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report subject to recommittal of the First Schedule.

**The Assistant Minister for Labour** (Mr. Ojamoong) seconded.

*(Question proposed)*

*(Question put and agreed to)*

### COMMITTEE OF THE WHOLE HOUSE

*(Order for the Committee read)*

*[The Temporary Deputy Speaker  
(Dr. Laboso) left the Chair]*

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

#### THE NATIONAL CONSTRUCTION AUTHORITY BILL

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Members, we have now moved to the Committee of the whole House again to deliberate and consider the National Construction Authority Bill (Bill No.4 of 2011), First Schedule.

Minister, now you have that opportunity to move your amendment.

Please, proceed!

#### *First Schedule*

**The Minister for Public Works** (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, this was an amendment moved by the Chairman of the Departmental Committee, Mr. David Were. At the time he moved it, he was under the impression that the name of the nominating body is the Institute of Engineers. However, the correct name is the Institution of Engineers. I would like to correct it that, indeed, there should have been no need for that amendment because the correct name is the Institution of Engineers which is properly contained in the Bill.

**The Temporary Deputy Chairman** (Prof. Kaloki): Very well! Could you now read the way it is supposed to appear in the Bill?

**The Minister for Public Works** (Mr. Obure): The amendment should not have been made, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Prof. Kaloki): All right.

So, Mr. Were---

**Mr. Were:** Mr. Temporary Deputy Chairman, I agree with the view of the Minister.

**The Temporary Deputy Chairman** (Prof. Kaloki): So now, you put it for the record that you are withdrawing?

**Mr. Were:** That it is withdrawn.

**The Temporary Deputy Chairman** (Prof. Kaloki): Very well!

You should be specific that you are withdrawing the amendment on part “a”.

**Mr. Were:** Mr. Temporary Deputy Chairman, Sir, I am withdrawing the amendment which was meant to change the word “institution” to the word, “institute”.

**The Temporary Deputy Chairman** (Prof. Kaloki): Which part?

**Mr. Were:** Part “a”.

*(Proposed amendment withdrawn)*

*(First Schedule agreed to)*

**The Minister for Public Works** (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the National Construction Authority Bill (Bill No.4) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, given that the time of the House is about to expire, I beg to move that the Committee of the House do report to the House and seek leave to sit again tomorrow.

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker  
(Dr. Laboso) took the Chair]*

**Prof. Kaloki:** Madam Temporary Deputy Speaker, Sir, I beg to move that the Committee of the Whole House do report to the House and seek to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

**ADJOURNMENT**

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members it is now time to interrupt the business of the House. This House, is therefore, adjourned until Tuesday 18<sup>th</sup> October, 2011 at 2.30 p.m.

The House rose at 6.30 p.m.