

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 20th December, 2011

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

**Mr. Speaker:** Hon. Members, I have a communication to make regarding returns on Bills received from the hon. Attorney-General, pursuant to the Standing Orders.

### COMMUNICATION FROM THE CHAIR

#### ASSENT TO BILLS

**Mr. Speaker:** Standing Order No.125 requires the Attorney-General to present to the President within 14 days of receipt from the Clerk of the National Assembly every Bill passed by this House. Thereafter, at the expiry of 14 days, the Attorney-General is required to file a return to the Speaker indicating the time and date that the Bill was presented to the President.

The returns now received indicate that the following four Bills were presented by the Attorney-General to His Excellency the President for assent and were duly assented to on 2<sup>nd</sup> December, 2011, at 2.00 p.m.

The Bills are:-

1. The National Construction Authority Bill, 2011, which was passed by the National Assembly on 18<sup>th</sup> October, 2011;
2. The National Payment System Bill, 2011, which was passed by the National Assembly on 3<sup>rd</sup> November, 2011;
3. The Capital Markets (Amendment) Bill, 2011, which was passed by the National Assembly on 9<sup>th</sup> November, 2011; and,
4. The Central Depositories (Amendment) Bill, 2011, which was also passed by the National Assembly on 9<sup>th</sup> November, 2011.

Hon. Members, the returns further indicate that the Unclaimed Financial Assets Bill, 2011, which was passed by the National Assembly on 3<sup>rd</sup> November, 2011, was presented by the Attorney-General to His Excellency the President for assent and was duly assented to on 2<sup>nd</sup> December, 2011, at 2. 15 p.m.

I thank you.

### PAPER LAID

The following Paper was laid on the Table:-

Report of the Departmental Committee on Defence and Foreign Relations on the rendition of Kenyan nationals to stand trial in Uganda and other foreign countries.

*(By Mr. Keynan)*

## NOTICE OF MOTION

### RENDITION OF KENYAN NATIONALS TO STAND TRIAL IN FOREIGN COUNTRIES

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

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the rendition of Kenyan nationals to stand trial in Uganda and other foreign countries laid on the Table of the House on Tuesday, 20<sup>th</sup> December, 2011.

Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** The hon. Member for Kisauni?

## QUESTIONS BY PRIVATE NOTICE

### EVICITION OF FAMILIES LIVING IN KWA BULO IN KISAUNI

**(Mr. Joho)** to ask the Minister for Lands:-

(a) Is the Minister aware of plans by the Government to evict more than 4,000 families living in Kwa Bulu in Kisauni Constituency?

(b) Could the Minister provide the names of persons and/or companies that have been allocated the said land, and state from whom they acquired the land, and at what cost?

(c) Could the Minister clarify whether there have been any transactions in relation to the said land, and state what measures the Government will take to ensure that the residents are not evicted?

**Mr. Speaker:** Order, hon. Members! The hon. Member for Kisauni, as a matter of fact, is away with permission from the Speaker. So, Question No. 1 by Private Notice is deferred until such time that he will be available.

*(Question deferred)*

Next Question, the hon. Member for Juja!

### CONSTRUCTION OF PERMANENT STRUCTURES ON TWIGA FARM

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

(a) Is the Minister aware that residents are constructing permanent structures on Twiga Farm within Ruiru Municipality without title deeds or approvals from the Ruiru Municipal Council?

(b) What measures is the Minister taking to ensure that the matter is dealt with and Kenyans do not lose money as recently witnessed in Syokimau Estate?

**The Assistant Minister for Local Government** (Mr. Nguyai): Thank you, Mr. Speaker, Sir. I would like to seek your indulgence. I do not have a written answer, but we did visit Twiga Farm and gave certain instruction. If you allow me, I would like to give an oral reply.

**Mr. Speaker:** Subject to the hon. Member for Juja being comfortable, then that would be fine with me.

**Mr. Kabogo:** Mr. Speaker, Sir, this is a Question by Private Notice! I just suggest that we proceed!

**Mr. Speaker:** Very well. You may carry on!

**The Assistant Minister for Local Government** (Mr. Nguyai): Thank you, Mr. Speaker, Sir.

Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the residents of Twiga Farm within Ruiru Municipality are, without title deeds, are constructing structures that are permanent with the approvals of the Ruiru Municipal Council.

(b) We visited Twiga Farm in the company of the hon. Member and had all the Ruiru officials there. At that particular point in time, I did give instructions that all illegal structures within Twiga Farm be demolished. Those instructions were given in the presence of the hon. Member and they were followed through with a communication. It is only a matter of time. We had set 2<sup>nd</sup> of December, 2011 as the deadline, but I think there were some statutory requirements in terms of notice. Those structures should be going down any time now. Thank you, Mr. Speaker, Sir.

**Mr. Kabogo:** Mr. Speaker, Sir, what the Assistant Minister has said is true to a large extent. Yes, we did visit the farm and he has said that the deadline was 2<sup>nd</sup> of December, 2011, which you realize is like 18 days ago. So, really, the notices were expiring on 2<sup>nd</sup> December. I imagine that action should have been taken by today. Could he give a firm undertaking to the House that these demolitions--- The underlying thing here is not demolitions. The Assistant Minister must understand that we are allowing illegal constructions. The issue is not really demolitions. It is that the Ministry must undertake to ensure that there are no illegal constructions on the farm, so that Kenyans do not lose their homes as was the case last week. Could he give an undertaking as to when the demolitions will stop? I want to know if the Assistant Minister will be able to undertake that these things will not continue happening.

**Mr. Nguyai:** Mr. Speaker, Sir, I wish to undertake to the Member and to the House that as soon as we open the new year, I will make sure that all illegal structures will be demolished. All the structures on Twiga Farm will be demolished. The Member must appreciate that we even had a baraza with the residents over the issue. It is only humane that we give them this time to relocate. Come January, we will enforce that order to the letter.

**Mr. Mbadi:** Mr. Speaker, Sir, as the Assistant Minister tries to handle this case of the Twiga Farm, cases of people putting up illegal structures have become prevalent in this country. Could he tell us whether they have a policy in place already to ensure that all parcels of land that are being encroached on are protected? Is the Ministry in the process of developing a policy to that effect?

**Mr. Nguyai:** Mr. Speaker, Sir, we have by-laws that protect both public and private land. In the case of Twiga Farm, it was private land. It was a huge farm and the issue was brought to our attention by the Member. We need to enhance inspection and I would want to appeal to all municipalities to inspect to see whether illegal structures are on public or private land. We want them out.

**Mr. Njuguna:** Mr. Speaker, Sir, could the Assistant Minister inform the House what action the Ministry ponders to take against the Ruiru Municipality for allowing Kenyans to construct these houses?

**Mr. Nguyai:** Mr. Speaker, Sir, when we visited the Twiga Farm, we established that the structures were illegal. We had notification from the staff that they had given intention to demolish. All we need to do is enhance pre-emptive measures, so that we can educate the residents who put up *mabati* or other structures that they cannot put them up without the authority of the council. We need to carry out a public awareness and education campaign to ensure that the law is followed.

**Mr. Chanzu:** Mr. Speaker, Sir, one of the reasons why there are these illegal structures is because people do not have title deeds. This encourages land grabbing. What is the Assistant Minister doing to ensure that there are title deeds for plots in all these places?

**Mr. Nguyai:** Mr. Speaker, Sir, on collective responsibility basis, as a Ministry, where there has been a requirement that we communicate and collaborate with the Ministry of Lands, particularly in cases of land that is allocated for purposes of business within the local authorities, we forward them to the Ministry of Lands. If all the requirements are met, the title deeds are normally issued. We are not holding any leasehold within our Ministry that is required to have been forwarded for the purposes of issuance of titles. We do that expeditiously and as quickly as possible. If any Member has issues that they would want us to assist on, we want to be an efficient Ministry to ensure that this happens in time.

**Mr. Kabogo:** Mr. Speaker, Sir, you realize that there are very many Kenyans who own homes that are not approved. It is the duty of this Ministry to make sure that Kenyans do not lose their valuable hard-earned money. On a similar Question, the Minister, hon. Mudavadi, himself, promised to carry out an inspection in Thika Town because it suffers the same fate. Until today, he has not visited the area. Could the Assistant Minister confirm or undertake to the House that that visit which was promised by his Minister will happen to inspect the illegal structures in Thika Town that could bring a disaster? We are only doing this to protect the people of Kenya.

**Mr. Nguyai:** Mr. Speaker, Sir, first, I wish the Member had alerted me when we were in Ruiru that there was a similar case because we would have dealt with it. However, I want to give a firm commitment and I want all and sundry to be aware that this Ministry is bent on making sure that the law is followed, illegal structures do not exist and Kenyans will not necessarily have to lose their hard-earned money because of not having the necessary approvals.

ILLEGAL ALIENATION OF LAND BY NYAMBENE  
COUNTY COUNCIL CLERK

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

(a) Is the Minister aware that the Clerk of the Nyambene County Council has unlawfully alienated 1,000 hectares of public land to private developers, including himself?

(b) Could the Minister provide a list of beneficiaries (including the respective acreage) of the irregularly alienated land?

(c) What steps has the Minister taken to revoke the illegal alienation?

Mr. Speaker, Sir, in asking the Question, I wish to express my frustration and also seek your guidance. When this Question first came up, it was directed to the Ministry of Lands. I had already been in contact with the Deputy Prime Minister and Minister for Local Government. I want to thank them for the co-operation they showed me and pointed out that they had issued a circular to all the local authorities in the country. Their problem was that despite this, title deeds were being issued by the Ministry of Lands. Therefore, my Ministry was directed to the Ministry of Lands. I do not know when or why it was redirected to this Ministry which had already provided me with the answers that I had sought before asking the Question.

**The Assistant Minister, Office of Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai):** Mr. Speaker, Sir, once again, I would like to ask your indulgence and hopefully direction as the Member has asked. I was not able to get a written reply because of the time that we got this Question and realized that it had come from the Ministry of Lands.

However, in that light, I would like to confirm that we have suspended the Clerk of Nyambene County Council and investigations are going on. As far as parts (b) and (c) of the Question are concerned, I strongly believe and agree with the Member that it is only the first part of the Question that was meant to be ours, and parts (b) and (c) should, probably, go back to the relevant Ministry. I seek your direction.

**Mr. Speaker:** Given the exchange of correspondence between the two Ministries, which, in fact, have been copied to my office, and taking into account the subject matter that is sought to be addressed by the Question, I direct that this Question falls largely within the ambit of the Ministry of Local Government because local authorities, including Nyambene County Council, are within your jurisdiction. It is your mandate. It is your duty to supervise local authorities, so that they do not involve themselves in anything unlawful such as alienating land over which they may have no powers to do. If anything, they will be acting *ultra vires* and it is your duty then to reign them in. It is your duty to control them. Invoking further the doctrine of collective responsibility, if you need any information from the Ministry of Lands, then it is your duty to secure that information and supply it to the House and the Kenyan public at large. So, I direct that you answer this Question exhaustively and satisfactorily such that the Member for Central Imenti will be satisfied with the answer, so will the House and the Kenyan public.

**The Assistant Minister, Office of Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai):** Mr. Speaker, Sir, I undertake to honour and answer this Question, but in light of the time that we received it, I ask that it be on the Order Paper on Thursday afternoon.

**Mr. Speaker:** Member for Central Imenti, are you happy with Thursday?

**Mr. Imanyara:** Yes, Mr. Speaker, Sir.

**Mr. Speaker:** Very well. So directed!

*(Question deferred)*

CONSIDERATION OF 2009 CENSUS RESULTS  
IN CREATION OF CONSTITUENCIES

**Dr. Khalwale:** Mr. Speaker, Sir, I beg to ask the Minister for Justice, National Cohesion and Constitutional Affairs the following Question by Private Notice.

Could the Minister clarify whether or not the determination and creation of 80 new constituencies before the 2012 General Election will take into account the 2009 census results which were nullified in eight districts in Northern Kenya?

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Nguyai): Mr. Speaker, Sir, I would like to seek your indulgence. Can we go through the first round as we find out where the Minister is?

**Mr. Speaker:** Very well. Yes, Member for Konoin!

SHORTAGE OF BCG VACCINE IN SOUTH RIFT REGION

**Dr. Kones:** Mr. Speaker, Sir, I beg to ask the Minister for Public Health the following Question by Private Notice.

(a) Is the Minister aware that there is an acute shortage of BCG vaccine in public health facilities in the South Rift region?

(b) What measures will the Minister take to ensure that there is immediate supply of the vaccine in all public health institutions?

**The Assistant Minister for Public Health and Sanitation** (Dr. Gesami): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that there is an acute shortage of BCG vaccine in public health facilities in the South Rift Region.

(b) However, following reports, additional 1,000 doses were supplied on 14<sup>th</sup> December, 2011 to the district to last over the next two months.

Mr. Speaker, Sir, Konoin District in particular has a monthly target population of 478 babies to be vaccinated with BCG. My Ministry regularly procures the full complement of vaccines required for the country's children. The next consignment of 987,000 doses of BCG vaccine will be received in the country on 11<sup>th</sup> January, 2012 at the Jomo Kenyatta International Airport. This will be supply for further three months for the whole country.

**Dr. Kones:** Mr. Speaker, Sir, initially, the Minister said that he was not aware. Subsequently, he went on to say that following some reports, he was able to send a further 1,000 doses to the district. Is he not contradicting himself to say that he is not aware and then proceed to say that following some reports, he was able to send more doses of vaccines to the district? The fact on the ground is that for a period of three weeks, there were no BCG vaccines at Kericho District Hospital, Kapkatet District Hospital and the sub-district hospitals surrounding those areas. After some period, Kericho District Hospital received some doses. What is the Ministry doing to ensure that there is a continuous supply of BCG vaccines in public hospitals?

**Dr. Gesami:** Mr. Speaker, Sir, I said that I was not aware because this Question was put to our Ministry a week ago and when we received it, we decided to send 1,000 doses to the South Rift region. Let me assure this House that we have enough vaccines. We have also tried to get some vaccines from other depots within the country to make sure that we distribute them properly.

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

**Dr. Kones:** Mr. Speaker, Sir, I am satisfied now that the vaccines are there.

**Mr. Speaker:** Very well.

Next Question, the Member for Bura!

## ORAL ANSWERS TO QUESTIONS

### *Question No.1247*

#### ILLEGAL MINING OF GYPSUM IN BURA CONSTITUENCY

**Dr. Nuh** asked the Minister for Environment and Mineral Resources:-

(a) whether he could confirm that all the companies undertaking gypsum mining in Bura Constituency are contravening the mining laws;

(b) whether he could also confirm that all communities in Bura were to be involved and consulted when allowing the companies to resume operations and, if so, why the companies were allowed to resume operations without such consultation; and,

(c) how many companies have now been cleared to resume mining, and whether he could table the letters ordering the stoppage of mining activities by the companies as well as the letters lifting the ban.

**Mr. Speaker:** The Minister for Environment and Mineral Resources!

Hon. Members, given that this Question is appearing on the Order Paper, I think, for the fourth time, and that so much indulgence has been extended to the Minister previously, it is my expectation that the Minister is here to answer this Question this afternoon. So, I would like one of the Front Bench Members to undertake to call the Minister to come to the House now.

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Nguyai): Mr. Speaker, Sir, I will do so. As we get to the second round---

**Mr. Speaker:** Order! Order, Mr. Assistant Minister! In Parliamentary parlance, there is nothing called "second round".

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Nguyai): Mr. Speaker, Sir, I withdraw "second round" and undertake to inform the Minister to come here.

**Mr. Speaker:** Will you, kindly, proceed to call him now?

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

*(Mr. Nguyai withdrew from the Chamber)*

**Mr. Speaker:** Next Question, hon. Yakub.

*Question No.958*

NON-PAYMENT OF INJURY BENEFITS TO BAKARI MAULANA FAHIM

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

(a) why injury benefits amounting to Kshs1,181,392.00 due to Bakari Maulana Fahim (P/No. 2006011033), who died on 31st January, 2009, have not been paid to the dependants; and,

(b) when the benefits will be paid.

**Mr. Speaker:** Hon. Members, hon. Orwa Ojode, who normally answers Questions under this portfolio is away with permission from the House conveyed to him by me on your behalf. Unless there is explanation or a possible appearance by the Minister himself, Prof. George Saitoti, I may have to defer this Question.

Bishop Wanjiru, can you go and look for Prof. Saitoti?

**The Assistant Minister for Housing** (Bishop Wanjiru): Mr. Speaker, Sir, I will do so.

**Mr. Speaker:** Please, do so now.

*(Bishop Wanjiru withdrew from the Chamber)*

**Mr. Speaker:** Next Question, Member for Vihiga!

*Question No.1342*

WITHHOLDING OF KCSE CERTIFICATES ON  
ACCOUNT OF OUTSTANDING FEES

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

(a) whether he is aware that there are many Form IV leavers who cannot obtain their Kenya Certificate of Secondary Education (KCSE) certificates from their former schools due to their inability to clear outstanding fees; and,

(b) what he is doing to ensure that these school-leavers obtain the certificates for their use, including looking for employment and training.

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

(a) I am aware that there are many Form Four leavers who have not obtained their KCSE certificates from their former schools due to their inability to clear outstanding fees.

(b) The Government pays for tuition and other related services, except for meals and boarding costs, which is the responsibility of parents and guardians. The outstanding fees are as a result of parents and guardians failing in their responsibility to pay for meals

and other related costs for their children. I do not intend to take this responsibility. I urge hon. Members to educate parents and guardians to take their responsibility of feeding their children.

**Mr. Chanzu:** Mr. Speaker, Sir, I would like to thank the Assistant Minister for the answer, but I think this is a pathetic statement from the Government, which is supposed to be taking responsibility and care of its citizens. Where former students are denied their certificates, there has not been an indication as to what items the outstanding fees is for. When did it become the rule in the Ministry that it is only the aspect of meals and boarding that the Ministry is not supposed to be catering for?

**Mr. Mwatela:** Mr. Speaker, Sir, maybe, I need to make it very clear that the Government's responsibility is to provide free day secondary education. Provision of meals is purely the responsibility of parents, whether the students are in boarding schools or not. Any other fees that are levied in day schools are imposed with the full understanding of parents through their respective Parents Teachers Associations (PTAs). They hold meetings and agree on the amounts to be charged. The District Education Boards (DEBs), where Members of Parliament sit, authorize those charges before the schools are allowed to collect them. So, to throw the ball back to the Ministry to pay outstanding fees is not acceptable. As far as the Ministry is concerned, it has done its part. It has paid for tuition for all the children.

**Dr. Nuh:** Mr. Speaker, Sir, the reason as to why schools refuse to release certificates belonging to students who have outstanding fees is mainly because they want to bind the students to pay the fees. The students cannot access even odd jobs if they do not have access to the certificates held by the schools. Why can the Ministry not give guidelines to schools that, at least, they should release the leaving certificates and the result slips to students and that what they should withhold is the original certificates only? After all, if someone gets employment, he will be bound to submit his original certificate and he will be in a position to pay the fees.

**Mr. Mwatela:** As far as the results are concerned, there is already a Ministry guideline that they cannot withhold the results. They can only withhold the certificates. It is not the intention of Government to continue having students who are unemployed. However, at the same time, when parents undertake to make payments to schools, they should do so. Furthermore, you realize that there is the Constituencies Bursary Fund and the Constituencies Development Fund (CDF) which exist to assist students. To ask the Government now to tell schools not to continue insisting on payment of fees by parents will be counter-productive. The Government accepts that the results may be released, but not the certificates.

**Mr. Shakeel:** Mr. Speaker, Sir, I am astounded to hear the stand of the Assistant Minister. I thought that any certificate of education is the property of the student who attained it. The Assistant Minister is now presuming that the certificate is the property of the school until it is released to the pupil. I thought it was the property of the pupil who has paid fees to sit for the examination. Could the Assistant Minister tell us whether it is the property of the pupil or the school?

**Mr. Mwatela:** Mr. Speaker, Sir, I hope the hon. Member realizes that in the first place for the student to be allowed to access examinations when the parents of the student have not met their obligations is already a consideration. The parents undertake to pay fees, but they do not do so. The school goes ahead and allows registration of those

students and later on, the parents just decide that they will not pay the fees. We risk running into trouble if we do not do that.

**Mr. Shakeel:** On a point of order, Mr. Speaker, Sir. The Assistant Minister has not answered my question. Is the certificate the property of the pupil or the school? Could he be clear one way or the other?

**Mr. Mwatela:** Mr. Speaker, Sir, the certificate is the property of the student subject to fulfilling all the conditions for getting that certificate, which includes payment of dues to the relevant people who have provided services.

**Mr. Olago:** Mr. Speaker, Sir, the question by hon. Shakeel is very valid. If it is agreeable to the Assistant Minister that, indeed, certificates belong to the students and not the school, then under what circumstances and law would the school hold certificates?

**Mr. Mwatela:** Mr. Speaker, Sir, it is the responsibility of the---

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! Order, Member for Bura! Proceed, Assistant Minister!

**Mr. Mwatela:** Mr. Speaker, Sir, it is common understanding that you have to meet your obligations.

**Dr. Khalwale:** Mr. Speaker, Sir, I do not know if the Assistant Minister has forgotten what he told the House some years ago. There was an executive order given and reported to the country through this House that no head of a school will be allowed to confiscate the certificate of a student. Could the Assistant Minister tell us on which date that executive order was vacated?

**Mr. Mwatela:** Mr. Speaker, Sir, I was not in Parliament then, but I am well aware of it. There was an executive order to give certain students over a certain period of time their certificates. It was very specific. The number of years stretched to, I think, 2006.

**Mr. Chanzu:** Mr. Speaker, Sir, this answer is very misleading. The same Assistant Minister was here when I brought a Motion here seeking to double the figures for primary and secondary schools because the money is insufficient. I would like him to tell this House whether it is not possible for the Ministry to give instructions to schools to release these certificates to the students because it does not help anybody for the certificates to be retained by the schools for all those years. The students would use the certificates to get employment and pay the outstanding fees.

**Mr. Mwatela:** Mr. Speaker, Sir, yes, I remember that Motion and I supported it to increase the capitation to schools. I am still in support of the increase of that capitation. Indeed, I made a Statement in this House as a follow up to that Motion, that the Ministry is pursuing the idea of increasing the capitation. However, that does not address debts that already exist.

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to say that the directive that he gave does not cover the existing debts, yet the same Government loans money to university students who get their certificates after graduating without any condition being attached, and they later pay at their own pleasure, with some taking even more than 20 years. Why are you discriminating against those who have gone through high school, yet you give favourable treatment to those who go through university?

**Mr. Mwatela:** Mr. Speaker, Sir, university students do not fall under my Ministry.

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

**Mr. Speaker:** Order, Mr. Olago! I will have to find out if the Assistant Minister wants information from you.

**Mr. Mwatela:** Mr. Speaker, Sir, I do not want any information.

*(Laughter)*

*Question No.1147*

#### STAFF SHORTAGE AT MASALANI DISTRICT HOSPITAL

**Mrs. Noor** asked the Minister for Medical Services:

(a) whether he is aware that both the male and female wards of Masalani District Hospital in Ijara Constituency have been closed due to lack of sufficient staff and medical equipment;

(b) whether he is also aware that the hospital has no operational ambulance and vehicles; and

(c) what measures he will take to ensure the two wards start operating immediately and an operational ambulance and vehicles are provided to the hospital.

**The Assistant Minister for Medical Services** (Mr. Kambi): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the male ward at Masalani District Hospital was closed in July, 2011 initially due to lack of staff to run it.

Although the hospital had already opened it after about a month, the ward subsequently developed multiple problems that rendered it inoperational. These include major cracks on the walls and floor, electrical faults and plumbing problems. On the advice of the public health department, the ward was closed until repairs are done. The CDF Committee of Ijara Constituency which funded construction of the ward has been requested to undertake the necessary repairs but so far, this has not happened.

The female ward which is also newly constructed was occupied on 23<sup>rd</sup> April, 2011. It has been operational, say, for a two week break in the month of October, 2011, when patients were temporarily shifted to the old twin male/female ward to enable repairs by the contractor that had arisen during the defects liability period.

*(Eng. Rege consulted loudly with other Members)*

**Mr. Speaker:** Order, Member for Karachuonyo! You know what you are supposed to do! You cannot address a meeting in the passages of the Chamber. So, you are on notice.

**Eng. Rege:** My apologies, Mr. Speaker, Sir.

**Mr. Speaker:** Proceed, Mr. Assistant Minister!

**The Assistant Minister for Medical Services** (Mr. Kambi): Mr. Speaker, Sir, thereafter, it was re-opened and remains operational up to date.

Basic equipment and supplies for the ward have always been available and have thus played no role in the temporary or extended closure of the two wards.

(b) The Hospital has two vehicles; a Nissan Ambulance GK, A758N and a Toyota double cabin, GK A455K, both of which are functional.

However, both require frequent maintenance as they often travel long distances within Ijara Constituency over rough terrain collecting patients for referral in Garissa.

(c) As indicated above, the ward is operational and a request has been made to Ijara Constituency CDF to carry out repairs to the male ward as it was hardly used before it developed the multiple problems.

In the meantime, male patients have been put in the old twin male/female ward which was refurbished with support from DANIDA. This old twin ward has a capacity of 14 beds, which is more than the maximum of seven male inpatients that the hospital has ever had at any time of the year. Thus the male patients are well accommodated.

Regarding the ambulance, the Ministry will consider procuring a stronger four wheel drive ambulance for Masalani District Hospital when funds are available. More importantly, the Ministry plans to upgrade the hospital to a fully fledged district hospital under a programme targeting 15 hospitals in the northern region of Kenya funded by the Government of Kenya with the support from the Government of the Netherlands. This will enable the facility to handle common ailments and emergencies and reduce the need for referrals.

The Ministry will endeavour to include a transport improvement component in the project. A feasibility study for the upgrading project is already underway with a survey of Masalani District Hospital having been done in October, 2011.

**Mrs. Noor:** Mr. Speaker, Sir, it is unfortunate that when facilities are put up in a hospital, particularly by donors and CDF committees, they are not maintained by the Ministry concerned. We, the people of Ijara, are grateful that CDF has done a lot. What is the commitment of the Government, particularly this Ministry, in maintaining the structures that are put up by either CDF committees or other international donors who have supported this particular hospital?

**Mr. Kambi:** Mr. Speaker, Sir, the maintenance of the building is not part of our mandate as a Ministry of Medical Services. It is a mandate of the Ministry of Housing. However, for equipment, we do give them and we have even given them to this hospital.

**Dr. Nuh:** Mr. Speaker, Sir, as you clearly heard the Assistant Minister says the mandate of renovation and maintenance of buildings falls under the Ministry of Housing when the Ministry of Housing is just another technical arm. His Ministry is supposed to provide for the financial backing and is supposed to factor in within its assets. So, is he in order to mislead the House that his Ministry is not responsible for maintenance of hospitals?

**Mr. Kambi:** Mr. Speaker, Sir, we do not factor in the budgetary financial support for the maintenance of the buildings. However, the maintenance of the equipment, beds and electrical appliances fall squarely under our Ministry.

**Mr. Twaha:** Mr. Speaker, Sir, in late July, at a very large rally in Lamu, the Minister; Prof. Anyang'-Nyong'o, promised the people of Lamu that by August, they would have a new X-ray machine. Where is our X-ray machine which was promised to us by the Minister?

**Mr. Kambi:** Mr. Speaker, Sir, we have given money to our procurement agent; the Kenya Medical Supplies Agency (KEMSA). Once this equipment is procured, it will be delivered accordingly.

**Mr. Wambugu:** Mr. Speaker, Sir, about two years ago, the Government through its budget indicated that it would provide an ambulance to each and every constituency in this country. Two years down the line, I have not seen any ambulance in Mathioya. When will the Assistant Minister make sure that all the constituencies are provided with ambulances that were promised?

**Mr. Kambi:** Mr. Speaker, Sir, it was our wish and it is still, indeed, our wish that we do procure ambulances for all the constituencies and counties. However, we are limited because of the resources and which has been voted in by this Parliament. If you look at our budget, it is not enough even to buy three ambulances. This financial year, we did receive about Kshs30 million to buy ambulances. The amount of Kshs30 million can only buy three ambulances. So, it is because of the budget constraints that we cannot afford to buy ambulances for all the 210 constituencies.

**Mr. M.H. Ali:** Mr. Speaker, Sir, part “a” of the Question also requires the Assistant Minister to give an answer on the issue of staffing. There is a problem in northern Kenya, particularly now when the rains are very heavy. There are a lot of floods. There are a lot of sick people, but the problem is that the medical staff is not enough. Whose responsibility is it to deploy the necessary staff in this region?

**Mr. Kambi:** Mr. Speaker, Sir, the shortage of staff is not only confined to Ijara, but also in the whole country. However, we, as a Ministry, have tried to address it. We have provided for it in the next financial budget. So, once it is approved by Parliament, we will deploy more doctors, clinical officers and nurses.

**Mrs. Noor:** Mr. Speaker, Sir, as you heard, the Assistant Minister said that maintenance of facilities under his Ministry is not his responsibility and it is not under their mandate. It seems that the Government is not planning holistically to address issues. This is a Government that draws good plans in particular Vision 2030 and does not implement them taking into account the reality on the ground.

Mr. Speaker, Sir, the Assistant Minister has said that he will consider providing an ambulance to Masalani District Hospital. He knows the status, the problem and the road. He knows everything. I do not want to ask another Question again regarding an ambulance every other time in this House. Could he promise that he will give an ambulance to Ijara District Hospital and all the other district hospitals in northern Kenya?

**Mr. Kambi:** Mr. Speaker, Sir, I have done a budget and once it is approved by Parliament, I am sure I am going to provide all the constituencies with ambulances.

**Mrs. Noor:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** What is it, Sophia? And note that you are standing on a point of order!

**Mrs. Noor:** Mr. Speaker, Sir, this House has approved money for the purchase of ambulances. Is the Assistant Minister in order to tell us again that he has put some proposals forward when we have approved a budget for ambulances in this House?

**Mr. Kambi:** Mr. Speaker, Sir, we only received Kshs30 million. A sum of Kshs30 million can only buy three ambulances. When we talk about ambulances, it is a full package. The cost for one ambulance is about Kshs10 million. What can Kshs30 million do in this case?

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

### **QUESTION BY PRIVATE NOTICE**

#### **CONSIDERATION OF 2009 CENSUS RESULTS IN CREATION OF CONSTITUENCIES**

**Dr. Khalwale:** Mr. Speaker, Sir, for the second time I would like to ask the Minister for Justice, National Cohesion and Constitutional Affairs the following Question by Private Notice.

Could the Minister clarify whether or not the determination and creation of 80 new constituencies before the 2012 General Elections will take into account the 2009 census results which were nullified in eight districts in Northern Kenya?

**The Assistant Minister for Justice, National Cohesion and Constitutional Affairs** (Cheptumo): Mr. Speaker, Sir, I would like to apologize for not being here when this Question was called out for the first time. I sincerely apologize.

Mr. Speaker, Sir, I have spoken to my colleague here. The Question requires a very comprehensive answer. We have not received the answer for the new body - that is the Independent Electoral and Boundaries Commission (IEBC). I have requested my colleague to allow, with the indulgence of the Chair, that I answer this Question tomorrow in the afternoon.

**Mr. Speaker:** Member for Ikolomani?

**Dr. Khalwale:** I have no problem with that, Mr. Speaker, Sir.

**Mr. Speaker:** Very well. It is so directed that the Question appears on the Order Paper tomorrow afternoon.

**The Assistant Minister for Justice, National Cohesion and Constitutional Affairs** (Cheptumo): Most obliged, Mr. Speaker, Sir.

*(Question deferred)*

### **ORAL ANSWERS TO QUESTIONS**

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

*Question No.1247*

#### **ILLEGAL MINING OF GYPSUM IN BURA CONSTITUENCY**

**Dr. Nuh** asked the Minister for Environment and Mineral Resources:-

(a) whether he could confirm that all the companies undertaking gypsum mining in Bura Constituency are contravening mining laws;

(b) whether he could also confirm that all communities in Bura were to be involved and consulted when allowing the companies to resume operations and, if so, why were the companies allowed to resume operations without such consultation; and,

(c) how many companies have now been cleared to resume mining and whether he could table the letters ordering the stoppage of mining activities by the companies as well as the letters lifting the ban.

Mr. Speaker, Sir, I am asking this Question for the second time.

**The Assistant Minister for Environment and Mineral Resources** (Mr. Murgor): Mr. Speaker, Sir, first of all, I apologize very sincerely for coming late. When the Question was first asked, the answer was still on the way. I apologize.

**Mr. Speaker:** Proceed, Assistant Minister!

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

(a) Although several companies had been licensed to transport gypsum in Bura area of Tana River County, the Ministry has noted that there are some companies which are carrying out prospecting and mining activities without licences. There are also companies which are using exploration licenses to carry out mining activities contrary to the Mining Act, Cap.306, Laws of Kenya.

On 1<sup>st</sup> October, 2010, the Ministry issued a directive to all---

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. It has been a rule in this House that we try to use Parliament's time prudently. The only thing that remained in this Question last time was for the Minister to table documents to show that there was agreement by the local community, there was consultation and show whether those people complied. Reading the entire answer afresh is not using the time of Parliament prudently. Could the Assistant Minister just table the document that he was asked to table last time?

**Mr. Speaker:** Mr. Assistant Minister, that is a legitimate challenge. Indeed, you had gone through the process of answering this Question and all that you were supposed to do this time is to update the House on the consultations that took place with stakeholders and further table the NEMA Report.

**Mr. Murgor:** Mr. Speaker, Sir, I wish to concentrate on part "b". The Ministry is aware that all companies in Bura were to be involved and consulted before allowing them to resume operations. However, those companies were allowed to resume operations without such consultations and a detailed assessment. I have, therefore, instructed officers to carry out an assessment to ascertain whether the companies have fully complied with the conditions set out in the ban. The officers will, in addition, consult the communities with a view to addressing their concerns which led to the ban. The companies will only be allowed to resume operations after fulfilling the above conditions. The officers have been given up to the end of January 2012 to accomplish that task so that the Ministry can give a comprehensive response.

**Dr. Nuh:** Mr. Speaker, Sir, I am lost. Indeed, you can attest to that. The Assistant Minister had told this House that the reason for the resumption by the companies to continue with their work was on a basis of a recommendation by NEMA that the companies had actually complied. The same Assistant Minister had actually convinced this House that the communities were consulting. When the Assistant Minister comes with a totally different answer; that he has now found out that the communities have not been consulted and NEMA does not have any report to show whether those companies complied, and goes ahead to say that they are giving a timeline of until January, I am lost. Since the companies are still in operation, and since they lifted the ban on the companies

on the wrong presumption, could the ban be reinstated such that until the companies comply and the communities are consulted? Those companies should not continue mining in Bura.

**Mr. Murgor:** Mr. Speaker, Sir, it is part of the process that we are starting now, so that we can ascertain and make assessment which will even include the area Member of Parliament. We will go there and assess the situation so that---

**Mr. Speaker:** Order, Mr. Assistant Minister! So that we save time on this matter, the concern by the Member here was that those companies have been licensed to either start a new or resume mining operations without stakeholders being consulted in the first place and, secondly, without a report by NEMA being obtained or availed by the companies. In which case, if what we are saying is the correct position, those companies are operating unlawfully. Your answer, therefore, would be: If they are operating unlawfully, then you must stop those operations until there is compliance. Are you prepared to do that so that we save the time of the House?

**Mr. Murgor:** Mr. Speaker, Sir, yes. That is why I said we are going to the ground so that we can assess fully and stop those that are operating illegally.

**Dr. Nuh:** On a point of order, Mr. Speaker, Sir. I had narrated to this House the long journey. The Assistant Minister then, Prof. Kamar, Ministry officials and I went to Bura, in fact, on a chartered flight. We spent, I think, close to Kshs2 million of taxpayers' money. So, when the Assistant Minister is telling me to again accompany him to Bura to assess - an assessment that they had already done as a Ministry - I think it is being unfair.

**Mr. Speaker:** Mr. Assistant Minister, how soon will you take that action?

**Mr. Murgor:** Mr. Speaker, Sir, we are giving a date of January. We are giving until 30<sup>th</sup> January. We will do a massive assessment and recommendations.

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. The Assistant Minister has not addressed himself to the point of order by Dr. Nuh that the Ministry had visited the place, together with the Member of Parliament. Does that mean that the Assistant Minister has no faith in what the Assistant Minister then, had done? Is it in order for the same Ministry to spend additional taxpayer's money to visit the same area they had already visited? Why can they not act on the basis of the report that was done then? What is the need of the other visit?

**Mr. Murgor:** Mr. Speaker, Sir, it is because there are some who operate on licences that are not proper. For example, those that are prospecting maybe practicing mining which is illegal. That is why we will assess every miner and prospecting company.

**Mr. Imanyara:** On a point of order, Mr. Speaker, Sir. Have you noticed that the Assistant Minister continually refuses to comply with your own observations? He confirmed that some things are going unlawfully. You asked him: Why can he not stop that which is happening illegally? Must he wait until January to stop an illegal activity? He has not addressed that point and I do not think he is in order.

**Mr. Speaker:** Mr. Assistant Minister, that is fairly straightforward.

**Mr. Murgor:** Mr. Speaker, Sir, we will address ourselves to that probably in two weeks time.

**Dr. Nuh:** Mr. Speaker, Sir, I do not know whether I have a question or a concern. However, if the Assistant Minister has said that he is ready, for a second time, to visit Bura because it seems like the Ministry is in love with Bura, I am ready again because

extra ordinary times call for extra ordinary measures. This is because the companies have again started destroying the environment. However, let the Assistant Minister commit himself to the specific dates in which he expects to travel to Bura to at least go and see, on a first hand information, what his predecessor, hon. Prof. Kamar, had seen.

**Mr. Murgor:** Mr. Speaker, Sir, we are committed to that and we will be in Bura in two weeks time.

**Mr. Speaker:** Very well! The Member for Bura, of course, you have other options open to you if there is no compliance to your satisfaction.

Hon. Members, Question No.1334 is deferred until Thursday, next week because the Member for Belgut is away on Parliamentary business with notice to the Office of the Speaker.

*Question No.1334*

RECIPIENTS OF MONEY AWARDED TO M/S PAN  
AFRICAN BUILDERS AND CONTRACTORS LTD

*(Question deferred)*

That brings us to the end of Question Time.

**Mr. Yakub:** Mr. Speaker, Sir, you had asked one of the Ministers to go and get the Minister of State for Provincial Administration and Internal Security.

*Question No.958*

NON-PAYMENT OF INJURY BENEFITS TO  
BAKARI MAULANA FAHIM

**Mr. Speaker:** Order! You have made your point. The Minister of State for Provincial Administration and Internal Security, this Question was left in abeyance on the grounds that you were not here.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, let me begin, first of all, by seeking the indulgence of the House to apologise to you for coming here late. This was occasioned by the fact that my Assistant Minister who had been scheduled to answer this Question had to take leave so that he could travel to China. The information that he had written to you came to me slightly later. On the basis of that, I would like to seek your permission to answer this Question tomorrow morning.

**Mr. Speaker:** Tomorrow morning? Sheikh Dor, will you be happy with that?

**Mr. Yakub:** Yes, Mr. Speaker.

**Mr. Speaker:** Very well. It is so directed!

*(Question deferred)*

That then brings us to the end of Order No.6.

Hon. Members, before we move to the next order, I would like to direct as follows: That after we finish order No.7, we will proceed to deal with Order Nos.10 and 11 before we go to Order No.9 so that after Order No.7, we dispose of Order No.8 and then we carry on to Order No.10 and then Order No.11. The reason for this is that business in Order Nos.10 and 11 pertain to matters related to the implementation of the Constitution and we are obligated to give them priority over other business. The rest of the business will follow in that sequence. This direction is given pursuant to the provisions of Standing Order No.36. So, please, note.

Let us move on to the next Order!

Do we have any statements due for delivery this afternoon? In the absence of statements due for delivery, we will take requests.

## POINTS OF ORDER

### DISCONNECTION OF ELECTRICITY TO LITEIN WATER SUPPLY

**Dr. Kones:** On a point of order, Mr. Speaker, Sir, I was expecting a Ministerial Statement from the Assistant Minister for Water and Irrigation. He had promised to issue the statement today. I had requested for the Statement on Thursday last week. I can see that the Assistant Minister is here.

*(Mr. Ruto consulted with Mr. Speaker)*

**Mr. Speaker:** Order, hon. Members. Please, note that you are requested to restrain from having to engage the Speaker during the sitting of the House unless it is absolutely necessary to do so, so that I can follow the proceedings.

Yes, the Minister for Water and Irrigation!

**The Assistant Minister for Water and Irrigation** (Mr. Waititu): Mr. Speaker, Sir, the Statement is not ready. I seek your indulgence that I come tomorrow.

**Mr. Speaker:** It has been pending for a long time.

**The Assistant Minister for Water and Irrigation** (Mr. Waititu): Mr. Speaker, Sir, it is only one week.

**Mr. Speaker:** Will you bring it tomorrow in the afternoon?

**The Assistant Minister for Water and Irrigation** (Mr. Waititu): Mr. Speaker, Sir, yes, I will bring it tomorrow in the afternoon.

**Mr. Speaker:** Very well!

Yes, the Member for Yatta!

### OWNERSHIP OF EAST AFRICAN PORTLAND CEMENT LTD.

**Mr. C. Kilonzo:** Thank you, Mr. Speaker, Sir. I would like to request for a Ministerial Statement from the Ministry of Industrialization concerning the ownership of East African Portland Cement Limited as declared by the company Chairman during the AGM held on 15<sup>th</sup> December, to the effect that the company had turned private by the

fact that National Social Security Fund (NSSF) has offloaded 4 per cent of its shares thus making the Government a minority shareholder. This is supported by the 2010/2011 annual report and financial statement on the status of the company which states:

“This company, not being a State Corporation ---.”

In the statement, I want the Minister to confirm to this House the current legal status of that company and whether it is a State corporation or not having in mind that the East African Portland Cement was established by an Act of Parliament as a State Corporation. Secondly, I want him to clarify whether the Government was aware of the dissolution of the shares; and, thirdly, did the Government give approval to the dissolution of its shares and if so, table the letter of that approval?

**Mr. Speaker:** Minister for Industrialization!

**The Assistant Minister for Industrialization** (Mr. Muriithi): Mr. Speaker, Sir, we could deliver it on Thursday, next week.

**Mr. Speaker:** Thursday this week. It is so directed.

**Mr. Ochieng:** On a point of order, Mr. Speaker, Sir. About a month ago, I rose on a point of order requesting for a Ministerial Statement from the Deputy Prime Minister and Minister for Finance regarding cushioning and borrowings that we are supposed to have done from the IMF. Up to now, the statement has not been delivered. Could I be told when the Statement will be delivered?

**Mr. Speaker:** Deputy Prime Minister and Minister for Finance. The Statement has been pending for sometimes.

Professor Saitoti, you want to do an undertaking on behalf of the Deputy Prime Minister and Minister for Finance to bring that statement.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, I will definitely bring this matter to the attention of the Deputy Prime Minister and Minister for Finance in the hope that he will be able to address it either tomorrow or the day after.

**Mr. Speaker:** This has been pending for sometimes. So I want to direct that he brings it on Thursday afternoon.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): I shall convey those statements, Mr. Speaker, Sir.

**Mr. Speaker:** Please, do so.

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. Equally the Attorney-General has indicated last week that he would bring my statement I sought sometimes back but I do not see him here.

**Mr. Speaker:** Professor Saitoti, you want to give a commitment on behalf of the Attorney-General.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, once again, I will bring this matter to the attention of the Attorney General.

**Mr. Speaker:** Similarly, let it be delivered on Thursday afternoon at 2.30 p.m.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, I will undertake to tell him so.

**Mr. Speaker:** Very well! Yes, Member for Chepalungu!

## RESETTLEMENT OF EMOBUT FOREST IDPS BY GOVERNMENT

**Mr. Ruto:** On a point of order, Mr. Speaker, Sir. I wish to request for a Ministerial Statement regarding resettlements, noting the various commitments we have had from Governments, both the President and the Prime Minister, Minister for Lands and the Minister of State for Special Programmes that they will ensure that the IDPs and all those who were evicted from various places, including Government forests; that is Embobut and Mau Forest and other places will be settled before December, 2011.

Mr. Speaker, Sir, there was a commitment to resettle them by December. Now that we are breaking off for Christmas, and I am still worried that children will spend time in the cold. Would we get a Ministerial Statement from the relevant Government Minister as to what they intend to do, whether those people will be resettled before we break for Christmas or what arrangements are there to ensure that they are in safe places?

**Mr. Speaker:** Again, Professor, Saitoti, I do not see your Minister for Special Programmes.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Yes, Mr. Speaker, Sir, she is not here. However, I do undertake to bring to the attention of the Minister for Special Programmes the urgency of this matter.

**Mr. Speaker:** When will it be delivered?

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Mr. Speaker, Sir, I will bring to her attention that this Statement is required as urgently as possible.

**Mr. Speaker:** In that case, I direct that you bring it on Thursday afternoon at 2.30 p.m.

**The Minister of State for Provincial Administration and Internal Security** (Prof. Saitoti): Much obliged, Mr. Speaker, Sir.

### CHAIR'S DIRECTION ON LETTER FROM SECRETARY TO THE CABINET

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. Last week, the Member for Gwassi requested the Chair to give directions to the House in respect of a letter, which he tabled from the Secretary to the Cabinet. This letter, if the Chair recalls, the Secretary had said Members of Parliament should be stopped from interfering with the Finance Bill.

Mr. Speaker, Sir, as we anxiously wait for this ruling or rather direction from the Chair, I also wish to table another document, which is headed: "*Grand Coalition Parliament Group held on 20<sup>th</sup> December, 2011*". In this document, which you will shortly see, there are two agenda items. The first one is to build consensus on the support for the Finance Bill, and the second one is to build consensus for the appointment of Ethics and Anti-Corruption Commission Chairperson and members.

Mr. Speaker, Sir, if you will be ruling any time soon, we will also like you to rule on this letter, because the House remembers that Item No.2 has already been moved in this House after the Committee of Justice and Legal Affairs made deliberations and quite a number of Members of Parliament have spoken on this issue. So, I am inviting you to determine whether in so doing, the Executive arm of Government continues to proceed in contempt of the National Assembly. Number two, whether the House will to allow the

Executive to continuously breach the principle of separation of powers between the Judiciary, Executive and Legislative.

Mr. Speaker, Sir, I also notice---

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

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

**Dr. Khalwale:** Mr. Speaker, Sir, I also notice that this afternoon, the Prime Minister and Member of Parliament for Langata is in the House. Probably, he might wish to use this opportunity to explain to the Chair why he chose to address us on this issue from Kenyatta International Conference Centre (KICC), and not come and take up his seat as the MP for Langata and contribute on this matter. I table the document.

*(Dr. Khalwale laid document on the Table)*

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

**Mr. Speaker:** Member for Chepalungu, do you want to speak to the same matters the Member for Ikolomani has raised?

**Mr. Ruto:** Yes.

**Mr. Speaker:** Very well. You can proceed.

**Mr. Ruto:** Mr. Speaker, Sir, is the hon. Member for Ikolomani in order to bring rumours to the Floor of the House? As far as I am concerned, I know there was a small tea session for Members of Parliament at KICC. I think the document he is circulating is not signed by anybody. I think that is just a rumour. I think we should proceed. I do not think the hon. Member is in order.

**Mr. Speaker:** Order! Hon. Members, the matter canvassed by the Member for Ikolomani is obviously legitimate. This House is governed in its practice and procedure by the Standing Orders. So, any breach of the Standing Orders is a matter that ought to be the concern of the entire membership of this House. Therefore, I will give direction as necessary.

With respect to the document tabled by the Member for Ikolomani, on this, I am afraid I find that it is not admissible. It is a paper that could have originated from anywhere. It has no signature. It is difficult to authenticate it.

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Speaker, Sir. What I would like to request especially in relation to the ruling you have made about the document that has been tabled by hon. Khalwale is especially on documents that are not letters or reports or minutes that are signed. However, it is an agenda of a meeting. In the ordinary course of duty, agenda of meetings are not signed. Also, in legal parlance, we have something called taking judicial notice of a fact. If we all attended the meeting and we all know the agenda, will it be in order for the Speaker to take judicial notice of the fact, and especially if we can prove we were there and that was the agenda of the meeting?

**Mr. Speaker:** Order! Order! That is questioning the directions that I have given and I will revisit my directions on admissibility of this document. I am convinced that my directions are well founded and they are firmly anchored in law.

As a practitioner of law, I know what judicial notice is. This document has not achieved that kind of notoriety that I will take judicial notice of it.

Member for Ikolomani!

**Dr. Khalwale:** Mr. Speaker, Sir, thank you for allowing me yet again. I would like to just make it crystal clear that I would never attempt to mislead the House. Indeed, I would not like to bring here a document that is not authentic. But---

**Mr. Speaker:** Order, the Member for Ikolomani! In my directions I have not said or even intimated that you attempted to mislead the House. I have only found that the document you tabled is inadmissible. That is all! So, we must be accurate in what we say.

Yes, the Member for Central Imenti!

**Mr. Imanyara:** On a point of order, Mr. Speaker, Sir. The hon. Member also said that pursuant to that agenda and although the document itself is inadmissible, they were addressed by none other than the Prime Minister who is actually sitting in the House and he has the constitutional obligation not only to supervise but also to co-ordinate. So, if, indeed, he spoke at this function and addressed this issue, would it not be in order for him to be given an opportunity to express his views to the House on these issues?

**Mr. Speaker:** Order! On that one, yes, you have my concurrence that it will be in order for the Rt. Hon. Prime Minister to make a response because it will help me even as I give directions.

Proceed, Mr. Prime Minister!

**The Prime Minister** (Mr. Raila): Thank you, Mr. Speaker, Sir. I want to own up and say that I did attend the meeting this morning. What the Member for Ikolomani did not state was that this was a joint Parliamentary Group Meeting of the two coalition partners, that is, the PNU and ODM.

Mr. Speaker, Sir, to the best of my knowledge, I did know that the new Constitution had banned political parties or that parliamentary groups can no longer meet. Under the new Constitution there is Schedule Six that provides for the transition. That is the reason we still have a President who is also a Member of Parliament, a Prime Minister who is also a Member of Parliament and Members of the Cabinet who are also Members of Parliament. That transition says that this will continue until the next elections are held. So, there is nothing unparliamentary for political parties meeting as parliamentary groups to discuss and agree on positions that they will take on matters that are before this House. This is usually a normal parliamentary practice even in the House of Commons.

So, the meeting this morning was never intended to violate any provisions of the current Constitution. It is perfectly within the provisions of the current Constitution. The hon. Member did canvass the point that he is raising here and the other hon. Members did not agree. So, I want to be guided when you make your ruling, to also make judicial recognition of the provisions of the current Constitution, particularly Schedule Six, which has provided that the position of the Prime Minister shall remain until after the next elections and that the President shall continue to be also the Member for Othaya and, therefore, can attend parliamentary group meetings of PNU of which he is the party leader. The Prime Minister can also attend and chair the parliamentary group meetings of ODM because he is also the party leader.

Thank you, Mr. Speaker, Sir.

**The Minister of State for Immigration and Registration of Persons** (Mr. Kajwang): On a point of order, Mr. Speaker, Sir. There is a fine distinction here between the current Constitution that we now practise and the old Constitution which, to some extent, is still continuing in certain cases. The definition of “Executive” and “Legislature” is not as clear as I hear the hon. Members speak about it every day. This is because we are both Members of the Legislature and at the same time members of the Executive. In fact, it is because of that confusion that we went for this kind of Constitution so that we separate it clearly, but we have not reached there.

Mr. Speaker, Sir, there will be a time when there will be a clear Executive outside this House and a clear Legislature inside this House. But as long as we still do not have that, if a parliamentary group or even a group of Members of Parliament would like to meet to discuss what position to take on any matter, they will be free to do so without any penalty. In fact, even as we go to vote, Members of a parliamentary group can ask for adjournment to go and discuss how they will vote and the Speaker will allow it. So, this confusion that there is a war between some Executive and Legislature is not as it is being put by my brother, Dr. Khalwale.

Thank you, Mr. Speaker, Sir.

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. Even as I agree that parliamentary groups could meet and discuss a legislation that is before the House, Dr. Khalwale referred to the letter that I tabled here last week. I was very clear on the letter that I tabled, which purported to instruct some Members of this House, who are also Members of the Executive to come and block interference by Parliament. I did raise the fact that we need to protect the integrity of Parliament. I asked then – and which I think hon. Khalwale has requested you to rule on – whether that is proper.

Mr. Speaker, Sir, I want to add that a section of today’s media did report negatively on the intentions of Members of Parliament with regard to the Finance Bill, that is, *The People* newspaper. It is said categorically that we are attempting to amend the Finance Bill, so that we can award ourselves additional perks. I have not seen anywhere of any notice by any hon. Member to award extra finances to ourselves. So, I think it is important that the Chair protects the integrity of this House by making a ruling on the action by the Executive through the letter, which I tabled here on Thursday, last week and the continued affront by a section of the media on Members of Parliament to an extent that their intentions are being misrepresented.

**Mr. Speaker:** Hon. Members, I have heard the point of order raised by the Member for Ikolomani and contributed to by the Members for Chepalungu, Gwassi, Nominated Member, hon. Odhiambo-Mabona, Rt. Hon. Prime Minister and Minister of State for Immigration and Registration of Persons, hon. Kajwang. I commit myself to give directions as necessary tomorrow afternoon.

In the meantime, I believe that all hon. Members of this House are men and women of integrity and that they can stand up to any challenges that pertain to legislation. They have substantive minds and will not be swept away by directions that, perhaps, have no sound basis in law. They will transact business before them with the presence of mind, decorum and factor in the greater national interest in everything that they transact.

So, I believe that all of you will be able to attend to business that appears on the Order Paper this afternoon without succumbing to any undue influence or attempts to influence you. Therefore, I direct that we will proceed with business as is in the Order

Paper and that I will give directions tomorrow with respect to the import of the letter by the Head of Civil Service as well as any meetings that may have been convened by the Executive.

## **BILL**

### *First Reading*

#### THE JUDICATURE (AMENDMENT) BILL

*(Order for the First Reading read- Read the First Time  
and ordered to be referred to the relevant Departmental Committee)*

## **MOTION**

#### ADOPTION OF REPORT ON REJECTION OF NOMINATION OF CHAIRPERSON/ MEMBERS OF ETHICS AND ANTI-CORRUPTION COMMISSION

THAT, this House adopts the report of the Departmental Committee on Justice and Legal Affairs on the rejection of the proposed nominees to the positions of the Chairperson and Members of the Ethics and Anti-Corruption Commission laid on the Table of the House on Wednesday 14th December 2011.

*(Mr. Baiya on 15.12.2011)*

*(Resumption of Debate interrupted on 15.12.2011)*

**Mr. Speaker:** Hon. Members, Mr. Ndiritu Muriithi had the Floor. You have 18 minutes left.

**The Assistant Minister for Industrialization** (Mr. Muriithi): Mr. Speaker, Sir, last week, when debate on this Motion first came up, it was a very passionate debate. One might even say that it was a very high octane debate. As I was attempting to catch the Speaker's eye, I found myself on the receiving end. I was called a heckler. I was fortunate that the Chair then protected us because we suffered a great deal of intimidation. People were attempting to stop us from rising to support this Committee in the work that it had done. So, I hope that as we progress, the debate will, perhaps, be as passionate, but there will be less attempts to muzzle and stop those of us who believe that, truly, the Committee has done this Parliament proud and we need to support what it is doing. There was an attempt, when documents were being tabled--- Those documents, on the face of it, provide significant information that we should debate and use to make up our minds. There was an attempt to gag the tabling of those documents, in my view.

Mr. Speaker, Sir, I hope that as we progress with this debate, it will be characterized by integrity and people will speak their minds. We shall vote for what we believe in and for our conviction. Debate is about persuading one another to take a view. I found myself on one hand considering the view of the Committee on Justice and Legal

Affairs whose Members are sitting here, including Mrs. Odhiambo-Mabona, Mr. Namwamba, Mr. Baiya, Mr. Abdikadir and Mr. Nyamweya. On one hand, they were telling us that in their considered view, they could not move on to agree with the appointment of these three proposed members of the Ethics and Anti-Corruption Commission (EACC). On the other hand, there was the Minister of State for Immigration and Registration of Persons, hon. Member for Kilome, the Minister for Nairobi Metropolitan Development and many others who had contrary opinion. I was asking myself: Who shall I believe because the issue of corruption is not a small matter? The senior officials in the Executive have admitted publicly that between 25 per cent and 35 per cent of the national Budget is lost through corruption. Now, 30 per cent of the national Budget today is in excess of Kshs300 billion. What can you do with Kshs300 billion? An amount of Kshs300 billion would give every constituency in excess of Kshs1.3 billion. I want to invite you to think about it. Today, we are creating change at the constituency level with the Constituencies Development Fund (CDF), which gives Kshs50 million, Kshs60 million or Kshs80 million per constituency. So, imagine what you can do with Kshs1.3 billion per constituency per year. That is what we lose through corruption every single year.

Mr. Speaker, Sir, a standard tarmacked bitumen class road costs Kshs30 million per kilometer. Imagine what you can do with Kshs300 billion every single year! Today in Kenya, more than 8,000 women die in the process of giving birth. Pregnancy is not a disease. So, how is it that 48 years after Independence, we suffer that level of maternal deaths? More than 75 per cent of this population is always at the risk of malaria. Twenty per cent of all children who die under the age of five years die because of malaria. How many mosquito nets can you buy with Kshs300 billion per year? So, the issue of who will serve in the EACC must be the biggest decision we are making after the passage of this Constitution.

Mr. Speaker, Sir, the Committee has reported to us that in interviewing those candidates, they asked one of them who had served in the now defunct Kenya Anti-Corruption Commission (KACC) what he or she knows about Anglo Leasing. The Committee reports that the candidate said that it is a mystery. They once saw a room full of files but it remains a mystery. The Committee also reports that they asked one of the candidates to explain why Kshs2.4 billion was never collected from a specific taxpayer and the candidate replied; "It wasn't me. It was not my job. My job was to point out that certain tax should be collected." When the Committee says that the candidates lacked passion that is what they mean. If you have served as a director in an institution and yet you know nothing about Anglo Leasing, what would suddenly motivate you to know a little bit about Anglo Leasing and take action? If you have been in a position of responsibility and you say that it is not your responsibility to pursue the tax payment, what is it that is going to happen now so that you will have the responsibility to pursue?

Mr. Speaker, Sir, there was a lot of debate about the word "passion". What is it that this Committee was looking for? I want to submit that any great leader must truly have passion for his or her country or the course he or she leads. I want to say that in this House, I believe that the people who fought for the Independence of this country - the *Mau Mau* - had passion.

Mr. Speaker, Sir, I want to believe that the people in this Chamber and elsewhere, who fought for this country to be liberated a second time, had passion.

*(Applause)*

Mr. Speaker, Sir, any revolutionary must have passion. Even in the corporate world, to be an effective leader of an organization, you must have passion for that organization. We know that corruption is not an easy matter; we know that corruption networks fight back; we know that it is not easy to nail the so-called “big fish;” we know this! The persons who are going to be able to do this job must have passion; they must be people who get up; they must be people who will not sleep.

*(Applause)*

**Mr. Speaker:** Order! Order, Mr. Muriithi! I thought there was unanimity in the House as I followed from a distance, that passion only comes about in the night.

*(Laughter)*

**The Assistant Minister for Industrialization** (Mr. Muriithi): Mr. Speaker, Sir, there was a contribution by hon. Member about when passion--- but there was no unanimity.

**Mr. Speaker:** Okay, I stand guided.

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Speaker, Sir. Last week, even I watched from a distance and hon. Members were talking about passion in the night. But today in the informal meeting we held, we all became born again. So, we all have acquired a new terminology – passion for halleluyah. So, perhaps, the hon. Member would be in order to, instead of talking of the passion of the night, talk the new terminology, halleluyah, which we acquired today.

*(Laughter)*

**The Assistant Minister for Industrialization** (Mr. Muriithi): Mr. Speaker, Sir, you know it is fantastic when debate is punctuated by interludes of laughter; I thank Mrs. Odhiambo-Mabona for creating one such moment.

Mr. Speaker, Sir, the question of whether people are passionate about the work they do and about the leadership they provide at whatever level and in whichever institution arises. When you are recruiting persons in any organization, it is not simply the issue of whether they have academic qualifications. Every time we advertise jobs---- This House questioned me just last week about, for example, recruitment at the Kenya Bureau of Standards (KEBS). When we say we are looking for a minimum of a Masters degree we will have a thousand applicants. So, it is not simply the issue of whether you have an academic qualification. It is about your bearing; it is about your belief; it is about whether you will serve this country with dedication in a specific role.

Mr. Speaker, Sir, we, as a House, have delegated a responsibility to a committee. This Committee has done its job; it has interviewed these candidates and it has unanimously reached a certain conclusion. I believe that we, as a House, must do our duty and must support what this Committee has presented before us. To do otherwise is

to suggest that the Committee did not do its job properly. Those who are opposing the Committee attempted to say that because not all the information in the universe has been put in this report, we should not look at any other available information. I disagree.

I believe that the Committee has done a credible job; if we are serious in the fight against corruption, we must find it in ourselves to uphold what the Committee has done and start again. I am certain that there are Kenyans who not only have integrity in themselves, but have passion for their country, and those are the Kenyans we need.

Mr. Speaker, Sir, I beg to support.

**Mr. Speaker:** The hon. Member for Garsen.

**Mr. Mungatana:** Mr. Speaker, Sir, I want to---

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

**Mr. Speaker:** I am sorry, the hon. Member for Central Imenti; the hon. Member for Garsen beat you at it, as I saw it.

**Mr. Mungatana:** Thank you, Mr. Speaker, Sir, for giving me an opportunity to also contribute to the debate that is before us. I have studied this report from the Committee, which has very many of my friends; I have studied their recommendations and with respect, I wish to disagree with the recommendations that these hon. Members have made.

*(Applause)*

Mr. Speaker, Sir, I have also listened to some of my very best friends, with whom I sit here, argue against some of the nominees and even the exaggerations that have gone on outside this House. I beg to disagree strongly with those friends whom I have worked with here before.

Mr. Speaker, Sir, I want to start with the first issue. It has become a norm that if somebody was working for the Government, or if somebody was a civil servant, particularly of long standing, and names are tabled here, people are told that the man or woman was part of a system that was corrupt in the former President's regime or in this regime or in the other regime and, therefore, does not qualify. It has become a norm to sacrifice all civil servants of long standing on the basis of generalized condemnation. This is what we did when we were choosing the Chief Justice; we said that all the Judges could not qualify.

This is the direction I am seeing people going because it is being strongly suggested outside there that the new Commissioner of Police should not come from the force. When you look at it, it is an attitudinal problem that seems to have cropped up in our Parliament and in our colleagues, so long as you have been in the Government this is almost an automatic disqualification. I then reason that if these people were working, let us say in Bamburi Portland Cement Ltd, Kenya Breweries or they were acting in certain capacities and things went wrong there, then they applied for jobs in the Government, nobody would be able to tell the story behind some of them. If people were working, say for a non-governmental organization or they lived in America, or they were working in some country like Great Britain, when they bring their curriculum vitae, everybody runs for them! But our civil servants here, who have given dedicated service throughout their

lives, some of them really not making money, just because they worked for the Kenya Government, when they come, they are looked upon with suspicion.

*(Applause)*

These are our own people; but because somebody was away or he worked for an NGO, all these constitutional jobs are going to them! I stand to say that this trend must stop. I would invite colleagues, please, let us not say that Mr. Mumo Matemu, just because he worked for the Government in various capacities, then that makes him a person who is not qualified to hold this position.

Mr. Speaker, Sir, let us look again at this because these are our own brothers and sisters, people who qualify to have gone to work outside. These are people who would have worked for NGOs or in some international jobs, but they stayed to work for this Government. When these new positions are coming up, we are all saying that these people should not be considered.

I want to urge the House and my colleagues to look at this issue again. Please, let us not condemn our fellows who opted to stay put working under a very difficult regime, namely, the former President and, in fact, the current President. Sometimes these people work under very difficult circumstances. Some of those that we condemn here and say they are corrupt were, in fact, instructed by the very politicians who today are sitting here to say that they are corrupt. Some of them lived under fear of getting telephone calls telling them: "You must give that procurement order to this company." Today, when they apply for jobs in a new environment, an environment that says that we shall support good governance, we want to condemn them. I reject that attitude. Let us be fair to everyone, particularly to those who have worked for the Government under difficult circumstances. I want to repeat that it is unfair to condemn these people at this point.

The second point which I want to raise as to why I disagree with this report is about passion. This report has raised the issue of passion. The immediate former KACC chief, P.L.O. Lumumba, was very passionate. He was forever on the media and he even participated in a demonstration, but how many people were arrested, charged and prosecuted during this tenure, no matter how short it was? Before him we had another Justice Ringera. He was very passionate when he went for the judges. He carried out what was called radical surgery and it only cut the judges. The rest of the political class, the Goldenberg and the Ndung'u Report offenders were never touched. Yes, he was very passionate, but what were the results? Did those results match the expectations of Kenyans?

I want to urge this House not to agree with the Committee on Justice and Legal Affairs that these people, just because they lacked passion, they are not fit. I know that effective investigators are not people who shout about their work. They are people who follow steps by steps. They follow procedures one by one. They do not talk to the media, but you see their results. You see their answers. You see them meeting expectations. I want to urge the House not to accept this. Just because I have come today and I am being interviewed, you should not say that I have no passion because you do not know what happened to me in the morning. I could be low or drowsy because I took piritons for my running nose.

I want to ask the House whether we can disqualify people on the basis that on the date of the interview, they did not seem to have passion. How can we measure the passion of someone to carry out a job on the basis of how he looked in one or two afternoons? Some of the people who have made the greatest scientific discoveries have been scientists who are very passionate about their work. However, when you meet them, you will dismiss them. You look at them and you even do not think they can be professors. But the passion of their work is shown in the results they give, the discoveries they have made, the papers they have written and the new knowledge they have brought into our science and discoveries in other social disciplines. When you look at these people, they do not look like they belong to any field that you call passionate. I want to reject this idea that these people do not have passion to fight corruption. That is an unfair categorization of these three nominees.

Mr. Speaker, Sir, I never had opportunity to meet them. However, I am convinced that the results is what should determine whether someone is passionate or not and not the length of speeches and how excited the person looks when they are being interviewed. The results these three nominees will give are what we should be looking at. Therefore, I want to disagree with my friends who have said that these people lack passion and, therefore, should be disqualified. I disagree that this is a category that should disqualify our people. This President is outgoing. I would urge the next President that we are going to elect to relook into this again. One very disappointing factor about the three nominees is that they are not members of any political party. Starting with the last one, Ms. Irene Cheptoo Keino, she is not a member of any political party and does not expect any conflict of interest to arise. There is the other nominee, Prof. Jane Kerubo Onsongo, again, she is not a member of any political party and does not expect a conflict of any interest to arise. Then there is Mr. Mumo Matemu; all the other qualifications are fine, but there is one here which is written that he is not a member of any political party and does not expect any conflict of interest to arise. The next President or the current President, if he has any other people to nominate, must relook into this. People who do not belong to political parties are people who are not interested in the governance of this country. They are people who most likely have never voted even maybe, they do not have a voters card. They are people who have no interest in the corporate governance of this country.

Mr. Speaker, Sir, being a leader of one political party, the ordinary membership costs something like Kshs20. If you want other categories, you will have to pay more. How do you bring to this Parliament three nominees and you make it almost like it is a holy and nice thing not to belong to political parties? I have said it in this House before and I am saying it again, please, let us bring nominees who have affiliations. I do not mind if you belong to KANU, NARC(K), ODM or any other political party.

Mr. Speaker, Sir, people who are interested in better governance of this country should be the people who should sit in commissions. How can a whole President and a Prime Minister decide to nominate people who have never participated in a commission? In fact, there is no evidence that they even voted. Surely, is it fare, in view of the fact that in the Department of History at the University of Nairobi, there are many professors who belong to various political parties? They will be interested in making positive contributions. In the new Constitution, we have the commissions as an important part of governance.

My only advice to the President and the Prime Minister and to the incoming President is that if they have a chance to nominate people to any commission or any other public body, they must nominate people who have demonstrated interest in the issues affecting this country. These people have just been there. There is no evidence of them having even voted. They have been living in their own little cocoons. In all fairness, these people cannot be better qualified than others. We had 169 people who applied. I am sure that some of them belong to some political parties.

Mr. Speaker, Sir, I have raised three points, and I would like to urge my colleagues to think about them as we reject these recommendations. First, we should not sacrifice people just because they have been civil servants. The second thing is the issue of passion.

**Eng. Gumbo:** On a point of order, Mr. Speaker, Sir. It is a sacred rule of this House that no hon. Member should repeat oneself unnecessarily. Hon. Mungatana is just saying what he has been saying all along. Is he in order?

**Mr. Speaker:** Member for Garsen, that is, indeed, a legitimate challenge. Even if you want to recap, just mention the points, one, two and three. You do not have to repeat yourself.

**Mr. Mungatana:** Mr. Speaker, Sir, I talked about the issue of passion. We should have people who are interested in the governance of this country.

With those few remarks, I urge this House to approve the nominees who have been brought here. I ask this House to oppose the Motion as moved.

**Mr. Imanyara:** Mr. Speaker, Sir, I thank you for this opportunity.

I wish to begin by thanking the Committee on Justice and Legal Affairs, first, for waking up after a long sleep and doing their work extremely well, and for making recommendations worthy of support of this House. I support the recommendations of this Committee. The reasons that have been given justify the support for the Committee's recommendations.

Mr. Speaker, Sir, in addition, way back on 4<sup>th</sup> January, 2006, a distinguished Member of this House, who is now deceased, the hon. Mirugi Kariuki, wrote a letter to the District Criminal Investigations Officer (DCIO), Nakuru. The letter is dated 4<sup>th</sup> January, 2006. He delivered it to the Provincial Criminal Investigations Office, which opened Inquest File No.5 of 2006. Mr. Kariuki was asking the Criminal Investigations Department (CID) to investigate a company that was working in cahoots with the AFC, where huge sums of money had been misappropriated under circumstances that showed outright fraud on the Kenyan people; the sums of money exceeded Kshs5 billion. I have that dossier here.

The police investigated. They took statements from witnesses. They attempted to take statements from some of the nominees that are now being recommended to sit in the Ethics and Anti-Corruption Commission (EACC). The police were prevented. They were unable to move. As recently as 7<sup>th</sup> June, 2011, one Andrew Nyarindo, signing for the Provincial Criminal Investigations Officer (PCIO), Nakuru, wrote to the Director of CID, a letter dated 7<sup>th</sup> June, 2011, Ref. No.CID/SECRET/4/4/P/VOL.I, and complained that the CID inquiry that Mr. Kariuki had sought had not been proceeded with. The letter is signed. I will quote one sentence from it. As a lawyer, I have taken the trouble to establish that I am not naming people here for the sake of naming them. He says:-

“The reason for not moving forward had to do with the suspects who had worked together in stealing and concealing facts using their positions and influence in stealing through proxy. I would not allow availability of the documents and also the manner in which the said banks and Agricultural Finance Corporation FC collaborated in giving and disbursing loans which were quite questionable.”

Mr. Speaker, Sir, they were not loans. A group of Asians, whose names are mentioned in this letter, would form companies. They would go to the AFC, borrow billions of shillings and that money would, through the National Bank of Kenya, be collected and the loans would be written off. The key player in this investigation is a person whom we are being asked to recommend to head the EACC.

I happen to know the nominees. I have met them socially. I have nothing personal against any of them but we are not talking about personalities. We are not talking about friends. We are talking about the future of Kenya. It is nothing to do with ethnic communities. Apart from the appointment of the Chief Justice of the Republic of Kenya, the next single most important appointment in this country is the head of the EACC. This must be a person in respect of whom we must not have any suspicion.

Mr. Speaker, Sir, the CID officers were asking that senior people be allowed to take statements from Mr. Mumo, together with others, regarding this colossal stealing of public money running into billions of shillings. The only thing that the officer investigating this matter found out was that, again, there was a conspiracy to even file a civil case in the High Court of Kenya. Again, the person who compromised that civil suit, in order for the AFC not to be investigated, is the same person we are, again, recommending that he goes and sits at the EACC. It will be a very sad day, indeed, for this country if we nominate this person, especially after so many failed attempts and after celebrating the appointment of Dr. Willie Mutunga as Chief Justice of the Republic of Kenya, not because he is from the Kamba community but because of his ability.

We do not make appointments in this House on the basis of people’s tribal backgrounds. We look at the competence. Where there are suspicions about any individual whom we are giving the responsibility of heading the EAAC, we must resist. The least we can do is to ask those nominees to look at public interest and consider the matter at hand, if they have conscience. Why should they subject themselves to this hearing, knowing well that these are facts you cannot hide? You cannot suppress this information.

Mr. Speaker, Sir, Inspector Irungu is prepared to swear an affidavit on the frustrations he faced when he was taking a statement. Here is an officer, telling the Director of CID: “Please, move in to protect the public interest” and here, we are saying that we shut our eyes to all this and allow these nominees to go through. It will be a great shame to this House, and I will never agree to be associated with their approval.

Mr. Speaker, Sir, I hereby table the letter dated 7<sup>th</sup> June, 2011. I have referred to the reference. The matter was referred to the then Attorney-General, Amos Wako, way back on 30<sup>th</sup> November, 2007. The reference is AG/CR/236/3/623/4. Again, this raises those issues. The Attorney-General recommended, “Carry out further investigations so that you can ensure that there is sufficient evidence to convict these people.” Despite these recommendations by the Attorney-General, no action was taken. With the appointment of the Director of Public Prosecutions (DPP), some well-meaning patriotic Kenyan CID Officer is making a plea on behalf of the Kenyan people, “Please, carry out

investigations. These are the facts and this is the amount of money.” There are cheques amounting to Kshs24million, Kshs18 million and so on. Details of accounts are given to the last cent and names are also given.

*(Applause)*

All these things are dated and I wish to table this letter particularly for those who say that we should support these nominees. They should read this and take their time. They need to ask whether these are the people we want to head the Ethics and Anti-Corruption Commission.

Mr. Speaker, Sir, I support.

**The Assistant Minister for Trade** (Mr. Oyongo Nyamweya): Mr. Speaker, Sir, thank you for giving me this opportunity to contribute to this Motion. I must say from the word go that I am against the Report. I have looked at it. The Committee has done a job, but it is not a job well done.

Kenya Revenue Authority (KRA) tax issues are very serious. If, indeed, there is somebody who has not paid tax, I expect this Committee to summon KRA officers and confirm whether or not there is money outstanding by this company which was never collected, and if it was not collected whether it was written off; if it was written off why it was written off. Really, we cannot take it lightly when somebody comes here with a document and tells us that somebody did not remit tax collection, and the issue is not pursued beyond that level. I expect the Committee to be serious enough and go to KRA. They even have the opportunity now to confirm if, indeed, this issue is true. They need to know how much money was outstanding and whether it was written off or not. If not, what happened?

There is an issue here about passion. I looked up the word in the Collins Dictionary to see what it says. The dictionary---

**Mr. Baiya:** On a point of order, Mr. Speaker, Sir. The Committee actually interviewed the candidate over this matter and presented an affidavit by the deponent who said that this tax was never collected. The candidate did not deny that. Instead he said that it was not his job. He said that his job was to deal with the court matter, and he did not know about the rest. Is, the hon. Assistant Minister in order to actually expect the Committee to call KRA officers when it had the evidence from the candidate himself?

**Mr. Speaker:** Hon. Nyamweya that is a legitimate challenge. You are saying that the Committee should have gone beyond the allegation. The Committee is telling you that they have an affidavit which they put to the candidate who did not deny or traverse the allegation.

**The Assistant Minister for Trade** (Mr. Oyongo Nyamweya): Mr. Speaker, Sir, I have seen the Report, but I have not seen that attachment. I need your guidance on this matter. What they are saying is that what they did is not in the Report. I do not see it attached to the Report and I am relying on what I have read.

**Mr. C. Kilonzo:** On a point of order, Mr. Speaker, Sir. Indeed, what the hon. Member is saying is true. Is it in order for the Vice-Chairman of the Departmental Committee on Justice and Legal Affairs to mislead this House that, indeed, an affidavit was tabled? What was tabled here was a letter from an auctioneer and it is even marked “without prejudice”. This is not an affidavit. It is the same document that Dr. Khalwale

claimed to be an affidavit. So, I would want your guidance on this matter. Can a document which is not an affidavit be admitted as an affidavit? I table the same document which was tabled by Dr. Khalwale.

**Mr. Speaker:** Very well. That will be valid. Mr. Baiya, is that the document that you are referring to as an affidavit?

**Mr. Baiya:** Yes, Mr. Speaker, Sir. This is actually one of the documents which were presented before the Committee. This document identifies the source. The author identifies himself and he makes these allegations sufficiently. It was addressed to the Departmental Committee on Justice and Legal Affairs. This is the document we put to the candidate.

**Mr. Speaker:** Is that what you are describing as an affidavit?

**Mr. Baiya:** Actually it is written in the form of a letter, but it is actually deponed and, therefore, is an affidavit. There is a signature and a Commissioner of Oaths has actually attested the signature.

**Mr. Speaker:** Kindly table the document.

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

**Mr. Baiya:** Mr. Speaker, Sir, this document was tabled by Dr. Khalwale and it is part of the record.

**Mr. Speaker:** I am looking at a document which says, "Without Prejudice". It is dated 5<sup>th</sup> December, 2011. It is addressed to the Chairperson of the Departmental Committee on Justice and Legal Affairs through the Clerk of the National Assembly. It is signed by a Mr. Washamina. But given my training and experience as a long standing lawyer and Speaker, I find that this is not an affidavit.

*(Applause)*

An affidavit will normally be sworn. Those words do not appear on this document.

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. The issue that hon. Oyongo Nyamweya raised did not have anything to do with validity or admissibility of the document, or whether or not the sum that is claimed to have been collected was collected. If I understood Mr. Baiya correctly, this candidate admitted that, indeed, the money was not collected. That was the issue. The other point I wanted to raise is that if there is need to get details, annexure and copies of documents, then these are available, not in the Report, but in the HANSARD proceedings of the Committee. They are available.

**Mr. Speaker:** Fair enough, Mr. Olago! What is critical here is that this document is not an affidavit. It is a letter. It is admissible as a letter and not as an affidavit.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. I just wish to set the record straight. I am the one who tabled the document that is being referred to. I clearly said that I was tabling a letter from Mr. Washamina, which had been commissioned by a Commissioner of Oaths.

**Mr. Speaker:** Dr. Khalwale, the constant remains that as a letter, it is admissible. As an affidavit, it is not an affidavit!

**Mr. Ruto:** On a point of information, Mr. Speaker, Sir.

**Mr. Speaker:** Information to whom, Member for Chepalungu?

**Mr. Ruto:** Information to Mr. Nyamweya.

**Mr. Speaker:** Hon. Nyamweya, do you want information?

**The Assistant Minister for Trade** (Mr. Oyongo Nyamweya): Yes, Mr. Speaker, Sir.

**Mr. Ruto:** Mr. Speaker, Sir, I wish to inform the hon. Member further that, that particular letter was instigated by an auctioneer who actually went and did some stock taking at Kingsway Motors and gave a bill of Kshs72 million. He demanded this money from KRA. We owe it to Kenyans to say the truth. That auctioneer comes from Kakamega. Maybe, Dr. Khalwale could tell us more.

**The Assistant Minister for Trade** (Mr. Oyongo Nyamweya): Mr. Speaker, Sir, the issue of tax being owed should have been confirmed by KRA. If there was no confirmation from KRA; KRA is actually up to date in terms of technology. It is wrong for us to stand in this House and condemn somebody that they cannot get a job on the allegations of somebody who has no interest. So, the issue of taxation and arrears, since it is not in the Report, as far as I am concerned and as Members of this House who have been elected, we should not dare talk about it.

Mr. Speaker, Sir, another issue is that we are talking like the anti-corruption body is the only organization which can fight corruption in this country. We are talking like if we get the head of the anti-corruption body corruption will end in this country. The truth here is that this is a body which has no prosecution powers. It does not have the powers to prosecute.

Secondly, there must be political goodwill from all the leaders and political players. We must respect institutions that have been put in place. This Report of the Committee has come with malice. There are no facts about it.

I want to talk about passion. I have looked at the dictionary to understand the meaning of “passion” because it has been used severally. According to Collins Dictionary it says passion means “having love or affection; intense sexual love; a stronger attraction for an object.” That is the dictionary meaning of the word “passion”. I do not know whether that can be a qualification for somebody who is heading a Commission which is so serious in fighting corruption.

I also looked at Oxford dictionary because I really wanted to know what you meant when you were talking about passion. According to the Oxford Dictionary “passion” means “a very strong feeling of love, hatred or anger.” Let us be fair. When I look through this meaning of the word “passion”, I find the report from the Committee not well-researched; not properly done and it is biased.

I want to talk about Jane Kerubo. Incidentally, this lady comes from my place in South Mugirango, I must declare that. This is a lady who is a professor in the university. She has written books and journals. She has done research on her own right as a professor in the university. She has written the following manual: “Promoting Gender Equity in Selected Public Universities in Kenya”. She has done research on the “Good of Private University in Kenya”. She has done research on “Implication of Gender Equity in Higher Education” and written journals for higher education in Africa. In terms of her capability for the job she has got, she is qualified. She has shown that she has got the capacity. As a professor, she has done a lot of writing. However, the Committee has said that these people do not qualify to do the job. What they are talking about here is passion. If you look at the meaning of the word “passion” in the dictionary it is far from what is required

of somebody to head this organization. So, I urge hon. Members that we reject this Report with tremendous respect because we should show fairness for Kenyans.

We should be fair. We should not use our positions to victimize innocent people who have not been interviewed thoroughly by the people who are supposed to interview them. When I look on the face of it, these people have the qualifications to do the job. We cannot rely here on rumours and information which cannot be confirmed. Therefore, I urge the Committee members who have come here that we reject this Report. We should have this Report amended, so that these people can go ahead and get the jobs. Let us not condemn people without a clear report and information. If anybody has anything to do, KRA is just a walking distance for us to confirm this.

With those few remarks, I oppose the Report.

**Mrs. Odhiambo-Mabona:** Mr. Speaker, Sir, I stand to support the Committee Report. In supporting the Committee Report I want to comment on one of the things that the speaker before me, the hon. Assistant Minister has alluded to. He has defined for us the word “passion” even though I will talk on it later.

I just want to comment that if you were to look at a dictionary of ethnic languages in Kenya and you went to a section that says *Mbura niguka* a Kikuyu will tell you it means the rain is coming. A Luo will tell you it means there is a cat on my shoulders. So, the word “passion” when you read it to us in the dictionary and tell us that it means love, sexual love and affection and you do not look at the last meaning which we just went over, then it means you are telling us *Mbura niguka* means the rain is coming and the Luo will tell you no, it is a cat on my shoulder. So, I just wanted to clear that the word “passion” has many meanings.

Having said that, as a Committee for the first time it was amazing we sat and all of us were unanimous on this Report. We were unanimous that the candidates do not qualify. I want to agree with my Committee and these are the reasons for doing that and also cognizant of the fact that I have fought for women’s rights all my life and that when supporting this Committee I will be rejecting two women with very good degrees.

On the issue of the chair, I was not here when hon. Members were debating, but the issues that have been raised on integrity on the person of the chair, even now we have just seen Mr. Imanyara has raised even other issues. Whether or not they were proven, we cannot be taking a person to head an institution when we have doubts on their integrity, unless we are saying we are not committed to eradicating corruption in this country.

I am very worried when I hear us alluding to the fact, for instance that there is no political will and that there are many people who are corrupt in this country, so, let us take anybody there. If that is true, then we should not be taking people; we should be disbanding that Commission. If we think it will not perform, disband it. But let us not take Kenyans there and pretend that we want to do away with corruption in this country. The reason we have people striking, Kenyans annoyed at us, and dissatisfied Kenyans is because of corruption. Unless and until this country is committed to dealing with corruption and choosing persons who are committed to eradicating corruption, we shall never move forward as a country.

Mr. Speaker, Sir, I want to indicate also that another issue that, perhaps, may not have come up is that we were not given any clear indication as to why the person who was number one, Mr. Okong’o Omogeni who also, probably, is the constituent of the Member who spoke before me, was not given this position and he was very qualified. As

a Committee we were left guessing because of time because these things came to us from the Executive late, that it could have been because of regional balancing. Even when we actually did a cursory look at the issue of regional balancing, we were not convinced because we have several Kambas who are already heading positions. We also have a few Kisiis who are heading positions. So, we saw that these are communities which are at par *prima facie*. So, unless we were given evidence otherwise, we cannot set a dangerous precedence. I have said it before and I will repeat because I am usually a very consistent person, that if the Principals want to be serious and they want to reject number one and to go to number four, there must be a constitutional reason; otherwise, it amounts to discrimination. If we should pass this, I would encourage Mr. Omogeni to go to court and have this nullified on the basis of discrimination.

Mr. Speaker, Sir, I would also want to indicate that there was no compelling gender reasons why we left the number one. Indeed, if the Principals were fairer, there was a person who was qualified and who was of a racial minority. If there was need for balancing, then we should have given a person of European background, whom we have not given any position in this country. If you are looking for any balancing, I am very careful and I have been very keen. I have worked on issues of equalization of opportunities almost all my life. We must be fair to everybody.

I want to talk about the issue of the two women nominees. I want to talk about the issue that was addressed on the issue of passion. That also touches on the chair. I want to distinguish two things; those are women with very good papers academically. I am glad that the speaker who spoke before me has attested to the fact that, indeed, Prof. Onsongo even has a PhD. She has done a lot of work on gender and higher education. Irene Keino is also very qualified as an architect. She has degrees even in Lund University, Sweden on historical buildings. They are women who have papers. They have studied. There were no ethical issues around those two women and there were no issues of integrity. I want to be clear; the only issue that our Committee talked about those two women was the issue of lack of passion. There is much that has been spoken about passion and I want to un-package it.

Mr. Speaker, Sir, it is not the passion of the night because I am sure we were not very ably qualified at that point to assess that level of passion even though I am sure some Members might have been happy to have been given that opportunity, but which we did not give them. What I want to say is that in un-packaging the issue of passion, there are certain benchmarks that the Committee looked at. We finished this Report in a short while and so, perhaps, we did not cover those benchmarks. We were trying to look at the issue of keeping time lines. I want to say that they did not have sufficient interest in the subject matter. When one of them was asked very specifically and directly that one of the issues that we have as a challenge in fighting corruption in this country is lack of political will; when we asked her to address herself to the issue of lack of political will, she said, "Do you know what, I have never thought about it. But now that you have asked me, perhaps, I will go back and think about it".

Mr. Speaker, Sir, I do not work on issues of governance and anti-corruption right now and even when I worked in the NGO sector, I worked on the peripheral even though I have done studies on them. However, everybody knows that at the heart of fighting corruption in this county is the issue of political will. If you have been there at the position of a director and you have never thought about the lack of political will, really

the only word we can define you politely is lack of passion. Otherwise, we should have used more disparaging terms for such a person.

The other benchmark we used for defining lack of passion is that they did not depict sufficient depth of knowledge on this issue despite the fact that both of them have been involved with this Commission. I know Mr. Ndiritu alluded to this but, we asked one of them about Anglo Leasing. We said this is one of the things that was such a big issue with the defunct KACC and asked her take on it and what she did about it. Her response was: "All I can tell you about Anglo Leasing is that we were taken into a room full of cartons and files and it is a mystery to me to date". So, surely, if you have worked there for years and Anglo Leasing was a mystery to you all these years, when we take you there, we are taking you so that you can be mesmerized and mystified about Anglo Leasing again!

Mr. Speaker, Sir, this is a case of people with excellent qualifications and skills poorly matched---

**Mrs. Shebesh:** On a point of order, Mr. Speaker, Sir. Is it in order for the Nominated Member of Parliament to be talking about one question that they asked each of the two ladies, when I am sure they asked them more than ten questions? Can she tell us how they performed in the answers to the other questions, instead of just regurgitating one question and how they answered it? If it is about how they answered questions, can she tell us how they answered all the questions that they were asked?

**Mr. Speaker:** Order! Mrs. Odhiambo-Mabona, you need not respond to that. A point of order must point out what the Member contributing or speaking is in breach of; which goes against our rules, practice or decorum. None of those embraces what you have raised, Mrs., Shebesh, I am afraid. You need not respond. Therefore, carry on, Mrs. Odhiambo-Mabona!

**Mrs. Odhiambo-Mabona:** Mr. Speaker, Sir, I need not respond but I would be happy to. In relation to the other questions, it was dismal--- Their performance was dismal.

**Mr. Speaker:** Please, do not! Just proceed!

**Mrs. Odhiambo-Mabona:** Thank you, Mr. Speaker, Sir. I would like to indicate that if we could really request the media, for Members who would wish to see, go and look at it yourself. I am a defender of women rights. I would want to request that those women are excellent in their fields. If we have a Commission looking at reserving our historical buildings, I would recommend that Irene be the chairperson. She is an excellent woman in that field, but we are putting her and setting her up as a woman. Once she fails, we will be told as women that we gave you and you did not manage. As women we also have to be strategic. Let us not go for things we do not think we can manage and then later complain as women that we failed.

Mr. Speaker, Sir, similarly I want to indicate that the same members - and this applies to all of them - did not tell us what they had positively contributed during the period that they were there. Passion is also seen in many ways. I am glad that Mr. C. Kilonzo actually alluded in his contribution that before I came to Parliament I was not passionate about Parliament. But I have proven myself by being extremely passionate. That is true. But my passion in a lot of things was evident. Way back, I trained Members of Parliament and that showed that my passion was towards Parliament. I even ran

around and slept around the tarmac of Parliament. That is passion enough in this direction. For those members, there is no passion whatsoever in that direction.

I am not convinced and I support fully the work of this Committee.

**The Assistant Minister for Youth Affairs and Sports** (Mr. Kabando wa Kabando): Thank you, Mr. Speaker, Sir, for giving me permission to contribute to this very important Motion. I would like to set the background of the points that I am going to make. They are five.

One, when the Chief Justice was nominated without consultations, this House made a ruling. We saw people congregating as political parties. We saw press conferences on the stairs of Kenyatta International Conference Centre (KICC). Some of us, despite belonging to the side of PNU, stood our ground. We penned very passionate articles and we said that on this particular matter, we will defy the President because we think it was a mistake.

When the Ringera issue was brought to the House, there was clarion call that people from certain areas must protect Ringera because he comes from the windward side. Some of us stood our ground and said: "We may come from the windward side of Mt. Kenya, but we refuse to be congregated on the basis of our ethnicity."

Mr. Speaker, Sir, there must be decisions that must go beyond our party affiliations and even our ethnicities. The new order has to crash the old order for us to create a template that will give ourselves, our children and future generations the opportunity to enjoy what we bequeath them. We want a legislative agenda which is clean and enduring.

Mr. Speaker, Sir, this morning, and I know this matter is before you and you will be ruling on it, we saw an attempt to debate issues before the House through some parliamentary groups. I want to reiterate the advice we and a number hon. Members gave, that we will not take orders because we are serving in the Executive. On issues before the House, it is not the President, the Prime Minister or the Leader of Government Business in the House--- Who is the Vice-President and Minister for Home Affairs to give orders or instructions on what needs to be done? If Members of Parliament have to be enriched on what they have to contribute to the House, there are issues that can be done through caucuses, e-mails and other correspondences that can enrich our contribution. So, the message that must come is that there are issues that are beyond political parties and those parliamentary groups.

In conclusion of my background, there are issues before the House that must go beyond our ethnic group. I am not naming any ethnic group but it disheartens many times when a matter comes, you are caucusing and calling for a meeting. You will not create a nation or even your career by appearing parochial and petty on issues that are very national. These are things that we see.

*(Applause)*

*[Mr. Speaker left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

The issue of passion has been dismissed. However, without blowing our trumpets, I would say that when I was the Chairman of Nairobi Water, I was the first chairman of a public corporation to initiate a code of ethics signed in the presence of KACC Deputy Director, Dr. Smokin Wanjala, one proprietor, Manu Chandaria and the Ambassador of Sweden in this country. Initiative is captured in this report. The nominee has to show passion, initiative and drive. If you are talking about breaking from the KACC that was headed by Dr. Lumumba, whom we hounded out from the position through this House, then we must also say that there is need to break completely from those who were working with him and create a new scenario and human resource that would give a difference.

Breaking from the past is important because it creates confidence. In my advice to the Chief Justice that never was and the Controller of Budget who never was and the DPP who never was, I said that it was also incumbent upon them to show humility, initiative and decline those nominations. Today, they walk in the streets with their fully coloured CVs that they never succeeded although they were given approval by the Executives of this country and endorsed by a section of this Legislature.

With regard to the Committee on Justice and Legal Affairs, for the first time, we have a Committee comprising of people that we highly respect. The membership is very educated and eminent. But we also know that the Committee brings individuals from different parts of this country and from political backgrounds that are very varied. It is very unique that they are unanimous. If not for anything else, I am completely and fully persuaded by the unanimity of that Committee that there is a portion and an issue that cannot be ignored. However, we are creating political convenience. In fact, can I say without naming names, that when I saw the individuals who were very loud on Thursday, last week in opposition to the Report of this Committee, I told myself, “son of a woman, son of Wachera, this must be the reason why you must support this Report more strongly”. Sometimes we say that if you want to know the character of a person, look at the friendship. Look at the company of those individuals. These are individuals who are normally very quiet, very limited and not very eloquent on issues of graft. Individuals who were entrusted with the fight against graft when Kenya was a pinnacle, a crescendo and citadel of corruption are now very loud. I asked myself, “what hope do I have; what are we telling our people?”

By the way, I am surprised when we speak, we give CVs and say that this is my constituent and I come from this area. There is an interview that gave somebody, George Kihoro, No.1 in this country. For reasons unknown to many people, he was dropped. He happens to come from Gusiiland. Now, there is another one called Okong’o Omogeni who is now No.1 and he is also being dropped. I am asking myself, “what are we telling the people of Gusiiland; that to produce eminent, passionate and compassionate lawyers is wrong? That we must go and look for No.2?” Just the other day, we dropped the name of another woman in this House who is an eminent professor just because her surname happens to come from a certain region originally.

**Mr. Mbadi:** On a point of order, Mr. Deputy Speaker, Sir. From the contribution of the Assistant Minister, he is trying to insinuate that this House and this country has been marginalizing the Kisii. However, I want to remind him that Mr. Nyachae was given a job and he was not No.1. So, is it in order for the Assistant Minister to imply that this

House and this country has been marginalizing a community which we have already given a job to head a Commission even though he was not No.1?

**The Assistant Minister for Youth Affairs and Sports** (Mr. Kabando wa Kabando): Mr. Deputy Speaker, Sir, there is nothing new that the hon. Member has told me. He should have reserved his energy. I think that all this arithmetic that we are doing; we do not have an intention to alienate any community or any part of this country. However, it is also important not to alienate credentials, performance and excellence for the sake of creating gender balance, ethnic or even regional balance. If it were to happen that individuals from one village and community would be the ones to slaughter the dragon of corruption to benefit all the people of the 42 ethnic groups in this country, so be it. If it happens that the unity of a Mkamba with the unity of a Kisii and a Luo driven by a Kikuyu and being fed by a Pokomo is what would create convenience for passage to civility of nominations, that is a tragedy. I echo, in conclusion, what the Committee has said about passion, drive and initiative. By the way, some of us speak idealistically and you may even say that we are not using our positions to create illegal wealth. However, it is the creation of illegal wealth in this country that is creating another community of disaffected, dissatisfied, disoriented and alienated citizens that are creating insecurity. It is a great shame for anyone, and I repeat that it is a great shame onto you who rises to caucus in the lobbies of Parliament, in the restaurant of Parliament or the corridors of Parliament saying that this individual must be supported because he knows how to eat *omena* very well or shares *Muthokoi* menu with you or knows how to boil *Githeri*. That is a big shame. If not for anything, the very fact that an important Departmental Committee for Justice and Legal Affairs has said no to these nominations, if I were to be appointed, I would have asked: What is it worth to my career? What is it that will constitute an inspiration and a benefit that I have to take this job at any cost?"

The individuals mentioned have very good CVs. I am not certain that they are very desperate to get any job. If this message is not taken by the full House and something that is desirable does not happen, my message to the three individuals is to actually decline the appointments for their careers. Otherwise, they will take these appointments and be like another Chief Justice that never was, a Controller of Budget that never was and another DPP that never was.

Mr. Deputy Speaker, Sir, I want to beseech the Leader of Government and the Prime Minister who was here, because the President heard us very well this morning, to actually join us those who are called idlest like the Khalwale, Kabando, Ndiritu Muriithi, Mille Odhiambo and others, to show unique and unusual leadership, by not only advising the President to even come as a Member for Othaya and join this move towards creating some freshness, but by yourself standing on the Floor of the House, particularly the Leader of Government Business, and voting passionately in support of this report, as if he had eaten *Githeri* and *Muthokoi* for breakfast.

Mr. Deputy Speaker, Sir, Kenya is on the threshold of a new beginning and all these cocoons that have been created to caucus on tribal basis, all these parochial caucusing, sometimes even possibly passing of envelopes, are coming to an end. You are going to have your cousin passed today. Tomorrow, you will have another cousin of Kabando passed from Nyeri County. All these big names may come from Nyeri, but the person living in the villages of Mukurweini does not derive immediate or even indirect benefit from the bucket of corruption.

These individuals may come from your political backyard, but I want to remind you that it is those unsung heroes, those young men and women living in the minorities, for instance, Mr. Issack Hassan, who are doing a good job. He is the first lawyer from a constituency called Fafi, I am told. But see what he has done for this country. He was not brought here by a community. Look at the work of hon. Abdikadir, from Mandera Central, he was not brought here by a community. But the problem with this country are these Kambas, Kalenjins, Luos, Kikuyus and others who think when they meet five of them, they speak for their communities, shame on them!

*(Applause)*

Mr. Deputy Speaker, Sir, thank you for the opportunity to tell these tribalists, philistines and charlatans that their time is up.

Thank you very much.

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, I stand here today to tell Members of Parliament when names are brought here for us to interrogate, pass or reject, we must take cognizance of the fact that Kenyans are watching us. Kenyans do not want to see theatrics. Kenyans want us to be responsible leaders. The people we are discussing today have children just like us. When we make allegations about those Kenyans, we must make sure those allegations are founded.

Mr. Deputy Speaker, Sir, I want these Members of Parliament to pose for a second and just imagine. Just the other day Members of Parliament were mentioned here adversely and they stood up and told us the pain they have gone through and what they were facing outside.

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. Did you hear the hon. Member say that we are causing pain to the children of the nominees by making unsubstantiated allegations when the evidence which has been tabled in this House both by myself and Imanyara, has passed the test of authenticity and the Chair has admitted that? Is that not objective contribution and sufficient engagement that what we are stating is not witch-hunt, but giving facts that are supposed to guide the decision making in the House?

**Mr. Deputy Speaker:** Order! The hon. Member is giving his opinion and is entitled to do that.

Proceed.

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, I am just going to demonstrate to this House that actually what hon. Dr. Khalwale, my friend, the Member for Ikolomani, the bull fighter has presented here is far from the truth. Indeed, it causes pain to some of these members who cannot have an opportunity to stand on the Floor of this House to defend themselves. Whether it will pass or not, let us make sure that whatever we say here is truth and is founded.

Hon. Khalwale, on Friday, very sensationally tabled a document here which he said was an affidavit from a gentleman, who is an auctioneer, who was claiming Kshs72 million from KRA. The person who rejected that payment, or who objected it was none other than Mr. Matemu, who today, we are discussing as the chair. What Dr. Khalwale did not do is to declare that he actually knew this person, and this person comes from Kakamega as it has been proved today.

Mr. Deputy Speaker, Sir, I want to talk about the man called Mumo Matemu so that Kenyans can compare what they have heard from Dr. Khalwale, hon. Imanyara and myself.

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

**Mr. Deputy Speaker:** Can you allow him to complete. You know when you rise on a point of order; it has to be a point of order, and not a point of information.

Proceed.

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir---

**Mr. Deputy Speaker:** Can you allow hon. Khalwale to proceed.

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, with all due respect, I was just setting the record straight that it is wrong for the Member to impute ulterior motives against me when the document I tabled had also been delivered to the Departmental Committee on Justice and Legal Affairs.

Mr. Deputy Speaker, Sir, more importantly, it is not wrong for the people of Kakamega, highly educated as they are to participate in any form of business. Our literacy level in Kakamega is 87.1 per cent.

**Mr. Deputy Speaker:** Order! Order! Hon. Member, can you allow hon. Members to exercise their rights to contribute and when you rise on a point of order, it better be a serious better point of order. You can object an opinion when you get your moment, and allow somebody else to also express his own opinion.

Proceed hon. K. Kilonzo.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, we were told on the Floor of this House that one Matemu Mumo, who today is being proposed as the chair did not collect money which was owed to KRA. A document which was tabled here from an auctioneer stated that Kshs72 million was supposed to be paid. KRA was established in 1995 and the only person who could maybe levy distress was the Income Tax Commissioner and no other person in that place. Even the Director-General could not levy distress. It then informed this House that when this person is indisposed, there is no work which can continue. In 2005, in this Parliament, an amendment was brought in to bring in the Commissioner-General to be part of those who could be allowed to sign distress on tax. Even the Commissioner-General could not be allowed.

I want any hon. Member who has a contrary opinion to challenge me. The Kenya Revenue Authority (KRA) is divided into the following divisions. There is one division which is for collecting huge taxes that exceed Kshs700 million. The other division is for the lower amounts of taxes, which is the domestic taxes. Mr. Matemu Mumo was neither of the two. He was a Commissioner of Support Services. The work of support services, if I can help my friends and the lawyers who are also here, is actually to deal with legal impediments. His work is to go to court to challenge anybody who says that he cannot pay taxes, like Kingsway was doing, for the court to rule. The department that is in charge of collections is the Domestic Tax Department.

Mr. Deputy Speaker, Sir, Mr. Matemu went to court on that matter and in 2007, none other than Lady Justice Wendo agreed with him. I want to table a copy of the ruling that was also tabled by Dr. Khalwale. Mr. Matemu did manage to convince the court that tax had to be paid by Kingsway and, therefore, a court ruling was given and an order issued to the Commissioner of Income Tax, Commissioner of Value Added Tax and the Commissioner-General to collect the tax. In this document, there is nowhere the

Commissioner of Support Services was told to collect the tax because it was not within his province or domain. There is no way Mr. Matemu would have done that job. He would be interfering with another Commissioner's docket. I would like to table this document.

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

Last year, Mr. Matemu, while still a Commissioner of Support Services, was recognized by none other than His Excellency the President who gave him an award. This award was given to him on Jamhuri Day, on 12<sup>th</sup> December, 2010, at State House, Nairobi. The citation reads as follows, because it is important for Kenyans to know the truth:-

“Matemu Mumo: Mr. Matemu was born in 1954 in Machakos District. He is the Support Services Commissioner, Kenya Revenue Authority. He has rendered distinguished service as a team leader for KRA ISO certification project.”

Mr. Deputy Speaker, Sir, it continues to say:-

“Protecting Government revenue through successful court actions.”

Mr. Deputy Speaker, Sir, is this person, one who has been honoured by the highest office of the land as a person who has championed court battles to ensure that revenue is collected, the same person we are saying here today that he could not collect taxes? It was not his work. I need to educate some of the hon. Members about the role of the KRA. I have just told you about the division of labour; who does what and who does what. I want to table this citation so that my colleagues and more particularly, hon. Khalwale can see how Mr. Matemu did his work very well.

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

Maybe Kenyans need to know who Mr. Matemu was even before he went to the KRA. This is because maybe some of these people saw him when he was in the KRA. For my friends who knew him many years when he was a magistrate, I want to read a letter from the High Court of Kenya about him. It says:-

“He joined this department as a District Magistrate II with effect from 18<sup>th</sup> August, 1981 after his graduate studies at the University of Nairobi and passing of the Bar examination. He worked in Nairobi before being transferred to take charge of Gatundu Resident Magistrate's Court. He was promoted”---

Mr. Deputy Speaker, Sir, it says again that this man was promoted because of good work. You cannot be promoted when you are a non-performer. He was promoted as an Acting Resident Magistrate and, thereafter, it continues to show how he worked and showed high degree of responsibility, organization and professionalism. The Registrar says that Mr. Matemu was a hardworking personality, exhibiting a pleasant and agreeable manner. Is this the same person my brother, Dr. Khalwale, and others are saying is not fit to hold this office or it is that attitude of some hon. Members, when names are brought here, like the name of the Director of Public Prosecutions (DPP)--- Some just stood and started attacking him. We must know that these people have families and relatives. Even if they do not get this job they will continue. These are professionals. We cannot afford to use the Floor of this House to cast aspersions and damage people's integrity. Tomorrow,

we will be out there and they will be here. I do not know good Kiswahili but if I was to tell these friends of mine, *leo ni sisi, kesho tutaambiwa chuma chetu ki motoni*. I do not know what that means, but I am just---

**Mr. Mbadi:** On a point of order, Mr. Deputy Speaker, Sir. The Standing Orders are very clear that if you start speaking in English, then you continue throughout. Is it in order for the hon. Member to mix languages?

**Mr. Deputy Speaker:** Proceed, hon. K. Kilonzo!

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, I want to talk about this auctioneer who made the House to come to a standstill and caused sensation by his letter being tabled here in the name of an affidavit. This auctioneer went to do an inventory at Kingsway Motors - and Lady Justice Wendo ruled against the same auctioneer – and sent a fee note of Kshs72 million.

In the letter that Dr. Khalwale tabled here, the Commissioner in charge of Income Tax, since it is not his work to deal with legal matters, referred the same to the Commissioner in charge of support services which – in brackets – is the legal department. That is the man we are discussing here today. When it got to him, Mr. Matemo sent a note back to the Commissioner saying that the man did not warrant to be paid Kshs72 million from tax payers' money. The only thing he was to be paid was a nominal fee. At that time, Kingsway Motors had rushed to court to get an injunction.

Mr. Deputy Speaker, Sir, the Income Tax Commissioner wrote to the auctioneer – Speedman - and told him that he is not going to be paid that money because the work he did was just inventory. He did not attach or auction. A man who has been denied by a person to swallow our Kshs72 million, would he talk well of the same person who actually stopped him?

*(Applause)*

**Mr. C. Kilonzo:** On a point of information.

**Mr. Deputy Speaker:** Do you wish to be informed?

**Mr. K. Kilonzo:** Yes, Mr. C. Kilonzo can inform me.

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, if you recall yesterday, the documents which were tabled by Dr. Khalwale and which he said were affidavits - they were not affidavits as per the Speaker's ruling - one of the letters which was tabled and which Dr. Khalwale was accusing Mr. Matemo of not collecting taxes, the letter is addressed to the Commissioner, Income Tax Department, Kenya Revenue Authority (KRA). I wish to pass over the letter to my friend.

*(Mr. C. Kilonzo passed the letter to Mr. K. Kilonzo)*

**Mr. K. Kilonzo:** Certainly. Mr. C. Kilonzo, you are doing a good job for Kenyans and taxpayers in this country. I table these documents.

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

**The Minister for Nairobi Metropolitan Development (Mr. Githae):** On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Do you wish to be informed?

**Mr. K. Kilonzo:** Yes, Mr. Speaker, Sir.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): The only reason why that auctioneer wrote this letter is because Mr. Mumo Matemo categorically told KRA that he cannot be paid the amount demanded. He must be paid on the amount actually received from the taxpayer. In this case it was zero. So, he was told that he will be paid a nominal amount. The auctioneer went to court. Mr. Mumo gave evidence and said that according to KRA rules, he is only entitled to be paid on the amount received. What he was saying was that if he was given an order to go and auction property because the tenant is owing Kshs2 billion, he wanted to be paid on Kshs2 billion even if he collected Kshs1. That is the only reason why the auctioneer, who comes from Dr. Khalwale's constituency---

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, I was just being informed.

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to impute improper motive on Dr. Khalwale? It was raised before by Dr. Khalwale and we left it. But we are leaving Dr. Khalwale to look like he has a vendetta against that person. These matters were brought before our Committee by somebody else and not by Dr. Khalwale. We looked at them, whether they were letters or affidavits. It is not about Dr. Khalwale. The Committee dealt with them.

**Mr. Deputy Speaker:** Order, Mrs. Odhiambo-Mabona. You are out of order! If an hon. Member stands and says that somebody comes from Dr. Khalwale's constituency, the only time you can stand on a point of order is if that information is misleading.

**Mrs. Odhiambo-Mabona:** It is misleading!

**Mr. Deputy Speaker:** Order!

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, I hope you will be kind enough to add me more minutes because I am being interrupted.

**Mr. Deputy Speaker:** Proceed!

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir---

**Mr. Olago:** On a point of order, Mr. Deputy Speaker, Sir. I never have frivolous points of order. I never do. A lot of time is being spent on the cost of auctioneer in this matter, as if that is the most relevant point. Is it in order for the Minister, Mr. Githae to stand before the House and mislead the House about fees of auctioneers when he knows or ought to know that the auctioneers' fees are charged within the Auctioneers Act and are set out?

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, on Friday, there was an insinuation on the way Mumo Matemo was appointed at KRA. Today, I have come here to make sure that those Kenyans, whose names the two Principals brought here, are not going to be vilified for no reason. I want to table here an appointment letter which shows that Mumo Matemo was actually appointed as a Commissioner of Customs and Excise with effect from 2<sup>nd</sup> February, 2002. I table.

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

With those many remarks, I wish to oppose this Report and tell hon. Members that we must support the names which are before the House.

**The Minister for Gender, Children and Social Development** (Dr. Shaban): Mr. Deputy Speaker, Sir, I beg to say that what has been brought in the Report and what has been alleged on the Floor of the House are two different things. What is surprising - and that is why I am opposing this Motion - is that all the major issues about Speedman, the Criminal Investigation Department (CID), a letter that was never an issue in the Report and things that were never raised at the Committee level.

I have gone through what Mr. Imanyara has tabled and, with all due respect to this honourable House, because we can all read English and understand it, the issues which were being questioned at the CID's office, were things to do with the Narok Branch and Matemo's name was not part of the report. I beg to table.

*(Dr. Shaban laid the report on the Table)*

Mr. Deputy Speaker, Sir, it is not fair for us to stand here and malign Kenyans. Just the other day, we watched one Dr. Khalwale talking about a person from Western Province where the Gender Commission is concerned. He was so passionate because that lady happened to come from his county. The same lady who happens to come from his county was actually number four. Numbers one, two and three were left out.

**Mr. C. Kilonzo:** On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Do you wish to be informed?

**The Minister for Gender and Children Affairs** (Dr. Shaban): Yes, Mr. Speaker, Sir.

**Mr. C. Kilonzo:** I wish to inform the honourable Minister that, indeed, the lady who was rejected was none other than Prof. Maria Nzomo who actually comes from my village and the hon. Member never spoke that day. He stood for the number four.

**The Minister for Gender and Children Affairs** (Dr. Shaban): Thank you for that information.

Mr. Deputy Speaker, Sir, we cannot be a House that sits here when we do not know certain individuals and decide that we do not like them. This is a wrong way of doing things and according to the new constitutional dispensation, we are not supposed to be bringing our personal issues in these matters.

There are hon. Members here who are known to have wanted to over-charge Agricultural Finance Corporation (AFC) on rent and today, they have come here and have been lobbying during tea time. They have been lobbying from last week. What is their interest? I think it is wrong. This Kenyan who has done such a good job in terms of revenue collection and making sure that KRA does not lose any money has got to be given his right. We cannot sit here because we did not make it when we over-estimate everything and we expect to be given free money. He did the right thing for KRA by making sure that it only collected what was due to it and only paid out what should rightfully have been paid to people.

Mr. Deputy Speaker, Sir, I could see some hon. Members getting annoyed when the issue of the Speedman Auctioneers was being discussed. I wonder, what is the---

**Mr. Mbuvi:** On a point of Information, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Do you wish to be informed, Minister?

**The Minister for Gender, Children and Social Development** (Dr. Shaban): Yeah, thank you. Please inform me.

**Mr. Mbuvi:** Mr. Deputy Speaker, Sir, this man, Phillip Jasper Wishaminy, the auctioneer, should not bring this House to a standstill. I know this man very well; he is an extortionist---

*(Laughter)*

He is a fraudster. I was with him in the Remand Prison---

*(Laughter)*

He was even obtaining bills on credit in prison!

*(Laughter)*

*(Mr. Kabando wa Kabando stood up in his place)*

**Mr. Deputy Speaker:** What is your point of order, Mr. Kabando?

**The Assistant Minister for Youth Affairs and Sports** (Mr. Kabando wa Kabando): On a point of order, Mr. Deputy Speaker, Sir. You have heard very clearly the hon. Member for Makadara saying very loudly that a person who has no opportunity to defend himself before the House is an extortionist and a conman.

*(Loud consultations)*

Mr. Deputy Speaker, Sir, I heard the hon. Member going on to say that, actually, the fraudster and conman was sharing the same room with him in the a remand. Is it in order for him not to make a full disclosure that they were actually comrades?

*(Laughter)*

*(Applause)*

**The Minister for Gender, Children and Social Development** (Dr. Shaban): Mr. Deputy Speaker, Sir, it is very important for us to know who we are dealing with. We have had reason here to sit down and listen to different people being condemned.

**Mr. Keter:** On a point of order, Mr. Deputy Speaker, Sir. It seems there are no new things coming up. Can I propose that you call upon the Mover to reply?

*(Loud consultations)*

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

**The Minister for Gender, Children and Social Development** (Dr. Shaban): Mr. Deputy Speaker, Sir, I beg to oppose.

*(Applause)*

**Mr. Abdikadir:** Thank you, Mr. Deputy Speaker, Sir. About two years ago, we called the then Attorney-General, hon. Amos Wako, to the Justice and Legal Affairs Committee and we asked him why the prosecutions concerning the Anglo Leasing were not going anywhere, and he said that the High Court had stopped both him and the Kenya Anti-Corruption Commission (KACC) from either investigating or prosecuting those cases. We asked: “Okay; when was that done?” and he said, “About one-and-a-half years ago.” We said: “What did you do about that?”, and the answer was that he had written to seek copies of the proceedings and one-and-a-half years later, the Attorney-General was waiting for the proceedings to be typed. We asked: “You have waited for one-and-a-half years?” and he said: “You know, I am not the court; I do not type proceedings. I am waiting for those proceedings to be typed.” Anybody will tell you that if you are interested in a case, you can have proceedings typed in one day, so that you can go ahead and appeal.

*(Applause)*

Mr. Deputy Speaker, Sir, the Committee was very respectful of these nominees. The Committee interviewed the nominees and discussed with the nominees; the report shows that the Committee was very respectful of these nominees. It does not call them names; it does not cast any aspersions, but the Committee also understands this: From the time that Act was passed up to date, we have been going one step forward, three steps backward as far as the war against corruption is concerned.

*(Applause)*

This House is guilty; the Executive is guilty; the Judiciary is guilty; all the institutions in this country are honestly at fault when it comes to this war! This House has to make one of two decisions, that we are not serious about this issue, do not waste taxpayers money, disband that Commission, amend the Constitution or handle this issue seriously.

*(Applause)*

Mr. Deputy Speaker, Sir, this is not an issue about calling good Kenyans who have come before this House names. This House is charged with a constitutional mandate to approve or disapprove. It is not a perfunctory job; it is not about ticking boxes and saying a,b,c, or d. It is actually about doing this job very seriously.

Mr. Deputy Speaker, Sir, we have had an Attorney-General who, for 20 years, did exactly that; it is not my job! We are not accusing Mr. Matemu of anything negative; what we are saying is, you cannot say that Kshs2.4 billion was not collected, and it is not your business, when you are the Commissioner who is in charge of legal services, part of which is to ensure that---

*(Applause)*

Mr. Deputy Speaker, Sir, if the core function of the Kenya Revenue Authority is to collect taxes, what about Kshs2.4 billion?

**Mr. Kapondi:** On a point of order, Mr. Deputy Speaker, Sir. Going by the mood of the House, I think we are basically repeating ourselves.

**Hon. Members:** No! No!

**Mr. Deputy Speaker:** Order! Order! Order! Proceed, hon. Abdikadir and conclude!

**Mr. Abdikadir:** Mr. Deputy Speaker, Sir, time has come---

**The Assistant Minister for Water and Irrigation** (Mr. Waititu): On a point of order, Mr. Deputy Speaker, Sir, I happen to have worked at the Income Tax Department. I am clear that Cap.470 defines the work of the Income Tax collector and it is only the Commissioner. Cap.476 defines the collection of the Value Added Tax (VAT). Out of the three legal collectors of tax, Mr. Matemu was none of them. Is it in order for the Member to continue misleading this House that the Kshs2.4 billion was not collected by Mr. Matemu while he was not a Commissioner in charge of collecting tax?

**Mr. Abdikadir:** Mr. Deputy Speaker, Sir, by the time you go to court and get a court judgement for Kshs2.4 billion, it is no longer tax. It is debt collection. Even if you were to follow that route, that is a debt that should have been collected and the officer in charge of debt collection---

**Mr. Deputy Speaker:** Order, hon. Abdikadir! According to hon. Waititu, the collection of any revenue, debt or otherwise, is specified in the Act. Could you controvert that by citing the Act and indicate where?

**Mr. Abdikadir:** Mr. Deputy Speaker, Sir, the core function of the KRA, and the KRA is one corporate entity, it does not have departments "x" and "y". It is a legal entity. The KRA is one legal entity. It does not have different departments called KRA "x" and KRA "y". It is one entity and every week---

**The Assistant Minister for Water and Irrigation** (Mr. Waititu): On a point of order, Mr. Deputy Speaker, Sir. I have told you specifically that I worked there and I know that the work of the KRA is not trial and error. It is properly specified. In Caps.470, 476 and 472, it is properly defined that the Commissioner of Customs and Excise Duty is supposed to perform his duties as per the Act. The Commissioner of Legal Affairs work is to follow the defaulters. Then after succeeding, he files a report to the Commissioner in charge to levy that tax.

**Mr. Shakeel:** On a point of order, Mr. Deputy Speaker, Sir. I have worked for the local authorities. I have also worked here. It says clearly that all letters are to be sent to the Clerk. It does not mean that the Clerk is the sole--- It is anybody that the Clerk gives the responsibility to. So, if it says the Commissioner, it means the Commissioner or anybody to whom the Commissioner gives authority to deal. It is not limited to the Commissioner or the Clerk.

**Mr. Deputy Speaker:** Hon. Abdikadir, can you conclude?

**Mr. Abdikadir:** Thank you, Mr. Deputy Speaker, Sir.

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

**Mr. Deputy Speaker:** Order, hon. Kutuny! Allow hon. Abdikadir to say his bit.

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

**Mr. Deputy Speaker:** What is your point of order, hon. Kutuny?

**Mr. Kutuny:** Mr. Deputy Speaker, Sir, judging from the mood of the House, it is important to call upon the Mover to reply.

**Mr. Deputy Speaker:** Order! Order! Proceed, hon. Abdikadir

**Mr. Abdikadir:** Mr. Deputy Speaker, Sir, when the Attorney-General said that it was not his business to go and look for typed proceedings, and when the gentleman says that it was not his business to collect Kshs2.4 billion---

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

**Mr. Deputy Speaker:** What is it, hon. Mwau?

**Mr. Mwau:** Thank you, Mr. Deputy Speaker, Sir. It is very important that the facts that are given before this House are true. When we start mixing the facts and propaganda, we will make a big mistake. This is a judgement that has been tabled in this House. I asked for a copy, which I have just scanned through. I am extremely surprised because, first of all, what the litigant asked for was an order of certiorari. The order he sought from the court not to pay, not because of money, but he asked that the court issue an order of prohibition, preventing the respondent from issuing any further warrants of distress, or from enforcing the warrant of distress dated 8<sup>th</sup> September, 2004 and the orders to the certified bailiff dated 14<sup>th</sup>. So, it was not the issue. I have read the---

**Mr. Deputy Speaker:** What is not in order, hon. Mwau?

**Mr. Mwau:** Mr. Deputy Speaker, Sir, the point I am trying to deliver is that this judgement does not relate to the Kshs2.4 million. I want to read out the conclusion of the judgement. The judge said:-

“In conclusion, I find no merit in the grounds in support of the application and for the reason that the applicant abused the court process by obtaining orders by concealing material facts, and the fact that there is misjoinder of the process of action, this application has no merit based upon its stand. I, therefore, strike out the motion.”

Mr. Deputy Speaker, Sir, there was no order to pay. I would like the hon. Member to show us where it says “pay”.

**Mr. Abdikadir:** Mr. Deputy Speaker, Sir, let me educate the hon. Member. In 2004, the KRA distressed, attached the property of Kingsway Motors. Kingsway motors agreed to a payment of Kshs1.5 million per week. In other words, Kingsway Motors accepted that they were going to pay Kshs1.5 million per week. Sometime later, they stopped paying. In 2006, that matter was mentioned in this House. It was after that---

**Mr. K. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. While I would want hon. Abdikadir to continue speaking, is he in order to misrepresent facts that Kingsway Motors agreed and paid yet we have just tabled documents to show that they never paid? They agreed and subsequently went to court opposing paying. We want him to present facts. Kenyans must be treated to facts.

**Mr. Abdikadir:** Mr. Deputy Speaker, Sir, when this matter was taken to court by Kingsway – and it lost this case – this gentleman came before us. He agreed that Kshs2.4 billion was outstanding and nothing had been paid. His answer was. “I did the case and I won it. Everything else belongs to somebody else”. Therein lies the issue. We had the then Attorney-General, Amos Wako, all of a sudden say, “I put the case. I asked them to give me typed copies, but two-and-a-half years later I am waiting for the typed copies.”

**Mr. Deputy Speaker:** Order, Mr. Abdikadir! We want to deal with matters of law and this is a legislative assembly. Hon. Waititu said that there are Chapters in law that define what the role of every Commissioner is. You need to get the Act, acquaint yourself with it and put the case forward. To assume the role of Commissioner of Support Services and compare it to the Office of the Attorney-General--- The Attorney-

General is comparable to the Director-General in this case. Maybe you need to get your facts right, so that you can---

*(Applause)*

**Mr. Abdikadir:** Mr. Deputy Speaker, Sir, the Attorney-General---

**The Assistant Minister for Youth Affairs and Sports** (Mr. Kabando wa Kabando): On a point of order, Mr. Deputy Speaker, Sir. This is a legal point of order and I will raise it with courage. It appears that you are debating and chairing. Please, give hon. Members an opportunity to---

**Hon. Members:** Out! Out!

**Mr. Deputy Speaker:** Order, hon. Members! This is a dignified House. It is important for the Chair to demand facts! That is the tradition of this House. For the House to proceed on, the Chair can demand those facts from the hon. Members when they are debating. For hon. Kabando wa Kabando to cast aspersions on the integrity and dignity of the Chair--- Hon. Kabando wa Kabando, notwithstanding the fact that you were my junior and friend while we were learning politics, we can still not allow the dignity of the House to be denigrated in any way. You will spend the rest of the day out there.

*(Loud consultations)*

**The Assistant Minister for Youth Affairs and Sports** (Mr. Kabando wa Kabando): I was never your junior!

**Hon. Members:** Shame! Shame!

*(Mr. Kabando wa Kabando withdrew from the Chamber)*

**Mr. Abdikadir:** Mr. Deputy Speaker, Sir, the Attorney-General in that case was acting as a lawyer.

**Mr. Kioni:** On a point of order, Mr. Deputy Speaker, Sir. Am I in order to ask, given your ruling, that hon. Waititu gives us the section of the Act? Coming on the Floor and saying Cap this and Cap that does not help in this debate.

**Mr. Deputy Speaker:** Indeed, hon. Waititu can either rise on a point of order or a point of information and give that information if he so wishes. Proceed, Mr. Abdikadir.

**Mr. Abdikadir:** Mr. Deputy Speaker, Sir, you asked for a clarification and I intend to give it. The Attorney-General was acting as a lawyer. The Commissioner of Support Services was acting as a lawyer. Both of them were advising their clients. They were exactly in the same position.

**Mr. Mbadi:** On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Do you wish to be informed, Mr. Abdikadir?

**Mr. Abdikadir:** That is all right.

**Mr. Mbadi:** Mr. Deputy Speaker, Sir, I think it is important for us as House to understand what the Committee was working on. The responsibility of collection of taxes is given to a body by a section of the law. Once the tax becomes a legal issue and it goes to court, and the court gives an order, the only person with capacity to ensure the

collection of that tax is definitely a person who heads the legal department. I want to remind this House that I am an accountant and I can work with KRA and can collect tax. However, when it comes to a legal issue and the matter has gone to court, and you expect an accountant like Mbadi to do it, it is not possible. Therefore, the person who has the responsibility under the circumstances is the person who heads the legal department.

**Mr. Abdikadir:** Mr. Deputy Speaker, Sir, the other issue is to do with the nominees. I want to come back to that. We, in this House, belong to different honorable communities. Literally one or two from each of these communities have passed through this House. Probably, the most honorable Member serving in any of the constitutional offices that has come through this House actually comes from the community that the proposed chair comes from. We have a lot of regard and respect for each of our communities.

Mr. Deputy Speaker, Sir, the Constitution says we must have regional and ethnic balance. Understanding that issue, we have a lot of regard for the communities. I agree with the hon. Minister when she said that last time when we believed in the Committee and the Committee came to exactly the same decision we are coming to, the chair of the Gender Commission was wrongly nominated. The view of the Committee was exactly the same, but the House disagreed with us. Today, we are coming back to the same position. The House may or may not disagree with us.

When you move away from what is normal which is number one should be taken; number two should follow, if you are going to move away then the Constitution requires for you to say the reason why for example---

**Mr. Keter:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for Mr. Abdikadir to say that when you move from No.1 to No.2 he disagrees with that and yet during the Gender Commission, they agreed to change and support No.4 and even the Budget Committee?

**The Assistant Minister for Water and Irrigation** (Mr. Waititu): Mr. Deputy Speaker, Sir, when we were passing the motion of the nomination of the Controller of Budget, the No.1 candidate was Mr. Njiraini. However, since some of these hon. Members in this House are allergic to taxmen, they rejected him and we picked No.4.

We went to No.4., the lady who was chosen was No.4 while we know very well that No.1 was Mr. Njiraini. Therefore, this case is not unique for Mr. Mumo to have been No.2.

**Mr. Kapondi:** On a point of order, Mr. Deputy Speaker, Sir. Since the mood of the House is very clear and we are being taken through the same argument, would I be in order that the mover be called upon to reply?

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

**Mr. Baiya:** Mr. Deputy Speaker, Sir, I would want to take this opportunity to thank the hon. Members of this House for making their contribution passionately and robustly.

By the very nature of this Motion and because of the fact that it relates to the Ethics and Anti Corruption Commission, it is divisive. This, just as my colleague Abdikadir has said is because of the critical role sought to be played by the Ethics and

Anti Corruption Commission in driving the agendas of this Constitution and of the Government to the next level.

Mr. Deputy Speaker, Sir, it has been pointed out that other than the position of the Chief Justice in the new dispensation, the other most critical agenda this country has to put the Government programme forward, is the Ethics and Anti-Corruption Commission (EACC). This country passed a Constitution in August, 2010. It promised Kenyans that the new Constitution has a very wide Bill of Rights. It also promised equity and security. It is hinged on the delivery of those rights. But we have the problem of poverty. Without alleviating poverty in this county, there is no way this Constitution is going to deliver. It has been pointed out and admitted from no other source than the Executive itself that, out of the revenues collected in this country, over Kshs300 billion gets lost through corruption. It was admitted by no less a figure than the Permanent Secretary in charge of Treasury.

Under the new dispensation, it should be understood that this House is no longer going to sit in the Executive. The Executive is going to consist of Members appointed by the President. We will then have a civil service led by an appointee of the President; a civil service that is not elected by anybody. Therefore, the mandate of the people of Kenya to ensure that they have a say in the way the Government is run has been given to this House. Therefore, I want to urge this House---

**Mrs. Noor:** On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Baiya:** Mr. Deputy Speaker, Sir, I would want to concede to the information.

**Mrs. Noor:** Mr. Deputy Speaker, Sir, I would like to inform the Mover that, last week, when this Motion was moved, I was in Mombasa discussing with Kenyans who are taxpayers. What a lady told me is that corruption in this country is a deep rooted culture and that even in her household, the maids expect to be bribed before they can do anything. I want those hon, Members who have not bribed or been bribed to stand up in the name of God. That is the situation and that is the problem we are facing in this country.

*(Mrs. Odhiambo-Mabona stood up to get  
a bottle of water)*

Milly, thank you for standing up because you have never bribed. Thank you so much.

**Mr. Baiya:** Mr. Deputy Speaker, Sir, I welcome that information. However, the basic message is this: I was trying to urge this House to bear in mind that the EACC is a key pillar in the new structure. If we miss it, then the whole delivery in terms of the new dispensation and the new Constitution will not succeed.

Let us also give the incoming executive president the legal framework and policy to deliver. The situation we have in Kenya today is that the Government, through the Budget, comes here to present very good policies, promises to eradicate corruption, poverty and so on and so forth. However, when it comes to enforcement, those policies are never realized because---

**The Assistant Minister for Industrialization** (Mr. Muriithi): On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Baiya:** Mr. Deputy Speaker, Sir, I would not mind getting the information.

**The Assistant Minister for Industrialization** (Mr. Muriithi): On a point of information, Mr. Deputy Speaker, Sir. May I inform the House that the court ruling that has been referred to concerns Kingsway suing or using the court to try and stop the KRA from recovering money from them? So, it is Kingsway suing. The judge finds that the person suing is abusing the court. Therefore, we are misrepresenting the facts here.

Mr. Deputy Speaker, Sir, the court is saying that you cannot use it to refuse to pay tax. That is the court's ruling that has been tabled. That is my information to this House.

**The Minister for Nairobi Metropolitan** (Mr. Githae): On a point of order, Mr. Deputy Speaker, Sir. We are standing here accusing Kingsway of abusing court processes. However, it is also very clear that some of our Members here want to abuse the parliamentary process. You have seen them passing notes to the Mover. Some have been saying that they are informing him but instead of informing him, they are debating. This is time wasting. The Mover is repeating himself and I would like to request that they should be put to issue.

**Mr. George Nyamweya:** On a point of order, Mr. Deputy Speaker, Sir. Honestly, we are seeking for you to guide this House. This is a serious matter that we are discussing. It is about the future of this country. We cannot allow it to degenerate into a point where, obviously, you can see there are attempts to force an issue in an unorthodox manner. We want to help this country. Let us be sensible and also be clear in our minds what we are doing. If you feel strongly that this is the person you want to put there, then wait and vote for him but do not demean Kenya by trying to do what you are trying to do.

Mr. Deputy Speaker, Sir, for the good Minister, when it suits him and his friends--  
- They are quite pleased to tell us how they were friends in class, how they were classmates and how they would do other things. Let the other side also explain to Kenyans why they think it is not possible to accept this person.

## PROCEDURAL MOTION

### EXTENSION OF HOUSE SITTING

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): On a point of order, Mr. Deputy Speaker, Sir. Looking at the fact that we have only five minutes left before the end of today's sitting, and in view of the need to conclude the business before the Floor of the House, and particularly the next order which is very critical, I beg to move:-

THAT, notwithstanding the provisions of Standing Order No.22, this House extends the Sitting Time of the House today until the conclusion of business under Order Nos.10 and 11.

**Mr. Deputy Speaker:** Order! Hon. Members, as much as we are all very passionate about the debate today, we have to also respect our own rules and the dignity of the House. Indeed, the Chair had a notice on the extension of the House and it had been approved. The Chair will now put the Question.

**Hon. Members:** No! No!

**Mr. Deputy Speaker:** Order, hon. Members! If it means sending out half of this House in order to ensure order in the House, I will do it. If it will be an issue between the

dignity of the House and the way some Members want to behave, the Chair is very resilient about that.

*(Question proposed)*

**Mr. Deputy Speaker:** Hon. Khalwale, you are on your feet. Please, proceed!

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir, I very well understand the Vice-President and Minister for Home Affairs, when he moves this Motion. However, may the House take note, and indeed, the whole country, that because of the type of machination that goes on in the networks of corruption, we do not even know the real intention of this Motion by him.

Mr. Deputy Speaker, Sir, I want to believe that he is doing all these---

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

**Mr. Deputy Speaker:** Order! The hon. Bony Khalwale and any other hon. Member who wants to contribute on this, the Motion is the Extension of the House, you can give the merits and demerits of either extending or not extending, and not the content of the debate that is essentially before us now.

**Mr. Ruto:** On a point of order, Mr. Deputy Speaker, Sir. Would I be in order to request that Dr. Khalwale be asked to apologize to the Vice-President and Minister for Home Affairs for casting aspersions on his intention because he suspects what is motivating him is some corruption networks? He said that, as much.

**Mr. Deputy Speaker:** Clearly, once the Chair has given a ruling on the same, we are past that. The issues should have risen at the appropriate time.

Proceed now, hon. Dr. Khalwale.

**Dr. Khalwale:** Thank you, Chair, for protecting me.

Mr. Deputy Speaker, Sir, we really are disappointed that none other than hon. Abdikadir was unable to conclude his contribution, because of the same attempt.

Mr. Deputy Speaker, Sir, we about also to be disappointed that the Vice-Chairperson of the Committee is not being given an opportunity for us to understand this stuff even more. If only Members of Parliament could allow us to give our facts, they give their facts, and then we vote, based on the weight of evidence.

This matter is so serious that one wrong turn now will make it difficult for us to enhance our fight against corruption. For this reason, I want to propose that we allow hon. Baiya to immediately conclude so that we vote before the House goes on Recess. We conclude it quickly.

**The Vice-President and Minister for Home Affairs (Mr. Musyoka):** On a point of order, Mr. Deputy Speaker, Sir. Indeed, I was going to plead that the Question be put because it is a procedural Motion.

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

**Mr. Deputy Speaker:** Order! hon. Members, when the Chair is on his feet or her feet, everybody should freeze.

Order, hon. Members! The Motion itself is about the extension of the House and you can bet your life that the Chair will put the Question before 6.30 p.m. reaches. That is essentially the substance of the Motion, itself. That is how the tradition of the House has been. The Chair will do that right away.

*(Question put, and agreed to)*

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

**Hon. Members:** Division! Division!

**Mr. Deputy Speaker:** Order, hon. Members, you can now sit. We have the requisite number for a Division, and the Chair orders that the Division bell be rung

*(The Division bell was rung)*

### DIVISION

*(Question put and the House divided)*

*(Question carried by 48 votes to 46)*

**AYES:** Messrs. Ali H.M., Bett, Dr. Gesami, Messrs. Githae, Haji, Hassan, Kaino, Prof. Kaloki; Messrs. Kamau Jamleck Irungu, Kambi, Kapondi, Keter; Mrs. Kilimo; Messrs. Kilonzo C., Kilonzo K., Kiptanui, Kiuna; Mrs. Kones, Mr. Kutuny, Dr. Laboso, Messrs. Lagat, Letimalo, Litole, Mbai, Ms. Mbarire, Messrs. Mbuvi, ole Metito; Dr. Munyaka, Messrs. D. Muoki, Murgor, Musila, Musyoka, Muthama, Mwaita, Mwathi, Mrs. Ngilu, Messrs. Njuguna, Nyamai, Nyambati, Okemo, Otieno, Oyongo Nyaweya, Poghisio, Ruto; Dr. Shaban, Mrs. Shebesh, Maj. Sugow and Mr. Waititu.

**Tellers of the Ayes:** Mr. Kambi and Dr. Otichilo.

**NOES:** Messrs. Abdikadir, Anyanga, Baiya, Bahari, Chanzu, Chepkitony, Dr. Eseli, Messrs. Gitari, Githunguri, Eng. Gumbo, Messrs. Kamama, Keya, Dr. Khalwale; Messrs. Kioni, Konchela, Lessonet, Magwanga, Eng. M.M. Mahamud, Messrs. Mbadi, Mbiuki, Midiwo, Dr. Monda, Messrs. Munya, Muriithi, Musyimi, Mwadeghu, Dr. Mwiria, Mrs. Noor, Mr. Nyamweya George, Mr. Ochieng, Mrs. Odhiambo-Mabona, Messrs. Ogindo, Olago, Prof. Olweny, Messrs. Ombui, Omollo, Orengo, Dr. Otichilo, Eng. Rege; Messrs. Ruteere, Sambu, Shakeel, Wamalwa, Wambugu, Yinda and Zonga.

**Tellers of the Noes:** Eng. Rege and Mr. C. Kilonzo.

**ABSTENTION:** Mr. Gaichuhie.

**Mr. Deputy Speaker:** Order, hon. Members! The result of the Division is that the Motion is carried. Now, you can open the doors, withdraw the Bar and proceed! Mr. Baiya can now proceed on with his contribution.

*(Debate on the Motion on nomination of  
Chair/Members of EACC resumed)*

**Mr. Baiya:** Mr. Deputy Speaker, Sir, I was on the point where I was trying to emphasize to honorable colleagues that, under the new Constitution, the fight against corruption is, indeed, a key pillar in terms of delivery of the other ingredients against corruption. Unless this country reckons with the menace of corruption, there is no doubt that no gains will be realized in all the rest, including upholding of human rights and making decisive inroads against poverty in this country and so on.

It is not really something that one can emphasize. Every year, the Government comes up with policies, guidelines and blue prints of programmes that it intends to roll out; only for the implementation, itself, to fail to achieve the goals or policies that the Government had in mind, thanks to corruption.

We have seen projects that actually fail because of poor implementation or non-implementation and the core reason is the menace called corruption.

Mr. Deputy Speaker, Sir, under the new dispensation, accountability by Members of Parliament is through the electoral framework. Under the new dispensation, where we are going to have non-elected secretaries serving in the Cabinet, the threat of that menace becoming uncontrolled is real. That is why a very vibrant Anti-Corruption Authority is very important.

I have no doubt in my mind that a serious Anti-Corruption Commission would not focus on the history before the new Constitution. Its main focus ought to be on effective implementation of the on-going budget process to ensure that there is efficiency and effective utilization of Government resources. So, it would be very disheartening if this House was to fail in terms of its obligation to implement the new Constitution and to ensure that there is a strong and effective Anti-Corruption Commission.

Mr. Speaker, Sir, when we were faced with the three candidates who were earmarked to head this new Commission, I want to assure this House that the personalities involved or their ethnicity was far from our minds when we looked at them. Our concern was what kind of values and character they add and how they would fit into the new dispensation and particularly their ability to shepherd the new Commission under the new dispensation. I must say that, that is what we were looking for. When we talk about passion, drive and initiative, these are attributes of people we are relying upon to drive the new values under Chapter six, Article 73, of the new Constitution.

In Chapter Six, Article 73 on leadership and integrity - it is a requirement that integrity will be critical in leadership, overall. The Commission that will be in charge of enforcing integrity will be the Ethics and Anti-Corruption Commission. This is one Commission which cannot afford to have a candidate who can be questioned in any of these parameters. Integrity is one and the other one is suitability for the office. That is why we are saying that we found these candidates, as much as they are Kenyans and are qualified in their own right, in terms of the threshold that would bring them in the purview of Chapter Six, we found them wanting. The Departmental Committee on Justice and Legal Affairs, notwithstanding its challenges and difficulties in the past, had no difficulty in making a unanimous resolve that we must advise this House that these candidates are not suitable and we must refer them back to the Executive with recommendations that they give us candidates who are suitable.

I would like to urge this House to bear in mind that the concern about corruption is not simply a concern of this House but a concern of Kenyans everywhere. The real victims of corruption are the people who are supposed to receive services from the

Government or development programmes. However, they end up being victims when this is not realized due to the menace of corruption.

I have not heard any Member who has contributed alluding, even in the faintest manner that they would like to have a weakened institution in terms of its ability to check corruption. I would like to inform this House that the biggest challenge we will have if we do not agree with the resolution of this Committee is that we will have a Commission of weak persons whose credibility and integrity has been challenged. It is not the business of the Departmental Committee on Justice and Legal Affairs to throw mud at the candidates. The vetting process should not be made or turned into a mudslinging session. Where we found issues that touch on their credibility, we have put them to you. Even when challenges were made, we made evidence available and the truth be told. We have enumerated the reasons why all these candidates are wanting. We have actually stated these reasons quite clearly.

If this House was to move ahead and confirm the names against the recommendations of the Committee of Justice and Legal Affairs, that would be most unfortunate because it would be a challenge on whether the House has the political will to combat corruption in this country and, indeed, this would be the real test.

Mr. Deputy Speaker, Sir, some Members accused our Committee of looking for different criteria that is not set out in the law. I think they have missed the point because they did not consider what the Constitution says. We were not interested in any other concern, but persons who will bring the ability to drive the anti corruption Commission.

Mr. Deputy Speaker, Sir, lastly, we have seen the two previous occupants of this office of the anti corruption Commission. The last occupant was actually hounded out in circumstances that reflected the transition mechanism. The worst that this Parliament can do is to actually show that its concern is not about the struggle and fight against corruption, but other consideration. That will send the wrong message and defeat the purpose of the statute. Kenyans will be challenged to comprehend the meaning of our Constitution. We need to support its implementation because we voted for it.

Mr. Deputy Speaker, Sir, this House needs to be reminded that it has also denied this Commission prosecutorial powers. Without prosecutorial powers, even if it actually comes out with clear investigation, it will still be subject to the approval of the DPP. There are actually checks and balances. I do not think it has any other motive other than combating corruption and ensuring the due process on those who are actually suspects before the Commission.

For these reasons, we have done our part. I am happy our Committee was able to stand unanimously in making this recommendation, which I urge the House to approve.

With those remarks, I beg to move.

*(Applause)*

**Mr. Deputy Speaker:** Order! It has been drawn to the Chair's attention that some Members put on the microphones when they are saying ayes, or noes. In the event that happens, the Chair as we all know has many eyes. It will be left with no option, but to take very stern measures against any Member who does so.

*(Question put and negatived)*

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

**Hon. Members:** Division! Division!

**Mr. Deputy Speaker:** Order, hon. Members! The requisite number for a Division is there. The Chair directs that the Division bell be rung.

### **DIVISION**

*(The Division bell was rung)*

### **DIVISION**

*(Question put and House divided)*

*(Question negatived by 50 votes to 49)*

**AYES:** Messrs. Abdikadir, Anyanga, Bahari, Baiya, Bifwoli, Chanzu, Dr. Eseli, Messrs. Gaichuhie, Gitari, Githunguri, Eng. Gumbo, Messrs. Kamama, Keya, Kioni, Konchella, Dr. Khalwale, Messrs. Kombo, Litole, Magwanga, Mbadi, Metito ole, Midiwo, Munya, Murgor, Muriithi, Musyimi, Mwadhegu, Dr. Mwiria, Mrs. Noor, Messrs. Nyamweya George, Obure, Ochieng, Mrs. Odhiambo-Mabona, Messrs Ogindo, Olago, Prof. Olweny, Messrs Ombui, Omollo, Onyancha C, Orenge, Dr. Otichillo, Mr. Otieno, Eng. Rege, Messrs. Ruteere, Sambu, Shakeel, Wamalwa, Yinda and Zonga.

**Tellers of the Ayes:** Messrs. C. Onyancha and Mr. K. Kilonzo.

**NOES:** Messrs. Chepkitony, Farah, Dr. Gesami, Messrs. Githae, Haji, Hassan, Jamleck Irungu Kamau, Kaino, Prof. Kaloki, Messrs Kambi, Kapondi, Keter, Kilimo, Kilonzo C, Kilonzo K, Kiptanui, Kiuna, Dr. Kones, Mrs. Kones, Mr. Kutuny, Dr. Laboso, Messrs. Lagat, Letimalo, M.H. Ali, Eng. M.M. Mahamud, Messrs, Mbai, Ms. Mbarire, Messrs. Mbiuki, Mbuvi, Dr. Monda, Dr. Munyaka, Messrs. Muoki D, Musila, Musyoka, Muthama, Mwaita, Mwathi, Mrs. Ngilu, Messrs. Njuguna, Nyamai, Nyambati, Okemo, Oyongo Nyaweya, Poghisio, Ruto, Dr. Shaban, Mrs. Shebesh, Maj. Sugow, Mr. Waititu, Capt. Wambugu.

**Tellers of the Noes:** Mrs. Noor and Mr. Jamleck Irungu Kamau.

**Mr. Deputy Speaker:** Order, hon. Members. There are two things I would like to tell the House. One is that the Speaker or the Deputy Speaker of the National Assembly of Kenya has both the original and a casting vote under the Standing Orders, and as far as the rules of the House, or the law, are concerned. That notwithstanding, whether the Chair voted or did not vote, it would not have made any difference to the results. When there is a tie, the Motion is lost and when the Motion is lost the reverse is basically what happens. The Member of Parliament for Lagdera, who is the Deputy Speaker, has on his own volition opted to vote for this Motion because he has a conscience, and a position and he is a politician like the rest of you. So, the position of the Chair is merely symbolic.

Having said that, I would like to announce the results of the Division. The Ayes are 49---

**Mr. Shakeel:** Corruption!

**An hon. Member:** Shame on you!

**Hon. Members:** Throw him out! Out!

**Mr. Deputy Speaker:** Hon. Members the Ayes are 49 and the Noes are 50.

*(Applause)*

The Motion is lost. The upshot of that is that the list of the members of the Ethics and Anti-Corruption Commission are the following:

- |                              |   |             |
|------------------------------|---|-------------|
| 1. Mr. Mumo Matemu           | - | Chairperson |
| 2. Prof. Jane Kerubo Onsongo | - | Member      |
| 3. Ms. Irene Cheptoo Keino   | - | Member      |

*(Loud consultations)*

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

**Mr. Deputy Speaker:** Order, hon. Members. We now unlock the doors and open the Bar.

Hon. Members, the Chair is now calling for the next Order.

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

**Mr. Deputy Speaker:** Is it with regard to the next Order?

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

**Mr. Deputy Speaker:** Order! The Chair has called for the next Order.

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

**Mr. Deputy Speaker:** Is it with regard to the next Order?

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, it is on a matter of procedure.

**Hon. Members:** No!

**Mr. Deputy Speaker:** Order. The Chair has called for the next Order.

**Dr. Khalwale:** On a point of Order, Mr. Deputy Speaker, Sir. Every time we make a decision in this House, we create a tradition or we uphold that tradition. I am glad that the voting has ended the way it has. However, on a purely point of procedure, I would like to be guided. Yes, indeed, you have two votes. You have the deciding vote and the casting vote. With all due respect to you, the deciding vote which you have applied today, you apply after the results have been announced to the House and you are perfectly in order.

**Hon. Members:** No! No!

**Mr. Deputy Speaker:** Order! Hon. Members, the rules are very clear.

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, can I---

**Mr. Deputy Speaker:** Order! You have been here for two terms and you do not even know the rules of the House. Could you allow me to educate you on the rules?

When you look at the list of the hon. Members who are here, look at No.26. That is now an original---

**An hon. Member:** But you voted late!

**Mr. Deputy Speaker:** Notwithstanding that, even if the Chair has not cast a vote; the Chair has not broken a tie. Whether the Chair was going to vote or not was not going to make any difference about the results here.

Having said that---

*(Loud consultations)*

Can we have order here? The Motion is carried. I have called for the next Order. If anybody rises on a point of order or the same, the Chair will take stern action.

Hon. Baiya, could you, please, proceed and move the next Motion?

ADOPTION OF REPORT ON NOMINATIONS TO  
JUDGES AND MAGISTRATES VETTING BOARD

**Mr. Baiya:** Mr. Speaker, Sir, I beg to move the following Motion.

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the approval of the nomination of Justice F.M. Chomba from Zambia and Justice Albie Sachs from South Africa for appointment as members of the Judges and Magistrates Vetting Board laid on the Table of the House on Wednesday 14<sup>th</sup> December, 2011.

Mr. Deputy Speaker, Sir---

**QUORUM**

**Mr. Shakeel:** On a point of order, Mr. Deputy Speaker, Sir. We have no quorum.

**Mr. Deputy Speaker:** Can you ascertain and establish that? Yes, there is no quorum. Ring the Division Bell.

*(The Division Bell was rung)*

*[Mr. Deputy Speaker left the Chair]*

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

**ADJOURNMENT**

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, there being no quorum, the House stands adjourned until tomorrow, Wednesday, 21<sup>st</sup> December, 2011, at 9.00 a.m.

The House rose at 8.05 p.m.