

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 21st December, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

QUESTIONS BY PRIVATE NOTICE

CONSIDERATION OF 2009 CENSUS RESULTS IN CREATION OF CONSTITUENCIES

Mr. Speaker: Hon. Members, I know that if we apply the rules strictly, we should drop Question No.1 by Private Notice but the prevailing circumstances today are such that, maybe, the Member for Ikolomani made certain presumptions that we would complete business appearing on the Order Paper in the morning. So, in those circumstances, I will leave the Question and either re-visit it or defer it as we come to the end of Order No.6.

(Dr. Khalwale) 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?

Mr. Speaker: Next Question, Member for Mathiyoia.

LIST OF AVIATION MEDICAL EXAMINERS IN KENYA

Mr. Wambugu: Mr. Speaker, Sir, I beg to ask the Minister for Transport the following Question by Private Notice.

(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 (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?

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I have the answer with me, which also includes the fact that the matter could well be *sub judice* because

there is Miscellaneous Application No.152 of 2011 on this matter, which is still alive. The only bit of information that I can give will not make sense without everything else. Now that the matter is in court, we pray that the court process be allowed to be completed. In the meantime, I have discussed the matter with the Questioner and undertaken to also look at it administratively as the court process goes on. So, I need your guidance as to whether we should proceed and interrogate this matter when it is alive in court.

Mr. Speaker: Minister, I know that you are a man who is very conversant with issues. To some extent, I am also aware that you are acquainted with the law because of your professional qualifications. You, no doubt, are aware of the directions that I have given on the subject of *sub judice* previously on many occasions. So, you will have to make a decision on your own whether or not you wish to proceed and give the answer, or you want to claim *sub judice*. If you want to claim *sub judice*, you must satisfy the criteria that we have very clearly laid down before. So, the ball is in your court. You can proceed in one of the two ways.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, on the face of it, what I might say may not prejudice what is before court.

Mr. Speaker: Then proceed.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I beg to reply.

(a) The list of doctors designated as approved Aviation Medical Examiners under Regulation No.132(1) and (2) of the Civil Aviation (Personnel Licensing), Regulations of 2007, is as follows:- Dr. John T. Gatabaki, Dr. Festus Ilako, Dr. Dammas Gathuku, Dr. Stephen Karau, Dr. Justino Muinde, Dr. Uma Nathawani, Dr. Andrew Hicks, Dr. Kimata Patrick Mukui, Dr. Phenny Kachumbo and Dr. Kimani Wanjama, who is currently out of the country for a period of three years.

(b) Regulation No.134(3) of the Civil Aviation (Personnel Licensing) Regulations of 2007 states that where an applicant for a medical certificate fails within a reasonable period to provide the requested medical information or history, the Authority may reject the application as well as suspend, modify or revoke all medical certificates held by the applicant. Sub-Regulation (4) provides that the suspension shall remain in force until the holder provides the requested information to the Authority and the Authority determines that the holder meets the medical standards.

(c) Further to the above, Regulation No.179 thereof provides that the Authority may suspend or revoke a certificate, document or authorisation where it considers it to be in the public interest to prevent any person from flying. From the foregoing, the suspension of Capt. Waweru's medical certificate was in accordance with the law.

In addition, as I said, this is a matter that is in court, in which application Capt. Waweru is seeking for the quashing of the decision of the Authority suspending his licence. Capt. Waweru has presented his case and the Authority has responded as appropriate. The application will come up for full hearing through highlighting of submission started yesterday, 19th December, 2011. For this reason, we thought that it would be in the interest of the court proceedings that this matter is not discussed in Parliament, and that doing so would be tantamount to subjecting the Authority to discussion here and in court.

As regards tabling of the medical report of Capt. Waweru, the Kenya Civil Aviation Authority is bound by the provisions of Regulation 138, which states that

medical confidentiality shall be respected at all times, and records shall be securely held, with accessibility limited to authorised personnel.

Mr. Mungatana: On a point of order, Mr. Speaker, Sir. If you heard the Minister, he actually talked of an active date when the matter is going for further hearing in court. Under those circumstances, the rules are very clear. If the pleadings show that they are active in court and there is a date then we cannot discuss this matter here. We must respect the principle of separation of powers.

Mr. Speaker: That may very well be so, Member for Garsen, but the criteria that we have laid down is broader than just the matter being active or having a date in court. We have also said that the transaction of the matter has to be subjected to the test as to whether or not it is likely to prejudice a fair hearing or trial. The Minister has said that what he is going to give by way of an answer is unlikely to affect the proceedings in court. He said that at the beginning. Proceed, Minister.

The Minister for Transport (Mr. Kimunya): On part “c”, the loss of Capt. Waweru’s job at Kenya Airways Limited was an independent administrative decision of his employer, and is a matter that can best be handled between himself and his employer. The Authority and us are also aware that Capt. Waweru has also instituted an industrial Court Case No.1281 of 2011 against his former employer and that matter is active.

Capt. Waweru’s medical certificate cannot be restored as it expired on 31st July, 2011. Those are the facts that I thought will not in any way affect the matter in court.

Mr. Wambugu: Mr. Speaker, Sir, I have keenly listened to the answer given by the Minister. He clearly stated that for somebody to be suspended there must be a confidential report by a qualified aviation medical doctor. However, I am still surprised that there is a medical report that he is referring to which is confidential, and which cannot be laid on the Table. I still request that the Minister, so that we proceed with this Question, tables the report he calls “confidential,” because the information---

Mr. Speaker: Order, Member for Mathioya! Ask a question otherwise, the Minister will not be under any duty to answer.

Mr. Wambugu: Could the Minister table the confidential report that he said was used to suspend Capt. Waweru’s medical certificate?

Mr. Kimunya: Mr. Speaker, Sir, I just answered that in accordance with Regulation 138, medical reports are kept confidential at all times; they shall be securely held with limited access only by the authorized personnel. So, I would not even have access to them to table in Parliament because I am not one of the authorized personnel who have access to those medical reports. In any case we are talking about medical reports relating to the previous certificate; the situation we have here is that the suspension was because of failure to provide medical information. So, the medical examination has not been completed. That was in accordance with Regulation 134. As I said, it is matter that I need to follow up administratively. There may be some issues that we can resolve. Since this matter involves the livelihood of a trained pilot, and we have a shortage of pilots in this country, I want to undertake to this House that I will give it my personal attention; I will try to resolve it the best way we can.

Mr. Imanyara: Mr. Speaker, Sir, I do appreciate the Minister’s concern regarding the confidentiality of these medical records which actually form the basis upon which these disciplinary proceedings were taken. Is the Minister aware that under Article 31 of the current Constitution, every person has a right to privacy, which includes the

right not to have information relating to their family or private affairs unnecessarily required or revealed? Are you satisfied that taking disciplinary action against him on the basis of his refusal to give information that is protected under the Constitution is right and proper?

Mr. Kimunya: Mr. Speaker, Sir, whereas the Constitution gives us that right to privacy of information that you can give, the law that relates to the licensing of pilots also requires them to provide some information. This is because pilots do a job that is beyond most of us. Their alertness must be guaranteed at all times before they are entrusted to get into the cockpit and carry people in the air. It is an international standard that has to be met. The important thing is that, that has to be obeyed. Anyone who wants to practise must provide that information. That was not the ground. I wish that he invoked the constitutional right then we would be arguing from a different angle. However, I think there are some other circumstances that I am yet to appreciate. From the information I have, I would plead that I undertake to look at this matter from different angles, and ensure that we do not prejudice the matter in court and the livelihood of this good pilot.

Mr. Mwangi: Mr. Speaker, Sir. Although the Minister is not ready to produce the report in the House, could he tell us whether or not Capt. Waweru was referred to one of the doctors that he referred to, or was sent to a different doctor?

Mr. Kimunya: Mr. Speaker, Sir, I am not in a position to respond to that authoritatively from the information that I have. That is why I am asking that I be allowed some time to look into this matter in detail. I will then either report to the House or resolve the matter.

Mr. Mwangi: On a point of order, Mr. Speaker, Sir. Will I be in order then to ask that this Question be deferred, so that the Minister comes here with all the information required on Capt. Waweru?

Mr. Speaker: Order, Member for Kiharu! There may be other hon. Members who are interested in other aspects of this matter.

Mr. Koech: Mr. Speaker, Sir, the Minister while answering part “c” of the Question indicated that the suspension of Capt. Waweru’s medical certificate did not lead to the loss of his job. Could he confirm to this House that the medical certificate is not part of the requirements by the Kenya Airways for employment of any person?

Mr. Kimunya: Mr. Speaker, Sir, I am not sure where the Member for Mosop got that impression. I mentioned that there is a matter regarding the loss of Capt. Waweru’s job at Kenya Airways; it may or may not have been linked to the medical certificate. That is an administrative matter that needs to be resolved. I also want to look at that matter to determine whether the two are interlinked and also know what happened. I am also getting a feeling that there could be more information than I have.

Mr. Baiya: Mr. Speaker, Sir, I want to thank the Minister for undertaking to look into this matter administratively. However, other than that, I would like him to find out whether, indeed, it is true that there was further development that had nothing to do with the medical status of Capt. Waweru, and that he dutifully reported it to the management, which is being used to victimize him to the extent of using his health to have him declared medically unfit. If that is the case, could the Minister confirm that he will come and, possibly, clarify to the House that even if those administrative functions have been taken, he will exercise his discretion to ensure that his career is not destroyed?

Mr. Kimunya: Mr. Speaker, Sir, indeed, I have intimated that I am aware there is some other information that I have received pertaining to this matter that I want to look at. However, I cannot speak to it here because I do not have the facts. I want to look at it comprehensively so that we safeguard the welfare and interest of the aggrieved person, employer and authority. We want to ensure that justice prevails across the three stakeholders.

Mr. Wambugu: Mr. Speaker, Sir, just for information to hon. Members of this House, a licence will not be complete without a medical certificate. After the loss of the medical certificate, that is how the final licence was suspended. That is what led to the loss of his job in Kenya Airways.

However, I thank the Minister because of undertaking to take up this matter personally, so that the gentleman can get back his licence and also be able to get a job later on for his livelihood. May I ask him within what time he will be able to do his investigations and report back to this House confirming that Capt. Waweru has got back his licence.

Mr. Kimunya: Mr. Speaker, Sir, I will do my investigations and inquiries. I have already started. I am continuing with that process and I hope to finish it in the earliest time possible.

In terms of reporting to the House when he will get back his licence, that can only be subject to the outcome of those investigations. So, allow me to do the investigations, find the facts and then we will take whatever action we will deem necessary. You can be sure that I would not want to lose a pilot.

Mr. Speaker: Very well! Hon. Members, taking into account what the Member for Kiharu raised and subsequently, the last question from the Member for Mathioya, I will direct that this Question be kept in abeyance given that the Minister has undertaken to attend to it as humanely as possibly and only return on the Order Paper on a need basis. Please, note.

Member for Kisumu Town West!

FIRMS AWARDED TENDER FOR CLEANING/
CAR PARK FACILITY AT KIA

Mr. Olago: Mr. Speaker, Sir, I beg to ask the Minister for Transport the following Question by Private Notice.

(a) To whom have the services for general cleaning and charges for entry into the new Kisumu International Airport been contracted?

(b) Could the Minister provide the addresses of the firms and reveal the identity of the directors?

(c) Why were the services not contracted from local firms?

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I beg to reply.

(a) The services for general cleaning and charges for entry into the new Kisumu International Airport have been contracted as follows:-

1. Provision of cleaning services – M/s Supergroom Services Limited
2. Environmental Services - M/s Mason Services Limited
3. Development and Management of an automatic car park facility at Kisumu Airport (charges for entry) – M/s Mason Services Limited.

(b)The addresses of the firms and the identities of the directors are given as follows:-

M/s Mason Services Limited, P.O. Box 7044 – 00300, Nairobi. Their Email is masons-services@wananchi.com. The directors are one Stephen Njoroge, Margaret Njeri and Veronica G. Mwangi.

M/s Superbroom Services Limited, P.O. Box 54714 – 00200, Nairobi. Email is Superbroom@yahoo.com. The directors are Mrs. W. Mbogori, Eng. F.K.N. Mbogori, Joy Wanja and Joseph Mwaniki.

(c)The tender for provision of cleaning and environmental management services was advertised on 30th June in *The Standard* Newspaper and on 4th July in the *Daily Nation* respectively. Thirty eight firms purchased the tender documents and 29 firms returned their bids. The bids were then subjected to an evaluation as per criteria set out in the bidding documents. An award was made to the best evaluated bidders as earlier mentioned, which is M/s Mason Cleaning Services Limited for Environmental Management Services and M/s Superbroom Services Limited for cleaning services.

The tender for development and management of an automated car park facility again was advertised on 8th April, 2011, in the *Daily Nation* and on 12th April, 2011, in *The Standard* Newspaper. Eleven firms purchased the tender documents and only six firms returned the documents. Again, the bids were subjected to an evaluation as per the criteria set out in the bid documents. An award was made to the best evaluated bidder M/s Mason Services Limited.

Mr. Olago: Mr. Speaker, Sir, the facts that are disclosed by this answer are very surprising to me. Indeed, tender proceedings evaluations are performed to the best of the client's ability. Regions are recognized by the Constitution. Indeed, I am referring to Chapter 2, Article 6 of the Constitution that specifically says that the national State organ shall ensure reasonable access to its services in all parts of the Republic so far as it is appropriate to do so having regard to the nature of the services.

The nature of the services in this case is cleaning, cutting grass and managing vegetation generally. It is not really specialized. If you look at the directorship of these firms you have Njoroge, Njeri, Mwangi, Mbogori, Wanja and Mwaniki. Did the entity that was procuring these services look at the Constitution and provide for locally accessed services?

Mr. Kimunya: Mr. Speaker, Sir, indeed, we even visited the airport with the hon. Member and did agree to sensitize the local community to be aware of the facilities and services that will be rendered at the airport and for them to participate in the service provision.

In February, 2011, the Authority did invite the entire Kisumu business community for a stakeholders' session where all the potential business opportunities arising from the new facility were outlined. During that meeting, the forum went further to highlight the procurement procedures and the expected minimum requirements. Much as he might want to look at it in terms of preferences to the region, it still has to meet the minimum requirements as set out in the tender documents.

From the information that we have, the few local firms that participated in the tenders were non-responsive *vis-a-viz* the requirements of the tender.

There is a procurement law which until we amend it to be in accordance with the Constitution to provide for regional preference, our hands are tied. Once we do a tender

and we advertise it nationally, we cannot then limit it to a local firm without flouting the procurement law. So, until we are able to amend the procurement law, our hands are tied.

Mr. Speaker: Order! Member for Gichugu, proceed and refrain yourselves from giving directions by gesturing!

Ms. Karua: Mr. Speaker, Sir, this is an amazing country. Jobs appear to go to the best bidders and also tenders appear to go to the best bidders. So that we understand this process, could the Minister table the list of all the bidders, those shortlisted and then we can understand how you did well?

Mr. Kimunya: Mr. Speaker, Sir, I would have no problem providing that information in terms of the documentation on who had bid, depending on what the bid requirements were. We are going to provide that information which obviously, I do not have with me today because I did not anticipate that, that would be part of the information required. We can do that subsequently.

Mr. Duale: Mr. Speaker, Sir, it is very amazing that even sweepers and cleaners are imported from Nairobi to Kisumu and northern Kenya. Can the Minister confirm that it is now becoming the culture of Ministers and Government officials to interfere with the tendering process and import their own cronies and companies to regions where they come from? Can he confirm whether this is part of that?

Mr. Kimunya: Mr. Speaker, Sir, I can confirm that I certainly have no idea who those people are. I have no idea in terms of when they actually did the bidding or who they represent. I have not interfered and I have no intention of ever interfering with the procurement in any of the parastatals, Ministry or anywhere else where I am concerned.

Mr. Njuguna: Mr. Speaker, Sir, aware that cutting of grass does not require one to go to a university, could the Minister immediately consider cancelling that tender and considering the locals?

Mr. Kimunya: Mr. Speaker, Sir, I am not seeing the connection between a university, cutting of grass and the tender. The tender has been awarded. If Members want me to cancel it, I can only cancel it within the framework of the law. For other bidders who felt, perhaps, they were dissatisfied by either the evaluation process or the way the tender was awarded, this House has provided a mechanism through the Procurement Review Board, for review of any of those tenders. Let us advocate for the application of the rule of law in not only the big things, but also in the small things so that people can respect the work we do in this House.

Ms. Karua: On a point of order, Mr. Speaker, Sir. The Minister is citing the law. The Constitution is superior to any other law. Once the Constitution talks of regional, ethnic balance and all that, any law that has not been amended becomes null and void to the extent of the consistency. Is he in order to try and hide behind the law for a contract that was obviously unconstitutional?

Mr. Kimunya: Mr. Speaker, Sir, I think it has been agreed within this House before that the duty of interpretation of the law and whether the matter is constitutional or unconstitutional is a matter we leave to the courts. However, for the purposes of the implementation of the Public Procurement Act---

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

Mr. Speaker: Order, Member for Gwasssi! I really just hope that by intuition he is wrong. Let me hear you. What is your point of order?

Mr. Mbadi: Mr. Speaker, Sir, I hope you heard the Minister say that it has been agreed in this House that the interpretation of the Constitution is left to the courts. Could the Minister refresh my mind when that was agreed in this House?

Mr. Speaker: Order, Member for Gwass! That is a false point of order. But, maybe, because, perhaps, you do not recollect what we have done in this House, I will treat you kindly and not impose sanctions on you. However, I have given directions in this House clearly since the promulgation of the Constitution on more than one occasion that any Kenyan who feels his rights have been breached is at liberty to refer that matter to the appropriate court. What the Minister is saying, is therefore, correct on that basis.

(Ms. Karua stood up in her place)

Indeed, Member for Gichugu that will be so! Order, Member for Gichugu! Revisit your HANSARD!

Member for Garsen, please, proceed!

Mr. Mungatana: Mr. Speaker, Sir, if you look at the answer that the Minister has given to this House you will see that Mason Cleaning Services Limited is emanating from Nairobi County. You will also see that Superbroom Services Limited is emanating from Nairobi County. The complaint that is before this House today is this: What will happen to counties like Tana River and others that have been marginalized when the Government continues to marginalize them by deliberately refusing to give jobs to the locals? I want the Minister to undertake, because there will be other contracts, that they will come up with procedures to favour locals. We need those jobs and we need our money to be spent within our countries.

I need you to tell us that you will come up with fresh Government procedures to enable counties to catch up with Nairobi County.

Mr. Kimunya: Mr. Speaker, Sir, I think the first thing I want to make clear is that we do not profile contractors by where they come from. If that was the case, we would be saying that there is this job in Kisumu and only contractors from Kisumu can apply. If we do that, will be caught with the issue of discrimination on account of where people come from. Until we change our procurement law to provide for that kind of preferences to a local group so that we can advertise within a local group, we will stand to be accused of discriminating companies which are also persons as per the Constitution in accordance with the non-discrimination clause. I think it is Article 27 in the Constitution.

Apart from that, we are attempting to ensure that, as much as possible, the local business goes to the local communities. That is why I personally went with the Member of Parliament and sensitized the local community that we were bringing that airport and we told them to participate. I did mention to them that I want to see them running the taxi services and doing all the work within the airport. We further called for a meeting where they were sensitized on the procurement regulations that they needed to meet, so that they could participate at par with everyone else.

As of now, I also want to confirm to Mr. Mungatana that, indeed, within the other airports---

Mr. Ochieng: On a point of order, Mr. Speaker, Sir. Is the Minister in order to say that the local communities were actually sensitized? I quite agree that they were

sensitized and that is why I want to declare my own interest. Even my own wife applied for those cleaning services and she was not even invited for an interview. Is he in order?

Mr. Kimunya: The Member for Nyakach has agreed that there was sensitization.

Mr. Speaker: Order, Mr. Minister! Proceed. Actually, the Member for Nyakach did not raise any concern on anything that is out of order.

Mr. Kimunya: Mr. Speaker, Sir, I was mentioning to hon. Mungatana that if you look at the contractors who are working at the Nairobi Jomo Kenyatta International Airport, you will find that they come from the entire Kenya. The people who are working at Moi International Airport, Mombasa, come from all over Kenya, including the contractors. The fact that in this particular case these two come from Nairobi, to me, is not an issue of concern. What we want to do is to fast track the review of the Act to provide for these preferences as we go to devolution and into national assets within the devolved country.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Speaker, Sir. I have been hearing the Minister continuously misleading the House that there is no law that allows him to give preference to local communities in simple jobs when the National Cohesion and Integration Act does exactly that. That is why it was set up so that we provide jobs across the board to bring cohesion amongst communities so that people do not fight each other. Is he in order?

Mr. Speaker: Give us the relevant part of the National Cohesion and Integration Act so that we are on the same page.

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, if I am given time, I can look at it. However, I am one of the persons who drafted the National Cohesion and Integration Act and it provides as much.

Mr. Speaker: Indeed, I want to give you time. In the meantime, I will take another Question.

Dr. Nuh: On a point of order, Mr. Speaker, Sir. Is the Minister in order to mislead the House that the law does not allow him to give preference when some of these things can be done through regulations and his counterpart, the Deputy Prime Minister and Minister for Finance when we were dealing with the Economic Stimulus Projects gave preference for local contractors to be considered? Even on the Constituencies Development Fund and the roads that we do, it is contractors who come from those counties who are considered. So, is he in order to mislead the House that he has no leverage?

Mr. Speaker: Mr. Minister, you may respond although I have my own understanding of what the Member for Bura has said.

Mr. Kimunya: Mr. Speaker, Sir, I just want to say that there may have been some exemptions that were given both on the CDF and the Economic Stimulus Programme which were conducted under the framework of the CDF to allow for local participation. However, the Kenya Airports Authority (KAA) is a national asset and there is a very clear instruction as to how it should obey the procurement law which does not allow for preference. But I keep on saying that immediately we change the procurement law, we will be able to target some of the operations within the counties and ensure local participation is given preference. But as of now, our hands are tied.

Mr. Speaker: Order! The Member for Bura, you may want to know that regulations are law only that it is a different category of law away from the Constitution and the Statute.

Dr. Nuh: I stand guided, Mr. Speaker, Sir.

Mr. Speaker: Please, note.

(Mr. Midiwo stood up in his place)

Last question, hon. Olago! The Member for Gem, sorry, I had overlooked that.

Mr. Midiwo: Mr. Speaker, Sir, I want to plead with the Minister. The Kisumu Airport has been constructed by foreigners. The Kisumu Airport is now employing staff that is hostile to the locals. We are told these things because we come from there. What would be wrong with the Minister allowing whoever has this contract to hold it but employ the locals?

Could the Minister think twice because these issues have even led us to butcher one another in the recent past? What the people of Kisumu are saying about what is happening at the airport is the exact thing that has fueled ethnic hatred in this country that led us to bloodletting in 2007. Could the Minister just allow the person to hold the contract but employ our local people because people look at the airport as being brought by the foreigners and it is meant for foreigners who work there? Tension is brewing and it will erupt. Let the Minister do something because that is within his reach. Please, help us to guide this country so that people can live together. There is nothing wrong with a foreigner owning that contract but there is everything wrong with him coming there and doing things including sweeping and cleaning that even our dogs could do even if our people could not do.

Mr. Speaker: Order! The Member for Gem, you will have to withdraw the words; “even our dogs.” Here we are talking about human beings.

Mr. Midiwo: Mr. Speaker, Sir, I gracefully withdraw and apologise. However, could the Minister help this country move forward? Those things we can avoid let us avoid them. Unnecessary anger towards the Government is not good for our people.

Mr. Kimunya: Mr. Speaker, Sir, I am aware that the airport was constructed by a foreign company, I believe of Chinese extraction. However, in terms of the contracts that have been awarded, from the names that I tabled here, these are Kenyans. I am not aware of any Kenyan who is a foreigner in any part of Kenya. However, I mentioned that I am willing and we have already started the process of sensitizing all local communities, wherever we have an operation, to participate within the affairs of that unit as stakeholders because it is also part of the wider Government objective to take development to people.

Raising the standards of Kisumu Airport to international standards is meant to open up, not just Kisumu but the entire western region. I would like to start thinking of what we can do to promote Kisumu rather than start scaring away people who are working at the airport.

Mr. Ogiado: Thank you, Mr. Speaker, Sir. I have no quarrel with the explanation that the Minister has given but a central question to his submission was posted to him by hon. Martha Karua about tabling the names of the contractors who applied. The Minister

only casually said that he was willing to avail that without saying when he will do that. Is he in order to avoid telling us when he will bring that so that we can scrutinize it?

Mr. Speaker: Order! I was satisfied with the answer given by the Minister that he is willing to avail that information because if you look at Question No.3 by Private Notice, you will realise that it did not ask the Minister to table documents pertaining to all the tenders. It may be a supplementary question but the Minister would be within his rights to say that he did not anticipate that the question would come. This Question had called for information.

The Member for Gichugu, I know that you want to contest that but I have the discretion to decide. This Question asked, specifically;

(a) "To whom have the services for ... been contracted?"

(b) "Could the Minister provide the addresses of the firms and reveal identity of directors?"

The Minister has provided that information. The Minister was not asked to indicate how many persons tendered and table the documents that were bidding.

(Ms. Karua stood up in her place)

You may proceed but I am afraid that this will not be within this Question.

Ms. Karua: Mr. Speaker, Sir, I am not at all contesting your ruling and interpretation. However, the Minister having agreed that he can table the information, would it be in order to seek that even if it is not today, because you are quite right that he may not have anticipated, that we request that he gives a date when he will table that information to the House which is necessary for the understanding of the question?

Mr. Speaker: Very well! That would be legitimate and I will direct that the Minister avails that information to the National Assembly and in particular the Member for Kisumu Town West as well as the Member for Gichugu. If there are any other issues, after that information is made available then this Question may be readmitted on the Order Paper.

Mr. Minister, please, do so within the next two weeks.

Mr. Olago: Mr. Speaker, Sir, as the Member of Parliament for Kisumu Town West, I want to be understood very clearly by the Minister. I am not advocating for any substandard cleanliness and gardening in Kisumu Airport. It has to be of the greatest standards. However, there was a plea that was made by hon. Midiwo that was very sensible and the Minister has completely ignored it. Could he kindly tell the House how long this tender will run? Could he also tell the House that he will ensure that these contractors who have tendered for the jobs they are performing at the airport employ locals for God's sake?

Mr. Kimunya: Mr. Speaker, Sir, I am very happy that the Member does appreciate the international status we want to put Kisumu. I know he has been very vocal on this. I would like to undertake to talk to the contracting authority, Kenya Airports Authority, who is the procurement entity, to prevail upon the one who won the tender to utilize as much as possible the local content in terms of material and people in provision of this service in line with our wider mandate.

KILLING OF CLEMENT ATIANG' OPIYO

Mr. Ochieng: Mr. Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice. It reads as follows:-

(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?

Mr. Speaker: Order, Member for Nyakach! The Question is appearing on the Order Paper for the second time today. It has been circulated in the internet. All Kenyans are aware that this Question is being asked now.

Where is the Minister of State for Provincial Administration and Internal Security? Deputy Leader of Government business, where is the Minister?

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, the Assistant Minister, Ministry of State for Provincial Administration and Internal Security is away. I believe he has been away outside the country. The Minister may not have been anticipating his presence in the afternoon. So, I would like to ask that we hold on until we are able to track him.

Mr. Speaker: With respect to Question No.4 by Private Notice, we will have to defer it for the following reasons:-The Member for Nyakach, when this Question was called this morning, you were not in the House. Now the situation has reversed, you are in the House and the Minister is not in the House to answer it. But because of the prevailing circumstances in the sense that it was, perhaps, anticipated that the House may adjourn in the morning, anticipating this, the Minister may very well be away for good a reason. So, I will defer this Question to Tuesday afternoon.

Next Question!

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.1426

TABLING OF REPORT ON KILLING OF BROTHERS

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

(a) why he has not tabled the report on the killings of two brothers, John Kamuri and Peter Irungu of Yamugwe Village, Githagara Location, Kahuro District on 28th December, 2010 as promised in the House when answering Question No.810 on 6th April, 2011; and,

(b) if he could table the report promptly.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, this Question is affected by the same circumstances as the previous one. I would like to plead that we defer it until the Minister is here to answer it. These are security issues that require authoritative responses.

Mr. Speaker: The Question is deferred to tomorrow afternoon, just in the event that the House will be sitting tomorrow.

(Question deferred)

Mrs. Odhiambo- Mabona: On a point of order, Mr. Speaker, Sir. You had requested me to give the sections of the National Cohesion and Integration Act. I do not know whether I should give it now, or I could provide it later.

Mr. Speaker: You could do so, just before we come to the end of Order No.6.

Mrs. Odhiambo-Mabona: Most obliged.

Mr. Mwangi: On a point of order, Mr. Speaker, Sir. I am really disturbed since we have deferred this Question---

Mr. Speaker: Order, Member for Kiharu! I have taken into account the circumstances around your Question. That is why I have deferred it to tomorrow afternoon. Please, let us use our time optimally. I have given it special consideration.

Hon. Odhiambo, ask Question No.964.

Question No. 964

ENFORCEMENT OF SECTION 53
OF EMPLOYMENT ACT

Mrs. Odhiambo-Mabona asked the Minister for Labour:-

(a) when he will make regulations under Section 53 of the Employment Act on activities that are deemed harmful to the health, safety and morals of a child between 13-16 years of age, and,

(b) what is considered "light work" that a child can undertake under the law.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, we seem to be having the same problem of anticipated outcomes of this morning. I know the Minister for Labour was travelling to Turkana. I thought I spotted his Assistant Minister earlier. However, could I ask the Chair to defer it to tomorrow?

Mr. Speaker: Very well! I will defer it to tomorrow afternoon, at 2.30 p.m. Minister, please, sensitize your colleagues that this House does not run on presumption.

Mrs. Odhiambo- Mabona: On a point of order, Mr. Speaker, Sir, I do appreciate. Nonetheless, I wish to draw to the attention of the House that I have received communication from the Minister which is essentially indicating that he is not ready because the hon. Attorney General is still waiting to deal with the issue of the regulations, and yet the House had indicated that he be given today to bring those regulations. So, he is really not complying with what the House has indicated for him to do, almost three times.

Mr. Speaker, Sir, since these regulations are ready, could he be asked to avail them in whatever form tomorrow through the Office of the Attorney General, directly as he responds?

Mr. Speaker: Deputy Leader of Government Business did you hear that? Could you note and communicate to the Minister, that he should table the regulations in whatever form they may be, when he comes to respond to this Question tomorrow afternoon.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I will do so.
(*Question deferred*)

Mr. Speaker: Member for Emuhaya.

Question No.1105

NUMBER OF TOURISTS
TO WESTERN KENYA TOURISM CIRCUIT

Dr. Otichilo asked the Minister for Tourism:-

(a) how many tourists have visited Western Kenya since the “*Western Kenya Tourism Circuit*” was established and operationalized,

(b) which tourism areas are most visited and what their main tourism attractions are; and,

(c) how much money has been used in the promotion of Western Kenya as a tourist destination and what incentives the Ministry has provided to encourage local investors to venture into tourism-related activities.

The Assistant Minister for Tourism (Ms. Mbarire): Mr. Speaker, Sir, I begin by really apologizing to the hon. Member. This Question was asked last week, but due to miscommunication, we were not able to answer it on the very day. However, I beg to reply.

(a) The number of tourists who have visited Western Kenya since the Western Kenya Tourism Circuit was established and operationalized in terms of bed nights, is as follows:- Western region, that is Western Kenya, 2009, we had bed nights for 40,720. In 2010, we had bed nights of 50,732. Nyanza Basin Zone which is between Western Kenya Tourism Circuit, 2009, they had 27,215, and in 2010 a remarkable improvement to 41,959 bed nights.

(b) Some of the most visited tourism attractions are Lake Victoria, Thimlich Ohinga Ruins, Kogelo Village- US President’s roots, Nabongo Mumias Cultural Centre, Kakamega Forest, Crying rock in Kakamega, Got Ramogi, Kakapel Rock in Busia , Agro Tourism in Kericho, Water Sports in Samia, Ruma National Park, Kisii soapstone and several cultural festivals like the Bukusu, Tiriki cultural festivals, and, of course, very lately, the bull fights in Western Kenya.

(c) The Government has budgeted Kshs650 million in the current financial year ending June 2012 to be used by the Kenya Tourist Board (KTB). A sum of Kshs35 million was set aside for marketing of the country to Kenyans to promote domestic tourism. KTB mainly markets the country as a unit and not regionally. However, KTB is working on a strategy to market regional trade fairs.

The Ministry offers different incentives to local investors through tax exemptions on imported building materials, duty waiver on imported four by four vehicles meant for tourism, provision of loans through Kenya Tourist Development Corporation (KTDC) and running tourism association forum across the country and during Agricultural Society of Kenya (ASK) shows in the country. The local tour investors are encouraged to partner with KTB to market themselves in trade fairs and source markets where they can derive maximum benefits.

Dr. Otichilo: Mr. Speaker, Sir, allow me to congratulate the Assistant Minister for a very comprehensive answer. Allow me also to congratulate the Ministry for the work they have done because the statistics they have given show that tourism is increasing in Western Kenya. Having said that, I would like the Assistant Minister to tell this House why very little amount is given to promote local tourism and yet, we would like to promote local tourism unlike foreign tourism, because it is sustainable? For example, out of Kshs650 million, they have only earmarked Kshs35 million to promote local tourism. Why is that so?

Ms. Mbarire: Mr. Speaker, Sir, the wish of the Ministry is to be able to get more resources from the Treasury to improve on the budget for domestic tourism promotion. However, you will realise that the amount of money given to the Ministry for marketing tourism is very little compared to our major markets that we compete with here in Africa. For example, if you compare what we spend with what South Africa or Egypt spends, we are way below them. So, we are forced to spend more money to attract international tourists than the local tourists. But I would like to urge this Parliament, especially through the Departmental Committee on Finance, Planning and Trade to continue pushing the Treasury to give us more money to be able to market this country. We are already doing very well and have an upward trend in terms of tourism arrivals. We believe that with more money we will not only be able to get more tourists coming to Kenya but also promote local tourists.

Mr. Chanzu: Mr. Speaker, Sir, I also want to commend the Assistant Minister for the information given. This is because it is very rare for Ministers to come out with that kind of statistics which helps. But unfortunately, the Question did not talk about the classification; whether they are local or foreign. Could she be having that kind of information so that she can avail it here?

Ms. Mbarire: Mr. Speaker, Sir, we have what we call “The Tourism Satellite Accounts” that basically focus on international arrivals only. So, the information I have for you here is actually for international tourists and not local tourists. At the point when they are checking into our hotels, if you look at all the forms or cards that one fills, it is very clear whether you are a citizen or visitor. So, that is what we use within the Tourism Satellite Accounts.

Dr. Khalwale: Mr. Speaker, Sir, two years ago, the Tourists Trust Fund (TTF) started supporting cultural tourism in this region. As a matter of fact, they have a project at Malinya Town in Kakamega. The project in Malinya has started. They also have a project at Ilesi and where they call the “Crying Stone” or *Ihongo Murwi*. This initiative seems to have stalled. Could the Assistant Minister tell us what she is doing if the TTF is having challenges, to take up the funding that had been initiated by the TTF so that these projects can come to completion?

Ms. Mbarire: Mr. Speaker, Sir, that is a very important question. It is true that we have been having legal challenges on the status of TTF. This is because the TTF was founded purely to implement projects under the European Union (EU) which came to completion last year but one. So, as a result, there is no money that is coming to the TTF. But I want to assure the hon. Members here that the Ministry is currently engaged in serious discussions with the Treasury to see how we can get the TTF funded by the Government and continue to provide the important services of bringing community-based tourism, so that communities can be empowered through tourism. I am aware that all the ongoing projects that TTF was working on will not be left alone. We will make sure that we continue with them, so that we can empower Kenyans through tourism.

Mr. Pesa: Mr. Speaker, Sir, I also want to commend the Assistant Minister for the good answer that she has given to this Question. But we know that most of the tourists that visit the lake region come from the Mara region. If you look at the roads connecting us with the Mara region, you will find that they are in deplorable conditions. Could the Assistant Minister work together with the Ministry of Roads to ensure that the roads in that region are improved so that we get more visitors coming to that area?

Ms. Mbarire: Mr. Speaker, Sir, that is also a very important question, because tourism cannot prosper without proper basic infrastructure, one of them being roads. We have worked very well with the Ministry of Roads. We have seen quite a number of roads going to major tourism sites being improved. The Mai Mahiu-Narok Road has been improved. I know that the road from Narok to Maasai Mara is being worked on and the Member of Parliament has been very aggressive in following up that particular matter. We are really looking into it. I want to assure the hon. Member that we will continue to work closely with the Ministry of Roads to ensure that all roads leading to major tourist sites are properly taken care of and maintained. However, I also want to urge the hon. Members that we are now focusing on regionalizing tourism, so that you can market our tourism at the regional level and even abroad. Now that we have devolved governments, we want to urge all counties to begin to identify their tourism sites and work directly with the Ministry of Tourism and KTB so that we can package your site as a region so that by the time the county governments come into place, you can be ahead of others in terms of marketing your regions.

Mr. Kutuny: Mr. Speaker, Sir, there is a clear indication that Western Kenya of late has attracted a good number of tourists. This means that facilities for tourists in this region are an issue that the Government has to consider. What measures is the Government putting in place to ensure that there is enough accommodation for tourists who visit Western Kenya? At the moment there is only one hotel which can accommodate tourists in Western Kenya, and that is Kakamega Golf Hotel, which does not have enough capacity. It has reached an extent where the people of Western Kenya, particularly Kakamega have turned Muliro Gardens to be one of the areas where they can accommodate each other and do their things when they tour that region. What measures will the Government put in place to provide enough accommodation for tourists in that region?

Ms. Mbarire: Mr. Speaker, Sir, I want to agree that the biggest challenge we are facing as we witness the increased number of tourism arrivals is that we do not have adequate quality capacity for our tourists. I want to tell hon. Members that they need to be aware of one fact; right now, the region with the biggest potential for tourists is the

Western Circuit. So, we need many lodges and hotels of good quality built in either Kisumu, Kericho or Kakamega. Many hon. Members are not aware that we do have credit facilities available for people interested in investing in tourism sector through KTDC. All you need to do is to write a proposal. Make sure that you have a piece of land and we will support you because we are desperate for increased bed capacity in that part of the country.

Mr. Speaker: Last Question!

Dr. Otichilo: Mr. Speaker, Sir, the Assistant Minister has just said that KTDC offers loans to investors in tourism. Could she be in a position to have statistics to show how many of the people from the region have benefitted from those investment funds?

Ms. Mbarire: Mr. Speaker, Sir, that is a very new and different Question altogether. But I will be willing to provide those statistics to the hon. Members and even to this House so that you can see how many people have benefitted. The other day, there was an article in the newspaper about some people doing very well in Nyanza Province and they have been supported by KTDC. I would like to give those statistics as soon as I get them, so that hon. Members can begin to see that something is happening.

Mr. Olago: On a point of order, Mr. Speaker, Sir. The Assistant Minister has told the House how they are doing very well and I think they are doing well. But is it in order for her to finish answering that Question without mentioning that she was supposed to visit Okore Ogonda graveside with me so as to look at how they could activate it, but she has not done it?

Ms. Mbarire: Mr. Speaker, Sir, I am willing to go with you, but the hon. Member never came back to me. I am willing to visit but let me know immediately in the new year, I will be ready to go.

Mr. Speaker: Ms. Mbarire, could you, please, avail that information to the House so that we can then circulate it to hon. Members. The Question does not have to come to the Order Paper again.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Speaker, Sir. I notice that when the Assistant Minister was speaking, she did not mention that Mbita has the highest tourism potential and she has, indeed, visited there. I do not know whether she has excluded it or whether she will give that information right from Lambwe, Mfangano, Takawidhi Islands, Rusinga Islands and others.

Mr. Speaker: Order, Mrs. Odhiambo-Mabona! Of course, I know that is a genuine question, but you can still do better than that. You are a seasoned debater. I will help you. I will volunteer.

Ms. Mbarire, were you in order to mislead the House by excluding Mbita from the list of preferred tourist destinations?

Ms. Mbarire: Mr. Speaker, Sir, there would be no tourism in Western Circuit without Mbita. Mbita is the hub of it all. Mbita is a very beautiful island.

QUESTION BY PRIVATE NOTICE

CONSIDERATION OF 2009 CENSUS RESULTS IN CREATION OF CONSTITUENCIES

Dr. Khalwale: Mr. Speaker, Sir, I apologize for coming late. Because of the fate that had befallen the Question in the morning, I did not know it would come up. I thank you for that.

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 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 (Mr. Cheptumo): Mr. Speaker, Sir, I would also like to apologize for coming late. Yesterday, I requested for more time to avail the answer this afternoon but, unfortunately, I have not been able to receive the appropriate answer from the Independent Electoral and Boundaries Commission (IEBC). The Question before the House is very important and critical. I have spoken to my colleague that I should be given more time, with the indulgence of the Chair, so that I can answer it on Tuesday next week. I hope that by then I will have received a comprehensive answer for this Question.

Dr. Khalwale: Mr. Speaker, Sir, whereas I have no problem with that, my only concern is that I do not understand this pussyfooting and dilly-dallying that I am seeing. It is a fact that immediately after a census, anywhere in the world, governments of the world do post census analysis and immediately deposit those documents with the United Nations (UN). As far as we are concerned, those figures have already been deposited with the UN and, therefore, whatever they do, the population that they deposited is the population of Kenya. Why can they not just respond? But I support you.

Mr. Speaker: Very well, Mr. Assistant Minister. How soon will you then be able to respond to this Question?

The Assistant Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Cheptumo): Mr. Speaker, Sir, I would not like to seek a further extension, but I would like to answer it next week on Tuesday.

Mr. Speaker: I direct that the Question be on the Order Paper on Tuesday at 2.30 p.m.

Mrs. Odhiambo-Mabona, you may rise on your matter now.

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, the relevant sections of the National Cohesion and Integration Act are Sections 3, 7 and 11. I do not know whether you would want me to read them.

Mr. Speaker: Yes, I would be happy.

Mrs. Odhiambo-Mabona: Mrs. Speaker, Sir, Section 3 says:-

“(a) For purposes of this Act a person discriminates against another person if-

(a) on ethnic grounds he treats that other person less favourably than he treats or would treat other persons; or

(b) he applies to that other person a requirement or condition which he applies or would apply equally to persons not of the same ethnic groups as that other person, but-

(i) which is such that the proportion of persons of the same ethnic group as that other person who can comply with it is considerably smaller than the proportion of persons not of that ethnic group who can comply with it; and

(ii) which he cannot show to be justifiable irrespective of the colour, race, nationality, ethnic or national origins of the person to whom it is applied; and

(iii) which is to the detriment of that other person because he cannot comply with it.”

I am not reading the entire Section 3. But I am looking again at Section 7 which talks about discrimination in employment. It says:-

“(1) All public establishments shall seek to represent the diversity of the people of Kenya in the employment of staff.

(2) No public establishment shall have more than one-third of its staff from the same ethnic community.”

That is what Mr. Olago was talking about. Again it is a long section, I am not going into it because I will take all the time. Then if you look at exceptions to discrimination which is referred to as “Exceptions to Discrimination” in the Bill of Employment which is Section 8, it says:-

“It shall not be deemed discriminatory under this part where having regard to the nature of employment or the context in which it is carried out.”

I will now go to Section 8(1)(c). It says:-

“(ii) The job refers to a work of art, visual image, the sequence of visual images of which a person of that group is required for reasons of authenticity.

(iii) The holder of the job provides part of that group with personal services promoting their welfare and those services can effectively be provided by a person of that ethnic group.”

Mr. Speaker, there is so much in relation to the National Cohesion and Integration Act that seeks to integrate Kenyans by equitably distributing resources and services.

Mr. Speaker: Your point is made. Mr. Minister, do you want to respond to that?

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir I fully agree in terms of the social integration, non-discrimination and setting of different standards for different people but, more importantly, I also want to make the distinction between employment and contractual services. If we are talking of hiring employees, then I will be looking at employees who are hired and whether they represent diversity. But when you now contract out through a tender and the tender does not require ethnic diversity as one of the criteria, then we have a slight problem in terms of application. In terms of employment, I am in total agreement but in terms of contracted services, it means that providers of services in one organization may all come from a certain region, and not necessarily where they are.

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. Is it not in order for the hon. Member to seek the free legal services of the department of Government that has constitutional protection in the office of the Attorney-General if he cannot read and understand the law as explained by an Advocate of the High Court of Kenya?

Mr. Speaker: Order, Minister! I think it would suffice if you say to the House that you will endeavour to comply with the law. If you say that, then that will be adequate. In the meantime, even as you do so, kindly tell me how you determine if a limited liability company is of a given ethnicity.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I do not know how you measure the ethnicity of companies, and this seems to be my problem. Maybe you do it through the directorship of companies; that is the possible way of determining if a company is owned by people of a certain ethnicity. But the directors and owners may all be different. So, if you typically look at any company on the stock exchange, it may

look like the directors come from a certain area, but the owners may be totally different. So, in terms of companies, there are issues we need to look at and have some regulations or some laws to ensure that the Procurement Act is consistent with the ethics, cohesion and the Constitution---

(Mr. Olago stood up in his place)

Mr. Speaker: Order, hon. Member for Kisumu Town West!

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, until we have upgraded our public procurement law and this is the job of this House, then we will continue to have those grey areas in terms of interpretation.

Mr. Speaker: Mr. Minister, you should confirm that you will comply with the law.

The Minister for Transport (Mr. Kimunya): But in the meantime our attempt to comply with the applicable laws---

Mr. Speaker: And you will further direct that these companies take steps to employ locals.

The Minister for Transport (Mr. Kimunya): Yes, Mr. Speaker, Sir. I had already given that undertaking; that will guide them to employ and use as much local resources as possible.

Mr. Speaker: That is good enough, Minister.

Hon. Members, that brings us to the end of Order No. 6.

Next Order!

PRIME MINISTER'S TIME

Mr. Speaker: Order, hon. Members! You will note that we are now well into Prime Minister's Time. I have received communication from the Office of the Prime Minister, through the joint Chief Government Whip, that the Prime Minister is not able to be here this afternoon to deliver the Statement that was otherwise expected because he, like quite a few other hon. Members this afternoon, had worked on the presumption that the House would be adjourned this morning. But hon. Members have made their point that this House should not be taken for granted. We heard you!

Hon. Members: Yes!

(Applause)

Mr. Speaker: So, on that basis, we will excuse the Prime Minister and hope that he will have an opportunity to deliver the requisite Statement on Wednesday, next week. Are there any other Statements ready for delivery?

STATEMENTS

MINISTERIAL STATEMENT

DISCONNECTION OF ELECTRICITY TO

LITEIN WATER SUPPLY

The Minister for Water and Irrigation (Mr. Waititu): Mr. Speaker, Sir, the hon. Member for Konoin had requested for a Ministerial Statement and I have it here.

My Ministry's Mandate is to ensure adequate supply of water and sewerage services, irrigation development and water storage. In order to implement this mandate, my Ministry is guided by the wider Government development agenda, principle of equitable distribution of resources and affirmative action on marginalized segments of society like arid and semi-arid areas, women and girl-child. My Ministry's budget utilization aims at providing access and reducing gross national water scarcity for domestic, livestock and irrigation use. This is based on---

Dr. Kones: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: What is it, hon. Member for Konoin?

Dr. Kones: Thank you, Mr. Speaker, Sir. I did not want to interrupt the Assistant Minister, but I am trying to follow the Statement he is reading. He has not made reference to the issues I had raised. I want---

(Loud consultations)

Mr. Speaker: Order! Order, hon. Members! The point of order raised by the hon. Member for Konoin is valid. First, will you, please, lower the level of your consultations so that we can hear the Assistant Minister? Secondly, Assistant Minister, will you, please, open your Statement by speaking to the preamble of it? What is your Statement about?

(Mr. Waititu stood up in his place)

Order, Assistant Minister! Please, resume your seat until I stop talking. You are, otherwise, out of order!

Finally, hon. Members, communication that should have been given at a quarter to noon today will still be given this afternoon and I intend to deliver that communication to the House at or about a quarter to 5.00 p.m.

I thank you.

Proceed, Assistant Minister!

The Minister for Water and Irrigation (Mr. Waititu): Mr. Speaker, Sir, the hon. Member for Konoin wanted to know why water has been disconnected at Litein Water Supply, whether it is because of the electricity bill and when it is going to be reconnected.

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker: Go ahead!

The Minister for Water and Irrigation (Mr. Waititu): Mr. Deputy Speaker, Sir, my answer is here.

My Ministry's Mandate is to ensure adequate supply of water and sewerage services, irrigation development and water storage. In order to implement this mandate,

my Ministry is guided by the wider Government development agenda, principle of equitable distribution of resources and affirmative action in marginalized segments of society like ASAL areas, women and girl-child. The Ministry's budget utilization aims at providing access and reducing gross national water scarcity for domestic, livestock and irrigation use. This is based on equitable, most visible method of water provision and socio-economic considerations.

Lake Victoria South Water Services Board, under whose jurisdiction Litein Water Supply Scheme falls, was established under the Water Act, 2002 and under Gazette Notice 1714 of 12th March, 2004, as a State corporation reporting to the Ministry of Water and Irrigation, and subsequently launched on 7th December, 2004. The board's mandate is to ensure efficient and economical provision of water and sanitation services in its area of jurisdiction in line with the Water Act. To ensure the provision of safe, adequate and suitable water and sanitation services for economic growth by developing viable water service providers and facilities, Lake Victoria Water Services Board will sign a Service Provision Agreement (SPA) with water service providers who have demonstrated capacity to deliver the services in accordance with the terms of the SPA.

In this regard, Mr. Deputy Speaker, Sir, Lake Victoria South Water Services Board is not responsible for payment of electricity bills for Litein, and this applies to all water service providers in its area of jurisdiction. Water service providers, in accordance with the terms of their service provision agreements, are expected to provide direct service within their areas as per performance targets.

However, Mr. Deputy Speaker, Sir, in recognition of the fact that some of these water service providers are not able to regularly meet their operation and maintenance costs, the Ministry of Water and Irrigation, from time to time, comes to their rescue, especially when power is disconnected over unserviced bills. The Ministry often obtains requests from water service boards on behalf of water service providers through the Water Services Regulatory Board, which assesses the financial situation of the water service providers to confirm that, indeed, they deserve the subsidies requested.

Litein Water Supply is one of the supply schemes under the Telibei Water Company, formerly Chemosit Water and Sanitation Company. Electricity supply for Litein, account No.0640152, was disconnected on 2nd December, 2011, due to an accrued bill of Kshs7.6 million and was reconnected on 15th December, 2011. This was after the company and the Ministry paid Kshs1 million each on 14th December and the promise by the Ministry to the Kenya Power Company to clear the arrears.

In this regard, my Ministry is making arrangements to make this payment within the first week of January, 2012. The Litein account attracts a monthly bill of Kshs2.5 million while the utility is able to service this debt on a monthly basis. From June, 2011, the Ministry paid a total of Kshs12.5 million towards this account, but subsequent bills were not serviced by the utility until a total of Kshs7.6 million again accrued by November. I have a table here for all the payments from June. In June, the Ministry paid Kshs12.5 million, in October, we paid Kshs240 million, in November, we paid Kshs3.5 million and now we have paid Kshs1 million, so that the power can be reconnected.

The Lake Victoria Services Board has been diligently managing the transition from the former Chemosit to the current Telibei Water and Sanitation Company.

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. On countless times, the Chair has ruled that Ministerial Statements should be short and to the point. If it is very long, just summarize and table it, so that the Members may scrutinize it.

Mr. Deputy Speaker: Hon. Waititu, summarize, conclude and table the Statement!

The Assistant Minister for Water and Irrigation (Mr. Waititu): Mr. Deputy Speaker, Sir, we have already paid Kshs1 million. Power has been reconnected to the company and water is in supply now. We will clear the balance in January, 2012.

Mr. Ochieng': Mr. Deputy Speaker, Sir, could the Assistant Minister clarify why they are not able to disband these water companies?

Dr. Kones: On a point of order, Mr. Deputy Speaker, Sir. The Statement was---

Mr. Deputy Speaker: Order, Dr. Kones!

Dr. Kones: Mr. Deputy Speaker, Sir, may I proceed to ask for clarification?

Mr. Deputy Speaker: Much as it is pretty much the tradition, it is not a first and hard rule, but now that hon. Ochieng has started seeking a clarification, could you allow him to finish and then you could request for your clarification? The Chair regrets the fact that he did not know that you are the one who demanded for that Ministerial Statement.

Mr. Ochieng: Mr. Deputy Speaker, Sir, could the Assistant Minister clarify why they are not able to disband these water companies and allow the water boards in those areas to run these facilities, so that we can have the power supply uninterrupted in the facilities? As I speak, electricity to the Nyakach Water Supply which was supplied for about Kshs2 million, has been disconnected and people do not have water for the last three weeks. When will the Ministry settle these bills? They have done so well so far.

Mr. Deputy Speaker: Hon. Waititu, do you wish to take a number of clarifications?

The Assistant Minister for Water and Irrigation (Mr. Waititu): Yes, Mr. Deputy Speaker.

Dr. Kones. Mr. Deputy Speaker, Sir, I wanted to ask my question first because this question was very specific to Litein Water Supply Service, but the Member has talked about Nyakach. I hope the Assistant Minister will not divert his attention to the other area.

Mr. Deputy Speaker: Proceed on the substance!

Dr. Kones: Mr. Deputy Speaker, Sir, one of the problems we have is telling the right water services provider in that area. Is it Chemosit Water Services Company or a new company? I have a court ruling here where the Chemosit Water Services Company went to court disputing the appointment of the current Chief Executive Officer of the water board. The service provider then seems to be recognized by the Lake Victoria Water Services Board. Which is the legal water services provider in the area under which Litein Water Supply falls?

Secondly, there is a question which the Assistant Minister has not answered. Why could we not get water by gravity from the Kipsonoi River on top of the hill called Bosto? A feasibility study had been done by the Ministry which showed that we can get water from there freely. In fact, the amount that is spent on electricity is enough to supply water by gravity from the top of the hill. Why could the Ministry not divert that money and get water by gravity from River Kipsonoi on the top of the hill?

Dr. Laboso: Mr. Deputy Speaker, Sir, could the Assistant Minister further clarify why in the Lake Victoria South Water Services Board which is our provider in the counties of Bomet and Kericho, there is a complete blackout of donor projects? Why is there an over-representation of projects in one region?

The Assistant Minister for Water and Irrigation (Mr. Waititu): Mr. Deputy Speaker, Sir, I will start with the question by hon. Ochieng as to why we cannot disband the water companies. Most of the water companies are doing well. The ones that are not doing well are still improving. We hope that in future they will provide better services. They have a lot of support from the local people who have formed those companies. We cannot, therefore, rush and disband them because they have not completely failed to provide water services to our people.

The rightful company is the Telibei Water Company which is formerly the Chemosit Water Company. It is properly recognized by the Lake Victoria South Water Services Board. Therefore, there is no complication as far as the name is concerned. The Government has secured a financial support amounting to Kshs3.5 billion from the Government of Germany through KFW. We will improve water services in Kisii, Nyamira, Kericho and Litein. About Kshs300 million will go to the Litein Water Company, so that the flow of the water can be gravity oriented.

Mr. Langat: Mr. Deputy Speaker, Sir, the Assistant Minister has said that they have got funding from Germany---

An hon. Member: KFW!

Mr. Langat: Or KFW, whatever it is, and they are shying away from breaking down the money into---

The Minister for Water and Irrigation (Mrs. Ngilu): On a point of order, Mr. Deputy Speaker, Sir. You have heard the Member saying 'whatever it is' after he has been told that we are obtaining resources from KFW. In other words, he is not even bothered whether we are getting the money or not. What is the point of us replying to him and giving them this if he has that attitude?

Mr. Langat: Mr. Deputy Speaker, Sir, I apologize to the Minister, but I think she is trying to run away from answering my question. From the money that the Ministry has got from the donor, how much will go to Kericho, Litein, Bomet and Kisii, so that we are sure that we are part of the Ministry's programme?

(Dr. Kones stood up in his place)

Mr. Deputy Speaker: Dr. Kones, do you want to seek further clarification?

Dr. Kones: Yes, Mr. Deputy Speaker, Sir, on the funding by KFW, can we get a firm confirmation that the money is, indeed, there? Information that has reached us indicates that the donors have pulled out because they do not have confidence in the CEO of Lake Victoria South Water Services Board.

Mr. Deputy Speaker: Assistant Minister, can you respond to the clarification sought?

The Assistant Minister for Water and Irrigation (Mr. Waititu): Mr. Deputy Speaker, Sir, I only came with the figure for Litein, which Kshs300 million. I had not broken down the figure but the total figure is Kshs3.5 billion. Kericho, Kisii, Nyamira and Litein are the areas going to benefit. The Member for "Litein" should be happy that

we now have the money, and we are going to start the project on the gravity next year. We hope to complete it in mid 2014.

Eng. Gumbo: On a point of order, Mr. Deputy Speaker, Sir. I have just heard the Assistant Minister refer to Member for "Litein". Where is "Litein" constituency in Kenya? I am not aware of its existence. Is he in order?

Mr. Speaker: Maybe, he meant the Member for the constituency where Litein falls.

Proceed, Assistant Minister!

Dr. Kones: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has not answered my question. Is there a firm commitment between Lake Victoria South Water Services Board and---

Mr. Deputy Speaker: He was in the process of answering when he was interrupted through a point of order.

Proceed, Assistant Minister!

The Assistant Minister for Water and Irrigation (Mr. Waititu): Mr. Deputy Speaker, Sir, I have told the hon. Member that we have the money from the KFW, a German organisation, and we will start the works for Litein next year. We have allocated Kshs300 million to Litein Water Supply.

Mr. Ochieng: Mr. Deputy Speaker, Sir, the Assistant Minister did not say when they are going to clear the electricity bill for Nyakach Water Supply, which has been disconnected for the last three weeks. My people do not have water. The Ministry has done well so far, but I would want them to also pay the electricity bill, so that my people can have water before Christmas.

Mr. Deputy Speaker: Hon. Ochieng, is the water supply in your constituency within the same region covered by the water services board?

Mr. Ochieng: Yes, Mr. Deputy Speaker, Sir. It is within the region covered by Lake Victoria South Water Services Board.

The Assistant Minister for Water and Irrigation (Mr. Waititu): Mr. Deputy Speaker, Sir, I wish the hon. Member could also assist us in talking to his people, so that they can start paying for the water. That is the biggest problem we have in that area. People there are getting water for free. Therefore, the water company is unable to even pay for electricity.

Mr. Ochieng: On a point of order, Mr. Deputy Speaker, Sir. My people are paying for water. The monthly collection that goes to the water company is over Kshs700,000. Where does this money go, if it cannot service electricity bills? I can prove that they collect almost Kshs700,000 per month.

The Assistant Minister for Water and Irrigation (Mr. Waititu): Mr. Temporary Deputy Speaker, Sir, the water company collects only Kshs700,000 whereas its budget is Kshs12 million. The hon. Member has said that our Ministry has been paying electricity bills for the company. I thought he should be the happiest Member of Parliament as far as our Ministry is concerned.

(Dr. Laboso stood up in her place)

Mr. Deputy Speaker: Hon. Members, the Chair will allow Dr. Laboso to seek the last clarification on this matter.

Dr. Laboso: Thank you, Mr. Deputy Speaker, Sir. Is the Assistant Minister aware that members of staff for Telilbei Water Project have not been paid their salaries for the last two months? Could he also clarify, as in the case for Nyakach, whether electricity for the people of Litein, Sotik, Kericho, Kipkelion and Bomet will be paid, so that they can have power during the Christmas season?

The Assistant Minister for Water and Irrigation (Mr. Waititu): Mr. Deputy Speaker, Sir, as far as the workers are concerned, we have not been informed of their plight. As far as the issue of payment of electricity bills for the areas that the hon. Member has mentioned is concerned, we paid Kshs1 million only last week and we are going to pay the balance early next month.

Dr. Kones: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to say that he is not informed about the salaries, yet it was part of the issues I wanted addressed in the Ministerial Statement that I sought? Is he in order to mislead the House that he was not informed, yet it was one of the items I had listed for his attention?

The Assistant Minister for Water and Irrigation (Mr. Waititu): Mr. Deputy Speaker, Sir, as far as we are concerned, the revenue that is generated at Telibei is enough to pay salaries for members of staff. We do not understand why they have not been paid. I will find out the reason, but I would also like the hon. Member to try and find out whether it is true that members of staff at that project have not been paid. The problem was electricity and we have since paid for it.

Mr. Nyambati: Mr. Deputy Speaker, Sir, I want to appreciate the work that the Ministry is doing because water is life. I am happy to hear that Nyamira is going to benefit from this massive project. I just want to know whether the Assistant Minister can promise to table the breakdown of how much each district or constituency is going to get. My constituency, Kitutu Masaba, has never benefitted from the Ministry of Water and Irrigation, and I hope that it will benefit this time round. I would like to know whether he can table the breakdown of what each district will get.

The Assistant Minister for Water and Irrigation (Mr. Waititu): Mr. Deputy Speaker, Sir, we have no problem with tabling the details of how the money has been allocated. I would also like to invite the hon. Member to our Ministry Headquarters. We have been doing a lot for the districts but sometimes hon. Members may not be well aware of our activities. We have been doing a lot and it is important for hon. Members to be visiting our Ministry, so that we can give individual hon. Members breakdowns of what we are doing in their areas, so that they can also try to help us with following up with their constituents on the ground.

Mr. Deputy Speaker: Hon. Members, that is it for this Order.

Mr. Nyammo: On a point of order, Mr. Deputy Speaker, Sir. The Order Paper indicates that there is a Motion for Adjournment that is supposed to have been moved not later than 3.30 p.m. Has the House resolved otherwise?

(Mr. Imanyara stood up in his place)

Mr. Deputy Speaker: Are you on a point of order, hon. Imanyara?

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

Mr. Deputy Speaker: Proceed.

POINT OF ORDER

SECURITY OF MEMBERS OF PARLIAMENT

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. I rise to raise an important issue regarding the security of Members of Parliament. In this regard, I speak as a Member of the Speaker's Panel, which comprises of you, the Speaker and four other Members of Parliament.

I have with me a copy of a letter from the Office of the President. It is a situation report that points out that the intelligence agencies have received information that a group of *Al Shabaab* operatives were dispatched from Lower Juba area in Somalia to Ijara and Lagdera Constituencies on 13th December, 2011 with a brief to assassinate Minister Yusuf Haji and Deputy Speaker Farah Maalim.

Similarly, the militia dispatched some unidentified explosive experts from Gauley area in Somalia to attack Habaswein and El Wak markets on undisclosed dates. *Al Shabaab* appears determined to continue pursuing targets in Kenya. As a result of this, we have seen a number of explosives kill a number of our security personnel. I rise on a matter of great national importance, particularly now that we are about to go on recess, to find out from the Minister of State for Provincial Administration and Internal Security what measures are being taken on this very serious threat to Members of Parliament and Kenyans as documented by intelligence reports, a copy of which I table.

(Mr. Imanyara laid the document on the Table)

Dr. Khalwale: Mr. Speaker, Sir, I would like to augment what he has said. We know from the history of this kind of militia in the USA and the Middle East that they tend to target citizens, especially during religious holidays. Could the Minister also tell us the improved security he is providing to Kenyans, so that they can enjoy this Christmas knowing that there is sufficient security?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I am aware that the Minister is not here. However, I want to state that the information brought by hon. Imanyara has emanated from the Government. So, we are aware of the threats and have taken measures to ensure that the security personnel are alert in those areas. Indeed, since the beginning of the operation within Somalia, extra security measures have been put in place and security advisories continue to be given. The catch word is that everyone should be watchful wherever they are as the Government continues intensifying security. We cannot guarantee that there is 100 per cent cover for everyone unless people do not move from where they are. We are all sometimes on the roads and elsewhere and the threat could be anywhere. It is unfortunate that in some incidents, people have been caught in the crossfire or in the exploding mines. We are aware of the situation and we are taking all the measures necessary to safeguard the lives of Kenyans and residents within Kenya, especially during this festive season. The catch word is that everyone should be on the lookout and report any suspicious activity to the nearest authorities.

Ms. Karua: Mr. Deputy Speaker, Sir, without asking for details, could the Minister assure us that the Government has taken measures to secure the safety of the

individuals under threat, and of Kenyans generally, especially having noted that the security arrangements at Parliament appear to have been relaxed?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, we are taking all precautionary measures to safeguard Kenya. This information has come from the Government and it knows not only those who are under threat, but also others as reported to it by intelligence organs every minute. Every time information comes in, it is taken on board for protecting any known targets and everyone.

In terms of relaxation of security at Parliament, I am not sure that there is a relaxation. I know there were very stringent measures such as opening every boot of vehicles. I think this is an operational issue in terms of to what extent you can trust a Member of Parliament. If a Member of Parliament is driving in, do you expect him to come in to destroy his own Parliament? I think it is an issue of trust plus control that works best for purposes of ensuring security without a lot of intrusion, which would show suspicion of the integrity of Members of Parliament, to the extent that they have to be subjected to unnecessary measures. So, I think a balance has been struck and hon. Members need not panic.

Mr. Lagat: Mr. Deputy Speaker, Sir, I want to thank hon. Gitobu Imanyara for raising this issue. The Government says that it has taken extra measures. However, when you walk around you will realize that there is free entry into all public buildings that the Kenyans use. Even vehicles are entering basement parking lots without serious security checks. Could the Government confirm whether or not they have seconded security officers to all public buildings in Kenya to ensure that Kenyans are secure?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, without getting into the finer details which would be prejudicial to the security operations, I can confirm that adequate security measures have been put in place. Some may not be visible, but some may be visible. Adequate security measures have been put in place to safeguard Kenyans. We are also asking Kenyans to be on the watch out and report any suspicious movements and articles left unattended. They should report anything that looks out of the ordinary.

Mr. Njuguna: Mr. Deputy Speaker, Sir, I am concerned that most of the people will now be in the rural areas. On 25th and 26th of this month all the Christians will be in their churches. What extra security measures will the Government institute to make sure the safety of these people is guaranteed?

Mr. Kutuny: Mr. Deputy Speaker, Sir, while appreciating the actions that the Government is putting in place to ensure that Parliament is secure, I think that the security team that is manning the gates of Parliament has gone beyond its mandate. It has gone to the extent where it seems they are harassing Members of Parliament as they drive in. When a Member of Parliament is in the vehicle, then there is no need for them to go and search the boot. This is because you do not expect a Member of Parliament to bring a bomb to bomb this House. These are the issues we are raising. They must try to look for a better way, and be flexible with Members of Parliament when they enter Parliament Buildings.

Mr. Deputy Speaker, Sir, there are times Members of Parliament come to Parliament using various vehicles, some of which may not have the Parliamentary sticker. The security people cannot allow a vehicle without the sticker to get in, even with a Member of Parliament inside the vehicle. So, we are requesting that they consider

allowing Members of Parliament to get in without the boots of their vehicles being searched.

Mr. Litole: Mr. Deputy Speaker, Sir, I want to differ with the hon. Member. In security matters, you must suspect everybody. Assume hon. Kutuny has an Al Qaeda man behind him with a gun in hand, yet we trust him to access Parliament in his vehicle. What will happen? He will enter with the Al Qaeda! So, let us be considerate, hon. Members, as these things are done for our benefit.

Mr. Deputy Speaker, Sir, much as the Minister is saying that security has been beefed up everywhere, seen and unseen, what is happening to our soldiers in Garissa, Wajir, and Mandera? The other day there was a bomb blast in one of those areas. Could the Government also agree with me that the Minister for Transport and the Minister of State for Defence need to be my guests to give me further security in Pokot?

Mr. Deputy Speaker: Mrs. Shebesh, did you want to rise on a point of order?

Mrs. Shebesh: Mr. Deputy Speaker, Sir, I just wanted to say exactly what hon. Litole has said with regard to enhanced security.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I want to thank hon. Litole for clarifying this matter. I mentioned that this is an issue of balancing between the measures to be put in place and ensuring that we are not seen to be harassing people. Regarding Parliamentary stickers, I would like to urge hon. Members to get them. This is because any vehicle coming to Parliament, whether it has a Member of Parliament in it or not, does not mean that the Member of Parliament is coming in voluntarily. He could be used as a decoy.

I think it is important that we get the official stickers. We also subject ourselves to this security measures for the security of each one of us.

Mr. Deputy Speaker, Sir, in terms of the members of the Christian faith who will be attending church services over Christmas and the other days, the administration is aware that those festivities will be taking place and measures will be put in place to ensure that there is law, order and security for the worshippers as they enjoy their Christmas. Indeed, the security will be provided for all the revelers who will also be going to enjoy at the various spots during the Christmas and New Year festivities. I would just like to tell them to be on the watchout and to ensure that they do not drink and drive.

Mr. Ogindo: On a point of order, Mr. Deputy Speaker, Sir. Under Order No.7---

Mr. Deputy Speaker: Order! The Chair clearly appreciates the concern by the hon. Members, Mr. Imanyara and all of you who are here, on our safety as Members of Parliament in general and in particular, two Members of this House who are now under threat. That information is actually available to me and to Mr. Haji too. The Government has taken certain adequate measures to protect our security, both at our constituencies as well as in Nairobi.

I also want to appreciate the offer given by Mr. Litole. I presume he means the Pokot militia. I cannot run away from the *Al Shabaab* militia and go to the Pokot militia for protection. But I appreciate the fact that you have also offered to protect your fellow Members of Parliament here.

But I want to tell something else to the Members of Parliament here. We need to go the extra mile. There is no cost to our lives. There is no cost which is too expensive to pay when it is a question of the life of a human being. So, I want to urge the Members of

Parliament to be very patient, to go through the security measures that have been put in place by our own security forces inside Parliament and outside. The *Al Shabaab* is a criminal gang that has terrorized the Somali people who are our brothers and sisters across the border. Definitely, if we do not take the kind of actions we took, it will come to us. When your neighbour's house is on fire, your house is bound to be on fire also in time unless you go and put it off. I think we are proud of our forces; we are proud of the leadership of our country and I am sure it will be a problem of the past soon.

As for me and Mr. Haji, we believe in destiny. We will die one day. So, that is not something that will scare any of us from giving the leadership that essentially we ought to give for this honorable course.

Thank you, hon. Members.

FINDINGS OF AUDIT ON WORLD BANK FUNDED PROJECTS IN WESTERN KENYA

Mr. Ogindo: Mr. Speaker, Sir, under Order No.7, sometimes back on 1st September, I sought a Ministerial Statement from the Minister for Finance on the findings and recommendations of the internal audit on the World Bank funded projects in western Kenya and in the arid areas. The undertaking was that a Statement would be issued on 6th September. To date, I have not received this Statement. I seek your guidance on when I should expect this Statement.

Mr. Deputy Speaker: Could the Deputy Leader of Government Business give an indication on when that Statement will be available in the House?

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I will hold some further consultation on that matter and find out why there is such a delay and then identify a proper date, perhaps, in a week's time depending on obviously---

Mr. Deputy Speaker: The Chair notes the fact there has been an unusually long delay in that Ministerial Statement. You, probably, need to give us more a definitive answer on this in due course and the Chair will look forward to the day when that will be presented also on the Floor of the House.

Mr. Ogindo, I think that satisfies you for the time being.

PURCHASE OF COTTON FROM FARMERS

Eng. Rege: Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of Agriculture on buying of cotton across the country. The Cotton Act, Cap. 335 which established a Cotton Development

Authority did give the Authority amongst, other duties, the mandate to register and gazette buying points and buyers of cotton across the country.

The Authority is also mandated, in consultation with the stakeholders, to review the buying price of cotton produced as the market demands. In the Statement the Minister should:

1. Indicate if the Ministry is aware that cotton is currently being harvested and cotton farmers are not happy with the manner in which the buyers are handling the process of buying cotton produce across the country, particularly in Karachuonyo.

2. State the number of gazzetted buying points available in the country, particularly in Karachuonyo.
3. Indicate the agreed buying price of a kilogramme of cotton between the authority and the buyers.
4. Confirm that the buyers are buying farmers' cotton at the agreed upon price and clarify whether the weighing machines used are the ones approved by the Ministry of Trade.

Mr. Deputy Speaker: Deputy Leader of Government Business, or any other Minister for that matter.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I will communicate to the Minister and he can have the Ministerial Statement next week, in parliamentary language.

Mr. Deputy Speaker: Fair enough! It is so directed. When specifically next week? Could you be more specific? The Chair cannot direct that the Ministerial Statement be made available next week.

The Minister for Transport (Mr. Kimunya): On Thursday, next week.

Mr. Deputy Speaker: The Chair so directs.

Next Order!

MOTION

ADOPTION OF REPORT ON NOMINATIONS TO JUDGES AND MAGISTRATES VETTING BOARD

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the approval of the nominations 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 14th December, 2011.

(Mr. Baiya on 20.12.2011)

(Resumption of Debate interrupted on 20.12.2011)

Mr. Deputy Speaker: Mr. Baiya, you have 59 minutes of the allotted time. You only spent one minute.

Proceed.

Mr. Baiya: Thank you, Mr. Deputy Speaker, Sir. I believe I will be much more brief than that.

Mr. Deputy Speaker, Sir, Parliament enacted the Vetting of Judges and Magistrates Act, 2011 which commenced on 22nd March, this year. The Act was later amended on 19th May, 2011. The Judges and Magistrates Vetting Board is established under Section 6 of the Vetting of Judges and Magistrates Act. Section 7 of the Vetting of Judges and Magistrates Act states that:-

“The board shall consist of nine members comprising of a chairperson, a deputy chairperson and seven other members of whom:

- (a) Six shall be citizens of Kenya appointed in accordance with Section 9(1) to sub-section 12 and of whom three shall be lawyers; and,
- (b) Three shall be non-citizens of Kenya appointed in accordance with Section 9(13).

The President, in consultation with the Prime Minister pursuant to Section 9(2) of the Vetting of Judges and Magistrates Act, 2011, as amended by the Vetting of Judges and Magistrates (Amendment) Act, 2011, declared the vacancies in the office of the chairman and members of the Judges and Magistrates Vetting Board and invited qualified applicants through gazette Notice No.5367.

On 17th November, this year, His Excellency the President through a letter by the Permanent Secretary, Secretary to the Cabinet and Head of Public Service, forwarded the names of the following persons to be considered for appointment to the respective positions pursuant to Section 9(13) of the Vetting of Judges and Magistrates Act, 2011, as amended by the Vetting of Judges and Magistrates and Judges (Amendment) Act of 2011:

1. Justice F.M. Chomba from Zambia, member.
2. Justice Albie Sachs from South Africa.

On 22nd November, 2011, the hon. Speaker in the Communication to the House referred the names of the two non-citizens of Kenya nominees to the departmental committee of Justice and Legal Affairs for vetting and directed the Committee to submit its recommendation on the nominees to the House.

At a meeting held on 14th of December this year, the Committee examined the *Curriculum Vitae* (CVs) of the two candidates and was satisfied that the two non-citizens possessed the requisite experience, record and competence. We have copies of their CVs which we are attaching to this Report.

Mr. Deputy Speaker, Sir, Section 8 of the Judges and Magistrates Act (2011) sets out the qualifications for appointment to the Judges and Magistrates Vetting Board. The qualifications are under Section 8:-

“(a) A person shall be qualified for appointment as a Member if such a person:-

- a. Holds a degree from a university recognized in Kenya.
- b. Has at least 15 years distinguished post-qualification experience in the field of study.
- c. Satisfies the requirements of Chapter 6 of the Constitution.

(2) A person shall not be qualified for appointment as the Chairperson or Deputy Chairperson unless such person has at least 20 years or an aggregate of 20 years experience as a judge of the superior court and distinguished legal, academic, judicial officer or other relevant legal practice in the public or private sector in Kenya”.

The recommendations of the Committee, therefore, are:-

The Committee did not interview the two non-citizens nominees who were nominated under Section 7(b) of the Vetting of Judges and Magistrates Act. However, the Committee considered their CVs and recommend that this House approves the appointment of Justice F. M. Chomba from Zambia and Justice Albie Sachs from South Africa.

Mr. Deputy Speaker, Sir, their CVs are attached to these applications. All we can really say is that these are judges who are eminently qualified with distinguished careers. The whole idea of bringing them on board is to give the process of vetting the judges and

magistrates the objectivity that would be required to put the whole process above suspicion and partisanship.

I would, therefore, urge the House to pass this Motion, observing that the commencement of the vetting of judges and magistrates Act is next month. The third other foreign judge is already available. It is only these two who are needed so that the whole process of vetting can go on, effective from next month.

I beg to move and ask my colleague, Mr. Olago Aluoch, to second.

Mr. Olago: Mr. Speaker, Sir, I have the honour to second this Motion. I have nothing more useful to add.

(Question proposed)

Ms. Karua: Mr. Deputy Speaker, Sir, I stand to support the Motion and to say that it is good that this Motion has been brought. This is very late. It was expected to have been done early. We are playing catch-up. I want to commend the Committee for doing its work expeditiously.

I beg to support.

The Minister for Justice, National Cohesion and Legal Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, I rise to support.

I also want to congratulate this House for putting back in place the Committee on Justice and Legal Affairs. They have come *kwa fujo na nderemo*. We welcome them and are very thankful and grateful.

I support.

(Question put and agreed to)

Mr. Deputy Speaker: Next order!

MOTION FOR ADJOURNMENT

ADJOURNMENT OF THE HOUSE *SINE DIE*

Mr. Deputy Speaker: Deputy Leader of Government Business, you realize that this Motion is supposed to take three hours. This means we will be adjourning past 7.00 p.m. Three hours is the maximum time unless there is nobody who wishes to contribute.

Proceed and move the Motion!

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

THAT, this House do adjourn *Sine die*

(Applause)

Mr. Deputy Speaker, Sir, let me start by thanking Members for the way we have conducted ourselves in the course of this year. The year 2011 saw, perhaps, the largest number of Bills passed by this House. Every Member deserves a pat on the back for that contribution to this nation.

It is in the course of this year that we saw all the Bills for the implementation of the Constitution passed and Members of the House working up to midnight, working longer hours and working on Fridays to ensure that we give Kenyans the legal framework to implement the new Constitution.

Mr. Deputy Speaker, Sir, this House has traditionally taken a break in early December. But this particular year has been special because of the business that we have had and part of the problems that we had ourselves within the Committee on Justice and Legal Affairs which delayed the processing of some the names. I am glad that we have managed to resolve that now and at all the names we gave to the Committee, at least, they have done their report and finished their work. Hence, the business that we had scheduled and was the only reason sitting between Members taking a break and staying in the House is as good as completed.

It time for Members to be with their families. It is time for Members to be with their constituents. It is time for all of us to take a break to go and recharge our energy after one year of service to this country. It is time we all went home to our constituencies to seek mandates in terms of the issues that our people want us to raise in the course of next year. All those things can only be done within the framework of us going and meeting with the students. The examination results for the Kenya Certificate of Primary Education (KCPE) will be announced in the course of next week.

Mr. Deputy Speaker, Sir, we have to go and start looking at all those bright kids who have passed, start accommodating them within our bursary systems and ensure we secure the schools that they need to go to.

I know that Members of Parliament do these things because I do them. I am a Member of Parliament. I want that time to go and do it. I am sure even Mr. Mbadi would like to do it because he has very bright kids in his area. I know most of them will be passing the exams and they need to go to schools. It is his duty to provide that leadership in terms of bursaries and other facilities.

Mr. Deputy Speaker, Sir, we have our CDF projects. This is a unique year. This is the last full year that we shall be in office. It is time we went and looked at the progress to date and what needs to be done so that all the projects within the CDF are completed while we are in office. We do not leave it to those who will come after us and they become white elephants.

In the course of the year, the staff of Parliament has been very good to us. These officers have worked extra hard. We have pushed them extra hard. They worked beyond the normal call of duty. I noticed even yesterday they had a small party wishing one another the Christmas good bye. When I met some of them who wished me bye yesterday I asked: "You are still here?" They said: "Yes, we even have tickets to go home but we are still waiting for the House".

I believe that these people deserve a break. We need to give them time to go and be with their families. However, they cannot go as long as the House is sitting. I would like to ask hon. Members that even as we think about ourselves, let us also start thinking about the people who work for us. They also have families and they have people they need to go and be with. Their children have also left school and are on holiday and they need that parental contact in the course of this holiday season.

Mr. Deputy Speaker, Sir, I am aware that there are some outstanding issues. We have some Bills that we would have preferred to finish this time of the year, particularly,

the Finance Bill and the Bill by hon. Ogindo on Interest Rates and other Bills that we would have preferred to deal with. However, I am also aware that the matters that have been raised have raised a lot of issues that need to be addressed best within the frameworks of the Committees.

I am aware of this, after talking to the Members, in my capacity as the Deputy Leader of Government Business. Members have asked whether they can take some time to consult in small groups with the Departmental Committee on Finance, Planning and Trade and the Budget Committee and with other stakeholders so that they can understand the intricacies of interest rates, how they affect us and how the exchange rates affect us. Can we get the output from the Ababu Namwamba Committee on the Cost of Living and from the Keynan Committee on the Exchange Rate so that we can use all these things to come up with a comprehensive solution on the issue of interest rates that is affecting all of us and businesses? A quick fix through one single amendment will not save the situation. But, a comprehensive approach to this matter will help us now and in the future so that we have a balance between the economy and the people who are affected by the interest rates on a sustainable basis.

These consultations will require some time of the House so that the Committees can take their retreats and look at these matters. We can then sort out the matter and by the time we come back, we address the Finance Bill from new lenses and a new look and discuss it within the new framework of extended consultations.

I am aware that perhaps, there may be some feelings that the Finance Bills expires. I do not know who has given the impression that the Finance Bills expire on 31st December. We moved away, when we changed our Standing Orders from a time when Bills used to expire at the end of a session. All Bills that are still on the Order Paper will continue until we pass them. The only thing that happens with the Finance Bill is that the House passed the Provisional Collection Order (PCO) that gave the Deputy Prime Minister and Minister for Finance power to collect taxes up to 31st December or up to when the Finance Bill is passed. So, what happens, obviously, is that between 31st December, 2011 and the time we come back to pass the Finance Bill, we will need to look for another instrument which is also provided for within the law because the Deputy Prime Minister and Minister for Finance has power to levy any taxes up to 30 per cent and then seek the concurrence of the House. So, there are instruments; the House, in its wisdom, in the past, has provided for these things and we need not to worry.

Mr. Midiwo: On a point of order, Mr. Deputy Speaker, Sir. I have the Floor, *Waziri*. Is the Minister in order to say that the Finance Bill will not lapse on 31st December, 2011 while only yesterday, the President asked him, in my presence and they said that the authority to collect taxes will lapse on 31st December, and then they will go to borrowing? Were they cheating the President or Members of Parliament? It is important to tell the truth. Honesty is a good thing.

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

Mr. Deputy Speaker: Allow the hon. Minister to respond to the point of order.

Mr. Kimunya: Mr. Deputy Speaker, Sir, if hon. Midiwo was listening, I have explained exactly what happens in terms of the Finance Bill and in terms of the Provisional Collection Order that we passed here whose power expires on 31st December. But, there are other instruments that you can use beyond that time. The Income Tax Act and the Customs Act have all provisions that the Deputy Prime Minister and Minister for

Finance can use to levy additional tax of up to 30 per cent, subject to ratification by the House at the earliest opportunity after it reconvenes.

The issue I want to bring out at this point is that, from all the discussions that the Departmental Committee on Finance, Planning and Trade has had with the Minister, the issue of tax rates has not been a matter of contention. That has been settled with the Committee. So, if there was a contention between the Departmental Committee on Finance, Planning and Trade and the Minister in terms of the tax rates in the Bill, then that would raised a lot of concern but there is concurrence on that. The other issues that are coming in require---

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. The rules of this House do not allow us to anticipate debate on the Finance Bill. You cannot anticipate that this House will pass the rates of tax. How do you know and yet we have not debated that Bill? It is wrong for the Minister to anticipate debate on a Bill which is not before the House.

Mr. Kimunya: Mr. Deputy Speaker, Sir, I have not said that the Members will pass it. I am talking about the instruments that are available for purposes of moving forward because there were some concerns from some Members, including myself, about what happens if we go home without passing the Finance Bill. I was just explaining that we do not stand to lose anything. There may be some implications in terms of collections between January and the time that this House comes back to do that, but there are some instruments that this House has provided for in such eventualities.

I think it is important that once we have that within ourselves, we give ourselves adequate time for consultations because the issue of interest rates affects all of us. It affects people and we are all concerned. However, a quick solution will not help us. Complex issues require complex solutions. I believe the consultations we envisaged with the Departmental Committee on Finance, Planning and Trade, the Budget Committee and with as many people and experts as possible, to understand what happens when you pass a certain law in Kenya, vis-a-viz, Uganda and Tanzania. Do you get capital flights; people moving their money from Kenya into Uganda and people moving their money from Kenya into Tanzania? All those things need to be addressed so that when we come back to this House, we can comprehensively look at a law that will help this country now and into the future.

That can only be done within the framework, when people's minds have rested and when we are not torn between our families and our constituents and being here. I agree that we should take this time and go through that. Hon. Members will remember that we have some Bills that are coming up for review; they are the Constitutional Bills with the 18 Months deadline which is 27th February. We need time to process them through the Committees, consult so that when we come back, we give people the next batch of the Constitutional Implementation Framework that they require. All issues are pointing towards the fact that we need a break. I certainly, need one and I know most of these Members who have been here, like hon. Dr. Khalwale and Mr. Imanyara has been here consistently--- If you have been working the way I have been doing, you actually know that we need that break to meet with our constituents because we have been marooned here working every week; working for this country from this side of the House. But I need time in Kipipiri and I know very many Members need time with their families and their people. Our staffs require extra time.

I really wish that this House does agree that we adjourn *sine die*. I beg to move and ask hon. Yusuf Haji to second the Motion.

The Minister of State for Defence (Mr. M.Y. Haji): Mr. Deputy Speaker, Sir, I want to second the Motion. Personally for the first time in the history of my Parliamentary career for the last 14 years, I have not been able to go to my constituency for one and half months. This is because of the duty that we are doing for this nation. Therefore, I feel strongly we need this break to be able to join our people who elected us.

Mr. Deputy Speaker, Sir, I want thank my brother, hon. Imanyara, for the issue he raised here. I want to tell the House that both the Deputy Speaker and I, being Muslims, believe that our fate is decided by the Almighty from the day we were in the womb of our mother. Therefore, *Al Shabaab* and their likes can never ever intimidate us from doing what we are supposed to do in the defence of our country. We will fight them; day and night, until we fully liberate Somalia from the mess they have meted on the people of Somalia for the last 20 years.

I want to thank the House for the support that they have continued giving our own Kenya Defence Force who are in the forefront fighting *Al Shabaab*. We wish them a happy Christmas and they should fight them to the end.

Thank you very much.

(Question proposed)

Ms. Karua: Mr. Deputy Speaker, Sir, may I, at the outset say; I rise to oppose the Motion.

It is true that we are tired that we need to do all those things that have been proposed. However, I am ready to sacrifice so that we do the things that we must do before going on recess. I want to begin by commending the Deputy Speaker and hon. M.Y. Haji for their courage. I also want to commend our defence forces who are working hard to secure our safety and that of our territorial integrity.

Mr. Deputy Speaker, Sir, the Mover of the Motion has just said that we do not need to pass the Finance Bill because they can use other instruments to collect taxes. I have been looking at Article 210 of the Constitution. It says:- "No tax or licensing fee maybe imposed, waived or varied except as provided by legislation." We pass the Finance Act every year to provide the legislative backing of taxation. The Provisional Order is set to lapse. If we believe in the rule of law, we should not go home without passing the necessary legislation, so that we can continue collecting taxes as has been proposed.

Mr. Deputy Speaker, Sir, it is quite sad that the Government is afraid of tabling the Finance Bill merely because a Member has voiced the intention, and which is supported by many, of bringing in an amendment to put a ceiling on interest rates. I want to recall that when the shilling was losing very badly against the dollar, the Deputy Prime Minister and Minister for Finance said he could not intervene. He was letting the market force to determine what happened. After the shilling took a beating and people made a lot of money, he finally intervened. The shilling has now stabilized. When the shilling had lost against international currency, fuel prices, food prices went high. However, when the shilling has regained, Kenyans have not had any reprieve from the high cost of living.

We are now being told that it is very bad to interfere with interest rates. In the developed countries, interest rates are always regulated, not by legislation, but certain gentlemen's agreement. But the regulators put their foot down. In Kenya, the regulator has gone to sleep, and the Minister has gone to sleep. The banks are left to fleece Kenyans. It is actually licensed theft.

Mr. Deputy Speaker, Sir, what is happening in Kenya is deplorable. Kenyans are left at the mercy of bankers. Some of these international banks are making the highest profits in the world in their branches in Kenya. The Deputy Prime Minister and Minister for Finance will, again, tell us about market forces, after the pockets of the money cartels are full, he would then intervene, or maybe they will use the regulator, behind the scenes, and things will stabilize the way they stabilized.

It is irresponsible of this Parliament to go home, leave Kenyans with the threats of losing their hard earned homes and shelters because of interest rates. It is irresponsible for us to go home, even though we are tired, and leave Kenyans at the mercy of cartels. There must be some interventions. If it works in other countries, through gentlemen's agreement, let the Deputy Prime Minister and the regulator wake up. If they do not, then Parliament must do the work for them. That is what we are here to do.

Mr. Deputy Speaker, Sir, I want also to note that the Constitution promises us equality. We have seen the Government demolishing houses of Kenyans who have struggled all their lives to get shelter for their families. In a comparable situation, when a certain company complained when they were informed that a certain by pass was to pass through their premises, the Government heard their cry, and the by pass was rerouted. Why couldn't there be some form of dialogue with the people whose houses were demolished? If their title deeds were not okay, the Government is the holder of all the land. This is a Government that has reneged on reforms. It is the Government of the rich by rich, which ignores the poor, and for those reasons, I oppose the adjournment. Let us sit here, and do the work that we were elected to do by Kenyans.

Mr. Midiwo: Mr. Speaker, Sir, I stand to oppose the Motion before the House. In doing so; I do so, with a very heavy heart.

Mr. Deputy Speaker, Sir, we must put our foot down as a Parliament, and put Kenyans first. The reason why this Government has refused to bring the Finance Bill before this House is for the reasons espoused by hon. Karua, simply because we are seeking to regulate the banks and stop them from fleecing our people. As we sit here today, some of our borrowers are paying, three or four times. The interest rates have gone up from 12 per cent to as much as 33 per cent in the market.

I want to say that we all need a break. But I think we need a break, only after doing our job. One of the cardinal roles of the Government is to protect its people. That the Government can behave as if it is a private commercial bank beats logic. We must force the Government to talk to Parliament for the good of Kenyans. All we are saying is that the power to bring or withdraw the Finance Bill is entrusted on the Executive by Kenyans. It cannot be a tool that the Minister can use to hurt Kenyans. It is a tool that we have, which forces the legislature and Executive to negotiate. It cannot be and has never been a reason for the Executive to help the rich to fleece the poor.

Mr. Deputy Speaker, Sir, one reason which is being peddled around is that even if the power to collect taxes lapses, the Government shall borrow. This Government can only borrow on behalf of the citizens because it is the citizens that will pay. It is not the

people sitting in the high offices that will pay if they borrow. Therefore, we want to tell the Minister that even if he thinks that he has authority to borrow, we gave him that authority as the representatives of the people and we shall be looking for ways of taking it away. We shall take away from him the power to overload our people with unnecessary debt without consulting this Parliament, because that is the wrong way to do it. The Minister must come to Parliament and negotiate. That is the way the Legislature works. We have our people who are suffering now and are looking up to us to offer solutions. Therefore, it cannot be that this Government calls Members of Parliament to the Kenyatta International Conference Centre (KICC) to tell them to drop the amendments without an option. We cannot drop our claim on the arrogance of the banks because the Executive has said so. That will not happen in this House. That was the Government and Parliament of yesterday. Today we have changed.

The Minister of State for Defence (Mr. Haji): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to say that we were being called to the KICC when he is the Chief Whip who summoned all the Members of Parliament to go there?

(Laughter)

Mr. Midiwo: Mr. Deputy Speaker, Sir, yes, I did that. I must admit that I summoned them and I asked for the agenda why I was summoning them, but nobody gave me the agenda. When I found out, I went to the Office of the President and told the President and the Prime Minister that I did not want to be called to betray Kenyans. I went and said my views in the KICC. I am clear on what I am trying to do for Kenyans and I will do it. I think this House must rise to the occasion.

Mr. Deputy Speaker, Sir, the so called Kenya Bankers Association (KBA) is a misplaced organization and cartel. It is a monopolistic organization in a free market economy. There is no Kenya Bankers Association in the free world. Somebody or even the Minister must control such tendencies. The Minister has powers to do so. Today if you get your bank statement, even at our level, I can never read and understand my bank statement. Even the charges which the law says that banks must seek the authority of the Central Bank to institute, banks are doing it day and night; everyday. That cannot be. We cannot be in a scenario where the Government helps crooks to create an artificial economy.

Mr. Deputy Speaker, Sir, a couple of months ago, the Dollar---

Mr. Deputy Speaker: Your time is up!

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

Mr. Imanyara: Mr. Deputy Speaker, Sir, I wish to muster as much passion as I can to oppose this Motion.

Mr. Deputy Speaker, Sir, our Constitution is a very recent creation. Chapter 9, Article 129 reads:-

“(1) Executive authority derives from the people of Kenya and shall be exercised in accordance with this Constitution.

(2) Executive authority shall be exercised in a manner compatible with the principle of service to the people of Kenya, and for their well-being and benefit.”

Mr. Deputy Speaker, Sir, to go on recess before considering the Finance Bill is to undermine and subvert that very constitutional principle. The Executive should not be an

employee of the banks, whether or not, he--- and I do not know whether he has any shareholding or not. Executive authority is exercised on behalf of the people of Kenya and we the representatives of the people of Kenya say that we are not ready to go on recess before we pass the Finance Bill.

Mr. Deputy Speaker, Sir, those who won a pyrrhic victory believe that today they will do the same. We are better informed this time. We shall stay here until such a time as necessary to ensure that this Motion is defeated. I wish that the Vice-President and Minister for Home Affairs was here so that I can challenge his *bona fide* in extending the House at a time that he did, when he had misrepresented to a lot of people that the House was going to rise at 6.30 p.m. in order to build an artificial majority. But as I said, that was an artificial majority. The events and the debate that took place yesterday was an exercise in futility. The whole purpose of it was to show Kenyans who is pro-impunity and who is fighting impunity. This is because we all know that the Committee of the House did not comply with the constitutional requirement. So, whether or not that Motion was passed, there were no names that were approved. That is the law or the Constitution of Kenya. So, those who were screaming that they won yesterday did not.

To go back to the point, the Finance Bill is so critical for this country and the management of the finances of this country that we cannot accept to go on recess without persuasive reasons. My good friend, the Deputy Prime Minister and Minister for Finance, should have called us in a Kamukunji and we would have listened to him. But to seek the assistance of the Executive when he can talk to his own colleagues in the House--- The Minister should come to the House and seek to reason together so that we can hear him and see whether he is making any case. That was a betrayal to the House and I think the Deputy Prime Minister and Minister for Finance lost the confidence and credibility of those of us who would have otherwise had sympathy for him in seeking to delay the Finance Bill to such other time.

Mr. Deputy Speaker, Sir, we cannot go on recess on the basis that we are in a position to borrow because we know what borrowing is doing to this country. We know that we are borrowing under circumstances where one private bank seems to have taken over the role of the Central Bank of Kenya. It is functioning as if it is the Central Bank of Kenya, contrary to the principles set out in the Banking Act; contrary to the principles of good governance and contrary to principles of fair management of this country's economy. It is time for this House to tell the Executive that the days of summoning Members of Parliament to rubberstamp legislations made elsewhere are long gone. Today we are determined to confirm and show you that.

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

Mr. Kioni: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this Motion. From the outset I want to say that I support the Motion for Adjournment.

Mr. Deputy Speaker, Sir, I can see you are smiling. I do not know why you are smiling because you are not one who smiles without good reason. But I think it is important that we agree that we have been here for a while. Even any pretence that we want to be here longer because we are waiting for a particular Bill, really, in a short while, there will not be quorum. That has been---

(Mrs. Odhiambo-Mabona consulted loudly)

Mr. Deputy Speaker, Sir, I need protection from Mrs. Odhiambo-Mabona.

Mr. Deputy Speaker: Order! Hon. Odhiambo-Mabona, the Chair has consistently noted that you engage in a debate from where you are sitting. You are only supposed to engage in a debate when you catch the Speaker's eye. Can you respect the House?

Proceed, hon. Kioni!

Mr. Kioni: Mr. Deputy Speaker, Sir, I need those extra seconds which have been taken away by hon. Odhiambo-Mabona.

Mr. Deputy Speaker, Sir, it is true that we have the issue of the Finance Bill that is pending. It is important that we engage on it as a House. However, it is also futile to try and engage ourselves if we are not making any progress, especially at this eleventh hour. The fact of it is that all of us - and if we want to be as truthful as we can be - are also in a mood to go and have some rest so that we can come back fresh and engage on these issues.

The fact that we are here at this time, it is important we own up to some of these facts. Yesterday, when we were whipped to go to Kenyatta International Conference Centre (KICC), we went there freely. A majority of us went there freely. I did not see Mr. Imanyara there. We went there freely and engaged the Executive. We left this place or the offices we were in, knowing that we were going to engage the Executive. So, to come back here and start pretending that you were called to a meeting which you did not know what it was all about is not true. It was engaging the Executive. I think it is important that we also take responsibility for the decisions that we make.

The Finance Bill has been on the Order Paper since October, if not before. I was in the United States of America (USA) from 3rd December, 2011 to 10th December, 2011. I was in the company of the Chief Whip, Mr. Midiwo. At the time we were there, that was the time when negotiations on the amendments of the Bill would have been going on. So, we are all to blame. We also took time to be away when we should have engaged ourselves to discuss the amendments of the Bill. It is important that I say that. If it is a question of passports, we can produce them.

Mr. Midiwo: On a point of order, Mr. Deputy Speaker, Sir. Is it sincerely in order for the hon. Member, Mr. Kioni, to allege that it is our responsibility as Parliament to engage the Executive, while our role is to simply legislate? Is he really in order to try to say that I should have abdicated my role together with him to sit here and wait for the Executive to do anything? Even yesterday, it was brought out that the Executive all along has refused to engage me. It is not us. The Executive has been telling me to withdraw my amendments for the last three weeks. I have been talking to the Minister and the mandarins and they are only saying that I should withdraw. Is that the kind of engagement this House expects?

Mr. Deputy Speaker: Proceed, Mr. Kioni.

Mr. Kioni: Thank you, Mr. Deputy Speaker, Sir for that protection. In the words of the debater, Mr. Midiwo, when he was speaking from the other side of the House, he indicated that he has again repeated that the Executive has refused to engage. How would the Executive have engaged him when he was out of this country for ten days? In essence, if he knew that there was need for him to be engaged by the Executive, then he

owed that responsibility to Kenyans not to go out of the country and engage the Executive, get a solution to the Finance Bill, and if needed to withdraw, he should have done so then.

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

Mr. Kioni: I think it is important that I be protected from these points of order. They have been misused in the past to interrupt debates and to stop people from making their contributions on the Floor of the House.

Mr. Deputy Speaker: Proceed!

Mr. Kioni: Mr. Deputy Speaker, Sir, the other thing that is important - and I think that it is also candid and we need to own up - is that my good friend, Mr. Midiwo, who we may not be good as we leave this House - but we will certainly have a cup of tea together - said that there was no counter proposal that was put before us yesterday. If I recall correctly, he was actually given an opportunity to respond to the counter proposal that was put forward by the Minister for Finance. As we engage on the Motion of Adjournment, it is important that we talk about these things.

Mr. Midiwo: On a point of order, Mr. Deputy Speaker, Sir. What Mr. Kioni is saying is not what I said. I said that the Government has failed to give a reasonable offer and all along until yesterday, they had not given any offer to anybody. The offer they gave is frivolous. He is telling us to let the banks keep fleecing Kenyans.

Mr. Deputy Speaker: Proceed, Mr. Kioni.

Mr. Kioni: Mr. Deputy Speaker, Sir, I want to say that I support the Motion of Adjournment. My time has been taken by the many points of order. I would have said more if you would have allowed us to debate more without any innuendos.

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Deputy Speaker, Sir, I rise to support this Motion of Adjournment. This Parliament has worked this time like it has never worked before. In fact, the whole of this year, Parliament has engaged the Executive and the Judiciary. Parliament has done what it was required to do. It is true that as we go for this recess, the cost of living at the moment is really very high. It is Christmas time and that is when we go to spend time with our constituents and our families. This is the only time that we do appreciate that the cost of living is very high. Our going or not going is not going to make too much difference. What Parliament must continue doing is to engage the Executive. What has happened in Rwanda can also happen in this country. I was surprised to learn yesterday that the cost of fuel in Rwanda is cheaper than in Kenya and yet, it comes through our Port. So, I do agree that there may be something that we are not doing right, but our not going to recess may not change that immediately. So, I want to support the Motion that we should go on recess. All of us have a certain capacity of working or performing. I think we have already wasted ourselves with the work that we have done. I want to beg the House to agree that we go home, guide our constituents, empathize with them, encourage them, educate them especially about next year when we are going to vote, tell them how it is going to be and ensure that we can have a peaceful time with them.

Mr. Deputy Speaker, Sir, because the Deputy Prime Minister and Minister for Finance is here, I am going to say that there is something that happened in 2001 when he was the Minister for Local Government. You may want to check on this again. I was in the Opposition at that time. At that time, interest rates had gone haywire the way they have gone this time. As leaders in the Opposition, the Government then was forcing us to

accept that this is the way to go. That was the time when we were having the famous Donde Bill. I do remember the current President who was then the Official Leader of Opposition, being invited by the World Bank at their Upper Hill offices. We all went there, sat down and we were given tea. But before we could sit down, His Excellency the President, who was then the Official Leader of Opposition said to them:

“We did not come here for tea. I am an economist and I want you to know that we will not sit back and wait to see our people suffer.”

Those are the words that came from Mr. Kibaki. We did not even take tea. He said that we are going to support the Donde Bill in Parliament. We were not going to allow interest rates to cripple our people. It happened and we made sure that interest rates did not go up. For many people who have saved for many years, the Deputy Prime Minister and Minister for Finance needs to hear this. We certainly cannot be working for banks. It is in this country where banks make exorbitant profits. Why should this be happening in this country? If we are going to rob our own people, let the Minister go back. I am supporting this Motion of Adjournment and I would even have supported the Finance Bill. But something is wrong in this country and has to be dealt with. We are going to finish our people, including the farmers, the women and everybody else.

With those few remarks, I beg to support the Motion of Adjournment.

Mr. Mbadi: Mr. Deputy Speaker, Sir, I rise to oppose the Motion of Adjournment. I want to agree that all of us have worked hard, but one rotten egg in a basket can spoil all the good eggs that you have. I want to say this: The fact that this is going to be historical and that this country for the first time---

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for hon. Kioni to be contributing from where he is seated?

Mr. Deputy Speaker: In the first place, Mrs. Odhiambo-Mabona, you do not contribute when your back is to the Speaker.

(Laughter)

You have made your point, but if you have to contribute using the microphone behind you, then you go to the benches behind you.

Proceed, you have made your point.

Mr. Mbadi: Mr. Deputy Speaker, Sir, I think I can proceed.

Mr. Deputy Speaker, Sir, the fact is that this is probably the first time in the history of this country - if it is not the first, it is a very rare occurrence - that we will proceed for Christmas vacation or recess without passing the Finance Bill. This is going to be a failure of this Parliament and we do not want to fail as a Parliament.

(Applause)

We want to throw back the failure to the Executive; we want to ask the Executive to make sure that they bring the Finance Bill. If they are not going to bring it tomorrow, then let them bring it on Tuesday, we pass it and go home.

(Applause)

Mr. Deputy Speaker, Sir, a lot has been said by my colleagues, who have talked about the banks. Yesterday, as I did say informally in a meeting we attended, you cannot control cartels through liberalization; you can only control cartels through regulations.

(Applause)

Since the Executive has failed to regulate the financial sector, we are going to do it through legislation in Parliament. Let us do this and give Kenyans a Christmas gift. It is not going to be of any use for us to sit with our constituents at home without giving them a Christmas gift. The Christmas gift that this Parliament can give the people of Kenya – those who are suffering, who borrowed loans when the interest rate was at 12 per cent and are now paying at 24 per cent or higher--- If they hear that we will spend one more week in this House to give them that Christmas gift, they will be happy with us; those people will say “Truly we elected men and women who care and are concerned about our welfare”.

(Applause)

Mr. Deputy Speaker, Sir, the oil sector is also composed of cartels. The gas price is too high. Actually, I was surprised that my friend, hon. Ngilu, has just discovered that we are paying fuel prices that are higher than those in Rwanda. Madam Minister, I wish you came to me earlier; we have been aware of that. Probably, it is only the pocket that is different; that was why you were realizing this yesterday. Even in Tanzania, our next door neighbour, we pay far much more than them!

Mr. Deputy Speaker, Sir, this is the time to crack the whip! We must show the banking sector before we proceed on recess that they do not own this country; this country belongs to us; we will remain here; we will regulate them; we will make them behave and if they cannot behave, we will close shop and other Kenyans will open banks! We will even lower the capital base, so that other Kenyans can open banks. This tendency to lower the capital base, which was done for Equity Bank and others, and then afterwards, you raise it; we will bring it down, so that other Kenyans can open banks.

Mr. Deputy Speaker, Sir, I want to conclude. If we do not have any Motion to discuss tomorrow, I want to propose one for the House Business Committee. Please, ask the Government tomorrow to issue a statement on the status of resettlement of Internally Displaced Persons (IDPs), so that when we proceed on Christmas recess, we are sure that all the IDPs in this country have been settled or we will know when those remaining will be resettled.

My last remark, Mr. Deputy Speaker, Sir, is that this country and this House owe a duty to the people of Kenya to uphold high standards of ethics and integrity. What happened in this House yesterday should never happen again. We are lowering the standards of ethics and integrity and we will not be forgiven! This House has been given a heavy task through the Constitution; today we have to vet all the major appointments by the Executive. We cannot do it in a partisan way the way we did it yesterday based on an ethnic---

Mr. Deputy Speaker: Order! Order! Order! You are out of order, Mr. Mbadi! Confine yourself to the Motion of the day!

Mr. Mbadi: Mr. Deputy Speaker, Sir, I think I have made my point and I oppose the Motion strongly.

(Applause)

The Minister for Education (Prof. Ongeru): Thank you, Mr. Deputy Speaker, Sir. From the outset, I support the adjournment.

(Applause)

We have worked extremely hard as a House and I believe, as many of my professional colleagues do, that there comes a time when you reach a level of diminishing returns. Energy expended will be productive enough to produce further benefits. To opponets from the other side who are opposing this Motion, let it be very clear that the Executive has not said that there is no issue that needs to be sorted out in the form of interest rates. We have never disowned that fact as the Executive, nor have we said that a raft of measures should not be taken to address these critical socio-economic issues. We have never said no to that fact. All we have said is that given the current situation and the economic status of this country, this is an area in which there is absolute need, even for legislators, to spend more time in a consultative process, so that the outcome of that consultative process is beneficial to the people of Kenya. We are all representatives of the people, including the Executive; we all go through the same difficulties, but the manner in which we decide to address the difficulties is the issue now. I suggest to this honourable House that the most important thing we can do is to allow the Deputy Prime Minister and Minister for Finance, now that we have been able to voice our views, to take stock of these issues and be able to generate a more consultative process that will give us a worthwhile resolution to this matter. If we want to rush in the heat of the moment, I am afraid – given my experience in this House – we may miss the bus.

Mr. Deputy Speaker, Sir, I want to say that I will be announcing the results of the Kenya Certificate of Primary Examinations (KCPE) and all hon. Members of Parliament from their respective constituencies--- It may be a time for you to go home and assist pupils to be able to access Form One come 2nd January, 2012. This is another important social function that you are involved in and which you should not just brush aside just because there are one or two things that have not been done. This will be next week.

Secondly, Mr. Deputy Speaker, Sir, I think this nation has done many things, including passing the Constitution in a record time. So, the adjournment now does not preclude us from resuming in the near future, once this matter has been digested and agreed upon. We can come here and pass an instrument that will be useful to this nation. But if we are forming cartels to be able to reach a quick fix answer, then we are treading on a dangerous path. I want to plead with hon. Members of Parliament that the most important thing, at least from my professional view point, is that you deserve a well earned rest starting from now.

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

The Minister for Forestry and Wildlife (Dr. Wekesa): Thank you, Mr. Deputy Speaker, Sir. I would like to support this Motion. This country is mostly Christian. Christmas is very important. We should respect Christians like me who take Christmas as

a very important occasion; an occasion when I can sit with my family and my constituents. It is an occasion when I have time to go round my constituency and see the various groups of constituents. I want to persuade my colleagues that we should go on recess because we have many issues to deal with. It is not only the Finance Bill. We have issues of climate change and the global recession that is, not only in Kenya, but all over. I want to persuade my colleagues that we are not saying that we will go for three months. I want to agree with my colleagues, Prof. Ongeru that we can even come back after Christmas. However, this concerted effort of people trying to compete with the Executive is not necessary.

I want to share something with some of the younger Members of this House. I was once challenged by a Member of Parliament who said to me: Dr. Wekesa, you do not speak very much in Parliament. Do you know that I am the Number One speaker in Parliament? I told him that I speak when it is necessary. I also told him that I spend a lot of time in my constituency. He said that he makes sure he contributes to every Bill. In the ensuing election, I came back, but he did not. I want to share with my younger colleagues here that their constituencies are just as important as the contributions in this House. If they do not believe me, I will tell them this: In the last Parliament, it is only 33 of us who came back. About 30 per cent came back. If you insist on always being in this House, Dr. Noah Wekesa will be Governor in Trans Nzoia and you will not be Members of Parliament.

I beg to support.

The Assistant Minister for Regional Development Authorities (Mr. ole Metito): Mr. Deputy Speaker, Sir, I stand to support the Motion. In supporting the Motion, I will not talk about the Bill which is not before this House. I will talk about issues that are so dear to my constituents, namely, devolution. We all know that we are now moving towards devolution. That is where resources will be based. That is where the development of our counties will be based. It is important that this Government gets right the criteria that it is going to use to allocate and distribute those resources.

Just recently, the Commission on Revenue Allocation (CRA) published data indicating the wealthy and the poor counties. I am surprised and so are my constituents, that Kajiado County was named the wealthiest county. I really wanted to understand the source of that information. I want to challenge the CRA that they did not do their job right. All the Commissions that we are forming in this House are meant to serve this country equitably and fairly without any discrimination. The source of that information which the CRA relied on was the report on poverty index that was done by the Government in 2006 and that report was the subject of a court case. Just last year, the CDF allocation was based on it. I am very clear that 99 constituencies out of the 210 lost very big percentages. Some Kenyans moved to court to challenge the authenticity of the report on poverty index. That was the report that the Commission on Revenue Allocation used to tabulate the so-called the rich and not rich counties in this country. One would want to ask himself whether Kajiado County, which starts from Ngong all the way to the border of Taita Taveta County---. It is 21,000 square kilometers and is one of those classified as arid counties.

A day after the publication of that report, I received a letter from the Permanent Secretary, Ministry of State for Special Programmes, directed to my District Commissioner and copied to me as the Member of Parliament for the area. The letter

informed me that the Government had just released 1,000 bags of maize as relief food. That is the county you want to say is the wealthiest county in this country. How can the wealthiest county be on the list of those who receive relief food day in, day out? Those who went to the field to collect data, I want to believe that they just went to Ngong, Ongata Rongai and Kitengela, but that is not even 0.1 per cent of the size of Kajiado County. Therefore, I want to take this opportunity to tell the CRA that they should not rely on some of the Government reports that were subject of the so-called discrimination and injustice in this country. The Commissions are independent and should do their work independently and give this country a fair deal.

We know that come next year after the elections, the resources will be distributed based on counties. The 15 per cent that will go to the counties through devolution is the one that is going to make a difference to the living standards of the people of this country. We want to get a very fair share as Kajiado County.

So, I support this Motion for adjournment and urge the Members that as we go home and meet with our constituents, we should create a lot of awareness.

I beg to support.

Mr. Okemo: Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity. I find it very difficult to relate the Finance Bill to the Motion for Adjournment. I do not see a relationship. Therefore, I do not want to argue on the basis of going for an adjournment. However, I want to say something very briefly about the Finance Bill, because it is so critically important. As the Chairman of the Finance Committee, we engaged the Minister on a number of issues. Subsequent to that, we had the problem of inflation and the exchange rates as a result of which several Committees have been put in place to find out what really happened and find out the solution to the problem.

We have engaged the banking sector and frankly speaking, we have not been satisfied with the way they have explained what happened and how they intend to go about it. We went through this same Motion in 2001. Hon. Ngilu has talked about it. I was the Minister for Finance at that time. The banks behaved irresponsibly at that time. They have also behaved irresponsibly this time round. It is very difficult for me to reconcile huge after tax profits, running into billions of shillings with the state of the economy and the interest rates that are being charged. If the banks were really responsible, they would sacrifice a bit of those huge profits by lowering the interest rates. We asked them to justify to us why we have such a huge spread between what they pay on deposits and what they charge for lending. They promised to bring to us those statistics. We gave them one week. I got a letter this morning saying that they can only do so in January.

Mr. Deputy Speaker, Sir, these are the kinds of frustrations that the banking sector is putting ordinary Kenyans to. Therefore, when we resort to extreme measures, I do not think Kenyans can be blamed. However, I do not want to relate that to going for adjournment. I do not think there is a relationship. So, personally, I feel that we should go on adjournment. The problem that is between the banking sector and its customers must be dealt with in a comprehensive manner. I really must ask the Minister for Finance to engage our Committee and Members of Parliament. The Kenya Bankers Association (KBA) must come and explain to us because we still have the power to come and fix those rates. If we do not do it today, we can still do it next year.

Therefore, to me, it is better for us to do these things in a systematic manner rather than do it out of anger. We are all angry because these people have punished the ordinary *mwananchi*, but we must look at the overall picture and deal with the consequences in a systematic manner. So, personally, I propose that we go on the adjournment, but I also recommend that the Minister for Finance must engage us between now and the time we will come back, so that when we come back we have a definite solution.

Mr. Speaker, Sir, let me tell this House one thing. I can predict and you will find that I am correct. By the time we come back, the lending interest rates will have come down to where they were.

Thank you very much.

Mr. Deputy Speaker: Order, hon. Members! Hon. Members, as I had indicated earlier, I want to remind you that this is a Motion for adjournment. It normally takes three hours. We started debating it at 4.45 p.m. and will end at 7.45 p.m.

Yes, hon. Charles Kilonzo!

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, I want to disappoint my close friends and say that I support this Motion. I will go the way of hon. Okemo.

Mr. Deputy Speaker, Sir, you must not make decisions when you are very annoyed, because if you do you will end up making the wrong decisions. However, we are dealing with an “animal” called Kenyan Government, which has refused to listen. So, we must tell the Government to its face where it has failed. We must tell them that this Motion of adjournment does not mean that they have gotten their way.

On the issue of interest rates, I want to give the Deputy Prime Minister and Minister for Finance a practical case of women from my constituency and a neighbouring constituency called Masinga, who, in the year 2009 demonstrated and went to the residence of one of the senior people in those constituencies. They complained that they had stopped sleeping at home because of auctioneers, and that the banks had refused to re-negotiate their loans. The women were saying that they wanted to pay but they wanted the loans re-negotiated. It was through my intervention and talking to senior managers of the banks and convincing the CEOs that those loans should be re-negotiated, that the women got reprieve. It has reached a stage where banks are not sensitive.

Mr. Deputy Speaker, Sir, it is, therefore, the responsibility of us in Government and we, the Legislature, to ensure we make the necessary laws. We will then make sure that the Executive arm of the Government does its work, failure to which this House will be left with no choice but to take action.

Mr. Deputy Speaker, Sir, I would like to tell the Government that; we have told you and you have heard. It is up to you. By the time we come back if you will not have made the right decision, then it will be too bad for you.

With regard to the cost of living, I sat on the Parliamentary Select Committee on the cost of living. We met the technocrats of this Government and all of them are knowledgeable. What we do not seem to understand is where the disconnect is. You have all the solutions, but you are unable to implement them. Why is it that the price of fuel goes up by Kshs10, but it comes down by, say, Kshs3 or Kshs4? It was after the Chairman of the Departmental Committee on Energy, Communication and Information, Eng. Rege, threatened to scrap the Energy Regulatory Commission (ERC) that they reduced the price of fuel by Kshs5 only. They had been saying that the price of fuel had

risen because the value of the Kenya shilling to US Dollar had shot up from Kshs82 to Kshs107. The Kenya shilling has now come down.

The other issue has to do with the Governor of the Central Bank of Kenya (CBK). When the value of the Kenya shilling to the US Dollar rose from Kshs82 to Kshs107, the Governor said that it would take six months for the value of the Kenya shilling to come down. I sit in a Committee that is presently looking at the Kenya shilling. You wait until you hear what everybody has said. The finger is pointing to one direction. We have an issue with the Governor. Today, it is barely six weeks and the value of the Kenya shilling has come down to about Kshs89. What happened to the six months?

The fact that today we may be supporting this Motion does not mean that we have changed our position. The Government must put its House in order, failure to which it will be difficult for it to survive to the full term. What is happening? Government corporations are being sold through the back door. How come East Africa Portland Cement Company, a State Corporation formed through an Act of Parliament has gone private without the approval of Government and of this House? How could that happen?

With those few remarks, I support.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this Motion. From the outset, I support his Motion.

I need to put a number of issues into perspective. The issue of concern to this House and Kenyans is that of interest rates. This is an issue that is of concern to the Government too. I am very glad to hear what hon. Okemo mentioned here, that as hon. Members of the Departmental Committee on Finance, Planning and Trade, they have been engaging the Treasury on these issues. We have agreed that we need to find a way to resolve this issue on a long-term and permanent basis. There is no difference in the position of the Executive, the Legislature and the people of Kenya.

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

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): This is the kind of problem I have been going through.

Mr. Mbadi: *Pole*, Mr. Minister.

Mr. Deputy Speaker, Sir, my point of order may cause some displeasure, but I am still entitled to raising it. It is very clear that when an hon. Member contributes to a point in which they have interest, there is need to declare the interest. I have listened to the Minister and he is talking about commitment by the Government, that is him and the Ministry, to regulate interest rates. Could the Minister declare his interest in the financial sector by telling this country categorically what your interest in the financial sector is, as a Minister?

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Thank you very much Mr. Deputy Speaker, Sir. I also thank the hon. Member for his personal ratification. That is why I keep saying it is politics here and not actually an issue of interest rates.

Mr. Deputy Speaker, Sir, I have an interest in the financial sector. But I stand here as the Minister of Finance of the Republic of Kenya and advocating the position of the Government of Kenya.

If I may proceed. As I have said, we have been engaging again with that Committee. It is important for this House to equally know what the truth is. The truth is

that as we were going through the Finance Bill, there were a number of issues. We engaged the Finance Committee because that is their role. We made some amendments again in consultation with them.

We had an agreement, but at that stage, the issue of interest rates was not an issue. The Chair of that Committee is here. He can say whether I am saying the truth or not. Despite that, basically close to the eve of bringing the Finance Bill to this House, a number of additional amendments were brought forward. These are amendments that we had not been given the opportunity to deliberate upon, to see what their impact would be on the overall economy.

That notwithstanding and recognizing that this House has a right to make amendments to Bills, that is its duty---. However, we said we needed to engage with the hon. Member who had brought those amendments. I wonder whether he has honour---

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. Whereas I appreciate what the hon. Minister for Finance is saying, the rules of this House apply to all of us. We are all equal in this House. It is very wrong for him to impute improper motives on another hon. Member by saying that an hon. Member lacks honour. Could he substantiate or withdraw and apologize?

Mr. Deputy Speaker: Order, Mr. Kenyatta. Mr. Kenyatta, this is a dignified House. You cannot impute an improper motive on a fellow Member of Parliament here without a substantive Motion. Under the circumstances, I direct you withdraw and apologize.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Deputy Speaker, Sir, I will withdraw and apologize.

Mr. Deputy Speaker: Proceed.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Deputy Speaker, Sir, we engaged with the hon. Member. I recall that as we engaged and continued to engage, including with the banking sector and the Central Bank, we were the first at the Treasury to agree with him that there is a problem that needs resolution. We continued with that engagement.

I remember that even on the day that it was on the Order Paper I came to the Floor of this House and requested the then Temporary Deputy Speaker, Mr. Imanyara, to allow that this Order be deferred to give me time to continue to engage that particular hon. Member.

We continued to engage with that hon. Member in trying to hammer out a solution that will deal with the issue of interest rates, but at the same time not affect the overall policy direction of the Government and, indeed, of our own economy.

Mr. Deputy Speaker, Sir, it is unfortunate, and I think that is where I made my mistake. I think I should have referred that matter to the relevant Committee in order to have witnesses here today as to the number of discussions that we have had.

Ms. Martha Karua has made a statement here, which I concur with, that, indeed, there is need for regulation. Regulation, however, does not mean necessarily legislation. That is because legislation itself can have an impact on other areas. That was the point we were going to get through to this particular hon. Member.

Mr. Deputy Speaker, Sir, all the way to the last minute---

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. With all due respect, I abhor to interrupt the Deputy Prime Minister and Minister for Finance but just a while

ago - I think about an hour ago - I had referred to regulations as not being legislation. The hon. Speaker, who is also a very seasoned lawyer, corrected me and told me that regulations are part of legislation. So, is the Minister in order to impute that regulations are not necessarily legislation?

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Speaker, Sir, regulation is part of legislation. Those are the rules of the game. We need to establish the rules of the game but that does not necessarily mean that a regulation is itself a law. It is to regulate a particular sector. Why do I say this? I say this because it is clear to me. What happened is that we wasted three weeks in that particular engagement. I will say it here that the fact that we are going on recess does not stop us from continuing with that engagement. I am willing that even as soon as this Christmas or this festive season is over, beginning January, for me not to engage the Member, but to engage the relevant Committee and any other Committee that chooses to engage with the Executive on this particular matter, to find a lasting solution that will ensure that we deal with this issue of interest rates.

Mr. Deputy Speaker, Sir, I will conclude by saying as I support; we cannot deal with the issue of policy through politics.

I beg to support.

Mr. Midiwo: On a point of order, Mr. Deputy Speaker, Sir. The Minister has said repeatedly that we are playing politics with the issue of interest rates. It is only fair that he substantiates because yesterday, I was called to the Office of the President where the Minister and the Prime Minister were. Both sides of the Coalition were there. I was very clear that the banks are fleecing Kenyans. If that is politics, it is politics that I wish to continue playing because the Minister has also declared that he is an interested party. Is he in order to keep on saying that without substantiation?

Mr. Deputy Speaker: Hon. Members, given the intense interest on this issue of interest rates, and the fact that the Deputy Prime Minister and Minister for Finance who is a line Minister might want to give more information, the Chair uses his own discretion to give five more minutes to the Deputy Prime Minister and Minister for Finance.

Proceed! But Minister, the Chair also directs: Maintain the dignity of the House by sticking to the rules themselves. Do not impute any improper motive on another Member.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Thank you, Mr. Deputy Speaker, Sir. I do also apologize for becoming passionate as Mr. Imanyara was saying on this particular issue.

Mr. Deputy Speaker, Sir, I am sure you are aware that people have tried to turn this into a personal issue as opposed to an issue that is affecting millions of Kenyans and requires a solution.

As I was saying, this is an issue that I am more than willing to engage this House in. All I said is that I am not going to engage an individual but I will engage the House through the relevant committees. I believe if I did that from day one, I believe that today or yesterday, we would have had a Finance Bill. We would have approved it because we would have been able to critically---

Mr. Midiwo: On a point of order, Mr. Deputy Speaker, Sir. I said in the consultations yesterday that I am willing to find a solution that helps Kenyans. The Minister has said that he is not willing to engage me on a Private Members' amendment.

In other words, he is saying that he will not talk. He says that he wants to engage with a committee which I do not know. That, to me, is being disrespectful to this House and I think it is imputing---

We have to bring down the arrogance of this Minister.

Mr. Deputy Speaker: Mr. Deputy Prime Minister and Minister for Finance, proceed!

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Deputy Speaker, Sir, I want to assure you and this House knows that I engage Members of Parliament. As the Deputy Prime Minister and Minister for Finance, I do not know whether there has been a Minister for Finance who has engaged committees of this House as much as I have engaged them. The only reason I am saying what I am saying and the hon. Member is, indeed, a Member of the Departmental Committee on Finance, Planning and Trade and he will participate--- I do believe that had we engaged the relevant Committee, we would have found a solution. Even from the contributions of Members in this House, they recognize some of the problems or some of the issues that are not feasible for us to go in the manner that the hon. Member had put in this amendment.

However, that does not mean that we were not willing to look at other amendments that would conform to our economic agenda as set out in our Vision 2030 but still be able to deal with the issue of interest rates. All I am saying is that I am committed towards continuing that engagement in a sober manner and where in a level headed manner, the Executive, whom I represent through the Ministry of Finance and Parliament through the relevant committees appointed by this House engage to find a policy solution or a direction that will ease the burden that Kenyans have. That is a commitment that I have and that is not a commitment that I believe we will be able to do within a matter of a day.

The Chairman, himself, has stated that this is an issue that requires in-depth study and analysis. We are willing to engage on that basis to find that solution. However, let us refrain, as a House, from using issues, personalizing them or to say that positions have been taken for personal interests.

Mr. Deputy Speaker, Sir, just as you were saying that I need to withdraw and apologize, those who are saying that I have an interest in the financial sector and, hence, the reason for my position should also be made to substantiate that position. So---

Mr. Deputy Speaker: Order, hon. Kenyatta! I want you to acquaint yourself with the Standing Order No.81 on declaration of interest. It says:-

“A Member who wishes to speak to any matter in which the Member has a personal interest shall, first, declare that interest.”

Indeed, it was incumbent upon you to proceed and declare it. But now somebody else has risen to do it and you did not.

Proceed!

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Deputy Speaker, Sir, as I conclude, mine is to say that let us use this break to recharge ourselves and to allow these tempers like I have now to cool so that we can engage ourselves in a sober and level headed manner. At the end of the day, I think the interest of this House is the people of the Republic of Kenya. If we were to work together, I have no doubt that we will find a solution that will take Kenya forward.

With those few remarks, I beg to support.

Mr. Olago: Mr. Deputy Speaker, Sir, this morning when we were debating the Procedural Motion for Adjournment, I said very clearly that if you ask for equity and come for the discretion of the House, you do so with clean hands.

Mr. Deputy Speaker, Sir, as I sat down here listening to the Chairman of the Departmental Committee on Finance, Planning and Trade, hon. Chris Okemo, as I looked at the demeanour and the submissions done by the Deputy Prime Minister and Minister for Finance, I got convinced that, indeed, I should now support this Motion. I had come here with the mind that this Motion must be defeated. However, after listening very carefully, I want to say that this House needs time to think very careful about the issues we have before us. Why do I say so? In the conflict situation, where interests and passions are as high as we have heard today and yesterday in this House, we need time to think, time to give and time to take. If we do not do so, we cannot take.

I do know as I stand here that there are friends of mine both in front of me and at my back who are very sad with what I am saying but I think the truth must told. What lessons are we learning as Members of this House, from the acrimony that we had yesterday and today? What acrimony are we having? What lessons are we learning? The lessons that we are learning, in my view, is that when we are dealing with these issues, as Members of this House, we need sometimes to step back one step behind and look at what we need to do. I say so, because I am fully aware that some of the reasons that we have heard here did not resonate at all with me and the fact that we may need time to go back to our constituencies does not convince me at all. We go to our constituencies every week. The fact that we have worked very hard does not resonate with me at all. We have worked very hard. Now it is the time to know those of us in this House who have stayed in power; it is time to know those of us who can work overboard and who can go the extra mile. I think the time has come, if want to move forward in this country, to be able to listen to each other and reason together. Let us take that chance to do so.

With those few remarks, I beg to support.

The Minister of State for Development of Northern Kenya and Other Arid Lands (Mr. I. E. Mohamed): Mr. Deputy Speaker, Sir, from the outset, I want to support the Motion. On the account of the word “passion” that has been introduced to this House, I think we need to go pull those passions and take them to the right place.

Mr. Deputy Speaker, Sir, the Deputy Prime Minister and Minister for Finance has really explained himself. He has done that in the Cabinet and we supported him unanimously. He has done it to the House. It looks like there are some Members who still want that debate further. As the Executive, we fully support those discussions to continue. I want to ask hon. Members to support this Motion of Adjournment. Let is cool the passions from the House and take it to the right place.

[Mr. Deputy Speaker left the Chair]

[Mr. Speaker took the Chair]

The Minister for Youth Affairs and Sports (Dr. Shaban): Asante sana, Bw. Spika, kwa kunipa nafasi hii ili nitoe maoni yangu kuhusu Hoja hii. Kwanza, ninaunga mkono Hoja hii kikamilifu.

Siasa za kuvutana hazina nafasi katika Kenya ya sasa. Hakuna haja ya sisi kubishana na kusema sisi ni bingwa kuliko wale na kadhalika. Tunahitaji siasa za kujenga na kuleta maendeleo katika nchi hii. Hakuna aliyeshabiki au bingwa kuliko mwingine katika Serikali hii. Wakenya wametupa nafasi hii ili tuweze kuwatumikia tukiwa pamoja. Tunashirikiana pamoja hapa Bungeni na Serikalini ili tuweze kutatua matatizo mengi yanayowakumba wananchi wetu.

Kuna baadhi ya viongozi wanaopenda kushabikia maswala ambayo hawayaelewi vilivyo. Sisi kama waheshimiwa Wabunge tunahitajika kufanya kazi pamoja ili wananchi wetu wapate afueni ya shida zinazowakumba maishani. Wakati umefika kwa sisi kwenda kuungana na wananchi kule mashinani ili tusheherekee pamoja siku kuu hii ya Krimesi na kuukaribisha mwaka mpya.

Maswala ambayo yamezungumziwa na Naibu wa Waziri Mkuu na Waziri wa Fedha, Bw. Uhuru Kenyatta, ni mazito na yanahitaji sisi sote kuyashughulikia kwa wakati ufaao. Haifai sisi kuyashughulikia kwa haraka na kwa muda mfupi. Maswala haya yanahitaji wakati wa kutosha. Kwa hivyo, tunataka kwenda likizo ili tuweze kuungana na ndugu zetu Wakristo wakati huu wa Krimesi na baada ya mwaka mpya na kuhakikisha kwamba Wakenya wamefaidika.

Bw. Spika, siasa za ubingwa na ushabiki, haswa kuzungumzia maswala ya biashara--- Kila Mbunge na mwananchi ana haki ya kufanya biashara kivyake. Wengi wetu tunafanya biashara lakini hatutangazi tunafanya biashara za aina gani. Mara nyingi tumesikia kwamba Waheshimiwa Wabunge hapa wanafanya biashara. Biashara za hakika zinafanywa wazi wazi. Tunafanya biashara za kila aina, zingine za halali na zingine za haramu.

Hon. Members: Aaah!

The Minister for Gender, Children and Social Development (Dr. Shaban): Bw. Spika, huo ni ukweli wa mambo. Ukweli wa mambo unauma roho. Jambo la kusikitisha ni kuwa tunataka kuchukua swala hili---

Dr. Nuh: Jambo la nidhamu, Bw. Spika! Mhe. Shaban amekiri hapa kwamba Wabunge wanafanya biashara zisizo halali. Je, ni sawa kusema maneno ambayo hawezi kuthibitisha mbele ya Bunge hili na kuwatusi Wabunge na kuwawekelea mizigo ambayo hawakubeba?

Mr. Speaker: Mhe. Shaban, hayo ni mambo ya ukweli. Ni lazima uthibitishie ni Wabunge gani wanafanya biashara ya haramu!

The Minister for Gender, Children and Social Development (Dr. Shaban): Bw. Spika, kulishatajwa hapa na Mawaziri na sikuona Wabunge wakibabaika kuwa hata kuna biashara zinafanywa ambazo ni za madawa za kulevyo. Je, hizo sio biashara haramu? Ni haramu!

Mr. Speaker: Mhe, Shaban, mimi kama Spika na pia Wabunge hatuwezi kuridhika na hayo. Wewe ndio umesema jioni hii kwamba kuna Wabunge wanaofanya biashara haramu. Kama unataka kuthibitisha, na ni jukumu lako kufanya hivyo, lazima ueleze ni Wabunge gani.

The Minister for Gender, Children and Social Development (Dr. Shaban): Bw. Spika, ninasikitika kuwa tunapenda sana kujiweka kwenye hali ya kuwa sisi ni malaika. Lakini, sisi sio malaika.

Nikimaliza kusema hivyo, swala la shuguli haramu ni kati yetu na Mwenyezi Mungu.

Bw. Spika, naomba kuondoa swala hilo kwenye orodha ya maneno yaliyozungumzwa leo. Vile vile, kwa wale ambao nimewakwaza, poleni sana.

Mr. Speaker: Asante, mheshimiwa! Mhe. Shaban, utaondoa hayo maneno na pia uombe msamaha!

Endelea!

The Minister for Gender, Children and Social Development (Dr. Shaban): Bw. Spika, hakuna msamaha zaidi ya kusema “pole kwa wale ambao nimewakwaza.” Pole pia ni kuomba msamaha kwa njia nyingine.

Mr. Speaker: Sema kwa Kiswahili ambacho hata mimi ninaelewa. Sema:- “Ninaomba msamaha.”

The Minister for Gender, Children and Social Development (Dr. Shaban): Pole sana, Bw. Spika, kama lugha inakukwaza. Lakini juu ya hapo, kusema “pole” ni kuomba msamaha!

Bw. Spika, ninataka kumalizia---

Mr. Speaker: Order, Dr. Shaban! Utafauta amri ambayo ninatoa kwa sababu sheria ndio inaniruhusu kutoa amri hiyo. Utayaondoa maneno hayo na uombe msamaha kwa Wabunge wenzako.

The Minister for Gender, Children and Social Development (Dr. Shaban): Bw. Spika, kwa wale ambao nimewakwaza, ninawaomba msamaha.

(Mr. Kabogo stood up in his place)

Mr. Speaker: Endelea, mheshimiwa! Mbunge wa Juja, nimetosheka kwamba mhe. Shaban ameyaondoa maneno hayo na ameomba msamaha. Ataendelea.

(Mr. Kabogo stood up in his place)

Kama haitakuwa jambo la nidhamu, utalipa!

Mr. Kabogo: Litakuwa, Bw. Spika!

Mr. Speaker: Endelea!

Mr. Kabogo: Hoja ya Nidhamu, Bw. Spika. Umemsikia Dr. Shaban akifafanua kuwa biashara zinazofanywa ni kama wale waliotajwa hata na Waziri kuhusu mambo ya madawa ya kulevya. Mimi nilitajwa, lakini baadaye Waziri alikuja akasema kwamba hakupata lolote wala chochote. Hakuna chochote kilitajwa hapa kunihusisha na madawa ya kulevya. Kisha, akaepa na maneno hayo akitumia Kiswahili cha kufurahisha. Kama ni sawa, akayaseme nje.

Mr. Speaker: Nisikilize Mbunge wa Juja! Nimeamrisha Dr. Shaban aondoe usemi huo wote na amesema kwamba ameondoa na ameomba msamaha. Na hiyo inahusu biashara haramu na biashara ya dawa za kulevya. Sasa sioni kwa nini turudie hapo tena kwa sababu mimi nimeridhika na nina hakika Wajumbe wengine wameridhika. Kama wewe unataka kujiingiza ndani, hiyo itakuwa tofauti kwa sababu Dr. Shaban hajarudia hivyo.

Mr. Kabogo: Bw. Spika, maneno ya dawa za kulevya sio maneno ya mchezo. Mimi nimeridhika lakini kuna watu wana tabia ya kutaja maneno ambayo hayatajwi hapa kwa meza kwa sababu kuna upingaji hapa Bungeni. Nafikiri umenielewa pia.

Mr. Speaker: Mheshimiwa wa Juja, kama umeridhika, nimetosheka.

Endelea, Dr. Shaban.

Dr. Shaban: Bw. Spika, naomba na nakushukuru kwa kunilinda na pia nakuomba uendelee kunilinda kwa sababu nimepatiwa vitisho.

Mr. Speaker: Muda wako umekwisha.

Dr. Shaban: Naomba kuunga mkono Hoja hii.

The Assistant Minister for Education (Prof. Olweny): Mr. Speaker, Sir, I beg to oppose the Motion. My reason for that is that I am concerned about the economy of this country. What is happening to the economy of this country? There was a proposal that when the Finance Bill is brought here, we will take measures to deal with interest rates which have gone so high in this country. The banks are making huge profits and the people who have borrowed from the banks are currently suffering because of those interest rates. Businesses and investments for some of them are about to collapse. That is why, in my feeling, we should have handled this issue before we go home. The banking industry, to me, has formed a cartel. They rip huge profits. When you go there, you will find that few people are employed there. They make so much money and so little is pumped into the employment sector. They have employed very few people. They basically use computers to do business. We have strained day in, day out in this country. Kenyans are suffering. This Parliament has the responsibility of helping Kenyans. Sometime early this year, around the month of March, someone walked into my office and gave me a story which I did not want to believe. I thought it was hearsay and I treated it so. He told me that in one of the hotels in this country, some people met and their deliberations were relating to the economy of this country and that the Kenyan shilling was going to be devalued very seriously and it is going to affect the economy of this country badly. I considered it hearsay. I did not believe it. But when it came to October, it came to pass that it happened, I called him and reminded him that what he had told me had come to pass and that the Kenya shilling was seriously devaluated, interest rates are going up and there are very many strikes all over the country. He told me that a group met in a hotel and planned all the things that happened. He also gave me information to pass to responsible Kenyans. There is a Parliamentary Committee here. He also wanted me to pass that information to the Prime Minister or any other person who would help but I considered it hearsay. That is why there are a few people who have benefitted from what is happening in this country. It is up to this Parliament to come out and help Kenyans.

Mr. Speaker, Sir, the high interest rates, the devaluation of the Kenyan Shilling, the strikes that we have every day--- Kenya has basically become a striking nation and it is bad for investors. No investor from outside is going to bring his or her money here. Local investors too are going to lose their investments. That is why I stand to oppose the Motion. We should stick here, deliberate on the Finance Bill and help Kenya.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: The hon. Member for Juja.

Mr. Kabogo: Thank you, Mr. Speaker, Sir. At the outset, I beg to support.

(Applause)

Mr. Speaker, Sir, the job of Parliament is to legislate, and there is time to legislate. We have had a long time for legislation and it is now time for recess. We should

go home and reflect on what it is that we have been doing here. There is a time for everything and supporting this Motion does not mean that I do not understand that Kenyans are suffering because of high interest rates. I am happy that the Deputy Prime Minister and Minister for Finance has committed himself before the House to engage those who are like me, those who believe that Kenyans are being overcharged by banks.

Having said so, Mr. Speaker, Sir, it is important for those of us who live within Nairobi to engage the Minister, and the Minister should realize that Kenya has a problem with interest rates. But staying here this week and coming back after Christmas will not be of any value in terms of legislation. We cannot force the Deputy Prime Minister and Minister for Finance to bring the Finance Bill if he decides he will not bring it. We will continue dealing with a few Questions and our hearts are not here in Parliament. We need to go; I need to go to Juja. I have been here for only one-and-a-half years, and I need to catch up with what is happening in Juja. I need to spend time to make sure that the Constituencies Development Fund (CDF) projects that are going on in Juja are of some help to the people of Juja, as opposed to sitting here and telling the country that we will not be able to go on recess, because the Finance Bill has not been brought here. We understand the importance of the Finance Bill; we understand the passion from which my friend, hon. Midiwo – whom I share most of this information with – feels Kenyans need to be helped. Kenyans have a right and we know that we have banks that are completely unruly. This is the only country in the world where the exchange rate can move from Kshs82 to Kshs107 and back to Kshs82 in the same month.

(Applause)

It does not happen anywhere else! So, it will be sick of me to sit here and say that it is nice. Things are happening and we know there is a problem. We hope that when we come back in the month of February, or thereabouts, the interest rates that the banks are charging will be back to normal. We want to challenge the Deputy Prime Minister and Minister for Finance that during this vacation, he should ensure that he engages all the interested parties to make sure that the interest rates are brought under control.

Mr. Speaker, Sir, this House has privileges that most of us will stand here and utter words that they cannot substantiate, as you saw a few minutes ago. I do not want to go back to that issue, but it is sickening to see people stand here and utter words that they cannot substantiate to damage people and their families and yet they know for sure that that information has been in public domain. So, it is important for the Members to think and act responsibly like honourable Members.

With those few remarks, I beg to support.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Thank you, Mr. Speaker, Sir. I will be very brief. I support this Motion for four reasons.

First, the Kenya Armed Forces, which I congratulate, they are doing a remarkable job securing this nation. As an Assistant Minister, Ministry of State for Defence, I would like to visit them to see what they are doing. That is one of the reasons why we need this recess.

Secondly, I want to go to Kajiado Central and assure the people that---

Dr. Nuh: On a point of information, Mr. Speaker, Sir.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry):
Mr. Speaker, Sir, I do not need the Member's information. In any case, the hon. Member does not understand the art of war. So, I do need any information.

I want to go and assure the people of Kajiado County that what they saw from the Cheserem Commission, that Kajiado Central is the richest, is totally untrue. It is a scheme to marginalize our people. How can people who are on relief food be the richest? When you look at the people who live around Kitengela, you will find that there are Ministers of this House and senior Government officials. If you go to Kitengela and Rongai, you will see big houses, but the real people of the Kajiado County are in the interior and are on relief food. It is the responsibility of Cheserem's Commission to go round the country and ascertain the poverty level of this nation. They should not base their report on what was done in 2006.

The other very important reason why I support this recess is that the Members of this House need to go and pass a message of peace, unity and cohesion to the citizens of this country. We are one nation. We need to pass this message because as we get into next year, Kenyans should understand that they are one nation, one people. The other reason why we must go for recess---

Mr. Litole: On a point of order, Mr. Speaker, Sir. Will I be in order to go and tell my constituents that the prices of fuel in Tanzania and Rwanda are cheaper than in Kenya?

Mr. Speaker: Order! That is not a valid point of order.
Proceed!

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry):
Mr. Speaker, Sir, that is quite true and that is the reason why we need this recess, so that the Member can go to Sigor and tell his constituents that the Government is working. We must face these challenges boldly, so that we can allow the Government to look into the issue of interest rates. We know Kenyans are suffering. The Government should also look into the issues of the high cost of food and fuel. This is the right time when we can support the Committees of this House and make recommendations to the Government. By the time we come back, the Government will have no reason not to adopt our recommendations.

The other very important thing why we should go on recess is that we must go and bond with our families. The children are on holiday. Some of them need to bond with them. We need to bring up these children to be good citizens.

I want to conclude by wishing the people of Kajiado and all Kenyans a Merry Christmas and a very happy New Year, 2012.

Mr. Ogindo: Mr. Speaker, Sir, I want to politely oppose this Motion. I want to congratulate this House for having done a very good job in the past one year. The reason as to why I am opposing this Motion is that as we debate in this House, Kenyans are looking upon us when they are "bleeding". The cost of living in this country has skyrocketed. It will be ridiculous for us to go back to our constituencies when we do not have any proposals on how to mitigate this crisis. I have noted with concern the high cost of food, fuel and money. It is incumbent upon this House to ensure that these serious issues are mitigated.

Mr. Speaker, Sir, we recently promulgated our new Constitution and there are several legislations that are required to ensure that the Constitution is implemented.

Critical amongst these are the devolution Bills. Devolution is very critical to this country. Time appears to be running out for these critical Bills.

Mr. Speaker, Sir, the other issue I want to tie on this argument is the Finance Bill. The Finance Bill is very critical to this country. The Finance Bill allows the Deputy Prime Minister and Minister for Finance to generate money to fund his Budget. The Budget is service delivery to Kenyans. Time appears to be running out for this critical instrument. I have heard suggestions by the Government that on any event that we do not have the Finance Bill by 1st January, 2012, there are instruments that can be exploited to ensure that revenue continues to flow in.

Mr. Speaker, Sir, I want to draw the attention of the House to the fact that when the Minister was presenting his Budget to this House in June, it became evident that our Budget had a deficit of Kshs184.3 billion. With the provisional collection order, which now hangs in the balance, the Government risks refunding Kshs15 billion in the last six months. In the event that the Finance Bill does not pass through, a further Kshs15 billion will have to be forgone. With that in mind, at the end of the financial year, we will be talking about a total Budget deficit of about Kshs216 billion. With that deficit, we will be required to borrow in order to plug that gap. Borrowing will come with increased bank interest rates again.

I have heard the Minister canvas that the danger with the Finance Bill lies with the proposed amendment to the Banking Act, which threatens to jeopardise negotiations with the International Monetary Fund (IMF) on a loan that the IMF has committed itself to give this country. Indications are that the loan is in the tune of about US\$600 million, which translates to about Kshs50 billion. In the event that we get that money, it will also attract interest. At the rate of about 3 per cent per annum, it translates to Kshs1.5 billion per annum. That is not going to mitigate the huge gap that we are going to have.

Mr. Speaker, Sir, therefore, it is my humble proposal that this House remains alive, so that the Minister can continue engaging and widen his engagement so that a solution can be found, so that this country can move forward with Kenyans being clear in their minds that we are indeed addressing their plight.

With those few remarks, I beg to oppose.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Thank you, Mr. Speaker, Sir, for giving me this chance to remind you something. I know you know the story of the Merchant of Venice. This is a famous play that I am sure a lot of the hon. Members have read. The shylock lent money to a merchant who was shipwrecked. The shylock now wanted his payment, which was a pound of flesh. Portia, a beautiful lady like hon. Millie here, stood up and said, "Here is a sword. Cut your pound of flesh, but not a single drop of blood should fall on the Floor." The time for a Portia in Kenya has come. I sincerely share the pain that borrowers in this country have. Of course, it is very important that I also declare that I own a few shares in a few banks, but their activities in fleecing the borrowers and undermining the economy-- - It is time that a Portia for Kenya came up and offered this sword to the banks and said, "Cut your pound of flesh, but do not undermine the lifestyle of Kenyans."

Mr. Speaker, Sir, if you read the Merchant of Venice play, they did not call the politician to come and fix the interest rate. They also did not use arbitrary methods of controlling interest rates. Therefore, I am convinced that hon. Okemo has given us the formula. Interest rates are very technical. It is a matter that is better left to very careful

negotiations with specialists like Portia so that she can withdraw that sword and give it to us. I want to plead with hon. Members to calm down. I was a bit embarrassed by the discussions yesterday. I think it is unfair for hon. Members of Parliament to subject the President and Prime Minister to the sort of arguments and debates that I witnessed yesterday. I think the time for sobriety belongs to the Grand Coalition Government to ensure that you discuss matters of this nature in a calm manner. Therefore, I want to suggest that we all support this Motion tonight, but demand of the Deputy Prime Minister and Minister for Finance to become the Portia of Kenya so that he engages this House through the Committees and hon. Midiwo whom I hold in a lot of respect in finding a formula. However, that formula should not be an artificial mechanism that will hurt the country down the line.

I beg to support.

Mr. George Nyamweya: Thank you, Mr. Speaker, Sir. Perhaps, I will not go with either side. I thought we ought to be asking ourselves with the new Constitution what separates the Executive, the Judiciary and the Legislature. Yesterday we had an encounter with the Executive and it was not a very pleasant one. We said that as the legislature, we want our independence. Should we not be asking ourselves what our calendar is? Should we not be saying that Parliament sits from this time to this time and takes a break from here and the next one is this one or that one? Why must we try and convince each other that we need to go home or stay around when we purely know that there is no business that we are going to transact? What is the point of trying to convince each other? Should we not ask the Committee that sets the calendar of Parliament to set it out so that we plan our lives? To pretend that we are going home for the sake of our constituents or to do this and the other, that is not very helpful in my view. Perhaps, we can agree that --- I see we are still in the Fourth Session and nobody has seemed to worked out when there will be the Fifth Session or how we will end Parliament or who will dissolve it and when does it expire. I thought that might be a more useful thing for us, as the House, to deliberate on than trying to anticipate a Bill that is not even here! Why should we talk about the Finance Bill which is not here? Then we have our rules which say we should not anticipate debate. In my view, all of us have been engaging in some phantom because I have not seen that Bill. So, how do we talk about it?

Mr. Speaker, Sir, may I persuade everybody that enough is enough. Let us go home and reflect on the New Year and how we will do these things.

With that, I am persuaded to say, I support.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Mr. Speaker, Sir, I beg to oppose this Motion because this Government has not kept its promises. Three years down the line, we have Government displaced persons in Mau and Embobut forests. Five years down the line, the people of Kipkurere are still suffering. These are marginalized people. The Ndorobos of this country do not have their own representative in this House. But because I represent---

Mr. Speaker: Order, Member for Marakwet East! Are you able to remember that you serve in the Government and you are saying that it does not honour its promises?

Proceed!

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Mr. Speaker, Sir, I am aware of that and it is very sad because the people in Mau, Embobut and Kipkurere were told that they would be resettled before December.

Now we are going home for recess before we resettle them. This House should not adjourn, if not for anything, so that we can resettle the people in the water towers of this country.

I oppose.

Mr. Farah: Mr. Speaker, Sir, I want to support this Motion, but with a very powerful rider.

I want to support this Motion to allow our Christian brethren in this country to also have Christmas and go and celebrate with their constituents as well as their children the same way when we have Idd also.

Dr. Nuh: On a point of order, Mr. Speaker, Sir. I know Mr. Farah is not a Christian so, he might not understand very well the days of Christmas. I just want to ask him whether he is in order to impute that Parliament sits on a Christmas because we know on Christmas Day, it is automatically a holiday and even on 26th December, which is Boxing Day and it even falls on a Sunday. We do not sit on Sunday in this House.

Mr. Speaker: Mr. Maalim, that is a legitimate challenge.

Mr. Farah: Mr. Speaker, Sir, I am not a Christian. However, I have lived all my life with Christians. What I know is that Christmas---

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

Mr. Speaker: Order, Mr. Maalim. Do you want information from Mr. Mbadi?

Mr. Farah: Give me a few minutes and then you will inform me.

I know that Christmas is not an event. It is a process; it is a period. It is not like a Sunday or Friday, but just like Idd, it is a period.

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

Mr. Speaker: Member for Lagdera, do you want information?

Mr. Farah: Now that he has insisted, I will allow him to inform me.

Mr. Mbadi: Mr. Speaker, Sir, I wanted just to inform the hon. Member for Lagdera being a Christian that not all Christians recognize Christmas. Actually, I am a Christian; I am a Seventh Day Adventist. I do not believe that Jesus was born on 25th December. So, he should have said a section of Christians and not all Christians. I do not recognize Christmas.

Mr. Farah: Mr. Speaker, Sir, I know you are from a denomination that does not recognize Christmas, but I also know that you a minority in this country. You are a very small miniscule minority.

(Several hon. Members stood up in their places)

Mr. Farah: Mr. Speaker, Sir, all these points of orders are taking away my very important time.

Mr. Speaker: Proceed, Member for Lagdera!

Mr. Farah: Mr. Speaker, Sir, Mrs. Odhiambo-Mabona is saying that all the Subas are---

Mr. Speaker: Member for Lagdera, you have my protection! Address the House!

Mr. Farah: I want to just respect her for confirming what I had said before. She has said, "Half the Subas". The Subas are only in one constituency, so you can imagine!

(Laughter)

Mrs. Odhiambo-Mabona: On a point of order, Mr. Speaker, Sir. Is the hon. Member in order to mislead the House? The Subas are in four constituencies including Mbita, Gwassi, Migori and part of Rongo. Even part of Kuria has Subas. A Suba is a brother to Kuria.

Mr. Speaker: Order! You have made your point.

Member for Lagdera, again, that is a legitimate challenge to you.

Mr. Farah: I do see that observation. My own other observation is that we have only one Suba Member of Parliament in this House.

(Laughter)

Mr. Speaker: Order, hon. Members! Order, Member for Migori!

Hon. Members, please, let us hear the Member for Lagdera. I am aware that there are more than one Member of Parliament who have Suba extraction.

Mr. Farah: I meant elected!

Mr. Speaker, Sir, I said I support this Motion with a very powerful rider.

I also want, from the outset, to congratulate and recognize the passion with which Mr. Jakoyo Midiwo has taken this issue of interest rates. I have seen myself how Kenyans have suffered as the result of interest rates that are not controlled. All of us remember what we went through in 1991/92 in this country where a majority of the middle class Kenyans here lost their properties to banks when the interest rates went as far as 75 per cent to 78 per cent. Therefore, there is need for us to protect Kenyans in this case.

I want the Deputy Prime Minister and Minister for Finance to listen to me very carefully. The Treasury and the Minister as the regulator, you will not be doing a lot of service to the idea or designs to bring down interest rates when you have Treasury bonds that are approaching and attracting interest rates that are close to 18 per cent. When the Treasury itself is giving an interest rate that is high, the banks have guaranteed returns on the Treasury bonds themselves. There is no way they are going to take their money to the banks to be lent at the rate of 11 per cent or 12 per cent, which is affordable to Kenyans, when the Treasury is attracting a much higher rate than that. So, the need for us to help Kenyans is there, the powers are there and the regulating regime is there. Let us save Kenyans using the Office of the Deputy Prime Minister and Ministry of Finance. I want to leave that at that.

Mr. Speaker, Sir, we do not want to have a country whose business elite are engaged in money profiteering; trading in money! We want people to trade in commodities. We want people to industrialize. We do not want people to trade in money. You go in, you attract a very high interest rate, you have a fluctuating foreign exchange rate and you bring money in and out. That is not good for this country. That essentially is not going to stem inflation and is also not going to protect Kenyans.

I am inclined to believe that we must have a law in place for the bankers association. We need a proper anti-trust law in place. Without an anti-trust law, those of you remember the great depression in the United States of America (USA) when the late Franklin De Lauro Roosevelt---

Mr. Speaker, Sir, I will again implore with you as the Deputy Speaker, who has hardly any time to contribute, to be given additional five minutes. I plead with you.

Mr. Speaker: Order! I will allow you two minutes! Proceed!

Mr. Farah: Mr. Speaker, Sir, in my opinion, the Bankers Association must be an illegal association because it is a cartel. We must have laws to regulate it and stop it.

Having said that, I want to talk about the security of this country. We are engaged in a war right now. In this war, we are helping the Somali people. I had said before that without carrying the Somali people on board, we will not succeed in winning this war. We must have a very serious civilian component in the struggle. We must carry the Somali on board. Otherwise, if they feel alienated, we will not succeed in our endeavours. I do not see that. We keep on getting one explosion after the other in my constituency in the refugee camps. The reason why we are getting these explosions is because for a population of 600,000 refugees against a population of 140,000 Kenyans, we have only four intelligence officers to gather intelligence information. If we had the right intelligence there and we take the right people who speak the right language, we would post them to the refugees' camps and these people would be arrested before they explode our things.

There is a serious failure on some arms of the Government on this war in Somalia. I congratulate the military. I was in my constituency despite the security alert on me, and I saw our forces across the border just two days ago. Our Defence forces are doing a good job and the Minister of State for Defence is doing a good job. Our intelligence and our police have to reciprocate the same.

Having said that, yesterday, there was an operation carried out in the refugee camp in Ifo where Kshs38 million was taken away from our traders by our security forces. They went there, smashed the shops, broke into houses, broke into business premises and robbed them. How do we expect that population to support us in this war? This has got to have a face that is political and very clever. That will allow us to win this war. If we continue the way we are going, we will lose and lose miserably. Countries that have defence forces bigger than ours have gone into Somalia and lost and moved out like Ethiopia. The Somali welcomed us because they love Kenyans and they love what Kenya is doing in their country. We must reciprocate it ourselves and do the right things.

I am saying that within the province itself, all this insecurity happens because there is a lapse. Last time when two women were abducted from Daadab, can you believe that out of our entire Provincial Administration security machinery, nobody trailed them? These women were being walked in our country for two-and-a-half days and the DC and the DO in Liboi, the officers who were in the areas that they passed by were not alerted to go and stop these people, arrest them and free the women. Everybody is absolutely worried about 2012 and all the Provincial Administration worries about is the dissolution of its own. There is a serious problem and there must be a complete overhaul of the Provincial Administration in our area.

I must say that I am very happy because I got an excellent DC called "Mr. Kimathi", the last two weeks, who is working very hard. However, the Provincial Administration, right from the PC, the intelligence machinery and all those things must be dealt with in a manner that will help us win this war. Otherwise, we will end up having a problem. Let us return the money to the people it was stolen from in Ifo Camp.

Mr. Speaker: Order, the Member for Lagdera! Your time is up.

The Assistant Minister for Agriculture (Mr. Ndambuki): Mr. Speaker, Sir, I would like to support this Motion. I would like to urge Members to take time off so that we can go and see what is really happening in our constituencies. We had very good rains but we are having bore warms that are destroying our crops. I urge Members to go, support and educate our famers on how to fight the bore warms. The Ministry has given each District Agricultural Officer (DAO) more than 5,000 litres of chemical to fight the bore warms. This is threatening our harvest and we are getting very close to harvest. I would also like to tell the Members who were affected by aflatoxin the last time, that we now have driers. They will be in place before the harvest of this crop.

I would like to thank the Deputy Prime Minister and Minister for Finance for assuring Kenyans and this House that he will look into the matter of interest rates. It is not only Kenyans who are being affected but even ourselves, we are affected. It is only fair that we do proper business not business of really finishing one side, and other people, really continuing to grow like the way it is happening. So, by the time we come back, we hope the Deputy Prime Minister and Minister for Finance will have come up with a formula, which will be used and which will enable us also to transact business. The way we are doing it now, we are going to cause a lot of mess and only do what we want to do. But if we give the Minister time to consult with the Finance, Planning and Trade Committee, they will come up with something which will sort out this issue once and for all.

Mr. Speaker, Sir, with those remarks, I support.

Mr. Speaker: Order! Hon. Members, you have just ten minutes to continue this business, if we share two minutes each, then we can do five. Member for Marakwet West, Chepkitony. Is it Marakwet East or West?

Hon. Members: Keiyo North.

Mr. Speaker: I am sorry. Proceed. Use your two minutes.

Mr. Chepkitony: Mr. Speaker, Sir, I want to correct that I am Member for Keiyo North.

Mr. Speaker: I have known that already,. Use your two minutes.

Mr. Chepkitony: Mr. Speaker, Sir, I thank you for giving me the opportunity to support this Motion. We are already very tired. We need to go and rest. Those of us who are Christians need to go and celebrate. In Kenya, we have serious economic issues which we need to address in the larger picture, including interest rates and inflation rate which is very high. We also need to improve and expand on our export base. Currently, we are not exporting much. In fact, our exports are declining. We need to know how to improve so that we support our shilling. We need to support our farmers to produce enough food and at a cheaper rates so that the cost of food comes down. We also have high rates of Treasury bills because the shilling is stabilizing. I think it is the high time that the Central Bank of Kenya starts reviewing the high interests which is imposed on the banks so that interest rates can come down.

I appeal to the Office of the Deputy Prime Minister and Ministry of Finance to release CDF money early enough so that we are able to implement CDF projects early enough before the campaigns for next year.

I beg to support the Motion.

Eng. Maina: Mr. Speaker, Sir, I stand to support this Motion. The issue interest rates or high cost of commodities in this country has to do with cartels. It is like a cancer

in this country which cannot be dealt with simply by rushing a matter. I think by the time we come back, and having heard what the Office of the Deputy Prime Minister and Ministry of Finance will say, this Parliament should be prepared to tackle this problem once and for all. But we cannot just say that we are going to solve this problem in the next two or three days.

On the issue of banks, I think banks in this country are run by sadists. Banks are run by people who cherish when people are in problems. Do you know when sign a loan, beside the interest rate, you give a security, and you are forced to sign something called a personal guarantee. Therefore, if the interest remain as high as they are, people of this country will be denied, not just lose of their securities, but they will lose their lives through something called personal guarantees. Therefore, this is a matter to be addressed not just by the Deputy Prime Minister and Minister for Finance. It is a matter that is very central to the Government. When fuel prices go down internationally, we have cartels that blackmail this country and even cause shortages that are not real, so that the Government can react and go back to their prices. Therefore, I think we need time to go and engage our constituents.

Mr. Speaker, Sir, I beg to support the Motion.

Mr. Lagat: Thank you, Mr. Speaker, Sir, for giving me this opportunity to support this Motion. We have been working all along and even extending the sittings of the House at times. I think this is the time to rest so that we can get energy for the coming year, which is, 2012. I think it is good for us to adjourn so that we can go and prepare ourselves.

Mr. Speaker, Sir, we also understand the economic situation in this country. Our Deputy Speaker has also mentioned, and we understand--- When we go back to history, we can learn what the Americans did during the time of Franklin Roosevelt in 1933 when there was depression. They were able to improve their economy. I think this country should think on ways to improve the economy.

Right now, we are celebrating Christmas and have very many ceremonies. It is high time that we got a chance to also go and celebrate with our constituents. This is because all along, we have spent a lot time in Parliament.

Mr. Speaker, Sir, the Tenth Parliament has done a lot. It has delivered a new Constitution to this country. Although we are still implementing it, I think what the Tenth Parliament has done has gone into history.

Mr. Speaker, Sir, I want to wish my colleagues a Merry Christmas and prosperous New Year.

Mr. Speaker, Sir, I beg to support.

Mr. Mureithi: Mr. Speaker, Sir, I rise to support the Motion for Adjournment. The reason is that this is the time for us to celebrate Christmas with our people, as the Deputy Speaker said. But at the same time, we should be able to go and distribute some of the monies that have been released to our constituencies and meet our constituents.

Mr. Speaker, Sir, having said that, it is a very sad affair when the common person is suffering because of high interest rates. What happened in 1991, 1992 and 1993 when hon. Okemo was the Minister for Finance--- I was also a member of the bank. The factors that affected us that time are not the same ones that are affecting us now. I think we should address ourselves to those factors that are causing the problem in terms of interest

rates so that our rural communities do not end up being sold out at this material time when the cost of living is quite high.

Mr. Speaker, Sir, with those remarks, I beg to support the Motion.

Dr. Monda: Mr. Speaker, Sir, I rise to support this Motion. As we go on recess, the Minister needs to indicate that when we resume in the New Year, we will make a follow up from where we are stopping so that we are able to pass the Finance Bill and debate the issues that affect this country especially the interest rates for Kenyans who take loans from our banks.

Mr. Speaker, Sir, secondly, I would like to ask the Deputy Prime Minister and Minister for Finance and the Ministry of Health, to reflect as we go on recess. This is one of the countries that losses over 500 children at the age of below of five years. We cannot afford to be losing such a big number of children. It requires the interest of the Government to fund sufficiently the conditions that lead to deaths of children in that magnitude. There is also an important area of mothers who die in conditions that are related to child bearing. In every 100,000 Kenyan mothers, we lose a very high number. It is important that as we come back, and I want the Deputy Prime Minister and Minister for Finance to note this, that unless we are concerned about the lives we lose, for mothers and children, then we are a country that does not invest in our future.

With those few remarks, I support the Motion.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Speaker, Sir, I also rise to support this Motion. My colleagues have already said that there is need for us to go for a break. There is no doubt about that. But how long should that break be? It is important for this House and for those who make decisions on the next date of resumption of the House to reflect on the fact that there are issues that are pending in this House. The first one is the issue of Internally Displaced Persons (IDPs). The second issue is about interest rates. The Executive and the Deputy Prime Minister and Minister for Finance have heard us loud and clear.

The other critical issue that we should reflect on is the Bills on devolution. We do not want to be rushed the way we were rushed a few months ago when we were debating beyond midnight the Bills that will operationalize the Constitution. I urge that by mid January, the House should be recalled so that these Bills on devolution can be debated before 14th February, 2012.

Mr. Speaker, Sir, my last word is to the Deputy Prime Minister and Minister for Finance. I know that the Kshs1 trillion Budget approved by this House is pegged on the taxation measures which were meant to come in the Finance Bill. In the event that those taxation measures are not approved by this House, I would urge the Minister for Finance to rationalize the Budget Votes and make sure that it is only the things that affect the common *mwananchi* that are prioritized and implemented. It should only be that.

With those few remarks, and because of time, I support.

Mr. Speaker: Order, hon. Members. We have the feel of the House, we have taken views from both sides and from the diversity of the House as much as possible, and so I will now put the question.

(Question put and agreed to)

(Several hon. Members stood up in their places)

Order, hon. Members! I have been able to ascertain that the Noes do not have the numbers. So, the Ayes have it and the Motion is, therefore, carried.

COMMUNICATION FROM THE CHAIR

DEFEAT OF MOTION BY DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

Mr. Speaker: Hon. Members, I now wish to make two communications. First, as you will recall, at the sitting of the House held this morning, Wednesday, 21st December, 2011, the hon. Member for Gem, Mr. Jakoyo Midiwo, rose on a point of order on the matter of the defeat by the House at the afternoon sitting of yesterday, Tuesday, 20th December, 2011, of the Motion by the Departmental Committee on Justice and Legal Affairs. The Motion by the Departmental Committee on Justice and Legal Affairs was to the effect 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 chairperson and members of the Ethics and Anti-Corruption Commission laid on the Table of the House on Wednesday 14th December, 2011.”

In his point of order, hon. Midiwo stated that by law, the nominees are required to be approved by the House. In the instant matter, hon. Midiwo took the view that the rejection of the Motion did not amount to an approval of the nominees by the National Assembly and did not satisfy the constitutional and statutory requirements for approval by the National Assembly. In his view, by the rejection of the Motion by the Departmental Committee, the nominees stood nominated by the Executive, but had yet to be approved by the House. Hon. Midiwo suggested that the names of the nominees will, therefore, require to be returned to the nominating authorities for resubmission to Parliament for vetting by the Committee and subsequent tabling in the House.

(Applause)

Hon. Members, a number of hon. Members rose to contribute to the issues raised by the hon. Member for Gem, namely Messrs. Olago Aluoch, Mohamed Abdikadir, Ndiritu Muriithi, Adan Duale, Martin Ogindo, Dr. Boni Khalwale, Mr. Charles Kilonzo and the Deputy Speaker and hon. member for Lagdera, Farah Maalim.

Hon. Members will recall that I undertook to make a ruling on this matter later today. Hon. Members, from the contributions of the aforesaid hon. Members I have arrived at the following as the key questions that require my determination.

1. What is the effect of the rejection of the adoption of a report of a Committee?
2. What does approval by the National Assembly of a nominee of the Executive mean and/or entail?

One other matter which I will speak to is on the rules relating to an original and a casting vote, as well as the manner in which these votes should be cast. I wish to commence by drawing the attention of this House to the importance of the matter at hand. The appointments in issue relate to a key constitutionally sanctioned organ for the eradication of corruption in our country. It is, therefore, critical, hon. Members, that this

House be not the source of delay in the operationalisation of the Ethics and Anti-Corruption Commission (EACC). By way of acknowledgement only, I wish to inform the House that I have received communication from the Chairperson of the Commission for Implementation of the Constitution (CIOC) on the subject of the recruitment and appointment of the Chairperson and Members of the EACC. The Commission states its position and expresses its concerns on the necessity and urgency of the recruitment and appointment of the Commission without delay and in accordance with the Constitution and the law. The Commission reminds the House a position that I entirely endorse and have previously pronounced to take heed of Article 259 (1) of the Constitution, which obligates all state organs and persons to interpret the Constitution and legislation in a manner that promotes the purposes, values, principles enshrined in the Constitution, advances the rule of law, permits the development of the law and contributes to good governance.

Additionally, hon. Members, a key aspect of the new constitutional dispensation in departure of the old constitutional order is the number of appointments which require the approval of Parliament before they can be made. It is, therefore, imperative that we make absolutely clear what the process of parliamentary approval means and entail, so as to avoid future disputation.

(Applause)

In arriving at the conclusion which I am about to share with the House, I have looked at previous precedence in this House as well as from other jurisdictions. I am satisfied, however, that the answers to the matters raised by hon. Members are to be found in the Constitution, the Standing Orders, the Ethics and Anti-Corruption Commission Act and the Public Appointments (Parliamentary Approval) Act.

On the question of the rejection of a Motion for adoption of a report of a Committee, I wish to re-affirm the important role that Committees as agents of the House play. Committees, as I have previously stated, provide the best forum for reflection and circumspection on matters which cannot effectively be achieved in the plenary of the House. The House, therefore, respects and appreciates the work of Committees for which reason I reiterate recommendation I previously bestowed on the Justice and Legal Affairs Committee for discharging the work delegated to it.

Ultimately, however, the decision on any matter is for the House itself. In the House making its decision, it should, however, be noted that a Committee report such as that presented by the Justice and Legal Affairs Committee may contain more than just the recommendations for the approval or rejection of nominees. It may contain other findings and observations by the Committee.

I will pause for a minute to allow the Members at the door to walk in.

(Hon. Members entered the Chamber)

Therefore, hon. Members, when a report of a Committee is rejected, the question must arise whether it is possible to say what aspect of the report the House did not agree with and what aspect the House is comfortable with. The argument can rightfully be made that the rejection of a Committee report is a rejection in toto and that nothing is left

of it. The argument can further rightfully be made that no aspects can be salvaged from a rejected report. This is why it is open to the House to adopt the report or to adopt the report with such amendments as may have been moved to it. The amendment of a Motion for adoption of a Committee report is, however, subject to the rules of this House about permissible amendments to Motions.

As I indicated when I disallowed the amendment proposed by hon. C. Kilonzo, the Member for Yatta, who sought to introduce an amendment to the Motion by the Departmental Committee, the effect of which will have been to directly negative the Motion. The Standing Order No.55(2), prohibits the introduction of an amendment if it represents a direct negative of the question proposed. I will want all the Members to visit that Standing Order. I indicated further that the recourse of the House or of a number who is of a view directly opposite to the text of the Motion is to defeat the Motion. The question, however, arises as it has in the present case, what the effect of such a rejection of a report proposing the rejection of nominees becomes, and I will return to this shortly.

The second question which is intimately linked to the first one is what approval by the National Assembly of a nominee of the Executive means and or entails. Chapter 15 and in particular Article 250(2) provides for the procedure for appointment of the Chairperson and members of a Commission in the following terms:-

“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,

(c) appointed by the President.

Section 6(7) of the Ethics and Anti-Corruption Commission Act provides that the National Assembly shall within 21 days of the day it next sits after receipt of the names of applicants by the President, vet and consider all the applicants and may approve or reject any or all of them. Thereafter, Section 6(8) of the same Act provides that where the National Assembly approves the applicants, the Speaker of the National Assembly shall forward the names of the approved applicants to the President for appointment. If on the other hand, the National Assembly rejects any or all applicants, the Speaker shall within three days communicate the decision of the National Assembly to the President and request the President to subject fresh nominations.

Hon. Members, from the position of the Constitution, as read together with the Ethics and Anti-Corruption Act, it is my considered opinion that if the Constitution is to be interpreted in the manner demanded by Article 259 as well as Article 10 of the Constitution, it must be absolutely certain either that the National Assembly has unequivocally approved or rejected the nomination of any person. The Speaker, in preparing a certificate, advising the President on the set of the approval process in respect of any nominee should not be put in the position where he has to deduce what the implication of any decision of the House is.

Taking into account Section 6, (subsections 7 and 8) of the Ethics and Anti-Corruption Commission Act, it is imperative that the Speaker is absolutely certain, and without a shred of doubt, as to the decision of the House. The jurisprudence on the process of approvals of office holders by the National Assembly prior to their

appointment by the Executive is still evolving. However, it will be much assisted by interpretations that promote the spirit and intendment of the Constitution.

Hon. Members, having considered all the relevant circumstances, I come to the considered position that the two most critical questions to the present matter can fairly be determined together, which I proceed to do as follows:-

I ruled, firstly, that in the context of approvals of nominees for appointment to any office, the rejection of the Report of a Committee of the House, whatever its proposals, leaves nothing before the House, in respect of which without further action, progress can be made either to appoint or not appoint the nominees. It is, however, imperative to observe, as I indicated to the hon. Charles Kilonzo, the able Member for Yatta, in disallowing his directly negative amendment proposals that “the nominees stand.”

Hon. Members, if you go back to the HANSARD, you will find that those are the exact words that I used – that “the nominees stand”. This means that the nominees still remain before the House. This brings me to the second aspect, where I rule that “approval” as contemplated by the Constitution and statutes is an affirmative and unequivocal approval by the House, and cannot be derived or deduced from the rejection of a Committee Report.

In circumstances such as are in issue, by the rejection of the Committee’s Report, the House is put in the position in which it was before the Committee’s Report; namely that there are nominees before the House, who have neither been approved by the House nor rejected by it and it becomes incumbent on the owner of the business in question, in this case the Government, through the Leader of Government Business or otherwise as the Government may determine, to move a Motion for the approval by the House of the nominees.

Such a Motion is a different Motion from the defeated Motion in so far as it does not seek the adoption of a Committee Report already defeated. It is a Motion independent of the defeated Motion.

(Applause)

Hon. Members, the final matter relates to the questions as to voting in this House. Section 54 of the former Constitution which is saved by virtue of Section 3(2) of the Sixth Schedule to the Constitution provides as follows:

“1. Except as otherwise provided in this Constitution, any question proposed for decision in the National Assembly shall be determined by a majority of votes of the Members present and voting.

2. On a question proposed for decision in the National Assembly, the person presiding in the Assembly shall:

(a) if he is the Speaker, have a casting vote, but not an original vote;

(b) if he is not the Speaker, have both an original vote and a casting vote.”

Standing Orders Nos.64 and 65, which were cited this morning, amplify this constitutional provision by providing at Standing Order No. 64 that: “Every Member other than the substantive Speaker or the Attorney-General shall be entitled to vote in a division even though the Member is in the Chair.” Further at Standing Order No.65, it states that: “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.”

The Constitution and the Standing Orders are, therefore, clear on this matter. As the situation could recur, it is useful to mention that the procedure is that if an elected Member who is in the Chair desires to vote during a division, he is entitled to do so while the division is in progress by having another Member temporarily relieve him or her in the Chair. After the division is complete and the Chair has announced the results of the division, and the results are a tie, it is the prerogative of the Chair to determine if he or she wishes to exercise the casting vote and if so, whether it will be an Aye or a Nay and therefore whether the Motion is carried or lost. To complete the picture, in the event that there is a tie and the Chair chooses not to exercise the casting vote, the Motion is lost.

Hon. Members, I, therefore, conclude by ruling as I have that the Motion for the adoption of the Report of the Departmental Committee on Justice and Legal Affairs having been rejected and the requirements relating to approval or rejection of nominees not having been met, it is important that the Government moves expeditiously to move a Motion for the approval of the nominees for Chairperson and members of the Ethics and Anti-Corruption Commission so as to enable the House to make its decision such as the Executive may be appropriately advised expressly by the Speaker in compliance with Section 6 of the Ethics and Anti-Corruption Commission Act, 2011. I thank you, hon. Members.

(Applause)

VOTE OF THANKS TO HON. MEMBERS AND
PARLIAMENTARY SERVICE COMMISSION STAFF

Order, hon. Members! The next Communication I wish to make is as follows. Hon. Members, before we adjourn, may I take this opportunity to thank all of you and our staff for your selfless dedication and commitment to duty and the manner in which you have conducted yourselves throughout the year. Indeed, we have had a historic year that has seen hon. Members debate and pass a total of 25 constitutional implementation Bills as required under the provision of the Sixth Schedule of the Constitution.

In a bid to meeting these constitutional deadlines provided under the Fifth Schedule, the House has had on numerous occasions to sit late in the night to debate and pass the requisite Bills alongside other legislations. I must add at a great sacrifice. Indeed, out of a total of 59 Bills that were introduced this year, 32 were debated and passed.

Hon. Members, during the year, 109 Motions were filed as well as 760 Ordinary Questions and 275 Questions by Private Notice.

From the foregoing, it is clear that the House transacted a lot of business. In order to give hon. Members time to take a break and also allow our staff some rest, including taking their annual leave, I direct that all parliamentary committee activities be suspended effective tomorrow, Thursday, 22nd December, 2011, until Monday, 30th January, 2012.

I do hope that hon. Members and staff will have good and ample time to rest and re-energize in readiness for a busy schedule next year.

I finally take this opportunity to most sincerely wish all hon. Members, their families and members of staff a blessed Christmas and a peaceful festive season. Merry Christmas. I thank you.

ADJOURNMENT

Mr. Speaker: Hon. Members, we have come to a point where we must adjourn the business of the House. The House, therefore, stands adjourned *Sine die*.

The House rose at 7.45 p.m.