

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 7th May, 1996

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPER LAID

The following paper was laid on the Table:-

The Sixth Report of the Public Investments Committee on the Accounts of State Corporations

*(By The Chairman of the Public Investments Committee
(Prof. Anyang'-Nyong'o)*

NOTICE OF MOTION

ADOPTION OF THE SIXTH PIC REPORT

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, I beg to give Notice of the following Motion:-
THAT, this House adopts the Sixth Report of the Public Investments Committee on the Accounts of State Corporations laid on the Table of the House on Tuesday, 7th May, 1996.

ORAL ANSWERS TO QUESTIONS

Question No. 164

SHIFTING OF DISTRICT HEADQUARTERS

Mr. Githiomi asked the Minister of State, Office of the President:

(a) whether he was aware that Nyandarua District Headquarters was shifted from Nyahururu to Ol Kalou; and,

(b) if the answer to "a" above was in the affirmative, when the departmental heads will start operating from the new headquarters.

The Assistant Minister, Office of the President (Mr. Awori): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am, indeed, aware

(b) The district departmental heads will move to Ol Kalou immediately the buildings and the necessary infrastructure are in place.

Mr. Githiomi: Mr. Speaker, Sir, the former district headquarters were in Nyahururu and a few departmental heads are still in Nyahururu. Now, Nyahururu is in the Rift Valley not in Central Province. I would urge the Assistant Minister to try and see that the district headquarters move out of Nyahururu as much as can be practically possible. Could the Assistant Minister consider moving the district headquarters to Ol Kalou? The officers who are going to Ol Kalou can share office accommodation with their colleagues who are already there.

Mr. Awori: Mr. Speaker, Sir, yes, my Ministry will do everything in its powers to ensure that departmental heads move to Ol Kalou as quickly as possible.

Mr. Icharia: Mr. Speaker, Sir, can the Assistant Minister explain why it was necessary to move Nyahururu from Central Province to Rift Valley in a hurry before the headquarters for Nyandarua District were constructed? Why was there a time limit within which you had to move Nyahururu from Central Province to Rift Valley? Why cannot this Government plan things properly? Can the Assistant Minister answer this question?

Mr. Awori: Mr. Speaker, Sir, there was no hurry of any kind at the time when it was decided to move to Ol Kalou as the new district headquarters. As we know, the headquarters was at the tip of a different Province and because wananchi requested that they wanted the administration to come closer to them, through the Sub-district Development Committee and the District Development Committee, it was decided that their district headquarters should be moved to Ol Kalou. It was not moved in a hurry.

Question No. 133

BENEFICIARIES OF BURSARY FUND

Mr. Gitonga asked the

Minister for Education:-

- (a) how many students from Lari benefitted from the Presidential Bursary Fund in the years 1993,1994 and 1995; and,
- (b) whether the Assistant Minister would name the schools which benefitted and the number of beneficiaries from each school.

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

The Presidential Bursary Fund was set up as a result of a Harambee presided over by the President on 17th March, 1990. In August, 1992, the entire Fund was disbursed to district commissioners. Therefore, in 1993, 1994 and 1995, there was no money from the Fund to send to any school in Kenya leave alone Lari Constituency. However, the Government introduced the Secondary Schools Bursary Scheme in the financial year 1993/1994 which is currently going on and which is administered by my Ministry?

(b) In relation to this Fund, as far as Lari Constituency is concerned, all secondary schools benefitted and the amounts which were allocated to each school are given as per attached list covering the three financial years. The number of students who have benefitted from the scheme are shown against each school. Where the number is not shown, the funds have not yet been disbursed to the students.

Mr. Speaker, Sir, I beg to table the details.

(Hon. Komora laid the documents on the Table)

Mr. Gitonga: Mr. Speaker, Sir, while thanking the Assistant Minister for this answer, would he inform this House who were the members of the disbursing committee?

Mr. Komora: Mr. Speaker, Sir, the funds are sent to each district education board which, in turn, sends the funds to each secondary school, and the Board of Governors are responsible for meeting and disbursing this money to each student.

Mr. Speaker: Can I give a colleague from your area the chance?

Mr. Mwaura: Mr. Speaker, Sir, can the Assistant Minister tell this House what other types of bursaries are being managed by the Ministry of Education other than the Presidential Bursary Fund?

Mr. Komora: Mr. Speaker, Sir, the bursary scheme which is managed by the Ministry of Education is the one I have talked about.

Mr. Speaker: Mr. Gitonga, you had a very burning question. What is it?

Mr. Gitonga: Mr. Speaker, Sir, the question which I wanted to ask is whether the Assistant Minister could tell this House who are the members of the disbursing committee. In other words, who decided how much should go to each school in the first place before it went to the board of governors?

Mr. Komora: Mr. Speaker, Sir, the most important point is that the intention of the Government is to make sure that bright students who are from poor families are enabled to attend school. The money is normally calculated based on the number of classes in each secondary school.

Mr. Mwaura: On a point of order, Mr. Speaker, Sir. The reason I asked the Supplementary question is because, here we are discussing Presidential Bursary Schemes which are initiated by the President as apolitical bursaries. Now, is the Ministry of education in a position to manage other bursaries which are managed and voted for by this House? We would like to know that.

Mr. Komora: Mr. Speaker, Sir, if the hon. Member was listening to my reply, the Presidential Bursary Fund was disbursed entirely in 1992. The Government introduced a bursary scheme for the whole country under the Ministry of Education, which we are managing.

Mr. Ndicho: Mr. Speaker, Sir, I am under instructions from Bishop Kimani to ask this Question. But before I ask it, I would like to seek clarification from the Chair as to why members of the public have been denied permission to enter the Public Gallery. I am just from outside, and what I was told by the orderlies is that these are instructions from Parliament. Who gave those instructions, that members of the public should not enter the Public Gallery? They are standing outside, across the road.

Mr. Speaker: By the way, Mr. Ndicho, there are certain things you ought to ask of the Chair. You know, for example, members of the public get access to the House with the authority of the Chair. But you are now drawing my attention to the Gallery; that the members of the public are not there. Which Gallery, because, I cannot see from the position in which I am? Anyway, ask your Question!

Question No.023

COLLECTION OF TEA AND COFFEE CESS

Mr. Ndicho, on behalf of **Bishop Kimani**, asked the Minister for Local Government:-

(a) how much money has been collected as tea cess and coffee cess between 1992 and 1994 in Nakuru North Constituency;

(b) what has delayed the gravelling of access roads in Nakuru North; and,

(c) if he could ensure that these roads, which are in a deplorable condition, are gravelled to enable farmers produce and transport their crops to the market easily.

The Assistant Minister for Local Government (Dr. Wameyo): Mr. Speaker, Sir, I beg to reply.

(a) Kshs0.8 million;

(b) Between 1992 and 1994, 305.4 kilometres of roads were maintained.

(c) I will do so.

Mr. Ndicho: Mr. Speaker, Sir, I do not know where the Assistant Minister was reading his answer from because what he has given the House is totally different from what I have here. So, I do not know whether we are going to go by the oral answer that he has given, or by the written answer that I have here on behalf of Bishop Kimani. Can he clarify this before I ask any supplementary question?

Dr. Wameyo: Mr. Speaker, Sir, I am the Assistant Minister, and I have read the answer.

Mr. Muite: Mr. Speaker, Sir, is the Assistant Minister aware that the rationale behind the cess for tea and coffee is that this money is supposed and intended to be spent on the maintenance of the roads in these areas, and it is never spent for that purpose? Instead, this is the money that is used for other purposes like paying salaries. Is he aware of that, and if so, what action is he going to take to ensure that the cess money is used for the maintenance of the roads in the tea and coffee areas?

Dr. Wameyo: Mr. Speaker, Sir, I will make sure that the cess money from tea and coffee will be used on the maintenance of roads according to the regulations.

Mr. Wamae: Mr. Speaker, Sir, is the Assistant Minister aware that he gave a similar answer last year for a similar Question and the money for coffee cess in Nyeri is not used for maintenance of roads but is being used for other purposes? Why has he not taken any action?

Dr. Wameyo: Mr. Speaker, Sir, I need to be made aware that, that money has been used for something which it was not intended and action will be taken.

Mr. G. I. Ndwiga: Mr. Speaker, Sir, could the Minister apportion some percentage to the councils for them to be able to run and to maintain some of these roads? Could he consider setting aside some percentage to be used by the councils to maintain or to gravel some of these roads?

Dr. Wameyo: Mr. Speaker, Sir, the money for gravelling roads is given to somebody who knows how to do the job. If you just give it to a casual who does not know how to gravel a road, I do not know how the road will be gravelled.

Mr. Speaker: The last question, hon. Ndicho!

Mr. Ndicho: Mr. Speaker, Sir, according to the information that the hon. Bishop Kimani gave me, there is no road which has been gravelled or maintained, yet the Assistant Minister has misled this House deliberately by saying that 305 kilometres have been graded and maintained. In fact, the Bishop told me that even donkey carts cannot move on those roads because the potholes are so big that the donkey carts are wobbling from all the sides. The Assistant Minister has misled us in this Question. Can you ensure that you send your officers from the Ministry's headquarters to ascertain whether what you have read here is correct or it is just

something written here in theory in the offices, because it is not the position in the field according to the area Member of Parliament?

Dr. Wameyo: Mr. Speaker, Sir, the area Member of Parliament is entitled to his own views. I have already said 305.4 kilometres were graded and maintained from 1992 to 1994. Now for this period, according to part (c), I have said I will do so.

Mr. Speaker: Next Question, Mr. Mumba!

Question No.218

WATER SHORTAGE IN BAHARI

Mr. Mumba asked the Minister for Land Reclamation, Regional and Water Development:-

- (a) if he is aware that there is a serious water shortage in Matsangoni in Bahari Constituency;
- (b) if he is further aware that there was a Government directive issued on 30th August, 1993, to the effect that the Ministry should ensure that the water project was fully functional by November of the same year; and,
- (c) what the Ministry has done to implement this directive.

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Speaker, Sir, I beg to reply.

- (a) I am aware there is a water shortage in Matsangoini Location in Bahari Constituency.
- (b) I am also aware that on 30th August,

1993, a Government directive was issued for the rehabilitation and extension of the existing water supply system for the area.

(c) My Ministry, through the National Water Conservation and Pipeline Corporation, has finalised the design for a 12-kilometre pipeline extension from Malindi water pipeline at Gede to Mida, in order to meet the water demand for Matsangoini area. The plan will be implemented as soon as the funds are made available.

Mr. Mumba: Mr. Speaker, Sir, the question of water is a matter of life and death. The questions I have asked are questions which the Ministry has been aware of for the last three years. Apparently, matters or projects that are designed, planned or requested for by some of our areas at the Coast, and in particular Bahari, are taken for granted and take very long to be implemented.

Mr. Speaker, Sir, the Ministry, maybe now has woken up and is trying to find a quick solution to this problem, but for many years---

Mr. Speaker: Mr. Mumba!

Mr. Mumba: Mr. Speaker, Sir, I am going to ask my question.

Mr. Speaker: Then, ask the question straight away.

Mr. Mumba: Mr. Speaker, Sir, the Ministry was directed to rehabilitate the existing water supply system in the area but nothing has happened for the last three years. In fact, the National Water Conservation and Pipeline Corporation has bought about 100 pipes and they are lying at Kilifi since mid-last year, and those pipes have not been used. Can the Assistant Minister tell us why those pipes are lying there and why they have not been laid to alleviate the water problem in Matsangoni? Can the Assistant Minister tell us that?

Mr. Ligale: Mr. Speaker, Sir, the Member for Bahari knows very well that we have toured the area together with him and identified the problem. He also knows that we came to the conclusion that the original design would be too small to meet the current water demand in that area due to increased population. That is why it became necessary for us to re-design the scheme to allow for a slightly wider pipeline, which will be able to meet his people's requirements.

Mr. Mumba: Mr. Speaker, Sir, he says "the plan will be implemented once funds are available". That is something that we hear so many times and nothing happens. Can the Assistant Minister give this House a time frame on which we can rely, and see how best we can assist the Ministry? Can the Ministry give us a time frame within which this plan will be implemented, because people are dying in road accidents between Matsangoni and Malindi at the rate of one person per week when they are cycling to get water from Matsangoni to Gede. Is the Assistant Minister aware of this?

Mr. Ligale: Mr. Speaker, I regret any incident in which some lives of our people may have been lost while fetching water from Matsangoni to Gede, but I have promised that my Ministry is very keenly pursuing this matter, and I very much hope that in the very near future, hopefully before the end of this financial year, we would be in a position to provide the water.

Question No.069

POWER PLANT AT WEBUYE FALLS

Mr. Busolo asked the Minister for Energy:-

- (a) what programme exists to exploit the hydro-electric power potential of the Webuye falls; and,
(b) whether he could consider including Misikhu and Ndivisi/Lukusi locations as well as Sitikho/Khalala areas in Webuye Division for rural electrification programme.

The Assistant Minister for Energy (Mr. Marita): Mr. Speaker, Sir, I beg to reply. (a) My Ministry has not programmed the extension of hydro-electric power potential of Webuye falls in the current generation plans.

Mr. Busolo: Mr. Speaker, Sir.

Mr. Speaker: Order, Mr. Busolo. Order, Mr. Minister. I do not think it is in order for a Member to shoot up and shout "Mr. Speaker". You must attract my attention by claiming a point of order. Anyhow, what was your problem?

Mr. Busolo: Mr. Speaker, I am still learning the rules. I was just saying that the Assistant Minister was not being audible when reading the answer.

Mr. Speaker: Oh, you are not understanding what he is saying?

Mr. Busolo: No.

The Assistant Minister for Energy (Mr. Marita): Mr. Speaker, Sir, if the Member did not hear, let him listen very carefully.

(a) My Ministry has not programmed the exploitation of hydro-electric power potential of Webuye falls in the current hydro-generation expansion plans which go up to the year 2013. However, the project could be considered in the next plan period.

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. You are suffering in the same way we are suffering. We cannot exactly hear what the Assistant Minister is saying. Would I be in order to request hon. Sunkuli to read the answer for hon. Atebe Marita, because we cannot ask any supplementary questions.

Mr. Speaker: Order! What is it you are complaining about? You are not able to hear?

Mr. Ndicho: We cannot understand what he is saying.

The Assistant Minister for Energy (Mr. Marita): Mr. Speaker, Sir, the hon. Member has never been in this House for five years. He must listen very carefully since he is very new in this House. Let me conclude my answer;

(b) Misikhu and Ndivisi/Lukusi locations, as well as Sitikho/Khalala areas in Webuye Division will be considered for rural electrification once they have been given priority by the Bungoma District Development Committee.

Mr. Mulusya: On a point of order, Mr. Speaker, Sir. My point of order is that; we could not understand the answer. Would it not be in order for the answer to be read again so that we can ask supplementary questions?

Mr. Speaker: I understand what he said. Can we hear whether Mr. Busolo does understand?

Mr. Busolo: Thank you Sir. With the benefit of the written answer, I can assure the House that I would have got the answer fully.

(Applause)

But in the absence of the written answer, I will try as much as I can to raise a supplementary question. If the Ministry has no programme to exploit the Webuye Falls, whose potential, as far as I am aware, is more than that of Turkwell. The Nzoia River flows all the year round, whereas that of Turkwell, I understand, cannot even fill the two turbines. How come that the Ministry, in its wisdom, has not done any evaluation of the potential in this area?

Mr. Marita: Mr. Speaker, Sir, I am happy because the hon. Member who had said that he did not hear the answer, has now asked a supplementary question arising from the answer that I gave him. I have already said that this area, where the hon. Member is requesting us to start the project, was not included the hydro-electric generation expansion plan which runs to the year 2013. I have said that after that year, this area will also be considered in the programme.

Mr. Busolo: Mr. Speaker, Sir, I think that answer is actually unacceptable. He said that the people of

Webuye have to wait until the next century for them to realise electricity in the area, when they have hydro-power in the area. I think it is like saying that those people may as well not be Kenyans. They are Kenyans, and I know the Government wants to woo people to support it, and it is imperative that the planners in the Ministry of Energy consider the request of the people to have electricity. We cannot go into the next century if there is no power in the area. I am questioning the Ministry for Energy as to why it wants the rest of the country to enter the next century with electricity and leave out Webuye?

Mr. Marita: Mr. Speaker, Sir, let me say that we know that. Webuye is within Kenya, but in Kenya we cannot do everything in every area. We have to start other projects and after completing them, we get some more money to carry out other projects. I have already told the hon. Member that when we have another plan, we shall consider Webuye Falls. If the exercise of surveying and research will justify some allocation of money to that project, then it will be considered.

Mr. Munyasia: Mr. Speaker, Sir, the hon. Assistant Minister has said that once the Bungoma District Development Committee (DDC) recommends Misikhu, Ndivisi/Lukusi locations as well as Sitikho/Khalala areas, he will consider these locations for rural electrification. How long, after this recommendation, will the Assistant Minister carry out rural electrification in these areas, noting that the recommendations from the DDC for Sirisia Constituency in 1995 have not been implemented to date?

Mr. Marita: Mr. Speaker, Sir, that is a different question which is not related to the Question that I am answering. Let me say that at the moment, there is electricity in Webuye and if these other areas will be recommended by the DDC, we shall have to consider them. At the moment, the DDC of Bungoma has recommended some areas for electrification; so, the hon. Member can recommend his area as well since he is also a member of the DDC. If these are forwarded, then we will recommend them.

Mr. Busolo: Mr. Speaker, Sir, I would like the Assistant Minister to tell us how he determines which areas should be given priority in electrification and not others because, as far as I am concerned, the Webuye Falls is of a higher priority than the Turkwell Gorge?

Mr. Marita: Mr. Speaker, Sir, I do not want to say so much because I have already said that if there is any area that the hon. Member wants considered for electrification, it should be recommended by his DDC and then we will deal with it.

Question No. 155

REMOVAL OF BUMPS ON HIGHWAYS

Mr. Maore asked the Minister for Public Works and Housing:-

- (a) whether he is aware that Makutano-Embu-Maua Road has 69 bumps, which is in contravention of the International Highway Convention;
- (b) since the Highway Convention Code prohibits bumps on the highways, what the reason for bumps in Kenyan's main roads is; and,
- (c) given the massive damage on motor vehicles resulting from these bumps, whether he can order their immediate removal from all major roads.

The Assistant Minister for Public Works and Housing (Col. Kiluta): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that there are 105 speed bumps between Makutano (junction of B6 and A2) and Maua, a distance of about 200 kilometres.

(b) The International Highway Convention Code covers the standards for use of road signs and signals, but it is silent on speed bumps. Since design and construction standards differ from one country to another, road bumps standards in Kenya have been designed and improved over the years to meet traffic requirements of being effective in slowing down vehicular speeds in townships and areas of high pedestrian population such as schools, hospitals *et cetera*.

(c) The Ministry is considering removal of speed bumps which cannot be justified by the above reasons, especially on the major highways.

Mr. Maore: Mr. Speaker, Sir, if you listened to the answer carefully, the International Highway Convention is very explicit on road signs and signals. On top of that, we do have signs and signals but then there are no police to ensure that these signs and signals are obeyed; so we have devised an African way of recreating what the engineers never intended. I have the experience of Australia, Europe and North America where you will never see any bump on the highway. Why does he think that the police cannot enforce signs and signals on roads and instead they build mountains on every two kilometres on this road? After every two kilometres there is a bump

on this road. There is nothing African about vehicles. They were done by the same minds that were making roads. How long does he think it will take before he minimises these too many bumps on a very short distance?

Col. Kiluta: Mr. Speaker, Sir, we are not very fortunate like the hon. Member to have been to Australia and America. All that we are saying here is that we will confine ourselves to the local issues. The police in actual fact have asked us to add some more bumps on the same road and the DDC from the hon. Member's area has also asked us to add some more bumps on the road. So, we do not intend to remove them, but rather to add some more.

Dr. Kituyi: Mr. Speaker, Sir, arising from the Assistant Minister's reply, since the purpose of the bumps is supposed to be to control excess speed, and he is talking about local standards, how does he explain the fact that there is such a wide variation in the size and design of those bumps, that in some places you have bumps which make it impossible to have a low vehicle drive over? Why do we not design standardized forms of bumps on Kenyan roads?

Col. Kiluta: Mr. Speaker, Sir, as I said, we do not have anything at all in our code governing the bumps. So, we are trying to improve on them with time and we should come up with a standard bump, but for the benefit of the hon. Member, if he has got the time, I will give him two letters, one of March this year, from his DDC, and the other one from the police requesting for more bumps. All they did not do is specify the size, but we will decide the size for them.

Mr. Mutani: Mr. Speaker, Sir, is the Assistant Minister aware that in Embu District, bumps are being erected now even where there is no danger for motorists and pedestrians?

Col. Kiluta: Mr. Speaker, Sir, I said earlier on that we are putting some more bumps, depending on the requests we have received from the DDC and the police---

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Assistant Minister in charge of public works to keep on telling this House that a distance of 200 kilometres, which has already got 105 bumps, is justified to get more bumps? Is it in order for him to try to convince this House that this stretch of road needs more than 105 bumps?

Mr. Speaker: Order, hon. Ndicho! That is not a point of order.

Mr. Maore: Mr. Speaker, Sir, since it seems that there is massive Africanisation of Kenyan engineers, the distance from here to Mombasa is over 400 kilometres. How come there are no bumps there and yet you have two bumps for every two kilometres for this road? What is the policy?

Col. Kiluta: Mr. Speaker, Sir I said very clearly that we put these bumps following requests made by the local community, backed by statistics on accidents occurring within that area, and if you want me to give you the statistics from your area, I have them.

Question No. 012

SHAREHOLDERS OF KTN

Mr. Kamuyu asked the Attorney-General who the shareholders of the Kenya Television Network (KTN) are and what their equity breakdown is.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to reply.

The share holders of the Kenya Television Network (KTN) and their equity breakdown is as hereunder:-

1. Trans-National Bank Limited, one share and
2. Mr. Philip Kipchirchir Murgor, one share.

I may add that this ownership of KTN has been challenged in High Court, vide Civil Case No.20 of 1996: Communications Centre Holdings Limited and Mr. Jared Kangwana versus Trans-National Bank Limited, Philip K. Murgor and Mwakio Kikonde Sio. The outcome of the suit is still awaited. The matter is, therefore, *sub judice*

(Mr. Kamuyu stood up in his place)

Mr. Speaker: Mr. Kamuyu, have you heard that the matter is *sub judice*?

Mr. Kamuyu: Yes, Sir. Indeed, I have a written answer. I have no intention of involving myself or this House in matters, which are *sub judice*. In the same vein the Attorney-General (AG) should not be allowed to hide behind the *sub judice* rule when I am not at all involving myself in the case of Messrs. Kangwana, Sio and Murgor. My Question was very straight forward, and I am fully aware of the HCCC case No. 20 of 1996.

Nonetheless, can the Attorney-General tell the House about the nominal shares of this particular company and the value of each of the shares held by Trans-National Bank and Mr. Philip K. Murgor, who is a lawyer? Can he also comment on the involvement of KANU in this particular organisation?

Mr. Wako: Mr. Speaker, Sir, as far as the records show I cannot see KANU mentioned anywhere in the files. As for the nominal share capital, the amount is Kshs30 million divided into 1,500,000 ordinary shares of Kshs20 each. Two ordinary shares have been issued.

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

Mr. Speaker: Yes, Mr. Muite. You will, of course, take into account the *sub judice* rule.

Mr. Muite: Mr. Speaker, Sir, I will steer very far away from the *sub judice* rule. There has been a lot of talk about involvement in this company of highly placed people in State House and in KANU. The Attorney-General must know whether either or any of these shareholders, some of whom are lawyers, are holding the shares as trustees of either KANU or individuals in State House. Can he tell us that?

Mr. Wako: Mr. Speaker, Sir, I do not go by what is said in public. I go by what is in the files I have here. What is in these files is what I have told this House.

Mr. Orendo: Mr. Speaker, Sir, many of the files that relate to organisations like KTN are not ordinarily available at the Attorney-General's. I remember that at one time I tried to look for this particular file or a copy of it, which should be available on demand for the purposes of search. Would the Attorney-General assure that this file is normally not available because the records are not quite what he is saying?

Mr. Wako: Mr. Speaker, Sir, as far as I know, all the files in the Registry of Companies are readily available. If any file is not readily available and a report is duly made to my office, investigations will be carried out to make the file available.

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

Mr. Speaker: He is responding to a point of order!

Mr. Wako: I do recognise that, in fact, in response to another Question in this House I did say that we shall soon computerise the Registry of Companies---

Mr. Muite: On a point of order, Mr. Speaker, Sir. Is it in order for the chief law officer of this Government to say that no files go missing from the Registry of Companies when it is matter of common notoriety that any file relating to political figures in this country is never available in his Chambers? Is it in order for him to say that the files are always available?

Mr. Wako: Mr. Speaker, Sir, the hon. Member was so keen rising on a point of order that he did not listen to my full answer to the Question. I did say that files are supposed to be readily available in my Chambers, but my Chambers has had difficulties, not just with any particular file, but because of the condition in which my registry is. Consequently the Government has taken it upon itself to try and computerise the Registry of Companies. I can assure the hon. Member that the issue of missing files in my office will be a thing of the past when the registry is computerised.

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

Mr. Speaker: Order, Mr. Gatabaki! Mr. Ojode's Question.

Question No. 064

PAYMENT OF COURT AWARD

Mr. Ojode asked the Attorney-General:-

(a) whether he is aware that Mr Benjamin Okwaro of Konyango Central Kabuoch, Private Bag, Marinde, who was assaulted by security officers, filed a case No. 277/89 in Kisii Law Courts, and was awarded damages amounting to Kshs30,000 in September, 1992 and has not been paid todate; and,

(b) if the answer to (a) above is in the affirmative, whether he could consider authorising this payment together with the accrued interest to Mr. Okwaro.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to reply.

(a) I am ware that Benjamin Okwaro of Konyango, Central Kabuoch was warded Kshs19,385 as general damages in civil case No. 227 of 1989 before the Kisii Principal Magistrate's Court. The amount has not been paid todate.

(b) The Office of the President has given assurance that the plaintiff, Mr. Benjamin Konyango, may collect his dues from his advocates, M/s J. Abobo & Co Advocates, any time after 21.5.96.

Mr. Ojode: Mr. Speaker, Sir, there are contradicting figures here. The Attorney-General is talking about Kshs19,000 and yet the complainant talks of Kshs30,000. I do not know which figure is correct! Could the Attorney-General inform this House why a case of 1989 has not been sorted out today? Why is he telling the complainant to go and collect his money after 21.5.96 and not immediately, if it has really been paid?

Mr. Wako: Mr. Speaker, Sir, actually the amount I stated was the principal one as awarded by the court. But if you include costs and interest the amount comes to Kshs25,262.10. Although this is a case of 1989 the judgement was not given until 1994. The delay has occurred purely because of non-availability of funds.

Dr. Lwali-Oyondi: Mr. Speaker, Sir, could the Attorney-General explain why he has not paid the interest on this money at the current rate of about 80 per cent for the period since 1989 up to now? This man would have gained all that interest amount if he had been given this money and put it in a fixed deposit account.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, the interest that was awarded was paid at the rate of 12 per cent. In the amount I mentioned, there was an element of interest.

Question No. 086

POSITION OF CONTINENTAL CREDIT LIMITED

Mr. Muite asked the Attorney-General:-

- (a) whether in view of the fact that Continental Credit Limited was put under receivership in 1985, he could inform the House (Continental Credit) its position as at 15th March, 1996; and,
- (b) whether he could give an estimated time of when the official receiver is likely to put Continental Credit Limited into liquidation.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to reply.

(a) The position with regard to Continental Credit Finance Limited, as at 15th March, 1996 was that the official receiver had realised Kshs323,629,990.95, and distributed Kshs136,568,995 to certain classes of creditors as ordered by the court.

(b) Continental Credit Finance limited has been in liquidation since 8th July, 1993.

Mr. Muite: Mr. Speaker, Sir, this answer does not adequately answer the Question that I had asked. Ten years have passed since the Continental Credit Finance Limited was put under receivership, and it appears that the official receiver has got in his hands, a sum of nearly Kshs200 million. We are not told which other classes of creditors have not been paid and why? We are not told whether the assets exceed the debts? We are not told whether this company is going to be returned to the investors? Can the Attorney-General clarify this matter, bearing in mind that back in 1985, the climate was very hostile? This is when indigenous financial organisations owned by a particular ethnic community were put under receivership overnight and deposits withdrawn. When will these organisations be returned to the investors? Why is it taking over ten years when the official receiver is sitting over Kshs200 million?

Mr. Wako: Mr. Speaker, Sir, the liabilities exceed the assets. We are talking of liabilities in excess of over Kshs900 million. Part of the reason as to why it went into liquidation was not because of the reason mentioned by the hon. Member of Parliament, who is my learned colleague, but because of over-borrowing by the directors themselves. I can give the figures for that.

Mr. Speaker, Sir, it went into liquidation in 1983 and the directors and shareholders would have protested and lodged a proper application if they thought they had the money to put the company into solvency.

Mr. Speaker, Sir, as far as the over Kshs200 million-plus is concerned, part of it is as a result of properties which were sold, but the creditors at the meeting of 15th March, 1996 decided that all the balance of the purchase price of all properties must be in first, and then they will meet and declare dividends.

Mr. Raila: Mr. Speaker, Sir, can the Attorney-General confirm or deny that those who owe the Continental Credit Limited are mainly very big sharks in the Government, and that the Government is, therefore, reluctant to collect this money? Can he deny, for example, that the Chairman of the Electoral Commission of Kenya is one of those who owe this bank Kshs3 million? Why has he not taken any steps to collect it?

Mr. Wako: Mr. Speaker, Sir, I can neither confirm nor deny, because I do not have the list or details of the creditors.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, is the Attorney-General aware that while the receiver is facing tremendous difficulties in collecting these debts, the assets of Continental Credit Limited are being run down and in the final analysis may be bought for a passing, and hence the whole exercise may be futile?

Mr. Wako: Mr. Speaker, Sir, as far as I know, there may be a few vehicles which are running down,

and which are even difficult to dispose of, but as I explained to this august Assembly, at least the three main properties have been sold out. These are Continental House, Continental Saget Apartments and some Kitsuru plots. We are awaiting for the balance of the purchase price. The balance of the purchase price ought to have been paid sometimes ago, but there was an injunction against all these properties. The injunction has been lifted in respect of two properties, and so the sales are proceeding. But in respect of one property, the dispute is still in court.

Mr. Speaker: Question No. 004 for the second time!

Mr. Murungi: Mr. Speaker, Sir, I beg to apologise for coming late. I beg to ask Question No. 004.

Question No. 004

SHOOTING OF SUSPECTED ROBBERS

Mr. Murungi asked the Minister of State, Office of the President:-

(a) how many suspected robbers have been shot dead and wounded by police between June, 1995 and February, 1996 (inclusive); and,

(b) whether he is satisfied that the police acted strictly in accordance with the law, and that they respected the right to life as protected under Section 71 of the Constitution of Kenya.

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Speaker, Sir, I beg to reply.

(a) 74 suspected robbers were shot dead, while 33 were wounded by the police between June, 1995 and February, 1996.

(b) Yes, I am satisfied.

Mr. Murungi: Mr. Speaker, Sir, I am surprised to hear that the Assistant Minister is satisfied that 74 people have been killed by the police within a period of seven months. About ten people are killed per month. Mr. Speaker, Sir, police brutality in Kenya has become a matter of international concern, and in fact, there was a British Broadcasting Corporation (BBC) programme on this issue. Can the Assistant Minister explain to this House, whether the Government has revived the shoot-to-kill policy which had been announced by the former Attorney-General, Mr. Charles Njonjo, sometimes back in 1980s, without telling us?

Mr. Sunkuli: Mr. Speaker, Sir, I am surprised that the hon. Member is directing questions about Mr. Njonjo to me. He should do it to somebody much closer to him. Mr. Speaker, Sir, what I know is that the reason why the police have killed these robbers is because they are protecting the lives and property of Kenyans. The hon. Member must be aware that the number of robbers killed by the police is easily comparable to the number of policemen and innocent citizens killed by robbers and gangsters. Mr. Speaker, Sir, it is always crucial to note that under our laws, the police have full powers to protect with reasonable force, with equal force, or slightly greater force, to protect the lives and the properties of these citizens.

Dr. Otieno-Kopiyo: Mr. Speaker, Sir, the question that must be in the minds of many people in Kenya, is the issue of the burden of proof. Once somebody is shot dead, there is no way to declare whether they were robbers or otherwise. But having killed 74 people, could the Assistant Minister now tell us, how many of the 33 people who were just wounded and not killed, were arrested, charged with crime and convicted to date?

Mr. Sunkuli: Mr. Speaker, Sir, I did not bring those figures, but there are persons we arrested using reasonable force, and some of them who were actually wounded and taken to court.

Mr. Murungi: Mr. Speaker, Sir, we have had cases where the police ambushed robbers and killed them. Can the Assistant Minister, who is a lawyer, explain to this House whether, under our laws, or the provision in the Police Act, police have any powers to ambush robbers and shoot them, instead of arresting them?

Mr. Sunkuli: Mr. Speaker, Sir, let the hon. Member know that a part from just visiting the scenes of crime, where offenses have been committed already, the police in this country also have a duty to prevent the commission of offenses. If the policemen waylaid the robbers on their way to their unlawful act, it is perfectly within our laws to do so.

Mr. Kamuyu: Mr. Speaker, Sir, some time back, some three suspects were shot and killed by police by mistake in Westlands. The policemen admitted that they had shot those people as a result of mistaken identity. Can the Assistant Minister tell us whether this hotline system, where people report their enemies to the police and the police come in quickly and kill them is still a recommended system by the police? Can he also tell us whether this system will continue to be used or it will be stopped? Could it, at least, be modified?

Mr. Sunkuli: Mr. Speaker, Sir, the police will continue using the hotline as a means of being informed, within time, so that they can get these robbers. The hotlines have actually been very effective and the incidents---

Dr. Otieno-Kopiyo: On a point of order!

Mr. Speaker: Dr. Otieno-Kopiyo, what is your point of order? That is the last point of order we are going to have on this Question.

Dr. Otieno-Kopiyo: On a point of order, Mr. Speaker, Sir. The Assistant Minister is evading answering an important Question here. The purpose of asking my original Question was for him to prove to us, on a balance of probability, that the people who are being shot as suspects or robbers were actually robbers. The only way we could find out about that was, if out of the 33 wounded people, somebody had been convicted and he has refused to say that.

Mr. Sunkuli: Mr. Speaker, Sir, I do not know what the hon. Member is arguing about; whether he wants me to go case by case and explain how each of the 74 people were killed. That would not have been done here. The only thing I would like to say is that the Government has a duty to protect the lives and the property of citizens and I am sure, the public, both in Nairobi, and outside Nairobi, are in total agreement that the police have done a good job and that Nairobi is now a safe place to live in.

QUESTIONS BY PRIVATE NOTICE

STRIKE BY KICOMI WORKERS

Dr. Oburu: Mr. Speaker, Sir, I beg to ask the Minister for Labour and Manpower Development the following Question by Private Notice.

(a) Is the Minister aware that the Management of Kisumu Cotton Mills Ltd. (KICOMI) has refused/neglected to implement the Wages General Amendment Order as per Legal Notice No. 193 of 1st May, 1995 in respect of minimum wages as a result of which more than 800 employees have been on strike for the last two weeks?

(b) Is he further aware that the management of KICOMI has sacked all the employees on strike and has refused to implement his order on unconditional reinstatement of the employees?

(c) If the answers to "a" and "b" above are in the affirmative, what steps is he taking to reinstate the employees unconditionally and also compel the employer to comply with the minimum wage provisions in accordance with Legal Notice No. 193 of 1st May, 1993?

The Minister for Labour and Manpower Development (Mr. Masinde): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware

(b) I am not also aware.

An. hon. Member: What about part "c"?

Dr. Oburu: Mr. Speaker, Sir, I have two sets of answers here from the Minister. I do not know whether the latest one he has given is the correct one. There is a lengthy one and the one he has just read out to us. But anyway, that aside, the hon. Minister has written two letters to KICOMI, which proves that he is quite aware of what is happening and I would like to table these letters.

The first letter is dated 23rd April, 1996, addressed to the Provincial Labour Officer, Nyanza Province. It says:

"The striking employees at KICOMI 1993 Ltd. should resume duty immediately without interruption of employment and the employer should re-admit them. The Minister will appoint an investigator to deal with the dispute at hand, immediately."

The second letter, again on his own letter head, was written on 26th April, 1996. It is addressed to the Managing Director of KICOMI and it says:

"Further to my letter of 24th April, 1996 to the Provincial Labour Officer, Kisumu, I wish to reiterate that workers should be allowed to resume work immediately. The workers should, however, be orderly and avoid any instances of hooliganism ---".

Mr. Speaker, Sir, the employer has refused to implement this directive of the Minister. Can the Minister tell us when he changed his mind on this directive to the employer, why he did that and why he had become a toothless bulldog? Is it also true that he met this employer recently, and perhaps, that is why he has been compromised?

(Applause)

(Dr. Oburu laid the two letters on the Table)

Mr. Masinde: Mr. Speaker, Sir, the Question is: Is the Minister aware that the Management of Kisumu Cotton Mills Ltd. (KICOMI) has refused/neglected to implement the Wages General Amendment Order as per Legal Notice No. 193 of 1st May, 1995? I am not aware.

An. hon. Member: Who is who?

Mr. Masinde: Mr. Speaker, Sir, to start with, what the hon. Member is asking about, that is, general wages, are not negotiable. This is because minimum general wages are usually announced by the Minister for Labour and Manpower Development. In that respect, it means that, if there is anybody paying below that wage, the Minister can take him to court so that he is dealt with according to the Kenyan law. So, it is not a negotiable issue, and for that reason, the workers had no right to strike because of that issue which is non-negotiable.

Prof. Anyang'-Nyong'o: On a point of order, Mr. Speaker, Sir. If the Minister is saying that minimum wages are not negotiable, and the employer was not honouring that rule and the workers gave 21 days notice, saying that this is not being honoured, and the Minister directed that it should be honoured and it was not, what other alternative did the workers have but to go on strike to bring the Minister's attention to that fact?

Mr. Masinde: Mr. Speaker, Sir, I think I will continue to give the background of the situation. As a result of the fact that this happened, my officers got involved, they discussed the issue with the workers and they agreed that the workers should go back to work. The workers refused to go back to work. Unfortunately, I was out of the country. I came back a week after the workers had refused to resume work. The employer, of course, has a right---- He issued notices that those who would like to work should now apply and go back to work. The notices were torn wherever they were placed and nobody applied to go back to work.

I met the Secretary-General and I advised him to tell the workers to go back to work. Later I met the employer and expressed the same, that I have advised the Secretary-General that the workers should go back under the agreement or under the discussions that had taken place with my staff. The workers still refused to go back to work. Hon. Members should know that these letters being tabled here are not orders. I was merely confirming what I had discussed with the employer and the workers' representatives. If it was an order, the hon. Members know very well that when giving such an order I would have to quote the sections which are being violated.

Mr. Karan: On a point of order, Mr. Speaker, Sir. The Directors of Kisumu Mills are Mr. Surujit Singh, popularly known as Obuya and Singh his sons who are also directors of the controversial Miwani Sugar Mills. These directors are boasting in Kisumu that nobody other than His Excellency the President can give them orders. Can the Minister confirm or deny that the fact that these directors have violated his instructions confirms that they are acting on behalf of somebody who cannot be reached?

Mr. Masinde: Mr. Speaker, Sir, there is nobody who is above the law in this country. Therefore, if the hon. Member has heard those rumours, I do not go by rumours, but I go by the laws established to govern the Ministry in this House.

Mr. Akumu: Mr. Speaker, Sir, it seems the problem here is not the employer, but it is the Minister's contradictions. Even in this House, before I came in here, there were two replies, one of "I am not aware," and b(i) "in an effort to resolve the issue, I appeal to the management of KICOMI to allow the striking employees to go back to work unconditionally." Which one do we take, this one or the other one "I am not aware?" Is the Minister aware that there is going to be a general strike in Kisumu on Monday in sympathy with these people and against this bad Asian employer? Does he know that on There is going to be a strike on Saturday, but because the President is going there it has been put off until Monday?

Mr. Masinde: Mr. Speaker, Sir, I feel very concerned when an hon. Member makes such utterances which, to me, appear to be incitement to the workers. As far as I am concerned, I wish to inform the House that even as I am talking now my Ministry is very concerned looking for a solution. However, I would still insist that the employees carry out the agreement which they had discussed earlier on with my staff and their union representative that they reapply and go back to work. I will definitely---

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

Mr. Speaker: Order, Mr. Nyanja! One thing you must learn to do is to obey orders, Mr. Nyanja. Hon. Members will notice that we are actually past Question Time and I still have two Questions by Private Notice which I would like to give the hon. Members responsible also an audience. But since this is, maybe, an issue involving the livelihood of some Kenyans, I will give Mr. Ojode the last chance.

Mr. Ojode: Thank you, Mr. Speaker, Sir. The Minister is misleading this House by saying that his Ministry is making every possible effort to solve this problem. He is very much aware that the problem has now gone to the Provincial Administration level, to Mr. Nandasaba, who is the DC. I wonder whether he has given

the DC, the mandate to handle this case. If this is the case, he has given him as who? He is incompetent. The reason why I am saying that he is incompetent is that the plight of the workers in Kenya are given deaf ears. We have East African Road Services ex-employees who have not been paid up to today, we have Stage Coach employees who have not been paid up today, and even their disputes have not be solved; we have KPCU and so on. We have every problem in this country. Can the Minister resign in the interest of the wananchi?

Mr. Masinde: Mr. Speaker, Sir, I do not see why my fellow hon. Member is so much agitated. As I mentioned earlier on, the workers at KICOMI became rather unruly and, obviously, my fellow hon. Member is very concerned that lives of Kenyans must be protected and, for that reason the security personnel were around just to make sure that normal peace was maintained and my officer who is the Provincial Labour Officer is handling the situation.

Mr. Ojode: On a point of order!

Mr. Speaker: Order! Order! I am afraid I have given much indulgence to this Question and we must now go to the next Question, Mr. Michuki.

DEDUCTIONS FROM COFFEE FARMERS

Mr. Michuki: Mr. Speaker, Sir, I beg to ask the Minister for Co-operative Development the following Question by Private Notice.

(a) Is the Minister aware that the coffee farmers in Kamacharia, Kiiru, Gitugi, Njumbi and Rwathia locations of Kangema Constituency are being forced to pay Kshs.700 each for the construction of the proposed administrative division being hived from Kangema Constituency?

(b) If the answer to "a" above is in the affirmative, could the Minister inform the House under what circumstances are the coffee farmers being forced to pay this money?

(c) Could the Minister inform the House whether the farmers have ever passed a resolution authorising the deduction of the said money for the aforesaid purpose?

The Assistant Minister for Co-operative Development (Mr. Titi): Mr. Speaker, Sir, I beg to reply.

(a) No, I am not aware that coffee farmers in Kamacharia, Kiiru, Gitugi, Njumbi and Rwathia locations of Kangema Constituency are being forced to pay Kshs700 each for the construction of the proposed administrative division being hived from Kangema Constituency. In view of the above reply, therefore, parts "b" and "c" do not arise.

Mr. Michuki: Mr. Speaker, Sir, as far as I know, the chiefs and the assistant chiefs in the area are telling the coffee owners that this money will be deducted when the factories concerned make next payments. Is the Assistant Minister aware that this is what is happening on the ground?

Mr. Titi: Mr. Speaker, Sir, I am not aware, the hon. Member is accusing the chiefs and their assistants on the ground---

Mr. Kamuyu: On a point of order, Mr. Speaker, Sir. Now that the Assistant Minister has been made aware by the very hon. Member of that area, and a very able honest hon. Member who has told him the truth, the whole truth and nothing but the truth, can he answer the Question now?

Mr. Titi: Mr. Speaker, Sir, these are mere speculations. It is a hypothetical question!

Mr. Speaker: Indeed, I was just thinking whether this Question is not hypothetical!

Mr. Titi: So, it is a hypothetical Question, and I am not going to reply to it.

Mr. Muite: On a point of order, Mr. Speaker, Sir. What the hon. Member for Kangema is saying is the truth because that is where my in-laws come from. My wife comes from this area. It is a fact that farmers have been told that this money will be deducted, but now that this Government has succeeded in extracting Kshs13 billion from the IMF and, therefore, they should have enough money for these divisions, constituencies, districts, that they created without a budget. Can they stop this habit now of forcing Kenyans to finance the construction of divisional headquarters and district headquarters? And if they cannot stop it, can they stop the creation of these additional districts and divisions?

Mr. Titi: Mr. Speaker, Sir, that is not a relevant question to this Question.

Mr. Michuki: Mr. Speaker, Sir, could the Assistant Minister gave an undertaking to this House that no money will be deducted from the farmers without either a general resolution within the governing policy of these co-operative societies or that a farmer, individually will have to authorise such deductions? Can he give that undertaking?

Mr. Titi: Thank you, Mr. Speaker, Sir. That is the position of the law. As far as I am concerned---

Mr. Gatabaki: On a point of order, Mr. Speaker, Sir. Is it in order for him to continue misleading this

House for he knows very well that the new Rwachia Constituency is being created for no other than hon. Joseph Kamotho, the Minister for Education, who has a habit of giving the Ministry of Education money for Harambee purposes?

Mr. Speaker: That was not a point of order.

Mr. Titi: I have answered the Question which was asked by hon. Michuki which is very important and in fact, I concur with his views that there are by-laws which govern the running of societies. So, the issue is that the society has the right through resolutions recommended by the managing committee to do that. If they do not know their powers, that is their own problem. So, I do agree entirely with the proposals made by hon. Michuki and the Ministry is going to address that very seriously. But the question raised by hon. Gatabaki is not relevant.

ASSISTANCE TO FLOOD VICTIMS

Mrs. Asiyo: Mr. Speaker, Sir, I beg to ask the Minister for Land Reclamation, Regional and Water Development the following Question by Private Notice.

(a) What action is the Government taking to assist flood victims in the Karachuonyo, Kano and Nyakach areas who have lost all their properties, livestock and crops when the flood hit those areas and whose mud houses are now crumbling on them and grains that were in granaries rotting?

(b) What plans has the Minister put in place to control the flooding of these areas which is a yearly occurrence?

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Speaker, Sir, I beg to reply.

(a) The Government, through my Ministry, has this financial year allocated Kshs1.4 million for the construction of dykes and channels in the upper parts of River Nyando in order to tame the river and prevent possible losses of property or lives in Karachuonyo, Kano and Nyakach. The short term measures have now been implemented through the construction of a half kilometre dyke along the upper part of the river.

(b) My Ministry has already finalised the dykes designs and the floods control project awaiting the availability of funds for its full implementation. In the meantime, my Ministry is currently bridging the broken down sections of the existing dykes.

Mrs. Asiyo: While thanking the Assistant Minister for the measures that he is intending to----

Mr. Muite: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Members from the KANU side to consult so loudly as if it was a KANU meeting to the extent where we cannot follow what hon. Asiyo is saying?

Mr. Speaker: Order! Order! Order, hon. Members! To be fair to this House, I think there was too much consultation, and to be even more fair, I think the hon. Member for Kikuyu was very partisan in his point of order. I am in a better position to hear where the consultations were coming from and I can assure the House that they were coming from both sides of the House.

(Applause)

Mrs. Asiyo: While thanking the Assistant Minister for the measures which his Ministry has taken in constructing the dykes and channels on the upper part of river Nyando, could he tell this House what action he has taken on Sondu Miriu-River which floods Nyakach and Karachuonyo because River Nyando only floods Kano and some parts of Kisumu District? Could he tell this House what has caused the delay of the implementation of the Sondu River Hydro-Electric Project which is very long overdue and which could have solved permanently the problem of flooding in both lower-Nyakach and Karachounyo constituencies?

Mr. Ligale: With regard to the current problems on the upper ridges of Sondu-Miriu River--- In fact, the flooding this year was not so bad. The DC and his team toured the area of Karachuonyo on 10th April and confirmed that there had been a flash flood and there had been no loss of property and that is why we have taken remedial measures on the River Nyando which was adversely affected.

With regard to the long term solutions to this problem, the Ministry of Energy is handling the implementation of the Sondu-Miriu Hydro-Electric Power Project and I am sure that their plans are in an advanced stage to realize that implementation.

Mr. Mak'Onyango: The problems caused by floods are not new. They have been here for a long time and one wonders why this is so. I am sure that even those who were before us were asking this same Question. What is the Government doing to provide a permanent solution to this problem because as this Question implies,

people are losing some of their properties and once they are affected, these are gone for ever. How long do you want people to suffer from this kind of a problem? Could the Government come up with a permanent solution to this problem?

Mr. Ligale: I had, in answering an earlier question, indicated that the final design for the channelization of the Nyando River has been finalised and all that we are waiting for is availability of funds to be able to implement the project.

Mr. Omino: All the rivers in this country overflow their banks. These include rivers like Sabaki, Tana, Nzoia, Yala and so on. So, the answer lies in a national programme that will solve problems countrywide once and for all. So, the piecemeal ideas which the Assistant Minister is giving us today are simply not good enough. Can he now tell us what the national policy is with regard to taming these rivers permanently?

Mr. Ligale: The long term solution is obviously in the taming of the rivers. But, the hon. Member for Kisumu Town will realise that that project costs massive amounts of money and it is not the kind of project that we can easily undertake within one financial year.

POINTS OF ORDER

MINISTERIAL STATEMENT: SHORTAGE OF SUGAR

Mr. Anyona: On a point of order, Mr Speaker, Sir. I rise to seek a Ministerial Statement from the Minister for Agriculture, Livestock Development and Marketing on the current artificial shortage of sugar in the country. Since the saga of the abortive ban on sugar imports which was subsequently replaced with the policy of import tariffs, there has been an artificial shortage of sugar in the country especially in Nairobi and other towns. This artificial shortage has resulted in an artificial price-hike at the rate of 45 per cent. The artificial shortage is apparently caused by a cartel of sugar dealers who were involved in the importation of foreign sugar at excessive profits. This cartel has decided to buy sugar from the factories in large quantities in order to create artificial shortages and hike the prices---

Mr. Speaker: Order! Order, hon. Members! Sorry, hon. Anyona, I know that you came to see me about this issue, but I am now reminded from the Table that I have, as a matter of fact, approved a Question by Private Notice by the Member for Mukurweini, hon. Muhika Mutahi, which is coming very soon and therefore, we will be anticipating whatever will come probably next week or during the course of this week. I do realise the urgency of the issue, but forgot that I had approved a Question by the hon. Muhika Mutahi, and, therefore, we will hold our horses until hon. Mutahi's Question comes and I will keep in mind your anxiety in this issue when allocating those Members to put questions to the Minister for Agriculture, Livestock Development and Marketing.

OUTBREAK OF CHOLERA IN MANDERA TOWN

Mr. Abdullahi: On a point of order, Mr. Speaker, Sir. I wish to request for a Ministerial Statement from the Ministry of Health, in view of the fact that there is an outbreak of cholera in Mandera District, which has already claimed over 50 lives. It is almost one month now since this outbreak started in Mandera Town. Can the Minister tell this House, and the nation, what urgent steps he is taking or he is intending to take, to control this outbreak of cholera from spreading to other parts of Kenya, and to cross further, again, into countries neighbouring countries like Somalia and Ethiopia, which have no Governments? Mandera has a river which comes all the way from Ethiopia, and I am made to understand this outbreak of cholera came from Ethiopia because this water is not being treated and there is no medical personnel or proper sanitation. Can the Minister give a Ministerial Statement pertaining to these issues?

Mr. Speaker: Very well. I do not know whether there is anybody from the Ministry of Health. Maybe they would respond in due time.

Next Order.

BILL

Second Reading

THE PHYSICAL PLANNING BILL, 1996

*(The Assistant Minister for
Lands and Settlement (Mr. Kaino) on 30.4.96)*

(Resumption of Debate Interrupted on 2.5.96)

Mr. Speaker: I think hon. Shikuku was on the Floor. Am I right?

Mr. Shikuku: Asante sana, Bw. Spika. Nilikuwa nikizungumza kuhusiana na Mswada huu karibu tano hivi halafu saa ikaisha.

Bw. Spika, Mswada huu ni wa maana sana ijapokuwa umechelewa. Mswada huu unahitajika kutueleza mambo kadha wa kadha. Nitazungumza juu yake kwa kuzingatia karibu mambo matano ambayo Mswada huu baada ya kuusoma wote, haujafanya lolote kuyahusu. Kwanza Mswada huu haujasema overall policy, operational, administrative and structural resources. Hasa katika structural, ni lazima tuwe na maongozi. Tumeuliza mambo haya mwaka nenda mwaka rudi kwa kuwepo na maongozi ya kusema kuwa ardhi hii, na wamesema katika Mswada huu, ni ya viwanda, kilimo na kadhalika. Hatuna maongozi kwa sababu kitu ambacho kinafanyika ni fragmentation ya ardhi na mwisho wake tutakuwa na njaa ambayo itatumaliza. Wakati umefika kwa Serikali hii tukufu imwambiwe kila mwananchi kwamba si kila mwananchi atapata ardhi na wale wanaonunua mashamba kama makampuni, waelezwe watenge kiasi fulani cha ardhi ambacho kitakuwa cha hospitali, dispensari, sinema na kadhalika. Pia wawe wakikaa hapo na kutoka hapo wakienda kulima huku na kurudi hapo. Hii habari ya kukatakata ardhi nusu, nusu itaifanya Kenya kuwa na njaa kubwa ambayo hatuwezi kusema kwa wakati huu.

Mswada huu, ni lazima uchukue mambo kama haya, lakini kuwadanganya kila siku eti kila mtu atapata kipande cha ardhi, huu ni uwongo kwa sababu tunazidi kuzaa watoto na ardhi haiongezeki. Kwa hivyo, tunataka tuwe na mambo haya na wanasiasa waeleze watu wao ukweli, lakini sio kukatakata ardhi. Mimi ni mtoto wa Oyondi, lakini ukifanya makosa kwenda kutafuta boma la mhe. Shikuku, utapata. Ni lazima uulize boma la Mzee Oyondi na katika boma la Mzee Oyondi, utapata nyumba ya mhe. Shikuku, Dr. Lwali-Oyondi na Ambrose. Wote tuko katika kijiji kimoja na tunatoka hapo, tunaenda kulima na tunarudi hapo. Hiyo ndiyo kupanga kuzuri.

Lakini ikiwa tutakakata mashamba ili Dr. Lwali-Oyondi, mhe. Shikuku na Bw. Ambrose apate yake, hatutakuwa na ardhi ya kulima na chakula hakitapatikana. Je, watu watakula nini katika boma hizo? Kwa hivyo, ni lazima tuambiane ukweli. Wazungu wamechoka kutusaidia. Sijui hawa Waafrika akili yao iko namna gani? Mnataka kusaidiwa na mtu ambaye babu yenu hakuwa na ukoo na babu ya yule mtu. Sisi ni wagonjwa sana hapa Kenya. Ni lazima tufanye mipango yetu kwa sababu njaa inakuja. Wengi wetu tunakwenda Ulaya, Marekani na kwingereko. Tukifika huko tunaziba macho kwa sababu hatuangukii maendeleo yanafanywa namna gani. Huku Ulaya hawakatakati ardhi namna hii. Let us be honest with our people.

Bw. Spika, Mswada huu umekuja ukiwa umechelewa. Wazungu wanasema kuwa tunafunga mlango baada ya farasi kuibiwa. Mswada huu ukisoma vizuri, unajaribu kuzuia kunyakuliwa kwa ardhi. Lakini tutakapojadili Mswada huu uishe halafu uchukuliwe kwa Mtukufu Rais atie sahihi, ukitoka hakutakuwa na ardhi tena, imekwishanyakuliwa. Ni wazi kuwa ardhi inanyakuliwa kwa sababu hata vyoo zimenyakuliwa vyote. Mahali pa kupumzika pia pamenyakuliwa. Hata sehemu zilizotengewa barabara na makaburi zimenyakuliwa na kujengwa. Kuna hatari kubwa katika Kenya na sisi wengine ambao tuko hapa hatusiti kusema ukweli. Ukweli ni kwamba Mswada huu utapokwisha, hakutakuwa na ardhi ambayo imesalia. Mimi ningependekeza kwamba tukipitisha Mswada huu, tuangalie nyuma ili wale ambao walinyakua ardhi iliyotengewa barabara, reli, shule, mahali pa kupumzika na viwanja vyote, wanyanganywe vipande hivyo vya ardhi ili watu wengine wapate haki yao.

Bw. Spika, hapa Kenya kuna watu ambao ni matajiri wa papo hapo. Unahitajika tu kupata uwanja ambao haujajengwa, unapewa na kesho unamuuzia Mulji Halji na unapata Kshs25 milioni au Kshs40 milioni ama Kshs100 milioni ndiyo unatembea huku ukisema, sisi wananchi hatutaki wanasiasa ambao wanaropokwaropokwa maneno, lakini tunataka vitendo. Mimi na bibi yangu tumetoa Kshs1.5 milioni. Alipata wapi pesa hizi? Amenyakua ardhi ya wananchi na kuuza na kuja kwa Harambee na kutoa mchango wake huku akijisifu na hali wananchi wengine hawana habari, lakini wameanza kupata habari. Wanampigia makofi kwa ukarimu wake, lakini wanapigia mauti yao. Hawana habari, lakini tunavyozungumza watajua. These instant millionaires wananyakua ploti hizi na kuziuzua halafu wanatoa kidogo kwa Harambee na wanangojea makofi ya kilo.

Bw. Spika, nia ya Mswada huu ni nzuri sana, lakini unahitaji ufanyiwe marekebisho mengi. Kwa mfano, Mswada huu unajumuisha vitu vingi hapa Nairobi. Kwa mfano, Director of Physical Planning atakuwa Nairobi na pia unapata kuwa anataka kuangalia mambo ya wilaya na baraza za miji. Hii haiwezekani. Mswada huu utahitajika ufanyiwe amendment. Naona hapa kuna watu wana national na hapa kutakuwa na wale wa district, urban na wote watakuwa na madaraka kama yale ya ---. Ukiiongojea, itakwenda kwa director wa Nairobi

na huko chini mambo yatakuwa yashaoza. Nitakuja kwa hivyo vifungu kuwaeleza vile tunavyoweza kufanya. There is too much centralisation rather than decentralisation of the whole exercise.

Bw. Spika, pointi ya nne, Mswada huu umetaja kidogo juu ya mazingira yetu. Mambo kuhusu mazingira ni ya muhimu sana na uzito wake haujazungumziwa sawa sawa katika huu Mswada. Nikifika hapo, nitakuja sema mengi kwa sababu mazingira ni kitu cha maana sana kwa sababu hatuwezi kujidai tunafanya maendeleo bila kuyazungumzia mambo ya mazingira kinaganaga na kuyamaliza.

Bw. Spika, baada ya kutoa hizo pointi tano ambazo zinahusika na Mswada huu, ningependa nikujulishe uende kwa ukurasa 32 kifungu cha 7 ambapo wanazungumza juu ya Liaison Committee na wanasema:-

"There shall be established in Nairobi and in each district or municipality a Physical Planning Liaison Committee hereby referred to in this Act as Liaison Committee".

Ukija kwa Kifungu cha 8 ambacho kinataja composition ya hiyo Liaison Committee na usikie sasa vile mambo yalivyo hapa:-

"The Permanent Secretary of the Ministry for the time being responsible for Physical Planning who shall be Chairman, the Director or his representative".

Hapa ndio mimi sitaki habari ya "his representative". Nitakuja kuzungumza juu ya hio. Na inaendelea hivi:-

"Director of City Planning, the Commissioner of Lands, Provincial Commissioner of Nairobi, the representative of the Office of the President, Chief Architect of Ministry of Public Works and Housing, Chief Engineer(Roads) of the Ministry of Public Works(Housing), Director of Medical Services, General Manager (Water Sewerage Department), Nairobi City Council and City Engineer (Roads) (Nairobi City Council)".

Bw. Spika, ukiona hawa watu wote, ni watu wa Serikali na mimi najua hatuwezi kupitisha Mswada kama mambo ni haya kwa sababu hautafanya kazi. Mtu anayeiwa "Permanent Secretary for the time being responsible for Physical Planning" ana kazi nyingi hivi kwamba hawezi kuifanya yote na ataleta maofisa wake wadogo ambao hawawezi kuchukua decision mpaka amuulize Permanent Secretary na kazi haitafanywa. What do I propose? Napendekeza kwamba kuwe na appointed people kama Katibu Mkuu na madaraka yake yote au wale watu wanaohudhuria mkutano huu kwa sababu mikutano mingi haitafanyika kwa sababu hawa ni wakubwa; Director or his Secretary to the committee. Huyu director atapata nafasi saa ngapi kuja kwa hii kazi? Yeye ni mtu mkubwa na kazi itakuwa nyingi. Atakuja saa ngapi katika hii committee? Ndiyo sababu nilisema tunahitaji kuwa na a very serious amendment to be practical kwa huu Mswada kwa sababu hawa watu wote ambao wametajwa hapa ni watu wakubwa na kawaida hawana nafasi.

Mr. Mulusya: On a point of information, Mr. Speaker, Sir. What I want to inform my hon. colleague is that this is a very technical appointment and it requires somebody with some relevant knowledge. So having to place the Permanent Secretary or just anybody who falls under the Permanent Secretary will be like committing suicide. So we need to have this amended so that somebody with relevant knowledge either appointed and recommended by the Minister through the Permanent Secretary is placed on that position.

Mr. Shikuku: Bw. Spika, nimempatia mhe. Mulusya nafasi ya kunipa habari lakini hakusikia pahali ninapoenda. Kama ni Katibu wa Kudumu sio mtu yeyote anayejua habari ya planning. Kuna architects na physical planners ambao wanajua mambo haya. Kwa nini kumpa huyo aliye na kazi nyingi na umuongezee nyingine na kuna wananchi wenye shahada? Wako wengi ambao hawako katika private sector. Hawa wachukuliwe na wapewe hiyo kazi na Katibu wa Kudumu aendeshe Wizara. Katika District wanaandika District Commissioner. Tangu wakati gani tumeshaambiwa kuwa kila District Commissioner katika district zote Kenya ambao wote ni physical planners na ambao watakuwa wenyekiti wa hizi kamata. Tunataka watu wenye maarifa wawekwe kwa hii kazi kama ni full-time kwa sababu habari ya ardhi ni jambo ya muhimu sana na haiwezi kufanywa on part-time basis. Ardhi ni kitu cha maana na kinaweza kuleta taabu katika Kenya hii. Kwa hivyo, tunahitaji full-time and qualified people kuwa katika hii Board.

Na hata hapa mhe. amenipa habari akisema kwamba anaona hapa katika (b) wanasema ya kwamba:-

"The Director or his representative shall act as a secretary to the Committee".

Si hapa wataweka mtu ambaye hajahitimu? Kwa hivyo mimi nataka wale waliohitimu wachukue madaraka haya badala ya kujaza Bodi hii na wale watu wa Serikali ambao wana kazi nyingi.

Bw. Spika, wanasema katika ukurasa wa 33 kwamba:-

"Each District Liaison Committee shall consist of the following members: The District Commissioner who shall be the Chairman".

Bw. DC hana nafasi kwa sababu ni mwenyekiti wa Liquor Licensing Board ni mwenyekiti wa DDC na ni mwenyekiti wa kila kitu. Hata ni chairman wa wanawake, na vile vile wa Security Committee.

The Assistant Minister for Education (Mrs. Ndeti): On a point of order, Mr. Speaker, Sir. Is the hon. Shikuku in order to say that the DC is the chairman of women? Which women is he talking about?

Mr. Shikuku: Bw. Spika, sisemi chairman wa wanawake lakini ninasema yeye ni chairman wa wanaume ili niache akina mama.

Mr. Speaker: Lakini anauliza mbona ulisema ni chairman wa wanawake?

Mr. Shikuku: Whether ni chairman wa wanawake au chairman wa wanaume, actually the DC today is the chairman of everything. So, kuna ubaya gani nikisema yeye pia ni chairman wa bibi yangu?

The Assistant Minister for Education (Mrs. Ndeti): On a point of order, Mr. Speaker, Sir. Is hon. Shikuku in order to say that the DC is the chairman of women? Which women and I am specific and in what organisation has the DC been elected to be a chairman or chairlady of the women? Which women?

Mr. Shikuku: Bw. Spika, nafikiri nitaacha hiyo.

Mr. Speaker: Ninafikiri ni heri utupilie mbali maoni hayo.

Mr. Shikuku: Haya nitayatupilia mbali. Nitasema DC ni chairman wa wanaume.

Kusema kweli, we have overloaded these people. Tumewaachia kila kitu. Tena wamemfanya DC kuwa Mwenyekiti wa Lands Board katika tarafa. Kule Kakamega kuna tarafa nyingi sana, je, yeye ataenda kusimamia mikutano katika hizo tarafa zote wakati gani? Sasa wamefanya hivyo, hata kabla ya kufanya mabadiliko katika present Act ambayo inasema kwamba, ni District Officer pekee yake ambaye ataangalia habari ya mashamba. Lakini wakati huu ninapoongea nanyi hapa, juzi DC wa Kakamega Bw. Raburu, alienda kusimamia mkutano wa Board ya Mashamba ya Butere. Yeye alisimamia chini ya sheria gani na hatujafanya mabadiliko? Lazima tupate watu wengine waendeshe nchi hii na sio District Commissioners, Provincial Commissioners au District Officers. Sio hao walio na akili peke yao. Tunaweza kupata katika wilaya mtu aliyehitimu. Katika wilaya kuna wale walioko katika County Council, wanaoweza kufanya kazi hiyo na siyo DC kila wakati. Katika Tender Board utampata DC kama Mwenyekiti. Kila kitu kinafanywa na DC. Hakuna haja ya kumpa kazi hii ilhali yeye ana kazi nyingi. Tunaweza kupata watu wengine watakaoteuliwa; wale ambao wamehitimu katika kazi hizi na wafanywe wenyekiti katika wilaya. Na iwe kazi ya kudumu kwa sababu, najua shida za mashamba ni za kila wakati. That will keep that individual very, very busy. Tena wanasema kwamba:-

"The District Planning Officer who shall be Secretary."

Kwa nini huyu District Physical Planning Officer ambaye ni mtu aliyehitimu asiwe mwenyekiti? Kwa nini mnaleta DC? That is the man who should be the Chairman of the District, kama mnataka mtu ambaye amehitimu katika kazi hiyo. Huyu District Planning Officer badala ya kuwa katibu, awe mwenyekiti na mtafute katibu mwingine.

Bw. Spika, wameandika hapa kwamba:-

"Clerk to the County Council to be the Secretary."

Lakini mimi ninafikiria kwamba, huyu District Physical Planning Officer yafaa awe mwenyekiti na yule Clerk awe katibu. Hapa tena wameandika kwamba:-

"The District Lands Officer, the District Surveyor, the District Engineer Roads---"

Hao wanafaa sana katika vyeo hivyo, lakini mwenyekiti awe District Planning Officer, katibu awe yule wa County Council na hao wengine wabaki hivyo, hivyo. Hapo nimekubaliana nanyi.

Bw. Spika, ukiangalia pale chini utapata kwamba wameandika:-

"Each Municipal Liaison Committee shall consist of the following members: The District Commissioner---"

Ninataka huyu atolewe hapo na yule District Physical Planning Officer katika hiyo Municipality awe mwenyekiti, Clerk wa hiyo Municipal Council au Urban Council awe katibu na haya mambo yote yawe decentralised. Wakati umefika ambapo yafaa tuwe na Planning Officer wa wilaya, tarafa hadi kule chini katika lokesheni. Nafikiri tuna watu wa kutosha wanaoweza kufanya kazi ya kitaalam mpaka kule chini, badala ya kungojea majibu kila wakati kutoka kwa katibu. Kwa hivyo, yule Division Lands Officer awe mmoja wa wale watu, na pia Town Engineer na Municipal Town Planning Officer. Na ndiyo nimesema kwamba, huu Mswada lazima uwe decentralised badala ya kuwa centralised vile ilivyo hapa.

Bw. Spika, Kifungu cha 9, ukurasa wa 34, kinahusiana na functions of Liaison Committee. Nimesoma maelezo kuhusiana na kazi yao, lakini ningetaka kusema kwamba, katika clause 10 (c) wameandika:-

"To determine development application, for change of user or sub-division of land which may have significant impact on contiguous land or be in breach of any condition registered against a title deed in respect of such a land."

Hapa tunataka kujua, je, hawa watu hawataanza kupewa hongo na kuanza kuwanyanyasa wadogo ambao hawana hongo ya kutoa? Haya yanafanyika. Nafikiria miongoni mwa hawa watu watakaokuwa wakisikiliza kesi hizi, lazima tujue ni mtu gani atakayekuwa katika kamati hizi. Ile composition yake iko kule, lakini ili kuhakikisha kwamba hii hongo haitolewi, kama inavyofanyika hivi sasa, nafikiria katika mabadiliko, tutajaribu kupata hata

wale officials waliochaguliwa na hata Members of Parliament wanatakikana wawe katika kamati hii ili wakomeshe ulaji rushwa. Katika (d) wameandika:-

"To determine development application relating to industrial allocation, dumping sites or sewerage treatment which may have injurious impact on the environment as well as application in respect of land adjoining or within a reasonable vicinity of safeguarding areas---"

Hiki ndicho kifungu kizuri pekee ambacho kinagusa hali ya mazingira. Hapa Nairobi tumeimbiwa wimbo kila mahali, katika televisheni, radio na kadhalika habari ya Mto wa Nairobi, lakini mpaka leo hakuna lolote limefanywa na hali tuna watu hapa ambao wanalipwa mishahara lakini hawawezi kuzuia huo mnuko, harufu au uvundo unaotoka katika mto huo. Hii ni aibu sana. Kwa hivyo, tungependa kamati kama hii iangalie mambo kama haya na itakuwa imesaidia sana. Ile Procedure of Liaison, nimeona ni sawa.

Clause 13 (1) inahusiana na ile inayoitwa Appeals Liaison Committee, na wameandika hivi:-

"Any person aggrieved by decision of the director concerning any physical development plans, may within 30 days of receipt by him of notice of such decision, appeal to the respective liaison committee in writing against decisions in such a manner as may be prescribed."

Huo muda wa siku 30 ni muda mfupi sana. That should be the minimum. Kwa sababu kuna tabu ya uchukuzi wa barua katika nchi hii. Barua inaweza kutolewa lakini inakaliwa na mtu fulani ilhali mwenyewe anaingojea na mwenye kuipokea akipata, siku 30 zimepita. Kwa hivyo, inatakikana iwe siku 30 minimum na siku 60 maximum. Kwa sababu tunajua watu wajanja ni wengi na wakitaka kukunyang'anya ardhi yako, utaandikiwa barua na haitaletwa wala kutumwa kwa posta na hata ikitumwa inaweza kuchukuliwa na mtu mwingine ilhali wewe unangojea tu. Baadaye, watakuambia kwamba, siku zako 30 zimekwisha. Kuna mahali ambapo wanazungumzia juu ya habari ya Official Gazette and any other publication. Nitakapofika hapo nitafafanua.

Hii Official Gazette ukienda kule kwako, Bw. Spika, na uwaulize wale marafiki zangu Wamaasai habari ya official gazette, nina hakika hawana habari.

Official Gazette si ya mtu, hiyo ndiyo inasomwa na watu wengi. *Taifa Leo* ndiyo itakuwa Official Gazette ya wananchi ikiwa mambo kama haya yatachapishwa katika *Taifa Leo* na *Daily Nation*. Lakini utaona kuwa hayatachapishwa. Serikali imeanzisha gazette moja linaloitwa *Kenya Times*, ambalo sisi tunaliita "Kenya Sometimes". Gazette hilo linachukua kodi yangu; matangazo yote ya Serikali ambayo ni kodi yangu na sisi watu wa Upinzani na wale walio katika Serikali hutumika kuliendesha gazeti hilo. Watu wengi hawalisomi, kwa sababu wanajua kuwa ni gazeti la propaganda ya KANU. Kwa hivyo, inatakikana iwekwe kwa radio, na Kenya Gazette and it has got the smallest circulation; iwekwe katika *Taifa Leo* na *Daily Nation*, na hata ikiwezekan ichapishwe katika *Kenya Times*, kwa sababu ardhi ni kitu muhimu. Yafaa mambo haya yachapishwe katika magazeti yote.

QUORUM

Mr. Moiben: On a point of order, Mr. Speaker, Sir. I think we have no Quorum.

Mr. Speaker: Well, I think you are right, there is no Quorum. Ring the Division Bell.

(The Division Bell was rung)

Mr. Speaker: We have Quorum now. You can proceed, Mr. Shikuku.

Mr. Shikuku: Bw. Spika, nilikuwa katika ukurasa wa 15 wa Mswada huu na jambo hili linahusu hali kukata rufani ambayo inaweza kufanywa kwa hii Liaison Committee na pia wanasema, rufani inaweza kufikishwa katika Mahakama Kuu. Maskini wamepotesa ardhi yao, wakinyang'anywa na wakubwa, kwa sababu mtu mdogo hana fedha za kuweza kulipa katika Mahakama Kuu. Ninamuunga mkono Rais Moi, anaposema kwamba, wale wajanja, wanataka mambo yaende katika Mahakama Kuu na hali mtu mdogo hana fedha za kutoa katika Mahakama Kuu. Isitoshe, ukitaka wakili wa Mahakama Kuu akusaidie, atakutoza kiasi ambacho kitakufanya wewe mwenyewe urudi nyumbani na unyamase, na ardhi yako itakwenda. Mtu akikutendea mabaya, rufani iwe mahali kule kwenye ardhi. Ikiwa ni Butere, ikiwa katika lokesheni ndogo inayoitwa Manyala, watu wa Manyala, diwani na Mbunge wao wawe hapo. Hao ndio wanaojua maneno ya hapo na wanastahili kukata kesi hiyo. Mahakama Kuu ina kazi nyingi. Kuna kesi nyingi zinazongojea kusikilizwa katika Mahakama Kuu. Kuna watu wanaongojea hukumu kutoka 1981 na hawajaiona na kesi zao hazijasikilizwa bado. Kuna mtu alipelekwa kortini, akahukumiwa miaka 25 na viboko na akachapwa na baadaye kwa sababu ya kuchelewa kusikilizwa kwa rufani yake katika Mahakama Kuu, baada ya miaka 15, aliachiliwa aende nyumbani na hajalipwa. Hilo ni jambo la kuonyesha kuwa kuna kesi nyingi katika Mahakama Kuu. Wengine watakufa

kabla kesi zao hazijasikilizwa. Kwa hivyo, Mswada huu unahitaji marekebisho ili rufani ifanyike kule katika lokesheni ndogo ya Manyala. Kuna Wazee huko na diwani na inafaa tuyamalize maneno hayo huko badala ya kwenda katika Mahakama Kuu na kuwanyang'anya maskini ardhi yao. Ninavyozungumza hivi sasa, kuna mama mmoja mwenye umri wa miaka 87, ninashukuru utawala wa mikoa katika Kakamega. Mtu akifanya kitu kizuri ni vizuri tumwambie. Walikuwa wamechukua ardhi yake na hana pesa za kupeleka kesi katika Mahakama kuu. Utawala wa mikoa na chifu wakasema hapana: "Hii ni ardhi ya huyu mama, tunajua bwana yake na hawa ni watoto wake na ana wajukuu wake". Walimwoko huyu mama juzi. Hiyo ndiyo sababu ninasema kwamba jambo la High Court lifutuliwe mbali kabisa katika Mswada huu kwa sababu watu wadogo wanazidi kunyang'anya ardhi yao na wale walio na pesa.

Bw. Spika, jambo lingine ni kuhusiana na Clause 14 na inasema hivi:-

"No member of liaison committee shall be liable to any action, suit or proceedings for or in respect of any act done or omitted to be done in good faith in the exercise or purported exercise of the functions conferred under this Act".

Ninajua hii Clause inawatetea hawa wanachama wa liaison committee. Hawawezi kupelekwa kortini kwa sababu wanafanya kazi "in good faith". Hapa katika Kenya hakuna good faith. Katika Kenya ni kuuana. Kwa hivyo, sioni haja ya hawa watu kuwachiliwa huru wakipatikana na makosa. Wakipatikana kwamba wamemfanyia mtu dhambi wasiwachiliwe huru, waonyeshwe cha mtamakuni. So this Clause should be struck out in view of the fact that corruption is the order of the day. Hii ilikuwa ikifanya kazi wakati ule tulikuwa na watu ambao sio wafisadi lakini kwa vile sasa ufisadi umeshakubaliwa Kenya, kuwazuia wanachama wa hii kamati ambao wamepatikana na makosa kutopelekwa kortini ni makosa. Ninataka hiki kifungu kitupiliwe mbali.

Clause 15(4) inasoma:-

"Any person aggrieved by a decision of the Minister under this section may appeal to the High Court against such decision in accordance with the rules of procedure for the time being applicable to the High Court".

Ni saa ngapi Waziri atapata nafasi ya kusikia appeal? What time will he have? Tunaona kwamba hawa Mawaziri hata katika Bunge hawawezi kukaa. Saa ngapi utafanya appeal kwa Waziri na asikize kesi yako na ilhali hata Bunge hawawezi kukaa? Hii habari ya Waziri itolewe kabisa na hiyo High Court pia nimesema itolewe kwa sababu Waziri hatakuwa na nafasi ya kusikiza appeal. Pia tunafahamu kwamba Mawaziri wanajihusisha sana na mambo ya ufisadi. Ukisoma mambo ya dunia hii utaona ni watu ngapi wananyakua hata ploti za Serikali. Wako humu. Hawa ndiyo watu utafanya appeal kwao? Utafanya appeal kwa nyang'au?

Clause 16, mstari wa tano kutoka chini unasema:-

"...providing for proper physical development of such land, and securing suitable provision for transportation, public purposes, utilities and services, commercial, industrial, residential and recreational areas, including parks, open spaces and reserves and also the making of suitable provision for use of land for building or other purposes".

Bw. Spika, hilo ni jambo la muhimu sana. Wametaja Mswada huu unataka kufanya nini na ninaunga mkono jambo hili lakini ninauliza, ile ardhi ambayo imetajwa hapa lakini imenyakuliwa, ni kitu gani tutafanya? Ndiyo sababu nilisema hapo mbeleni kwamba huu Mswada umeletwa baada ya farasi kuibiwa. Badala ya kufunga mlango kabla ya farasi kuibiwa unakuja kuufunga baada ya farasi kuibiwa. Where are these recreational areas now? Ndiyo tunataka hapa tufanye marekebisho katika sheria zetu ili ile ardhi yote ambayo ilikuwa ni ya umma na imenyakuliwa ichukuliwe tena na wale walio ndani waondolewe. Ni bure kuzungumza tu habari ya recreational areas ukifahamu vizuri kwamba haziko. Hapo lazima tufanye sheria iwe retrospective kwa sababu huu Mswada ni mtamu lakini hautakuwa na maana baadaye.

[Mr. Speaker left the Chair]

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

Sasa Bw. Naibu Spika wa Muda, tutaangalia ukurasa wa 37, Clause 19. Inasema:-

"The Director shall, not later than thirty days after the preparation of a regional physical development plan, publish a notice in the Official Gazette and in such other manner as he deems expedient to the effect that the plan is open for inspection at the place or places and the times specified on the notice."

Hivi ni vizuri lakini itakuwa kama ile inspection of voters' roll. Watu wangapi watakwenda kutazama sehemu hizi na watajuaje kwamba hii plan imeshafanywa?. Inahitajika hizi plans ziwe kule katika kata ndogo na tarafa ili

watu wawezi kujua ni ardhi gani imechukuliwa na imechukuliwa kwa manufaa gani kwa sababu watu wengi katika Butere hawajawahi kuona Official Gazette na ninajua pia watu wengi katika Marakwet hata neno "Official Gazette" hawajahi kulisikia. Kwa hivyo, inatakiwa hii notice itolewe katika magazeti ambayo wananchi wanasoma kwa wingi kama vile Daily Nation ili wafahamu ni kitu gani Director anafanya.

Hapo chini Clause 19 (3) inasema:- "The Director may in his discretion accommodate or decline to accommodate such representations or objections to the plan, and in either case, shall within thirty days of his decision, notify the petitioner in writing accordingly". Hapa tunampa mtu mmoja uwezo wa kutumia kama anavyotaka. Uwezo huu ungepewa kamati, badala ya mtu mmoja. Tukiupitisha Mswada huu kama ulivyo, tutakuja kulia baadaye. We are giving too much power to one person. Tunahitaji kamati kuwa na uwezo huu badala ya mtu mmoja kuwa nao. It is too much power in one man!

Bw. Naibu Spika wa Muda kifungu cha 14(4) kinasema:-

"Any person who is aggrieved by the decision of the Minister under this section may appeal to the High Court against such decision in accordance with the rules of procedure for the time being applicable to the High Court."

Tunataka hiki kipengele ambacho kinataka rufani ikatwe kwa Waziri na Mahakama Kuu kiondolewa. Hii ni kwa sababu tunajua Waziri hana wakati wa kusikiliza rufani hizi. Pia tunajua wananchi hawana pesa za kulipia rufani katika Mahakama Kuu. Tunataka jambo hili lishughulikiwe mahali ardhi inayohusika ilipo. Nataka kwenda mbio mbio. Nimeusoma Mswada huu wote lakini nitaenda mbio mbio ili Wabunge wengine wapate nafasi ya kuzungumza.

Kifungu cha 25 kinasema:-

"A local physical development plan shall consist of-

- (a) a survey in respect of the area to which the plan relates should be carried out in such manner as may be prescribed; and
- (b) such maps and descriptions as may be necessary should be made to indicate the manner in which the land in the area may be used, having regard to requirements set out in the Third Schedule in relation to each type of local physical Development plan."

Tunazungumza juu ya plans, lakini utaona kwamba sasa ujanja umekuwa mwingi. Kuna mtu mmoja wa Butere, ambaye amesoma sana. Aliwahi kuonana na maafisa wakubwa wa ardhi na akachukua ardhi ya ndugu zake. Alipewa kipande chake cha ardhi, lakini baadaye alifanya mpango na akajiongezea kipande cha ardhi ya ndugu zake. Tena alienda kwa Wizara ya Ardhi na Makao na akapata ramani ya bandia, ambayo anajaribu kuitumia katika kuwanyang'anya ndugu zake shamba. Nina furaha kwa sababu Mkuu wa Wilaya ya Kakamega, Bw. Raburu, anajua kesi hii. Watu waliosoma wanatumia elimu yao kuwanyang'anya watu wengine ardhi. Mkufunzi mzima anawanyang'anya masikini ardhi kwa sababu hawakusoma kama yeye. Hii ndio sababu ninasema inafaa sisi viongozi tuachiwe nafasi ya kuamua kesi za mashamba kwa sababu tunawajua watu walio mashambani. Wakati huu watu wadogo wananyang'anywa ardhi yao. Machifu na manaibu wao wameingilia kesi za ardhi. Wameanza kuteua *makuru* badala ya kuwaachia wananchi kuwachagua *makuru* wao. Machifu wanatumia *maguru* kwenda kung'oa "tukhoni" na kisha wanaweka mipaka yao. Nimesikia kwamba machifu huko Bunyore na mahali kwingineko wameanza kuwanyang'anya wananchi mashamba. Hawana kazi nyingine wanayofanya.

Bw. Naibu Spika wa Muda, ajabu ni kwamba katika Mswada huu hakuna mahali machifu wanapopewa uwezo wa kuamua kesi za mashamba. Sasa machifu wanaingiliaji kazi za mashamba? Juzi nilipokuwa nyumbani mtu mmoja maskini alikuja hapo kwangu na kuniambia kwamba ana hati ya kumiliki shamba---

The Assistant Minister for Co-operative Development(Mr. Titi): Jambo la nidhamu, Bw. Naibu Spika wa Muda. Nataka kumjulisha mhe. Shikuku kwamba wakuu wa wilaya ni wenyeviti wa-

The Temporary Deputy Speaker: (Mr. Ndotto): Is it a point of order or a point of information?

The Assistant Minister for Co-operative Development: (Mr. Titi): It is a point of information. Is hon. Shikuku aware that the district commissioner (DC) is also the chairman of the Land Control Board? That is why DCs keep on getting involved in land cases.

Mr. Shikuku: Bw. Naibu Spika wa Muda, Serikali ya KANU haitaki kufuata sheria. Sheria inasema kwamba ni District Officer (DO) tu anayehusika na kesi za ardhi. Pia yeye ndiye mwenyekiti wa Divisional Land Control Board. Katika sheria zetu DC hana nafasi katika kesi za mashamba. Lakini juzi, kwa sababu ya ufisadi wa DOs - yule DO wa Butere ametajirika kwa sababu ya kupata *asoya* huko - Serikali iliwapa DCs uwezo wa kuingilia kesi za mashamba. Lakini hakuna sheria inayowapa DCs uwezo huo!

The Minister for Environment and Natural Resources (Mr. Sambu): Jambo la nidhamu, Bw. Naibu Spika wa Muda. Kitambo kidogo kilichopita mhe Shikuku alisema kwamba DC wa Kakamega alimsaidia mwananchi mmoja wa Butere, lakini sasa anasema DC ni mbaya. Is he in order now?

Mr. Shikuku: Bw. Naibu Spika wa Muda, pengine mhe Sambu hakifahamu Kiswahili! Nilisema juu ya utawala wa mikoa, lakini si juu ya DC. Najua afisa aliyemsaidia mwananchi huyo. Si DC aliyemsaidia.

Hapa tunataka kuzungumza kuhusu sheria, lakini nimeona kwamba taabu ya nchi hii ni kwamba viongozi hawataki kufuata sheria. Wanataka kuchukua njia za mkato, jambo ambalo litaleta matata katika nchi hii. Sheria zetu zinampa DO uwezo wa kushughulikia kesi za mashamba. Sheria hizo hazimpi uwezo huu DC or provincial commissioner (PC). Lakini sasa DC amepewa uwezo wa kuongoza Land Control Board, ingawa akishtakiwa kuhusiana na kesi ya shamba hawezi kuonyesha sheria inayompa uwezo wa kushughulikia kesi za mashamba. Mimi nazungumza sana juu ya Miswada kwa sababu ninaisoma Miswada yote. Hakuna Mswada utakaopitishwa katika Bunge hili kabla ya mimi kuusoma. Sikumbuki kama tuliirekebisha sheria na kumpa DC uwezo wa kuwa mwenyekiti wa Land Control Board. Serikali hii ya KANU haipendi kufuata sheria. It is allergic to law. Hata nasikia Serikali inataka DCs wausimamie ule mpango wa kuwasaidia vijana. Lakini najua mpango huu si wa kuwasaidia vijana ila unakusudiwa kuokota pesa za kampeini. Serikali ilikuwa wapi tangu tupate Uhuru? Hata nilipoileta Hoja hapa katika mwaka 1968 iliyotaka watu wenye madaraka wakatwe asilimia kama 10, tano, nne au moja ya mishahara yao ili vijana wasaidiwe kupata kazi ilikataliwa katika Bunge hili. Katika mwaka wa 1968 ndipo nilipofikiria njia ya kuwaanzishia vijana wetu viwanda vidogo vidogo, ingawa wakati huo ukosefu wa kazi haukuwa mwingi kama ulivyo sasa. Sasa ndio Serikali inajifanya kuwa "imeamka". Lakini si ati imeamka: inatafuta pesa za kununua watu wakati wa uchaguzi mkuu ujao.

The Minister for Environment and Natural Resources (Mr. Sambu): Jambo la nidhamu, Bw. Naibu Spika wa Muda. Ni haki kwa mhe Shikuku kusema alitaka watu wakatwe mishahara yao kwa lazima na hali yeye huwa katika mstari wa mbele katika kupinga ukusanyaji wa pesa za Harambee kwa nguvu? Yeye hayuko kwa nidhamu!

Mr. Shikuku: Bw. Naibu Spika wa Muda, nitamsamehe mhe Sambu. Huu ndio ubaya wa kuwateua watu kuwa Mawaziri kabla ya kuwa Wabunge wa viti vya nyuma na kujifunza mambo fulani. Mhe Sambu alitoka mstuni na kuwa Waziri, na kwa hivyo hayajui mambo mengine.

The Minister for Environment and Natural Resources (Mr. Sambu): Jambo la nidhamu, Bw. Naibu Spika wa Muda. Mimi nilitoka nyumbani kwangu na nikachaguliwa na watu kama mhe Shikuku alivyochaguliwa na watu wa Butere. Kwa hivyo, sikutoka msituni! Tena, kazi ya uwaziri haihitaji mtu kuwa Mbunge wa viti vya nyumba kabla ya kuanza.

Mr. Shikuku: Bw. Naibu Spika wa Muda, sina haja ya kugombana na rafiki yangu. Najua kwamba uwezo wa kuteua Mawaziri ni wa Rais. Lakini kama ningekuwa na uwezo huo ingekuwa ni lazima mtu awe Mbunge wa viti vya nyuma na kujifunza Kanuni za Bunge, swali la ziada na mambo mengine kabla ya mimi kumteua kuwa Waziri. Nafikiri mhe Sambu hajui swali la ziada ni nini. Hii ndio taabu tuliyo nayo wakati huu.

Nilikuwa nikisema kwamba mtu mmoja maskini wa Butere alikuja kwangu akiwa na hati la kumiliki shamba. Na chifu anataka kuchukua ardhi ya huyo maskini. Huyo chifu amepewa pesa na wakubwa, na akamwambia huyo maskini hasipalilie shamba lake. Walienda kuchukua polisi na wakatimia nguvu za utawala kumshika huyo maskini katika lokesheni ndogo ya Shilombe. Walimshika na kumpeleka korokoro ya polisi wa utawala kwa siku moja. Siku ya pili, walimweka korokoro ya regular police huko Butere kwa siku moja. Siku ya tatu, polisi walienda kwa shamba la huyo maskini. Ukitaka kujua hii Serikali yetu haitaki kufuata sheria, polisi hao hao walienda kwa shamba lake na wakapata ukweli kwamba huyo maskini ana cheti cha kumiliki shamba. Baadaye, hao polisi walisema hayo si maneno yao na wakawachana naye. Lakini huyu mtu alikuwa amelala korokoro ya polisi wa utawala na regular polisi kwa siku mbili. Haya maneno yalifanywa na naibu wa chifu wa lokesheni ndogo ya Shilombe katika tarafa ya Khwisero. Kwa hivyo, unaona vile wananchi wanavyoteswa. Ilinibidi mimi mwenyewe kuingilia mambo hayo.

Sasa, ikiwa manaibu wa chifu wameanza kugawa na kunyakua mashamba ya watu wakitumia crown, haki iko wapi kwa mwananchi wa kawaida? Bw. Naibu Spika wa Muda, katika Kenya hii, hakuna haki kwa mtu mdogo. Katika Kenya hii, ukiwa mwizi au muuaji, wewe ndiye mheshimiwa na mkubwa.

An hon. Member: Na ikiwa unajua kuhongana.

Mr. Shikuku: Ukijua kuhongana, wewe ndiye mkubwa. Ukiwa mwizi mkubwa lakini wewe unatoa pesa nyingi kwa Harambee, wewe ndiye kiongozi. Hii ni jamii iliyogonjeka. Wananchi hawapatiwi haki, na tunakaa hapa, huku tukiambiwa kwamba Serikali tukufu ya KANU ni ya maendeleo, na hali ndiyo inawanyonga watu. Watu wanauawa na hakuna mtu anasema kitu. Wanatuambia mshukiwa ni mwizi na hajafikishwa kortini kuthibitishwa kwamba yeye ni mwizi. Leo tumeambiwa washukiwa wengine waliopigwa risasi na polisi ni wezi, na hali walikuwa washukiwa tu. Waliuawa bila kupelekwa kortini ili ijulikane kweli ikiwa walikuwa wezi. Sheria inasema polisi wanatakiwa kupiga mtu risasi ili kumfanya kilema. Ni kwa nini hawakupigwa risasi kwa miguu au mikono ili wasiweze kukimbia na wakamatwe ili wapelekwe kortini? Hii inaonyesha, hakuna sheria

katika Kenya.

An hon. Member: Haifuatwi!

Mr. Shikuku: Ukiwa mkubwa, wewe ndiye sheria, lakini ukiwa mdogo, wewe hauna sheria. Lakini, inshalla! Tulikuwa tukifanywa hivyo na wabeberu, lakini leo, wabeberu hawako hapa. Lakini siku itafika tu. Tunakalia bomu la wakati. Wengine wetu wataenda juu na warudipo chini, watavunjika vipande vidogo vidogo. Wananchi hawawezi kuonewa hivyo, na sisi tusiweze kusema. Hawana kazi na chakula. Hata lile shamba analo mnataka kuchukua tena. Watakwenda wapi? Hii ndiyo Serikali ya kweli? Hata afadhali Serikali ya mbeberu ambayo haikuwa inafanya hivyo. Mimi nilipambana na mbeberu kweli kweli. Mimi sikuli vitu ambavyo sikufanyia kazi. Navuna yale niliopanda. Lakini nasikitika ninapolinganisha Serikali ya mbeberu na ya sasa. Serikali ya sasa ina uovu maradufu kushinda ya mbeberu. Ikiwa mnawaumiza watu wenu wenyewe, mnataka nini? Sheria tunazozipitisha hapa ni za kufinya wananchi wadogo. Ni kuwafanya wawe maskini kabisa. Hata ng'ombe yake inachukuliwa.

Wanaoiba ng'ombe katika sehemu ya Butere na sehemu nyingine ni *makuru*, manaibu wa chifu, machifu na Maofisa wa Utawala. Halafu baadaye, wanagawanya vitu walivyoiba. Hawataki wananchi wenyewe wachague hao *makuru*. Wananchi wakitaka kuchagua *makuru* wanaowajua ni watu wa kuaminiwa, hawaruhusiwi. Machifu na manaibu wa chifu ndiyo wanachagua watu wao. Wanachagua wezi. Katika lokesheni ndogo ya Manyala kuna wezi wanne, na mmoja wao ni muuaji, na ambao ni watu wa ukoo wangu, wamefanywa *makuru*. Nataka kukuonyesha kwamba mimi nazungumza mambo ambayo ninayajua. Wanapotembea katika maboma ya watu, wanachunguza mahali ng'ombe za watu zinalala. Usiku, wanakuja kuiba. Hawa ni watu ambao wamechaguliwa na naibu wa chifu katika lokesheni ndogo ya Manyala. Waliochaguliwa ni watu wa ukoo wangu lakini ni wezi. Mmoja wao ni muuaji. Alimua babu yake. Ananiita mimi babu. Yeye amefanywa kuwa *likuru*. Sasa, usalama wa ng'ombe zetu utakuwaje?

Bw. Naibu Spika wa Muda, tunataka haki. Wananchi hawana haki. Miswaada kama hii, lazima tuichunguze. Mimi niko tayari kukaa chini na Waziri kwa sababu, swala la ardhi ni muhimu sana. Inatakiwa tukae chini, tutengeneze sheria ambayo italinda ardhi ya Maasai, yangu na ya kila mtu. Sheria ambayo italinda mtu asinyang'anye mwingine ardhi yake.

Hii ni kwa sababu, usipokuwa mwizi, wewe sio mtu. Nimepatiana mfano wa lokesheni ndogo ya Manyala. Naibu wa chifu wa sehemu hii anachagua wezi na wauaji kuwa *makuru*. Hataki sisi tumuambie ni nani anafaa kuwa *likuru*. Wanagawanya vitu wanavyoiba na mkuu wa tarafa. Naibu wa chifu, chifu na mkuu wa tarafa ni wezi.

An hon. Member: On a point of information---

Mr. Shikuku: Kuna jambo la ufahamisho?

An hon. Member: Hawawezi kutoa jambo la ufahamisho!

Mr. Shikuku: Wakitoo, watapata mengi.

An hon. Member: They are clever!

Mr. Shikuku: Katika ukurasa wa arobaini, kuna Clause 29 ambayo inahusu powers of the local authority. Imeandikwa ifuatavyo:

Subject to the provision of this Act, each Local Authority shall have power:

(a) to prohibit or control the use of development of land and buildings in the interest of proper and orderly development of its area.

Hivyo ni vizuri sana. Lakini ukiangalia, wanaonyakua ploti ni nani?

An hon. Member: Ni hao hao wakubwa!

Mr. Shikuku: Ni hao wakubwa wa county council. Unakumbuka kulikuwa na kesi moja ya Kakamega County Council, ambapo kuna mkubwa ambaye alinyakua ardhi ya shule. Yeye ndiye anatakiwa kuwa mlinzi wa ardhi hiyo. Lakini yeye ndiye alinyakua. Sasa guarantee iko wapi? Yale maneno yanayosemwa hapa ni mazuri sana. Kama yangeweza kutimizwa, itakua ni bora. Lakini sasa tunajua Mawaziri, Naibu wa Mawaziri na wafanyakazi wa Serikali ndiyo wananyakua maploti. Katika gazeti ya leo, kuna ploti huko Kasarani ambazo zimenyakuliwa.

The Temporary Deputy Speaker (Mr. Ndotto): Hon. Shikuku, you know that you cannot deal with that one.

Mr. Shikuku: Bw. Naibu Spika wa Muda, nilisoma kwa gazeti, na mimi sikuleta hayo maneno kwa gazeti.

The Temporary Deputy Speaker (Mr. Ndotto): You know you cannot--

Mr. Shikuku: Kwa hivyo, ikiwa hawa watu wananyakua, nani atalinda ardhi ya county council? Tunataka Mswada huu ukifika katika Committee Stage, ufanyiwe marekebisho. Katika historia ya Bunge hili,

kama kuna Mswada unaohitaji kupelekwa mbele ya Committee of the Whole House, ili uchunguzwe na kufanyiwa marekebisho, ni Mswada huu. Hii ni kwa sababu, Standing Orders zinaruhusu Ministerial Committee kukaa chini na kuuchana Mswada huu na kuufanyia marekebisho, halafu walete ripoti yao hapa. Mswada huu unafaa kufanyiwa hivyo. Kwa vile tuna Ministerial Committee ya kuangalia mambo ya ardhi na Physical Planning, ingeangalia Mswada huu kwa makini ili walete marekebisho ambayo yatafanya Mswada huu uwe wa manufaa kwa watu wote. Hii ni kwa sababu, shinda za ardhi haziko mahali pamoja. Ziko kila mahali.

Katika sehemu ya (b), inasema ifuatavyo:

(b) To control and prohibit the sub-division of land or existing plots into smaller areas.

Hakuna jambo lingine zuri kama hili. Ikiwa inaweza kutekelezwa kama vile imeandikwa, basi hatungekuwa na shinda yoyote. Hiyo ndiyo kazi inatakikana tufanye. Lakini nani atafanya hivyo? It is the policy of this Government. Ni siasa ya Serikali hii kuendelea kundanganya wananchi kwamba ardhi ikata katwe. Hata ukiwa na nusu ekae au robo eka, lakini waseme ukweli. Ukweli ni kwamba tukigawanya na kugawanya, mwisho yake hatutakuwa na chakula cha kulisha watu katika hizo sub-divisions. Inahitaji siasa ya Serikali kugeuzwa na kuwaambia wananchi ukweli. Na ukweli ni kwamba siyo kila mtu atapata kipande cha ardhi. Tuchukue ili ardhi iliyoko na tuitumie ile tuweze kupata mazao ya kulisha watu katika hayo maboma. Ardhi nyingi imechukuliwa kwa maboma, maboma yamejengwa. Kwa mfano, ukienda Lugari, ambayo ilikuwa settlement scheme zamani, sasa imekatakatawa na iko karibu kuwa kama Maragoli. Hakuna tofauti kati ya Lugari na Mbale kwa wingi wa watu. Kule Maragoli sasa kila tunahitaji ni umeme kwa sababu nyumba zimesongana. Familia wanaishi katika 1/8 ya eka. Sasa kilichobaki ni kuweka stima.

An. hon. Member: Kwa nyumba ya nyasi?

Mr. Shikuku: Yes! Tuweke sitima ndiyo uwe mji mkubwa. Sijui kama huyu mhe. Mbunge wa Marakwet amewahi kwenda kule. Kule Maragoli watu ni watu. Unaona watu, siyo paa. Watu wanatembea kwa wingi unafikiri wanakwenda mkutano lakini si mkutano ni kawaida tu. Hata ni ngumu kwenda haja ndogo kwa sababu kila upande kuna watu na itakubidi uanze safari bila kujisaidia. It is very serious and I only wish that hon. Komora angepanda gari la mhe. Ligale aende ajione yale ninayosema hapa na atastaajabu. Kwangu Butere, pia kumejaa, lakini Maragoli watachukua kikombe kwa wingi wa watu!

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Hapana!

Mr. Shikuku: Bw. Naibu Spika wa Muda, unasikia mhe. anapinga? Kwa hivyo, fragmentation ya ardhi is the surest way of being permanently hungry. Ninajua kwamba siku moja mtoto atazaliwa Kenya hii ambaye hatafanya siasa na atavunja maboma hayo yote na kuyafanya kijiji ili watu walime na kupata chakula. Siasa itakuwa imekwisha. Lakini wengine wetu tunataka kuona mbele. Sisi husema maneno yetu mbele na huonekana. We see 50 or 100 years ahead. Hii maneno ya kusema kwamba hata mtu akiwa na nusu eka akate na kupata title deed si mazuri. Hiyo ni siasa mbovu. Wanaendelea na kusema ifuatavyo: "To consider and approve all development applications and grant all development permissions". Hii ni kitu kizuri, na mimi ninashukuru kiko katika Mswada huu. But the problem is, who will implement this? Sheria ni tamu. Hata hizi sheria zinafunjwa si baya sana, lakini zinafunjwa kwa sababu hakuna mtu anataka haki. Hata huku kwetu, wengine hawataki sheria, wanasema hawana haja nazo, wanaweza kuendelea bila sheria, which is terrible. Sheria zitengezwe.

Mr. Wetangula: Na kina nani?

Mr. Shikuku: Mhe. Wetangula anauliza itengezwe na nani, na yeye anajua. Wengine wanasema hawaoni maana ya sheria.

Bw. Naibu Spika wa Muda, Kifungu cha 13 kinasema hivi kuhusu maendeleo:-

"No person shall carry out development within the area of local authority without a development permission granted by the Local Authority under Section 33".

Lakini utapata hii Local Authority itachezewa. Ile kamati ya kuangalia maendeleo ikishapewa *kitu kidogo*, maneno yanapita. Lakini hapa sheria inaeleza vizuri. What are we going to do?

Nikienda upesi, na kuruka zingine ili wenzangu nao wapate nafasi ya kusema. Katika page 43, Clause 35(i), inasema ifuatavyo:

"A Local Authority shall refer any development application, which in its opinion, involves matters of major public policy to the relevant liaison committee".

liaison committee gani? Wanasema ile liaison committee iliyohapa au itakuwa liaison committee ipi? It should be liaison committee of that given area. Kwa sababu kuna liaison committee ya Nairobi, na ya District. Napendekeza kuwe na ya division, lokesheni na ya sub-location, ikiwezekana. Which liaison committee are we going to refer to? Tukipitisha huu Mswada lazima tuwe na hakika kile tunaongea.

Clause 35 page 44, says as follows:

"The person aggrieved by the decision of the Liaison Committee may, not later than 14 days after he has been notified of the Committee's decision, appeal against such a decision in writing to the Minister whose decision shall be final."

Hapa tunampatia Waziri uwezo kwamba uamuzi wake ndio neno la mwisho. Habari ya ardhi, Minister amekaa hapa---

The Temporary Deputy Speaker (Mr. Ndotto): What Clause are you referring to?

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

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

Mr. Shikuku: Thank you, Mr. Temporary Deputy Speaker, Sir; it is Clause 35 (ii) on page 44. Mtu mmoja ambaye ni Waziri anapewa uwezo wa kukata neno la mwisho, naanakata kesi ya huko Kitui, kule Matonguni, Tseikuru kule mbali karibu na Somali au kule Kipini, Lamu. Anaambiwa yeye anatoa uamuzi wa mwisho hapa Nairobi kuhusu mtu yule yuko Kipini. Na pengine huyo mwenye shamba hata hajui kusoma, kata neno "Official Gazette" hajasikia. Mimi siwezi kuwa mmoja ya wale watapitisha sheria kama hii bila mabadiliko.

Itakuwaje Waziri mmoja kutoa uamuzi, na huo uamuzi uwe ni final? Uamuzi kuhusu yule mtu aliye Kipini itolewe Kipini na watu wa Kipini ambaye wanafahamu kwamba hii ni shamba la Abdulrahman bin Mohamed. Sasa wewe Waziri uko Nairobi, unatoa uamuzi na huo uamuzi ni final. Kuna sheria mbovu kushinda hii? Wale watu wa Kipini ndiyo uamuzi wao utakuwa final kuhusu Kipini.

Lamu na Kipini ni mbali sana. Hata Wabunge wengine hawajawahi kufika huko Kipini.

The Assistant Minister for Education (Mr. Komora): Wewe umewahi kufika huko?

Mr. Shikuku: Ndiyo, mimi nimeshafika, hata huko kwako! Mimi siwezi kuunga mkono Clause---

The Temporary Deputy Speaker (Mr. Wetangula): Which Clause?

Mr. Shikuku: Clause 35 (iii) on page 44 which states:-

"A person aggrieved by the decision of the Liaison Committee, may not later than 14 days, after he has been notified of the Committee's decision, appeal against such decision in writing to the Minister, whose decision shall be final."

Wangapi huko Kipini hawajui kuandika? I feel that 14 days is a very short period. Yafaa wapewe 21 days kama ni ya haraka, kwa sababau wengine kwao ni mbali sana na Nairobi kama inakuja kwa njia ya Post Office inaweza kuchukua wiki tatu kufika Nairobi. Posta imekuwa ovyo siku hizi. Kutoka Kipini barua kufika kwa Waziri hapa Nairobi itafika within 14 days? Ninaelezewa kwamba wakati wa mafuriko barabara zimefungwa na hakuna mawasiliano. Even the 21 days I am proposing are not enough. As this is urgent, it should be at least 60 days because of the communication problem. Vile tunazungumza ni kama sisi sote tunaishi Nairobi. Kuna sehemu zingine ambazo mtu hawezi kupita kwa urahisi hasa wakati wa mvua na Waziri hajapata barua yako ya maombi na uamuzi wake utakuwa wa mwisho. Huyu Waziri ambaye pengine anatoka kwa Mungu! Mimi nastaaajabu sana na jambo hilo siwezi kukubali napinga hicho kifungu kabisa.

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

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

Katika kifungu cha 38: Enforcement Notice: "When it comes to the notice of the local authority that the development of land has been or is being carried out after the commencement of this Act without required development permission having been obtained, or that any of the conditions of the development permission granted under this Act has not been complied with, the local authority may serve an enforcement notice on the owner occupier or developer of that land"

Bw. Naibu Spika wa Muda, katika kifungu hiki cha 38(1), haya maneno yanayosemwa hapa nataka kuuliza swali moja. Huu Mswada utachukua muda na wengine wanajua utachukua muda watafanya dhambi zao na wengine wamekwishafanya dhambi zao. Sasa kifungu hiki kitakuwa na maana gani? Pia kifungu cha 38(2)

kinasema, "An enforcement notice shall specify the development alleged to have been carried out without development permission-----" Hii, yote, kwa mfano, ambao washanyakua kila kitu na hata walikuwa wakijaribu kunyakua Mama Ngina Drive, Mombasa. Ni inshallah, Mungu alizuia!

Sasa haya mambo ya road reserve, railway reserve na kila kitu reserve itakuwa imechukuliwa.

Nafikiri Mswada huu ungekuwa umefanya marekebisho na kusema kwamba baada ya huu Mswada kupitishwa kama nilivyosema hapo mwanzoni uwe "restrospective" ili tuweze kuokoa ardhi ya shule, ardhi ya barabara, ardhi ya railway reserve, ardhi ya makaburi, ardhi ya kupumzikia na kadhalika. Haya yote yanastahili kuwekwa katika marekebisho ya Mswada huu, la sivyo, tunapoteza wakati bure.

Katika Kifungu cha 39(3) katika ukurasa wa 45, hapo wanazungumza juu ya local authority, wanasema, "Where local authority has taken action under subsection(1) any material removed, be it from the land in pursuance of such actions shall, unless the owner claims and removes such material, be sold and the proceeds thereof, after deduction of any expense reasonably incurred by the local authority in connection with such actions and sale, be paid to the owner."

Bw. Naibu Spika wa Muda, inaonyesha hapa tunatakiwa tuwakubalie wale watu pengine ambao tumepata wamekosa wapewe tena. Kwa mfano, kama mtu alijenga kioski, duka au nyumba, ati tumurudishie ile tumebomoa. Yafaa Serikali au local authority ichukue mali yote hiyo na wasimpe kitu cho chote kwa sababu ukipata mwezi akiwa na ng'ombe wako humuachii ngozi. Huu ni wizi ambao tunajua unaendelea na tukishawapata hawa local authority iwe na uwezo wa kukataa kumrudisha cho chote, kwa sababu ukimpata mwizi na ng'ombe wako ni lazima umpige ngumi mbili au tatu hivi na uchukue ng'ombe wako.

Katika ukurasa wa 46 Kifungu cha 41(1): "No private land within the area of authority of a local authority may be subdivided except in accordance with the requirements of local physical development plan approved in relation to that area under this Act and upon application made in form prescribed in the Fourth Schedule of local authority."

Hakuna jambo nzuri kama hilo lakini utapata maafisa tawala DO, maafisa wa land board na kadhalika, jambo hili ni jambo wazi. Nimepambana na watu wengi huko Butere, watu wananyag'anywa ardhi. Utapata kwamba hata pale kituo cha land board cha Butere ukitaka kuingia hapo huwezi kuingia bila kutoa Kshs200. Nilifanya mpango nikapata ni kweli, lakini nilipouliza ninaambiwa "unajua hii ni chai kwa sababu land board inaketi hadi usiku kwa hivyo hizi pesa tunatumia kununulia petroli kuwachukua wanachama katika sehemu ambazo wametoka." Nikauliza ni sheria gani inasema hivyo na wewe unakumbuka Land Board Butere ina land problems because of congestion ni kubwa sana. Katika siku moja unaweza kupata zaidi ya Kshs140,000. Kweli, hesabu Kshs200 jumulisha na visa 200 au zaidi. Hawa watu wanatengeza pesa, lakini nikinung'unika kwamba huu DO apatiwe uhamisho, hawezi kuhamishwa kwa sababu anapopata pesa hizi hugawanya na wakubwa wake. This we must not overlook; it requires an amendment whereby at the Committee Stage, we shall advise the Minister accordingly.

Pia Kifungu cha 41(2) kinasema, "The sub-division of land use in relation to private land shall be prepared by a registered physical planner and such plans shall be subject to the approval of the director."

Bw. Naibu Spika wa Muda, planning hii kule Butere au Shirobe sub-location or Kipini, itachukuwa muda gani mkurugenzi aliye Nairobi kupitisha Kipini na huko Shirobe sub-location in Butere? Tunatengeza sheria lakini hatuangualiu the practical part of it, it is not possible. Haya ni mambo ambayo yafanywa kwa sababu tuna sub-DDC ile ya kata ndogo, kata na tarafa. Haya yote yafanywa huko na mkurugenzi ajulishwe watu wamefanya nini kwa sababu sisi ndio tunaajua taabu zetu za huko nyumbani.

Ukiangalia ukurasa wa 47 Kifungu cha 45 under the heading of secrecy and service of notice, wanasema habari ya siri. Ardhi ni jambo ambalo haliwezi kuwa la siri, kama mhe. Shikuku akimnyang'anya Bw. Malibe shamba lake haiwezi kuwa siri. Na hata hivyo, ulipokuwa unasoma zile minute zao za composition walikuwa wanasema katibu wa Board ya hawa watu atakuwa akiweka minutes zake. Lakini hawakusema kila watu wa liaison committee members hawatakuwa wakichukua minutes nyumbani. Watakuwa wanachukua minutes nyumbani. Where is this secrecy? Nikienda na minutes zangu nyumbani zinaweza kumjulisha ndugu yangu au nikiacha mezani si bibi atasoma. Tunatakiwa tuwe na transparency. Ardhi ijulikane ni ya mhe. Masinde au ni ya Bw. Fulani. Hiyo si siri hata kidogo. Ndio kwa sababu hata wakati huu tuna taabu na nimetoa notice ya Hoja nikisema kwamba hii tunaita Public Accounts Committee hawatakiwi kujua yale yanayoendelea. Mtu anakula pesa za wananchi na anataka iwekwe siri. We have got to change our laws. Hiyo ndiyo sababu nilitoa ile Notice of Motion kwamba Kamati zote, na hata Bunge hili, ziwe public ili watu wajue ni nini inaendelea; ni nani anataka kuchukua shamba la mtu fulani au ni nani anataka kumuzia mtu fulani shamba lake ama kama mzee fulani anataka kugawa shamba lake kati ya watoto wake. Hii habari ya secrecy ambayo imeandikwa hapa ni ya nini? Let us be transparent na sio watu wa kufichaficha siri. Mambo ya ardhi hayawezi kuwekwa siri.

Pia, nina matumaini kwamba ile Motion ikipitishwa, wananchi watakuwa na nafasi ya kuja kutoa maoni

yao kwa Public Accounts and Public Investments Committees kama vile inavyofanyika America. Bora mtu ni mwananchi wa Marekani, ako na haki ya kuja kutoa maoni yake mbele ya Public Accounts Committee mradi tu athibitishe maoni yake. Hii ni sababu wanataka kuchunga fedha zao. Lakini hapa, tunakula pesa halafu tunataka iwekwe siri. Ningependa kifungu 44, habari ya secrecy, kiondolewe na tuiweke transparency ili watu wajue kinachofanyika. Watu wakijua kinachofanyika, itakuwa vigumu sana kwa ufisadi kuendelea kwa sababu wale wafisadi wataona aibu.

Kwa mfano, katika nchi ya Malawi, ukitaka mkopo, kutoka kwa Serikali, ni lazima wale majirani yako wawe guarantors yako ili upewe mkopo. Ukishindwa kulipa huo mkopo, wao watalipa huo mkopo kwa niaba yako. Hii ni kwa sababu watu wakishajua wewe umepewa mkopo, ukianza kunywa pombe, watukuuliza ni kwa nini unakunywa pombe ni zile pesa za mkopo! Watakataa kulipa mkopo huo na hata watatoa hiyo habari kwa wale wanaohusika. Hii ni kwa sababu umepata huo mkopo kutoka kwa fedha za wananchi. Yafaa tuwe wazi kama watu wa nchi ya Malawi ambapo 99 per cent wanaopata mikopo kutoka Serikali wanalipa because of that system. Mtu akipewa mkopo wananchi watajua na akianza kuitumia hizo pesa vibaya, wanajua hizo ni pesa za wananchi. That is another way which we can follow to assist our people bila hii habari ya siri. Hata wakiona mhe. Shikuku akiendesha motokaa, wanajua wamenunua na huo mkopo.

Nimefanya homework nyingi kuhusu Mswada huu na ningependa kumaliza hivi: Ningependa Waziri anyohusika na Mswada huu--- Simwoni hapa--- Mhe. Kaino na mhe. Sumbeiywo wako hapa na sisi. Shida zilizoko Butere ziko kila mahali katika Kenya. Hata mhe. Sunkuli anasema kuna shida za shamba huko kwake pia. Kwa nini sisi Wabunge ambao tulipewa madaraka ya kuunda sheria, tusichukue nafasi hii kumwomba, mhe. Kaino achukue maoni yetu, halafu tutaketi badaye na yeye ili tuangalie shida za watu yetu. Tukifanya hivyo, tutafanya appropriate amendment na katika Bunge hili tuko na wanasheria katika pande zote na watatuzaidia. Pia yule lawyer aliye katika ofisi ya Attorney-General---- Alikuwako hapo zamani wakati Bw. Njonjo alikuwa Mkuu wa Sheria. Tulikuwa tukizungumza hapa na wakati huo mhe. Njonjo alikuwa akituuliza ni nini tunataka na ni nini hatutaki. Yule mwanasheria kutoka ofisi ya Bw. Njonjo alikuwa akiandika amendments katika lagha ya kisheria.

Hapa ninaona mhe. Sunkuli ambaye ni mwanasheria na atashirikiana na wanasheria wenzake kutoka upande huu wa Upinzani na sisi zote kuangalia mambo ya ardhi. We want to see if there are other land laws which conflict with some clauses in this Bill. Hiki ni kitu ambacho ni lazima tuangalie na tutengeneze ardhi wananchi wote wa Kenya, hasa wale wadogo wanaonyanganywa ardhi yao na wakubwa wafaidike. Hiyo itakuwa ni kazi ya Upinzani na Serikali pomaja na mawakili wa Upinzani na wale walio katika Serikali. Otherwise this Bill is very good, but it requires some minor amendments to make sure that small people are not robbed of their land kama vile inavyofanyika huko Butere na kwingineko.

Kwa haya machache, ninaunga mkono.

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute on this Bill and to make a number of suggestions.

From the outset, I want to say that we need a Physical Planning Bill in this country. For a long time, most of the planning that has taken place has been through administrative action and has, therefore, lacked the force of law to ensure its implementation. It is therefore, important that we in this august House do pass this Bill to give legal basis upon which all our planning and development control can be carried out. With regard to the objects that have been spelt out by the Attorney-General, at the end, the main object is specified as being to provide for the preparation and implementation of regional and local physical development plans. That is the basic objective of this Bill. If that is the main objective of this Bill, there is a conflict, as I shall show as I go through it, between the preparation of the plans and the implementation of the same plans.

Mr. Temporary Deputy Speaker, Sir, this Bill when it becomes an Act of Parliament, is supposed to be implemented by the Minister for the time being responsible for Physical Planning. Unfortunately, most of the implementations of the plans so prepared is supposed to be undertaken by the local authorities. The local authorities happens to fall in a different Ministry from the Ministry that is currently responsible for physical planning. That is the beginning of a conflict. We will see through a number of Clauses which I shall refer to that the Minister responsible for Physical Planning, is supposed in certain cases to give directions to local authorities, to request them to undertake certain actions to invoke certain plans. That cannot be possible and there is no way a different Minister can go and give directions to the local authorities and to require them to undertake certain action in fulfilment of the requirements of this Bill, once it becomes law.

Mr. Temporary Deputy Speaker, Sir, in a country that I know and where I studied as a physical planner, the United Kingdom (UK), in effect these two functions are in one portfolio. The functions of planning and development control and implementation are in one portfolio. If we intend this Bill when it becomes an Act of

Parliament to have any chances of success, that is what we need in this country. Otherwise, we are headed for a conflict that we may find difficult to resolve. We are also still suffering to a certain extent in this Bill under the misapprehension which we have had for a long time that we do have Government Land and Trust Land which the Commissioner for Lands will administer and, therefore, which will become the subject of most of the planning that we want to carry out here. I want to say here and now, and most of us do know that in effect public land in this country is virtually gone.

Hon. Members: It has been grabbed!

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Well, I am not talking about grabbing, but I am saying it is virtually gone because by sheer sources or development needs, we had only land that would bear up so much and we have not acquired additional public land; it was bound to get finished and it is finished. Whether it has been legally or illegally, public land is gone. We must face the fact that most of the planning that is going to take place and to which this Bill is going to apply would be privately owned land, either as freehold land or as leasehold land. So that the Act should come up with massive distinctions of that fact and we must realize that rather than depend on the Commissioner for Lands to administer, and as he always done, public land or Trust Land from the county councils, in effect, we want an Act of Parliament that is going to be an enabling Act, which will enable the ordinary mwananchi to be able to develop, sub-divide, to get changes of user in terms of an Act of Parliament. That is important and we must take cognizance of that fact. If we take those two as the starting points, given that the portfolios are the way they are, we need to find out whether we are attempting to empower the Minister in charge of Physical Planning or the Minister in charge of Local Government. We need to make that distinction, who are we empowering because once we empower the Minister, he must have the teeth to be able to bite and to say no to any development and to be in a position to enforce that law. If a Minister is in charge of one aspect and the other one is in charge of implementation, and we have a conflict, clearly the loyalties would have to come. The local authorities would have to go to the Minister for Local Government, and hence a conflict in terms of actual implementation.

Mr. Temporary Deputy Speaker, Sir, thirdly in any situation when we say that the Minister shall approve, the Minister shall reject and he shall have the final authority, it comes to a point hon. Shikuku was referring to a while ago. In most cases, the Minister is advised by experts. In this Bill we have a conflict that the same experts, who are supposed to be advising the Minister in taking that final decision are the ones who are preparing the plans. We are asking the Director of Physical Planning, who is answerable to the Minister, to advise preparing the same plans and this cannot work. We really need somebody to prepare the plans and if the plans go to the Minister for approval, he has a chance because he is a laymen, unless he is lucky like myself, professionally.

Otherwise, if they are laymen, they need to depend on the physical planners experts in their offices. They should be able to tell him, "Sir, we think that the matter that has been referred to you is proper and you can approve or it is not proper, you may refuse". That is the way Government works.

Mr. Ndicho: Does it really work?

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Of course, it does and you know it, hon. Ndicho. Having made those points, my suggestion would be as follows and to a certain extent conquer with the comments that were made by hon. Shikuku, not that I entirely agree with everything he said. We need to re-examine this Bill and define, first of all, who is going to prepare the plans and to avoid conflict between the authority preparing the plan and the authority approving the plan. Secondly, we need to ensure that the authority that wants to enforce the plan has jurisdiction over those who are implementing the plan. We need to make that distinction. My suggestion is that while we have a Director of Physical Planning who would be answerable to the Minister who approves the plan and who rejects anything that maybe either approved or reject any submissions that are made directly to him as appeals, that Minister shall be able to refer this matter to the Director of Physical Planning. The actual preparation of this plan should then be with a separate authority. I am also suggesting that in effect, we have to recognise the need, however much we do not like them or think that local authorities have problems and they do not have the capacity and they are unable to handle some of these issues, we need to empower the local authorities by giving them credence, the necessary manpower and the capacity to prepare the plan.

The Director of Physical Planning will have the responsibility of laying down the general policies on how we want to see our towns grow and also oversee physical environment.

And in terms of that policy guideline, the local authorities will prepare these plans. Having prepared, circularised and discussed them within their own committees and having amended them in the light of comments received, they then refer them to the Minister for approval. The Minister will then go and consult his Director of Physical Planning and say "Yes, we have received these plans from local authority so and so. They want to have this regional development plan in terms of this; they want to have this local physical development plan; they want

to have this action plan for this area and they want to sub-divide this plot. Now this is going down to the micro-level and what do you think? Are they in terms with your broad guidelines, are they in conformity with your policy guidelines that we have laid down, are they following the general rules that we have set?" Then the director will say "Yes Sir, they are okay and we may approve them", or he may say "No sir, they are counter to our guidelines and we want therefore to have them rehearsed, amended or rejected all together because they do not follow any of the guidelines we have laid down". In that way we shall avoid conflicts and we have a person who is advising properly and not the same person who has prepared the plan. And in that way we avoid the kind of clash that we are likely to have if this Bill in its present format is accepted.

Mr. Temporary Deputy Speaker, Sir, having laid those as the broad parameters, I can then say that whatever comments I now make on specific paragraphs will have to take into account my broad guideline; my basic thesis that you must avoid conflict and you must ensure that the one that prepares the plans is not the same person who is approving and giving advice to the Minister for approval. That business of where the portfolio lies, that of course to some extent lies beyond our control because the organisation of Government and portfolios is the prerogative of His Excellency the President. But I am sure these points can be taken into account by whoever is organising these portfolios.

Mr. Temporary, Deputy, Speaker, Sir, I will therefore go through the various will comments. Firstly in the definition, I have no quarrel with the various definitions that have been given but there are one or two definitions which instead of appearing at the beginning, they go into the body of the Bill and I do not quite understand why. If you look at page 44 you will find that there is one definition which has not been taken to the Bill body and this is the question of the registrar. We are coming for the first time with reference to the registrar and that registrar in Clause 37 (1), the definition is given in Clause 37 (2). The definition should have really been at the beginning because normally when you are defining Clauses, you put definitions at the beginning so that they do not appear in the body of the Bill. I would suggest that that definition of the registrar for the purpose of this exercise, the registrar of titles should go to the place where we are carrying out definitions i.e on pages 28 to 29 where the main body of the definitions do lie.

Mr. Temporary Deputy Speaker, Sir, if we start on page 31 Clause 4 on the administration of this Bill when it comes an Act of Parliament and they are saying:-

"There shall be appointed by the Minister, a Director of Physical Planning and other officers who shall be public officers as they be deemed necessary for the purposes of this Act".

There are two points I want to make here. Firstly, ordinarily, the appointment of departmental heads is the subject of the Public Service Commission, like most other senior appointments. Here, we are now giving powers to a Minister to appoint a head of a department. I do not quite understand why that becomes necessary, because we need to be able to give freedom to the Public Service Commission which has always appointed officers other than those officers who are specified by the Commission that they shall be the prerogative of the President. All the others are the subject of the Public Service Commission appointments. So, I do not understand why we want to give that power to the Minister to appoint a head of a department.

Mr. Temporary Deputy Speaker, Sir, when we have specified that the Minister shall appoint so and so, is when you are setting up a board. A board is something quite separate, but this is a Government department and Government officers are appointed by the Public Service Commission and that is the way we know it, other than where it is specified by the Act that they have to be appointed by His Excellency the President.

Mr. Temporary Deputy Speaker, Sir, in Clause 5, we are then saying that the Director shall be responsible for the preparation of all regional and local physical development plans. In my earlier submission, I had said "no". I do not think it is the responsibility of the Director of Physical Planning to prepare those plans. I think that these plans should be prepared by the local authorities and we should empower them. Let us train people and make sure that officers who are required in the local authorities are trained and assigned there. I am suggesting that under this clause, we should say that the Director of Physical Planning shall be responsible for the preparation of policy guidelines and overall strategy on the development of our urban, rural and market centres and generally how our human settlements in this country are going to be spaced over the landscape; to lay the guidelines so that the plans which are prepared by the local authorities can come in conformity with those guidelines.

The Temporary Speaker (Mr. Ndotto): Hon. Ligale, under the same Clause 5 (b), I think that specifies what you are already recommending. Continue!

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Temporary Deputy Speaker, Sir, I was actually referring to (a). I am saying, the responsibility of the Director of Physical Planning should not be to prepare these regional and local development plans. Because, I am saying that, in fact, you are right that the director's responsibility should be mainly under (b). To formulate the national,

regional and local physical development policies, strategies and guidelines. That is all I am suggesting. And that preparation of these detailed plans, whether it will be on a regional or a local level, should be the preserve of the local authorities. Because they are the ones who are going to implement them. They are the ones who are going to take responsibility for their preparation and implementation. Under the same Clause (5), with reference to Clause 8; it says that:-

"His responsibilities will be to ensure proper execution of physical development control and preparation orders."

That is a tall order. There is no way the Director of Physical Planning can, in effect, ensure that this happens. He has no power over the local authority, because all the applications that are being made for the development of specific things in towns are done at the local authority level. How the Director of Physical Planning can ensure that this happens, is impossible. It is like telling somebody to go into somebody's household. He is out there, may be some bank manager and you are saying somebody is going into a household of somebody to ensure that the mama of that house cooks good ugali for that somebody. That is impossible, he has no jurisdiction over somebody's household. This is a matter that belongs correctly to the local authorities.

This is a matter that belongs correctly to those chaps. Where we have any public land still available and, as I said earlier, there is not much remaining, then you can have the Director of Physical Planning helping the Commissioner of Lands to understand and to ensure that it is properly utilised. But where we are dealing with either the Government or private land, whatever the situation maybe, let the local authorities be able to handle this because they are in the best position to ensure execution. Even when you look at the Schedules, and I shall come to those later on, the format of application for approval of any development proposal is only directed to the local authority. There is no schedule here which is directed to the Director of Physical Planning for him to approve. The five schedules which are here, are dealing with application for permission to either get a change of user or to get a subdivision---

Mr. Shikuku: On a point of order, Mr. Temporary Deputy Speaker, Sir. Do you realise that the air-conditioning is not functioning and it is getting rather warm in here?

The Temporary Deputy Speaker (Mr. Ndotto): I request those concerned to check whether there is something wrong with the air-conditioning system in the House. Continue, hon. Ligale.

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Temporary Deputy Speaker, Sir, I was saying that the format of application for approval of any physical development, whether it is subdivision or change of user, extension of user, extension of lease, and so on, all these applications are correctly being made to the local authority because that is where they belong and that is where they should be vetted. That is where they should be scrutinised because at that level we have the ability to go through the plans and to have them passed through the committee system to the full council for approval.

Mr. Temporary Deputy Speaker, Sir, if we agree that the responsibility of preparing the regional and the local physical development plans lies with the local authority, then we would have to rethink the constitution of these liaison committees, because they are assuming that we still have power vested at some central Government level. I am suggesting that, in effect, if our committee system in the Local Government was working properly and at which you have the various disciplines within a local area--- You have your City Engineer, Director of Planning at the Local Government level, the City Architect, the City Education Officer and so on, and that can be replicated in all the other local authorities, if the local interests do not override all other interests, as it so often happens, then you will have adequate machinery at that level to get the plans and to look at them and to agree on what should happen to them; whether or not that plan should be approved. If it is not going to be approved with what conditions and if it is going to be rejected, at what level? Because the conflict of interest which I saw does come in here, for we are saying that once you have the liaison committees, an aggrieved person or applicant shall apply to the relevant liaison committee and if he is still aggrieved by the relevant liaison committee, he shall appeal to the Minister.

In this case, the Minister responsible for physical planning and if still they are aggrieved, they will apply to the High Court. I have no quarrel with going up to the High Court. I think we need something like that where people have a safety-net where they can go and argue out their cases, but I am saying that, if the two were one and the same thing, the responsibilities of preparing the plans and the execution of the plans were basically the same office, then it would work well because in this case, the Director of Physical Planning is not in any of these committees. He would be divorced from them so that after they have rejected the case and the applicant appeals to the Minister, the Minister has a chance to consult an expert in his office and that expert will advise him accordingly and if there is a conflict, he can say, "We have a problem here. They are not following our guidelines properly and that is why we want changes and that is why we are refusing the case" and any aggrieved party would then appeal to the High Court. I think that it is important that that idea of the High Court should be available for

any aggrieved people.

Mr. Temporary Deputy Speaker, Sir, if you look at Clause 10 (e) where they are describing the functions of the liaison committee and, as I said, we should remove any references to complaints against the Director of Physical Planning because we should be referring to the local authorities which have designed the plans. So the Director of Physical Planning must remain neutral to be able to advise the Minister. Under Clause 10 (e) we are saying:-

"To hear appeals lodged by persons aggrieved by decisions made by the Director or local authorities under this Act."

Local authorities will not be making decisions under this Act, they will be making decisions under the Local Government Act, Cap. 265. We are looking at what action can be taken in the event people are aggrieved by the liaison committee and under Clause 14 we are saying:-

"No member of liaison committee shall be liable to any action, suit or proceedings for or in respect of any act done or omitted to be done in good faith in the exercise or purported exercise of the functions conferred under this Act".

This is giving a bit too much latitude to public officers. I think I am not saying that we should specify that officers shall be actionable, but on the other hand, to absolve them in the Act is also giving them too much latitude. It will be made to mean that officers will act willingly because they are well absorbed and nothing can happen to them. I am suggesting that that Clause is really not necessary. Officers should know and act responsibly, but they should not be protected in advance of their taking any decision on an applicant's proposal.

Mr. Temporary Deputy Speaker, Sir, Under Clause 15, in respect of any particular plan, application and so on, we are saying that when the Minister makes an appeal he shall either reverse, confirm or vary the decision that has been appealed against. He will do that after listening to experts in his own office. I want to suggest a possibility of an added element. In some countries, notably in the United Kingdom, there is a system of public hearings. In other words, to avoid the conflict that sometimes appertains where maybe an influential person would influence the officers--- You know it is not uncommon to find some very influential persons influencing all, or the majority of the members in the liaison committee, to decide in their favour.

However, the wider interests are those of the people who want the development of their city or town to be carried out properly. This is so particularly where you are carrying out a major development. For instance, you may be building a major highway that is going to cut through a beautiful part of the country, or a major airport, which is going to create a lot of noise. Instead of leaving everything purely to the system of application, consideration by the liaison committee, the Minister and eventually the High Court, I think, we should also provide for a possibility for interested groups to have a chance to air their views through a public hearing. This system has been utilised to good effect in a number of countries. We should not just leave it to the system where things move through the office and assume that everybody in that office has the best interests of the country at heart, and that nothing untoward will happen. I think we should allow for the possibility of public hearings, particularly where we will be dealing with major developments that will be likely to have an environmental impact on the country, a city or a local area. In this way people who have no superior interest in the matter, but who are interested in the welfare and good development of the city will come in and air their views. Those views, which will be expressed in public hearings, can then be looked at by the Minister before he takes the final decision in that matter. I think that will be possible.

If I look at Clause 19(5)---

Mr. Ndicho: On a point of information, Mr. Temporary Deputy Speaker, Sir. I very much thank my friend, hon. Ligale. He is contributing very good points. But before he leaves the clauses dealing with appeals against the decision of the liaison committees I thought that he would also have noted---

The Temporary Deputy Speaker (Mr. Ndotto): Order, Mr. Ndicho! He is commenting on what he wants. If you want to comment on what you think he should comment on, wait until I recognise you and then you make your comment.

Mr. Ndicho: Mr. Temporary Deputy Speaker, Sir, I am doing this in very good faith. I am really enjoying what my friend is saying. But this is very important. Let me point it out to him. Clause 13(2) talks about the liaison committee reversing the decision of the Director. Then clause 15(2) is also talking about the Minister reversing all what has been reversed by the Director and the liaison committee. So, you can see it is a vicious circle, that will never end. It will continue to make this Bill useless. It is a useless Bill.

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Temporary Deputy Speaker, Sir, I do not agree with the language that my colleague used. I do not think he added anything to my points really. But all the same, we are in a democratic system.

Mr. Temporary Deputy Speaker, Sir, let me get back to the points that I want to make on Clause 19 (v),

which reads as follows:

"A person who is aggrieved by the decision of the Minister, may appeal against the decision to the High Court in accordance with the rules and procedure, for the time being, applicable in the High Court".

I think there ought to be an opportunity to contest the Minister's decision even if it is a positive one. We ought to allow this, because sometimes the local authority itself may view that a decision taken by the Minister is contrary to their own well-being. They should feel free to appeal. It should not be the person who applied for development in the first instance. We should allow a person, or any authority which is rejecting the decision of the Minister, to appeal. It should be a two-way traffic. We should not assume that it should be only the aggrieved individuals who have made an application. The authority may also feel aggrieved. The local authority may also feel aggrieved by the decision of the Minister. There should be an opportunity for them to appeal to the High Court, so that they can contest the decision of the Minister adeptly. If the High Court wants to reverse the decision of the Minister, "*hewalla*". The local authority should be happy.

Mr. Ndicho: On a point of order, Mr. Temporary Deputy Speaker, Sir. My friend has spoken a very funny language, and we would like to know what it is. What does "*Ewalla*" mean?

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): I think my colleague just wants to add a little pepper to the discussion. I welcome that, but I know he understands what "*Ewalla*" means.

With regard to Clause 20, sub-sections 2 and 3, I would like to emphasise the point that I made earlier on that Clause. The Minister, in reaching to his decisions, will have to depend on the advice of the Director. I think that point should be made very clear. The Minister should not be taking decisions on his own. He should get expert advice to arrive at his decisions. If we agree, as I had suggested earlier, the Director of Physical Planning should be the one to advise him, rather than preparing the plans. That would be quite in order. This is where he will be giving advice to the Minister before he makes his decisions, to either vary, reject or otherwise allow the appeal.

Mr. Temporary Deputy Speaker, Sir, Clause 21, says that the Minister, or an officer authorised by him, should within 14 days after approval of the plans, publish them in the Kenya Gazette. We do not want to get into a situation where every Minister will at whim, decide on whom he should authorise to gazette such important decisions.

We know that there is an Accounting Officer in the Ministry and he is the one who should make decisions and be able to order for gazette. I do not know why we should go talking about an officer who shall authorise himself. We may end up in a situation where a Minister will have his favourite sons whom he wants to choose to go and do the gazette. One day you have it being gazetted by the Director of Physical Planning, the next time by the Permanent Secretary, while another time it is being gazetted by some junior Under Secretary or Assistant Secretary because he happens to be a personal assistant to the Minister. We want to avoid that situation and actually designate the officer who shall be able to do the gazette.

Mr. Temporary Deputy Speaker, Sir, under Clause 21(3) we are saying:

"An approved regional physical development plan shall not change the character of the title of any land or the disposal of any land by its registered owner."

That is foolproof. When you prepare a regional or a local physical development plan, it immediately changes the value of that land, whether we like or not. For instance, if we have prepared a plan that shows a major highway ploughing through your plot of land, dividing it into two, clearly the value and the character of your title has changed. We cannot say a plan which is prepared should not change the value or the title, otherwise it is not a plan. That Clause is, therefore, unnecessary. It is tying us into knots and we are going to find ourselves put into litigation from time to time because plot owners will say: "Hey, my friend, before your plans were approved, this land of mine had so much value, the title had this value, but since you approved this plan of yours, my title has changed value, and it is not supposed to change. Therefore, you must compensate me". We should not tie ourselves into knots which we cannot unravel.

Mr. Temporary Deputy Speaker, Sir, let me move to Clause 23 where it says:-

"The Director may, by notice in Gazette, declare an area with unique development problems as a special planning area."

We are not just talking about problems, we should also be talking of opportunities because when we are looking at a particular area which is unique, we want to see it in terms of its opportunities as well as problems. So, let us not just emphasise on negatives, but let us also emphasise the positive, the opportunities that an area presents before we jump to problems. That is what I want to emphasise on as a good planner. I want to see what the opportunities are, how I can utilise these opportunities to develop it to good advantage. That Clause---

The Temporary Deputy Speaker (Mr. Ndotto): Order, hon. Ligale, address the Chair!

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Temporary Deputy, Speaker, Sir, I am trying my best to enjoy the humour.

The Temporary Deputy Speaker (Mr. Ndotto): Just ignore it!

Dr. Otieno-Kopiyo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Ligale to refuse to confirm that the hon. Members on the Government side see too many opportunities in land grabbing everywhere? Everywhere, they look, they see an opportunity to build something or to sell something to NSSF!

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Temporary Deputy Speaker, Sir, I am sure that you will agree with me that is a frivolous point of order.

Under Clause 25, we are talking about what local physical plan shall consist of and it talks about two things; a survey in such areas and such maps as be necessary to indicate the manner in which the area will develop.

Mr. Temporary Deputy Speaker, Sir, by my training, a physical planner does more than this. He should be able to spell out the policies that has guided the arriving at a particular pattern. He should be able to show us some of the things they have talked about in regional development planning. In the regional development plan, they went to great lengths to specify and spell out what will comprise that land. In terms of local development plans, we have two schedules, and I am suggesting that this Clause be looked again to specify more properly what that land shall comprise of.

Mr. Temporary Deputy Speaker, Sir, under Clause 26, there is a very important word missing there. It says "the director shall later than 30 days--- "shall not later than 30 days" It is very important because without it, it makes no sense.

When we talked about the regional physical development plan, we provided for its amendment and we provided for its procedure of amendment. In the case of local development plan we are not providing for amendment. We must provide for how we amend the local physical development plan and the procedure that we go through having it amended.

We are talking of development control and this is where we have some of the greatest weaknesses, particularly in local authority because of either lack of expertise or too many vested local interests and so on and so forth. And because that area is so crucial, it is important that we address the penalties which are being spelt here, starting with one under Clause 30(2) where we are asking that anybody who contravenes approved plan shall be liable to a fine not exceeding Kshs100,000 or an imprisonment not exceeding five years or both.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ndotto): Hon. Members, it is now time for interruption of business. The House is, therefore, adjourned until tomorrow Wednesday, 8th May, 1996 at 9.00 a.m.

The House rose at 6.30 p.m.