

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 7th June, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATIONS FROM THE CHAIR

Mr. Speaker: Hon. Members, I have three Communications to make.

MEMBERS' KAMKUNJI TO DISCUSS YOUTH EMPOWERMENT PROJECT

The Ministry of Youth Affairs and Sports through the Office of the Minister, hon. Dr. Otuoma Nyongesa, has requested for a *Kamukunji* for Members of Parliament on Thursday, 9th June, 2011, in the Old Chamber, Main Parliament Buildings at 10.30 a.m. to discuss "Youth Empowerment Project – *Kazi kwa Vijana*." This will be an open forum from where hon. Members will be free to raise issues, problems, questions and concerns on the said project. All Members are, therefore, invited to attend the *Kamukunji* on Thursday, this week at 10.30 a.m.

TABLING OF JUDICIARY AND NATIONAL GOVERNMENT ESTIMATES

Hon. Members, pursuant to the provisions of Article 173(3) and Article 221 of the Constitution, the Estimates of the Parliamentary Service Commission, the Judiciary and the National Government are submitted to the National Assembly for approval and on submission are tabled in the House. By practice, reports and official documents from Government are tabled in the House by the responsible Ministers. In view of the fact that we are in a transitional period, and upon reflection, I do direct that the Estimates of the National Government and for the Judiciary be tabled by the Deputy Prime Minister and Minister for Finance and the Minister for Justice, National Cohesion and Constitutional Affairs, respectively, in similar fashion as was the case with the Estimates for the Parliamentary Service Commission which were tabled by the Vice-Chairperson of the Commission.

(Several Members stood at the Bar)

I thank you.

Hon. Members, we will pause for a moment to allow those at the entrance to come in.

(Hon. Members at the Bar entered the Chamber)

CONSIDERED RULLING

FINANCE MINISTER TO PRESENT 2011/2012 FINANCIAL STATEMENT AS A MINISTERIAL STATEMENT

Hon. Members, on 31st May, 2011, hon. Martha Karua rose to seek guidance of the Chair on the application of certain provisions of the Constitution and, in particular, Section 2 of the Sixth Schedule to the Constitution, relating to the suspension of certain provisions of the Constitution which are recited at that Section. Hon. Karua asserted that, to her mind, the provisions of Article 221 of the Constitution relating to Budget Estimates and the Annual Appropriation Bill was not one of the provisions that was suspended and that, in her view, the Deputy Prime Minister and Minister for Finance could not read the Budget to Parliament because under the provisions of the new Constitution, which now apply, there will be no more reading of the Budget.

Hon. Karua contented that despite this, she had seen that the Deputy Minister and Minister for Finance had publicly stated that he would be reading the Budget on 8th June, 2011. Hon. Karua, therefore, sought the ruling of the Chair on whether it was in order for the Deputy Prime Minister and Minister for Finance to contemplate reading the Budget in the House and the attendant fanfare and ceremony.

The Chair sought to hear some views on the matter and the same were put forward by a number of Members including Mr. John Mbadi; Mr. G. Nyamweya; Dr. Machage; Mr. Gitobu Imanyara; the Minister for Justice, National Cohesion and Constitutional Affairs, Mr. M. Kilonzo; Mr. Abdikadir; Mr. Namwamba; the Minister for Education, Prof. Ongeru; the Minister for Transport, Mr. Kimunya and the Minister for Lands, Mr. Orengo.

In summary, the following propositions were urged. May I state at the outset that I make no comment at this point as to their respective merits or demerits.

1. Article 221(1) of the Constitution requiring the Cabinet Secretary responsible for Finance to submit to the National Assembly estimates of the revenue and expenditure of the national Government for the next financial year, at least, two months before the end of each financial year; and Article 221(4) and 221(5) requiring public participation in the budget-making process have not been observed.
2. That Kenya has an international obligation under the East African Treaty to read the Budget at the same time as the other partner States.
3. Pursuant to Section 6 of the Sixth Schedule to the Constitution, the provisions of the former Constitution concerning the Executive continue to operate until the first General Elections held under the new Constitution and that those provisions recognize the Deputy Prime Minister and Minister for Finance and a window can, therefore, be found to permit the Minister to read the Budget even if Article 221 has not been complied with in full.

4. Article 221 is operative and the budget process as stipulated under the new dispensation requires that the estimates referred to in Article 221 should be submitted to the House and subsequently referred to the relevant Departmental Committees.
5. That a failure to read the Budget could lead to a paralysis and in the absence of resources to run its services.
6. That the Budget consists of the proposals that the Government wishes to put forward in terms of policies to be pursued in the following year and its reading is not inconsistent or incompatible with the presentation of the estimates of revenue under Article 221 of the Constitution and can be done with or without the existence of Article 221.
7. That the law contemplated in Article 221(2)(b) to govern the form and procedure of Estimates of Revenue and Expenditure has not been passed and that that Article is, therefore, inapplicable.

From these arguments, I have determined the following as the key issues requiring my ruling or directions:-

- (a) Whether or not Chapter 12 of the Constitution of Kenya, 2010 is in force and operation and whether in particular Article 221 of the Constitution is applicable to the current budget process.
- (b) Whether it is lawful in the present state of the law for the Deputy Prime Minister and Minister for Finance to read the Budget in the House and, if so, whether it is imperative that the Budget is read on the same date as the other partner States of the East African Community (EAC).
- (c) What the correct budgeting process at present should be.

Hon. Members, I wish to acknowledge that while preparing my ruling on these issues, I received, on 6th June, 2011 correspondence from the Commission on the Implementation of the Constitution (CIC) under the hand of its chair person, Mr. Charles Nyachae, attaching an advisory opinion on the matters at hand and requesting my consideration of it. I now propose to make my findings and comments on each of these issues.

(Several Members stood at the Bar)

I will pose for a moment for to allow Members at the entrance to walk in.

(The Members at the Bar entered the Chamber)

Hon. Members, on issue No.1 on whether or not Chapter 12 of the Constitution of Kenya, 2010 is in force and in operation and whether in particular Article 221 of the Constitution is applicable to the current budget process, these two issues can be collapsed into one and disposed of together.

The general proposition, I think, is that unless a provision of the Constitution has been expressly or by absolutely necessarily implications suspended, it is in force and applicable. Sections 2 and 3 of the Sixth Schedule to the Constitution do not suspend the operation of Chapter 12 except in so far as it relates to devolved Government.

Hon. Members, Chapter 12 of our Constitution relates to public finance. Sections 2 and 3 of the Sixth Schedule to the Constitution do not suspend the operation of Chapter

12 except in so far as it relates to devolved Government. Accordingly, I take the position that the Chapter is in force inclusive of Article 221 and, therefore, to the extent that the Estimates of Revenue and Expenditure for the next financial year were not submitted to the National Assembly, at least, two months prior to the end of this financial year, this provision of the Constitution has been breached.

It follows that any requirement of Article 212 which under the Constitution ought to have been met, such as that on public participation at Article 221(5) and requirement for discussion and review of the Estimates by a Committee of the Assembly prior to their consideration by the Assembly at Article 221(4), must be complied with. The argument that it is impossible to comply with Article 221 or other provisions of Chapter 12 on the grounds that there is not at present a Cabinet Secretary for Finance is not correct. Pursuant to Section 31(2) of the Sixth Schedule to the Constitution, provision is made for the position of Cabinet Minister to be regarded as the position of Cabinet Secretary in terms of the application of Article 221 of the Constitution.

On whether it is lawful in the present state of the law for the Minister for Finance to read the Budget in the House and if so, whether it is imperative that the Budget is read on the same date as the other partner states of the East African Community, the spirit, letter and intent of the new Constitution as spelt out at Chapter 12 on Public Finance, completes the transition of our Parliament from a budget approving legislature to a budget making one. I will repeat that: The spirit, letter and intent of the new Constitution as set out at Chapter 12 on Public Finance completes the transition of our Parliament from a budget approving legislature to a budget making one. It brings openness and accountability to the budget process, strengthens the separation of powers and ensures fiscal parity between the three arms of Government.

The Constitution as promulgated on 27th August, 2010 deviates from Section 100 of the former Constitution which required the Minister for Finance to cause to be prepared and laid before the National Assembly in each financial year Estimates of the revenue and expenditure of the Government of Kenya for the next following financial year. Now under Article 221 of the Constitution, the Cabinet Secretary responsible for Finance now read; The Deputy Prime Minister and Minister for Finance, is required to submit to the National Assembly Estimates of revenue and expenditure of the national Government. The Estimates are to be considered together with those of the Judicial Service Commission as well as those presented by the Parliamentary Service Commission (PSC).

The provision further stipulates that the Estimates shall stand committed to the relevant Committees, which Committee, in finalizing its report is required to seek the views of the public. The requirement under Article 221 of the Constitution, that the Estimates of Revenue and Expenditure be submitted at least two months before the end of the financial year, aims to ensure that there is adequate time for the legislature to seek the views of the public and their participation in the budget making process. The delay in submission of the Estimates has an adverse effect on and, indeed, is a contravention of this important constitutional objective. In a period of transition, it needs to be recognized that it is possible to see that delay can be occasioned by the dynamics of socializing the new constitutional order. The question naturally arises: What should be done when a delay occurs in a matter where constitutional timelines are expressly stipulated and further where as in the circumstances of Article 221(1); no person or authority has been

mandated to extend the period within which the Estimates may be submitted to the House?

A delay in such a situation is highly regrettable and must be strenuously avoided. But if, despite every effort, it does occur, I think that the obligation at Article 3 on every person to respect, uphold and defend the Constitution would demand that the person responsible for the delay or other failure seizes every available means to repair and mitigate that delay or failure. It is gratifying that in the present matter, the delay in submitting the Estimates of Revenue and Expenditure has at least been mitigated by the fact that as we speak, these Estimates have already been submitted to the House.

Hon. Members, the question of whether or not to have a Budget Speech in the form and style that all Kenyans have been accustomed to since Independence has been raised. On the one hand, the argument has been made that the spirit and provisions of the new Constitution, including the reforms in the budget making and approval process, leave no room for a Budget Speech and the attendant fanfare and ceremony. By this account, a Budget Day, if any, is the day when the Minister submits his tax proposals to the House and subsequently publishes a Finance Bill for introduction in the House and the debate on this Financial Statement is under the provision of Standing Orders No.147 and 148. Support is found for this proposition in the precedent set on 22nd March, 2011 when the House reconvened for the continuation of the Fourth Session in a Special Sitting, foregoing some of the traditional events associated with the State Opening of Parliament on the occasion of a new session.

Another point of view and, indeed, some hon. Members have argued so, is that the reading of the Budget and any accompanying ceremony are not inconsistent or incompatible with the Constitution. The answer may lie somewhere in between. It commences with an appreciation that the Budget Speech is, as it were, an outline of the state of the economy and the financial environment that the country is operating in. The Budget indicates the total expenditure and key areas earmarked by the Government for the raising of funds. This aspect roughly corresponds with the budget policy statement submitted to the House in the month of March this year. The second part of the Budget Speech normally concentrates on the measures that the Minister intends to employ to address taxation and the effect thereof on various forms of investment or business in the country. It further covers those measures which the Government seeks to employ to raise all the required finances, including action to bridge any deficits.

It may be argued that it is this part of what is traditionally the Budget Speech which is presently outstanding and which is important to propound as it has an impact on our partnership in the East African Community. This has no doubt instructed the argument that it is a constitutional imperative that our Budget be not only read, but also that it be read on the same day as those of the other partner States.

This last proposition may be desirable, perhaps even prudent, but it certainly does not rise to a constitutional dictate. Article 2(6) of the Constitution does not subordinate the Constitution of Kenya and our laws to our treaty obligations. It requires that our treaty obligations form part of our law under our Constitution. The effect of this is to make it the obligation of the State to ensure that we not only meet our treaty obligations, including those under the treaty for the East African Community but also that we do so without violation of our own Constitution. Indeed, Article 2(6) is in my view, so worded as to try to avoid the possibility of such conflict.

In any event, I think it is indisputable that a need for the announcement of the Government's fiscal policy on the same day as the other partner States does not lead to any corresponding need to adopt or maintain the same style or form of announcement as is in the case in those States or has been done in the past. I should hasten to add, however, that as this House is in charge of its own affairs so long as the Constitution and the laws are not broken in letter or spirit and so long as the Standing Orders of the House are observed, it is not the place of the Chair to prevent the Minister for Finance or any other hon. Member from making a Statement in this House. I must emphasize though that the important point is that any statement or speech and any ceremony or fanfare attending thereto, can only be such as is countenanced by the Constitution as it stands, the laws and the Standing Orders.

On what the correct budgeting process at present should be, I will say the following: Hon. Members, given the position that I have taken, that Article 221 is in force and operational, it follows that it is my considered opinion that the budgeting process is broadly speaking as set out in that Article. It is worth noting that certain sections of the old Constitution relating to the Legislature are saved under Section 3 of the Sixth Schedule of the Constitution and it further follows therefore, that Standing Orders providing for financial procedures in the House will continue to apply with such alterations, adaptations and exceptions necessary to bring them in conformity with these provisions. As hon. Members are aware, the matter of the budget process has generated extensive national debate and the Chair, therefore, takes the liberty to set out the following roadmap in the hope that it will help to guide the budgeting process going forward.

The budget process, from the point of view of this House, commences with the presentation of a Budget Policy Statement pursuant to Standing Order No.143, which the House dutifully considered and adopted on 3rd May, 2011. This is followed by submission of the Estimates to the National Assembly as has been belatedly done, which Estimates, once laid in the House, should stand committed to the relevant Committees of the House for review.

This process should include a macro review of the Estimates by the Budget Committee. As a third step, subject to abiding by the Constitution and the laws, I think that during the transition period, while the Deputy Prime Minister and Minister for Finance is a Member of this House, he may, if he is so minded, present his Financial Statement to the House and upon conclusion, lay the necessary documents in the House for review by the relevant Committee, together with the Estimates.

Clauses No.4 and 5 of Article 221 of the Constitution should thereafter come into play. Before the National Assembly can consider the Estimates of revenue and expenditure, these have to be discussed and reviewed by the relevant Committee. Further, as provided by the Constitution under Article 221(5), in renewing the Estimates, the Committee shall seek representations from the public. Considering the late submissions of the Estimates this year, the Budget Committee will need to move with dispatch to nevertheless, hear the public in a structured manner on issues they think the Budget has not adequately taken care of. The other Departmental Committees will, in the same vein, need to urgently convene and allow the public access to their review meetings. They will consider, discuss and review the Estimates committed to them and report to the House in accordance with Standing Order No.152(2).

Although it is not expressly provided for, the committal of the Estimates to the Budget Committee means that as a matter of course, if the spirit of the Constitution is to be observed, the next step should be that the Budget Committee will require to lay its report on the Estimates in the House for debate and adoption before the House can move to the Committee of the Whole House. The Report could be laid on a Motion that “this House do adopt the Report of the Budget Committee on the Estimates of Revenue and Expenditure, laid in the House by the Judicial Service Commission, the Parliamentary Service Commission and the Executive on--- (date).”

The Committee of Supply should then commence and proceed as provided for in Standing Orders No.153 to 155. It is noted that as Ministers are at present still Members of the House, they will move their votes during this transitional period. But in future, starting from the next Parliament - that is the Eleventh Parliament - depending on amendments made to the law and the Standing Orders, it may have to be the Chairs of respective Departmental Committees or Members designated by the leaders of the House to do this. Once the Estimates have been approved, an Appropriation Bill should be introduced to the House by the Minister for Finance or in future, possibly, by the Chairperson of the Budget Committee.

Hon. Members, the roadmap I have presented is enough, I hope, to discount the claim that the law contemplated in Article 221(2), paragraph (b), to govern the form and procedure of the Estimates of Revenue and Expenditure has not been passed and that, on that basis, the Constitutional provisions are, therefore, inapplicable. It has been argued by the Commission for the Implementation of the Constitution - and I agree and want to persuade all of us to agree – that Article 221, being a constitutional provision, must take precedence over legislation and that, in any case, the purpose of passage of legislation is to give further effect to the provisions of the Constitution and not to contradict or take away that which the Constitution has expressly mandated. So, please, note that whatever law you pass to operationalize the Constitution only gives effect to the Constitution. It does not take away from the Constitution.

Hon. Members, invoking Section 7 of the Sixth Schedule to the Constitution, it is clear that it is possible and necessary to use the existing laws, including the Fiscal Management Act of 2009 and the existing Government Financial Regulations and Procedures, to navigate the Budget process. I think I should also emphasize that the Budget process has also got inbuilt mechanisms for dealing with unforeseen events in order to avoid the possibility of what, sometimes, is described as a financial shutdown.

Article 222 of the Constitution provides that the National Assembly may authorize the withdrawal of money from the Consolidated Fund, in the event that the Appropriations Bill may not be assented to or is unlikely to be assented to by the beginning of a new financial year. This is the Vote on Account that is limited to no more than one half of the amount included in the Estimates of Expenditure for the particular year as tabled in the National Assembly.

Hon. Members may wish to note now that the doctrine of separation of powers has played out in recent days, as the Executive, Legislature and Judiciary have all been seized of the matter of the Budget process concurrently, each feeling at liberty to deal with it in its own right and according to its constitutional limitations. It is also useful to observe that the decision of the Cabinet, the Minister and Treasury about how to proceed in this matter was based on their interpretation of the Constitution and its application to

the matter. They did not go to court to seek the interpretation of the court as to how they should proceed. The court, for its part, at the insistence of a citizen, has proceeded to deal with the matter as it considers appropriate. Parliament now needs to interpret the Constitution and determine how it wishes to proceed. This is as it should be. There is neither contradiction nor conflict in these concurrent processes. However, if there is discordance between these interpretations or if a person is aggrieved by any of these interpretations, that person still has recourse to the courts for a judicial interpretation and determination.

I will, once again, pause for those at the door to come in.

(Several hon. Members entered the Chamber)

Order, hon. Members! In the meantime, I wish to assure Members of the Cabinet that the Chair will always give them the opportunity to make Statements in the House, touching on the policies of their Ministries. The Chair will similarly avail opportunity for the House to interrogate those policies. Indeed, in respect of the issue at hand, the Chair will have expected that the Minister for Finance will indicate, on the Floor of the House, the difficulties, if any, that the Treasury was facing in meeting the timelines for submission of the Estimates of the National Government and the actions that were being taken to mitigate the situation. The following is directed to the Deputy Prime Minister and Minister for Finance.

It is unprogressive, I must say, for the Deputy Prime Minister and Minister for Finance to seek to speak to among others, his colleagues, let alone Kenyans, on a matter pending before Parliament, away from the House. I will urge all Ministers to use the opportunity afforded by this House to inform Members and the public at large, of the management, activities and operations of their Ministries, rather than doing so through press conferences or other unhelpful fora.

Hon. Members, I am of the view that in the matter of the application of the transitional provisions in respect of the Public Finance Chapter, it is a question of the choice of constitutional philosophy. For my part, I am satisfied that in the present matter, perhaps more than ever, there is need for recourse to Article 259(1) of the Constitution – and I am sure the Minister for Justice, National Cohesion and Constitutional Affairs, the Attorney-General and the rest of us will agree – which requires the Constitution to be interpreted in a manner that:-

- “(a) promotes its purposes, values and principles;
- (b) advances the rule of law and the human rights and fundamental freedoms in the Bill of Rights;
- (c) permits the development of the law; and
- (d) contributes to good governance.”

Hon. Members, if upon this interpretation it is conceded, as I think it must be, that the regime of the new Constitution, in respect of the Public Finance Chapter of the Constitution is applicable, it must follow that every effort must be made to abide by the provisions of that Chapter. In a matter as important as the Budget process, the good will of everyone is required and expected. In this respect, the Chair notes with concern that this entire controversy was avoidable in the first place. It has been claimed with evidence provided that the Treasury had, in fact, correctly understood the constitutional obligation

imposed on it and had issued Treasury Budget Circular No.2 of 2011 dated 17th March, 2011, to all Accounting Officers. The contents whereof were categorical that the Circular was “intended to guide Ministries, departments and other Government Agencies (MDAs) on planning for the Financial Year 2011/2012 Budget which would be presented to Parliament in accordance with Article 221 of the new Constitution”. That is a circular issued by the Treasury on 17th March, 2011, emphasizing that the Treasury was aware that Article 221, in fact, applied. It is unclear at what point there was departure from this thinking and it must be hoped that this will not recur.

It also emerges that as the constitutional deadline for submission of Estimates in April approached, the Treasury sought, and apparently obtained from the relevant Parliamentary Committee, a one month extension of the period for the submission of the Estimates. It should be quite clear that no person or organ has the authority to enlarge constitutional deadlines and any such purported extension is a nullity in law for all purposes. It must similarly be hoped that this will not recur.

Everything notwithstanding and arising from all the foregoing, hon. Members, I wish to now give the following directions:-

1. That the Minister for Finance shall be given an opportunity on Wednesday, 8th June, 2011, at 3.30 p.m. to give a Ministerial Statement outlining an overview of his measures for tax proposals and other measures to finance the Budget. The Minister shall thereafter lay the necessary documents on the Table of the House on a Motion that the measures be referred to the Budget Committee. The debate on this Motion shall proceed in terms of the Standing Order No.148(2).

2. The Estimates submitted by the National Government together with the Estimates submitted by the Parliamentary Service Commission and the Judiciary shall be referred to the Budget Committee and the Departmental Committees in accordance with Standing Order No.152 while the Ministerial Statement and any document laid by the Minister for Finance shall be referred to the Budget Committee. All the Departmental Committees should review the Estimates as has been the case before and submit a summary of key issues to the Budget Committee as well as detailed reports on the Estimates to the House within 21 days. In conformity with the provisions of Article 221(5) of the Constitution, all the concerned Committees will be required to seek and receive representation from the public.

3. Upon the tabling of the reports of the Departmental Committees on the Estimates, the Committee of Supply will commence as per the provisions of Standing Orders No.153 to 155 and based on the Supply resolutions, the Minister for Finance will be required to introduce an Appropriations Bill in the House to give legal effect to those resolutions.

4. In view of the fact that the Appropriations Act for the incoming financial year will not have been enacted by the beginning of the next financial year, it is expected that the Minister for Finance shall move a Motion of Vote on Account pursuant to Article 222 of the Constitution and Standing Order No.155(7) on or before 26th June, 2011

5. The Finance Bill that will have been published following the Financial Statement shall be referred to the Departmental Committee on Finance, Planning and Trade for consideration and necessary action.

Hon. Members, these directions will continue to be in place during the life of this Parliament along with the relevant Standing Orders and in conformity with other

financial statutes governing the Budget process as provided for in the Constitution. I thank you.

Next Order!

PAPERS LAID

The following Papers were laid on the Table:-

The Judiciary Budget Estimates for the Financial Years 2011/2012 to 2013/2014.

(By the Minister for Justice, National Cohesion and Constitutional Affairs)

The 2011/2012 Estimates, Recurrent Expenditure Volumes I, II and III.

The 2011/2012 Estimates, Development Expenditure Volumes I and II.

The Annex of Estimates of Revenue and Expenditure of State Corporations of the Kenya Government for the year ending 30th June, 2012.

(By the Deputy Prime Minister and Minister for Finance)

Mr. Speaker: Mr. Deputy Prime Minister and Minister for Finance, please, note that you will have time as per the Order Paper tomorrow to proceed from 3.00 p.m. and you will be at liberty to take as long as you desire.

QUESTIONS BY PRIVATE NOTICE

PAYMENT OF LAND RATES ON PRIVATE PROPERTY L.R. No.7879/4 BY GOVERNMENT

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

(a) Under what circumstances has the Government, through the Office of the President been paying land rates to the Nairobi City Council for a private property, LR No.7879/4?

(b) What is the ownership status of the said property and are there any outstanding rates owed to Nairobi City Council?

(c) When will the Government finalize transactions for the purchase of the parcel of land, which was initially meant for the construction of the General Service Unit (GSU) housing units?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I beg to reply.

(a) The Government, through the Office of the President, paid land rates to the Nairobi City Council in 1994 to enable the City Council issue rates clearance certificate to be annexed to the transfer deed for the 196 maisonettes which were purchased by the Government from the Kenya Posts and Telecommunications, as it then was, being

proprietors of a first charge over the property in question and the official receiver as liquidator of the Continental Credit Finance Limited.

The amount paid on account of the same was to be recovered from the purchase price of the additional area that the Government intends to purchase from the owners. It will be noted that had the Government not intervened and paid the rates, the entire parcel of land could have been auctioned by the City Council to recover rent and rates arrears which the registered owners were unable to meet.

(b) The property is registered in the names of Afrison Export Import Limited and Huelands Limited as proprietors in common in equal shares.

(c) The High Court Civil Suit No.977 of 2005 was filed by the registered owners against the Government for the determination of the plaintiffs' interest or rights, the legality of taking or possession of the property, interest or rights and the amount of compensation the plaintiffs are entitled to in respect of LR No.7879/4 between Afrison Export Import Limited, Huelands and Drive-in Estate Developers on one hand and the Attorney-General and the Commissioner of Lands on the other.

(d) There are other suits that require to be determined by the High Court for correct ownership of the property to be ascertained, including the Miscellaneous Civil Application No.1135 of 2007 between Rafiki Enterprises Limited, Senior Resident Magistrate, Milimani, the Registrar of Lands, Commissioner of Lands, Attorney-General and four interested parties. The Official Receiver of Kenya as liquidator of Continental Credit Finance Limited has vested interests in the property in question.

(e) The Ministry has engaged the concerned parties, including the Official Receiver, in an effort to secure the transfer of the property purchased, and for the purchase of a further 5.3 hectares for purposes of developing the police housing units. The Government will engage the rightful owners once the above suits have been determined. Already, the valuation report of the land in question has been placed before the Ministerial Tender Committee for consideration and authority to procure.

Mr. Kutuny: Thank you, Mr. Speaker, Sir. First of all, it is illegal to use taxpayers' money for private purpose. The Ministry of State for Provincial Administration and Internal Security used over Kshs20 million taxpayers' money to pay rates for that property and yet, it is not owned by the Government. The Government has been occupying that land for the last 20 years without due procedure.

Mr. Speaker: Order, Member for Cherengany. Would you, please, comply with the Standing Orders in respect to content of questions? Do not use this opportunity to make a speech, argument or an address.

Mr. Kutuny: Thank you, Mr. Speaker, Sir. The Assistant Minister has talked about 5.6 hectares. He has said that the Government is aware of that parcel of land. Is the Assistant Minister aware that the City Council of Nairobi is demanding Kshs271 million as land rates for that piece of land? Is that piece of land not 85 acres?

Mr. Ojode: Mr. Speaker, Sir, the Assistant Minister is aware that, out of 86 acres, the City Council is demanding Kshs284 million in terms of rates arrears. However, we will not pay what the City Council of Nairobi is demanding. We have agreed that we will authorize the payment of Kshs384 million for the plots which we are going to have. In those 86 acres, we have agreed that on the parcel where we have 196 maisonettes, we will pay for it. However, if we get money from the Deputy Prime Minister and Minister for Finance, hon. Uhuru Kenyatta, in the next financial year, we are contemplating buying

the whole parcel of land. However, what we have before the Ministerial Tender Committee totals to Kshs384 million.

Mr. C. Kilonzo: Mr. Speaker, Sir, the issue is that the Government has been paying rates for land that it is not occupying. The entire parcel is 86 acres. What you are occupying is 7.5 acres where there are maisonettes. You are buying another 13 acres which will total to 20 acres. The Council is demanding from you Kshs271 million for the entire plot. Previously, you have been paying rates for the entire plot. What will the Government pay for the portion that it occupies?

Mr. Ojode: Mr. Speaker, Sir, we paid about Kshs20 million earlier to secure the plot. That is because if we did not do that, the City Council would have auctioned the whole parcel, together with our housing units. So, we agreed with the owner to pay the rates for him and deduct whatever we would have paid from the principal amount when the agreement is sealed. I wish to table the valuation report which has been taken to the Ministerial Tender Committee for purposes of hon. Kutuny to see what we have agreed on. He is going to see what is before the Ministerial Tender Committee to acquire what we have used. Once we get money in this financial year--- We have also talked to the owner to give us the entire land once the valuation has been done.

(Mr. Ojode laid the documents on the Table)

Dr. Khalwale: Mr. Speaker, Sir, it is very surprising that, after the Government paid those rates, soon after, the Commissioner of Land issued out letters of allotment to private individuals to the extent that, even after the Government had paid, the same land was allotted to private individuals, some of them who work at the Office of the President. I want to table a sample of the letters of allotment to those particular individuals, for whom the Government had used public funds to pay. Could the Assistant Minister explain how, after the Government had paid for public land, it ended up being allotted to private individuals?

(Dr. Khalwale laid the document on the Table)

Mr. Ojode: Mr. Speaker, Sir, there is nothing unique in allocating land that does not belong to us. The land, as at now, does to belong to us. We are persuading the owner of the land to sell to us what we have used to build the 196 maisonettes. So, if he wants to sell some of the parcels, that is up to him. We are zeroing in on what we have utilized. That is what we are convincing him to sell to us. If, in any case, we need additional parcels, we will also ask him to give us the valuation for the additional parcels, even if the other parcels have been distributed. We will ask him if we need that land. As of now, we are going by what we need. What we have paid for is where we are occupying - the GSU and police housing units.

Mr. Kabogo: Mr. Speaker, Sir, could the Assistant Minister tell the House what vote or authority was used to pay public funds for private land and yet, we know that there is what we call compulsory acquisition? If they wanted to pay for that land to stop it from being auctioned, the Government can put a caveat and proceed with compulsory acquisition. What was the need to commit public funds and whose authority was used to do that?

Mr. Ojode: Mr. Speaker, Sir, you cannot do compulsory acquisition on something which is in court. It is not possible. It is until the court determines and comes up with a verdict that the land belongs to so and so that you can do it. I have said that there are four to five owners and that is why they went to court. We have to ascertain who the owner of the land is. I mentioned the defunct Kenya Posts and Telecommunications Company, Rafiki Enterprises, Woodlands among others. They have gone to court. So, we are concentrating on the land which we have utilized. We have built 196 units on that land. That is why we had to pay land rates to avoid the land being auctioned.

Mr. Ogindo: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to avoid a simple question from hon. Kabogo? The question is: Who authorized the payment? That is because on a payment voucher, the accounting officer who is authorizing must say that he is certain that he has received value for service for the amount paid. Who authorized the payment and what value did he receive?

Mr. Speaker: Order! The question, which the Assistant Minister has not answered, is who authorised the payment?

Restrict yourself to that, Assistant Minister.

Mr. Ojode: Mr. Speaker, Sir, the Accounting Officer in my Ministry authorised the payment in order for that land not be auctioned. Otherwise, if it was auctioned, we were going to lose 196 units which we had already built.

Mr. Kutuny: Mr. Speaker, Sir, it appears that the Assistant Minister is trying to cover up something because this one raises the issue of audit queries. Will he make sure that the people who were involved in using the public money are made to account for it?

Mr. Ojode: Yes, Mr. Speaker, Sir. I will make sure that they have to account for whatever money they used.

INVASION OF MUCHIRI WA GITHAIGA FARM BY WARRIORS

(**Mr. Kiuna**) to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

(a) Is the Minister aware that some warriors have invaded Muchiri wa Githaiga Farm in Mau-Narok division of Njoro district and have destroyed property worth over Kshs10 million and, if so, what action has the Government taken to arrest the situation?

(b) Could the Minister consider compensating the owner of the farm for the loss?

Mr. Speaker: Hon. Members, Question No.2 by Private Notice is deferred to Tuesday, next week because the Member for Molo has taken the Minister with him to visit the subject matter of the Question.

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.827

STABBING OF BANGI KALUKU MUNUVE

Mr. Speaker: Member for Mutito! Question dropped.

(Question dropped)

Question No.851

LEVEL OF SUCCESS OF TREE PLANTING EXERCISE
IN EMUHAYA CONSTITUENCY

Mr. Speaker: Member for Emuhaya! I have information that the Member for Emuhaya is away on Parliamentary business with permission. So, the Question is deferred to Wednesday, next week.

(Question deferred)

Member for Limuru!

Question No.926

LIST OF TENDERS FOR CONSTRUCTION
OF FRESH PRODUCE MARKETS

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

(a) whether he could provide a list of all the tenders signed for the Construction of fresh produce markets countrywide to date and indicate the construction status of each project, and,

(b) why the works on the project in Limuru have not commenced and when the works will commence.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Mr. Speaker, Sir, I beg to reply.

(a) Annexed herewith is a list of all tenders---

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

Mr. Speaker: What is it Member for Limuru!

Mr. Mwathi: Mr. Speaker, Sir, this Question was deferred last time I asked it. It was the ruling of the Chair that I receive the answer, because it was bulky, two days before the Question. However, as it is now, I have not received the written reply.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Mr. Speaker, Sir, the hon. Member, as you are aware alerted the Chair that he was away. If he has not received it, I could forward to him the answer, and then, probably, give the official reply at a later date.

Mr. Speaker: Do you have an extra copy, Assistant Minister?
The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Mr. Speaker, Sir, I do.

Mr. Speaker: Then, maybe, you can table that so that it is passed on to the Member.

(Mr. Nguyai laid the document on the Table)

Member for Limuru, would you be comfortable to proceed or you want more time?

Mr. Mwathi: Mr. Speaker, Sir, I need time! If you can reschedule that for Thursday this week, I do not mind.

Mr. Speaker: Very well! It is so directed! Thursday this week!

(Question deferred)

Next Question; Member for Chepalungu!

Is there any indication from the Clerk-at-the Table that he is a member of the COIC? No, Question dropped!

Question No.928

PAYMENT OF COMPENSATION
TO FAMILY OF LATE R.C. LANG'AT

(Question dropped)

Mr. Speaker: Next Question! Member for Mumias!

Question No.899

WHEREABOUTS OF CAPITAL LEVY PAID TO MOCO FARMERS

Mr. Washiali asked the Minister for Agriculture:-

(a) whether he could explain the whereabouts of the Kshs6 per tonne capital levy paid by cane farmers to Mumias Outgrowers Company Ltd. (MOCO) for a total of 21 years;

(b) how much was collected during this period, and,

(c) when sugar-cane farmers will benefit from the accruals.

The Assistant Minister for Agriculture (Mr. Ndambuki): Mr. Speaker, Sir, I beg to reply.

(a) MOCO has taken Mumias Sugar Company to court on the matter; the whereabouts of Kshs6 per tonne capital levy paid by Mumias Sugar-cane farmers. Hence, it will be prejudicial for me to give any further information.

(b) Between 1975 to 1998, a total sum of Kshs288,117,285 was deducted by MOCO as sugar-cane levy from farmers between commencement and stoppage time.

(c) Sugar-cane farmers will benefit once arbitration process between MOCO and Mumias Sugar Company stayed by the court is fully determined.

Mr. Washiali: Mr. Speaker, Sir, there is a procedure in this House that if the subject matter of a Question is before the court, the Minister responding should give evidence that it is *sub judice*. Therefore, could the Assistant Minister prove to us that this matter is active in the court? According to the report that I have, the matter before the court is the usage of sugar development levy by Kenya Sugar Board to fund the arbitration case of MOCO and not the Kshs6 capital levy that farmers pay to MOCO.

Mr. Ndambuki: Mr. Speaker, Sir, the case, the hon. Member is talking about is at Kakamega High Court. I am talking of a case in Kisumu High Court whereby MOCO took Mumias Sugar Company to court challenging the Sugar Company to pay them capital levy. The case was moved, when Mumias Sugar Company went to Kakamega and sued MOCO to stop it, so that they could continue with the process of arbitration. So, there are two cases.

(Loud consultations)

Mr. Speaker: Order, just allow the Assistant Minister to finish.

Mr. Ndambuki: Mr. Speaker, Sir, there are two cases here. There is a case filed in Kisumu. Another one was filed in Kakamega.

Mr. Speaker, Sir, what the hon. Member was given last week by my colleague was the Kakamega case, but the Kisumu one was not given. There is a dispute. It is true that there is about Kshs3.5 billion which is supposed to be paid to MOCO. However, because there is a fight between MOCO and Mumias Sugar Company, it cannot be determined. So, they have moved to court for arbitration. I believe they will be heard and then the money can be released.

Mr. Speaker, Sir, the argument here is that Mumias Sugar Company is challenging KSB for helping MOCO in arbitration. So, it is a bit tricky case, but I can assure the House that it is being looked into. It will be determined and farmers of MOCO will be paid their money.

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

As I understand, the hon. Assistant Minister is claiming *sub judice* to stop him from giving answers to this Question, which I think is relevant to the farmers of Mumias. If it is the intention of the Assistant Minister to claim *sub judice*, is it in order for him to attempt to do so, without complying with the strict requirement of Standing Order No.80 by producing copies of pleading, and also proving to the House that the matter is actually active?

Mr. Speaker: Mr. Assistant Minister, what is your reaction to that?

Mr. Ndambuki: Mr. Speaker, Sir, I can table the Kakamega case.

Mr. Speaker: You have all the pleadings!

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

Mr. Speaker: What is it, Member for Mumias?

Mr. Washiali: Mr. Speaker, Sir, my Question is very well framed. In part (a), the Question seeks to know where the Kshs6 per tonne Capital Levy Fund (CLF) is. However, the Assistant Minister has laid on the Table a document detailing the use of the Sugar Development Fund (SDF) money by the Kenya Sugar Board to support MOCO.

That is not the question I am asking. I am asking where the Kshs6 in respect of the CLF that the farmers pay to MOCO is. There is an answer which MOCO has already given. I do not know why the Assistant Minister does not want to read it out.

Mr. Speaker: Assistant Minister, that is a valid point of order. You have a very specific Question here, asking you where the Kshs6 per ton levied on the farmers for the past 21 years is.

Mr. Ndambuki: Mr. Speaker, Sir, I said that the money is there, and that the case is about the money.

Mr. Speaker: Where is the money?

Mr. Ndambuki: Mr. Speaker, Sir, the money is with Mumias Sugar Company. That is the Kshs3.7 billion I was talking about.

Mr. Speaker: Last Question, Member for Mumias.

Mr. Washiali: Mr. Speaker, Sir, now that the Assistant Minister has accepted liability and confirmed to this House that the money is with the Mumias Sugar Company, and given that this money was meant to be capital levy for farmers in MOCO, when is Mumias Sugar Company transferring this money back to MOCO, so that the farmers can access it?

Mr. Ndambuki: Mr. Speaker, Sir, there is an arbitration process that is going on. Once the matter is determined, the money will be released.

(Mr. Washiali stood up in his place)

Mr. Speaker: What is it Member for Mumias?

Mr. Washiali: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead this House that the matter is before the Arbitration Court when, in the actual sense, the Ministry, through the Permanent Secretary (PS), has written a letter to stop the arbitration case?

Mr. Ndambuki: Mr. Speaker, Sir, the Minister did not write a letter stopping the arbitration. He wrote a letter stopping use of the money. They were asking for Kshs4 million for the arbitration case. They have already used Kshs850,000. The Kenya Sugar Board money is used for development. It is not used for arbitration. So, it is a question of MOCO trying to get money for arbitration and not the KSB to use levy money for the arbitration process.

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

Mr. Speaker: Order, Member for Mumias! I have not allowed you to raise a point of order! What is it? Let us hear it!

Mr. Washiali: Mr. Speaker, Sir, the Assistant Minister has said that the Ministry stopped the KSB from supporting the arbitration process, whereas in the Sugar Act, 2001, part of the functions of the KSB is arbitration. So, why would the Ministry interfere with the functioning of the KSB when in the actual sense it is supposed to be funding the arbitration process? Part of the functions of the KSB is to support arbitration in matters affecting the industry. Why should the Ministry refuse to fund this matter?

Mr. Speaker: Order! Order! Member for Mumias, I am conscious even from where I am sitting, and from your demeanour, that you are aware that that is not a point of order. You have merely asked a question seeking to interrogate the matter further. So,

you are out of order, but I want to ask the Assistant Minister, if he is generous, to give you an answer.

Mr. Ndambuki: Mr. Speaker, Sir, the Ministry set up an arbitration court for anybody who has a problem to go there. However, the Ministry is not supposed to meet the expenses of anybody who goes for arbitration. So, MOCO is free to pay whatever is required, and their case will be heard and determined.

Mr. Speaker: Member for Mumias, you may want to pursue that matter further with the Minister. I am sure that you can secure a satisfactory solution even away from the House.

Mr. Washiali: I am most obliged, Mr. Speaker, Sir.

Mr. Speaker: Very well.

Next Question, Member for Turkana Central.

Question No.921

CONTRAVENTION OF PENSIONS (AMENDMENT)
ACT BY GOVERNMENT

Mr. Ethuro asked the Minister of State for Public Service:-

(a) why the Government is contravening the provisions of the Pensions (Amendment) Act, 2003, by failing to either retain or pay retiring employees until their pension is processed;

(b) whether he could indicate the outstanding pensions before 2003 and table the quantum of pension and the number of pensioners per cadre, month and year for all public servants who have retired from 2003 to date; and,

(c) what action the Government is taking to ensure compliance with the statute.

The Minister of State for Public Service (Mr. Otieno): Mr. Speaker, Sir, I beg to reply.

(a) The Government is not contravening the provisions of the Pensions Act, 2003. Delays are normally occasioned by the failure by the retirees themselves to submit or complete the required documentation for pension processing. In the case of dependants, the delay is usually due to the lengthy process to determine the next of kin and failure to procure the required documentation in time, which is a problem with both the beneficiaries and the Pensions Department. In order for the Ministry to complete and pay a pension, documents must be submitted. Amongst the documents we need are the Tax Clearance Certificate, the last payslip and a certificate indicating that the person's name has been deleted from the payroll.

(b) There are no outstanding pension claims with the Pensions Department for the periods before 2003. On the question of pension paid and number of pensioners paid per month and year for public servants who have retired from 2003 to date details are attached as Appendix A, which is a list of 56 pages, which I beg to table.

(Mr. Otieno laid the document on the Table)

(c) The Government has introduced the following measures to speed up the settling of pensions:-

(i) pension processing has been incorporated as one of the targets in the performance contracts of the Pensions Department;

(ii) Ministries have been directed to commence pension processing nine months before the scheduled retirement date of any pensioner;

(iii) the operations of the Pensions Department have been computerised through a Pensions Management Information System (PMIS) to ensure faster processing of pension payments;

(iv) the Government is in the process of integrating the PMIS with other human resource information systems such as the Integrated Payroll and Personal Data (IPPD) to ensure access to the required information for speedier processing of pensions is possible;

(v) introduction of the new contributory pension scheme is expected to ensure prompt pension processing;

(vi) the Government has introduced a computerised file tracking and database in all the Ministries to ease the problem of misplaced files and hasten the processing of pension cases;

(vii) introduction of the Government Human Resource Information System (HRIS) is expected to ease retrieval of all employee information, so that pension documentation can be speeded up; and,

(viii) the Government has initiated a sensitization programme for all the officers due for retirement, so that they acquaint themselves sufficiently with the requirements, and so that they can get their pension claims processed in time.

Thank you, Mr. Speaker, Sir.

Mr. Ethuro: Mr. Speaker, Sir, the Pensions Act was amended in 2003 in this House, through a Private Member's Bill sponsored by hon. David Musila. The Minister has said that the law is not being breached, but he confirmed that there are a few outstanding cases. The reason as to why this House passed that particular law was because those kinds of excuses were being given. The amendment in Section 16A says:-

“A person to whom a pension or other allowances are payable under this Act shall be entitled to be retained in the service until the payment in full of the same payable to him.”

So, the issue that the Minister needs to address himself to is that, whatever the reason for the delay in processing of pensions, he should retain pensioners until he has complied with the law; he should send them away when he has already complied with the law. Why has the Government failed to do so since the 2004? I am not satisfied with the sensitization programmes done late in the day.

Mr. Otieno: Mr. Speaker, Sir, the hon. Member has not read the full clause. The full Clause 16(a) uses the word “entitled” which means somebody has to make a claim of that entitlement. Secondly, it is gratuity not pension. That is after you have exercised our option to get gratuity payment. It is only then---

Mr. Ethuro: On a point of order, Mr. Speaker, Sir. Is the Minister in order to mislead this nation that the hon. Member for Turkana Central is semi-illiterate and can barely read? In fact, I allowed him in the first instance because I respect him. However, he got away with it and added another one. I want to invite him to look at 16(a). It says: “A person to whom a pension or other allowance--- Is the word “pension” not there?

Mr. Otieno: Mr. Speaker, Sir, we really should not spend so much time on this. Let me read the full Clause 16(a). It states as follows:-

“A person to whom a pension or other allowance is payable under this Act shall be entitled to be retained in the service until the payment in full of the gratuity payable to him consequent upon the exercise by him of the option to receive such gratuity under the provisions of this Act.”

So, instead of the monthly pension, you elect a gratuity. From that time if that gratuity is not paid, then you will be entitled to make a claim if you are retained or if you are not retained, payment *in lieu*. But in the course of exercising that option to take a gratuity, you will have completed all the documentation required in the course of exercising that gratuity.

So, there is no such outstanding pension where somebody has given all the documents and has elected the gratuity and has not been paid. There is not a single case. If there is, give it to me and action will be taken immediately.

Mr. Twaha: Mr. Speaker, Sir, inflation is eroding the purchasing power of many pensioners. I wonder if the Minister is taking any steps to ensure that our pensions are linked to the Consumer Price Index (CPI), so that we protect them from the ravages of inflation.

Mr. Otieno: Mr. Speaker, Sir, we decided to take a more comprehensive approach over this matter of very low pensions. A Bill will be published shortly to cushion pensioners. We will be introducing a contributory pension scheme which will allow independent investment of all public pension provisions to investment pension's contribution, so that the investment returns would in a way provide the link with the cost of living based on investment performance. So, we are addressing it more comprehensively and the Bill will be coming to the House soon.

Mr. Letimalo: Mr. Speaker, Sir, in his answer, the Minister said that one of the reasons that caused the delay of paying pensioners on time is lack of submission of documents and other information. When an officer is enlisted in any public service, information is provided including the next of kin. What is the cause of this delay whereas all the information is available in the records? What causes these long delays?

Mr. Otieno: Mr. Speaker, Sir, I believe you are aware that even where a beneficiary is clearly indicated for any set of benefits, there are disputes in families as to who should actually claim the benefits. You are also aware that sometimes what somebody filled when he entered service, if not updated in the course of his service, may be totally out of date, including the person who may have been appointed to act for him in those circumstances. So, all different issues do arise.

Mr. Affey: Mr. Speaker, Sir, I want to thank the Minister for the answer but also find out from him why the pension for the former staff for the ECK, the one that this House decided to send home, why those members were not paid their pension even after he promised that they will be paid.

Mr. Otieno: Mr. Speaker, Sir, the former ECK was an independent pension programme with trustees. If the hon. Member addresses the question properly, we will find out from the trustees what problems they may be having.

Mr. Ethuro: Mr. Speaker, Sir, I would like the Minister to look at 19(a), especially for dependants. Not unless there are legal proceedings if we have delayed the payment of the pension to the dependants of officers of the Government who have

worked very hard for the State, then you should pay pension with accrued interest. When will he ensure strict compliance, particularly on the issue of either retaining them or if they die in service, we pay their dependents within the stipulated period of 90 days? Failure to do so, you pay with interest. He has given a record where I know for a fact that some Ministries have over 736 pensioners who are yet to receive their pension.

Mr. Otieno: Mr. Speaker, Sir, I am not personally happy with the standards of performance in terms of payment of pensions as of now. That is why I am pushing the department to complete computerization. When it comes to dependants in this country, it is a very complicated matter. Somebody puts one wife, the day he dies wives begin appearing from here and there and then legal rights come to question. We have to wait for the legal course to protect the rights of anybody else who claims to be a dependant. That is the cause of delays. We would be accused of rushing to benefit one particular person when we have been made aware that there are other interested parties in a particular claim.

Mr. Speaker: Member for Kisumu Town West.

Mr. Olago: Mr. Speaker, Sir, because this Question touches on Kenyans who may not be able to see or hear, I want to read out the Question.

Mr. Speaker: Carry on.

Question No.721

LEVEL OF COMPLIANCE WITH PERSONS
WITH DISABILITY ACT

Mr. Olago asked the Minister for Gender, Children and Social Development:-

(a) what the level of compliance is with relevant provisions of the Persons with Disabilities Act, Cap. 14, relating to exemption from Income Tax Section 12(3), reservations of 5 percent of all casual, emergency and contractual positions in public and private sector to the disabled (Section 13) and provision of sign language service in all newscasts and education programmes and all programmes covering national events (Section 39); and,

(b) what action the Government is taking to ensure total compliance with the law so that the disabled are not marginalized any further.

The Assistant Minister for Gender, Children and Social Development (Mr. Keya): Mr. Speaker, Sir, I beg to reply.

(a)(i) Section 12(3) of the Persons with Disabilities Act provides for exemption from payment of Income Tax accruing to persons with disabilities from their employment. This provision of the Act came into force after the Finance Minister amended Section 35 of the Persons with Disabilities Act of 2003 under amendment 71 of the Finance Bill of 2009.

In the amendment, the Finance Minister then prescribed the procedure for applying for and granting of exemption to persons with disabilities (PWDs) under Legal Notice No.36 dated 26th March, 2010. From April, 2010, PWDs who are in receipt of

income have been applying to the Commissioner of Domestic Taxes, through the National Council for PWDs. Where the applicant qualifies for exemption, the Commissioner issues the person with a certificate of exemption for a period of three years renewable within 30 days. To date, a total 1,348 PWDs have been granted tax exemption up to a maximum of Kshs150,000 per month, and the exercise is still ongoing.

Mr. Speaker, Sir, consequently, tax exemption certificates have been issued to PWDs in the public, private and self-employment and the National Council for Persons with Disabilities (NCPD), together with stakeholders, are creating a lot of public awareness on this provision of the Act.

(ii) Mr. Speaker, Sir, Section 13 of the Act provides for reservation of 5 percent of all casual, emergency and contractual positions in employment in the public and private sectors for PWDs. Until the last financial year, 2009/2010, not much had been done regarding this provision, except creation of awareness of the key employers, which include the Public Service Commission and the Teachers Service Commission, who have since operationalised this requirement during recruitment. The NCPD carried out a pilot survey in the 2009/2010 financial year to establish the number of PWDs employed in the Ministries of Gender, Children and Social Development, Education and Medical Services. It was established from the survey that the Ministries had 160, 698, and 38 employees with disabilities respectively. These represented 9 percent, 14 per cent and 0.20 percent of employees in that order. In the current financial year, 2010/2011, one of the NCPD performance targets is to establish the total number and percentages of PWDs employed in the Civil Service.

Mr. Speaker, Sir, additionally, the introduction of disability mainstreaming indicator in the performance contracts in the entire public service has also enhanced the employment of PWDs as all employers aspire to ensure that at least 5 percent of their work force are PWDs.

(iii) Mr. Speaker, Sir, Section 39 of the Act states that: “All television stations shall provide sign language inset or subtitles in all newscasts and educational programmes, and in all programmes covering events of national importance.” Under this provision, media houses are expected to embrace sign language as an accessible format for communication to persons with hearing impairment. This provision is also entailed in the Bill of Rights of the new Constitution at Section 54(1)(d), where a person with disability is entitled to use sign language, Braille or other appropriate means of communication, and (e) of the section, to access materials and devices to overcome constraints arising from the person’s disability. It is encouraging to note that the National Assembly, as well as some privately sponsored television programmes, have already complied with the requirements of this provision. This notwithstanding, a lot of awareness creation is being done through workshops, seminars and the disability newsletters to media houses and other stakeholders to implement these requirements, and the NCPD is planning a major stakeholders’ meeting to sensitize the public and implementers on the same.

(b) Mr. Speaker, Sir, among the measures the Government has put in place to stop marginalisation of PWDs are:

(i) disability mainstreaming – all public institutions are called upon to mainstream disability and this is measured annually to ensure that service providers also target PWDs as consumers;

(ii) operationalisation of the National Development Fund for PWDs whose specific objectives include:

- to support economic empowerment and employment of PWDs;
- to support mobility and accessibility needs as well as facilitate other assistive devices for PWDs in Kenya to enable them to function in the society;
- to improve choices and opportunities for PWDs by enhancing opportunities in education, training and rehabilitation institutions;

(iii) compliance with various international instruments on PWDs, such as the UN Convention on the Rights of PWDs, UN Standard Rules, declaration of the rights of PWDs, declaration of the rights of the mentally handicapped and World Programme of Action of PWDs.

Mr. Speaker: Assistant Minister, that was a very long answer. Proceed, Mr. Olago!

Mr. Olago: Mr. Speaker, Sir, I am satisfied with part 1 of the answer dealing with the issue of exemption from Income Tax, because the initiative is to be taken by the disabled persons themselves; but I am dismayed at the reservation of employment because the wording of Section 13 of the Act is that: "The Ministry shall", and that imposes a responsibility on the Ministry, which must be discharged. If some Ministries have as low as 0.02 percent of disabled employees, what action then is the Assistant Minister taking to ensure that, first of all, the Ministries themselves attain this 5 percent?

Mr. Keya: Mr. Speaker, Sir, my Ministry has taken, or is taking, up the issue of the low percentage recruitment in the public service. First, we shall start with the Ministry of State for Public Service, and then the Public Service Commission to make sure that of the people recruited, at least 5 percent of them or more, are PWDs. You may note that some of them may not be applying for jobs. So, we may not know exactly--- This is because nobody has said that he applied, was interviewed and turned down unfairly.

Mr. Olago: Mr. Speaker, Sir, this relates to provision of sign language on newscasts broadcast by many stations in Kenya. Clearly, when you watch news in Kenya, not all broadcasting stations provide persons who can interpret the broadcast to viewers. In view of the actual wording of Section 39; that all television stations shall provide sign language inset or subtitles in all newscasts and programmes covering events of national significance, what action is the Ministry taking to ensure that television stations comply with that requirement fully?

Mr. Keya: Mr. Speaker, Sir, the Ministry has tried to do what I mentioned earlier. But now that it has come to my attention that most of them have not done it, we are going to follow them up and make sure that all television stations broadcast in sign language.

Question No.858

FRUSTRATION OF PHD/MASTERS
STUDENTS BY SUPERVISORS/EXAMINERS

Dr. Khalwale, on behalf of **Mr. C. Kilonzo**, asked the Minister for Higher Education , Science and Technology:-

(a) whether she is aware that the number of students pursuing Doctor of Philosophy degrees (PhDs) and Masters degrees in the University of Nairobi has declined due to frustration by and/or the unavailability of supervisors and examiners due to “*moonlighting*” in other universities and institutions of higher learning; and,

(b) whether she could provide a list of the number of Doctor of Philosophy degrees (PhD) awarded by the University of Nairobi from the year 2000 to-date; and,

(c) whether she could provide a list of duly registered PhD and Masters degree students whose due dates have elapsed but have not graduated since the year 2000 to-date, indicating their names, when they registered for the degrees, reasons why they have not graduated and the names of their respective supervisors.

The Minister for East African Co-operation (Prof. Sambili): Mr. Speaker, Sir, on behalf of the Ministry of Higher Education, Science and Technology, I beg to reply.

(a) I am not aware that the number of students pursuing Doctor of Philosophy degrees (PhDs) and Masters degrees in the University of Nairobi has declined due to frustration by and/or the unavailability of supervisors and examiners due to “*moonlighting*” in other universities and institutions of higher learning. This is because nobody has made a complaint about the same in my Ministry or the University of Nairobi.

Mr. Speaker, Sir, I am, however, aware that the University of Nairobi has had a steady increase in the number of such students each year. I would like to inform the hon. Members that the following is a summary of the figures that clearly show the numbers have been steadily increasing over the years.

Mr. Speaker, Sir, in the year 2005/2006, there were 79 registered PhD students and 1,939 Masters students, giving a total of 2,017 students. In the year 2006/2007, there were 90 PhD students and 2,536 Masters students giving a total of 2,626 postgraduate students. In year 2007/2008, there were 109 registered PhD students and 3,344 registered Masters students in the University of Nairobi, giving a total of 3,453. In the year 2008/2009, there were 162 PhD students and 3,704 Masters students giving a total of 3,866 postgraduate students. In the year 2009/2010, there were 201 registered PhD students and 3,861 registered Masters students in the University of Nairobi, giving a total of 4,062 students.

(b) I provide a table showing the list of the doctoral students awarded by the University of Nairobi from the year 2000 to date. The number - given by gender - totals to 2,299 PhD students. I have the list here.

(c) Mr. Speaker, Sir, I would like to inform hon. Members that the number of duly registered PhD and Masters degree students whose due dates of graduation have elapsed and have not graduated is 284 from the year 2000 to 2005 – that is for PhD - and 8,640 from the year 2000 to 2009 for Masters students. That is as per the attached list. There are various reasons for those problems. Among the reasons are:-

(i) Scholarships. Since the onset of self-sponsored programmes at the University of Nairobi, which started in 1998, a number of postgraduate students sponsor themselves from their own sources. That is due to the fact that availability of scholarships from the

Government, universities and other organizations is limited. Students, therefore, sometimes find themselves unable to raise adequate funds.

(ii) Research funds. Sometimes, students may not be able to complete research studies after completing the taught courses.

(iii) Work related issues. Sometimes, students who are working get transferred to other areas and may not be able to complete their studies.

(iv) Academic rigour. Sometimes, some of the students who register for postgraduate courses are working and demands from work places and families make them unable to complete their studies on time.

Mr. Speaker, Sir, finally, I would like to inform hon. Members that the list and names of supervisors for PhD and Masters students are still being extracted from the university records. As soon as this information is ready, I will present it, with your permission, to the House.

I, hereby, wish to table the list of the students who have not graduated.

(Prof. Sambili laid the document on the Table)

Dr. Khalwale: Mr. Speaker, Sir, I want to thank the Minister. It is surprising because at the university, all the programmes are computerized. How can you not be able to get the list that we demanded? However, I would like you to assure me on one thing. In view of the fact that we have got a serious shortage of lecturers in all our universities, what reassurance do you give the public that the quality of teaching, learning and training at our universities, few as the lecturers are, and as many as the postgraduate students are, is up to the international standards?

Prof. Sambili: Mr. Speaker, Sir, the Ministry has given research funds to support students and lecturers to do research in the universities. Those funds will enable the students to pursue postgraduate studies. We encourage universities to support students who get First Class Honours, for example. They should be employed in the universities, so that we can have enough staff. So, I want to assure the House and the country that we are working together with university leaders, chancellors and vice-chancellors to ensure that, indeed, students are not frustrated when they register for PhD studies.

Mr. Koech: Mr. Speaker, Sir, while I thank the Minister for her answer, there are serious concerns on the shortage of lecturers in our universities. The problem is not only in that particular university. We would like to thank the Ministry for ensuring that we are going to have a double intake of students this year. But the major concern is: What mechanisms has the Ministry put in place to ensure that we recruit as many lecturers as possible to ensure that the quality of education is not watered down as we have the double intake in this country?

Prof. Sambili: Mr. Speaker, Sir, indeed, we are happy that we will have a double intake, so that students do not spend so much time at home after graduating from high school. We are working together with the universities to make sure that quality is maintained. We are also working together with the Commission of Higher Education to ensure that academic standards are maintained in this country and in the region.

Dr. Khalwale: Mr. Speaker, Sir, now that the graduants are increasing at such a high level like postgraduates, what plans is the Government putting in place to ensure

that the job market is prepared for these specialists to the extent that we avoid the ugly incidents whereby even Masters holders are job seekers in the country?

Prof. Sambili: Mr. Speaker, Sir, I would only like to request that the private sector works together with the Government to expand employment opportunities for graduates. I want to confirm that the courses that are offered in universities are generally market driven. So, we hope that the graduates will get jobs mostly in the private sector.

Question No.975

STALLING OF REHABILITATION WORKS ON
JOGOO/MUMIAS SOUTH ROAD

Mr. Mbuvi asked the Minister for Roads:-

(a) whether he is aware that Jogoo and Mumias South roads in Nairobi are in a deplorable condition due to potholes dug by the contractor who was repairing the roads; and,

(b) why the contractor abandoned the works on the said roads and when the works will resume.

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

(a) I am not aware that the above mentioned roads are in a deplorable state due to potholes dug by the contractor who was repairing the roads. However, I am aware that the said road requires urgent repair.

Mr. Mbuvi: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to tell this House that the condition of Jogoo Road is not deplorable when he knows very well---

Mr. Speaker: Order, Member for Makadara! Please, be patient! This is your Question. Allow the Assistant Minister to give you his answer and you have the first opportunity to ask a supplementary question and the last to ask the final question. So, you have a lot of room to ventilate.

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

(a) I am not aware that the above mentioned roads are in a deplorable state due to potholes dug by the contractor who was repairing them. However, I am aware that the said road requires urgent repair.

(b) My Ministry, through the Kenya Urban Roads Authority, has engaged a contractor to carry out pothole patching on a number of roads in Eastlands including Mumias Road. The contractor is still on site and the works are ongoing. As regards Jogoo Road, my Ministry has awarded a contract for the repair of the same and the works will begin early this month. I want to confirm that, indeed, the contractor is on site.

Mr. Mbuvi: Mr. Speaker, Sir, it is true the Assistant Minister cannot be aware whether this road is in a good condition or not because he and his senior engineers who are responsible for the maintenance of this road stay in posh areas like Muthaiga where they have tarmacked their roads up to their toilets and compounds.

Mr. Speaker: Order! Member for Makadara, you know you are a Member of Parliament; a man of honour. So, whatever you say must be said with some decorum. Do not make generalized aspersions like you are doing.

Mr. Mbuvi: Mr. Speaker, Sir, my concern is that this road is impassable. The potholes cause frequent accidents on a daily basis which claim the lives of my constituents and other people who use this road. Could the Assistant Minister give a timeframe within which the contractor will complete the construction work on this road?

Mr. Kinyanjui: Mr. Speaker, Sir, I want to inform the hon. Member that what I indicated not to be aware of is the cause of the potholes. In his Question, he had indicated that the cause of the deplorable state of the roads was because of the works by the contractor. I want to be very clear that the cause of the potholes is the normal wear and tear and we have recognized that and subsequently procured the works of a contractor who has been given the works. The name of the contractor is Devon Construction Company and the contract sum is Kshs24,820,000. We expect the contractor to be already on site and within the next two months or 60 days, he will complete the works.

Mr. Njuguna: Mr. Speaker, Sir, I thank the Assistant Minister for the good answer that he has given. However, could he, in addition, inform this House the clear steps that the Ministry is taking against the contractors who have continued to execute shoddy works on our roads after collecting colossal amounts of money from the Kenyan taxpayer?

Mr. Kinyanjui: Mr. Speaker, Sir, it is true that in the past, we have had those issues. In fact, you will recall that a number of contractors were paid and they never actually did the work. In the contracts that are drafted these days, we expect that the contractor will deposit a performance bond, in which case, if he does not perform, we execute the bond and recover the amount that he has already used. Also, we do not pay for any works until we have a completion certificate by a qualified engineer. Therefore, there is a no situation where we can have money paid before the actual works are done. I also want to assure the hon. Member that last week we passed the National Construction Bill which was, among other things, seeking to streamline the industry and ensure that the players within the industry have a proper and clear mechanism upon which their work can be evaluated.

Mr. Mututho: Mr. Speaker, Sir, could the Assistant Minister consider putting, at least, rumble strips along the road he passes through every day near Gilgil, where, on average, we are losing one student per week because of fast moving vehicles, maybe including his? This is with a light touch.

Mr. Kinyanjui: Mr. Speaker, Sir, the request for speed control around Gilgil has actually been made even in the past. My Ministry is examining the best way in which we can reduce speed without interfering with the flow of traffic in this particular section of the road. As I have said in this House before, it is not in the interest of our Ministry to create bumps or rumble strips at every section. From Nairobi all the way to Nakuru, we have, at least, about 20 sections where Members in these respective areas would want bumps erected. We would want to ensure that we have smooth flow of traffic, but even then, we must balance that with the lives that we must also protect. Nevertheless, I will examine the particular request and get to the Member.

Mr. Mbuvi: Mr. Speaker, Sir, why did the Ministry award the tender to the highest bidder locking out other prominent contractors with good work ethics? For example, there is a contractor who tendered for Kshs20 million.

Mr. Kinyanjui: Mr. Speaker, Sir, I request that the Member repeats the question, please? I did not get it.

Mr. Mbuvi: Mr. Speaker, Sir, why did the Ministry award the tender to the highest bidder at a sum of Kshs24 million, locking out other competent contractors who tendered for Kshs20 million? Is this a way of messing with the taxpayers' money or the higher the amount the bigger the kickback?

Mr. Speaker: You must withdraw that part. I cautioned you a little earlier that you are an hon. Member of Parliament. You are prone to throwing in statements that are completely unsubstantiated and even ungrounded; which is not helpful for your case. For example, in this case, you have asked a very good question. However, what you are throwing in does not add value to your question. It only provokes sensationalism which does not help you.

Mr. Mbuvi: Mr. Speaker, Sir, I apologize and withdraw.

Mr. Speaker: Please, Mr. Assistant Minister, proceed and answer.

Mr. Kinyanjui: Mr. Speaker, Sir, the evaluation of contractors in that case is not only on financials only. That is because if we restricted our evaluation only on the financials, it would mean that anybody, even without any equipment or experience in the field of construction, would just come and bid and tomorrow, we will give him the tender on account of being the lowest bidder. Therefore, I would like to assure the hon. Member that we have an open criteria upon which members, when they are not satisfied, can appeal. When we award the contract, we have a 14 days period upon which that contractor, or any other contractor for that matter, is given an opportunity to appeal and, in fact, to be heard. Therefore, I do not think that the hon. Member is in order to insinuate that we gave the contract to the highest bidder.

Question No.966

IMPACT OF SOCIAL NETWORKS
ON CHILDREN

Mr. Speaker: Very well! Question No.966 is deferred to Thursday this week because the Member is engaged in the Constitutional Implementation Oversight Committee (CIOC) which is now vetting, on behalf of the House, various appointees as nominated by the President.

(Question deferred)

Next Order!

We will first take statements which are due, beginning with the Minister of State for Provincial Administration and Internal Security, followed very closely by the Minister for Transport.

MINISTERIAL STATEMENTS

MASSIVE EXPLOSION AT PETROL STATION ALONG KIRINYAGA ROAD

The Minister of State for Provincial Administration and Internal Security
(Prof. Saitoti): Mr. Speaker, Sir, I wish to make the following Statement.

On 5th June, 2011 at about 11.30 a.m., one David Ng'ang'a, a customer service assistant reported that a massive explosion had occurred at the Shell Petrol Station along Kirinyaga Road. Security officers responded and found out that, at the petrol station, two fuel pumps were on fire. That fire was, however, put out by the Nairobi Fire Brigade within a period of about 30 minutes. On examining the scene, the officers made the following observations:-

(i) That the explosion could have started from the rear of the Shell Petrol Station where there is unutilized underground space measuring about 1,800 cubic meters.

(ii) Prior to the explosion, the underground space had been sealed by a perimeter wall against which there were two detached containers and two structures containing spare parts.

(iii) The explosion had blown off the perimeter wall and turned the containers upside down extensively damaging nine motor vehicles and shattering the windows of the nearby storeyed building - that is Ramhtulla House or otherwise known as Shabir Center - and the adjacent buildings.

(iv) The Shell Petrol Station has four underground fuel tanks; one for paraffin, one for super petrol and two for diesel. Each of those tanks has a capacity of 30,000 litres. However, at the time of the explosion, diesel tank one had only 300 litres. Diesel tank two had 600 litres while the petrol tank had 250 litres.

(v) , On the surface, the petrol station had two huge cracks before the explosion and, as a result of the explosion, two additional cracks emerged, one on the external surface and another in the manager's office. The investigating team comprising of officers from the Anti-Terrorism Response Police Unit, the Bomb Disposal Unit and the Nairobi Area Commandant have, so far, arrived at the following preliminary findings:-

1. That the explosion resulted to the death of two people, while 45 others are undergoing treatment. Those who were injured were taken to the following hospitals. A total of 21 people were taken to Kenyatta National Hospital and 14 were discharged as of 6th June, 2011. One person was taken to Aga Khan Hospital. Four people were taken to MP Shah Hospital and four to Getrudess Hospital.

2. Investigations indicate that the explosion was not terror related but accidental. Bomb disposal experts, in their opinion, suspect that the blast could have been as a result of petrol leakage, which accumulated in the unutilized space within the petrol station. That is partly because on physical check of the super fuel tank, it was established that 250 litres of super fuel could not be accounted for and, on the scene, no shrapnels were found.

3. The injuries sustained by the casualties were as a result of burns and scalds, while others were as a result of falling glass and flying objects. Other casualties were trapped under the vehicles and containers.

4. Huge cracks which emerged on the surface of the petrol station could have been caused by the pressure from the underground tanks.

Despite those preliminary observations and investigations, more investigations are being carried out. So, in an effort to establish the actual cause and leave no doubt whatsoever on the cause of the blast, the following additional measures are being undertaken:-

(a) Bomb disposal experts have taken soil samples from the basement, storey buildings, containers and the nearby dumping site to the Government Chemist for analysis.

(b) Kenya Power and Lighting Company (KPLC), City Fire Brigade and Shell Company engineers who visited the scene are also putting together their independent findings, which will then be forwarded to the police.

The findings from the various organizations will be analyzed to arrive at a comprehensive investigation report on the accident. Therefore, on the basis of the available information, and in the light of the steps which have already been taken, I would wish to inform Kenyans that the country is secure with regard to that particular matter, and that every effort is being made to prevent any terrorist attack in the country.

[Mr. Speaker left the Chair]

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

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, for many years, the property where that incident occurred has for many years been dogged by property ownership disputes. So as to assure that the public that it is not because of the disputes that that incident took place, what is the Minister doing to sort out the ownership of that property so that the rightful owner is given the possession of the same?

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I am sure that the hon. Member is aware that, sometime last year, that issue came up. There was a confrontation between the mechanics who were there and those who claim the ownership of the land. Eventually, the matter ended up in court and we know that it is alive in court. Therefore, it is extremely difficult to interfere with a matter that is already in court. Suffice to say, our own security officers will ensure that there is no action that will lead to confrontation in a violent manner.

The Assistant Minister for Housing (Bishop Wanjiru): On a point of information, Mr. Temporary Deputy Speaker.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, what is sought for in a Ministerial Statement is a clarification!

The Temporary Deputy Speaker (Mr. Imanyara): You cannot seek a clarification! You are part of the Government!

ENGAGEMENT OF CONSULTANTS FOR FEASIBILITY STUDY
ON PROPOSED LAMU PORT

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I wish to make the following statements on the methods used to engage consultants for Lamu Port and Lamu–Southern Sudan-Ethiopia Transport Corridor, as requested by hon. Eng. Gumbo.

Mr. Temporary Deputy Speaker, Sir, hon. Eng. Gumbo rose on a point of order to seek a Ministerial Statement on how the consultants conducted feasibility study for the Lamu Port and Lamu-Southern Sudan- Ethiopia Transport Corridor were engaged. He sought the following explanations on how the Japan Port Consultants were awarded the multi billion shilling consultancy, to clarify whether an expression of interest and request for proposal were sent out, and when it was sent out, and how many firms were invited, to provide detail bids on all firms, the RSP in terms of financial bids and technical bids, to provide a copy of the evaluation report, to provide detailed curriculum vitae of all the individuals in the respective firms that placed bids for this contract, and to confirm that provision of the Public Procurement and Disposal Act, No.3 of 2005 and the Public Procurement and Disposal Act regulations of 2006, had been complied with.

Mr. Temporary Deputy Speaker, Sir, I wish to state as follows. The procurement of the Japan Port Consultants was done through a competitive tendering process in two stages, namely, an expression of interest at stage one and issuance of Requests For Proposals (RFP) to the shortlisted firms at stage two. The expression of interest for Lamu Port and Lamu- Southern Sudan- Ethiopian Transit Corridor Consultancy was advertised in the print media, on 6th April, 2009, and 30 expressions of interest's bids for the consultancy were received on 18th May, 2009. A copy of the Expression of Interest advertisement is tabled as Appendix I.

(Mr. Kimunya laid the document on the Table)

The evaluation of the EOI bids for the 30 firms was carried from 29th of June, to 3rd July, 2009, and the Evaluation Committee shortlisted eight firms to undertake the feasibility study and to prepare the preliminary designs, prepare Lamu Port Masterplan detail design together with tender documents. The technical evaluation report and EOI, a pre deal conference and technical evaluation report for the six firms are tabled as Appendices two to four.

(Mr. Kimunya laid the document on the Table)

Mr. Temporary Deputy Speaker, Sir, in August, 2009, the Ministry sent out the Request for Proposals to the eight shortlisted firms, and I have already tabled that. Out of the eight shortlisted firms, only six submitted technical and financial proposals in separate sealed envelopes on 17th November, 2009. Separate envelopes means a technical envelope and a financial envelope. The evaluation of the technical bids was done and only two firms namely, M/s Japan Port Consultant and Royal Haskoning Netherlands obtained the minimum technical score of 80 percent. Accordingly, the financial bids of the four firms, which did not obtain the minimum technical score of 80 percent, were returned unopened, and this is all contained within the evaluation report.

Mr. Temporary Deputy Speaker, Sir, Japan Port Consultant and Royal Haskoning, Netherlands scored 91 percent and 82 per cent, respectively. The financial bids for Japan

Port Consultant which attained the highest score, was then opened and the firm was invited for negotiations. Japan Consultants accepted the offer after the negotiations were concluded. Consequently, the bid for Royal Haskoning, Netherlands was returned unopened in accordance with the procurement instruction within the RFP. A copy of that offer letter to Japan Port Consultant is also tabled herewith.

(Mr. Kimunya laid the document on the Table)

The original contract sum for Japan Port Consultant was Kshs3.04 billion. On 21st September, 2001, and I believe it is contained in the notification of awards letter, which I also tabled as Appendix 6.

On 21st September, 2010, I wrote to the Treasury raising concerns over the pricing of the contract and requested the Treasury as the chief advisor to the Government procurement to determine whether the unit rates of the contract represented good value to the taxpayer, and whether the contract ought to proceed in that form.

Consequently, on the 5th of November, 2010, a consultative meeting was held between Treasury, Ministry of Transport, State Law Office and Public Procurement and Oversight Authority. During the meeting, Treasury was requested to assess the financial implication if the contract was to be terminated.

After the assessment and re-evaluation of the contract, it was found prudent to renegotiate and restructure in a view to have the units rates addressed to reflect reality. The restructuring and renegotiations resulted in reduction in the lumpsum contract from Kshs3.04 billion to Kshs1.98 billion. There should be a letter within this document showing the revisions.

The other issue that was requested is how up to date, the total amount that has been paid is Kshs500 million, which was paid during the last financial year, while a further Kshs500 million is provided for in the Supplementary Estimates. But this has not been paid out yet.

The applicable staff rates for the lumpsum contract including the list of staff and the curriculum vitae of all the staff are attached. We have the rates as Appendix 7. All the rates are here, plus all the CVs of the professionals, who are involved also tabled as one batch.

(Mr. Kimunya laid the document on the Table)

Mr. Temporary Deputy Speaker, Sir, finally, from the information availed to me, it indicates that public procurement procedures were adhered to as understood by the Ministry.

I also want to add for clarification that we could only provide CVs and financial bids for only the successful firm because everything else was returned, and opened in accordance with the regulations.

Eng. Gumbo: Mr. Temporary Deputy Speaker, Sir, I want to thank the Minister for the speed with which he has responded to this Ministerial Statement.

He clearly understands the importance of this Statement. The Lamu Port and their putnances thereof, is one of the key flagship projects for Vision 2030. It is a national project. It is a very important project.

Mr. Temporary Deputy Speaker, Sir, I wish to seek your indulgence on this matter, because a lot of the things that I want to interrogate are actually in those documents. But even as I do that, I am sure some of my colleagues may also be interested---

The Temporary Deputy Speaker (Mr. Imanyara): Order! If the request is for time, the Chair would grant that. As you notice, we have not even gone into the commencement of the business of the House. So, if that is the request you are making, please, make it now.

Eng. Gumbo: Mr. Temporary Deputy Speaker, Sir, I kindly request for your indulgence, because I know this is a project that is of national interest. I need to interrogate the documents laid before us. I need to share it with my colleagues. I would request the Chair to allow me to go through the documents so that we can interrogate this matter.

The Temporary Deputy Speaker (Mr. Imanyara): How long do you require?

Eng. Gumbo: Mr. Temporary Deputy Speaker, Sir, I would request that I be given up to Thursday afternoon, so that the Minister can respond to the clarification.

The Temporary Deputy Speaker (Mr. Imanyara): Minister, any comment on that?

The Minister for Transport (Mr. Kimunya): Obviously, I do not expect the hon. Member to look at all these documents, which he requested in a couple of minutes. I have no objection to whenever he will be comfortable after looking at them, be it this week or next week.

The Temporary Deputy Speaker (Mr. Imanyara): Next week, on Tuesday.

The Minister for Transport (Mr. Kimunya): I am most obliged, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): Yes, Minister for Medical Services.

HIRING OF CHIEF EXECUTIVE OFFICER OF MOI TEACHING AND REFERRAL HOSPITAL

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Speaker, Sir, about two weeks ago, the Member for Mosop, requested that I make a Statement in this House regarding the hiring of the Chief Executive Officer (CEO) of Moi Teaching and Referral Hospital. I would like to do so today, as I promised then.

The Temporary Deputy Speaker (Mr. Imanyara): Minister, how long is that Statement?

The Minister for Medical Services (Prof. Anyang'-Nyong'o): It is not very long, Mr. Temporary Deputy Speakers, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): How many pages is it?

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Speaker, Sir, it is a three-page Statement, which is reasonably spaced.

Mr. Temporary Deputy Speaker (Mr. Imanyara): All right.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Speaker, Sir, throughout the entire period that the Moi Teaching and Referral Hospital has operated as a state corporation, there has been only one CEO – Prof. Harun N.K. arap Mengich. So far, he has had five appointments to serve as the head of the hospital.

Prof. Mengich was first appointed as the Director of the Hospital and Principal of the College of Health Sciences on 1st July, 1999 for a period of three years. The appointment was made by the then President of the Republic of Kenya, His Excellency Toroitich arap Moi, and communicated to him by the Permanent Secretary (PS), Ministry of Health, on 28th June, 1999. His second appointment was again made by the then President through Gazette Notice No.3990 of 27th June, 2002. This time round, Prof. Mengich was appointed to serve a term of five years.

Mr. Temporary Deputy Speaker, Sir, Prof. Mengich served as a Director of the Hospital for the third time between 7th March, 2007 and 6th May, 2008. This was an interim appointment by the Hospital Board, through the Chairman, pending advice from the Ministry on the way forward. At the request of the Board, I renewed Prof. Mengich's contract for a further period of three years with effect from 7th March, 2007. This was the fourth appointment for Prof. Mengich.

The fifth and final appointment for Prof. Mengich took effect from 7th March, 2010 for a period of one year. I approved a one-year extension, from March 2010 to March, 2011, to allow for a smooth transition as, indeed, the Board was then new. The letter giving extension to Prof. Mengich stated clearly that this was a final appointment of one year to allow for a transition from Prof. Mengich to a new CEO.

Mr. Temporary Deputy Speaker, Sir, the Board of Moi Teaching and Referral Hospital, in consultation with the Ministry, advertised the position of Director or CEO of the hospital on 24th September, 2010, in the local dailies. A total of 11 applications were received, out of which six applicants, who met the minimum requirements, were shortlisted. The shortlisted candidates included Prof. Harun Mengich. Only four candidates turned up for the interviews held on 10th February, 2011. Out of the four candidates interviewed, only two scored 70 per cent and above. The breakdown of the scores for the four candidates is as follows:-

- (i) Dr. Fatuma Some, 59 per cent;
- (ii) Prof. Fabien Esemai, 71 per cent;
- (iii) Dr. Otieno Omolo, 57 per cent; and,
- (iv) Prof. Harun Mengich – 81 per cent.

On the basis of these results, the Board recommended that Prof. Mengich be appointed for another period of three years, notwithstanding the fact that the one year extension granted to him earlier had been made conditional to the Board empowering a new CEO to succeed Prof. Mengich. On consideration of the results of the interviews and recommendations of the Board, I noted critical anomalies regarding the recruitments as follows:

1. The position attracted a very limited number of applications up to the final interview. Therefore, I considered the process not to have been competitive enough.
2. The candidate recommended by the Board, Prof. Mengich, had served the institution since it was established.

The Ministry Headquarters was still of the view that the Hospital required a fresh CEO to steer the institution to greater heights of development and service delivery in line with the reforms that the Ministry was implementing. Indeed, it was for that reason that when we gave the one year extension, it was with the express understanding that the Board and the CEO would look for a successor.

Mr. Temporary Deputy Speaker, Sir, there are a number of current developments and activities going on at the hospital that have a bearing on the appointment of the new Director of the Hospital as follows:

1. The Hospital is facing serious financial constraints that have made it unable to meet its obligations. This is despite the Hospital's budget having been almost doubled in the last six years. The main reason behind this constraint has been employment of staff beyond the approved establishment of 2,700. The Hospital has a current staff complement of over 3,000. This is besides the 220 staff members serving the Hospital on casual or locum engagement.
2. The Kenya National Audit Office is undertaking a forensic and systems audit at the Hospital, but it is yet to complete its report. In addition, the Ministry, at the request of the Board of Management, has invited the Efficiency Monitoring Unit to assist the Hospital identify inefficiencies in its systems and thus make appropriate improvements.
3. The Kenya Anti-Corruption Commission (KACC) is investigating allegations against Prof. Mengich relating to abuse of office, nepotism and staff contract matters, among other concerns.

Mr. Temporary Deputy Speaker, Sir, in order to avoid any gap in leadership, and recognising the important role that the Director plays in the day to day operations of the Hospital, I appointed Dr. Omar Ali the Deputy Director, Clinical Services, as Acting Director/CEO, on 8th March, 2011. The appointment is for a period of six months. It is my expectation that the recruitment process will be finalised within this period.

Following the anomalies noted with regard to the initial recruitment, the Hospital Board, in consultation with the Ministry, re-advertised the position of the Director/CEO in May, 2011. Presently, the institution is receiving applications to fill the position.

Mr. Temporary Deputy Speaker, Sir, in conclusion, it is my considered view, and that of the Ministry, that Prof. Mengich has had ample time to implement his vision for the institution. After 14 years as the head of that institution, it is unlikely that he has a reservoir of fresh ideas to steer the Hospital towards further improvement. It is also the view of the Ministry that the country is not short of professionals who can manage Moi Teaching and Referral Hospital, and further transform it to serve Kenyans better in line with the requirements of the Constitution and Vision 2030.

Mr. Temporary Deputy Speaker, Sir, for these reasons, it is my humble submission that the Ministry should be allowed to continue sourcing for a suitable director or CEO through a competitive and transparent process as the investigations being carried out by Government agencies continue at the Moi Teaching and Referral Hospital.

Thank you.

Mr. Koeh: On a point of order, Mr. Temporary Deputy Speaker, Sir. Before the clarifications, I am the one who sought the Ministerial Statement. I did ask the Minister to state the situation on the ground as it is today. Is he in order to avoid answering that bit of the question?

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Koech, you rose on a point of order, but that is a clarification you are seeking. Even the level of interest that I have seen, I think the best forum for interrogating this answer is in the relevant Departmental Committee. I, therefore, direct that this matter be referred to the relevant Department Committee. I also direct the Committee to report back to the House within 30 days.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, I thank you for that directive. However, maybe the Chair wants to remember that again in this House in this Tenth Parliament, this issue came up with the same Minister after he overlooked a recommendation for appointment of the Director of Kenya Medical Training College. He went on and did exactly what he has done in this particular case. The matter went to the Committee---

The Temporary Deputy Speaker (Mr. Imanyara): Order, Dr. Khalwale. Those issues can arise when the report of the Committee is tabled within 30 days. Can we go to the next Minister with a Ministerial Statement?

I know that, Mr. Ojode, you have three Ministerial Statements. Given the time left, I would direct that your Ministerial Statement be given tomorrow in the morning section.

Any request for a Ministerial Statement?

Mr. Chepkitony: Mr. Temporary Deputy Speaker, Sir, I want to seek a clarification from the Minister---

The Temporary Deputy Speaker (Mr. Imanyara): Order! I am on requests for Ministerial Statements. Matters relating to the Ministerial Statement by Prof. Anyang'-Nyong'o can be interrogated in the relevant Committee.

POINTS OF ORDER

EXTRADITIONS OF MESSRS. DEVANI, OKEMO AND GICHURU

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, I rise to seek for a Ministerial Statement from the Prime Minister of Kenya in respect of the arrest in the United Kingdom and the expected extradition to Kenya of the fugitive businessman, Mr. Yagnesh Devani.

I would like a statement on the state of Kenya's oil import open tender system. I would like him to make the following clarifications:

1. Could he confirm that the fugitive businessman was arrested in a deal to have his extradition to Kenya swapped with the extradition to the United Kingdom of Messrs. Chris Okemo, the hon. Member for Nambale, and Mr. Samuel Gichuru, the former boss of the Kenya Power and Lighting Corporation (KPLC).
2. Secondly, I would like him to confirm whether senior politicians, some currently serving in this Government today and who were close associates of Mr. Devani have recorded any statements with the Criminal Investigation Department (CID). If so, could he state the names of those former associates of Devani?

3. The Prime Minister should clarify what fate befell the Triton Petroleum and Triton Energy firms that were linked to Devani together with the personal property of Mr. Devani.
4. The Prime Minister should also clarify what weaknesses and loopholes existed in the country's oil import open tender system that aided the Triton oil scam.
5. I would like the Prime Minister to clarify by stating the reforms the Government has effected within the country's oil import open tender system in response to the weaknesses that led to that scam.
6. The Prime Minister should clarify to what extent he is attributing the current deplorable high cost of living in the country to the mismanagement of the petroleum sector in this country.

Thank you.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I will communicate to the Office of the Prime Minister for consideration of that matter. I expect it to come, depending on how many other Statements are in the pipeline, by Wednesday, next week because tomorrow, there is already a Statement that has been ruled on by the Speaker.

The Temporary Deputy Speaker (Mr. Imanyara): Dr. Khalwale, is Wednesday, next week okay?

Dr. Khalwale: Yes, Mr. Temporary Deputy Speaker, Sir.

CIRCUMSTANCES SURROUNDING DEATH OF MR. SOLOMON MAWAYA NGALI

Mr. Mwadeghu: Mr. Temporary Deputy Speaker, Sir, I wish to seek a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security with regard to the circumstances surrounding the death of Mr. Solomon Mawaya Ngali on Wednesday 26th May, 2011.

In the Statement, the Minister should:-

- (a) clarify the circumstances under which the police officers shot the deceased considering that an alarm was raised which attracted the police who rushed to the scene.
- (b) indicate the identity of the police officers who attended to the distress call and other people present at the scene.
- (c) confirm the persons who took the body of the deceased to the mortuary and the reasons why the next of kin were not informed and the action taken to apprehend the killers of Mr. Solomon Mawaya Ngali.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, I will be ready with the Statement on Wednesday morning next week.

The Temporary Deputy Speaker (Mr. Imanyara): There was a Ministerial Statement expected today also. Was there any other request?

PRESENCE OF MUSICIAN DING DONG IN KENYA

Mr. Shakeel: Mr. Temporary Deputy Speaker, Sir, about four weeks ago or more, I asked for a Ministerial Statement on the matter of a musician who was allowed into this country. The musician is called Ding Dong. That Ministerial Statement was promised within a week, over a month and a half ago.

The Temporary Deputy Speaker (Mr. Imanyara): Which Ministry was that?

Mr. Shakeel: It was directed to the Ministry of State for Immigration and Registration of Persons.

The Temporary Deputy Speaker (Mr. Imanyara): Yes, you are right. Indeed, there is a pending request from the Ministry of State for Immigration and Registration of Persons.

Deputy Leader of Government Business, could you, please, establish from the Minister when this Statement will be given?

The Minister of Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, my recollection is that when it was due, the hon. Member was not in the House. I think the Minister was then asked not to issue the Statement until the hon. Member comes back. Now that the hon. Member has come back, we can look for some time next week. Is Tuesday next week okay?

The Temporary Deputy Speaker (Mr. Imanyara): Tuesday next week is fine. Any more requests? The Ministerial Statement will be delivered on Tuesday next week. Are there any more requests? If there are none, then we will move to the next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

*[The Temporary Deputy Speaker
(Mr. Imanyara) left the Chair]*

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Mr. Imanyara) took the Chair]*

THE SUPREME COURT BILL

The Temporary Deputy Chairman (Mr. Imanyara): Order, hon. Members! We are in the Committee for consideration of the Supreme Court Bill. Mr. Minister, you appear to be a lucky man since there are no amendments, unless from your good self!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, there are no amendments from myself. I normally do a good job!

*(Clauses 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16,
17, 18, 19, 20, 21, 22, 23, 24, 25, 26,*

27, 28, 29, 30 and 31 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Supreme Court Bill and its approval thereof without amendment.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Members, because we have two Bills falling under the Committee Stage, I propose that we do the Nurses (Amendment) Bill and then we can report on both. Mr. Mututho, you have amendments!

THE NURSES (AMENDMENT) BILL

Clause 2

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, I require some guidance here. The amendments have been proposed by the Committee. So, can I proceed?

The Temporary Deputy Chairman (Mr. Imanyara): The Chair of the Committee, or another Member of the Committee, should move them, but not the Mover. Do you have another Member of the Committee? Yes, hon. Lekuton, proceed!

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

THAT Clause 2 of the Bill be amended in Subsection (1) of the proposed Section 4 –

(a) by deleting the word “mental” appearing in subparagraph (iii) of paragraph (e) and substituting therefor the word “psychiatric” ;

(b) by inserting the following new words at the end of subparagraph (vii) of paragraph (e)-

“nominated by recognized universities in Kenya”.

(c) by inserting the following new subparagraph immediately after subparagraph (viii) of paragraph (e)-

“(ix) one person with a professional background in human resource management ;”

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

“(f) the chief executive officer of the Kenya Medical Training College or his representative”.

(Question of the amendment proposed)

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Chairman, Sir, we have no objection to the amendment.

*(Question, that the word 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)

(Clauses 3 and 4 agreed to)

Clause 5

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

THAT, Clause 5 of the Bill be amended in paragraph (d) of the proposed Subsection (1) by deleting the word "discipline" and substituting therefor the words "discipline, standards".

(Question of the amendment proposed)

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Chairman, Sir, we accept the amendment.

*(Question, that the word 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. Lekuton: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 6 of the Bill be amended-

(a) by deleting paragraph (b) of the proposed Section 17(1) and substituting therefor the following new paragraph-

(b) is registered, enrolled or licensed as a nurse under this Act;

(b) by inserting the following new subsections immediately after subsection (2) of the proposed section 17-

(2A) A license issued under sub-section (2) -

(a) shall be for such period and for such purpose as the Council may prescribe;

(b) may, on its expiry, be renewed for such period, not exceeding one year, as the Council may prescribe;

(2B) Where a license issued under subsection (2) is renewed, details of the renewal shall be entered in the appropriate record.

(2C) Where a license issued under sub-section (2) expires and is not renewed within thirty days of expiry, the name of the holder of the license shall be removed from the appropriate record and the Council may decline further requests for renewal of such a licence or impose a levy on such further requests;

(c) by deleting the words “five hundred thousand shillings” appearing in paragraph (a) of subsection (8) of the proposed section 17 and substituting therefor the words “three hundred thousand shillings.”

(Question of the amendment proposed)

The Minister for Medical Services (Prof. Anyang’-Nyong’o): Mr. Temporary Deputy Chairman, Sir, I want to clarify the amendment to Clause 6(c). I think some Members are anxious about this amendment. It is about the penalties to be exerted. It says “by deleting the words “five hundred thousand shillings” appearing in paragraph (a) of subsection (8) of the proposed section 17 and substituting therefor the words “three hundred thousand shillings.”

Mr. Temporary Deputy Chairman, Sir, I wondered what the rationale was. Why the reduction from Kshs500,000 to Kshs300,000, especially when the law is going to be there for a long time, and the value of money is likely to go down? So, rather than keep on revising it, it is better to stick with a higher figure, so that it is a deterring factor for long enough, rather than reduce it and very soon, because of decline in the value of money, it will not be as deterrent as it should be. So, I was going to request the Mover of the amendment to allow the Bill to stand as it is now rather than change the figure.

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, I concur with the Minister because it is a matter of life and death. When a nurse makes a mistake, it is a really grave mistake. In actual fact, we should be talking of millions now because---

The Temporary Deputy Chairman (Mr. Imanyara): Are you suggesting that the amendment be withdrawn?

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, I am suggesting that the amendment be withdrawn with respect to “c”.

The Temporary Deputy Chairman (Mr. Imanyara): Mr. Lekuton!

Mr. Lekuton: Mr. Temporary Deputy Speaker, Sir, I agree.

(Part “c” of the amendment withdrawn)

(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

The Temporary Deputy Chairman (Mr. Imanyara): Again, the Committee has proposed some amendments. Mr. Lekuton, are you moving or withdrawing them?

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

THAT, Clause 7 of the Bill be amended in the proposed Section 18A by inserting the following new subsection immediately after Clause (1)-

(2) For the avoidance of doubt, this section applies in equal respects to all categories of nurses whether registered, enrolled or licensed as such under this Act.

(Question of the amendment proposed)

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Chairman, Sir, I accept the amendments.

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

(Clause 7 as amended agreed to)

(Clauses 8, 9, 10, 11, 12, 13, 14 and 15 agreed to)

New Clause

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

THAT, the Bill be amended by inserting the following new Clause immediately after Clause 4-

4A. Section 9 of the principal Act is amended in subsection (1) (i) by inserting the words "nursing commodities" immediately after the words "qualified staff".

(Question of the new clause proposed)

(New clause read the First Time)

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

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Chairman, Sir, I am okay with it.

(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)*

(Schedule agreed to)

(Title agreed to)

(Clause 1 agreed to)

Mr. Mututho: Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Nurses (Amendment) Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Deputy Speaker in the Chair]

REPORTS, CONSIDERATION OF REPORTS AND THIRD READINGS

THE SUPREME COURT BILL

Mr. Imanyara: Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered the Supreme Court Bill and approved the same without amendment.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Medical Services (Prof. Anyang'-Nyong'o) seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I beg to move that the Supreme Court Bill be now read a Third Time.

(Question proposed)

Mr. Imanyara: Mr. Deputy Speaker, Sir, I did not get a chance to make my contribution during the Second Reading. Therefore, let me take this very short time to congratulate the Minister for Justice, National Cohesion and Constitutional Affairs for

moving a Bill that the House has fully agreed with. I think this is one of the very few occasions that, that happens. It shows that there was thorough input by him and his officers who prepared the Bill.

Mr. Deputy Speaker, Sir, it is an important date in this country's history as we entrench the culture of constitutionalism, that we, the House, have lived to the expectations of Kenyans and have moved with dispatch in ensuring that we pass the Bills that are brought to the House, contrary to the perceptions in certain circles that Members of Parliament are the cause of the delays. I would have hoped that by now, the Minister would also read, at least, the First Reading of very many other Bills that are pending, so that we can move with similar dispatch to ensure that this House does get the new Constitution implemented well before the next general elections, next year.

Mr. Deputy Speaker, Sir, as we move to pass this Bill, an important exercise is taking place in County Hall, where the grilling of nominees for the position of Chief Justice, Deputy Chief Justice and Director of Public Prosecutions is taking place. That shows that we, in the House, are committed to the task that the people of Kenya entrusted with us, when they promulgated this new Constitution. It is my expectation and hope that the Minister will now go and come back to this House very quickly, as early as tomorrow, to bring the other Bills that are due for consideration by this House, so that we can move forward and get this Constitution implemented in the spirit that the people of Kenya want us to.

Thank you very much, Mr. Deputy Speaker, Sir.

The Minister for Medical Services (Prof. Anyang'-Ny'ong'o): Mr. Deputy Speaker, Sir, in like terms, I would like to congratulate my friend, the Minister for Justice, National Cohesion and Constitutional Affairs and this House for speedily passing the Supreme Court Bill, Bill No.10 of 2011. As my colleague has said, the Commission vetting people in the Judiciary and the Parliamentary Committee doing the same are doing a transparent and good job. Let the Kenyan society know that we want men and women at the Judiciary, not known by the kind of clothes they wear, but by the content of their character, their contribution to the struggle for democracy and liberation in this country and their vision for a new Kenya.

It is very important that having struggled for so long for a new Constitution for democracy to prevail in this country and for human rights to be respected and defended, we have men and women in the Judiciary who have not only identified, promoted and supported this democratic struggle, but also fully identify and promote a new Kenya as, indeed, is enshrined in Vision 2030 and the Constitution.

I applaud the House for what we have done today.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I rise to congratulate the Minister and, indeed, the entire Government for the manner in which this Bill has been brought, delivered and processed through this House. I also want to thank the Members of this House for the speed with which the debate on the Second Reading was held and the total agreement in terms of the essence and the need to have the Bill fast-tracked.

For the first time, we have not had pulling and pushing over amendments to the Bill. This is a milestone that for the first time in this country, we are going to have a Supreme Court. It is fitting that the Bill to bring that institution to fruition has had the least or no controversy at all.

Congratulations to this House and to everyone.

The Minister for Lands (Mr. Orenge): Mr. Deputy Speaker, Sir, I similarly want to thank the Minister for Justice, National Cohesion and Constitutional Affairs for the work he has done in successfully piloting this Bill through the stages and also doing a lot of preparatory work that goes to demonstrate the spirit and the passion that he has had in the whole process of reforming the Judiciary. I would want to urge him to continue on that road, but remember that we are always there to assist when it is necessary.

You will remember there used to be the old Court of Appeal of East Africa and that court, to some extent, was an available institution where the two countries in East Africa went overboard. Every citizen within East African region, especially on constitutional issues, would run to the old East African Court of Appeal, but down the line, the jurisdiction of the Court of Appeal on constitutional matters was repealed by, I think it was Kenya first, because of questions dealing with sovereignty, so to speak. The question was sovereignty but it was dictatorship coming in gradually to affect our way of governance. Eventually, the Court of Appeal of East Africa was abolished through the repeal of the law as it existed then.

Mr. Deputy Speaker, Sir, I am saying that the Court of Appeal will be as good as it starts its very first work in this very important institution. It will determine the type of democracy that would emerge in this country. All great democracies, beginning from the United States or even England, you find that they were able to make those strides because of the standing of the Judiciary. They had to fight in many cases for their own independence. They did not agree with the Executive all the time.

Therefore, I hope that both the Constitution and this legislation that we are passing have given the necessary autonomy to the Supreme Court which will defend the Constitution and resolve disputes between citizens and the Government or between the various levels of Government, namely, between counties and the National Government. I hope that the bad history of the past will be forever thrown into the dustbin of history. Just to give an illustration, there are a lot of Kenyans who went to detention. A lot of them were detained without trial, kept in custody for a long time, including my learned friend, Mr. Imanyara. One would have thought that if you went to the Supreme Court of the land, you would get justice in that exalted institution, but our Court of Appeal and the Judiciary tended to be more executive than the Executive and, therefore, every genuine plea or entreaty made by the citizens to that court came to naught.

Mr. Deputy Speaker, Sir, I hope that with the support of the Ministry of Justice, National Cohesion and Constitutional Affairs, those reformers within the Government and the Government as a whole will make sure that democracy is properly grounded in this country, so that when we retire we may write something - I am glad that probably when the Minister for Justice, National Cohesion and Constitutional Affairs retires he will write books about this entire process. I hope that this process will form one of the chapters that one would be proud to write about, both about what Parliament did and what the Supreme Court came to be.

The Attorney-General (Mr. Wako): Thank you, Mr. Deputy Speaker, Sir. I recollect that in 1979 when I was elected the Chairman of the Law Society of Kenya, we raised two issues; one was the setting up of a Supreme Court and two, representation on the Judicial Service Commission of the Law Society. The former has been achieved and I

am glad that I am witnessing today the completion of the exercise of having a Supreme Court in this country.

As you know, beginning yesterday, we are currently involved in interviewing the judges of the Supreme Court. Therefore, the enactment of this Bill could not have come at a better time. Therefore, I wish to congratulate the Minister for Justice, National Cohesion and Constitutional Affairs for providing leadership in ensuring that this Bill is drafted by the Attorney-General and it comes to this House in good time for it to be enacted before the appointment of the judges of the Supreme Court.

Mr. Deputy Speaker, Sir, when we talk about reforms in the Judiciary, they are going to start at the top, namely, the Chief Justice, the Deputy Chief Justice and the judges of the Supreme Court, who will now give leadership in ensuring that we have good jurisprudence in this country. As you know, up to now, we have been having conflicting judgements or points of law and we hope that with the establishment of the Supreme Court, we are now going to have leadership in that area.

With these few remarks, I support.

The Minister of State for Development of Northern Kenya and Other Arid Lands (Mr. I.E. Mohamed): Mr. Deputy Speaker, Sir, I also join my colleagues in congratulating the Minister for a job well done. Nobody knows well enough the importance of a good Judiciary than the people of northern Kenya where bills of rights and human rights have been abused. So, the hope is that we have a new dawn. We have a Supreme Court that is going to really make a big difference. The Bill is timely because the interpretation of the new Constitution is becoming an issue. Everybody is trying to interpret the Constitution. That will be a major remover of obstacles about interpretation of the Constitution.

This country has seen terrible abuses of human rights. It is my hope that once we have a clean Judiciary, as we are going to have, abuse of human rights will be a thing of the past. Every Kenyan, irrespective of where he is born in this country, will be shielded under the same law. Every Kenyan will be entitled to the same benefits as any other Kenyan. There will be no second class citizens in this country.

Thank you.

Mr. Nyambati: Thank you, Mr. Deputy Speaker, Sir. I would also like to join my colleagues in congratulating the Minister for a job well done, and for bringing a Bill which we have just passed without any amendments. I also want to congratulate the House for doing a good job. We are here to ensure that this Constitution works. What we have done today is a milestone in the history of this country. It gives every segment of our population and every person in this country a right to receive justice. We hope that what we have done here, by creating the Supreme Court, will give all Kenyans equal justice as our National Anthem says. It says: "Justice be our shield and defender." It is important that we support the Supreme Court. It is important that the Supreme Court dispenses justice to every Kenyan. There should not be any Kenyan who is more equal than others. The law should be applied equally and the Supreme Court should be a place where every Kenyan should run to for justice. This is a milestone. I congratulate the Minister and all those who have been involved.

I beg to support.

Mr. Baiya: Thank you, Mr. Deputy Speaker, Sir. I also join my colleagues in congratulating the Minister for bringing this Bill. I would also like to point out that this

Bill did not have the benefit or input of the Departmental Committee on Justice and Legal Affairs for reasons that are in public domain. The Supreme Court Bill is helpful. It helps the country to establish the legal infrastructural framework for the operation of the Supreme Court. It is also important to point out that it is not just the Bill that is necessary. Even the process and the other steps that are needed to make that court functional will be equally important. That includes the process of appointing the Chief Justice, the Deputy Chief Justice and also the Supreme Court Judges. If the court does not have the requisite independence as an institution so that it can freely arbitrate between the Executive and other State organs, it may not be able to achieve its goal. We hope that the other prayers will also facilitate to ensure that all those other actions to be undertaken as we pursue the implementation of the Constitution are done as they ought to be, so that Kenyans can have a Supreme Court that the Constitution has promised. It will be functional and it will exercise all the various rights envisaged within the Constitution. We will then still look forward to the process of appointing the Chief Justice and judges to the Supreme Court. All those processes will have a direct impact and relevance as far as the operations of the Supreme Court are concerned. We call upon all the key players to bear in mind the high principles and spirit enshrined in the Constitution so that, even as we have our problems and differences, we can anchor our solutions to the constitutional principles which we also expect the Supreme Court to become the custodian. The Supreme Court should ensure that we achieve that.

It is true that the principles of constitutionalism can never have their place, merely, in the statute books no matter how good they may be drafted, if the key players in the Government be they politicians or other leaders, do not embrace the culture. If they do not embrace the principles of integrity and so on, they will always have a way of frustrating the process. We look forward to seeing a leadership in the Judiciary that will not only embrace these values, but also a political system that will not be out to frustrate that kind of spirit. If that happens, we will still be compromising the achievements of the Supreme Court.

With those few remarks, I beg to support.

Mr. Njuguna: Mr. Deputy Speaker, Sir, I also take this opportunity to contribute, very briefly, to this important Bill. First, I would like to congratulate the Minister for Justice, National Cohesion and Constitutional Affairs for his commitment in presenting this Bill to this House. This is the first time in the life of this nation that we are going to have the desired Supreme Court, free of impunity and corruption. The image of the new Judiciary will greatly create the necessary environment for investors to come to this country. This, consequently, will also cause faster appointment of qualified Kenyans to that court. Kenyans have lost confidence in the judicial system for decades. Therefore, the creation of the Supreme Court will rekindle the lost confidence.

With those few remarks, I fully support the creation of the Supreme Court.

Mr. Deputy Speaker: Hon. Members, I am reminded that we are not in the Second Reading. We are not supposed to be debating these matters.

(Mr. Shakeel stood up in his place)

Mr. Shakeel: Mr. Deputy Speaker, Sir, we have been waiting!

Mr. Deputy Speaker: Order! Hon. Shakeel Shabbir, it is not a privilege for you to catch the eye of the Chair. You are not any more special than other Members of Parliament who are here. Under the circumstances, the Chair rules that you stay out of the House for the rest of the day.

Mr. Shakeel: Mr. Deputy Speaker, Sir---

Mr. Deputy Speaker: Order! You are a stranger now.

(Mr. Shakeel withdrew from the Chamber)

Hon. Members, you must understand that there are 222 Members of Parliament here, elected and nominated by their respective parties. No Member is any more special than the other Members.

Proceed, hon. Githae.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Deputy Speaker, Sir, let me take this opportunity to congratulate the Minister for Justice, National Cohesion and Constitutional Affairs, together with his staff and all the other people who were involved in the making of this important Bill, for a job well done. Parliament has done its job. We have given this country a Supreme Court Act and it is now up to the Judicial Service Commission to do its work. We hope that they will give us men and women of integrity, men and women who are philosophical; men and women who are well endowed in the jurisprudence of the law so that, from now on, this country can be proud to say that we have a final court of justice that will give justice to all.

Lastly, I hope that the Judicial Service Commission will not commit the same mistake it has made. It needs to give the appointing authority choices so that they can look at the people who have been nominated and who can serve Kenyans.

Thank you.

Mr. Mututho: Mr. Deputy Speaker, Sir, I want to congratulate the Minister for moving this particular Bill and now having the Act. How often we forget that these things are done by human beings! This comes from a domain, where day in, day out, we are only bashing the Judiciary and legal fraternity and everybody else. I want to congratulate him and the Attorney-General irrespective of the fact that this Constitution clearly says that he will be jobless within the next couple of days. The department under his leadership has continued working so diligently and hard. I would like the Minister to persuade his brothers in other Ministries to bring their Bills as fast as they could.

I want to thank the Minister, particularly for enduring all that to make sure that we have the Constitution. I would like also to salute the Attorney-General, whether we like him or not, he has done a good job. It is not a matter of liking him or not liking him, but it is a matter of delivery of service. They have delivered this Act and we congratulate them.

Thank you.

The Assistant Minister for Industrialization (Mr. Muriithi): Mr. Deputy Speaker, Sir, let me join my colleagues in congratulating the Minister and, indeed, the House for the speedy way in which we have gone about enacting the Supreme Court Bill. This is a fantastic day for judicial reforms. Indeed, judicial reforms are not just about the Supreme Court. We must on the administrative side, get the right number of people so that we stop moving a system with only half the magistrates, only half the State prosecutors and half the judges. Therefore, I think it is a fantastic day for Kenya that we

are taking a step forward, so that we can have a Judiciary that functions and protects, not just the dignity, but also the rights of Kenyans. I join my colleagues in congratulating and supporting the Bill.

(Question put and agreed to)

*(The Bill was accordingly read
the Third Time and passed)*

THE NURSES (AMENDMENT) BILL

Mr. Imanyara: Mr. Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered The Nurses (Amendment) Bill and approved the same with amendments.

Mr. Mututho: Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Medical Services (Prof. Anyang-Nyongo): Mr. Deputy Speaker, Sir, I would like to congratulate the Mover of this Bill, and second that the House doth agree with the Committee in the said Report.

(Question proposed)

(Question put and agreed to)

Mr. Mututho: Mr. Deputy Speaker, Sir, I beg to move that The Nurses (Amendment) Bill be now read for the Third Time.

The Minister for Medical Services (Prof. Anyang-Nyongo): Mr. Deputy Speaker, Sir, I second that the Bill be read the Third Time.

(Question proposed)

Mr. Imanyara: Mr. Deputy Speaker, Sir, as I rise to support the Mover of this important Bill, let me underline the importance of the Standing Orders that we amended and removed the restrictions that were placed beforehand on Members of Parliament to move Private Members' Bill.

Mr. Deputy Speaker, Sir, in this regard, one must pay tribute and congratulate the Member for Naivasha, hon. Mututho for spearheading the campaign in this regard, not only introducing successfully the "Mututho law", although its applications, just like we have seen with the constitutional implementation process, has had its own problems but the motive and intentions were good. He has set the pace by again moving this important Bill, and the Minister has supported it, showing that united as a House with a purpose and vision for Kenya, we can move this nation forward.

This Bill was in need of amendment for a very long time. There had been suggestions many times, but the Government has never seen the necessity of following up on the amendment that had been proposed over the years, and I wish to congratulate the Mover and the Minister for Medical Services for not opposing the same.

Mr. Lekuton: Mr. Deputy Speaker, Sir, I would also like to congratulate hon. Mututho, Minister and the Committee. The Committee and the Mover worked very closely to make sure that this amendment was realized. I would also like to thank the Minister so much for being very straight-forward with the Committee and the Mover and to realize that this amendment that was proposed in 1991 is passed after 21 years. I thank the Minister for his co-operation. I know if he was the Minister, Ministry of Health in the last ten years, this amendment would have been done long time ago.

With those few remarks, I beg to support.

The Minister for Medical Services (Prof. Anyang-Nyongo): Mr. Deputy Speaker, Sir, I would also like to congratulate both the Committee on Health and Mr. Mututho for bringing back to life a Bill that has been in the making for a long time since 1991. Indeed, it was received overwhelmingly in the Ministry, and the Chief Nursing Officer has been very handy and useful to the hon. Member, not only in proposing more amendments, but making sure that this time we get it right.

Mr. Deputy Speaker, Sir, every year we get applications from about 10,000 Kenyans to enter Kenya Medical Training Colleges to train as nurses, but we only take about 2,000. That means that 8,000 Kenyans are being disappointed every year. At the same time with an extreme shortage of nurses we need a total of 67,000 nurses in the public sector. We only have some 26,000. So, the shortage is very big.

Mr. Deputy Speaker, Sir, I hope that we will vote more money to the health sector, so that we can train more nurses. My Ministry is very ready to open more Kenya Medical Training Colleges (KMTCs) to train more nurses. Hon. Members have made proposals. The Director of KMTC and his Board are very ready to visit any facility and make suggestions as to how we can establish more facilities for training nurses in our nation. Likewise, I have said that we need at least medical schools in this country, both in the public and private sectors. At the moment, we have only eight medical schools, which means we have a big shortage of training facilities for training manpower for the health sector to serve in both the public and private subsectors.

I am saying this because one of the observations that have been made is lack of morale amongst nurses in our hospitals. This comes from being overworked. Since nurses are very few, they work two shifts. This is also as a result of lack of continuous training or in-service training, because they cannot afford that time. The changes we are making give more support in terms of budgetary allocation to the health sector. This will, obviously, make sure that the ills that this Bill is trying to cure will be less and less in future in the health Ministry.

With those remarks, I beg to congratulate and support the Mover of those amendments.

(Question put and agreed to)

(The Bill was accordingly read the Third Time and passed)

BILL

Second Reading

THE INSOLVENCY BILL

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to move that The Insolvency Bill be read a Second Time.

Mr. Deputy Speaker, Sir, only about three weeks ago, I had the privilege of moving The Companies Bill. While doing so, I mentioned that the current Companies Act is the same word by word as the Companies Act that was there in the United Kingdom in 1949. The debate that I am now moving is going to bring together the liquidation and winding up sections which were in The Companies Act and The Bankruptcy Act.

The Bankruptcy Act that we have applies to individuals and, obviously, the liquidation and winding up provisions, under The Companies Act, apply to companies. The Bankruptcy Act that is currently in our statute books came into force on 3rd September, 1930. That is about 81 years ago, and I doubt whether there is anybody in this House who is near that age. There have been dismal amendments from time to time but, obviously, it is not up to date. So, this Bill becomes important. It brings together the bankruptcy of the individual and the winding up of a company, and updates the law to bring it to the levels that we have today.

Mr. Deputy Speaker, Sir, this is another Bill which emanated from the task force on Companies, Insolvencies and Partnerships, which I appointed in the 1990s and which, as I stated for The Companies Bill, was composed purely of the stakeholders in the industry. The task force made a recommendation which resulted in The Insolvency Bill. That recommendation was reviewed further by the Law Reform Commission, and the Ministry of Justice, National Cohesion and Constitutional Affairs, who, again, called stakeholders' workshops and so on. So, this Bill has been refined to a level where I would gladly recommend it to this House.

Part II of the Bill introduces the new concept of "insolvency partnerships." You will get the definition of this in Clause 4. Part III of the Bill deals with bankruptcy and related provisions. I have just been asked what the definition of "bankruptcy" is. You will find that in Clause 21. At page 850, there is what we call "Acts of Bankruptcy". I may just read a few of them; we have Clause 21(1), which says:-

"21(1) a debtor commits an act of bankruptcy if-

- (a) the creditor has obtained a final judgement or a final order against a debtor for at least Kshs50,000 and execution of the judgement or order has not been stayed by the court---

Mr. Deputy Speaker, Sir, what would normally happen in this type of case is that if a creditor has obtained such a judgement, he would, in both cases, have really tried to execute and obtain payment of the liquidated sums. It is only when he fails to get any property from the debtor to satisfy the liquidated amount that he now goes for the final step of declaring a person bankrupt.

Clause 21(1) continues to say, in paragraph (b), that a debtor commits an act of bankruptcy if-

"(b) a debtor has been served with a bankruptcy notice and the debtor has not, within the time limits specified, complied with the requirements of the notice or satisfied the court that he has a counter-claim against the creditor."

In most cases, instead of the creditor going to the court, filing a case and obtaining judgement, he may feel that "this amount rightfully belongs to me and there is

no defence to it, which can be raised by the debtor. Therefore, the best way I can get my money back is to serve him with a bankruptcy notice”, so that if the debtor does not pay the amount of money within the notice period, the creditor can file a case in court using the bankruptcy notice in his possession.

Mr. Deputy Speaker, Sir, if I may just, again, explain the issue of bankruptcy is such a serious matter, which will, in most cases, affect the rights of the individual. In fact, according to the Constitution, you cannot stand for elections or be elected to hold public office if you have been declared bankrupt. It becomes a matter for the due process. It is only the court which can ultimately declare you bankrupt.

Part IV of the Bill deals with the appointment of the receiver, and it is set out clearly. This part also provides for the manner in which the property of a person who has been adjudged bankrupt is to be handled, including the status of the property in relation to the person adjudged bankrupt. Clause 103 provides for the manner in which payments due to the bankrupt person by a trustee should be applied, and so on.

Mr. Deputy Speaker, Sir, Part V provides for the status of the bankrupt person’s property. Should he be declared bankrupt, all the property that has passed to the bankrupt person will vest in a trustee. It also sets out the duties of the bankrupt person, and imposes a general duty to assist, to the best of his ability, in the realisation of his property.

Mr. Deputy Speaker, Sir, I am trying to go through in a hurry. Clauses 147 to 156 restrict the rights of the bankrupt person to deal with property. In other words, if you have been declared bankrupt, your right to deal with your property is limited because the paramount objective now is for the amount to be realized to pay your debt. Clauses 147 to 156 deal with that.

Clauses 175 to 179 provide for the status of contracts entered into by a person who has been declared bankrupt. There are very detailed provisions relating to that.

Mr. Deputy Speaker, Sir, Part VI of the Bill deals with discharge of bankruptcy order. In other words, all the properties have been realized and so on. He cannot remain bankrupt forever at least he should be allowed now to start life afresh.

Clauses 238 to 250 provide for the manner in which creditors may accept composition in satisfaction of the debts by the bankrupt person. It may very well be that I am to be declared bankrupt and I owe many people a lot of money. These creditors can sit down and say, “this is the status of this person. We cannot claim everything. If the property is realized, each one of us will get a portion of what this person owes us.” So, those clauses deal with how that composition can be entered into with a bankrupt person, so that if he agrees to that composition and discharges the things then the bankruptcy order can be discharged.

Mr. Deputy Speaker, Sir, Part 6(8) of the Bill outlines the acts which will cause bankruptcy offences where a court has made a bankruptcy order prior to the discharge of the bankrupt person. There is that grey period you have to be declared bankrupt. When you have not yet been discharged as bankrupt, there are possible offences that you can commit. All those offences are outlined from Clauses 298. For example, a bankrupt person who does not, to the best of his knowledge and belief, disclose all the property comprising in his estate to the official receiver or trustee commits an offence. Once you are declared bankrupt and the receiver has been appointed, it is their duty to disclose all the properties you may have in your possession. If you do not disclose all those properties

you have in your possession, then you will be committing an offence. Clause 298 will deal with you.

Mr. Deputy Speaker, Sir, the bankrupt person can also commit an offence if he conceals books of accounts and papers or falsifies those books of account. A bankrupt person also commits an offence under Clause 302 on page 967, if he fraudulently disposes off the property particularly knowing that he is bankrupt. For example, he can now start selling all his property quietly and so on, for the period of five years then he will be committing an offence under this Act. We have had cases in this country, particularly by foreigners. They commit acts of bankruptcy and then try to leave the jurisdiction of the country or they leave the country. In that case, an offence is being committed.

Mr. Deputy Speaker, Sir, a bankrupt person also commits an offence when despite knowing that he is bankrupt, obtains credit for himself or for the purpose of engaging in some other businesses. That is also an offence because the creditor under those circumstances will not be protected. A bankrupt person commits an offence where there is failure to keep proper accounts of businesses. The whole chapter deals with the offences that can be committed by a person who has been declared bankrupt. The whole purpose of that is to ensure that the creditors are protected. Although they may not be entitled to full payment, but at least all the properties of the bankrupt person can be realized and go towards clearing the credit.

Mr. Deputy Speaker, Sir, for the companies, again bankruptcy can be declared by the court or the company can voluntarily decide to declare itself bankrupt. Even where it does so, the court must give assent to that bankruptcy.

Clauses 365 to 380 provide for the constitution of a committee of inspection. If the creditors feel that a committee should be appointed to carry out an inspection of a person who has been declared bankrupt, such a committee can be set up under those clauses and the powers of the committee; what they can do and cannot do is clearly set out.

Mr. Deputy Speaker, Sir, Clauses 420 to 421 which are on page 1064 clearly state, when all the properties have been realized and you have creditors, how are they to be paid. In what order must they be paid? Which creditors are entitled to prior payments and so on? Clause 421 on page 1064 provides the order of priority on how the various persons have to be paid. Needless to say, the cost and expenses of winding up have to be paid first, followed by wages and salaries of the workers, followed by any amount due to employees as retrenchment benefits, followed by amounts due in respect of Workmen's Compensation Act and so on. Then now what is left can be divided on pro rata basis amongst the creditors. But the employee's benefits and salary are taken care of and they must be paid first before the amount that has been realized can be distributed amongst the creditors.

Mr. Deputy Speaker, Sir, I am very pleased to move this Bill. If enacted it will bring us very close to one of the best laws we have in this country on insolvency law. This Bill combined with the Companies Bill which went through Second Reading in this House recently, and the Partnership Bill which has also gone through; a combination of these three Bills I think will bring a number of our commercial laws to date.

With those few remarks, I beg to move and I will ask my dear friend to second me. He is a man who knows this matter very well. He comes from the right Ministry, he has the right experience and I am glad that he is seconding me.

The Assistant Minister for Industrialization (Mr. Muriithi): Thank you, Mr. Deputy Speaker, Sir. I rise to second that the Insolvency Bill be read a second time. In doing so, as the Mover, the Attorney-General, has explained, we are in a time where the whole legal regime under which private companies are operating is undergoing modernization. The hon. Attorney-General referred, for example, to the new Companies Bill which has already gone through the Second Reading with a lot of support from the House. These sets of law will add to the Accountants Act that sought to improve the nature of financial reporting and, therefore, improve the overall corporate governance of companies. Therefore, they will underpin our efforts to modernize this economy. Indeed, this Insolvency Bill is part of that overall modernization regime under which private companies, or the private sector, operate.

Mr. Deputy Speaker, Sir, of particular note is the effort by this Bill to encourage dissolution of non-viable enterprises, or enterprises that are inefficient; it creates a regime that encourages the survival of the efficient companies in order to maximize value in the event of liquidation.

Mr. Deputy Speaker, Sir, hon. Members will note that Part III of this Bill, which is voluminous, introduces the idea of a moratorium, or a period during which companies can go through a process of curing themselves if they are insolvent. This is seeking to change the environment under which, for example, receiverships take place. So far, in most of corporate Kenya, receiverships tend to be an exercise in which assets are sold off and a company is liquidated. This fails to make the clear distinction between insolvency and the possibility of bankruptcy. Throughout the world, three-quarters of businesses fail; businesses primarily because of cash flow issues, and not because they are not profitable. A company has the real possibility of facing bankruptcy if it is unprofitable and, therefore, is not sustainable in the long term. For most companies, the issue is insolvency, which is about inability to pay debts when they are due. But that is not always the reason why a company is not profitable. In fact, more often than not it is for reasons that can be cured by improving the management processes, introducing new capital into a company and so on. That is the reason why the modern profit law should seek to provide a moratorium so that companies are cured instead of being liquidated.

Mr. Deputy Speaker, Sir, this Bill goes further in parts VII and IX to examine and provide for how corporate rescue can happen. I think Uchumi Supermarket is an excellent case in point. You will notice that in this case, because the creditors, shareholders of this business, suppliers and everybody who was involved were able to very quickly get together and decide that they were going to rescue this business, because it was profitable--- I think the facts have shown so; perhaps, it had suffered periods of poor management and corporate governance. Therefore, the rescue, or bringing of Uchumi back to health and to the stock exchange, is exactly the reason why we need this law.

Mr. Deputy Speaker, Sir, if you compare that to the efforts we are now making in the revival of Pan African Paper Mills (PAPM) in Webuye-- This rescue of PAPM is difficult and has taken a long time; it has been the subject of many sessions of the Parliamentary Committee on Implementation. The reason is that we operate in a legal environment where corporate rescue is not expressly provided for in law. If the various

stakeholders, meaning the holders of debts, whether long-term or short-term and the shareholders are not able to quickly come to an agreement, then the rescue becomes very difficult. For example, in this particular matter of the PAPM, because there are so many creditors, both foreign and local, some long-term, some secured and others unsecured, and because of the very many shareholders and our inability, as groups in the very beginning to be able to come together as happened in the case of Uchumi, this rescue has taken so long and has been very cumbersome.

Therefore, the idea of having a well-defined legal regime within which various critical steps can be taken to ensure that businesses that have the prospect of survival – business that are profitable - are not put in a test spin, which is what tends to happen when we put companies in a receivership--- Creating that legal regime is what is necessary to modernize the legal environment in which they operate; this is line with the best practices globally.

Mr. Deputy Speaker, Sir, if you consider the totality of these Bills, the Accountants Act, the new Companies Bill that has gone through Second Reading the net effect is to be able to create an environment that allows us to rapidly modernize this country and build momentum for growth, thereby creating jobs and having an environment in which we encourage the private sector to grow.

Mr. Deputy Speaker, Sir, we have recently been criticized on a variety of issues. We make efforts to encourage investments by Kenyans as well as by investors from the region and overseas. When we are evaluated by others on the climate under which businesses operate, and by those who do the investment and by those who look at the overall environment in which business is done, one of the key issues that both the private sector as well other partners raise is, in fact, this very need to modernize the Company law and the Insolvency law, so that we are in tandem with what happens in other jurisdictions.

Mr. Deputy Speaker, Sir, when this is achieved, several things will happen. Those things are that first, we become a more attractive investment destination not just for foreign direct investments, but also for the much more crucial domestic investments. You will notice that even though in the State Law Office we have well over half a million business names, very few entities choose to formalize themselves by becoming private or public companies. Part of the challenge has been because the previous legal environment that we are seeking to---

ADJOURNMENT

Mr. Deputy Speaker: Order! Hon. Members, it is now time to interrupt the business of the House. The House is, therefore, adjourned until tomorrow, Wednesday, 8th June, 2011 at 9.00 a.m.

The House rose at 6.30 p.m.