

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 9th June, 2011

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

PRAYERS

### QUESTION BY PRIVATE NOTICE

DEPORTATION OF MS. CLARA GUTTERIDGE

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, I beg to ask the Minister of State for Immigration and Registration of Persons the following Question by Private Notice.

Could the Minister explain the circumstances in which Ms. Clara Gutteridge, a human rights investigator, was deported from Kenya?

Mr. Deputy Speaker, Sir, as I ask the Question, I need to point out that the last time this Question was called out, the Minister gave an answer identical to the one he has given me today. The Chair ordered that he goes and prepares a proper answer. He has, however, brought an answer identical to the one that was rejected by the House. I seek your direction on how we shall proceed when an order or direction has been given by the Chair that the Minister goes and brings another answer, but he comes back to the House and gives the same answer in total contempt.

**Mr. Deputy Speaker:** Mr. Assistant Minister, is it true that the answer you brought to the House is identical to or the same as the one you delivered last time?

**The Assistant Minister, Ministry of State for Immigration and Registration of Persons** (Mr. Baya): Mr. Deputy Speaker, Sir, when this Question was called out in this House either the Minister or myself were in. However, somebody answered on our behalf and I was given this answer today. I have discussed with Mr. Imanyara before the beginning of this sitting. I would like to request more time so that we can go deep into this Question.

**Mr. Deputy Speaker:** Mr. Assistant Minister, you will realize that this is a Question by Private Notice. The nature of such Questions is that they have some urgency and that has to be appreciated by the Government side.

**The Assistant Minister, Ministry of State for Immigration and Registration of Persons** (Mr. Baya): Mr. Deputy Speaker, Sir, I do realize the urgency involved when it is a Question by Private Notice. However, as a result of the circumstances that I have just mentioned, I request that we are given up to Tuesday, next week.

**Mr. Deputy Speaker:** Mr. Imanyara, are you comfortable with Tuesday, next week?

**Mr. Imanyara:** It is okay, Mr. Deputy Speaker, Sir. I would also prefer that the Minister himself who has penned this answer comes to answer this Question. I have no problem.

**Mr. Deputy Speaker:** The Chair directs that the Question is deferred to Tuesday, next week.

*(Question deferred)*

## ORAL ANSWERS TO QUESTIONS

*Question No.752*

### NUMBER OF INDUSTRIAL ESTATES IN KENYA

**Mr. Anyanga** asked the Minister for Industrialization:-

(a) whether he could provide a list of all industrial estates in all districts in Kenya; and,

(b) when the Government will allocate funds for the construction of Industrial Estates in Nyatike District to help spur economic growth aimed at achieving the goals of National Development and Vision 2030.

**The Assistant Minister for Industrialization** (Mr. Muriithi): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Kenya Industrial Estates (KIE) has built a total of 28 industrial estates which contain 480 sheds.

(b) The Government plans are in two parts. In the first instance we are constructing a Constituency Industrial Development Centre (CIDC) and this is nearing completion as part of the Economic Stimulus Programme (ESP) that the Government has been implementing. In the second part of our plans, the KIE is working with the hon. Member to secure land so that we could progress to building an industrial estate.

**Mr. Anyanga:** Mr. Deputy Speaker, Sir, may I thank the Assistant Minister for that answer. However, he is not being honest and the answer that he has given does not flow. With me here is a letter written by the Ministry and it reads: "It is in view of this that we request you to allocate a piece of land of, at least, 2.5 acres."

Mr. Deputy Speaker, Sir, the land is already there. Could the Assistant Minister come out clearly and tell this House when they will start the construction of this industrial estate? I am not talking about the ESP but I am talking about the KIE shades/parks which have been indicated clearly in this letter.

I wish to table this letter.

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

Could the Assistant Minister come out clearly and tell us the truth as to when they will start the construction of the KIE sheds and parks?

**Mr. Muriithi:** Mr. Deputy Speaker, Sir, I am a bit disappointed by the direction the hon. Member has taken because this letter was initiated by ourselves. In January, this

year we asked the hon. Member to assist us find land in his constituency so that we can embark on proper planning. As I have said, I am a bit surprised. But be that as it may, we have asked for this land and I know that the hon. Member has also made an effort. He has said that land is available and we need to formalize it because we cannot construct the KIE sheds until there is fullness. It is not about the land being available, but the documentation on the land needs to be proper.

With regard to the CIDCs, we are constructing them in all the constituencies and most of them are now complete. We are now equipping them. This is part of our overall strategy. Therefore, one is to do with the KIE and the other is to add on by way of the CIDCs. We will progress once documentation is completed.

Mr. Deputy Speaker, Sir, for example, we have just completed an estate in Kipkelion this year with 12 sheds. We have also completed an estate in Kakamega with 22 sheds. We have also added four sheds in our facilities here at the Nairobi Industrial Area. So, this is part of our overall strategy.

**Mr. Njuguna:** Mr. Deputy Speaker, Sir, while appreciating the good answer given by the Assistant Minister to this Question, could he indicate to this House when they are likely to start such an industrial estate in Lari Constituency? This is because he has given that impression in this House.

**Mr. Deputy Speaker:** Order, the Member for Lari! That is a different Question! File your Question and the Assistant Minister will answer it.

**Mr. Njuguna:** Mr. Deputy Speaker, Sir, I thank you for the opportunity to request the Assistant Minister to indicate to this House the measures the Ministry has put in place to establish an industrial estate in Lari Constituency in particular because that impression has come out.

**Mr. Deputy Speaker:** Order, Member for Lari! You cannot hijack somebody's Question unless you want to ask a Question on broad policy. If you want to ask specifics on a given constituency or district, then ask that specific question. File the Question and let it go through the process. Let the Assistant Minister go back and come with an answer because you do not expect him to have everything concerning 210 or 290 constituencies in future at his finger tips.

**Mr. Shakeel:** Mr. Deputy Speaker, Sir, out of the 27 industrial estate units that he has mentioned in the answer, how many of them are sold? What is the net of the sale? On what basis have they been sold and to whom?

**Mr. Muriithi:** Mr. Deputy Speaker, Sir, out of the 480 sheds---

**Mr. Shakeel:** On a point of order, Sir. My question is about the 27 sheds built in Kisumu.

**Mr. Deputy Speaker:** Order, Mr. Muriithi! You had already given that in your answer about the sheds in Kisumu.

Proceed.

**Mr. Muriithi:** Mr. Deputy Speaker, Sir, if I understand the hon. Member correctly, his question relates--- The Member is aware that out of the 28 estates that we originally constructed, a variety of the sheds in those estates were privatized through a previous policy in 1990/1991. Out of the 480 sheds that existed then, 91 of them were left under the ownership of the KIE.

However, I do not have the specific number. In each industrial estate, we have two or three sheds that belong to the KIE. However, I would seek the Member's indulgence so that we could give him the specific figure in Kisumu.

**Mr. Pesa:** Mr. Deputy Speaker, Sir, in view of the fact that in Nyanza Province we have six counties and the sheds are distributed among three of them, what is the Government's plan to establish other estates in the three remaining counties?

**Mr. Muriithi:** Mr. Deputy Speaker, Sir, if you look at the CIDCs, you will find that we have done four workshops under Phase I. However, the CIDCs are designed to house approximately 16 workshops. So, this is Phase I and they are in every constituency. In addition, at the moment, we are identifying one of the CIDCs in which most of the services to be provided to the small industries would be based in each county. Therefore, our plan which we are implementing at the moment covers every county.

**Mr. Anyanga:** Mr. Deputy Speaker, Sir, I am happy that the Assistant Minister has confirmed that the Government will soon construct an industrial estate in Nyatike Constituency. Could he tell this House when the Ministry is going to allocate funds for the same?

**Mr. Muriithi:** Mr. Deputy Speaker, Sir, this will be in the next financial year, considering where we are in this financial year. Just to mention, this year in the Estimates that were tabled, we are providing Kshs400 million to the Kenya Industrial Estates for this work. There is already a workplan; therefore, it will be in the next financial year. What we expect is that planning is completed well ahead of time so that we can do so.

**Mr. Deputy Speaker:** Next Question by Mr. Namwamba!

*Question No.936*

STATUS OF TEACHERS EMPLOYED ON CONTRACT BY TSC

**Mr. Namwamba** asked the Minister for Education:-

(a) to state to the House the status and terms of service for teachers employed by TSC on contract terms in the 2009/2010 financial year;

(b) when and how the Government plans to absorb the contract teachers on permanent and pensionable terms; and,

(c) what the success rate of the employment on contract initiative is and what its fate is.

**The Assistant Minister for Education** (Mr. Mwatela): Mr. Deputy Speaker, Sir, I would like to say that the reply is long because of the nature of the Question.

I beg to reply.

(a) The Teachers Service Commission (TSC) employed 18,060 teachers on contract terms under the Economic Stimulus Programme (ESP). The ESP was meant to spur economic growth by creating jobs and income in all the constituencies. The terms of the contracts are as follows:

1. The teachers engaged shall be paid monthly salary of Kshs10,000 for primary school teachers and Kshs15,000 for post-primary teachers. The salary paid is all inclusive.

2. The contract period shall be three years with the option of renewal at the sole discretion of the TSC. The TSC shall meet the contractual teachers' monthly National

Hospital Insurance Fund (NHIF) and also National Social Security Fund (NSSF) contributions.

3. The teachers engaged shall be entitled to paternity or maternity leave and also sick leave.

4. The TSC or the person engaged can at any given time, terminate the contract by giving to either party three months notice or one month salary in lieu of notice.

5. The person engaged shall abide by the provisions of the TSC Code of Regulations for teachers and any other policy for the Public Service.

(b) The Ministry of Education plans to absorb the teachers on contract to permanent and pensionable terms immediately Treasury provides funds in the next financial year. The Ministry in a letter dated 31<sup>st</sup> March, 2011, on 2011/2012, 2013/2014 medium term budget requested for Kshs6.556 billion from Treasury for the recruitment of an additional Kshs10,000 and for absorbing the contract teachers into permanent service.

I beg to table the letter.

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

In the process of replacing teachers who exit through natural attrition, teachers on contract are offered the first priority in the recruitment process.

(c) The initiative has reduced the under-staffing in our schools greatly. However, some teachers have turned down the offer citing low remuneration. Concerns have also been raised about the level of commitment of these teachers given that they have similar qualifications and offer the same services with other teachers yet their remuneration is below that of other teachers.

The contract teachers who turned down the offer of employment, resigned or deserted duty as at 21<sup>st</sup> May, 2011 are as follows:-

Staffing Post-Primary	-	199
Staffing Primary	-	69
Total	-	268

This total is out of 18,060 which is fairly negligible.

**Mr. Namwamba:** Mr. Deputy Speaker, Sir, I thank the Minister for that answer but it is really distressing to look at the terms of service for these teachers. These are people who have spent time in school and training and yet they are remunerated at the rate of Kshs10,000 all inclusive. This is really distressing and one wonders how these teachers make ends meet. But I am happy that the Assistant Minister indicates that they have requested for resources to absorb these teachers to permanent status. I acknowledge this letter in which the Ministry states - allow me to put it on record:-

“It is our intention to convert the contracted teachers to permanent status and recruit an additional 10,000 in the Financial Year 2011/2012 to address the resultant shortage in the subsequent financial year. This will require an additional Kshs6.5 billion.”

Therefore, my question to the Assistant Minister is that yesterday the Deputy Prime Minister and Minister for Finance submitted the budgetary estimates of the Government to this House; I would wish him to confirm if indeed this request has been

granted by the Government and, therefore, we should expect the contract teachers to cross over to permanent status.

**Mr. Mwatela:** Mr. Deputy Speaker, Sir, I have not appraised myself with the details of the Budget. As we know, the Ministry is large. I would say that the relevant Committee of the House will, indeed, get the opportunity to address this issue in their own right and they would be very helpful in ensuring that this allocation is provided for in the actual Budget.

**Mr. Letimalo:** Mr. Deputy Speaker, Sir, if the purpose of recruiting teachers on contract as per the Economic Stimulus Programme (ESP) was to create employment and provide income to the unemployed, why is the Government, through the TSC, not ready to either renew their contracts or absorb them on permanent status? Why is it conditional when the purpose was to create employment for the youth?

**Mr. Mwatela:** Mr. Deputy Speaker, Sir, if the hon. Member listened to the answer I gave, these teachers who are on contract terms are the ones who are given preference when it comes to transforming them into permanent terms. So, I really do not see the problem that the hon. Member is raising because when it comes to interviews, they get preference and not the ones that are freshly coming in.

**Mr. M'Mithiaru:** Mr. Deputy Speaker, Sir, the Assistant Minister has just told the House that when there is a vacancy in the permanent employment of teachers, they will give preference to the teachers on contract. Could he confirm whether the TSC employed teachers this year and, if so, on what terms?

**Mr. Mwatela:** Mr. Deputy Speaker, Sir, there were some teachers who were employed. Those who were employed followed those terms that I have mentioned.

**Mr. M'Mithiaru:** On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead the House because those who were employed this year were employed on permanent terms and not on contract?

**Mr. Deputy Speaker:** Mr. Mwatela, are you sure you have your facts right?

**Mr. Mwatela:** Yes, I am sure. What I am saying is that those who were employed on permanent terms may have been working on contract which was transformed to permanent status. Those who were given priority were the ones who were already in the service as contract teachers.

**Mr. M'Mithiaru:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is misleading the House. Could he bring a letter of appointment of those teachers so that the House can confirm that they were not employed previously? They were new entrants and yet they were employed on permanent terms leaving those who were on contract.

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

**Mr. Deputy Speaker:** The Assistant Minister is responding to a point of order.

**Mr. Mwatela:** Mr. Deputy Speaker, Sir, if you give me time, I will be able to produce those letters.

**Dr. Nuh:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister, in answering the question posed by Mr. M'Mithiaru, said that the ones who were employed may have been on contract. So, is he in order to mislead the House again by saying that he has proof when he himself alluded to the fact that they "may" which might mean may or may not.

**Mr. Mwatela:** Mr. Deputy Speaker, Sir, I am not evading the question. Take the example of a school that requires Mathematics and Chemistry teachers and none of the teachers who have applied there is on contract. You do not hire a person who has not made a request for the job. That is why I am saying “may” but if the person was already on contract then he gets the opportunity.

**Mr. Deputy Speaker:** Mr. Namwamba, could you ask the final supplementary question on the same?

**Mr. Namwamba:** Mr. Deputy Speaker, Sir, there are two serious things to confirm here. The Assistant Minister admitted, and let me quote him in this answer:-

“Concern has also been raised about the level of commitment of these teachers given that they have similar qualifications and offer the same services with the other teachers, yet their remuneration is below that of other teachers.”

The Ministry is admitting that the status of these teachers is impacting negatively on their performance. It is also clear that the Government is going on to employ newcomers and ignoring those who are already on contract. Could he give a very unequivocal assurance that whatever amount of money the Government avails to the Ministry for purposes of recruitment, utmost priority will be given to absorption of these contract teachers?

**Mr. Mwatela:** Mr. Deputy Speaker, Sir, we have to be careful. In the case of a primary school, the answer is “yes” because there are no specific qualifications as such. However, in post-primary institutions, we cannot do that because there are special requirements for each school and people must apply for those particular jobs in the particular stations.

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. The hon. Member wanted the Assistant Minister to confirm whether in view of the enhanced budgetary allocation to the Ministry of Education, he was going to direct the TSC to employ the teachers who are on contract. The Assistant Minister said that he was not able to say that because he has not apprised himself with what he was given by the Treasury. Is he in order to refuse to answer that question when all that is required is for him to direct the TSC to employ these teachers as a matter of priority? Is it in order for him, 48 hours after the Financial Estimates were tabled in this House, to feign ignorance?

**Mr. Deputy Speaker:** Mr. Assistant Minister, you can react to the point of order!

**Mr. Mwatela:** Mr. Deputy Speaker, Sir, the Financial Estimates were tabled yesterday. In answering the hon. Member’s question, I said that according to the new Constitution, the TSC is a corporate body and, therefore, I cannot order them to do things contrary to what is provided in the Constitution. So, the TSC will have to act in its own right as the Commission that is charged with the responsibility of employing teachers. I cannot order them!

**Mr. Namwamba:** On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to engage in double-speak by saying one thing in his written answer and another thing on the Floor of the House? In his own written answer, he says:-

“The Ministry of Education plans to absorb the teachers on contract on permanent and pensionable terms immediately the Treasury provides funds in the next financial year.”

Mr. Deputy Speaker, Sir, is the Assistant Minister in order to now separate secondary schools from primary schools instead of giving an unequivocal commitment,

in accordance with this written answer, that whatever amount of money Treasury avails, first priority, without splitting hairs, will be given to the contract teachers? Since this is a matter on which the Assistant Minister does not seem to be very clear, would I be in order to request that it be referred to the relevant Departmental Committee to be dealt with; with the urgency and seriousness it deserves?

**Mr. Mwatela:** Mr. Deputy Speaker, Sir, I do not know why it is becoming so difficult. What I am saying is that, in primary schools “yes” but in secondary schools, the hon. Member knows what happens. Teachers apply for positions as advertised depending on availability of vacancies in different schools. A school may have a position and teachers who are not necessarily serving on contract may apply. So, you cannot give such a place to somebody who has not applied. You have to give employment to the people who have applied for the jobs. That is the difference.

**Mr. Namwamba:** On a point of order, Mr. Deputy Speaker, Sir. With all due respect, I think the Assistant Minister is absolutely out of order because these are not new entrants into the service. These are teachers who are already in the service. They have already been assigned responsibilities in their respective schools. The Ministry can issue a policy directive to absorb these teachers even on affirmative action basis. Could the Assistant Minister unequivocally assure these 18,060 young Kenyans, who are struggling out there, that they will be absorbed within this financial year? What is so difficult in him doing so?

**Mr. Deputy Speaker:** Mr. Assistant Minister, in your written answer and in response to part (b) of the Question, you say that the Ministry of Education plans to absorb the teachers on contract on permanent and pensionable terms immediately the Treasury provides funds in the next financial year. As part of supportive information that you have given to the Questioner is a letter that was signed by your Ministry to the Treasury, which in part says:-

“It is our intention to convert the contracted teachers to permanent status and recruit an additional 10,000 teachers in the Financial Year 2011/2012 and address the resultant shortage in the subsequent financial year---”

Are you in a position to affirm this position?

**Mr. Namwamba:** Mr. Deputy Speaker, Sir, you will, indeed, notice from that letter that the primary basis of the request to Treasury is absorption of the contract teachers. So, there is no reason as to why the Ministry would receive those funds and apply them for purposes other than the reason for which the funds were sought from the Treasury, which is absorption of these contract teachers. So, really, let him just confirm what is in both the letter and his written answer, that these contract teachers will be given absolute priority.

**Mr. Deputy Speaker:** Mr. Assistant Minister, what do you have to say?

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. The reason as to why we are insisting is that we want a clear answer to the effect that these young people are going to be employed. Would I be asking for too much if I requested that we defer this Question for the Assistant Minister to go back and study the Budget, come back on Tuesday next week and assure Kenyans that our people are going to be absorbed into permanent employment?

**Mr. Deputy Speaker:** Mr. Assistant Minister, do you wish to be given some more time, so that you can come up with a more comprehensive answer?



**Mr. Mwatela:** Yes, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Mr. Assistant Minister, are you comfortable with Tuesday next week?

**Mr. Mwatela:** Mr. Deputy Speaker, Sir, Thursday next week will be better.

**Mr. Deputy Speaker:** Hon. Questioner, is Thursday next week okay with you?

**Mr. Namwamba:** Mr. Deputy Speaker, Sir, what we want is these young Kenyans to get unequivocal assurance. So, Thursday next week is good enough.

**Mr. Deputy Speaker:** That will be in the body of the answer itself but, in order for you to be able to prosecute the matter adequately, is Thursday an appropriate date for you? You are the Questioner!

**Mr. Namwamba:** Yes, it is, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** It is directed that the Question appears on the Order Paper on Thursday next week.

*(Question deferred)*

**Mr. Deputy Speaker:** Hon. Members, in line with the provisions of the Standing Orders, this is the First Allotted Day for the Financial Statement which has to commence not later than 3.30 p.m. I will defer the following Questions to Tuesday, next week.

*Question No.919*

PAYMENT OF TERMINAL DUES TO  
FORMER EMPLOYEES OF NYAYO TEA ZONES

*(Question deferred)*

*Question No.926*

LIST OF TENDERS FOR CONSTRUCTION OF  
FRESH PRODUCE MARKETS

*(Question deferred)*

**Mr. Deputy Speaker:** Hon. Members, the Chair will only entertain one Statement from the Deputy Leader of Government Business in the House, Mr. Kimunya. All other Statements will be deferred to other dates.

**The Minister for Transport (Mr. Kimunya):** Mr. Deputy Speaker, Sir, could I just have a minute? The Statement was being updated to reflect the agreements we made in the House Business Committee.

**Mr. Deputy Speaker:** How many more minutes?

**The Minister for Transport (Mr. Kimunya):** Within another five minutes, it should be ready.

**Mr. Deputy Speaker:** And you expect the House to be---

**The Minister for Transport (Mr. Kimunya):** In the meantime, we can receive one Statement that was promised to Ms. Karua.

**Ms. Karua:** I am just offering the way out! I can see that Mr. Ojode is ready with my Statement!

**Mr. Deputy Speaker:** Mr. Ojode, you have two minutes!  
Proceed!

## MINISTERIAL STATEMENT

### BURGLARY IN THE OFFICES OF THE KENYA ALLIANCE OF RESIDENTS ASSOCIATION

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Deputy Speaker, Sir, Ms. Martha Karua asked for a Ministerial Statement from my Ministry with regard to burglary in the offices of the Kenya Alliance of Residents Association located off Ngong Road.

In her statement, she wanted to know whether the incident is a political thuggery arising out of Mr. Mutoro's activism on the rising cost of living. She further wanted to know the Government's action to curb such incidents.

Mr. Deputy Speaker, Sir, I wish to state as follows; that on 25<sup>th</sup> May, 2011, at about 2.30 a.m. a gang of six, one allegedly armed with a pistol gained entry to the Kenya Alliance of Residents Association (KARA) offices by jumping over the perimeter wall. They tied up the security guard, an employee of Full Circle Limited before stealing the following items: seven HP computers, two LG radios, two LG televisions, two blackberry mobile phones, one Orange mobile phone, three Nokia mobile phones, one Ramtons microwave, one gas cylinder, one laptop and one wall clock. All valued at Kshs657,874.

The matter was reported at Kilimani police station under case file No.141/405/2011 opened for robbery with violence, contrary to Section 296(2) of the Penal Code. So far, no arrest has been made, but police have stepped up patrols and intelligence collection to help reduce such incidents.

Initial investigations carried out by police indicate the incident was an ordinary act of crime unrelated to Mr. Mutoro's activism on the rising cost of living. Police are following very crucial leads with a view to recovering the stolen items and then arresting the culprits immediately.

Thank you.

**Ms. Karua:** Mr. Deputy Speaker, Sir, that is a strange Statement coming from the Assistant Minister. Investigations have not led to the arrest of anyone yet he is convinced that there are investigations which can show that this is an "ordinary crime" as he says and not an act of political thuggery. What type of investigations are those because we know that during the dark KANU days, this is how the system intimidated activists? It is not only the KARA residence that has been broken into; you will recall the burglary and injury to my supporter about two months ago. What sort of investigations are these that do not catch the thief, but exonerate the Government?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Deputy Speaker, Sir, let me assure the hon. Member that we are getting very good leads. I would not want to divulge any information as early as now. If I do so, then it will prejudice the investigation. Allow me to continue with the investigation. Allow me also to assure the hon. Member that the Government is not

sleeping. The Government is out to get these fellows and, within a week, I will report to her personally that I have managed to arrest these fellows.

**Ms. Karua:** On a point of order, Mr. Deputy Speaker, Sir. This matter is now before the House. Instead of promising to report to me personally which could also be a security situation, would he be in order to report to the House?

*(Laughter)*

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Deputy Speaker, Sir, I do not have any problem with that. However, I would just ask her to be patient because this is a very heavy matter because I need to arrest these fellows.

**Mr. Deputy Speaker:** Do you wish to have this same Statement again listed for another day?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Deputy Speaker, Sir, there is no need of having another Statement on this matter. It seems I have so many Statements to make. Like today, I have got seven Statements to make including the one of G.I, my good friend. I can as well give the report on the findings while dealing with other Statements which are more or less related.

**Mr. Deputy Speaker:** Could you manage to do it within the next two weeks?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Yes, Mr. Deputy Speaker, Sir.

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

**Mr. Mbadi:** On a point of order, Mr. Deputy Speaker, Sir. The hon. Assistant Minister has just referred to an hon. Member as “G.I”. Could I know who is “G.I” in this House?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Deputy Speaker, Sir, for new comers, they might not be aware that we have some abbreviated names for good friends. “G.I” simply means hon. Gitobu Imanyara!

*(Laughter)*

## POINT OF ORDER

### STATUS OF THE TAX ACCOUNT AT TREASURY

**Mr. Mbadi:** On a point of order, Mr. Deputy Speaker, Sir. On 21<sup>st</sup> April, 2011, I did seek Ministerial Statement from the Deputy Prime Minister and Minister for Finance and there was a ruling which was supposed to come from the Chair. I am worried that we are soon debating Financial Estimates for 2011/2012 where we will be required to approve taxation on Kenyan people. I have a concern with the way the reporting of tax revenue has been going on in this country. I would be reluctant to give that authority until my Statement is brought. I need to be convinced that the reporting to Kenyans has been accurate and fair.

**Mr. Deputy Speaker:** Order, hon. Members. Mr. Mbadi your concerns have been taken into consideration by the Chair and there will be a ruling on the same on Tuesday, next week.

Mr. Kimunya!

## **MINISTERIAL STATEMENT**

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 14<sup>TH</sup> JUNE, 2011

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, pursuant to the provisions of Standing Order No.36(4), I take this opportunity to make the following Statement with regard to business for the week commencing Tuesday 14<sup>th</sup> June, 2011.

The following Bills that are currently before the House will be considered for debate: the Insolvency Bill, continuation of debate on Bill No.22 of 2010. We will continue debate on the Independent Offices Bill, Bill No.11 of 2011. I would like to appeal to hon. Members that this is a very important Bill. If you could finish discussion and approval of it, it would be so good to have the Independent Offices Bill in place before the next financial year, so that we will start a new financial year with these offices filled. There is also the Public Appointments Parliamentary Approval Bill, Bill No.3 of 2011.

On Motions, the House will consider debate on the following Motions: Motion to discuss the Financial Statement for the Fiscal Year, the continuation of debate beginning today; Motion to adopt the report on the Constitution Implementation Oversight Committee (CIOC) on the approval of the nominees to the offices of Chief Justice, Deputy Chief Justice and Director of Public Prosecutions.

We will also be considering Private Members Motions. There is a Motion by Mr. Jeremiah Kioni and a Motion by Ekwee Ethuro that will be discussed on Wednesday morning.

The House Business Committee (HBC) will be convening again on Tuesday, 14<sup>th</sup> of June to consider business for the rest of the week, which will include a Vote on Account. As you know, yesterday we had the presentation of the Financial Statement. We have got to discuss the Vote on Account on Thursday. We will also have a potential adjournment Motion on Thursday, so that we can facilitate the Committee on the Budget to have enough time to look at the Budget and for Members to also appear before the Committee.

Mr. Deputy Speaker, Sir, that is roughly the programme for the rest of the week. Thank you very much.

**Mr. Deputy Speaker:** Next Order!

## **PROCEDURAL MOTIONS**

EXEMPTION OF BUSINESS FROM PROVISIONS OF S.O. NO.148(1)

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to move the following Procedural Motion:-

THAT, the business appearing on today's Order Paper as Order Nos.9, 10 and 11 be exempted from the provisions of Standing Order No.148(1), which gives the debate on the Financial Statement precedence over all other business.

Mr. Deputy Speaker, Sir, this is a very procedural matter, because, as you know, we are not supposed to be proceeding on any other business except debate on the Financial Statement. Because we need to move these three other Motions, I would like to ask for the indulgence of the House that we actually do it without any further ado. We move these three Motions starting with this first one that I have moved, so that by 3.30 p.m. we will be ready to move debate on the Financial Statement.

I would like to just ask the Minister for Justice, National Cohesion and Constitutional Affairs to just do the traditional bow.

*(Mr. M. Kilonzo bowed)*

**Mr. Deputy Speaker:** The hon. Minister for Justice, National Cohesion and Constitutional Affairs will second! You do not direct him to do "the traditional bow!" What is "the traditional bow?"

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, with your permission, my bow is actually seconding the Motion under the Standing Orders.

*(Question proposed)*

*(Question put and agreed to)*

REDUCTION OF PUBLICATION PERIOD: THE INDEPENDENT  
OFFICES (APPOINTMENT) BILL

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order No. 107, this House orders that the publication period of the Independent Offices (Appointment) Bill, Bill No.11 of 2011, be reduced from 14 to 7 days.

Mr. Deputy Speaker, Sir, the essence of this Motion is to facilitate the commitment of this Bill to the relevant Committee, so that it can start looking at it and, hopefully, we can debate and finalise debate on this Bill by next week. That way, we will have this law in place before the next financial year, or, at least, before the House goes on adjournment because this is the Bill that is going to create the offices of Controller of Budget as well as the Auditor-General. These are two very critical offices that we need as part of our budgeting and accountability processes. It will be good to have them at the beginning of the financial year.

Mr. Deputy Speaker, Sir, I beg to move and ask the Minister for Justice, National Cohesion and Constitutional Affairs to second.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo) seconded.

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Deputy Speaker, Sir. In respect to that Bill, it stands committed to the relevant Departmental Committee, yet the Justice and Legal Affairs Committee is not in place. Could we, please, get your direction?

**Mr. Deputy Speaker:** It is a procedural Motion. This is essentially nothing but a procedural Motion!

*(Question proposed)*

*(Question put and agreed to)*

**Mr. Deputy Speaker:** Next Order!

## **BILL**

### *First Reading*

#### THE INDEPENDENT OFFICES (APPOINTMENT) BILL

*(Order for First Reading – Read the First Time and  
Ordered to be referred to the relevant Departmental Committee)*

**Mr. Deputy Speaker:** Next Order!

**Mr. Imanyara:** On a point of Order, Mr. Deputy Sir. You did not go into the formality of sending the Bill to the Committee.

**Mr. Deputy Speaker:** Hon. Members, with the ruling that was given by the Speaker previously, on a similar Bill, this Bill now stands committed to the Constitutional Implementation Oversight Committee (CIOC).

Next Order!

## **PROCEDURAL MOTION**

#### EXTENSION OF PERIOD FOR SELECT COMMITTEE ON COST OF LIVING

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to move the following Procedural Motion:-

THAT, the period of the Select Committee on Cost of Living be extended by two (2) months in order to enable the Committee conclude its activities as per the terms of reference of its establishment.

Mr. Deputy Speaker, Sir, we have received communication from the Chairman of the Committee, the hon. Ababu Namwamba, that the Committee is making very good progress, but it requires extra time, so that they can wind up, complete all their activities and report in a comprehensive manner to this House. I believe that we have no objection to that extension of time. I hope hon. Members will support the extension.

I beg to move and ask the hon. Namwamba to second and give any further information to the House.

**Mr. Namwamba:** Mr. Deputy Speaker, Sir, I thank the Leader of Government Business. I just want to put it on record that the Committee has taken every effort possible to complete its work within the time that it was initially granted, which was 30 days. Indeed, we have prepared a preliminary Report which has detailed a total of 21 emergency measures. I am happy that some of the issues that the Committee had already noted as emergency, received good attention from the Treasury going by the Statement read by the Deputy Prime Minister and Minister for Finance in this House yesterday.

**Mr. Deputy Speaker:** Hon. Namwamba, whereas the Chair would want to appreciate the very lengthy contribution that you are making, this is a Financial Statement Day.

**Mr. Namwamba:** Mr. Deputy Speaker, Sir, I am just concluding by saying that the Committee would be most appreciative to get the additional time to complete its work in accordance with its terms of reference.

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

*(Question proposed)*

*(Dr. Khalwale stood up in his place)*

**Mr. Deputy Speaker:** Dr. Khalwale, do you wish to oppose this Procedural Motion?

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

**Mr. Deputy Speaker:** Hon. Khalwale, this is an Allotted Day for the Financial Statement.

Proceed!

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, I believe, and would like the House to forgive me, that this Select Committee was formed in response to the rising cost of living in the country today. If that was the case, then it is important that we appreciate that because of that rising cost of living, Kenyans are suffering and becoming sick due to malnutrition and, indeed, others might be dying. It would, therefore, be superfluous for us to extend the time of this Committee. They should, in fact, be forced to table their findings and recommendations immediately.

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

**Mr. Mbadi:** Mr. Deputy Speaker, Sir, I just want to support quickly by answering Dr. Khalwale. Actually, we have a preliminary Report which I think will be tabled either tomorrow or on Tuesday, depending on the Chair. This issue will recur again and so, the Committee wants to recommend some long-term measures. That is why we need some additional time.

*(Question put and agreed to)*

## MOTION

REFERRAL OF FINANCIAL STATEMENT AND OTHER

DOCUMENTS TO BUDGET COMMITTEE

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, the Financial Statement and all the other documents tabled on Wednesday June 8, 2011 for Fiscal Year---

**Mr. Ogindo:** On a point of order, Mr. Deputy Speaker, Sir. Thank you for your indulgence. I rise on a point of order in pursuit of this House's compliance with Article 221(4) of the Constitution. It reads:-

"Before the National Assembly considers the Estimates of Revenue and Expenditure, a Committee of the Assembly shall discuss and review the Estimates and make recommendations to the Assembly."

Mr. Deputy Speaker, Sir, I want to fortify that by referring you to Article 3 of the same Constitution. It reads:-

"Every person has an obligation to respect, uphold and defend this Constitution."

Mr. Deputy Speaker, Sir, I want to further refer you to Standing Order No.152, which reads:-

"(1) Upon being laid before the National Assembly, the Annual Estimates shall stand committed to the respective Departmental Committees according to their mandates."

(2) Each Departmental Committee shall consider, discuss, review the Estimates committed to it under this Standing Order and submit its report thereon to the House within 21 days after they are first laid before the House."

Mr. Deputy Speaker, Sir, it is important that this House does not undermine itself. I want to thank the Minister for his Budget Speech yesterday. But that Budget Speech was delivered under circumstances that said "Presentation of the Financial Statement for the Fiscal Year 2011/2012, pursuant to Standing Order No.148(1) and (2)." We have agreed that the Constitution has since changed. It is imperative that we comply with the Constitution.

Mr. Deputy Speaker, Sir, the import of Article 221(4) is to allow this House to discuss and review the Financial Statement. The Motion that the Minister is just about to move reads:-

"THAT, the Financial Statements and other documents tabled on Wednesday June, 8, 2011 for the Fiscal Year 2011/2012, be referred to the Budget Committee."

The substance of this Motion is the discussion of the Financial Statement. I heard the Deputy Leader of Government Business say that this being the First Allotted Day, in his programmes, Tuesday shall be another Allotted Day to discuss the Financial Statement. Those were his words. That means that the substance of this Motion is the discussion of the Financial Statement. Upon the Budget Committee going through this Financial Statement, it is required that the same Committee makes a Report to this House, which shall be debated and subsequently approved. But if we allow this House to debate this Financial Statements now, first, it is going to undermine the work of the Committee. Secondly, it is going to subject this House to double-debate on the same subject. More importantly, it is going to be a breach of the Constitution.



Mr. Deputy Speaker, Sir, I want to get your guidance that this Motion be postponed to a later date (21 days). You want to bear in mind the fact that the Committee has limited time due to the fact that the Ministry of Finance submitted the Estimates late. We want adequate time to embark on the discussion and review of the same, as Members of the Committee, and also to engage the public. The Three Allotted Days will eat into the 21 days. It is on that account that I seek your guidance and ruling that this Motion be postponed. It is with a clear and clean heart. I do not want to frustrate the efforts of the Minister for Finance.

**Mr. Mbadi:** Mr. Deputy Speaker, Sir, also on the same point of order that hon. Ogindo has raised, when Motions are put, they can go either way. We will vote for or against it here. I am trying to look at this Motion. Suppose we vote against this Motion, what will that mean to this country? It will mean that the Financial Statement, together with the documents which were tabled here will not be referred to the Budget Committee. Is that going to be the intention of this House? My answer is no. We have a new Constitution in place which, to some extent, may not agree with our Standing Orders. But we will have to align the Standing Orders to the Constitution, so that there is no contradiction. But in case, there is contradiction, I do believe that we must go with the spirit of the new Constitution, which is that the moment the Financial Statements are tabled, they stand automatically committed to the Budget Committee.

Mr. Deputy Speaker, Sir, therefore, this Motion, to me, is misplaced because it is asking this House to do what it cannot do. It is a constitutional requirement and I beg to ask the Chair to rule that this Motion is not properly before the House.

**Mr. Sambu:** Mr. Deputy Speaker, Sir, I am not against the Financial Statement, but I am against the fact that Parliament, which should be guarding the Constitution, is now here to ensure that the Constitution is not complied with. Article 221(4) of the Constitution is very clear. The Standing Order No.152 is also very clear on this issue. During the Speaker's Communication on Tuesday, he said very clearly that:-

“Before the National Assembly can consider the Estimates of Revenue and Expenditure, this has to be discussed and reviewed by the relevant Committees”.

He also quoted the same article of the Constitution. He went ahead to say that the Motion will be brought by the House Budget Committee. He even said that the Motion could read something like: “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”.

If we go this route, it means that we shall be taking the public for a ride. The public has to contribute in accordance with Article 221(4) of the Constitution which requires public participation. This will pre-empt what is going to be said. So, I support the view that we postpone this and we discuss it fully in another Motion after the Report of the Budget Committee.

**Ms. Karua:** Mr. Deputy Speaker, Sir, the ruling of the Chair on Tuesday was clear that it was not business as usual. We are used - after the Budget is presented - to discussing the Financial Statement and then waiting to discuss the Votes one by one. It is time that we looked closely at the Constitution. Article 221(4) is very clear. It is mandatory in the terms of the article and it states “shall”.

It states that:-

“Before the National Assembly considers the Estimates of Revenue and Expenditure, a Committee of the Assembly shall discuss and review the Estimates and make recommendations to the Assembly”.

If you look at the Motion that is being proposed by the Deputy Prime Minister and Minister for Finance, it clearly states that the Financial Statement and all other documents tabled on Wednesday 8<sup>th</sup> June, for the Fiscal Year 2011/2011 be referred to the Budget Committee. So, this is going to lead to a discussion of the Financial Estimates before they have been referred to the Committee. This Motion is proposing that we actually disobey the Constitution. Therefore, the Motion is unconstitutional. At this stage, it should be stopped and the Estimates already stand, by the operation of the Constitution, committed to the Budget Committee. It is after the report of the Committee and after public participation that this House can then discuss those Estimates. The procedures we are undertaking now are new and we need to look at the Constitution twice.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, yet again, a difficult challenge faces you. I want to say the following four things. One, that you find that my very good friend, the Member who has raised this point of order, is out of order for the following reasons. First, if you rule that this Motion does not proceed, you will, in fact, be usurping the function of the House Business Committee that has committed this Motion to the Floor after a very long debate. Secondly, you are also the one with authority to approve the constitutionality or otherwise of a Motion before it finds its place on the Floor and that you already have done. I have no doubt, knowing you, Sir, that you have considered even much more than what has been said on the Floor. The third reason is that the House cannot, as we say, on matters of equity, take advantage of its own neglect. If you look at Article 221(2)(b), it says that:-

“(2) The Estimates referred to in Clause (1) shall-

(b) be in the form, and according to the procedure prescribed by an Act of Parliament”.

You will notice that notwithstanding the fact that this Act of Parliament is not contained in Schedule Five, Parliament itself has been aware of Article 221 from the very beginning and, in fact, alerted the Treasury that it required to be complied with. So, to the extent that Parliament has not yet passed this law, the Chair cannot depart from the ruling it made on Tuesday in reference to this matter because this Motion originates from that ruling. I suggest that you look at it carefully and you begin to realize - and this brings me to the next point - that the Motion does not, in any way, intend to usurp, overcome or undermine Article 221(4). What the Motion is seeking is for the Minister to present formally an opportunity for this House on behalf of the country to discuss the Statement that he made on the Floor of the House yesterday as opposed to the documents that he tabled together with that Statement. Unless somebody can see that distinction, we are violating the principles of Article 251 which require that the Constitution be looked at in a purposeful manner.

Mr. Deputy Speaker, Sir, so, in fact, the Minister is being very kind to the country and in the absence of a law under Article 221(4), he is saying, “I made statements here on the Floor of the House yesterday. Allow me to have three days during which those statements are discussed and the documents then forwarded to the relevant Committee, namely, the Budget Committee”. That is how I understand the Chair to have ruled on

Tuesday. If I am mistaken, I stand to be corrected, but this is a point of order that should not be found to be in order. To do otherwise, is to suggest that the Minister is suggesting that you discuss the Estimates. No, he is asking you to discuss the assertions, the points of law he tabled here and opportunity will come for Parliament at the end of 21 days, for us to discuss the Estimates based on the report from the Budget Committee.

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I rise to persuade you to guide the Member accordingly in terms of the fact that this Motion is properly before the House and the Minister is moving in accordance with the Standing Orders, the Constitution, the spirit of debate and the practice and procedures of this House.

I believe there is confusion that is coming out. I would like hon. Mbadi and the other Members to be very attentive because being new in the House, we would guide him. The Standing Order No.148(1) refers to the debate on the Financial Statement on the Annual Estimates. It is not debate on the Annual Estimates. I know there is confusion between financial statement and annual estimates and one may look at it from the ordinary use of the word to mean the statement of receipt and expenditure, but the Standing Order No.152, which was also quoted is also very clear. It addresses the issue of the annual estimates.

Mr. Deputy Speaker, Sir, we are talking of two things here, namely, a Financial Statement on the Annual Estimates which is a narrative and the detailed discussion that was discussed and agreed yesterday and then there are the Annual Estimates, which are the statements of revenue which were tabled yesterday and the statements of expenditure which were tabled earlier and which are now with the Committee. The Committee has 21 days to look at that. In addition, the Minister came yesterday and gave a whole overview of the global economy; where we are in Kenya and in the region, what happened last year, the outturn for next year and the proposals for next year. The Members need to be given an opportunity to deliberate and ventilate on those issues and that debate will also guide the Budget Committee in terms of its debate on the Financial Statement.

So, the Financial Statement on the Annual Estimates is what we are discussing today and asking whether that Financial Statement that was tabled yesterday together with the attached documents can be committed to the Committee because there is no Standing Order that says that, that should be committed automatically to the Committee. It is here in the House and the Committee has a choice of taking it or not, but this House will move a Motion that says that, that the Financial Statement on the Annual Estimates plus all those attachments that were brought yesterday should now be committed to the Committee to follow the Annual Estimates in the form of the estimates of revenue and the estimates of expenditure that were already committed to the Committee before so that they can look at everything as a package. The House Business Committee, and I am surprised that Ms. Karua has opposed this Motion on the Floor because she was a Member of the House Business Committee, deliberated on this and allocated it time for discussion.

Earlier on, I asked this House to approve through a Procedural Motion that we fast track other businesses so that we can start this debate and nobody even raised an issue on it.

Mr. Deputy Speaker, Sir, I would like you to guide this House accordingly. You should guide specifically the new Members that there are certain procedures that are

followed so that the Members have an opportunity to discuss on the Floor of this House on the issues that were raised by the Minister and would then form part of the debate and deliberations in the Budget Committee when it continues its debate within the 21 days. I request that you guide the Members accordingly and we continue with the debate for the next three days.

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, the Speaker of the House was very clear when he gave the ruling and the guidance on how to proceed and the hon. Member for Webuye has read to you what the Speaker said in terms of providing guidance.

Mr. Deputy Speaker, Sir, first and foremost, this Constitution is the supreme law of the land. It is more superior than the Standing Orders. It is superior than all the usages; it is superior than all other laws of Kenya. Therefore, the first reading is to the Constitution itself. The Constitution tells you in Article 221 (4) in very clear terms, if I may repeat what was read to you: “Before the National Assembly considers---” The operative word is “before the National Assembly considers” and what the Ministers are asking us to do is to consider. What they are asking us to consider is set out in the Order Paper. The Motion says:-

“THAT, the Financial Statement and all the other documents tabled on Wednesday, June 08, 2011 for Fiscal Year 2011/2012 be referred to the Budget Committee.”

Mr. Deputy Speaker, Sir, if they have been referred – and that was not necessary because by operation of law, they stood referred – what can we be debating here other than short-circuiting the route through the back door and beginning to debate upside down? Instead of waiting for the Budget Committee to come, we are setting the terms for the Budget Committee; we are pre-empting the work of the Budget Committee.

Finally, the national values as set out in Article 10 of the Constitution are very clear. National Value No.10 (2) (a) is on the need for participation of the people. The people can only participate through the Committees of this House. How can we debate any estimates before referring the matter to the Budget Committee to enable the people of Kenya to put in their views and then at that stage, come to the House and let the Minister then introduce whatever he wants to introduce and we can debate after giving the people of Kenya the opportunity to participate. However, we cannot do so before that.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Yes, Dr. Eseli?

*(Dr. Khalwale stood up in his Floor)*

Order, Dr. Khalwale! You must appreciate that there are many medical doctors also in the House!

*(Laughter)*

**Dr. Eseli:** Mr. Deputy Speaker, Sir, mine is a brief one. As you give guidance, it should not just be for the new hon. Members but for all the hon. Members because this is a new Constitution and, most likely, the new hon. Members have absorbed the new Constitution better than the old hon. Members who are stuck in their old ways!

*(Laughter)*

**Dr. Khalwale:** Thank you, Mr. Deputy Speaker, Sir. Mine is very brief. I was just listening to the hon. Minister, Mr. Kimunya and probably, he has a point that we are supposed to discuss the generalities of the Speech of the Budget. However, if that is the case and if we are discussing for three allotted days, since when in this House did we use allotted days to sort out Motions? If we use these three allotted days, as he proposes now, after the Committee goes through, what shall we call that period at that time?

Mr. Deputy Speaker, Sir, for that reason, I find it that the Minister is completely out of order. In fact, it is because of him over staying in this House that he is getting confused. Probably, the young Mbadi could be the one leading in this particular case!

*(Applause)*

**Mr. Oyongo Nyamweya:** Thank you, Mr. Deputy Speaker, Sir. If you look at this Motion which is coming up and if I look at Motion No.10, which talks about the Independent Offices (Appointment) Bill (Bill no. 11 of 2011), we have only noted it and referred it to the Committee. The same should apply to the Motion that the Deputy Prime Minister and Minister for Finance wants to bring. It is not for discussion. It should be referred to the Committee which will come with its findings and we shall debate it. It is not something for us to debate.

*(Applause)*

Mr. Deputy Speaker, Sir, if the House Business Committee has made a mistake by putting this Motion on the Order Paper, should we go by it? It is the House Business Committee which has erred, because as far as I am concerned, it should not have allowed this Motion to be brought to this House today.

So, let us follow the Constitution, which we all swore to protect. So, as things stand now, this should not be debated and it is not for us to vote on it because it is not an issue of voting. It is for the Chair to guide us because it is a constitutional issue. It is not an issue of the majority or the minority but it is about what is right and correct according to the Constitution of Kenya.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Ruto:** Mr. Deputy Speaker, Sir, as much as I want to congratulate my friend, the Deputy Prime Minister and Minister for Finance, for giving us a good Budget yesterday, I think he may have to wait a little bit so that we look at it and we scrutinize it. In the past, he used to give us a Budget Speech which used to be final. This one is not exactly final. We will go through the pages; we may suggest other amendments and we shall bring it here to pass. Therefore, this one is in the older fashion of finality.

Mr. Deputy Speaker, Sir, I want to warn Mr. Kimunya, who is the Deputy Leader of Government Business, that Dr. Khalwale is actually back! I am sure that he does not require a lot of prompting to say he must go! If he insists, we might invite Dr. Khalwale to do what he normally does best.

*(Laughter)*

To be on the safe side, I want to suggest to him that he withdraws this Motion and we shall look at it two weeks from now.

*(Applause)*

## CONSIDERED RULING

### FINANCE MINISTER TO STICK TO POLICY STATEMENT ON REFERRAL OF FINANCIAL STATEMENT

**Mr. Deputy Speaker:** Hon. Members, you realize this is a very weighty matter. It is setting of a precedent in this country.

I do agree with the number of hon. Members, who did indicate, that actually, the Constitution takes precedence over any other written rule or law. As far as the commitment of the Financial Statement is concerned, on the Annual Estimates, Standing Order No.152 (1) is very clear; it stands committed to the Budget Committee, the relevant Committee for that matter.

As far as the debate is concerned, the hon. Khalwale indicated that if it is not an Allotted Day, then why do have three days? Standing Order No.148 (2) says:

“The debate on the Financial Statement on the Annual Estimates shall be limited to three days exclusive of the Mover’s Speech and reply.”

It is limited to three days; you can do it in a day, you can do it in a half day, and you can do it in any number of days so long as is not more than three days.

As far as the Constitutional provision is concerned, yes, Article 221(3) says:-

“The National Assembly shall consider the estimates submitted under clause (1) together with the estimates submitted by the Parliamentary Service Commission and the Chief Registrar of the Judiciary under Articles 127 and 173 respectively”

Sub-article (4) says:-

“Before the National Assembly considers the estimates of revenue and expenditure, a committee of the Assembly shall discuss and review the estimates and make recommendations to the Assembly.”

Hon. Members, my ruling on this is guided by two things; one, a precedent setting in which the Speaker did rule on the admissibility of this Motion. Two, Article 221(4) talks about the National considers the estimates as opposed to the financial statement.

The financial statement, in the opinion of the Chair, is the policy that has been engaged in the construction of the Estimates. However, I stand to warn the hon. Minister that, indeed, he has to confine himself to the Policy Statement. In the event he proceeds and moves into the Estimates themselves, then clearly, you do appreciate how the Chair will rule on the same.

## MOTION

### REFERRAL OF FINANCIAL STATEMENT AND

OTHER DOCUMENTS TO BUDGET COMMITTEE

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Speaker, Sir, I beg to move:-

THAT, the Financial Statement and other---

**Mr. Mbadi:** On a point of order, Mr. Deputy Speaker, Sir. I think your directive is very clear. Your ruling is very clear that we now have to listen only to the speech on policy issues. Therefore, this Motion requires to be amended, because if you look at it, it talks of the Financial Statement and all the other documents.

Mr. Deputy Speaker, Sir, if we allow the Motion as it is, we will debate on all the other documents, even without the Minister moving it. We need to amend to this Motion, so that we only restrict ourselves to debate on financial statement as will be presented by the Minister.

Mr. Deputy Speaker, Sir, I think it is important that we amend this Motion.

**Mr. Deputy Speaker:** Hon. Minister, indeed---

**Mr. Ruto:** On a point of order, Mr. Deputy Speaker, Sir. I do not know whether I was not listening, but did you rule that this is the First Allotted Day? Could we treat it as such?

**Hon. Members:** Yes, after the ruling!

**Mr. Ruto:** Then, what shall we be discussing? An Allotted Day would necessarily be basically on the statement.

**Mr. Gabbow:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Members to revisit what you have already ruled on?

**Mr. Deputy Speaker:** Order! Hon. Members, the Chair, indeed, does appreciate the need for us to uphold the rule of law. In upholding the rule of law, the Constitution is the supreme law of the land.

Hon. Deputy Prime Minister and Minister for Finance, if, indeed, you are satisfied that the "Financial Statement and all the other documents", include Estimates, and not the policy, then the Chair will advise you to make the requisite amendment to your Motion to conform to the law.

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Deputy Speaker, Sir, I beg to move:-

THAT, the Financial Statement on the Annual Estimates and all other documents tabled on Wednesday, 8<sup>th</sup> June, 2011 for the Fiscal Year, 2011/2012, except the Estimates be referred to the Budget Committee.

Mr. Deputy Speaker, Sir, the Budget for the Financial Year 2011/2012 that I presented to this House yesterday was formulated within a fiscal framework aimed at achieving and sustaining macro-economic stability, while laying a firm foundation for reducing unemployment and poverty as envisioned under Vision 2030.

This year's Budget---

**Mr. Deputy Speaker:** Order! Hon. Deputy Prime Minister and Minister for Finance, it is the presumption of the Chair that you have already put in writing that amendment and that you will give it to the Clerk. That is the procedure of the House!

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Deputy Speaker, Sir, this year's Budget was being prepared against the backdrop of continued economic growth despite new challenges stemming from rising international

commodity prices, including fuel, drought related concerns. The economic prospects for 2011/2012, however, do remain strong. But the impact of high fuel and commodity prices, as well as delayed rains is a source of concern.

Mr. Deputy Speaker, Sir, we see continued strong credits to the private sector, increasing foreign direct investments---

**Mr. Deputy Speaker:** Order, hon. Deputy Prime Minister and Minister for Finance! When you move an amendment, it is the tradition of the House that we dispose of the amendment first. The Chair would suggest that you move your amendments and be seconded. We dispose of the amendment and then we move on to the amended Motion.

**Ms. Karua:** On a point of order, Mr. Deputy Speaker, Sir. The Motion had not been moved when hon. Mbadi rose on a point of order. So, this Motion has not been moved and, therefore---

**Mr. Deputy Speaker:** Order! Order, hon. Karua! The Chair, did, indeed, taken into consideration that. As the hon. Deputy Prime Minister and Minister for Finance was moving, is when hon. Ogindo, as a matter of fact, and not hon. Mbadi, rose on a point of order.

**Mr. Deputy Speaker:** Order! Hon. Members, Standing Order No.48 (1) says:-  
“The Speaker may permit a Member to move in amended form a Motion of which notice has been given if, in the opinion of the Speaker, the amendment does not materially alter any principle embodied in the Motion of which notice has been given.”

Hon. Minister, you can proceed now and move the amended Motion.  
**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Deputy Speaker, Sir, I beg to move:-

That the Motion be amended by inserting after the phrase 2011/2012, “except the annual estimates”.

**The Minister for Transport** (Mr. Kimunya) seconded.

*(Question, that the words to be inserted be inserted proposed)*

**Mr. Deputy Speaker:** Order! Hon. Deputy Prime Minister and Minister for Finance, the fact that you went back and forth and as much as the Chair would want to assist both sides of the House to make sure that this important business is transacted, the Chair will allow you to proceed now and move the Motion as amended.

*(Applause)*

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Thank you, Mr. Deputy Speaker, Sir. The Budget for the Financial Year 2011/2012 that I presented to this House yesterday was formulated within a fiscal framework aimed at achieving and sustaining macro-economic stability, while laying a firm foundation for reducing unemployment and poverty as envisioned under Vision 2030.

This year’s Budget is being prepared against a backdrop of continued economic growth, despite few challenges stemming from rising international commodity prices, including fuel and drought related concerns. Economic prospects for 2011/2012 remain strong, but the impact of high fuel and commodity prices as well as delayed rains is a source of concern. We seek continued strong credit from the private sector, increasing



Foreign Direct Investment (FDI), improved tourism and construction and strong export growth with better prices and fare shilling exchange rate helping to sustain growth despite the economic shocks related to high fuel and food prices.

**Mr. Ruto:** On a point of order, Mr. Deputy Speaker, Sir. I am very much convinced by everything that the Deputy Prime Minister and Minister for Finance is saying. However, the Motion before us requires us to commit all the documents plus the Financial Statement to the Budget Committee. What are we debating? I thought it stays committed now. Why should we debate? Normally, we only say that it be committed. Must we, therefore, debate?

**Mr. Deputy Speaker:** Order, Mr. Isaac Ruto! Whereas it is a tradition that we are starting and the practice has not been like this, it is understandable because this is a policy matter. It is a policy statement from the Executive through none other than the Deputy Prime Minister and Minister for Finance, himself. He is supposed to propound on that.

Proceed, Mr. Deputy Prime Minister and Minister for Finance!

**The Deputy Prime Minister and Minister for Finance** (Mr. Kenyatta): Mr. Deputy Speaker, Sir, consequently, we have assumed a real GDP growth of 5.7 per cent in our fiscal framework for the Financial Year 2011/2012. To ensure proper growth and sustainable development in the 2011/2012 Budget, we have continued to focus on key priorities as a basis for allocation of resources. This include improving access, transition rates and quality of education, enhancing efficient and quality healthcare systems, ensuring security for all persons and properties, empowering the youth and vulnerable members of our society by engaging them in gainful employment and wealth creation. Implementation of the new Constitution and promoting food security was also taken into account. Taking into account the above, we have, therefore, provided enhanced funding in the overall Budget in all areas that are pro-poor and pro-growth.

At the time of the Budget submission, line Ministries had requested for additional amounts of over Kshs460 billion, over and above the Budget ceiling which we had provided in the Budget Policy Statement which I presented to this House in March, 2011. All that could not be accommodated by domestic borrowing without causing macro-economic dislocation. Due to resource constraints, we were only able to accommodate about 20 per cent of the requests, including provisions for new strategic interventions to deal with high fuel and food prices.

Once again, I would like to thank hon. Members for their cooperation and continued support. I assure them that I will, indeed, take their views seriously and, as much as possible, take them into account at the appropriate time.

With those few remarks, I beg to move.

**The Assistant Minister for Livestock** (Mr. Duale): Mr. Deputy Speaker, Sir, I second the Motion.

*(Question proposed)*

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. I rise on Standing Order No.25 which allows me to move that this debate be now adjourned. The reason is that if we so adjourn, then we will achieve the following. One, we will give the

Committee time to report back to us within 21 days and then bring us a substantive report that we can then use during the Allotted Days to discuss.

Secondly, we will, by adjourning, be now respecting the new Constitution.

Thank you.

**Mr. Deputy Speaker:** Order! Hon. Members, I think there is need to appreciate the cardinal doctrine of separation of powers. In that cardinal doctrine of separation of power, the Executive has a right to indicate its philosophy, policy, ideology and its ideas of construct. Standing Order No.25 says:-

“A Member who wishes to postpone to some future occasion the further discussion of a question which has been proposed from the Chair may claim to move “That the debate be now adjourned”, or in the Committee of the Whole House, “That the Chair do report progress”.”

The Chair understands and appreciates that this is a new dispensation and we will, definitely, be making a few starts here and there. However, it is important to appreciate that the Executive is merely saying that it intends to send the information, policy, idea and ideology behind the Estimates, and refer them along with the Estimates to the Committee for consideration. In the final analysis, there is no way we can get away from the fact that in the new constitutional dispensation, the Committee has to come back and report to the House.

The Financial Statement is what the Minister is trying to refer to the Committee. As far as the Estimates are concerned, they stand committed immediately they are tabled in this House. So, the Chair is convinced that it is in line, and it is time that the Chair gave leadership on this process.

**Mr. Ogindo:** On a point of order, Mr. Deputy Speaker, Sir. I thank you for that ruling but I want your further guidance. This Motion, as amended, if we proceed and debate it, I am sure that there will be a Question to be put at the end. In the event that the Question is put and negatived, what will happen?

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. Whereas I have no problem with the ruling that you have just made, the procedure is that, the Deputy Prime Minister and Minister for Finance having moved the Motion, under Standing Order No.25, you should then put the Question, so that it is negatived. If you do not put the Question, there is no way we will know the thinking of the Membership of this House on the matter.

**Mr. Deputy Speaker:** Order! Order! Hon. Bony Khalwalwe, indeed, what you have said is true. Indeed, the Standing Orders guide except where they come into conflict with the Constitution, or any other written law. Indeed, the Standing Orders also have certain provisions, and you do not read them in isolation. Standing Order No.25(1) says exactly what you have said, but did you have an opportunity to go through Paragraph 3 of the same Standing Order? This paragraph says:-

“25(3) If the Speaker is of the opinion that a dilatory Motion is an abuse of the proceedings of the House, the Speaker may forthwith put the Question thereon or decline to propose it.”

Hon. Members, under the circumstances, the Chair has declined to propose that Question. So, we should proceed. I will now propose the Question, that the Financial Statement and all other documents tabled on Wednesday, 8<sup>th</sup> June, 2011 for Fiscal year 2011/2012, except the Annual Estimates, be referred to the Budget Committee.

*(Question of the Motion as amended, proposed)*

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I rise to support the Motion that the Financial Statement on the Annual Estimates and the statistical abstracts, together with all those documents that the Deputy Prime Minister and Minister for Finance tabled here, be committed to the Budget Committee.

Mr. Deputy Speaker, Sir, let me begin by thanking the Deputy Prime Minister and Minister for Finance, together with his staff, for working all long hours and delivering to us the Ministerial Statement that was delivered here yesterday. It seems to have put the country in some state of calm as the people now know where we are going.

As I said before, Kenya is a market leader in East Africa. Yesterday, members of the public expected the Government to tell them where we were and where we were going in terms of the economy and the related issue of cost of living. As people went to bed yesterday, they felt good because they, at least, knew where we stood in terms of the cost of fuel. They felt good that they knew what would happen to all the promises that had been made in terms of the reduction of the price of fuel.

Mr. Deputy Speaker, Sir, I am aware that all these matters will come out clearer in the detailed discussions in the Committee, where *wananchi* will have an opportunity to participate. I am also aware that once the Committee reports come back to us, we will have an opportunity to debate these issues further. It is, however, important that we also remember that participation of the people, as envisaged in the Constitution, does not exclude the participation of Members of Parliament, who represent the people in this House.

There is no better forum for the people to participate other than through their representatives in this House. That is why we are paid as Members of Parliament. We are paid to come and participate in the debate on the Financial Statement, so that people do not discuss the issues contained therein through interviews conducted by the media, and engage in discussions in other forums out there. We should discuss these matters on the Floor of this House to establish what the views of the people are on what the Deputy Prime Minister and Minister for Finance said here in his Ministerial Statement. I believe that we all listened very attentively. We are now very clear in terms of where we are going as a country.

Mr. Deputy Speaker, Sir, it is important for Kenyans to appreciate the planning frameworks we are working on. The Deputy Prime Minister and Minister for Finance alluded to the fact that we are looking at the global economic situation. I want to take advantage of this opportunity to just highlight some of the issues relating to what is happening in the transport sector.

**Mr. Ogindo:** On a point of order, Mr. Deputy Speaker, Sir. I do not wish to interrupt my good friend, hon. Kimunya, but the Motion, as amended, is now being debated in the first allotted day. You rightfully put it that you have a maximum of three allotted days. In the event that we exhaust the three allotted days, what will happen to the Report of the Budget Committee when it is brought to this House for debate? How shall we get adequate days to debate it? Will we really get three extra days after exhausting our time by debating this matter starting from now?

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I know that the issue has been directed to you but let me help the hon. Member.

As a proactive House, and as this debate continues, we give you an opportunity to receive documents officially. You can still take over these documents and start discussing them. The extra input you need from hon. Members will be provided to you. Indeed, through this debate, Members of the Government will have an opportunity to expound further on some of the issues contained in those documents, just as I am about to expound on issues relating to the transport sector.

Mr. Deputy Speaker, Sir, one of the things that came out yesterday is that there will be some extra regulations relating to disposal of motor vehicles, where people may want to take their vehicles outside the country. There will be some documentation. This is, indeed, a laudable move. It is a move which will help to avoid a situation where people purport to move vehicles out of the country when, indeed, they still have them within the country. These are the kind of things we want to look at.

Before I was interrupted, I had indicated that I wanted to share with hon. Members in terms of the things that happen in the transport sector. Much as the global economy grows at a slower pace than what was envisaged--- Everyone thought that the economy was recovering, and we have seen a growth of up to 12 per cent in our port business. This has put a bit of pressure on our port handling facilities. It is very important to note that such development will create extra jobs in the country.

Mr. Deputy Speaker, Sir, people have confidence in using the ports within our coastline. I know that there is competition along the entire African coastline, in terms of ports, but people have settled for Mombasa as their port of choice. I would, therefore, like to ask for the support of Members of Parliament. I appreciate the fact that we have support from the Departmental Committee on Transport, Public Works and Housing, and other Committees, in terms of having the first walking-talking advertisement to justify why people should be using the Port of Mombasa.

I know that hon. Members have also seen the refurbishment that we have undertaken at our airports, including the provision of new and comfortable seats. These are issues which were alluded to. These are issues which have an impact in making Kenya a transport hub in this region and increasing the number of tourists visiting this country. Since hon. Members are regular travellers, they should have noted those changes. It is important that we continue supporting the initiative, particularly during the discussions in the Budget Committee proceedings.

*(Dr. Khalwale stood up in his place)*

**Mr. Deputy Speaker:** Yes, Dr. Bonny Khalwale!

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, our fear is still there that we might exhaust the three Allotted Days and when the Report comes we will not know where to get the time from to do those days. Therefore, Mr. Ogindo rose on a point of order, so that you could guide the House on how we will navigate on this and you are yet to pronounce yourself on the same. Could you, please, guide the House?

**Mr. Deputy Speaker:** Hon. Members, the Budget Committee and the relevant Departmental Committees have got 21 days. Then it comes to the Committee of Supply and then it comes to the appropriation. What we have right now is in line with the

cardinal doctrine of separation of powers. All that the Executive is saying is that this is what informs our Budget. You do not expect Parliament; the Legislature, to take over the role of the Executive. This is what informs our Budget and this is also to be referred to the Budget Committee for consideration.

Why would the Budget Committee not want to have that information which informed the Government's position on the way the Government itself has worked out its estimates?

**Ms. Karua:** On a point of order, Mr. Deputy Speaker, Sir. In this new order, the Cabinet Secretary and, in this case, the Minister, will be appearing before the Budget Committee. That is where he will make these explanations of how he arrived at the financial estimates. That is where he will make his explanations.

**Mr. Deputy Speaker:** Or "she".

**Ms. Karua:** At this time it is a "he". I am saying for this particular Budget, but moving forward, definitely it will be a "she". In this transition period the Cabinet Secretary is the Minister as per Schedule Six. That is why I am referring to "he". So, I exactly know what I am saying.

So, these explanations are needed by the Budget Committee. When we come to discuss, since we have familiarized ourselves with the Budget Statement laid, we will utilize that information.

Mr. Deputy Speaker, Sir, those viewing may very well think that Parliament is resisting reforms because we have left the old order where we used to discuss for seven days and now shortened to three days, the Financial Statement awaiting for the day that we could discuss the Votes one by one. Now to discuss this Financial Statement, and that is why I support the move to adjourn it, amounts to resisting what has taken place that any explanation by the Government and yes it is needed, should go to the Budget Committee.

**Mr. Deputy Speaker:** Ms. Karua, the Chair appreciates all that you have said. We are not fully under the new dispensation. We do not have the Cabinet Secretaries. All that the Minister is doing now is to have the Financial Statement referred to the Budget Committee. The Chair sees this as essentially the role of the Executive and the House has got ample time after the Budget Committee and other relevant Departmental Committees have exhausted their work to again debate the matter through the Committee of Supply and Appropriation.

Proceed, Mr. Kimunya.

**The Minister for Transport** (Mr. Kimunya): Thank you, Mr. Deputy Speaker, Sir, for that clarification.

**Mr. Ogindo:** On a point of order, Mr. Deputy Speaker, Sir. I very much respect the Executive and the separation of powers. The Executive had an opportunity yesterday at the generosity of Parliament to espouse on the Budget policy. The able Minister did it very eloquently.

However, the count is on. Today, we are on the 9<sup>th</sup> of June. The financial year is ending on the 30<sup>th</sup> of this month. The House has a lot of business to transact other than this one and the House need not transact this business. In order to save time for the committees to embark on their constitutional work---

**Mr. Deputy Speaker:** Order, Mr. Ogindo!

**Mr. Ogindo:** Mr. Deputy Speaker, Sir, I want you to appreciate the time that is running out---

**Mr. Deputy Speaker:** Order! You must be well-versed with the way the House works. The Committees took over their responsibilities from yesterday. Some of them have even started meeting and sitting as early as this morning.

In all jurisdictions in the world, the Executive has the right to refer the policy that essentially has guided the Financial Statement in the form of a financial statement to the relevant Committee. I think we are being dilatory and kind of abusing the process itself.

Proceed, Mr. Minister.

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

Order, Mr. Sambu!

Proceed, Mr. Minister.

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, as I was saying, we have seen those changes taking place within the transport sector. If you look at all the other sectors, you will find that we are on the path of recovery. We have had figures coming from the Ministry of Planning and National Development in terms of showing our growth potential. We have seen what is being projected by the World Bank and other institutions basically showing that Kenya is on the rise.

I was very touched the other day seeing Kenya being discussed by one of the leading magazines in this world; the Economies Magazine. It was showing Kenya's potential and where it is going. I believe this is the kind of thing that we need to internalize and start celebrating as Kenyans so that we do not just concentrate on the negatives that affect this country. There are some very good positive things that are happening in this country.

Mr. Deputy Speaker, Sir, I am also very encouraged with the debate that has been happening this afternoon because it just shows that Kenya is on the move.

With those words, I beg to support.

**Ms. Karua:** Mr. Deputy Speaker, Sir, although I believe that we ought not to be discussing this, let me take this opportunity to say a few things.

It is all very well that we now have a trillion budget. It is all very well that the economy is growing. But those who are on the periphery are asking: Whose economy and where is this economy growing?

I travelled last weekend to Samburu and Isiolo. The people are very hungry. The situation there is dire. You will recall that at the beginning of this year we passed the Supplementary Estimates which had money to alleviate the suffering of the people in the dry areas where there is famine. The reports today are saying five people have died in Turkana. We know the situation is dire in North Eastern Province and in many other parts of Kenya. The question we are asking is this: Where is the money we voted in the Supplementary Estimates?

This Government appears to be good in statements or policy, but not in implementation. There is disconnect between the statements of policy and implementation. We are asking the Government to wake up to the reality that the services are not reaching the people.

When food reaches those areas, it reaches there once a month, according to what I was told on the ground. This food sometimes is still not properly distributed. In Isiolo, we heard reports of food being taken to a store to be sold by the Provincial Administration, leading to serious suffering by the people. We need to improve implementation and execution of plans, otherwise it will not make sense having an expanded Budget, which will not end up benefiting the people.

Mr. Deputy Speaker, Sir, I would wish that our colleagues in the Budget Committee, as they scrutinize the Estimates, check what the plans are and interrogate the Government on what the plans on implementation are. When it comes to job creation, our youth do not only need menial jobs provided by the *Kazi Kwa Vijana* (KKV) Programme. Our youth are educated as well; it is well for those who can get menial jobs under the KKV programme, but we have professionals. How about reviewing policy to ensure that all the skilled jobs, where the skills are found locally, are necessarily given to our people, and in turn they will create employment.

Mr. Deputy Speaker, Sir, when large infrastructural works are given to foreigners, it is our professionals who are hired and sub-contracted to provide the services, and the foreigners end up only collecting the cheque. I think we need a turn around in the way we think; we should not think that only menial jobs are suitable for our people.

Mr. Deputy Speaker, Sir, we want to see more emphasis on governance and there cannot be good governance unless we speed up reforms of our Judiciary and the entire criminal justice system. Reform is more than just providing the money. It is ensuring that we give support and stop manipulating processes in order to hire those we feel will protect us. We want to see more support of the reform process, even in this Parliament. We want to see the Executive stopping to push things with the attitude of business as usual. We would want to see the Executive display a mastery of the new constitutional order, and not to be waiting for Members of Parliament to point out where they are failing. That is what we have seen in the run-up to this Budget, and that is what we have seen even in this Motion that we are now discussing under protest.

Mr. Deputy Speaker, Sir, we have seen the amounts provided to the various sectors. It will be up to us to interrogate them; as Members of Parliament we need to know. We can shift allocations to the areas where we know they are needed most. Let us also tune our minds. This is not just another Budget that the Executive must ram down our throats. If we think the allocation for food is not enough, we can shift money from one area to another. We, therefore, need to show our mastery as Members of Parliament to rely on the professional staff that we have. If we feel we need more expertise we need to get the Parliamentary Service Commission through the Speaker to hire experts for us to enable us to analyse the Budget and reorganize it in a manner that is suitable to Kenyans.

Mr. Deputy Speaker, Sir, this is an opportunity for Parliament to interrogate the Kshs3.7 billion allocated for us to finalise Constituencies Development Fund (CDF) projects. On what basis shall it be allocated? What are the criteria? Hon. Members, this is our time to input the criteria we want to see. For all the monies allocated, it is for us to see how we can make it equitable and ensure that those in the Executive do not manipulate things to take monies to their favourite places or to their constituencies, and ignore the rest.

Mr. Deputy Speaker, Sir, when it comes to security money, we have been complaining in this House about lack of security at our borders, and about the suffering

of our people, who are left exposed to raiders from neighbouring countries. It is our turn now to scrutinize the Budget and reorganize what is provided, so that we can ensure there is security. I remember recently we discussed the situation in Turkana, the issues about the border in North Horr, Mandera and even in Migingo, to which the Ugandans are taking additional forces without regard to the fact that there is a dispute. This is our time to reorganize and put our footprint on how security is ordered to ensure that our people are secure.

Mr. Deputy Speaker, Sir, we now must move from lamenting because the Constitution gives us power. This is the time we can make an impact in our country. Large sums have been provided for irrigation. It is our time to interrogate how these monies are going to be spent by the Ministry of Water and Irrigation. When we meet our constituents, our greatest challenges are health, hunger and education. Let us interrogate the equity, or lack of it, in the allocations in these areas. I think that although it is the Budget Committee to which the Constitution commits the Estimates, each one of us is entitled to sit with the Budget Committee, and to sit in the Budget Committee, and make our contributions to ensure that the Budget is forward-looking and will end up being of great effect to Kenyans.

Mr. Deputy Speaker, Sir, finally, let us not blame the fuel, or energy, crisis merely to rising international prices. That is just one of the factors. The other factors, and which contribute greatly are corruption in the sector, insider trading and cartels that operate with full knowledge of the authorities, and which some members of the Executive may be part of. We want to see a full evaluation of this sector. We can promise that the prices of food will come down, but if the price of energy keeps on rising, it will keep on causing a ripple effect and will not be able to stabilize the food prices.

The bottom line is governance; good governance and more good governance is what we must invest in. That is what is causing suffering to the people. That is what is causing the monies allocated here for food and other essential services not to reach, or to be available to our people at the grassroots. Let this be a warning not just to the Executive but to all of us in public service, that when you fail to do your duty and abide by the provisions of the Constitution, Kenyans are watching, and very soon the law will catch up with you, if not through the law enforcement agencies, by Kenyans going to court to ensure that what is due to them is received by them.

I abstain from either supporting or opposing.

**Mr. Deputy Speaker:** Order! It is not the moment to record! Hon. Ms. Karua, you do not record your abstention. You wait to see if there will be a Division. If there is no Division, then there is nothing to abstain from.

**Mr. Midiwo:** Thank you, Mr. Deputy Speaker, Sir. I rise to support the Motion. First of all I thank the Minister for his Speech yesterday. It is good to realize that the country is at a crossroads. There is a way in which we are setting a precedent---

**Mr. Deputy Speaker:** Order! Hon. Midiwo, I am reminded that the Whips can only talk from the left side. You cannot use the Dispatch Box.

**Mr. Midiwo:** Since when, Mr. Deputy Speaker?

**Mr. Deputy Speaker:** Order! The Dispatch Box is for the Government.

**Mr. Midiwo:** Mr. Deputy Speaker, Sir, I am the Whip of the Government. What are you trying to say now?



**Mr. Deputy Speaker:** Order! Proceed from the back. I am reminded by the institutional memory. A Chair is not supposed to keep on arguing on this.

**Mr. Midiwo:** Mr. Deputy Speaker, Sir, then I will decline to talk. I am the Whip of this Government. I am even the boss of the Minister who has just moved the Motion.

*(Mr. Deputy Speaker consulted with  
the Clerks-at-the-Table)*

**Mr. Deputy Speaker:** Hon. Midiwo, without any disrespect to you--- As a matter of fact, on the contrary, with a lot of respect to you, the Chair is reminded that Whips do not address the House from the Dispatch Box. From the institutional memory, with your indulgence, if you want to do it, you can do it from the left side.

**Mr. Midiwo:** Mr. Deputy Speaker, Sir, I decline to contribute.

**Mr. Deputy Speaker:** Hon. Orengo, do you wish to help us? You are a Member of Parliament of a long standing. Do you wish to assist the Chair in determining whether--

**The Minister for Lands** (Mr. Orengo): Mr. Deputy Speaker, Sir, I just want to debate. But hon. Midiwo was at one point the Acting Leader of Opposition. So, I think he got used to speaking from here and, probably, should continue.

Mr. Deputy Speaker, Sir, I wish to support this Motion and make it very clear that there was a moment last week, or even previously, when I thought that, with the hard economic times, the Government was not going to address the plight of the needy members of society. In fact, the truth be told – and I want to make this very clear – there was a meeting at which I said that I may join the Back Bench in reacting negatively to the Budget process, because it was my assumption that there were certain actions that were taken that did not indicate that we are alive to the plight of the Kenyan people. But since then, with the overall economic situation in the world and more, particularly, facing countries in what I may call, for lack of a better term, the Third World, we are undergoing very hard economic times. I think the Minister has tried, in the circumstances, to address the issues that are of concern to the public, including the plight of the less fortunate members of our society. I think it could have been better, but the Minister, at the end of the day, has limited resources and Kenya is not very well endowed by way of natural resources like oil and minerals. So, that should not be lost to us. Each one of us should ask what he or she is doing to make sure that Kenya belongs to the league of the emerging economies of the world that are competitive. For that reason, I think the overall perspective of the Statement that was made and the documents that have been committed for the Committee to look at, is to make the Kenyan society and economy more competitive. Unless we go out there and do this work ourselves, Kenya cannot grow.

Mr. Deputy Speaker, Sir, at one time when I was in China, there are officials of the Chinese Government who told me that China had to feed itself. With a population of 1.5 billion people, China can never hope to get assistance or aid. There is no country that can produce food to feed China. I also want to believe that Kenya can only move forward by making sure that we feed ourselves and make this country grow to greater heights. So, overall, I think that we have done the best in a very bad situation. We need to work together as a nation to move forward.

Mr. Deputy Speaker, Sir, I just want to make a personal plea at this moment. We have to think about the country. We do not have to think around elections and leadership. The problems that bedevil us on an everyday basis are not going to be resolved by thinking about who is in State House, who is the Prime Minister and who is the Leader of Government Business all the time. If this is what is going to preoccupy our minds, then Kenya cannot move forward. It is important---

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

**The Minister for Lands** (Mr. Orengo): *Hai! Yawa!*

**Mr. Ethuro:** You have heard my very good friend, Mr. James Orengo, a man that I respect and actually love, making a personal appeal. I am wondering whether that personal appeal does not start with the person himself. That is because he has been quoted seeking permission from the Prime Minister, the Right Honourable Raila Odinga to disrupt the Budget Speech but, fortunately, the Right Honourable Prime Minister did not grant him his wish.

**The Minister for Lands** (Mr. Orengo): You know when you are a Turkana, you are more used to hearing the AK 47 and so, whatever I say may not be loud enough.

*(Laughter)*

**Mr. Deputy Speaker:** Order! Order, hon. Members! Hon. Ethuro, you are out of order and so is hon. James Orengo.

Proceed!

**The Minister for Lands** (Mr. Orengo): Mr. Deputy Speaker, Sir, I had started by making a confession that, initially, I had those misgivings. But I have since then seen that in the presentation of the Budget Speech, there was concern about the plight of the Kenyan people. That is what I started with. But I know you enjoy seeing me talk and so on.

Mr. Deputy Speaker, Sir, I was just making the point that we have one year or even less, depending on when we are going to have elections. We are living on borrowed time. In this one year or so, let us be seen to be moving Kenya forward. Already there are signs out there that we have tried to do the best. If you look at the infrastructure and the entire constitutional making process, no nation can come up with the number of things that we are doing at the same time, including all these Bills. We may be impatient with each other but, if you go to other countries, for a country to move forward the way we are moving--- Nominations are going on with the Parliamentary Committee having its meetings and other Bills are being discussed in all the other fora. It shows that, indeed, we can chew gum and walk at the same time. That shows that Kenya has come of age. We are a mature democracy, if we would want to put it that way. But we need to have constant vigilance. We should not just be prepared to live by our laurels. It is not good to think about where we have come from. That is because whenever you think about where you have come from, you may think that you are coming from an abyss and so, your target may not be very high. I think we should be thinking of where we want to take Kenya. If we are thinking about the Kenya that we want, I think all the politics of the day will be put aside, so that we can move together as a nation. All of us have been brought here as one Parliament and any law that is passed in this Parliament will not bear the imprints of any particular person. It will be an Act of this Tenth Parliament. Anything

that we do positively in Government will go to the Government of the second Republic, under the new Constitution. If it bears the imprint of anyone of us, we will have gone that extra mile in order to move Kenya forward. But what is most important is that this leadership will be remembered by what we do collectively in this Parliament. But if we are out to fight for our mutual self destruction, which is the operating kind of agenda in the past in this country - that when I see hon. Orenge falling, you want to put more fire; when hon. Ethuro is falling, we want to throw stones at him, this shows that we are not each other's keeper. You must be your brother's keeper. You must love every other Kenyan. If Migingo is going, we get together as Kenyans. If any part of Kenya is threatened, we get together as one country. Therefore, the only thing that I would want to ask the Deputy Prime Minister and Minister for Finance is to be on his guard and make sure that - because the mechanisms are there and the Office of the Prime Minister and the Office of the President are important, that Kenya, in this very important phase, every worth of every coin that has been given for purposes of governance or development, Kenyans get the full value for the money and the taxes that they have paid. That will show a big difference.

Mr. Deputy Speaker, Sir, I never imagined that this economy would be talking about a trillion. There was a time when we were in this Parliament where the Budget was Kshs200 million and it looked like a lot of money. Somehow, money has come from somewhere. Kenya has got resources and also shock absorbers. There are sometimes when we think that we are finished as a nation, but we continue to absorb these shocks every time that we have these challenges.

Finally, we should also remember that we are living in very consequential times. No other generation will live in a period when so many things are happening at the same time. So, in the words of Article 10 of the Constitution, unity of the nation, patriotism and all those values, if every time we open our mouths including myself and hon. Ethuro to talk about them, Kenya will be a better place, so be it.

With those remarks, I beg to support.

**Mr. Ogindo:** On point of order, Mr. Deputy Speaker, Sir. I have never seen this House in the best mood like it is today. The Minister ably gave us the Budget and the House is unanimous. Would I be in order, so that we end on the same good note and tone that we are in, to request you to call upon the Mover to reply?

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

**Mr. Deputy Speaker:** Order, hon. Members! I will now put the Question that the Mover be called upon to reply.

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

**The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta):** Mr. Deputy Speaker, Sir, as a Government, we have put together a Budget which we believe will serve the best interest of the 40 million Kenyans. We put it together in a manner that we believe it will be felt by every single Kenyan in every corner of this country in order to ensure that as we move forward, we move forward in an inclusive manner. We move forward in a manner that takes account of the plight of the poor. It takes account of the need for us to continue developing our infrastructure to improve accessibility throughout

the country and increase our linkages with our neighbours. With all this done, we improve trade and ability to do business with each other both within and outside this country to grow this economy. That would not be for the benefit of a single individual, but for the benefit of the whole country.

As we commit these documents to the Budget Committee, let us remember that the Budget was formulated, most importantly, with a view to ensuring that we maintain macro-economic stability. As they go through the contents of the Estimates, they bear in mind that many of the projects that have been incorporated in the Budget are the result of a lot of work that the Executive has done in terms of road and dam designs throughout this country and those projects have been picked on the basis of their importance to contributing to the overall economy and to the benefit of all. So, as we commit these documents, I would hope that the Budget Committee will bear in mind not the views or the needs of an individual Member of Parliament or a particular region, but to look at the Budget with a view to moving the entire country forward.

With those few remarks, I beg to move.

*(Question of the Motion as amended  
put and agreed to)*

*Resolved accordingly:-*

THAT, the Financial Statement and all other documents tabled on Wednesday, 8<sup>th</sup> June, 2011 for Fiscal year 2011/2012, except the Annual Estimates, be referred to the Budget Committee.

### **ADJOURNMENT**

**Mr. Deputy Speaker:** Hon. Members, there being no other business to transact, the House stands adjourned until Tuesday, 14<sup>th</sup> June, 2011, at 2.30 p.m.

The House rose at 5.08 p.m.