

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 4th August, 2011

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

### CONSIDERED RULING

EROSION OF SUPREMACY OF PARLIAMENT BY HIGH COURT JUDGEMENT:  
THE CHAIR TO STAY HIS RULING SINCE THE MATTER IS *SUB JUDICE*

**Mr. Speaker:** Hon. Members, I have the following communication to make. On 21<sup>st</sup> July, 2011 the hon. Member for Kisumu Town West, Mr. Olago, rose on a point of order seeking direction from the Speaker on the essence of the judgment delivered by Her Ladyship Justice Kalpana Rawal on 14<sup>th</sup> July, 2011 in Nairobi High Court, Civil Case No.1250 of 2004 George Odinga Oraro Versus Gor Sungu.

In his point of order, Mr. Olago raised the following issues:-

(i) That the judgment erodes the supremacy of Parliament and whittles down the principle of Parliamentary privilege under the National Assembly Powers and Privileges Act, Cap.6 of the Laws of Kenya and Article 117 of the Constitution.

(ii) That the Speaker should protect Parliament from the Judiciary.

(iii) That Members of Parliament be allowed to ventilate on this issue.

(iv) That the matter be referred to the Parliamentary Service Commission (PSC) for appropriate action and the Commission reports back to the House.

Hon. Members, you will recall what followed were a number of interventions by five more hon. Members who rose to speak on point of order by the hon. Member for Kisumu Town West, providing various additional perspectives on the matter. I have carefully considered the point of order raised by the hon. Member for Kisumu Town West and the contributions made by other hon. Members on the Floor and I have also looked generally into the principle of Parliamentary powers and privileges. A privilege in the legal sense is an exemption from some duty, burden,

Erskine May an authority in Parliamentary practice states:-

“Parliamentary privilege is the sum of peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by which members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land is to a certain extent an exemption from the general law.”

Hon. Members, the individual privileges in the context of Parliament include freedom of speech, freedom from arrest in civil process and the privileges relating to persons summoned as witnesses. Underlying the doctrine of parliamentary privilege is the justification that these privileges are necessary for the conduct of Legislatures' business and that, for that to be effective Parliament must enjoy a certain autonomy from control by the Executive and the Judiciary.

The basic concept underlying parliamentary privilege is the need to ensure so far as possible that a Member of the Legislature and witnesses before Committees of the House can speak freely without fear, that what they will say will later be held against them in court. This freedom of speech is conferred for the benefit of the parliamentary system with the purpose of safeguarding the integrity and effectiveness of this key democratic body.

Hon. Members, be that as it may, I wish to inform you that my office is in contact with the former Member for Kisumu Town East, Mr. Sungu, who has informed me that he has filed a notice of appeal against the ruling by the learned judge and that he intends to proceed to the Court of Appeal and challenge the entire decision by Justice Kalpana Rawal. The former hon. Member has also written to my office reiterating generally the matters raised by Mr. Olago and requesting for assistance by Parliament.

Considering that the former Member for Kisumu Town East Constituency has already preferred an appeal against the judgment by the learned judge, I do not find that the interest of justice would be served by a pronouncement by the Speaker on this matter at this time, conscious as I am, that the matter is *sub judice*.

I, therefore, stay my ruling on the matter to allow the former hon. Member to pursue the legal processes to their logical conclusions. I do, however, reserve the right to pronounce myself, as sought by this House, at the appropriate time. May I add that since completion of this Communication, this matter has been raised before the Parliamentary Service Commission and that it is considering various options at its disposal among them, as to whether or not Parliament can come to the aid of the former hon. Member in whatever manner.

## **PAPERS LAID**

The following Papers were laid on the Table:-

Report of the Constitutional Implementation Oversight Committee on the approval of Rev. Dr. Samuel Kobia for appointment to the Judicial Service Commission (JSC).

*(By Mr. Abdikadir)*

Report of the Departmental Committee on Health on the appointment of the Chief Executive Officer, Moi Teaching and Referral Hospital.

*(By Dr. Monda)*

## NOTICES OF MOTIONS

### APPROVAL OF REV. DR. SAMUEL KOBIA'S APPOINTMENT TO JSC

**Mr. Abdikadir:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT this House adopts the Report of the Constitutional Implementation Oversight Committee (CIOOC) on the approval of Rev. Dr. Samuel Kobia for appointment to the Judicial Service Commission (JSC) laid on the Table of the House on Thursday, 4<sup>th</sup> August, 2011.

### ADOPTION OF REPORT ON APPOINTMENT OF CEO OF MOI TEACHING/REFERRAL HOSPITAL

**Dr. Monda:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT this House adopts the Report of the Department of Health on appointment of the Chief Executive Officer of Moi Teaching and Referral Hospital laid on the Table of the House on Thursday, 4<sup>th</sup> August, 2011.

## QUESTIONS BY PRIVATE NOTICE

### HARASSMENT OF CHEMELIL SUGAR COMPANY/ CONTRACTED WORKERS BY MUHORONI DC

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

(a) Under what circumstances did the Muhoroni District Commissioner (DC) use armed Administration Police Officers to chase away persons contracted to plough part of the Chemelil Sugar Company nucleus estate that borders the DC's office on 1st June and 4th July, 2011?

(b) Is the Minister aware that the DC also chased away the Managing Director of Chemelil Sugar Company Limited, who had gone to find out from him why he was blocking the Company from working on its nucleus estate?

(c) What disciplinary action will the Minister take against the DC for the illegal conduct?

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

(a) On 1<sup>st</sup> June, 2011 while the District Commissioner (DC) was presiding over Madaraka Day at Muhoroni District headquarters next to Chemilil roundabout, firms contracted by Chemilil Sugar Company began to plough next to the function. They were then stopped for being a public nuisance and directly interfering with the proceedings of a public function.

(b) On 4<sup>th</sup> July, 2011 the same persons returned and began to plough within the district headquarters. The district headquarters houses the following Government offices: District Commissioner, Administration Police line, District Agricultural Officer, District Youth Officer, District Livestock Officer, District Human Resource Development

Officer, District Medical Officer, District Water Officer and the District Armory. The Administration Police restrained the person from destroying Government property. However, on 4<sup>th</sup> July, 2011 an individual stormed into the DC's office, Chemilil without following the established protocol. He later introduced himself as the Managing Director of the sugar company and proceeded to threaten the DC and making calls to various places in a disorderly manner. He was eventually requested by the security officers to leave the office and make his calls outside since his disorderly conduct was attracting unnecessary attention.

(c)The DC's conduct was not illegal so there is no disciplinary action being contemplated against him.

**Mr. Pesa:** Mr. Speaker, Sir, we are talking about a parastatal that is very important to this country and we are also talking about the character of the DC and the Managing Director. The Assistant Minister says that the DC did not even know the Managing Director and yet he is living within the premises provided by Chemilil Sugar Company. Is it really true that the DC does not know the Managing Director of Chemilil Sugar Company?

**Mr. Lesrima:** Mr. Speaker, Sir, indeed, there is a problem between the DC and the Managing Director. It is possible that he does not know him because when the DC tried to make a courtesy call on arrival in the district in the month of March, 2011 he was kept waiting for two hours and eventually he never managed to see the Managing Director. This was the first time that the DC was meeting the individual. These are two public servants because I believe that Chemilil Sugar Company is a parastatal and, therefore, the officer managing it is a public servant and the DC is also a public servant. So I am just wondering whether this is the right forum to resolve the conflict between the two.

**Mr. Koech:** Mr. Speaker, Sir, I have listened to the Assistant Minister. He is talking about people ploughing on Madaraka Day to plant more sugar-cane. Again on 4<sup>th</sup>, he has talked about the same people trying to plough around the headquarters to increase the acreage of sugar-cane in this country. Could he confirm that there is serious frustration from that public officer? What is the real relationship between him and the public, now that we expect him to bring people together?

**Mr. Lesrima:** Mr. Speaker, Sir, I did not get it! A relationship between who and who?

**Mr. Speaker:** Mr. Lesrima, this House is giving you all the attention that you will want under any circumstances. There is no reason why you should be upset. Repeat the question, Mr. Koech!

**Mr. Koech:** Mr. Speaker, Sir, I was very clear. After listening to him, what happened on 4<sup>th</sup> June is that the DC wanted to stop somebody from ploughing the farm to expand the production of sugar-cane by arguing that it is within the district headquarters. I do not want to believe that. So, my question is: Has he done adequate investigations to know the real relationship between the DC and the community?

**Mr. Lesrima:** Mr. Speaker, Sir, the location of the district headquarters is occupying about two acres. That particular individual was cultivating closer and closer to the buildings, thus causing security issues.

**The Assistant Minister for Education** (Prof. Olweny): On a point of information, Mr. Speaker, Sir.

**Mr. Speaker:** Order, Mr. Lesrima. Do you want information from Prof. Olweny?

**Mr. Lesrima:** Mr. Speaker, Sir, I do not think I want information because Prof. Olweny should declare his interest.

**Mr. Speaker:** Order! The Assistant Minister has declined the information from you, notwithstanding that you are also an Assistant Minister.

*(Prof. Olweny consulted loudly)*

Order, Prof. Olweny!

**Mr. Njuguna:** Mr. Speaker, Sir, indeed, that was a very sad moment in that area. Could the Assistant Minister inform this House what the Government is doing to bring harmony between the two institutions? There is clear intent on disregard of a very important national day and clear intention to destroy Government property.

**Mr. Lesrima:** Mr. Speaker, Sir, we have tried to bring harmony through a District Development Committee (DDC) meeting which was convened by the DC. The Managing Director flatly refused to attend. Secondly, the Provincial Commissioner (PC) called the two individuals to go to his office and discuss how to work harmoniously. That is because both of them are public servants. But on returning back, the same Managing Director persistently refused to co-operate.

**Mr. Gabbow:** Mr. Speaker, Sir, in his reply, the Assistant Minister has said that Chemilil Sugar Company (CSC) was ploughing closer and closer to the district headquarters. Could he ascertain whether the land that was being ploughed belonged to CSC?

**Mr. Lesrima:** Mr. Speaker, Sir, the land belongs to Agricultural Development Corporation (ADC).

**Mr. Speaker:** Last question, Mr. Pesa!

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to feign ignorance of the background of that DC, when he is fully aware that, that DC was removed from Nandi North District because of misconduct, and because of his inability to co-operate with others in that district? In fact, when he left, his departure was celebrated by district heads!

**Mr. Lesrima:** Mr. Speaker, Sir, I am aware that, that man was a District Officer I in Samburu Central and he was an excellent performer!

**An hon. Member:** What happened in Nandi?

**Mr. Lesrima:** Mr. Speaker, Sir, I do not know what happened in Nandi!

**Mr. Speaker:** Order, Mr. Lesrima!

**Mr. Lesrima:** Mr. Speaker, Sir, that man comes from Rarieda! He does not come from Samburu and I think I have an obligation to protect public servants who are being maligned by politicians!

**Mr. Pesa:** Mr. Speaker, Sir, the Assistant Minister is aware that the purpose of posting the DC to where he is today was to serve the communities there. The Managing Director too is supposed to be serving the communities of that area. Those are sugar-cane growing farmers. I wonder whether the Assistant Minister can take this matter more seriously by ensuring that the people of Chemelil are given the necessary support in order to work in their farms without the DC interfering.

**Mr. Lesrima:** Mr. Speaker, Sir, I happened to have been a Deputy Personnel Manager, Mumias Sugar Company (MSC) sometime back. So, I understand how sugar companies operate with the communities. I will endeavour to solve this problem with the co-operation of the Ministry of Agriculture for the benefit of the sugar industry and the people of the area.

## ORAL ANSWERS TO QUESTIONS

### *Question No.838*

#### STATUS OF GITHURAI KIMBO POLICE STATION

**Mr. Kabogo** asked the Minister of State for Provincial Administration and Internal Security:-

(a) whether he is aware that Githurai Kimbo Police Station is currently under the Kasarani OCPD instead of the Ruiru OCPD;

(b) why the 72 police officers at the police station are assigned duties in Kasarani area, which is outside Juja Constituency; and,

(c) whether he is also aware that insecurity cases have escalated as a result of the anomaly and what measures the Ministry is taking to ensure the trend is reversed.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, I would like to seek the indulgence of the Chair. You will remember that you ordered me to visit that area and solve the problem raised by the Questioner. We have since agreed that, because I was out of the country, you give us two more weeks for us to go and solve that problem once and for all.

**Mr. Speaker:** Is that the position, Mr. Kabogo?

**Mr. Kabogo:** Mr. Speaker, Sir, partly, yes. It is on the bit of him solving the issue. But when we discussed the issue yesterday, he said that the time he will be seeking from the House will be for rearranging the issue so that the police division can be moved back to Ruiru. That is exactly what he said!

**Mr. Speaker:** The Assistant Minister needs two weeks. So, will you grant him two weeks?

**Mr. Kabogo:** To do that? Yes, Mr. Speaker, Sir.

**Mr. Speaker:** Very well. It is so directed! Two weeks away from today!  
Member for Eldoret South.

### *Question No.878*

#### CONSERVATION OF ENVIRONMENT IN KENYA

**Ms. Chepchumba** asked the Minister for Environment and Mineral Resources:-

(a) what plans the Government has to ensure promotion of environmental conservation through community development initiatives throughout the country given the serious global climate change; and,

(b) how much money the Ministry has set aside for the initiative, particularly in Eldoret South Constituency, and whether any donor funding has been sought.

**The Assistant Minister for Environment and Mineral Resources** (Prof. Kamar): Mr. Speaker, Sir, I beg to reply.

(a) The Government has programmes to ensure promotion of environmental conservation through community development initiatives throughout the country, given the serious global climate change. Government efforts include policy frameworks, regulations and project activities covering all aspects of the environment including, climate change, biodiversity conservation, wetlands conservation and pollution control, among others. These activities are guided by the Environmental Management and Coordination Act (EMCA) of 1999 under which Government programmes are executed through District Environmental Committees (DECs). Those committees involve and create awareness among the public on the need for environmental protection and conservation.

(b) The Ministry has been allocated Kshs1,858,994,301 for environmental management and protection in the 2010/2011 Financial Year, and has projected Kshs3,237,270,093 for the 2011/2012 Financial Year. That allocation has not been broken down to constituency level and includes donor funds for climate change related activities, and the Lake Victoria Environmental Management Programme (LVEMP). Recently, my Ministry launched the River Sosiani Rehabilitation Programme that traverses Eldoret Municipality in Uasin Gishu County and Kshs15 million was allocated for that programme in the 2010/2011 Financial Year. Another Kshs50 million has been projected for this Financial Year, 2011/2012. I wish to confirm that, out of a total of 4,735 primary schools to be supported through the Green Schools Initiative and other collaborations of the Ministry, 29 are going to be in Eldoret South Constituency.

Thank you.

**Ms. Chepchumba:** Mr. Speaker, Sir, I want to thank the Assistant Minister for that good answer. However, from her response, she has stated that, out of the 4,735 primary schools that were supported under the Green Schools Initiative Programme, only 29 are from Eldoret South Constituency. But as per the minutes of a District Education Board (DEB) meeting that was held in my constituency on Wednesday 26<sup>th</sup>, 20 schools benefited from that programme. I would like to ask the Assistant Minister to clarify why the other nine schools were not supported. Could she respond to that?

**Prof. Kamar:** Mr. Speaker, Sir, not all the 4,735 schools have implemented the programme. As I said, some are under the Green Schools Initiative and others are under collaborations with other Ministries; including the Ministry of Education which has programmes that come through the DEB. What was identified in Eldoret South was an allocation of 29 schools, which we think most constituencies will receive. But the first 20 were implemented. So, programmes for the nine remaining schools are still going to be implemented. That is why, in my answer, I have talked about schools that will be supported in that programme. It is not that we have completed supporting. We are still continuing. In fact, we have 500 schools that are going to be added in the budget for this financial year.

**Mrs. Odhiambo-Mabona:** Mr. Speaker, Sir, could the Assistant Minister, please, clarify whether they have a specific programme with other Ministries to mainstream

environment protection in their work and, more specifically, with the Ministry of Roads? Right now, as the Ministry is undertaking infrastructural development, it is felling down many trees. There is absolutely no evidence that they are being re-planted. I will give you an example of Riverside and Homa Bay County - along the Kendu Bay-Homa Bay Road. If you look at the roads, all the trees are going. There is no evidence that they are re-planting the trees that have been felled. Do you have such a specific programme?

**Prof. Kamar:** Mr. Speaker, Sir, yes, we have a programme. The Ministry is guided by EMCA. In that Act, NEMA has been empowered to ensure that whatever development takes place, whether it is roads, building estates or whatever any Ministry would like to do, an environmental impact assessment (EIA) must be done. It is true that, sometimes, especially when we are talking about by-passes, you will find that the Ministry of Roads has been felling trees to create way. But we are conscious of that fact. We ensure that environmental conservation is always re-done immediately after roads are completed. That covers not only the trees, but also the waterways. That is because the disposal of water from the roadsides has been a challenge in most areas where construction is going on. So, yes, we are in touch with the Ministries and we use EMCA as our law to ensure that environmental conservation or protection is safeguarded when any development is taking place.

Thank you!

**Dr. Kones:** Mr. Speaker, Sir, last year there was so much talk about conservation of Mau Forest. The talk then was that the communities surrounding this forest were to be empowered on environmental issues. May I know from the Assistant Minister what specific programmes have been implemented in the areas surrounding Mau, particularly the western part where I come from, that is Bomet, Konoin and Kipkelion areas? Are there specific programmes?

**Prof. Kamar:** Mr. Speaker, Sir, we have had a provision in the Budget for conservation of Mau Forest. In March this year we employed 250 youth for three months who were involved in the replanting of trees at Mau. This was a joint project with the Kenya Army and some donors. We will continue with the same. I appeal to the Members of Parliament, especially from that area, to identify particular areas where we can protect our water sources. We, as a Ministry, will implement the programme because we have provided for funding, especially for planting of indigenous trees. Our agenda in Mau is big. This forest is very important for us and for the country at large.

**Mr. Baiya:** Mr. Speaker, Sir, I would want to ask the Assistant Minister whether she is aware that some of the programmes being proposed appear to have been generated from the office without reference to the actual situation on the ground. For instance, in my constituency, you will find some schools being allocated resources to raise seedlings which, even after they plant them, they have nowhere to take them. There is no land where we can plant those trees. Why does the Ministry not actually liaise with the people on the ground to identify the suitable programmes they can involve them in rather than impose them from above?

**Prof. Kamar:** Mr. Speaker, Sir, at the district level, we work through the District Education Board (DEB) and District Environment Committee (DEC). The DEC is the one that advises the DEB on the appropriateness of the trees to be planted. There is a policy now in place that 10 per cent of agricultural land be converted into a forest. For us



to be able to realize that, the agenda between the Ministry of Environment and Mineral Resources and the Ministry of Education was to raise as many seedlings as possible.

The part that may be weak, and that is where the hon. Member may be right, is the fact that the weak line is to ensure that farmers actually look for these seedlings, so that we ensure that we fulfill our law on 10 per cent of agricultural land because nowhere in this country have we fulfilled that. So, there should not be any seedlings that are not utilized. The seedlings should go to the farmers and we should encourage that. What I would take from what the hon. Member is saying is to ensure that our DEC's are sensitized to sensitize the communities to buy seedlings from these schools because that was the intention.

**Ms. Chepchumba:** Mr. Speaker, Sir, I appreciate the Ministry for setting up Climate Change Secretariat. Could the Assistant Minister tell this House who chairs this Secretariat?

**Prof. Kamar:** Mr. Speaker, Sir, the Climate Change Donor Co-ordination Secretariat is co-chaired between the donor group and the Ministry. The Ministry is doing it on behalf of the Government and it is actually under the PS. It is chaired by the PS or somebody the PS delegates. So, that is our contact person in the Ministry.

**Ms. Chepchumba:** On a point of order, Mr. Speaker, Sir. My question was specific: Who chairs this Climate Change Secretariat? I know there is a link person in the---

**Mr. Speaker:** You have already asked the question! Let the Assistant Minister answer!

**Prof. Kamar:** Mr. Speaker, Sir, as I said, the person who chairs is the PS in my Ministry. He is Mr. Ali Mohammed. He has the powers to delegate his job to any of the other officers in the Climate Change Secretariat. But recently, we have also announced that we will have a Climate Change Co-ordinator and that person has not been recruited yet because we will co-ordinate from one specific unit.

#### *Question No.950*

#### PAYMENT OF GRATUITY TO FAMILY OF LATE TITUS KIEKE KISINA

**Mr. Kiilu** asked the Minister for Environment and Mineral Resources:-

(a) whether he is aware that the next-of-kin to Titus Kieke Kisina P.No.1982069349 who died on 25<sup>th</sup> April, 2009, have not been paid death gratuity and if so, what the reasons were; and,

(b) when the payment will be made.

**The Assistant Minister for Environment and Mineral Resources** (Prof. Kamar): Mr. Speaker, Sir, I beg to reply.

(a) The late Mr. Kisina not Kisina previously worked for the Ministry of Water and Irrigation and, therefore, had his old main personal file maintained in the Ministry of Water and Irrigation. These files were reported misplaced making it very difficult for my Ministry to process the death gratuity claim on time. My Ministry, however, has

managed to reconstruct the late Mr. Kesia's records and processed the death gratuity claim which was submitted to the Director of Pensions Department in the Treasury vide letter Ref. No.EFT82069346 dated 14<sup>th</sup> April, 2011.

(b) I would like to advise that the next-of-kin follow up the payment with the office of the Directorate of Pensions Department in the Ministry of Finance, that is Treasury.

**Mr. Kiilu:** Mr. Speaker, Sir, while thanking the Assistant Minister for this answer I wish to express my concern that it has taken too long for this Ministry to reconstruct information that is available in the Ministry. Many relatives of officers who have died while in the service of this Government have continued to suffer while pursuing gratuity and other claims because of poor record management by the Government.

At this age of information technology available in this country, could she state whether there is a policy of managing storage and retrieval of information, so that officers who happen to die in the Civil service do not continue to suffer before compensation is done?

**Prof. Kamar:** Mr. Speaker, Sir, I want to say it is regrettable that they took about two years to get this. However, as I mentioned, this was a staff member who had moved from one Ministry to another. When one Ministry tells you that the documents are not available you can only wait and hope that they will be available.

In addition, I also want to mention that the next-of-kin also took time in acquiring the required letters of administration, so it was not fully because of the Ministry. But yes, with IT now I think this will be very easy and even communicating with the Treasury after things are done will be easy. So, I can assure the hon. Member that my Ministry is now IT compliant and our documentation is up to date and we will not have a problem. Thank you.

**Mr. Langat:** Mr. Speaker, Sir, the Assistant Minister has referred the relatives of the deceased to the Pensions Department, which has been frustrating retirees for a very long time. Could she undertake to take up this matter herself, so that this family is assisted other than referring the matter to the Pensions Department which is a problem?

**Prof. Kamar:** Mr. Speaker, Sir, the best undertaking a Ministry can give is to release a letter to the Director of Pensions, Pensions Department. We have no control once we send the letter. So, I cannot undertake to ensure that the Treasury pays. If we have a problem with the Treasury, we can deal with that, but I do not see any problem as soon as the reconstruction is done and the details are given. I have a copy of the letter that was given and we even undertook to harmonize the names of the deceased. All the information that they require is there. It again borders on the issue of IT and I think the Treasury must be up to date. So, it should not take as much time as it used to take before. It is true it used to take a lot of time, but I can assure the Members that currently we have fewer complaints in this area.

**Mr. Njuguna:** Mr. Speaker, Sir, I want to thank the Assistant Minister for reconstructing a new file for Titus. Could she then inform this House the amount of money they have prepared for this complainant?

**Prof. Kamar:** Mr. Speaker, Sir, that question begs for details that I do not have. I have the details of when he was hired, when he moved from one grade to another, but I cannot tell the translation into Kenya Shillings from the documents that I have. We even have a little overpayment of Kshs18,000 which was supposed to be deducted. The details

are there, but it will take time for me to calculate and give this House the figures. In the reconstruction, we have shown from the day the person was hired in 1981 and as he changed grades from Grade “A”, “C”, “D”, “E” to “F”. We have all those calculations which were the guidelines for calculating the amount of money. This is very safe.

**Mr. Kiilu:** Mr. Speaker, Sir, you have heard the Assistant Minister say that she has advised the next-of-kin to follow up this payment with the Treasury. Could she tell this House what form of communication she used to communicate with the next-of-kin of Titus? She should also state here the amount of money this family should follow up with the Treasury.

**Prof. Kamar:** Mr. Speaker, Sir, our communication to the next-of-kin, Agnes Katunge Titus, was a letter sent to P.O. Box 31 Emali. The letter that is given shows the gratuity including the calculations, but we did not indicate to her what the Pensions Department will do. It is the job of the Pensions Department to calculate. Ours was to confirm when the deceased was employed in whichever Ministry because he exited from our Ministry. We indicated the dates when promotions took place and the grades as he progressed. It was the job of the Pensions Department to calculate. I have a letter dated 14<sup>th</sup> April, 2011, which was sent to Agnes Katunge Titus.

*Question No.991*

IRREGULAR TRANSFER OF PARCELS  
OF LAND FROM NJORO TO GILGIL DISTRICT

**Mr. Kiuna** asked the Minister for Lands:-

(a) why land reference numbers LR 4334, 4335, 4336, 4337, 4338 and 4339 East of Njoro Farms (Kiambogo Block 1) in Kianjoya Location of Lare Division, Njoro District, were transferred to Gilgil District;

(b) whether the said block could be transferred back to Njoro District; and,

(c) when the title deeds for the blocks will be issued to the respective owners.

**The Assistant Minister for Lands** (Mr. Bifwoli): Mr. Speaker, Sir, I beg to reply.

(a) Land reference numbers L.R.4334, 4335, 4336, 4337, 4338 and 4339 East of Njoro Farms (Kiambogo Block 1) also known in the Land Registry as Kiambogo Mutukanio Block 1 are in Njoro District and the land registration matters are done in Nakuru Land Registry. However, when the Naivasha Land Registry was established, in order to decongest the Nakuru Land Registry, some land registration records were advertently transferred there hence inconveniencing the registered land owners. Arrangements are afoot to retransfer them to the Nakuru Land Registry, which serves Njoro District, by November, 2011.

(b) The land register and other registry documents for the said block cannot be taken to Njoro District since there is no Land Registry there.

(c) Titles for land falling under the Kiambogo Block 1 also known as Kiambogo Mutukanio Block 1 were issued and registered in the Nakuru Land Registry.

**Mr. Kiuna:** Mr. Speaker, Sir, while I appreciate the answer given by the Assistant Minister, I would like to request him to consider posting Ministry officials to Njoro District.

**Mr. Bifwoli:** Mr. Speaker, Sir, I am willing to post officers from my Ministry to Njoro District and open a Land Registry, but due to shortage of staff, I cannot do it immediately. When we get more staff, we shall consider it.

**Mr. Speaker:** Next question, Member for Molo! I am told this Question had previously been answered!

**Mr. Kiuna:** Mr. Speaker, Sir, I concur with the Assistant Minister and hope that whatever he has said is true. When will the shareholders of Mutukanio Block 1 in Kianjoya and Mahiga be given title deeds?

**Mr. Bifwoli:** Mr. Speaker, Sir, when it comes to land where there are shareholders, it means that it is a private company. Once the company registers and subdivides the land, we shall give the shareholders title deeds.

*Question No.979*

UPGRADING OF CHEPTERIT-BARATON-KAIBON-KIPKARREN-TURBO ROAD

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

(a) how much money was spent on the maintenance of the Chepterit-Baraton-Kaibon-Kipkarren-Turbo Road (C37) in the 2010/2011 Financial Year; and,

(b) whether he could consider upgrading the road to bitumen standards.

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

(a) My Ministry, through the Kenya National Highways Authority spent Kshs5,932,979 for the maintenance of Chepterit-Baraton-Kaibon-Kipkarren-Turbo Road.

(b) My Ministry has completed the design for upgrading of Chepterit-Baraton-Kaibon-Kipkarren-Turbo Road (C37) at a cost of Kshs35 million. We have also set aside Kshs90 million to commence procurement for bituminization of the road later this year. In the meantime, we have provided Kshs18 million for the maintenance for the purpose of ensuring that the road is in a motorable state.

**Mr. Koech:** Mr. Speaker, Sir, I really want to thank the Assistant Minister for this answer. This is a very important road which covers up to Baraton University where we even have international students. We also have farmers producing a lot of milk, maize and horticulture. He has confirmed that they have provided Kshs90 million to commence procurement to upgrade the road to bitumen standards. When is the tender going to be done so that this work can start?

**Mr. Kinyanjui:** Mr. Speaker, Sir, as I have indicated, we have already completed the design. We are in the process of preparing the advertisement to invite tenderers who are interested in this particular road. Within the next 90 days, we should be able to have the tender out.

**Mr. Speaker:** That, really, should settle the matter. Do you have any further questions, Mr. Koech?

**Mr. Koech:** Mr. Speaker, Sir, this road cuts through three constituencies, namely Emgwen, Mosop and Eldoret North. Two years ago, they did the grading of the Eldoret North part. In the last financial year, they did the Emgwen part. My constituency's section of this road is very bad. Now that the Ministry has provided Kshs18 million for maintenance, could he consider starting work from the Mosop section, and ensure that the work starts immediately because farmers are suffering?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I want to confirm that what the hon. Member has said is, indeed, correct. I would like to assure him that we will start with the worst section.

*Question No.1012*

STALLING OF WORKS ON NYARU-  
ELDAMA RAVINE ROAD

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

- (a) whether he is aware that the re-carpeting of Nyaru-Eldama Ravine Road has stalled; and,
- (b) why it has stalled and when the work will resume.

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

(a) I am aware that the re-carpeting of Nyaru-Eldama Ravine Road was not completed due to exhaustion of funds.

(b) This was occasioned by an increase in the quantities due to the severe deterioration of the road, which was used as an alternative road to Eldoret from Nakuru during the reconstruction of the Nakuru-Timboroa Road.

My Ministry has allocated a total of Kshs129,500,000 through the Kenya National Highways Authority in this financial year to carry out the remaining works.

Thank you, Mr. Speaker, Sir.

**Mr. Kiptanui:** Mr. Speaker, Sir, I wish to thank the Assistant Minister for answering this Question. He has said that the Ministry has allocated Kshs129,500,000 for the remaining portion of the road. Is he sure that this amount will be sufficient for the remaining 20 kilometres?

**Mr. Kinyanjui:** Mr. Speaker, Sir, this was based on the quantities that were given to us. I am confident that we will be able to finish the work with the amounts allocated.

**Ms. Chepchumba:** Mr. Speaker, Sir, this is a very important road. It opens the North Rift to tourists. What assurance can the Assistant Minister give this House that the allocated funds will be availed for the completion of this important road?

**Mr. Kinyanjui:** Mr. Speaker, Sir, as I have indicated, we have already set aside the amount. In due course, we will advertise the tender and ensure that we give it to competent contractors to start the works. Allow me to also say that the reason as to why we have had severe deterioration on this road is that we had heavy trucks using it whereas the road had not been designed for that kind of load. We are considering putting a weighbridge on that road to ensure that we do not have a massive deterioration as a result of overloading on that section of the road.

**Mr. Speaker:** Last question, hon. Kiptanui!

**Mr. Kiptanui:** Mr. Speaker, Sir, what measures has the Ministry put in place to ensure that only authorized vehicles use that road? We have vehicles carrying sand from Iten using that road. The weight of the trucks is over 20 tonnes. If you drive through that road, you will realise that some sections of the road, which were repaired last time, are worn out. What measures have you put in place to address the situation?

**Mr. Kinyanjui:** Mr. Speaker, Sir, as I have indicated, we are in the process of introducing a mobile weighbridge on that road, and we will be targeting some of those notorious companies, which have been overloading their trucks, especially the trucks belonging to companies that extract raw materials like fluorspar and those of timber merchants, which have also been doing the same.

I also want to take this opportunity to sound a serious warning to other road users, who also overload, that we will have weighbridges on all the key roads, including sections of the Malindi-Mombasa Road, where we have had the salt works causing a lot of damage on a section of the road.

*Question No.1054*

NON-DISBURSEMENT OF FSE  
FUNDS TO KIRIMOSE SECONDARY SCHOOL

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

(a) why the funds for Free Secondary Education (FSE) have not been released to Kirimose Secondary School for Term I and Term II of 2010; and,

(b) when the Ministry will disburse the funds to the school.

**The Assistant Minister for Education** (Prof. Olweny): Mr. Speaker, Sir, I beg to reply.

(a) Kirimose Secondary School did not qualify for funding for Terms I and II of 2010 due to failure to meet the Free Day Secondary Education Funding and Disbursement Regulations. The regulations require that a school must be registered and have a Teachers Service Commission (TSC) headteacher. The school was registered on 18<sup>th</sup> August, 2010. The school's registration number is GP/A/88/54/10 and the headteacher, Mr. Richard Ruto, TSC No.358755, was posted to the school on 30<sup>th</sup> November, 2010.

(b) The school made its application for funding on 3<sup>rd</sup> January, 2011, which was received by the Ministry through the District Education Office, on 18<sup>th</sup> January, 2011. Since January this year, the school has received a total of Kshs584,969 for Terms I, II and III of 2011. The breakdown is as follows: Term I, Kshs275,125; Term II, Kshs21,939 and Term III, Kshs287,905.

Thank you, Mr. Speaker, Sir.

**Dr. Kones:** Mr. Speaker, Sir, I want to thank the Assistant Minister for the answer. When I filed this Question, the situation was slightly different but it has since changed. I want to inform him that the disbursement was made after I made several visits to his Ministry. Your Ministry needs to do something. It does not have to wait until we visit it in order for it to act. Could I know why there are big differences in the

disbursements for Terms I, II and III? In Term I, we had Kshs275,000 but in Term II, you disbursed only Kshs21,000. Why the difference?

**Prof. Olweny:** Mr. Speaker, Sir, the disbursements are based on a formula in the Ministry, which I do not have with me. It is not uniform. The disbursement for Term I is always bigger than that of Term II. I do not have the disbursement formula with me now.

**Mr. Speaker:** Very well. You can pass it on to the hon. Member later.

**Mr. Chepkittony:** Mr. Speaker, Sir, the Assistant Minister mentioned that the school had not been registered during Terms I and II of 2010, yet it is the same Ministry which registers schools. What are they doing to fast-track registration of new schools, so that they do not wait for too long and lose this money? Could they consider registering schools online?

**Prof. Olweny:** Mr. Speaker, Sir, registration takes a very short time once the relevant documents are available. This is a new school. Once the documents were delivered to our office, registration was effected immediately. As a matter of fact, registration of a school can be done within a week once we receive the documents. The problem is always on the ground, where it takes a while before the people concerned put all the necessary documents together and deliver them to us.

**Mr. Speaker:** Last question, Member for Konoin.

**Dr. Kones:** Mr. Speaker, Sir, the application for funding was made in January, but the total disbursement for Terms I, II and III was done three weeks ago. What is the Ministry doing to ensure that disbursements of funds are made as soon as applications are made?

**Prof. Olweny:** Mr. Speaker, Sir, the information I have is that the money was disbursed in January. Immediately we received the application, the money was disbursed.

**Kones:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead the House when I know for a fact, I was at the Ministry and this disbursement was done three weeks ago? Is he in order to mislead the House that the disbursement was done in January yet he does not have facts?

**Prof. Olweny:** Mr. Speaker, Sir, well the information I have here is that the disbursement was done in January.

**Mr. Speaker:** Next Question by the Member for Sigor!

*Question No.1066*

FAILED LAUNCH OF MASOL WILDLIFE CONSERVANCY

**Mr. Litole** asked the Minister for Forestry and Wildlife:

(a) why the launching of the Masol Wildlife Conservancy which was scheduled for 30<sup>th</sup> May 2011 did not take place despite adequate planning for the exercise; and,

(b) when the Ministry will launch the event.

**The Assistant Minister for Forestry and Wildlife** (Mr. Nanok): Mr. Speaker, Sir, I beg to reply.

(a) The Masol Community launched peace and development strategy dubbed MPDI strategy, the Masol Peace and Development Initiative and not the Masol Wildlife

Conservancy on 30<sup>th</sup> May 2011. The launched Masol Peace and Development Initiative proposes the establishment of the Masol Wildlife Conservancy as one of its envisaged future development goals.

(b) My Ministry will assist the Masol Community to create the envisaged Masol Conservancy once a formal request for assistance to create a wildlife conservancy is received from the Masol Community.

**Mr. Litole:** Mr. Speaker, Sir, the Assistant Minister is aware, and he was even invited to attend this meeting for that particular purpose. It is, therefore, interesting that while the Forestry Service came all the way from Nairobi, nobody from the Kenya Wildlife Service (KWS) came and yet they were the major stakeholders. This happened while they were just a stone's throw away from Turkwel. Could the Assistant Minister confirm that a Member of Parliament from the neighbouring constituency sent an SMS text to the Managing Director, KWS asking him not to attend that meeting and that is why nobody attended the meeting?

**Mr. Speaker:** Member for Sigor, perhaps, next time you should try and keep your questions in the head! Other Members should also note because we do not want to encourage you to read questions!

**Mr. Nanok:** Mr. Speaker, Sir, before I can respond to this, could the hon. Member declare his interest?

**Mr. Litole:** Mr. Speaker, Sir, my interest is that I am the area Member of Parliament! He also has some interest of wanting to expand the Turkana County to come into the Pokot County! That is why he told the Director of KWS not to attend that meeting!

**Mr. Speaker:** Mr. Assistant Minister, proceed and answer the question as asked the first time! Ignore the other one!

**Mr. Nanok:** Mr. Speaker, Sir, I did not send any SMS text as the Assistant Minister for Forestry and Wildlife. As I have said clearly, what the Masol Community and the hon. Member were launching was a strategic plan that has so many future proposals. I want to repeat that no formal engagement has been done with my Ministry with regard to establishment of a conservancy.

Mr. Speaker, Sir, we have a law under the Wildlife (Conservation and Management) Act. Cap.376, Sections 19 and 67 regulate how requests for conservancies and approvals have to be established. I want to read Section 19(1):-

“The Minister may, after consultation with the competent authority, by notice in the *Gazette*, declare that any specified area shall be a local sanctuary wherein any animal specified in the same or a later notice shall not be hunted.”

(2) The area of local sanctuary shall not exceed two thousand six hundred hectares”

Thank you.

**Mr. Speaker:** Last question, Member for Sigor!

**Mr. Litole:** Mr. Speaker, Sir, the Assistant Minister has not answered my question as to why he himself sent an SMS text to the Director of the KWS telling him not to go there! I know for a fact – I talked to the Director of KWS - that a group of officers went to the Director's office to talk to him not to come there. Why did the Assistant Minister have to stop this man from going there? He must declare his interest!



**Mr. Speaker:** Mr. Assistant Minister, just answer the question! Why did you stop that man from going there?

**Mr. Nanok:** Mr. Speaker, Sir, I want to state categorically that I did not stop anyone from doing anything! What---

**Mr. Speaker:** Order, Mr. Assistant Minister! If that is your answer, then you have---

**Mr. Nanok:** Mr. Speaker, Sir, I think I have to bring out this very clearly! What we launched on 31<sup>st</sup> May 2011 is the strategic plan. Could the hon. Member table that strategic plan here?

**Mr. Speaker:** Order, Mr. Assistant Minister! You are being repetitive! We have heard that before even as you gave your immediate answer. We will not allow you to have your confrontation with your neighbour here!

Next Question by Mrs. Noor!

*Question No.1082*

ALLEVIATION OF ACUTE WATER SHORTAGE IN IJARA DISTRICT

**Mrs. Noor** asked the Minister for Water and Irrigation:-

(a) whether she is aware that Hulugho, Sangailu, Handaro, Sangole, Jalish, Bothai, Ruqa and Warsame divisions are experiencing acute water shortage;

(b) what the sources of water in the above divisions are; and,

(c) what long-term plans the Ministry has to solve water problems in the areas mentioned in (a) above.

**The Assistant Minister for Water and Irrigation** (Mr. Waititu): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that due to drought and failure of rains for the last three years in Ijara District, the local people and livestock within Hulugho, Sangailu, Handaro, Sangalo, Jalish and Bothai divisions are experiencing water shortage as the water sources which are mainly pans have not been recharged and are about to dry up in the current dry season.

(b) The water sources for these divisions are exclusively water pans.

(c) My Ministry intends to undertake the following long-term measures to solve water problems in the said areas:-

(i) Undertake water conservation through the construction of large and medium dams in Ijara. This is possible as the district has an annual rainfall of over 600 millimetres which entails surface water harvesting as the best option for water service development. The project will be implemented in the next five years.

(ii) Procurement process for the two boreholes to be drilled and equipped at Hulugho and Sangailu respectively in the current financial year 2011/2011 to provide water services in the district has started.

(iii) The design of Masalani-Ijara-Hulugho pipeline, which will run across the district, west-east, is complete at an estimated cost of Kshs200 million. The project will be implemented in two years and, when implemented, the project will provide 80 per cent of the residents with clean water.

**Mrs. Noor:** Mr. Speaker, Sir, the Assistant Minister did not get his facts right. He is calling all these places I have mentioned a division whereas Hulugho is a district, if I may correct him. Having said that, could he tell us who has conducted the study on the design he has just mentioned, when the study was conducted and where and who were involved? Who were the stakeholders involved when this study was conducted to design Masalini-Hulugho-Ijara Pipeline?

**Mr. Waititu:** Mr. Speaker, Sir, in Ijara, we have a District Water Officer (DWO) who is in charge of water in the district. The designs were done under his supervision. I also must bring it to the notice of the Member that this project was proposed a long time ago and was factored into this financial year. The designs are complete.

**Mrs. Shebesh:** Mr. Speaker, Sir, in his answer the Assistant Minister says that the Ministry intends to undertake the building of large and medium size dams and pans in Ijara. Are they intending to build a lake or they are building a dam the size of a lake? Do you understand what you are talking about? Is it a miracle that you are going to build a dam the size of a lake?

*[Mr. Speaker left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

**Mr. Waititu:** Mr. Deputy Speaker, Sir, we have a long-term programme for this district. One of the projects is to construct some large-scale dams and some medium dams. What I want the hon. Member to know is that this is a project that we are supposed to undertake in the next five years.

**Mr. Njuguna:** Mr. Deputy Speaker, Sir, while thanking the Minister for the good answer that he has given, could he then inform this House the interim measures that the Ministry is likely to take, to address the concerns of the drought-stricken community?

**Mr. Waititu:** Mr. Deputy Speaker, Sir, for the time being we have given the district a water bowser, registration No.GKA 721S, which is providing water right now.

**Ms. Karua:** Mr. Deputy Speaker, Sir, could the Minister tell the House exactly what work he has undertaken with the Kshs200 million, because we are informed reliably that there is nothing on the ground? What is this work you have spent Kshs200 million on, instead of providing water to the people of Ijara?

**Mr. Waititu:** Mr. Deputy Speaker, Sir, the Kshs200 million is for the pipeline. What I told the hon. Member is that we have done the designs and the pipeline will cost Kshs200 million.

**Ms. Karua:** On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to just say that Kshs200 million is for the pipeline without letting the House know whether that money is available now or in the future?

**Mr. Waititu:** Mr. Deputy Speaker, Sir, this project is earmarked for this Financial Year (2011/2012) that we have just started.

**Mr. Deputy Speaker:** I thought the Chair heard you just say that this is long-term and it is for the next five years.

**Mr. Waititu:** Mr. Deputy Speaker, Sir, there are three measures that we have earmarked as a Ministry. One of them is the pipeline in Masalani - Ijara-Hulugho and the

other one is the dams in the next five years. The other is two boreholes that are to be done in this financial year at Hulugho.

**Mr. Deputy Speaker:** So, the Kshs200 million is for this financial year?

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

**Mrs. Noor:** On a point of order, Mr. Deputy Speaker, Sir. I have the written response by the Minister. It reads:

“The design of Masalani-Ijara-Hulugho pipeline, which will run across the district west-east, is complete at an estimated cost of Kshs200 million.”

Mr. Deputy Speaker, Sir, that money is already used according to his response.

**Mr. Deputy Speaker:** Order, hon. Noor! It is the design.

**Mrs. Noor:** Mr. Deputy Speaker, Sir, I have been on the ground in the last two weeks. The area Member of Parliament is here seated and can confirm that. I talked to the Water Engineer and there is nothing of the sort. Is the Minister in order to mislead this House when this design has not been conducted?

*(Mr. Haji stood up in his place and bowed)*

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. I do not know whether you saw the Minister rise and bow to confirm that, indeed, his own Government here, being represented by the other Minister, is misleading the National Assembly.

**Mr. Deputy Speaker:** The Minister, like the perfect administrator he was, indeed, he did stand up and bowed, which is an indication that he is in concurrence. Hon. Minister, whereas he is a Minister, he is barred by the Standing Orders to interrogate your answer, but clearly, when your fellow Minister here shakes his head when you say something, and then stands and bows to indicate concurrence with a Backbencher, then there is something seriously wrong with your answer.

**Mr. Waititu:** Mr. Deputy Speaker, Sir, we cannot assume that he was responding to the hon. Member, when we do not know whether or not he was in acceptance.

**Mr. Deputy Speaker:** The body language is that the hon. Member is asking a question that the Minister says “yes, indeed.”

**Mr. Waititu:** Mr. Deputy Speaker, Sir, we can only assume that, but we cannot---

**Mr. Deputy Speaker:** The Chair is assuming because the Minister is nodding behind you. Everytime I say that the answer is inadequate, the Minister nods.

Proceed and give an appropriate answer!

**Mr. Waititu:** Mr. Deputy Speaker, Sir, what I was trying to clarify is that the designs are complete. Designs are normally done and are in the office, but what the hon. Member needs to know is that during this financial year, there is Kshs200 million that we are going to spend on this pipeline.

**Mr. Chanzu:** Mr. Deputy Speaker, Sir, year in, year out, the Ministry of Water and Irrigation votes out money for projects like the one that the Minister has just stated here. But I would like to know what contingent measures the Ministry has put in place for the proper utilization of this money, particularly when it comes to designs. This is because they have been known to design pipes which eventually blow up under pressure. What contingent measures have you put in place to make sure that the money is properly utilized?

**Mr. Waititu:** Mr. Deputy Speaker, Sir, every Member is aware that we proposed, as a Ministry, that we should have a District Water Committee where Members of Parliament will be represented. It is our sincere hope that they are going to use the chance to put in some people who can also be supervising on their behalf.

**Mr. Deputy Speaker:** Last question, hon. Noor!

**Mrs. Noor:** Mr. Deputy Speaker, Sir, the Minister in his answer, also said that there is a permanent water bowser in Hulugho. He is misleading this House because I have been in Hulugho and have never seen a water bowser there. We have only one water bowser which was purchased five years ago in Masalani District. Would I be in order to say that the Minister has misled the House in the whole answer to this Question and should, therefore, give us a proper answer?

**Mr. Deputy Speaker:** Hon. Minister, are you sure you said that there is a water bowser in Hulugho District?

**Mr. Waititu:** Mr. Deputy Speaker, Sir, I said that there is a water bowser in Ijara District, registration No.GKA 721S. As you might also be aware, the Minister for Finance---

**Mr. Mbadi:** On a point of order, Mr. Deputy Speaker, Sir. From the Minister's answer, it is very obvious that he is not very sure of the answer he is giving. If you look at the written answer that he gave, he has even scribbled some writings saying "Ihugo Town, GKA 721S." Would I be in order to ask that since he appears not to be very sure of his own answer, he should be referred back with it, so that he can come back with a better answer, or that this matter be referred to the Committee to investigate it? The issue of water in such areas mentioned is not a small matter.

**Mr. Waititu:** Mr. Deputy Speaker, Sir, I do not know what the hon. Member actually means, because I think I have clarified what the hon. Member is asking. If hon. Mbadi has a question he can ask and I will answer it. I have the details with me in my supplementary answers. What the hon. Member is not saying is that we have also done various projects in this district. We have done some projects in Kotole Water Supply, at a cost of Kshs1 million, Kababa Water Pan, Kshs2 million; Masalani Water Supply, Kshs6 million---

**Mrs. Noor:** On a point of order, Mr. Deputy Speaker, Sir. I had asked a specific question in a specific area. The Assistant Minister has not answered this Question adequately. As hon. Mbadi asked, could this Question be deferred so that the Assistant Minister can go back and bring a better answer or you refer it to the Committee so that the issue of designs, which I doubt that they exist, could be investigated?

**Mr. Deputy Speaker:** Hon. Sophia, are you categorically saying there is no water bowser in Masalani District?

**Mrs. Noor:** Mr. Deputy Speaker, Sir, I said that there is one in Masalani. But in Hulugho District, there is no water bowser. That is what he told me! He said that it is permanently stationed at Hulugho.

**Mr. Deputy Speaker:** For the purpose of our practice here, what is written is not captured by the HANSARD. What is captured is what the Assistant Minister has said. The Assistant Minister did not say that there was a water bowser in Hulugho.

Hon. Assistant Minister, there is a written answer in the possession of the hon. Member. Clearly, it is not in my possession. The one I have here does not have any vehicle number. It indicates that you have a vehicle in Hulugho.

**Mr. Waititu:** Mr. Deputy Speaker, Sir, I said it is in Ijara District. What the hon. Member needs to do, and it is in the public domain--- Just the other day, the Ministry of Finance reallocated Kshs1.5 billion for drought mitigation. That is why we have decided to increase water bowsers in drought hit areas. What I can promise the hon. Member is that, once we receive that money, we will give a water bowser to Hulugho District. We have already ordered for the water bowsers.

**Mr. Gabbow:** On a point of order, Mr. Deputy Speaker, Sir. As much as the Question addresses specific areas, the same situation is affecting northern Kenya. We are aware that the Ministry is giving water bowsers to areas that do not deserve them. So, could the Assistant Minister assure us that, once the water bowsers are bought, they will not be taken to areas where rivers are flooding?

**Mr. Waititu:** Mr. Deputy Speaker, Sir, the water bowsers will go to areas that are hard-hit. I call upon Members to come and update us on the latest situation in their constituencies, so that they can be assured of getting water bowsers.

**Mr. Deputy Speaker:** Mrs. Noor, you will now ask the last question on this! Since the Assistant Minister has given a categorical statement that this is in this financial year, if it does not happen, you can always revisit the matter. However, as for now, you should just ask the last supplementary question on the same.

Proceed!

**Mrs. Noor:** Mr. Deputy Speaker, Sir, I am okay!

*Question No.888*

PROVISION OF FREE ARV DRUGS TO  
PEOPLE LIVING WITH HIV/AIDS

**Mr. Kaino** asked the Minister for Public Health and Sanitation:

- (a) whether she could consider subsidizing or providing free Anti-Retroviral (ARVs) drugs to persons living with HIV/AIDS; and,
- (b) what other assistance the Ministry could extend to persons living with HIV/AIDS.

**The Assistant Minister for Public Health and Sanitation (Dr. Gesami):** Mr. Deputy Speaker, Sir, I would like to reply as follows:-

(a) At the moment, Anti-Retroviral Drugs (ARVs) are being offered free of charge to all persons living with HIV/AIDS in Government and non-Governmental facilities, including those run by faith-based organizations.

(b) In addition to provision of free ARVs, other services provided to persons living with HIV/AIDS at facility level include counseling and testing, health care intervention such as free septrins to prevent opportunistic infections, provision of clean water containers and free condoms. Patients living with HIV/AIDS are also offered food on prescription, which is important in ensuring compliance and efficacy.

In some instances, they are also provided with basic home care packages which contain two long lasting insecticide treated nets, water containers with a sieve and chlorine tablets for disinfecting water and a packet of condoms.

**Mr. Kaino:** Mr. Deputy Speaker, Sir, I would like to thank the Assistant Minister for that answer. I am satisfied with part one of the answer. However, part two is not really

convincing. I am not satisfied with the other services that they are giving. However, I commend the Ministry for what they are doing. Could the Assistant Minister confirm whether the campaign against HIV/AIDS has slowed down in the country?

**Dr. Gesami:** Mr. Deputy Speaker, Sir, I would like to deny that the campaign against HIV/AIDS has gone down. In fact, what we are seeing attests to that. The prevalence rates have gone down considerably and that is because of the knowledge that we have given to *wananchi*.

**Mr. James Maina Kamau:** Thank you Mr. Deputy Speaker for giving me this chance. I would like the Assistant Minister to tell this House what the Government is doing to make sure that the quality of HIV/AIDS drugs that are being brought into this country are up to standard. I have seen people who have been on those drugs for a very long time and, instead of improving, they continue deteriorating.

**Dr. Gesami:** Mr. Deputy Speaker, Sir, I would like to assure Kenyans and this House that all generic drugs that are brought into this country are tested for efficacy. We have a laboratory at Kenyatta National Hospital where we test all drugs before we give them to the patients.

**Mr. Kaino:** Mr. Deputy Speaker, Sir, I would like the Assistant Minister to tell this House what steps he is taking to ensure that the drugs reach the rural areas, which are poorly covered as opposed to urban areas. There is too much information in the urban areas. However, that information does not reach the ground. Secondly, I would like the Assistant Minister to tell this House about the reported cases of resistance.

**Dr. Gesami:** Mr. Deputy Speaker, Sir, I would like to assure the hon. Member that in 2004, we had only 200 facilities giving ARVs to Kenyans. Today, as I stand here, we have 1,100 facilities countrywide providing ARVs. We must say that we have not reached the end but, as a Ministry, we are trying as much as possible to ensure that those services are available to all Kenyans.

#### *Question No.927*

#### FATE OF PRISON OFFICERS RETIRED IN PUBLIC INTEREST

**Ms. Karua** asked the Vice-President and Minister for Home Affairs:

(a) why Prison Officers ACP Ambrose O. Ngare, SSP Martha Samu and SSP Andrew Ojal were charged along with others in CR Case No. 618/08;

(b) why the officers were subsequently retired in public interest; and,

(c) whether there was any internal investigation carried out following the protest by prison warders in April 2008 and, if so, could the Vice President table the report in the House.

**The Vice-President and Minister for Home Affairs (Mr. Musyoka):** Mr. Deputy Speaker, Sir, I seek the intervention of the Chair in this matter because this is the third time that this Question is being asked. During the first instance, the same Question was asked by hon. Dr. Robert Monda on 17<sup>th</sup> February, 2009 and again, by hon. Mithika

Linturi on 18<sup>th</sup> August, 2009. Further, two of the subjects, the persons mentioned specifically, went to court and two cases are pending before court. The hearing of the cases is continuing as we speak. I wonder whether this matter is not really *sub judice*.

Therefore, I seek the Chair's interpretation of all this.

**Ms. Karua:** On a point of order, Mr. Deputy Speaker, Sir. I must first express surprise because when the Vice-President and Minister for Home Affairs came over to this side to talk to me, he only indicated he wished to go to some other engagement. He did not indicate any objection to the Question. Be that as it may, our Constitution as it is now, with the freedom of expression and freedom of information, it has totally freed us from the archaic rules of *sub judice*. It is left to the good sense of this House not to go deep into matters in court; we are not longer bound by those archaic rules.

Mr. Deputy Speaker, Sir, I will be tabling two orders to show that the court has already given an order of *mandamus*, and Standing Orders cannot supersede the Constitution because I see the Clerk-at-the-Table passing over Standing Orders. I want to demonstrate that the court has already issued orders and, therefore, the questions I am asking do not relate to what is being discussed in court; they relate to the reasons why administratively the Ministry did what it did. The Question asked in 2009 was over six months ago. A Question cannot be asked again within a period of six months. The aspect I am asking about is not the same aspect that Dr. Monda asked about.

Mr. Deputy Speaker, Sir, is the Vice-President in order to try and avoid this Question?

*(Ms. Karua laid documents on the Table)*

**Mr. Olago:** On a point of order, Mr. Deputy Speaker, Sir. I have a lot of respect for the hon. Vice-President and Minister for Home Affairs, but I am surprised at what he is doing this afternoon in the House. Clearly, if he wants to take advantage of Standing Order No.80, which talks about what needs to be done if a matter is *sub judice*, then he knows, or ought to know, that the onus is upon him, and nobody else, to comply with Standing Order No.80(4) which says: "A Member alleging that a matter is *sub judice* shall produce evidence to show that paragraphs (2) and (3) are applicable". He has not done that. Is he in order?

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. I really wish that the Vice-President and Minister for Home Affairs could see our point. If you look at that Standing Order, that particular lady, Martha Samu, is from my constituency. When the Vice-President and Minister for Home Affairs says that they are waiting for the court cases, I am wondering because these are two judgements, and the Government has ignored them; this is clearly impunity in Government. That is why this matter is back in Parliament. If, indeed, the Government had implemented these two court orders, this Question would not be here.

Mr. Deputy Speaker, Sir, with your permission, I wish to read one of the judgements by Judge Gacheche; it says: "There can be no good reason in my mind to withhold her salary any further". This lady has not been paid since 2008 and she has eight kids. In the second judgement, the *mandamus* order, there is a clear order that she be paid her salary. So, the Government has refused to implement court orders. I do not

know if it is aware that we are under a new Constitution. That is why the matter is here. So, I would plead with you to allow this matter to continue.

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Deputy Speaker, Sir. The hon. Vice-President and Minister for Home Affairs, who is also a lawyer, ought to know that when you allege *sub judice* you must actually prove the same. So, he cannot make mere allegations. He cannot come before this House and say that there are matters before court. That is a rumour, as far as we are concerned. What we have before us is what hon. Karua has presented, the documents. The only thing now the Deputy Speaker can guide us on is whether they are authentic; otherwise what the Vice-President is saying is a rumour.

The reason why this matter is coming back the fourth time is because this mother that hon. C. Kilonzo is talking about was retired when she was 43 years and had eight children. She is taking care of eight children. The Government has set a dangerous precedent that when the court makes a decision, you can say that you will use rules and give administrative orders. This is a new Kenya, with a new Constitution. You cannot do such things. Let the Vice-President and Minister for Home Affairs be advised.

**Mr. K. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. I am rising on a point of order because hon. Karua has made a very serious allegation against the person of the Vice-President and Minister for Home Affairs, who is a heartbeat away from the presidency of this country.

Hon. Karua has alleged that the Vice-President and Minister for Home Affairs talked to her in private and at length on that issue. He was actually leaving this place; now it is insinuated that he was actually trying to avoid answering this Question. Since this touches on the credibility of my party leader, would I be in order to ask the Vice-President---

**Mr. Deputy Speaker:** Order! A Minister is not obligated to share the content of the answer that he is going to give to a Questioner. That is why the matter is for the plenary of the House. So, whatever was shared between the two hon. Members was essentially their own business; she has already given her own version. It is not a matter for debate! Hon. Members, maintain your eyes on that decision.

The hon. Vice-President and Minister for Home Affairs, indeed, the Chair has got copies of orders that were given in favour of one, Martha Samu, who is one of the three people mentioned in there. The Chair is not in possession of any orders on Ambrose Ngare. Are you in possession of those papers?

**The Vice-President and Minister for Home Affairs (Mr. Musyoka):** Mr. Deputy Speaker, Sir, I thank you and I take kindly the remarks that have been made by my colleagues.

First, on the issue on that hon. Karua raised, yes, it is true. We had some very useful consultation, including my giving her a copy of a report that I think she must have found very useful. It is also true that I was pressed for time and we discussed that. In fact, I approached the Chair at that particular time, and you were willing to have this matter brought forward, so that I could deal with it, and then, thereafter, leave. The technical bit was that I was still supposed to make a further statement. So, it was not really very useful. Those were the discussions I had with hon. Karua, and she knows that both of us have a responsibility to intellectual honesty. So, that is really what it is. I, of course, did



not indicate to her that I was going to raise this objection with regard to the rule touching on *sub judice*.

Mr. Deputy Speaker, Sir, Standing Order No.80(1) states:-

“Subject to paragraph 5, no Member shall refer to any particular matter which is *sub judice* or which, by the operation of any written law, is secret.”

I want to refer to Standing Order 80(3)(c) which states:

“Civil proceedings shall be deemed to be active when arrangements for hearing, such as setting down a case for trial, have been made until the proceedings are ended by judgment or discontinuance”.

Mr. Deputy Speaker, Sir, I did indicate with regard to Mr. Ambrose Ngare, for instance, High Court Civil Case, No.500 of 2010 is actually active. I would appreciate getting a copy of the service and also that of David Bwana, High Court Civil Case No.501 of 2010. Therefore, it is my considered view that discussing this matter right now actually makes this House do exactly what the courts would be doing. I thought it would be best that we allow the process in court to be concluded.

Mr. Deputy Speaking having said that, I thought it is only fair that this is seen as transparently as that. I share the feelings of my learned junior sister, Odhiambo-Mabona, when she says that we are dealing with a very painful situation of a 43 year old mother who has to fend for her children. But you see, when it comes to discipline within our defence forces, I think we cannot really compromise on those matters. That is a matter that, probably, I would have dealt with. I know that these are very serious matters.

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

**Mr. Deputy Speaker:** Mr. Vice-President, has the judgement in the case of one Martha Samu been entered? Has that matter not been concluded?

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Deputy Speaker, Sir, I am not aware. But definitely with regard to Ambrose Ngare, I can confirm that this matter is ongoing before court.

**Ms. Karua:** Mr. Deputy Speaker, Sir, I think we are being taken in circles by the Vice-President. If you look at the Question, it asks clearly why the three officers; Ambrose Ngare, Martha Samu, and Andrew Ojal were charged. In all these cases where they were charged, a *nolle prosequi* was entered. How then can it be *sub judice* to tell us why they were charged in the first place, in a case that is concluded?

Why were they retired in public interest? This is an administrative issue. We are asking whether investigations were ever carried out about the prison warders' strike of 2008. If he wants to omit any part which is *sub judice* that is where he should be concentrating on. But as the three questions stand, nothing in them would infringe on the case before the court. I am asking whether it is in order for us to request that he be compelled to answer without further delay.

**Mr. Olago:** On a point of order, Mr. Deputy Speaker, Sir. The issue of *sub judice* that the hon. Vice-President and Minister for Home Affairs has raised, must have come to him as an after-thought after he came to the House.

Clearly, he has not even made an iota of an attempt to discharge the obligation on him under Standing Order No.80(4). He has not made any attempt at all. The onus is on him.

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, I said that one of the parties, Martha Samu has no court case. If you look at the judgement; the second last paragraph says as follows:-

“It is clear by now that whatever Samu requires of the Commissioner, the second and third respondent, that is the PS and the Minister for Home Affairs, are statutorily public duties, where the three have failed to perform, duties that should have been performed without undue delay”.

It goes on to summarise as follows:-

“ In view of the above, I find that safe for the Attorney-General, apparently has turned to be a good boy in this particular case, against who no prayers were sought, the other three respondents have failed to act as required and I do in the circumstances allow our application and tender both orders”.

Both orders are; “pay her salaries and dues”. I raised this matter because, only the other day, she sent an emissary to be assisted to pay fees for 8 children who are in school. So, my plea to the Office of the Vice-President and Minister for Home Affairs is to look at it, if it is not in court. If this Government cannot respect court orders, then why were we busy fighting for a new Constitution?

**Mr. Deputy Speaker:** Hon. Vice-President and Minister for Home Affairs, it is apparent that the cases that are in court are of a civil nature, filed by the same officers themselves. The matter that is before us now is a matter that, essentially, that raises the following questions: Why were they sacked, in the first place? Why were they, subsequently, retired? It also addresses the matter of the report itself here. Why were they charged; a charge that the Chair has been made to understand has since been dropped?

The Chair is convinced that whereas the rules are very clear that whenever a Minister has to claim *sub judice*, he must prove why it is so and has proceedings in it; but be that as maybe, the Chair is of the opinion that, particularly, on the matter of Martha Samu; the Vice President and Minister for Home Affairs should proceed and answer the question.

**The Vice-President and Minister for Home Affairs (Mr. Musyoka):** Mr. Deputy Speaker, Sir, in that case, I will deal with the matter of Martha Samu. I could have discharged my responsibility as a Member of this august House and pointed out that the rules relating to *sub judice* do actually apply. However, in view of the need to deal with one or two of those particular cases, I beg to reply.

(a) In criminal case No.618 of 2008, prisons officer Ambrose O. Ngare who was at the time an Assistant Commissioner of Prisons, Martha Samu, who was Senior Superintendent of Prisons, and Andrew Ojal, Senior Superintendent of Prisons along with six others were charged with incitement to disobedience of lawful command of a prisons officer contrary to Section 63(2) of the Prisons Act, Chapter 90, laws of Kenya. The officers were also interdicted from duty with effect from 20<sup>th</sup> April, 2008, in accordance with the code of regulations, Section G(32).

(b) The Chief Magistrate Court discharged the officers following the Attorney-General’s decision to enter *nolle prosequi*, and the Government preferred to subject the errant officers to internal disciplinary process as provided for under Sections 1, 2, and 3 of the Prison rules. It is worth noting that the Prisons Department is a disciplined force with a hierarchy of command and a defined process for managing grievances, the officers failed to follow this formal process. Therefore, the Ministry invoked the provisions of

Section G(33)(4) of the Civil Service code of regulations which does provide, among other things, and I quote:-

“ If criminal proceedings are instituted against an officer, or where an officer has been acquitted of a criminal charge in a court of law, the authorised officer, shall not, however, be prevented from dismissing him or her, or otherwise punishing on any other charge arising out of his conduct in the matter”.

The Ministry applied this provision of the code of regulations in conjunction with the provisions of the Prisons Act, Chapter 90 (16) and the Public Service Commission Act, Chapter 185(40)(31) of the Prisons Service regulations. The due process, I am convinced, was followed and the Public Service Commission retired the officers in public interest.

(c) An internal Government investigation was carried out following the very famous prisons officers' strike. I specifically appointed a high level committee immediately after the strike to review the state of discipline of prisons officers, among other matters, and make appropriate recommendations for implementation. The Report of this Committee strongly disapproved of the strike and recommended stern action against the perpetrators and immediate restoration of discipline in the Prisons Service.

I hereby table the full Report of the Commission which was chaired by the hon. Major (Rtd) Marsden Madoka, dated 16<sup>th</sup> July, 2008. As I table this document which I think I had given to my learned friend to acquaint herself with, I do need to point out Recommendation No.10 where the committee condemned the mutiny by the prisons officers which is a serious offence. It reads: “The committee recommends thorough investigations and stern action against the perpetrators.” That was a specific recommendation.

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

Mr. Deputy Speaker, Sir, with regard to retirement benefits, among the nine officers who were retired, six of them received their final dues. The remaining three who were in issue have not submitted the requisite documents for processing payment of the retirement benefits. I want to confirm here that if Samu has actually submitted her documents, I will ensure that she is paid expeditiously. It is important to note that these officers were eventually retired under public interest. At the time, I had to make a very strong intervention because the other military commanders, as I indicated when I answered this Question before by Dr. Monda, were of the view that they should have been summarily dismissed. I thought that times have changed as my colleagues have pointed out.

However, we do not want to compromise discipline in our defence forces. These are men and women bearing arms. Always, we talk about bearing responsibility and this is exactly what happened. I think they should appreciate that they were not dismissed after all. Some of them are continuing with civil action. Should the courts find that the Government should reinstate these people, I want to give assurance to this House that we shall comply because that is the situation we find ourselves in particularly under the new Constitution.

**Ms. Karua:** Thank you, Mr. Deputy Speaker, Sir. It is unfortunate that this matter has not been handled satisfactorily. You heard the Vice-President and Minister for Home

Affairs say that the officers were dismissed following the famous prisons officers' strike in 2008. Indeed, I have the charge sheet that was preferred against Ambrose Ogeto Ngare which states that on 25<sup>th</sup> April, 2008 at King'ong'o Government of Kenya Prison in Nyeri District within Central Province, being the Provincial Prisons Commander of Central Province, he incited prisons officers at the said prison by ordering them not to return on duty. I want to table the charge sheet.

*(Ms. Karua laid the document on the Table)*

As a matter of fact, and which the Vice-President and the Minister for Home Affairs should be able to confirm to this House and the country, there were no riots or strike in King'ong'o or in any other prison in Central Province and that is the reason a *nolle prosequi* was entered against Ambrose Ogeto Ngare. Why was he then subsequently dismissed and yet the Constitution protects him from unfair treatment and provides for due process? Why was he sacked when there were no riots?

**Mr. Deputy Speaker:** Ms. Karua, it is the understanding of the Chair that the matter that is before court now is the dismissal of the officers in question from the forces. If that matter is active in court, then clearly it fits into the *sub judice*.

**Ms. Karua:** Mr. Deputy Speaker, Sir, the Vice-President and Minister for Home Affairs has answered that they were dismissed following the riots. The only point I am following is for him to confirm to this House that the charge sheet was about King'ong'o Prison. He needs to confirm as a matter of fact because it will be in the Report he tabled that there were no riots anywhere in the prisons in what used to be Central Province. Therefore, there were no riots in all the prisons under the command of Mr. Ngare with which the Vice-President and Minister for Home Affairs could have charged him.

**Mr. Deputy Speaker:** Part "a" of the Question asks; why were the three officers charged in the case number, that is, the case that you have cited now and which was subsequently entered *nolle prosequi*?

**Ms. Karua:** Mr. Deputy Speaker, Sir, that is the gist of my question. The case was withdrawn and then he was dismissed. It means there was no basis whatsoever.

**Mr. Deputy Speaker:** Order, Ms. Karua! The dismissal itself is a matter that is active in court right now as a civil litigation. There is no way the Chair can allow Parliament to debate and deliberate on a matter that is active in court.

**Ms. Karua:** We have not seen the proceedings!

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Deputy Speaker, Sir. This House has made a ruling before, more than once, that unless a Member produces proceedings that show that a matter is active---

**Mr. Deputy Speaker:** Indeed that is a matter you should have raised from the beginning! In which case---

**Mrs. Odhiambo-Mabona:** I did, Mr. Deputy Speaker, Sir!

**Mr. Deputy Speaker:** Order! In which case the Chair will have no option but to defer this Question to another date and then ask the Vice-President and Minister for Home Affairs to produce the proceedings of the matter that is in court.

**Mr. Olago:** On a point of order, Mr. Deputy Speaker, Sir. I was listening very keenly to the answer by the Vice-President and Minister for Home Affairs about the dismissal of Mr. Ambrose Ngare Ogeto. Is it in order for him to mislead the House when

he is fully aware that on 19<sup>th</sup> June, 2009, Mr. Ogeto was asked to show cause why he should not be retired in public interest? I wish to table that letter.

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

On 15<sup>th</sup> October, 2010, the Commissioner of Prisons wrote about Mr. Ogeto as follows:-

“Mr. Ogeto rose through the ranks to the level of an Assistant Commissioner of Prisons due to his diligence and vast knowledge in management of penal institutions. He was, indeed, a hardworking and proactive officer. Mr. Ogeto was posted to various prisons to be the Officer in Charge, about six of them, where he discharged his duties extremely well.”

Under this circumstance, is it not true that---

**Mr. Deputy Speaker:** And subsequently dismissed by the same Commissioner or authority?

**Mr. Olago:** Precisely, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** And that dismissal is a matter that is there as a civil litigation in court. You cannot debate the merits or demerits of that on Floor of this House.

**Ms. Karua:** On a point of order, Mr. Deputy Speaker, Sir. The point that, perhaps, the House has not captured is that the dismissal was in 2009 and the letter of commendation was written only last year after the dismissal. The Prisons Department is saying of Mr. Ngare that he discharged his administrative functions extremely well.

**Mr. Deputy Speaker:** That is a perfect argument and very convincing. Indeed, the Chair is also sensitive to that. However, this should not be on the Floor of the House. It is in the courts!

**Ms. Karua:** Mr. Deputy Speaker, Sir, the point I am making is that if the Prisons Department, without any coercion, writes a letter confirming that this officer is of exemplary performance, then it is incumbent upon the Government and the Ministry led by the Vice-President and Minister for Home Affairs to immediately, even without waiting for the discourse in court, reinstate this officer who has discharged his duties with distinction. I am sure that the Minister in charge of Public Service would advise the Vice-President and Minister for Home Affairs in that manner.

**Mr. Deputy Speaker:** That sanctifies the cardinal separation of powers. Parliament cannot take over the role of the court. This matter is *sub judice* and we cannot proceed any further on it.

**Ms. Karua:** Mr. Deputy Speaker, Sir, there is a section of this matter which is not *sub judice*.

**Mr. Deputy Speaker:** Which one? Yes, it is on the matter of the Report. I mean the internal investigations. Ask your supplementary question.

**Ms. Karua:** Mr. Deputy Speaker, Sir, you saw the Vice-President and Minister for Home Affairs table the Report on the investigations which I have gone through. It shows shameful houses that one cannot even keep animals in as the house that the prison warders were occupying. Could he confirm that the prison warders are no longer occupying those shameful mud houses? This is because that was the reason for the strike in the first place.

**Mr. Musyoka:** Mr. Deputy Speaker, Sir, I thank my learned sister for that question. I want to assure the House that we are working very hard. We are even looking at possibilities of using private/public sector partnership in order to, once and for all, deal with this very shameful problem of prisons officers living under conditions that are clearly not acceptable.

In the recent past, I have had occasion to go and actually open some of these newly constructed facilities, some put up under Rapid Results Initiative. Even as late as this morning, we were in consultations with the Housing Finance Company of Kenya, together with the Treasury, in trying to find out whether we can actually use a Public/Private Partnership (PPP) approach, so that we can do massive construction of prisons houses.

I think the hon. Members should also thank the Ministry because when we took over, Ms. Karua may not know, but some of these officers like those in the Industrial Area Prison were actually using buckets as toilets. It used to be the case that the Prisons Department was actually the milk cow in the years gone by. It used to be assumed that nobody cares about the prisoners and nobody wants to investigate. However, I want to tell this House that the reform programme being carried out by the Ministry with specific reference to the Prisons Department is a serious reform programme and we will make sure that our officers live under conditions that are humane.

**Mrs. Shebesh:** On a point of order, Mr. Deputy Speaker, Sir. I have listened carefully to the Vice-President. The question that Ms. Karua asked was very clear. The question was: Are the prison warders still staying in those deplorable conditions five years after the strike which was precipitated by staying in those bad houses? I have not heard a clear answer from the Vice-President regarding that question. Is he in order?

**Mr. Musyoka:** Mr. Deputy Speaker, Sir, if this beautiful colleague could have listened carefully, she would have heard that over 70 per cent of these officers are now properly housed!

*(Laughter)*

**Ms. Karua:** On a point of order, Mr. Deputy Speaker, Sir. Whereas the beauty of Mrs. Shebesh cannot be the answer, and that ought to be a subject outside this House, is the Vice-President in order not to be categorical and to confirm to this House that 30 per cent of prison warders are still living in deplorable conditions, so that then this House can know what to do? Is he in order to avoid that confirmation and hide under beauty?

**Mr. Musyoka:** Mr. Deputy Speaker Sir, beauty is always in the eyes of the beholder!

*(Applause)*

But I want to say that we are doing everything possible to deal with the problem of prison staff houses. I can bring a report six months down the line to indicate how many houses we will have put up because it is a matter that we are taking very seriously.

**Ms. Karua:** Mr. Deputy Speaker, Sir, could the Vice-President and Minister for Home Affairs then confirm that 30 per cent are still living in dilapidated mud houses and,

therefore, that he merely victimized the sacked officers over a problem the department has been unable to overcome in four years?

**Mr. Musyoka:** Mr. Deputy Speaker, Sir, I can let out a secret here; that the hon. Member for Gichugu told me to drink a lot of water because she was going to be very tough; and, indeed, she has!

I want to say that I cannot confirm the figure of 30 per cent. I can, however, accept that some of our officers still need urgent attention. We are doing everything possible to make sure that those staff houses are provided. In fact, the Ministry's budget should have been upped so that at least we do the best we can under the Rapid Results Initiative.

I also want to say that regarding the second part of her question, I clearly do not agree with.

**Mr. Deputy Speaker:** Next Question.

*Question No.1067*

NON-COMPLETION OF STALLED MODERN  
MARKET PROJECT IN PORT VICTORIA

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

(a) why the construction of the modern market at Port Victoria, with 40 per cent of the work done stalled in 2008; and,

(b) when the contract for the completion of the market will be awarded, when the contractor is expected on the site and what the expected date of completion is.

**Mr. Deputy Speaker:** The Chair is actually in possession of a communication from the Deputy Prime Minister and Minister for Local Government that he would not be in a position to answer this Question because of other engagements. Under the circumstances, the Chair defers this Question to Tuesday, next week.

Mr. Namwamba, would you be comfortable with Tuesday, next week?

**Mr. Namwamba:** That is good enough, Mr. Deputy Speaker, Sir. I already do have the answer. So, I would not mind waiting until Tuesday, next week.

**Mr. Deputy Speaker:** The Question is deferred to Tuesday next week.

*(Question deferred)*

Next Order!

**MINISTERIAL STATEMENTS**

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 9<sup>TH</sup> AUGUST, 2011

**Mr. Deputy Speaker:** Hon. Members, in line with our Standing Orders, the hon. Vice-President and Minister for Home Affairs and Leader of Government Business in the House is supposed to give the programme of the Government Business for the next week.

Could you proceed and do that?

**The Vice-President and Minister for Home Affairs (Mr. Musyoka):** Mr. Deputy Speaker, Sir, pursuant to Standing Order No. 36(4) I stand to make the following Statement.

Let me start by commending hon. Members for remaining steadfast and zealous in executing their mandate of handling House business in a vibrant and non-partisan manner. Recently, we have been treated to both prime time and headline news in our local media houses, highlighting impending failure by this House to deliver key constitutional Bills as per the 26<sup>th</sup> August, 2011, deadline.

Some Kenyans feel that our Constitution implementation conveyor belt is rolling, but churning out very few legislative proposals. On this, let me assure Kenyans that our key agencies namely, the State Law Office, the Kenya Law Reform Commission, the Commission on the Implementation of the Constitution and the line Ministries and, indeed, this House are alive to these concerns and are seized of this process.

Let us not, because of fear, submit to rushed processes where some Kenyans may feel sidelined and slighted. The House Business Committee is on top of this agenda. Our Members will burn the midnight oil if it comes to that as we have done before and deliver on the deadline. The challenge is indeed surmountable.

Next week, the House has prioritized debate on the following constitutional Bills which are at the Second Reading stage: The Commission on Administrative Justice, Bill No.21 of 2011; the Kenya National Human Rights Commission Bill No.22 of 2011; the National Gender and Equality Commission Bill, Bill No.23 of 2011.

I want to say that hon. Members will have received notice from the Minister for Gender, Children and Social Development to attend a workshop in Mombasa. I am told that some of the hon. Members have already left in order to be able to gather consensus, so that when we come to the House on Tuesday we shall be able to move with the necessary speed.

Finally, the House Business Committee will meet on Tuesday, 9<sup>th</sup> August, 2011, to consider business for the next week and if need be, consider the important question of having to extend sitting time in order to beat some of these deadlines.

*[Mr. Deputy Speaker left the Chair]*

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

JUSTIFICATION FOR ANNUAL HEAD  
TEACHERS' CONFERENCES

**The Minister for Education (Prof. Ongeri):** Mr. Temporary Deputy Speaker, Sir, may I take the earliest opportunity to congratulate you for being the Speaker of the moment. Two weeks ago, Eng. Gumbo asked for a Ministerial Statement on the value and the need for the annual head teachers' conferences. The Kenya Primary Schools



Head Teachers Association (KEPSHA) and the Kenya Secondary Schools Heads Association (KESHA) are recognized professional bodies for the head teachers in public and private primary and secondary schools in Kenya.

These annual conferences give an opportunity for head teachers to come together and learn new ways of managing schools. It gives them an opportunity to exchange views on innovative ways of managing schools and share best practices in management. They also share challenges and experiences on improving schools' performance and governance. More notably, this year's theme of the conference was Transformational Leadership for the Child's Welfare.

These conferences have always been held in July because of the Ramadhan Festival which normally falls in August. The average cost of the conference is about Kshs30,000 which is used for the conference at the district level and paid for by the district associations while individual primary head teachers pay Kshs100 per month and those of secondary schools pay Kshs1,000 per month for other expenses. At the provincial level, each delegate is assigned an average of Kshs6,000 to cater for the conference expenses while at the national level, the officials are assigned to pay Kshs3,000 for six days. These national conferences are funded by the teachers' monthly contribution and other sponsors, for example, UNICEF, UNESCO, Oxford University Press and individual sponsors. Both KEPSA and KESHA which are the registered professional bodies regulate the amount to be paid to the head teachers as daily allowances.

The resolutions of the national conferences have informed formulation of policies in education, especially in the management of education programmes like the Free Primary Education, the Free Day Secondary Education, Capitation Grants, School Management Curriculum Revision and Development and matters related to the Kenya national examination administration. Both KEPSA and KESHA have been directed to explore other cost effective measures to enable head teachers to address issues concerning them and those of the education sector in general for future district, provincial and national head teachers' conferences. The measures to be addressed are decentralization of conference venues with the aim of reducing transport and accommodation cost, holding the conferences during the school holidays other than in August which is clearly known, engage more sponsors to come on board in order to ease the financial burden on the head teachers and schools and reduction of the number of delegates from each region in attendance to cut costs and ensure the school programmes are not interfered with.

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): Any clarifications?

**Eng. Gumbo:** Thank you, Mr. Temporary Deputy Speaker, Sir, for allowing me a chance to seek clarification. I sought this Ministerial Statement because of the concern that I had that this being the period for mock examinations, it does not augur well to have the head teachers out of school for about a week. I was also concerned about the fact that it is always held in Mombasa, which makes it unnecessarily expensive. Ways could be explored to make it cheaper. I appreciate what the Minister has said and I am generally satisfied, but as he rightly said, the only assurance that he can give---

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): What is the clarification you are seeking?

**Eng. Gumbo:** Mr. Temporary Deputy Speaker, Sir, could he assure the House that, he will try, in the spirit of devolution, to decentralize the conferences to make them cheaper? I want to point out that the Minister has said---

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): This is not a debate! You have sought your clarification and I think you are done. You have made your point!

**Eng. Gumbo:** Mr. Temporary Deputy Speaker, Sir, I sought the Statement, why can you not let me finish? I have not even sought a second clarification.

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): One clarification for each Member!

**Eng. Gumbo:** Mr. Temporary Deputy Speaker, Sir, the person who seeks the Statement always gets two.

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): Okay, make your last clarification and be precise, to the point.

**Eng. Gumbo:** With all due respect, Mr. Temporary Deputy Speaker, Sir, I think the Chair is harassing me.

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, at one such conference in Mombasa, the Minister is reported to have paraded senior officers in his Ministry before the heads of schools, purporting to shift the blame for the loss of the Kshs4.2 billion meant for free primary education to those senior officers. Could he clarify whether, indeed, he humiliated senior officers in the Ministry in connection with the Kshs4.2 billion? If, indeed, that is true, could he go ahead and indicate the nexus between him and those senior officers and the loss of the Kshs4.2 billion meant for free primary education?

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, on the same note, could the Minister come out today and tell Kenyans how much they have lost in that Ministry and who has stolen it? There are a lot of stories and Kenyans are getting tired of this Kshs4.2 billion. Is it true it is Kshs4.2 billion or is it less? Who has stolen this money, so that Kenyans can deal with that person? Kenyans do not want to let go of that Kshs4.2 billion.

**Mr. Mwathi:** Mr. Temporary Deputy Speaker, Sir, I listened to the Minister's Statement and the sentiments of Eng. Gumbo. Like Eng. Gumbo has said, July is a very sensitive time, is it possible for the Minister, as a matter of policy, to hold these conferences in first term instead of second term?

**Mr. Ngugi:** Mr. Temporary Deputy Speaker, Sir, the alleged embezzlement or loss of Kshs4.2 billion arose out of an audit of 512 schools. Only 512 schools were audited. There are 20,000 primary schools. If 5,000 schools were audited, the loss would have amounted to Kshs50 billion. Could he clarify whether they are going to extend the audit to the other schools, so that we can know the extent of the embezzlement or the loss to the Kenyans?

**Mrs. Shebesh:** Mr. Temporary Deputy Speaker, Sir, after watching many headteachers converge at the last Annual Headteachers Conference, where they made decisions intended to help Kenyan students, I would like to understand when the Minister plans to also have meetings with headteachers of private schools and informal schools. I believe what was represented at the last conference were the Government schools.

**Mr. Njuguna:** Mr. Temporary Deputy Speaker, Sir, colossal sums of money were collected by the association. Could the Minister inform this House clearly how those funds are audited? Could he also tell this House whether those funds have been used to enhance the quality of learning in our schools?

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): Minister, those should be enough clarifications.

**The Minister for Education** (Prof. Ongeru): Mr. Temporary Deputy Speaker, Sir, obviously, many of the questions asked are outside the purview of the Ministerial Statement sought, and I would seek the indulgence of the Chair that I come back to those issues, which are not within the purview of the Ministerial Statement.

Eng. Gumbo raised the question of decentralisation. Yes, it is part of my Statement. I said that I have adequately advised the organisation as a professional organisation, and like other professional organisations, which are able to run their affairs quite well.

Dr. Khalwale raised an issue on mock examinations. I am quite aware of that, and I think it is a question of adjustment as to what stage they must have the conferences. However, I want to assure the House that these are absolutely important conferences for teachers to share their experiences and frustrations. In most cases, recommendations arising from these conferences inform the policy and what should happen in the management of institutions in their various capacities. Therefore, as far as the Ministry is concerned, we support these conferences, because they give value for money.

Dr. Khalwale also asked a question about parading senior officers. There was no such thing like parading officers. The blanket statement was that money had been sent to the schools. They were merely confirming. The intention was to protect those very head teachers. The idea was to protect the head teachers from the kind of mob statements to the effect that money had been stolen since these are the same head teachers who receive this money.

So, it was demonstrated that, actually, the money had gone into the right use. We have since then been able to get reports from the ground to the effect that money actually went to those schools, and that the headmasters and the principals used that money very well. It will be a subject of a different report, through another channel. So, it is not a question of parading anybody.

**Dr. Khalwale:** On a point of order, Mr. Temporary Deputy Speaker, Sir. As they say, what is good for the goose is also good for the gander. The President of Kenya has never, in a public function, humiliated the Minister for Education in respect of this matter. Why did the Minister, instead of defending those senior officers, parade and humiliate them? Why did he not use protocol, which demands that when your senior is there, he is the one who bears the responsibility? Why did he humiliate those senior officers? Mr. Minister, are you in order to refuse to clarify that particular point?

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

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): Order, hon. Members! Allow the Minister to respond.

**The Minister for Education** (Prof. Ongeru): Let me say that if there was any degree of humiliation, it was all in your own translation. I want to assure this august House that, indeed, it was a protective measure because there was a blanket assumption that if the money that was captured in the audit report went to the schools, those teachers had taken it. I only wanted to make a public confirmation. It was in their interest, and

there is nobody who has complained about it, except those who have been in some other payroll, in order to be able to come out of the situation.

Therefore, there was no embarrassment. In fact, they have been very co-operative. They have given us a lot of information. In this era of transparency, we wanted everybody to know that, that money, which was said to have been “stolen”, actually went to the schools. That money was correctly utilized in schools. That is all the confirmation they wanted to give, so that the public would have the correct information rather than falsehoods pedaled through dubious methods to achieve some other objectives.

**Mr. Mbadi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. What the Minister is trying to address is a weighty matter. This issue did not come from this House. It did not come from Kenyans. It actually came from the Government. It is the same Government which came out there and told Kenyans publicly that Kshs4.2 billion could not be accounted for in the Ministry of Education. As representatives of the people, we cannot just sit and hope that things will be explained. The Minister owes it to the people of Kenya.

I remember that before we went on recess, the Minister attempted to address this matter in the House, but he was asked to go back because the figures did not add up. So, the Minister should take this matter seriously, address the nation, through Parliament, and explain the matter. If it is true that all these are falsehoods, kindly tell Kenyans how false they are, because they are giving this country, and this House, a bad name. It is making us look like we are an insensitive, and a Parliament that cannot oversee the Executive.

**The Minister for Education (Prof. Onger)**: Mr. Temporary Deputy Speaker, Sir, I mentioned that some of the issues raised, like the one by Eng. Gumbo, were outside the purview of the information sought. It is, indeed, true that I came to this august House and issued a Ministerial Statement regarding the Kshs4.2 billion. I remember that hon. Mbadi was one of those who made contribution to the Ministerial Statement I issued in this House. I have not departed from what I said in this House then. There is additional information to what I told this House; subject to the outcome of the investigations that are ongoing. I will table in this House the full details of the investigations outcome. There is nobody who is running away from anything. It is just a matter of time. I think many people will be ashamed.

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

**The Temporary Deputy Speaker (Mr. C. Kilonzo)**: Order! Order! Allow the Minister to finish his clarifications.

**The Minister for Education (Prof. Onger)**: Hon. Mbadi, I have already partly answered you. We will be able to answer you comprehensively, and say if at all any money was stolen and by whom. So, do not be in a hurry. Wait, because the investigative arm of the Government is on the matter. We have done our own investigations, and we have the details; but we want those details corroborated through the normal channels. Once that is done, I will, definitely, come back to this august House and apprise hon. Members.

Suffice it to say at this point in time, just for the avoidance of doubt, that the Kshs4.2 billion comprises of Kshs2.27 billion relating to the years ended 30<sup>th</sup> June 2003,

2004, 2005, 2006, 2007 and 2008. I just want him to note that aspect, which I have already pointed out.

Those represent what we call reconciliation through the financial management reports on the funds given by the Kenya Government which is the bulk at 95 per cent and donors at 5 per cent. I can disaggregate how much each donor gave out of those funds. We have all those details. The Kshs1.9 billion represents the amount of infrastructure money sent to the primary schools for building. We have checked all the records and that is the report which I intend to table in this House once the investigations are complete.

Mr. Temporary Deputy Speaker, Sir, I can assure the House that after going through that report, other than the imprest in terms of money meant to travel around and what have you, the bulk of that money is fully accounted for. Even the FMRs are fully accounted for. The only time I can be able to say so is when I have those reports sent here.

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): Minister, can you try to summarize?

**The Minister for Education** (Prof. Ogeri): Mr. Temporary Deputy Speaker, Sir, I will summarize.

Mr. Mwathi has suggested the first term for these conferences and that is a possibility. I think we can do it or we can do it just before the mocks. Then about the schools, they were 512 schools and there are 20,000 schools. There is a misconception here that the schools that benefited from the infrastructure funds were 3,078 and not the 20,000. In fact, the total number of primary schools is 19,600 and odd numbers. I cannot remember the final numbers. The ones involved were 3,078---

**Mr. K. Kilonzo:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): Mr. K. Kilonzo, allow the Minister to finish!

Minister, carry on and summarize!

**The Minister for Education** (Prof. Ogeri): Mr. Temporary Deputy Speaker, Sir, just to avoid any doubt, those 3,078 schools belong to 25 districts which were considered vulnerable. Anybody who wants the information, I will table it at the material time when this report is ready. It will show which money went to which school and how much money went to that school and whether that money was used correctly or not. I will table that information and nobody should be in a hurry.

On the question by Mrs. Shebesh, indeed, Kenya Primary Schools Heads Association (KEPSHA) and Kenya Secondary Heads Association (KESHA) is an association of both the public and private institutions. Therefore, they attend the same meetings. They are not excluded from these meetings. The decisions that we carry out are only those that are important

Mr. Njuguna asked about the colossal amount of money collected. Yes, this money is collected by the entire membership of KEPSHA and KESHA. They have their own internal mechanisms because these are professional associations with their own auditing on how their money is accounted for. We do not give any public funds to them other than what they contribute to these funds and money from sponsors.

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, with all due respect to the Chair, you have heard the Minister has at length dealt with the loss of free primary education funds. I was just wondering, in your wisdom, if you could kindly allow the

House to then seek further clarification on the Statement he has issued because he is going to leave the wrong record on the HANSARD.

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): Dr. Bonny, you are an old Member of this House. You know very well that there are many ways to pursue this matter. I am going to give Eng. Gumbo, since he is the one who asked for the Ministerial Statement, a chance to seek the last two clarifications then we move on to another Ministry.

**A hon. Member:** Eng. Gumbo is not here!

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): Very well! Then let us have Dr. Oburu!

RELEASE OF FUNDS TO MOIBEN –CHEBARA  
DAM COMPENSATION ACCOUNT

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance** (Dr. Oburu): Mr. Temporary Deputy Speaker, Sir, on the 12<sup>th</sup> May 2011 the Member for Marakwet West, Mr. Boaz Kaino presented to this House a petition on behalf of 80 Petitioners that were displaced by the construction of the Moiben-Chebara Dam. The petitioners sought the release of Kshs635,532,000 to the Moiben-Chebara Compensation Account under Chebara Secondary School.

Mr. Temporary Deputy Speaker, Sir, in the Financial Year 2011/2012 Budget, a provision of Kshs300 million has been made for compensation to the institutions and communities displaced by the construction of the Moiben - Chebara Dam. The funds are available for release to the Government through the Ministry of Water and Irrigation, directly to the community institutions being compensated. The balance of the funds is scheduled to be budgeted for in the financial year 2012/2013.

I wish to inform this House that the Government, through the Ministry of Water and Irrigation, is handling the matter expeditiously and that the said amount will be availed to the school account as soon as the Ministry requisitions for it. I further wish to confirm that the hon. Boaz Kaino has accordingly been informed by the Treasury of the proposed line of action to which he has no objection and we shall be writing to the petitioners through him.

Thank you.

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): Any clarifications?

*(Ms. Chepchumba stood up in her place)*

Are you standing for a clarification?

**Ms. Chepchumba:** Mr. Temporary Deputy Speaker, Sir, I am sorry the clarification I wanted to seek was from the Minister who gave the previous Statement. It seems I have been overtaken by events.

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): You are out of order!

Are there any other clarifications on this Statement by the Assistant Minister?

**Mr. Kaino:** Mr. Temporary Deputy Speaker, Sir, I wish to thank the Assistant Minister for this Statement. I appreciate it.

## POINTS OF ORDER

### GOVERNMENT SPOKESMAN'S STATEMENT ON DROUGHT/HUNGER SITUATION IN THE COUNTRY

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of State for Public Service regarding the contradictory statement made by the Government Spokesperson, Dr. Alfred Mutua, on the Government's position with regard to the actual effect of drought and hunger and the number of people who died from starvation or who have died so far.

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): Which Ministry?

**Mr. Mbadi:** The Ministry of State for Public Service. I am told this is the boss, so allow me to seek my Ministerial Statement.

In the Statement, the Minister should state:-

- (i) If there is any Kenyan who has lost his or her life due to the hunger in the country.
- (ii) Confirm that the remark made by the Government spokesman is the official Government position on the matter.
- (iii) What disciplinary action will be taken against Dr. Mutua for embarrassing the Government.
- (iv) Indicate the amount of money spent on the adverts placed in today's dailies by the Government spokesperson to defend his reckless remarks.

Thank you.

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): We expect the Statement here on Tuesday.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, this is not a difficult matter because everything is on record. I think Tuesday will be fine.

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): Very well!

Hon. Gumbo and then hon. K. Kilonzo!

### STRUCTURE/STAFF LEVELS AT IIEC

**Eng. Gumbo:** Mr. Temporary Deputy Speaker, Sir, a rise to seek a Ministerial Statement from the Minister for Justice, National Cohesion and Constitutional Affairs on the staffing levels and structures at the Interim Independent Electoral Commission (IIEC).

Mr. Temporary Deputy Speaker, Sir, in the Statement, the Minister should:-

- (a) clarify the rationale and philosophy behind the level of staffing and deployment of all employees at the IIEC and in doing so---

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): Order! Had you seen the Chair on this?

**Eng. Gumbo:** Mr. Temporary Deputy Speaker, Sir, it is signed!

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): Very well!

**Eng. Gumbo:** Mr. Temporary Deputy Speaker, Sir, the Minister should:-

(a) clarify the rationale and philosophy behind the level of staffing and deployment of all employees at the IIEC and in doing so:-

(b) give the names of all the staff attached to each of the commissioners, the Chairman and the Chief Executive Officer (CEO), indicating their professional qualifications, job groups/rank held, date of birth and their constituencies and counties of origin,

(c) give the names of all the regional and constituency election coordinators, indicating their professional qualifications, job groups/rank, their current station, date of birth and their constituency and counties of origin; and,

(d) explain what the Ministry is doing to address the ongoing wrangles at the IIEC to ensure that the credibility of the Commission and confidence of the Kenyan public in general is upheld in our electoral process.

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Temporary Deputy Speaker, Sir. We just need your direction on this issue. This is because I know that the Constitution Implementation Oversight Committee (CIOC) is already trying to deal with this issue in order to sort it out amicably. Is it in order for the hon. Member to raise that Statement?

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): You are out of order!

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, in view of the fact that a comprehensive Statement is required, I will transmit the information and suggest Thursday afternoon.

**Eng. Gumbo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. This matter is actually very urgent. You know that we have a by-election in this country in two weeks time. The information I have asked for here should actually be held in the IIEC databank. Surely, Thursday is too long.

**The Temporary Deputy Speaker** (Mr. C. Kilonzo): In view of that, the Statement should be made on Wednesday afternoon.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Much obliged, Mr. Temporary Deputy Speaker, Sir.

**Mr. K. Kilonzo:** Mr. Temporary Deputy Speaker, Sir, I rise under Standing Order No.82 (2) which states:

“If a Member has sufficient reason to convince the Speaker that the Member is unable to substantiate the allegations instantly, the Speaker shall require that such Member substantiates the allegations not later than the next sitting day, failure to which the Member shall be deemed to be disorderly within the meaning of Standing Order 97 (Disorderly conduct) unless the Member withdraws the allegations and gives a suitable apology, if the Speaker so requires.”

Mr. Temporary Deputy Speaker, Sir, yesterday, during Question Time in the morning sitting, hon. Mohamed Sirat, raised a Question where I rose on point of order and asked him to substantiate and state his interest. He said that he had no interest. Following that, hon. Imanyara did ask me to table any documents to show that, indeed, the Member had an interest on this matter.

Mr. Temporary Deputy Speaker, Sir, following that, today I, indeed, wish to table the following documents to prove that the hon. Member had an interest in this matter. The first is the letter written by the Member of Parliament to the Secretary General of Kenya Red Cross, dated 4<sup>th</sup>, 2011. I want to read just paragraph two. It reads:



“Take note that we also appreciate your kind consideration and the speed at which the project was commissioned.”

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

*[The Temporary Deputy Speaker  
(Mrs. Odhiambo-Mabona) took the Chair]*

Madam Temporary Deputy Speaker, he continued to say that he does note that the Wajir District Red Cross coordinator got involved in petty politics. This was from the Member of Parliament himself writing to the Secretary General of Kenya Red Cross. I wish to table it.

*(Mr. K. Kilonzo laid the document on the Table)*

Madam Temporary Deputy Speaker, the second letter which I wish to table – and you allow me very quickly to note paragraph 3, just to show that, indeed, the Member has interest – is from Kenya Red Cross and talks of the genesis of the unsubstantiated attack against the Kenya Red Cross. Paragraph 3, towards the end, says:

“Kenya Red Cross immediately appointed a contractor to rehabilitate Meri and Abakore boreholes on 5<sup>th</sup> April, 2011.”

Hon. Sirat wrote back to Kenya Red Cross to thank the organization. But the letter continues to say:

“However, it was brought to our attention that the generator sets for the same borehole that Kenya Red Cross financed and had paid for, were proposed, budgeted for and allegedly paid under the Constituencies Development Fund. We were advised that the CDF had procured generator sets for the two boreholes at Abakore and Meri, despite the fact that the contractor had been paid by Kenya Red Cross.”

Madam Temporary Deputy Speaker, I want to table this letter to show that, indeed, the Member of Parliament had an interest. There was a conflict between hon. Sirat and the Red Cross. The reason why that Question was brought here was to settle scores in this Parliament on the issue of double funding of projects. They were funded by CDF and the Red Cross at the same time. I wish to table the letter.

*(Mr. K. Kilonzo laid the document on the Table)*

Madam Temporary Deputy Speaker, I think in keeping with the Standing Orders, I have fulfilled my obligation to show that, indeed, the Member of Parliament had an interest.

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

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): Maybe before I take your points of order, hon. Member, to the best of my recollection, yesterday, the hon. Member was actually punished. He was asked to leave the House for insisting on

giving unsubstantiated claims. If that is the case, I am wondering why you are raising it again. Perhaps, you would have brought it as a personal statement.

**Mr. K. Kilonzo:** Madam Temporary Deputy Speaker, I just want to clarify what really transpired yesterday. The hon. Member was punished for imputing improper motive on other hon. Members. But on the issue of tabling these letters, I was challenged by the Speaker to table them today and that is what I have done.

**The Minister for Nairobi Metropolitan Development (Mr. Githae):** Madam Temporary Deputy Speaker, I think what transpired yesterday is very clear. Hon. Sirat was fully and adequately punished by the Speaker for both infringement and imputing improper motive on an hon. Member and also insisting that he had no interest. I think we should rest the matter there because that is adequate punishment. It should not be seen as if it is personal. As hon. Members, we should allow the issue to rest there.

**Mr. C. Kilonzo:** On a point of order, Madam Temporary Deputy Speaker. There are two issues here. Hon. Sirat was thrown out for imputing improper motive on hon. Members here. Secondly, he was asked whether he had an interest in this matter and he said “no”. He has not been punished for that. Hon. K. Kilonzo was challenged by none other than hon. Imanyara and was instructed by the Chair to table that information. For that reason, I wish to seek the following from the Chair.

Standing Order No.97 says:-

“Conduct is grossly disorderly if the Member concerned-

(e) otherwise abuses his or her privileges;

(f) deliberately gives false information to the House”

Hon. Sirat told the Chair that he did not have any interest in this matter. It is very clear that he has an interest because he has already been quarrelling with the Kenya Red Cross. It continues to say:-

“(j) acts in any other way to the serious detriment of the dignity or orderly procedure of the House.”

So, I am asking the Chair to find the hon. Member grossly disorderly and to apply 2(d) which says:-

“(2) The Speaker or the Chairperson of Committees shall order any Member whose conduct is grossly disorderly to withdraw immediately from the precincts of the Assembly, either -

(a) for the remainder of that day’s sitting; (which was done for a different offence) or

(b) for a period not exceeding two sitting days, including the day of the suspension.”

**Mrs. Shebesh:** On a point of order, Madam Temporary Deputy Speaker. I was fortunate not to be here in the House yesterday, but I was watching this issue on television. I am very clear that what Mr. C. Kilonzo has done is what he was asked to do. However, what is more fundamental is that the issues he has raised as to why he was bringing out the issues of personal interests are so fundamental and critical, and touch on the discipline and integrity of this House.

Therefore, I am asking; since we have the Powers and Privileges Committee--- This is an issue that must go before that Committee because it touches on the integrity of Members of this Parliament.

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): Hon. Members, I will make a ruling on this. I have heard what all hon. Members have said. I heard what hon. K. Kilonzo has said. Given the fact that Mr. K. Kilonzo has submitted the documents that he was asked to do, the hon. Speaker will make a ruling on Tuesday next week.

**Mr. Mbadi:** On a point of order, Madam Temporary Deputy Speaker. On 21<sup>st</sup> April, I had sought a Ministerial Statement in this House regarding the revenue account. I wanted it from the Deputy Prime Minister and Minister for Finance. There is a ruling that the Chair was supposed to give on this matter. Up to date, the ruling has not been given. I am concerned that the issue I raised is even continuing and is persistent. This is causing a worry because even in the latest Report from the Controller and Auditor-General, it indicates that the recent Estimates that were tabled in this House, there is a difference of what he has reported in his accounts of over Kshs146 billion. This is worrying to me. It should concern this House.

The Deputy Prime Minister and Minister for Finance owe it to this country to explain why he gives different figures to this House and different figures to the Controller and Auditor-General and, more so, when the amounts he purports to give this House as having been corrected, are more than what has actually gone into the Exchequer Account and reported to the Controller and Auditor-General.

So, I want to seek the indulgence of the Chair that this ruling be given as early as possible and, if possible, the Deputy Prime Minister and Minister for Finance be compelled to give an answer to this House on why the Government accounts are erroneous and why, even the accounts of the Office of the Deputy Prime Minister and Ministry of Finance have not been certified by the Controller and Auditor-General. This is a serious matter which needs to be disposed of, especially when we are just about to conclude debate on the Budget.

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

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): That was directed to the Chair. What is your point of order or what is not in order?

**The Minister for Nairobi Metropolitan Development** (Githae): On a point of order, Madam Temporary Deputy Speaker. This matter has already been settled by the Budget Committee. Therefore, there is no need of bringing it here. It has already been sorted out and an explanation given.

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): Hon. Njeru Githae, you are definitely out of order because the issue was directed to the Chair for a ruling that is pending. So, I will direct that the Chair will give directions on Tuesday next week.

**Mr. Mbadi:** On a point of order, Madam Temporary Deputy Speaker. It is really sad that hon. Githae stands to comment on a matter that he has not even understood. I am questioning the issue of differences in revenue accounts. What hon. Githae is talking about is completely out of ignorance.

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): Hon. Mbadi, I have already given directions on that. It is already sorted out. The Speaker will give directions on Tuesday next week.

Next Order!

## MOTION

### EXTENSION OF DURATION OF SELECT COMMITTEE ON COST OF LIVING

**Mr. Namwamba:** Madam Temporary Deputy Speaker, I beg to move the following Motion:-

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

I wish to make only three points. First, the Committee has, indeed, done a splendid job in terms of investigating the causes behind the sharp escalation in the cost of living. In the course of those investigations, it has come to the attention of this Committee that there are some deep seated factors that will require both medium-term and long-term interventions; some that will require legislative action. The Committee is, therefore, of the view that, rather than bringing an open-ended report to this House, it should bring a comprehensive report accompanied by certain specific time-bound legislative proposals that can make its work realize definite benefits for the country. Therefore, one of the reasons why we seek this extension is to enable this Committee not only to conclude a comprehensive report, but also to prepare certain legislative proposals that can lead to legislation to address some of the fundamental issues that the Committee has already taken note of.

Secondly, a lot of the time that was granted to this Committee was taken up by the recent recess. It so happened that the time that the Committee was given to conclude this process coincided with the recent recess and, therefore, a lot of the work that the Committee had scheduled to do, did not happen because Members of the Committee, who are also Members of this House, were busy with the recess.

Finally, I would like to assure this House that even as we seek this extension to conclude this work, the Committee has not been sitting back and doing nothing. The Committee has, indeed, concluded a preliminary report that has already been shared with the Government. I am happy to note, on behalf of the Committee, that of the 21 preliminary recommendations already shared with the Government--- Those recommendations were officially presented to the Government through the Secretary to the Cabinet and Head of the Civil Service, Amb. Francis Muthaura as well as the Prime Minister of the Republic of Kenya.

Of the 21 recommendations, the Committee is happy that a number of them have already been implemented by Government, including the emergency food supply that is being undertaken now by the Military and the National Youth Service. Those were among the emergency recommendations that the Committee had presented to Government. They included importation of maize that is going on currently and addressing issues within the Kenya Revenue Authority (KRA) Simba System. Those are some of the emergency recommendations that the Committee has already made in its preliminary report. They are already with the Government and being implemented.

The Committee now pleads for the indulgence of this House to be granted this time extension to conclude the final comprehensive report that will be accompanied by the legislative proposals that the Committee hopes will result into legislation to address fundamental issues that have already been noted. This is so that the report of this

Committee does not become like any report previously approved here but without resulting in anything substantive.

The hon. Member for Eldoret South, hon. Peris Cheipchumba, will kindly second the Motion.

**Ms. Chepchumba:** Madam Temporary Deputy Speaker, I rise to second the Motion. I have two burning issues on this. The cost of living not only affects the consumers but producers as well. I had an opportunity in Eldoret to sit with this Committee, as a friend, and it is doing a wonderful job for Kenyans. I want to reiterate that farmers in Eldoret poured their frustrations to this Committee. I know there are weighty issues affecting the producers, especially of cereals. Now the price of maize is low and the cost of inputs is high. This has made these farmers to be frustrated. I want to say that this Committee should be given an extension of two months, so that they can go deeper and come up with recommendations that will save Kenyans.

I beg to second.

*(Question proposed)*

**The Minister for Nairobi Metropolitan Development (Mr. Githae):** Madam Temporary Deputy Speaker, I wish to support this Motion. In supporting it, I just wish to tell the Committee to, please, let your report be in the national interests. Do not target specific Ministers. Initially, there was the fear that this Committee was being formed to target the Minister for Energy. However, from the interim reports that you have given, it is now very clear that this was not the intention and we thank you for that. Please, continue. We are looking forward to your report so that the Government can implement it.

Thank you.

*(Question put and agreed to)*

**The Temporary Deputy Speaker (Mrs. Odhiambo-Mabona):** Next Order!

## **BILL**

### *Second Reading*

#### THE UNCLAIMED FINANCIAL ASSETS BILL

**Mr. Lekuton:** Madam Temporary Deputy Speaker, I beg to move that the Unclaimed Financial Assets Bill be now read a Second Time.

I will be very brief because many hon. Members have read this Bill and do understand it.

I would like to start by thanking my fellow Members of Parliament, the stakeholders, the media and members of the public for being very supportive of the Unclaimed Financial Assets Bill, 2011. I have consulted widely with members of the public, friends and various stakeholders on this Bill. I am glad to say that it is getting a lot of support all over the country.

Madam Temporary Deputy Speaker, this Bill is very important for this country. It is very important for the poor people. It is very good for the uninformed members of the public who have money, but have no idea where their money is. A functioning financial system is extremely good and for the economic development of a nation. In recent years, the Kenya financial sector has been very powerful and has improved tremendously. It has witnessed a lot of profits. This is a welcome move considering that we are doing well when the rest of the world is not doing that well.

Madam Temporary Deputy Speaker, Vision 2030 clearly rests its case on the financial sector to improve the economy of this country. However, we need to improve the financial sector on some issues, and specifically on the issue of unclaimed financial assets, which is very crucial, as I said earlier, to the poor people of our country. We have savings and deposit institutions, banks, brokerage firms and pension schemes, which hold a lot of money that is unclaimed. It may belong to an old woman somewhere in the middle of this country, somebody somewhere in the United States of America (USA), Ikolomani, Laisamis and in the whole of the country. If we really have to live by the Constitution that we created--- Most of our laws are pegged on international law. This Bill conforms to the very issue that we believe in and is of international standard.

Madam Temporary Deputy Speaker, international best practices include the management of information that we need to know. It will help us to know how much money we have and how much money banks and pension schemes have. It is only ethical for the banks to report how much money they have. After three or four years, depending on their category, they will report on this money to a special fund that will be created by the Bill. Members of the public will continue seeing if their money is there after getting extensive information through radio, newspapers and other media. The good thing about this Bill is that the people of this country will have access to their money for hundreds and hundreds of years as opposed to now, when after three to four years, that money is gone.

Madam Temporary Deputy Speaker, we need to protect our people. Countries like Canada, Australia, United Kingdom (UK), Ireland, Malaysia, New Zealand and the United States have made major strides in the management of unclaimed assets. As financial systems continue to be complicated, we need a law like this one. At the moment, there is no law that protects unclaimed money.

Madam Temporary Deputy Speaker, just to give you an example, the State of Florida alone has received since its inception of its scheme in 1961, US\$3.7 billion in unclaimed money. Even after 20 or 30 years, people have come to claim their money from the government system. Out of that money, US\$1.6 billion was claimed by its rightful owners even after 20 to 30 years. The beauty about this is that the money with authorities will be used by poor Kenyans in hunger alleviation, making roads and supplying water to people. It is money that the banks have now; all the interested groups will be brought under the Government. The Government should be very happy that this Bill has been introduced because it will give them money. It is not taking money from them. It will give them money that they never had before. So, I will find it very strange for the Government not to support this Bill.

Madam Temporary Deputy Speaker, I will just give you two examples before my colleague seconds the Bill. There is a former Member of Parliament, hon. Joe Donde. I had a discussion with him and other hon. Members as well. He told me that when he

lived in the United Kingdom (UK), where his last child was born, he used to get £8 per week; that is the practice there. The former hon. Member was working in the financial sector of the UK at that time. He deposited that money in a building society account and forgot about it. Then he moved to Kenya and became a Member of Parliament. When he lost his seat, he told me he was broke. He went through his suit cases and found two sets of notes. One a saving from a reputable bank and the other one was from Dub Building Society in the UK. So, he got himself a ticket and flew to the UK, 15 years later, and found out the Building Society was closed but the law protected his money. That money was taken by the building society to the Authority of Unclaimed Financial Assets Management. Hon. Donde was able to get his money back because the law was there.

Madam Temporary Deputy Speaker, we do not have such laws in Kenya. For example, with regard to insurance company, we need to educate Kenyans on this. If you buy a 15 years life insurance policy and eight years down the road, you cannot afford to pay more just because you do not have a job. Very few Kenyans know how they can get that money back. We need laws to protect such monies, so that they know their money is available.

Madam Temporary Deputy Speaker, I want to be brief because I want many Members to contribute. When the East African Community collapsed workers lost all their savings. Those savings are in this country, but they cannot access it because there is no law that will make them get that money back. That Question was raised by Mr. Yakub. I am sure the Office of the Deputy Prime Minister and Ministry of Finance is aware of that. We have new technologies. I can have money in this phone, M-Pesa, and I get hit by a bus, who knows I had Kshs20,000 in my M-Pesa account. The technology industry is so fast that we have to make laws that will catch up to their speed. So, we also need to regulate because many Kenyans have money in M-Pesa accounts that people have died and no one knows. That is why I am saying we have to protect our citizenry. The story of Donde is just one. During the Safaricom IPO, thousands of Kenyans applied. However, many of them could not get those shares because it was oversubscribed. Safaricom had to refund money to them. Between the six weeks of application and the refunding period, over Kshs200 million was stuck in financial institutions because owners could not be traced. That is just one incident. Let us think about many more like that in our country.

Madam Temporary Deputy Speaker, in conclusion, the Bill is setting five parts. The first part is, of course, the title. The second part is on unclaimed asset; what qualifies to be called unclaimed assets, cheques and drafts. Part three is dealing with unclaimed assets, duties of holders and certain powers of the authority. Four, deals with the Unclaimed Asset Authority. What is its responsibility and powers? Five, unclaimed financial asset trust fund, who will decide what projects the money will go into in this country? Will it go to roads or education? Those are some of the things that these Bill talks about. So, I know my good friend hon. Gumbo is also very conversant with this Bill. In conclusion, it will just help the poor. It will be good for our country because we need that money for other social programmes. We, as a country, are not rich.

With those few remarks, I beg to move and ask hon. Gumbo to second.

**Eng. Gumbo:** Madam Temporary Deputy Speaker, I want to thank my friend, hon. Lekuton, for bringing to this House this very timely Bill, which I think should have come here many years ago.

Madam Temporary Deputy Speaker, as I speak now, billions of shillings are actually lying unclaimed in travellers cheques, money orders, ordinary cheques, bankers cheques, deposits for electricity, telephone, water services, insurance premiums, shares and so on. These are money that belonged at some point to some Kenyans somewhere, but because of one reason or the other, they are unable to claim it. This money is lying unaccounted for in the hands of holders who, for instance, are only too reluctant to disclose.

Madam Temporary Deputy Speaker, as I speak, chances are that almost all members in this House have some unclaimed assets sitting in some bank, traveller's cheques, electricity deposits, water and telephone deposits that have not been claimed. Therefore, this is not just a Bill that we are trying to pass to help the ordinary Kenyan. This is a Bill that will help virtually everybody. I remember many years ago when I left the university, I tried to buy shares in a company which changed names many times. Only recently, I realized that I had some shares there. However, this company has changed names. I do not even know whether their address is still the same. But for sure, that company in whatever form it is, owes me money. This is something that is all over the country.

From what my good friend has stated, banks, financial institutions, pension fund custodians, phone, water, electricity, fund managers and even Government departments, are holding billions of shillings of unclaimed assets. As I speaker, the estimates we have in the country maybe as much as Kshs200 billion or even more. These are huge amounts of money to be held in a country like Kenya whose annual budget is Kshs1 trillion. We are looking at about 20 per cent of the annual budget. That is a huge sum of money. In fact, some of us feel that some of the huge and even abnormal looking profits that our banks declare every year; may actually be driving from investment in this money which is not visible to most of us.

As we debate this Bill, it should be important to point that, in fact, unclaimed assets could also be target for fraudsters. Some of those people who hold these unclaimed assets know they hold them. It is very easy for them to collude with fraudsters to be able to target and access this money. It is, therefore, important that we pass this Bill. A sum of Kshs200 billion will be lying with the Unclaimed Assets Authority. Even if 60 per cent of it was put into some form of social investment can make a big difference in our country.

I, therefore, urge that we have clear structures on how we will utilize this money once it gets to the authority. I will be interested to know and the impetus will be there, if I knew, for example, that Kshs150 billion is with the Unclaimed Assets Authority and Kshs1billion is going to Rarieda, it will give the impetus to follow this matter. We have discussed these issues and I urge my good friend to form a structure, so that there is no vagueness in the way this money will go to social services in the country.

Madam Temporary Deputy Speaker, as I conclude, I want to caution the Mover that from what we see in the industry, it is possible that the people who hold these assets will fight back in one way or the other. This is because this is money that is good in their books and they use it to increase their profitability. It is important that he is alive to the fact that some amount of fighting back from the holders of these assets is expected. However, I hope that this House will rise to the challenge and look at the benefits that Kenyans will derive from this important Bill. We should pass the Bill with amendments that will only enrich it.



Turning to the Bill, I want my brother and the Mover to look at page 182. In light of the new Constitution, perhaps, the word “Minister” there should now be “Cabinet Secretary”.

I have an issue with Clause 21 as proposed. It states:-

“For the purposes of this Act, the Authority may request a person who the Authority reasonably believes is a holder of assets to provide such information to the Authority as the Authority may require within such time or at such intervals as may be specified in the request.”

I think we need to be more emphatic on this. Let us compel the holders of these assets to declare them. Let us specifically, and in this Act, compel them that if they do not--- As we compel them, let there be a penalty for giving the wrong information in the first place and for not disclosing within a specific period.

Clause 33 states: “A person who fails to pay or deliver assets within the time prescribed by this Act---”

I know you have proposed a penalty, but look at it this way. This is money that these people use to generate other monies. Is it good enough? They should not just declare the money, but also account for it. As we go to the Committee Stage, these are the areas where we shall be proposing some amendments.

Once again I thank my brother, Mr. Lekuton for coming up with a timely Bill. With those remarks, I second and urge my colleagues to pass this good Bill.

*(Question proposed)*

**Dr. Khalwale:** Madam Temporary Deputy Speaker, I rise to strongly support this Bill because it advances an idea whose time has not only come but given a chance, should have come much earlier. If this Bill sails through, I will dedicate it to the former employees of the East African Community with special reference to my own brother, Sylvester Imbali Khalwale; my cousin, Alfred Mulema; my brother Adrian Muteshi Ayisi and, of course, my cousin, Dr. Henry Mima. These are people who worked with the East African Community either with the defunct East African Airways, East African Railways and East African Post Office. My brother was an accountant in the Kilembe Mines, but because of lack of this kind of law, his money still lies with the former East African Community. The three countries of the East African Community shared assets and the money which was meant to pay these people was brought to the Government of Kenya. However, because of lack of law and the culture of impunity in this country, these very gallant sons who worked in the Community still remain unpaid.

There are, of course, weaknesses in the judicial system and serious deficiencies in the statutes of this country which continue to leave many Kenyans helpless and hopeless. This is the real reason why we should move with speed to help such hopeless and helpless Kenyans who have money held up in unclaimed assets.

Madam Temporary Deputy Speaker, there are many incidences in this country where Kenyans have been fleeced by unscrupulous individuals and institutions because of ambiguity in our laws ranging from privatization of State Corporations; IPOs; collapsed banks like the Trade Bank, Exchange Bank, Trust Bank, The Urban Rural Co-operative Society, many other savings societies and, of course, now the unclaimed assets.

It is very unfortunate that in this age and era, the monster of unclaimed assets is exacerbated by the following reasons in my view. First, there is the issue of financial illiteracy amongst Kenyans. It is so serious that even doctors of medicine like me are not financially literate in the very meaning of the word. If that is the case, what do you expect of the people in rural areas with limited education? Because of the financial illiteracy, they are exploited and their money will forever remain locked in unclaimed assets.

We also have the challenge of limited access to education by the girl child. This means that if a man marries below the academic ladder, you will find that the man works here in Nairobi but when he dies, because the wife was, probably, a Standard Seven dropout, the poor girl will be taken through several offices in Nairobi and when she now wants to make progress, she approaches a cousin in the family to do a follow up for her. By the time the cousin comes to Nairobi, he would have claimed favours from this woman some of them which are not culturally becoming.

We also have the challenge of road traffic accidents especially where those accidents claim both parents. What then happens is that the little children who are left behind, in their ignorance and vulnerability, they have nobody to do a follow up for them and the money will forever remain unclaimed.

Then, of course, latest, we have the challenge of the scourge of HIV/AIDS. Usually, this scourge would take both parents and if the road accidents that kill both parents, you will find that the orphans are left uncatered for and they are stuck. They do not know who can bid for them.

Madam Temporary Deputy Speaker, without annoying my former college mates who qualified as lawyers, there is also the challenge of the advocates. Some of the lawyers, and with all due respect - my son is a lawyer - and so I would have no intention of imputing bad motives against the profession, just refuse to settle claims and yet the money is there. My brother, Mr. James Orengo, had an opportunity to come across such incidences where a lawyer just refuses to pay. In other incidences, the lawyer underpays the claim. This is part of the unclaimed assets that we are worried about. I can see Mr. Wetangula fidgeting and looking like I am speaking about something that does not exist. Allow me to inform him that it is because of what I am saying that we have disciplinary action within the Law Society of Kenya (LSK) against lawyers with this kind of attitude.

**An hon. Member:** It is underpaying!

**Dr. Khalwale:** Madam Temporary Deputy Speaker, yes, it is underpaying. He must admit that that medical jargon is miles away from legal jargon.

*(Laughter)*

Madam Temporary Deputy Speaker, this brings to mind the merit of us, as the Parliament of this country, to make sure that we address the method through which payments are made when they are being claimed by lawyers.

Madam Temporary Deputy Speaker, there is a lot of merit in two cheques being drawn so that there is a clear cheque going to the lawyer and a clear cheque going directly to the client.

Having said those things, allow me to point one or two things on some of the clauses. Clause 17 talks about assets held by courts or Government departments. Many hon. Members will know that we have many cash bonds that are paid at the police station.

As soon as the poor Kenyan is released, he runs away going home. He does not want to appear near the police station. This money ends up disappearing.

Similarly, cash bails which are also paid at law courts meet the same fate. With this kind of law, if properly worked on and improved, it will address this kind of problem. By the way, that money is not little. It is a lot of money. People pay cash bails of Kshs5,000, Kshs10,000, Kshs100,000 and some of them just run away.

Madam Temporary Deputy Speaker, Clause 18 talks about the Minister prescribing further classes of assets. I want to agree with Eng. Gumbo that the person who was drafting this particular Bill is not living in Kenya. He must be living in history because he is still talking about Ministers when we expected such a brilliant lawyer to have remembered that we are operating under the new Constitution.

I believe that under this particular clause, we can cover other groups not necessarily provided for. For example, in the villages and estates, we have very popular groups called merry-go-rounds. These merry-go-rounds are common amongst the low income workers, women groups, circumcision groups, especially in Bungoma. They are called age groups or *rika*. They are common amongst *boda boda* groups. When one member dies, the wife or husband does not know that the spouse was a member of a particular merry-go-round group and that money just disappears. It might look small, but this is an issue that touches the very heart of the common *mwananchi* for whom we want this new Constitution and the new laws to protect.

I have a small issue with Clause 26. Clause 26 talks about the sale of unclaimed assets. To me, we must deliberately make an effort to ensure that we bring it in tandem with the various African cultures the way they provide in our communities. For example, in my community, in the case of land, if a man dies and his son had disappeared to Mombasa or to the United Arab Emirates, the uncle of the boy who has disappeared, that is the brother of the late man, automatically takes control of that land. He will keep on waiting until this boy comes back. If the boy does not come back or if he comes back dead, culture provides that automatically that land then becomes the property of the uncle. In my mind, land is an asset. If this land is then classified as an unclaimed asset and then the authority goes on and sells that property, it is obnoxious and going against our cultures. They are the same cultures that our Constitution attempts to preserve.

Madam Temporary Deputy Speaker, I also want to point out something in Clause 40. It is talking about the composition of the Board. I want to agree with it, but while agreeing with it. Please, the drafters, make sure you change the word Permanent Secretary. To be in tandem with the new Constitution, I believe it should be the Principal Secretary. But more importantly, I believe the composition of the Board should include Sub-Clause (d). The official Government Ombudsman should sit on this Board. The Ombudsman is the custodian of all complaints from all corners of the country. It is important that with that big eye of his, he should sit there and add value to the Board of Trustees.

Finally, Clause 41 is talking about the objectives and functions of the Board and how those should be managed and invested. In my view, this should be guided by specific rules and regulations, so as to promote social justice to all Kenyans and all counties. We do not want a national authority, which might be under a particular Cabinet Secretary, to then be abused to the extent that that Cabinet Secretary starts favouring certain Kenyans or counties. That is why I believe that there should be rules and

regulations to ensure that social justice is achieved. Secondly, in those rules and regulations, we must clearly put it in writing such that we prevent abuse by the Board of Trustees of this particular Fund.

All the Members of Parliament are alive to the unjustifiable cases of the unjustifiable enrichment through the funds at the National Social Security Fund (NSSF). In fact, it is unfortunate that some of these people who have unfairly and unjustifiably enriched themselves using the NSSF funds are politicians. We must put these rules and regulations, so that never again shall a politician, be it a Minister, Assistant Minister or even the Head of State or the Deputy President, abuse this Fund for personal and unjustifiable enrichment.

With those remarks, I strongly support.

**Mr. Wetangula:** Thank you, Madam Temporary Deputy Speaker, for giving me an opportunity to make a brief contribution to this Bill. I congratulate the Mover, hon. Lekuton, for such a brilliant idea that as hon. Khalwale says, should have come a long time ago.

If you travel to various jurisdictions, you will find that they have legal frameworks that govern unclaimed financial assets that have been turned into phenomenally huge financial reserves for the country. These financial assets are used routinely for social services, infrastructure development and improving the lot of the people.

Equally, we know many countries out there that have deliberately omitted to have a legal system to govern unclaimed assets for purposes of enriching themselves. You know many countries in Europe where African dictators have stashed away billions and billions of dollars, gold and other precious stones. They are either overthrown or die and the money is hidden in numbered accounts which only the holder of the account knows. At the end of the day, the money is lost.

*[The Temporary Deputy Speaker  
(Mrs. Mrs. Odhiambo-Mabona) left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, in this country, we have also had many situations, particularly pertaining to rural teachers. There was a time when rural teachers in this country, particularly primary school teachers, were coerced into taking up insurance policies. Each one of them was paying between Kshs200 and Kshs300. Down the line, they found that it was not sustainable by their pay cheque. They dropped it, and they did not even know that they could claim that money. Some insurance companies folded up. Some owners of insurance companies transferred the money to themselves.

Building societies have done the same. The old East African Community also did the same. Even the National Social Security Fund (NSSF) is a culprit. There are many people who have died and their families do not know that they were holding accounts with the NSSF, and the money disappeared. What this law is trying to do is to now

impose a duty on institutions, both public and private, that hold financial assets to account for them when they are not claimed.

Mr. Temporary Deputy Speaker, Sir, in your contribution, you appear to have misrepresented the provisions of the Bill. The assets do not include land. They are only financial assets. So the point on land is not part of what we are talking about. We are dealing with---

**The Minister for Lands** (Mr. Orengo): On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member cannot talk about the Speaker having misrepresented the Bill. The person who was speaking at that time was Dr. Bonny Khalwale. The person on the Chair cannot be taken to have misrepresented the Bill. Could hon. Wetangula show decorum and respect to the Chair? Probably, he never imagined that you could be in the Chair.

**The Temporary Deputy Speaker** (Dr. Khalwale): Order! Order! Hon. Wetangula, you are out of order!

*(Laughter)*

Hon. Wetangula, you do not have to respond to hon. James Orengo but, please, take note that the Speaker of the National Assembly has not, at any one time, made a contribution from the Floor of this House. The contribution was made by the Member for Ikolomani.

Continue!

**Mr. Wetangula:** Mr. Temporary Deputy Speaker, Sir, indeed, the Member for Ikolomani misrepresented the contents of the Bill and mistook “assets” to mean and include land. They do not include land.

Mr. Temporary Deputy Speaker, Sir, the Bill needs to be strengthened. I think the drafter and his advisors need to give a clarification and a definition on how the state can use the finances coming out of these unclaimed assets. If we leave it grey, there will always be the temptation to abuse or misapply those funds. There is always the temptation to use funds for unintended purposes, especially when there is not enough money in the country, and you have money lying idle somewhere.

It is good to state very clearly that such money can be invested in state bonds, especially infrastructure bonds like bonds for road construction, which we are all crying for. Such assets, once liquidated into cash, can build a super highway from Mombasa to Malaba and Busia, and suddenly result in the growth of the economy of this country to some phenomenal level. Such funds can be used to build the ports we are talking about.

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

*[The Temporary Deputy Speaker (Mrs.  
Odhiambo-Mabona) resumed the Chair]*

Madam Temporary Deputy Speaker, at this age and day, we should not be contented with the Port of Mombasa alone. A small country like Mozambique has five fully fledged and functioning sea ports. They are usefully utilised and are generating a lot

of contribution to that country's GDP. Such funds can be used to build another port in Kilifi, Malindi, Lamu or Shimoni or wherever else. So, we need to fine tune this Bill and provide for the "dos" and "don'ts" of how this money can be put into use. Such funds can also be put in endowment facilities for education.

Of course, we need to provide in this Bill that even when the funds have been moved to the proposed authority and the rightful claimant comes, there must be the shortest time possible within which the authority must pay the rightful claimant once he is identified. We do not want these stories of you coming; then they hire a clever lawyer; he then waves the Limitation of Actions Act on your face and tells you: You did not claim in five years' time. So, you are done.

There should be no limitation in accessing unclaimed assets by rightful beneficiaries so that whenever they are available, the limitation of actions should not apply so that they can get access to these funds.

Madam Temporary Deputy Speaker, equally, the management of this Fund must be by a team that must be clearly defined. I have in mind Clause 40 which is too weak and fluid. It can give rise to the wrong people being appointed to sit on this Authority. When you say: "One person shall be appointed by virtue of his knowledge and experience in matters relating to banking and investment", a cleaner at the bank has some knowledge relating to banking. Do they qualify to sit on this Authority? I think you should define the academic qualification of what you want.

When you say: "One shall be appointed by virtue of his knowledge and experience in matters relating to accounting, auditing and law", I want you to be sensitive and say his or her, but does my clerk in a law firm qualify to sit on this? I think not! You should clarify that this people should possess a first or second degree in law. A first degree is good enough and then experience will assist.

Madam Temporary Deputy Speaker, I want to tell the Member for Ikolomani why the Ombudsman should not sit on this Authority. The Ombudsman is a public defender. Everybody in this country who is aggrieved including this Authority will go to the Ombudsman for help. There is no point to compromise the Ombudsman and sit him on any board or any authority. This is because he holds the last line of defense for the ordinary person. When you are aggrieved, you can go to the Ombudsman and be assisted.

I also want to draw the attention of the Mover to Clause 47(2). I would urge you to delete it because it makes very little meaning. In fact, if anything, it runs counter to the spirit of your Bill. It says:-

"A person is not guilty of an offence under sub-section (i) (b) if that person did not know that the statement was false or misleading---"

When a person is filing particulars of a claim, he has a duty to file correct particulars. The defense of not knowing should not be legitimized in law. It is a defense, anyway. When you put it here, you will have people who have given false material in particular, coming and saying they did not know and the law protects them because they did not know. This would happen even when they dishonestly gave false information. The Mover should make sure that he changes that.

Madam Temporary Deputy Speaker, then we come to the funds that will run the Authority---

**Mr. Mututho:** On a point of order, Madam Temporary Deputy Speaker. I seek your indulgence that you allow each one of us to speak for one minute so that we are able to carry on. I did not mean to interrupt my senior colleague, but if we could do one minute each, it would be very good for us.

**Mr. Wetangula:** Madam Temporary Deputy Speaker, I leave it to you because I do not know whether we are being curtailed in terms of time.

**Dr. Khalwale:** On a point of order, Madam Temporary Deputy Speaker. Whereas I want to agree totally with Mr. Mututho, the purpose of such a new law is to allow as many Members as possible with enough time for them to give out their ideas which can enrich the law instead of allowing only one short time for people to talk and then we end up with a shoddy piece of legislation. I propose that we continue with this debate even up to next week.

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): Going by the mood of the House, hon. Wetangula, you can proceed! Every hon. Member has 20 minutes.

**Mr. Wetangula:** Madam Temporary Deputy Speaker, thank you for that wonderful ruling. I do not know what I could talk about this Bill in one minute.

Madam Temporary Deputy Speaker, I was talking about the clause on giving false information. I think that giving false information, in fact, in Penal Law is a crime. So, you do not even have to let people raise it as a defense.

Madam Temporary Deputy Speaker, I also want to urge the Mover to define clearly how much money can be used for the administration of the Authority. Like the boards that have been set up, we normally say that the rules will be defined and maybe, no more than this can go to administration. This is because the Authority can start abusing the money. They can just start buying property and doing all sorts of things and then, the people intended to get this money will miss it out. So, it will be good if the Mover can fine-tune that.

Madam Temporary Deputy Speaker, a very important point was raised by the Member for Ikolomani about bonds deposited with the police, chiefs and in courts. There are even bonds deposited at District Commissioners' (DCs) offices, especially in far-flung areas where sometimes DCs double as magistrates. There are others deposited in prisons, where somebody goes to jail, deposits money there and he dies. The body is carried away and nobody knows if any money was deposited. I think the Bill should provide for all such public institutions to keep an inventory of all such deposits and financial assets held by them; regularly update through publication and indicate whether the person who deposited the financial asset is known to be living or not. Then, the assets can automatically move to the Authority. This is because previously, what used to happen is under the common law doctrine of presumption of death of seven years and one day. When after seven years and one day, you are not known of, if they know where your family is, they will reach out to them. If they do not know, sometimes, they pass the money to the Public Trustee and other times, the institutions just converted the money for their own use. I believe this should not be limited to the common law doctrine of presumption of death of seven years and one day. I have seen you have indicated about three or two years. Three or four years are good enough. If the owner of the asset resurfaces anyway, the money will be safe in the Authority. They can still go and get it. The Authority should also be obligated to account for the interest on the asset. If the

Authority takes Kshs1 million from hon. Chachu Ganya's estate and they hold it for four years, presuming he is dead, and he resurfaces, then they must account for the four years. This is because we are telling them that this money must be invested in bonds, infrastructure and any other earning investments for the country. So, if you are able to put that in the Bill, that will be very good.

Madam Temporary Deputy Speaker, I want to urge the Mover, as I come to an end, that this is not a new phenomenon. There is very developed law relating to unclaimed financial assets in many jurisdictions. I would urge you to do a little more research so that you improve this Bill, because this is a novelty that you have brought to the country, that is going to help a lot of poor people. The richer you make it, the better for the people of this country. So, try and reach out to those who can help you on research. Go to the web and check what this law says in England, Germany and many other places. Then, you will be able to bequeath to this country something that we will live to remember you. Even when the people of Laisamis say "*songa kando, tutakukumbuka*."

Madam Temporary Deputy Speaker, with those many remarks, I beg to support this Bill and urge everybody else to do so.

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): Yes, hon. Jakoyo Midiwo!

**Mr. Midiwo:** Madam Temporary Deputy Speaker, I am the one and only hon. Jakoyo Midiwo.

I thank hon. Lekuton for bringing a very good idea. Like I said somewhere yesterday, when I was with him, I thought that we could do more in this Bill. I am happy that last night, as I watched news, I saw some Kenyans, particularly the CEO of Equity Bank, Mr. James Mwangi, support this course. I was impressed because he conceded that the unclaimed assets, particularly the ones deposited with banks, are the breeding ground for theft or corruption. I know that many people will oppose this thing. However, I want to beg Parliament that the time to do this thing is now.

The Government, in its own wisdom, in March, 2008, set up a taskforce to find a solution on unclaimed assets. Maybe, the Minister will get time to respond to this. But it is amazing that the taskforce came up with recommendations along the same lines you have come up with, except that the Executive chickened out and did not want to implement them. So, you are doing something that our Government is afraid of.

In the Bill, we must give the responsibility to citizens to know the existence of their unclaimed assets and ensure that they go to the people who are entrusted with them. As we have spelt somewhere in the Bill, we should make it mandatory that if your father or grandmother deposited so much money with bank "X", that bank needs to publish that they are holding those assets, as opposed to them waiting for people to not to show up.

That is the problem that families of the elderly are facing. The families of the elderly or the dead are facing those problems today when banks simply refuse to pay benefits. Kenyans are spending a lot of money just to chase benefits of the deceased. We want to use this Bill to make that a thing of the past. As you may remember, a few years ago, hon. Musila brought a Bill forcing retirement benefits to be paid within a certain period. However, now, Kenyans are waiting until they die. Even after they die, their families do not get to know where those assets are. So, I want to thank you for doing that.



This must be done as far as the NSSF is concerned; all the aged funds and all the asset funds that are there.

I wanted to mention one thing to the Mover of this Bill. The Authority cannot be left without control. First, we must specify in law how much money the Authority will use in administration. If you let them collect money on our behalf and they give you negative balance sheets, there is nothing you will do. We do not want to cure corruption by creating another corruption. So, we must limit that ability. Secondly, we must spell it out in law that, that Authority must report to Parliament and not to the Government. It must report to a particular Parliamentary Committee so that we can exercise oversight over what they do with public funds directly.

I beg to support.

### **ADJOURNMENT**

**The Temporary Deputy Speaker** (Mrs. Odhiambo-Mabona): Hon. Members, it is now time for interruption of business. The House, therefore, stands adjourned until Tuesday, 9<sup>th</sup> August, 2011, at 2.30 p.m.

The House rose at 6.30 p.m.