

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 21st June, 2012

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PETITIONS

IRREGULAR ALLOCATION OF LAND IN LAMU

Dr. Nuh: Mr. Speaker, Sir, I beg to present a Petition on behalf of the residents of Siu in Lamu Island on the irregular allocation of land and the Petition reads as follows:-

We, the undersigned citizens of Kenya who are residents of Siu Town in Lamu and squatters, draw the attention of the House to the following:

That aware that a committee with a membership of seven people was established in Lamu; whereas the committee was created to facilitate land re-settlement of all landless people in the area, on the contrary, the committee has allocated most of the land to members themselves, their family members, relatives and friends as well as foreigners at the expense of more than 300 residents who are landless; whereas the committee was to facilitate the landless to be resettled, there has emerged an agency operating for rich people from Lamu and other areas willing to buy land from the region at some fee; whereas the land from Kwang'ombe Area which is within Siu Location was allocated to Rasini residents of Faza Locations and such complaints were made to the office concerned, but nothing has been done to date. Therefore, your humble petitioners pray that Parliament and the Committee concerned, investigate the matter with a view to establishing genuine squatters and issuance of title deeds in an equitable manner to the residents and cancellation of all title deeds which have been irregularly issued and your petitioners will ever pray.

This is presented on behalf of the residents by Dr. Nuh. The Petition has been signed for by 294 members from that location. I table.

(Dr. Nuh laid the Petition on the Table)

Mr. Speaker: Do you have any hon. Members who want to speak on the matter briefly?

Mr. Yakub: Asante, Bw. Spika. Zaidi ya ombi hili la watu wa Siu ambalo limewasilishwa mbele ya Bunge hili na Dr. Nuh, pia ningependa kuwasilisha stakabadhi hapa ambayo inaonyesha baadhi ya kurasa katika ombi hilo zimeondolewa. Kwa mfano, kutoka ukurasa wa 1110 hadi 1225, kurasa hizo zote hazipo. Kurasa hizo zilijumuisha zaidi ya majina 115. Naomba nipewe ruhusa ya kuiweka stakabadhi hii kwenye Meza.

(Mr. Yakub laid the document on the Table)

Bw. Spika, kuna nyingine ya mwisho!

Mr. Speaker: Endelea basi, umalize haraka!

Mr. Yakub: Bw. Spika, asante na nitafanya haraka.

Kuna barua ambayo imetoka kwa wakili wa jamii ya Wasiu ya kutaka Mkuu wa Wilaya wa Lamu Mashariki aketi pamoja na kamati ya Bw. Omar Sabur kuanzia 5/08/2012. Hilo halijafanyika. Pia kuna barua iliyotoka kwa wakili na iliyokwenda kwa Director of Physical Planning and Survey, Lamu. Pia, kikao hicho hajifanyika.

Mwisho ni kwamba ni masikitiko ya kwamba kila Wasiu wakienda kwa ofisi ya ardhi, Lamu, hawaonyeshwi ramani na majina ya watu waliopewa stakabadhi ya kumiliki mashamba haya. Nafikiri jambo hilo si haki. Kila Mkenya ana haki ya kuomba stakabadhi anazotaka kutoka ofisi yoyote ya Serikali. Naweka hizi barua mbili za wakili kwenye Meza

(Mr. Yakub laid the document on the Table)

Mr. Keynan: Mr. Speaker, Sir, I stand to support this petition. Lamu is critical to the economy of the Republic of Kenya. This is where we intend to have the second port. Although this was a very ambitious plan, it should not be used to deny the original residents of Lamu their rightful ownership of land. This is one thing that even before the project picks, the Government should address the issue of Lamu squatters and ownership of land. Lamu originally was trust land under the County Council of Lamu. Under the new Constitution, the issue of land management is under a different constitutional dispensation. We do not want the people of Lamu in the name of modernization or mega projects to be displaced. That issue must be addressed. The Government must apply due diligence in law to ensure that the people of Lamu are protected from this land speculators.

Mr. Kabogo: Mr. Speaker, Sir, you know the issue of land is quite an emotive topic---

Mr. Speaker: Order, hon. Member for Juja! Just before you proceed, Mr. Yakub, the document which you have tabled, on the face of it, is not admissible. So, I will suspend its admissibility until you comply with the Standing Orders. So, if you could see Mrs. Munga or our clerical staff after the House rises from this sitting, she would guide you, then we can consider the document later.

Mr. Kabogo: Mr. Speaker, Sir, I was saying that land issues are quite emotive. As we move to county governments, there is a tendency of land grabbers and fraudsters to run into counties and sub-divide land. It would be important for the Committee that seeks to look into the issue of Lamu to request that presentation books; these are books that indicate the daily transactions of land, be availed to them. There is a tendency of when hon. Members ask questions about land here, they give selective information. If the Committee that would be looking into this matter could get the presentation book from Lamu, they would be able to see, for example, how parcels of land have been given out in 2010, 2011 and 2012. This will enable us to put a stop to land grabbing.

Mr. Speaker: Hon. Member for Turkana Central, just live within two minutes.

Mr. Ethuro: Mr. Speaker, Sir, I want to thank the hon. Member for Bura for bringing the petition as requested by the people of Lamu. Lamu is going to be the beginning of LAPSET 2. Kenyans as usual have run there to grab land and to displace the indigenous people. The new Constitution recognizes those people who have been marginalized for a long time. I want to

make sure that this kind of petition that has come to this House will be favourable to the people of Lamu who have not been given land. They have been squatters for a long time. Some of them do not even have national identity cards.

The Assistant Minister for Roads (Dr. Machage): Bw. Spika, ninamuunga mhe, Dr. Nuh mkopo katika rufani yake. Ni lazima tuwatetee wanyonge nchini kwa hali na mali. Ujanja uliyotekelezwa siku za awali ambapo watu walinyang'anywa mashamba yao kwa sababu ni watu wa jamii ndogo, usije ukatumika hapa na kuwanyima watu wa Lamu stakabadhi za kumiliki mashamba.

Mr. Bahari: Mr. Speaker, Sir, it is unfortunate that when opportunities of investment come around, the people with capital will go out to grab land and displace the indigenous people of Lamu. This House must keep watch on the matter of Lamu very closely to keep this at bay, so that we do not sow the seeds of discourse for the future in that area given that this area is very important for investment. This should now be extended to Isiolo because Isiolo is also facing a similar threat. I really thank the hon. Member for having brought this matter up.

Mr. Speaker: Hon. Members, according to the Standing Orders, we have had enough contributions to that petition. So, we will let it rest there. It stands committed to the relevant Parliamentary Committee which should then address itself to the petition within the timelines set out in the Standing Orders; not exceeding 21 days from today.

STATUS OF LAND IN TURKANA FOLLOWING OIL DISCOVERY

Mr. Ethuro: Mr. Speaker, Sir, I also rise under the same Standing Order to issue a public Petition to the Government of the Republic of Kenya by the citizens of Kenya residing in Turkana County on the recent oil discovery in the said county.

We the undersigned being citizens of Kenya and residents of Turkana County within the Republic of Kenya, draw the attention of the Government of Kenya through this august House to the following:-

(i) The announcement of 26th March, 2012 by the President of the Republic of Kenya, His Excellency Hon. Mwai Kibaki, that mineral oil deposits had been discovered within Ngamia 1, Block 10 BB area within Turkana County and the subsequent revelations that some companies among them Turkana Energy Incorporated, Turkana Drilling Company, African Oil and others had been granted prospecting licences over Ngamia 1 and, indeed, other oil blocks within Turkana County. Some of these companies had reportedly sold or transferred those licences to other companies thereby making huge amounts of money in the process.

(ii) The emerging reports that the Government of Kenya had signed petroleum agreement with some local and/or international oil companies in respect of the same Ngamia 1, Block 10 BB and other blocks within the county, covering other things profit sharing by these companies and the Government of Kenya.

(iii) The assertion by the County Council of Turkana, which by law holds all the land in Turkana County in trust for the residents of the county that it was not informed or consulted or otherwise involved in the setting a part of the land within which the said exploration and anticipated production is or will be taking place.

(iv) Our concerns regarding the dose of information available in the public domain are as follows:-

(a) The process of allocation of land within Turkana County to three companies for prospecting and related purposes.

(b) Details of profits and beneficiaries of grants of prospecting licences and petroleum exploration and production agreements.

(c) Environmental and social impact assessment of the ongoing exploration and the anticipated production of mineral oil in Turkana.

(d) The alleged ongoing allocation of land within the precincts of Ngamia 1 and other blocks in Turkana County.

Therefore, your humble petitioners pray that the Government of the Republic of Kenya provides the following information:-

(a) Whether the land within the prospecting of oil is taking place or set apart in accordance with the Constitution and other relevant laws. In particular, we would like to know how much land was set apart, who were the beneficiaries, what were the terms of setting apart the land and whether full and prompt compensation was paid to the residents.

(b) On prospecting licences: How many prospecting licences were granted? Who were the licensees? Who were the directors of the licensee companies? In respect to which blocks were these licences granted? What were the terms and conditions of these licences?

(c) On petroleum agreements: With who the Government of Kenya signed petroleum agreements in respect of oil exploration and production in block 10BB and other blocks in the country? What are the terms of these agreements regarding use of land and compensation of individuals who are ordinarily residents and sharing of benefits from possible oil production if it is found to be commercially viable?

(d) If the oil is found to be commercially viable, what agreements exist or can be put in place to ensure that the local community benefits from the proceeds beyond the token corporate social responsibility initiatives that are currently being undertaken by Talo Oil Incorporated?

How can the revenues from the oil be used or shared to improve education, infrastructure, health and other conditions of the residents of Turkana County?

Secondly, our prayers is that the Ministry of Energy is compelled, plus the National Environment Management Authority (NEMA) and other Government Ministries, departments or agencies to publicize the environmental impact assessment and the social impact assessment reports from Ngamia I and other oil blocks if they exist. What do environmental impact and social impact studies, if any; say about the environmental and social effects of the oil exploration? How can the environmental and social effects of the anticipated oil production be mitigated?

Third, what corporate social responsibility projects have been undertaken by the respective prospecting companies indicating project period, location, coverage, funds allocated, intended beneficiaries and the implementing agencies?

Fourth, what urgent infrastructural projects is the Government undertaking to ensure that the county is fully prepared to take full advantage of these resources in terms of the roads, security, water, health facilities, mobile telephony connectivity and again, indicating the quantum of the money allocated, beneficiaries, the duration of the project and its locality.

Your petitioners will ever pray; presented on behalf of the petitioners by the Member for Parliament for Turkana Central, hon. Ekwere Ethuro.

I table, Mr. Speaker, Sir.

(Mr. Ethuro laid the document on the Table)

(Dr. Otichilo stood up in his place)

Mr. Speaker: Member for Emuhaya, do you want to speak to that?

Dr. Otichilo: Mr. Speaker, Sir, I rise to second this petition---

Mr. Speaker: Order! You do not second. You make your contribution.

Dr. Otichilo: I want to support this petition.

First, I want to thank the Member for Turkana Central for bringing this petition. This petition is extremely important. The issues he has raised in this petition on behalf of the people of Turkana are very important particularly the issue regarding land. Land is so crucial. Land in Turkana belongs to the community and the people of Turkana. It is important for the people of Turkana to know the status of their land and how their land has been alienated or not alienated.

Secondly, the issue of how prospecting licences were issued is so crucial. The people of Turkana are entitled to know how these licences were issued and whether there was any exchange of money and whether they were entitled for any benefit on this money.

The other issue is that of environmental impact assessment statement. It is important that the people of Turkana know the environmental impact assessment on the future exploitation of this very important resource. This is because unless environmental and social impact assessment is known this can be a curse instead of being a blessing.

Finally, the issue of how the people of Turkana are going to benefit from this very important resource must be clearly spelt out. That is why it is very important for the Minister to come out very clearly to show how the people of Turkana and the people of Kenya in total are going to benefit from this resource.

I beg to support.

Mr. Speaker: Member for Bura, two minutes.

Dr. Nuh: Mr. Speaker, Sir, I do not know why the Government usually becomes very economical. I want to urge the Executive side that most time failure to give information that the public requires creates a lot of room for gossip and hearsay. Just the other day, we were hearing of a certain Cabinet Minister or a personality who had disposed of this Ngamia I parcel of land at Kshs800 million. The Government could not come clean because they are economical with information.

Turkana has been a place that has been disastrous in many aspects. There are people who fight over resources every other day including grass. Let us not make the discovery of oil another curse for the Turkanas now to start fighting the Government and ask for secession.

Mr. Speaker, Sir, it is only fair that the Government provides the relevant information to the stakeholders so that the Turkana people can know that the oil which is coming is not blood oil but will oil that will be a blessing for Turkana and this nation at large.

Mr. Speaker: Member for Naivasha, one-and-a-half minutes.

Mr. Mututho: Mr. Speaker, Sir, I want to thank Mr. Ekwee Ethuro. However, more fundamental is a call for a very thorough investigation to know whether somebody in Government knew there was oil there thereby setting up a series of events that led to all these quagmires that we are seeing. The same story would be said of what we heard this morning in respect to Lamu and Isiolo. Can the Government mechanism be put into place now so that all those people who are speculating or those who were in office at that particular time are the first point when oil was thought to be available in Turkana to be investigated thoroughly to see whether they betrayed the course of the Turkana people.

Mr. Kombo: Mr. Speaker, Sir, I also want to take this opportunity to thank Mr. Ekwee Ethuro for bringing this matter to the Floor early enough. Oil has been a curse in many parts of

the world and people who sit on the oil or where oil is discovered end up being extremely poor. Therefore, we need to know well in advance the Turkana who have been marginalized for a long time; famine and all these ills that have afflicted Turkana, when the oil is eventually commercially produced, the people of Turkana are benefiting so that it is not a curse to them as it has been in many parts of the world.

Mr. Hassan: Mr. Speaker, Sir, I stand to support the petition. It will be a double tragedy if the marginalized people of Turkana were again disposed of their basic rights because of the discovery of oil. I think it is important that there should be transparency in the prospecting of oil in that part of the country to allow those people to benefit from the resources that have been fortunately found under their soil. It is also important to have protection mechanism in any arrangements in future to ensure that they benefit from the social and economic of the oil prospective in which we should allow a significant percentage of that income to be used for the development of this people rather than for the enrichment of a few.

Mr. Speaker, Sir, I would also like to say that we need to protect the region of the County of Turkana from carpet beggars who will be streaming once the oil has been found in order to benefit from that and further marginalize the people of Turkana.

Mr. Mbadi: Mr. Speaker, Sir, a number of times the Government has information that the rest of us do not have. Therefore, those who are politically correct use this information to go and acquire land in areas where there are likely to be discoveries. I think this Committee needs to look at who owns land in these regions. If you are coming from another part of the country you need to tell us when you acquired this land. Up to recently nobody from another region could go to Turkana to buy land because Turkana is very dry. This Committee needs to look at the land ownership in this region and tell us who these Kenyans who had known that oil would be discovered and want to disadvantage the Turkanas are.

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): Mr. Speaker, Sir, I would also like to support this petition. Even as we congratulate ourselves as our country, it is important that we take care to make sure that the mistakes that have been made elsewhere in Africa with regard to the discovery of these kinds of resources are not repeated.

First, it is important to have a master plan in terms of how we can develop that region as we link it up to the rest of Kenya because a lot of development will be coming up. This will need infrastructure and we will need these people to be supported with other social services so that they are part of Kenya. If we can be thinking about a city like Dubai in Turkana and plan for it and link it to the rest of the country, that would be a great deal of help.

Secondly, it is important that we subscribe to the international community with regard to the law of disclosure so that whatever is coming out of these results is quite clear and known and how it is going to be distributed across the central government, regional government and any other company that is prospecting and making money out of it. More importantly, we must remember that it is a national resource and the people who must benefit the most are the people of Turkana. We should, especially use this resource to bridge the gap between the majority of our people and a few well connected individuals who continue to amass wealth at the expense of the majority of the people as they are doing in Rwanda, Nigeria and other places. This oil is a resource for those who are connected politically. We do not want to repeat that mistake in this country. These resources belong to the people and the benefits must be seen with the majority of the people of this country.

The Assistant Minister for Roads (Mr. Kinyanjui): Mr. Speaker, Sir, thank you for the opportunity to participate in this petition brought by the hon. Member. At the outset, I want to

say that as a country, it is a great honour and opportunity for us not only to improve the well being of our people but more so, to improve areas that have for a long time been largely marginalized. But it is important to remember that in areas in Africa where we have had oil, including in countries like Nigeria, the cost of petroleum in Nigeria is higher than in countries that do not produce oil like Kenya. Therefore, the discovery of this resource must be properly harnessed to ensure that it benefits the actual people who are sitting on this land.

Secondly, agreements between the Government of Kenya and the people who are exploiting this resource and, in particular, Turkana and many other places, this has to be clearly made because we know every time we have a great resource like this, it may end up coming into this country but only benefitting very few people. It belongs to Kenya and the people of Kenya must sufficiently benefit from it.

Lastly, the discovery of oil in that section of the country together with Uganda and Southern Sudan would mean that in Kenya, we have enough oil for us to have a refinery around Eldoret or that general area, so that we can refine. Therefore, as we explore this, let us also look at how we can do value addition so that we are not just supplying crude oil to the rest of Africa.

Mr. Speaker: Hon. Members, that is adequate ventilation by way of comments and observations from the rest of the House. The petition will stand committed to the Ministry in charge of mineral resources and the Ministry has to come up with a Statement through the House which will eventually end up with the petitioners. So you must note that difference; that if it is to the Committee, the Statement will just be tabled but if it is to a Government department then the Statement has to not only be tabled but also made in the House. So, the Minister for Natural Resources please note.

Leader of Government Business can you assure that there is compliance within 21 days because there is urgency in this matter?

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, yes, we will communicate. The Minister is coming on 27th June, 2012 so 21 days will fall when they are already here.

PAPER LAID

The following Paper was laid on the Table:-

The Report of the Departmental Committee on Defence and Foreign Relations on the disqualification of Ms. Gladys Chepkejei Tarus from the military training.

(By Mr. Keynan)

NOTICE OF MOTION

DISQUALIFICATION OF MS. TARUS FROM MILITARY TRAINING

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

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the disqualification of Ms. Gladys Chepkejei Tarus from the military training, laid on the Table of the House on, Thursday, 21st June, 2012.

QUESTIONS BY PRIVATE NOTICE

ERECTION OF ILLEGAL STRUCTURE ON L.R. NAIROBI/BLOCK/93/1418

Mr. Ethuro, on behalf of **Dr. Khalwale**, asked the Minister for Local Government the following Question by Private Notice.

(a) Is the Minister aware that an individual has put up an illegal structure (Car wash facility) on land L.R. NAIROBI/BLOCK/93/1418 which is between Plainsview Estate and Shell Petrol Station along Mombasa Road?

(b) Is the Minister further aware that the Minister for Lands accompanied by officers from the City Council of Nairobi demolished some illegal structures in 2010 on the same land and declared that the land was a road reserve?

(c) Could the Minister demolish the illegal structure forthwith and allow the residents of Plainsview Estate South 'B' to fence the area in order to avoid construction of such structures?

The Assistant Minister for Local Government (Mr. Nguyai): Mr. Speaker, Sir, I had asked the indulgence of the hon. Member and also the indulgence of the hon. Member asking on behalf of the hon. Member that I am not ready with the answer and I would want to answer it on Tuesday afternoon.

Mr. Speaker: Fair enough! In fact, Mr. Ethuro ought to have articulated the matter in that manner because Questions by Private Notice are not delegated but the damage is under control. So this Question is deferred until Dr. Khalwale is back to prosecute it.

(Question deferred)

DISREGARD OF NEMA RECOMMENDATION ON CONSTRUCTION OF SOUTHERN BY-PASS

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

(a) Could the Minister confirm that the Government has approved the de-gazettement of parts of Nairobi National Park for the construction of Nairobi Southern By-Pass road against the recommendation of NEMA?

(b) Is the Minister aware that the de-gazettement of any national park in the country is prohibited by law without the approval of Parliament?

(c) Is the Minister further aware that implementation of the proposed de-gazettement will set a dangerous precedent for demands for de-gazettement of various parts of national parks in the country by the local communities and could the Minister assure the House that the proposed de-gazettement will not be implemented and instead the earlier planned road reserve will be repossessed from illegal allottee(s) and developer(s) who may have encroached on the same?

Mr. Speaker: Minister for Forestry and Wildlife? Leader of Government Business, even though I was away from the proceedings of this House this morning, I followed what transpired and your Minister really ought to be here to answer this Question.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, now that they are aware that they are being looked for, perhaps we could give them some time to see whether they will come before the end of Question Time. Then otherwise, I will advise you on what we will do.

Mr. Speaker: Order! We have previously ruled that there is nothing like second round; giving another opportunity. The time when the sittings of this House commence is cast in stone as you know for many years. If the House meets at 2.30 p.m., it starts at 2.30 p.m. promptly. If it starts at 9.00 a.m., it starts at 9.00 a.m. So in that circumstance, I am afraid there is no reasonable explanation as to why the Minister is absent. So, I order that the Minister is not permitted into Parliament or the premises of Parliament for the rest of today. So the Minister will not have access to any place in Parliament. This Question will appear again on the Order Paper on Wednesday next week. Dr. Otichilo, please note.

The Serjeant-at-Arms' Office, comply, strictly so. The Minister includes the substantive Minister and the Assistant Minister. They will not even have access to their offices in Parliament.

(Question deferred)

LOSS OF HEAD TITLES FOR LAND IN MAAI MAHIU

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

(a) Is the Minister aware that the head titles for plots L.R. Nos.2755/1, 2781/2, 2718/2 and 10712 which were surrendered to the Ministry by the owners for sub-division were stolen as confirmed by a letter by the Chief Land Registrar to the Director of Criminal Investigations dated 26th October, 1994?

(b) Is the Minister further aware that the theft of those titles is causing tension amongst the *bona fide* owners of the said land in Maai Mahiu?

(c) When will the culprit(s) be arrested and arraigned in court since they are currently using the stolen head titles to sub-divide and sell the said land to members of the public?

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Speaker, Sir, I am able to answer the Question, but I do not have a written answer, if you allow me.

Mr. Speaker: I will allow you to answer the Question and supply the written answer subsequently, as first as you can. So, proceed. Member for Naivasha, follow the answer.

The Assistant Minister for Lands (Mr. Bifwoli): I do not have a written answer but I can answer, if I am allowed.

Mr. Speaker: Proceed and answer.

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

(a) Yes, I am aware that the the head titles for plots L.R. Nos.2355/1, 2781/2, 2718/2 and 10712 which were surrendered to our Ministry by the owners were stolen.

(b) We have taken the matter to the police to arrest the thieves.

(c) We do not know how far the police have gone in their investigations but we are requesting the Director of Public Prosecution to arrest and arraign them in court.

Mr. Mututho: Mr. Speaker, Sir, I seek your indulgence since the Assistant Minister has been generous enough to answer the Question without a written answer. I would like to table some documents here, which forms the background of what we are talking about.

Mr. Speaker: Proceed and get to the question quickly. You have two opportunities to ask questions.

Mr. Mututho: The Ministry alerted the police on 1st November, 1994, through a letter, which I would wish to table. The letter alerted the police that somebody had stolen the title deeds as confirmed by the Assistant Minister. The thief has gone ahead and used the forged documents, caused a subdivision of that scheme and he is now selling that particular scheme, which is likely to cause a big mayhem and fight because the *bona fide* owners of that farm had already settled peacefully.

Mr. Speaker, Sir, could the Assistant Minister give an indication of how soon, even if it means driving to the Director of CID, they are going to arrest the thieves, given that they have taken 18 years to cause any arrest or prosecution?

(Mr. Mututho laid the document on the Table)

Mr. Bifwoli: Mr. Speaker, Sir, let me assure the hon. Member that we have put a restriction on that particular parcel of land; that no transaction should be done. If anything is being done, it is illegal. Let Kenyans know that whoever is doing it is doing it outside our office.

Mr. Kabogo: Mr. Speaker, Sir, under Standing Order No.81, I would like to declare my interest in this Question. Among the *bona fide* owners who were given one parcel of that land in 1991 happens to be my father and I table a copy of the title.

(Mr. Kabogo laid the document on the Table)

Mr. Deputy Speaker, Sir, what is important is to understand that the genuine and *bona fide* owners of that land surrendered the original title for the purpose of subdivision. I would like to lay on the Table of the House a copy of the sub-division in 1991.

(Mr. Kabogo laid the document on the Table)

At some point, the Ministry found out that its employees were colluding with fraudsters. They released the surrendered original title and it is being used to sub-divide and deny genuine land owners their right. So, as the Assistant Minister has confirmed that investigations are going on, it is important to confirm to the House that those genuine owners who are enjoying the use of their land are protected and they continue to enjoy the use of their land without interference from the fraudsters.

Mr. Bifwoli: Mr. Speaker, Sir, let me honestly assure my brother that nobody is going to interfere with the legal owners of the land. We are aware that there are fellows who stole our original title deed and have generated their own documents, which we are not going to register at all. We are aware.

Mr. Langat: Mr. Speaker, Sir, this matter is almost similar to the Syokimau case, which we did some investigation. One of the recommendations was that the Ministry was supposed to do the vetting of the staff because it was found out that most of those fraudulent transactions actually happen with the help of the staff from his Ministry. Could the Assistant Minister tell us whether the exercise of vetting of the staff within the Ministry of Lands has been done or not and, if not, when are they going to do it?

Mr. Bifwoli: Mr. Speaker, Sir, even before vetting, if we discover that any member of staff is involved, we take disciplinary action immediately.

Mr. Mungatana: Mr. Speaker, Sir, you have heard the Assistant Minister admit that they were doing investigations. Now, since 1994 to date is about 18 years, surely, could the Assistant Minister really tell us whether, before he came to the House, he got a brief from the CID Director and if not, can he cause that to happen? It appears to me that there is no seriousness. In fact, the Assistant Minister, maybe, has not bothered at all to find out what is going on. Surely, the Director of Criminal Investigation must know. It is either that or there are some officials you are protecting in the Ministry. Could you, please, clarify the status of those investigations?

Mr. Bifwoli: Mr. Speaker, Sir, as I told you, we wrote to the Director of CID to investigate and we have even written a reminder. I think that is where our mandate ends. It is up to the CID to do the investigations and arrests. But ours is to report.

Mr. Speaker: Member for Naivasha, last question.

Mr. Mututho: Mr. Deputy Speaker, Sir, could the Assistant Minister consider coming and visiting the site, which is just about 30 minutes drive from where we are here, to assure the *bona fide* owners that, truly, they can enjoy peaceful settlement? I am saying that because as late as January this year, a conman has sold my four properties in Naivasha Town. With the help of the Assistant Minister's officers, they have got fake title deeds. That issue is rampant. Could you assure the Naivasha people that your department is functional and the CID are going to arrest all the people who are using stolen documents? He should come and visit the site itself.

Mr. Bifwoli: Mr. Speaker, Sir, I am more than willing to accompany the hon. Member of Parliament to go and assure the people of Naivasha that these things will be done. Secondly, if anybody sold your plot when you are inside and is a conman--- I have no control over conmen. But they will not reach our registry to change your name to the other man's name.

Mr. Speaker: Very well. Mr. Assistant Minister, you have many documents that have been tabled this afternoon. Ensure that you seize copies of them. Pass them on to the police and have action taken faster than it has so far been taken. 18 years is a long time.

Very well, we will take the Member for Lari.

CAUSE OF FIRE AT UPLANDS IN LORI LOCATION

Mr. Njuguna: Mr. Speaker, Sir, I beg to ask the Minister for Medical Services the following Question by Private Notice.

(a) Is the Minister aware that three children namely, Pauline Njeri Maina, Elizabeth Nyambura Maina and Catherine Wachuka Maina were burnt at Uplands in Lori location and admitted in the Intensive Care Unit at Kenyatta National Hospital on 9th May, 2012?

(b) Is the Minister also aware that one of the children, Catherine Wachuka, subsequently died?

(c) What was the cause of the fire and could the Minister consider paying the medical bills at the hospital since the parents cannot afford to pay?

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, may I crave the indulgence of the hon. Member for Lari and request that we answer this Question on Tuesday, next week. This is because we have not received all the information we need in the Ministry to answer this Question effectively as the hon. Member would require.

Mr. Speaker: The hon. Member for Lari, do you grant that indulgence?

Mr. Njuguna: Mr. Speaker, Sir, noting the point raised by the Minister, there is very crucial indication that has been given by the hospital that the two fire victims are likely to be released by next week. Aware that the family affected is very poor, he should, well in advance, address that concern.

Mr. Speaker: Minister, the hon. Member is willing to accommodate you, except for those urgent aspects. So, this Question is deferred to Tuesday, next week.

(Question deferred)

DISTRIBUTION OF SYRINGES TO DRUG ABUSERS/USERS

Ms. Shakila Abdalla: Mr. Speaker, Sir, although I have not received the written reply, I beg to ask the Minister for Medical Services the following Question by Private Notice:-

(a) Is the Minister aware that the Government is planning to distribute syringes to drug abusers/users in the country?

(b) How will the syringes help the users?

(c) Could the Minister confirm or deny that distribution of the syringes is a way of demonstrating Government failure to curb drug abuse in the country?

Mr. Speaker: Minister for Medical Services, once again; it is a Question by Private Notice, if the Minister is ready to answer it, you can proceed.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, again, I must apologize, but this answer requires inter-Ministerial consultation, especially with the Ministry of State for Provincial Administration and Internal Security, and you know what that Ministry has been going through. So, I request again that we answer this Question on Tuesday, next week.

Mr. Speaker: Hon. Shakila, are you fine with Tuesday, next week, for the reasons given by the Minister?

Ms. Shakila Abdalla: It is okay, Mr. Speaker, Sir.

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

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.1355

DESILTING OF HARAMBEE DAM IN KIKUMINI LOCATION

Mr. Kiilu asked the Minister for Water and Irrigation:-

(a) whether she is aware that residents of Kikumini Location in Makueni District are experiencing shortage of clean water due to complete silting of the Harambee dam, which was constructed in 1971;

(b) how much the Ministry has set aside for desilting the dam in the 2011/2012 financial year; and,

(c) what immediate measures she is taking to ensure clean water is accessible to the residents of Kikumini Location.

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

(a) Yes, I am aware that residents of Kikumini Location in Makueni District do experience shortage of clean water. The community has been depending on an earth dam called Harambee Dam, which was constructed by my Ministry in early 1970s, but silted up over the year.

(b) My Ministry allocated Kshs3.9 million for desilting of the dam in 2011/2012 Financial Year. A contractor called Agalka Construction was procured through competitive bidding in 2011 and completed the works in February, 2012.

Mr. Speaker, Sir, I wish to report to the House that the dam is now full to its capacity and serving the residents of Kikumini Location.

(c) My Ministry, through the National Water Conservation and Pipeline Corporation (NWCPC), has drilled a borehole one kilometre from Kikumini Market Centre which has a yield of six cubic metres to supplement supply from the dam. The laying of distribution pipelines to supply water from the borehole to the area is currently in progress and is expected to be completed in the first quota of the coming financial year. Further, my Ministry has been assisting the local institutions through water tracking, especially during drought.

Mr. Speaker, Sir, I remember we had answered this Question last week. The only thing that was lacking was the name of the contractor which I have given.

Mr. Speaker: Last question, hon. Member for Makueni.

Mr. Kiilu: Mr. Speaker, Sir, I concur with what the Assistant Minister has said. I want to thank him because last time, he was unable to disclose the name of the contractor who had been sourced competitively. Now that he has disclosed it, I have no further question to ask him.

Mr. Speaker: That will rest the matter. Mr. Assistant Minister, you have done well. Thank you.

Next Question.

Question No.1593

ERECTION OF ILLEGAL HIGH BUMPS ALONG
URIRI-KADRA-MIGORI-ISEBANIA ROAD

Mr. Pesa asked the Minister for Roads:-

(a) whether he is aware that some residents of Migori County have erected road bumps too high so that road users, especially those driving saloon cars, cannot drive smoothly along Uriri-Kadra-Migori-Isebania Highway;

(b) what he is doing to restore order in this important road used by Kenyans and neighbours who visit Kenya for trade purposes; and,

(c) what became of his promise on the Floor of the House that plans were underway to construct bumps along Rongo-Migori-Isebania Road.

Mr. Speaker: Where is the Minister for Roads?

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

(a) I am aware that some residents of Migori County had erected illegal bumps along Road A1 from Rongo to Isebania. My Ministry, through the Kenya National Highways Authority (KeNHA) has removed all the illegal bumps. The Ministry is doing everything possible to minimize accidents on our roads and where we have identified that bumps will lead to reduction

of the accidents, we shall not hesitate to do so. In the case of this particular road, my Ministry through KeNHA has laid standard bumps and rumble strips in critical centres such as Uriri, Migori and Maberu.

Thank you, Mr. Speaker, Sir.

Mr. Pesa: Mr. Speaker, Sir, I want to thank the Assistant Minister for the quick action they took on this particular issue, which has caused a lot of loss of life in Migori. In particular, I want to thank the Permanent Secretary, Eng. Kamau, because I saw him on Thursday and, by the weekend, the bumps had been removed. Two days later, the proper bumps had been erected. So, I need to thank him for that good work.

Now that the bumps have been put in place, when are you going to put up the road signs and the road markings so that the people who approach the road can be warned in time before they pass over the bumps?

Dr. Machage: Mr. Speaker, Sir, we are currently working on the shoulders of the road and as soon as possible. Before the end of this year, we will, probably, embark on that exercise.

Mr. Pesa: Mr. Speaker, Sir, I rest my case there. I am very satisfied with the response.
Next Question.

Question No.1594

NON-PAYMENT OF DEATH GRATUITY TO
WIDOW OF CPL. M.L. SIGIRTEI

Dr. Monda asked the Minister for Finance:-

- (a) whether he is aware that Corporal Mairiria Lisirma Sigirtei's (PF No. 55439) death gratuity has not been paid since 2008; and,
- (b) when the widow of the deceased will be paid.

The Minister for Finance (Mr. Githae): Thank you, Mr. Speaker, Sir. I have so many files here with me. Allow me to get the one on the Question about pension.

Mr. Speaker: Order, Minister! Could we allow you a few minutes to organize yourself?

The Minister for Finance (Mr. Githae): Yes, please, Mr. Speaker, Sir.

Mr. Speaker: I will take the hon. Member for Isiolo South in the meantime.

Question No.1497

LACK OF VEHICLE FOR GARBATULLA DEO

Mr. Bahari asked the Minister for Education:-

- (a) whether he is aware that the official Government motor vehicle assigned to Garbatulla DEO's office has been grounded since June 2010; and,
- (b) what he will do to ensure that the DEO has a vehicle available for use.

Mr. Speaker: Minister for Education? Is the Minister for Education not here? Minister for Education, Question No. 1497!

An hon. Member: He is here!

The Minister for Finance (Mr. Githae): As you call out for the Minister, Mr. Speaker, Sir, I am reading---

Mr. Speaker: Proceed and answer Question No.1594!

The Minister for Finance (Mr. Githae): Thank you, Mr. Speaker, Sir, for that indulgence.

Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that Corporal Mairiria Lisirma Sigirtei, Service No. 55439, death gratuity has not been paid since 2008. In fact, the true position is that the Pensions Department paid the death benefits due to the estate of the deceased former military officer on 7th February this year to his two widows, Mrs. Selina Lisirma and Mrs. Koinange Lisirma through their respective bank accounts at Kenya Commercial Bank (KCB) Maralal. Payments were made using Electronic Funds Transfer (EFT) Reference No.28708 and 28710 at KCB, Maralal.

In view of the answer in part “a” part “b”, therefore, does not arise

Dr. Monda: Mr. Speaker, Sir, the transferred money, according to the Minister, did not get into that account and, therefore, there was not, indeed, a transfer, because this account was long closed after one of the widows died. What is the Minister doing to ensure that the remaining widow receives this money, so that she can assist the large family that she was left with when her co-wife died?

Mr. Githae: Mr. Speaker, Sir, I am in a very awkward position because the total amount was divided amongst the two widows. The money was actually sent, received and withdrawn by the same. As I said, Kshs458,432 was sent to Mrs. Selina Lisirma, Account No.1116410842, Kenya Commercial Bank (KCB), Maralal and Koinange Lisirma, Kshs458,432.90, Account No.1116411067, KCB, Maralal. I have even given the Electronic Funds Transfer (EFT) numbers, which were 28708 and 28710. If the allegation is that one of the widows never received the money, then really that is more of a police case. It then means that there is somebody who pretended to be Mrs. Selina Lisirma and got the money. So, I would request that we defer this Question, so that I can talk to the Member of Parliament to give me those details and then, we now make it a police case. This is because some fraud could have been committed in this case.

Mr. Speaker: Dr. Monda, that is a useful proposal and I think you should accept it.

Dr. Monda: Mr. Speaker, Sir, indeed, I agree with the Minister, so that he finds supporting evidence that the money was withdrawn and who did it.

Mr. Speaker: Very well! The Question stands deferred for the next one month.

Mr. Minister, note that the Question will appear again on the Order Paper after one month from today.

(Question deferred)

Question No.1497

LACK OF VEHICLE FOR GARBATULLA DEO

Mr. Bahari asked the Minister for Education:-

(a) whether he is aware that the official Government motor vehicle assigned to Garbatulla DEO's Office has been grounded since June 2010; and,

(b) what he will do to ensure that the DEO has a vehicle available for use.

The Minister for Education (Mr. M. Kilonzo): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that the official Government vehicle, GKA 977R, assigned to the District Education Officer (D.E.O), Garbatulla District, has been unserviceable for quite sometime.

(b) The Ministry arranged for inspection of the vehicle by the Chief Mechanical and Transport Engineer at the Ministry of Roads and took it to the agent, CMC, Nairobi, for repair. The vehicle is currently undergoing such repair, which involves overhaul of the engine, among other works. It is expected to be completed in a month's time and handed over to the D.E.O immediately.

Mr. Bahari: Mr. Speaker, Sir, I want to thank the Minister for the answer. But June 2010 to June, 2012 are two years, just to repair a vehicle. What action will the Minister take against the staff who are responsible for this matter, since the Ministry of Education is sensitive and exams could not be done as required? This is a very serious matter and we give them money all the time.

Mr. M. Kilonzo: Mr. Speaker, Sir, I share the concerns of the hon. Member in this House because it is really unfair for a vehicle to take two years to repair. My investigation of this matter has demonstrated a problem, not with the personnel, but with our procurement systems. I am happy to inform the hon. Member that since the quotation for repair was Kshs747,000, this required approval by the Ministerial Tender Committee under the procurement regulations. I have been aware for sometime of the shortcomings of these regulations and law and it is not fair at this point to assign responsibility to individuals in the Ministry. We have faced enormous challenges in having to keep up with these regulations. I admit that there has been delay and it is very unfortunate. But, if I were to give the details of what has happened, you would be surprised. The problem is the procurement system that we have under the law.

Mr. Kigen: Mr. Speaker, Sir, many District Education Officers are unable to conduct inspection in schools because either their vehicles are very old and unable to go to certain areas or they do not have those vehicles at all. What is the Minister doing to ensure that districts which do not have those vehicles are actually given vehicles, so that they can do their work well?

Mr. M. Kilonzo: Mr. Speaker, Sir, again, I want to thank the Member for Rongai, who is also my Member of Parliament, for raising that issue, because it is a matter that is also a concern to the Ministry. It is not just the DEOs who require motor vehicles, but we also need motor vehicles for the recently deployed County Education Directors. Right now, in the Estimates, this House will be aware that we have been assigned some money that may enable us to buy a number of vehicles, but it is not enough. Therefore, we are in the process of doing mapping so that we can determine how the small number of vehicles that we are going to buy, using the money that has been assigned in the Estimates--- The hon. Members will be aware that the Budget Committee has, in fact, recommended the chopping by nearly 30 per cent of these items. But we will do mapping and at some point, I will come and table in this House, how we are going to assign the small number of vehicles that we can secure at this point in time. In future, we will be asking for sufficient facilitation for the purchase of vehicles, for all County Education Directors and DEOs, because education for this country is vital. Therefore, I share those concerns but my hands are tied. For those vehicles that have broken down, as I said, so long as the quotation is in excess of Kshs500,000, then we have to use the procurement law and regulations. But if there is any Member of Parliament who has a vehicle that has broken down and it can be repaired for less, I would request that you merely walk into my office, so that we can find a method of rectifying the situation.

Mr. Kigen: On a point of order, Mr. Speaker, Sir. In the 2010/2011 Budget, there was a proposal by the Ministry of Education to buy new vehicles for the district education officers. Now, the Minister says that they are doing mapping to determine the number of vehicles that are needed and in which districts. Is it in order to start a process that, according to his Ministry, had

already been advanced and had reached a level where they were buying the vehicles, since they had already known which districts did not have vehicles?

Mr. Speaker: Minister, is it true that you are misleading the House?

Mr. M. Kilonzo: No, Mr. Speaker, Sir. I would never dare mislead the House. The fact of the matter is that we are aware of these demands, but since the House, in the Budget process, did not allocate us sufficient money to give each and every DEO a vehicle throughout the country, that is the meaning of mapping, so that we can find a method of prioritizing, because we cannot buy vehicles for everyone. The money allocated could only buy so many and no more.

Mr. Chanzu: Mr. Speaker, Sir, the amount of Kshs700,000 that this vehicle is supposed to cost in terms of repairs I think is quite substantial. I raised a similar Question about two years ago and the Ministry improvised and gave a small vehicle which cost between Kshs1.2 million and Kshs1.5 million. Considering that the area where the Member who has asked the Question comes from, it is rather a difficult terrain, in these two years, could the Minister consider looking around and getting a vehicle for the time being? I am sure that there must a number of vehicles that he can change around.

Mr. M. Kilonzo: Thank you very, Mr. Speaker, Sir. The fact of the matter is that I am grappling with this situation. I wish I could find a quick solution so that we give our District Education Officers vehicles. I agree that a repair cost of Kshs747,000 seems to be on the high side but if the hon. Member heard what I read, he will find that the answer says that we have to overhaul the engine but the cost for the rest of the body is not so much. Therefore, by using the procurement method, we will determine whether it is cheaper to repair the vehicle than to completely write it off. The one for Garbatulla is reparable. As I said, the problem has been the procurement process and meeting the requirements of the financial year. However, if I get an opportunity to find cheaper vehicles for Distinct Education Officers, we will make the presentation in this House so that we can get the approvals as necessary.

Mr. Bahari: Thank you, Mr. Speaker, Sir. I want to persuade the Minister not to be persuaded by the mandarins in his office to justify that because of the procurement process, he can hold on for two years. That is quite unrealistic. Perhaps for the remote and arid areas where transport is a problem whether the Minister can consider, in such circumstances, to put aside some money, however, small it is for hire of vehicles in extreme circumstances like this?

Mr. M. Kilonzo: Mr. Speaker, Sir, the hon. Member is right. But as I said, we are mapping the areas to determine the best way to facilitate these officers to oversee the policy on education as required by Fourth Schedule of the Constitution. However, at this point in time, I am not in a position to promise that it is something we can roll out quickly. This is because right now, we are concentrating on the reforms in the education sector. Hiring of vehicles must depend on the budget forces under Articles 218, 221 and 222 of the Constitution. So, I will use the available resources as approved by this House from time to time.

Mr. Speaker: Order! Hon. Members, there is a balance of one Question, No.1629, and I am afraid that because of the nature of business on the Order Paper, I will defer that Question to Tuesday, next week at 2.30 p.m. That Question will take priority over other Questions that will be due then.

So, that closes Order No.6.

Question No.1629

DETAILS OF HEALTH FACILITIES/PERSONNEL

IN SAMBURU EAST CONSTITUENCY

(Question deferred)

Next Order!

Mr. Speaker: Are there any Statements that are due today? Leader of Government Business, I know that you have a Statement that is due. The Deputy Leader of Government Business was here. Does the Deputy Leader of Government Business hear me from wherever he is? In the meantime, what is it the Member for Ainamoi?

POINTS OF ORDER

CONSTRUCTION STATUS OF MAU
SUMMIT-KERICHO/KERICHO-KISUMU ROAD

Mr. Langat: Mr. Speaker, Sir, about one month ago, I had requested a Statement from the Ministry of Roads concerning the construction status of the Mau Summit-Kericho and Kericho-Kisumu Road.

Last week, the Deputy Leader of Government Business promised that it will be presented today. I thought I had seen the Minister around but he is not ready to deliver the Statement.

Mr. Speaker: Order! Can the Minister ensure that this Statement is delivered on Tuesday at 2.30 p.m? The hon. Franklin Bett was here and so is hon. Kinyanjui.

The Assistant Minister for Roads (Mr. Kinyanjui): Mr. Speaker, Sir, I undertake to deliver the Statement on Tuesday, next week.

Mr. Speaker: Do that without fail because you are already in breach.

PROGRESS REPORT ON PUBLIC FINANCE MANAGEMENT BILL CONSULTATIONS

Mr. Okemo: On a point of order, Mr. Speaker, Sir. During this morning's session, the Speaker directed that the Departmental Committee on Finance, Planning and Trade, the Budget Committee and the Minister for Finance hold a meeting to look at the proposed amendments to the Public Finance Management Bill. He directed that we go and meet, carry out the exercise and then come and report the progress to the House. That is what I would like to do now.

Mr. Speaker: Proceed.

Mr. Okemo: Mr. Speaker, Sir, we have gone through a number of amendments but we are very far from completing them. Going by what we experienced in the short time we were together, I think we will need, at least, two days. We propose and we have agreed with the Ministry and the two Committees, that we continue with these meetings to look at the recommendations and amendments on Monday at 8.00 a.m. because Members are committed with workshops and other things and so they will not be available tomorrow, Saturday and Sunday. So, we would like to ask the House to consider postponing the debate on the Public Finance Management Bill up to Tuesday. I think by that time, we will be ready with all the recommendations and I would, therefore, like to ask for the indulgence of the House on this matter.

Mr. Speaker: Fair enough. Depending on what the Deputy Leader of Government Business says in his Statement to the House this afternoon, I will give directions on the fate of the Public Finance Management Bill.

Mr. Speaker: Yes, Mr. Minister---

The Minister for Transport (Mr. Kimunya): On that one or on any other issue?

Mr. Speaker: Depending on what you say in your Statement. I am asking you for a response to the issue raised by the Member for Nambale.

MINISTERIAL STATEMENT

BUSINESS FOR THE WEEK COMMENCING 26TH JUNE, 2012

The Minister for Transport (Mr. Kimunya): Thank you, Mr. Speaker, Sir. I would like to take this opportunity to make the following Statement with regard to business for next week.

First, let it not escape out attention that we, Members, once again demonstrated our commitment to the call of our legislative duty by sitting late last night, indeed, up to one minute to midnight. During the Special Sitting we had this morning, we concluded some business with special reference to the Statutes Law (Miscellaneous Amendments) Bill, Bill No.14 of 2012 today. I want to take this opportunity to thank the Members for that commitment. On the same note, again, we obviously expect that there will be more business coming our way this afternoon and I expect the same commitment and teamwork so that we can dispose of the business that we have.

As hon. Members will note, on the Order Paper today, the House Business Committee had scheduled a Motion for Adjournment of the House to a day other than the next normal sitting day which would have meant adjourning today for four weeks. However, due to the understanding that was reached this morning and which has been reported by the Chairman of the Departmental Committee on Finance, Planning and Trade, we wish to reschedule the following for Tuesday afternoon subject to your concurrence, Mr. Speaker. We should discuss the Public Finance Management Bill, Bill No.7 of 2012, The Teacher Service Commission, Bill, Bill No.17 of 2012 and the Public Service Commission Bill, Bill No.16 of 2012.

Also for consideration will be the Motion to adopt the Report of the Departmental Committee on Health on the alleged irregularity of rolling out the civil servants outpatient medical scheme laid on the Table of the House on Tuesday, 5th June, 2012. Upon completion of those, we can then have a Motion for Adjournment. So, we can adjourn on Tuesday. I believe that with the usual show of solidarity that was demonstrated yesterday, this morning and what we expect this afternoon, we can release the Committee to go and finalize on the finance matters so that on Tuesday, we finish all this business and rejoin our constituents and the other people that we needed to work with during the recess which we should have had today but which we hope we can have on Tuesday. Failure in that, obviously, we will take it from there on Tuesday whether we will need to reschedule orders for the week.

Mr. Speaker: Order! In that case, the orders that were on the Order Paper this morning on the Public Finance Management Bill will, again, be on the Order Paper on Tuesday, next week at 2.30 p.m. That is the direction given.

(Applause)

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker: Order, hon. Members! Before we proceed on to the next Order, as I had promised you yesterday, I have a Communication to make.

COMMUNICATION FROM THE CHAIR

CONSTITUTIONALITY OF TABLING OF MOTION ON VOTE ON ACCOUNT

Hon. Members, during the afternoon sitting of the House yesterday, Wednesday, 20th June, 2012, the Member for Gwasssi, hon. John Mbadi, rose on a point of order and sought the ruling of the Chair on a matter of the tabling of a Motion on Vote on Account. He laid on the Table two letters from the Treasury dated 19th June, 2012 and 20th June, 2012, respectively. One of the letters was addressed to the Chairperson of the Parliamentary Budget Committee and related to the Report of the Committee on the Estimates of Revenue and Expenditure for the Financial Year, 2012/2013.

In this letter, the Treasury sought to inform the Committee that although the Treasury agreed in principle on the recommendations made by the Committee on the Estimates as approved by the House, the Treasury was concerned that some of the proposed expenditure cuts would have adverse effects on the ability of the Government to deliver some critical services.

Hon. Members who are at the bar may now walk in.

(Hon. Members at the entrance walked into the Chamber)

Regarding this particular letter, hon. Mbadi contended that it amounted to a calculated attempt by the Treasury to demonstrate that the Estimates approved by the House were incapable of implementation, a situation he termed as being unacceptable.

Hon. Members, by the letter dated 20th June, 2012, the Treasury forwarded to the Clerk of the National Assembly a Motion on Vote on Account for the financial year 2012/2013 duly signed by the Minister for Finance and the Vote on Account Schedules in respect of Recurrent and Development Expenditure for the financial year 2012/2013.

Hon. Mbadi contended that in order to ensure compliance with Article 222 of the Constitution, a Motion on Vote on Account for the financial year 2012/2013 could not be introduced for debate in the House unless it was preceded by the introduction of an Appropriation Bill.

In support of his position, hon. Mbadi tabled before the House a judgment by Justice David Majanja in a High Court Petition No.108 of 2011: Jayne Mati and Another v. Attorney-General and Another.

Hon. Mbadi summed up his contribution by stating that the two letters from Treasury constituted Acts of impunity and violation of the Constitution that should not be condoned. Hon. Members, the Chair undertook to give directions on this matter today, Thursday, 21st June, 2012, noting nevertheless that the House transacts its business based on traditions, precedence, the Standing Orders, the Constitution and other written laws.

Hon. Members, from the point of order and arguments made by hon. Mbadi I have determined the following as issues requiring my direction:

1. Whether pursuant to Article 222 of the Constitution, the Motion on Vote on Account is admissible in the House in the absence of a published Appropriation Bill.

2. The implications of the ruling by the High Court of Kenya in the matter of Jayne Mati and Another v. Attorney-General and Another, 2011 delivered by hon. Justice Majanja on 23rd December, 2011.

3. Whether the Vote on Account should be based on the original Estimates laid by the Minister for Finance on 26th April, 2012 or whether it should instead be based on amended and reviewed Estimates in line with the Budget Committee Report adopted by the House on 7th June, 2012.

I think that the first two issues can be fairly considered and disposed of together by revisiting the ruling made by the Chair on 7th June, last year as well as the decision of the court in the Jayne Mati Case. Faced with somewhat similar circumstances last year, the Chair ruled that Articles 221 and 222 were in force and that it was incumbent on this House and the Executive to abide by them in the Budget-making process. The Chair explained the elaborate process contemplated by the Constitution culminating into the introduction of an Appropriation Bill in the House by the Minister for Finance, or in future by the Chairperson of the Budget Committee once the Estimates have been approved.

The Speaker ruled that the budget process has in-built mechanisms for dealing with unforeseen events in order to avoid the possibility of what is sometimes described as a financial shut down of the Government. It was explained that the purpose of Article 222 of the Constitution is to enable the National Assembly to authorize the withdrawal by the Government of money from the Consolidated Fund in the event that the Appropriation Bill may not be assented to or is unlikely to be assented to at the beginning of a new financial year.

It will be recalled that the Chair emphasized the doctrine of separation of powers and the prerogative of each arm of the Government to proceed in the budget process based on its interpretation of the Constitution and that for Parliament's part, he would have recourse to Article 259(1) of the Constitution requiring the Constitution to be interpreted in a manner that promotes its purposes, values, principles, advances the rule of law, permits the development of law and contributes to good governance.

Applying these provisions, the Speaker, underlining his hope that the shortcomings occasioned by the Executive in the budget process last year would not recur, allowed the budget process to proceed but also set out guidelines for this year's and subsequent budget processes.

Hon. Mbadi contended that in order to ensure compliance with Article 222 of the Constitution, a Motion on Vote on Account for the financial year 2012/2013 could not be introduced for debate in the House unless it was preceded by the introduction of an Appropriation Bill. In support of his position, he tabled before the House a judgment by Justice David Majanja in the High Court Petition No.108 of 2011, Jayne Mati and Another v. Attorney-General and Another. Hon. Mbadi summed up his contribution by stating that the two letters from Treasury constituted acts of impunity and violation of the Constitution that should not be condoned.

Hon. Members, I think I had one page which was typed twice. Nevertheless, as pointed out by hon. Mbadi, the matter of last year's budget process and in particular the Vote on Account found its way to the High Court in the Jayne Mati Case where the court was urged to find that the National Assembly contravened Articles 114, 206, 221, and 222 of the Constitution of the Republic of Kenya by permitting debate, approving and passing the Motion on Vote on Account

authorizing the withdrawal of money from the Consolidated Fund without the passing of an Appropriation Bill.

In the judgment of the High Court, which was tabled by hon. Mbadi, the court ruled, among other things in paragraph 25 of the ruling, that Article 222 contemplates the existence of an Appropriation Bill hence the reference to the words in Article 221 which say: “If the Appropriation Act for the financial year has not been assented to or is not likely to be assented to”. These words import the existence of a Bill that is within the legislative process or a Bill which has been passed, but is awaiting Presidential assent.”

Paragraph 27 of the same ruling – Judgement: I, therefore hold that for there to be compliance with Article 222, there must be an Appropriation Act or Bill in place and it was in breach of the Constitution to proceed to withdraw money from the Consolidated Fund without the existence of an Appropriation Act or Bill. This finding does not end the matter.

Despite this finding of the court, Justice Majanja declined to issue the declaration sought in the petition on the grounds that he was satisfied that the Speaker’s ruling to allow the Vote on Account to proceed last year – the procedures adapted and directions given by the Speaker - were made in good faith and they were not calculated to undermine the constitutional bedrock of the Budget process and the Constitution itself.

It was unclear as to whether the Minister for Finance was aware of this judgement in bringing the Motion for Vote on Account and, if so, how, regardless of the ruling of the Chair, he proposes to deal with it in light of the doctrine of separation of powers, as I have enunciated. I think that it would have been useful to hear the thoughts of the hon. Attorney-General, the Principal adviser to the Government on this matter.

Hon. Members, on the issue of the estimates on which the Vote on Account should be based, given that Article 221 of the Constitution is in force and requires interpretation in the spirit of Article 259 of the Constitution, it follows that the Appropriation Bill referred to in Clause 7 of Article 221 of the Constitution and which subsequently gives rise to the Appropriation Act referred to in Article 221 of the Constitution is based on the estimates of expenditure that have been reviewed and approved by the House in line with Article 221 of the Constitution.

In this regard, an Appropriation Bill which draws its legal mandate from Article 222 of the Constitution cannot be based entirely on drafts of estimates of expenditure unilaterally presented to this House by any single arm of Government. It will follow that an Appropriation Bill needs to be based on estimates that result from a comprehensive review – an amalgamation by this House, which in this case, would be the estimates that result from the approval of this House of the report of the Budget Committee on the 2012/2013 estimates of the revenue and expenditure.

Hon. Members, arising from the foregoing and considering all pertinent circumstances, I will now rule on the way forward on this matter. In so doing, I am guided by the precedence of this House, our Constitution and of other kindred jurisdictions on the matter of Vote on Account. I also know that the current Article 222 of the Constitution is not entirely new. Section 101 of the former Constitution had similar provisions and was the basis for the Vote on Account. It was not understood in law or practice to be a requirement that the publication of an Appropriation Bill had to precede the Motion for Vote on Account. But that is not all. The argument that Article 222(1) has an implication that there has to be in existence a published Appropriations Bill can be countered by the equally persuasive argument that there is no such implication and the Vote on Account is introduced as set out in Article 222.

This is the Article - 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 so as to enable the National Assembly to authorize the withdrawal of money from the Consolidated Fund for the purpose of meeting expenditure necessary to carry out on the services of the National government during that year until such time as the Appropriation Act is assented to---. The Article is clear; the amount to be withdrawn should not exceed in total one-half of the amount included in the estimates of expenditure for that year that have been tabled in the National Assembly. The Vote on Account, therefore arises if the Appropriation Act for the financial year has not been assented to or is not likely to be assented to by the beginning of the year.

The provision in the Constitution proceeds and says – I read:-

“(1) 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 so as to enable the National Assembly to authorize the withdrawal of money from the Consolidated Fund.

(2) Money withdrawn under clause (1) shall-

(a) be for the purpose of meeting expenditure necessary to carry out 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 expenditure for that year that have been tabled in the National Assembly”.

Hon. Members, whatever the reason, this argument is enhanced by the comparative practice in most jurisdictions where every effort is made to avoid a scenario that results in the shutdown of Government and, therefore, denial of the citizens of their constitutional right to services.

Hon. Members, for all these reasons, I feel that I am guided once again by the constitution and, as I indicated, the precedent set out in the ruling of the Speaker on June 7th 2011. I, therefore, find that from the standpoint of Parliament, the position that it is a requirement for a published Appropriation Bill as a condition precedent to the mentioned Vote on Account cannot be presumed on that basis. And considering the totality of the current prevailing circumstances, the Minister for Finance shall be permitted to give notice and to prosecute a Motion for Vote on Account.

Thank you, Hon. Members.

(Applause)

Mr. Mungatana: Mr. Deputy Speaker, Sir, I want to thank you for your ruling and I agree with part of it, but even assuming that we are going to proceed on the basis of Article 222; that whether or not the Appropriation Act has been assented to, we can still approve the estimates. My point is only one, which I listened to carefully but I did not see you hammering it. Which estimates are we going to be looking at? This is because this House has already put a report here to seek amendments through the Budget Committee of the Printed Estimates the Minister has laid on the Table. If this House has already said there are amendments, the proper thing would have been for the Minister to reprint the estimates in accordance with the recommendations of the Budget Committee and it is on that basis that we could have said: “Okay, let us go on with the Vote of Account and let us withdraw the 50 per cent.” However, as it stands now, we have two positions on the estimates. There is the Printed Estimates the Minister has laid on the Table and there is the one that after the Budget Committee talked with the

Minister via various inter departmental committees' inputs, the Minister now ought to have brought the second reprinted estimates.

So, the House has two positions there and the latest position is the one of the Budget Committee. It is wrong for us to purport to approve what this House said is not correct. So, we cannot proceed on the basis of the Estimates that the Minister tabled here.

Mr. Deputy Speaker, Sir, I beg that you reconsider that issue.

Thank you.

Mr. Deputy Speaker: Hon. Members, the position of the Chair on this matter is that, as it has always been the tradition, a Vote on Account is essentially a sum of money not exceeding 50 per cent of the National Budget.

(Loud consultations)

Mr. Deputy Speaker: Order! Hon. Members, the Chair is talking. So, listen to the Chair, first.

This is a sum of money which is essentially designed to be borrowed as a loan. Appropriation is going to be done on Item by Item by Parliament. If by the end of August the Appropriation Act is not in place, which means that the Appropriation Bill should have been passed by this House and assented to by the President; indeed, there is going to be a shutdown of Government operations.

So, the tradition has been to allow the Government to proceed on while it puts its own house in order.

(Mr. Okemo stood up in his place)

Mr. Deputy Speaker: Are you on a point of order, hon. Chris Okemo? You are an authority on these matters. Proceed.

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. I want to raise a matter touching on procedure.

Mr. Deputy Speaker: What is it, hon. Ruto?

Mr. Ruto: Mr. Deputy Speaker, Sir, as a matter of procedure, once the Chair makes a ruling on a matter, I do not know whether we continue to debate the same matter or, in this case, whether we could go to Order No.8 and start dealing with this matter substantively.

Mr. Deputy Speaker: Thank you very much, hon. Ruto. For once, you have done something good for the House and the country.

(Laughter)

Mr. Deputy Speaker: Anyway, I have said that on a light touch, hon. Isaac Ruto. Hon. Members, that matter has been disposed of. We should now proceed to the next Order.

COMMITTEE OF SUPPLY

(Order for Committee read)

Mr. Deputy Speaker: Proceed, Mr. Minister!

(Mr. Okemo stood up in his place)

Mr. Deputy Speaker: Hon. Okemo, the Chair would always love to hear your wisdom. You have been in this business for a long time.

Mr. Okemo: Mr. Deputy Speaker, Sir, may I say what I was going to say before hon. Isaac Ruto came in with a clever manoeuvre?

Mr. Deputy Speaker: Please, proceed.

Mr. Okemo: Mr. Deputy Speaker, Sir, I have a lot of reservations about the Motion that we are about to debate. I do so, having read the Constitution very carefully. The Budget process, as outlined in the Constitution, has not been followed. In fact, the only problem between debating this Motion and adopting what we are trying to say is just increasing the time, maybe, by one or two days and we should be able to comply with the Constitution. Why are we in a hurry to contravene the Constitution?

After the Estimates were presented to this House, they were referred to the relevant Committee, which is the Budget Committee. We even went ahead to do consultations. The Committee actually went to all parts of Kenya and got views from members of the public. Are we saying that we got those views in vain? Did we act in vain?

We wanted to hear those views, so that we could incorporate them in the Budget Estimates. That is why there was public participation. That exercise produced a number of recommendations. Those recommendations were captured in the Report of the Budget Committee, which was subsequently brought here, debated and adopted. In fact, they are no longer recommendations of the Committee. They are resolutions of Parliament.

Mr. Deputy Speaker, Sir, we are now saying that those resolutions should be incorporated in the Revised Estimates, which should then be brought here. After we have agreed on those Revised Estimates and approved them, as Parliament, the next thing is to debate the Ministries' Votes. Due to limitation of time, and because the Committees of this House have been engaged sufficiently, the debate can be limited to the Vote of one Ministry and the rest of the Votes can be done by Guillotine.

That process has to be undertaken. Once that happens, it will produce the substance that goes into the Appropriation Bill. In fact, even before the Appropriation Bill is published, if the exercise of debate on the Votes is brought here and the House approves the Estimates through approval of the Votes and Guillotine, what will be left for the Minister is merely to go and publish an Appropriation Bill. All these things can happen in one or two days.

An hon. Member:---(Off record)

Mr. Okemo: Mr. Deputy Speaker, Sir, they can happen in one or two days. What is so difficult? We have already been engaged, as Committees of Parliament, in terms of looking at all the Ministries' Votes. Each Committee here represents various Ministries, and they have already approved the various Votes. So,---

(Loud consultations)

Mr. Deputy Speaker: Order! Order! Hon. Members, whereas I appreciate what hon. Chris Okemo is saying, given his long experience in this field, the Chair also must notify the House on the standpoint from the Chair.

Indeed, the wisdom in the Constitution right now, in this new dispensation, is that the recommendations of the Budget Committee, which have become a property of the House, must be brought on board. Indeed, the Minister has to know that even after the Vote on Account is passed – a Vote on Account is essentially an advance – he has the responsibility of taking the sentiments of hon. Members on board. Two months down the line, the House has got, again, within its own powers, instruments it could use to cause the shut down that we are avoiding right now. So, it is the Minister who will probably give us his position.

Hon. Members: Point of order! Point of order!

Mr. Deputy Speaker: Order! Order, hon. Members! Can we hear the Minister?

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, it is important that hon. Members listen to me.

Hon. Members: Point of order! Point of order!

Mr. Deputy Speaker: Order! Order! Hon. Members, when the Chair gives you a direction, you follow that direction and wait for your moment.

Proceed, Minister.

The Minister for Finance (Mr. Githae): Thank you, Mr. Deputy Speaker, Sir. Can I, first, move the Motion and then make my contribution?

Mr. Deputy Speaker: Move the Motion first.

COMMITTEE OF SUPPLY

MOTION

VOTE ON ACCOUNT

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, I beg to move:-

THAT, in accordance with Section 222 of the Constitution of Kenya, the withdrawal of Kenya shillings 424,666,046,946, representing one-half of the total net estimates of Recurrent and Development Expenditure made up in the manner set out in the Vote on Account Schedules laid in the House, be authorized for the purpose of meeting expenditure necessary to carry on the services of the Government of Kenya during the year ending on 30th June, 2013, until such time as the Appropriation Act for the year comes into operation.

His Excellency the President has given his consent to this Motion.

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order! Order! Hon. Keynan, hon. (Dr.) Nuh and hon. Mbadi, do you think after the Chair has given direction on a matter, you can change that direction by standing on points of order? The Chair has given the Floor to the Minister for Finance to move the Motion.

Proceed, Minister.

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, I would like to, first of all, thank the Budget Committee for the work that it did. The Committee came up with its own recommendations. I actually instructed the Treasury officials that they must take on board

everything that the Committee has recommend when preparing the Appropriation Bill. The problem came when they brought to my attention some of the implications of the Committee's recommendations. I did not want to say this but I am now going to say it.

One of the Budget Committee's recommendations was that the allocations for domestic travel be reduced by 30 per cent. We realised that if this happens, three Ministries will be affected. The first one is the Prisons Service. We realised that prison authorities will not be able to take prisoners from remand cells to court. The same applies to the Police Service. This recommendation also effectively reduces the mileage of Members of Parliament by a similar amount. Then the other issue was on the Local Authorities Transfer Fund (LATF). The recommendation is that, again, 20 per cent of grants to the Government to semi-autonomous Government institutions be reduced. The effect of that is to reduce the Constituency Development Fund (CDF) which is based on an Act of Parliament. It is also to reduce LATF---

Mr. Shakeel: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to mislead the House? Firstly, the CDF is ring-fenced and the 30 per cent will not affect it. Likewise, mileage is an item that is also ring-fenced but we are prepared to lose that. When he talked about the CDF, I said that it is ring-fenced. Is the Minister in order to mislead the House about the CDF?

The Minister for Finance (Mr. Githae): Thank you, Mr. Deputy Speaker, Sir. I am saying this, and I have the recommendations here. I am saying when, for example, you have 4 per cent reduction in current grants to Government agencies across the board, if I were to implement this recommendation, in effect then, I have to reduce the CDF and the LATF. However, these are based on another Act of Parliament which gives the amounts. So, unless that law is, again, changed then you have a problem.

Mr. Deputy Speaker, Sir, this is what I would like to say. We have had a very wonderful working relationship with the Budget Committee and the Departmental Committee on Finance, Planning and Trade. I give my own undertaking that the recommendations of the Committee will be taken into account when we are preparing the Appropriations Bill.

This is simply an advance to the Government. We still have another opportunity. If I have not taken into account your recommendations when it comes to the Appropriation Bill, hon. Members, you will have an opportunity to hold me to account. You will also have an opportunity to interrogate me. We even have another opportunity in the Finance Bill which is coming.

Mr. Deputy Speaker, Sir, we are saying that the consequences of us not passing this Vote on Account are drastic. It means that come 1st July, the Government will shut down and nothing will operate. Is that the risk you want to take? Already, we have heard the Deputy Leader of Government Business say that because we have not passed the Public Financial Management Bill he will not bring the Motion on Adjournment, and that he will do it on Tuesday.

We cannot afford to risk a government shut-down. That is the point I am making. If there was time, we are supposed to resume back, if the Motion goes through, on 24th July. By that time, if we would not have passed the Public Financial Management Bill there will only be three days left. If anything happens within those three days then it means we will not have the Public Financial Management Bill. This, therefore, means that we will have to revert back to the old law. It also means that we cannot ask for another extension because the Constitution talks of only one extension.

For all these reasons, I am really begging and requesting Members of this House. We have had a wonderful working relationship and we trust each other. I am asking you to trust me

and I give you my undertaking that I will incorporate all the recommendations of the Budget Committee. I will do that.

(Applause)

That is all I am asking. I am only saying that let us not risk shutting down the Government. The consequences are more serious than the evil that we may cause by passing this Vote on Account. This is simply an advance to the Government. We will have the Appropriation Bill. It is coming to this House. I would like the HANSARD to quote me. You will be surprised and shocked that I have actually taken up almost all your recommendations. The ones that I will not take up, we will talk to the Chairman of the Budget Committee; we will sit down so that I can give them the implications. If, after I have given the implications they still maintain their position, then I have no alternative but to incorporate all the recommendations.

Mr. Deputy Speaker, Sir, Parliament has been given an important role in the budget process. We in the Treasury have no intention of interfering with that. However, this is a learning process because we are in transition. Things will continue to improve. So, I beg hon. Members of this House that let us pass this Bill.

Hon. Members: It is “pleading” and not “begging”!

The Minister for Finance (Mr. Githae): Mr. Speaker, Sir, I have been told to plead. I am pleading, beseeching, asking and requesting Members of Parliament; please, let us not take this risk. Let us pass this Vote on Account; it is an advance to the Government.

I beg to move and request Mr. Kimunya to second.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to second this Motion to facilitate access to the provision of Government services beyond 30th June, through the Vote on Account which is a provision that the framers of both the former and current Constitution and, indeed, all countries and companies on a global basis have all these provisions that pending the final approval of their budget, there is a mechanism through which people will access funding because that approval cannot be rushed because the year is coming to an end or the year is about to begin.

Mr. Speaker, Sir, I am very happy because of what we are just about to do. As I listened to the Chairman of the Departmental Committee on Finance, Planning and Trade, I was almost getting very disturbed that we will rush the debate next week in terms of the approval just to meet a deadline. However, going the route we have taken by giving the Minister for Finance 50 per cent or up to 50 per cent of the money, we are saying here is the money so that the Government does not shut down. However, let us have maximum time between now and the end of August to ensure that the commitment he has given; that he will respect the Budget Committee to ensure that this Committee and the stakeholders have made sure that every single item has gone to the Vote that was agreed on; that that discussion is concluded fully and we get an Appropriation Act that reflects not just the Estimates by the Treasury but the wishes of this House; that that will now be facilitated.

I am very happy that by taking this route, we will now be curing many issues. This is the last time that this will be happening in this transitional period because next year we will be operating within the new constitutional framework. These are some of the things that we need to take on board that by next week we will hopefully complete debate on the Public Financial Management Bill and probably bring some amendments to it between then and next year. That should close all these doors in terms of; what happens when? When does the Bill come? When

does it get finalized and when does the Vote on Account come? Hopefully, we can even have the Appropriation Bill passed before the beginning of the financial year. Then the issue of Vote on Account will only be in the likely event that the Appropriation Bill is not passed.

Be that as it may, I believe that the other thing that we all need to note is that as long as the total or global figure does not exceed the 50 per cent, the discussions are detailed. I am very happy that the Minister for Finance has given this undertaking. I am sure that the Committee will be able to do these things so that Kenyans will not feel that we have shut down this Government, including shutting down this Parliament and us not being able to do anything before we actually get money between 30th and 1st. We only have nine days. Come next week we will only be having that week. If we do not do these things now, we could put ourselves into a lot of risk which is not necessary.

I believe that the mood is good. I wish to take this opportunity as I second this Motion to thank Mr. Speaker for having burnt the midnight oil and going through the issues to make the clarification that was sought by hon. Members. As it was emphasized yesterday, this Parliament has a duty to legislate and provide guidance, not just for now but into the future. It can be very different from the arguments that may be proffered out there in the courts by the stakeholders who will go to the courts. They do not have the advantage of having all these hon. Members to enrich their debate. It is just the lawyers on both sides. You can almost see the reason why the courts' rulings are different from what the Chair is ruling. We thank you for guiding us accordingly in terms of ensuring that Kenya is not brought to a standstill on account of perhaps a ruling that we should have appealed had we got the notice but that did not happen. Thankfully, the House, at least, has saved this country from that situation.

I believe I do not need to belabour the point, other than to say let us team up together. Let us give the Minister for Finance his advance. Let us give him maximum time to work with the committee, first of all on the Public Finance Management Bill and then work through the commas, points, figures and lines that were agreed. When we are all happy, we will have the Appropriation Bill here, pass it at the earliest opportunity and we then can make progress.

In the meantime, I beg to second.

(Question proposed)

Mr. Mbadi: Mr. Deputy Speaker, Sir, the Budget Estimates were tabled on the 26th of April, 2012. The Budget Committee did a good job and brought their Report to this House. On the 6th of June, that Report was adopted by the House. The Government had all the time to follow all the provisions of the Constitution. Unfortunately, the Government decided to act with impunity to ignore to bring the relevant legislations that are required before the Vote on Account is prepared.

One would have expected that from 6th to date, the Minister would have engaged with the Budget Committee or Parliament on the issues of estimates. One would have expected that by now an Appropriation Bill would have been before the House to be debated.

Mr. Deputy Speaker, when this Constitution was done, one thing that Kenyans took away from the Executive was the monopoly of the budget making process. Even though the former Constitution talked about Vote on Account even before the Appropriation Bill, the current Constitution is totally different. If you read Article 222 it says:-

“If the Appropriation Act---“

And it is deliberate why it is an Act and not a Bill.

“---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. Deputy Speaker, Sir, what this Constitution envisages is that before a Vote on Account is brought to the House, Parliament must have approved the estimates---

Mr. Mungatana: On a point of order, Mr. Deputy Speaker, Sir. There is a grave omission; it is so grave that we cannot proceed with this debate as it is. The HANSARD will bear me out. I am standing under Standing Order No.142. When the Minister was moving this Motion he did not; and I remember very well, he failed to signify that the President has given consent to this Motion.

Hon. Members: He said it! He said it!

Mr. Deputy Speaker: Order, Mr. Mungatana! The hon. Minister did say that. Indeed, the Chair was conscious of that.

Mr. Mbadi: Mr. Deputy Speaker, Sir, as I was saying, last year, when I raised this matter, I felt we could not proceed with the Vote on Account unless we had the Appropriation Bill before the House; either disposed of or at least before the House. I was not accorded the listening the same way, today, this House is not according me the listening. Some Kenyans went to court.

Mr. Deputy Speaker, Sir, I know and agree that you have read this ruling. However, to me this ruling by Justice Majanja is clear that failing to follow this ruling, to me, is like an act of impunity on the part of Parliament.

Mr. Deputy Speaker: Order, Mr. Mbadi. The Chair did give you a deliberate leeway so that you can come back to the track. We are now debating the Vote on Account. You can either oppose it or support it. We have passed where you are talking about.

So, proceed.

Mr. Mbadi: Mr. Deputy Speaker, Sir, I am exactly giving reasons why I am opposing unless the House does not want to listen to me. I am opposing this because the judge has already pronounced himself to this particular matter before us. As someone who is a law abiding citizen, I cannot support this Motion knowing very well that it is violating the provisions of the Constitution.

The judge was very clear that a Vote on Account or Motion does not comply with the provisions of Article 222 of the Constitution. The processes set out in Article 222(1) and 222(2) are not intended to give the budgeting and appropriation process and legislation a seal of approval but to promote the values of the Constitution. I have already alluded to this. This is the judge talking. He says:-

“I hold that for there to be compliance with Article 222 there must be an Appropriation Act or Bill in place”.

If today we are passing a Motion on Vote on Account, the question we should ask ourselves as Parliament is, because we are setting precedence for the future; do we have an Appropriations Act? If not, do we have an Appropriation Bill today? The answer is no.

Mr. Deputy Speaker: Order, Mr. Mbadi! If you have an Appropriation Act, then why would you need a Vote on Account?

I want you to pause for a moment and think about what a Vote on Account is. A Vote on Account is an advance. If you have an Appropriation Act in place then you do not need a Vote on Account.

Mr. Mbadi: Mr. Deputy Speaker, Sir, the Constitution is very clear that where the Appropriation Act has not been assented to by the President---

Mr. Deputy Speaker: Order! It is not an Act that is assented to. I agree with you like any other human being I want to believe that---

Where is the Attorney-General? Where is Mr. Mutula Kilonzo!

Mr. Mbadi: Mr. Deputy Speaker, Sir, before you invite Mr. Mutula Kilonzo, what I am saying I am reading from the Constitution unless you are telling us that Kenyans passed a wrong Constitution. It says:-

“If the Appropriations Act for a financial year has not been assented to---“

This is the Constitution.

Mr. Deputy Speaker, Sir, whether it is wrong, you live with the Constitution. This is the Constitution.

Mr. Deputy Speaker: Order! The very good finance person, I know you are very good in field. However, an Act becomes an Act when it is assented to. Up until the time it is assented to, it is a Bill. The fact that there is an anomaly in the Constitution, Mr. Mungatana who is next to you will probably tell you that there is a bit of a problem here and maybe the Attorney-General would have helped us on that. So do not insist on something that essentially is---

The Chair has given a direction on this: The whole idea of a Vote on Account in the Constitution is designed to assist the Government and the people of the country for the period when the Appropriation Bill is being worked on. It was envisaged by the framers of the Constitution, not just this Constitution, even the old Constitution, that there is always a time period that is needed for the Government to put the Appropriation Bill in place and have it as an Act. In any case, that has also not given the Government a very open cheque. By the end of August, if it does not have it in place, even if Parliament does not pass, there is a shut down. It does not even have to come from a Motion or a resolution of Parliament. If the Appropriation Act is not in place by the end of August, then you cannot withdraw any money from the Consolidated Fund.

Proceed!

Mr. Mbadi: Mr. Deputy Speaker, Sir, thank you for your guidance but I believe that if there is a provision in the Constitution that sounds vague or cannot be understood, it is for the courts to interpret. The moment the courts have interpreted, we cannot again say that the interpretation of the court is wrong and that is where I have a problem because the courts have told us that there should have been an Appropriation Bill in place.

Mr. Deputy Speaker: Order, Mr. Mbadi! That is why there is an appellant and after---

Mr. Mbadi: But there was no appeal! The Attorney-General lost the case and did not appeal. If this Government knew that the judge was wrong, what the Attorney-General would have done was to appeal. There is no appeal, which means that the Government accepted that they lost the case fairly and squarely.

Mr. Deputy Speaker, Sir, but let me conclude. The reason why the drafters of this Constitution provided that there must be an Appropriation Bill is because they wanted to stop the Government from spending up to 50 per cent without Parliament giving express approval and you can only give an approval for expenditure through a Bill. So for me, if this House will sit again like we did last year, we will be judged harshly. We are setting a bad precedent; we are allowing the Executive and more particularly the mandarins at the Treasury who do not want to obey the law, to proceed doing things the way they were doing them yesterday before this Constitution came into effect and that is what Kenyans seriously fought for. We wanted a new

Constitution to have a break from the past. We did not seek for this Constitution again to have excuses like I hear from the Front Bench. The Minister pleading with us for something he would have done differently. We gave him the Estimates two weeks ago. If he wanted to comply with the law; if the Minister really seriously wanted to comply with the law, he would have made an attempt to comply with the law. But if you look at what the Minister is doing even by promising this House that he will take into consideration the views of the Budget Committee which were passed by this House, his actions are totally indicating a different kind of direction.

If you look at the letter which I tabled here yesterday, the Minister is very clear. He is saying:-

“The Treasury, in principle, is agreeable to recommendations made by hon. Members of Parliament. However, we have noted that some of the proposed expenditure cuts while implementing the Budget could have adverse effects on the ability of the Government in delivering some critical services”.

If the Minister wanted to convince us the way he is trying to convince us through this letter when he appeared before the Budget Committee, he would have had his way. If he did not have his way, he is a Member of Parliament and he would have brought those relevant amendments to the House for the House to deliberate on. Once the House has made a resolution; the House has passed the Estimates, the Minister cannot again come to the House and tell the House that he cannot implement what we did. He has no capacity; he has no powers. He is trying to abrogate and give himself powers that he does not have. Unfortunately, this House is allowing the Minister to commit an illegality. This House is allowing the Minister to undermine the authority of the House. It is sad that we continue to allow the Minister to undermine the authority of the House. The House has already made a resolution. The House has told you that this is what is supposed to be in the Estimates but he comes and tells the House that he cannot implement them. Who gave the Minister those powers? Could someone read to me in the Constitution where the Minister for Finance has such powers? If it used to be there, it ceased to be there a long time ago.

I see a number of hon. Members thinking that if we do not pass this Vote on Account, there will be a shut down. That is not correct. We are not adjourning. We are not going on Recess today. Why can we not ask the Minister to do the right thing so that by next week we pass the Vote on Account if it is necessary, so that next week we give the Government money that it desires. We still have up to 30th June, so we can forego one more week just to comply with the law but I beseech and plead with Parliament: Let us not violate the Constitution which we struggled so hard to get for this country.

Mr. Deputy Speaker: Mr. Kenneth, you have been in the Treasury before.

The Assistant Minister, Ministry of State for Planning, National Development and Vision 2030 (Mr. Kenneth): Mr. Deputy Speaker, Sir, first of all, let me thank the Chair for the ruling that you gave and which the previous speaker has in many ways tried to oppose. I think the ruling that you gave was the interpretation of the issues that he raised before, and he continues to raise them now on the Floor of the House.

It is important that we do not marginalize the Constitution but it is also important for this House to realize that the Vote on Account is purely accountable to us in this House through the Budget Committee and the Departmental Committee on Finance, Planning and Trade that the Minister for Finance was alluding to. It is also important to realize what a Vote of Account stands for because in the next couple of days, especially after we cross 30th June, the Vote of Account will be very important because we must first of all consider that we have forces in

Somalia today that would be depending on some expenditure from the Vote of Account. We must also be---

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. I am having difficulties following what the former Assistant Minister in the Treasury is saying. He is talking of a “Vote of Account”, when we are talking of Vote on Account.

Mr. Deputy Speaker: No; it is Vote on Account.

Mr. Ruto: Could he correct and apologize?

(Laughter)

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. Is the former Assistant Minister for Finance and currently the Assistant Minister for---

Mr. Deputy Speaker: Not former Minister. In Parliament, they are all Ministers.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. Is the former Minister for Finance and now Assistant Minister, Ministry of Planning, National Development and Vision 2030 in order to mislead the House that our forces are requiring money from the Vote on Account in this Budget when none other than the Prime Minister three weeks ago said that the budget for all the forces including everything and their emoluments would be entirely given by the United Nations?

Mr. Deputy Speaker: Will be?

Dr. Nuh: Yes, Mr. Deputy Speaker, Sir.

The Assistant Minister, Ministry of State for Planning, National Development and Vision 2030 (Mr. Kenneth): Mr. Deputy Speaker, Sir, first of all, Mr. Ruto who hosted me two weeks ago must have heard that I speak good English and it is Vote on Account. With regard to Dr. Nuh, the fact is that despite statements that have been made by the Prime Minister, the Government of Kenya has not received any money in support of the Kenya Defence Forces (KDF) in Somalia and it is an issue of securing our borders. However, that is just one expenditure item which is critical, but we also have essential services that are spread all over the country.

I would like to appeal to my colleagues that a Vote on Account, in essence, having the Departmental Committee on Finance, Planning and Trade and the Budget Committee to ensure that the House is accountable and the Minister for Finance is accountable, remains a critical safeguard. I do not support, in any way or fact, that we would be trying to marginalize any part of the Constitution but, of course, it is important for us to stick to the ruling that the Deputy Speaker has given this afternoon because it addresses the same issues that the previous speaker raised. Therefore, I want to appeal to the House that accountability must be key. The Budget Committee must be key in this and so must the Departmental Committee on Finance, Planning and Trade, to ensure that there is full accountability on the Vote on Account.

I support the Motion.

Mr. Ruto: Mr. Deputy Speaker, Sir, I rise to reluctantly support. I am only supporting because I realize that it may be too late for us to force the Minister to bring us an Appropriation Bill. I am also willing to go to the bank on his word. That is because he has proven for the last one month or so that he is a Minister who can be relied on.

I really expect that he will live up to that reliability that he seems to be building up. But you must apologise to us because of the laziness in your docket. Was it impossible for you to print the Appropriations Bill? Was it impossible for you to have accommodated the views of

Parliament? Was it impossible for you to have flagged out the difficult areas and consulted with our Committees? We would have expected you, maybe, if we said, we continue with this exercise next week on Tuesday, you may still not have finished. That is because you still have to consult with our Committee. But I want to go by your assurance. I also want you to realize that we are breaking off on Recess. Could you then also release the CDF funds immediately? That is because that is what the *raia* are waiting for? Could you release all the funds to CDF so that, when we go home, we can finalize our commitment to the people to move on? Could you also promise us that, unlike last year, we will get all the funds that are meant for free secondary education, free primary education and bursaries? Last year, your predecessor told us that he was giving us Kshs1.2 billion for bursaries. He actually ended up disbursing hardly Kshs500 million. We were informed that other monies went for drought mitigation. I do not know whether he took the other monies to Somalia. We got so many stories. I hope that you are not going to relapse into these problems. I would like to take your word to the bank. I would like to go home and tell the people that CDF is coming quickly. That is because we want to dispose of the development projects and then go to campaigns without any further difficulties.

But you also need to promise us that you will not break the law again. That is because hon. Mbadi is actually right. But we are trying to brush him aside and yet, he is pushing a very valid point. But in future, please, let us stick to the law and let us proceed.

Thank you. I beg to support.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Deputy Speaker, Sir, I want to thank you for giving me this opportunity to support the Motion.

Mr. Deputy Speaker, Sir, the concerns by hon. Members in as far as the point raised by hon. Mbadi are legitimate and understandable. Nevertheless, we have got to realize that in any transition, there are teething problems. The budgeting process that we have been using has been in this country for over 100 years. It is only reasonable that we should expect some teething problems. This is one of the cases. But we do recognize that there are some problems. Nevertheless, we cannot shut down the operations of Government because of some little oversight. The fact that the hon. Minister has given an undertaking---

Mr. Keynan: On a point of order, Mr. Speaker, Sir. Is it in order for my good friend, hon. Musila, to say that we cannot cause a shut down simply because of a little oversight? This is a constitutional issue. A constitutional issue is not a little oversight. So, is he in order to mislead Kenyans and the House?

Mr. Deputy Speaker: Order! Hon. Keynan, the Chair has already ruled that it is not a constitutional issue.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Assistant Minister, who is my good neighbour, in order to mislead the House and Kenyans that those Members of Parliament who are opposed to the Vote on Account being introduced today are calling for a shut down of Government, when what we are saying is: Let the Government comply before 30th and we will be here and around to pass whatever else they want? So, is he in order to insinuate that?

Mr. Deputy Speaker: Hon. Musila, it is not a small oversight. It is an issue that is important. But as for the constitutionality, the Chair has already given a direction on that.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Deputy Speaker, Sir, I quite agree. I never, for once, said that the hon. Members who are opposed want the Government to shut down. I never said that. In fact, I said that Members have legitimate concerns.

Mr. Deputy Speaker, Sir, it is so important that we move on, especially after your very wise ruling that we proceed. I think we are on the right track and the Minister has given an undertaking that he will ensure that this is not repeated and that, come next year, the teething problems that we have experienced during the last two years will be overcome.

Mr. Deputy Speaker, Sir, of importance is to realize that we have had floods in this country and our roads are in terrible conditions. It is so urgent that in order to move the economy forward, we approve this Vote on Account so that the Minister can do the right thing and provide funds for making our roads, which are so dilapidated.

Mr. Deputy Speaker, Sir, also of importance is the fact that we are now in the last leg of our term. We are doing our 5th year and it is so important that we get funds to complete the remaining job that needs to be done. For example, Rural Electrification is in a very critical stage and it needs to be completed. I can see hon. Keynan is agreeing that we need to get those funds quickly in order to finish rural electrification---

Mr. Keynan: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for my good friend to speculate and start imagining what is going on in my mind, when he knows I am going to say almost the opposite of what he is saying right now?

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Deputy Speaker, Sir, I would not know what he is going to say. But I clearly saw him nodding and smiling in agreement with what I was saying.

Mr. Deputy Speaker, Sir, I was just emphasizing the importance of us approving the Vote on Account in order for the Minister to release funds for the very important projects that we need. For example, I mentioned about roads, rural electrification and of importance also, is CDF. We need those funds quickly as the hon. Issac Ruto has said, so that we can finish the on-going programmes. I want to correct an impression that was given by hon. Dr. Nuh---

I beg to support.

The Minister for Nairobi Metropolitan Development (Mr. Jamleck Irungu Kamau): Thank you very much, Mr. Deputy Speaker, Sir. The issues which have been raised by hon. Mbadi are pretty weighty and, of course, we cannot afford to just wish them away. In actual fact, we should not even ostracise hon. Mbadi.

Mr. Deputy Speaker, Sir, as the late Minister for Provincial Administration and Internal Security clearly said, there comes a time when the country is more important than an individual. I think it is important, as I appreciate what hon. Mbadi is talking about, that we look at the state of the country. I understand and I know that the Vote on Account is simply an advance to the Government. We still have a second opportunity when we will be doing the Appropriation Bill. If the Minister does not do what Parliament has recommended, then we will still have an opportunity to interrogate the Minister even further. Therefore, I will like to urge my colleagues-- This Minister is actually moving this Vote on Account for the first time. It is his first Vote on Account and this is---

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

Is it in order for the Minister to mislead this House by implying that any time we have a new Minister, we have to violate the Constitution? What if we will be having a new Cabinet Secretary for Finance every year?

The Minister for Nairobi Metropolitan Development (Mr. Jamleck Kamau): Mr. Deputy Speaker, Sir, I did not say anything like that. I did not even imply anything like that and, therefore, I do not need to reply to it.

I think it is very clear that we all know the consequences if we do not pass this Motion.

Come 1st July, the Government will grind to a halt. There are so many other consequences that are so grave to this country. There are so many things that will not move after 1st of July if we do not pass this Motion.

Mr. Deputy Speaker, Sir, we know about the Independent Electoral and Boundaries Commission (IEBC); just the other day, they asked for quite a lot of money. They need to register voters because we are just about to go into an election. These people need money. If we do not pass this Motion, it means that there will be no money for them to even start the voter registration.

Mr. Deputy Speaker, Sir, on the issue of Constituencies Development Fund (CDF) as mentioned here by my colleagues; we are heading now to a very busy period of the year when we need to be more on the ground. We need to make sure that all ongoing projects in our areas are completed. My Ministry has a project which is so dear to me; the project of installing CCTV. I want to make sure that we bring sanity to this particular City of Nairobi. We want to ensure that traffic management is done properly. We want to ensure that security issues are taken care of through the issue of CCTV. If this Motion is not passed, it means that we will not even have all this.

Mr. Deputy Speaker, Sir, I want to support this Motion and urge my colleagues to support it as well.

Mr. Keynan: Thank you, Mr. Deputy Speaker, Sir. First of all, let me say that this is a good Minister for Finance for so many reasons. However, that does not mean that some of the issues or the mistakes that we are seeing should be tolerated.

Mr. Deputy Speaker, Sir, one of the reasons that Kenyans, in their own wisdom, decided to have a new constitutional dispensation was simply because we wanted to be governed according to the rules, not according to the wishes or gimmicks and the day-to-day political convenience of anybody.

Mr. Deputy Speaker, Sir, in the budget making process, of which Parliament is part and parcel of, in the mid-term expenditure review framework and this is clearly stratified in the Constitution, he, first of all, was expected to table the Budget Policy Statement. As a result of the Budget Policy Statement, again, he was expected to table the Estimates. As a result of the estimates, the Kenyan public, through their legitimate representatives, were expected to participate in critiquing the Estimates and to consider whether, indeed, what was contained in the Estimates was in line with their wishes. It is because of this that, through the Budget Committee and other Departmental Committees, Parliament was, for the first time, expected to participate in shaping the Budget.

Mr. Deputy Speaker, Sir, the Committees did their submissions after we sought the public views. I want to go on record that the people of Wajir, as I stand here today, are expecting to see how we are going to vote because through the public hearings, they presented some of their concerns.

Mr. Deputy Speaker, Sir, my dilemma is; in this figure, the Government is not even asking for 10 per cent, 25 per cent or 50 per cent on the Vote on Account. In my opinion, this is farfetched and it will not assist us. You will remember that this year, the Minister failed to table the Budget Policy Statement simply because Parliament was sent on recess. Again, we, as Parliament, are wrong.

Mr. Deputy Speaker, Sir, this is going to be the second time the Government is trying to create a crisis that is not there; we are not talking about a shut down. We are not that irresponsible and we are not talking about creating a gridlock; we are talking about adhering to

the rules, the Constitution, the provisions of Article 221 and to the provisions of Standing Order 143.

Mr. Deputy Speaker, Sir, for us to achieve this, that book that we have there is not the Estimates; initially, that book was actually reading “A temporary Estimates for the Financial Year 2012/2013.” What we expected was a reprinted Estimate to take into account the resolutions of the House. One of the things that is making me concerned is that if we reflect on the Budget Statement by the Minister, I believe this is the bit that the hon. Members are raising and it is the one that is causing suspicions – the Minister in his Budget Statement did not make an attempt to reflect on the recommendations of the Budget Committee as adapted by this House. Therefore, from the outset, it seems that what we did was just gerrymandering.

(Applause)

Anyway, Mr. Deputy Speaker, Sir, Paragraph 19 of the Minister’s Budget Statement says that “The Report of the Budget Committee as adapted by the House is very difficult to implement.” Therefore, from the outset, it is like he does not want to implement the recommendations of the Budget Committee. That would be contemptuous of the existence of this august House.

As much as we empathize with the Government, we still have time; let us put this on hold so that we can bring an amendment to reduce the 50 per cent on account to 25 per cent, so that we do not create a gridlock. That will also give us an opportunity to correct some of the institutional mistakes that have been made.

(Applause)

Mr. Deputy Speaker, Sir, it is not an issue of whether I am going to miss my salary; it is an issue of the rule of law. We are trying to set a precedent and a tradition that will govern the next Legislature, when a Committee system is going to be the *modus operandi*. I do not want to challenge what you said, but I want to plead with you to consider allowing us to move an amendment to reduce the Vote on Account to 25 per cent.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Baiya: Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to also contribute to this Motion. I am also speaking as an hon. Member of the Budget Committee, as a matter of principle and as a matter of upholding the spirit of the Constitution, pursuant to which we have all actually sworn to uphold. It is, therefore, important to bring out quite clearly why we are opposing this Motion by the Minister.

(Applause)

Mr. Deputy Speaker, Sir, the procedure of Vote on Account under the current mechanism of accountability in the current Constitution should be a last resort. But it appears that the Executive is making it a common practice, given that this is what they did last year and that is what they are doing this year.

(Applause)

This is going to become entrenched as a precedent which will become very difficult to overcome in future. It is, therefore, imperative that it be stated clearly and categorically that the mechanism of Vote on Account is actually not envisaged in the new Constitution. It is anticipated that an Appropriation Bill should be presented clearly well within the timelines which have been set. He has the Budget Committee Report. The Committee's recommendations only affect about Kshs19 billion out of a budget of about Kshs1.46 trillion. So, if he had dealt with those issues, he would have actually brought in an Appropriation Bill quite timely for it to be passed for the first time before the end of the current financial year. What this really would have done in terms of our Budget circle is that the various Ministries would have had a whole fresh year to implement the Budget duly approved by this Parliament. This would have improved also the role of oversight by Parliament, because they will be implementing. But right now, with a Vote on Account, what most of the Ministries do is to selectively implement what they are going to do, because it has not received full approval of Parliament, which can only be done through the Appropriation Bill. So, we expect the Minister, in accordance with the spirit of the new Constitution, which requires that public finance be managed prudently and efficiently, to take the opportunity to ensure that The Appropriation Bill is passed well before the end of the financial year. This will ensure that Ministries and departments have a full year to implement not a Vote on Account but the full Budget that was passed. This is the new standard that the Constitution aspires to bring the country into.

Mr. Deputy Speaker, Sir, there is no clear explanation being given by the Minister as to why he is not making available this opportunity. We are ready even to stop the Adjournment Motion by a week, so that we seize the opportunity, for once, to ensure that the country will not run on a Vote on Account for up to even three months. One of the challenges that we have had in the expenditure of Government revenue – Recurrent and Development – is that they always delay implementation to the last three months and then rush to implement those projects. They then start complaining that the procurement procedures are slow and so on. This is precisely because we start too late with Vote on Account. You have an opportunity to actually ensure that you start afresh, when you have the full mandate.

Mr. Deputy Speaker, Sir, for those reasons, I oppose this Motion.

The Minister for Energy (Mr. Murungi): Mr. Deputy Speaker, Sir, I rise to support this Motion.

Mr. Deputy Speaker, Sir, the Minister is a lawyer by profession, just like hon. Mungatana across there. He has given an undertaking to this House that he is going to incorporate all the recommendations that came from the Budget Committee and we have no reason at all to doubt him. I think that this is a very positive gesture by the Minister; that he is going to comply with the law and incorporate the recommendations made by the Budget Committee. I have listened to the hon. Members and the breach of the law that they are talking about, is that the Minister has not incorporated the recommendations of that Committee. But the Minister has undertaken to comply with the law by incorporating those recommendations. So, I want to plead with the House that we give the Minister a chance to incorporate those recommendations and then we can move on.

Mr. Deputy Speaker, Sir, we are going on recess. I think that time has come for us to move this country faster. When we go to our constituencies, the first question that we will be asked by the *wananchi*, especially after the rains, is: The roads have been washed away, what are you doing about them? We need this money to give an answer to our constituents. I am receiving your lists for rural electrification projects. I would like to give instructions, especially

because of the little time left for us to complete the projects that we have started and also move transformers to where they are required. We need some money for that and it will be good if we can go and say: We are promising electricity to that school, market or coffee factory.

Mr. Deputy Speaker, Sir, although we were given Kshs17 million in terms of the Constituencies Development Fund (CDF) to complete projects, there are very many uncompleted CDF projects around the country. During recess, I would like an opportunity to visit my CDF projects and say that we are allocating so much to this and that project. So, whereas it is very important that we implement the Constitution and follow the law, it is also very important that we do not let our electorate down. It is also very important that we implement this law in a realistic and practical manner that is beneficial to our people.

Mr. Deputy Speaker, Sir, I think that we are being too hard on the Minister. I was with him last week. In fact, after the Mombasa conference, he spent most of last week trying to raise money and attending various meetings regarding the burial of our two colleagues and officers, and lost one week. So, maybe some of the things that could have been done, could not be done because he lost one week.

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to mislead us that the Minister, having been engaged in some activities like meetings, is the reason we could not have these documents in good time, yet we know that the Minister is just a policy maker in the Ministry and he is not the one dealing with the day to day preparation of documents? I do not expect any Minister to be doing the paper work, so that we can have the documents available to this House.

The Minister for Energy (Mr. Murungi): Mr. Deputy Speaker, Sir, I was talking about things that I know because I attended some of the meetings with the Minister. Mr. Mbadi is talking about things as they ought to be.

Mr. Deputy Speaker: Your time is up!

Hon. Mohamed Elmi!

The Minister of State for Development of Northern Kenya and other Arid Lands (Mr. I.E. Mohamed): Mr. Deputy Speaker, Sir, I just want to plead with the House that we have a Minister who is accessible, and anytime that he has given his word, he has always delivered.

Mr. Deputy Speaker, Sir, we are in transition. We are making our laws and it is this Parliament that is going to make it clear, because there are a lot of grey areas. What we are going through is normal in transition. I want to persuade my colleagues who are opposing this Motion to come on board and take the Minister's word. We have recourse to law and it is this Parliament that is supreme. So, we are not going to lose anything by giving the Minister what he has asked for. I know that every hon. Member here wants us to follow the law, but I am pleading that we go ahead and pass this Motion and move this country forward.

Mr. Deputy Speaker, Sir, those who have spoken before me have listed numerous reasons for urgent spending that needs to be done from 1st July. We sat here and said that we want the CDF proposals to be in place by 1st July, so that we implement them by December. So, the reasons are many and compelling.

Mr. Deputy Speaker, Sir, I support the Motion.

Mr. Ngugi: Thank you, Mr. Deputy Speaker, Sir, for giving me this chance to also air my views.

Mr. Deputy Speaker, Sir, I will start by saying that I am a respecter of the Constitution and this Minister must learn to respect the Constitution. I know that he is capable of doing that because he has demonstrated in the past that he can do so. Secondly, this is a Minister with so

much goodwill that we would not want him to erode it. We will support you because you have undertaken to incorporate all the amendments that we brought forward as the Budget Committee, and I know that you can keep your word. But we are still waiting for you to keep your word on the Report on the decline of the Shilling, on the things that you were going to amend, so that we can rein in the banks.

The Minister for Finance (Mr. Githae): They are coming!

Mr. Ngugi: Mr. Deputy Speaker, Sir, if they are coming I will still give them that extra benefit and goodwill. However, Mr. Minister, do not learn bad manners from your predecessors of pushing Parliament.

Mr. Deputy Speaker: Order! “Bad manners” is un-parliamentary.

Mr. Ngugi: Mr. Deputy Speaker, Sir, I withdraw the words “bad manners” and replace them with the word “indiscipline.” Do not learn to be undisciplined.

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

Mr. Deputy Speaker: Do you wish to be informed by hon. Mbadi?

Mr. Ngugi: No, Mr. Deputy Speaker, Sir. He will be taking my time. We know that the Minister is capable of doing the right things. Please, let us keep to those and I support him because one, I want the money set aside for the Transition Authority. We are already late on devolution. We just passed the names of the members of the Transition Authority, and we want that Authority to start working like yesterday. So, for that reason, I support the Minister.

I also support the Minister because I want to go on recess, be with my people, tour the county and tell them that good things will come when we are independent as Nyandarua County. I want to support the Minister because I know when I become the Governor; he will support the county governments. With that, I plead with my colleagues to give this Minister the benefit of the doubt, extend that small goodwill and pass this Vote.

I support, Mr. Deputy Speaker, Sir.

Mr. Chanzu: Thank you, Mr. Deputy Speaker, Sir. I also want to contribute on this Motion. The undertaking that the Minister has made in this House is commendable. However, I wish that the Speaker took over and gave sanctions that would be meted on the Minister just in case. However, based on that and the way I know the Minister’s track record considering where he started from; the Ministry of Local Government, the Ministry of Nairobi Metropolitan Development and now the Ministry of Finance, I would like to support this Motion. However, I would like the Minister to address some key issues. Because we do not have a lot of time, we want him to listen and respond.

There are several issues that hon. Members have talked about like the CDF and roads which also affect him because he comes from a rural constituency like us. We have the issues of recruitment of teachers which all of us know. We are facing elections, as we said. The Minister has to clarify the issue about the Free Primary Education (FPE) and Secondary Education money. Sometimes we are told that the money was disbursed. I was reading in the newspaper recently that it was not true. The issue of teachers’ salaries should also be taken care of.

Mr. Deputy Speaker, Sir, the other day, I was driving on the famous Thika-Nairobi Super highway which is a very impressive road. As we talk about roads, and I can see the minister for Roads seated there, this must be replicated, even if it is not now. It must be in our minds because it gives a very good picture that something is happening. You will take ten minutes to drive from Ruiru to the former Museum Roundabout and then 50 minutes from there to this place. I think we must think how we can have another road which passes over here as the rest of the people can proceed. So, *Waziri*, you must avail funds for this.

We have the Kisumu International Airport. The job looks marvelous from far but it is not complete. We have been trying to address this with the Minister for Transport and this is something which needs to be taken up. When it is raining, you cannot take tea in that shed. These are some of the things that we need to finance in the coming year.

Mr. Deputy Speaker, Sir, with those few remarks, I beg to support.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Thank you very much, Mr. Deputy Speaker, Sir. I rise to support this very important Motion. The concerns of hon. Members are very legitimate and the Government should take them into consideration. You can take the word of the Minister because he is a very honest Minister. So, whatever promises he has made, he will ensure that your concerns are taken care of.

Mr. Deputy Speaker, Sir, we must approve the Vote on Account because there are several projects that the Government must undertake. Our soldiers are now under the African Union Mission in Somalia (AMISOM) and they need ammunition, equipment and everything that is required to sustain that war. The Government of Kenya, as it waits for the African Union to refund, these soldiers must be well equipped to achieve the mission of getting to Kismayu before August.

The second point which is important, and that is why we must approve the Vote on Account is that we want the essential services for the Government to run. We want children in universities, secondary and primary schools to get bursaries. This is very important. We need to buy medicine for our people. So, we should approve this money so that the Government can function. We have a very important exercise as a nation.

We have elections coming up, and the Independent Electoral and Boundaries Commission (IEBC) requires money to do the necessary to enable it run free and fair elections. Therefore, we require this money to be authorized. I would like to commend the Minister for taking into consideration the recommendation made by livestock farmers that the Agricultural Finance Corporation (AFC) be cushioned so that the loans that had been taken by these farmers who lost their livestock are waived. I commend the Minister for taking this into consideration.

We need money for roads, and the Minister for Roads is here. I want the Minister to hear this. We want money to be given to the Ministry of Roads as a tribute to the late hon. Prof. George Saitoti because the road from Kiserian to Isinya is completely worn out. We require money to make sure that the road is repaired. We require money for the rest of the infrastructure and, therefore, we require the Parliament to pass the Vote on Account. The hon. Members who have been lamenting the whole afternoon that the Government has not followed the law should know that we will follow the law and correct the mistakes.

Mr. Deputy Speaker, Sir, with those very few remarks, I beg to support.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, I was beginning to think that I am invisible, but I can now put that to rest.

I share the concerns of my friends who are on the other side about following the Constitution. That is for sure. However, we are on a learning curve from 2010. This Constitution is going to be with us for 40 or 50 years or many more years. I think the Minister has given his undertaking, just as we have done. We are passing the Vote on Accounts so that subsequently next year the Minister can work closely with the Budget and Finance committees very early in the year, so that they can agree on the timetabling and how to work on some of these things so that we can do things better.

It is much better to agree amongst ourselves, the Budget Committee and the Departmental Committee on Finance, Planning and Trade to agree that next year and subsequent

to this there will be more pre-preparations to ensure that when we come to vote on the Vote on Account we do not experience these kinds of problems. Secondly, as hon. Maj-Gen. Nkaiserry has already said, day to day running of the Government must continue. I feel strongly that we need to give the Government money so that no one single day passes without resources. For example, health care is a very sensitive area such that should we close down any hospital, this can lead to death. Therefore, whatever problems we have, let us make sure that the Government has resources to enable the day to day running of Government.

I am particularly concerned that our doctors expect that all those obligations we undertook are realized so that we can avoid the many strikes that we have been having and which have virtually put our health care in jeopardy.

Mr. Deputy Speaker, Sir, yes, we want to be governed according to the rules laid down. However, in the process of implementing this dictum, the Government by Constitution or the Government by rules, you get to learn better how best to implement rules. This is because development of rules and perfections of implementing rules can only be realized in action. When we act and we find that it may be problematic to implement certain rules, we also learn how to amend those rules. So, I think the experiences that we are going through today do not mean that we become slaves permanently to rules, but we examine these rules and see how amenable they are to the day to day action of Government and day to day running of Government affairs.

Mr. Deputy Speaker, Sir, I was rather worried when my dear friend hon. Keynan proposed that we slash the Vote on Account by half and rather than give Government 50 per cent we give it 25 per cent of the Budget. The English may say that if we do that we are becoming penny wise and pound foolish. This is because if you give Government that kind of percentage it may not be in actual fact effective in meeting certain day to day running of Government activities that are in our interest.

The proposal by hon. Keynan was, perhaps, a wake-up call for us to live more by the rules. I would like to appeal to my colleagues that we treat hon. Keynan's proposal as a quip rather than a serious issue.

I thank you and I beg to support.

Ms. Karua: Mr. Deputy Speaker, Sir, I rise to oppose the Motion. I have absolutely no problem with the Vote on Account. It is something necessary and it is something that we must pass. I have no problem with the Minister proposing or the Government proposing the Vote on Account. However, I have a problem in everybody saying that this is transition. We are admitting that we are wrong and then we are saying that let us be a little more wrong until we are able to do it. Then we will never learn how to do it.

(Applause)

We have already agreed not to adjourn today. We will be on next week. What would have been so difficult pushing the Vote on Account to Tuesday or Wednesday next week and today getting the publication of the Appropriation Bill? I have looked at the former Constitution and the current Constitution - Article 101 of the former Constitution and Article 222 of the current Constitution. Both envisage the passage of Appropriation Bill by Parliament before Vote on Account. The only thing they allow is that even if the Bill is not assented to or is not operational in the words of the former Constitution, we still can go on. Therefore, we have been doing it wrong since time immemorial bringing the Vote on Account before the Appropriation Bill. We have now passed a Constitution. After we have disobeyed the old one and it became completely

inoperative, we have passed a new one and we now have started nibbling at it. We have started making a patchwork of a new document.

Mr. Deputy Speaker, Sir, I would want to understand the Executive. What is so difficult about publishing an Appropriation Bill, getting leave of Parliament to shorten the time, burning our midnight oil like we have done on many occasions so that before 30th June--- I know the Vote on Account is needed before 30th June. We are responsible leaders and nobody wants a crisis, but we must do it right. This country will never learn constitutionalism. We shall never learn to respect the rule of law. Bringing the Vote on Account before passage of the Appropriation Bill is a display of impunity and it does not bond well for this country.

(Applause)

There is a ruling of the court on this matter. You are telling us that we cannot have elections in December because of a court ruling. This court ruling is it not a court ruling like the one on election? At least, people who respect the rule of law have gone on appeal. Have you gone on appeal on this ruling which you are now disrespecting? The Executive has made a very poor show. It has shown that they are not willing to respect the rule of law and that it is business as usual. If you are going to continue doing what we did before the passage of the Constitution and giving excuses then it means that there is no hope that people can realize their rights under this Constitution.

If, indeed, you respect the rule of law, this is the fifth year. Declare election date in December. Adjourn this Motion. Publish the Appropriation Bill and on Tuesday or Wednesday, whichever day you please, we deal with the Appropriation Bill and on the same day we can pass the Vote on Account. Let us not make excuses: "Oh yes, we are wrong, but we are in transition". You are forcing the hand of Parliament.

I want to go on record as opposing defiance of the Constitution. I have consistently stood against the defiance of the election date. I stand here to oppose this defiance of the Constitution. I want to tell my brother the Minister: You have done so well so far. I do not know why you would wish to enter into this trap of going down on record as somebody disrespecting the rule of law. It is within your powers to stand this down, publish the Appropriation Bill. The Government Printer is waiting. It stops for Government business. It will publish the Bill and we will be ready to pass it. We need services. We know that 30th June, 2012 is next week and we have enough time to do it. I now want to plead with you to uphold constitutionalism. Let us pass the Appropriation Bill before the Vote on Account.

I beg to oppose.

Mr. Sambu: Thank you, Mr. Deputy Speaker, Sir. At long last you managed to spot me.

I stand to support the Motion. Whether we pass it today or next week, it will still be a rush. We have worked briefly with the Minister for Finance. We have had a very good relationship. He has given undertakings before which he has followed. Today, the Minister has given two major undertakings. One is that he will take into account all the recommendations of the Committee as approved by this House.

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. I think we need to respect procedures and rules of the House. We sat as a Budget Committee which hon. Sambu is the Vice-Chairman and we agreed that this is unconstitutional and we will not accept it. That was the Budget Committee's position. We have to respect it.

Mr. Deputy Speaker: Order! Hon. Mbadi, you are out of order! Every Member of Parliament here has a constitutional right to either oppose or support any matter that comes before the House.

Mr. Sambu: Mr. Deputy Speaker, Sir, may I repeat that I am not supporting on the basis of the undertaking given by the Minister. Before, we did not have that undertaking but now he has given an undertaking – in fact two of them which are very fundamental. One is that he will take into consideration the recommendations of the Committee as approved by the House. But for those recommendations that are not approved by the House that he is having difficulty with, he will come to the Committee and discuss and where we feel aggrieved, our decision will prevail. This is the understanding. So, even if we pass this Motion today or tomorrow, there will still be a rush. So, why not do it well and take into account all those facts that you have recommended to the House and have been approved by the House? We have that authority. To that extent, I support the Motion.

However, I have one or two things that we need clarification on. One is the use of the word “half” because really one-half as used here represents one-half of the total net estimates of Recurrent and Development Expenditure because in the case of the national Budget, that half does not exist because you have not actually already taken into account the recommendations of the Committee as approved by the House.

Secondly, there are also the budgets of the Parliamentary Service Commission (PSC) and the Judicial Service Commission (JSC). So, we are not sure whether you are saying half of the total Government expenditure or just half of the national Government which I have said is not there. So, that has to be clarified.

I wish to say that the Vote on Account for now and the future should really not be a factor in our Budget process because the Vote on Account in many ways misses a lapse somewhere along the line and should not be the case.

Otherwise, I support the Motion.

The Minister for Trade (Mr. Wetangula): Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to speak immediately after my county man. I support the Motion. The issues raised by our colleague, hon. Mbadi, are issues the Minister and the House should address for the future. I want to urge that we pass the Vote on Account because there are so many urgent things that require being undertaken. There are preparations for elections. The other day the Commissioner of Police told us that he needs to recruit about 37,000 policemen and train them in readiness for giving us the necessary required peace and security at election time. We need this to get moving. We have the Lamu-South Sudan-Ethiopia Transport (LAPSSET) Corridor programme in Lamu. I believe the Minister will put some money on the Lamu project to start off. We have terribly dilapidated infrastructure. The ongoing rains have ravaged roads everywhere. We need to repair roads. We have a crisis looming in free education, both primary and secondary. Hon. Mutula Kilonzo needs money to send to schools to cover universal education. We need money for rural electrification. We need money for Constituencies Development Fund (CDF) so that as we go on recess, hon. Members can have an opportunity to actualize their budgets in their constituencies. We need money for the security of Nairobi given the recent shocks that we have been having from terror-based attacks. We need money to run the Government in every respect.

Mr. Deputy Speaker, Sir, I want to urge that the Minister’s undertaking be taken seriously. He has committed himself that he is going to take into account the Committee’s recommendations. He has given an undertaking that he is going to respect the views of hon.

Members on the Vote on Account and giving half of the expected expenditure is something that has ordinarily been done on the Floor of this House. We know of a new dispensation. We know we must respect the Constitution but you made a ruling that gave the go ahead for this debate to go on.

Mr. Deputy Speaker Sir, I also want to urge my sister and my learned friend, hon. Martha Karua that the Minister for Finance has no capacity to change the elections date neither does anybody in the Executive. It is an issue---

Ms. Karua: On a point of order, Mr. Deputy Speaker, Sir. I do not want to interrupt my good friend but I would seek that he upholds what he started yesterday and, therefore, he addresses me as learned senior.

(Laughter)

The Minister for Trade (Mr. Wetangula): I have absolutely no difficulty. My learned senior, you were wrong in asking the Minister for Finance to change the elections date. He has no capacity to do so or even the Executive.

The Minister for Medical Services (Prof. Anyang-Nyong'o): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for lawyers to subject us to this feudal title that has no relevance to our culture?

(Laughter)

The Minister for Trade (Mr. Wetangula): Mr. Deputy Speaker, Sir, you can read the nostalgia with which the Professor is talking. He wishes he was one of us.

(Laughter)

Mr. Deputy Speaker, Sir, as I come to the conclusion, I want to urge that we support because the Government must continue functioning and programmes should not ground to a halt simply because the House had withheld its authority for the Government to incur expenditure to run its programmes.

Thank you.

Mr. Njuguna: Thank you, Mr. Deputy Speaker, Sir for the chance to also contribute to this very important Motion. I will start by saying that we need to allow Government services to continue and to allow them to continue is allowing this Motion to pass.

Mr. Deputy Speaker, Sir, I note the new Minister has taken the new document with a lot of image building which is acceptable to us and even to the whole country. He has given a good image to the new Ministry and this very afternoon, he has given a firm commitment – a serious undertaking that all the issues that were raised by the Budget Committee will be embraced in the incoming proposal.

It is important we realize that we need to improve security in this country. The Government requires improving---

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for every contributor to plead with us that the Minister has given his undertaking and that you can take his work to the bank? I would rather have the Minister than the bank. Is it in order for hon. Njuguna, who is the latest victim of this disease, that we should invest in an individual and not in an

institution of governance, to say that the Ministry itself can be as good as the word yet I can confirm to you that even as we speak now, the last amount of money he allocated to CDF under duress is yet to be released 100 per cent? Is he in order?

Mr. Deputy Speaker: Hon. Ekwee Ethuro, you are out of order.

Proceed, hon. Njuguna.

Mr. Njuguna: Mr. Deputy Speaker, Sir, I thank you for protecting me from hon. Ekwee Ethuro. Hon. Members will realise that we need a lot of money to be invested in issuance of national identification cards to our people. About 1.2 million Kenyans need identification cards. Therefore, money is required for this very important sector.

Mr. Deputy Speaker, Sir, as I speak, there are unsettled Internally Displaced Persons (IDPs). We are now in the final phase of this very important engagement. Therefore, money is required. We are now approaching the electioneering period, and the Government intends to recruit 7,000 Administration Police (APs) officers to enhance security in the country. It will not be possible for the Government to do this if money is not released.

Our people in Government hospitals need drugs. Our people at Kenyatta National Hospital (KNH), the biggest referral hospital in Kenya and others, require drugs. Therefore, money is required immediately, so that Kenyans do not continue to suffer. In our constituencies, roads and bridges have been destroyed. We need to repair the bridges and maintain the roads to improve on transport and communication.

Mr. Deputy Speaker, Sir, there is the issue of school funds. If money is not released in good time, we are likely to compromise the standards and performance in our primary schools. Loans must be released to university students to guarantee them continuation of their academic programmes. Teachers' strikes must be contained. Therefore, the Teachers Service Commission (TSC) must have adequate funds to release to teachers, so that the strikes that have been witnessed in this country can come to an end.

With those few remarks, I support the Motion.

Mr. Deputy Speaker: Hon. Members, I have heard only one hon. Member from the side to my right. So, I now give the Floor to hon. Esther Mirugi.

The Minister of State for Special Programmes (Ms. Mathenge): Mr. Deputy Speaker, Sir, I thank you for the opportunity but I have to remind you again that my name is Murugi, and not Mirugi.

Mr. Deputy Speaker, Sir, I rise to support the Motion.

I was surprised while listening to some of the hon. Members who actually opposed this Motion, because they are the same Members of Parliament who come to my Ministry every day, requesting for relief food for their constituents and inviting me to go and deal with disasters in their constituencies. I wonder how I am expected to provide such services, if money is not released to my Ministry.

(Mr. Mbadi stood up in his place)

Mr. Deputy Speaker, Sir, I need protection.

Mr. Deputy Speaker: Hon. Mbadi, what is it?

Mr. Mbadi: Mr. Deputy Speaker, Sir, is it in order for the Minister, whom I respect, having helped me when I had disasters in my constituency, to imply that by saying that we should follow the Constitution and pass the Vote on Account next week, we are refusing to

release money to her Ministry? We want to give her the money procedurally and properly, on the dictates of the Constitution. Is that a threat not to give me money in future?

The Minister of State for Special Programmes (Ms. Mathenge): Mr. Deputy Speaker, Sir, I appreciate the hon. Member's sentiments.

Going by the events that have happened in this country in the last few months, it is clear that a disaster can happen at any time. It can happen today; it can happen tomorrow and it can happen next week. When I go to the Minister for Finance, he tells me that he has no money. So, I want to appeal to my friend, whom I helped very quickly that he depleted my finances, and that I need them to be replenished to think otherwise. I do not need to elaborate any more.

Thank you.

Mr. Deputy Speaker: Yes, hon. Ekwee Ethuro, the Member of Parliament for Turkana Central.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I stand to oppose this Motion.

I am opposing the Motion because almost two years after we got a new Constitution, this Government has remained incompetent. It is tired. It does not follow the provisions of the law. The Constitution is very clear on what needs to be done. The Government should not intimidate us. We are not refusing to pass the Vote on Account. This is the work we have come here to do. We want the Government to do it properly.

Mr. Deputy Speaker, Sir, I heard the Minister for Energy say that we want to go and talk about the money for the roads. Where I come from, even the tarmac that existed before has disappeared. So, which roads will I be going to talk to my people about? He was telling me that he wanted money to do the road. Do those in the Executive want to do roads in their own homes?

Every hon. Member of this House can bear me witness. How many constituencies have been given their full Constituencies Development Fund (CDF) allocations in the current financial year, which is coming to an end? Does the Minister want me to believe that I can take his word to the bank? We have given this Minister a lot of goodwill from our side but he has now joined the comfort zone of the Executive. He is now trying to make undertakings.

Mr. Deputy Speaker, Sir, since Parliament is a law-making body, we are not interested in undertakings. He is a lawyer. He should know better. We are interested in the institutional framework.

The Minister for Trade (Mr. Wetangula): Lawyers do make undertakings all the time.

Mr. Ethuro: Yes, but we want him to operate beyond being a lawyer. He is not an advocate to make undertakings for another person.

Mr. Deputy Speaker, Sir, we voted for the new Constitution, so that we can have institutions that work. This is a government. The Constitution requires them to come up with even a basic format on how to do a Budget, so that we can gauge their performance. This same Minister has failed to produce a format on which we can gauge his performance. He has failed to do basic things but he wants me to give them 50 per cent of the national Budget. They could even have bargained for 75 per cent and say: "We need three months to come up with the Appropriation Bill." We will be failing as a House. Every time they appeal to our emotions as if we are in the business of love. We are here to use our heads and the Constitution. What the law provides is what the Minister is expected to do. So, the Minister and the Government continue to violate the provisions of the Constitution and when it comes to a vote, instead of arguing, they collect all of them to come and---

The Minister of State for Development of Northern Kenya and other Arid Lands (Mr. I.E. Mohamed): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member right in

continuing to refer to the Executive as Government and, therefore, drawing the Legislature and the Judiciary into his argument?

Mr. Deputy Speaker: Proceed, hon. Ekwee Ethuro.

Mr. Ethuro: Mr. Deputy Speaker, Sir, the Minister is not senior to me. I employed him. He is my junior. If I may borrow hon. Wetangula's argument, he is Executive. He is not Government. Thank you for that information.

Hon. Wetangula, my apologies. You know, he was my party leader in those days, and I still appreciate him.

Mr. Deputy Speaker, Sir, after telling the Minister for Finance my mind, I want to agree. So far, so good, but we want him to be very clear that he is not doing this House and the country a favour by doing the right thing. Look at the amount of money that he has given to the Ministry of Medical Services. There is a commitment, according to the MDGs, on the percentage of the national Budget that the professor should get. What has he got? He got peanuts. The Minister has now gone ahead to start a private foundation for things he should be dealing with as Government Minister.

With those remarks, I beg to oppose the Motion.

Mr. Ogindo: Mr. Deputy Speaker, Sir, allow me to thank you for your magnanimity and generosity in your ruling today particularly to the Minister for Finance. But I must say that we are doing the right thing the wrong way. None of us is opposed to this Motion on Vote of Account. We all swore to defend and uphold this Constitution. The Constitution says that Parliament shall approve the estimates. As we speak, we do not have approval of the estimates.

Mr. Deputy Speaker, Sir, the same Constitution says that Vote on Account shall not be more than a half of the estimates. As we speak, we do not even know the total amount of the estimates. The Chair referred to the court ruling. The court said that its failure to grant the orders that were sought was not to be interpreted to mean that it condones non-constitutionality in the process.

This Parliament is lucky that nobody can take it to court. However, we will look bad if everyday we do things that are unconstitutional. I am sure by our action today we have invited ourselves to the courts. The reasons that are being given here by the Executive are very pedestrian and nobody would buy them. We were inviting the Minister to just be kind and procedural because what was left in this budget processing was very little. We were just to come here, approve the Budget and go straight into the Appropriation Bill. Having interrogated this Budget, this House was in the mood of passing the Appropriation Bill so that the entire Budget can be implemented. I am disappointed that we are rushing when we are running away from nothing.

An hon. Member: We are going on recess!

Mr. Ogindo: Mr. Deputy Speaker, Sir, the Minister is advising me that we should be going on recess. We must not run away from our responsibility to go on recess. We should finish our job in this House. We should do it diligently.

I want to continue giving the Minister the benefit of the doubt but I would like that this House learns from his mistake so that we look better tomorrow.

Thank you, Mr. Deputy Speaker, Sir. I support.

(Laughter)

Mr. Wambugu: Mr. Deputy Speaker, Sir, I rise to support this Motion. However, I support with a few comments. We know we need to have the funds---

*(Mr. Mbadi stood up in his place
and looked around the Chamber)*

The Minister for Finance (Mr. Githae): On a point of order, Mr. Deputy Speaker, Sir. I am just wondering why Mr. Mbadi is always standing and counting Members of Parliament. I am wondering why he is doing that. He has now done that four times.

(Laughter)

Mr. Deputy Speaker: Mr. Mbadi, do not count people.

Mr. Mbadi: Mr. Deputy Speaker, Sir, when an accountant is counting people the lawyer cannot know. So, he was just seeing me looking around the House and checking who is present. When I am counting, he will not know.

Mr. Deputy Speaker: Order, Mr. Mbadi! You are not the one who takes the roll call for Parliament.

Proceed, Capt. Wambugu.

Mr. Wambugu: Mr. Deputy Speaker, Sir, indeed, counting people is not allowed in our tradition. We only count goats.

Mr. Deputy Speaker, Sir, I beg to support this Motion but only with a few comments. Every one of us here has stood to say that they are very impressed by the commitment made by the Minister for Finance that the proposals and recommendations of the Budget Committee will be considered. However, if we all listened, the Minister put in some reservations because of some recommendations that had been made. Therefore, I am not very sure that what the Minister said will be implemented or taken on board. Otherwise, I think we need these funds to be released so that the IEBC can kick off its work of registration of voters so that we can have a safe election in March, next year.

We also require funds to complete CDF projects. While on that issue of undertaking by the Minister, it is very sad because most of the undertakings made by the Government in this House have never come to pass. About two weeks ago, the Minister for Local Government rose in this House and made an undertaking that a market in my place called “Kiria-ini” would be opened within three days. Until now that market has not been opened. I am still wondering why he had to make that undertaking and yet the market has never been opened. However, I understand that it is because of lack of funds and that is why I still support that we pass this Motion so that we can get the money to open up that market.

Mr. Deputy Speaker, Sir, we also need to get funds so that we can handle some of the projects which were destroyed by the recent floods in various constituencies. I have a school which experienced a serious landslide and I wrote a letter to the Ministry of State for Special Programmes, but I am yet to get a reply from the Ministry. We also need money for free primary education and free secondary education.

With those few remarks, I beg to support.

Mr. Kaino: Thank you, Mr. Deputy Speaker, Sir. I rise to support this Motion. While supporting this Motion I would like to say that Kenyans are suffering in the rural areas.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, there are many people who are today going without food in many districts including Turkana despite the oil that they have found. Many hospitals, dispensaries and health centres are going without drugs today, and these drugs cannot be bought unless there is money. Members of Parliament are disturbed by people calling because there are no drugs in hospitals. Patients are suffering in many places. I urge my colleagues not to see the Motion the way it is today, but to see the suffering of Kenyans in many places. They should address the plight of patients in hospitals. By doing so, these Members and Kenyans at large will benefit from this money that we are now passing.

Mr. Temporary Deputy Speaker, Sir, elections require a lot of preparations. It is very risky to wait until the Government operations are set for elections and we deny them the money. I am urging my colleagues to see the passing of this Motion as positive.

Just the other day when I was in my constituency, I received several phone calls about drugs. I do not know whether the problem is in the whole of Kenya but in my constituency drugs are not there. When I asked the Medical Officer of Health (MOH) he said there are no drugs even at Kenya Medical Supplies Agency (KEMSA), where we are supposed to get them, because there is no money.

Mr. Temporary Deputy Speaker, Sir, I am supporting this Motion because of the Kenyans who are suffering today. I want to ask my colleagues to see that Kenyans are actually suffering and not to think about themselves.

I wish to support this Motion---

(Several hon. Members stood up in their places)

Mr. Temporary Deputy Speaker, Sir, protect me I have not finished. My time is not up.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Boaz! It is your own words that are betraying you. You know once you say that you are supporting, it is like you are concluding.

Mr. Kaino: Mr. Temporary Deputy Speaker, Sir, let me just conclude by urging my colleagues to support this Motion.

I wind up by supporting this Motion very strongly.

The Minister of State for Defence (Mr. Haji): Mr. Temporary Deputy Speaker, Sir, thank you for giving me this opportunity. From the outset I want to say that I support this Motion not because I am a Minister but because I know what it means when the Government is not able to function as it is supposed to.

Some speakers here mentioned the devastation caused by the rains in this country. But I want to mention right now here that just this morning I received a telephone call from my District Water Officer (DWO) to tell me how serious drought is in my own constituency of Ijara.

Mr. Temporary Deputy Speaker, Sir, because of lack of water our livestock have now moved to the coast. Unfortunately, we are already in conflict with the people at the coast because game officers are being used to ask our people to go back to where there is no grass or water. I agree with the Minister of State for Special Programmes that she needs money for the vulnerable people in our country.

I very strongly support the Motion.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I rise to support this Motion.

In supporting this Motion I want to say that I sit in the Budget Committee. It is the Budget Committee which came up with far wide-ranging recommendations which meant mutilating deep into the estimates that had already been published. For you to reconstruct that, obviously there must be something.

The second reason is that as an agriculturalist, I do understand that you require time to produce food. We do not have food in the Republic of Kenya. Anytime we are buying here, it works against us and we may end up importing. Even that importation will require time. So, for the sake of your stomachs, for the sake of people who have voted you here and will be requiring a lot of relief food and other facilities, we need to have the Government and Executive move into action immediately.

Mr. Temporary Deputy Speaker, Sir, I do not believe that any one of you, including the Chair can avoid and ignore the fact that because of this bad weather, we are going to have a major outbreak of diseases. If they come, how would the Executive deal with these issues if they do not have money? How are they going to continue serving these Kenyans?

One time I watched the Cable News Network (CNN) and Mr. Bush, the President of the United State of America (USA) was there. From his executive position, he was able to move that they vote US\$38 billion against all requirements by Congress. We should also be able to stand on some of these odd situations and accept that we are faced with a situation; we are making progress and, therefore, I support.

Mr. Mwangi: Mr. Temporary Deputy Speaker, Sir, thank you. While we would not condone the actions of the Minister and we would think that in future he would be ready to follow the Constitution as stipulated, I support this Motion.

I hope the Minister is listening to us and will take note that there are several or many stalled projects in this country that require completion within the financial year. The Minister of State for Planning, National Development and Vision 2030 is reported to have said that we will not be able to spend the Constituencies Development Fund (CDF) money come next December. I wonder what the Minister for Finance is going to do while there are complaints that he has not provided us with funds before the end of this financial year.

Today, free primary and free secondary education funds have not been released by the Minister for Finance.

(Mr. Mbadi consulted Mr. Githae)

I hope Mr. Mbadi is not keeping the Minister busy so that he does not listen to what we are saying. The Minister must give us an ear. He must give us a hearing. While we are supporting him, he should also not take it easy while we are not doing the right thing. Although I am supporting, our children's primary schools have not received their money since the beginning of the year and so are the secondary schools. This is why we are supporting the Minister. We want him to release these funds and the others for CDF. The roads are in bad shape. We will support him and expect him to release these funds as quickly as possible so that our schools get provisions.

With those few remarks, I beg to support.

[The Temporary Deputy Speaker]

(Mr. Ethuro) left the Chair]

[Mr. Deputy Speaker resumed the Chair]

Mr. Mbau: Mr. Deputy Speaker, Sir, I want to begin by appreciating and thanking you for your very wise decision and ruling this afternoon that was very informed. You know last year when we had this kind of mess, the Chair still provided direction to hon. Members and the House as a whole. So I want to thank you for the guidance that you have given to this House.

I have listened very keenly to the contributions of hon. Members of both the Back Bench and the Front Bench which contributions go towards telling the Executive what the Back Bench is usually about, which is putting the Executive to account. It is about holding the Government to account and, so far, from where I am standing, I can attest that the Back Bench has brought to bear the reasoning of the Executive. I want to appreciate that the Minister for Finance supported by Mr. Kimunya as well as other Ministers who have spoken, have taken heat from what is coming from the Back Bench in so far as complying and obliging to the Constitution, the rules and legislations are concerned.

We take note of the fact that the Minister for Finance agrees that mistakes may have been committed but he is willing to ensure that these mistakes will not be repeated, including in the finalization and processing of the current Budget. The Budget process is lengthy. It started with the presentation of the Budget Policy Statement and shall come to an end when we shall eventually pass the Appropriation Bill to become an Act. In fact, it is not until the President gives assent to the same that it shall become law. I appreciate that the Minister is confirming and agreeing that if this House grants him leave to access the Vote on Account, it is only a way of advance, awaiting the eventual prosecution and approval. I also note that this Minister and Government, if this House did not allow the passage of this particular Motion, the Minister would still be at liberty to actually go out there and consult the World Bank, International Monetary Fund (IMF) and even local banks and borrow. But that will be borrowing at high interest rates.

Mr. Deputy Speaker, Sir, I want to also note that whereas my colleagues here - and I concur with them - are putting the Government on notice on what will happen in future; that we cannot afford to continue to claim that we are in a state of transition; that because we are transiting we can afford to flout both the law and the Constitution, Prof. Anyang'-Nyong'o clearly said that we consider that we in a learning curve. May the Executive know that immediately after the next general election, Ministers, who will be known as Cabinet Secretaries, may not be able to come to the Floor and prosecute their cases, as is currently the case.

So, to Members of Parliament who are my colleagues, I do bear with the position that we hold the Budget Committee and Finance, Planning and Trade Committee responsible. But I think in the interest of continuity; in the interest of all of us, we can agree that this is the last time that, as Members of Budget Committee and as Parliament, we are ceding ground to the Executive, knowing very well that next year they will not be here to prosecute what they are doing. I think we can allow this Motion to pass.

With those remarks, I wish to say that in the interest of all of us, we can call it a day, support and move on. But we also note the undertaking by the Minister. In fact, I must say that we are ceding ground because of the undertaking of the Minister to ensure that he shall integrate whatever report was adopted by the House, so that it becomes part of the Appropriation Bill.

Mr. Deputy Speaker, Sir, I thank you as I support.

(Mr. Koech stood up in his place)

Mr. Deputy Speaker: Do you want to contribute?

Mr. Koech: Mr. Deputy Speaker, Sir, I do not intend to say much, but I want to support this and remind the Minister that he should--- If this is what has been keeping him from releasing the money to schools, he should do it like yesterday.

I support.

Mr. Deputy Speaker: Order! For the information of Members of Parliament here, this debate can only come to an end if there is no Member willing to contribute. That seems to be the case now. The Chair will now have no option but to put the Question. I call upon the Mover to reply.

The Minister for Finance (Mr. Githae): Thank you, Mr. Deputy Speaker, Sir. First of all, let me take this opportunity to thank all the Members for their contribution, goodwill and support. I trust your faith in me. I promise you that my undertaking is an undertaking of an honourable Member of Parliament and a gentleman. I will keep it. Even as a lawyer, an undertaking is as good as law.

Mr. Deputy Speaker, Sir, on CDF - now that it has been mentioned - it is my intention that before December, the full amount of CDF will be released so that the current Members of Parliament can be able to finalize and complete all the projects. That is because by December, the campaigns may have started. So, we want to do it before December. The full amount must be released.

(Applause)

With those words, I beg to move.

Mr. Deputy Speaker: Hon. Members, now that we have come to the end of debate, I now wish to put the Question.

(Question put and agreed to)

ADJOURNMENT

Mr. Deputy Speaker: Hon. Members, it is now time to interrupt the proceedings of the House. The House now stands adjourned until Tuesday, 26th June, 2012, at 2.30 p.m.

The House adjourned at 6.21 p.m.