

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 21st December, 2011

The House met at 9.00 a.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

Report of the Departmental Committee on Agriculture, Livestock and Co-operatives on the Agricultural Sector Retreat for the Departmental Committee on Agriculture, Livestock and Co-operatives on 15th to 18th December, 2011.

(By Mr. Mututho)

NOTICE OF MOTION

ESTABLISHMENT OF LIVESTOCK INSURANCE FUND

Mr. Duale: Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, aware that livestock farming is a major source of income for the people living in the Arid and Semi-Arid Areas in the country---

Mr. Speaker: Order, Member for Dujis! You cannot move the Motion! You can give Notice!

Mr. Duale: Mr. Speaker, Sir, I apologize.

However, I beg to give Notice of the following Motion:-

THAT, aware that livestock farming is a major source of income for the people living in the Arid and Semi-Arid areas in the country; deeply concerned about the devastation caused by the perennial drought in most parts of the country, especially in the ASAL areas, that has occasioned heavy losses to livestock farmers thus greatly affecting them financially; noting that many farmers have lost almost all their livestock and experienced a sharp reduction in the quantity and the quality of the produce due to the harsh climatic conditions in the ASAL areas; convinced that unless these farmers are protected from the harsh climatic conditions, livestock farming is likely to face the risk of irreversible economic realm, this House urges the Government to urgently establish a Livestock Insurance Fund to cushion livestock farmers in all the ASAL areas against the loss occasioned by the perennial drought.

QUESTIONS BY PRIVATE NOTICE

CONSIDERATION OF 2009 CENSUS RESULTS IN CREATION OF CONSTITUENCIES

(Dr. Khalwale) to ask the Minister for Justice, National Cohesion and Constitutional Affairs:-

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?

(Question dropped)

KILLING OF CLEMENT ATIANG' OPIYO

(Mr. Ochieng) to ask the Minister of State for Provincial Administration and Internal Security:-

(a) Under what circumstances was Mr. Clement Atiang' Opiyo, a former teacher and a husband to the Chief of Agoro West location in Nyakach, killed at his home on or about 23/11/2011?

(b) Have any suspect(s) been arrested in relation with the murder and, if not, why?

(c) What measures has the Minister taken to ensure that security is enhanced in the location and its environs?

(Question dropped)

LIST OF AVIATION MEDICAL EXAMINERS IN KENYA

(Mr. Wambugu) to ask the Minister for Transport:-

(a) Could the Minister provide a list of all qualified and approved aviation medical examiners operating in Kenya?

(b) Under which conditions may a Medical Certificate issued to a flight crew member be suspended before expiry and could the Minister state under what circumstances the Kenya Civil Aviation Authority's (KCAA) medical certificate issued to Capt. P. M. Waweru on 17th January, 2011 was suspended on 26th May, 2011 and could the Minister table the medical report used in the suspension?

(c) Is the Minister aware that due to the suspension of the medical certificate, the captain subsequently lost his job at Kenya Airways and what action will the Minister take to restore the officer's medical certificate?

Mr. Speaker: Hon. Members, with respect to Question No.3 by Private Notice, I am on notice that the Member for Mathioya is engaged elsewhere and may, therefore, not be able to get here timeously. So, in those circumstances, I will defer Question No.3 by Private Notice until such date and time that the Member for Mathioya will be available.

(Question deferred)

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

Mr. Speaker: Any Statements for delivery today? Deputy Leader of Government Business, are there any Statements which are ready? I thought there would be some, but let us have an indication from you.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I am not aware of any that are ready for today. Given the mood of the House, perhaps, we should have the Statements at the next opportunity.

Mr. Speaker: Fair enough! Hon. Members, are there any Members who have requests for Statements? That then concludes Order No.7. Next Order!

The Clerk-at-the-Table: Order No 8: Procedural Motion!

POINT OF ORDER

IMPLICATIONS OF REJECTION OF COMMITTEE REPORT ON NOMINEES TO EACC

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

Mr. Speaker: Hon. Midiwo, at this point, Order No.8 has already been called. Your point of order, as you put me on notice, was going to concern business of yesterday. So, you should actually have stood up before we called Order No.8, but because we have not transacted Order No.8, you may proceed.

Mr. Midiwo: Mr. Speaker, Sir, I am happy that you have woken up in a good mood and you are lenient to me. I thank you so much. The issue I want to raise is fundamental. I did ask you to indulge me.

Yesterday, this House rejected the Report by the Departmental Committee on Justice and Legal Affairs, which recommended the rejection of the nominees to the Ethics and Anti-Corruption Commission (EACC) by the President and the Prime Minister. Last week, you made a ruling when hon. C. Kilonzo attempted to introduce an amendment to a Motion which would have altered the spirit of that Motion. I want to say that you were right in your ruling, but I want to plead with you. The rejection of that Motion does not mean approval of those names by this House.

Mr. Speaker, Sir, two weeks ago, we adopted a Report that approved the nominees to the National Gender and Equality Commission. I moved an amendment to alter that Report to allow for the approval of Ms Winny Lichuma. What would it have been if this House had thrown out that Report? Would it have meant that Ms Winny Lichuma would have been approved and the other nominees would have been thrown out? The Report would have been negated.

The law says that nominees by the Executive must be approved by the House. I want to put it to you that what we did yesterday was not an approval of the names. I am

not a lawyer but I agonised over this issue overnight. I am convinced that the import of what happened is that the persons stand nominated by the President and the Prime Minister, but have not been approved by this House. Therefore, they have to go back to the nominating authorities to be re-sent to Parliament, so that the Committee can vet them again and review its Report. That will provide another opportunity for this House to approve those nominees or disapprove them.

Mr. Speaker, Sir, I want to leave it at that but I believe that what transpired yesterday does not satisfy the constitutional and the legal requirement of approval. I want to plead with you that the process we have begun as a country, of Parliament approving nominees of the Executive, was never there before. Therefore, this Report cannot be compared with an adverse report about another public officer, or another Kenyan, whose name comes here and Parliament, in its wisdom, feels that the Committee is not right in accusing somebody. Therefore, after that Report was rejected, what obtained was that the names, or the record of the said persons, did not remain in the records of Parliament.

This is a precedent we are trying to set as a country. I do not believe that if we treat these names as approved, future nominations for interviewing by Parliamentary Committees will be properly safeguarded by this House. This House must carry out its responsibility in the implementation of the Constitution. We must do the right thing for Kenyans. When aspersions are cast on a nominee, this requires us to go an extra mile to prove or disapprove them. What this House did yesterday was to give the Government a chance to go back and investigate the aspersions and allegations levelled against the individual. Parliament cannot investigate them.

Mr. Speaker, Sir, if the appointing authorities feel that they are not adverse enough, they can follow the normal channel and bring the names back to the House for another consideration. Therefore, I submit that a negative Motion did not constitute an approval of the nominees.

I thank you and wait for your ruling.

Mr. Speaker: Order, Joint Chief Whip and Member for Gem! I have heard your arguments, except that there is something you have not done. You have referred to the law but you have not indicated to me, or to the House for that matter, which law. Even as you ask me to reflect on this matter and give directions, I really want to know where you are coming from, so that I can help you to know where you should go.

Mr. Midiwo: Mr. Speaker, Sir, there are two laws; one is the Constitution itself, which requires that these people be nominated and approved by Parliament. The Mungatana Vetting---

Mr. Speaker: Hon. Midiwo, could you be kind as to give me which particular Article of the Constitution?

Mr. Midiwo: Mr. Speaker, Sir, I cannot tell you exactly which Article but I believe that Chapter Six kicks in. It deals with nominations. It says that Parliament shall enact a law that will create this particular Commission. There is also an Act that we passed not very long ago, which deals with vetting of public officers. The Bill was sponsored by hon. Mungatana. That law says that the only time nominees can be deemed to have been approved by Parliament is if there is inaction by the House. It says that if names are not approved or disapproved within 14 days those names shall be deemed to have been passed.

Mr. Speaker, Sir, that is as far as my knowledge of law goes, and I believe that my logic is very sound. I have agonised over this issue and I beg for your indulgence.

Mr. Speaker: Hon. Members, obviously, that is a matter that has far reaching implications, as argued by the Member for Gem. So, I want to hear a few of you and then we will try and give directions timeously. We will want to be able to give directions before the end of business in this sitting. So, those of you who have any views on this matter, they will be useful.

Mr. Olago: Mr. Speaker, Sir, the issue canvassed by hon. Midiwo is very grave, and we should consider it as such because we are dealing with a new area, and we need to set precedent that we can comfortably follow in future. Hon. Midiwo was clearly referring to the Public Appointments (Parliamentary Approval) Act, Act No.33 of 2011. As I was rushing to this session of Parliament, I was researching on this subject, because I also thought that it is very important but I did not complete my research because I had to come. I know that what is expected of the House is approval.

Mr. Speaker, Sir, to the extent that the Motion before the House was a negative Motion, seeking non-approval of the nominees, then rejection of that negative Motion, in my humble view, did not result in making the Motion positive. To the extent that this House rejected the Report of the Departmental Committee on Justice and Legal Affairs, in which I have the honour to sit, the result of the rejection of that Motion would be that the nomination by His Excellency the President remains as it came to the House. It is not tantamount to an approval of the recommended names.

It was not tantamount to an approval of those names. Standing Orders that refer to Motions, as the House is aware, are found in Part 13, Motions and Amendments, starting from Standing Order No.47. Nowhere in these rules is it indicated that a negative Motion, if rejected by the House, will result in a positive Motion. So, it will be left to reason, logic, tradition and customs of the House for us to look at and reach a conclusion.

That is why, in my humble view, looking at the Public Appointments (Parliamentary Approval) Act, 2011, as read together with the relevant provisions of the Constitution, this would have the result that what Parliament did yesterday was simply to reject the Motion of the Departmental Committee on Justice and Legal Affairs, but not to approve the nominees. This is a matter that needs ventilation seriously, so that we set a precedent that is not only based on the Standing Orders, but also on the Constitution and the law, and so that in future, we will know what should be done in the House.

Mr. Speaker, Sir, in my humble view this matter needs deeper research, so that it is ventilated on properly.

Mr. Speaker: Order, hon. Members! I want to restrict further points of order to just a maximum of five. Those of you who will be lucky to fall within the five, I will hear you. Those who will fall outside, I am afraid you will be heard another day. Let us hear the Chair of the Implementation of the Constitution Oversight Committee (CIOC).

Mr. Abdikadir: Mr. Speaker, Sir, you asked an important question of the Chief Whip which I hope to clarify. You asked specifically which laws state that Parliament will approve. Article 79 of the Constitution talks about the establishment of the Ethics and Anti-Corruption Commission. It states that the Commission will have the status and powers of a Commission under Chapter 15 for purposes of ensuring compliance with and enforcement of the provisions of this Chapter. Then under Chapter 15 in terms of appointment, Article 250 of the Constitution says:

“The Chairperson and each member of a Commission and the holder of an independent office shall be:

(a) identified and recommended for appointment in a manner prescribed by national legislation

(b) approved by the national assembly”.

The national legislation was enacted by this House. The Ethics and Anti-Corruption Commission Act, which this House passed, also requires the positive approval.

Mr. Speaker, Sir, the House made a decision last night and we have no problem with that. For purposes of setting precedent, it should be very clear henceforth what exactly that decision will portend in future in the event that we have tie. We need to have clarity on this specific issue. We were hoping that the Speaker would exercise his mind on the issue and give directions for the future, so that in the event that such a situation recurs, everybody is very clear of what it means.

While you consider that, Mr. Speaker, Sir, is it also possible for you to clarify for us what, under those circumstances, the view of the House should be for the person in the Chair at that time to also vote, and their vote is a deciding vote? This should also become part of your ruling. It is not because we have any issue with the vote, but we want to be clear as we move forward in terms of precedent how that should happen in future.

Mr. Speaker: That is fair enough, Mr. Abdikadir, except that you are introducing a different angle to it. As a smart lawyer, I think you have in the first place indicated that you want to contribute to the point of order raised by the Chief Whip, but you have introduced another angle. You are asking what the effect of your vote was.

Mr. Abdikadir: Mr. Speaker, Sir, may I---

Mr. Speaker: Order! I have heard you. I do not think I want to hear you beyond there.

The Assistant Minister for Industrialization (Mr. Muriithi): Mr. Speaker, Sir, in providing the House with direction, I think it will be most appropriate for you to look into that question raised by hon. Abdikadir. You have been firm and categorical about the dignity of this House, and how it must not only conduct its business, but be seen by the entire world and this country to conduct its business. So, in a case where the Chair throws out--- It is the duty of the Chair to ask hon. Members to step out and cite them for misconduct or other reason and then proceed to vote---

Mr. Speaker: Order, hon. Nderitu Muriithi. I think you are getting into an area that is murky, and I do not think I will allow you to go into that area because the Chair is corporate. The actions of any person presiding, including the Deputy Speaker, who was presiding during yesterday’s session, when that business was transacted, would be upheld by the rest of the membership of the Speaker’s Panel. So, if you want to speak to the import of the resolution of the House on that Motion, that would be different. I will receive that and listen to it kindly, but I will not take kindly to a situation where you want to challenge the decision of the Deputy Speaker, for example, in ordering a Member to withdraw from the House. This is because I do not have the benefit of knowing under what circumstances the Deputy Speaker deemed the conduct of that Member to be out of order.

The Assistant Minister for Industrialization (Mr. Muriithi): Mr. Speaker, Sir, I apologize and stand guided. The issue as to whether the rejection by the House of the

Committee's Report equaled an approval, in my view, needs very clear guidance, so that in debating and canvassing matters, we do not end up in a situation where we do things in reverse. Approval must be direct and must be canvassed through a specific Motion to approve a specific matter or recommendation or persons for a specific reason. I hope that you will be persuaded that this decision of the House to reject the Report, no matter the circumstances, could not, possibly, be equal to the approval of those specific names.

Mr. Duale: Thank you, Mr. Speaker, Sir. I was not in the House yesterday, I was in my constituency. However, Parliamentary Committees are a creation of this House and the final verdict on Committee reports lies in either the approval or disapproval of the same by the whole House. The debate was as per the Standing Orders. Members debated. They looked at the Report and the recommendations. This House has the moral authority to disagree with any Committee's recommendation. What is the essence? When it agrees with a Committee's recommendation, that means adoption and, therefore, the way forward. If it disagrees with a Committee's report, then that means that the verdict of the whole House carries the day.

Mr. Speaker, Sir, coming to the issue of the division that took place, Standing Orders No. 64 and 65, are very clear that even when the House ties in terms of numbers, it is only the substantive Speaker and the Attorney-General who are exempted from this and that anybody else who is in the Chair can give his vote to either side of that.

Mr. Speaker, Sir, I think this country needs to move forward. I think Parliament must be respected and the Standing Orders must be followed. Chapter 6 talks about integrity. Hon. Members had all the time to bring all the evidence against the three. For the case of Lichuma, I was in this House. When there are seven names and the contentious issue is only one name, then an hon. Member can bring an amendment to either remove that name or support it. However, for this case, the Committee rejected all the three names.

The wisdom of this House felt in a vote that the position of the Committee was not the same. I need you to give a ruling in the essence that we should delink politics and regional interests from the whole element of the three names and what happened yesterday in Parliament.

Mr. Speaker: Thank you, Member for Dujis. Despite your baiting, I will not be tempted to give any ruling on politics.

Mr. Ogindo: Mr. Speaker, Sir, I do not want to question the verdict that was arrived at yesterday. However, I want also to give my contribution in view of the precedent that we are setting. Article 250 Part 2 of the Constitution requires that there is parliamentary approval. What we had yesterday was a Motion by Committee seeking the disqualification of the names. That Motion was defeated. I think as a legislator, I try to imagine what the spirit of the law is.

In my view, the spirit of the law in the Constitution and in the Ethics and Anti-Corruption Commission Act that requires parliamentary approval. It requires this approval to be expressed. The express approval is obtained by putting the question whether we approve or disapprove.

Mr. Speaker, Sir, when you put a question for us to support the disapproval of these names and it is negated, it is not fair to now want to get approval by inference. In such a case, you can draw inference in either direction. I believe this is a dangerous

precedent we are setting. We need to get express approval that gives express mandate for those people to hold the offices. I want you to consider that as you apply your mandate.

Dr. Khalwale: Mr. Speaker, Sir, I want to speak on this issue and draw your attention to Standing Order No.1(2) which cites the issue of precedent. Once a precedent is set, it becomes the tradition of the House. So, whatever you will guide us on will henceforth become the tradition of doing business in this House.

Mr. Speaker, Sir, you will remember when the same Committee brought the name of Cecil Miller when we wanted to appoint him as the chair of the IIEBC, the House rejected. But at that time, the Committee had come before this House asking us to approve the name of Cecil Miller. When there was a tie, the result was that Cecil Miller's name could not go through because the approval that was being sought had not been gotten.

Yesterday what came before the House was a Motion to reject. The Constitution says that this Parliament shall give its concurrence on a matter like this one. If we set a precedent, then it will mean that will be the way---

Mr. Speaker: Order, Member for Ikolomani! So that the record is accurate, what did you say came before the House yesterday?

Dr. Khalwale: Sorry, Mr. Speaker, Sir. Let me just be clearer. The Motion that came before the House yesterday was a report of the Committee which was requesting the House to reject the names of the nominees. I hope I am now clear.

Mr. Speaker: That would not be accurate. What business was before the House yesterday?

Dr. Khalwale: Mr. Speaker, Sir, yesterday we were debating the Motion of the Report by the Committee on Legal Affairs and Justice.

Mr. Speaker: Order, Member for Ikolomani! Let us just get it clear, straight and simple. What was before the House yesterday was the Motion by the Committee on Justice and Legal Affairs urging the House to adopt its Report.

Dr. Khalwale: Correct, Mr. Speaker, Sir.

Mr. Speaker: Very well. Proceed from there.

Dr. Khalwale: So, corrected, Mr. Speaker, Sir. Let me proceed from there.

As you set this precedent in your ruling, you will have created a major decision which will become our tradition that my colleagues have articulated ably.

Mr. Speaker, Sir, another point I would like you to address yourself to is, again, the procedure of the Chair exercising his right to vote. In so doing, I would like you to look at Standing Orders No.64 and 65. Kindly, see my line of thought. My line of thought is that once the Chair has called for a division, he patiently sits in that Chair, waits for the Ayes and the Noes to vote. He does not know the results on either side just like the Chair never knows whether a Member in the House is inappropriately dressed until the Chair's attention is drawn to that. Then the Chair patiently sitting there is waiting that his attention be drawn to the outcome of the division. Should there be a tie, then the Chair will break it if he so chooses by voting.

So, the decision I am begging you to make is that since the Chair decided to vacate the seat during division and went to one side of the House to go and cast his vote before he knew that there was a tie, was it procedural?

The second point I would like you to clarify to my mind is that, yes, supposing you find it was procedural, had he voted in your view having decided that it was

procedural and then the result of his voting was that he created a tie, who then would have broken the tie? If you find that had he voted the way he did, and he created a tie and then he comes and attempts to break the tie, would you be telling us that in any one Motion an hon. Member can vote twice? If an hon. Member cannot vote twice, then the reverse becomes that the Chair acted unprocedurally to anticipate the result and to try to break the tie before the result was brought before him.

(Mr. Speaker consulted the Clerk-at-the-Table)

Dr. Khalwale: Mr. Speaker, Sir, I will stop so that you listen to me.

Mr. Speaker: Order! Member for Ikolomani, you may proceed!

Dr. Khalwale: Mr. Speaker, Sir, if your finding is that any one Member in this House, be it a Member of the Speakers' Panel sitting in the Chair or the Deputy Speaker can only vote once on one Motion, then the fact that the Deputy Speaker yesterday anticipated a tie before the result of the division was announced to him, therefore, implies that, had a tie been there, the Deputy Speaker in discharging the responsibility of the Chair would have voted twice, which would have made it unprocedural.

This is such a serious matter that when I rose yesterday to address myself to it, the Chair of the day misunderstood me to mean that I was challenging his ruling. I am comfortable to live with Matemtu as the Chair of the Commission so long as the majority has decided. We just want that majority decision to be clear so that we do not have the embarrassment of this Parliament being challenged in court.

Mr. Speaker, Sir, having made that submission, I want to make the final request. In view of this, the Speaker should seriously consider asking this House to make a determination on a simple and clear Motion which should read: "The House approves the names of the Chair and the members of the Commission".

I rest my case.

Mr. Speaker: Order, hon. Members! I gave directions earlier that after I had taken the first two submissions, that is by the Member for Gem and another Member who spoke to the matter, I was going to take another five, and that those who are lucky to fall within the parameters of the five will contribute. The rest would wait for another day. I think I want to stick to those directions. I am adequately guided by contributions from Members. I have heard both sides of the coin. I have also heard from the Government and the Back Bench. I am reasonably well guided.

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. Just as information to the Chair.

Mr. Speaker: What is it, Member for Yatta? On a different matter!

Mr. C. Kilonzo: Mr. Speaker, Sir, it is to remind the Chair of what transacted when I brought an amendment and your ruling---

Mr. Speaker: Order! I do not need to be reminded. My mind works very well up to where we are.

Mr. Kapondi: On a point of order, Mr. Speaker, Sir. I do not want to challenge your ruling, but the Members who have made their submissions are the very Members who were supporting the Motion yesterday. Therefore, you have not heard the other side of the coin. You should have given us an opportunity.

Mr. Speaker: Order, Member for Mt. Elgon! I will not allow you to usurp my discretion.

What is it, Member for Lagdera and Deputy Speaker?

Mr. Farah: Mr. Speaker, Sir, I am just rising on a very simple and basic Standing Order here to remind my friends who have been here; some of them for two terms, some for three terms and some only for this one term, that the Standing Orders are very clear. There is a serious misleading when you fail to acquaint yourself with this very basic book.

Standing Order No.64 says:-

“Every Member, other than the substantive Speaker and the Attorney-General, shall be entitled to vote in a division even though the Member is in the Chair”.

Put that point first of all to rest. Supposing---

An hon. Member: On a point of order, Mr. Speaker, Sir.

Mr. Farah: Order! I am on a point of order!

(Laughter)

Mr. Speaker: Order, hon. Members! I am accommodating the Deputy Speaker up to where he has gone, merely because he is pointing out areas of the law that may be helpful to me. If he sticks to the law, fine. If he goes to facts, I am afraid I will rule you out of order!

Mr. Farah: Much obliged, Mr. Speaker, Sir.

The Deputy Speaker or any other Member on the Chair has an original vote, except the substantive Speaker, hon. Marende, and the Attorney-General in this case.

Then, assume even after I have voted, there is a tie. It says:-

“Casting Vote – whenever there is an equality of votes on any question not requiring a special majority, the Speaker including any other Member in the Chair, shall have a casting vote”.

I have the powers and legality to vote twice when I am in the Chair if I am not the Speaker or the Attorney-General. So, acquaint yourselves with those basic two articles.

(Applause)

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Deputy Speaker and Member for Lagdera, you have made your point. I think we want to stop there.

Hon. Members, please, note that the next order is supposed to last a maximum of three hours. If you see the Order Paper at page 3163, that business should commence not later than 9.30 a.m. We are now at 9.45 a.m. So we will have to continue with business in this sitting until 12.45 p.m.

Hon. Members, it is accurate that the next business will last a maximum of three hours. So, that time must be available to the House. That will exclude business at Order No.8 and Order No.9. So, hon. Members, please, note and be guided accordingly.

Hon. Members, I will give my directions on this matter as has been canvassed by the Chief Whip and supplemented by seven other Members at 11.45 a.m. in this sitting.

Mr. Olago: On a point of order, Mr. Speaker, Sir. I am aware that your Chambers work very efficiently. It is possible that while you are making those directions, they may forward the names. Could you kindly confirm to the House that the names will not be forwarded until you give that direction?

Mr. Speaker: Order! I am aware that no names will be forwarded until after I have given directions and communicated with His Excellency the President.

Member for Kisumu Town West, maybe, so that you become fully aware, the Ethics and Anti-Corruption Commission Act (Act No.22 of 2011) which this House passed not very long ago, obligates the Speaker to communicate the resolution of the House to the President. The President cannot act without communication.

Next order!

PROCEDURAL MOTION

EXEMPTION OF BUSINESS FROM PROVISIONS OF STANDING ORDER NO.38

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

THAT, this House orders that the Business appearing in today's Order Paper be exempted from the provisions of Standing Order No. 38(1), being a Wednesday Morning, a day allocated for Private Members' Motions.

Mr. Speaker, Sir, Members will note that Wednesday morning is usually reserved for Private Members Bills. But we made a decision in the House Business Committee that we will need to bring in a Motion of Adjournment this morning so that Members can join their constituents for the festivities. Having concluded most of the business, except the business at Order No.9, which we hope we will finish this morning, Members can then proceed to join their constituents and families in preparing for the break, which we should have taken two weeks back. But because of the amount of work in the House, this recess has been extended.

I will be talking to that much later when I will be moving the Motion of Adjournment. For now, I just would like to seek the concurrence of the House that we exempt today's business to enable us to transact Government business on a day allocated to Private Members.

With those words, I beg to move and ask Prof. Saitoti to second.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Deputy Speaker, Sir, I am quite happy to second this Motion.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. The Minister, having moved the Motion for Adjournment, I am rising to---

Mr. Deputy Speaker: The Minister has not moved the Motion for Adjournment. Did you move the Motion for Adjournment?

The Minister for Transport (Mr. Kimunya): No, I moved a Procedural Motion.

Dr. Khalwale: Thank you, Mr. Deputy Speaker, Sir. I thought we were already on the Motion for Adjournment. I am consulting.

Mr. Deputy Speaker: Get yourself in the House!

Dr. Khalwale: Mr. Deputy Speaker, Sir, it is a very busy day because we want to get Kenya in order. We cannot leave it to gangsters.

Proceed, Mr. Minister.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Deputy Speaker Sir, without much ado, I beg to second the Motion.

(Question proposed)

Mr. Ogindo: Mr. Deputy Speaker, Sir, I rise to oppose this Motion. You are aware that this House handles two major business structures; one from the Government and the other from the Members. This House normally has four sittings. Only one sitting is dedicated to Private Members' Motions. We have serious Members' Motions that are in the pipeline that require to be expensed of. Time is running out for this Parliament.

The Government side has always had a chance to bring its Motions but it has always squandered those chances. It is in this connection that I want to oppose this Motion so that those pressing Members' Motions can get their rightful time in the calendar of this Parliament.

I beg to oppose.

Mr. Mbadi: Thank you, Mr. Deputy Speaker, Sir. Allow me to also oppose this Procedural Motion asking us to exempt today's Order Paper from the provisions of Standing Order No.38(1) which basically mandates this House to debate Private Members' Motions this morning. You remember that the Government has enough time namely on Tuesdays, Wednesday afternoon and Thursday afternoon to debate the Government Motions. It is wrong for the Government again to use its power in the House Business Committee to deny the Backbenchers an opportunity to have their Motions canvassed. We have a number of Motions which we have filed that require to be debated. We will not allow the House Business Committee to lower the value of our Motions by bringing in Government Motions on a single day and a single sitting that we have for Private Members' Motions.

Looking through the Order Paper, the only Motion I see is Order No.9 which is basically asking this House to adopt the Report of the Departmental Committee on Justice and Legal Affairs. This House has no respect, at all, to the recommendations of this Committee. I do not think it is important to waste this Parliament's time to debate a Report from a Committee that this House has no regard for.

Therefore, I oppose this request from the Government to debate its Motion and rather to go back. If they have no business, we better adjourn and go home for the House Business Committee to prepare for us business to deal with. If we allow the House Business Committee to be doing this, then we will set a precedence that we may not handle in future.

Mr. Deputy Speaker, Sir, I oppose.

Dr. Khalwale: Thank you Mr. Deputy Speaker, Sir. Before I comment on how I wish to proceed on this Motion, allow me to apologise to Members of the Back Bench who proposed me to represent them in the House Business Committee. I failed them

yesterday because I did not sit in the meeting. Hon. Members, I hope that my apologies are taken.

(Applause)

Hon. Members: You have been forgiven.

Dr. Khalwale: Mr. Deputy Speaker, Sir, having been forgiven, I would like to oppose this intention of the House Business Committee. Why? This is because the House Business Committee cannot move in contempt of the house. How on earth did they know that this morning, this House would move and approve their intentions? If they were not acting contemptuously, we would have seen on the Order Paper the business of the Private Members' Bills and Motions that was due today. Then, we would have known that they respect this House and we would have said; let us humble ourselves; hon. Kimunya has convinced us; he is our colleague; he is our Minister and we love him and let us give him support. But because he is proceeding in contempt of the House, we cannot accept. I oppose with a second reason.

I have a very important issue that was raised in this House about the ongoing audit of public monies. The Chair ruled that the Attorney-General should come here and tell us how before the expiry mandatory period of six months as contained in the Constitution of Kenya, the public funds that are being expended by the Auditor-General will be audited. The Attorney-General is not here. We do not know how they want to do it and we do not know how many billions will have been put to good use and how many hundreds of millions will have been misused. Therefore, I urge Members that we reject this particular Motion so that we give the Attorney-General time to come and tell Kenyans how the Office of the Auditor-General will be audited.

Finally, there is a Bill which has gone through First Reading in this House entitled "The Electoral Opinion Poll Bill". I am the author of that Bill. In the memorandum of objects and reasons, we are attempting through this Bill to make the political playground even. The Bill envisages that the electoral period is 12 months to the date of the election. So, this is one Bill which would have been helpful to the House, if we want peace to prevail in the country. We should have debated and passed it before we address other businesses that the Government wants.

Mr. Deputy Speaker, Sir, I oppose and request hon. Members to weigh the evidence that I have tabled in this House.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, I support. Members need to ask themselves what the effect of rejecting the Procedural Motion is. If, indeed, we are talking about spending public money in the right way because we are all earning salaries, the effect is very simple. We will, basically, have no business to transact this morning. If, indeed, the Members who are opposing are genuine, they should first understand the consequences of opposing the Motion, which is very simple. We will be idle taking tea at the lounge, at the expense of the taxpayers' money because we will not go to Motion No.9. I plead with hon. Members that it is one thing to oppose the Motion for Adjournment and another thing to oppose the Procedural Motion. For the sake of utilizing the taxpayers' money, let us support this Motion. When it comes to the Motion for Adjournment, that will be a different matter altogether!

With those few remarks, I beg to support.

Mr. Olago: Mr. Deputy Speaker, Sir, I rise to oppose this Motion.

There is a maxim in law that says that he who comes to equity must do so with clean heart; in good faith. In this case, the Leader of Government Business has not come to ask for the discretion of the heart with clean heart. He has come with bad faith in the sense that he has not disclosed certain material facts that he ought to have disclosed. In this case, we all know that there are Bills that must come before this House within certain specified periods.

If this Motion is approved, then it means the House will go on Recess *sine die*. It is not possible in my mind that the House would resume business before the closure of this year.

Mr. Deputy Speaker: Are you sure, hon. Olago, that this is the substance of the Motion we are discussing now?

Mr. Olago: Mr. Deputy Speaker, Sir, it may not be the Motion itself. However, that is the precursor to the substantive Motion for Adjournment.

Mr. Deputy Speaker: This is a Motion that essentially calls for exemption from the provisions of Standing Order No.38(1), which is a Private Members' Day. So, it is not the Motion for Adjournment.

Mr. Olago: Mr. Deputy Speaker, Sir, I wish to say that this Motion is a precursor to the main Motion that is coming up after it. That also perpetuates what I am saying that the Leader of Government business is not coming before the House with clean heart in the sense that they are hiding facts from the House. Under these circumstances, I urge the House to reject this Motion.

Mr. Ruto: Mr. Deputy Speaker, Sir, I also rise to oppose this Motion. I think like my friend, Olago Alouch said, the Leader of Government Business should wash his hands and come clean. What is the hurry? Where is the other business? Why do they want us to discuss this business and yet, we have got so much to do and they have not listed them? Order No.9 on the Order Paper is okay. We will handle it in the afternoon. Why do you want it now? Where is the other most important business which we have been waiting for since yesterday? It is not on the Order Paper. Where is the Finance Bill? Could you bring that one? I want to dismiss the notion, hon. Member C. Kilonzo was saying, that we will be wasting taxpayers' money. We are being watchful. We are playing our role as representatives of the people of Kenya. We must be awake to the possibilities of this Government tampering with the rights of Kenyans. Kenyans are now suffering. We have got high prices of commodities. The Government is busy protecting banks. On this occasion, I think they just want to protect the banks. Let them bring the other one so that we can sought out the plight of Kenyans first. Before they bring the Motion for Adjournment, could they tell us what is happening to IDPs? Will they be resettled before Christmas? They have not told us what will happen to them. They promised to issue a Ministerial Statement on Thursday with regard to resettlement of IDPs. Are you bringing it forward? We cannot go for Christmas unless they tell us that all Kenyans will have been afforded a fair opportunity to enjoy like other Kenyans. So, what is the hurry for? We can stay throughout Christmas and work until we are assured that all Kenyans are okay.

What is going on here? Please, wake up, Mr. Leader of Government business. Listen to Kenyans, they are crying out there. Does he not come from Kenya? Is he an alien? Where does he live? Where do these people live?

Mr. Chanzu: Mr. Deputy Speaker, Sir, I also stand to oppose this Motion. First of all, this Motion talks about exempting the Business appearing on today's Order Paper. Normally, morning like today is for Private Members' Motions which are not appearing here. So, what are we exempting?

Secondly, I think those who believe that they should go for Christmas and enjoy it with their constituents; I have no problem with them. However, how will they enjoy when they shield themselves from *wananchi*. Those of us who interact with *wananchi* almost on daily basis do not see the need of us going for recess. There are many problems bedevilling our people and we need to address them.

Mr. Kigen: On a point of order, Mr. Deputy Speaker, Sir. Going by the mood of the House, would I be in order to ask that you put the Question?

(Applause)

Mr. Deputy Speaker: Clearly, the mood indicates that they want the Chair to put the Question.

(Question put and negatived)

ADJOURNMENT

Mr. Deputy Speaker: Hon. Members, under the circumstances, given that there are no Private Members' Motions to be debated this morning, the House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 10.10 a.m.