

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 11th June, 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 Economic Survey, 1996

*(By the Assistant Minister for Planning
and National Development (Mr. Oyondi)
on behalf of the Vice-President
and Minister for Planning
and National Development)*

ORAL ANSWERS TO QUESTIONS

Question No. 229

MEMBERSHIP OF DDCs

Mr. Mutani asked the Minister of State, Office of the President who the members of the District Development Committee in each district are.

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

The membership of the District Development Committees include the following: The District Commissioner, who is the Chairman, the District Development Officer who is the Secretary, Departmental Heads of all Ministries represented in the district, Members of Parliament, District ruling Party chairman, Chairmen of all local authorities, Clerks to the local authorities, Chairmen of the Divisional Development Committee, Representatives of development related parastatals, invited *ad hoc* representatives of non-Governmental development related to organisations and self-help groups.

Mr. Mutani: Thank you, Mr. Speaker. The Assistant Minister said that the District ruling Party Chairman is a member of the District Development Committee. But since we have introduced of multi-partyism in Kenya, why has the Assistant Minister not revised that document to guide the District Commissioner and include other chairmen of political parties in this country in the DDCs? Why has he not done so?

Mr. Manga: Mr. Speaker, Sir, if you see the original Blue Book of 1987, you will see that the chairman of the ruling Party was not included. But it is due to the establishment of multi-partyism that the district chairman of the ruling Party is included in this Blue Book.

Mr. Anyona: Mr. Speaker Sir, we would like the Assistant Minister to explain the legal status of the DDCs because DDCs are supposed to decide on priorities of development projects in the various districts and yet they have no authority to deal with matters of finance.

Can he tell us the legal status of this organisation not forgetting the political organisation and the Civil Service forum?

Mr. Manga: Mr. Speaker, Sir, the DDC has been there for a long time and the legal part of it has not been questioned. So, I am surprised to get such a kind of question from that Member.

Mr. Speaker: What is it, Mr. Anyona?

Mr. Anyona: My question is this; what is the legal status of the DDC? You cannot have a baby that does

not have a legal existence and purport it to be a legal organisation. What is the legal status of this thing and on which basis are they able to handle financial matters?

A Member: Samehea yeye kwa sababu hajui!

Mr. Manga: Mr. Speaker, Sir, I do not know whether the Member wants it to be brought to Parliament for an enactment, but if that is the wish of the Members then we will do that.

Mr. Mulusya: Mr. Speaker, Sir, if the Assistant Minister knows that there is no Act of Parliament establishing the existence of DDCs, can he now consider issuing a directive to discontinue all activities of DDCs and through an Act of Parliament establish the existence of DDCs because they are illegal and we cannot continue emphasising and working on illegalities.

Mr. Manga: Mr. Speaker, Sir, I am not in a position to give those directives.

Mr. Mutani: Mr. Speaker, Sir, if I followed the Assistant Minister closely, he said that in the 1987 issue of the District Focus for Rural Development Strategy Blue Book there is no provision for a political Party, but I have got a copy here of this year which includes KANU chairman of the district in the DDC. Is he in order to mislead Parliament?

Mr. Manga: Mr. Speaker, Sir, I am not misleading the House. What I am saying is that there was KANU at that time, but here it says the ruling Party. If FORD Kenya is the ruling Party then the FORD Kenya Chairman will be there.

Mr. Kamuyu: Mr. Speaker, Sir, how are you after a long holiday?

Question No. 082

WATER SHORTAGE IN DAGORETTI

Mr. Kamuyu asked the Minister for Local Government:-

(a) whether he was aware that there is an acute water shortage in the whole of Dagoretti Constituency and especially at Ngando, Riruta, Waithaka, Kangemi, Uthiru, Mutuini, and Kawangware; and,

(b) what concrete steps the Ministry was taking to alleviate the problem.

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. The Swahili people say "kuishi kwingi ni kuona mengi" na sisi wengine tumeishi kwa muda mrefu. Is it in order for an hon. Member to send greetings to the Chair? The hon. Member stood up and before he asked his Question he asked you how you were after the recess period. Is that in order Mr. Speaker, Sir?

Mr. Speaker: Order! Order! I do not really think I take offence to an hon. Member recognising my presence. Proceed!

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

I am aware that the water demand for Dagoretti Constituency is more than the existing water supply for the area. Dagoretti Constituency gets its water by gravity from Kikuyu Springs through pumping to Uthiru and Dagoretti Reservoirs. Areas served by Kikuyu Spring, Uthiru, parts of Waithaka, Riruta and Kawangware have constant water supply. Areas served through pumping from Kabete to Dagoretti, parts of Waithaka, Mutuini and Riruta and from Kabete to Uthiru experience minor problems due to frequent power fluctuations and the high water demand associated to the current development and high population.

Mr. Speaker, Sir, in order to alleviate the problem, my Ministry has undertaken the following steps:-

1. Water is being pumped from the lower areas to the upper areas of the city to supplement the existing supply. The Ministry is in the process of acquiring additional pumps to pump more water from these low areas to the upper areas.

2. The Ministry has commenced a trunk main project starting from Uthiru Reservoir passing through Dagoretti to Karen. This project, which is in existence, will soon be operational.

3. My Ministry and the Ministry of Energy are working on modalities of ensuring that the power fluctuation will not affect strategic water supply facilities.

4. My Ministry is undertaking major works at Ngathu Water Works to increase the amount of water coming to Nairobi from 280 million litres to 410 million litres daily. This project should have been completed in 1991, but due to delays caused by the suspension of credit by the World Bank, the treatment is expected to be completed by June this year, 1996.

Mr. Kamuyu: Mr. Speaker, Sir, I received a similar answer to the same Question last year. Lots of good promises, but nothing is done. As I am standing here today, I have not had a bath for three days. In fact, I

am sitting very far from my neighbours because I do not know whether they are very comfortable and this is not a joke. All the Dagoretti small scale farmers have given up their work. All the cows have been sold. Literally, there has not been any water in that area for a very long time and the water trickles in from 2.00 a.m in the morning and all the women have to come out to look for that small trickle of water. It is a very serious situation. Now, since the Assistant Minister is talking about the Ngethu Water Project supplying 280 million litres of water to be raised to 410 million litres of water, and as he says, it is true that this water project was supposed to be completed in 1991 to augment water supply not just for Dagoretti, but for the whole of Nairobi. Can the Assistant Minister now be very, very specific and tell us in sincerity whether this project will really be completed by the mid June or end of June and when it will be completed, whether Dagoretti will be fully supplied, half supplied, quarter supplied or I will have to put this Question again next year?

Mr. Kamuren: Mr. Speaker, Sir, as I am talking right now, the officers who were with me this morning are right in the field and I told them that I do not want to answer a Question before the House which will not work and that the House must be told the truth. I will make sure, from the officers concerned, that these people will get this water by the 30th of June.

Prof. Ouma: Thank you, Mr. Speaker, Sir, and allow me to say this, that, the towns and urban centres in this country are notorious for lack of water; Mombasa and even Kisumu on the lake shore has no water. I would like the Assistant Minister to assure this House that at least it will enable this city to plan 20 years ahead by ensuring that we have got water which can sustain 10 million people and industries at that time. The Minister has told us that there are water works going on. For what population are these water works planned? Is it for five million, 10 million and will it be able to sustain us for say, 20 years when the population will be 10 million and the industry is three times what it is today? For what population?

Mr. Kamuren: Mr. Speaker, Sir, because this is a Question particularly from Dagoretti Constituency, if the hon. Professor Ouma would like to profess and bring a professional question, I will answer accordingly.

Mr. Speaker: Final question, hon. Kamuyu!

Mr. Kamuyu: Thank you, Mr. Speaker, Sir. Now the Assistant Minister is talking "Trunk Main Project".

I would like to expound on that and also give this House the capacity of Uthiru Reservoir because as far as I am concerned, Uthiru Reservoir itself is dry. There is no reservoir there at all and while we there, I would like to take this opportunity to thank the Jockey Club of Kenya because they have allowed us to connect a pipe from their supply into Ngando in Dagoretti free of charge. Can the Ministry not do a gesture like that?

Mr. Kamuren: Mr. Speaker, Sir, as soon as the project is complete, we will also connect the pipe that will come so that it will help these people in this area to supplement the water that they have now.

Question No.227

RECEIPTS FROM SUGAR-CANE CESS

Mr. Sifuna, on behalf of **Mr. Munyasia**, asked the Minister for Local Government:-

(a) how much money the Bungoma County Council has received as cess from sugar cane in 1992, 1993 and 1994; and,

(b) how was this money spent

Mr. Speaker: I do not know whether you really have instructions. Because another hon. Member, Mr. Busolo, came to the Chair and said he had instructions on this Question.

Mr. Sifuna: Mr. Speaker, Sir, it is true hon. Munyasia rang here. In fact, even hon. Busolo can prove me right or wrong and even I have spoken to the Assistant Minister for Local Government concerning this Question. Why are you doubting?

Mr. Speaker: Anyhow!

The Assistant Minister for Local Government (Mr. Kamuren): Mr. Speaker, Sir, I have already discussed with hon. Sifuna and agreed that because I got a very unsatisfactory answer to this Question and I have already contacted the officer concerned, that we defer the Question so that we get a proper answer to the Question.

Mr. Speaker: Well, deferred to next week.

(Question Deferred)

Mr. Speaker: Next Question!

Question No.078

EQUIPMENT FOR INTENSIVE CARE UNIT

Dr. Lwali-Oyondi asked the Minister for Health:-

- (a) if he is aware that the Intensive Care Unit (ICU) at the Nakuru Provincial Hospital is just a room without a proper ICU equipment in it; and,
 (b) if the answer to "a" above is in the affirmative and bearing in mind that this hospital is along an international highway where frequent road accidents occur, when he will equip this Unit.

The Assistant Minister for Health (Mr. Criticos): Mr. Speaker, Sir, I beg to reply:-

(a) It is true that the Intensive Care Unit at Nakuru Provincial General Hospital is composed of one unit which is inadequately equipped.

(b) While my Ministry supports the idea of establishing intensive care units, particularly in the hospitals located in accident prone areas, present financial constraints continue to affect implementation of such project proposals. For example, Kshs32 million needed to fully equip the Nakuru Provincial General Hospital ICU is not available at the present moment. As soon as the full budgetary allocation is made for Nakuru Provincial General Hospital, the ICU work will resume.

Dr. Lwali-Oyondi: Mr. Speaker, Sir, I am very much disturbed by the answer given by the Assistant Minister because he knows very well that this hospital is in the Headquarters of one of the biggest provinces in Kenya and he is always passing around there and you never know when he will need the ICU in this particular place. There are a lot of accidents happening in this place and many people lose their lives because even a heart and lung machine, an electro-cardiograph and electro-espherograph. All these cannot really cost Kshs32 million. They are fairly cheap machines. Can the Assistant Minister ensure that the basic facilities of the ICU are in place, because I went there and found that the place is just but a room? We had walked in order to put up this particular unit but the Government was supposed to equip it. Can the Assistant Minister give an answer to that?

Mr. Criticos: Mr. Speaker, Sir, I appreciate what the hon. Member is asking. There is some few equipment which is required in that hospital and we are willing to provide for the ICU unit. I appreciate his bringing this to my attention. What we have said is that the total cost of a brand new ICU will be Kshs32 million.

However, I give the undertaking to the hon. Member, and will do my utmost to provide the basic essentials for that ICU.

Prof. Mzee: Mr. Speaker, Sir, I clearly heard the Assistant Minister saying that they would wish to equip the hospital, but they do not have funds. I am really surprised. He had accepted that Nakuru is located in accident prone areas. In actual fact there are a lot of accidents. I personally was involved in a serious accident near Nakuru some time back. What is the Government priority? Is it the lives of people involved or what? The Government just says that it does not have money after we have approved billions of Shillings in the budget. What other priorities does the Government have? Is life not the first priority when it comes to Kenyans?

Mr. Criticos: Mr. Speaker, Sir, without doubt human life is of the highest priority in this country. Drugs are available, the basic materials for First Aid are available but a unit which is specialised in a profession like this is extremely expensive and that is why the Ministry has this problem. For the information of the hon. Member even in my own constituency, Voi, we have the same problem. So, it is not a one-area problem, it is a countrywide problem.

Dr. Lwali-Oyondi: Mr. Speaker, Sir, Kshs32 million in Kenyan terms is a very small amount of money especially when we are speaking of a Government. I have just been in elections in Molo where more than Kshs50 million was used and it was being given to wananchi in the open daylight. They even bought four Mousso cars which were harassing us, and they were chasing me throughout, but we defeated them anyway. Why is it that money is available for elections, but not available for live?

Mr. Criticos: Mr. Speaker, Sir, I am not aware of what the hon. Member is talking about we should just concentrate on this Question.

Question No.189

BENEFICIARIES OF BURSARY FUND

Mr. Maore asked the Minister for Education:-

(a) whether he could table the list of beneficiaries and the amount each beneficiary received in 1995 from the Bursary Fund in Nyambene District; and,

(b) how much did each division in the district receive and why were some genuine cases not considered.

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

(a) The list of students who have benefited from the Bursary Fund in Nyambene District is not ready because a number of secondary school Boards of Governors have not finalised the allocation of bursaries to the needy students. However, during 1995, schools in Nyambene District were allocated bursaries as shown in the appended list which I am tabling. These are 35 schools.

(b) The total amount received by each division in the district during 1995, was as follows; Tigania Central, Kshs408,653.50, Tigania East, Kshs56,363.50, Tigania North, Kshs591,843.45, Tigania West, Kshs605,940.35, Uringu, Kshs70,457.55, Igembe North Kshs380,471.30, Igembe South, Kshs183,112.00, Igembe Central, Kshs70,457.15, Ndoleli, Kshs70,457.15, Laare Kshs140,483.45 and Mutuati Kshs126,823.35.

Mr. Speaker, Sir, I am not aware that some genuine cases were not considered. However, hon. Members of this House bear a heavy responsibility of attending DEB and Boards of Governors (BOG) meetings called for deliberating on bursary funds to ensure speedy and fair allocation of the money to needy students in schools within their constituencies.

(Mr. Komora laid the list on the Table)

Mr. Maore: Mr. Speaker, Sir, in part (a), the Assistant Minister has totally avoided answering it. I wanted a list of the beneficiaries and the amount each beneficiary received. When is the Assistant Minister going to have that list available, because gist of my question? Otherwise, the entire list is cooked up just to show the Government that you are dishing out money to these schools and they never receive it. If they receive it, do you have any evidence that they receive it?

Mr. Komora: Mr. Speaker, Sir, if the hon. Member listened to my reply, he would note that he himself may be party to the cause of the delay in finalising the list by not attending (BOG) or DEB meetings.

Mr. Maore: Mr. Speaker, Sir, we are talking about 35 schools. The Assistant Minister is literally avoiding answering the questions. How do you expect me to be in 35 BOGs? How did the Government know that these schools needed the money?

Mr. Komora: Mr. Speaker, Sir, I have replied to the effect that the list is under preparation to show how the BOGs allocate the money to students. The list will be finalised by BOGs and I implore Members of Parliament in their constituencies to ensure that they attend BOGS meetings to process these allocations speedily so that students can benefit.

Mr. Murungi: Mr. Speaker, Sir, we have received complains about unfair allocation of these bursaries because some of the headmasters sit without the BOGs and allocate the bursaries to their friends. Can the Assistant Minister issue instructions to all schools that no headmaster should distribute the bursary money alone without sitting with the BOGs and representatives of the parents and Teachers Association. This will clear the problem.

Mr. Komora: Mr. Speaker, Sir, instructions are already available to headmasters that the allocation of funds must be done BOGs to each needy student. All the members of the community within the school area are represented in the BOGs. Therefore, it is a waste of time to repeat what is already known. What is important is that the provision is already there. I would like the Members of Parliament to go round and make sure that these funds are distributed.

Mr. Maore: Mr. Speaker, Sir, I did state categorically that the list is a "cooked" one. When you talk of board of governors, several schools that are in this list are private. How can you then involve board of governors there?

Mr. Komora: Mr. Speaker, Sir, we are not talking about private schools, but about schools which get assistance from the Government.

Question No. 106

NUMBER OF IRRIGATION SCHEMES

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

(a) how many Irrigation Schemes are there in Kenya; and,

(b) when they were established and to what extent they have succeeded.

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

(a) A recent study carried out by my Ministry has established that there are 502 private small holder and Government managed irrigation schemes in the country.

(b) (i) The schemes were established on diverse dates between 1954 and 1991.

(ii) I consider the irrigation schemes successful because wherever they have been established, they have emerged as the main life sustaining and money generating activity.

Mr. Nthenge: Mr. Speaker, Sir, if they have been successful, why has the Government not increased them and why do we not see them producing food for the nation?

Mr. Mokku: Mr. Speaker, Sir, I said that the first lot of these schemes was started in 1954-1991. To answer the question on why these schemes have not been increased, I would like to say that there has been a tremendous increase of these schemes between those years. In various areas where these schemes are undertaken, various crops are grown, for example, horticultural crops, rice, coffee, maize, cotton and other crops.

Mr. Wamae: Mr. Speaker, Sir, can the Assistant Minister assure this House that farmers in Mwea Irrigation Scheme will be given their plots, issued with title deeds and allowed to run that Scheme instead of it being run from Nairobi?

Mr. Mokku: Mr. Speaker, Sir, that is a different question. Before we went on recess there was a Question on that issue and the hon. Member who was supposed to ask that Question was not in the House to ask it.

All the same, if the hon. Member asks a Question concerning Mwea Irrigation Scheme, it will be answered accordingly.

Mr. Mbui: Mr. Speaker, Sir, is the Assistant Minister aware that the Mwea Irrigation Board has refused the ploughing of land for rice plantation in Mwea because of colonial terms that it has employed to the tenants of the Scheme as of now?

Mr. Mokku: Mr. Speaker, Sir, I am not aware of the Mwea Irrigation Board refusing farmers to plough their land and if the hon. Member wants to get details on this matter, let him put a Question, I will answer him.

Mrs. Asiyo: Mr. Speaker, Sir, can the Assistant Minister tell this House why he has not extended other irrigation schemes if he considers, like he does, that all those other projects they started have been successful?

Mr. Mokku: Mr. Speaker, Sir, I wish to ask the hon. Member to be specific in her question. Which areas does she have in mind?

Mrs. Asiyo: Mr. Speaker, Sir, the whole of Lake Victoria Region is untouched and we have put very many Questions in this House about expanding irrigation schemes to that area. Can the Assistant Minister tell this House why this has not been the case?

Mr. Mokku: Mr. Speaker, Sir, I will ask the hon. Member to put that Question and I will answer her.

Mr. Nthenge: Mr. Speaker, Sir, since Kenya is mainly a dry country but with a reasonably number of rivers which can be used for irrigation, what is the Ministry's plan in irrigating most of the dry land? We have a lot of idle men, land and water which can be used.

Mr. Mokku: Mr. Speaker, Sir, the hon. Nthenge's question is very general. As far as the Ministry is concerned, along all the rivers that we have in this Republic, there is at least a certain degree of irrigation taking place.

Mr. Speaker: Mr. R.K. Mungai's Question!

Mr. R.K. Mungai: Mr. Speaker, Sir, before we went on recess, I asked this same Question and the Minister stood up in this House and said that he did not have an answer. I also do not have the benefit of a written reply.

Question No. 167

CONSTRUCTION OF THIKA-NYERI ROAD

Mr. R.K. Mungai asked the Minister for Public Works and Housing:-

(a) whether he could inform the House what type of contract was awarded to HZ & Company Limited for construction of Thika-Nyeri Road, and how much money was involved; and,

(b) what the current status of the above project is and how much money has so far been paid.

The Assistant Minister for Public Works and Housing (Mr. Mwamzandi): Mr. Speaker, Sir, we have a

reply today and the following is the reply.

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister not to furnish the Questioner with the written reply? Why has he refused to give him that reply?

The Assistant Minister for Public Works and Housing (Mr. Mwamzandi): Mr. Speaker, Sir, it is not the Minister who issues the written replies to the hon. Members but the Office of the Clerk. This is not the responsibility of the Minister.

Mr. Speaker, Sir, I beg to reply.

The contract awarded to HZ & Company Limited was repairing, resealing and recarpeting of the following roads which connect:- Makutano-Sagana Road, Kangema-Muranga Road, Kangema-Nyeri Road and Marua-Nyeri-Kiganjo-Marua Road. The contract sum for the above works is K£227,251.

(b) The contractor is remobilising to resume work on the project starting with the Makutano-Sagana Road. The contractor has so far been paid K£15,489-94-90. For the information of the hon. Member, the contractor is by now on the site.

Mr. R.K. Mungai: Mr. Speaker, Sir, can the Assistant Minister tell us when this contract was awarded if the Ministry has already paid K£15 million? How far have they done the road, and I am talking of Makutano-Sagana Road? Mr. Speaker, Sir, I know that you do pass on that road and you know how bad it is. Can we have a reply as to when the contract was awarded and what the K£15 million has been used for?

Mr. Mwamzandi: Mr. Speaker, Sir, the contract was awarded and commenced on 14th October 1994 and should have taken 18 months which should have ended on 30th April, 1996, but unfortunately, the work stopped because of unforeseen circumstances.

Mr. Achieng'Onoko: Mr. Speaker, Sir, the HZ & Company Limited seems to have monopolized road contracts in Kenya. Can the Assistant Minister tell us the directors of this particular company that monopolizes road construction in the country?

Mr. Mwamzandi: Mr. Speaker, Sir, I have no information whatsoever about the directors of this company!

Mr. Michuki: Mr. Speaker, Sir, you will recall that in April, 1994 I presented a Question through this House to the Ministry concerned. The Question was on the part of the contract which covers Kangema/Murang'a Road. I was told that the contract would become operative on 1.6.94. Could the Assistant Minister tell this House why, in the first place, he was off the mark, because construction work has not started? It is now two years since he made that promise!

Mr. Mwamzandi: Mr. Speaker, Sir, Kangema/Murang'a Road is among the roads that have been contracted to be done. If the road was not done during that period, it is going to be done this time.

Mr. Ndicho: Thank you, Mr. Speaker, Sir, for giving me this opportunity to ask the Assistant Minister why only a few selected companies like M/s Krishna Bihal, HZ Company and SS Mehtar and Brothers are contracted to do roads. Even if these companies are favoured with road construction jobs, why can the Assistant Minister not ensure that they do the jobs quite well. As we are talking here Companies like M/s SS Mehtar were paid money to do Thika Road, but after getting the money they just went away. Why can the Assistant Minister not assure this House that there will be a supervisory committee in his Ministry to ensure that once these companies are paid money they will do the jobs that they are given.

Mr. Mwamzandi: Mr. Speaker, Sir, this company is not favoured as the hon. Member has just imputed. It was---

Mr. Michuki: On a point of order, Mr. Speaker, Sir. The hon. Questioner clearly talked about several companies, and not one, which have monopolised road construction jobs, but the Assistant Minister is now talking about only M/s HZ Company! Is he in order?

Mr. Mwamzandi: Mr. Speaker, Sir, I think the hon. Member did not follow what hon. Ndicho said. Hon. Ndicho earlier implied that this company has been favoured with road construction jobs. I was saying that I do not think that it has been favoured. This is because out of the five companies which bid for this contract, its contract price was the lowest. So, that is how it got this job.

Mr. Kaptan: Mr. Speaker, Sir, there is no doubt that M/s HZ Company is favoured in road construction jobs in this country. For example, it is this company which every year recarpets and reseals Nakuru/Eldoret Road, and yet its work is sub-standard. Can the Assistant Minister tell this House why M/s HZ company gets almost 95 per cent of road construction contracts in this country?

Mr. Mwamzandi: Mr. Speaker, Sir, I did not think of that, but we will consider the hon. Member's suggestion, that we properly distribute the contracts.

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. This Question refers to M/s HZ Company and so

the Assistant Minister, who is replying to it, should tell this House who the owners of this company are.

Mr. Speaker: Mr. Speaker, Sir, you can find out that from the Registrar of companies! Can you not?

Mr. Shikuku: Since the company is in the Question---

Mr. Speaker: Anyway, what you want is against the rules. The information is contained in a public document and you can check it in the Registrar of Companies' Office.

Question No. 222

DE-REGISTERING OF CO-OPERATIVE SOCIETY

Prof. Mzee asked the Minister for Co-operative Development:-

- (a) whether he is aware that the North Coast Fishing Co-operative Society is charging a subscription amounting to 17 per cent of the value of fish sold to the Co-operative;
- (b) what services are provided by this Co-operative Society; and,
- (c) since most of the fishermen in Lamu do not wish to belong to this Co-operative, whether he can consider de-registering the said Society.

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

(a) I am not aware that the North Coast Fishing Co-operative Society Ltd charges 17 per cent subscription of the value of the fish sold to it. However, the society charges 10 per cent commission on the total turnover for operating expenses. This is in accordance with the society's by-laws, Section 24.

(b) the society provides the following services to its members: Arranging for the collection of fish from the members, marketing the fish, provision of credit and loan facilities, providing book-keeping services for members' businesses, education and training.

(c) I am not aware that most of the fishermen in Lamu do not want to belong to North Coast Fishing Co-operative Society Ltd. However, I am aware that the majority of the society's members voted for the re-location of the society's headquarters from Lamu Island to Faza Island, where 60 per cent of the society's business is located. The offices were moved to Faza Island in December, 1995. Therefore, there is no need to de-register the society because it is serving the interests of its members.

Prof. Mzee: Mr. Speaker, Sir, 10 per cent of the value of the fish sold is still a lot of money to charge. But besides this 10 per cent commission, members also pay subscription fees and other charges, which raises the amount charged to 17 per cent. However, every fisherman in Lamu is forced to pay this 17 per cent of the fish value, whether or not he wants to be a member of the society. So, the figure of 10 or 17 per cent of the fish value, every fisherman is forced to pay it to the co-operative society. In any country, fishermen are very important people, and so the Government is supposed to help them in every way possible. In fact, last year Canada and Spain were about to go to war because of a dispute over fishing. In our country, fishermen especially those at the Coast, are not given any services whatsoever; and yet fishing is an important enterprise in the country. None of the services the Assistant Minister has listed is provided to the fishermen. The only thing that the co-operative society does is to weigh the fish so as to determine how much it should take. Why is the money recovered from the fishermen remitted to Nairobi instead of being kept in Lamu?

Mr. Titi: Mr. Speaker, Sir, I am not aware that the money is remitted to Nairobi. I am hearing this for the first time from Prof. Mzee!

Prof. Mzee: Mr. Speaker, Sir, now that I have informed the Assistant Minister that all the money taken from the fishermen is not kept in Lamu but is remitted to Nairobi, will he investigate the matter? If he finds that the remission of the money to Nairobi is irregular, will he instruct the co-operative society to return the money to Lamu?

Mr. Titi: Mr. Speaker, Sir, I thank the hon. Member for giving me this information. The Ministry will be very interested to investigate the matter. We will have to issue a directive to that effect.

Dr. Lwali-Oyondi: Mr. Speaker, Sir, arising from the Assistant Minister's answer, and bearing in mind that ten per cent is a substantial portion of these fishermen's trade and realising that most people never make more than ten per cent in this trade, could he consider lowering that percentage to about three per cent?

Mr. Titi: Mr. Speaker, Sir, I sympathise with the Questioner because, what I know is that the societies are governed by their own laws. They pass their own resolutions which they have to follow. So, it has nothing to do directly with the Ministry; it is a question of the members to pass their resolutions.

Question No. 321

PAYMENT OF NSSF DUES

Mrs. Asiyó asked the Minister of Labour and Manpower Development:-

- (a) why the National Social Security Fund (NSSF) has not paid Mr. Francis Oyoo Owour, NSSF No. 018113060, his entitlements; and,
- (b) whether he could pay Mr. Owour all his entitlements including interest accrued from his and his employer's contributions, with immediate effect.

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

Mr. F.O. Owour was paid partial benefits amounting to Kshs15,642.75 by cheque No. 324627 on 15th December, 1995. His final payments amounting to Kshs30,656.00 has been processed, and it is now available for collection from the cash office by cheque No. 348001 dated 10th June, 1996.

Mrs. Asiyó: Mr. Speaker, Sir, the NSSF is a very big organisation with a lot of money. It handles billions of shillings all the time. Why should it take the Fund so long to pay a poor contributor a sum of Kshs30,000? Why should it take so long?

Mr. Komen: Mr. Speaker, Sir, the first cheque which was the first instalment paid to Mr. Owour covered the only amount the Teachers Service Commission (TSC) had forwarded to NSSF. The other amount has just been received from the TSC and it is in the final stage of payment. We are now paying. So, it was not our mistake.

Mr. Mulusya: Mr. Speaker, Sir, I think the Assistant Minister did not understand hon. Asiyó's Question. She said this is a very big organisation which is handling billions of money daily.

Why should it take that long to pay money which is due to contributors after retirement? It is not only this case which is involved. There are hundreds and hundreds of Kenyans who are suffering and queuing in that place. It is like a market place. Why is it taking them so long to process final payments due to these contributors?

Mr. Komen: Mr. Speaker, Sir, I think I have answered that. We could not pay the contributor the money which we have not received. We had to pay money that we had, and we paid the first instalment which we had received from TSC. When this Question came, we had to follow the second lot. We got the money and now we are paying it.

Prof. Mzee: Mr. Speaker, Sir, the NSSF payment to workers is something which takes very, very long. In my experience, I have a list of not less than ten people from my Constituency who have been waiting payments for the last one year. Can the Assistant Minister tell us, since we know that NSSF has misappropriated funds, and it does not have any cash to pay, whether it is hiding by delaying payments? This is a fact. You are delaying payments because there is no cash. How long does it take - I have a list of ten people from my Constituency, who have applied for their dues for the last one year, and they have not been paid - the Ministry to process NSSF payments?

Mr. Komen: Mr. Speaker, Sir, the allegations made by the hon. Member are not true. NSSF is in a sound financial footing, and can pay any amounts that are claimed at any moment. The only problem that we have is that at times, the money has not been remitted by the employers. That is the main problem that the NSSF is facing. We have to follow them. But for those whose records are there, we clear them within a period of less than two days, and on the third day, they get their cheques. I can invite the hon. Member to come and see for himself, those who are actually paid when their documents are ready. They are paid on the spot.

QUESTIONS BY PRIVATE NOTICE

DEATH OF MS. RODAH MARAI

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

(a) Is the Minister aware that Ms. Rodah Marai of Kilgoris Division in Transmara District died in St. Joseph's Mission Hospital due to the negligence of the Nurse and the Doctor?

(b) What measures has the Minister taken to ensure that the Doctor and the Nurse in St. Joseph's Hospital are disciplined?

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

(a) Yes, I am aware that Ms. Rodah Marai died at St. Joseph's Mission Hospital, but not due to negligence of the Nurse and the Doctor. She was admitted in the Hospital on 24th of April, 1996 at 12.30 p.m. Investigations were carried out on her, which indicated that she had malaria, and she was also pregnant. The patient was put on drugs and she subsequently died on 24th of April, 1996 at 7.30 a.m. due to complications which arose while she was being treated. That was 19 hours after admission. The cause of death was severe malaria in pregnancy.

(b) I have no plans to discipline the doctor and the nurse in St. Joseph's Hospital, since there is lack of evidence. However, I am willing to instruct my Director of Medical Services to open further investigations into the matter, just in case we have missed anything. If the hon. Member has any information on this matter, he should come forward with it. This will enable me to give the relevant instructions for further investigations.

Mr. Leshore: Mr. Speaker, Sir, this is a very sad case. It is purely a case of negligence by the nurse and the doctor in charge of that Hospital. This poor young Kenyan girl could have survived if the nurse attended her. Before the young lady passed away, she was given drips, and the dripping bottle dried at around 3.00 a.m., and nobody attended her until she passed away. Could the Assistant Minister take urgent measures to discipline the nurse who was on duty, and investigate the incompetence of the doctor in charge of that Hospital?

Mr. Criticos: Mr. Speaker, Sir, this information will enable me now to carry on or open further investigations.

Mr. Anyona: Mr. Speaker, Sir, this hospital also serves part of Kisii District. We have had several cases similar to this one, of people who have died due to negligence. It is said that there are some foreign doctors and nurses in that hospital, who apparently are using Africans as guinea pigs. Can the Assistant Minister carry out comprehensive investigations into this hospital and find out exactly what is going on there?

Mr. Criticos: Mr. Speaker, Sir, to do this I would like to have information about a specific patient. And, we in the Ministry, we welcome information of any nature and furthermore on thefts of drugs and other equipments from our hospitals. We welcome information like this.

Mr. Arte: Mr. Speaker, Sir, I understand that this particular doctor who attended the said lady was not a qualified doctor, but a trainee doing her practicals. Can the Assistant Minister either deny or accept whether that doctor was a qualified doctor, a trained doctor or not? And if that is not true and she is not a trained doctor can he consider posting a trained doctor there?

Mr. Criticos: Mr. Speaker, Sir, as I said earlier on, I will do further investigation and I would bring the report to this hon. House.

Mr. Speaker: Very well. The last chance I will give to Mr. Shidie.

Mr. Shidie: Mr. Speaker, Sir, this hospital is known to be a very notorious hospital. Can the Assistant Minister confirm or deny that they are charging patients Kshs800 for consultation whereas they are claiming to be a non-profit making hospital?

Mr. Criticos: Mr. Speaker, Sir, I did not understand his question.

Mr. Speaker: Hon. Shidie, can you ask your question again?

Mr. Shidie: Mr. Speaker, Sir, my question is: Since this is a Mission Hospital can he confirm or deny that the patients are charged exorbitant consultation fee of Kshs800?

Mr. Criticos: Mr. Speaker, Sir, I am not aware.

Mr. Speaker: What is "itching" you, Mr. Ndicho?

Mr. Ndicho: Mr. Speaker, Sir, what is "itching" me is about the negligence of this doctor and nurses in this hospital. Two weeks ago, a doctor in Thika District Hospital operated two patients; one woman who was giving birth through caesarian operation and another old man, and he was very drunk at that night. I was there and I witnessed the drunkardness of this doctor. The two patients passed away after they had been operated, but when I complained to the District Commissioner in Thika the only---

Mr. Ruhiu: On a point of order, Mr. Speaker, Sir. How can the hon. Member go to an operation theatre to witness a caesarian operation?

(Laughter)

Mr. Speaker: Order! Order! Subject to what hon. Ndicho has to say in reply to the hon. Ruhiu, I believe he must have walked there, but Mr. Ndicho what do you say?

Mr. Ndicho: Mr. Speaker, Sir, I did not even say that I was in the operation theatre, but I said that I witnessed the "drunkardness" of this doctor and these two patients died at the same time. The nurses reported this to MOH and when the doctor operated the lady he went to sleep. He just slumbered and the nurses had to

wake him up and say, "Please, wake up." And he said, "Do not worry she is going to give birth." So my question is: The disciplinary measure that was taken against that doctor was to transfer him from Thika District Hospital to Nyeri Provincial Hospital so that he is near the Provincial Medical Officer (PMO). So can the Assistant Minister consider that the disciplinary action is not to transfer such a doctor but to sack him from serving the public? What is he going to say about that?

Mr. Criticos: Mr. Speaker, I really respect my hon. Member of Parliament. However, there is something which we should say very clearly here, if somebody has done a grave misconduct he is immediately removed, sacked, fired or whatever you might call it from the Ministry. So it all depends on the gravity of the situation.

Mr. Michuki: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister who is an hon. Member of Parliament to refer to Ndicho as his MP when actually hon. Ndicho represents Juja constituency?

Mr. Ndicho: On point of clarification, Mr. Speaker, Sir. May I bring it to the attention of my friend, hon. John Michuki, the fact that it is true the hon. Criticos is my constituent. He was born in Juja and that is why he is my constituent.

(Laughter)

Mr. Speaker: When you meet in Juja you can continue.
Next Question, hon. Murungi.

SUB-DIVISION OF NTHUNGURU FOREST

Mr. Murungi: Mr. Speaker, Sir, I beg to ask the Minister for Environment and Natural Resources the following Question by Private Notice.

(a) Is the Minister aware that Nthunguru Forest in South Imenti has been sub-divided and allocated to individuals?

(b) Is he further aware that wananchi in South Imenti have vowed to eject, maim and to kill any person who takes any portion of Nthunguru Forest?

(c) What urgent steps is the Minister taking to protect this important water catchment area, so as to avoid clashes?

The Assistant Minister for Environment and Natural Resources (Mr. Abdi): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware of any sub-division and allocation to individuals of Nthunguru Forest in South Imenti.

(b) Equally, I am not aware of any threat by wananchi in South Imenti to any person who takes any portion of Nthunguru Forest.

(c) What I am aware of is the encroachment on Nthunguru forest by one person. Investigation has been instituted with a view to establishing the actual boundaries of the gazetted forest for appropriate action to be taken against the individual.

Mr. Murungi: Mr. Speaker, Sir, the Assistant Minister is treading on very dangerous grounds. He is talking about encroachment by an individual, such generalizations are only going to lead these people into a lot of problem. In fact, the feelings in the place are so high that "*Mantu nijamathuku muno.*" Can the Assistant Minister tell this House whether the chairman of KTDA, Mr. Mutahi, has been allocated parts of Nthunguru forest by President Moi? Two, whether Mr. R.K. Nabea has been allocated Themwe Salt Lick which wananchi use---

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. The Question hon. Murungi is raising is very important to a lot of us who are mourning the "death" of public forests. Could you oblige the hon. Members on the other side to consult in lower tones so that we can hear what he is saying?

Mr. Speaker: Can you put your question now?

Mr. Murungi: Mr. Speaker, Sir, my question was simple. Can the Assistant Minister, to the best of information, knowledge and belief, confirm to this House whether he knows whether the chairman of KTDA, Mr. Mutahi, has been allocated parts of Nthunguru forest by His Excellency the President? Two, whether he is also aware that Mr. R.K. Nabea has been allocated Themwe Salt Lick which is within that forest for construction of a tourist hotel thereby depriving the wananchi of a facility for taking their cattle to Themwe Salt Lick? That is all.

Mr. Abdi: Mr. Speaker, Sir, I said I am aware of one person who has encroached on Nthunguru forest.

(1) Mr. Mutai cleared about 2.25 acres of forest land and was registered as Kinoru LR.730.

(2) A further 25.51 acres was also cleared in 1992 and registered as Kinoru LR.649 and was planted with tea bushes.

(3) The encroachment was discovered in February, 1996 and the District Commissioner was informed and a team of the District Security Committee visited the area.

(4) The Ministry's Surveyor and the District Surveyor confirmed the encroachment.

(5) The District Commissioner is expected to confirm the damage and determine its value then report to the Ministry for appropriate action.

Dr. Kituyi: Mr. Speaker, Sir. Notwithstanding a statement that there has been some enclosure referring to persons who have been allocated land and given title deeds in public forests, could the Assistant Minister tell this House why the District Commissioner for Meru, Mr. Korir, has very frequently been involved in scandals over the allocation of forest resources? He has been transferred twice including the end of May, 1996, handing over to a Mr. Lima as the new D.C and going to Makueni, only to get another letter transferring him back. Is it the case that because of his connection with saw millers in Meru, the conflict of interest which we have always explained about a Minister in charge of forestry who is also a saw miller, is again being rewarded in Meru District?

Mr. Abdi: Mr. Speaker, Sir, I am not aware of any involvement by the District Commissioner in Nthunguru forest.

Mr. Speaker: The last Question, Prof. Muga.

Prof. Muga: Mr. Speaker, Sir, less than three per cent of this nation is a forest of some kind. The future needs for timber, wood and other resources including a genetic bank need much more resources than that. Yet, now and again, we would hear of forests being de-gazetted or allocated before they are de-gazetted. Where are we heading to? Can the Assistant Minister tell us what assurance this country has that land grabbing will not endanger the future? What assurance have we that the forests will not be de-gazetted and that, instead, more will be planted? It is worrying. We want an assurance.

Mr. Abdi: Mr. Speaker, Sir, I am not aware of any forest that has been de-gazetted or given to individuals. I would be grateful if the hon. Member could table a list, if he has any.

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

Mr. Speaker: What is it Mr. Mulusya?

Mr. Mulusya: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to deny that no forest has been de-gazetted? We all know that Karura Forest, which is very near Nairobi was de-gazetted as early as last year and allocated to some Cabinet Ministers in this Front Bench. Karen and Kinale forests have also been de-gazetted. Is he in order to mislead this House?

Mr. Abdi: Mr. Speaker, Sir, can the hon. Member table the list of the beneficiaries of those forests?

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

COMMUNICATION FROM THE CHAIR

OPERATIONS OF THE PUBLIC ACCOUNTS COMMITTEE

Mr. Speaker: Order, hon. Members! I think Question time is over, and I have a rather lengthy communication to make.

Hon. Members, on 23rd May, 1996, a section of the membership of the Public Accounts Committee (PAC) led by the Chairman of that Committee, Mr. Michael Wamalwa, contemptuously addressed a Press Conference in which it was alleged that the Chair had obstructed the operations of the Committee by unnecessarily upholding the *sub judice* rule. I wish to give a considered ruling on this issue and I seek your indulgence because the comments are rather detailed. The background to this matter is essential.

On 4th March, 1996, my attention was drawn to the proceedings of the PAC regarding the hearing of evidence on Paragraphs 34 and 37 of the 1993/94 Report of the Controller and Auditor-General, querying the unsupported expenditure of K£738,747,574.12, that is, Kshs14 billion. This figure includes payments totalling some Kshs5.8 billion which were made by the Treasury to the Kenya Commercial Bank. This latter sum, it will be recalled, was and is the subject of a criminal case against a former Permanent Secretary to the Treasury, Dr. Wilfred K. Koinange and one, Kamlesh M. Pattni. The two were charged with the theft of Kshs5.8 billion on 5th January, 1995, in Nairobi Chief Magistrate's Criminal Court Case No. 46 of 1995. The case was consolidated with others on the 19th June, 1995 to become criminal case No.2208 of 1995 of the same Court. It is still pending, and undetermined by the Court. I need not stress that the Chief Magistrate's court is competent

enough to try a theft case.

The Committee instructed the Clerk to summon persons who were either accused in the said criminal case or likely State witnesses. The Clerk sought my guidance in accordance with the provision of Section 15 of the National Assembly Powers and Privileges Act, Chapter 6 of the Laws of Kenya, having regard to Standing Orders No.37(10) and 74. Standing No. 37, Paragraph 10, provides as follows:

"Reference shall not be made in a question to any particular matter which is *sub judice*."

Standing Order No. 74, provides as follows:

"No member shall refer to any particular matter which is *sub judice* or to any matter which, in its nature, is secret."

Section 15(1) of the National Assembly Powers and Privileges Act Cap.6 provides as follows:

"Any order to attend, to give evidence or to produce documents before the Assembly, or a Committee shall be notified to the person required to attend or to produce the documents by a summons under the hand of the Clerk, issued by the direction of the Speaker."

It is on this basis that the Clerk sought the Chair's guidance. It may also be of assistance to note that some witnesses had severally pleaded to the Committee that the matters relating to Kshs5.8 billion were *sub judice* and they did not wish to comment on it. On the basis of this information, I as the Speaker of this House, and in discharge of my duties to the House, wrote to the Chairman of the PAC on the same day, drawing his attention to the fact that all matters attaching to the Kshs5.8 billion are clearly *sub judice* within the plain meaning of Standing Order No.74. I advised that no Member, either in the House or in the Committee, would be allowed to discuss that issue. The corollary being to adduce that evidence. The Chairman was advised to ensure strict observance and adherence to the said Standing Orders. The Chairman read the contents of my letter to the Committee and the resulting debate saw the use of a language that is offensive to the existing rules of the House, decorum and indifference to the Chair.

Hon. Members, to this very day, I have not been able to fathom the reasons for that behaviour. Nevertheless, some Members of the Committee led by the Chairman made a visit to my office in an attempt to persuade me to alter my ruling on the basis that I do have powers to waive the *sub judice* rule. I was also informed by the Chairman that the Committee was also seeking the Attorney-General's legal opinion as to the meaning and scope of the *sub judice* rule. While affirming the Chair's full responsibility for interpreting Standing Orders, I nevertheless, requested the Chairman to set out his arguments as to why the Committee thinks I have the power to waive the *sub judice* rule. He did so on 10th May, 1996. Hon. Members may have read the same in the *Daily Nation* of Saturday, May 25th, 1996.

In the meantime, the hon. Attorney-General appeared before the said Committee and while affirming correctly that the interpretation of Standing Orders is the sole responsibility of the Speaker, he gave his considered opinion on the *sub judice* rule. I entirely agree with his submissions to the Committee, which in essence I consider to be the correct legal position. He appeared before the Committee on the 13th May, 1996 and on 16th May, 1996, I wrote to the Chairman of PAC, informing him that I still considered that my earlier direction on the matter was the correct position and this led to the Press conference which I referred to at the beginning of this communication which in my view was meant to intimidate and blackmail the Chair to bend, overlook or deliberately assist in the flouting of the rules of this august House.

I refuse to be so blackmailed. I refuse to be intimidated in total obedience to my conscience, honour, the dignity of the House and the oath I partook on 26th January, 1993 in front of all of you. I now wish to address myself to meaning and scope of the *sub judice* rule, and, as to whether the Chair can, and under what circumstances the Chair can waive the *sub judice* rule if at all.

The *sub judice* rule is a deliberate limitation by Parliament of its rights to free debate. This is done through Standing Orders 37 (10) and 74. It is noteworthy that the language used in both Standing Orders already referred to is mandatory. The Chair has no discretion in the matter. In Standing Order No. 37 (1), the words are: "Reference shall not be made to any matter which is *sub judice*." In Standing Order No. 74, the words are: "No Member shall refer to any particular matter which is *sub judice*." Both Standing Orders use the words "shall not." Where is the Speaker's discretion when it is plain by the plain words that it is mandatory?

The Chairman of the PAC in his submission which he made public chose not to see these Standing Orders. The fact of the matter is that they are there sitting in our book of rules. If you do not like them, amend the Standing Orders and delete both of them. That is how powerful Parliament is. It does not help to cry to the public who cannot do anything to amend our Standing Orders. As I said, the Chair has absolutely no discretion in this matter. Assuming that I am wrong in the interpretation of these Standing Orders, where else do we get guidance?

Section 20 of the National Assembly Powers and Privileges Act, Cap. 6 provides that:

"In the absence of any expressed provision, in our Act, the usage and practice of House of Commons Parliament of the United Kingdom shall apply."

In the United Kingdom, matters awaiting the adjudication of a court of law are not allowed to be brought forward for debate, subject to the right of the British Parliament to legislate on any matter. The House of Commons passed a resolution on 23rd July, 1963, setting out in details the *sub judice* rule. This resolution, bars reference in debates, Motions and questions to matters awaiting or under adjudication in all courts exercising criminal jurisdiction and in courts martial from the moment the law is set in motion by a charge being laid until the time the verdict and sentence has been announced and again from the date when the notice of appeal is given till the date the appeal is determined. That resolution also applies to civil courts. It in general bars reference to matters awaiting or under adjudication in a civil court from the time the case has been set down for trial or otherwise brought before the court. However, such matters may be referred to in the House or its Committees before such debates unless it appears to the Chair that there is a real and substantial danger of prejudice to trial of the case. The bar again defines when the notice of appeal is given until the date the judgement is given.

However, hon. Members, by a further resolution dated 28th June, 1972, the House of Commons decided that subject to the discretion of the Chair reference may be made in Motions, Questions and debates to matters *sub judice* in civil courts where such matters relate to a Ministerial discretion or decision which cannot be challenged in court except on grounds of misdirection or bad faith.

Again, there is a rider that in exercising its decisions, the Chair should not allow reference to such a matter if it appears that there is real and substantial danger of prejudice to the proceedings. The Chair has a discretion in civil matters only. In our case, there is no such discretion.

Hon. Members, in accordance with that provision of Section 20 of the Powers and Privileges Act, the usage and practice of the House of Commons is applicable to matters *sub judice* in our country. The rule of *sub judice* has had to be invoked as soon as the House or its Committee receives a notice that the matter is under reference as *sub judice*. Further, the House or its Committee cannot discuss the matters which are *sub judice* in criminal courts from the moment the charge is made to the time the verdict and the sentence is announced.

Hon. Members, the Committees are creatures of this House and their proceedings are governed by the same rules which govern the House's proceedings, namely the Standing Orders, precedence and practice. Well, Mr. Speaker may find that a *prima facie* of a privilege exists and gives the matter precedence. It is the House alone that decides whether a breach of privilege or contempt has occurred for only the House has the power to commit or to punish for contempt.

Nevertheless, it may resort to the House that in his own opinion a breach of contempt has occurred and that is to the House to take action. Therefore, while the Chairman cannot entertain questions of privilege in the sense that he is not competent to rule on whether a *prima facie* breach of privilege has occurred as Mr. Speaker can, the Chairman of a Committee may entertain a Motion that certain events that occurred in the Committee may constitute a breach of contempt and that the matter be reported to the House. That should a witness refuse to attend or refuse to give evidence, the Committee must report to the House for remedial action. In the technical sense, therefore, bringing into question Parliamentary events outside the precincts of Parliament could constitute contempt of Parliament because it represents a breach of that privilege of the House, which gives it the sole jurisdiction over its proceedings. The House must protect its privileges and punish for their violation in a manner similar to a court of law punishing for contempt. Breaches of privileges of the House can be for such matters as the attempted intimidation of the Chair or the disobedience to the rules or orders of the House. The staff of the House are of necessity also covered by some of the privileges of Parliament. The House will only waive some of its privileges here out, out of necessity, for instance, to the point of allowing its staff to give evidence on the proceedings of the House. It is for the House to determine whether the act of addressing a Press conference by a section of the Membership of the current Public Accounts Committee (PAC) on 21st May, 1996, was an assignment mandated to it by this House or it was meant to undermine the integrity of the House. Thank you.

(Applause)

Next order!

BILLS

First Reading

THE NATIONAL INTELLIGENCE SERVICES BILL

(Order for the First Reading read - Read the First Time - Ordered to be read the Second Time tomorrow)

Second Reading

THE AUCTIONEERS BILL

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Speaker, Sir, I beg to move that the Auctioneers Bill be now read a Second Time.

Mr. Speaker, Sir, today the Auctioneers Bill was a result of the Task Force which was appointed by the Government and chaired by the hon. Justice Bosire. As a result of this a Bill has been---

Mr. Kamuyu: On a point of order, Mr. Speaker, Sir. I would like to be informed whether the hon. Member is now the Acting Attorney-General and whether he has been gazetted.

Mr. Speaker: The hon. Member is moving the Bill on behalf of the Attorney-General, who is not in.

Mr. Kamuyu: He has not been gazetted!

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Speaker, Sir, as I said this Bill resulted from the Government Task Force which was chaired by the hon. Justice Bosire.

Mr. Kapten: On a point of order, Mr. Speaker, Sir. The Office of the Attorney-General is a Constitutional Office and unless the hon. Assistant Minister has been gazetted or is Acting Attorney-General, I really do not see how he can move a Bill on behalf of the Attorney-General.

Mr. Speaker: Well, I have not directed my mind quite strongly on that issue, but I think the Attorney-General also is part of the Cabinet, a Minister. I think any Member of the Front Bench can move a Bill on behalf of another hon. Member. I see nothing wrong with it and there is really not anything attracting to the function of the Attorney-General as such. If, for example, the hon. Sunkuli attempted to issue a *nolle prosequi* to determine a case, then, obviously he would be absolutely wrong because he would be performing a Constitutional duty. This particular one is legislation which can be moved by any hon. Member of the Front Bench. Indeed, legislation maybe moved by any hon. Member of this House.

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Speaker, Sir, I have also severally answered questions on behalf of the Attorney-General without the complaints of my learned colleague. Mr. Speaker, Sir, the first purpose of this Bill is to consolidate the law with relations to those persons who auction goods on a commercial basis. The law that will be affected mainly would be Cap 20, the Court Brokers Act and Cap 526, the Auctioneers Act. If this Bill is passed, it will consolidate those two pieces of legislations as well as amend other laws that touch on the auctioning of goods or the conduct of persons who do auction them. That includes the law of Contract Act, Cap 23 of our laws. As a result of the passage of this Bill if it becomes law, Cap 56, the Auctioneers Act and Cap 20, the Court Brokers Act, will effectively be repealed by the Act.

Mr. Speaker, Sir, the consolidation of our laws is a necessary process. In the process of law reform, it enables matters to be put into a single Act of Parliament for ease of reference, understanding and to obviate other latent contradictions. So that is the first purpose of this Bill.

The second purpose of this Bill which other than creating uniformity in the licensing procedures and standards, and also creating strict supervision, is to promote transparency in the activities of auctioneers.

Mr. Speaker, Sir, the third purpose is to create a law which will enable the auctioneers and the court brokers to wear a human face and to be able to conduct their job professionally and in a manner that would be considered humane.

[Mr. Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, to go straight to the Bill I would like to say that the first duties that Bill does after the interpretation is to create a Board. This Board would be known as the Auctioneers Licensing Board and the Bill provides for a Board that is widely representative, that covers all the aspects and offices

possible within our country, that are incidental or related to the activities of auctioneers. You can see from Article Three of the Bill, that the courts are adequately represented by the Chief Justice, who will be the Chairman of the Board, the Security Personnel who usually participate strongly in the activities of auctioneers and court brokers are represented by the Permanent Secretary in the Office of the President for the time being in charge of Provincial Administration or his representative.

Subordinate courts are represented by one of the Chief Magistrates appointed by the Chief Justice. The members of the Bar are represented by two advocates who should have experience of not less than ten years standing. The auctioneers themselves are represented by two auctioneers of not less than five years experience. And the general public are represented by one representative from each of our provinces and these persons are appointed by the Attorney-General. The Chamber of Commerce is also represented here and the Kenya Bankers Association is represented in order to take care of the interests of the financial institutions.

Mr. Temporary Deputy Speaker, Sir, that board has several duties and the main duty of this board is to license. The Task Force which was appointed by the Government made a recommendation which we intend to translate into legislation and the recommendation of the Task Force if I may quote in brief says that:-

"We recommend that new and stringent requirements be specified in the Act for any persons aspiring to be licensed as auctioneers".

Mr. Temporary Deputy Speaker, Sir, this is because under the present regulations there is no particular requirement for anybody to qualify to be an auctioneer. So anybody can qualify to be an auctioneer and as a result of this random qualification, a lot of mischief has been occasioned. In the first place we have had to witness the sprouting up of so many auctioneers everyday. If you want to license an auctioneer everyday you can license one because there is no qualification that is required in order for an auctioneer to be licensed and as a collateral to that, out of this sprouting of auctioneers, it has become common feature in our commercial circles to witness the fall of so many auctioneers. So many auctioneers are falling down to the detriment of the public because many auctioneers do take, in fact, property that does not belong to them and if they collapse, then it is the public that stands to suffer. This law, therefore, intends to ensure that auctioneers are properly licensed so that only certain persons who are properly vetted do become auctioneers and do become court brokers.

Mr. Temporary Deputy Speaker, Sir, this is a very important aspect because the office of the auctioneers, court bailiffs and court brokers have often fallen victim of public outcry in the execution of their duties. We have all had problems of harassment, intimidation, high-handedness and of utter lawlessness from this sector and therefore one of the aims of this Bill is to ameliorate the difficulties and to seal the lacuna that have existed before. Therefore the important aspect that we want to cover in this Bill is to ensure that persons are properly licensed and that a register of auctioneers in the country be properly kept.

Mr. Temporary Deputy Speaker, Sir, Article (5) of the Auctioneers Bill demonstrates the powers that are going to be given to the board and that the board shall have such powers as necessary or expedience for the proper discharge of the functions under this Act. As the article states and regulates the meetings of the auctioneers, this is Article (7) which states that:-

"The Chief Justice shall appoint a public officer to be the secretary of the board".
Therefore that is a matter of procedure.

Mr. Temporary Deputy Speaker, Sir, the article that I would like to pay attention to is article 10 of this Auctioneers Bill which stipulates the eligibility of a person to be made an auctioneer. This Bill states clearly that a person who is aged less than thirty years cannot become an auctioneer. That is a person who is still too young to do this job should not be licensed to become an auctioneer except if he can prove that he has been an apprentice on this job for a period of not less than seven years. A person who is aged more than sixty five years cannot become a court broker. That is another limit which has been placed on the profession of the court brokers and the law intends to make this exception that if you are aged sixty five years and you want to become an auctioneer, then you must be only able to prove one thing and that is that you were appointed an auctioneer not more than three years before. Therefore that is one of the requirements that the new Bill intends to legislate on.

Mr. Temporary Deputy Speaker, Sir, it is also a requirement that for one to be an auctioneer you must be a Kenyan citizen, of course, and that you must have sufficient knowledge of your profession as an auctioneer. It is very important that the office of an auctioneer becomes a professional office and I want to call upon persons who will receive the licences of auctioneers to expose themselves to training as managers, public relations officers, accountants and also to train themselves in accounts and to train themselves in the general management of public affairs so that they can be able to conduct their office of auctioneers in a professional and good manner.

Mr. Temporary Deputy Speaker, Sir, the law that we intend to pass here also makes it clear that persons who have been convicted within the last ten years should not be allowed to become auctioneers. This is another feature that is becoming common now, that many of our auctioneers have become persons who are not of straight

character and I think it is important that we do demand in our law that only those persons who are clean in terms of character can become auctioneers or court brokers and it is also a requirement of this law that certain persons who might be interested in one way or the other do not become auctioneers and for that matter, therefore, a judge or a magistrate or any person employed in any capacity as an executive or a subordinate officer of the court may not become an auctioneer because there will obviously be a conflict of duty. It is also a requirement of this law that Members of Parliament, councillors or advocates of the High Court of Kenya should not become auctioneers. That is under Article (10) and the whole of sub-section 2 which says that:-

"A public officer or an officer or employee of any local authority or statutory body such as state corporations or parastatals shall not be eligible to be licensed as auctioneers".

So that is so much about the licence.

"That the Board shall have its primary purpose to licence persons who shall become auctioneers."

Mr. Temporary Deputy Speaker, Sir, I just want to make a general comment here. That, when it comes to licensing, vetting and licensing shall now be done under the chairmanship of a Judge of the High Court, because many of these matters that affect the auctioneers do in fact originate or go from the High Court. Previously, Magistrates or the Government's civil servants used to participate in the licensing of auctioneers, but now we have stated that auctioneers should be licensed only under the chairmanship of Judge of the High Court of Kenya. It will require that auctioneers be vetted very strictly so that persons who are incapable of handling public property or; persons who are incapable of handling human beings humanely, shall not be considered to be eligible as auctioneers.

Mr. Temporary Deputy Speaker, Sir, Article 11 makes an exception that, notwithstanding the provisions of section 10, the Board may licence the persons who are above the age of 65 years in case they have not carried their work for more than three years, or the Auctioneers Board may licence a person who is not a citizen of Kenya if that person comes here for a specific purpose and therefore he wants to carry out a specific purpose, say, that there is a special reason why a non Kenyan citizen should be given an opportunity to seize property of a Kenyan. Property perhaps that owes to a person abroad or something of that kind. But that is a temporary licence for a person who is not a citizen of Kenya.

Mr. Temporary Deputy Speaker, Sir, the application for a licence must be made in accordance with the prescribed form which the Act has hereby drawn. The purpose of this is to ensure that all these are made standard.

The Board that we are creating now by virtue of this Act shall be required to act judiciously so that when an application is forwarded to the Board in considering this licensing, the applicants of course must supply enough information to make the board either accept or reject their application. And of course the Board may subject to the provisions of this Act and to the payment of subscribed fees issue a licence in the prescribed form to the applicants.

Mr. Temporary Deputy Speaker, Sir, the Task Force received several recommendations. One of the representations was that in order for a person to qualify to be an auctioneer, that person should be a fully paid up member of the auctioneers association. But this particular matter was not included in the law because unlike the Law Society of Kenya, the Kenya Association of Auctioneers is a society registered under the Society's Act. Therefore, it is important that the Government should retain its ability to deregister a particular auctioneer because if we make the association a determining factor as to whether an auctioneer should be registered or not, that will lessen the power of the Government to deregister a particular auctioneer. Therefore, this Bill provides certain regulations for the revocation of an auctioneer's licence.

Mr. Temporary Deputy Speaker, Sir, the power of the Board to revoke a licence of the auctioneer is stipulated in Article 18 sub-sections 1, 2, 3 and 4. The Board may revoke a licence if the Board discovers that at the time a particular person applied for the licence, he gave information which was not correct. A licence of an auctioneer may also be withdrawn or revoked if any event occurs which renders the licensed auctioneer ineligible to hold his licence under the law that we are intending to create today. If the licensed auctioneer ceases to carry out business in Kenya, or his business is wound up or otherwise dissolved, he will also have his licence withdrawn.

If the licenced auctioneer is in breach of any of the conditions attached to his licence, he will also have his licence withdrawn. If an auctioneer does not comply with the regulations of this Act, the Board will also withdraw his licence. Where the Board intends to withdraw the licence of a particular auctioneer, it will also be required to act judiciously. That means that, first of all it must serve the particular auctioneer with a notice that it intends to revoke his or her licence. This notice must be served on the auctioneer within 14 days before the intended revocation. If the Board wants to withdraw a licence from an auctioneer, the Board must specify or "shall" - which means it is mandatory - specify the reasons for the withdrawal of that particular licence. That is what I

mean when I say that the Board must be able to act judiciously so that it does not arbitrarily give a licence and it does not arbitrarily withdraw or revoke that particular licence. The revocation of a licence from an auctioneer shall take effect from the date of service of a notice under sub-section 4 that I have just referred to above. If such licence is served on the licenced auctioneer personally, or where the notice is sent through registered post on a date seven days after the posting. That means, if the Board posts a notice to the auctioneer, the revocation shall take effect seven days after the posting. If the notice is not given to the auctioneer himself but is given to another person, then that notice shall take effect only seven days afterwards. But if the notice is served to the auctioneer himself, it takes effect immediately.

Mr. Temporary Deputy Speaker, Sir, after 14 days of the revocation of the licence, the name of the auctioneer shall be deleted from the register so that the auctioneer does not have his name on the register of the auctioneers any more. If this licence is revoked, then the auctioneer should surrender the licence to the Board and shall not be eligible to hold any licence under this particular Bill for a period of 10 years from that date. This will therefore, discourage auctioneers from committing offenses which are related to their job.

Mr. Temporary Deputy Speaker, Sir, the Bill also gives power to the Board to suspend a licence from an auctioneer.

"And the Board shall have power to suspend the licence of an auctioneer if the licenced auctioneer is charged with any offense which involves fraud, immorality, dishonesty, malicious damage or violence."

If an auctioneer is charged with offenses related to those, then the Board must suspend the licence of this particular holder.

Mr. Speaker, Sir I want to be very clear here that if the auctioneer is charged without offence, it is just like the case of public servants who are charged with offences. As soon as the charge arrives in court, we usually interdict the public servants. The law also requires that as soon as a man is accused in court, whether he is found guilty or not, his licence should be suspended for a period not exceeding six months. We will later on bring an amendment to read that if the court does not finalise the case within that particular time, that will be a reason why the licence should continue to be effected.

If the Board receives a complaint about a certain auctioneer, under Article 24 of this Bill, then the Board can also suspend the licence of the auctioneer. The licence of an auctioneer can also be suspended in any event where the licensed auctioneer has acted in a manner incompatible with the status as an officer of the court. So, much about the licences; the law makes clear provisions for the Auctioneers' Board to act judiciously. The effect of Section 20 is to create the Register of auctioneers which should be expected to contain not just the name of the auctioneer, but full identity of the auctioneer. The Register will clearly show where the auctioneer is carrying out business, just like the Company Law, under which a company is required to state where it is operating from. We also require that the auctioneers do state where they are carrying out their business and they must say in which district and the Register must show the expiry date for the licence or any other amendments to the licence in case there are other changes that may be required and it should also carry regulations related to the suspension of that licence and it will carry out any particulars which the Board might deem necessary to effect. The Register that will be kept by the Board will not be anything secret, it will be open for inspection by any person who wishes to inspect that register. Provided that the person who is going to inspect the register is a member of Police Force or a public officer acting in the course of his duty or somebody who is authorised in writing by the Board. Any other person other than those two can inspect the Register but they must pay a fee.

There is a provision under section 21 for transparency. My hon. colleagues have spoken about transparency. The law has also visited the auctioneers this time round and it is demanding that the auctioneers be transparent in their operation of their duties. In the first place, it is going to be a requirement of this law that the date, time and place of everything sold by auction be advertised so that everybody knows, when and where that particular sale is going to take place. The advertisement will be done on the prescribed form so that it will specify everything that is required. The Bill that we are dealing with here states, in Article 21, that the sale must take place where and at the time it was advertised to take place. It must take place where it was stated. It must not take place at a different place.

Under sub-section (2) of the article, where any movable and immovable property is put up for sale by auction in lots, each lot shall *prima facie* be deemed to be subject of a different contract of sale. It becomes very important that instead of the auctioneer bringing for example hon. Shikuku's things and putting them on the tables and selling them all at once, it is now going to become a provision of the law that each article shall be put in lots and each lot shall be deemed to be a separate thing to be sold. So that you do not auction things at a go and without a specified price. This Bill makes provision that if an auctioneer wants to sell anybody's property, that property must first be valued. I think the hon. Members do understand the importance for valuing a property

before it is auctioned. It has become a practice of auctioneers in this country that if they go and seize a property, they can sell it at any price. It is now a provision of this law that the auctioneers must have the property valued so that they sell goods at their proper values; instead of getting a car which is worth Kshs1 million and selling it at Kshs120,000. It is now becoming necessary under the provisions of this Bill that auctioneers must have each property's value. It is also going to be necessary that auctioneers do not operate in the dark. That, they do pay attention to the fact that the property they are seizing belongs to a particular person and that the particular person be represented at the time when the property is being seized so that he can witness and take up an inventory of the goods that are put in place.

For that reason, therefore, the property that will be sold henceforth will have to be itemized. Auctioneers should not be allowed to attach household goods. If we want to run a country that has good laws, we must be able to tell our auctioneers that they must not go into the house and collect the household goods, the sufurias and the cups. It is not human for the persons to be robbed of what they need in order to survive. The auctioneers should get into the house and get what are regarded as luxury goods. So auctioneers should not be allowed to seize utensils, cookers, beddings or other personal items. For the time being I am not referring to sofa sets and other things. I am referring to goods that are necessary for the survival of every household including things that are necessary for the preparation of food, clothing and of course they cannot seize the shelter of a particular person. That will not be considered a proper attachment.

Mr. Temporary Deputy Speaker, Sir, if an auctioneer gets hold of a person's goods and he goes to sell them at a price which will be considered to be unreasonably low, or what I have just stated it will be prohibitive for him to do including taking household goods such as utensils, cookers and so on, there is a provision for a tribunal which will listen to the complaints related to this particular sector. The Bill specifically states that there will be a tribunal to listen to the complaints against auctioneers under Article 24.

The reason why we need a tribunal is because we need a speedy way of dealing with a person's complaint. Auctioneers must go into their jobs professionally. They must go into their jobs transparently and do their jobs judiciously. If they fail to comply with the rules of transparency and commerce, being human a complaint can be raised and the Board will listen to it. When a complaint is made against an auctioneer, it must be made by affidavit. If a person has a complaint against an auctioneer, he must swear before a magistrate or a Commissioner of Oath and have an affidavit that will illustrate what kind of complaint he has against the auctioneer, and that the affidavit will be availed to the auctioneer and the auctioneer must also reply to the complaint through an affidavit so that he can swear and say exactly what he has to say. If the Board upon reading the affidavit of the complainant and reading the replying affidavit of the auctioneer finds that there is nothing on the face of the affidavit that will actually lay a proper complaint upon the persons complained of, the Board may dismiss these complaints outrightly, but if the Board finds that there are justifiable reasons to have a hearing, then it will have a hearing and call evidence and upon that evidence, the Board shall therefore act. Supposing the Board finds that the complaint against the auctioneer is actually valid, what powers does the Board have? The Board may admonish that particular auctioneer or it may order that the licence be suspended or it may order the revocation of that particular licence. The Board is also given discretion that it may give other conditions as it wishes to ensure that the auctioneer is licensed and this will be noted in the register. The Board may also order that the auctioneer do pay a fine of a sum not exceeding Kshs100,000 or order the auctioneer to pay compensation to the complainant or still further, may order that the auctioneer be disqualified from holding an auctioneer's licence for a period that the Board might deem fit or it may give an order which combines several of those measures that I have just outlined.

Article 25 gives a provision of the right to recover damages from an auctioneer so that subject to other provisions that are outlined by this law, nothing shall prevent the auctioneer from claiming indemnity from any person or to limit the damages. Under Article 26, if a person is taken to court and convicted under this Act for a penalty which is prescribed by law, he may be fined up to Kshs100,000 or he may be imprisoned for two years or both, but in order to ensure that we have stringent punishment for the auctioneers, if the court takes its measures, the Board can still act under Article 25. Therefore, as I said, the purpose of this Bill is to consolidate and amend this law to ensure that auctioneers do operate in a uniform situation and do promote transparency in their activities and to ensure that they actually operate in a humane manner that takes into account the interest not just of their own business as auctioneers but also take into account the interest of those people whose property is laid on their hands. The Bill wants to ensure that auctioneers shall be strictly liable for any wrongful attachments and therefore it requires all that I have already stated.

In conclusion, I would like to say that this is one of the Bills that should be supported by all hon. Members because it is a Bill that wants to ensure professionalism in all spheres of our economy. Auctioneers have tended to act a little too arbitrarily and a number of lawyers have, of course,

abetted the activities of auctioneers and I think it is important that my colleagues in the legal profession should assist the general public in order to mitigate the harshness of the auctioneers. An auctioneer today can come into your house and collect anything he wants and sell it at the time he wants. An auctioneer should give a grace period for goods that are not perishables, for instance, if an auctioneer is sent from Kisii to Kilgoris to collect somebody's cows, he should keep those cows at least for 48 hours at the police station or at the DC's office before he rushes them to Kisii for sale. If it is any other thing like land or a car, the auctioneers should give a grace period so that things are not done quickly and unfairly. This is one of the areas in which the legal profession can play a role because like ambulance-chasing, it is one of the weaknesses of our legal system. It is very crucial that people do not make profit out of others without due course. It is very important that all of us do say today that we condemn the activities of those auctioneers who are arbitrary. It is important that auctioneers be vetted and licensed because they are falling by the day and with them public property.

With those remarks, I beg to move.

The Attorney-General (Mr. Wako): Thank you very much, Mr. Temporary Deputy Speaker, Sir. I beg to second this Bill, and first of all I would want to thank hon. Sunkuli for having moved the Bill in my absence.

Mr. Raila: On a point of order, Mr. Temporary Deputy Speaker, Sir. I have a point of procedure. Is the Attorney-General in order to begin to second a Bill which has not been moved? The hon. Mover did not formally move the Bill when he was interrupted by the Attorney-General!

The Temporary Deputy Speaker (Mr. Wetangula): Hon. Sunkuli, is that correct?

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, the HANSARD will be very clear on this point. I said: "I beg to move and hon. Shidie will second the Bill". You then said that hon. Shidie was not in the House. I then said that the Attorney-General himself was here and could second the Bill. That is what the HANSARD will show tomorrow. At any rate, I beg to move again.

Mr. Shikuku: On a point of order, Mr. Temporary Deputy Speaker, Sir. This is history: I have never heard of a Bill being moved twice. I heard hon. Sunkuli say that he had moved the Bill and then he said: "At any rate, I beg to move", and yet the hon. Attorney-General was already seconding what had been moved! Now, where do we stand?

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, I had moved the Bill, but with a light touch I said: "At any rate I beg to move again".

Prof. Mzee: On a point of order, Mr. Temporary Deputy Speaker, Sir. I thought I heard the Assistant Minister saying that hon. Shidie is the one who seconded the Bill! Why is the Attorney-General seconding it for a second time? He should just be contributing like anybody else because the Bill has already been seconded!

The Temporary Deputy Speaker (Mr. Wetangula): Hon. Mzee, you know hon. Shidie could only second the Bill by either standing up and nodding to the Chair, which he did not do because he was not even here, or by contributing and seconding. So, he did neither and I think the Attorney-General is in order to second the Bill.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, as I was saying, I wish first to thank hon. Sunkuli for having moved this Bill in my absence. I have just come in from Mombasa, where I destroyed about 20 tonnes of hashish. The exercise took a very long time: It continued to well past 2.00 p.m. So, I have just come in and I am glad that hon. Sunkuli stepped in and moved this Bill and I have arrived in time to second it.

Prof. Mzee: On a point of order, Mr. Temporary Deputy Speaker, Sir. If the Attorney-General was present when the hashish was being destroyed he could have inhaled some of the smoke from it. Can we be assured that he is not under any influence whatsoever of the drug?

The Temporary Deputy Speaker (Mr. Wetangula): Mr. Attorney-General, did you stand in the direction of the smoke?

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I stood far away from it. If the hon. Member can just look at me he will see that I am a man who is in charge of his faculties in a reasonable way.

The Temporary Deputy Speaker (Mr. Wetangula): Prof. Mzee, you have nothing to fear because the Attorney-General is very sober!

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I think hon. Sunkuli has very ably gone through most of the parts of the Bill, and I just want to give an overall view of the situation. The Bill which is before this august House arises out of the recommendations of the task force that was set up to review laws relating to auctioneers and brokers. That task force was set up in December, 1993 and was chaired by Justice Bosire. Prior to the appointment of that task force there had been a number of complaints against court

brokers and auctioneers. These complaints were of various types. But what also encouraged me is the fact that the officials of the National Association of Court Brokers and Auctioneers (NACBA) called upon me and were also concerned about the negative image that court brokers and auctioneers have in the eyes of the public. They were also concerned about the fact that a number of court brokers and auctioneers were not living up to the standards expected of their profession. That was the time when the Government had embarked on a law reform programme and was already setting up a number of task forces to review various aspects of our laws.

You may recollect that in the area of administration of justice, for example, we had a task force on the legal status and management of the Kenya School of Law. This task force made its recommendations and even drafted the Council of Legal Education Bill, which was debated in this august House and is now part of the laws of this country. I was privileged to launch the first Council for Legal Education under the said Act. That was just one of the task forces. The other task force was on laws relating to children. Again, this task force completed its task and the Children's Bill is going to come before this august House. In fact, we began debating upon it during the last Session but, according to our rules, we shall have to publish it again and then continue with the debate on it.

Also in the area of administration of justice, this august House has in recent times actually passed a number of Bills. One, of course, is the Council of Legal Education Act, which is part of the laws of this country. The other one is the Arbitration Act, which provides for arbitration, both at national and international levels in this country. The other one is the Council of Law Reporting Act, which again was passed by this august House recently. Again, I was privileged to launch the first law reporting board under that Act. That board is going to work hard and ensure that the law reports that we have been operating without since 1981 are produced, so that they can be used by lawyers, judges and everybody else who wants to know what the law is and how the courts are interpreting various parts of our laws. So, we have those three Acts which have already been passed by this House in recent times and which touch upon the administration of justice.

We are now discussing this very important Bill, the Auctioneers Bill. When the officials of NACBA called upon me they asked the Government to set up a task force. The Government agreed to the setting up of the task force and appointed its members. Most of the members of that task force were actually the national officials of the NACBA. I am glad to say that this is, at least, one of the task forces whose report is available to Members of Parliament. I believe that before we adjourned last time there was a notice outside this House which said that any hon. Member who wished to have a look at the report of the task force itself could do so. I think this is the first task force whose report has been made available to hon. Members. I am glad to say that we are now getting a bit out of the financial constraints that had bedeviled the task forces. Hence it is now possible to have this type of a report around.

Mr. Temporary Deputy Speaker, Sir, members of this task force were in the main, as I have said, national officials of the NACBA. We had Messrs. Nzoka, Gakuru and A.S. Jeneby, a very prominent court broker from Coast Province.

Prof. Mzee: On a point of order, Mr. Temporary Deputy Speaker, Sir. Could I draw the attention of the Attorney-General that he is not Mr. I.H. Jeneby?

The Temporary Deputy Speaker (Mr. Wetangula): Prof. Mzee, I did not hear you! What did you say?

Prof. Mzee: Mr. Temporary Deputy Speaker, Sir, he mentioned a wrong name for one of the members of the task force and I was just correcting him.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I stand corrected. He has a brother whom I know is more familiarly called I.H. Jeneby. But the member of the task force was A.S. Jeneby, who is a famous court broker at the Coast. Another member was Mrs Sally Church, who is also a national official of the NACBA. She specialises mainly in the auctioning of antiques. The joint secretaries of the task force were Mrs Lesiit and Mrs Okwengu, both of whom are senior magistrates and are currently also officials of the Court Brokers' Licensing Board. We also had as a member, Miss Jeane Gacheche, who is a senior official in the Agricultural Finance Corporation. She is an expert in the auctioning of agricultural properties. Another member was Mr. Walter Mukuria, the Managing Director of the Housing Finance Company of Kenya Limited. Mr. P. Kamara who is an advocate of the High Court of Kenya, Mr. ole Kipury, who is the Registrar of the High Court and Mr. Justice Bosire. These are the people who comprised the membership of the Task Force on court brokers and auctioneers.

Mr. Temporary Deputy Speaker, Sir, in accordance with what all task forces are supposed to do, they are supposed to involve the people, particularly the consumers of whatever reforms that are going to be recommended.

They must approach the consumers so that they can give their opinions and so on. So, this Task Force actually did that. If you look at page 1 of the Task Force Report, you will see that there were questionnaires which went to licensing authorities, financial institutions, lawyers,

repossessor auctioneers and investigators. Those three different sets of questionnaires are found from pages 84 to 90 of the Report. They are fairly detailed questionnaires.

Mr. Temporary Deputy Speaker, Sir, in addition to that, you can see that on page 2 of the Report, the Task Force held a number of meetings to receive memoranda and oral submissions. There are dates when they went to Mombasa, Nyeri, Meru, Kisumu, Kakamega, Nakuru, Eldoret and Nairobi, which are set out on page 2 of the Report. In all these venues, they received memoranda and interviewed about 1810 persons. Most of the people were either members of the public, provincial administration, auctioneers themselves, court brokers, Kenya Police, Judiciary and advocates. All these people gave their views.

Mr. Temporary Deputy Speaker, Sir, on page 3, you will see some of the issues which emerged from various meetings, where there was dissatisfaction as regards the performance of court brokers.

On page 3, you will see that from all these meetings, there was constant complaints about court brokers in the following areas:

Dishonesty among court brokers and auctioneers.

Failure to comply with rules.

Inadequate supervision of court brokers and auctioneers.

Over-charging.

Under-selling, particularly to friends, relatives and other contacts.

Collusion with the creditors.

Failure to account to courts. In fact, that means theft.

Failure to keep proper books of accounts.

Loss or damage to attached property.

Mistreating advocates, decree holders, judgement debtors or third parties.

Inaccessibility of the licensing board to members of the public.

Lack of security and protection of court brokers and auctioneers, and so on.

Mr. Temporary Deputy Speaker, Sir, the Task Force split itself into three committees. There was the Technical Committee, Implementation Committee, and the Licensing Committee. That is how the Task Force went about its work.

Therefore, what we see today is as a result of real experts in this area, and people who are involved in these areas, saying that they should not just allow what they know, but they should seek the opinion of members of public, and therefore, emphasising that and coming out with these recommendations.

The recommendations are the Auctioneers Bill which is set out in the Report. The Auctioneers Bill has been refined, but the essence of it has not been lost. All that is in the draft Auctioneers Bill which is before this August Assembly.

When this Bill was published, there was some concern among some sections of the court brokers and so on. That was expected, particularly when you have a body of people who have been operating without any guidance or rule. That is so, when we try to make the court brokers and auctioneers a profession. When we are trying to make it a profession, we are trying to say that:

(a) There must be some minimum qualification.

(b) There must be ways of doing things, and so on.

Therefore, there is no wonder that we had some dissatisfaction from a section of the community.

There are some areas on which the officials came to see me, and it is the cause of this secondment. I will indicate roughly the type of amendments which will come in at the Committee stage, as I make my submissions on this particular Bill. I believe that hon. Sunkuli has gone through the Bill in detail, and therefore, I will not go through it in detail, except to draw your attention to the definition of an auctioneer, which is on page 65 of the Bill. You will see that the definition now encompasses many things. The definition has been worded so as to include court attachments and sale, eviction by court order - that section of the Report here - but the definition is on page 65. To include anyone who sells by auction, levying of distress for rent or under the income tax, or Value Added Tax registration, sale by auction of goods whether under chattle's transfer and collected goods, hire purchase or other legal situation where the goods of one person can lawfully be sold to another.

Mr. Temporary Deputy Speaker, Sir, the only exclusion is the auctions of tea and coffee which is properly catered for under the Coffee and Tea Act. Otherwise, the definition is now wide enough to cover every other auction. Of course, one of the major recommendations is to merge a number of Acts together, so that we can consolidate them under this very one Act. Therefore, the definition is of necessity to include all these other areas.

Mr. Temporary Deputy Speaker, Sir, I will then draw your attention to the composition of the Board. The composition of the Board---

The Temporary Deputy Speaker (Mr. Wetangula): Are you satisfied with the definition of an auctioneer in the Bill?

The Attorney-General (Mr. Wako): Yes. I am satisfied with the definition of an auctioneer in this Bill. But of course, if there is any good definition that comes from the Floor, it will be considered in due course.

Mr. Temporary Deputy Speaker, Sir, the issue of the Board is set out on page 66 of this Bill. The major recommendation is centralising everything and on page 12 of the Report, they have listed the advantages of a centralised Auctioneers Licensing Board with regional representation. Here, they have set out why they think that we should have a centralised licensing board with regional representation.

Mr. Temporary Deputy Speaker, Sir, according to their draft, the regional members of the Board are supposed to be two, to represent Rift Valley, Western and Nyanza provinces, one to represent Nairobi and Central Provinces, one to represent Coast and North Eastern Provinces, and one to represent Eastern Province.

After further discussion, it was felt that it will be more equitable if each province was represented on the Board. Consequently, the Bill that we have today, is one in which each province will be represented on the Board.

The Task Force came to a conclusion, and I agree with it, that the Board should come under the overall authority of the Chief Justice. In fact, the courts are the authorising authority for auction sales and, in fact, because where the owner wishes to stop or criticise or set aside an auction, a court application is the only remedy.

Taking that principle into account, that the Chief Justice should remain over all responsibility, I will during the Committee Stage, be moving that the representatives from the provinces should not be appointed by the Attorney-General as it is currently provided for. They should be appointed by the Chief Justice. So, during the Committee Stage, I will be deleting "Attorney-General" and substituting it thereof with "Chief Justice" because I think the Chief Justice should remain over-all judge.

Mr. Temporary Deputy Speaker, Sir, as to who should be the chairman, I will be moving an amendment during the Committee Stage to widen the discretion as to who should be the chairman. Currently, it is just a Judge of the High Court shall be appointed to be chairman.

To further consultations, it is felt that it should be widened to include any person who qualifies to be appointed a judge; so that if you have a Judge, well and good, but because of the pressure of work on the court and so on, it may be necessary to have somebody else other than a judge who can devote slightly more time to the workings of the Board and, therefore, any person or an advocate who qualifies to be a judge. In other words, anyone who has served a minimum of seven years as an advocate and so on should be eligible to be appointed chairman of the Board.

Mr. Temporary Deputy Speaker, Sir, the other amendment to the composition of the Board would be one which will enable the National Association of Court Brokers and Auctioneers also to nominate two members to be on the Board. That would be under "a." Under "a," it is said "True auctioneers of not less than five years standing to be appointed by the Chief Justice." I will be moving, during the Committee Stage to delete Chief Justice and instead say that the National Association of Court Brokers themselves should appoint the two members who would represent them on this Board. I think that is only fair and just. We, the National Chamber of Commerce and Industry, are nominating one person; the Kenya Bankers Association are nominating somebody else. I think it is only fair and just that the National Association of Court Brokers and Auctioneers should also appoint their members on to the Board.

So, when it comes to the composition of the Board during the Committee Stage, I am putting this House on notice that I will be moving those amendments together with any other bright idea that may come out of the debate that we have in this Assembly. I do not want to repeat what the Mover of the Bill, I think must have touched on. I think the objectives and functions of the Board are more or less straightforward.

Clause 9 states that "No person shall in Kenya carry on the business of an auctioneer unless he holds a valid licence issued by the Board." That is the whole purpose of this Bill that any person who wants to carry out this business of auctioneers and so on must have a licence issued by the Board.

Mr. Temporary Deputy Speaker, Sir, then we come to Clause 10 of the Bill. There, I want again to put this House on notice that after further consultations, I will be tabling amendments to amend Clause 10 of the Bill. Until the Government follow religiously the recommendation of the Task Force---

The Temporary Deputy Speaker (Mr. Wetangula): You will help the hon. Members to avoid repetitions if you sound out what you want to amend so that they do not dwell on it.

The Attorney-General (Mr. Wako): I beg your pardon, Sir?

The Temporary Deputy Speaker (Mr. Wetangula): Clause 10, you are saying that you intend to amend it?

The Attorney-General (Mr. Wako): This is what I wanted to explain. That under page 19 of the Task Force Report the recommendations were that for a person to be appointed a Court Broker he must be a least 30 years of age and under 65 years of age at the date of the commencement of a licence applied for with a proviso that anybody under 30 years should have at least seven years apprenticeship in a reputable firm of Court Brokers. That was a recommendation that was reflected in Clause 10(a) of the Bill. Mr. Temporary Deputy Speaker, Sir, after further consultations, I will be moving an amendment during the Committee Stage to delete those age qualifications.

Mr. Temporary Deputy Speaker, Sir, of course, one has to make an application to the Board for the licence. If the hon. Members read the entire Report, they will see the type of form of application which will be used in making the application to be a court Broker. It has a fairly detailed application containing your qualifications, your experience, your education and other factors. I do not have to go into that at the moment. But the Act does, of course, state clearly that to be a court broker you must have sufficient knowledge and experience in the business and practice of an auctioneer and you must not have been convicted in the ten years immediately preceding the application of an offense involving fraud, dishonesty or immorality and otherwise, and be of good character and reputation. When the Task Force went around the country-side, they were able to put out quite a number of auctioneers and court brokers who had been convicted of offences and yet, somehow, they had obtained licences to operate. Now, when this Act come into force such persons will not even file in the application to be court brokers. They would be disqualified immediately under Clause 10 of the Bill.

Under Clause 11, may I just in passing explain the issue of licence in special circumstances. It was felt by the Task Force that at times we need specialists who are required for specific auction. And the reasons given in the Report of the Task Force is as follows "The provision for special licence is to cover those unusual situations for which it is difficult to legislate. For example", and here they were taking note of the legislation in Zimbabwe, "in Zimbabwe, when surplus elephants are up for sale, they really require somebody who has that expertise of conducting that particular sale". Therefore, it might be necessary, say, if we have to do it here and we do not have the necessary experience in this country to have somebody with the necessary experience to come and help the local auctioneer to come and advertise properly for the sale of elephants. In Kenya there have also been, from time to time, specialised race horses, antiques and other items of specialised knowledge.

You may recall that only recently, in New York, we had a very specialised auction of the properties of the late Jacqueline Kennedy. It required somebody who really has a knowledge and the expertise of those antiques; who knows their historical value and who has contacts all over the world to be able to interest the type of people who would be interested to bid for that type of auction. So, the Task Force felt that the Bill, or the law should have that leeway where the Boards can have somebody who is a specialist to come and auction in that particular special auction.

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

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker, Sir, I just want to draw your attention to Clause 14 (6). When this Act is passed, if you hold a licence under it, you may not necessarily be able to auction certain specialised matters, and that is why it says as follows:-

"Except as may be otherwise provided by law, a licence under this Act shall not authorise any person to deal in or sell anything, the dealing of, or sale of which is restricted to persons duly licensed and authorised in that behalf".

One has in mind the sale or auction involving drugs, for example. It is only proper that sales and auctions involving drugs be properly done under the legislation where it is catered for, and also, sale of firearms, poisons and so on. I have already talked about tea and coffee auctions. I look forward to the contribution by the hon. Member for Kisauni, Prof. Mzee, who I think will give a scientific input into this thing. He is talking about embryos and so on, which are also apparently being sold or can be sold by auction.

Mr. Temporary Deputy Speaker, Sir, Clause 18 is also important, and I would like to bring to the notice of the hon. Members that as far as Clauses 18 and 21 are concerned, we are now talking of revocation of a licence and so on. Although the provision is here, it is not very clear whether the decision of the Board is appealable to the High Court. It is not clear whether one can appeal against the decision of the Board.

Mr. Shikuku: Yes, it is not clear.

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I am informing this august House that

during the Committee Stage, a very clear clause, which will give an applicant the right to appeal in case of an application which is refused, or in case a licence is revoked will be included for all those factors. Either refusal to licence, revocation, or refusal to renew, will be appealable to the High Court of this country. That Clause will be there at the Committee Stage.

Mr. Shikuku: How did you miss it?

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, it was missed out because it was not in the Report. I will also be bringing a very slight amendment to Clause 18(1) (c), which states that where a licensed auctioneer ceases to carry on business in Kenya, then his licence may be revoked. I will be deleting that particular phrase from that particular clause in the amendment that will be tabled at the Committee Stage. The reason being, that one---

An hon. Member: Which clause?

The Attorney-General (Mr. Wako): The first part of Clause 18(1) (c). The reason being that it has been brought to my attention that one may cease to carry on with the business for reasons that are beyond his control; for example you may be involved in an accident and you become sick for some time. Nobody should use that as an excuse to revoke your licence. So, we shall be bringing an amendment to this House to delete that particular paragraph.

I may say here that I had drafted this amendment for tabling in this House when I had anticipated moving this Bill, but we were a bit late because today's Order Paper came out on Friday. So, it was too late to include it, but I will be putting in all those amendments on the Order Paper, so that at least, when the debate is going on, from tomorrow onwards, hon. Members know exactly the type of amendments that are envisaged to be moved during the Committee Stage.

On the issue of the procedures of the Board and how they will consider applications, whether it is application for licensing and all their duties, it is quite clear that the rule of natural justice is going to be closely followed. We have very closely followed the provisions under the Law Society, which is another profession, on how this type of issues are dealt with, particularly those which relate to the disciplining of auctioneers. We have followed a bit closely on what is provided for under the Advocates Act. Therefore, the rule of natural justice will be followed. But if an auctioneer has breached the law, then obviously, he must be disciplined. In fact, in my considered opinion, what we are trying to do here is to put auctioneering on the level of a profession also. If the professionals adhere to their code of ethics, and if the procedures are correctly followed, then we shall ensure that the standards of our professionals in this country, not just brokers, but everybody else, will be high. And that will be for the benefit of the country.

The passing of this Bill will necessitate a number of amendments to other Bills. Those other Bills---

Prof. Mzee: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for KANU hon. Members to hold their own discussions, while an important Bill is being discussed?

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

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, as you can see, various amendments to various legislations such as the Distress for Rent Act, the Law of Contract Act, the Registered Land Act, The Agricultural Finance Act and the Estate Agents Act are all included there in the Bill.

As I said earlier, I would not want to repeat what the Mover must have said in moving the Motion and when he went carefully through the Bill. It is just a pity that we are very few in the House, but this is a very important Bill that we are discussing and I look forward to constructive proposals, as usual, coming from this House, and then at the end of the day, we ought to have a very good Bill, which will govern the auctioneers in this country.

With these few remarks, I beg to second.

Mr. Muite: Thank you, Mr. Deputy Speaker, Sir for giving me this opportunity to contribute on this Bill.

Nobody can quarrel with the Attorney-General for bringing such a Bill to this House with a view to tightening up an area of the law that has been the subject matter of great dissatisfaction on the part of the public. The auctioneers are seen as villains who are out to take advantage of people when they have been reduced by economic situations, including colluding with others, in order to sell properties which they have seized sometimes in very oppressive situations, for instance, on Saturday or Friday in the evening when even those who can arrange to pay off the amount owed cannot do so because of the timing of the seizure of goods. This includes the fact that they act in a criminal manner when they are attaching the goods for the purposes of selling them.

So, the thrust of the Bill is namely, to bring about ethical standards in the conduct of the business of auctioneering and this is something that I would support. However, it is one or two bad apples which spoil the

rest of the apples in a bag. It is important to stress here that there are auctioneers of good repute. It is not each and every auctioneer who behaves in this manner. Those are the ones that we should have in mind and, perhaps, we should encourage them to regulate the profession of the business of auctioneering. In other words, the Attorney-General should come up with amendments that would seek to regulate the business of auctioneering rather than to control it.

When one reads this Bill as a whole, one finds what has become common with all the Bills that have emanated from office of the hon. Attorney-General in the recent past which seek more and more Governmental control rather than regulation. What we want the Government to do is to relax and leave professions, including that of auctioneers to be internally self-regulating and self-disciplining. In other words, the Government should not be seeking to control the business of auctioneering. It should be seeking to regulate and confine itself to that jurisdiction of regulating rather controlling.

So, it is with that in mind that I would appeal to the Government to reconsider Clause 3 of the Bill. Firstly, I bear in mind that the Attorney-General will be proposing an amendment at the Committee stage in respect of Clause 3, and that is good. Indeed, the person to be appointed as the Chairman should not be a judge who is currently serving on the Bench. I agree that he should be a person of integrity whose name has been on the roll of advocates for over seven years and, therefore, that person qualifies to be appointed as a judge. But I would urge the Attorney-General to specifically disqualify for appointment as Chairman a person who is currently serving on the Bench of the High Court. This is for the simple reason that, that will bring about acute embarrassment if the Chairman of the Board is also a current judge of the High Court, in the event of person wishing to appeal to the High Court against a decision of the Board because, that person would again be appealing to a person with the same jurisdiction with the person who revoked or who refused to grant the licence or who refused to renew a licence. Whereas I agree with the Attorney-General that he should be a person who qualifies to be appointed to the High Court Bench, it would bring, potentially, a very embarrassing situation if, indeed, the Chairman was also currently a judge serving on the High Court Bench.

One is not quite able to follow the logic in asking the Permanent Secretary in the Office of the President for the time being responsible for matters relating to the Provincial Administration or his representative to be a Member of this Board. I have tried to understand what the Provincial Administration has got to do with the business of auctioneering without success. I do not understand what he has got to do with it. I know that perhaps, the Attorney-General can appoint somebody who is a lawyer because there are aspects to be regulated here, but why should we appoint somebody from the Office of the President?

We are moving towards democratising Presidential powers in this country and that is where the problem in this country lies. The institution of the Presidency has far too much power in this country. So, let us not increase those powers by appointing the Permanent Secretary in the Office of the President, who is appointed by the President to that Board. This is a way of increasing the Presidential powers at a time when we should be moving in the opposite direction - in the direction of democratising instead of widening those powers. So, I would ask the Attorney-General to reconsider replacing this entirely, perhaps with his own appointee being a person at least in theory who enjoys constitutional security of tenure.

The Attorney-General is not in the same position with the Permanent Secretary in the Office of the President because he enjoys constitutional security of tenure. He cannot be sacked tomorrow. If he is shy in exercising those powers and standing up to the President and saying this cannot be done, then, that is a problem of the current Attorney-General. But the constitutional position is that he is given that constitutional security of tenure so that he can be able to stand up to the Government of the day, and even to the President, and say, "This is not right", or "this cannot be done" without risking being sacked unless very protracted procedures are adopted. So, I would be quite happy if that is done. I am not necessarily thinking about the incumbent Attorney-General, but I am looking beyond the incumbent Attorney-General for part (b) to be substituted by somebody to be appointed by the Attorney-General.

I have no quarrel with part (d) which states that: "Two advocates to be nominated by the Council of the Law Society." But when it comes to part (e), most of the professions, for example, the accountants, the doctors and the lawyers, practically all the professions are self-regulating. Why should there be a major departure when we come to auctioneers? The trend in the world is to allow people to be self-regulating, including the Chamber of Commerce, the bankers and the insurers. The statutes should not control them. It should make it possible for them to be self-regulating. So, it is a great pity that here, we are dealing with a Bill which is directly dealing with auctioneers, and yet auctioneers are given only two members on this Board. That does not look quite right to me.

I think they should have a minimum of five individuals because, as I said, it is not all of them. In fact, the good auctioneers, professional men and women of integrity, have their reputation being spoiled and soiled by a tiny minority which goes doing the wrong thing. If the Board was to identify those auctioneers who are men and

women of integrity and appointed them to the Board, this would go a long way in ensuring that this business of auctioneers is self-regulating, and they would be responsible for up-keeping discipline. Where this has been done with regard to the other professions it works very well.

Mr. Deputy Speaker, Sir, I am happy with the appointment by the National Chamber of Commerce and I am also happy with one person to be appointed by the Kenya Bankers Association (KBA). We need to re-arrange the ratios here because when one counts Government appointees, "a", "b" and "c" are Government appointees and then these eight persons to represent each Province are also Government appointees. Obviously the Government is heavily represented and that ratio should be the other way round. That is why I am suggesting that the people to be appointed by other professions, other than the Government, should be the majority rather than the ones to be appointed by the Government.

Mr. Deputy Speaker, Sir, I am very happy with the deletion of Clause 10 (a), and I cannot see the logic that motivated the Task Force in coming up with this outrageous provision. What is more important, conducting the business of auctioneering or managing a country? We know Presidents who are managing countries, and running a country is a much more difficult job with every person who is around the President trying to take him for a ride and lie to him for self-interest or the manner of thinking. It is a difficult job and yet, there are Presidents running countries even in their 80s. If we do not have an age limit for the President, how can we possibly even think, or allow our minds to think along the lines of having an age limit for 65 for auctioneers or even the lower limit of 30 years? I am very happy that is going to be deleted.

Mr. Deputy Speaker, Sir, I am equally happy with the provision relating to the appeals to the High Court. That was a glaring omission and I am pleased that the Attorney-General has seen that is a clear omission which he is going to rectify. The auctioneers themselves have written to the Attorney-General and I know that he has received that letter, but if he has not, I have a copy here that I would like to read to him. This is the National Association of Kenya Auctioneers and Court brokers. They have got a number of very useful comments and arguments in this letter. It is a long document and I do not need to go through it, but I would commend to him to carefully consider, for example, what they say about the omission to synchronize or harmonize the current Bill with the Civil Procedure Act and Rule. There is an obvious conflict there because the Attorney-General knows that under the Civil Procedure Act and Rules, the courts authorise auctioning of both immovable and movable properties. In the Schedule to the Bill, the Attorney-General is dealing with all the other Acts that are going to be amended or repealed, but he has not dealt with the Civil Procedure Act and Rules. I think that is an omission and I am pleased to see that the Attorney-General is taking note of it and he is going to harmonize and reconcile that. This is a letter that I am laying on the Table of the House for the Attorney-General to consider including an excellent article which is done by the Centre for Governance and Democracy, also on this Bill. Again they contain some very useful comments and instead of me taking time when other hon. Members, I am sure, want to contribute, I am commending that the Attorney-General himself, or his staff, looks at the comments which are made in those provisions.

(Mr. Muite laid the documents on the Table)

Mr. Deputy Speaker, Sir, one other major point that I would urge the Attorney-General to consider is that there are auctioneers and court bailiffs who are currently carrying on the sort of business that is now thought to be brought under one umbrella. On the passage of this Bill, when it is enacted and becomes law, all those individuals would lose their licences. Since they had been licensed under the existing legislations, is there not a case for them to be made, that the Attorney-General considers at the Committee Stage introducing transitional provisions in this Bill, so that all those currently holding valid licences can be deemed to be duly authorised under this Act because the Act, has got provisions for revocation and disciplining them? We do not want them to be out of business the day that this Bill becomes law. They should be deemed to be licensed so that any of them breaching disciplinary provisions thereafter under the new Act can be subjected to the very rigorous procedures which are there.

The Attorney-General (Mr. Wako): On a point of information, Mr. Deputy Speaker, Sir. I wish to thank the hon. Member for drawing my attention to this point which meant that this is one of the things I overlooked when I was seconding this Bill. Of course, we have Clause 31 which deals with transitional matters, but what I do agree is that the Clause is not clear enough to cover the type of situations which he is referring to. I will again, at the Committee Stage, be bringing an amendment to that particular clause to ensure that it covers the type of situation he is referring to. I just wanted to give him that point of information.

Mr. Muite: Mr. Deputy Speaker, Sir, it is because of Clause 31 that I was urging the Attorney-General to bear in mind the case of the situation of those court brokers and bailiffs currently licensed under the existing

provisions because what Clause 31 says is that no person shall carry on the business of an auctioneer after 31st December, next, following the date of commencement of this Act unless he holds a valid licence under this Act. What I am suggesting should be done is to specifically say that any person holding a current licence under one, two, three, four, shall be deemed to have been licensed under this Act. Thereafter, if he breaches any of the provisions, then he can be subjected to the disciplinary provisions of this Bill when it becomes law.

Mr. Deputy Speaker, Sir, Clauses 17 and 18 are good. Finally, I would like to make an appeal to the Attorney-General, because even under the existing legislation, he could have prosecuted some of these bad auctioneers who have been breaching the law, but one has not found the Attorney-General's Office being very active in that direction. We do know auctioneers whose licences are cancelled by existing tribunals, and the Registrar of the High Court, but they continue to conduct the business of auctioneers. There are many complaints and I know lawyers who have taken bouncing cheques from auctioneers after they sold goods. What I am saying is that it is all very well for this House to pass very nice pieces of legislations here, but that does not resolve the social problems. When we are enacting a Bill, we always have in mind what is the evil, what is the purpose, or the objective that we are seeking to achieve, and what is the social evil currently being felt that the current Bill seeks to address. What I am saying is that the enactment of this Bill into law by itself is not going to bring about a solution or to eradicate the misconduct by the auctioneers. The Attorney-General must be active in prosecuting those who should be prosecuted, and I am saying, with respect to the Attorney-General, that his Office has not lived up to the expectation in terms of prosecuting the current defaulters.

The Attorney General (Mr. Wako): On a point of order Mr. Deputy Speaker, Sir. Is the hon. Member in order to imply that one can prosecute without a proper investigation being done which should help the office of the Attorney-General to proceed?

Mr. Muite: Mr. Deputy Speaker, Sir, the Attorney-General knows that he has the constitutional powers to direct the Commissioner of Police to carry out any investigation. I am making the contribution here that the passage of this Bill into law by itself without being accompanied by active prosecutions by the Attorney-General is not going to remove the evil that has been felt in the society before. I am saying that the Attorney-General need not have waited for this new Bill which is basically consolidating the other existing legislations before moving in speedily and forth-fully to prosecute those auctioneers who have breaching the law. I am saying with respect that the Office of the Attorney-General has been singularly lax. It is not going to be galvanised into action because we have passed this Bill. That is why I am making this passionate appeal that he should undertake prosecution of any errant auctioneer and in deed he should go beyond the auctioneers and prosecute individuals who commit crime and to do so without being selective about it which is what he has been doing.

With those few remarks, I beg to support.

Mr. Mulusya: Mr. Deputy Speaker, Sir, this Bill should have become also a little bit earlier because Kenyans in general have suffered in the hands of auctioneers. We have witnessed cases where bank managers collude with advocates and auctioneers to make sure that properties which are very valuable are sold at very low prices and even thereafter you find the bank having to take to court the original creditors whose property has been sold at throw-away price. This is because that property did not raise possibly the agreed amount. Mr. Deputy Speaker, Sir, auctions have been advertised in the papers simply for the expedience of meeting the existing regulations only to go to the auction house and find that that property which should have been sold through public auction has been sold through private treaties. When the persons affected by such fraudulent activity between the banker, the banks lawyer and the auctioneer goes to the Attorney-General to complain, it takes so long for remedial action to be taken. It takes so long for the Attorney-General to order investigations to be done and I am surprised that the Attorney-General has refuted that by saying that he has been acting like a passive player in prosecution of those people who are colluding to defeat the interests of Kenyans who are hard working and it is only one time maybe you have fallen in arrears in paying your bank loans; that a bank manager will hurriedly make sure that your property goes out for auction. It is the responsibility of the Attorney-General, as the hon. Muite has said, to make sure that once this Bill has been passed by this Parliament and it is operational, that where the auctioneers themselves are in breach of the regulations which are going to be set by the Board, that action is taken to make sure that the Board disciplines that person.

Mr. Deputy Speaker, Sir, in the Act, there is the issue of the revocation of the licence by the Board from the auctioneers who are found either guilty or in malpractice. This is on page 71 Clause, 18 (4). It says:-

"A notice under section three shall be served not less than 14 days before the date of intended revocation and shall specify grounds for such revocation and the Board shall consider any representations made to it in writing by the licensed auctioneer during the period, and shall take every reasonable precautions to

ensure fairness in the exercise of its powers under this section."

Mr. Deputy Speaker, Sir, if a notice is issued to an auctioneer for revocation of his licence and within 14 days he is supposed to make representations, and it is within the 14 days that his licence is likely to be revoked, this does not augur well with the auctioneer himself because this is a person who is in business and this is a person who needs to have ample time to be able to answer to the charges. We are not saying that this person should be given indefinite time limit, but there should be ample time, and 14 days is a very short time and I suggest that during the Committee Stage, the Attorney-General brings an amendment to at least make it a minimum of 21 days.

Mr. Deputy Speaker, Sir, Clause.5 says:-

"The revocation of a licence shall take effect from the date of service of notice under sub-section 4 if such notice is served on the licensed auctioneers personally or where the notice is sent through registered post on a date seven days after the date of posting."

Mr. Deputy Speaker, Sir, definitely the Office of the Registrar is going to be located in Nairobi, and when it is located in Nairobi and a notice is sent, within seven days of posting, that person will not have received that notice and this person is purported to be going out of business because of some alleged misconduct. Within that period, that person will not have made any representations to the Board. So, it is very important that the Attorney-General considers a longer time for the auctioneer to be able to make a representation.

Mr. Speaker, when you get to Clause 7 it says:-

"An auctioneer whose licence is revoked shall forthwith surrender his licence to the board and shall not be eligible to hold a licence for a period of ten years, starting from the effective days of revocation."

Mr. Deputy Speaker, Sir, this is very good. The only problem is the notice. If somebody is likely to lose his licence for the ten years, definitely by the time he is eligible to apply again, he would have gone to decay. Let there be ample time within which this person is supposed to make a representation because possibly the Board may have received information which this person would have defended himself with. But this is going to act as a very big deterrent against auctioneers who have been playing around with properties which belong to good citizens of this country. When the auctioneer has known that he is likely to lose his licence and he cannot get it until after ten years, then those who are going to be licensed would be able to at least exercise some restraint when they are exercising their powers. Those who are fraudulent in thinking and in action, would know that they are going to lose heavily.

Mr. Deputy Speaker, Sir, once the licensed auctioneers sell a property, it has been very difficult for the banks or those people to get their proceeds. For instance if it is a landlord, who is acting on distress of rent, he gives an auctioneer a go ahead to auction the property seized on distress of rent. But then it takes a long time before the person who is aggrieved to receive the proceeds from that auction. Banks have gone to court, given the process in our courts, it takes so long for them to hear civil matters, many people have really suffered. This is why I praise the Attorney-General for coming up with Clause 22, which says:-

"A licensed auctioneer making any sale other than the auction of attached property, shall unless otherwise agreed between him and the seller, be entitled to sue, recover or discharge all sums due in respect of the sale. A licensed auctioneer making any sale unless otherwise agreed between him and the seller, shall be liable to due payment to the seller of the net proceeds of all sales of property within 15 days of the sale."

Mr. Deputy Speaker, Sir, when you are in problems it is not good to get a licensed person to go and sell a property, maybe if you are a banker, and the money which you are lending does not belong to you, it belongs to the public who have put the money in either a fixed deposit or in other forms of investment. After the licensed auctioneer has sold that property he decides to convert the money into other uses.

This has been happening. There has been conspiracy between advocates representing the interests of the bankers and the auctioneers. For quite some time now, there has been disputes between the auctioneers and the advocates. Sometime you will find an auctioneer saying that he sold some property and handed over the proceeds to the advocate and on the other hand, the advocate saying that he was not given the proceeds. In this way you will find that by the time the seller of the property decides to take a different action and go to a court of law, these people have enjoyed the proceeds for which they have not worked for. So, it is very important that the Attorney-General makes sure that this Clause is acted upon.

I will now go to Clause 24 which deals with complaints against auctioneers. Clause 24 (f) states:- "The licensed auctioneer is supposed to pay compensation not exceeding Kshs 100,000 to the person indemnified by his misconduct". Here is an auctioneer selling property which belongs to a person, which is, say, worth more than Kshs20 million, for very low price and when he goes to complain all he can get is Kshs100,000 as compensation!

The Attorney-General should understand that this is a matter on which the Board should be given a greater leeway so as to determine how much money should be given as compensation. The Clause does not consider the market price of the property auctioned.

The Act says that in case of complaints one can only apply to the High Court and the decision of the High Court will be final. This is taking Kenyans back to square one. We would like the Attorney-General to come up with better remedies for those people who are going to be victims of collusion between the banker or whoever is giving instructions to the licensed auctioneers to sell the property and the buyers. This is very dangerous and we are not helping Kenyans. I hope the Attorney General is going to review Clause 24 and come up with an amendment which will help Kenyans. I do not want to tell the Attorney-General that he is no more secure than we are. Very soon he will not be the Attorney-General. If he becomes a victim of the licensed auctioneers when he is not the Attorney-General, what will he do? He will not have a chance to come to this House again and amend the Act. This is the only time the Attorney-General can correct mistakes for the benefit of both himself and all Kenyans. I am telling the Attorney-General this because I know what is in store for us. It is not a question of just saying that one party's faction, and not the other, should have been registered. It is a question of saying the law must take its course. It is from here where the law should start taking its course. We know that a former attorney-general, Mr. Njonjo, can only afford to go to dog shows! It is very important that we do not have a repeat of that situation in respect of another person. What is a dog show for somebody who was so powerful that he could amend the Constitution in one day?

Mr. Deputy Speaker, we are looking for security for Kenyans and their property. This Bill is supposed to take care of the propertied class. You cannot run a business unless you have a sofa set on which to sit. You cannot be paid rent unless you have houses to rent. We cannot afford to have property of people who get bank loans eventually auctioned just for the sake of it. We need to have good Kenyans in banks. We need people of good intentions, who will build the nation, create employment and protect people's property.

With those few remarks, I beg to support.

Mr. Shikuku: Ahsante sana, Bw. Naibu Spika. Tangu mwanzo nilikuwa tayari kuzungumza juu ya Mswada huu. Kwanza nitasema kwamba Mswada huu umechelewa kuletwa hapa. Nakumbuka kwamba kulikuwa na Mbunge wa Nyandarua North aliyeyitwa Josiah Mwangi Kariuki. Hayati Kariuki aliwahi kuuleta Mswada wa binafsi kuhusiana na jambo hili hili la madalali. Nakumbuka kwamba wakati huo kulikuwa na makampuni mengi ambayo yalikopesha bidhaa kwa malipo ya pole pole. Ulifika wakati ambapo hata mtu ambaye alikuwa amelipia cherahani au gari na kubakisha Kshs800 aliipoteza mali yake na pia pesa zote alizokuwa amelipa. Jambo hili lilikuwa likifanywa na madalali.

Ijapokuwa tulikuwa na chama kimoja cha kisiasa tuliujadili Mswada huo hapa.

Ukweli ni kwamba, ijapokuwa tulikuwa na chama kimoja, tulikuwa na uhuru wa kutoa maoni yetu na hata kutupa Mswada katika Bunge hili. Nakumbuka wakati mmoja ambapo Mswada ilikuwa umeletwa hapa Bungeni, kwamba mama akiwa amepata mtoto, anaweza kusema kwamba mtoto huyo ni wa Mkuu wa Sheria, ama Mhe. Shikuku, Bw. Njoroge, au sijui ni wa Bw. Njuguna, na watu hawa wote walikuwa wanahitajika kutoa fedha za kulisha mtoto mmoja mwenye baba karibu sita. Huo Mswada ulipoletwa hapa Bungeni, tuliutupa, ijapokuwa tulikuwa na chama kimoja.

Bw. Naibu Spika wa Muda, lazima ukweli usemwe. Lazima tuseme mazuri na pia mabaya. Wakati huo, tulikuwa na uhuru wa kufikiria katika Bunge hili. Tulitoa maoni bila kushurutishwa, na tulipitisha na pia tukatupilia mbali Mswada mingine. Siku hizi, wengi wetu hata hawasomi Mswada. Imekuwa tu Mbunge anakaa nje na akiambiwa Mswada hautakiwi, yeye ni kupinga tu bila kujua ni kwa sababu gani. Kazi yake ni kupiga kura tu. Mswada huu unatuambia tuangalie habari ya madadali. Namshukuru Mkuu wa Sheria kwa kutupatia majina ya wale walikuwa kwa Task Force iliyoleta Mswada huu. Wengi wao ni madalali. Wamefanya yale ambayo wamefanya. Namshukuru kwa sababu nilikuwa najuliza, ikiwa dalali atanyang'anywa leseni, malalamiko yake atayapeleka wapi, au atakata rufani wapi? Ile Board imekuwa mwenyezi Mungu. Ikishakata kwamba unatolewa, basi, hakuna cha pili hilhali wewe unaondoka. Namshukuru kwa sababu amesema ataleta marekebisho kuwezesha dalali kukata rufani ikiwa atanyang'anywa leseni. Lakini mambo bado. Wanakwambia kutoka tarehe hii hadi hii, uwe umerudisha leseni. Hakuna muda mtu huyu, ijapokuwa amekosa, anapewa. Hakuna kipengele kinachompatia dalali muda fulani kabla ya kunyang'anywa leseni. Lazima apewe nafasi ya kukata rufani. Akishapewa notisi, lazima apewe nafasi ya kukata rufani. Lazima awe akiendelea na kazi yake wakati wa kusikilizwa kwa rufani yake. Huyu dalali ana bibi, watoto na shinda zake. Itakuwaje unampa wiki mbili peke yake na maneno yote yamekwisha? Lazima anapopewa notisi, akate rufani. Wakati rufani hiyo inaposikilizwa, akubaliwe kuendelea na kazi yake. Lakini isiwe mara moja. Hawa madalali wenyewe ndiyo walikuwa wanaangalia mambo yao katika hiyo Task Force na hawakukumbuka jambo hilo. Kweli, hawa madalali ni wagonjwa sana. Nikiwapata, nitawaambia hivyo.

Jambo la pili ni kwamba, nimemsikia Mkuu wa Sheria akisema wanataka kuifanya kazi ya dalali kuwa taaluma. Yaani, wawe kama mawakili, majaji, madaktari au wajuzi. Lakini katika huu Mswada, sioni mahali ambapo kunaonyeshwa vile watapatiwa mafunzo. Watakuwa wataalamu namna gani na hawajapewa mafunzo? Mafunzo yao yako wapi? Lazima kuwe na mafunzo ya hawa madadali, ili iweze kuwa taaluma. Lakini, kwa vile Mhe. Shikuku anaweza kuwa dalali kesho, na niambiwe nikae kama mtaalamu, nitawezaje kukaa kitaalamu ikiwa sijapewa mafunzo ya kuniwezesha kukaa hivyo?

Bw. Naibu Spika wa Muda, wakati umefika. Hii Miswada tunayotengeneza katika Bunge hili, siyo ya leo, bali ni Miswada ambayo itakuwa sheria na ambayo italinda sisi zote miaka ijayo. Wakati umefika ambapo Serikali hii inapaswa kufikiria kuwapa mafunzo madalali kwa sababu maovu mengi yamefanywa na madalali, ambayo yanamhitaji Bw. Yesu kurudi ili afanye yale aliyofanya siku moja, kwa yule mtu mfupi ambaye alikuwa anaitwa Zakayo. Ilimbidi apande mti ili amwone Bw. Yesu. Na Yesu alipofika karibu na mti huo alimwambia Zakayo, "shuka chini", naye Zakayo akashuka. Yesu alimwambia arudishe mali na ushuru mwingine ambao alikuwa akitoza watu kabla ya kuwa mfuasi wake. Hivyo ndivyo alivyofanya. Sijui Mohammed Salalehi wa Walehi wa Salaam alifanya nini? Lakini ninakumbuka hiyo ya Yesu na Zakayo. Sijasoma Korani sawa sawa ningemnuuu lakini bahati mbaya sikusoma Korani. Ningewapa mfano wa Yusufu na kadhalika lakini si kuweza kufika hapo.

(Laughter)

Bw. Naibu Spika, madalali wamewavuruga watu. Wamekuwa ni hatari sana kwa muda mrefu. Wenyeve ni hatari na baba yao ni hatari pia. Wanachukua mali yako, mali ambayo umenunua kwa pesa nyingi na wanafanya mipango na watu wengine kuja kununua ile mali kwa bei ya chini ili wewe utoke bila cho chote. Nia yao hasa ni kukufilisi kabisa. Unaweza kupata wapi gari au motokaa ambayo unaweza kununua kwa Kshs150,000? Je, motokaa nzima inaweza kununuliwa kwa Kshs150,000? Hii imepangwa ili wewe uvurugwe!

Na kawaida mtu akishapata deni yuko hatarini katika Kenya. Kwa sababu ukiona sisi tunatoa maoni yetu hapa katika Bunge hatuna deni ya Serikali. Hii ndio hunifanya niseme yote ninayotaka kusema.

Si jambo la kuogopa, mimi sina deni ya Serikali wala hongo sijapata kutoka kwa Serikali na ndio maana nazungumza yote ninayotaka kusema bila uwoga. Hii ni kwa sababu nikipata mkopo tu nitakuwa nimewekwa chini ya amri ya Serikali. Nikisema kidogo kesho jina langu litatangazwa gazetini na vitu vyangu vitauzwa au niataambiwa nihame chama changu cha kisiasa. Na wale watu wanaotumiwa sana ni madalali. Sasa ukifikishwa kortini dalali tayari amekwishafika. Tena wana vikundi vya watu ambao ni waharifu. Sijui kama Mkuu wa Sheria anasikia? Wanafika nyumbani kuja kutoa vitu na waharifu hawa hawana ustaarabu wowote. Hawa ni waharifu ambao wanatumia na madalali. Ukifanya mchezo unasukumwa, bibi anasukumwa hadi kuanguka kule jikoni na sufuria yake inamwagika maji na uji na wanabeba kila kitu. Ni lazima pia tuwape mafundisho hawa watu ambao watawasaidia madalali. Ni nani atakayemsaidia dalali kuendesha kazi yake? Huyu mtu ni lazima apewe mafundisho fulani. Ukitaka uhalifu wowote patana na madalali. Kuna watu ambao wakikunja ngumi moja inatosha kama kichwa chako. Afadhali ngumi ya Tyson! Mimi ninazungumza kwa niaba ya wananchi wadogo. Nimeona kwa macho yangu hawa agents, au youths wa madalali vile wanavyoharibu mali ya watu. Lazima tuwe na mipango. Katika Mswada huu, hakuna mahali ambapo pameandikwa kuhusu mafundisho ya yule mtu anayetaka kuwa professional na wale watu atakayetumia. Sio jambo la kutumia wale makaidi kuingia katika nyumba ya mtu ambaye ana deni na kuchukua vitu vyake. Hilo ni jambo ambalo Serikali ingeangalia, kama sasa tuko huru kweli, na ninashuku kuhusu jambo hili. Sisi bado hatuko huru. Tulipopigania Uhuru tulikuwa tukifikiria kwamba tukishapata huo Uhuru, watu wetu watapumua na kutendewa kiutu, siyo kinyama. Kitu cha ajabu ni kwamba hawa madalali wakifika katika nyumba yako, hawakupi hata muda. Ni lazima mahakama ziambiwe kwamba ikiwa kitu cha mtu fulani kinauzwa---

The Assistant Minister for Research, Technical Training and Technology (Mr. Kagwima): On a point of order, Mr. Deputy Speaker, Sir. I am concerned that hon. Shikuku says that we are not yet independent. I am not sure whether there is any country still ruling over Kenya. Can he substantiate or withdraw that misleading statement?

Mr. Shikuku: Bw. Naibu Spika, mshemiwa anauliza matata ya bure. Huyu anayezungumza ndiye alipambana na Wabeberu na wengine, kumng'oa Mbeberu hapa. Ninajua taabu za Mbeberu na nikapambana naye mpaka nikaenda Uingereza, nikamwambia abaki huko kwake. Baadaye, mwaka wa 1963, nikaenda nikaleta Uhuru ambao umemfanya mshemiwa sasa aingie katika Bunge hili. Zamani ilikuwa taabu kwa Mwafrika kuonekana katika Bunge hili. Nikifikiria hiyo, ninaona kwamba hakuna Uhuru na ninasikia uchungu maana sioni lile nililopigania. That is why I feel very bad. Tena hii Serikali ni mbovu mara 15 kushinda ya Mbeberu.

The Assistant Minister for Research, Technical Training and Technology (Mr. Kagwima): Mr.

Deputy Speaker, Sir, I listened very keenly because I thought he was in the process of explaining what makes him think that we are not yet independent. But he stopped somewhere in the middle and got emotional and started banging the Table. He has not made the point I wanted him to clarify on who is ruling over Kenya. Secondly, the people I see in this Parliament are citizens of this country, not *Wazungu*.

Mr. Deputy Speaker: You can reply to him when your time to speak comes as that is a point of argument.

Mr. Shikuku: Thank you, Mr. Deputy Speaker, Sir. Yeye angetushukuru kwa sababu pengine angekuwa anachunga ng'ombe za baba yake. Hangeingia Bunge hili kama hatungeleta Uhuru. Saa hii, angekuwa anachunga mbuzi huko kwao. Lakini sasa anakuja hapa, hana hata adabu ya kumsikiliza mtu yule aliyeleta Uhuru.

Jambo ninalotaka kusema ni hili---

Mr. Mulusya : On a point of order, Mr. Deputy Speaker, Sir. Is it in order for hon. Shikuku to say that an Assistant Minister, who is a member of this Parliament and popularly elected on a KANU ticket, is mannerless and cannot listen to him? Is he in order?

Mr. Shikuku: Bw. Naibu Spika, hayo ni maneno yake. Nilisema kwamba hana heshima, na mhe. Mulusya anasema "mannerless". Neno hili lilitoka wapi? Hii ndiyo taabu ya wale waliosoma Kingereza na hawakusoma Kiswahili. Na sijui alipita mtihani wake namna gani.

ADJOURNMENT

Mr. Deputy Speaker: Order! Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Wednesday 12th June, 1996 at 9.00 a.m.

The House rose at 6.30 p.m.