

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 22nd November, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATIONS FROM THE CHAIR

(Several hon. Members stood at the door)

Mr. Speaker: Order, hon. Members! Those Members at the door may want to walk in quickly!

(Hon. Members standing at the door entered the Chamber)

Hon. Members, I have three communications to make.

MEMBERS WORKSHOP ON IMPLEMENTATION OF KENYA'S UNIVERSAL PERIODIC REVIEW RECOMMENDATIONS

First, I am in receipt of a letter dated 10th November, 2011 from the Ministry of Justice, National Cohesion, and Constitutional Affairs with regard to a workshop on the implementation of Kenya's Universal Periodic Review Recommendations. The Universal Periodic Review is a mechanism through which the UN Human Rights Council reviews compliance by member states with international human rights obligations. Kenya's compliance status was last reviewed on 6th May, 2010. During the exercise, the Council made a number of recommendations to the Government which it is expected to implement.

Hon. Members, in view of the fact that the Executive Arm of the Government has to work hand-in-hand with Parliament for the smooth implementation of the recommendations and, more importantly, because these recommendations may require ratification of treaties, the Ministry of Justice, National Cohesion and Constitutional Affairs has invited all Members to a two-day workshop to appraise them on these recommendations as well as the Universal Periodic Review process itself.

The workshop will be held in Mombasa on 9th December, 2011 and 10th December, 2011 at a venue to be confirmed in due course. Members will be expected to depart from Nairobi on Thursday, 8th December, 2011 and return on Sunday, 11th December, 2011. Members are, therefore, requested to confirm their attendance by registering at the Main Reception of the Main Parliament Buildings by Thursday, 24th

November, 2011 so as to enable the organizers of the workshop put in place the necessary logistics.

Thank you.

I will proceed to the second Communication, but before I do so, I will allow Members at the door to walk in and take their seats.

(Hon. Members at the door entered the Chamber)

NOMINATION OF CHAIRPERSON/MEMBER OF SALARIES
AND REMUNERATION COMMISSION

Hon. Members, further to the previous Communications on the matter of the nomination of the Chairperson and members of the Salaries and Remuneration Commission, I wish to inform the House that by a letter from the Permanent Secretary, Secretary to the Cabinet and Head of the Public Service dated 18th November, 2011 and addressed to the Clerk of the National Assembly, the National Assembly has been advised that pursuant to Article 230 of the Constitution and Section 7(2) and Section 10 of the Salaries and Remuneration Act, 2011, the following persons have been nominated by the respective nominating bodies for the position of chairperson and members of the Salaries and Remuneration Commission:

Under Article 230(2)(a), for Chairperson, Mrs. Sarah Serem; under Article 230(2)(b)(i), nominee of the Parliamentary Service Commission, hon. Peter Oloo Aringo; under Article 230(2)(b)(ii), nominee of the Public Service Commission, Mr. Daniel Ogutu; under Article 230(2)(b)(iii), nominee of the Judicial Service Commission, Ms. Selestine A. Kiuluku; under Article 230(2)(b)(iv), nominee of the Teachers Service Commission, Mrs. Serah Kinyua; under Article 230(2)(b)(vi), nominee of the Defence Council, Brigadier (Rtd) Samuel Ndururi Kirubi; under Article 230(b)(vii), nominee of the Senate, Mr. Jason A.N. Namasake; under Article 230(2)(c) (i), nominee of the Central Organization of Trade Unions (COTU), Mr. Isaiah Kubai; under Article 230(2)(c)(ii), nominee of the Federation of Kenya Employers (FKE), Mrs. Jackline Mugo; under Article 230(2)(c)(iii), nominee of the Association of Professional Societies in East Africa (APSEA), Mrs. Anne Owour; under Article 230(2)(d)(i), nominee of the Cabinet Secretary responsible for Finance, Mr. Joseph K. Kinyua, Permanent Secretary, Office of the Deputy Prime Minister and Minister for Finance; under Article 230(2)(d)(ii), nominee of the Attorney-General, Mr. Wanjuki Muchemi, Solicitor-General in the Attorney-General's Chambers; and under Article 230(2)(e), nominee of the Cabinet Secretary responsible for Public Service, Mr. Titus M. Ndambuki, Permanent Secretary, Office of the Prime Minister and Ministry of State for Public Service.

By the same letter, the National Assembly has been advised that the name of the nominee of the National Police Service Commission under Article 230(b)(v) shall be submitted after the Commission has been constituted.

I direct that the names of the nominees received and the accompanying curriculum vitae be forwarded to the Departmental Committee on Finance, Planning and Trade for consideration and report to the House on or before Tuesday, 29th November, 2011. Thank you.

(Several hon. Members stood at the Bar)

Hon. Members at the Bar may want to walk in.

(Hon. Members standing at the Bar entered the Chamber)

Order, hon. Members! The Third Communication is as follows.

NOMINATION OF FOREIGN JUDGES TO THE JUDGES/
MAGISTRATES VETTING BOARD

Sections 6 and 7 of the Vetting of Judges and Magistrates Act, 2011 provide for the establishment and membership of the Judges and Magistrates Vetting Board. Section 7(b), in particular provides that of the nine members of the Board, three shall be non-citizens of Kenya appointed in accordance with Section 9(13), which provides that the President, in consultation with the Prime Minister, and subject to the approval of the National Assembly, shall in respect of the vacancies in the Board relating to foreign judges appoint three distinguished non-serving or retired judges, each of whom has served as Chief Justice or judge of a superior court in the Commonwealth to be members of the Board.

Upon receipt of the names of the nominees, the National Assembly is then required under Section 9(8) and (9) to consider within 14 days the nominations received and may approve or reject any nomination and request the names of new nominees. By a letter from the Office of the Permanent Secretary, Secretary to the Cabinet and Head of the Public Service dated 17th November, 2011 and addressed to the Clerk of the National Assembly, the National Assembly has been advised that His Excellency the President, in consultation with the Prime Minister, has nominated the following foreign judges to be considered for appointment as members of the Judges and Magistrates Vetting Board:

1. Justice F.M. Chomba, Zambia
2. Justice Albi Sachs, South Africa.

Hon. Members, I direct that these names and the accompanying curriculum vitae be forwarded to the Departmental Committee on Justice and Legal Affairs for its consideration and report prior to approval by the House. The Committee is subsequently hereby directed to table its report on or before Tuesday, 29th November, 2011.

Hon. Members, please, note that I will have the fourth Communication which I will make just before we get to Order No.8. Thank you.

QUESTIONS BY PRIVATE NOTICE

IMPOSITION OF DUTY ON MEDICAL PRODUCTS IMPORTED
BY BETA HEALTH CARE INTERNATIONAL

(Mr. Kutuny) to ask the Deputy Prime Minister and Minister for Finance:

- (a) Under what circumstances did the Kenya Revenue Authority (KRA) impose duty on medicinal products Sandoz Calcium (Forte)

500MG and Calcium Sandoz 1000MG imported by Beta Health Care International Limited, yet such products are zero-rated?

(b) What informed the decision for the tariff reclassification of the two products from Medicine (HS Code 3004.90.90) to Food Supplement (HS Code 2106.90.90) and imposition of duty retrospectively, from 2008 to 2003?

(c) Why is KRA also demanding over Kshs.127 million from Beta Healthcare on imported products that were re-exported and why has KRA since attached Kshs33 million from the Company's VAT Receivable Account and frozen some of its bank accounts?

Mr. Speaker: Hon. Members, I am on notice that the Member for Cherangany is away officially with permission from Parliament. Therefore, Question No.1 by Private Notice is deferred to Thursday next week at 2.30 p.m.

(Question deferred)

TERMS OF REVENUE COLLECTION CONTRACT
BETWEEN EQUITY BANK/NAROK COUNTY COUNCIL

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

(a) Is the Minister aware that Narok County Council has entered into an agreement on revenue collection from Maasai Mara Game Reserve with Equity Bank Limited?

(b) What are the terms of the contract?

(c) Could the Minister table the contract documents?

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Speaker, Sir, I just want to seek your guidance because I responded to this Question and even tabled the contract document. So, my understanding was that we deferred it to today to allow the hon. Member to look at the contract document and then raise specific issues.

Mr. Speaker: Yes, that is so. I recollect that to be the position. Member for Narok South, you may want to ask your first question.

Mr. ole Lankas: Mr. Speaker, Sir, I want the Minister to confirm to this House what the County Council of Narok asked in the Expression of Interest (EOI) and what it got from Equity Bank Limited.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Speaker, Sir, what Narok County Council asked for, and they advertised for this publicly, was for an EOI for the supply, installation and commissioning of a prepaid card system. The scope of what was required is indicated in the advertisement, which I will also table here. However, broadly speaking, it was:

(a) to supply, install, and commission a centralized online prepaid billing system;

(b) supply and install relevant ICT infrastructure at all entry points and head office for the period of the billing system;

(c) supply, install and commission vendor-based prepaid equipment, complete software system for the County Council of Narok Headquarters vendors and supervisors;

(d) train staff on the use of the new system on the first line maintenance of the proposed equipment; and

(e) provide ongoing callout for repairs and maintenance not covered by first line maintenance and provision of a watertight system against revenue loss.

Mr. Speaker, Sir, those were the details of the EOI that was advertised by the county council.

Mr. ole Lankas: On a point of order, Mr. Speaker, Sir. Is the Deputy Prime Minister and Minister for Local Government in order to avoid my Question? He has just read the scope of works. I asked what services they are getting from Equity Bank Limited and whether that is provided for in this EOI.

Mr. Mudavadi: Mr. Speaker, Sir, in the expression of interest and in the contract document which I did give to the hon. Member, and I table another copy in the House, I would like to draw his attention specifically to page 9 of the contract document. In that document, there are details of the bank's obligations are laid out and also the details of what is supposed to be provided is also attached in the form of technical specifications which are itemized as schedule (a) and they were part of the documents I tabled here. All these are contained in the contract document and it was executed after the Council and Equity Bank had gone through the process to ensure that what was being demanded is properly captured in the contract document.

Mr. Konchella: Mr. Speaker, Sir, while the Deputy Prime Minister and Minister for Local Government is in order to mention what is in the contract, when you look at the contract, you will see that it was done by the bank which dictated the terms and ensured that the terms are favourable to them. For example, the contract is for ten years and yet technology changes---

(Prof. Muigai crossed the Floor without bowing to the Chair)

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

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

Mr. Mungatana: Mr. Speaker, Sir, did you see what the Attorney-General just did?

Mr. Speaker: Yes, I did!

Mr. Attorney-General, perhaps you just want to go through the full motion! You will go back to the door, a place where you bow, go to where you were seated and move from there to go to the left side. Just proceed and go back! Go to your seat and then to the left. Go to the Bar at the door!

(Prof. Muigai went to the Bar and bowed to the Chair)

Very well, go to the right hand side and now proceed and go and engage the hon. Member for Garsen.

*(Prof. Muigai walked to the Bar,
bowed to the Chair and crossed to the left side)*

(Applause)

Mr. Attorney-General, that is very well done! Proceed, sit beside the hon. Member for Gwassi or beside the hon. Member for Garsen or whoever you want to speak to and you may proceed to do so quietly!

Hon. Member for Kilgoris, proceed!

Mr. Konchella: Mr. Speaker, Sir, the Attorney-General was not inducted in the House properly, so you cannot blame him!

Mr. Speaker: Order, hon. Member for Kilgoris! I have already dealt with that matter.

Mr. Konchella: Mr. Speaker, Sir, this contract is skewed in favour of the bank. When you look at it, it is a contract for ten years and within those ten years, the council is supposed to buy a system whereby the smartcard is run by the bank while receiving 1.7 per cent of the Kshs1.5 billion. So, this is a system that is supposed to rip off the council. The issue of interest rates whereby the dollar rose from Kshs90 to Kshs120 is not taken care of. So, they are giving a fixed interest rate where any fluctuation becomes money for the bank.

Could the Minister cancel this contract and allow a proper audit of the contract whereby an expert will look at the interest of the council so that we can have a proper contract? I have no doubt that---

Mr. Speaker: Order, hon. Member for Kilgoris! You have actually asked your question and we have allowed you so much time to even lay the background.

Mr. Mudavadi: Mr. Speaker, Sir, according to the documents that we have, first of all, the contract has been executed between the Narok County Council and Equity Bank. One of the things that I would like to point out is that, also due process was followed in them arriving at this contract. So, the contract has been executed and, therefore, the consequences of me terminating this contract do not arise in the sense that it is a contract that has been executed.

The second point that the hon. Member is raising is the issue which is appearing in Article 6(1), page 13 of the contract document, which relates to the term of the contract and how the revenue will be collected or shared and how the bank will earn its portion of what is collected. The schedule is there and it was discussed between the Narok County Council, Equity Bank and their lawyers and made the approval of the county council. Therefore, it is a validly entered into contract.

Mr. Konchella: On a point of order, Mr. Speaker, Sir. The Minister is a custodian of public good in terms of local authorities. Here, he is not looking at the interest of the people but the interest of a businessman. All these things are skewed towards making money. What I want to ask him is whether this whole thing can be referred to the relevant Committee to actually interrogate the bank and the council because this is something that is done with corruption in mind.

Mr. Speaker: Order! That does not pass for a valid point of order. You had asked the Minister whether or not he can cancel the contract and have the council advised. The Minister adequately answered that and you have not pointed out anything that is in breach of the rules.

Anybody else interested? Yes, hon. Member for Samburu East!

Mr. Letimalo: Mr. Speaker, Sir, Equity Bank was supposed to only install smartcard system but now it has gone ahead and collected revenue without the consent of Narok County Council. Is that one not an illegality on its own?

Mr. Mudavadi: Mr. Speaker, Sir, I do not know where the hon. Member is drawing that from because in the contract documents, the details are there. What I am talking about is not outside the contract document. There is no place in this document where I can be shown the difference. As the revenue is collected through---

Mr. ole Lankas: On a point of order, Mr. Speaker, Sir. On invitation of expression of interest by the county council, the issue of revenue collection was not tendered. He has just read that in his response. The issue of revenue collection is outside the scope of works as read. Is it in order for the Minister to deny that whatever the bank is doing in terms of revenue collection is an illegality?

Mr. Mudavadi: Mr. Speaker, Sir, if one looks carefully at what is here, it says:-
“(i) Supply, install and commission a centralized online prepaid billing system,
(ii) Supply and install relevant ICT infrastructure at all entry points at head office for prepaid billing system.
(iii) Supply, install and commission vendor-based prepaid equipment complete software for the County Council of Narok headquarters, vendors and suppliers.
(iv) Train staff in the use of the new system and the first line maintenance of the proposed equipment to provide ongoing call out for repairs and maintenance not covered by the first line mainstream.
(v) Provision of watertight system against revenue loss.”

Mr. Speaker, Sir, if you look at all this, you will see that the billing system focuses on revenue collection. Therefore, the contract that was entered into between the County Council of Narok and Equity Bank is not in breach of what was advertised for. So, I am fully convinced that the contract entered into is in accordance with this scope of works and they followed the due process. I also want to allay any fears about corruption by tabling in this House a letter which was written by the Kenya Anti-Corruption Commission (KACC) who went and looked at this entire exercise as it was going on. After that, they wrote a letter to the Clerk of the County Council confirming that they are satisfied that due process was followed and there was no corruption involved.

(Mr. Mudavadi laid the letter on the Table)

Mr. Mungatana: Mr. Speaker, Sir, as you can see, it is not the first time that hon. Members have raised concerns about the goings on in the county councils in terms of disposal of property. Now we are raising concerns in terms of long-term contracts with respect to the incoming county governments. What I wanted from the Minister is an undertaking from him that he is going to stop, first, the disposal of public property belonging to the county councils, secondly, entrance into detrimental contracts pending the incoming county governments. We are all worried about what is going on. Councillors know that they are going away and things are happening.

Mr. Speaker: Order! Hon. Member for Garsen, this is Question Time. You have asked your Question. Do not now slip into a debate!

Mr. Mungatana: I am not slipping into a debate, Mr. Speaker, Sir.

Mr. Mudavadi: Mr. Speaker, Sir, I would like to reiterate, because I said it here last week that, indeed, we have already issued circulars to all local authorities not to dispose of any assets belonging to the respective 175 local authorities. That message has gone out in writing to all the clerks and the chairmen of councils. They are in full picture of this.

I would also want to point out here that in the context that we are talking about - it is important that I help the House in this context by providing a little more information - the smart card system is to provide a more watertight methodology of getting revenue. The current system---

(Mr. Kigen consulted Mr. Ole Lankas over the Bench)

Mr. Speaker: Order, hon. Member for Rongai! If you want to consult with the hon. Member for Narok, you know what to do!

Mr. Mudavadi: The current system is a manual system where cash payments are made at the gates and without any fear or favour. This cash system has been an avenue for some officers within the local authorities to collect money and not account for it. So, the prepaid system is denying them that particular opportunity. That is why on the ground, we are seeing increased activity being funded by those specific revenue officers to try and block a mechanized automated system that will enhance the revenue of Narok County Council.

Mr. Konchella: On a point of order, Mr. Speaker, Sir. The Minister is insinuating that we, Members of Parliament, who represent the people are part of a skewed system to corruptly take money that belongs to our people. What I am telling him is that---

Mr. Speaker: Order, hon. Member for Kilgoris! You have treaded on very dangerous grounds. The Deputy Prime Minister and Minister for Local Government has not said that hon. Members are part of the corruption conspiracy. You are now alleging it. You must really withdraw that part.

Mr. Konchella: Mr. Speaker, Sir, I talked of insinuation. I did not say that he said so. What I want to ask him is the difference between billing and collection. That is what we are trying to follow.

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

Anybody else interested? Hon. Member for Narok South!

Mr. ole Lankas: Mr. Speaker, Sir, the other issue which is very sensitive in this contract is its term; it is running for ten years! Taking into account the current Constitution and its implementation, why did the County Council of Narok decide to enter into a contract for ten years yet, we are going to the new county systems? What will they manage if the only revenue source they have will be in the hands of another entity?

Mr. Mudavadi: Mr. Speaker, Sir, if you look at page 9, the term of the contract are well stipulated. It says this contract will also be under review every two years for the County Council of Narok and the Equity Bank to be able to determine whether it is moving in the right direction and whether it needs any corrections. There are also termination clauses that are in this contract.

Mr. ole Lankas: On a point of order, Mr. Speaker, Sir. The clause that the Minister is referring to on the terms of the contract says that every two years during the term, the parties shall hold a review meeting to discuss the performance of the pre-paid

service and to agree on ways in which to improve its efficiency. What I am contesting here is that this term of three years is not to review the contract, but to look at the efficiency and performance of the machine and to give it a go ahead.

Mr. Mudavadi: Mr. Speaker, Sir, that may be so, but again, if the hon. Member could look at page 20 on the termination and consequences of termination, it will be clear to him. Clauses of termination are in this contract document. It says if, indeed, it reaches a stage where the County Council of Narok is unhappy with the terms of the contract, they have a right to give notice and proceed with the process of termination.

Let me also point out that there is also article 4(i) on page 10, which says when money will be collected, it will be deposited in the bank and the bank is obligated to provide the county council with access to periodic reports on the balances in the extra account on a daily, monthly, quarterly and annual basis. So, on the basis of whatever is being collected through this pre-paid system, the county council has direct access to know what resources have been collected by the day, month and year.

(Several hon. Members stood up in their places)

Mr. Speaker: Order, hon. Members! I have followed the interaction on this Question and *prima facie*, it would seem there are issues that need a greater in depth interrogation.

(Applause)

From the outset, Mr. ole Lankas asked the Minister to read out what is the request by the Narok County Council was in the tender for expression of interest and he has read that out. Among other things, he said to design, install and commission. However, Mr. ole Lankas seems to say that the contract which was subsequently entered between the parties goes much further than the tender.

(Applause)

So, on those grounds, I will urge the relevant Parliamentary Departmental Committee to exercise its mandate and look into this matter and file a report in the House. I will not direct how soon, but you can see, Members of that Committee, that this is an important matter. It is like precedent setting because if you say, design, install and commission, is that the same as saying design, install, commission and man? So we will need to look at that. I, therefore, so direct!

(Applause)

AWARD OF TENDER FOR SECOND HAND
MOTOR VEHICLE INSPECTION

Mr. Kapondi to ask the Minister for Industrialization:-

(a) How many companies bid to offer second hand motor vehicle inspection clarification services to the Kenya Bureau of Standards (KEBS)?

(b) Under what circumstances was the tender awarded to a company, M/s Japan Vehicle Inspection Centre, a Japanese company?

Mr. Speaker: Hon. Members, I have communication from Mr. Kapondi, Mr. Minister, to the effect that we assigned him to attend to other urgent Parliamentary business at this time and he put in a request that I defer this Question to Thursday next week. If that is okay with you, Mr. Minister, I direct accordingly!

The Minister for East African Community Mr. Kingi): Mr. Speaker, Sir, I would request that the same be put on the Order Paper on Tuesday, next week.

Mr. Speaker: Why not on Thursday?

The Minister for East African Community (Mr. Kingi): Mr. Speaker, Sir, let it be on Tuesday next week.

Mr. Speaker: I had said Thursday next week!

The Minister for East African Community (Mr. Kingi): Mr. Speaker, Sir, on Thursday, I am scheduled to attend a function in Mombasa.

Mr. Speaker: Very well! In that case, I will defer it to Tuesday, next week and the hon. member shall be notified accordingly.

The Minister for East African Community Mr. Kingi): Mr. Speaker, Sir, much obliged!

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.1031

CRITERIA FOR APPOINTMENT OF RECEIVER MANAGERS

Mr. Speaker: Order, hon. Members, I have information from Mr. James Maina Kamau that he is bereaved. He lost his sister and the funeral arrangements are ongoing. Maybe hon. Members will want to associate with him and go and condole with him. So, I will defer this Question to Thursday, this week as requested by the hon. Member.

Mr. Attorney-General, please note!

The Attorney-General (Prof. Muigai): That is okay, Mr. Speaker, Sir.

(Question deferred)

Mr. Speaker: Next Question, Mr. Kaino!

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

Mr. Speaker: Is that in connection with Question No.903 which I have already called out?

Dr. Khalwale: No, Mr. Speaker, Sir. It is on procedure.

Mr. Speaker: Order, Dr. Khalwale! The Chair will take care of that one.

(Loud consultations)

Order, hon. Members! I have been brought up to speed on the concern by Dr. Khalwale, but that is not anything new. I have spoken to this before and I have given directions.

Proceed, Mr. Kaino!

Question No.903

LIST OF EDUCATION ATTACHES
IN KENYAN EMBASSIES

Mr. Kaino asked the Minister for Foreign Affairs:-

(a) whether he could provide a list of Education Attachés in all the Kenyan Embassies, High Commissions and diplomatic missions stating their respective stations, qualifications, positions and district of birth;

(b) whether the officers deployed meet the minimum educational requirements to hold their respective positions; and,

(c) whether he could consider rationalizing the deployment of the officers with regard to regional and ethnic balancing.

Mr. Speaker: Where is the Minister for Foreign Affairs? Mr. Mudavadi, what is the fate of your Minister for Foreign Affairs?

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Speaker, Sir, both the Minister for Foreign Affairs and his Assistant Minister are out of the country.

Mr. Speaker: Mr. Kaino, what do you say?

Mr. Kaino: Mr. Speaker, Sir, I have no objection.

Mr. Speaker: Very well! I will defer this to Tuesday next week at 2.30 p.m.

(Question deferred)

Question No.1223

ISSUANCE OF NATIONAL IDENTITY CARDS

Dr. Nuh asked the Minister of State for Immigration and Registration of Persons:-

(a) how long it takes a Kenyan to obtain a new national identity card or replacement of a lost one upon application;

(b) when the forms bearing Serial numbers 2276151157, 2264792765, 2253246922, 2269263157, 2272603401, 2260975963, 2264804604, 2277590052, 2273990196, 2296464536, 2261300711, and 2271853683 were received at the Registration of Persons headquarters and if he could provide particulars of the applicants, including their respective names, age, place and date of application and home district as well as the respective stages of the application; and,

(c) when the identity cards will be ready.

Mr. Speaker: Order, hon. Members! With respect to Dr. Nuh, I have information, though not in writing, that he was called at short notice to attend to a very significant matter that is taking place in his constituency at which the Leader of Government Business will be present. So, he is away for that reason. In my opinion, the circumstances are understandable and I accept them. So, I will defer Question No.1223 to Wednesday, next week in the morning.

(Question deferred)

I want to go back to the Question by Mr. Letimalo!

QUESTIONS BY PRIVATE NOTICE

PURCHASE OF ELAN DOWNS FARM BY KWS

Mr. Letimalo: Mr. Speaker, Sir, I beg to ask the Minister for Forestry and Wildlife the following Question by Private Notice.

(a) Under what circumstances did the Kenya Wildlife Services (KWS) purchase land parcel No. LR. No. 10068 (Elan Downs Farm) which is the subject of a suit in Nyeri High Court, and could the Minister confirm that there are plans to gazette the parcel as a national park?

(b) Why did the Government ignore the community's memorandum as well as correspondence from Kituo cha Sheria dated October 19, 2011 requesting, KWS to stop interfering with the land until the suit is determined?

(c) Could the Minister ensure that KWS does not gazette the parcel of land as a national park pending the final determination of the suit?

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Speaker, Sir, I beg to reply.

(a) The KWS did not purchase LRNo.10068. The property was donated to the KWS as a gift having been purchased by the African Wildlife Foundation (AWF) from a private willing seller.

(b) The Government is not aware of the memorandum and the letter referred to and, therefore, my Ministry cannot comment. Perhaps, these documents can be provided to us to facilitate an informed response.

(c) The Government is law abiding and will neither go against any laws of the country nor any court order given on the said parcel of land as a national park.

Mr. Letimalo: Mr. Speaker, Sir, I want to believe that the Minister is actually aware going by part (b) of the answer that there was correspondence about this particular matter. I have a copy of the memorandum from the community addressing the Minister himself and having been signed by 24 members of the community to show that this land is in such a district and the case is going on in the High Court. I want to table it.

(Mr. Letimalo laid the document on the table)

I also have a copy of a letter from the Kituo cha Sheria which was addressed to the Director of the KWS requesting him to keep off this matter because it is pending in the High Court in Nyeri. I also table it.

(Mr. Letimalo laid the document on the Table)

I also have a copy of a letter from Kituo cha Sheria addressed to the Attorney-General informing him that this is a contentious issue. This is contempt of court by the KWS, an institution of Government, by interfering with a suit land.

(Mr. Letimalo laid the document on the Table)

What prompted the KWS? What was the intention of getting involved in that matter in a case already at the High Court? It means that they are trying to deny the community the right of ownership.

Dr. Wekesa: Mr. Speaker, Sir, I am not aware of these documents that have been laid on the table. We, as the Government, this piece of land was donated to us. In the interest of conservation of our wildlife, we accepted the donation. This is in keeping with the need to preserve our wildlife which is an economic cash cow to us.

Ms. Karua: Mr. Speaker, Sir, now that the Minister says it was somebody else who transferred this land to the AWF, could he name that person? He has told us now that he knows there is a suit. What is he doing to ensure that he does not prejudice the rights of the community?

Dr. Wekesa: Mr. Speaker, Sir, we, as a Government, have not been sued. So, I cannot comment on that point. However, I do not know whether it is in the interest of this House to know that person.

Hon. Members: It is!

Mr. Konchella: On a point of order, Mr. Speaker, Sir. You clearly can see that the Government is out to rip the people of Kenya, particularly the innocent ones of their own property and land. Indeed, this is community land. This House passed a law to create a Land and Environmental Court which should be handling these matters. In fact, the Attorney-General is also watching the people being ripped of their wealth. Under what circumstances, would this Government allow a private entity to occupy community land without the due process of law?

Mr. Speaker: Mr. Minister, you may answer that notwithstanding that it is not very well prosecuted as a point of order.

Dr. Wekesa: Mr. Speaker, Sir, this was not public land. This is land that belonged to an individual who---

Hon. Members: *Nani?*

Dr. Wekesa: Mr. Speaker, Sir, an individual who donated the land!

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. Is the Minister in order to avoid answering the question by Ms. Karua? The question was: Who was this individual because this land belongs to the community? Who was this individual?

Dr. Wekesa: Mr. Speaker, Sir, this land belonged to Ol Pejeta Ranch. The piece of land was donated to the KWS for conservation.

Mr. Letimalo: On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to mislead the House by claiming that this land belonged to Ol Pejeta whereas this is a community land which was illegally taken by the AWF and, it was for that matter, that it was taken to court?

Dr. Wekesa: Mr. Speaker, Sir, this land belonged to Ol Pejeta and a piece of Ol Pejeta was given to the former President---

Hon. Members: Oooh!

Dr. Wekesa: Mr. Speaker, Sir, the former President did not want to use this land for his private use and he donated it to KWS.

(Mr. Imanyara stood up in his place)

Mr. Speaker: Order, Mr. Imanyara! Mr. Minister, have you concluded your statement to the House?

Dr. Wekesa: I have, Mr. Speaker, Sir.

Mr. Speaker: You have! What is it, Mr. Imanyara?

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. The Minister referred to the former President, but we have had more than one former president. Could he specific?

(Laughter)

Dr. Wekesa: Mr. Speaker, Sir, the former professor of politics!

Hon. Members: Who is that?

(Loud consultations)

Mr. Speaker: Order!

Mr. Mungatana: Mr. Speaker, Sir, in the letter that has been tabled here for the information of the Minister, it is Nyeri High Court, Civil Suit No.154 of 2009 originating summon, Joseph Lekamaria and 248 others *versus* the AWF and Daniel arap Moi.

Mr. Speaker, Sir, what is critical in this letter from Kituo Cha Sheria which has been tabled here is that on 24th November, 2010, the High Court sitting at Nyeri issued orders of status quo pending the hearing and determination of the matter in the High Court.

Mr. Speaker, Sir, this High Court order is also attached here. The High Court order says:- "To ensure that the squatters in occupation, and or grazing on the suit land are not evicted or harassed until this suit is heard and determined."

This letter is addressed to the Attorney-General. It urges him to make sure that the status quo is maintained. This is a copy of those orders which has been tabled before this House. Why can he not give an undertaking now that he knows there is a court order? Why can he not give an undertaking that the 248 members of the community together with their families will not be interfered in any way in this suit land and that he will not gazette this as a national park until the High Court in Nyeri hears and determines this matter? Why can he not do a simple civic duty like that to secure the community which might one day vote for him if he wants to become the President of this great nation?

Dr. Wekesa: Mr. Speaker, Sir, I have stated publicly that I do not want to be the President of this country. How can people of Laikipia vote for me? I want to be the Governor of Trans Nzoia County.

Mr. Speaker: Last question, Member for Samburu East!

(Mr. C. Kilonzo stood up in his place)

Order, Member for Yatta! What is your point of order!

Mr. C. Kilonzo: Mr. Speaker, Sir, the question which was asked by hon. Mungatana was very simple. So, is the Minister in order to totally ignore answering the question and truly showing that the Government of Kenya has no interest where private and community property is concerned?

Mr. Speaker: Order, Minister! Address the House.

Dr. Wekesa: Mr. Speaker, Sir, there is no need for me to take an undertaking and I will explain.

We, as a Government, have not moved any further than the parcel of land being given to KWS. We are aware that there is a court case. So, the people residing on this piece of land are comfortable. They are there. We have not disturbed them. So, there is no need for me to make any undertaking at all. We will accept the status quo. The Government cannot break the law. I have already said so in my answer.

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

Mr. Speaker: What is it Member for Molo?

Mr. Kiuna: Mr. Speaker, Sir, would I be in order to say that this Question has been asked previously and the Speaker ruled that the relevant House Committee interrogates it further? This is the same Question---

Mr. Speaker: How long ago was this, Member for Molo?

Mr. Kiuna: Mr. Speaker, Sir, I am a member of that Committee. We went there about four months ago.

Mr. Speaker: The same Question?

Mr. Kiuna: Yes!

(Mr. Letimalo stood up in his place)

Mr. Speaker: Order, Order! What is it Member for Samburu East?

(Mr. Letimalo stood up in his place)

Order! You can only stand on a point of order. Let me hear you, if you are challenging the assertion by the Member for Molo.

Mr. Letimalo: Mr. Speaker, Sir, I am challenging what the hon. Member for Molo has just said. It is true that I brought a Question before the Floor of the House. However, that was on a different issue. It was about eviction of the community from Elans Down Dams. But this one now, I am concerned about KWS land which pending in the court. So, these are two different issues.

(Several hon. Members stood up in their places)

Mr. Speaker: Order! What is it, Member for Gichugu!

Ms. Karua: Mr. Speaker, Sir, the Minister in his answer, including his written answer, said that he was not aware there were court orders. Just now, he has said, he is aware. The Government has done nothing, and you maintain the status quo. Is he taking the House seriously, if he first denies that he is aware, and I can see the Attorney-General trying to assist him? If he says, he is not aware, and then categorically says he is aware, and he is not talking of being aware now. He is saying he has been aware.

Dr. Wekesa: Mr. Speaker, Sir, I have been made aware now.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Order, Minister! Do you want information from your good Assistant Minister?

Dr. Wekesa: Yes, Mr. Speaker, Sir.

Mr. Speaker: Proceed, hon. Nanok!

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Speaker, Sir, I want to inform my colleague in the Ministry that basically when KWS took over the gift of this particular ranch, which is located among many other private ranches--- It is also a major migratory corridor for elephants. There was no injunctions, injecting KWS that it was a court order that the case about the land was in court.

It was only last Thursday, which is about three or four days ago, when KWS has been injected. So, essentially, the land came from a private hand. It is now in public hand, but it was injected last Thursday. So, in so far as it is concerned, then, we will follow the law until this matter is settled.

Lastly, I want to inform you that the information we have is that nobody is inside this piece of land, which is 19,100 acres. It is only elephants who are scavenging there.

Mr. K. Kilonzo: On a point of order, Mr. Speaker, Sir. While I commend the “Deputy Minister”, clearly the Ministry is not reading from the same script. What the Minister has said is that he was not aware. Now the Assistant Minister is doing a more better job by contradicting him by saying that the Ministry is really aware--- Would I be in order---

Mr. Speaker: Order! Order, Member for Yatta! The Assistant Minister did not contradict the Minister. He gave information to him.

Mr. K. Kilonzo: I agree with you, Mr. Speaker, Sir. In fact, it is for the same reason, I am asking whether it would be in order for the Minister to go back and get more information, because it appears there is more information in the Ministry, which he does not have so that he can bring sufficient answer to this House.

Mr. Speaker, Sir, you have stated that this is a very serious House. This is an august House, and the Minister cannot take the business of this House casually.

Mr. Speaker: Minister, do you want to respond to that?

Dr. Wekesa: Yes, Mr. Speaker, Sir. Once upon a time, the Member for Mutito used to be a very good friend of mine. However, I now see that his allegiance has been shifted to hon. Charity Ngilu!

(Laughter)

(Mr. K. Kilonzo stood up in his place)

Mr. Speaker: What is it, Member for Mutito!

Mr. K. Kilonzo: Mr. Speaker, Sir, while it is a matter of fact that I am now supporting the gracious lady for the Presidency of the Republic of this country, is it in order for the Minister to bring in that issue on a more serious matter of answering the issue which is at hand? Is he in order?

Dr. Wekesa: Mr. Speaker, Sir, both are serious matters. For my Assistant Minister whom we work very well with to give me more information about this, there is no issue here. If there are more issues surrounding this property, I am supporting the Member for Molo that the House Committee really looks into this matter. I have a feeling and maybe not sure that there is that there are some personal interests in this piece of land.

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

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

Mr. Speaker: Order, hon. Members! We have already spent the last 15 minutes on this one Question. I will, therefore, take the last question.

Mr. Letimalo: Mr. Speaker, Sir, now that the Minister is aware of a court case, could he instruct the Kenya Wildlife Service (KWS) to ensure that they do not convert this land into a national park until the matter is fully heard and determined by the High Court?

Dr. Wekesa: Mr. Speaker, Sir, I have already said that. We will not gazette it. We will not go ahead and gazette this piece of land until the matter is determined. We cannot break our own laws.

Mr. Speaker: Next Question by Private Notice by Dr. Khalwale!

GOVERNMENT EXPENDITURE ON KENYAN DELEGATION
AT ALL AFRICA GAMES IN MAPUTO

Dr. Khalwale: Mr. Speaker, Sir, I beg to ask the Minister for Youth Affairs and Sports the following Question by Private Notice.

(a) Could the Minister table an account of the funds spent by the Kenyan delegation in the just ended All Africa Games that were held in Maputo, Mozambique?

(b) Could the Minister also table the full list of persons who travelled to Maputo indicating their respective roles?

(c) How many of these were “joy-riders” who travelled and lived on Government funds?

The Minister for Youth Affairs and Sports (Dr. Otuoma): Mr. Speaker, Sir, I beg to reply.

Mr. Speaker, Sir, I want to inform this House that the All Africa Games which took place in Maputo, Mozambique, Kenya was very well represented there. We

managed to get 48 medals and that was the best we have ever done since the games were first started in 1965.

(a) Coming to the first question on the issue of funding for the Kenyan delegation to the All Africa Games, I wish to table the list of items that were funded during these All Africa Games where Kshs210,349,887 was used out of an estimated budget of Kshs253,598,970. I table that!

(Dr. Otuoma laid the document on the Table)

(b) On providing the full list of all those who travelled to the All Africa Games, I have broken them down into various disciplines and various officials who travelled to Maputo. The total number was 396. I also table that list!

(Dr. Otuoma laid the document on the Table)

(c) As indicated, out of the contingent of 396 people who went to Maputo, I am not aware of any joy-riders.

Dr. Khalwale: Mr. Speaker, Sir, before I ask my first supplementary question, I would like to invite the Chair to look at the documents that the honourable Minister has tabled. The first document he has tabled purports to be the accounts of the expenditure of Kshs253 million plus. If you look at that document--- From the little time I have served on the Public Accounts Committee (PAC), I am aware that a document of the Government representing expenditure is not packaged the way he has packaged this one. For all one would care to say is that this might as well have been done on somebody's desktop computer and brought to the House.

Mr. Speaker, Sir, I would also like you to look at the second document and also find that again it is not owned. It does not belong to any Ministry. Neither the Minister nor the Assistant Minister or the Accounting Officer has owned the document. I, therefore, find it difficult to interrogate these two documents for purposes of confirming the propriety of the expenditure of the Kshs253 million.

Mr. Speaker, Sir, if you so find from what I have submitted, I want to request that the Chair directs the Minister to bring here actual accounts, so that we see--- He claims that Kshs6.5 million was spent on allowances, and we want to see the people who received the allowances and evidence that they actually received them. When he says air tickets were bought, we would like the Kshs42 million for air tickets also to be supported by actual documents. This cannot pass. We want to see how the Ministry spent this money before we ask supplementary questions.

Dr. Machage: On a point of order, Mr. Speaker, Sir. Will I be in order to request that the Questioner, hon. Khalwale, be asked to define the term "joy-riders" in part "c" of the Question? What I know is that all the people who went to these games came back joyful and riding in the same plane as the Minister?

(Laughter)

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. I have not even asked my first supplementary question. I was merely inviting the Chair to look at the documents that the Minister has tabled. Could you give an indication on how we should proceed?

Mr. Speaker: Very well! I would want to hear the Minister's response to the point of order before I give directions, because I have heard the assertions that you have made. Minister, what is your reaction to that point of order?

Dr. Otuoma: Mr. Speaker, Sir, when answering this Question, I am very much aware of the way Government documents are audited. I know that hon. Khalwale is the Chairman of the PAC and he knows how Government audits are done. Looking the way this Question is put, what I have provided could be something like a management report. It is in response to this Question. If it is an issue of audit, I think we will have to follow the Government procedures and I am sure the hon Member knows how those procedures are followed.

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. The Government might have its own procedures but so does Parliament. None of these documents tabled, including the accounts, is even signed by the Minister, which means he can disown these documents tomorrow. At least, the Minister must own the documents. So, is he in order to table documents that flout our own Standing Orders? These documents are not signed!

Mr. Speaker: Minister, I will not like to spend any more time on this and your response to the point of order has not been useful. I find that there is substance in the point of order by Dr. Khalwale. It is a legitimate challenge to the underpinning of questions in the House, that Ministers are obligated to provide information. So, in those circumstances, I find the written answer supplied by you, including the annexures, as at where we are inadequate. I, therefore, will defer this Question to Thursday next week so as to give you time to provide further information as is necessary, even before you are interrogated on this matter. Obviously, documents such as accounts must be signed, dated and if not so, they must be certified. You are well aware of this. You were there for some time now.

Dr. Otuoma: Mr. Speaker, Sir, I accept that. I am going to ensure that the documents are properly signed by the accountant and certified as you have ruled.

Mr. Speaker: Very well! The Question is deferred to Thursday afternoon!

(Question deferred)

Let us move on to the next Question by the Member for Wundanyi!

Mr. Mwadeghu: Mr. Speaker, Sir, I request that this Question be deferred for the next two weeks as we are consulting with the Minister.

Mr. Speaker: Yes, Mr. Assistant Minister!

The Assistant Minister for Roads (Mr. Kinyanjui): Mr. Speaker, Sir, I have no problem with that. We have consulted with the hon. Member and we are addressing some of the concerns that he would like us to address. So, I agree with the two weeks request to defer the Question.

Mr. Speaker: Very well!

UPGRADING OF MUSAU-WUNDANYI-MUGANGE-BURA ROAD

(Mr. Mwadeghu) to ask the Minister for Roads:-

(a) Can the Minister confirm that M/s Victory Construction Company was competitively awarded a tender for upgrading Musau-Wundanyi- Mugange-Bura road to murrum standards in 2004/2005 and, if so, table the contract agreement?

(b) Is the Minister aware that the work done by the contractor on the road was below standards, especially on the stretch between Wundanyi and Weruga and, if so, who signed the certificate for completion?

(c) What measures will the Minister take to ensure that works are done as per the specifications in the contract and what action has the Ministry taken against the contractor?

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.1108

CROCODILE/HIPPOPOTAMUS MENACE IN LAKE TURKANA

Mr. Speaker: Hon. Members, the Member for Turkana Central is away in Burundi on Parliamentary business with leave from the Speaker. Therefore, this Question is deferred until the return of the delegation that has gone to represent us in Burundi.

(Question deferred)

Question No.1149

PROVISION OF FIRE FIGHTING ENGINE TO KABARNET COUNCIL

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

(a) whether he could provide details of fire fighting engines held by all local authorities in the country;

(b) whether the Ministry has an operational comprehensive fire fighting policy; and,

(c) when the Ministry will provide a fire fighting engine to Kabarnet Municipal Council.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Mr. Speaker, Sir, I beg to reply.

(a) The fire fighting service provision by local authorities is grossly inadequate. Local authorities operate within a system of meagre resources and inadequate training, which do not equip them sufficiently to the needs of the communities in the event of fire

outbreaks. Since the year 2005, my Ministry has embarked on enhancing fire fighting capacity in the various local authorities. To this end, my Ministry has procured the following fire fighting equipment and distributed them to the local authorities. Annexed herewith are the details of the fire fighting engines held by the various local authorities.

(Mr. Nguyai laid the document on the Table)

(b) An Inter-Ministerial Committee was formed to draft the National Fire Policy under the Minister of State for Special Programmes. A draft has been done and is expected to be concluded within this financial year.

(c) My Ministry is committed to empowering all local authorities to efficiently respond to the fire disaster, but the major handicap is its finances. For this instance, only Kshs40 million is available for that service in this financial year. The Municipal Council of Kabarnet will be considered for the provision of a fire engine in the next financial year. My Ministry always encourages local authorities to improve their capacity to respond to fire disasters using the available resources at their disposal.

Mr. Mwaita: Mr. Speaker, Sir, I wish to thank the Assistant Minister for the detailed answer. However, in part “b” of his answer where he is talking about the policy, he has not stated what the Government is doing to train adequate firemen and firewomen in this country to be able to combat fire disasters. Could he explain that?

Mr. Nguyai: Mr. Speaker, Sir, in part “b” of my answer, I said that there is a Draft National Fire Policy. I can make the Draft available to the hon. Member and he will find the specific details because it is a comprehensive document.

Dr. Eseli: Mr. Speaker, Sir, perusing the answer from the Assistant Minister, there seems to be an equipment in Mombasa Municipal Council which was bought in 1959. This means that I am just one year older than that piece of equipment, whose registration number is KAQ 189. That is the KAQ before the new series started in Kenya. Could the Assistant Minister tell this House when they will donate this piece of equipment to the National Museums of Kenya and remove it from the Municipal Council of Mombasa?

Mr. Nguyai: Mr. Speaker, Sir, I cannot find my copy, but I believe that the hon. Member is entirely correct. So long as the equipment is operational and functioning, we will continue to use and operate it. However, if it is no longer operational, then we will find a way of ensuring that it goes to the necessary national archives.

Dr. Eseli: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to suggest that the equipment is functional when his report here clearly shows that it is not serviceable and it is not working?

Mr. Nguyai: Mr. Speaker, Sir, it is important that the hon. Member has informed me that. I said that I could not find my document. If it is not operational, we will ensure that it goes to the relevant department for preservation.

Mr. Imanyara: Mr. Speaker, Sir, the Assistant Minister has talked about a draft policy. When do we expect this policy to move from the draft stage to a concrete fire fighting policy?

Mr. Nguyai: Mr. Speaker, Sir, I would have to consult on the exact date, but I have said that it is within this financial year even though, it is being spearheaded by the Minister of State for Special Programmes.

Mr. Speaker: Yes, the Member for Baringo Central!

Mr. Mwaita: Mr. Speaker, Sir, in part “c” of the Assistant Minister’s answer, he has said that Kabarnet Municipal Council will be considered this financial year. Could he undertake that within the coming financial year, the Municipality of Kabarnet will be considered for a new fire engine?

Mr. Nguyai: Mr. Speaker, Sir, I would like to stick to my answer. I said that the Municipal Council of Kabarnet will be considered for provision of a fire engine in the next financial year.

Question No.1294

NON-PAYMENT OF PENSION TO
MESSRS. OWITI ADHIAMBO/ALEX CHIAJI

Mr. Mbadi asked the Deputy Prime Minister and Minister for Finance:-

(a) why Mr. Joseph Owiti Adhiambo (APN/PC 182729) has not been paid his pension for November, 2008;

(b) why Mr. Clement Alex Chiaji (APN/PC 165517) has also not been paid his pension for May – November, 2005 and January, 2006; and,

(c) why the said pension was returned to the Pensions Department and when will the two be paid their dues.

The Assistant Minister, Ministry of Roads (Mr. Kinyanjui): Thank you, Mr. Speaker, Sir. On behalf of the Deputy Prime Minister and Minister for Finance, I beg to reply.

(a) I wish to confirm to this House that Mr. Joseph Owiti Adhiambo’s pension for the month of November, 2008 has been processed and paid to him.

(b) I further wish to confirm to this House that the Pensions Department has processed and paid Mr. Clement Alex Chiaji’s pension for the period running from May to November, 2005 and January, 2006.

(c) The return of Mr. Owiti’s pension to the Pensions Department was occasioned by an error in the bank account number that was provided, whereas, Mr. Chiaji’s pension was returned owing to his change of bank account without informing the Pensions Department. However, as I have already indicated above, the correct bank details have since been obtained and the pensions benefits have subsequently been processed and paid to the two pensioners.

Mr. Mbadi: Mr. Speaker, Sir, even though I am yet to confirm whether it is true that these gentlemen have now been paid their pension, could the Assistant Minister give an indication to this House when the two payments were made to these two gentlemen?

Mr. Kinyanjui: Mr. Speaker, Sir, for Mr. Joseph Owiti, as I indicated, we had gotten the wrong account number but it was later reported that one digit of the account number entered in the payroll was wrong and corrected. The bank returned his pension for the month of November, 2006 of Kshs10,962, which was paid to the pensioner on 16th June, 2010.

For Mr. Alex Chiaji, the monthly gratuity of Kshs7,326 was awarded to him and paid through the payroll with effect from August, 2005. However, the pensioner later

reported that his account had been closed by his bank. He gave a different bank account and the same position was corrected on 1st March, 2006.

Mr. Pesa: Mr. Speaker, Sir, these people are entitled to their pensions. The Assistant Minister has stated that the pensions have been prepared and I expected him to come with some evidence to show the House that they have now been paid. Could he produce the evidence?

Mr. Kinyanjui: Mr. Speaker, Sir, I do not have any evidence with me, but I wish to confirm to the Member and, indeed, the House, that the Department of Pensions has been experiencing serious problems. Before people retire, they give the addresses of where they are working, but as they leave their places of work, they do not update their contacts with the Pensions Department. Therefore, when there is any inquiry or change of address and the Pensions Department is not informed, we have challenges communicating with them. In this particular case, when we sent inquiries to confirm whether he had been paid, there was no response for quite a significant period of time.

After we introduced the Electronic Funds Transfer (EFT) system from October, 2009, when one digit cannot tally with the account number, immediately the funds will not be transferred. Previously, we would take a long time before we confirm that. As of now, I want to assure the Member that the true pensioners have been paid.

Mr. Mbadi: Mr. Speaker, Sir, I know that this Assistant Minister takes his work very seriously. He is one of the Assistant Ministers and Ministers who give accurate answers in this House. It would be important for him to confirm to us by evidence that these payments have been made. The evidence can only be a cheque or a receipt with a signature signifying that the recipient has received the money or a bank statement showing that the money has left the Ministry's account to the gentleman's account. Could he provide that evidence?

Mr. Kinyanjui: Mr. Speaker, Sir, I will gladly do that, but as I have indicated, we use the EFT system to disburse the funds. More importantly, because the two pensioners are known to the Member, it would be best for him to confirm with them. If there is any issue, I will supply the evidence from our side.

Mr. Speaker: That brings us to the end of Order No.6.
Next Order!

MINISTERIAL STATEMENT

STRIKE BY STAFF OF KENYATTA NATIONAL HOSPITAL

The Minister for Medical Services (Prof. Anyang'-Ny'ong'o): Mr. Speaker, Sir, about two weeks ago, hon. Mututho requested for a Ministerial Statement when I was not in the House on the strike by the staff of the Kenyatta National Hospital and the information was communicated to me by my colleague, the Minister of State for Public Service, hon. Otieno.

I beg to state as follows: -

The Kenyatta National Hospital has an existing recognition agreement with the Kenya Union of Domestic, Hotel, Education Institutions, Hospitals and Allied Workers signed in 1996. The last collective bargaining agreement expired on 30th June, 2009, and

negotiations for a new one commenced in January, 2010. The parties were able to negotiate but could not agree on the following items:-

- (i) Level of union representation.
- (ii) Salaries.
- (iii) Commuter allowance.
- (iv) House allowance.
- (iv) Leave allowance.

With regard to the level of union representation, the Union has proposed the membership to include officers on Job Group K7 and K6. The management objected to this on the basis that the officers in the two job groups perform supervisory duties and were, therefore, not unionisable as stipulated in the exclusion clause in the Industrial Relations Charter.

With regard to salaries, the Union had proposed an increase in salaries by 80 per cent and with regard to commuter allowance, the Union had proposed an increase from Kshs1,500 to Kshs5,000 for all unionisable employees. With regard to house allowance, the Union had proposed an increase ranging from 28.5 per cent to 150 per cent. Finally, with regard to leave allowance, the Union had proposed one month basic salary.

On the issues of salary increment and payment of commuter allowance, the management responded by indicating that salaries and allowances paid by the Kenyatta National Hospital were harmonized with those in the Civil Service. The management further indicated that the hospital did not have the ability to pay. This position was affirmed vide the Office of the President Circular Ref: OPCAB2/23A of 25th May, 2011, suspending any review of remunerations in the Public Service. The dispute ended up in the Industrial Court and the matter is due for hearing starting from 223rd November this year. With regard to the implementation of the commuter allowance Phase II, the hospital implemented commuter allowance Phase I in May, 2011. Phase II was not implemented as the hospital did not have funding for the same. The requests were made to the Ministry of Finance to allocate funds for the payment of the allowances, but the funds were not availed on time.

On 2nd November, 2011, the Kenya Union of Domestic, Hotel, Education Institutions, Hospital and Allied Workers wrote to the Kenyatta National Hospital and gave seven days notice to the management to pay commuter allowance Phase II to unionisable employees or face industrial action. The notice expired at midnight on Tuesday, 8th November, 2011. On 9th November, 2011, the unionisable employees of the hospital worked normally up to 10.30 a.m., thereafter, services were discontinued except in theatres, accident emergency and paediatric emergency unit, renal, labour ward and new born unit which handle emergencies. The following services were affected:-

- (i) Outpatient clinics which remained closed.
- (ii) Diagnostic services.
- (iii) Cleaning services, wards and laundry.
- (iv) Waste management.
- (v) Preparation of food.
- (vi) Pottering services for patients.
- (vii) Food.
- (viii) Linen.

[Mr. Speaker left the Chair]

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

The hospital management sought and obtained staff reinforcement from the Kenya Medical Training College (KMTC) and the National Youth Service (NYS) to assist the hospital cope with the situation in critical areas. In addition, the matter was reported to the Permanent Secretary in my Ministry seeking intervention by the Ministry. In the afternoon of the same day, after speaking with the Deputy Prime Minister and Minister for Finance, hon. Kenyatta, the Ministry of Finance approved an additional Kshs550 million to meet the cost of commuter allowance for the staff of the four parastatals in my Ministry. This includes the Kenyatta National Hospital, the KMTC, the Moi Teaching and Referral Hospital and the Kenya Medical Supplies Agency. Shortly thereafter, a memorandum of understanding was signed between the Union and the Ministry of Medical Services on the basis of which the employees returned to work and normal services resumed from 6.00 p.m.

Therefore, the slow-down in work affected the hospital from only about midday to 6.00 p.m. on that day. The Kenyatta National Hospital was not the only parastatal that had not paid Phase II of the commuter allowance. As I have indicated above, funds released by the Treasury to pay the commuter allowances included allocation for three other parastatals under my Ministry.

The Ministry did not wilfully allow the situation to degenerate into a full-fledged strike in the country. The Ministry sought funding from the Treasury to pay the allowances but the funds were not availed before the unionisable workers went on strike. However, as soon as they went on the go-slow strike, the matter was settled amicably. The workers signed a memorandum of understanding with us, and they went back to work as at 6.00 p.m. that day.

In conclusion, I wish to request this august House to help the Ministry of Medical Services secure adequate funding to enable it to fully deliver health services to Kenyans as enshrined in the Constitution. A useful beginning could be the allocation of the 15 per cent of the country's Budget to the health sector as required under the Abuja Declaration of 2001, to which the Republic of Kenya is a signatory. In this regard, I call upon Members of Parliament to support us in achieving this goal.

The Temporary Deputy Speaker (Mr. Imanyara): Is there any clarification being sought on that issue? Are there any other Statements that are being issued?

(Mr. Mungatana stood up in his place)

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Mungatana, have you risen on the Ministerial Statement?

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, I rise to seek a Ministerial Statement.

The Temporary Deputy Speaker (Mr. Imanyara): Go ahead.

POINTS OF ORDER

APPOINTMENT OF COUNTY COMMISSIONERS BEFORE ENACTMENT OF APPROPRIATE LAW

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, I rise on a point of order to seek a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security with regard to a matter that has been in the public domain – the appointment of county commissioners. I wish the Minister to clarify the following in his Statement:-

(i) why the Ministry has opted to use a shot-cut to try and appoint County Commissioners without bringing a relevant law to the House;

(ii) whether the appointment of the proposed County Commissioners conforms to the requirements of the constitutional transitional provisions under Section 17 of the Sixth Schedule, where it is indicated that the restructuring of the Provincial Administration is supposed to respect the devolved system of Government;

(iii) whether he can also confirm that the proposed County Commissioners will not water down the powers of the incoming County Governors;

(iv) whether he can confirm that in the event of conflict between the decisions by the County Commissioners and the County Governors, the decision by the County Governor shall take precedence;

(v) what qualifications County Commissioners are going to have; and,

(vi) whether and when he will bring the relevant law to avoid unilateral decisions by the Ministry taking such an important constitutional step as far as the devolved governments and the Central Government relationship is concerned.

The Temporary Deputy Speaker (Mr. Imanyara): Yes, Attorney-General!

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Speaker, Sir, I have my own Statement. I hope this is the right time to make it.

The Temporary Deputy Speaker (Mr. Imanyara): We have the request; so, would you be able to indicate to the hon. Member when that Ministerial Statement will be delivered?

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Speaker, Sir, I will pass his request to my colleague. Two weeks?

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Mungatana, two weeks?

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, because this is a matter of concern to all of us, and the information I have is that the County Commissioners are about to take over, why can the Ministerial Statement not be brought next week?

The Temporary Deputy Speaker (Mr. Imanyara): Prof. Muigai, given that we are moving towards the end of the Session, and this is a matter for which one week should be sufficient time to give that Ministerial Statement, let it come in one week's time.

The Attorney-General (Prof. Muigai): Mr. Temporary Deputy Speaker, Sir, I will convey the message to the Minister.

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

[Mr. Speaker resumed the Chair]

BUFFALOES/HIPPOPOTAMUS MENACE IN LAMBWE VALLEY

Mrs. Odhiambo-Mabona: On a point of order, Mr. Speaker, Sir. Last week, I requested a Ministerial Statement from the Minister in charge of wildlife in relation to buffaloes and hippopotamus that were harassing people in Lambwe Valley. After I sought that Statement, one of the buffaloes was killed by the members of the public but another one was yesterday sighted in Ogongo. It is posing a serious threat to human life. In fact, the persons who found it were children. You will remember that the last time I sought the Ministerial Statement, the Minister was not here, but he is here now. So, could he, please, indicate what they are doing, as an urgent measure, to deal with the menace as we await the comprehensive Ministerial Statement on Thursday?

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Speaker, Sir, I will be able to give a comprehensive Ministerial Statement on Thursday afternoon. Meanwhile, we have alerted our officials on the ground. I am sure that they are in the area taking steps to make sure that the animals do not disturb the population there.

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. I have just heard the Minister saying that his officers are on the ground. Is it really in order for the Minister to take solace in misinformation from his officers when I personally passed through Kipwasi and never saw any Kenya Wildlife Service (KWS) officer? The local people are so worried. I had to speak to a number of them on Friday. There are no officers on the ground. Even up to now, we are being told that the officers are not there, and the animals are going out of the fenced area to terrorise the local people. Could he be sure of what he is telling this House? His officers are misleading him.

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Speaker, Sir, since the matter was mentioned in Parliament, the KWS has taken steps to comb the area. The area is big. Therefore, the hon. Member may not be able to see the officers as they do their work.

Eng. Gumbo: On a point of order, Mr. Speaker, Sir. Last week I requested a Ministerial Statement on what most Kenyans felt was very unfair treatment of a Kenyan. The request was to the Ministry of Youth Affairs and Sports. I would have thought that the Minister had actually undertaken to bring it today. This is a matter that concerns the whole country – the IIFA nominations. The Ministerial Statement is due today.

Mr. Speaker: Deputy Prime Minister and Minister for Local Government, can you take this request back to him? Let him come and respond to this matter, in any event not later than Thursday this week.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Speaker, Sir, I will get him to respond tomorrow afternoon.

Mr. Speaker: Very well.

Attorney-General, do you have a Ministerial Statement to give?

The Attorney-General (Prof. Muigai): Mr. Speaker, Sir, I do.

MINISTERIAL STATEMENT

UNCONSTITUTIONAL WITHDRAWAL OF FUNDS FROM THE CONSOLIDATED FUND

The Attorney-General (Prof. Muigai): Mr. Speaker, Sir, a few weeks ago, the Member of Parliament for Gwasi, hon. Mbadi, sought a Ministerial Statement from the Attorney-General on the withdrawal of funds from the Consolidated Fund. He wanted the Attorney-General to clarify whether the withdrawals from the Consolidated Fund between the 1st and the 7th of September, 2011 had been made in accordance with the provisions of the Constitution, and in particular Articles 206(2) and 221(6).

Mr. Speaker, Sir, Article 206(2) says:

“Money may be withdrawn from the Consolidated Fund only-

(a) in accordance with an appropriation by an Act of Parliament;”

Mr. Speaker, Sir, this presupposes a situation where every action taken by the Executive through the Minister responsible for finance and by Parliament in passing the Appropriations Act has been done within the prescribed period.

(b) in accordance with Article 222 or 223; or

(c) as a charge against the Fund as authorised by this Constitution or an Act of Parliament.’

Article 222(1) says:

“If the Appropriation Act for a financial year has not been assented to, or is not likely to be assented to, by the beginning of that financial year, the National Assembly may authorize the withdrawal of money from the Consolidated Fund.”

Article 223(1) says:

“Subject to clauses (2) to (4), the national government may spend money that has not been appropriated if-

(a) the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated under the Act; or

(b) money has been withdrawn from the Contingencies Fund.”

Thirdly, money may be withdrawn as a charge against the Fund authorized by the Constitution or an Act of Parliament.

Under Article 222 the Constitution then addresses itself to special circumstances under which money can be withdrawn from the Consolidated Fund before the passage of the Appropriation Bill and states in specific terms as follows:-

Article 222(1) says:

“If the Appropriation Act for a financial year has not been assented to, or is not likely to be assented to, by the beginning of that financial year, the National Assembly may authorize the withdrawal of money from the Consolidated Fund.”

Article 222(2) says:

“Money withdrawn under clause (1) shall-

(a) be for the purpose of meeting expenditure necessary to carry on the services of the national government during that year until such time as the Appropriation Act is assented to;

(b) not exceed in total one-half of the amount included in the estimates of the expenditure for that year that have been tabled before the National Assembly; and.”

Article 223 then qualifies that the national Government may spend the money that has not been appropriated in three instances these being: First, that the amount appropriated for any purpose under the Appropriation Act is insufficient or need has arisen for expenditure for a purpose for which no amount has been appropriated under the Act.

Secondly, that the money has been withdrawn from the Contingencies Fund or thirdly, that if Parliament is not sitting or is sitting but adjourns before the approval has been sought in which case the approval shall be sought within two weeks after it next sits.

The Constitution gives this House authority to approve spending of public money in this matter within two months after the first withdrawal of the money.

This authority should be read in conjunction with the provisions that I have mentioned above which is that Parliament must be sitting at the time.

Mr. Speaker, Sir, in the instance case brought to the attention of the House by the hon. Member, the money in question was withdrawn on 14th June, 2011. The withdrawals from the Consolidated Fund that the hon. Member has enquired about were made, therefore, in strict compliance with the Constitution of Kenya.

The Appropriation Act for the Financial Year 1st July, 2011, to 30th June, 2012 had not been assented to at the time in question as provided under Article 222 of the Constitution. The Government sought authority from Parliament through a Vote on Account of Motion dated 14th June, 2011. Parliament gave its approval on 16th June, 2011. The consent of His Excellency the President was sought and obtained for this particular Motion that was debated and approved by the House on 16th June, 2011,.

From all the information available to me, therefore, I am satisfied that all the timelines required by the Constitution were complied with.

Thank you, Mr. Speaker, Sir.

Mr. Mbadi: Mr. Speaker, Sir, first of all, the main reason why I directed this Ministerial Statement to the Attorney-General is because he is the legal advisor to the Government.

I want to take the House to Article 206(2) which I mentioned in my statement. This article talks about how money may be withdrawn from the Consolidated Fund. It gives only three ways through which money may be withdrawn.

(a) Through an Appropriation Act passed by Parliament.

(b) In accordance with Article 222 or 223. For the benefit of the House Article 222 talks about Vote on Account and Article 223 is on Supplementary Appropriation.

(c) Finally, through the CFS. The fund may be authorized through the Constitution or an Act of Parliament.

Mr. Speaker, Sir, the clarification I would like to seek from the Attorney-General is that he talked about Article 222 which is the Vote on Account. I want to take him to Article 222(1) which says if the Appropriation Act for a Financial Year has not been assented to or is not likely to be assented to by the beginning of that financial year, the National Assembly may authorize the withdrawal of money from the Consolidated Fund.

Mr. Speaker, Sir, I am particular about the specifics of the wording of this particular provision. It talks of Appropriation Act not “assented to” or “not likely to be

assented to". Article 221(6) which talks about the introduction of the Appropriation Bill in the House says:

“When the estimates of national government expenditure, and the estimates expenditure for the Judiciary and Parliament have been approved by the National Assembly, they shall be included in the Appropriation Bill, which shall be introduced into the National Assembly to authorize the withdrawal from the Consolidated Fund of the money needed for the expenditure, and for the appropriation of that money for the purposes mentioned in the Bill.”

By the time this House gave the approval on Vote on Account, the Appropriation Bill had not been published. Therefore, the clarification I want to seek from the Attorney-General, and I wish this statement came earlier because now I think even the memory of the House is a bit blurred. This House had not debated the Estimates. We had not debated the Estimates and, therefore, the Appropriation Bill had not been introduced to the House yet we went ahead and passed the Vote on Account. The only way this House can pass Vote on Account is when the Appropriation Act has not been assented to, and not when the Appropriation Bill has not been introduced into the House.

Therefore, hon. Attorney-General, any amount that was withdrawn on the strength of the Vote on Account, as the Government legal advisor, was it done procedurally? I ask this because even next year we will still go through a Budget cycle. Could he clarify to the people of Kenya that this House can give authority to withdraw funds on Vote on Account even without giving approval on the Estimates and even before the Appropriation Bill has been introduced in the House and even before it was published, like it was the case this financial year?

Thank you.

Mr. Speaker: Is there anybody else who wants to seek a clarification?

Mr. Mungatana: Mr. Speaker, Sir, I wanted the Attorney-General to confirm whether in the current engagement that the Kenyan nation has in Somalia those funds which are being used are falling within the constitutional appropriations. That is on the three categories that he has given us.

The Attorney-General (Prof. Muigai): Mr. Speaker, Sir, first, I am grateful to the hon. Member for the clarification sought. As the hon. Member is aware, I came into this office long after this set of circumstances had lapsed. The facts that I have presented are not within my personal knowledge because they were informed to me by officers in my Chambers. I now realise, with the supplementary issue raised, that there is a legitimate query about that and I would like to seek time to reconcile the timelines with the HANSARD so that I may do justice to that answer.

Mr. Speaker: Very well! Attorney-General, that makes good sense.

The Attorney-General (Prof. Muigai): Thank you, Mr. Speaker, Sir.

Mr. Speaker: When will you be ready?

The Attorney-General (Prof. Muigai): Mr. Speaker, Sir, I will be ready in a week's time. I am conscious that we are running out of parliamentary time for this session.

As to the second Question by my noble learned friend, hon. Mungatana, I would like to make a Statement on this if you so direct me in a session hopefully in the Departmental Committee on Defence and Foreign Relations, where I may be in a better position to elaborate because some of these matters are still very sensitive.

Mr. Mungatana: No! That is not satisfactory!

Mr. Speaker: Order, the Member for Garsen!

Mr. Mungatana: Mr. Speaker, Sir, what is not in order---

Mr. Speaker: I will determine whether or not it is satisfactory.

Mr. Mungatana: Thank you, Mr. Speaker, Sir. What is not in order is that I have sought a very simple clarification. Are these appropriations within the three parameters of the Constitution or not? It is a simple answer. If it will take one week for the other clarification---

Mr. Speaker: Mr. Mungatana, your point is made!

Mr. Mungatana: Thank you, Mr. Speaker, Sir.

Mr. Speaker: Let the Attorney-General come up with that clarification in addition to the one that he will be dealing with as sought by the Member for Gwassi. So, a week away from today, the Attorney-General can speak to both matters.

(Mr. Hassan stood up in his place)

What is it the Member for Kamukunji?

Mr. Hassan: Thank you, Mr. Speaker, Sir. I wanted to raise an issue relating to demolitions in my constituency. I would like to bring to your---

Mr. Speaker: Have you had a change of mind? Have you taken cognizance of your opening statement which is “you wanted to raise a matter”?

Mr. Hassan: I want to raise it, Mr. Speaker, Sir.

Mr. Speaker: Proceed!

POINT OF ORDER

DEMOLITION OF BUILDINGS IN EASTLEIGH

Mr. Hassan: Mr. Speaker, Sir, I would like to bring to your attention the massive demolition exercise which is taking place in Eastleigh South in an area adjacent to the Eastleigh Air Force Base in my constituency. Many high rise buildings have been razed to the ground; thousands of people made homeless and millions lost in property and household belongings. Besides, many of the tenants who were at work when the demolitions began had no security or protection and many of their belongings have been looted and they have lost everything.

Mr. Speaker, Sir, the exercise is being carried out in a brutal, inhumane and undignified manner. It is not something that you see in a democratic society.

These are buildings that were approved and built by the permission of the Nairobi City Council (NCC) and all the landlords have paid their taxes to date. Is it right that the Government undertakes demolitions when already there is a House Committee investigating the issue of demolitions?

Mr. Speaker, Sir, through you, I would like to call upon the Government to suspend the demolitions in Eastleigh, out of respect for this House, until the House Committee finishes investigations.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Very well! Yes, the Minister of State for Provincial Administration and Internal Security!

Yes, the Deputy Prime Minister and Minister for Local Government!

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Speaker, Sir, I undertake to communicate with the Minister of State for Provincial Administration and Internal Security so that he can respond to this issue tomorrow.

Mr. Speaker: Are you sure he will be able to respond tomorrow?

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Speaker, Sir, I believe he should be able to respond to this tomorrow in the afternoon.

Mr. Speaker: Very well! Then I will direct that the Ministerial Statement is delivered tomorrow in the afternoon!

Mr. Imanyara: Mr. Speaker, Sir, on the same issue, may I---

Mr. Speaker: Why would you not have done so before I gave directions?

Mr. Imanyara: It just arose when---

Mr. Speaker: Order, the Member for Central Imenti! You are a seasoned Parliamentarian! You do not reopen a matter after the Speaker has given directions! May be you want to hold your horse until tomorrow afternoon.

(Laughter)

Order, hon. Members! Before we move to Order No.8, I wish to communicate as follows.

BILL

Second Reading

THE PUBLIC PROCUREMENT AND DISPOSAL (AMENDMENT) BILL

Mr. Speaker: Hon. Members, Order No.8 will be deferred until sometime next week because the Member for Saboti, who is the sponsor of that Bill is away on parliamentary business and he has been granted permission to be away. The next Order, therefore, will be Order No.9.

(Bill deferred)

Before then, I wish to make the following Communication.

CONSIDERED RULING

THE CONSTITUTION OF KENYA (AMENDMENT) BILL IS ADMISSIBLE FOR FIRST READING

Mr. Speaker: Hon. Members, I plead with you that you bear with me because the communication is a bit long. This is with respect to the Constitution of Kenya (Amendment) Bill, Bill No.57 of 2011, which was programmed for First Reading. I, therefore, would give directions now that will affect its destiny hereafter.

Hon. Members, as you will recall, Order No.8 on the Order Paper of the afternoon of Wednesday 2nd November, 2011, provided for the First Reading of the Constitution of Kenya (Amendment) Bill, 2011, which was published on 19th October, 2011.

When the Order for the First Reading of the Bill was called, hon. Mungatana, the Member for Garsen rose on a point of order objecting to the First Reading of the Bill. Explaining the reason for his objection, hon. Mungatana stated that the Bill as published covered a number of issues all of which were of fundamental constitutional significance. In hon. Mungatana's view, these matters ought not to have been presented under what he referred to as an "omnibus" Bill but should rather have been separated so as to allow the House to focus on and debate each issue separately.

In support of this position, hon. Mungatana made reference to the history of constitutional amendments in our jurisdiction and stated that whenever constitutional amendments were proposed through the years, they had focused on one specific issue so as to allow the House to mull over the issue and to conclusively debate it before deciding whether or not to accept the amendment. In concluding his remarks, hon. Mungatana proposed that the Minister withdraws the Bill and re-drafts it so as to bring each issue separately for debate before the House.

Hon. Members, this matter raised considerable interest and was further deliberated upon in the House on the 2nd, 9th, 15th and 16th of November, 2011, with a number of hon. Members contributing to the point of order raised by hon. Mungatana. These Members were hon. Imanyara, hon. Rachel Shebesh; the Chairperson of the Constitutional Implementation Oversight Committee (CIOC), hon. Abdikadir; the Minister of State for Immigration and Registration of Persons, hon. Otieno Kajwang'; the Member for Gichugu, hon. Karua; the Member for Gem, hon. Jakoyo Midiwo; the Member for Ikolomani, Dr. Khalwale; I think, the hon. Njuguna; the Member for Gwassi, hon. John Mbadi and the hon. Minister, Mr. Mutula Kilonzo who responded to the points of order raised.

Hon. Members, I have carefully considered the contributions by all the Members who spoke to this issue. These contributions raise the following issues that require my ruling-

(i) Whether or not the processes for development and introduction of the Bill complied with Article 256 of the Constitution which provides for amendment by parliamentary initiative;

(ii) whether or not there was sufficient consultation with the public and with stakeholders, including the Constitutional Implementation Oversight Committee (CIOC), prior to and following the publication of the Bill;

(iii) whether or not the matter is *sub judice*;

(iv) whether or not the Constitution permits the introduction of an amendment Bill that covers a number of subjects;

(v) in the light of the foregoing issues, whether or not the Constitution of Kenya (Amendment) Bill, 2011 is admissible for First Reading.

Hon. Members, I shall commence with the first issue which is whether or not the processes for development and introduction of the Bill introduced by the Minister complied with Article 256 of the Constitution which provides for amendment by parliamentary initiative. In some of the contributions made on this issue, the view was advanced that the Bill, having originated from the Cabinet, did not meet the threshold of a Bill introduced by “parliamentary initiative” as the Constitution made no provision for the introduction of a Bill to amend the Constitution by Cabinet or by a sub-committee of Cabinet. It was argued that Article 256 provided only for the introduction of a Bill to amend the Constitution by members of Parliament and not by the Cabinet.

Hon. Members, Chapter 16 of the Constitution titled “Amendment to the Constitution” provides for amendment either by parliamentary initiative or by popular initiative. The matter presently before us relates specifically to amendment by parliamentary initiative in respect of which Article 256(1) provides as follows:-

“A Bill to amend this Constitution-

- (a) may be introduced in either House of Parliament;
- (b) may not address any other matter apart from consequential amendments to legislation arising from the Bill;
- (c) shall not be called for Second Reading in either House within ninety days after the First Reading of the Bill in that House; and
- (d) shall have been passed by Parliament when each House of Parliament has passed the Bill, in both its Second and Third Readings, by not less than two-thirds of all the Members of that House”.

It is clear, Hon. Members, that a Bill by “parliamentary initiative” is one to be introduced by a Member of Parliament. In this transitional period, Article 256 should be read together with Sections 2 and 3 of the Sixth Schedule to the Constitution by which some provisions of the New Constitution are suspended while some of those of the former Constitution are extended. These provisions indicate that during the period of transition from the former to the new Constitution, some Members of the Executive will continue to sit as Members of Parliament.

The import of the architecture of our Constitution and the transitional provisions thereunder is that our Parliament continues, until the next general elections, to have in its ranks, Members who are also Members of the Executive. These Members enjoy the same rights and constitutional status as any other Member of Parliament. From this perspective, there is, therefore, little doubt that Members of the Executive who are also Members of Parliament are entitled to introduce a Bill under Article 256 as the Minister has done. A constitutional amendment by parliamentary initiative at present refers to the capacity, and indeed, entitlement, of any Member of Parliament to publish and introduce in the National Assembly, a Bill to amend the Constitution.

(Two hon. Members stood at the Bar)

I want to take a break for a minute to allow those two hon. Members to walk in.

(The hon. Members entered into the Chamber)

Hon. Members, related to the matter above, is the issue of whether or not there was sufficient consultation with the public and with other stakeholders, including the CIOC, prior to and following the publication of the Bill. Hon. Members, one of the cornerstones of the New Constitution is public participation and stakeholder consultation. Public participation has been secured through a number of provisions in the Constitution. Chapter 16, in a departure from the former Constitution, makes elaborate provisions for the inclusion and involvement of the public by providing for publication of proposals for amendment of the Constitution and for participation of the public in the processes leading to amendment of the Constitution, including in some cases, reference to the people through a referendum.

Article 256, in particular, provides at sub-section (1)(c) that a Bill to amend the Constitution by parliamentary initiative “shall not be called for Second Reading in either House within 90 days after the First Reading of the Bill in that House”.

Article 256(2) requires Parliament to publicize any Bill to amend the Constitution and to facilitate public discussion about the Bill. I want to repeat that so that Members follow. Article 256(2) requires Parliament to publicize any Bill to amend the Constitution and to facilitate public discussion about the Bill. The duty imposed on Parliament is one which arises after the publication of a Bill rather than before that. Further, Article 256(1)(c) provides that a Bill to amend the Constitution shall not be called for Second Reading in either House within ninety days or after the First Reading of the Bill in that House. The period of three months provided for under Article 256(1)(c) has been set aside by the Constitution to facilitate publicizing of the Bill and public discussion that should inform the Second Reading and subsequent stages in the House.

Hon. Members, the third issue before us is whether or not this matter is *sub judice*. Reference was made to Supreme Court Constitutional Application No. 2 of 2011 in which the Supreme Court by a ruling dated 15th November 2011 directed that the case be heard and determined by the High Court. The High Court is currently seized of the matter in High Court Constitutional Petition No. 185 of 2011. It was argued that an attempt to introduce the Bill while the Petition was alive and current before the Judiciary will undermine Article 160 of the Constitution, and in particular sub-Article (1) thereof which insulates the Judiciary from any form of control or direction from any person or authority. It was further argued that introducing the Bill at this stage will be a violation of standing order 80 which disallows reference to a matter that is *sub judice*.

For his part, the Minister argued that Parliament’s power to amend the Constitution under Article 256 did not interfere with or contradict the mandate of the Supreme Court provided for under Articles 163 and 165. He further argued that the matter before the Supreme Court was not whether or not, it was unlawful to amend the Constitution. The Minister, therefore, took the view that ultimately, Parliament, as the law making body, will require to enact legislation that will enable the Executive and other organs to organize transparent, free and fair elections.

Hon. Members, the question of whether or not a matter is *sub judice* is not new to this House and the rules are by now fairly well settled. The rule of *sub judice* operates to bar members from making reference to any matter relating to active criminal or civil proceedings, the discussion of which is likely to prejudice its fair determination. It is not an absolute rule as the Speaker is empowered to waive the rule and allow reference to any matter in the House or in a Committee of the House.

(Several hon. Members stood at the Bar)

Hon. Members, again, I will take a short break for those at the bar to walk in.

(The hon. Members at the Bar entered the Chamber)

On this matter, the hon. Minister is right. The Courts and this House are not seized of the same matter. The matter before the courts is distinctly different from what is before the House in the form of the constitutional amendment Bill. The High Court is being asked to interpret the provisions of the Constitution and determine the date of the next General Elections from the wording of the Constitution. Again, I want to repeat that because it is important. The High Court is being asked to interpret the provisions of the Constitution and determine the date of the next General Elections from the wording of the Constitution. The question to the High Court is:

“What is the election date as provided for in the Constitution?”

The Court is not being asked, and cannot be asked to determine what the election date should be. But rather, the court is only being asked to interpret the provisions of the Constitution as to what the election date is. The Constitution of Kenya (Amendment) Bill, on the other hand, is proposing a date for the election. It is speaking to the question; what the election date should be. The House can deliberate on and pass an amendment of the Constitution setting out a date for the election, regardless of the decision of the Court. Similarly, the Court can rule on the election date as currently provided for in the Constitution regardless of the proposals in the Bill.

Hon. Members, there is the question of whether or not the Constitution permits the introduction of what a number of members described in their contributions, as an “omnibus” Bill to amend the Constitution. Several members made reference to the history of amendments to the former Constitution and stated that such amendments had, in all instances, addressed single issues. On this matter, the Minister argued that in a number of instances, single Constitutional (Amendment) Bills had dealt with a multiplicity of matters.

Hon. Members, I have carefully studied the amendments made to the former Constitution right from 1963. I have found that there are precedents for either proposition. As an example, Act No. 26 of 1964 was a single-issue Constitutional (Amendment) Bill on the subject of holding referendums to ascertain the wishes of the public with regard to the amendments to the Constitution. Act No. 6 of 1985, also a single-issue amendment, clarified the citizenship status of certain persons born in Kenya after 1963. Other single-issue amendments through the years have included: Act No.1 of 1974, No.13 of 1977, No.1 of 1979 and No.5 of 1979. This list is by no means exhaustive.

There have also been numerous amendments to the Constitution that have covered a diverse range of subjects. One of the most memorable, if infamous amendments, the 1982 amendment to the Constitution (Act No. 8 of 1982) that introduced a new Section 2A and made Kenya a *de jure* one-party state, also introduced an unrelated and new Section 22 creating an omnipotent office of Chief Secretary. Note that these two

amendments were carried in the same Bill. I know the Member for Central Inmenti will say that was then, bad practice.

Similarly, Act No.7 of 1984 contained provisions relating to the exercise of judicial power as well as unrelated provisions increasing the membership of the Public Service Commission from five to fifteen. Again see how those two issues maybe unrelated and reasonably far apart.

Further, the amendment widened the definition of local authority. Other examples of omnibus constitutional amendments include Act Nos. 19 of 1964, 14 of 1965, 16 of 1966, 18 of 1966, 45 of 1968, 14 of 1986, 10 of 1991 and 3 of 1999. Again, this list is by no means exhaustive.

Comparative experience indicates that although in some instances, Bills to amend the Constitution have addressed single issues, it is not uncommon for a bill to amend the Constitution to address multiple issues, subjects or themes. Some examples illustrate this. Before we go on that tour, I will want to allow the Member for Ndia to walk in.

(Mr. Githae entered the Chamber)

Hon. Members, the Constitution (Amendment) Act, 2005, of Uganda covered a number of subjects. Among other things, it distinguished Kampala as the capital city of Uganda and provided for Swahili as an official language of Uganda. Again, see the proximity between those.

(Applause)

It further made provision for a leader of the opposition in Parliament and removed the limits of the tenure of the office of the President. Those are four amendments which are not so close to each other, as you will all note. The Act also provided for the independence of the Auditor-General, and for the creation and functions of special courts to handle offences relating to corruption, for the control of minerals, petroleum and for the holding of referenda.

In the case of South Africa, which a lot of Kenyans want to compare themselves with, the Constitution (Amendment) Act, No.65 of 1998, extended the term of municipal councils, provided for the designation of alternates in respect of certain members of the Judicial Service Commission (JSC), amended the name of the human rights commission, adjusted the powers of the Public Service Commission (PSC) and extended and modified the application of transitional arrangements in respect of local government. An earlier Act, No.35 of 1997, amended the Constitution of South Africa so as to make further provision in relation to the oaths sworn or affirmation made by an acting President and to extend the cut-off date in respect of the granting of amnesty – two subjects that are quite diverse in their nature.

In India – our model democracy – the 42nd amendment to the Constitution of India is notable as it brought about the most widespread changes to the Constitution – so widespread that it is referred to by some as “The mini Constitution”. The amendment was passed by the Indian Parliament on 2nd November 1976 but was later repealed in 1977.

Honourable Members, in light of all the foregoing, I rule as follows-

1. On whether or not the processes for the development and introduction of the Bill complied with Article 256 of the Constitution, which provides for amendment by parliamentary initiative, a reading of Article 256 together with sections 2 and 3 of the Sixth Schedule to the Constitution indicates that in this period of transition from the former to the new Constitution, a Cabinet Minister may initiate and publish a Bill seeking to amend the Constitution by parliamentary initiative under Article 256 or any other Bill for that matter. I, therefore, find no bar to the Minister for Justice, National Cohesion and Constitutional Affairs initiating and publishing a Bill to amend the Constitution, and I rule accordingly.

2. On whether or not there was sufficient consultation with the public and with stakeholders, including the Constitutional Implementation Oversight Committee (CIOC), prior to and following the publication of the Bill, hon Members, it would be hoped that whenever there is a proposal to amend the Constitution, there would be efforts to build consensus prior to and following the publication of the Bill, and to educate the public on such proposals so as to ensure that the people of Kenya, who are the owners and custodians of the Constitution, are empowered to make an informed choice on any such proposal.

In this particular instance, a number of Members, including the chairperson of the CIOC, have voiced concern on the level of public participation prior to and after the publication of the Bill to amend the Constitution. Members argued that consensus was not adequately built prior to the publication of the Bill and that the public was not informed and educated on the contents of the Bill. These are concerns that I would hope the Minister would take time to critically reflect on. I do not, however, find the Minister to be in breach of any constitutional prerequisites to the publication of this Bill.

(Several hon. Members stood at the Bar)

Order, hon. Members, I will allow Members at the door to walk in.

(Hon. Members at the Bar entered the Chamber)

3. On whether or not the matter is *sub judice*, although the Court is yet to determine the issues in High Court Petition No. 185 of 2011, there can be no doubt that the exercise of the legislative mandate will not interfere with the decision of the Court as the two are addressing different aspects of the question of the election date. The legislative mandate includes the power to amend the Constitution through the procedure prescribed in Chapter 16. Consequently, I find that this matter is not *sub judice*.

4. On whether or not the Constitution permits the introduction of an amendment Bill that covers a number of subjects, I find that Article 256 of the Constitution and Chapter 16, as, indeed, the Constitution as a whole, do not bar the introduction of a Bill to amend the Constitution that addresses diverse matters – the so-called “omnibus” Bill. While it may, therefore, be undesirable to some, and quite in order for others, there is no bar in the Constitution to the introduction of a Bill that addresses itself to either a number of articles, chapters, subjects or themes in the same Bill. In any event, hon Members, drawing the distinction between a single issue amendment Bill as opposed to an omnibus Bill is, itself, a process that is fraught with challenges.

Although the issue was not raised, I consider it opportune to mention another important aspect of the constitutional amendment process provided for in the Constitution, in departure from that in the former Constitution. The hon. Mutula Kilonzo, the Minister for Justice, National Cohesion and Constitutional Affairs, made a most important point in the course of his response to the points of order raised.

The point, which bears repeating, was that the language, philosophy and precedents on the amendment of the former Constitution and, indeed, the entire architecture of the former Constitution cannot be used for interpreting the amendment process in the Constitution of Kenya, 2010. The Standing Orders, too, insofar as they are oriented to the former constitutional dispensation would similarly not provide the requisite guidance on this score.

Hon. Members, it must always be remembered that in many respects, the new Constitution is and was intended to be a departure from the former Constitution. Hon. Members may want to reflect on the import of this vis-à-vis the 90-day window provided for in the Constitution before the Second Reading of a Constitutional (Amendment) Bill. A large proportion of the points of order prosecuted by the hon. Members go to the merits and demerits of the substance of the Bill, and appear appropriate as arguments to be made at the Second Reading of the Bill.

Hon. Members, the final matter requiring my determination is, therefore, whether the Constitution of Kenya (Amendment) Bill, 2011 (Bill No.56 of 2011) published in the Kenya Gazette Supplement as Supplement No.141, dated 19th October 2011, is admissible for the First Reading. For all the reasons I have given, I find and rule that the said Constitution of Kenya (Amendment) Bill, 2011 is, indeed, admissible for First Reading, and I direct that the Bill be listed in the Order Paper for First Reading, tomorrow, Wednesday, 23rd November, 2011 at 2.30 p.m.

I thank you.

(Applause)

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. I respect your ruling although, of course, not agreeing with it.

Mr. Speaker, Sir, arising directly out of that ruling, should there be a vacancy – and God forbid – in the Office of the President today, would we be able to hold an election or would we have to amend the Constitution in order to do that election, given the ruling that you have given on the issue of admissibility of this amendment Bill?

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. You have quite at length educated us about your findings that have led you in making that ruling that we are fairly uncomfortable with.

Mr. Speaker, Sir, with all due respect, you have cited the bad old days that we wanted to move away from. You have also cited the case of Uganda, which for all intents and purposes, is not a democracy but a dictatorship.

Mr. Speaker: Order! The Member for Ikolomani, of course, you know your Standing Orders only too well. Uganda is a friendly country. According to the Standing Orders, you cannot refer to a friendly State in terms that are derogatory. So, you will have to withdraw the words “Uganda is a dictatorship” and endeavour to prosecute what you want to say differently.

Dr. Khalwale: Mr. Speaker, Sir, I withdraw the words “Uganda is a dictatorship.” Allow me to say that you have cited the case of Uganda, which is faced with momentous challenges in the issue implementation of the democratic practice in that country.

Mr. Speaker: Very good! That will pass.

Dr. Khalwale: Mr. Speaker, Sir, I was just wondering, because you are the one who was doing the research, whether you could enlighten us further on what the authority of Erskine May says about this particular practice of Omnibus. This is because I take it that, that is the authority to Parliamentary democratic practice.

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. I also want to appreciate your ruling, although a number of us are a bit uncomfortable, but we will live with it.

Mr. Speaker, Sir, in your ruling you did indicate the practices, but I did not hear you speak to Article 256(1)(b) which we raised at the point that we were canvassing this issue, and which in my view was trying to cure some of these practices which were undesirable to the people of Kenya. It says that a Bill to amend this Constitution may not address any other matter apart from consequential amendments and legislation arising from the Bill. I thought that the reason the drafters of this Constitution found this particular provision important was to try and avoid the kind of mischief that we would have in lumping very many amendments to the Constitution together, so that we only bring a single amendment to the Constitution to give Members of Parliament and Kenyans time to only discuss that single amendment. So, I would like to be educated as to why that particular provision was necessary and was put in the Constitution.

Mr. Mungatana: Mr. Speaker, Sir, I do not agree with the ruling, although we have to live with it. I rise to persuade you, maybe to make a further finding in view of the following.

Mr. Speaker, Sir, you did rely on Article 256(2) where the Constitution says that that Parliament shall publicize any Bill to amend this Constitution and facilitate public discussion about the Bill. You did, in your ruling, interpret that to mean the First Reading and then, afterwards, the 90 days of debate before the Second Reading. However, what is the meaning of “publicise?” As a Senior Counsel, you know that the Constitution is interpreted by the Constitution itself.

Mr. Speaker, Sir, Article 35(3) of the same Constitution reads:-

“The State shall publish and publicise any important information affecting the State.”

Mr. Speaker, Sir, this means that there is a clear distinction between “publish” and “publicise.” These two words that have been used in Article 35, to my mind and to an ordinary person’s mind, would mean that if Article 256 said that Parliament is to publish the Bill to amend, then we are talking about it first going to First Reading. But to publicise, in my simple understanding, is that Parliament needs to discuss this matter and talk about it outside to make it known.

Mr. Speaker, Sir, when we talk about participation of the people, I want to invite you to look at the application of the Bill of Rights, under Article 20. It is the right of Kenyan people to:-

1. Have access to information which is part of the Bill of Rights under Article 35.
2. Participate in debates prior to and even before the publication of any constitutional Bill.

In interpreting this right, it is possible to look at it this way or the other way, but Article 20(4) of this Constitution says that:-

“In interpreting the Bill of Rights, a court, tribunal or other authority shall promote-

(a) the values that underline an open and democratic society based on human dignity, equality, equity and freedom”.

I want to persuade you that in interpreting this first omnibus amendment, at the very minimum, we would plead that the authority that has been granted on the Chair to find further, that it will be in the interest of the values that underline an open and democratic society based on human dignity, equality, equity and freedom. That the issues that are being canvassed as Mr. Mbadi has said should be brought one by one, particularly so because the former Constitution never had a particular section such as 256(1) (b) that says that:-

“A Bill to amend this Constitution-

(b) may not address any other matter apart from the only consequential amendments to legislation arising from the Bill”.

At the very minimal, we would have expected that this being the first attempt by this Government to bring three issues at the first instance, to order them to come one by one. I raised my dilemma that if the people of Garsen, for example, are comfortable that the gender provision should be amended to include the women, but they are uncomfortable with the change of the date of election, as the Member of Garsen Constituency, how will I vote? I urge you to have a further finding that as a compromise, the Minister should publish this Bill separately and only make consequential amendments. We are now in a new era and definitely, this new Constitution has a very clear mind. It does not want to be like the old Constitution. Please, in interpreting the Bill, I urge you to allow this debate further than where it has gone. I rest my case.

Mrs. Odhiambo-Mabona: Thank you, Mr. Speaker, Sir. I appreciate your ruling, but while appreciating your ruling, I would want to address myself to two issues and one is the issue of public participation. If you look at the Constitution, public participation is mentioned more than ten times. That mention is not accidental and public participation is one of the four pillars of a human rights based approach to development and legislation.

I was one of the drafters of the Constitution and as the Vice-Chairperson of the Committee on the Implementation of the Constitution. I am well versed with the history of the Constitution. I was in Bomas and I know that the persons who introduced the issue of public participation were speaking to the human rights based approach. I would want you to address yourself to that issue because if we start on the wrong footing, then we would find ourselves in a situation where we will be having a cosmetic look at the issue of public participation. I would want to invite you to look at the issue about whether there could be a different way to approach the issue of public participation or perhaps whether we need to bring it by way of a comprehensive legislation on public participation that will then clear the air. In the meantime, the way we are going about it would be giving a free ticket to the Minister to avoid the issue of public participation.

The other issue that I would want to speak to is the issue of the omnibus approach. Whereas I appreciate the examples that you have given, I want to join hands with hon. Khalwale. I appreciate the experiences of South Africa, but I am not very encouraged by the example of Uganda for obvious reasons, especially, on Migingo. On

the omnibus approach, when we had just come to Parliament, the Attorney-General brought an omnibus legislation even though it was not relating to the Constitution and many people were not even aware that within it, he had taken over the role of the Prime Minister and given it to Mr. Muthaura. It is only because some of us were diligent. When you bring that approach, then you can bring a legislation that might declare me to be the Speaker of the National Assembly without everybody noticing.

So, I would want us to start on a right approach; that when we are dealing with a constitutional amendment, we must be very clear in our minds because this was a negotiation between Kenyans and the sovereign. For us to cede certain authority to the sovereign, we must be consulted yet again when the sovereign wants to take it back from us. We must be clear so that we do not have our minds confused and confounded by so many things. The Constitution is a complex thing. Kenyans want to address one issue and deal with it especially after having gone through such a rigorous process.

Mr. Speaker: Very well! Before the Minister for Justice, National Cohesion and Constitutional Affairs responds, hon. Members will note that under normal circumstances, after I make a Communication, I will not allow further debate on it. But because this is a matter to do with the new Constitution and the interpretation of its import by the Speaker, perhaps for the first time, I will allow this interaction because I must give myself as much information as I can get from the Membership of the House. I have taken the side to my left and I will now take a response by the Minister. Much as I have the capacity to rule on this matter now, because of the importance of it and so that I accord hon. Members the respect that I ought to, I will then go and rule on this matter tomorrow afternoon. Let me hear the Minister.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, I am not aware of any country in the world that has been able to bring forth a Constitution like the one that Kenya now enjoys, particularly on these issues. Therefore, personally, I am extremely excited to see the enormous enthusiasm that the leaders of this country are demonstrating, even following your ruling. Therefore, because of the challenges driven by the new Constitution, allow me to react to a few, if not all the remarks made by the Members whom I hold with a lot of respect.

First of all, I wish to reiterate, because I gave you my notes in writing, that I do not believe that what I have presented is an omnibus. I am addressing elections and I notice that luckily, no Member has differed with that point of view that each and every proposed amendment is dealing with the issue of elections. The mere fact and, I want to repeat, please hear me out---

(Mrs. Odhiambo-Mabona consulted loudly with hon. Mbadi)

Mr. Speaker: Order, Mrs. Odhiambo-Mabona! The Minister and the rest of the House, when you contributed, heard you quietly. Even the Speaker did listen to you intently and now you do not want us to hear the Minister!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, this is such a fundamental issue and when we address it, we are not addressing merely the Members of this House, particularly distinguished lawyers including some whom I taught. We are talking to the country. We are talking to the world. Therefore, an issue like an omnibus, as you observed in your ruling, even to

determine what is a single issue amendment and what is an omnibus is in itself an issue that would engage lawyers between now and Christmas and it is possible that they will not agree among themselves.

I sincerely, with absolute apology to my colleagues, want to say that the position of the Ministry, the Cabinet and the Member of Parliament for Mbooni is that, indeed, it is not an omnibus.

Of course, everybody is entitled to his own opinion but he is not entitled to his own set of facts. The facts are that each and every section of every Article and each and every area of transition that I have touched on in my proposal deals with elections; I feel so much fear having served the country at Serena Hotel during the national reconciliation process. A few instances involved the resolution of the dispute that was followed by the formation of the Grand Coalition Government. I want to say without fear that I felt I had a serious obligation to my country to address the issue of elections, and elections only.

Another fact that, in my view, is escaping our attention is that a Bill is just a proposal. Unlike in the old days when a Bill would come to the Floor of this House and is debated for 45 minutes or a half an hour--- Some constitutional amendment Bills were passed in single sittings. The records are there. We can no longer do that. Therefore, what I have presented to my country, with extreme humility and out of the experience that I have acquired and the training that I have earned through public expense, is a proposal in order to drive next year's elections and, if the country agrees, other elections thereafter.

Mr. Speaker, Sir, when we talk of public participation, I am more committed to public participation than anyone else. The moment your ruling takes effect tomorrow and the Bill is read the First Time, we will engage not just Parliament but the entire country, and will consider this proposal in terms of Article 256(2). I see no requirement and I stand to be corrected, but I am also a Senior Counsel of this country, which is not easy to attain. It arises in the sense that I examined this document very carefully. I have almost memorised the entire Constitution.

I find no area where, before you make a proposal, you are required to have public participation and consultation. You may have consultations for developing the proposal and that was done, as I will demonstrate to Parliament and the country when we start on the proposals between tomorrow and the 90th day; you will, in the end, say that Mutula is becoming boring.

Mr. Speaker, Sir, as to the issue raised by hon. Mbadi, which was also raised by hon. Mungatana, on any other matter as captured under Article 256(1)(b). As I said, a constitution is a living document. It is a conversation. Kenya entered into a conversation with itself on 27th August, 2010. This conversation is going to go on until my Lord Jesus Christ comes and goes. Even those who will be left behind after he takes all of us to Heaven, will continue with that conversation.

Now, allow me to contribute to the words "any other matter".

In my view, "any other matter" means that in prosecuting this Bill, I will not speak of anything other than what the Bill contains. I cannot prosecute anything other than what the Bill contains. You know, I went to high school. I read a lot of English. I did literature. I did law. I think I have a slight understanding of the English language. If the framers of this Constitution wanted to say that you cannot put several items in the same Bill, they would have said "No more than one matter shall appear in a constitutional amendment Bill".

Mr. Speaker, Sir, to the extent that those words do not appear – I stand to be corrected as we continue debating amongst ourselves – my interpretation is that I can only prosecute the items that I have included from Articles 90, 97, 98, 101, 136 and so on; I cannot go outside those matters except for amendments consequential upon this House saying “yes” or “no”.

As for the matter raised by my good and learned friend, hon. Mungatana, on how hon. Members will vote, surely, there is no answer except, “yes’ to vote in favour of this Bill.

Thank you, Mr. Speaker, Sir.

*(Several hon. Members, including Mr. Imanyara,
stood up in their places)*

Mr. Speaker: Order! Order, hon. Members!

Member for Central Imenti, I am satisfied that I have heard adequate submission on this matter from the Membership present in the House. I will take guidance from those submissions.

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

Mr. Speaker: Member for Central Imenti, if you want to raise a point of order away from the substance of the submissions, yes.

Mr. Imanyara: Mr. Speaker, Sir, there is absolutely nothing to do with the substance of what has been urged before you, but it arises out of your own communication that you are going to give tomorrow afternoon. If you are going to make a ruling tomorrow afternoon---

Mr. Speaker: Order! Order! I did not say I will make a ruling. I said I will give further directions.

Mr. Imanyara: Mr. Speaker, Sir, you will give further directions tomorrow afternoon. In those circumstances, is it not only fair that the First Reading of the Bill comes after those further directions from the Chair?

(Applause)

Mr. Speaker: Order! Member for Central Imenti, the fact that a Bill appears on the Order Paper does not mean that it will proceed to be read for the First Time. You know that. After my directions, it will be clear what happens to that Order, as it will be on the Order Paper. Do not anticipate what I will say.

Hon. Members, that should take us to the next Order.

MOTION

ADOPTION OF REPORT OF SELECT COMMITTEE ON COST OF LIVING

Mr. Speaker: Member for Gwassi, I am told that you are a Member of this Committee. In the absence of the Chairman, you can proceed and move the Motion.

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

THAT, this House adopts the report of the Parliamentary Select Committee on Cost of Living laid on the Table of the House on Tuesday, October 25, 2011.

Mr. Speaker, Sir, I want to start by saying that I was not prepared to move this Motion, but given that I am a Member of this Committee, and that I participated actively in the sittings and deliberations of the Report, I would still be competent enough to move the Motion.

[Mr. Speaker left the Chair]

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

I would, first of all, like to give the background to this particular Motion. The Report that we are debating today is the final Report of the Parliamentary Select Committee on cost of Living, following a preliminary Report dated 7th June, 2011 already presented to the Government by the Committee, which is also annexed to this Report.

Mr. Temporary Speaker, Sir, we felt that it was important for us to give a preliminary Report. This was necessitated by the fact that the creation of this Committee became necessary because there was a crisis in this country, and the crisis was with regard to the rising cost of living. Therefore, as a Committee, we felt it was important that even before we do our final Report, which would encompass some long-term measures to address this problem, it was important that we give to the Government a preliminary Report which, if acted upon, would have helped to alleviate some of the problems that we were facing then, hence the Report that we gave to the Government through the Office of the Prime Minister, and which was distributed to the relevant Ministries on 7th June, 2011. As I have already indicated, the content of that preliminary Report, including 21 recommendations, which are repeated herein, should be treated as constituting an integral part of this Report.

The Committee was formed via a resolution of the august House on 11th May, 2011, following adoption by this House of a Motion by the Member for Budalangi, hon. Ababu Namwamba, in response to the public outcry over the unprecedented spiraling inflation arising from a sharp rise in the cost of fuel and foodstuffs in the country. The Committee's primary mandate was to inquire into the factors inflaming this situation and table in Parliament a comprehensive Report with substantive recommendations on both immediate and long-term remedial measures. The immediate measures are the ones that I actually indicated we gave to the Executive arm of Government on 7th June, 2011.

The Committee also held its first meeting on 12th May, 2011, where hon. Members unanimously elected Mr. Ababu Namwamba and Ms. Shakila Abdallah the chairperson and vice-chairperson, respectively.

Mr. Temporary Deputy Speaker, Sir, initially, we had a 30-day mandate which was expected to end on Saturday, 11th June, 2011. Within this period, the Committee undertook a whirlwind of inquiries culminating in the preliminary report aforesaid, which was adopted on 7th June, 2011. However, that preliminary inquiry also revealed that this matter posed such a massive challenge that it required deeper interrogation and substantive remedial measures that would include concrete proposals for specially targeted legislation as I will highlight at the tail end of my presentation.

The Committee accordingly sought extension of its time twice. We are glad that this House did grant extension period of 9th June and also 4th August, 2011, to conclude the longer term aspects of its mandate. This Report has effectively responded to that need for deeper inquiry and includes specific legislative proposals which we have tasked a number of our Committee Members. If this House adopts the Report, a number of the membership of that Committee will pick various legislations to push through this House.

Mr. Temporary Deputy Speaker, Sir, I do not want to go into the details of why the extension was necessary because I think those were explained when we canvassed for the extension of the period.

We, therefore, took a total of five months to fully conclude our work and table this Report in the House. After its first round of engagement with various stakeholders in the oil and grain sectors and public hearings in several parts of the country, the Committee strongly felt that there were certain issues that were so urgent that they could not wait for the final report, as I did mention.

I just want to go ahead and mention the composition of the Committee because I think it is important. The membership of the Committee was as follows:- Mr. Ababu Namwamba, MP; Chairperson, Ms. Shakila Abdalla, MP, Vice-Chairperson; Ms. Martha Karua, MP; Mr. Elias Mbau, MP; Ms. Rachael Shebesh, MP; Mr. Charles Kilonzo, MP; Mr. John Mbadi, MP; Dr. Eseli Simiyu, MP; Dr. Joyce Laboso, MP; Mr. Nkoidila ole Lankas, MP and Mr. Mohamed Gabbow, MP, who was by then a Member of the Back Bench. Mr. Mohamed Gabbow was subsequently appointed Assistant Minister, Ministry of State for Special Programmes in August, 2011, before the Committee concluded its mandate thus reducing this membership to ten. There was no time to replace him.

The Committee, subsequent to its formation, adopted the following terms of reference:-

(i) Investigate factors responsible for the rapid rise in inflation from 3.8 per cent in November, 2010, to 12.93 per cent in May, 2011. The high cost of living in the country and propose for both short and long term remedial measures.

(ii) Establish the effect of the current inflation and the high cost of energy on producers, manufacturers and consumers and the impact of this on the economy.

(iii) Establish the factors causing the ever rising cost of energy with a focus on fossil fuel and how the Government can get a lasting solution to the problem.

(iv) Establish the status of the preparedness of the country to handle any interruptions in supply of fuel.

(v) Interrogate existing policies on food security in the country and examine any measures in place meant to ensure the country produces enough food to feed the whole population.

(vi) Track the cereal production and supply chain and determine how this contributes to the cost of food with specific emphasis on land tenure, farm preparation, timely availability and pricing of seeds and other farm inputs. Also on harvesting, storage and post harvest management.

(vii) Examine the supply chain of oil from importation through clearance, transportation distribution and consumption with a view to detecting factors in the chain which might be responsible for inflaming the sharp rise in pump prices.

(viii) Interrogate the cost of staple food crops in the country, the ability of Kenyans, especially the under-privileged to afford basic foodstuffs and any existing measures to ensure all people have access to food.

(ix) Establish the country's state of preparedness to handle severe food shortages caused by among others famine and disruptions in the production and supply chain.

(x) Quantify the cost of running the Government and the savings expected from any austerity measures that may be considered to reduce avoidable State expenditure.

(xi) Establish the relationship between unemployment, the wage levels and the living standards of Kenyans.

(xii) Examine institutional capacities and synergies for shielding Kenyans from vagaries like fluctuations in international oil prices, drought and interruptions in the food and oil supply chains.

(xiii) Explore legal and policy options necessary to address the challenges identified, including the cost of energy, cost of food, public expenditure as well as institutional capacities and synergies.

Mr. Temporary Deputy Speaker, Sir, it is important to note that from the terms of reference that I have just read, this really was an extensive work by the Committee. The Committee held a total of 50 sittings within and outside the precincts of Parliament to establish the factors causing the high cost of living. Internal meetings were held in Parliament with Government officials from relevant line Ministries, public policy research bodies and experts in various fields. The Committee also visited various parts of Kenya on fact finding missions and to conduct hearings with members of the public targeting communities, groups and players in specific areas of socio-economic concern.

The meetings were meant to enable the Committee get area and sector specific first hand information in order to understand how each one of them was uniquely contributing to or affected by the rise in inflation and high cost of living. Overall, the Committee met stakeholders from all the key sectors of the country's economy and specifically, those directly relevant to the wider mandate of the Committee. The Committee specifically held meetings with the following persons, institutions and companies:-

Minister for Energy, the PS in that Ministry, Director-General of the Energy Regulatory Commission (ERC), Managing Director, Kenya Petroleum Refineries, Managing Director, National Oil Corporation of Kenya, Managing Director, Kenya Pipeline Corporation, Governor Central Bank of Kenya, Commissioner-General, Kenya Revenue Authority, top management of oil marketers, including Kenol-Kobil, Shell, Oil Libya and Gulf Oil. Chief Executive Officer, Petroleum Institute of East Africa, Managing Director, National Cereals and Produce Board, Management of the Kenya Seed Company Limited, Mayor and Deputy Mayor of Kitale, Provincial Commissioner, Nyanza and Regional Commissioners in Nyanza.

The Committee also met Regional Commissioner, North Rift, Branch Manager, Unga Limited, Managing Director, United Millers Kisumu, Chief Executive Officer, Institute of Economic Affairs, Chairman, Secretary and CEO of the Consumer Federation of Kenya, Board of Directors, Mombasa Maize Millers, Chairman and Trustees of the Kenya Transport Association, the Managing Director of Kenya Institute for Public Policy Research and Analysis (KIPPRA), Minister for Agriculture, Minister for Finance, Secretary to the Cabinet and Head of the Public Service, PS in the Office of the Prime

Minister, Clerk of the Kenya National Assembly, PS, Ministry of State for Planning, National Development and Vision 2030, Minister for Medical Services, PS, Ministry of Public Health and Sanitation, PS, Ministry of Public Service and management of Mumias, Nzoia, SONY and Muhoroni Sugar companies.

The Committee also conducted on-site fact finding missions to the following places:- National Cereals and Produce Board depot in Eldoret, Unga Millers Eldoret, Kenya Seed Company Limited, Kitale; private maize traders in Kitale and Kiminini; Kenya Petroleum Refineries Limited in Mombasa, Kenya Pipeline Corporation oil jetty in Kipevu, Mombasa and Mombasa Maize Millers; Grain Bulk Handling Limited, Mumias Sugar Company Limited, Nzoia Sugar Company Limited and Muhoroni Sugar Company Limited.

Further, the Committee held public hearings in a number of locations, that is, Kibera, Eldoret, Uasin Gishu County, Kitale and Kisumu. In Kisumu, we held meetings in Kisumu County Hall and Ahero. We also held meetings in Mumias, Kakamega and Suba. I am happy to say we held meetings in my constituency, Tonga, Nyatoto, that is in Homa Bay County with fishermen, grain farmers and livestock farmers.

Mr. Temporary Deputy Speaker, Sir, we went to Bomet where we held meetings with maize and dairy farmers and the general public. In Narok, we met wheat and maize farmers, livestock farmers and the general public. In Nyeri, we met tea and coffee farmers and the general public. At Embu, we did meet with the general public, while in Meru we met with farmers, traders and the general public. In Lodwar, we met with the pastoralists and the general public. In Lokichar, that is in Turkana County, we met pastoralists and the general public while in Kitui we met with the general public. In Lango Baya in Malindi, Kilifi County we met with the general public. We also met with the general public in Lamu.

The Committee tried to move across the country. It had planned to hold similar public hearings in some areas like Mwingi, Isiolo, Garissa and Mwea, but was unable to do so due to unforeseen constraints. The Committee is, therefore, confident that it had a representative voice of Kenyans and its report thus reflects sentiments of the people of Kenya.

Mr. Temporary Deputy Speaker, Sir, allow me to make acknowledgements. The Committee is grateful to the Office of the Speaker and the Clerk of the National Assembly for the support it received to discharge its mandate. The Committee further commends Government agencies and departments that it met for openness and co-operation which they accorded it while conducting its business. The Committee is especially grateful to the Provincial Administration for the support they accorded the Committee in organizing public hearings in different parts of the country. The Committee appreciates the technical advice it received after consultations with various stakeholders and the findings and recommendations contained in this report tried to address all the issues it had established.

Special thanks also go to the Staff of the Parliamentary Service Commission who served under the Committee. They are Edward Libendi, James Kinono, Nicodemus Odongo, Farida Ngasura and Linda Kirinya. Finally, the Committee extends special gratitude to the hon. Members of the Committee who worked extremely hard, sometimes under strenuous circumstances. The following hon. Members need special mention. Fortunately, this starts with my name and I do not know why. Hon. John Mbadi, hon.

Rachel Shebesh, hon. Nkoidila ole Lankas, hon. Eseli Simiyu, Shakila Abdalla and, finally, hon. Joyce Laboso. This report was adopted unanimously and the recommendations herein were arrived at after thorough consultations with all the targeted stakeholders. It is my pleasure to commend and commit this report to the House for adoption.

Mr. Temporary Deputy Speaker, Sir, I just want to mention a few findings. It is important to note at the beginning that in all the places where the Committee has interacted with Kenyans through open public hearing, one strong message that has been consistent is that the citizens of this country are literally panting under the unbearable burden of the cost of essentials of life that has spiralled well beyond their reach. The rapid increase in inflation without a corresponding rise in incomes has seriously eroded the purchasing power even for the middle class. Actually, we were told that Kenya has become a “walking” nation instead of being regarded as a working nation.

It is important to note that Kenyans are laying their tribulations squarely in the lap of the country’s leadership, who they believe are insensitive and I am quoting this from what we heard from the Kenyan public. The Kenyan public said:-

“...Unresponsive and obsessed with games of political brinkmanship and hunger pangs ravage children, women and men across the length and breadth of the country. Kenyans feel neglected and shunned by a leadership that is insulated from their grim reality. Farmers feel abandoned to the mercy of brutal profiteers while transporters are exposed to merciless wheeler-dealing cartels in the energy sector. There, indeed, is widespread concern about cartels and corruption networks that have infested all spheres of life.”

Mr. Temporary Deputy Speaker, Sir, I think it is appropriate for me to mention at this time that many times when we interacted with the public, the way the public sees leadership in this country, they see a leadership that is corrupt; they look at us like we are the same ones who cause their problems and then we run to ask them what the solutions are. In one of the sittings, I remember we were asked whether it is really true that we do not know the causes of the high rising cost of living. According to the general public, they believe that the leadership is very much aware of why they are facing problems in their day to day lives. But they feel we are reluctant to help them solve these problems.

We identified and met various stakeholders as I mentioned. We started with the oil sub-sector and we held meetings as I did say. Specifically, the Committee was interested in knowing whether cartels exist in the oil sector and what really causes the sky-rocketing cost of fuel in Kenya? Thirdly, we wanted to know the percentage cost of taxes in the high cost of living or the portion of the tax element in the cost of fuel. The other one was the effect of price regulation. Since we started price regulation through the Energy Regulatory Commission (ERC) on the cost of fuel, has it achieved any desired objective?

Mr. Temporary Deputy Speaker, Sir, I could not speak at a better time. Recently, I remember the Departmental Committee on Energy, Communication and Information questioned even the rationale of having this commission in place. They actually called for its disbandment. I think it was important for our Committee to also address this issue. We also wanted to know the relationship existing between the percentage increase in international oil market prices and the pump price of Kenya; we wanted to know the role of the National Oil Corporation in stabilizing fuel prices; we wanted to know the real

cause of fuel shortage in early May, 2011, and many other things which I may not mention at this time due to constraints of time.

We did meet with officers from the Ministry of Energy led by the Permanent Secretary. We also met with the Minister and we had a very fruitful discussion. The Permanent Secretary attributed the high cost of fuel on the rising international crude oil prices. He talked about the weak value of the Kenyan currency to the dollar and the turmoil in the Middle East. It also emerged from the Ministry of Energy officials that the Government had reduced excise tax on kerosene by 30 per cent, which was effected on 28th April, 2011. The Office of the Deputy Prime Minister and Ministry of Finance should have introduced a Bill in Parliament to waive the taxes on kerosene. The Minister did introduce the Bill later on because there was a delay. The Minister for Energy explained that there were sufficient consultations between the President, the Prime Minister, the Ministry of Energy and the Ministry of Finance before any policy changes were announced, specifically the policy announced by the Prime Minister that the Government would reduce Excise Duty on kerosene and diesel. There was extensive consultation in Government.

The Ministry of Energy also explained the other factors which have contributed to the sharp rise in prices as follows:- One, continued existence of piracy activities in the Indian Ocean are responsible for increased freight cost of petroleum products. There are also demurrage charges incurred by ships waiting to discharge commodities at the Mombasa Port.

Secondly, they talked of clogging of the pipeline system by oil marketers who have no adequate storage facilities. Out of these two, we felt that something could easily be done on the second one which is clogging of the pipeline system by the oil marketers who have no adequate storage facilities. We felt there was negligence on the part of the management of the pipeline system in this country. There was reluctance and insensitivity on the part of the Ministry to take action to ensure that this problem is not encountered even as we appreciate that, probably, the issue of piracy is a bigger one and is probably, a regional if not a global concern.

Mr. Temporary Deputy Speaker, Sir, oil sector marketers and other oil stakeholders also raised certain concerns. One of them is having only one jetty at the port of Mombasa in which oil products are discharged. They also said that this country lacks strategic oil reserves. Inefficiencies at the Kenya Petroleum Refineries Ltd. were also cited, which marketers alleged contributed an additional Kshs5 to Kshs8 to the litre.

There was also talk of infrastructural constraints, particularly the Kenya Pipeline Kipevu Jetty and the need for the establishment of a common storage facility in Nairobi. The marketers using the pipeline as a storage facility thus clogging the system and denying importers a chance to discharge their products in the pipeline was also sighted. Actually, it came from these oil marketers; that this is done with the express knowledge of the management of the pipeline system.

Mr. Temporary Deputy Speaker, Sir, as to why some marketers would be allowed to use the pipeline as a storage facility begs question which I think the various officers responsible need to address. The Ministry of Energy officials led by the Permanent Secretary confirmed that the Kenya Petroleum Refineries (KPR) Limited could only remain viable if it stuck to the proposed time lines of modernization or else it should be shut down. The oil marketers also committed themselves to abide by the resolutions.

When we were discussing with the various stakeholders, Ministry and the various marketers, we were also agreeing on some things which could be corrected. Ours was not just to collect information and compile a report but we were also trying to look at how we could fix some of these issues.

Mr. Temporary Deputy Speaker, Sir, in discussing with the oil sector stakeholders identified above, the following measures were identified that would help reduce the cost of fuel and ensure consistency in supply, both in the short term and long term:-

(i) Introduction or enforcement of strict penalties for storing oil products in the pipeline for a longer duration than 14 days for domestic fuel and 30 days for transit fuel respectively.

(ii) The establishment of strategic oil reserve urgently to cushion the country against fluctuations in the supply chain. I think this is long overdue. This country must have strategic oil reserve.

(iii) The sharing of space allocated in the pipeline by oil marketers based on throughput

(iv) The Kenya Revenue Authority and Kenya Ports Authority clearing system should be made more efficient.

(v) There is need to amend the Energy Act in order to convert the KPR Limited into a merchant refinery.

In concluding, the Petroleum Institute of East Africa was categorical that cartels did not exist in the oil industry as is presumed by many, since the Competition Act prohibited such acts. I am quoting from the Petroleum Institute of East Africa.

Mr. Temporary Deputy Speaker, Sir, we also discussed with the National Cereals and Produce Board (NCPB). I will not go into the details of what we discussed but it was very clear that we discussed various issues. We discussed issues including some of the reasons for high shelf price of maize, cost at which the NCPB purchases maize from farmers *et cetera*. However, when we visited the NCPB, we went with the idea that probably there was maize in this county at that time and some farmers were hoarding maize. It turned out that it was not true. This was especially so after the Minister for Agriculture had told this country that the country had eight million bags of maize. We were told by farmers that maize was selling at a record high price and they would be fools not to sell their maize at that price. There was no maize. We confirmed that truly there was no maize. What came into our mind and the question we would want to ask is; truly does the Government really have the facts about what is happening in this country?

We also discussed with the Kenya Seed Company (KSC) Limited. It was something that shocked all of us as members of the Committee. We were informed by the KSC that even some of the seeds which they gave to some farmers were not appropriate. This was because somebody somewhere made a decision at one point which put this country at risk. The decision was to stop production of seeds thinking that they had too much seed in stock. This resulted into shortage of seeds. Even at that time when we were carrying out our research, we realized that probably the seeds that were planted in many parts of this country were not appropriate for those places.

Mr. Temporary Deputy Speaker, Sir, we met with various stakeholders as I did indicate; we met with United Millers in Kisumu and the Central Bank of Kenya (CBK). I think it is important to talk about what we gathered from the CBK. When we met with the CBK, our concern as a Committee was the high inflation in the country which had risen

from 3.8 in 2010 as I mentioned earlier to a high of 12.95 in May 2011 and the fall in the value of the Kenya Shilling against the main foreign currencies.

The Committee sought clarifications on the following specific issues:-

(i) How the tax system could benefit Kenyans and how quickly the proposed Excise tax waiver on oil products such as paraffin and diesel could be effected.

(ii) How the Government could deal with any possible existing cartels in the maize sector.

(iii) How the CBK and KRA were dealing with the issues of climate change if any and, effects of depreciating Kenya shilling against the major world currencies.

(iv) In depth information on why the inflation is on steady increase.

(v) Tax measures that the KRA could propose to help manage the rising cost of living among other things.

Mr. Temporary Deputy Speaker, Sir, the Governor of the Central Bank indicated that economic growth was showing a strong recovery partly due to good performance in agriculture and financial growth also remained strong. I really do not know whether the Governor at this point could still stand at this point and repeat the same. However, at that time, the Governor expressed optimism even when many of us expressed our fears that economic growth would be affected.

The discussions identified the following cross-cutting measures that would help stabilize the micro-economic environment and other areas of concern to the Kenya economy:-

(i) There should be oil reserves in the country to cushion against external shocks. I think this is a very direct proposal.

(ii) There should be domestic supply buffers of essential commodities which should be separate from the strategic reserves. I think we dwelt a lot on oil because we realized that the high cost of living in this country is contributed to significantly by the high cost of oil.

(iii) Incentives for food prices should be based on market prices and further that the Government should establish institutions that will buy surplus commodities from farmers.

(iv) Monetary policy should not be used to fix prices as it has limitations on controlling inflation.

The Commissioner-General of KRA informed the Committee that certain direct taxes have impact on inflation, for example, Excise Duty. However, there was a caution that at times as a country, we are over-excited in trying to reduce taxes on these commodities but they do not go into helping the problems of the poor but rather benefit the middle men and businessmen.

Mr. Temporary Deputy Speaker, Sir, I would agree because we removed Excise Duty on paraffin but the price of paraffin has been on the increase since then. Therefore, this has not really served the intended purpose. Probably we are denying the Kenyan economy revenue to finance its activities, yet the effect is not realized by the public.

I really do not want to go into the details of the meetings we held because I am sure hon. Members will find time to go through the Report. I want to go straight to the recommendations, with your permission. It should be noted that the 21 recommendations made in the preliminary report dated June 7th 2011 and is annexed to this Report

constitute part of the Committee's recommendations and should accordingly be considered alongside these recommendations offered here.

The Committee strongly recommends the Government to expedite those 21 preliminary recommendations in addition to the final ones that are based on the analysis of the findings of the Committee.

Mr. Temporary Deputy Speaker, Sir, the Committee prepared a Motion to revive the Kenya Farmers Association (KFA). This Motion was moved by the Chairman of the Committee on the cost of living requesting the Government, through the Ministry of Agriculture, to extend a grant of Kshs1.3 billion to KFA. It was discussed and adopted by Parliament on Wednesday, 17th August, 2011. The Committee, therefore, recommends that the Committee on Implementation takes over this matter to ensure that the Government allocates this money to KFA immediately as resolved by Parliament. We will not go into the details of why this is necessary, because that was canvassed when the Motion was moved in this House.

There is the Motion urging the Government to grant the Agricultural Finance Corporation (AFC) Kshs2 billion to enable it provide appropriate leave to both crop and livestock farmers. Again, the Committee prepared this Motion after listening to farmers around the country. I remember when we were in Narok, it was really sad to see farmers literally shedding tears because they had been given warning letters that their property was going to be sold, and they lost their crops due to bad weather. Many people suffered losses as a result of the prolonged drought that affected many parts of the country earlier in the year, 2011. This Motion was approved by the Speaker and is awaiting discussion and adoption by the House. I am aware that it has actually been moved, but not concluded by the House. I would urge this hon. House to consider it favourably. Again, I want to mention here that some farmers were complaining that farmers in other regions of this country had their loans written off by the Government. They were wondering why they were left out.

There is also the Motion urging the Government to stop privatisation of the New Kenya Co-operative Creameries (KCC) until ownership of its assets is settled. The Committee established, after listening to dairy farmers in various parts of the country, that they had a majority stake in the assets of the original KCC before it was converted to the New KCC. That shareholding in the New KCC was never conclusively determined and yet the New KCC was in the process of privatisation. So, the Committee through its Chairman prepared this Motion which is pending before Parliament for discussion and adoption.

I want to go to sector specific recommendations. After concluding its programmes of public hearings and analyzing the information it received, the Committee puts forward the following short term and long term recommendations:- One, on the oil sub-sector we have made a number of recommendations. About the Kenya Pipeline Corporation (KPC), the Committee is recommending that the Ministry of Energy should introduce and enforce stiff penalties for storing products in the pipeline for a longer duration as I mention earlier. The KPC should develop rules that ensure space in pipeline is shared between marketers. The Government, through the Ministry of Energy, should urgently overhaul line one of the Kenya Pipeline running from Mombasa to Nairobi. It has outlived its useful life and is now a health hazard.

We have talked about strategic oil reserve. I do not want to go into the details. We have also talked about inefficiency at the Mombasa Port. There is a paragraph on that. We have also mentioned about Kenya Petroleum Refineries, what needs to be done. I will not read the details.

Mr. Temporary Deputy Speaker, Sir, dealing with oil cartels in the oil industry, I think I should mention that the Government should operationalize the Competition Act and establish a strong and independent competition authority to address the cartel like tendencies prevalent in the energy sector. The authority should develop regulations that restrict what each player can and cannot do so that a single individual does not undertake importation, marketing and operation of retail pump station, to prevent monopolistic tendencies. We have also talked about the role of the National Oil Corporation of Kenya. I think something needs to be done about this corporation, review of the OTS and increase in investment of geothermal power. I think if I read each one of them, it may take forever.

On taxes on kerosene and diesel, I want to mention that to cut down the burden of the high cost of living to low income Kenyans, the Government should reduce the taxes imposed on diesel and zero-rate kerosene. That is well articulated, and I would only urge that even as we do that, I think it is also important to increase expenditure on the poor by, may be, making cash transfers.

Mr. Temporary Deputy Speaker, Sir, on the cereal sub-sector, a number of recommendations have been made about the Agricultural Finance Corporation and many other agencies, which I have already mentioned but it is important to note that Kenya has not filled its strategic grain reserve. So, we need to work towards that.

Mr. Temporary Deputy Speaker, Sir, there are other recommendations, but the one I want to conclude with is strengthening key agricultural institutions to ensure food security. To ensure that farmers have a platform for engagement so as to be able to participate in public policy and decision making, and provide a forum through which farm inputs can be distributed to reach all the farmers, and their harvests collected and sold at competitive prices, the Government should revive the Kenya Farmers Association (KFA) by injecting in it the Kshs1.3 billion approved by Parliament on 17th August 2011 as I did say earlier.

To save farmers agony, we have also recommended the writing off of the AFC loans; the Kenya Seed Company (KSC) should be empowered to produce enough quality seeds in time for planting to avert a situation like the one that occurred in the planting season for 2010/2011, when farmers could not access quality seeds during the planting season. I think I alluded to this; I want to repeat that growing seeds is not a very easy exercise, and it is only the KSC that can undertake this particular task. In growing of seeds there are even spaces between the seeds and other conventional crops. So, we need to empower the KSC to produce quality seeds.

Mr. Temporary Deputy Speaker, Sir, on monetary and general micro-economic sector, the Central Bank of Kenya (CBK) through its monetary policy committee should take immediate decisive intervention measures to check any further fall of the Kenyan shilling. I need not repeat this. I think this is something we have been on. At least, there are some positive indicators now, but we hope they will be followed by concrete monetary policy by the CBK to make sure that we do not again fall to the level that we fell to.

The CBK, in collaboration with the Competition Authority, should take stern action against any commercial banks found to have engaged in practices that have led to the depreciation of the Kenyan shilling. Finally, CBK should strictly enforce the Banking Act, especially on share ownership, to curb unethical practices. I do not want to discuss this in detail because this House has already created another committee to look specifically into these issues of the depreciating Kenya shilling.

Mr. Temporary Deputy Speaker, Sir, on social safety nets for the most vulnerable, we have recommended a meal voucher system for the urban poor designed along the food voucher system operated in the United States, and the meal voucher model for providing employees with food during working hours operated in France. An agency can be established to implement this programme, which will involve all the needy people registering with the agency which will then vet them and issue the vouchers only to those who qualify.

The second one is the cash transfer system like the one being implemented by Oxfam in Turkana South; it should be fashioned along the lines of the one implemented by the Ministry of State Special Programmes, where funds are disbursed to people above the age of 65. The transfer of the funds should target people identified through the local community leaders. I want to mention that actually I personally successfully moved a Motion in this House to make cash transfers to the elderly; I hope that the Government will take that Motion seriously and implement it in the next Budget as was promised.

Finally, I want to just go through some proposed legislation by the Committee. We have the following: The Committee is convinced that in order to effectively address the myriad challenges facing Kenyans, and to institutionalize the recommended interventions, specific legislative measures must be undertaken urgently. It should be noted that arising from the Committee's activities, three key motions discussed below have already been brought to Parliament targeting the revival of the KFA, AFC and Kenya Co-operative Creameries (KCC). The legislative measures proposed here will further buttress the action that must be taken to move the country forward, and protect Kenyans from the identified myriad vulnerabilities.

One, we propose the Agricultural Insurance Scheme Bill. Its key features are to guarantee minimum return. I do not think I will go into the details of it. The Government will support institutions that buy surplus produce from farmers. The Government will regulate the amount of food produced in the country; the Government will guarantee insurance for farmers in case of crop failure to guarantee income. So, that is a bill that we expect to come to the House.

Mr. Temporary Deputy Speaker, Sir, the other one is The Strategic Oil Reserves Bill whose key features are:-

(i) The amount of each type of fuel to be stored in the strategic reserve at any particular time. The country should strive to have a minimum of 180 days stock, even before this Bill comes into force. I think this is something that the Government can implement even without the Bill.

(ii) where the reserves will be stored;

(iii) who will control and manage these reserves; and,

(iv) when they can be released.

Mr. Temporary Deputy Speaker, Sir, there is The Disaster Risk Reduction and Management Bill proposed by my Committee. The features include:-

- (i) to reduce the extent of damages suffered as a result of disasters;
- (ii) to mitigate the effects of disasters by taking certain measures;
- (iii) develop effective early warning systems to alert in cases of disaster; and,
- (iv) planning for disasters.

Mr. Temporary Deputy Speaker, Sir, the other proposed Bill is the Social Safety Nets Bill. Cash transfer programme and meal voucher system, as I mentioned, should be features of that Bill. Each programme is to target a specific section of the population. Cash transfer could target the unemployed and elderly, while meal-voucher programme could target the urban poor and those with very low incomes. Finally, the relevant Ministry could establish a body to implement this programme.

Mr. Temporary Deputy Speaker, Sir, the other Bills include:

- (i) Workers Protection Bill;
- (ii) Social Health Insurance Fund Bill, which I think has also been talked about widely in the public;
- (iii) Housing Regulation Bill. Here we should include categories of housing regulated. We should also allow construction using modern low-cost construction technology, incentives to investors in identified housing schemes, form and means of rent regulations, nature and scale of Government involvement;
- (iv) Competition (Amendment) Bill to eliminate cartels. We have also canvassed features of that Bill and I do not want to go into the details.

Mr. Temporary Deputy Speaker, Sir, the Committee is also asking this House that we consider the Sugar (Amendment) Act to overhaul the sugar sector. Here, I want to mention the following and this will be my concluding remarks:-

The Committee recommends that The Sugar Act be amended in consultation with all stakeholders to create sanity in the sugar industry. The regulator, Kenya Sugar Board (KSB), which issues licences to millers has failed miserably in discharging this role effectively by numerously authorizing construction of factories without proof that they have developed adequate cane for processing thus resulting in theft of cane. The proposed law should, therefore, overhaul the KSB and propose changes in the manner in which the board members are elected, so as to incorporate professionalism and good management practices. We need to look at the management of that board. We noticed that the KSB is licensing very many sugar factories without cane being developed. Finally, what happens is that these factories compete for cane to an extent that farmers are forced to harvest immature cane which has very low productivity, hence the shortage of sugar in the country.

The Committee is aware that the Member for Naivasha has proposed a Sugar (Amendment) Bill which is due to be introduced in the House. We will call upon the Member to revise his Bill in consultation with all stakeholders and to incorporate in the Bill, the views of the Committee considered in this Report.

Mr. Temporary Deputy Speaker, Sir, the Committee will also propose amendments to entrench zoning in sugar-cane growing areas so that each sugar company can know the extent to which it can grow cane or contract farmers. This will avoid poaching of cane which is currently rampant in the industry, especially in the Nyando Sugar Belt and Nzoia area. Because of time, I just want to add that this Report has also annexure. We have annexed a number of items which the hon. Members will find important in their reading.

I want to conclude by asking this House to consider this Report of the Committee on the Cost of Living. I think we did extensive work trying to dig and find out the real causes of the rising cost of living and how in the short term they could be addressed and, more importantly, going forward how we will address these issues.

Mr. Temporary Deputy Speaker, Sir, with those many remarks, I beg to move and ask Dr. Eseli, who is also a Member of the Committee to second the Motion.

Dr. Eseli: Thank you, Mr. Temporary Deputy Speaker, Sir, for this chance to second the Motion on the Report of the Committee on the Cost of Living. It was quite an eye opener when we were on this Committee's business in the sense that we got out there and *wananchi* asked us: "You are our leaders and you should know. Why have you come back to ask us"? Being an eye opener, we learnt several things. I, for one, learnt that a cartel-controlled economy is not sustainable. Indeed, as the Mover has alluded to, we have several cartels in our economy that virtually control everything. The regulators appear to be helpless especially in the oil sector where they deny having any cartels. Even as I speak, there has been purchase of bulk fuel for February next year at a price higher than the market rate right now using the previous week's Dollar exchange rates. This is being done by the same oil cartels. So, our economy has too many cartels and these are the people who are making the cost of living so high.

In the sugar sector, you will find that the distributors of sugar are the same ones from factory to factory. They are the same people using different company names, but they are the same people. These kind of people can keep the sugar away from the market and push up the prices and then offload the sugar that they have. These cartels are virtually bringing the country to its knees and we are not looking at it that way. If you take the cereals production, we despise the farmer so much that he has been left at the mercy of middlemen who are working as cartels. During the harvesting of maize, they move from South Rift to Western to North Rift depending on when the harvests are being done and mop up the maize at throw away prices and fuel rural poverty. When they fuel rural poverty, the people move to the cities and increase urban poverty and this becomes a vicious cycle.

The problem we have had in the country is that we have looked too much to be dictated to by the Bretton Woods organizations and the various international donor organizations to the extent that we have failed to address the key issues that we should address as a nation. It is now quite clear that outright capitalism as we know it has failed. When you look at Europe, the economy is imploding. When you look at America, it is tittering on tenterhooks. So, it shows that outright capitalism as we know it or as the Chicago School economists wants to put it, has failed. The Chicago School economists mean leaving everything to the free market forces. The free market forces can never deliver healthcare to all. They cannot because healthcare is an expensive service and the free market cannot possibly deliver such a service. But the Chicago School economists have pushed it for everybody to accept liberalization at whatever cost. This caused a lot of pain in the former republics of the USSR. They have caused a lot of pain in South America, the same people experimenting with the Chicago school kind of economics leaving out the Keynesian type of economics that leaves a social safety net for the citizens, be it by providing foodstuffs, healthcare or education.

I would plead with our people who are running all over the country wanting to be president next time; Hon. Kibaki came on and promised free education which is a social

safety net. I am yet to hear any presidential candidate pledging to give free healthcare which is a very important safety net. If they are not able to give this, it will be very difficult to attain whatever level of development that we want to attain.

If you look at electricity, you will find that the way we have handled our energy sector is skewed to the extent that right now, factory owners are virtually unable to produce at peak rates because the power bills are too high. I know of some flower farmers in Trans Nzoia whose bills are over Kshs5 million a month. They cannot possibly make any profit and they end up laying off workers, therefore, increasing the rural poverty, yet such people are supposed to alleviate the rural poverty by the high number of people that they employ.

We have one of the largest reserves of geothermal energy in the world. We have refused to exploit it to the maximum, so that we can bring down the cost of our energy, especially that of electricity. So, we have failed to have our priorities right, mainly because of vested interests. Since Independence, we have not had any people-friendly Government in place, in the sense that there is lack of political will, which is influenced by profiteering tendencies of the individuals who are supposed to take care of these areas. I do not want to use the word “corruption”. Those individuals further their profiteering interests at the expense of the common *mwananchi*. That is what has caused the problems that we have in the country today.

Mr. Temporary Deputy Speaker, Sir, there is also the issue of population growth, which, unfortunately, has not been adequately addressed. The rate of population growth in this country is almost unsustainable, in the sense that whatever revenue that the Government might receive cannot be enough to sustain even the social safety nets that we are talking about, be it in education, healthcare or provision of food. This is because the population growth rate outstrips what the nation is able to generate. We have not adequately addressed that particular factor. For about two decades now, we have not been addressing population explosion. We now have the problem of high cost of living, and we are still not addressing it. It will be difficult for us to change the scenario in favour of an economic growth orientation.

It is important to note that while all this goes on, we are yet to put into place laws that are punitive enough to discourage the cartel-like behaviour of some business people, and to discourage excessive profiteering. This entails putting in place some safeguards to ensure that the common *mwananchi* is not exploited in the manner it is happening right now. All this comes down to Parliament passing relevant laws to safeguard the common *mwananchi*. That is what the Mover of this Motion alluded to when he said that the Committee has a raft of Bills it is going to introduce to this House. We expect the support of this House, because I believe that the adoption of this Report by the House will form a very firm foundation for the future of this country.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to second the Motion.

(Question proposed)

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I rise to support this Motion wholeheartedly. As the Chairman of the Departmental Committee on Agriculture, Livestock and Cooperatives, I have been following and tracking these issues. If asked, I

would say before this House that the problem with Kenya, given the first three major issues causing this problem, can be summarised as follows---

The Temporary Deputy Speaker (Mr. Imanyara): Order! Mr. Mututho, you will have to summarise those issues when this matter comes up again for debate, because our time has run out.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, we now adjourn our proceedings to tomorrow, Wednesday, 23rd November, 2011, at 9.00 a.m.

The House rose at 6.30 p.m.