

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 3rd January, 2013

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

NOTICE OF MOTION

Mr. Deputy Speaker: My presumption is that you are laying Papers.

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, it is a notice of Motion.

Mr. Deputy Speaker: Did the Minister of State for Planning, National Development and Vision 2030 indicate the laying of Papers.

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Yes.

Mr. Deputy Speaker: You did not move fast enough when the Order was called. Could you repeat it?

PAPERS LAID

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Deputy Speaker, Sir, I was requested by the Speaker last week that I lay on the Table a circular that I have issued to all District Development Officers (DDOs) and all Fund Managers to be available between now, when the Treasury has released funds for the CDF, and the end of April; they are not allowed to go on leave so that we are able to use the CDF funds without a problem.

So, I take this opportunity to lay the circular as ordered by the Speaker.

(Mr. Oparanya laid the document on the Table)

NOTICE OF MOTION

GUARANTEE OF US\$93 MILLION FROM EUROPEAN INVESTMENT BANK

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts Sessional Paper No.15 of 2012 on Kenya Government guarantee of a loan of US\$93 million equivalent to Kshs7,994,280 billion from the European Investment Bank to Kenya Airports Authority for the rehabilitation and expansion of Jomo Kenyatta

International Airport laid on the Table of the House on Tuesday, 18th December, 2012.

Mr. Deputy Speaker: It is my presumption that there is no Minister who is ready to give a Statement and no Member is willing to request a Statement. So, let us go to the next Order.

MOTION

Mr. Deputy Speaker: Hon. Minister, you will need to move the Motion in the amended form; I am made to understand that you requested this and that changes the figures.

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

THAT, in accordance with the provisions of Section 223 of the Constitution of Kenya, this House approves the withdrawal from the Consolidated Fund of a sum of Kenya Shillings 58,848,761,483 representing the total net estimates of Recurrent and Development Expenditure made up of the following:

(i) A sum not exceeding Kshs56,745,830,182 be granted from the Consolidated Fund to meet expenditure during the year ending 30th June, 2013, in respect of Supplementary Estimates of 2012/13 Financial Year (Recurrent) having regard to the proposed reduction of Kshs. 6,005,491,759 therein appearing.

(ii) A sum not exceeding Kshs16,030,931,343 be granted from the Consolidated Fund to meet expenditure during the year ending 30th June, 2013, in respect of Supplementary Estimates of 2012/13 Financial Year (Development) having regard to the proposed reduction of Kshs7,922,508,283 therein appearing.

(His Excellency the President has given his consent to this Motion)

Mr. Deputy Speaker, Sir, hon. Members will recall that this House approved a Budget of Kshs1.460 trillion for this financial year. I am happy to say that this Budget was fully financed. An amount of Kshs655.8 billion was for Ministerial Recurrent Expenditure; Kshs453.2 billion was for Development Expenditure; Kshs3.6 billion was for Consolidated Fund Services, and Kshs5 billion was Civil Contingency Fund.

Just like in the previous year, the fiscal framework was based on a continued stable micro-economic environment. We also, as a policy, continue to contain non-priority and unproductive expenditure and shifting them to development and social investment.

Mr. Deputy Speaker, Sir, following the approval of the Budget by this august House, for which I am grateful; the Government embarked on the implementation of the various programmes for which resources were appropriated. I wish to inform hon. Members that in the course of implementing the Budget, we faced a number of challenges and emerging priorities which were not anticipated when I was preparing the Budget.

To start with, the global economy is weak and seems to remain so in the medium, according to the latest International Monetary Fund forecast. While our economic growth is still resilient, the outcome of the first half of the financial year and the continuation of the global economic crisis is likely to pose a challenge in revenue mobilisation. Also, the economic recovery of the US has been rather slow. Recovery in the Euro Zone has actually been in recession.

Mr. Deputy Speaker, Sir, all these challenges have affected us. Economic growth slowed down in the first half of 2012/2013 Financial Year but we expect it to pick up in the remainder of the financial year, given the favourable conditions and improved micro-economic environment. Hon. Members will recall that we have had more than adequate rains. Crops are doing very well. Except for the floods that we have witnessed, the weather forecast looks very positive.

Short-term interest rates have also eased. Hon. Members will recall that there was a time when the interest rates were at 35 per cent. They have now gone down to an average of 16 per cent, which is a commendable effort. Inflation has also gone down from 19.1 per cent to 3.4 per cent. Again, this is a commendable effort. The exchange rate between the Kenya Shilling and the US Dollar has also stabilised. Hon. Members will recall that there was a time when the exchange rate was Kshs107 to the US Dollar. It has now stabilised at about Kshs83/84, which is just about right.

Mr. Deputy Speaker, Sir, the only down side is on revenue collection. A shortfall was experienced during the first five months of the financial year. Assuming that we will be able to recoup the revenue shortfall within the remaining period of the second half, it is clear that it is not practical to finance additional expenditure from revenue resources.

In order to confront the challenges of revenue shortfall and expenditure pressures, the Government will step up efforts on tax administration and mobilisation of revenue to eliminate leakages and increase revenue collection as targeted in this financial year as well as re-align and rationalise its expenditure.

Mr. Deputy Speaker, Sir, if I may just explain this to hon. Members, because it would not be prudent to increase taxes; we are trying to stop all tax leakages. Target areas have been identified. These are basically the areas of counterfeits and fix. We are using over Kshs30 billion because of fix and counterfeits. So, we are going to revamp the anti-counterfeit agency to make sure that this leakage is plugged.

Another area on which we have intelligence we are losing revenue is transport. We have intelligence that we are losing revenue in the areas of Advance Tax payment by *matatus* and inspection certificates. We have requested the Kenya Revenue Authority (KRA) to stop accepting cash and let everybody go and pay to the banks. Nobody should be paying tax at the KRA offices. Let the money be paid in the banks. If we do that, we will be able to plug and stop those leakages.

Mr. Deputy Speaker, Sir, coming to expenditure pressure, we have received quite a number of requests on account of new salary demands from the health workers, whom we are aware went on strike; teachers and lecturers, whom we are aware also went on strike; and the police, who did not go on strike but whose salaries were due for revenue. This has given rise to the need for additional funding.

In addition, there is demand for additional resources for the preparation for the general election, transition to the devolved system of government; continuing security interventions in Somalia and fighting terrorism. Internal security operations have also

posed a risk to the fiscal framework and stability of the Budget in the face of revenue shortfalls.

Mr. Deputy Speaker, Sir, this means that we have had major areas of expenditure requirements. Hon. Members will be shocked to know that we received over Kshs165 billion additional requests from Ministries, which was really about 15 per cent of the overall Printed Ministerial Budgets. Out of these requests, we interrogated each and every Ministry. We called them for interviews. We went through those Budgets line by line. As a result of that exercise, we were able to justify Kshs73.7 billion for supplementary funding, in view of the tight resources constraints.

I am not saying that the requests were not reasonable or uncalled for but, in view of the tight financial constraints, we had to make decisions. As Minister for Finance, you are forced to make some very drastic decisions when you are faced with requests amounting to Kshs166 billion but you can only afford Kshs73 billion. You have to turn down quite a number of people, and that is exactly what happened. This comprises of Kshs61.4 billion for Recurrent Expenditure and Kshs12.3 billion for Development Expenditure.

Mr. Deputy Speaker, Sir, I wish to give the highlights of the expenditure. The sum of Kshs32 billion is for salaries for teachers, health workers, lecturers and the police. As I have explained, during the negotiations with the striking workers, a return to work formula was agreed upon and this has resulted in the amount being requested above.

The sum of Kshs10 billion is for administrative costs and operationalization of county offices. It is estimated that after the general elections schedules for March 4th, additional expenditure amounting to Kshs6.8 billion for new administrative structures will be required for the period between March and June, 2013. In addition, a one-off expenditure for setting up the necessary county infrastructure is estimated at Kshs3.2 billion. What am I saying? I am assuring the county governors that come 5th March, they will have money for their operations. There will be money for the salaries of the governor and his or her running mate. There will be money for the executive committee. There will be money for the staff of the governor and money for county representatives. There will also be money for the operations for the office; stationery, vehicles and petrol. What will not be there is money for development. It is good that I say this.

Mr. Deputy Speaker, Sir, that money will not be there because when we started at the beginning of this financial year, the county governments were not in existence. That money was granted to the Ministries. So, because the Ministries have already entered into contracts, it will not be prudent to stop those contracts in between. Within those four months, it will give the governor time to recruit his executive and staff, time to purchase a few vehicles and he will have money for operations and for paying his county representatives.

Again, in this Supplementary Budget, we have given Kshs6.7 billion to the Independent Electoral and Boundaries Commission (IEBC) for the biometric voter registration. We have also given Kshs7.2 billion for internal security operations and continued external intervention in Somalia. Our soldiers are still in Somalia and I can tell you it is very, very expensive to maintain a combat soldier in a war zone. They have to be fed, their vehicles have to be fueled and they have to gather intelligence where they are. So, we have provided Kshs7.2 billion.

As I have explained, I have also provided Kshs2 billion to the Kenya Revenue Authority (KRA) for its operations. If KRA is to recoup the shortfall on revenue, then they must be able to seal all the tax leakages. As I said, we estimate that we are losing about Kshs30 billion to Kshs40 billion on fakes and counterfeits, particularly on alcohol, wines and spirits. The revenue stamp that is affixed to a bottle, you as a consumer have no way of knowing whether it is genuine or not. We want KRA to come up with a system which will be online, which will be installed in the manufacturing plants such that each and every time a beer bottle, wine bottle or whisky bottle passes through the bottling line, it automatically levies the revenue charged on the bottle.

Mr. Deputy Speaker, Sir, the KRA people will have readers. By visiting the bars with the reader, just by flashing it against the bottle, it will transmit that information to the head office in Nairobi. They can, therefore, tell whether that revenue stamp which is fixed on the bottle is genuine or fake. We suspect there are quite a number of fake revenue stamps affixed on beer, spirit and wine bottles. So, the Kshs2 billion for the KRA will do that.

We have Kshs1.4 billion for constitutional reforms and transition expenses in readiness for devolution after the forthcoming general elections. This is the amount that has been requested by the Transition Authority to enable them employ temporary staff for the counties. Again, we realized that the Constitution says that the governor will be sworn in by the secretary. But by 5th March, there will be no secretary in the county to swear the Governor. This would have caused a constitutional crisis. So, the Transition Authority is going to employ temporary secretaries of counties to be able to swear in the governors. The governors in turn will swear in the county representatives. That is a serious omission that we discovered.

Mr. Deputy Speaker, Sir, we have also provided Kshs1.4 billion for health services and emergency interventions including victims of terror attacks, violence and hospital requirements. All the victims of those attacks are taken to Kenyatta National Hospital (KNH). This was not budgeted for and so, we have given some money for that.

We have another Kshs5 billion for the Civil Contingency Fund which is required for unforeseen expenditures during the remainder of the financial year, including expenses for a run-off in the presidential election. My request to Kenyans is: Please, make your decision. Give one of the coalitions votes in good and sufficient number to avoid a run-off.

Hon. Members: CORD! Jubilee!

The Minister for Finance (Mr. Githae): It is for the Kenyans to decide whether it is Jubilee, CORD or the Third Force or whatever it is. Please, Kenyans, if you want to save me from spending Kshs5 billion, make up your mind. Give one of the coalitions all the votes to avoid a run-off. It would make me very happy. I can then use that money to tamack new roads instead of it being wasted in a run-off, which is not necessary.

Mr. Deputy Speaker, Sir, considering the option of raising additional revenue through higher taxation is not feasible in the middle of a financial year. The Government is left with very limited options to fund the above requirements. Given the current state of affairs, additional expenditure is being financed through existing contingency, differement of some projects that are unlikely to start this financial year, reallocation of budgeted provisions, across the board expenditure cuts and we are going to borrow an

additional Kshs30.7 billion. That means that we have no financial gap. Our budget is fully catered for.

With these highlights, I, therefore, wish to thank hon. Members and request them to support this Motion.

To conclude, when Kenyans were enjoying themselves during Christmas and the New Year, the Minister for Finance and the Treasury officials were in office trying to come up with this Supplementary Budget. I have never seen in the long history of this country that so few people have sacrificed so much for the welfare of so many.

I beg to move and request Mr. Isaac Ruto to second this Motion.

Mr. Ruto: Mr. Deputy Speaker, Sir, I stand to second. Although I would have liked some improvement on this Supplementary Estimates, I think the Minister for Finance knows how to rope me in.

In this situation, the Minister for Finance has tried to explain what he intends to finance. I only wish there was a way of improving in terms of---

Mr. Deputy Speaker: Order! Order!

Mr. Ruto: Mr. Deputy Speaker, Sir, I second.

(Question proposed)

The Assistant Minister, Ministry of State for Defence (Maj.-Gen. Nkaisserry): Thank you, Mr. Deputy Speaker, Sir---

Mr. Koech: On a point of order, Mr. Deputy Speaker, Sir. I am looking at Order No.8 and part (ii) at the end of it reads Kshs8 billion---

Mr. Deputy Speaker: It has been amended. You probably came in a bit late.

Proceed, Maj.-Gen. Nkaisserry.

The Assistant Minister, Ministry of State for Defence (Maj.-Gen. Nkaisserry): Mr. Deputy Speaker, Sir, I stand to support this very important Motion. There are certain highlights which the Minister needs to realize. First of all, I would like to thank the Minister for releasing the CDF funds. I was made to understand that the funds would reach the constituencies accounts today. If that is the case, the Minister will have my accolades.

These Supplementary Estimates will enable the country to move forward. Therefore, they have come at the right time, although they were a bit delayed for obvious reasons. But today, we are able to debate and pass them so that the country can move forward, because there are quite a number of important aspects which need to be dealt with using the money released from these Supplementary Estimates.

Mr. Deputy Speaker, Sir, we have an election coming up in a few months time, and without money it may not be successful. We have security organs of the country which require funding to be able to function effectively and secure the security of the country. Therefore, these Supplementary Estimates are very important.

Mr. Deputy Speaker, Sir, it is very important for this country to realize--- I am not an economist but I am a student of international trade. I am also a student of international security. Without proper funding of security organs, there can be a disaster in any country. Without taking proper steps, international trade can also be affected.

Mr. Deputy Speaker, Sir, inflation is at 7 per cent and that is why I said I am not an economist but I have read international trade quite well. When inflation is between 7

per cent and 11 per cent no liquidity exists. The economy declines. When it is at 3 per cent or below, there is no borrowing. It means there is stagnation in the economy. When the interest rates come down drastically, it means people are not borrowing because there is a problem somewhere.

Kenyans must be very afraid, and very afraid, indeed, because we are in an election year. We have got a monster hovering over this country; this is a monster called “the International Criminal Court”. Our friends are focusing on the ICC. We have to speak the truth about this. I want to tell Kenyans today that the ICC will be there, sanctions will be imposed on this country if for example our Jubilee friends, who are claiming that they will win the election---

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

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Mr. Deputy Speaker, Sir, this is a very important thing, and I have to say it to Kenyans.

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

Mr. Ruto: (*inaudible*)

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): It does not matter!

Mr. Deputy Speaker: Order! Mr. Ruto and any other hon. Member, you have a right to stand up here and give a lot of ideas that you have. But you have no right to stop somebody else from giving his opinion.

What is your point of order, Mr. Ruto?

Mr. Ruto: Mr. Deputy Speaker, Sir, is the hon. Member in order to stand here and give spurious and outrageous threats against Kenyans if they vote one way or the other? Is he in order? I thought he was debating the Estimates. But right now he is threatening Kenyans that if they vote in a particular way, there will be sanctions. He is pretending that he is an expert in international trade and international security when we know he is a local soldier; a local *askari* who just rose through the ranks. Now he is even using his mind to threaten Kenyans! He is an ordinary *askari*!

(*Laughter*)

Mr. Deputy Speaker: Order, Mr. Ruto! You cannot disparage our very noble institution called “the Kenya Defence Forces”. There is nothing ordinary about a general who has served in the Kenya Defence Forces and risen up to that rank. In any case, I have not heard you cite any provision of the Standing Orders to show that, indeed, the hon. Assistant Minister is out of order. If he is giving an opinion, you can stand up and give a counter-opinion and take all the time you need as provided in the Standing Orders. Let us have a civilized House in which every hon. Member has the right to be heard.

Proceed, Maj-Gen. Nkaisserry.

Mr. Mungatana: On a point of order, Mr. Deputy Speaker, Sir. I want to take on the Major-General on a point of order. Ordinarily, like you say, this is a civilized House. We are guided by the rules of the House and we are to debate within the confines of those rules. One of the fundamental rules of this House is relevance to debate. You cannot start talking about issues that have nothing to do with the Supplementary Estimates. They are not adding any value to this debate but take our valuable time. If the hon. Maj-Gen. Nkaisserry has nothing to say he should sit down.

Mr. Deputy Speaker: Order! Order! I just wish that we could get a bit more civilized than we are now. Any of you who heard hon. Maj-Gen. Nkaisserry - and I must say that I am seeing an economic side to his own disposition too – he is trying to make a linkage between inflation---

Hon. Members: No! No!

Mr. Deputy Speaker: Order! Order! Did you hear the Minister's speech? The Minister talked about inflation and areas in the economy itself. All that I have heard is hon. (Maj-Gen.) Nkaisserry trying to make linkages to that inflation and the interest rates and what he perceives to be a political environment. He has only a few minutes; you can rise up and counter that.

Proceed, Maj-Gen. Nkaisserry. You have two minutes!

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Mr. Deputy Speaker, Sir, first of all, I want to respond to hon. Ruto. I trained in the best institution in the world. I am an academy in the Military Academy Alumni. I am an alumnus of the United States of America Army War College, which is the best in the world. You can see that hon. Ruto is a local fellow from Kericho and he does not understand what is going on in the international arena!

(Laughter)

Mr. Deputy Speaker, Sir, I was explaining what this Supplementary Estimates need to do, so that we can help this country move forward. However, I had to send a warning and explain to my people that it is important to realize the seriousness of this matter given that we live in a global village where international trade is involved and we are the heart of this region. So, we have to be extremely careful. The major problem is that we have a monster which will make the economy of this country go down. This is the message that I am trying to send. However, hon. Ruto, is very much afraid for obvious reasons. Hon. Ruto wants to be a Governor.

Mr. Deputy Speaker, Sir, I am afraid that I do not see the money which will go to the Governors who will be functional from 5th March in these Supplementary Estimates. The Minister should have been very specific and said that so much will go to the counties because they will be functional from 5th March.

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

Mr. Duale: Mr. Deputy Speaker, Sir, I will not go the way hon. Maj-Gen. Nkaisserry, the former Kenya Defence Forces (KDF) Maj-General has gone. From what they did in Garissa, he should even be ashamed of being part of the KDF.

(Applause)

Mr. Deputy Speaker, Sir, let me come to the economics. I want to thank the Minister for steering this Ministry for the short period he has been there. But in supporting this Supplementary Budget, I want to bring to the attention of the Minister that he does not believe in the spirit of devolution. He believes in centralism and leads the group that does not believe that Kenyans should have resources in the devolved sections of the Constitution. Why do I say so? The Constitution is very clear that 15 per cent of the revenue must go to the county governments. Fifteen per cent of the Kshs1 trillion

Budget comes to about Kshs100 billion. In his Estimates, the period that he was asking for this money – the three months to June, 2013 - the county governments were entitled to Kshs30 billion under the Constitution on a *pro-rata* basis. This is what the Commission on Revenue Allocation has even advised him legally. But under the Estimates that the Minister has tabled, he is allocating the county governments Kshs6 billion only. His move is unconstitutional. I think the House must come to the fact that this Supplementary Budget should not be passed until and unless this Minister allocates the Kshs30 billion constitutional share to the county governments. We still have people in the Government led by this Minister who believe that the Kenyans who voted for devolution in order to have independence in terms of resources and leadership--- If he denies the county governments resources for the first three months, which is unconstitutional, that itself will put him on the dark side of history that the last Minister for Finance to sit in this House is denying and circumventing devolution. Why does he allocate Kshs6 billion and not Kshs30 billion to county governments? The Minister needs to explain this to the House. I want to urge the House, despite this Minister enticing Members of Parliament with the Constituencies Development Fund (CDF) money, to rise to the occasion and protect devolution. We must oppose this. I rise on the Floor as the first Member of Parliament who will protect devolution. Let the Minister give us a good reason why he is allocating county governments Kshs6 billion and not Kshs30 billion.

Mr. Deputy Speaker, Sir, I rise to oppose this Supplementary Budget.

The Minister for Finance (Mr. Githae): On a point of order, Mr. Deputy Speaker, Sir. I think that is because the hon. Member was not here at the beginning when I explained how this amount has been arrived at. First of all, the Constitution gives phased approach to county governments for three years. The figures I have mentioned were given to us by the Transition Authority. I explained very clearly that at the beginning of this Financial Year when we made the Budget, county governments were not in existence. So, they could not have been allocated money. So, money was allocated to the Ministries. We want to make sure that on 5th March, the Governors have enough money for their salaries, those of their deputies, plus staff, vehicles, fuel, operations and salaries for the county representatives. Actually, what the hon. Member is saying will come out very clearly in the Division of Revenue Bill because it explains exactly how much money has been allocated to the counties. It is even more than 15 per cent that is stated by the Constitution. In fact, it comes to 33 per cent. I have given more. I am one of the believers of county governments and that is why I will go for the seat of Governor of Kirinyaga County.

Mr. Deputy Speaker, Sir, in addition, the CDF will continue. I have just been advised by the Attorney-General that he has actually published the Allocation of Revenue Bill and the Division of Revenue Bill now. That will clearly show what each county will get, for what purpose and for these four months, how much the Central Government will continue to run but on behalf of the county governments. This is because Ministries have already entered into contracts. Is hon. Duale saying that we should terminate those contracts in the middle of execution? I explained all these at the beginning when he was not there.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order! The issue that hon. Duale raised basically touches on the Constitution. Maybe if I got the Attorney-General right, he said that the

Constitution gives a minimum of 15 per cent of ordinary revenue to the county governments. That 15 per cent, on a *pro-rata* basis, if I am right, in terms of the quota translates to something more than what you have allocated now. Maybe you need to put more light on that. The Attorney-General can help you on that.

Mr. Duale: On a point of order, Mr. Deputy Speaker, Sir. I am very clear. It is not about Ministries being allocated money but it is about the Constitution. I will go further and say that this Minister is one who believes in centralism. He does not believe in devolution. Until today, this Minister has not brought the County Revenue Bill. He has also not brought the County Appropriations Bill and the County Finance Bill. He is talking about the Attorney-General bringing these Bills later on. Under the Constitution, we are not asking him the salaries of the county representatives, the Governors and their staff. That is their right. The Minister is not doing them a favour. The county governments need to devolve in the three months given under the Constitution. Who said that he should only give them salaries? Why can he not give them the Kshs30 billion that the Constitution talks about under the *pro-rata* of the 15 per cent basis? Why is the Minister denying them that? These are the moral questions that we are asking him. They are entitled to the 15 per cent under the Constitution. Why does the Minister want to circumvent this? Let us uphold the Constitution. Let this Minister come out clear and tell the nation why he is circumventing the emergency fund of a devolved system of government in this country for the first three months.

Mr. Ogindo: On a point of order, Mr. Deputy Speaker, Sir. This is a point of order to strengthen what my colleague has said. Is the Minister in order to claim that there are no county governments when he knows very well that the county governments are scheduled to be in existence three months to the end of the financial year and this is in public domain? The essence of budgeting is to envisage such. On the constitutionality of the allocation, this is not negotiable. This allocation that will go to the county governments is unconstitutional. The issue of absorption of the allocation is another question. However, in the Estimates there must be an equivalent of the three months amount allocated to the county governments otherwise these Supplementary Estimates will not pass in this House. We cannot undermine the very Constitution that we passed. Kenyans are watching us.

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, let me just reply to him. I think hon. Members are jumping the gun. I have just explained that the County Allocation Bill, The Division of Revenue Bill and The County Appropriations Bill have just been published. We are jumping the gun. From there, it will be clear that you need to commend me. Instead of 15 per cent, the amount allocated is 33 per cent. This is more than what the Constitution has given. We are jumping the gun. Let us wait for that. This is the Supplementary Bill.

Mr. Mungatana: On a point of order, Mr. Deputy Speaker, Sir. I really want to understand the Minister. However, if you look at the arguments that he is putting across, you will see that he is the one who is jumping the gun. He is telling us that we should pass these Estimates because he has already provided more than the 15 per cent. However, this amount is in another Bill which is being published and will be coming to this House. I am, therefore, rising on this point of order to formally apply that we stand down this Motion or withdraw it until the Division of Revenue Bill and other Bills are tabled before the House, they go through the First Reading, we see the facts and the

figures and then we pass the Supplementary Estimates Bill. We have no quarrel with the Minister.

Mr. Imanyara: Thank you, Mr. Deputy Speaker, Sir. We need to make it clear that the era of the “rubber stamp Parliament” is long gone. It cannot be in order for a Minister to come and ask us to approve financial obligations on the basis of a promise to publish a Bill. Until those Bills are published and we see that they comply with the relevant provisions of the Constitution, it is completely out of order for us even to discuss this Motion. Therefore, I urge you to order that the Motion is withdrawn until we see that the Bills that have been published comply with the law. Only then, can we discuss this.

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

Mr. Deputy Speaker: Order! The Chair can see you from the system. So, just relax.

Hon. Minister, this is a matter that touches on the Constitution of the country. In any case, even if there were Bills to be passed subsequent to this, then one wonders where the money would come from for that quota because this is the last Supplementary Estimates Bill that this Parliament will pass. Once the money is given out and it is not removed from the Consolidated Fund, I do not see how you will cater for the adherence or the observation of the provisions of the Constitution. But nonetheless, the Attorney-General is next to you and I am sure that he will assist you.

Let me now listen to Mr. Isaac Ruto. You cannot seek to catch the eye of the Chair without making a fuss?

Proceed now!

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. I heard the Minister although I do not know whether I heard him well. He said that he had been advised by the Transition Authority. On issues of finance and specifically allocation on this matter, he is supposed to listen to the Commission on Revenue Allocation. That is the constitutional Authority that is supposed to advice on this issue. Could the Minister come out clean and lay on the Table the advice of the two institutions? In the first instance, the Transition Authority, in fact, is not supposed to advice on allocation of revenue. This is supposed to be done by the Commission on Revenue Allocation. Half of the membership of the Transition Authority is made up of Permanent Secretaries; eight of them. What are Permanent Secretaries supposed to do other than to continue to cling on the resources? I would like to listen to the Commission on Revenue Allocation. So, can the Minister lay on the Table the advice from the Commission on Revenue Allocation?

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, I would like to say two things. One, we need to pass these Supplementary Estimates for the Appropriations Bill to come to the House. Without the Supplementary Bill, you cannot have the Appropriations Bill. So, we have that technical problem.

Secondly, as far as the Commission on Revenue Allocation is concerned, proper allocations will start from the next financial year. It will start on a clean slate from 1st July. What we are providing for is for the short period between March and June. Let us be practical. I have said one thing. Already, Ministries have entered into contracts on behalf of the counties. Are we saying that we stop the construction of those roads in the middle so that we give the money to the counties? That will not be prudent management of the scarce resources.

Thirdly, we are jumping the gun. When it comes to revenue, you will see that I have provided for more than the 15 per cent that is required. In fact, it is 33 per cent. This is more. I am also wondering why if you took my word that I will raise the CDF allocations, why can you not take my word that I have taken care of all the constitutional elements? We depend on undertakings of honourable Members. This cannot be one way but two ways.

Mr. Deputy Speaker, Sir, I propose that we pass these Supplementary Estimates on the basis--- You have trusted me before; you should trust me again.

Hon. Members: No! No!

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, it is very clear when the Minister was claiming that they worked during the holidays, he was actually preparing to swindle the county governments of their rights. That is very important for the Back Bench. It should never support or second any Motion or Bill brought by the Government. It was a big mistake for my own brother to second this Bill. That is because that was part of the scheme. The Minister thought that if Isaac Ruto seconds the Bill, then we would obviously support it. But we have caught the Minister! So, my suggestion to the Minister is this:

In order to avoid us even calling for a quorum, my suggestion to the Minister is that we, perhaps, postpone this. What the Minister is trying to do is to blackmail us. This House cannot be blackmailed. Even if the Minister loses his cool, that is his own problem. We will ask the appointing authority to have him replaced immediately because of that. I can see he is packing. The way forward is that we do not proceed with this debate. This matter should be brought out for further discussion, say, in a *Kamkunji*, and then it is brought back to the House. We will be recommending for another Minister.

Mr. Deputy Speaker: What is your point of order, Mr. Duale?

Mr. Duale: Mr. Deputy Speaker, Sir, I want to go on record and Members of the Budget Committee of this House will bear me out. The Budget Committee of this House had similar concerns last night on the issue of devolved funds.

I want this Minister to know that the constitutionally established Commission on Revenue Allocation is well led by Mr. Micah Cheserem. I want this Minister to table the opinion of that Commission on this matter and that will set us free. I want you to direct this Minister to table the opinion or letter given by the Commission on Revenue Allocation on this matter. Otherwise, the matter at hand is a matter of constitutional interpretation. Some of us will not be part and parcel of a scheme to circumvent the emergence and start of a devolved system of government in this country. If the Minister wants to be part of it, we are not going to be part of it.

Mr. Deputy Speaker: You have made your point. Mr. Kabogo!

Mr. Kabogo: Mr. Deputy Speaker, Sir, my point of order has been partly dealt with by hon. Duale. Is it in order for the Minister to try to mislead this House that it is roads and contracts that he does not want to terminate and yet, that is the job of the national Government? Roads that are part of the county government are also part of what he has brought here. But what we are saying is this:

There is a constitutional requirement that a certain amount of money should be sent to the county governments. All we are asking hon. Githae in conjunction with the Attorney-General who is seated next to him is to conform to the Constitution of the Republic of Kenya and grant the amount of money that has been given by the

Constitution. In any event, will it be in order for the Minister to tell the House that he has catered for salaries of governors? I will be a governor in Kiambu. I will just sit there and wait for the salaries and yet, there will be nothing to do for a quarter of a year. So, really, let the Minister be kind enough and withdraw this for the rest of the day. He should go and consult and conform to the Constitution. We will have a problem when people will start going to court to claim the unconstitutionality of this Supplementary Budget. So, please, take heart, Mr. Githae, and consult widely. Do not get upset.

Mr. Deputy Speaker: I was hoping that hon. Githae would request, but I am not seeing him do so. Hon. Githae, just for the benefit of the House, you are talking about appropriation. You can only appropriate what has been granted from the Consolidated Fund. So, then how do you appropriate what is not there? Even when the Appropriation Bill comes, if it has not been drawn from the Consolidated Fund through these Supplementary Estimates, then how do you appropriate what is not there?

The Minister for Finance (Mr. Githae): Mr. Deputy Speaker, Sir, that is exactly the point I was making; that we are actually jumping the gun. When we come to the County Allocation Bill; the Division of Revenue Bill and the County Appropriations Bill, the answers are there for all these questions that hon. Members are asking. You need to actually withdraw those allegations you have made because I have given more than 15 per cent required by the Constitution. The amount that is coming tomorrow is 33 per cent. I am not withdrawing this. Let us pass it and let us wait. As I said, the Bills are hot – they are just coming from the Printer. You approve it or reject it. I am not withdrawing it. I am not!

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! I think there is need to have sobriety on both sides of the House. The shooting down of the Finance Bill more or less entails the shutting down of the Government and the system. Minister, as well as the Back Benchers, you need to look at the bigger picture much more closely than to be guided--

Hon. Members: Postpone! Postpone!

Mr. Deputy Speaker: Order! You have a problem in even postponing this Motion! The Standing Orders do not allow this Motion to be postponed unless under certain extreme circumstances. Hon. Members, the procedures to be followed in the deliberations in the House of matters pertaining to the Committee of Supply are very express and explicit.

Standing Order No.156(4) states:

“On any day upon which the Chairperson is under this order directed to put forthwith any questions, the consideration of the business of Supply shall not be anticipated by a Motion for the adjournment of the House, and no dilatory Motion shall be moved in relation to the business, and the business shall not be interrupted under any Standing Order.”

Ideally, this business is not supposed to be interrupted. The dilemma we are in is if the Back benchers insist on getting the right answers and, in the process, shoot down this Motion. Then we have a shutdown of the Government. If the Minister insists on pushing this thing without getting the right counsel from the Attorney-General, we have

an issue that, that is a constitutional matter that can also be shut down by the courts. So, I think we need to have sobriety on both sides of the House. The issue of 15 per cent is the minimum and is provided for in the Constitution and has to be factored in one way or the other. So, we have a problem and I think it is only fair that the Attorney-General, the Minister for Finance and the Members of the other side need to deliberate on these things with a lot of sobriety to see how we can move forward. We have a situation right now “damned if we do, damned if we do not”. If we pass it we have an issue and if we do not pass it, then we have an issue that is very serious. So, can you continue with the debate?

An hon. Member: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: What is your point of order, hon. Member?

Can you use the button? All of you will have an opportunity to debate this.

Prof. Muigai!

The Attorney-General (Prof. Muigai): Mr. Deputy Speaker, Sir, I was going to do two things: First, I want to confirm that the Bills that hon. Members have requested to have sight of are on their way to the House within the hour. That is point number one. Point number two, with your permission, I was going to persuade my distinguished friend, Mr. Githae, the first Lord of the Chancery to allow us to defer this up to 2.30 p.m. this afternoon.

(Applause)

Mr. Deputy Speaker: Order, hon. Members! It can only be deferred under certain circumstances. The Standing Orders are express. It says that debate shall not be interrupted by any Standing Order. The only Standing Order that can interrupt unfortunately is either Standing Order No.1 or lack of quorum. Other than that---

(Loud consultations)

Order! Let the Chair look at this and meditate for a moment.

(Consultations)

Order, hon. Members! Under the circumstances, we are more or less in what can only be slightly synonymous in what they are calling the fiscal cliff in the United States of America (USA) and we can easily have a fiscal cliff here and plunge this country into mystery or unproportional level and magnitude. So, let us continue with debate while consultations are going on.

Proceed, Prof. Anyang-Nyong’o, in contributing to the Motion.

The Minister for Medical Services (Prof. Anyang-Nyong’o): Mr. Deputy Speaker, Sir, I regard this fiscal cliff as a very healthy sign that Members of this august House have keen eyes on matters of money and are very focused on ensuring that devolved funds are available to counties as indeed those of us who are eyeing Senate seats and governor seats in the counties must make sure that come next year, these counties have enough resources to move on. I think that is a positive sign.

The other thing that is important is the wake-up call for us in the Government to ensure that when such emotions come to Parliament, the accompanying Bills are at hand

so that when hon. Members raise questions they can see ocular evidence as proof. Having said that, to error is human and I do believe that the assurances of the Minister for Health-

(Loud consultations)

Mr. Deputy Speaker, Sir, if I could be protected---

Mr. Deputy Speaker: Order, hon. Members! Order Mr. Duale, Mrs. Odhiambo-Mabona, Mrs. Noor! Order!

The Minister for Medical Services (Prof. Anyang-Nyong'o): Mr. Temporary Deputy Speaker, Sir, the whole idea of parliamentary debates is that we learn to exchange ideas and to listen to each other however difficult what is being discussed is. I do believe that as we consult, rather than vote with our feet in protest, let us engage in discourse so that we may save this nation. I think this nation is greater than individuals and if we parliamentarians show that we respect the interest of our people, I think we shall be held in high esteem. I think after our consultations, we do have a solution at hand. Indeed, what the hon. Members are asking for is going to be available very soon.

Mr. Deputy Speaker, Sir, having said so, what is clear in our budgetary system is that the financial outlays that the Government can make available for Government expenditure is very stringent because the financial outlays must depend on our economic growth and the extent to which our people can pay taxes to make it possible for Government to raise these funds.

Mr. Pesa: On a point of order, Mr. Deputy Speaker, Sir. This is a very important Motion and to me, I feel that a quorum is very essential for such a Motion. When I look at the House, we seem not to have a quorum. What is your take?

Mr. Deputy Speaker: Clerks-at-the-Table, can you count the number of Members who are in the House now to establish whether we actually do have a quorum or not?

Do we have a quorum? Indeed, we do not have a quorum, I can confirm that. Ring the Division Bell.

(The Division Bell was rung)

ADJOURNMENT

Mr. Deputy Speaker: Order, hon. Members! Hon. Members, there being no quorum, the House stands adjourned until today, Thursday, 3rd January, 2013 at 2.30 p.m.

The House rose at 10.25 a.m.