

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

**Tuesday, 11th April, 1995**

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

## PRAYERS

## PAPERS LAID

The following Papers were laid on the Table:-

1994/95 Supplementary Estimates (Recurrent Expenditure)  
1994/95 Supplementary Estimates (Development Expenditure)  
Statement of Excesses No.1 of 1990/91  
Statement of Excesses No.1 of 1991/92

*(By the Assistant Minister for Finance (Mr. Keah), on behalf  
of the Minister for Finance)*

## NOTICE OF MOTIONS

**The Assistant Minister for Finance (Mr. Keah):** Mr. Speaker, Sir, I beg to give notice of the following Motions:-

THAT, a sum not exceeding K£560,553,194 be granted from the Consolidated Fund to meet expenditure during the year ending 30th June, 1995 in respect of Supplementary Estimates of 1994/95 (Recurrent) having regard to the proposed savings of K£103,796,837 therein appearing.

THAT, a sum not exceeding K£115,882,236 be granted from the Consolidated Fund to meet expenditure during the year ending 30th June, 1995 in respect of Supplementary Estimates of 1994/95 (Development) having regard to the proposed savings of K£126,029,910 therein appearing.

THAT, a sum not exceeding K£70,935,003-01s-45 be granted from the Consolidated Fund to meet expenditure during the year ending 30th June, 1991 in respect of Statements of Excesses No.1 of 1990/91.

**A.2 - 11.04.95**

THAT, a sum not exceeding K£48,216,360-16s-85 be granted from the Consolidated Fund to meet expenditure during the year ending 30th June, 1991/92 in respect of Statement of Excesses No.1 of 1991/92.

*(His Excellency the President has signified his consent to these Motions)*

**ORAL ANSWERS TO QUESTIONS**

*Question No.014*

DE-REGISTRATION OF CLARION

**Dr. Ombaka** asked the Minister of State, Office of the President:-

- (a) why the Centre for Law and Research International (CLARION) was deregistered, and;
- (b) if he was satisfied that the de-registration was in accordance with the spirit and provisions of the Non-Governmental Organisations Co-ordination Act, 1990 and the Non-Governmental Organisations Regulations, 1992.

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

(a) The Centre for Law Research International (CLARION) was deregistered because it violated the terms and conditions of Section 17 of the Act under which it was registered.

(b) The Non-Governmental Organisation (NGO) Co-ordination Board adhered to the Act as provided by Section 16 (1) (a), (b) and (2) of the NGOs Co-ordination Act and the NGOs Regulations 1992. However, if CLARION is not satisfied with the Board's decision, it is free to appeal to me, giving reasons, as is provided by Section 19 of the Act.

**Dr. Ombaka:** Mr. Speaker, in what specific ways did CLARION act in violation of the terms of its registration? What specific acts did the organisation commit so as to fall foul of the conditions of its registration?

**Mr. Awori:** Mr. Speaker, Sir, CLARION carries out various research in this country and it is supposed to have its findings given to the members. In this case, CLARION carried out certain research and the findings were used to disseminate information that was prejudicial to the security of the country.

**Mr. Ruhii:** Mr. Speaker, Sir, can the Assistant Minister confirm or deny that the deregistration of this organisation was prompted by the fact that it was exposing human rights abuse and corruption in this country?

**Mr. Awori:** Mr. Speaker, Sir, I deny it.

**Mr. Shikuku:** Mr. Speaker, Sir, arising from that absurd reply from my friend, can the Assistant Minister deny that there is no corruption in this country, when he knows and it has been accepted that it does exist?

**A.3 - 11.04.95**

**Mr. Awori:** Mr. Speaker, Sir, if the hon. Member himself is making a categorical statement that he is aware of, then he is entitled to his opinion.

**Mr. Farah:** Mr. Speaker, Sir, the Assistant Minister says that CLARION carried out

some research and the information of that research was injurious to or compromised the security of this country. Can he tell us what exactly that information was and how it compromised the security of this country?

**End A.**

**PAO**

**B.1 - 11.04.95**

**Mr. Awori:** Mr. Speaker, Sir, I regret to say that I have not considered detail in the matter that was prejudicial to this country. If the hon. Member wants me to do so, I will do so.

**Dr. Ombaka:** On a point of Order, Mr. Speaker, Sir. You were gracious enough to give me the first bite of my Question, but you failed to give me any chance subsequently. I did not have a chance to wrap up my Question.

**Mr. Speaker:** Can it not go without your wrap?

*(Laughter)*

But nevertheless, wrap it!

**Dr. Ombaka:** Thank you very much, Mr. Speaker, Sir. Can the Assistant Minister deny the fact that the de-registration of CLARION was in contravention of the NGO Co-ordination Act in that the Act was done by the Chairman of the Board as opposed to the entire Board sitting as is required by the Regulations under the Act.?

**Mr. Awori:** No, Mr. Speaker, Sir, I deny it.

**Mr. Farah:** On a point of order, Mr. Speaker, Sir. Can the Assistant Minister tell us when he will bring the information on how the research work itself compromised the security of this country? Can he tell us when he will bring that to the House?

**Mr. Awori:** Mr. Speaker, Sir, that is a supplementary question, not a point of order. But nevertheless, I will bring the information a week from today.

*Question No. 010*

#### TRANSPORTATION OF KCPE PAPERS

**Mr. Maore** asked a Minister of State, Office of the President:-

(a) If he is aware that Mutuati District Officer refused to offer his vehicle GK 225 S to transport the 1994 Kenya Certificate of Primary Education (KCPE) papers; and,

(b) how much money the Government has spent on repairs of the said vehicle since April, 1994, and why has the said District Officer been collecting money from people allegedly to repair the vehicles.

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

(a) The District Officer Mutuati could not offer his vehicle, GK 225 S to transport the 1994 KCPE examination papers because it had broken down.

(b) No money has as yet been spent to repair the vehicle. The vehicle has been parked at the district officer's office since April, 1994, as there was no money to repair it and there is still

no money at the moment. The district officer has not collected any money from the public as alleged by the Questioner.

## **B.2 - 11.04.95**

**Mr. Maore:** Thank you, Mr. Speaker, Sir. I do agree with the Assistant Minister that according to the official records, the vehicle has been parked since April, 1994, and this district officer came to Mutuati in June, 1994. The KCPE examination papers had to be physically carried a distance of about 6 kilometers by people, and this vehicle was operational. Money to repair it had been collected from people by the said DO. How is the Assistant Minister expecting the DO to operate without a vehicle in an area that he knows very well is an insecurity prone area?

**Mr. Awori:** Mr. Speaker, Sir, I can only repeat what I had stated earlier, that we did not have money in the Vote for the District Officer to repair his vehicle. With regard to the question of the area being a security risk, we try to supplement security forces in the area from time to time from other parts. For the moment, we have not got the funds to repair the vehicle.

**Dr. Lwali-Oyondi:** Mr. Speaker, Sir, the Assistant Minister has agreed that this is an area where security of wananchi is compromised. Since the district officer is the first man to look after that security, can he tell the house whether the Government has emergency funds for such undertakings in such a dangerous area?

**Mr. Awori:** Mr. Speaker, Sir, there are usually no emergency funds. However, the Government can always borrow a vehicle from another division, where the security may not be as serious.

**Mr. Maore:** Thank you, Mr. Speaker, Sir. Given the fact that the public did actually maintain this vehicle for a long time out of goodwill, goodwill which was withdrawn when the DO mis-behaved. Is the Assistant Minister undertaking to investigate whether members of the public did collect money to maintain a GK vehicle through some illegal means?

**Mr. Awori:** Mr. Speaker, Sir, I will indeed investigate, but there are very many cases all over the country where sometimes the services of a Government vehicle may be required and there is no fund for the purchase of petrol. Without any force, a member of the public may voluntarily offer money to fuel the vehicle in order to get the service.

### *Question No. 004*

#### **PAYMENT OF MR. ARASA'S PENSION**

**Mr. Obwocha** asked the Minister for Finance:-

(a) If he is aware that Mr. Samson Nyatika Arasa has not received his pension cheques Nos.03600463 and 0367908 purportedly for the months of July 1991 and September 1991 respectively; and

(b) if the answer to "a" above is in the affirmative, could the Minister release the payments for July and September 1991 including May 1992.

**The Assistant Minister for Finance (Mr. Keah):** Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that Mr. Samson Nyatika Arasa did not receive his pension cheques No. 03600463 and 03679680 for July and September, 1991, respectively.

(b) The three cheques have already been despatched to the pensioner as I give this reply.

**Mr. Obwocha:** Mr. Speaker, Sir, in view of the reply the Assistant Minister has given,

can he give the cheque numbers and when they were sent to Mr. Nyatika?

**B.3 - 11.04.95**

My supplementary Question is: In view of the fact that the cost of living has gone up tremendously, can the Government consider revising the pension levels so that the pensioners---

**Mr. Speaker:** Order, Mr. Obwocha that is not your question. **Mr. Obwocha:** Mr. Speaker, Sir, that is a supplementary question arising from this one.

**Mr. Speaker:** It is irrelevant to this one. Ask a relevant question, proceed.

**Mr. Obwocha:** Mr. Speaker, Sir, I am saying that the amount of money Mr. Nyatika is receiving as pension is very little. Can the Government consider revising the pension levels of the pensioners?

*(Applause)*

**Mr. Keah:** Mr. Speaker, Sir, I thought his first question was the cheque numbers and the dates of despatch which would have been very relevant to this question. But the second the question which is: Can the Government revise the levels of pensions.

Mr. Speaker, Sir, I have no answer to this question at this point and time. But the amounts paid to our pensioners are reviewed regularly. We did give an answer to a Question here last year which gave a date as to when the last revisions were made. I cannot remember that date, but it is a regular practice by the Treasury to review this pensions.

**End of B**

**JKK**

**C.1 11.4.95**

**Mr. Obwocha:** Mr. Speaker, Sir, could the Assistant Minister give us the cheque numbers and also tell us when the cheques were dispatched to Mr. Samson Nyatika Arasa?

**Mr. Keah:** Mr. Speaker, Sir, the following cheques were dispatched to Mr. Arasa: The first one was replaced by cheque No.ZB 818514 dated 19th November, 1993, and the second one was replaced by cheque No.ZB 819597, dated 3rd December, 1993. I would go further and say that both these cheques were encashed on 31st January, 1994, at the District Commissioner's office, Nyamira, which the pensioner had given as his collection point.

*Question No.007*

COUNCILS' ACCOUNTS IN TRADE BANK

**Mr. Shikuku** asked the Minister for Local Government:-

(a) which municipalities and county councils had opened accounts with the Trade Bank and how much had each of the said municipalities and county councils deposited with the said bank before it was placed under receivership; and

(b) what steps he is taking to retrieve part of this money.

**The Assistant Minister for Local Government (Mr. Walji):** Mr. Speaker, Sir, I request the hon. Member to give me more time and I will bring a proper answer.

**Mr. Shikuku:** Mr. Speaker, Sir, I thank the hon. Assistant Minister very much. I am patient enough; let him go and get more details.

**Mr. Speaker:** Very well. The Question is deferred. How long will it take you, Mr. Walji, to look for more details?

**The Assistant Minister for Local Government (Mr. Walji):** I will bring the answer the day after tomorrow, Mr. Speaker, Sir.

**Mr. Speaker:** The Question is deferred to Tuesday, next week.

*(Question deferred)*

*Question No.28*

#### UPGRADING OF HEALTH WORKERS

**Mr. Speaker:** Question No.28 is also deferred.

*Question No.024*

#### PAYMENT OF MR. NYABUCHE'S DUES

**Mr. Ojode** asked the Minister for Lands and Settlement:-

(a) whether he is aware that Mr. Andrew Odero Nyabuche of Box 125, Ndhiwa, whose land No.164/Kayambo/Kwamo, was acquired for the purpose of construction of Rodi Kopany-Karungu Road, has not been compensated;

**C.2 - 11.04.95**

(b) whether he is further aware that this land was only valued for Two Thousand Shillings (KShs.2,000/-); and

(c) if the answers to "a" and "b" are in the affirmative, when Mr. Andrew Nyabuche will be compensated and paid for the correct value of his land.

**The Minister for Lands and Settlement (Mr. Mulinge):** Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that Mr. Andrew Odero Nyabuche of Box 125, Ndhiwa, whose land No.164/Kayambo/Kwamo which was acquired for the construction of Rodi Kopany-Karungu Road has not been compensated. However, I am aware that Mr. Andrew Odero Nyabuche whose land number is Kayambo/Kwamo/1465 has been compensated.

(b) I am not aware that Mr. Nyabuche's land was valued for only KShs.2,000/-. I am however, aware that his land plus the development thereon were valued for KShs.2,245/- (c) Mr. Nyabuche has been paid for his land in conformity with the area which was acquired and cheque No.D 13/043794, written in his name was sent to District Commissioner, Homa Bay, on 19th April, 1994.

**Mr. Ojode:** Mr. Speaker, Sir, the Minister is misleading this House. I have a letter written by Mr. Nyabuche claiming that his two acres were taken away but he has not been compensated to date. The letter was written on 10th May, 1994, and there was a lot of development on this property. It is being alleged that the land was valued for only KShs.2,000/- which Mr. Nyabuche has not received up to this very moment. Could the Minister tell us exactly when that cheque was written. This land was undervalued. There is no way two acres can go for KShs.2,000/-.

**Mr. Mulinge:** Mr. Speaker, Sir, I think that the hon. Member is also misleading the

House. The piece of land in question measured only 40 square metres and it was valued by the Government Chief Valuer. If Mr. Nyabuche is not happy with the valuation he is free to get his private valuer and get the land re-valued.

**Mr. Ojode:** Mr. Speaker, Sir, I do not think I am misleading the House because I have the letter here with me. The fact is that personally, I had already gone to the District Land Valuer who confirmed to me that the land was under-valued. I have a letter here, which I am going to Table, which shows that there were some improvements on that land. Could the Minister give a more concrete answer so that the man is paid the correct amount for his land?

**Mr. Mulinge:** Mr. Speaker, Sir, I do not need to bring any more information on this matter. This is because the valuation was done by a Government expert. As I have already stated, if the valuation is not acceptable then Mr. Kabuche is free to get a private valuer to go and value that land and then the two valuers can argue. If Mr. Kabuche is entitled to more than what has been paid to him, then he will be paid the difference.

**Mr. Mulusya:** Mr. Speaker, Sir, I think the Minister is misleading the House. He knows that the Compulsory Acquisition Act stipulates that immediately the value has been communicated to the land owner he is supposed, within 45 days or 90 days, to lodge a complaint.

If the compensation has been paid what powers is the Minister using to ask for a late complaint from the affected person? What powers is he using other than what is in the Act?

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**Mr. Mulinge:** Mr. Speaker, Sir, I am not using any other powers. What we have here is a question of compensation and compensation has been paid through the valuation that was done by a Government expert. If the land owner does not accept that amount then he get another valuer to value the land.

**Mr. Ogur:** Mr. Speaker, Sir, these people undertook the valuation some 15 years ago when KShs.2,000/- was a lot of money. The Minister ought to know that KShs.2,000/- is nothing today. I know this person and I also know that he has planted a lot of mango trees and paw paws in his homestead. Is the Minister aware that this man was cheated? Is the Minister aware that KShs.2,000/- is nothing today?

End of C.

EWK

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**Mr. Mulinge:** Mr. Speaker, Sir, I am not aware.

**Mr. Owino Achola:** Mr. Speaker, Sir, could the Minister confirm to this House when this cheque can be delivered to the person involved?

**Mr. Mulinge:** Mr. Speaker, Sir, I said the cheque is with the District Commissioner. It was sent a year ago, and the owner can go and collect it.

**Mr. Ejodeh:** On a point of order, Mr. Speaker, Sir. The Minister is misleading the House. Could you come and rescue us because he is saying that the cheque was delivered a year ago and yet I have a letter which was written on 19th May, 1994 and the man is my constituent. I even saw him last week. He is not from Kathiani! He is from Nthiwa and I saw him last week. He was complaining that he has not yet received even a single cent.

**Mr. Speaker:** Order, Mr. Ejodeh! Are you suggesting by any chance the Minister is a Minister for Kathiani?

**Mr. Ejodeh:** Not really, Mr. Speaker, Sir. What I am saying is that I was just from Nthiwa the other day and I was talking to this constituent of mine who has been going to District Commissioner's Office, Homa Bay, to look for this money. These Kshs.2,000 for two acres has not been received to date. What I am saying is that, I am requesting the Minister to go and check if it was undervalued, and then he could recommend to give him the right amount.

**Mr. Speaker:** Hon. Minister, can you rescue him on my behalf?

**Dr. Lwali-Oyondi:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order, Dr. Lwali-Oyondi! Mr. Ejodeh was on a point of order and he is entitled for a response from the Minister. Have patience.

**Mr. Mulinge:** Mr. Speaker, Sir, I have given the number of the cheque, and if the cheque has not been received, then the owner should go to see his District Commissioner and get him to write a letter to my Ministry because the cheque might have been misplaced, but the fact is that the compensation was paid and if you want me to read the cheque number, I can read it to you. It was sent to the District Commissioner concerned. As for valuation, I had said that the land was properly valued and if the Government valuation was not acceptable, he can get private valuers to revalue it.

**Dr. Lwali-Oyondi:** On a point of order, Mr. Speaker, Sir. Is the Minister in order to tell us that this particular *mwananchi* should go and collect a cheque which he knows was issued one year ago and it is stale? Is he in order to order this Member of Parliament to go and collect a stale cheque?

**Mr. Mulinge:** Mr. Speaker, Sir, I think I am in order to tell the House that the cheque was written and was sent to the District Commissioner concerned.

**A hon. Member:** A year ago.

**Mr. Mulinge:** Yes, a year ago.

*(Laughter from Opposition side)*

**Mr. Speaker:** Next Question.

**Mr. Gitonga:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order, Mr. Gitonga! Order, Mr. Gitonga! Whenever you rise on a point of order, you should actually shout "Point of order". You do not negotiate with me, you shout it loud so that I hear.

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**Mr. Gitonga:** Point of order, Mr. Speaker, Sir. Is the Minister in order to mislead this House. According to the information given here, this land was valued 15 years ago, and the Government did not pay the compensation at that time. The Government paid compensation 15 years later. Is he in order to say that the Kshs.2,000 was the appropriate value for this land 15 years later?

**Mr. Mulinge:** I was not aware.

**Mr. Mulusya:** Point of order, Mr. Speaker, Sir. With due respect to the hon. Minister, the hon. Member has risen on a point of order which concerns him and even up to today the hon. Minister is unaware that there is something that is going on in this House. We are not talking about the roads somewhere in Kathiani with the Minister.

*(Loud consultations)*



**Mr. Speaker:** Order! Order! Order! Hon. Minister, did you follow what was being said?

**Mr. Mulinge:** Mr. Speaker, Sir, I was not listening, I thought my questions were over.

*(Loud consultations)*

**Mr. Speaker:** Order! Order! Can we give hon. Members who are asking questions, and those who are answering them, the opportunity to hear the replies and the subsequent questions that are being put. Can we please consult in a much more quieter fashion. Mr. Gitonga, would you like to repeat the question.

**Mr. Gitonga:** My point of order, Mr. Speaker was, is the Minister in order to mislead this House because according to the information available, this land was valued 15 years ago, and the cheque was issued to the owner 15 years later. Can he really say that this value is appropriate at this time when the cheque is issued 15 years later?

**Mr. Mulinge:** Mr. Speaker, Sir, this value was approved during that time, which is 15 years ago. That was the value.

**Mr. Speaker:** Next Question.

*Question No. 042*

#### RE-ALLOCATION OF PLOT

**Dr. Lwali-Oyondi** asked the Minister for Lands and Settlement why Mr. M.K. Mwaniki ID/No.3094696/66, of Nyandarua Progressive Agencies Limited, (Certificate No.788), has not been re-allocated another plot by the District Officer, Bahati.

**The Assistant Minister for Lands and Settlement** (Mr. Khaniri): Mr. Speaker, Sir, I beg to reply.

I am not aware why Mr. M.K. Mwaniki of Nyandarua Progressive Agencies Limited has not been re-allocated another plot by the District Officer, Bahati, as there are no records in my Ministry as to the circumstances under which Mr. Mwaniki lost his plot, and also the conditions under which the District Officer, Bahati was to allocate him another plot. It is also **D.3 - 11.04.95** not clear from the Question whether the plot was in Settlement Scheme, in Urban Centre, in a Company or a Co-operative farm. In view of the foregoing, the hon. member should give me more information about the case to enable my Ministry to carry out investigations and take the necessary action.

**Dr. Lwali-Oyondi:** Mr. Speaker, Sir, I think the Assistant Minister should be aware of what we were asking. We were asking a Question on Nyandarua Progressive Agencies Limited which is a firm and in which there has been alot of correspondence between the District Commissioner of Nakuru, and the District Officer, Bahati. If the Assistant Minister is asking for more information I wish to submit one of the letters just to let him get on with the necessary investigations. The Question was that this particular person who belonged to Nyandarua Progressive Agencies Limited was given a shamba full of rocks, in which he was expected to cultivate. He was just asking for a better piece of land from this particular company where he can farm properly. Could the Assistant Minister make the District Officer help him to get a better piece of land?

**Mr. Khaniri:** Mr. Speaker, Sir, as I have already said, my Ministry had no correspondence between the District Officer and the person in question. Now that I am getting the details, I will have to go and consult the Commissioner of Lands and find out how best we can help this man.

**End D**

**CNJ.**

**E.1. - 11.04.95.**

**Dr. Lwali:** Mr. Speaker, Sir, in view of the what the Minister has just said, could he given an undertaking to this House when he would be prepared to give a better answer to the House?

**Mr. Khaniri:** Mr. Speaker, Sir, now that I have received some details here, I would like to promise the House that by next week, I shall give the proper answer to the House.

*Question No. 045*

FRAUD IN HOUSING CORPORATION

**Mr. Speaker:** Question No.045 is deferred.

*(Question deferred)*

#### **QUESTION BY PRIVATE NOTICE**

POLICE RAID IN JARAMOGI'S HOME

**(Mr. Raila Odinga)** to ask the Minister of State, Office of the President the following Question by Private Notice:-

(a) Is the Minister aware that armed police officers led by the District Officer for Bondo stormed the home of the former Leader of the Opposition the late Jaramogi Oginga Odinga on the night of 20th January, 1995 and without any lawful cause beat up and brutally injured innocent people who had gathered to commemorate Jaramogi's anniversary?

(b) If the answer to part (a) of the Question is in the affirmative, what disciplinary action has the Government taken against the District Commissioner for Siaya who ordered the invasion?

**Mr. Speaker:** That question by Private Notice is also deferred.

*(Question deferred)*

#### **MINISTERIAL STATEMENT**

**The Assistant Minister, Office of the President (Mr. Awori):** Mr. Speaker, Sir, last week, points of order were raised by two hon. Members and I promised to make a Ministerial Statement something which I would like to do now.

The first point of order was raised in respect to a young man aged 18 years, who was shot by an administration police. In this regard, I would like to say that hon. Members will recall that I undertook to bring a Ministerial Statement to this House in response to hon. Otieno Mak'Anyango's allegation that an innocent boy was killed by a administration policeman who was guarding the residence of the District Commissioner, Siaya, on the 17th of March 1995. The position is as follows:-

(Loud consultations)

**E.2. - 11.04.95.**

**Mr. Mak'Anyango:** On a point of order, Mr. Speaker, Sir, consultations in the House are a bit too loud. I cannot hear what the Assistant Minister is saying.

**Mr. Speaker:** Order! Order Dr. Lwali! You are contributing to this disorder in the House. Will you proceed, Mr. Awori.

**The Assistant Minister, Officer of the President** (Mr. Awori): Mr. Speaker, Sir, the position is as follows:-

On the 17th of March, 1995, one Elayas Obondo Oyombra, aged 18 years, went to visit administration police constable, Bernard Omondi Onyango, Service No.94021048, who was guarding the residence of the District Commissioner, Siaya. The two had been friends even before the latter joined the administration police force. While Mr. Oyombora and the administration police constable were still chatting, three bullets discharged from the constable's firearm, hitting Mr. Oyombra on the chest. He died on the spot. Police from Siaya, visited the scene of the incident immediately and arrested the constable Bernard Oyango who has since been charged with murder of the Elayas Ombombo Oyombra. In view of the foregoing, the matter is now *sub judice* and I cannot therefore comment further on it. Police investigation file No.634/96/95 and Court file 228/95 are relevant to this case.

Secondly, Mr. Speaker, Sir, hon. Members will recall that following hon. Mwavumo's allegation that regular and administration police harassed innocent wananchi in Likoni, I did undertake to bring into this august House a Ministerial Statement in that respect. The position is as follows:-

On 4th of April, 1995 at 9.45 a.m, one Mr. Keah Mzee and his labourers were working on his plot situated at Maweni area, near Likoni Ferry. Suddenly a group of about 30 people emerged around with stones and pangas and attacked Mr. Keah Mzee and his workers who resisted the attackers and fracas ensued. As the two parties intensified the fight, police on patrol led by Inspector Swale Rhamadhani, Police Constable Samuel Membwe and Corporal Joseph Mureithi arrived at the scene and tried to separate the fighters. Police later learned that the dispute was over the ownership of the plot on which Mr. Mzee was working one. Unfortunately, the fighters turned their wrath on the police pelting them with stone and other objects. The police responded by firing in the air in a bid to scare the attackers but the attackers became even more violent whereby they seriously injured police constable Samuel Ondara on the head. Sensing the danger, the police opened the fire and one Msumbi Bajuma was shot in the right hand. The attackers then fled and the commotion, they damaged the windscreen a motor-vehicle No. KAB 208X and a matatu. As a result, the following people were arrested: Mwalizama Juma, Rashid Mohamed, Obed Juma, Mzumbi Bajuma were charged with behaving

in a manner likely to cause breach of peace by assaulting a police officer and malicious damage to property. Police file No.344/151/95 and Court File No.1292/95 are relevant in this respect.

Mr. Speaker, Sir, in view of the foregoing, it is now clear that the police did not attack innocent people as alleged. On the contrary, they just moved in to enforce law and order in a situation which would, otherwise, have deteriorated into a more serious fight.

**Dr. Kopyo:** Mr. Speaker, Sir, I rise on Standing Orders No.69 to clarify that last week while asking Question No.061 regarding land allocation in Nairobi, the Kenya Television Network went on to report that this was done by the hon. Ndichu

**E.3. - 11.4.95.**

who is a friend and colleague from Juja Constituency. I just want to inform the press that I am Otieno Kopyo and not Mr. Ndichu.

**Mr. Speaker:** Next Order!

### **MOTION**

#### ADOPTION OF P.A.C. REPORT

THAT, this House adopts the Report of the Public Accounts Committee on the Government of Kenya Accounts for the year 1992/93 which was laid on the Table of the House on 30th March, 1995.

*(By Mr. Wamalwa on 30.3.95.)*

*(Resumption of Debate interrupted on 6.4.95)*

**Mr. Speaker:** Mr. Sankori was speaking last time.

**Mr. Sankori:** Mr. Speaker, Sir, before I continue with my contribution, I would like to take this opportunity to protest against one of the daily papers, *The Kenya Times* for giving me the wrong name all the time. On Saturday, they called me Kamuren and on another day, they called me hon. Sing'aru, M.P. for Kajiado South. I would like them to know my name and to spell it correctly. I am hon. Sankori, Member for Kajiado Central.

Having said that, Mr. Speaker, Sir, I would like to continue with my contribution on the Report of the Public Accounts Committee which was Tabled by the Chairman a week ago. It is unfortunate that some of the hon. Members in this House have chosen to carry debate in this House outside this House. As we all know, hon. Members have all the right and privilege to say whatever they want to say in this House. However, it is against the Standing Orders of this House to carry debate outside the House. Had it not been for the good heart on part of the Government, action would have been taken against such hon. Members.

*END E.*

**ART**

**F. 1 - 11.04.95**

**Mr. Shikuku:** On a point of order, Mr. Speaker, Sir. The issue now being raised by the hon. Member on the Floor is very close to the point I was trying to raise. I have also read and I do recall that you made a Communication from the Chair very clearly in simple English to all hon. Members that no hon. Member is allowed by the Standing Orders to carry the debate

outside the House. I can now hear the hon. Member allege that some hon. Members of this House have done exactly that. Why do you not get tough and have those hon. Members named and thrown out of the House because it is either we keep within the rules or we call it a day and go home?

**Mr. Speaker:** Order, Mr. Shikuku! I am glad that the hon. Member for Butere is requesting the Chair to be tough. I thought occasionally to resort to being tough. But if it is in the interest of the House, obviously, I do not need any prodding. But you may revisit that issue on Thursday!

**Mr. Shikuku:** Thank you, Mr. Speaker, Sir.

#### ANONYMOUS LETTER

**The Assistant Minister for Research, Technical Training and Technology** (Mr. Khalif): On a point of order, Mr. Speaker, Sir. Some hon. Members are circulating a letter here which discusses this debate. We do not know the author; it is anonymous. It has no signature on it, but it is trying to pre-empt the decision of this House on this Report. So, I would like to bring to your attention this letter and I would like your guidance on this matter as far as the Standing Orders are concerned?

**Mr. Speaker:** Order! As long as the matter has not come to the Floor of the House, the Chair is absolutely unaware. Secondly, if hon. Members were to canvass or lobby, the Chair has nothing to do with that. I am not concerned at all with what hon. Members do to try to persuade each other so long as it does not pervert the rules of this House. Proceed, Mr. Sankori.

#### ADOPTION OF PAC REPORT

**Mr. ole Sankori:** Mr. Speaker, Sir, I am glad you have made a ruling on that issue; we wait until Thursday. But let me say that the Report that was Tabled by the hon. Wamalwa is a Report of this House and, therefore, a Report of the Committee. So, it is no longer a Report of an individual and the House must accept whatever was in that Report. So, it is up to the decision of the House to accept it in total, to refuse it in total or to amend it. So, it was brought to this House to be debated and for the House to make its own recommendation or decision.

Mr. Speaker, Sir, on the same line, it is very unfair for anybody here or outside to make allegations that cannot be substantiated by tarnishing the good names of the hon. Members who were in that Committee. It is more worse if it comes from an hon. Member of this House.

Mr. Speaker, Sir, people are talking a lot about this Report but they are only concentrating on very few pages of the Report.

The entire Report constitutes of 972 paragraphs, but people are only concentrating on one or two paragraphs. Why? It is my wish that hon. Members should peruse the whole Report of 972 paragraphs and come up with whatever findings or solutions. The same Report has 472

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pages and people are only concentrating on 6 pages. Why? It is very unfair as hon. Members not to see what is happening to the entire organisation of the set up of the Government and how wananchi money is being spent.

People are already mad about Goldenberg and so on, but I would request the hon. Members to see beyond that. It is not the wish of either the Committee or the Government to

cover up anything. But it is entirely what they received throughout the interviews they had with whoever appeared before the Committee. All that is in verbatim and hon. Members have a right to go the Library and pick up whatever they want and make their own conclusions. But to just brush the Report aside and blame hon. Members for no apparent reason, I think, that is a bit unfair to both the Committee and this House. It is because it is this House that elected those Members of the Committee and the House has the right to remove them, if it so wishes.

**Mr. Ruhiu:** On a point of order, Mr. Speaker, Sir. This is not in connection with the hon. Member's contribution. However, since we came to this House this afternoon, no single Kanu Member seems to be steady on his seat. They seem to be lobbying and canvassing about something clandestine. Can we be told what is it so that we are aware too?

**Mr. Speaker:** Order, Mr. Ruhiu! Except that I did send you out last week for a frivolous point of order, I will restrain myself today from doing so. But you are certainly guilty of a false point of order! Hon. Members of this House have a right to consult and to lobby. After all, that is what Parliament is all supposed to be. If you want to have your way, it is not by the sword but by persuasion that you will have it. So, please, can we have the debate uninterrupted unnecessarily.

**Mr. ole Sankori:** Thank you, Mr. Speaker, Sir. I was driving at one of the paragraphs that people have a lot of interest, and this is paragraph 112 that deals with the loss of cash at Central Bank of Kenya. It is very clear that some money got lost from Central Bank of Kenya. It is not just small money but a lot of money. The Government has already taken action even before this issue came to this House. People are already in court and I see no reason we should doubt the Government when it does something that it wants to be done. I am talking about the KSh.13.5 billion and the KSh.5.8 billion. The Government has already taken action and people are already in court. I see no reason why we should doubt what the Government is doing. I have dealt in length on that issue and I would invite hon. Members to go to the Library and get themselves copies of the verbatim report of the Committee. The questions they are now asking had already been asked and I do not want to tire hon. Members by reading the entire verbatim report. But if it is the wish of the House, let me read some parts of the Report.

For example, the US\$210 million which is equivalent to KSh.13.5 billion. It is on page 9 of the Committee Report of 27th September where we invited officials of the Central Bank of Kenya, including Mr. Kamlesh Pattni and we grilled all of them. If I may just quote a part of it:-  
*"The Chairman:* Just before you do so, maybe Mr. Njoroge something that might throw some light on this issue of KSh.13.5 billion".

**(End.F.)**

**AWN**

**G.1-11.04.95**

**"The Controller and Auditor General** (Mr. Njoroge): Mr. Chairman, I was just going to ask this, if in fact they were entering into contract on behalf of Exchange Bank, does this one form part of what you are now demanding from Exchange Bank?"

This is in connection with the US\$ 210 million.

**"Mr. Marambii:** Mr. Chairman, the whole issue of US\$ 210 million is part of

our bigger scandal - what was taken and eventually returned to the Central Bank of Kenya." That is Mr. Marambii speaking. He then continues to say:-

"Mr. Chairman, this money was taken in part of 1993. The first hundred million dollars were promised to Central Bank on 1st June 1993. The second were US\$ 110 million and were promised on 30th June, 1993."

There were some irregularities and thus we find those people involved in these irregularities in court. They were actually covering up this issue and Central Bank has taken up steps to make sure that these things come into light. Had it not been for the agreement that was made later on 29th September that year, this thing was very clear to us until that agreement came into force. At the same time, this is the same money that some hon. Members of this House wanted to implicate some hon. Members which is completely different from the Goldenberg money and that is the issue I want the Public and this House to understand. The Kshs 19 billion has got nothing to do with the Goldenberg issue. The only connection is that it is the same person conducting the whole business but he was doing it at different times.

Mr. Speaker, Sir, I do not want to take a lot of your time. Coming to the very crucial Paragraphs 38,39 and 40, I want to say something about them. Our recommendations were unanimous as a Committee. On page 409 of the report, for those who have the Report, the minutes of our last meeting read as follows:-

"Members who were present---

**Mr. Speaker:** Order! Order, Mr. Sankori! Was that part not read twice now?

**Mr. ole Sankori:** I do not know.

**Mr. Speaker:** I believe it was read by hon. Obwocha and hon. Wamalwa.

**Mr. ole Sankori:** If it was read twice then I beg to just refer the hon. Members to read page 401 of the Report to see who were present that time and what we said.

Page 38 and 39 of the Report deal with the Goldenberg issue. The amount involved in Goldenberg in total is only Kshs. 3.1 billion. The 20 per cent which was already paid is Kshs. 1.16 billion. The 15 per cent is Kshs 0.250 billion, the pending bills is Kshs 2.1 billion totalling to Kshs 3.1 billion. That is the total amount of money involved in Goldenberg, the paid and unclaimed bills. So, for the hon. Members or the public to be thinking that Goldenberg is something of over Kshs 10 billion is not right. We should put our records right.

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The procedures had already been explained and thus I do not need to repeat them. They were explained last year by the Chairman and the Seconder of the Motion. The irregularities were explained and this was only for one year. Export Compensation was terminated in January, 1992 but legally put on Gazettement in April, 1993. According to paragraph 40 the Committee recommended that that money be recovered. You look properly at it. If I may read the last paragraph which is found on page 20 of the Report, I am reading the recommendations:-

"The Committee further heard that the consignment of 81 kilogrammes of gold was in October and November, 1991 imported from a foreign country in a briefcase as accompanied by baggage of two persons connected with the company. However, since the arrival of this consignment, no duty and VAT has been collected. The Committee noted that a further consignment of 31<sup>1/2</sup> Kilogrammes of gold bars were brought into the country by a Mr. Gillani of Goldenberg International, Nairobi and for which duty and VAT amounting to K£206,670 was not

collected"

If you read the end of the recommendation, just before Paragraph 41 you will find that, and I quote:-

"The Committee further recommended that a total duty and VAT due on the 81 Kilogrammes and 32 <sup>1/2</sup> kilogrammes of gold respectively amounting to K£ 729,930 be collected forthwith"

The Committee recommended on that paragraph for that amount of money to be collected. It is unfair for some hon. Members to take a Report of the Public Accounts Committee as though there was nothing done on it simply because of one, two or three paragraphs that hon. Members are not happy with. I am making that very clear because it is not right to take a lot of time to discuss one particular item while in actual fact compared with what is in that Report, it is very very little. There are a lot of things that are in that Report that we need to address ourselves to.

As I said earlier on, it is this August House that can decide what to do with that Report. We brought the Report here for you to decide whatever you want to do with it. As I said you can take it *in toto* or refuse it *in toto* or you can amend it the way you want.

Coming to paragraph 129 and 130, that addresses the issue of Somaia, it is very unfortunate that the Public Accounts Committee has tried its level best to have this man brought in to answer or throw some light on the Kshs 4.7 billion that he was paid for some goods he never supplied. I am glad that some of you have seen the effort that the Chairman and the Committee have tried to put to bring this man back to this country. It is unfortunate that a lot of things around that time happened. I am saying that it is unfortunate because almost all people who were doing that are no longer alive now, like the late Oyugi. The **G.3 - 11.04.95**

Committee has never refused, at any one time, to call whoever we thought could throw some light to us so that we bring a Report that would be acceptable by everybody in this House though we were very sure just the way you are also very sure that there will never be anything that all of us can agree on and that is why we have got a multi-party democracy. We must have different ideas and we must accommodate them.

**End G**

**JNM**

**H.1. - 11.04.95**

Mr.Somaia was given a lot of money by the Government because it was thought that he was going to behave in an honourable manner and be able to supply whatever he was required to supply, but unfortunately he did not.

Mr. Speaker, Sir, on the question of pending bills, these amount to billions of Shillings. We have requested the five senior most officers in the Government together with the Treasury to find a lasting solution to the issue of pending bills. Pending bills are a cancer in our Government. In the Report we are discussing now we have nearly K£230 million for pending bills. That actually forms a big part of the Budget of the Government. I am not dwelling much on this point because we have addressed the issue to the respective Accounting Officers. In this Report we also have a problem of unfinished projects. This issue is not new to you hon. Members. It was the wish of the Committee that the Government tries to complete a lot of the



stalled projects. We have actually taken up this issue very seriously with the same five senior most officers in the Government, who are the Attorney-General, the Head of the Public Service and Secretary to the Cabinet, the Controller and Auditor-General, The Permanent Secretary, Treasury and the Director of Personnel Management. This is because there were some policy matters which we wanted to address to these officers. Unfinished projects are costing us a lot of money in terms of the funds used on them, the service they should provide to wananchi and non-collection of appropriations-in-aid (AIA) which the Government should collect in the process of their implementation. Again, delayed completion of projects increases costs due to ever rising prices.

It might be good to start another project, but it is not proper to leave a project half-way done so as to start another one. For example, there was a project in Voi for construction of 400 housing units. Surely, who will rent these 400 units in Voi? Somebody realised the excessiveness of the units and split it so that some of the units were built in other districts, but none of the units is completed.

Now, it is useless for us to continue making recommendations which are never implemented. I request this hon. House to ensure that whatever recommendations are made are implemented. This should be more so where no money is required for the implementation. For example, you do not need money to implement a recommendation that Mr. Sankori be sacked. Other arms of the Government must be used to implement whatever we recommend.

We also have a problem in our Committee. This is because we are not a crime investing Committee. Even though people have told us to investigate crime we cannot do that. You have read in the newspapers that we tried to call somebody who is outside this country to appear before the Committee but he did not comply. We also asked the Attorney-General to assist us and he encountered some problems. This is because the law does not allow us to go into some areas. This shows that we will need an amendment in our Standing Orders and laws to be able to function properly.

As I promised earlier, it is not my wish to be long on this debate.

So, with those few remarks, I beg to support.

**The Minister for Finance:** Mr. Speaker, Sir, I beg to propose an amendment to this Report by the Public Accounts Committee (PAC), which is that the Motion be amended by deleting the full stop appearing....

## H.2 - 11.04.95

**Mr. Anyona:** On a point of order, Mr. Speaker, Sir. I understand the Minister for Finance wishes to propose an amendment to the Motion before the House. Now, the provisions of Standing Order 46(4) and paragraph (b) are very clear as to how amendments are proposed. For the same reason if the House could let me read that bit of the Standing Order.

"When two or more amendments are proposed to be moved to the same Motion Mr. Speaker shall upon the movers in the order in which their amendments related to the text of the Motion or in cases of doubt in such order as he shall decide, provided that no amendment may be moved which relates to any words which it has been decided shall be left out of the Motion."

My point of order is this, that on Wednesday last week I submitted a proposed amendment to this Motion and I have been waiting for an opportunity to move it. If the

Minister for Finance wishes to move an amendment - and he has the right to move it - we can do one of two things. Either he can move an amendment to my amendment or move an amendment after my amendment has been disposed of. So, I thought that it is important that we must get this procedure clear, otherwise what the Minister wants to do will amount to hijacking an amendment already proposed by the Opposition. This will create very bad faith in this House and yet want to deal with this issue as one House, find out mistakes and correct them. But, someone should not try to hijack something in order to get credit. He cannot get credit for that; it is too late and he made mistakes. We are the "doctors" to try and operate on the Minister and get him cured. So, I thought it is important we do not allow this matter to be hijacked in this manner.

**Mr. Speaker:** Order! As far as I am concerned I have no interest in who gains what political capital and who loses. As it is important that hon. Members who want to appear, as a matter of fact, to be honest must actually be so, I am sure the hon. Member for Kitutu-Masaba knows very well that he has just handed in an intended amendment; he has done this just now as we were sitting here. That obviously is much later than when the Chair got other proposed amendments. But the most important thing is this, that any hon. Member who proposes an amendment to a Motion has obviously to move it when he gets a chance to contribute to the Motion. There is no way you can propose an amendment when you are seated. There is no way in which, for example, two or three hon. Members who would like to propose amendments will do so at the same time. What I propose as the way forward for you, hon. Anyona, is that if you are happy with the amendment - we have not yet heard it - being proposed you can support it; if there are certain aspects you are unhappy about you can further amend the amendment. May I also say from here that there is no limit to the number of amendments that may be proposed to any particular Motion, or to any intended amendment to a Motion. I will assure the House the Chair will receive as many amendments as will be forwarded to it and will put them to the House for its determination and final decision.

#### **End of H.**

**GKI**

**I-1. 11.04.95**

**Hon. Members:** On a point of order!

**Mr. Speaker:** Order! Can we hear what he has to say first? We have not even heard what he has to say. He has only said "I wish to propose an amendment". Is that offensive?

**Mr. Wamae:** On a point of order, Mr. Speaker, Sir!

**Mr. Speaker:** Order, Mr. Wamae! I do not understand how you can assume the role of giving yourself the Floor. There are three other hon. Members. Anyway, you have the Floor.

**Mr. Wamae:** Mr. Speaker, Sir, you ruled here that you would call the speakers alternatively, from the Opposition side and the KANU side. Now, you have called speakers from the KANU side twice, which is wrong according to your ruling!

**Mr. Speaker:** Order! Order! Hon. Members, if you are serious, you must be serious.

**Mr. Nyanja:** We are serious!

**Mr. Speaker:** Order! You are not, Mr. Nyanja, and if you further interject when I am on my feet, you will know what seriousness means!

Now, I would like to invite the attention of this House to the Motion itself and to whom it is addressed. It is addressed to the Minister for Finance and the Minister will do this House a great favour if he did, for example, give an indication as to what he proposes to do with this Motion. If the Minister for Finance wishes to say that he accepts or opposes, may be, the House

is the better for it. If he has an amendment that will satisfy this House, then House is the better for it since the hon. Members will know in advance what it is that the Minister, to whom the Motion is addressed, considers that Motion to be. It is in that light that I called upon the Minister for Finance so that he can give his indication of how he intends to respond to this Motion. Consequently, the Members will also not be belabouring an issue that will, may be, not come up later. Therefore, I think that it is in the interest of the House that we know what possible amendment the Minister for Finance has. May be, it will forestall a thousand others or even invite a thousand others. That is better for the House before too many Members have spoken. As you know, once a Member has spoken on a Motion, he may not speak on it again and, may be, certain issues will arise that may make a Member say; "I wish I knew this before I spoke".

**Mr. Shikuku:** On a point of order, Mr. Speaker, Sir!

**Mr. Speaker:** What is it, Mr. Shikuku, after I have made my ruling on the issue?

**Mr. Shikuku:** Mr. Speaker, Sir, I am not challenging your ruling at all. Far from it! However, I would like to seek your guidance, taking into account the experiences we have had in this House. Normally, before you move a Motion, you must give notice to the Speaker. If that is so, and if hon. Anyona submitted his amendment to you earlier than the Minister for Finance, then I would like to know whether that usual procedure where one submits his amendment to the Speaker can be overlooked and the latest amendment be considered.

**Mr. Speaker:** Order, Mr. Shikuku. I had just addressed myself to that fact. As a matter of fact, it is true hon. Anyona did forward an intended amendment to the Motion before the House. I have also stated that, today, hon. Anyona brought a further amendment that would amend his earlier amendment which, in fact, was later in time than the one for the Minister of Finance. In any case, as I have said, it is in the best interest of the House that they know what direction the Minister would like to lead in this debate. Proceed!

**I.2 - 11.04.95**

**The Minister for Finance** (Mr. Mudavadi): Thank you, Mr. Speaker, Sir, for that ruling which shall guide us. I propose that the Motion on the Public Accounts Committee Report be amended as follows:-

by deleting the full-stop appearing at the end thereof and inserting the words: "to the exclusion of paragraphs 38,39,40 and 112 and the recommendations appearing therein, taking into account the fact that the Government policy decision to grant export compensation to gold and jewellery was done procedurally".

Mr. Speaker, Sir, I am sure the hon. Members would want to know why the Government is proposing this amendment. Though the Government had acted procedurally in the initial policy decision to grant export compensation ---

**Mr. Shikuku:** On a point of order, Mr. Speaker, Sir. Having listened to the Minister, I find that his amendment is similar to hon. Anyona's amendment. Is that not the hijacking what hon. Anyona was talking about?

**Mr. Speaker:** Order! Order, Mr. Shikuku! The amendment that was proposed by hon. Anyona on Thursday last week was that the Report be accepted excluding paragraphs 38, 39 and 40, and it stopped there. Now, in the one that he has presented today, in addition to paragraphs 38,39 and 40, he goes further to add paragraph 112. That is his intended amendment as of today which was handed to me during this sitting. The amendment of the Minister is exactly what hon. Anyona now wants, but he had done that much earlier than Mr. Anyona. I get

all these things so I understand.

**Hon. Members:** On a point of order!

**Mr. Speaker:** Order! Unless it is really on something else, can we be serious a little now? Can we now move on?

**The Minister for Finance** (Mr. Mudavadi): Thank you, Mr. Speaker, Sir.

I am sure that the hon. Members would want to know why the Government is proposing this amendment. Though the Government had acted procedurally in its initial policy decision to grant the export compensation to gold and diamond jewellery, subsequent events surrounding this policy decision have raised several questions and cast a lot of doubts in the minds of several Kenyans as to the actual value and earnings of the mineral trade. As a result of this, the recommendations that have been made by the Public Accounts Committee on this subject could have far-reaching implications on the well-being and integrity of this nation. If they are not tackled carefully, we could land into a very difficult situation. First, the Public Accounts Committee seems to have completely overlooked the question that there are several criminal and civil cases revolving around the principal players in this saga before the courts of law. Therefore, allowing Parliament to debate it in the light of this situation, could be extremely dangerous as it will put the courts in an awkward situation and it also immediately brings to focus the spectre of a constitutional crisis, bearing in mind the importance of upholding the doctrine of the separation of powers when dealing with State matters.

Secondly, it is important to point out that the Public Accounts Committee, indeed, when presenting the Report, cast doubt on the evidence it adduced before arriving at its recommendations. Then the big question is: How can they make such far-reaching and conclusive recommendations if they feel the evidence is doubtful?

**End I.**

**PAO**

**J.1 - 11.04.95**

What a contradiction? Furthermore, the Committee goes on further to recommend that more monies be paid to Mr. Pattni and his associate companies. Which Government, may I ask, would dare accept such proposals?

*(Applause)*

Which Government? Certainly not the KANU Government! Perhaps, hon. Members of the Public Accounts Committee shall shed some light on this issue. It would appear that sometimes we have very short memories. At this juncture, I feel that it is absolutely imperative that I prod our memories on this most fundamental issues.

Mr. Speaker, Sir, it is only recently that His Excellency, the President, Hon. Daniel arap Moi painstakingly and courageously guided this country through that delicate transition from a single party state into a multi-party state with all the associated problems of instability, insecurity and ethnic conflicts *etcetera*. It is only recently that His Excellency, the President has astutely guided this nation in restoring positive relations with the international community after they were severed in 1991. He in turn has helped to restore investor confidence and to renew interest in Kenya. Inflation is down to a single digit level. Our balance of payment position is stronger, the exchange rate and the Shilling is showing greater stability. There are prospects of economic growth of about 3 per cent. In short, there are promising signs of economic recovery.

Therefore, Mr. Speaker, Sir, to accept the recommendations of the Public Accounts

Committee does nothing short of completely undermining the tremendous achievements that the President has been able to secure against all odds and within such a short time.

*(Applause)*

Indeed, if this Parliament were to sanction these recommendations as they appear, it would be like throwing the Government into the den of lions.

**Mr. Shikuku:** Stop reading!

**The Minister for Finance** (Mr. Mudavadi): Mr. Shikuku, I do not why you are getting jittery. As a Parliament---

**Mr. Speaker:** Order, Mr. Mudavadi. What is it Mr. Shikuku?

**Mr. Shikuku:** Mr. Speaker, Sir, I am on a point of order. Since this hon. Member does not sit in this House regularly, I better educate him. He does not know the Standing Orders. We are guided by Standing Orders. Standing Order No. 65 states:-

" No Member shall read his speech, but he may read short extracts from written and printed papers in support of his argument and may refresh his memory by reference to notes."

*(Loud consultations)*

**Mr. Shikuku:** Mr. Speaker, Sir, can I be heard in silence?

**J.2 - 11.04.95**

**Mr. Speaker:** Order hon. Members! Less excitement will make us debate freely. Can we in the usual manner give every hon. Member who rises on a point of order, our ears and, indeed his right to rise on a point of order so long as it is not frivolous.

**Mr. Shikuku:** Thank you, Mr. Speaker, Sir, for your ruling. I have not finished. I was trying to draw your attention to the rules of this House. If all of us kept these rules we would be very happy people. Standing Order No. 65 forbids reading his speech. He can only refer to the paragraph and continue, but the hon. Member rarely sits in this House, so he is reading as if he is reading the Financial Statement.

*( Applause)*

Could you draw his attention to this Standing Order No.65 and let him sit often in the House so that he gets familiar with the Standing Orders?

**Mr. Speaker:** Order! I agree. Hon. Members will make their speeches in the House verbally. They may of course, in accordance with Standing Order No. 65 refer to their notes or to printed documents, but refer means refer. So, can you proceed!

**The Minister for Finance** (Mr. Mudavadi): Mr. Speaker, Sir, I think I was simply referring to some notes here, and I was not reading as the hon. Shikuku would like to imply. I do hope that he will come to terms with the matter that is before us.

Mr. Speaker, Sir, I would like to highlight that in this Parliament we should not become prisoners of conscious. We should deliberate and legislate on the issues before us, and be able to go out to the public and defend the decisions that we either make collectively or individually

without fear or favour.

*(Applause)*

It is in this regard that I want to say that any hon. Member of good will, will see the seriousness of this Motion. If we have to go out there and speak to the public, who are our electorate, we must be able to stand up and say: "that" if it is the issue of throwing money to somebody and yet there are extreme doubts on how it is supposed to have been earned, we should be able to stand without shuffling our feet.

*(Applause)*

Mr. Speaker, Sir, the public is watching and they are getting restless. If the public were to lose faith and confidence in Parliament, the Executive and the Judiciary, then what option will they have? Your guess is as good as mine; they will resort to the streets, to anarchy and chaos will reign supreme. This Parliament should not precipitate that crisis. Instead, it should assist in averting it.

Mr. Speaker, Sir, in the light of the fact that there are several issues before the courts of law revolving around the principal players in this matter, it be awkward, as I indicated earlier, that if this matter was to be debated and concluded in this House, we would be putting the country into conflict. I therefore, wish to implore this House that they exclude the recommendations of the Public Accounts Committee contained in Paragraphs 38, 39, 40 and 112.

**J.3 - 11.04.95**

Mr. Speaker, Sir, I would also like to urge the Attorney General and the investigative arms of Government to ensure that the issues that relate to this saga will be immediately looked into, expedited and the matter brought to its logical conclusion.

*(Applause)*

Mr. Speaker, Sir, Kenyans and the country as a whole have been haunted for too long. These issues will continue to haunt them unless some firm action is taken. The process of restructuring the economy and ensuring absolute confidence in the management of the affairs of the State can extremely be difficult. The Parliament should assist the Government in ensuring that these things are kept on track and at the same time, they should not allow themselves to be dragged backwards by whatever issue that may arise.

Mr. Speaker, Sir, when I started I did remind this august House that we have just come out of a very tumultuous and traumatic situation. We know very well what the implications of lack of confidence in any economy can do. We know what lack of confidence in the key institutions of State and of a country can do. Can this Parliament today look into these matters very critically?

**END of J.**

**JKK**

**K.1 11.4.95**

Mr. Speaker, Sir, can this Parliament look into these matters critically, come forward and vote in support of the amendment so that sanity can be start being restored where it had evaporated? I therefore beg to move:-

THAT, this House adopts of the Public Accounts Committee on the Government of Kenya Accounts for the year 1992/93 which was laid on the Table of the House on 30th March, 1995, to the exclusion of paragraphs 38, 39, 40 and 112 and the recommendations appearing therein taking into account the fact that the Government policy decision to grant export compensation to gold and diamond jewellery was done procedurally.

**Mr. Shikuku:** On a point of order, Mr. Speaker, Sir. Having listened to the Minister, he is only asking us to exclude recommendations. But could we get to the technical part of it? Is he therefore, in a nutshell, asking hon. Members not to air their views on the said paragraphs? That should also be included because if we continue airing our views on the said paragraphs mentioned in this amendment--- What is he intending to do to stop this House from going into issues which are prejudicial? This should be included in the Motion otherwise Members will be free to refer to the---

**Mr. Speaker:** Order! Obviously, this House will debate the intended amendment. By the way I have not even proposed the question because the amendment has not been seconded yet. This House will debate this amendment and either accept it or reject it. Once the House makes a decision one way then obviously the rules of relevance will apply. If the paragraphs in question will have been struck out then it will be irrelevant to talk about them. But if they shall remain, then it will be absolutely relevant and pertinent to discuss every issue. Could we first of all see whether the Minister has a seconder?

**The Minister for Agriculture, Livestock Development and Marketing (Mr. Nyachae):** Thank you, Mr. Speaker, Sir.

I rise to second and support this amendment that in deliberating upon the PAC report we exclude paragraphs 38, 39, 40 and 112. For some of us who have been public servants for years, since Independence, we have taken interest in reading reports of the PAC but none has proved so surprising to some of us, particularly to me, as this particular one.

The paragraphs we want to exclude are paragraphs which have far-reaching implications on the interests of Kenyans. In fact if this report was adopted the way it is prepared, without excluding those paragraphs mentioned, we might as well go back to the electorate and seek a fresh mandate. This is because the interests of the public are going to be affected by adversely by the recommendations contained in those paragraphs. Indeed, and as Members of Parliament know, I come from Nyanza Province. If Nyanza Province was given that money which is implied, we would not need to ask the Government for any more money for two years. A lot of money is involved here.

To make matters worse, Mr. Speaker, Sir, why do we have to rush into decisions on matters which are still being investigated? Some matters are before the courts of law. It does not matter whether the case is going on; it does not matter whether there has been an attempt to prosecute or an attempt to investigate the matter. It does not matter whether the Attorney-General has withdrawn the case. The fact of the matter is that members of the public are still **K.2 - 11.04.95** interested to know the outcome of the investigations. By reaching a conclusion in this H

Mr. Speaker, Sir, it is very unfortunate that here we are as a House which has always, over the years, resected the reports of the Controller and Auditor-General. I listened very

carefully to the Chairman of the PAC when he was moving the Motion. At one stage he told us that his presentation was based on the information the PAC had received from those who appeared before it. At no time did I hear him say, "In response to the queries raised by the Controller and Auditor-General, this is what we have decided." The presentation of the Report tends to imply that the issues raised by the Controller and Auditor-General were not as important as the presentations made by those who appeared before the PAC. We are discouraging the Controller and Auditor-General from reporting on what he finds going wrong. Have we been told at any one time that the investigations that were going on--- Have we been told that files relating to these matters have been closed and there is nothing else that can be done? Investigations are going on.

Mr. Speaker, Sir, if we are representatives of the people, then we must open all our ears and listen carefully to what members of the public are saying. The public are not with us on this issue. The people who elected us---

**Mr. Mwaura:** On a point of order, Mr. Speaker, Sir. With all due respect, and my total support to the amendment by the Minister for Finance, would it not be order for this House to assume that the debate before this House now, which is as a result of a crime committed by the Government itself, has now been hijacked to make the entire Opposition in Kenya look uncaring and irrelevant?

**End of K**

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**The Minister for Agriculture, Livestock Development and Marketing** (Mr. Nyachae): Mr. Speaker, Sir, the Report of the Public Accounts Committee (PAC) is not a Report of the Opposition. It is a Report of a joint Committee of the Whole House. Therefore, there is no question of hijacking. Here is an issue of national interest, and if we lose one cent,---

**Mr. Anyona:** On a point of order, Mr. Speaker, Sir. My main interest here is to have this issue resolved amicably. I am not interested in scoring politically. If now the Government is accepting what we said last week, that this matter is before courts of law, and therefore cannot proceed in this House, the Chair offered to make a ruling and that ruling has not been made up to now. Is it, therefore, not correct, now that the other side is crying about the matter being investigated and taken to court, that the provisions of Standing Order No. 74 take effect immediately, rather than waste time here discussing this Motion?

**The Minister for Agriculture, Livestock Development and Marketing** (Mr. Nyachae): Mr. Speaker, Sir, the point I was making is that each---

**Mr. Speaker:** Order! What is it specifically you are having in mind, Mr. Anyona?

**Mr. Anyona:** Mr. Speaker, Sir, last week, I raised issues of this matter being---

**Mr. Speaker:** Use the microphone. I want to follow every word you say.

**Mr. Anyona:** Yes, thank you, Sir. I hope they are working. What I am saying is that last week, I raised the whole question of the matter being *sub judice*. The Chair offered to make a ruling on the question of conflict between the Judiciary and the Legislature if these matters go on simultaneously. That ruling has not been made. This afternoon, Government decides to hijack our Motion and in the process admit that the matter is *sub judice*. If the matter is therefore, *sub judice*, is this House not out of order under the provisions of Standing Order 74 to proceed further with this matter?

**Mr. Speaker:** Order! Order, Mr. Anyona. I did promise, Mr. Anyona, the ruling,



and I am sorry to the House I have not completed it. I will deliver it in good time, but what I am saying is this: If debate on a matter that is in court- - Even on Thursday I did say and every Member will recall that I did say that all the time I have been the Speaker, I have held the rule, that this House should not discuss on matters which are *sub judicate*. You did raise a much more intricate issue than that, and intricate issues cannot be dealt with casually. Therefore, I am not prepared to deal with any matter that is serious and intricate in a casual manner. I will direct all my mind, and any resources that I will muster, to get a ruling that will not put this country into trouble or into any conflict. For now, I cannot see, for example, any issues that will be in contravention of Standing Order 74 if the Motion is "delete", and I repeat, "delete" paragraph 38, paragraph 39, paragraph 40 and paragraph 112. I think that will not lead this House to discussing the merits or demerits of any matter that is pending in court. I wish to take the earliest opportunity to say as follows: Pending my ruling, I wish to take the earliest opportunity to say as follows: The High Court of Kenya and all courts subordinate thereto has unlimited jurisdiction on civil and criminal matters, and any Kenyan citizen has an unimpeded right to seek redress in that court. I wish further to say that the Parliament of the Republic of Kenya, subject to the Constitution, has also unlimited power to legislate but they have no powers to adjudicate as to who is wrong and to who is right

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between citizens or between the citizens and the Government. That role is purely vested in the courts. So, with that in mind, can we proceed with the Motion before us, whether or not this House will accept the amendment proposal by the Minister or it will reject. If it does reject, then you will be at liberty, Mr. Anyona, to again draw my attention to that issue. Very well, proceed, Hon. Minister.

**Mr. Nyagah:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order! No further points of order. Order! Order, Mr. Nyagah. I think generally, hon. Members I tried to be as clear as possible in the first instance, and I tried to use as easy language as possible. I think those who have clearly followed what I said, I have been very clear and very simple. Proceed, hon. Minister.

**The Minister for Agriculture, Livestock Development and Marketing** (Mr. Nyachae): Thank you, Mr. Speaker. The point I was making is that each one of us here has an interest in the economy of this country, has an interest to see the right management; has an interest of making sure that he is answerable to the people of this country and that we act in accordance with the wishes of Kenyans. The second point I want to add on this is on the issue of management of economy of this nation, It does not matter to which political party you belong. If the economy is misdirected and something goes wrong, we all suffer, and we should see these things in the right perspective.

Mr. Speaker, Sir, there are too many reasons why we would like to see these paragraphs excluded because there are so many points to be clarified. We feel that adequate investigation has not been done and there are so many questions in our minds. For example, the billions of shillings that have been paid before and the implication of the additional money which might be paid. The question here is: if we are talking about gold and diamond jewellerys, all of a sudden---

**Mr. Speaker:** Order, Mr. Nyachae! I think you do understand my ruling very, very carefully. My ruling is simple. Standing Orders No. 77 states the reasons why somebody wants this portion to be deleted. I have said any Member who will try to talk about the merits or demerits of any matter that is pending before a court of law will be stopped.

**The Minister for Agriculture, Livestock Development and Marketing** (Mr.

Nyachae): Thank you, Mr. Speaker. I was not at all touching on those areas, but I was merely commenting on puzzling issues scertain that gold or whatever it is has certainly disappeared again. That is why some answers have to be given to Kenyans. That is the point I was trying to make. However I would like to end my remarks by appealing through this House that the Attorney-General and any other bodies that are involved in the investigations of this matter, please can they expedite action so that the Kenyans know exactly what is this mysterious thing which has been taking us round and round. Some matters go to court, then they come out. Then we hear of these debates. We hear of billions there, we hear of that, and then we want to end this matter here just like that because of the PAC.

Mr. Speaker, Sir, we shall give the Kenyans the first opportunity since Independence to truly elect people of moral courage, men and women who will lead this Republic with solemn courage and morality and not those who are filled with appetite to grab and to divide the public into two or many. Thank you.

**End L**

**CNJ.**

**M.1. - 11.4.95.**

*(Question that the words to be added be added, proposed)*

**Mr. Shikuku:** On a point of order, Mr. Speaker, Sir, normally, if you have spoken on the main Motion, you are allowed to speak to the amendment, but you have to confine yourself to that amendment. Now, point of order is this: some of us never spoke on the main amendment, shall we be allowed to speak on the amendment?

**Mr. Speaker:** That is absolutely correct, Mr. Shikuku. An hon. Member who has spoken to the main Motion may speak on an amendment to that Motion. However, he must restrict himself to the amendment. Those hon. Members who will speak to the amendment, must confine themselves to the amendment. Even those who have not had the chance to speak on the original Motion and have a chance now to speak to this amendment, may not take this chance to speak on the original Motion. Therefore, any hon. Member who has a chance to speak now will strictly confine himself to the amendment.

**Mr. Anyona:** Mr. Speaker, Sir, as I said earlier, my intention and my interest and I believe that that is the intention and the interest of all hon. Members of goodwill in this House, is to resolve this question of Goldenberg once and for all in the best interest of this country. I am therefore not going to engage myself in a game of hide and seek as often happens in this House between the Government and the Opposition. However, much as we in the Opposition feel that Government should not have indulged in this game of hide and seek, we would like to support the spirit of Motion even though the intention may not be as honourable. What I mean by that is that nobody in this House, even those in the Government, should try to make a political capital out of this matters. As far as I am concerned, there is not way Government can make any political capital out of the Goldenberg, because it is the same Government that was in involved in this matter in the first place.

Mr. Speaker, Sir, I would like to say that issue of Goldenberg is a political dynamite. I am saying so because if anybody tries to tamper with this matter, he will politically be brown up into pieces. Goldenberg is like a dangerous political snake that kills when it bites and you had better make sure it does not bite you because if it does, you will definitely die. Goldenberg is a

political hydra with many heads and we are trying to find these many heads are so that we can destroy this monster. I do not know whether we have experts who can destroy this the many heads in this political monster. Goldenberg, in spite of the stories we have heard clearly divided the Public Accounts Committee and I shall come to the merits and demerits of this later on. This issue seriously threatened to divide this parliament and if Parliament is divided, like hon. Nyachae said, then we might as well pack up and go home and ask our people for a new mandate. However, Kenyans would never give us a new mandate to many of the sitting members of Parliament who do not fully understand the interests of the country. So, do not go looking for a mandate that you will never get.

Mr. Speaker, Sir, today Kenyans are furious about the Goldenberg issue. I hear that the Government is scared of riots, but would this Government ever tolerate riots? I am sure this Government is prepared to kill and to maim through all manner of attack on innocent wananchi if they ever dared to riot. Today, donors and international community are amazed by the Goldenberg issue. In fact, I am reliably informed that they have had to intervene to get the Government to understand and come to their senses over this matter.

**M.2. - 11.4.95.**

**An hon. Member:** Give us the details!

**Mr. Anyona:** Yes, I can give you the details because I have them. I know more than you think. Do not get late when you go to receive dignitaries at the airport. Therefore, international community and the donors are keeping on watching as to how this Parliament is going to handle the question of Goldenberg. Therefore, passing the Goldenberg scam into Parliament is tantamount to signing a political death warrant, but I am sure we are wiser than that. At least when it comes to our own interests; when it comes to which side of our bread is well buttered, particularly the Government side, we are very smart.

Mr. Speaker, Sir, the amendment that the Government is trying to hijack is intended as an honourable auction out of this mess, both for the opposition and the Government. As I said, there is no way we can pass this Motion and expect to come back to this House. Therefore, as far as I am concerned, this is like a rescue operation both for this House and the country. This amendment offers an honourable auction and also a rescue operation.

**END M.**

**ART**

**N. 1 - 11.04.95**

Mr. Speaker, Sir, having said that, let me now touch on a few matters touching on this Report. The first thing I want to say is that the Public Accounts Committee (PAC) is a Committee of this House established under Standing Order (SO) 147(1). The membership as you know is five from the Government and six from the Opposition. The Chairman comes from the Opposition.

The mandate of the PAC is found under SO 147(1) and it is to examine the accounts of Government Ministries. The proceedings of the PAC are found under SO 160. I say these things because there has been a lot of confusion in both the Report and in some of the debates that have gone before us, and we need to expound those debates of those issues so that we can clearly focus on the matters that face both this House and this country.

Now, the proceedings of the PAC, Mr. Speaker, Sir, are the same as those of the Committee of the whole House which is found under SO 126 to 131. Now, there was an issue when the Report was being made and also in the Report as regards this particular section of the

Report to which the amendment relates, as to whether there was unanimity or not. Now, the point is that questions arising in a Committee of the House, just like questions arising in this House, are determined and decided by vote. In this particular case of the House, unless there is a Division, we never record names. But in a Committee of the House, if there is a difference, then a vote is taken and SO requires that the names of hon. Members voting for and against are recorded in a minute. This is SO 160(1). Now, from what I have read, there does not seem to have been any vote taken or any recording of those who voted for and against. So, therefore, as far as this House is concerned, it is a word of one or some against another or others. I do not think this House is in a position to make a decision when a matter like that arises. If the rules had been followed properly, we would not have had that problem.

**Dr. Otieno-Kopiyo:** On a point of order, Mr. Speaker, Sir. Is hon. Anyona not misleading the House when he says that where there is no recording of dissent, it means that some anomaly took place? The truth is that if there is no dissenting voice, it means the votes were unanimous.

**Mr. Speaker:** Order, Mr. Anyona! You must sit down when I am communicating even when I am seated! In fact, I find it extremely difficult to follow hon. Anyona maybe for being too close to that microphone. I think he is talking rather too loudly and I am unable to follow his argument. But that notwithstanding, I think all hon. Members are advised that when they debate this issue, they should not cast any aspersions to any individual Members of the Committee. They can criticise, but of course, with dignity and decency.

**Mr. Anyona:** Mr. Speaker, Sir, I was not criticising anybody; I am making observations arising from the Report we have heard in this House. The Chairman of the Report says there was unanimity. We have also heard both in this House and outside that there was dissent. All I am saying is that there is a procedure in the SOs how issues like those are resolved.

From what we can see from the Report, it is also true that a claim is being made that there was no unanimity. That is what I am saying and I am not supporting or condemning anybody.

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**Mr. Wamalwa:** On a point of order, Mr. Speaker, Sir. Last year when there was no unanimity, if hon. Anyona recalls, it was recorded which way everybody voted, and this year the fact that there was no recording as to how each person voted, it means there was unanimity.

**Mr. Speaker:** Order! Can I give a little direction? I do not really think for purposes of deciding as to whether to delete or not paragraphs 38 to 40 and 112, the unanimity or otherwise of the Committee is absolutely relevant because the Committee does act by simple majority. In fact, a decision of six against five is a lawful decision of the Committee. So, can we restrict our debate as to whether we should retain those paragraphs or we should do away with them? Proceed, Mr. Anyona.

**Mr. Anyona:** Mr. Speaker, Sir, the reason I have said that is exactly what you have said. I do not think that this House should be diverted from the issues before us by such arguments. I even went further to say that if there had been that evident, then we would have known one way or the other, but now we cannot because we were not there.

The other issue, Mr. Speaker, Sir, that I would like to refer to is that there has been a question concerning this paragraph with regards to publication of evidence from the Committee. Again, if we allow that difference to involve us as a House, then we shall get lost. That is why I am trying to throw some light on those issues.

Now, under SO 161, it is quite clear how evidence of a Committee are handled. Nobody is allowed to publish evidence or documents of a Committee prematurely, that is before it is presented to the House. One of the things that the Standing Orders Committee will have to decide is: when is the Report of the House presented to the House? Is it when it is raised here or is it when it is actually moved? If we say it is when it is moved, then we have this problem of as soon as this Report is here, it is being published by the Press. So, we really cannot say that at that stage we can stop people from talking about it. But in any case, before it is Tabled here, it is premature to publish that evidence.

Now, the Powers and Privileges Act, section 19, prohibits any matter before a Committee of the House going to court by a Member of the Committee or anybody else. All those arguments have come up in this debate and I think it is important to say and make it absolutely clear that anything that was done in breach of SO 161 - it does not matter who did it - it was wrong. That is not meant to attack or praise anybody, but those are procedures. We have said that in future, we want to open up those debates of the Committee to the Press and the public, but we have not done that. Therefore, as long as we have not done that, then clearly it was not right for those matters to be divulged. I say so because I do not think it is right for this House to allow matters that are either personal between individuals or are problems of a political party to be brought into this Report and to this House. "You can sort them out there; we wish you the very best but, please, do not bring them here!"

*(Applause)*

*(End N.)*

**AWN**

**O.1-11.04.95**

**Mr. Speaker:** Order! I would like to read the provisions of the Standing Order the hon. Shikuku is referring to. It says:-

"No evidence received by and no documents presented to a select committee shall be published or otherwise disclosed to any person other than a Member of the House until the report of that committee shall have been presented to the House"

My reaction to this is that Standing Order, No. 161 applies to the evidence or documents received by a select committee up to and before the report has been presented to the House. Once presented to this House, all that information comes to the public domain and once it comes to the public domain, including the library of this House, it ceases to have Standing Order No.161 applying to it. Any matter that is in the library of this House is open for perusal by hon. Members and with permission also to enter the library by any member of the public. So, I do not want to be all the time wailing and giving rulings on my feet. I am also only human too. If you demand too many rulings from me, when they get to too many I think I am also a human being.

*(An hon. Member interjects)*

*(Laughter)*

Order! So, that is my immediate reaction to what you are saying now. That precludes obviously what I will have considered but I can assure you that it will not be contrary to what I have already stated on my feet.

**Mr. Nyagah:** On a point of order, Mr. Speaker, Sir. Whereas I do not want to challenge what you have said, if I heard you correct you did say that any material that is in the library, any hon. Member can have access to it and we would properly like to have your ruling on this. I have in the course of last week tried to get a Verbatim Report on what transpired on a particular day of the 25th January, 1995 and this was not readily give to me and the reason as given by members of the staff of the Library was that, they are under instructions not to give to any hon. Member any of those Reports that are there.

**Mr. Speaker:** Order! As I said hon. Members, you will recall that last week, I am not quite sure whether it was Wednesday or Tuesday of last week, I did bring to the attention of all hon. Members the fact that the Verbatim Reports of the Public Accounts Committee were placed on the library and are available to all hon. Members. I think I did mention that here as a Communication for assistance of all hon. Members who would like to have access to any matter that is in the library. Once a document is in the library, if any hon. Member were to wish to borrow that document or book or paper it is incumbent upon the hon. Member to sign for it so that he or she is responsible for the security of that document or paper and the return thereof. I am completely unaware that any hon. Member is unable to get the Verbatim Report but if in the unlikely event that there is such inability, I have directed

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and the copies of Verbatim Report are available at the Table here for ease of reference by any hon. Member who would like to make use of them. If you cannot get them in the library which I am sure you should get, I have already made them available here. You can check them here, you can take and read them there or at your place and return them. So, can we proceed.

**Dr. Otieno-Kopiyo:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order! Can we give the hon. Anyona a chance to contribute.

**Dr. Otieno-Kopiyo:** My point of order, is on an important matter that you have just given guidance on. Last week, I raised the issue of Standing Order No. 161. I am grateful to the Chair for the direction you have given now but that was in reference to a specific incident where an hon. Member or some hon. Members had taken evidence or documents received by them during their work as a Committee elsewhere and you---

**Mr. Speaker:** Order! can we now go to the Motion. As I have said, what I ruled here is an indication that--- I said I have not prepared the considered Communication which I am assuring the House I will do in due course. There are certain things that I will deal with off hand like, simple procedural issues but there are certain decision that I also will make which have far reaching consequences. I would rather that an issue that has far reaching consequences is given the greatest of my attention and care and I would like the hon. Members to have a little patience. I have not forgotten and I will not forget that neither have I also forgotten the issue that has been raised on some hon. Members taking the debate out of this House deliberately, I must say in spite of continued complaints by hon. Members of this House and in spite of the directions I have given from here. I think generally those hon. Members must be warned that the House may run out of its patience and I have already advised the hon. Shikuku to revisit that issue on Thursday of this week. Proceed.

**Mr. Anyona:** Thank you Mr. Speaker, Sir. As regards the four paragraphs that we are proposing to leave out of this report, the four paragraphs fall into two very distinctly separate categories. Paragraph 38,39 and 40 deal with what has come to be known as Goldenberg scam, the actual Goldenberg. Paragraph 112 is a kind of subsidiary of that scam but I think the merits and demerits of the two are totally different. I would like to throw some light on the issues that we want this House to focus on in future when the matter comes before the House. It is important

to point out at this stage that whether we exclude these paragraphs now or not, whether the matter is pending before the courts of law for as long as it may take, this matter will finally have to come back to this House. There is no way a matter before Parliament or a matter before a Committee of Parliament, can be resolved in this particular form by the courts or by anybody else. It is important since the matter will be coming back not to be thinking in terms of how we are going to deal with it. An impression may well be created to the country that we are as was said last year, burying the issue on the Floor of the House. That when we exclude it from the main report that is the end of the story.

### End of O

JNM

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It must be clear to us whether the matter will have to come back in this House. Whether in the current session or in another in another session, finally it must come before this House. Secondly, in the meantime it will have to be decided - I do not know by what forum, though I have some ideas - as to how we deal with these four paragraphs. Do we send them back to the Public Accounts Committee (PAC)? Do we set up a new select committee to deal with them? Is the matter in actual fact handled out there by a public inquiry? These are issues we must be thinking about. This is because, to be able to finalise this matter a modus operandi which goes into the issues raised must be found. But at this stage, I would like to point out the issues involved that are in this Report. In paragraphs 38, 39 and 40 the following issues arise. One, as far as I am concerned, the validity or otherwise of a payment of 20 per cent export compensation and the sum involved in that regard is K£61,338,457,000. Now, if you look at the Local Manufacturers Export Compensation Act you will find that the rate applicable to this section, which is found in the First Schedule to this Act, was 20 per cent. The question this House has to resolve is, is there an issue here that requires to be resolved or that has not been resolved? I am not going to answer it now because we shall be coming back to it. The other issue is, the validity or otherwise of the additional 15 per cent export compensation amounting to K£12,639,064,000. If you add up the total of the 20 per cent and 15 per cent you will get a staggering sum of K£73,977,521,000. That was the figure as at March, 1993.

We have to decide finally when this matter comes up whether or not that extra 15 per cent was legal or otherwise; whether or not the agreement between the Central Bank of Kenya and Mr. Patni---

**Mr. Speaker:** Mr. Anyona, can we leave that out, please?

**Mr. Anyona:** Yes, Sir.

The other issue that arises from these four paragraphs is the unpaid claims as of April, 1994 of K£105,731,798. The other issue is the question of import duty unpaid on 81 killogrammes of gold, amounting to K£275,400. The issue is the question of Value Added Tax (VAT) on the same 81 killogrammes of gold amounting to K£247,860. The other issue is the import duty and VAT unpaid on 32.5 killogrammes of gold bar amounting to K£206,670. Now, those are issues arising which have got to be resolved. As long as the House feels that they have not been resolved then it is only fair that this matter should be excluded from the Report. Now, the other issue, as I said, is the legality of the contract between the two parties. The other issue is the justification of the payment of export compensation at the rate of 20 per cent.

**Mr. Speaker:** Mr. Anyona, I would like to know from you whether this House is vested with the power to interpret or make laws.

**Mr. Anyona:** Mr. Speaker, Sir, all that I am doing is to try and bring out the issues

involved in those paragraphs, which this House will have to deal with. The court will interpret their part of these issues, but the House has to deal with them. We have to be satisfied that those queries have been resolved.

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Mr. Speaker, Sir, the other issue is the legality of payments of customs refund. Here we are saying that a matter that was supposed to be handled as export compensation was finally handled as export refund. The issue we want to deal with is, is that legal? Where does the law lie? We are told in the Report of 1990/91 that under Head 135, Item 196, there was no provision in the printed estimates at all---

**Mr. Mulusya:** On a point of order, Mr. Speaker, Sir. The loud consultations in the House indicate disinterest in the contribution of the hon. Member on the Floor. Can I move that the Mover be now called upon to reply?

**Mr. Speaker:** No; way. I will not accede to such a request when we have a Motion as important as this one. The House must be given a chance to deliberate on it fully.

**Mr. Anyona:** Mr. Speaker, Sir, I am horrified to hear an hon. Member of the Opposition say that the House is disinterested in a matter as grave as this one. I hope the people have heard you clearly. If we do not know what is involved we will never be able to resolve it. I was merely trying to point out the issues involved in these paragraphs and I think I have a right to do that.

Now, there was no provision for this payment in the printed 1990/91 estimates. In the revised estimates for 1990/91 there was a provision of K£8 million. The question is, why was this matter not included in the main estimates? Was it an after thought? Or, was it an intention not to come out clearly and say what it was? In the 1991/92 estimates, again, there was no provision in the printed estimates. Now, that is very curious because in the previous year a provision had been made in the supplementary estimates, which means that by that time, at least, the Ministry was aware that there was a problem. Why then was it not included in the main printed estimates of the following year? In the revised estimates for 1991/92 there was a figure of K£7,399,629. I have looked at the debates that went on in 1990/91 and 1991/92.

*[Mr. Speaker left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

**End of P.**

**GKI**

**Q-1. 11.04.95**

In the debate on the two Estimates, there is total silence from the Mover of the Estimates as to what this item was all about. Here was an item that had been causing problems to the Government and, finally, they decided that it should be handled this way. I really find this very strange. It might be an oversight. As I said, I do not want to make any accusations because I was not there. The point is; why was it not made clear to the House and to the country that we were making provision under customs refund because we could not find a proper way of doing it and we intended to use it for this purpose? Was there an intention to mislead the House and the country? When we finally resolve this issue, there is a very tricky matter that bedeviled even



the Committee. This is the question of the fact that subsequently, these amounts were paid as customs refund and were sanctioned by this Parliament accordingly. That is why the Committee came here and said their hands were tied and they could do nothing because the matter had been passed by this Parliament. One of the reasons why we are excluding this Parliament is because I, personally do not believe that there is no way out of that problem. Parliament has power to repeal laws. In this particular case, if we should find that the Estimates were wrongly provided and, therefore, they were wrongly passed by the House, then clearly, a matter that may have been irregular cannot be justified by the fact that the House passed it. Those are issues which this House has to consider.

Mr. Deputy Speaker, Sir, there are various issues of evidence which were collected. I want to make this summary: Looking at some of the evidence that was taken last year and that evidence which was taken this year, one gets the impression that we have not come to the bottom of this matter. I do not know why. The Chairman of the Committee said they did not have power. I wish he could elaborate on the meaning of that. Does he mean that the Committee was obstructed by anybody, in which case the House should have been told, or, that the Committee lacked expertise? However, if, as we have been told by the Chairman of the Committee, they were unable to get conclusive evidence, then that is loud and conclusive reason why the House would not be in a position to pass this Report as it is. That is why it is important, therefore, that the matter be excluded from the Report. I would have gone into the various bits of evidence they were given and pointed out where I think there are shortcomings. I do not think that is important since the idea is to pass the Motion that we exclude these matters. Let me also point out the issues involved like I have done in the first case. The issues involved are that certain commercial banks were allowed to overdraw their accounts to the tune of K£888,076,350. These banks have the following breakdown: Trade Bank - K£2,172,329,283, Post Bank - K£2,063,986,511, Exchange Bank - K£13,525,211. We are told that that figure was reduced to K£2,375,711,887. Obviously, this House would require authentic evidence that that figure was so reduced, but those are the issues that are involved. The total of all that is K£17,751,526,794. That is one issue. The other issue is that there was no interest paid on those overdrawn accounts. You overdraw, you took the money, but you did not even pay interest. That is the other issue that has got to be dealt with.

Mr. Deputy Speaker, Sir, the other issue is that the Central Bank, in their wisdom, have made provision for bad debts. Now, in my lay man's language, what that means is that you intend to write-off that amount of money so you make provision in the books so that the books balance. It is not possible! This afternoon, we were being told here that investigations are not complete and yet the Government has gone ahead and made provision for bad debts.

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This shows that they know this money will not be paid. That is totally unacceptable to Kenyans and, please, go and rethink those issues. The other issue is the disposal of Trade Bank Centre estimated at K£400 million. What that means is that, that is far short of the amount that is owed to Kenyans, and particularly, to the Central Bank and the NSSF. This means that Kenyan workers and the Kenyan taxpayers are going to lose huge amounts of money, and for that reason, it is not right that this House should seek to pass this Report and that is why it is good that we are in agreement that we stop these matters. I do not think anybody should see it as a slight on the Committee as such. May be, the Committee did their best and now that they have come here, it is for us as a House to decide how best we can get out of this mess.

Mr. Deputy Speaker, Sir, the question of the Kshs13 billion is in respect of unremitted US\$210 million. Quite clearly, if you get Kenya Currency, and you promise to give dollars and

you do not give those dollars, it is a very clear matter. Either you are deliberately intending to defraud or it really can be anything else. How do you forget? You have taken the money and, therefore, you know you are supposed to pay the dollars. We can ask many questions, but we have got to appreciate that, may be, the Government was in very dire straits. We have heard of cases like in Zimbabwe, that is the former Rhodesia, where, during the Unilaterally Declared Independence (UDI), they had to do all sorts of things to survive. So, may be, the Government was trying to survive, but surely, you have given someone money to give you foreign exchange, you do not get the foreign exchange and he takes your money. That is an issue that will have to be dealt with. The other issue is the question of the hotel which was, apparently, given as security, valued at Kshs2.5 million. Now, there is some juggling of figures here. I think we need to go through these things systematically to find out exactly what we owe and what they owe us so that we can resolve the matter amicably. We, as a Parliament, must administer justice. We do not want to be against anybody, but we must do it on the basis of ---

**Mr. Shikuku:** On a point of order, Mr. Speaker, Sir. If I recall the Speaker's ruling on this, it is a question of whether or not we should delete paragraphs 38, 39, 40 and 112. If we go into the merits and demerits of the details of what happened, then that would be going against the spirit of this Motion. I was just wondering whether my hon. friend is not about to go over the Speaker's ruling.

**Mr. Deputy Speaker:** Order! I was out of the House when the Speaker made the ruling but, frankly, I was just debating in my mind as to whether hon. Anyona was not going overboard. As often happens, I looked for objections or challenges and I saw none. I think it is proper that you confine your contribution at this stage to the substance of the amendment and not the original Motion.

**End Q.**

**PAO**

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Mr. Deputy Speaker, Sir, I am talking about the amendment. I was saying - and I said so at the beginning - that we were really trying to highlight the issues involved in those Paragraphs without going into merits and demerits.

I was just pointing out what the issues are. but I fully understand the ruling of the Chair.

Mr. Deputy Speaker, Sir, I would like to be brief and say that those are some of the issues; there are many more. When they come before this House or before another Committee of the House, we shall go deeply into them.

Mr. Deputy Speaker, Sir, let me say as we said before; that there should no be illusion in anybody's mind that you can sweep the matter of Goldenberg under the carpet. The Committee depends on the Controller and Auditor-General, on Government officials and other sources of information and so the Government is a major player in this. A lot of information we had here came from Government officials. Is it not so? We are telling the Government, and I know there are some clever heads on that side of the House who think they can dodge all issues. You cannot!

*(Applause)*

On this matter, and we shall be suggesting on how it should be done, when this matter comes either before another PAC or before some sort of other Committee or whatever body it comes

before, before it finally comes to this House, let us all come clean let us expunge the reputation of this country of this scam, once and for all. As I said at the beginning, this afternoon, Government has tried to hijack a matter properly belonging to the Opposition in order to try and get credit. But we are so magnanimous on this side; we are so grown up, mature and democratic that we are willing to support this Motion.

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

*(Applause)*

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, I stand up to support the amendment moved by the Minister for Finance. I would crave the indulgence of the hon. Members and that of the House that I should refer extensively to my notes because what I have to say is very factual and will assist this National Assembly in arriving at the correct decision.

Mr. Deputy Speaker, Sir, as this is a very important matter for the nation, I know that the Kenyans are likely to get very annoyed concerned and emotional on this issue. That is understandable. But if we have to move on this issue and deal with it in its entirety, then let us, particularly in this august Assembly, look at it with sober and cool minds. I would like to take this opportunity to give the House some information which I think can assist us and this House in having an intelligent debate on the Motion as amended by the Minister for Finance.

Mr. Deputy Speaker, Sir, the investigations into what is now popularly referred to as the Goldenberg scandal began in July, 1993. When I say investigations, I mean investigations by the police. Immediately, it was realised that the matter was wider, larger, bigger and

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deeper than was initially thought. Accordingly, on 12th October, 1993, in the exercise of the power conferred upon me by the Constitution, Section 26(4), I instructed and directed the Commissioner of Police, in writing, to carry out comprehensive investigations into all the issues and report back to me. I further directed him to issue progressive reports until the final report. With regard to the final report and parts of those progressive reports my letter dated 18th March, 1994, I directed the Commissioner of Police to intensify their investigations. I further directed the Commissioner of Police, to find out in particular, and here I quote:

"Whether gold was exported, if so, how much? Does it tally with the declared quantity?

How much Foreign Exchange was actually received? And does this tally with the declared amounts, the basis of which the compensation is calculated and was paid and is claimed?"

I further instructed the Commissioner of Police to keep me posted from time to time. I want to assure this House that investigations will continue, but as and when any aspect of the investigation was completed and *prima facie* evidence disclosed, I did not hesitate, whatsoever, to institute criminal proceedings.

Mr. Deputy Speaker, Sir, currently there are three criminal cases instituted by the Attorney-General in these matters. What are these cases? The first one, I think it is important for the hon. Members to know so that they can make a good decision on this Motion. The first one is Criminal Case No. 4053 of 1994 in which Kamlesh Pattni, Elphas Riungu, former Deputy Governor, Lazarus Wanjohi Wairagu, Job Kelach and Michael Wanjihia, all former senior officials of Central Bank have been charged on 11 counts of theft by servants in case of the former officials and theft in case of Kamlesh Pattni of an amount of KShs.13.5 billion. They were arrested on 30th May, 1994 and made the first appearance in court on 31st May, 1994 and the hearing of this case has been fixed from 17th to 21st July, 1995. This case, of which hearing

dates have been fixed, forms some of the matters that had been recommended by the Public Accounts Committee. You will note at Page 44 of the Report that the Committee was also informed of the KShs.13.5 billion. The matter takes on from there. That is the amount which is the subject of the criminal case instituted by the Attorney-General in court and is due to be heard in July this year. These are the facts.

**END. R**

**Mr. ole Sankori:** On a point of order, Mr. Deputy Speaker, Sir. I would like the Attorney-General to clarify whether he is talking about the same KShs.13 billion on which the Central Bank had an agreement with Kamlesh Pattni.

**The Attorney-General (Mr. Wako):** I was coming to that, Mr. Deputy Speaker, Sir. The KShs.13.5 billion which is mentioned at page 44 of the report and whose analysis continues in the following pages is the same amount which is a subject of a criminal case in court. In other words, basically US\$210 million was promised but was never delivered although the money was given. It is this same case---

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

**Mr. Deputy Speaker:** Are you sure it is a point of order?

**Mr. Shikuku:** Mr. Deputy Speaker, Sir, I will never rise on something that is not a point of order. I am drawing your attention to page 280 of the report. This is the agreement entered between Mr. Pattni and the Central Bank of Kenya. Is the Attorney-General aware of this agreement? He is mentioning the same amount which is mentioned in this agreement.

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, I am very much aware of that. I urge hon. Members to be patient and listen to the entire story because all these points are going to be touched. Let them not be jittery about what may or may not be mentioned. I am going to touch on all these points.

Mr. Deputy Speaker, Sir, the Government did not just prosecute in a criminal case but at the same made attempts to collect that amount. The efforts have to some extent been successful because about---

**Mr. Orenge:** On a point of order, Mr. Deputy Speaker, Sir. I rise on a point of order because there have been several points of order raised in this House drawing the attention of the House to the fact that this matter is *sub judice*. The hon. Attorney-General is now treading on very dangerous ground. This is because he is conducting his prosecution before the House. I only wanted the assurance of the Chair that we shall be allowed to respond in kind because the root cause of this problem is the office of the Attorney-General.

**Mr. Deputy Speaker:** Order! Firstly, I wish to give an assurance here that anybody who has something to contribute will be given requisite opportunity to contribute. I am very much aware of the risk of discussing matters that are *sub judice*. I take it that the Attorney-General as the Chief Law Officer of the State will definitely know very well what amounts to *sub judice*. I understood him to be giving the reasons as to why he is supporting the amendment; that the matters are in court and therefore the issues involved in those cases are not available for analysis by anybody including himself.

**Mr. Orenge:** Mr. Deputy Speaker, Sir, the problem that I have is that--- Hon. Anyona spoke here and tried to deal with matters which were in fact remote to the present prosecution and they were ruled out of order. In fact hon. Anyona tried to keep away from these points. The assurance that I am trying to get from the Chair is that if at a different stage we as the Opposition are going to take the Attorney-General to task on these matters that he is talking about, and he is misleading the House on these matters, we shall not be stopped on the basis of *sub judice*. This is because---

**Mr. Deputy Speaker:** Order! Let me put it this way, and this will be final. The Attorney-General is expected not to express opinions on the merits of the issues involved in those cases. He is required to restrict himself to purely informing the House as to what cases are before the courts.

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, that is exactly what I am trying to do. I am merely informing the House as to which cases are before the court. I am not in any way going on the merits and demerits of those cases.

**Dr. Otieno-Kopiyo:** On a point of order, Mr. Deputy Speaker, Sir. There was a matter that arose before this House last week and the Speaker was requested to make a ruling as to whether this House was seized of the matter that went to court before they---

**Mr. Deputy Speaker:** Order! Order! Order! That is definitely a frivolous point of order. This is because there was a stage at which you were expected to know when to raise points of order demanding rulings which he promised the House before; that is immediately after Question Time. This is not the point at which you raise that matter.

**The Attorney-General (Mr. Wako):** Arising out of that amount, there is another civil case which is pending before the court and which is being heard right now and where all these issues which the hon. Member has touched on are for determination before the court. This is High Court Civil Case No.29 of 1995, Uhuru Highway Development Company versus the Central Bank of Kenya and others. In other words, this is the issue of agreements, counter agreements and what-not. That is the dispute about Grand Regency Hotel; whether it should be sold or not. All those disputes are being canvassed in the High Court Civil Case No.29 of 1995. That forms quite a big part of the recommendations of this PAC report.

Mr. Deputy Speaker, Sir, the other criminal case before the court is Criminal Case No.3314 of 1994, in which Kamlesh Pattni has been charged with two counts of stealing with alternative counts of obtaining money by false pretences and the amount involved there is KShs.2.6 billion. This case is due for mention tomorrow and the hearing dates will be fixed.

The other case that is pending before the court is Criminal Case No.46 of 1995 in which Kamlesh Pattni and Wilfred Koinange have been charged with three accounts of stealing money and the amount involved is KShs.5.8 billion. The case is due for mention tomorrow and the hearing dates have been fixed. Those are the three criminal cases so far instituted by the Attorney-General. There are other two cases which are before the court by way of private prosecutions. The disputes there are being determined in accordance with the law. I will not go into the merits or demerits of those cases. One is filed by hon. Raila and the other one is filed by the Law Society of Kenya. The disputes are currently in court.

**Dr. Lwali-Oyondi:** On a point of order, Mr. Deputy Speaker, Sir. Is the Attorney-General in order to cite all those cases without involved the former Governor of the Central Bank of Kenya? How could billions of Shillings be taken out of the Bank without Mr. Kotut knowing?

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, I have informed this House that those are the three criminal cases which are currently before the court and they are due to be heard. We have also two private prosecution cases and the argument on the preliminary points in those cases is still going on.

**End of S.**

**Mr. Orenge:** On a point of order, Mr. Deputy Speaker, Sir. The Attorney-General has just given one case as an example of the cases that are going on in court that he has said, and I have heard him very clearly, that one of the cases is that one which was filed by hon. Raila Odinga against hon. George Saitoti. The Attorney-General is misleading the House because he has taken over this case and terminated it. The Attorney-General is not having clean hands on this matter.

**Deputy Speaker:** Order! Order! Order! Firstly, Mr. Orenge, that is a point of argument, and not a point of order.

**The Attorney-General** (Mr. Wako: Mr. Deputy Speaker, Sir, I was to inform this August Assembly that the case is pending. It is still pending in a sense that a ruling is still being awaited. I will be talking on this same issue about private prosecutions. I want to inform this August Assembly that investigations are still continuing. The investigations into the three criminal cases which I have already instituted were able to be finalised faster because the deputy documentation involved is not large in what is called the original Goldenberg. There are hundreds of transactions involved with a lot of documentation for each transaction. It will be necessary, of course to carry on further investigations in Europe and Middle East *etcetera*. Some of the ground work on these investigations has already been covered. I have informed the House of the issues and the subsequent directive to the Commissioner of Police pursuant to Section 26(4) of the Constitution, to have a thorough investigation into these matters. I wish to take the opportunity to inform this House, and the country, that I have further directed the Commissioner of the Police to finalise his investigations into this very complicated investigation by Monday 15th May, 1995 and let me have a report. Mr. Deputy Speaker, Sir, I would also wish to comment on the report of the Public Accounts Committee in so far as they made reference to Mr. Cunningham. I agree with that recommendation and I have already acted on it and made the necessary directive to the Commissioner of Police. I want to assure this House, and the nation, that when I get an investigation file which discloses a *prima facie* case against anybody with substantial and reliable evidence which is admissible in court, that the criminal offence has been committed any identifiable person, let me assure this House that I shall discharge my Constitutional responsibilities under Section 26 of the Constitution and issued a criminal prosecution in the public interest and in the interest of justice, I cannot, in fact it would be wrong for me to institute prosecution merely because of public opinion. Let me also add that for as long as---

**Mr. Nyanja:** On a point order, Mr. Deputy Speaker, Sir.

**Deputy Speaker:** Mr. Nyanja, are you sure you have a very serious point of order?

**Mr. Nyanja:** Yes, Mr. Deputy Speaker, Sir. I want to ask the Hon. Member, the Attorney-General---

**Mr. Deputy Speaker:** I am afraid this is not the time for asking questions.

**Mr. Nyanja:** Is it in order, Mr. Deputy Speaker, Sir, for the Attorney-General to continue misleading this House with promises of investigations whereas this August House, and the entire Kenyan public know, that even investigations about late Dr. Robert Ouko have never come out? We cannot be taken for a ride. So, is he in order, at this point in time, to promise Kenyans that the investigations were ordered?

**The Attorney-General:** Mr. Deputy Speaker, Sir, in relation to the facts which are

before this August Assembly, investigations were ordered. I have shown the House that arising out of those investigations, already three criminal prosecutions have been mounted by the Attorney-General. I have assured this House that when I get an investigation file which discloses evidence against anybody, I will not shy from my responsibilities to act accordingly. Let me also add, for the benefit of everybody, that as long as I am the Attorney-General, and for as long as the Constitution of this Republic is in force, I shall not abdicate or shy away from my Constitutional powers relating to instituting and undertaking criminal proceedings in this matter of Goldenberg. This is an important issue and the Attorney-General in whom the powers are confided to prosecute will undertake the responsibilities, I will not shy away from those responsibilities at all.

Mr. Deputy Speaker, Sir, it is still assuming that Kenyans "in the processing of this jewellery reach the required percentage to make them qualify for the export compensation. A number of questions, and here I will say questions of facts, the disputes of facts have arisen. I do not have to go into all those disputes of facts which need to be clarified. They have arisen and these are matters which call for a thorough investigation under a method of determining those disputes on facts in order to establish the truth. Of course the PAC has itself acknowledged that they may not have had the necessary powers of investigations to enable them to arrive at the truth of some of these facts which are disputed. That is there in the Report. It is also there in the remarks of the Chairman of PAC when he introduced the Report, that they lacked the necessary powers of investigations in order to really satisfy themselves that this is so. Therefore, in so far as that is concerned, the conclusions are not necessarily justified in the Report, and as far as they are not justified in the Report, and that those matters are pending before the courts, it is better that this House enables a thorough investigation to be done by the police so that the criminal justice system can take place.

Mr. Deputy Speaker, Sir, I am aware that the Speaker has undertaken to make a ruling on this whole issue of *sub judice*. It is a very complicated and intricate affair and I will not in any way want to *pre judice* that ruling by the Speaker, but what I can say is this, that in so far as they are disputes on issues of fact which requires thorough investigations, and even after investigations and after investigations which require a method of determining those disputes, then I think here common sense should prevail so that the machinery which is in place should be allowed to take its course.

**End of T.**

**CNJ.**

**U.1. - 11.4.95.**

I can say that we are not breaching the Constitution. In fact, we are supporting the Constitution because the matter to be decided, does not in any way impeach on the constitutional powers of this National Assembly.

Mr. Speaker, Sir, to approve this Motion as it is today, does not in any way impeach on the constitutional powers vested on the National Assembly. I am saying this because section 30 of the National Assembly Powers and Privileges, is based on the legislative powers in Parliament. Section 46 states that that power will be exercisable by a bill passed in Parliament. This Motion does not, in any way, touch on a Bill to be passed by this House. Of course, section 60, as the Speaker said earlier on, is based on the unlimited jurisdiction in civil and criminal matters. Therefore, in so far as that criminal process is going on no---

**Mr. Shikuku:** On a point of order, Mr. Deputy Speaker---



*(Mr. Farah entered the Chamber)*

**Mr. Deputy Speaker:** Order Mr. Farah! When you walk into the Chamber, you should not pass between the Speaker's eye and the Member on the Floor. This is a cardinal rule of the House, but if your path must take you along that line, then you are required to bow so that the Speaker can see the hon. Member speaking.

**Mr. Shikuku:** Mr. Deputy Speaker, Sir, I would like to demonstrate what hon. Nyagah did. Could he stand up and then I come into the House so that I can demonstrate. This is a very complicated affair.

**Mr. Deputy Speaker:** Order Mr. Shikuku! We do not have the time to do that. I am afraid we have to be a little bit more serious. Although that has been said with a light touch, we do not need that kind of drama for the moment. I think hon. Members understand what you want to say, Mr. Shikuku.

*(Loud consultations)*

**Mr. Shikuku:** On a point of order, Mr. Speaker, Sir. I am straining to hear what the hon. speaker on the Floor is saying due to loud consultations going on at the moment in the House.

**Mr. Deputy Speaker:** Order! Order hon. Members!

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, as I was saying the passage of this amendment Motion will not in any way impeach all the constitutional functions of the National Assembly Powers and Privileges Act under Section 30 of the Act. Further more section 46 of the Act says that legislative powers in Parliament will be exercisable by bills passed in Parliament. By approving this Motion, we are not touching on the legislative powers of Parliament to pass the Bill. The practice in the House of Commons is that even with the Sub judice rule, that sub judice role, is subject to the right of the House to legislate on any matter. Therefore, this coption does not touch on the right of the House to legislate.

Mr. Deputy Speaker, sir, we have to interpret what we are doing particularly regarding the powers of the National Assembly and the Powers of the Attorney-General in a manner which is harmonious. For example, we have cases in the England where, particularly in the criminal proceedings, where the House of Commons does not debate on such cases when they are pending before the court. Here I would like to refer to Eskein and

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May 19th Edition at page 368 (h). I do not have to read but they quote quite a number of examples where this has happened. Regarding criminal matters, you cannot discuss them in this House, particularly when they pending before the court. You have to await them to end before you can say anything about them in this House. On the entire issue, I have assured this House that I want investigations to be completed by the 15th of May and thereafter, I will make my decision.

Mr. Deputy Speaker, Sir, when we talk about harmony in our laws, I want to talk on--

**Mr. Mulusya:** On a point of order, Mr. Deputy Speaker, Sir. Is the Attorney-General in order to casually keep on promising this House that investigations are going to be carried out. He has been doing this for five years. Can he assure this House---

**Mr. Deputy Speaker:** Order Mr. Mulusya! That is a classical example of a frivolous point of order. The Attorney-General is perfectly in order to even promise more casually, that criminal investigations will be carried out as many as 100 times!

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, as I said, investigations on this matter began in July, 1993 and arising out of these investigations, three criminal cases are already before the court. Hearing of the cases will be fixed as and when investigations are completed. As far as the courts are concerned, of course, section 26 (h) of the constitution as far as the Attorney-General is concerned says:

"In the exercise of my powers over criminal cases, I am not subjected to any authority"

Section 60 (b) of the Evidence Act states that the court must take judicial notice of the proceedings before this House. What I am pleading for really is that in taking regulations into account and in interpreting them in a harmonious way, taking into consideration, the problems we are facing, it really requires proper investigations. I think the best way to move forward is by allowing these investigations to get completed. I have given them a deadline of 15th May and we shall move forward after that. I know this issue will come to the House next year and I hope that by that time, the doubting Thomases would be looking at the palm and saying, "Yes, here is the mark" We shall try our best to sort of this problem for the good of this country.

With those few remarks, I beg to support.

**END U**

**ART**

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**Dr. Otieno-Kopiyo:** On a point of order, Mr. Deputy Speaker, Sir. On a matter of such grave importance, the Official Opposition has not been given a chance to respond when they are the main mover of the Motion they are seeking to amend. Is that in order really?

**Mr. Deputy Speaker:** Order, Dr. Otieno-Kopiyo! I very much appreciate your concern which is quite legitimate, but there are many more things on the Speaker's mind often and within his knowledge than are known to you. I have even heard hon. Members say that hon. Michuki has already spoken on the matter and the Chair is very much aware of that. But when a proposal has been made to amend the amendment before the House, the Speaker who has already spoken on the main Motion is still welcome to speak on the amendment to the Motion. In fact, he was entitled to speak on the Motion before the House by hon. Mudavadi, but it is because there was a properly notified amendment to this amendment within his knowledge that I gave him the opportunity to speak. I think that is not a matter that is open to debate. I will be fair to all hon. Members, but I think this is the fairest considering the time and so on. Proceed, Mr. Michuki.

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

**Mr. Deputy Speaker:** Disallowed!

**Mr. Michuki:** Mr. Deputy Speaker, Sir, I rise to propose an amendment to the amendment by introducing the following Motion:-

"THAT, the amendment be amended by --"

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

**Mr. Deputy Speaker:** Disallowed! Order! There is clearly a misunderstanding of the procedures of this House. In fact, I would have thought that hon. Orengo as a long standing Member and a lawyer too would understand these things better than some of your colleagues. There are three things or matters which are in essence before the House and which hon. Members must distinguish: The main Motion on the Report of the PAC. For the moment, or for the first two or three hours of this afternoon, we shall debate on the main Motion and move to an amendment to that Motion.

Now, what hon. Michuki is proposing to do, is to ask us to shelve even that debate on hon. Mudavadi's Motion and bring a further amendment, which by our Standing Orders must be disposed off: an amendment to amendment must be disposed off before the amendment, and the amendment must be disposed off before the Report. So, when we disposed off with Mr. Michuki's amendment, we shall still revert back to the amendment propose by hon. Mudavadi. Again, when we dispose off that, we shall get back to the main subject or the parent subject matter which is the Report of the PAC. It is a very simple matter and the Standing Orders are very clear on that: Where an amendment has been proposed, it has to be disposed off before the main subject; and where an amendment has been proposed to that amendment, that amendment to the amendment has to take priority over the main amendment. It is as simple as that. Proceed, Mr. Michuki.

**Mr. Michuki:** Mr. Deputy Speaker, Sir, I rise to propose the following amendment to the amendment:-

"THAT the amendment be amended by deleting the comma after the word "could" and by inserting a fullstop in place thereof and deleting all the words appearing thereafter".

Mr. Deputy Speaker, Sir, the effect of the amendment that I am proposing is that we shall be confined to the exclusion of the paragraphs quoted in the amendment and the recommendations appearing thereof, but avoiding to take any judgement as to the procedures that were followed. The reason why I have been prompted to bring this amendment is that

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the procedure itself is part of investigation by the PAC. We cannot, therefore, pre-empt those investigations and the conclusion the Committee might come into by pre-judging the case before evidence has been sought.

Mr. Deputy Speaker, Sir, if we look at paragraph 39, the whole thing is there. This is where the Controller and Auditor-General says he is not even sure that procedurally, the provision of Export Compensation Act were actually followed. There is doubt in that. We would like the Committee to come out with their recommendation on that because the matter has been raised by the Controller and Auditor-General as having not been clear.

The other reason is, of course, Mr. Deputy Speaker, Sir, in getting the whole of this saga to be as confusing as it is today, surely, if they knew that they followed the procedure there is no need in reiterating it in this Motion because the main thing is to exclude the paragraph and not to give any moral judgement as to whether the procedures were right or not.

Mr. Deputy Speaker, Sir, I do not want to overlap this issue, but it is important that we know the purpose of the original amendment. Procedures are part of what is in doubt and that, therefore, it should not be legitimised through an amendment of this nature since it will be investigated by the Committee. The Committee has to come with this proposal.

With those few words, Sir, I beg to move.

**Mr. Kibaki:** Mr. Deputy Speaker, Sir, I hope that the Ministry of Finance will see that this is a helpful amendment because the procedure for payment of compensation is spelt out in that Act and the question of whether or not diamonds do qualify for being paid compensation, if exported in reality other than papers, is part of the procedure. The procedure as to whether the Ministry of Finance were correct in paying those KSh.18 billion and so on through customs refund procedure rather than via export compensation procedure, those were also issues raised by the Controller and Auditor-General in his original report which set off all these matters.

So, Mr. Deputy Speaker, Sir, I think it is not right for us to be asked to approve as a small end at the tail of the Motion which is purely a proviso having regard to something or another that the decision to pay compensation was done procedurally.

Now, first of all, even in English, you do not pay billions of shillings "purely procedurally". How do you do it? You cannot do that!

*(Applause)*

**(End V.)**

**AWN**

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Billions must be paid within the law, whether paid according to procedure or not in this case, that is a subject of a question. That is what we are saying and, that therefore it should be left to be looked into and to ask this House to approve the manner in which it was paid. I think it is very wrong because the whole subject is either the matter is going to be investigated or not. You cannot say, investigate but do not check whether we paid as and according to the law. That is really what we are saying. So, do not judge that particular thing now. Leave it open to those who are going to investigate. Whoever they are. That is really what we are saying and we are saying it in all honesty that the Ministry will be seen like there must have been a reason for adding this little addendum at the end and I am sure they did not have any sinister reason but why have it if it superfluous and limit those who are going to be investigated. Let them investigate. That is what we are really saying.

Secondly, Mr. Deputy Speaker, the actions by the Central Bank are questionable. It has been confirmed today that they came to the Public Accounts Committee and produced one page agreement which said that they and Pattni had reached an agreement as to how they were going to pay each other *et cetera* and also pay Pattni Kshs 2.5 billion or whatever billions. They came with that agreement to the Public Accounts Committee and the Chairman of that Committee told us that their decision was based on that formal statement by the Central Bank to the Committee. We were also told that they had reached agreement somewhere outside but the day before they had not reached any agreement and they adjourned. Then somewhere in the middle of the night, Lo and behold! the whole world came together with the universe and some angel said, an agreement between Central Bank and Pattni has been reached and, therefore, it was written that quickly that night, signed as we were being shown there and it was brought the following day and it was agreed therefore by the Committee, quite mistakenly of course, that is enough evidence for them to come to this House and to tell us, now, there is a solution. We have reached an agreement. It is important that the person who is going to be investigating this matter is not going to be told that the payments were procedurally done because that particular phrase has no meaning in English. Unless it is an effort to hide something, it has no meaning. So, let us stop using this phrase. It has no meaning in English. I went to school, some good people did not go to school and that is not my fault. I am just saying---

*(Laughter)*

**The Assistant Minister for Health (Mr. Mutiso):** On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Mwai Kibaki in order to insinuate or in other words, to imply that there are some hon. Members here in this House who have never gone to school? Can he substantiate who they are?

**Mr. Kibaki:** Mr. Deputy Speaker, Sir, I do not know why the hon. Member for Yatta is worried. I was not referring to him for if he needs assurance, I will give him that assurance.

I was saying that these particular phrases do not have meaning in English and I am sure the hon. Minister for Finance who has the respect of this House and particularly having moved this Motion will see that the effect of it is not spoilt or the hands of whoever is going to investigate are not tied so that he may also go home and rest in peace as he said everybody

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wants to rest in peace. We would like to have that kind of word deleted.

When the Minister comes to reply he should tell us why when Central Bank brought an agreement to the Committee and said, "on the basis of this agreement the subject is closed", the Committee agreed. The Minister should be able to tell us whether the Central Bank was acting on its own or Central Bank and Treasury had agreed. Why the sweet words by him and the Minister for Agriculture, Livestock Development and Marketing Development that are being spoken now? Did the Central Bank act on its own to go and dispose of all these billions and bring an agreement to the Committee which became the basis of the Report which we now we have and which landed us into this mess and which we are trying to wriggle out of that mess? So when the Minister is replying, we would like to know this because I am sure this House, and the country, will read their statements as being extremely exaggerated pretending that now only they are honourable and some other people are not honourable. I am not trying to defend anyone but I am saying that Central Bank brought an agreement to the Committee and that agreement did all that damage which we are suffering from now. We want to know whether it was the activity of the Central Bank by itself or with the authorization and authority of the Minister for Finance. Equally we want to know that the original Goldenberg, I do not know where the Attorney General has gone to---

**Hon. Members:** He is here.

**Mr. Kibaki:** Yes, he is behind there. The Attorney General has given us three cases which have come up after the original Goldenberg. The original Goldenberg of Kshs 18 billion has been neglected by the Attorney-General, the Government and they have found these other cases simpler to handle.

**The Attorney General (Mr. Wako):** Mr. Deputy Speaker, Sir, is the hon. Member in order to mislead this National Assembly when the three cases involved Kshs 21.7 billion and when actually the original Goldenberg, whichever way you look at it, does not come to anywhere near Kshs 18 billion?

**Mr. Kibaki:** Mr. Deputy Speaker, Sir, we are not talking about millions. The Attorney-General may not appreciate. We are talking about billions.

**The Attorney General (Mr. Wako):** On a point of order, Mr. Deputy Speaker, Sir, is the hon. Member in order to mislead the House that I was referring to millions when I was referring to billions?

**Mr. Kibaki:** Mr. Deputy Speaker, Sir, I am happy about that. What I am saying is that I am not belittling Kshs 13.5 billion or Kshs 2.6 billion or Kshs 5.8 billion which are all the subject of the three cases the Attorney General is mentioning. What I was saying is that these are after the original Goldenberg which was Kshs 18 billion. What I am then saying is that this country has only been told by the Attorney General just now and he has said it four or five times before that he is waiting for an investigation and that no one knows when that investigation may end. He himself is also promising to go on with that investigation. A case which was brought was hijacked by himself and then written off. We need an assurance from the Attorney General this moment.

**End W**

**The Vice-President and Minister for Planning and National Development** (Prof. Saitoti): On a point of order, Mr. Deputy Speaker, Sir. I am not here to argue about the merits and the demerits of the cases. However, the hon. Member is misleading the House by talking about KShs.18 billion which was originally paid to Ms Goldenberg International for export compensation. What is contained in the original Report of the Controller and Auditor-General (CAG) is a sum of K£73 million, which translates to Kshs1.4 billion. The schedules are all here. So, can he substantiate his abstract figure of Kshs18 billion, which is really not there?

**Mr. Kibaki:** Mr. Deputy Speaker, Sir, we can all talk about these figures. You know that that case has been analysed backwards and forwards by everyone. More important, the Report we are now referring to the PAC, in fact, said that the claims which lie unpaid and which amount to K£105 million should also be paid. Those claims originate from the original Goldenberg cases and not from the latter Goldenberg cases.

**The Vice-President and Minister for Planning and National Development** (Prof. Saitoti): On a point of order, Mr. Deputy Speaker, Sir. It is important that in this House we talk of figures which are verified and known. The figure of what was paid in the original Goldenberg case was Kshs1.4 billion. It is, indeed, true that there is another Kshs2 billion pending claims. Therefore, the total sum of money is only Kshs3.4 billion. We must clarify the issue of Kshs18 billion. I myself have been accused of stealing Kshs18 billion, but I want to lay the evidence of what was paid here.

*(Hon. Saitoti placed some papers on the Table)*

**Mr. Kibaki:** Mr. Deputy Speaker, Sir, let me make my point, although there is an effort to divert me from it. The point is that the original Goldenberg case should have come to court. However, when an effort was made to bring it to court the Attorney-General took it over and quashed it. So, now Kenyans want an assurance from the Attorney-General on two issues. First, that that original Goldenberg case will still be prosecuted and that it will not be thrown away in the manner the Attorney-General did the other day, pretending that because it was a private prosecution his powers were being usurped, which is not correct. Despite his powers, the citizen, as a citizen, is superior to him.

**The Attorney-General** (Mr. Wako): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to imply that I am not a citizen?

**Mr. Kibaki:** Mr. Deputy Speaker, Sir, I would never imply that the Attorney-General is not a citizen, but the rights of the citizen cannot be taken away by the him. That is what I am saying in straightforward. Even if he acts amicus curiae he cannot take it away. So, we want assurance on th is case and also on these other three cases.

**The Minister for Commerce and Industry** (Mr. M'Mukindia): On a point of order, Mr. Deputy Speaker, Sir. It was not my intention to cut short hon. Kibaki's contribution. But is he in order to divert the attention of this House from the second amendment, which is related to procedures that were followed by going to the main to the Report of the PAC? Could he stick to the second amendment and tell this House what was wrong with it procedurally?

**Mr. Kibaki:** Mr. Deputy Speaker, Sir, we have to forgive the hon. Member because he is pre-occupied elsewhere. The issue is not what he is saying - he was not here earlier. The Attorney-General mentioned the three cases which are in court. We are asking the Attorney-General a question which he can reply without the assistance of hon. M'Mukindia---

**The Minister for Commerce and Industry** (Mr. M'Mukindia): On a point of order, Mr. Deputy Speaker, Sir. We need your guidance. What is the matter before this House? Is it what the Attorney-General talked about, which was the first amendment? Or, is it the amendment that hon. Michuki has moved? I say that we are on hon. Michuki's amendment, which says that the word "procedural" should be struck out of the first amendment. Therefore, hon. Kibaki, who is seconding this second amendment, should stick to this second amendment by hon. Michuki.

**Mr. Kibaki:** Mr. Deputy Speaker, Sir, I am sticking to the amendment but I want the Attorney-General to give us an assurance on these four cases. I want him to tell us that he is not going to use his powers and withdraw them from court. That is very important as far as we are concerned and we want it to be stated here.

I also do not see why, when we send this matter to the PAC, we cannot allow the PAC to hold public hearings. The Chairman has said they want it and we can allow it under our procedures. I am sure that that will be helpful to the.

Finally, let me say this, that in his 1992/93 Report, which was considered by the PAC, the CAG talked about these procedures having been breached. That is the main reason why we are really asking that the Minister for Finance agrees that since that question was raised in the original Report it is very closely tied to whatever is going to be decided about the payment made afterwards. Therefore, we should not exclude that procedure from the considerations that are now going to be undertaken.

With those words I beg to second the amendment.

*(Question, that the words to be left out be left out,  
proposed)*

## ADJOURNMENT

**Mr. Deputy Speaker:** Hon. Members, it is time to interrupt the business of the House. The House, therefore, now stands adjourned until tomorrow, Wednesday, 12th April, 1995 at 9.00 am.

The House rose at 6.30 pm.

END. X