

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 7<sup>th</sup> November, 2013

The House met at 2.30 p.m.

*[Hon. Speaker (Mr. Muturi) in the Chair]*

### PRAYERS

### MESSAGE

#### NOMINATION OF MR. MUTUTHO AS CHAIRPERSON OF NACADA

**Hon. Speaker:** Hon. Members, I have a Message from the President, being No.10 of 2013. The Message is on the nomination of Mr. John Mututho for appointment as chairperson of the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA).

Pursuant to Standing Order No.42, I wish to convey a Message from His Excellency the President which was submitted by way of a letter addressed to my office for submission to the House. In the Message, His Excellency the President conveys that in exercise of powers conferred to him by Section 6(1)(a) of the National Authority for the Campaign Against Alcohol and Drug Abuse Act of 2012, he nominates Mr. John Mututho, former Member of Parliament for Naivasha and campaigner against alcohol and drug abuse as the chairperson of NACADA Board for a period of three years. His Excellency the President, therefore, seeks the approval of the House on the nominee for the appointment to the aforementioned position.

Hon. Members, Standing Order No.45 requires that upon receipt of notification of nomination for the appointments, such nomination shall stand committed to the relevant Departmental Committee of the House for consideration. Pursuant to the provisions of the said Standing Order, therefore, and Paragraph 3 of Standing Order No.42, I hereby refer the Message from His Excellency the President to the Departmental Committee on Administration and National Security to undertake the necessary approval hearings. I have referred this matter to the said Committee since the State Department under which NACADA falls, namely the Ministry of Interior and Coordination of National Government, also falls within the mandate of the Departmental Committee on Administration and National Security.

Hon. Members, the Public Appointments (Parliamentary Approval) Act No.33 of 2011, requires the National Assembly to either approval or reject the nomination within 14 days. In this regard, I wish to guide the Committee and the House as follows: One, the Committee shall notify the nominee and the general public of the time and place for holding the approval hearings in good time. In order to manage our time optimally, the notification should therefore be made on Friday, 8<sup>th</sup> November, 2013; and two, the Committee should commence the necessary approval hearings on 13<sup>th</sup> November, 2013, and submit their report before this House on or before 19<sup>th</sup> November, 2013.

### PAPER LAID

The following Paper was laid on the Table:-  
The Report on National Consultations on Post-2015 Development Agenda.

*(By hon. A.B. Duale)*

### NOTICE OF MOTION

**Hon. Speaker:** The Member for Machakos County, Dr. Musyoka. The Notice of Motion is dropped.

*(Notice of Motion dropped)*

### STATEMENTS

**Hon. Speaker:** The Chairperson, Departmental Committee on Administration and National Security on rampant cases of insecurity along Muhoroni/Tinderet sub-counties border requested by hon. James O. Koyoo.

#### INSECURITY ALONG MUHORONI/TINDERET BORDER

**Hon. Abongotum:** Hon. Speaker, Sir, the Member for Muhoroni, hon. James Onyango Oyoo, requested for a Statement on the rampant cases of insecurity along the Muhoroni/Tinderet Sub-counties boundary. The Member wanted to be informed on the appropriate steps the Government is taking to ensure that a permanent solution is found and right protection of citizens is ensured.

I wish to state as follows: There has been a long standing dispute between the squatters and the large-scale farmers in Muhoroni Sub-county. The Government purchased part of Kibigori Plantation in Kisumu County with the intention of settling squatters within Nyang'ore Sub-location. However, some of the squatters have resisted the Government's allotment of two acres each and are demanding for more acreage. The land is currently occupied by the above-mentioned squatters who have as well encroached into adjacent large farms.

On 14<sup>th</sup> October, 2013, Mr. Naman Abira, who had accompanied his brother, Mr. Moses Abira to one of the farms was fatally shot with a poisoned arrow when a group of squatters attacked them. Police officers responded and in the process, Inspector Wario Galgalo, the Officer in Charge of Chemelil Police Post lost his Ceska Pistol, which was later recovered in a sugar plantation. Police are pursuing the suspected criminals who are believed to be hiding within Nandi Hills in Nandi County. The Government has instituted the following measures in order to restore peace and harmony in the area:-

- (i) establishment of police patrol base as Ruga Farm within the disputed area besides enhancing patrols;
- (ii) holding peace meetings in order to sensitize the community members on the importance of peaceful co-existence; and
- (iii) investigations are underway, so that the culprits can be arrested and prosecuted, if they are caught.

Hon. Speaker, Sir, that is the Statement to hon. Oyoo.

**Hon. Speaker:** Hon Onyango Oyoo

**Hon. Oyoo:** Thank you very much, hon. Speaker. I want to say that the answer given by my good friend hon. Abongotum, the Chair of Committee on Administration and National

Security is very inadequate in as far as my expectations and the expectations of the people of Muhoroni are concerned. In my question, I had sought an answer or a lasting solution towards that menace. There has been sporadic insecurity along the border and I would like to give a small brief; I want this House to know that Muhoroni is besieged by very good neighbours. We stand in between Tinderet, Aldai, Ainamoi, Kipkelion West, and now Sigowet Soin. We have had no major incident so far between us and our neighbours, the Kipsigis from Ainamoi, save for few cattle rustling incidences which are controlled by the police now and again. We have no major incident worth reporting between us and our neighbours from Sigowet Soin, which was curved out of Ainamoi.

Similarly, we conduct very good businesses with our partners and neighbours in Aldai and Kipkelion West. Even Tinderet, until few months ago, we had a very good relationship. That was courtesy of sound leadership. It is when the immediate former MP, hon. Henry Kosgei, was there. We share so many things in common. A lot of sugar-cane is owned by the nearby Chemilil Sugar Company, which is within Muhoroni Constituency. But it serves the interest of Muhoroni, Tinderet and Aldai. We are very friendly. We inter-marry each other and do business together.

In my question, I wanted to know what the Government is doing to get a long lasting solution because that thing started as cattle rustling. Then it generated into a small incident of what I would call hooliganism and then, all over a sudden, people who incited are coming from the hills and encroaching on large scale farms which are owned by individuals. The law of this country is very clear on private property. Private property belongs to the owners. Ruga Farm belongs to the owners; who are the late George Owuor and his surviving wife, retired Justice Effie Owuor and their siblings. Nobody is allowed to come and claim part of it until he has entered into a solid agreement and gotten pre-requisite papers to show that the farm has been transferred to him. If anybody for any reason is found to have encroached Ruga Farm, the law should take its course.

The incident that happened on 14<sup>th</sup> is where a respected retired responsible and resourceful person, one retired teacher, Mr. Abira, had gone to see his farm near Ruga Farm. He met a hostile crowd which, he says, was out to spill blood. He ran back and got the company of the area commanding officer, Chemelil Police Station, his brother and seven police officers. It is a shame that, as a country ruled by law, Mr. Abira was shot using a poisoned arrow in the scene where the same police officers and the commanding officer, Chemelil Police Station were and he died there. It is purported that he tried to run away and dropped his pistol, which was taken by the assailants. The following day, he was called and he went on a motorbike.

**Hon. Speaker:** Hon Oyoo, now seek clarification.

**Hon. Oyoo:** I want a long lasting solution, which must be an establishment of a permanent anti-stock theft police station. We also want Ruga Farm to be restored back to its owners. Subsequent to my question, I took the Provincial Administration, the regional commander and the entire security team to the hotspots and we addressed rallies. We established a police station which is ensuring peace. But just for the information of hon. Abongotum, the same Ruga Police Station was attacked by assailants five days ago. Those people wanted to repulse the policemen. You can see impunity.

**Hon. Speaker:** Hon. Oyoo, rather than seek clarification, you are clarifying to hon. Abongotum what you have done. Therefore, you have done well. We can then proceed.

*(Laughter)*

**Hon. Oyoo:** I have done well and what is remaining now is: We want a police station permanently erected there with enough staff. We also want serious peace meetings to take place. I am happy to announce that we have already arranged one with all the neighbouring MPs from Monday. I will take the opportunity to invite all of them to come and exonerate themselves because some of them have been named as inciters, I have no evidence but the people are dropping names.

**Hon. Speaker:** Hon. Abongotum. Yes, is there a clarification?

**Hon. Abongotum:** Yes. They sought for a long lasting solution.

First of all, I want to thank hon. Oyoo for the efforts he has made to ensure there is peaceful co-existence between the many communities in that region. I also want to thank the people of Muhoroni - especially that area - for encouraging marriages and businesses in that place. We would encourage them to continue marrying each other so that some sort of peace can be achieved when all of them are related to each other. On the issue of long lasting solution, I think I agree with the hon. Member that we need to enhance the police patrol base at Ruga. That is because if you get the history, around 1992, we had issues of ethnic tension around that area. So, we will ensure and we will get in touch with the Cabinet Secretary to ensure that, that patrol base is upgraded.

On the issue of holding peaceful meetings, I want to encourage that. Peaceful meetings should be conducted between all communities in that area. We should not also forget that even the governors from both sides can also hold those meetings because all governors are chairpersons of the county policing authority. So, they can also liaise together and make sure that those meetings are done. Otherwise, on the issue of squatters going to individual farms, I think this will not be tolerated. We will liaise with the Office of Inspector-General to ensure that private property is protected and squatters should not be allowed to invade private farms. We will ensure that it is done and those who fail to observe that will have to face the full force of the law.

Thank hon. Speaker Sir.

**Hon. Speaker:** May we get the next response, Chairperson of the Departmental Committee on Defence and Foreign Relations.

#### GOVERNMENT FACILITATION ON TRADE AND INVESTMENT IN SOUTH SUDAN

**Hon. Gethenji:** Thank you, hon. Speaker. The Member for Kiambaa, hon. Paul Koinange, requested for a Statement on the following issues related to South Sudan: -

- (i) Government facilitation on trade and investment by Kenyans in South Sudan;
- (ii) status of implementation on construction of an oil pipeline from Lamu to South Sudan; and,
- (iii) status of South Sudan membership to the East African Community (EAC).

Hon. Speaker, as a way of introduction, there is an estimated 30,000 Kenyans living and working in South Sudan in both the formal and informal sectors. Kenya is the second-largest exporter to South Sudan after Uganda, with an estimated annual trade of over US\$200 million. Popular export products include Tusker beer and construction materials such as cement and steel. Kenya is also one of the leading investors in South Sudan with dominance in air services by Kenya Airways and Flight 540. In the banking sector, Kenya Commercial Bank has 21 branches; Equity Bank, 19 branches and Co-operative Bank, one branch. In the insurance sector, the UAP

Insurance Company is dominating the market. Kenyans have also invested in the small and medium size enterprise sector as well as in petroleum products, real estate, hospitality and transport. In the road transport sector, we have Simba Coach, El Waal Coach and Kampala Coach operating there.

Hon. Speaker, in view of this, the Government has put in place measures aimed at facilitating trade and investment by Kenyans in South Sudan. This has largely been done through conclusion of bilateral memoranda of understanding (MoUs) and agreements with the Government of South Sudan. For example, on 19<sup>th</sup> December, 2012, an MoU was signed between the Central Bank of Kenya and the Bank of South Sudan. The MoU spells out modalities of engagement between the two banks with a view to fast-tracking implementation of identified areas of co-operation. A key aspect of the MoU is negotiations on bilateral exchange rate between the Kenya Shilling and the South Sudan Pound. This is aimed at solving the problem of conversion of South Sudan Pounds into Kenya Shillings for use by the Kenyan business community. In Addition, the following MoUs and agreements have been concluded between Kenya and South Sudan to provide mechanisms for engagement in the trade and investment sectors:-

- (i) agreement on technical, economic and cultural co-operation;
- (ii) MoU on technical assistance, co-operation in training and capacity building;
- (iii) technical assistance co-operation in placement of 80 civil servants through the Republic of South Sudan-IGAD countries Programme;
- (iv) MoU on delivery of quality oil pipeline and fibre optic infrastructure services;
- (v) MoU on technical assistance, co-operation on training and capacity building in the health sector;
- (vi) joint venture agreement between the Co-operative Bank of Kenya and Government of South Sudan; and,
- (vii) MoU on mutual administrative assistance in customs and taxes between Kenya Revenue Authority (KRA) and South Sudan Customs Services.

Hon. Speaker, currently, the Kenya Civil Aviation Authority (KCAA) and the South Sudan Civil Aviation are in an advanced stage of negotiation for a bilateral air service agreement.

The Government, through the Kenya Embassy in Juba, plays a pivotal role in facilitating Kenyan investors and business community by authenticating application documents for registration as required by the Government of South Sudan. The embassy also issues recommendation letters to the business community. Furthermore, in a bid to promote expansion of the market share for Kenyan products in South Sudan, the embassy facilitates Kenyan organisations to participate in agricultural exhibitions, trade fairs and conferences that are held in South Sudan.

The embassy also offers consular services to facilitate Kenyan investors and the business community in South Sudan. This is by liaising with the host Government to assist Kenyans seeking visa and work permits in South Sudan; facilitating issuance and replacement of Kenyan passports and undertaking consular visits in different states of South Sudan to address concerns by Kenyans.

Hon. Speaker, on the status of implementation of the construction of an oil pipeline from Lamu to South Sudan, it may be recalled that on 2<sup>nd</sup> March, 2012, the former President of the Republic of Kenya, His Excellency Mwai Kibaki; the President of the Republic of South Sudan, His Excellency Salva Kiir and the then Prime Minister of the Federal Republic of Ethiopia, His

Excellency the late Meles Zenawi, participated in a groundbreaking ceremony for the Lamu Port-South Sudan-Ethiopia Transport Corridor (LAPSSET) project, held at the port city of Lamu, Kenya.

Following the launch of the project, Kenya and South Sudan signed an MoU on the development of the crude oil pipeline project. This provides for the establishment of the Joint Co-ordination Committee (JCC) on the South Sudan-Kenya (SSK) crude oil pipeline project. The JCC was tasked to undertake the bilateral negotiations for the Inter-Government Agreement (IGA) between Kenya and South Sudan. Negotiations on the IGA are underway. It is expected that the agreement will be concluded once South Sudan finalises a feasibility study on the crude oil pipeline project.

Hon. Speaker, regarding the status of South Sudan's membership to the EAC, I wish to inform the House that the Republic of South Sudan submitted its application for admission on 11<sup>th</sup> November, 2011. Consequently, the Thirteenth Summit of the EAC Heads of State and Government held in Bujumbura in November, 2011 directed the Council of Ministers to consider South Sudan's application on the basis of the criteria for admission of foreign countries as spelt out in the treaty establishing the EAC.

The Council of Ministers presented its recommendations at the Tenth Extraordinary EAC Heads of State and Government Summit that was held in Arusha on 28<sup>th</sup> April, 2012. The Summit instructed the Council of Ministers to continue with the verification exercise and submit its report and recommendations during the Fourteenth Ordinary Summit of Heads of State and Government in November, 2012. The Summit received a progress report on South Sudan's application for EAC membership and further directed the Council of Ministers to begin negotiations with South Sudan. The process of negotiation was expected to start after the EAC Council of Ministers meeting scheduled for August, 2013. It was projected that it would take up to three or four years for South Sudan to meet the required criteria for joining the EAC, unless the EAC Heads of State and Government directs otherwise.

Hon. Speaker, this is a Statement from the Ministry of Foreign Affairs and International Trade, dated 26<sup>th</sup> July, 2013.

Thank you, hon. Speaker.

**Hon. Speaker:** Yes, hon. Koinange.

**Hon. Koinange:** Thank you, hon. Speaker. I would like to say that I have already spoken to the Chairperson of that Committee. However, there are three issues that I would like to bring to the attention of this House. Many Kenyans in South Sudan are really complaining. I would like to mention three areas where they are very concerned.

In the area of banking in South Sudan, they are not doing the best they can do for Kenyans. Most of the banks in South Sudan do not represent the face of Kenya with regard to staffing. The Kenyan community in South Sudan feels very insecure because they are harassed from time to time by the locals and the authorities. My colleague has mentioned that visas are available to Kenyans. But it is very difficult for Kenyans to get visas and work permits.

On the issue of the pipeline in South Sudan, that started way back in 2004. Up to now, it seems it is not getting any improvement. The MoU has not succeeded but rather it has failed. I would urge our Government to seek an agreement with the Government of South Sudan where we could conclude the issue of the pipeline from Lamu to South Sudan.

I would also like to urge the Government to continue supporting South Sudan at this time. As Kenyans, we need to do more business with other African countries because times are changing. There are many Kenyans in South Sudan. They are complaining that even when they

are put in cells, there is no justice. That is what our embassy in Juba needs to pursue and ensure that justice is done for Kenyans.

**Hon. Gethenji:** Hon. Speaker, the issues raised by hon. Koinange are pertinent. I wish to invite him to our Committee. We could take it up as a substantive agenda during our session. We will invite the Cabinet Secretary in the Ministry of Foreign Affairs who is also responsible for international trade. We could have a session with him in the Committee, if he is agreeable. I suggest that we proceed along those lines.

**Hon. Speaker:** The Chairperson of the Departmental Committee on Education, Research and Technology.

#### COMPENSATION FOR TEACHERS ENGAGED BY KNEC AS EXAMINERS AND INVIGILATORS

**Hon. (Ms.) S.W. Chege:** Hon. Speaker, pursuant to Standing Order No.44(2)(c) hon. Tonui of Bomet Central Constituency requested for a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology regarding compensation for teachers engaged by Kenya National Examinations Council (KNEC) as examiners and invigilators in the national examinations.

The first question was about the plans KNEC has to compensate all those involved in the examination process in various capacities such as teachers of applied subjects, principals and head teachers.

The response is as follows:-

Head teachers are employed by Teachers Service Commission (TSC) and posted to particular stations. They should be in their stations to oversee all activities that take place in those stations, including KNEC exams. The Council pays contracted professionals who leave their stations to offer services in other stations. All head teachers who are professionally contracted by KNEC as examiners, monitoring officers and trainers are all entitled to payment.

It is against the Government policy for officers to receive extra allowances while they are at their workstations. An assessment is part of the normal work routine at their workstation. Therefore, they are required to supervise and mark their students' projects as normal teaching as per their syllabus. He also sought to know what KNEC is planning in order to provide decent accommodation for the examiners instead of school dormitories.

Hon. Speaker, KNEC provides the best possible accommodation to examiners it can afford with a limited budget. Therefore, the funds available are not adequate to host examiners in hotels. However, examiners are accommodated at special marking centres with required accommodation facilities and they are also given special meals commensurate to what they are used to at home.

He also sought to know what measures have been put in place by KNEC to ensure prompt payment of examiners and invigilators immediately after the examinations are completed and marked respectively.

The KNEC has taken appropriate action to ensure that all payments for supervision and marking are made after the release of results as part of the contract. Processing of supervision payments involves verification, validation and confirmation to ensure payment to the right accounts. That process takes a minimum of two months hence payments are made in March and April.

The KNEC is registering all contracted personnel online so that they can ensure efficiency. Once the process is complete, KNEC will be able to link payment with all the registration data instead of doing it manually.

The hon. Member also sought to know what plans KNEC has to have the review of script allowances for examiners annually *vis-à-vis* the rising cost of living.

Hon. Speaker, script fees are reviewed after every two or three years depending on the availability of funds. Rates for scripts can only be increased subject to availability of funds.

Finally, he asked for reasons that led to stoppage of reimbursement of travel expenses for teachers attending training of examiners and marking sessions.

Hon. Speaker, training not being a core function of the Council, KNEC partners with the Kenya Education Management Institute (KEMI) to offer training, which is part of capacity building. That mandate falls under KEMI. The KNEC has no funds for training of examiners and, therefore, trainees are required to pay a fee at a subsidized cost. The certificate gained by trainees after successful completion of the course is recognized by TSC for promotion of teachers. Therefore, there is a growing demand by teachers to train as examiners and KNEC was not able to cope with the demand. Not all teachers who train as examiners intend to work for the Council. Therefore, the training set-up does not place them under any obligation to serve under KNEC.

Hon. Speaker, with your permission, hon. Ogalo, Member of Parliament for Rangwe Constituency had also requested to know something with regard to people who registered for the 2013 Kenya Certificate of Primary Education (KCPE), and who had been banned by KNEC from sitting for the examination, and what measures had been put in place to ensure that such pupils are not banned from sitting the examination. I wish to respond as follows:-

The KNEC would like to assure all candidates, parents, and the country at large that pupils who registered for KCPE, 2013 shall not be barred from sitting the examination regardless of their age. The CEO of KNEC has issued firm regulations to all County Directors of Education, DEOs, head teachers, supervisors and invigilators from barring candidates who have registered for KCPE, 2013. A feedback mechanism has been put in place to ensure that they comply.

**Hon. Speaker:** What is the name of the Member who sought the Statement?

**Hon. (Ms.) S.W. Chege:** There was hon. Tonui and hon. Ogalo.

**Hon. Speaker:** Two people sought the same Statement?

**Hon. (Ms.) S.W. Chege:** The other one was in regard to registration of KCPE.

**Hon. Speaker:** We have such immense business. I think we can only do one Statement. Hon. Tonui is not present and so, he loses his chance to seek clarification. So, you will deliver the other one on Wednesday.

**Hon. (Ms.) S.W. Chege:** Hon. Speaker, an hon. Member disrupted you. I have already issued both Statements.

**Hon. Speaker:** So, you have issued both of them.

**Hon. (Ms.) S.W. Chege:** This one was only one line. There is no candidate who will be barred from sitting for examinations.

**Hon. Speaker:** There you have shortchanged the Chair. Where is hon. George Oner Ogalo, Member for Rangwe Constituency?

Hon. Members, as we develop this system, let us just deal with Members who raise the issues for the time being. That is because it is eating into a lot of other business' time. If hon. Ogalo and hon. Tonui are not present, you could resume your seat.



**Hon. (Ms.) S.W. Chege:** Thank you, hon. Speaker. With your permission, I would like to recognise members of the County Assembly of Murang'a at the Speaker's Gallery.

*(Applause)*

**Hon. Speaker:** Hon. Nooru, Chairman of Departmental Committee on Agriculture, Livestock and Cooperatives.

#### MEASURES TO COMBAT DROUGHT IN LAGDERA

**Hon. Nooru:** Hon. Speaker, this week on Tuesday, 5<sup>th</sup> November, 2013, hon. Shidiye, Member for Lagdera, sought a Statement from the Departmental Committee on Agriculture, Livestock and Cooperatives. The issue of drought mitigation is under the Ministry of Devolution and Planning and not the Ministry of Agriculture, Livestock and Fisheries. This question is misdirected. It should be directed to the relevant Departmental Committee which deals with devolution.

Secondly, on the same date, 5<sup>th</sup> November, 2013, hon. Joseph Lekuton, MP for Laisamis sought a statement from the Departmental Committee on Agriculture, Livestock and Cooperatives which was misdirected because he is talking about drought management in Arid and Semi-Arid Lands (ASAL). The Drought Management Authority is under the Ministry of Devolution and Planning. The Statement should, therefore, be directed to the relevant Ministry.

Thank you.

**Hon. Speaker:** Very well, in terms of our Standing Orders, those areas about which the statements were sought fall under the Departmental Committee on Finance, Planning and Trade, because the Ministry of Planning is also combined with devolution. Therefore, the statements are referred to the said Committee, accordingly.

Next Order.

#### BUSINESS FOR THE WEEK COMMENCING 12<sup>TH</sup> TO 14<sup>TH</sup> NOVEMBER, 2013

**Hon. A.B. Duale:** Hon. Speaker, Sir, pursuant to Standing Order 44(1), on behalf of the House Business Committee (HBC), I rise to give a statement regarding the business appearing before the House the week beginning Tuesday 12<sup>th</sup> November, 2013.

Hon. Speaker, Sir, next week on Tuesday, the House will consider the Second Reading of a number of Bills, namely:-

- (i) The Media Council Bill.
- (ii) The Election Campaign Financing Bill.
- (iii) The National Police Service Commission (Amendment) Bill.
- (iv) The Truth, Justice and Reconciliation (Amendment) Bill.
- (v) The Insurance (Motor Vehicle Third Party Risks) (Amendment) Bill

The other Bills to be read a Second Time next week include the National Social Security Fund Bill, 2013 and the Wildlife Conservation and Management Bill, 2013, whose reports have already been laid on the Table, according to the relevant Chairs.

Hon. Speaker, Sir, through you, I wish to take this opportunity to notify the House that under Order No.8 in today's Order Paper on the motion to adopt the Report on the petition for removal of some members of the Judicial Service Commission, being a special Motion, it must

be debated and concluded within seven days, pursuant to Standing Order 230 and Article 251 of Constitution.

In the event that the Motion is not concluded today, Thursday, 7<sup>th</sup> November, 2013 it will be deemed to have been withdrawn. I, therefore, wish to urge the House, through the Chair, to consider the Motion today and if need arises, the House may at a later time resolve to extend its sitting time today in order to conclude this important business and make a decision, one way or the other.

Hon. Speaker, according to the calendar of the House, this House will go on recess on 5<sup>th</sup> December, 2013. It, therefore, means that this House has only about 17 sittings left, including today.

Hon. Speaker, Sir, if the House is to conclude its business, then the HBC may be forced to seek an approval of the House for extra sitting hours to conclude the heavy business before us before recess. This extension will be occasioned by the number of important Bills that we have, one of which has a constitutional deadline. This also includes other very important Bills such as the Kenya Heroes Bill, 2013, whose passage is anticipated to coincide with 50 years of Jubilee celebrations.

Hon. Speaker, Sir, the HBC has also taken note that the following Bills will mature for the First Reading on 13<sup>th</sup> November, 2013:-

1. The Statute Law (Miscellaneous Amendments) Bill
2. The Statute Law (Miscellaneous Amendments) Bill (No.2)

The second Bill is the one that affects counties. I want to be very clear. We have two Statute Law (Miscellaneous Amendments) Bills; one of them affects the counties, therefore, it will go to both Houses.

Finally, the HBC will meet on Tuesday, 12<sup>th</sup> November, 2013 at the rise of the House to consider other business for the rest of the week. I now wish to lay the Statement on the Table of the House.

Thank you.

*(Hon. A.B. Duale laid the Statement on the Table)*

**Hon. Ng'ongo:** Thank you, hon. Speaker, Sir. I have listened to the programme of the week and even after, which has been articulately presented to the House by the Leader of Majority Party. I did check and realized that the VAT (Amendment) Bill or proposed VAT (Amendment) Bill has been signed by your office and that was done on 1<sup>st</sup> November, 2013.

Hon. Speaker, Sir, given the importance of that Bill I would request that the House Business Committee prioritizes it as soon as it comes out of the Government Printer. That is a plea that I would put to this House. That is because we need to deal with this Bill before going on recess, otherwise it will be overtaken by events.

Thank you.

**Hon. Speaker:** Hon. Ng'ongo, that was not a point of order and I am sure you know it. You did not have to raise it here, but because this is the hour I have always said is exhibition time, all you need to do is just approach the Chair and you know what I have always done; the priority will be given to the Bill.

But of course, this is an exhibition hour.

**Hon. (Ms.) Nyasuna:** Thank you hon. Speaker, Sir. I am happy that the Kenya Heroes Bill that seeks to recognize the heroes of this country is going to be fast-tracked. I do hope that

this Bill is fast-tracked so that we can recognize our heroes, including our sportsmen. Our sportsmen, who have exemplified themselves such as Gor Mahia Football Club, are in the Gallery today. They are the Kenya Premier League Champions, 2013. Gor Mahia has a very special link to Homa Homa Bay County because, indeed, Gor Ogada, the grandson of Ogallo was a medicine man from Ndhiwa Constituency in Homa Bay County.

Hon. Speaker, Sir, '*Mahia*' is a Luo word which describes a state of awe and wonder and to just finish with the translations, '*Giniwasekao*' is a Luo word which means "we have taken this thing". The Heroes Bill will really help in moving this country forward.

As I finish, I would like to say that our heroes must be adequately recognized. Our sportsmen should be adequately supported. Our sportsmen and our athletes all across the country must be adequately supported. We call upon the Government and also the corporate world to come in and support the Kenya Premier League so that we can take this league to a place where it will be like the English Premier League or the Bundesliga.

Thank you very much.

**Hon. Speaker:** Well, it is the hour of exhibition!

I want to disclose to you that in some jurisdictions, there is always a provision where a Member can speak for two minutes or any amount of time under the sun but, please, make it decent also.

**Hon. Sumra:** Thank you, hon. Speaker, Sir. I would like to ask the hon. Member if she is in order to say that Gor Mahia FC belongs to Homa Bay and they play in Nairobi. First of all, I would like to congratulate them. This is a Nairobi team and a national team and we are proud of them. Please, lift up your trophy for the Members of Parliament to see if you have brought it and we in Nairobi---

Hon. Speaker, Sir, thank you for coming to my rescue because Nairobi is a place where everybody belongs. Please do not say they belong to Homa Bay because Gor Mahia FC is a national team and we would like to wish them, as Members of Parliament, the very best. We will support them wherever we can.

Members of Parliament, since Gor Mahia FC has come, they are requesting for a photo session, maybe, at 4.30 p.m., if there is tea break. Gor Mahia FC, keep it up. Bobby Ogola and George Williamson, keep it up. We wish you all the best in the Africa Cup of Nations.

**Hon. Speaker:** Hon. Asman Kamama, the exhibition is now drawing dangerously to a close.

**Hon. Abongotum:** Hon. Speaker, Sir, I also take this opportunity to congratulate Gor Mahia FC for the wonderful work. I also want to join my good friend, hon. Wanga in congratulating them for the super performance. I used to be their supporter when I was in primary school. There was a player by the name Abass Khamis Magongo. There was another player by the name Bobby Ogola. Keep it up. What I only want to tell Kenyans is let us go to our stadia and support our football teams so that they can also make money like the ones in Europe.

The Leader of Majority Party has actually given us the order of events from now up to next week, but there is this issue of the Media Council Bill. You know that there is a Media Council Bill and last week, when we approved the Kenya Information and Communications (Amendment) Bill, our media friends actually complained that nobody consulted them. This time around, we really want to urge them to contact the Chairperson of the Committee and also the Cabinet Secretary, so that when we approve this Bill, we do not want them to be crying as if they do not research and read. We want the media people to be involved fully when we are going to approve the Bill in this House. That is my advice.

Thank you.

**Hon. Speaker:** I think we need to close the exhibition hour, with the intervention from hon. Washington Jakoyo Midiwo. I am not able to find where he is seated. He is supposed to be somewhere here. Do not hide.

**Hon. Midiwo:** I was consulting with the Member for Nyakach. I used to be a Chief Whip and I am used to gallivanting. Let me also congratulate the team *sirkal*. It has been a long wait for them. I said in your presence a few years ago that what this country and Parliament need to do - I tried to do it in the Finance Bill last year - is to ban corporates from sponsoring their own teams, so that they can sponsor community teams.

We are a country of communities and the only way to go is to stop the Bandari's, Bata Bullets and all those people gaining from tax exemptions, when they sponsor their own teams. That takes from our communities. I want to disagree with hon. Wanga that Gor Mahia FC is a Homa Bay team. In fact, the captain is from my village.

(Laughter)

She is very wrong and you also need to tell your folks, the Member of Parliament for Embakasi, who has just said we will have a tea break. There is never tea break in Parliament. So he needs to learn a few things.

I congratulate them and agree with what hon. Kamama has said. He used to support Bobby Ogola who is sitting in the Gallery. He was a good No.4. Congratulations!

Thank you, hon. Speaker, Sir.

**Hon. Speaker:** Maybe, perhaps, he could have ended with an invitation for a match between themselves and Bunge FC.

**Hon. Members:** Yes.

**Hon. Speaker:** What is it hon. Amina Abdalla.

**Hon. (Ms.) Abdalla:** Thank you, hon. Speaker, Sir. I would like to join my colleagues in congratulating Gor Mahia FC for their win and to agree with hon. Sumra that those of us in Nairobi are the owners of that team. They are not based in Homa Bay and those of us who grew up in Eastlands we sang *Gor biro yawne yoo* on behalf of their own.

(Laughter)

So, for you to claim them is to be fraudulent in your claims. Having said that, I just wanted to follow up with what the Leader of Majority Party has said about the business of next week. Most of us are from constituencies that hold wildlife and the Wildlife Bill will be on the Order Paper next week. I think it will be very good for you to go through the Committee's Report. We have had extensive interactions with stakeholders and we need to move that agenda forward next week.

Thank you very much.

**Hon. Speaker:** Finally, a response from the Leader of Majority Party. Hon. Amina Abdalla, how can you forget? Unfortunately, you have disappeared from the screen.

**Hon. (Ms.) Abdalla:** Thank you, hon. Speaker, Sir. My good friend, hon. Jakoyo can never speak and I fail to respond. He urged the companies not to sponsor their own internal teams but other external teams. As you know, charity begins at home, and since he knows what I am talking about, he needs to urge *Jakom* and his company Spectre to sponsor a team.

Thank you.

*(Laughter)*

**Hon. Speaker:** Hon. Duale.

**Hon. A.B. Duale:** Hon. Speaker, Sir, the Hero's Bill will come hopefully next week, so that great men like the players of Gor Mahia FC--- Even the camel keepers of northern Kenya are supporters of Gor Mahia FC.

*(Laughter)*

For 18 years, they have not won and some of us shifted and became fans of Manchester United. But now that they have won, we want all to support Gor Mahia FC. Those of you who are fans of Manchester United, we are playing with Arsenal this weekend on Sunday.

As much as you support Gor Mahia FC and also our great athletes from the Rift Valley, during 50 years of independence celebrations, we want the President and the Government to make sure they are honoured; the good players of *Gor Mahia FC*, the people who won the marathon in Boston, Washington and many other cities, including hon. Members who participated in the Standard Chartered Marathon, hon. Maj-Gen. Nkaisery and his team.

Gor Mahia FC, we are proud of you and we are going to watch the match you will play with Bunge FC. You must give direction that Gor Mahia FC should play with Bunge FC and we must win that day. Bunge FC should beat Gor Mahia FC.

*(Laughter)*

**Hon. Speaker:** Very well, since the person who plays No.3 is hon. Midiwo that will be achieved. Can we now move to the next Order!

### **SPECIAL MOTION**

#### **ADOPTION OF REPORT ON REMOVAL OF MEMBERS OF JUDICIAL SERVICE COMMISSION**

THAT, pursuant to the provisions of Article 251(2 and 3) of the Constitution and Standing Order 230, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the Petition for the Removal of Ahmednasir Abdullahi, Rev. (Dr.) Samuel Kobia, Prof. Christine Mango, Mohammed Warsame, Emily Ominde and Florence Mwangangi as Members of the Judicial Service Commission, laid on the Table of the House on Thursday, 31<sup>st</sup> October 2013.

*(Hon. Chepkong'a on 6.11.2013)*

*(Resumption of Debate interrupted on 6.11.2013 – Afternoon Sitting)*

**Hon. Speaker:** Hon. Chepkong'a, you were moving the Motion and in terms of our rules, you have a total of 60 minutes. You spent 30 minutes. You have a balance of 30 minutes in

moving and you will have another 30 minutes in replying. Those are the rules. These days they are better because previously, you could speak for weeks.

*(Applause)*

**Hon. Chepkong'a:** Thank you, hon. Speaker. Hon. Mbadi is telling me the applause is not for me.

**Hon. Speaker:** Hon. K'Oyoo what you are doing is unparliamentary.

**Hon. Chepkong'a:** Hon. Speaker, let me take this opportunity also to congratulate Gor Mahia. As you know, they are our neighbours but you know we have this coalition arrangement where we are the athletes and they play football and we forget that hon. Wesley Korir has just come back from the United States of America (USA) where he participated in a marathon and he was number nine.

*(Applause)*

Thank you, hon. Speaker. Yesterday, I left at the point where I was flagging out the letters that we received. I just wanted to bring to the attention of the House one issue. As you are aware, there has been an alleged order that was issued by a court purporting to stop proceedings of this House. Pursuant to the National Assembly Powers and Privilege Act, Chapter 6, Section 4 of this Act states as follows:

“No civil or criminal proceedings shall be instituted against any member for words spoken before, or written in a report to, the Assembly or a committee or by reason of any matter or thing brought by him therein by petition, Bill, resolution, motion or otherwise.”

Section 12 of the same Act states as follows:

“No proceedings or decision of the Assembly or Committee of privileges acting in accordance with this Act shall be questioned in any court.”

Section 19 of the same Act clearly states that:

“No Member or officer of the Assembly, and no person employed to take minutes of evidence before the Assembly or any committee shall give evidence elsewhere in respect of the contents of those minutes of evidence or of the contents of any document laid before the Assembly or that committee or in respect of any proceedings or examination held before the Assembly or that committee without special leave first obtained.”

Hon. Speaker, that is the law with regard to the privileges that this House enjoys.

Article 117 (1) of the Constitution which is also very explicit on the powers of this House when it comes to debates in the Chamber clearly states as follows:

“There shall be freedom of speech and debate in Parliament.”

Hon. Speaker, on that particular Article there is no proviso to it and so there is no derogation by any court of law.

Hon. Speaker, as I was mentioning yesterday, we received a letter from hon. Paul Muite who was acting on behalf of the Judicial Service Commission (JSC) dated 25<sup>th</sup> of October in which they sought for an extension of time. We also received a letter from the Inspector-General (IG) of Police with regard to the breach of Article 245 of the Constitution. It is annexed to the report. We also received a letter of an exchange between the former Chief Registrar of the Judiciary and the Cabinet Secretary in charge of the National Treasury. We also received an extract of resolution of the Finance Committee of the JSC, of a meeting held on 20<sup>th</sup> September.

The extract was dated 26<sup>th</sup> September, 2013 and it was directing the police and Anti-Banking Fraud not to charge or arrest any persons until investigations being undertaken were completed.

Hon. Speaker, I would like to go to the report of the Committee. After the Committee analysed the various evidence that was adduced, it came to the following findings and observations:

With regard to breach of Article 245(4) that was stated by the petitioners, Messrs Mugambi and Alex Kibii, no person shall give direction to the IG of Police with regard to any matter that the IG of Police is investigating at that time. We received a letter from the IG that is dated 25<sup>th</sup> October, 2013. I would like to read it. Make reference to it so that it is not misreported. It states:

“On 27<sup>th</sup> September, 2013 as the audit report was awaited, two officials of the Judiciary namely Mr. Kaikai Kissinger who is the Deputy Registrar and who has facilitated the arrest of the four Judiciary staff accompanied by the Director of Finance, Mr. Benedict Omollo arrived at the Anti-Banking Fraud Investigation Unit with instructions from the JSC that no Judiciary staff should be charged and any of them held in custody should be released.”

That is the letter that we have received from the IG of Police.

Hon. Speaker, we also received a resolution duly signed by the Chair, JSC in charge of the Finance and Administration Committee that was extracted on 26<sup>th</sup> September, 2013 that was supposed to be taken to the Anti-Banking Fraud Unit and it reads as follows:

“Committee Resolution: The Committee deliberated on the matter and having considered the management report resolved that the judicial staff being held in police custody in relation to the fraud should not be charged in court until investigations being undertaken are complete and the JSC is fully briefed.”

Hon. Speaker, that information was sent to the police. As you are aware, the JSC employs magistrates, High Court Judges, Court of Appeal Judges and also the Supreme Court Judges. To send a letter to the police stopping them from executing their duties, the Committee found that that communication together with the appearance of the Deputy Chief Registrar and the Director of Finance requesting for the release of those persons, to have been in contravention of Article 245(4) which states that:

“...no person may give a direction to the Inspector-General with respect to the investigation of any particular offence or offences, the enforcement of the law against any particular person or persons---”

Hon. Speaker, the Committee, upon due consideration, found the claim herein discloses sufficient grounds to warrant the petitions and the supporting materials to be forwarded to the President to constitute a tribunal to fully investigate the matter.

With regard to violation of Article 161(2)(c) of the Constitution, it designates the Chief Registrar of the Judiciary as the chief administrator and accounting officer of the Judiciary. Article 173(1) establishes the Judiciary Fund “which shall be administered by the Chief Registrar of the Judiciary”. The Committee received correspondence from the former Chief Registrar and a letter from the Cabinet Secretary in charge of the National Treasury in which the Chief Registrar was seeking assistance with a view to resolving the issues of interference within the Judiciary as she executed her duties.

That letter was responded to on 15<sup>th</sup> October 2013 outlining the requirements of the Constitution and the law and the National Treasury Cabinet Secretary warned that anyone that is in breach of that particular legislation that establishes the Chief Registrar as the accounting officer was in breach of the Public Finance Management Act. The Committee considered all

correspondences that were submitted to the Committee. It came to the conclusion that there was violation of the law and recommended that this matter be investigated by a tribunal to be established pursuant to Article 251 of the Constitution.

Hon. Speaker, on the alleged violation of Chapter Six of the Constitution and the Advocates Act, we received as I have stated, a number of correspondences both from those who made oral submissions and those who made those oral submissions on oath. In those submissions, they clearly submitted documents that showed that one member of the JSC had in fact violated Chapter Six of the Constitution and the Advocates Act.

Hon. Speaker, if you look at the report of the Committee on page 23, the Committee concluded that there was sufficient evidence to warrant this particular commissioner to be referred to the President for the appointment of a tribunal. There was sufficient evidence that was adduced by one, Brian Yongo in which he submitted that the named commissioner had in fact shared profits, contrary to the Advocates Act.

Further, we were given information to the effect that this particular advocate or commissioner had been admitted, contrary to the Advocates Act. The documents have already been annexed to the report of the Committee.

The documents which were availed to the Committee included a certificate of completion that was signed by the late Peter Simani on 30<sup>th</sup> November, 1992. This was done by P.L. Simani of P.L. Simani and Company Advocates.

That certificate clearly stated that Mr. Ahmednasir Maalim Abdullahi had attended pupilage under his guidance and received instructions in proper business practice and employment of an Advocate from 1<sup>st</sup> June, 1990 to 31<sup>st</sup> December, 1990, in accordance with the provisions of the Advocates Act. It was signed on 3<sup>rd</sup> November, 1992.

Hon. Speaker, Sir, in an affidavit that was submitted to the Committee dated 27<sup>th</sup> January, 1993, the said late Peter Simani said in paragraph nine that in 1991, due to poor performance of his firm in 1990, he decided to branch into other areas of economic activity and concentrated his effort in his stationery firm known Chebuturi Enterprises.

He also stated in paragraph four of that affidavit that his last practice certificate expired on 31<sup>st</sup> December, 1989. The Committee considered this as very important material in which it disqualifies the Commissioner for having been appointed as a Commissioner in the Judicial Service Commission (JSC). This goes to show the gross incompetence that is stated in Article 251 of the Constitution. Therefore, this matter is fit to be referred to the President for an appointment of a tribunal.

Hon. Speaker, Sir, in the course of our investigations, and I must thank Senior Counsel Aluoch who is a Member of my Committee, he informed the Committee that the Public Investments Committee (PIC), while investigating the matter of Erad, had reached a conclusion in the report that was tabled and approved by the House on Tuesday. Under paragraph 13 on page 94, the Committee made the following observation:

“In spite of denials by Mr. Ahmednasir Abdullahi that the firm of Ahmednasir Abdikadir did not purchase these documents, evidence submitted by the NCPB indicated that the firm purchased tender documents for maize importation under Tender No.80, Receipt No.348782 dated 4<sup>th</sup> August, 2004.”

The Committee found that this particular Commissioner lied under oath and so he is not fit to hold office in accordance with Chapter Six of the Constitution. Therefore, the Committee said that this particular report of the PIC should be tabled once it is approved. I wish to table the



Report of the PIC in support of the contention of the Departmental Committee on Justice and Legal Affairs.

*(Hon. Chepkong'a laid the document on the Table)*

Hon. Speaker, Sir, we also received complaints from one, L.G. Kamweti, former employee of National Bank of Kenya (NBK) who wrote presentations and swore an affidavit to the effect that Commissioner Ahmednasir Abdullahi had unlawful confidential documents from the NBK that he used against the bank. He also gave sworn testimony before the Committee that the said Commissioner had abused his office to occasion termination of his employment with the bank.

The Committee also considered this matter and resolved that it is enough ground for abuse of office; a matter necessitating the Committee to recommend to Parliament initiation of the process of removal of the Commissioner.

In the attachments that we have produced, it is clear that there was serious intimidation from the Chairman of the NBK, one Mr. Hassan. Mr. Kamweti indicated and told the Committee that he was asked to withdraw the complaint against Mr. Ahmednasir that had been filed with the Advocates Complaints Commission. When he failed to do so, the Chairman himself vide a letter that is attached to this report wrote to the Advocates Complaints Commission purporting to withdraw the complaint that had been made by L.G. Kamwiti. This is in the letter that is dated 2<sup>nd</sup> July, 2013 and it is addressed to G.M. Thuku, Senior Principal State Counsel, the Advocates Complaints Commission. Paragraph three of the letter states:-

“In light of the contents of paragraphs 1 and 2 herein above, I restate that the complaints purported to have been filed on behalf of the NBK, the same is hereby withdrawn as it was filed without authority or sanction by the relevant committee or decision-making organs of the bank.”

The letter is signed by Mr. Mohammed A. Hassan, Chairman. It was copied to Ahmednasir Abdikadir and Company Advocates, CBA Building. The Committee found that this was credible evidence that a tribunal needs to investigate further.

Hon. Speaker, Sir, as you are aware, under Article 251, the threshold for this sort of investigation is to establish not beyond reasonable doubt that there is a *prima facie* case that a tribunal can go and investigate by calling evidence, conducting investigations and inquiries in which they are better placed to do.

What we were required to do under Article 251 and Standing Order No.230 was to establish that there are sufficient grounds and supporting evidence to warrant Parliament to recommend to the President to establish a tribunal to investigate further the named Commissioners.

Having considered the provisions of Articles 73, 75, 76, 125, 161, 171, 172, 173, 245 and 251 of the Constitution, and in particular having also considered the ruling that you made in this House which categorically said:-

“Indeed, as you well know, the National Assembly approves the appointment of most State officers, including Cabinet Secretaries. Does it, therefore, not follow that the Secretaries would know that the same House retains the power of removing them from office for contempt, insubordination and lack of courtesy?”

The named Commissioners were invited to appear before the Committee or make representations as they deemed fit in accordance with Article 125 of the Constitution. They made attempt to send counsel we have a lot of respect for. As you are aware, that counsel was the

former Chair of Departmental Committee on Justice and Legal Affairs of this House. We did, of course, graciously inform him that he was aware, as the former Chairman that he would not have allowed anyone to appear who has been invited to make personal representation because those were disciplinary proceedings and he could not hold brief for them.

Hon. Speaker, Sir, we informed him that we have no problem with him appearing, but he must appear with the persons who have been invited to come. We found their non-attendance in breach of Article 125 of the Constitution, the ruling of this House, which has neither been reviewed nor appealed against. It is binding on all the Members of Parliament and Committees. We were bound by that ruling. Consequently, we found that the conduct of the named Commissioners was in contempt of the Committee of the National Assembly, an act of insubordination and lack of courtesy. Consequently, the Committee found that this amounted to gross misconduct on the part of the named Commissioners. Just failing to attend to a Committee is a very serious matter. We cannot even say much about this because they know it. These are members of the Judiciary and they know the law. They can read it for themselves and so, in accordance with your own ruling of 16<sup>th</sup> October, any person that fails to appear is in contempt of this House and therefore, is acting in gross insubordination. Therefore, non-attendance consequences will apply as required under Chapter 6 of the Constitution.

In conclusion, the Committee reports to the House that the petition discloses grounds for removal of the following members of the Commission:- Ahmednasir Abdullahi, Reverend (Dr.) Samuel Kobia, Prof. Christine Mango, Mohammed Warsame, Emily Ominde and Florence Mwangangi and recommends to the House as follows:-

(a) That the House resolves that the petitions herein, together with the materials in support thereof be sent to His Excellency the President pursuant to Article 251 of the Constitution;

(b) That the House resolves that His Excellency the President appoints a tribunal to deal with the matter in accordance with Article 251(5) of the Constitution;

(c) That considering the matters to which the petition herein relates, the House resolves that His Excellency the President suspends the Commissioners herein pending the determination of the tribunal.

As I conclude, I would like to quote from John Maxwell's book in which he said, "Nobody says that good decisions are always simple, but they are necessary for success".

Quoting the former President of Notre Dame University in the United States, one Theodore Hesburgh, he says, "You do not make decisions because they are easy; you do not make decisions because they are cheap; you do not make decisions because they are popular; you make decisions because they are right".

I appeal to the Members to uphold decency and integrity as we adopt this report, so as to uphold the supremacy of Parliament and sovereignty of the people who elected us into this House.

I move the report and call upon hon. Waiganjo to second.

**Hon. Waiganjo:** Thank you, hon. Speaker, Sir. I rise to second this important report from the Committee on Justice and Legal Affairs. This report was necessitated by a petition from the members of the Republic of Kenya wishing to exercise their constitutional rights and of course, coming through our Standing Order No.225. As has been ably prosecuted by the Chairman of the Committee, we were seized with this petition. The Speaker invoked the provisions of Standing Order No.230 and the petition was therefore, committed to the Committee on Justice and Legal Affairs.

From the outset, I wish to state that the journey that the Committee has travelled with the Judicial Service Commission has been very turbulent. This is a Commission that would only wish to oversee itself. Before this petition, we had issues with this Commission. This is the time for this House to assert itself. We need to realize that this Commission snubbed a Committee of Parliament. If Members will not assert their authority, tomorrow another Commission will snub another Committee. It is, therefore, very important, as we look through the litany of misdeeds that have been brought forward by the petitioners, to have in mind that no malice is intended in this report. It is a report that has been done in utmost good faith. The Commissioners of the JSC were invited and the Committee was only carrying out its mandate. When the Speaker referred this matter to this Committee, we looked at our mandate and realized that we had a job to do.

Under Standing Order No.230(3) and the Second Schedule, the Committee on Justice and Legal Affairs is seized with the responsibility of considering matters of constitutional affairs, the administration of law and justice including the Judiciary, public prosecutions, elections, ethics, integrity and anti-corruption, human rights and even matters relating to political parties. We have always had commissions appear before us in the past whenever the Committee required them to appear. They have always appeared before this Committee, but the JSC did not.

So, in exercise of the mandate of this Committee, we looked through the petitions as had been presented to us. We invited the petitioners and they appeared before us. I shall not repeat what the Chairman has ably enumerated, but every document that we perused is an annexure to the report that is before the House today. Interestingly, the breach against the Constitution referred to Article 161 where the Chief Registrar, as the Accounting Officer of the Judiciary, would make approvals and then the JSC would overturn or disregard them. Under Article 173(1)(3), the Chief Registrar as the administrator of the Judiciary did not have a free hand on the Judiciary Fund. The Judiciary Fund is approved by this House, but when it gets to the Judiciary, the secretary of the JSC cannot manage it. Directing the Inspector General of Police to stop investigations of a criminal nature is something that has never been heard of. This is a clear breach of the constitutional provisions. We swore to uphold and protect this Constitution and, therefore, we must do what we are required to do. Yesterday, we censured a Cabinet Secretary. Today, we are on a task to censure a constitutional commission. We shall not get away from such responsibilities.

Perhaps, it is important to look at the Office of the JSC. The membership of the JSC, for Members' information is headed by none other than the Chief Justice of the Republic of Kenya; the President of the Supreme Court, as its Chairman. There is a member who is a Judge of the Supreme Court, elected by the Judges of the Supreme Court. Then it has a Judge of the Court of Appeal.

So, hon. Members can see the calibre of the leadership of the Judicial Service Commission. It comprises of a Judge of the Court of Appeal, who is elected by the Appellate Judges; a Judge of the High Court and a Magistrate, who are elected by the Association of Judges and Magistrates; the Attorney-General, two Advocates of the High Court of Kenya and a member of the Public Service Commission. So, the membership of the JSC comprises of high calibre personalities with high moral integrity. In order for those individuals to become members of the JSC, they went through baptism by fire. It is not easy. The public holds the JSC in very high esteem. When you are held in such esteem, members of the public must also have their eyes on you because you are answerable to the people of Kenya. Therefore, you must be beyond reproach.

Hon. Speaker, the members of the JSC were given an opportunity to explain themselves. The documents were handed over to them. We said to them: "Look at the petition. Do you have anything to say? You do not even need to appear before our Commission. Prepare written submissions, so that we can look at them. If we find that there are no grounds, we shall report to the plenary of the House. If we find that there is something untoward, we will do the same." They refused. They did not appear. They sent counsel but we could not listen to him because the matters are personal to them. So, they have a great responsibility. They are held in very high esteem but they refused to come. So, what happens? We had a job to do. We had been given these reports to look at.

Article 172 of the Constitution enumerates the functions of the JSC. Their functions are commensurate to their calibre. What the JSC can do to the Judiciary is unimaginable. That is why we chose very carefully while picking them to serve as members of the JSC. They are seized with the responsibility of recommending to the President of the Republic of Kenya on appointment of judges. Every judge must go through the JSC. That is the membership of the Judiciary that we are discussing here today. Those are the men and women who sit in judgment of judges – our learned Judges of the High Court and the Supreme Court as well as Magistrates.

Hon. Speaker, another function of the JSC is that they can recommend the removal of those judges. Therefore, we must have people in the JSC who are beyond reproach. If one can recommend the removal of a judge from office, then what are we talking about? They discipline court registrars everywhere in the Republic of Kenya. They even sack them. Of course, they sacked the Chief Registrar of the High Court only the other day. However, that is not the reason for this report. This report is premised on the petition of the citizens of the Republic of Kenya.

So, these are people who look at the programmes of the Judiciary. So, these are people of high calibre, who have onerous responsibilities and functions. Of course, they did not want to come to the National Assembly, not to be cross-examined or interrogated but to simply tell the Committee what was happening within the Judiciary. They have a Fund, which is provided by the Constitution. This House approves that Fund. Therefore, I urge hon. Members of this House to look at our report and adopt it.

With those remarks, I beg to second.

*(Question proposed)*

**Hon. Speaker:** Yes, hon. Agostino Neto.

**Hon. Oyugi:** Thank you, hon. Speaker. First, allow me to declare that I am a Member of the Committee. Therefore, I am bound to support the report since I am a Member of the Committee and given the fact that I did not record dissent at the time when the Committee dealt with this matter.

I would like to, first, speak to the doctrine of separation of powers which was referred to when my Committee was presented with this particular petition. The doctrine of separation of powers as enshrined in constitutional principles, as passed by the very learned Montesquieu, says that the branches of government ought to be separate and distinct. They ought to be independent from each other but yet inter-dependent. I speak to the principle of inter-dependence of the branches of Government to help establish the fact that all the three branches of the Government need to have powers to check each other. That means that the Executive can then check the Legislature and the Legislature can check the Judiciary, and vice-versa.

Hon. Speaker, constitutional principles lay out how the various branches of government check each other. The Legislature, for example, would veto presidential appointments. Once or twice, this House tried to do so. The President can also veto legislation passed by this august House. The Judiciary can also declare that laws passed in this House are unconstitutional and, therefore, look at various interpretations with a view to making them constitutional. The JSC is not the Judiciary. So, however much there would have been issues of the National Assembly wanting to interfere with the work of the Judiciary, the JSC is not the Judiciary. Even then, I have already explained that even the Judiciary can be checked by the National Assembly. Nothing stops us from doing so. The JSC is a Commission within the meaning of Article 248 of the Constitution, which is then a Commission that is subject to Parliament.

The Constitution outlines very well that the sovereignty of the people belongs to the nationals of this country, and it is supposed to be exercised by the various organs of the Government. More so, Article 95(4) of the Constitution speaks to the fact that the branch of the Government that exercises sovereignty, on behalf of the people, is the National Assembly. We received the petition for the removal of the members of the JSC, which is in line with Article 251 of the Constitution. If you read Standing Order No.220, moving forward, on how to deal with petitions, as well as Article 251, you will appreciate that ours is not to find out whether the Commissioners are guilty or not guilty. Ours is to find out if at all the petition that is before us sets our grounds for possible removal of the JSC from office. The work of the removal of members of the JSC belongs to someone else – the President is supposed to appoint a tribunal to investigate the allegations.

Hon. Speaker, we shall, therefore, not be interfering with the work of the President. What were supposed to happen before us were basic considerations. It would be proper for the House to know that the Justice and Legal Affairs Committee was magnanimous to the extent that they invited the JSC, so that they could give them a fair chance to execute the issues before them. That same Commission chose not to appear before the Committee.

Hon. Speaker, you have ruled several times that this House exercises oversight. For the JSC not to appear before us whereas other organs of Government appear before us sparks of impunity. I really think that the consideration before us is not that Parliament is violating the work of JSC, we are only doing that which we are obligated to do under the Constitution. What is presented before us with regard to the various committees of the JSC are gross acts of constitutional violations. Hon. Speaker, how much more time do I have on this?

**Hon. Speaker:** Five minutes.

**Hon. Oyugi:** Thank you very much. Hon. Speaker, I will be very considerate because I know many Members want to speak to this matter.

The acts of JSC as presented before us, let us not create people who are above the law. This is because the law does not anticipate that. Even the members of the Judiciary can be removed. So, there is nothing that stops us from removing Commissioners of the JSC especially if they are in violation of the Constitution in the manner that was manifest in the petition presented before our Committee.

This has nothing to do with the removal of the Chief Registrar of the Judiciary. These things are totally distinct. There is nothing to do with the removal of the Chief Registrar. I know a few people will be speaking to that. I am alluding to it because I know for a fact that the Chairman of my Committee has been under siege for several other reasons. Some people think that because the Chief Registrar is, perhaps, a member of his clan or community--- I think that is improper. What we are dealing with are grounds of violation. This House set precedent yesterday

and we warned you. I remember my friend hon. Okoth told you that once you start treading on constitutional violations, we have to use the same measures and standards. You cannot be using constitutional standards on one side and then refuse to use them on the other side. That is a principle of the rule of law. The rule of law simply states that the law must cut across for everyone and equally unless there are people who are more special or more superior. If we want to set such precedent in this House, then people will engage in constitutional violations. So, whether it is the President, the Speaker of the National Assembly, the Leader of Majority Party, the Leader of the Minority Party and so on, they must be shown that constitutional violations cannot be entertained

If the Parliamentary Service Commission, which you honourably Chair, can submit to Committees of Parliament then who is the JSC not to submit to the Committees of Parliament? The JSC cannot come to the courts of equity with clean hands. We gave them a fair chance to state their issues and argue their case, but they failed to do that. We request this House to support the findings of this Committee. We are not witch-hunting. The facts speak for themselves. Whether it is illegal or not, it will be subject of a tribunal which the President has to select. That tribunal will be dealing with the illegalities. It is, therefore, for this House to see whether they committed offences. *Prima facie* there has been a violation of the Constitution and that is why we recommend that the President forms a tribunal to investigate the members of the JSC.

Hon. Speaker, with those remarks I beg to support.

*(Applause)*

**Hon. Speaker:** Well, hon. Members, I think that it is important that even as you debate this report certain things be made clear. The Parliament of the Republic of Kenya is established under Article 93 of the Constitution and, indeed, Article 94 grants legislative authority of the Republic at the national level to the Parliament. The Parliamentary Service Commission which is not Parliament is established under Article 127 of the same Constitution. The Judiciary is established under Article 159 and its independence provided for under Article 160. The JSC which is not the Judiciary is established under Article 171. Under Article 95(5)(b) the National Assembly of the Republic of Kenya exercises oversight over all State organs. Under Article 260 of the Constitution, State organs are commissions and offices created under the same Constitution. The commissions which I have referred to, that is, the Parliamentary Service Commission and the Judicial Service Commission are State organs over which this National Assembly of the Republic of Kenya has oversight over.

I am sure hon. John Olago Aluoch, who has been a commissioner of the Parliamentary Service Commission is aware that the Parliamentary Service Commission has in the past and even now been taken to court. That is perfectly in order. However, it has never happened that somebody in their right minds would take the Parliament of the Republic of Kenya to court.

*(Laughter)*

This must be made absolutely clear. The Parliament, indeed, this National Assembly cannot pass a resolution here directing that criminal “A” or “Y” who is appearing before this and that court should be acquitted. This House cannot do that. This is because we are alive to the sense of separation of powers which hon. Neto has referred to. We cannot pass a resolution here

saying that the courts before which this criminal is appearing must release him or her. So, similarly, it is trite law that the courts cannot and must not direct what this House does.

*(Applause)*

That I would defend to the hilt.

Hon. Members, let us give a chance to hon. Dr. Patrick Mweu Musimba, who is making his maiden speech. Please do not interrupt him.

**The Member for Kibwezi West** (Hon. Patrick Mweu Musimba): Thank you hon. Speaker, Sir, for giving me this opportunity to contribute.

I would like to thank the Leader of Minority Party in the National Assembly, the Deputy Leader of Minority Party, the Chief Whip and the Deputy Whips, the leadership of the House and indeed, fellow hon. Members for your support in this course and endeavour to return to this august House. I also want to thank the Almighty God and I want to dedicate the words of Psalms 121, which I wish to read as follows:-

“I look up to the hills  
Where does my help come from?  
My help comes from the Lord.  
The maker of heaven and earth  
He will not let your foot slip  
He watches over you  
Will not slumber nor sleep  
The Lord watches over your coming  
And going, now and forever more.  
Amen.”

Hon. Speaker, Sir, I want to thank the people of Kibwezi West Constituency for the faithfulness and steadfastness in making a profound statement that: *“Pamoja Tunaweza.”* Indeed, at this juncture I look up to the great and onerous task as I took the great oath to defend the Constitution of the Republic of Kenya. Indeed, I stand on the shoulders of giants. The first time I entered into this House - I have confessed this to a couple of you hon. Members - I felt like walking with a notepad and taking autographs because there are great people in this House.

Hon. Speaker, Sir, as people debate and try to impute honour of the august House, I stand here to uphold the same and contribute on the plight of the many Kenyans, including the many people of Kibwezi West Constituency. I just want to highlight only two issues. The first one is on security. We borrowed a leaf and said that security is the responsibility of each and every individual in this Republic. We say *kaa macho* all the time. Together, if we uphold our risks and threats assessment skills, we will prevail against all and sundry.

Two, on road carnage, I want to say that where we cannot take responsibility for our people, because we have lost a lot of people in Kibwezi West, along the Great Nairobi-Mombasa Highway, I think it is high time we looked at the structural integrity of motor vehicles to see, in the event of an accident, how many lives can be saved. Purely because a lot of the cars we drive go through great integrity tests and have airbags and so forth. What about our public service vehicles? Do they have roll cages and are they stable?

Hon. Speaker, Sir, I want to stand here again and just confirm to this House that your individual support and steadfastness as we move together, lead us to protect this great nation. I want to part by saying, God bless Kenya, God bless our President and Deputy President as they lead the nation towards the implementation of a great vision that is to take what our forefathers

envisioned; that we shall take leadership globally. Remember, there is no one too rich that they cannot receive, nor too poor that they cannot give.

Thank you and God bless you.

**Hon. Wakhungu:** Thank you hon. Speaker, Sir. Before I make my comments, I want to quote what Martin Luther King Junior said. He said that the true measure of a leader is in decision making. It is decision making, not in times of comfort and convenience, but in times of difficulties and challenges, like today. Therefore, I am calling upon hon. Members to debate this issue objectively. This is a House of debate, rules and procedures.

Hon. Speaker, Sir, I rise to oppose.

Article 251 (2) states as follows:-

“A person desiring the removal of a member a commission or of a holder of an independent office on any ground specified in clause (1) may present a petition to the National Assembly setting out the alleged facts constituting that ground.”

Hon. Speaker, Sir, if you allow me, I want to read clause (1). It states as follows:-

Article 251 (1)

“A member of the commission (other than an *ex officio* member), or the holder of an independent office, may be removed from office only for –

(a) serious violation of this Constitution or any other law, including a contravention of Chapter Six;

The term to note is “serious”. Within few a minutes I am going to demonstrate that the petitioners were not serious.

When I looked at the name “Riungu” I thought it was my friend, hon. Kang’ethe Irungu only to realize that this gentleman by the name Riungu Nicholas Mugambi, is from Igoji Meru.

When you look at this petition, this particular petitioner did not appear before the Departmental Committee on Justice and Legal Affairs. The allegation is very serious. We need to know who this Riungu Nicholas Mugambi is.

**Hon. Member:** He is a Kenyan!

**Hon. Wakhungu:** Of course he is a Kenyan, but we need to know him. He never appeared before the Committee. When you talk of a petition--- Standing Order is very clear. We are looking at precedent set. Unless I am wrong, any petition that comes--- This is a petition. There is no oath taken here and we are relying on this petition. That is point number one.

*(Loud consultations)*

Give me time; this is a House of debate!

Secondly, there is no affidavit and he never appeared before the Committee. I am going to analyze the issue one by one, if the Chair allows me. Article 245 (4) of the Constitution reads in part:-

“---no person may give a direction to the Inspector-Generalwith respect to –

(a) the investigation and any particular offence or offences”

It is very clear. I have looked at this report to get the petition or an affidavit by the Inspector-General, I have not got it. I asked whether the IG appeared before the Committee and I was told he did not. This is a serious matter and the methodology and the process must meet the threshold.

Hon. Speaker, Sir, if at all the IG was directed, Article 245 is clear. It says: - “no person may give a direction---”

“Direct” and “opinion” are two different things.



In any case, if the IG was given direction, he violated the Constitution and for that matter he must be on his way home. We need to know whether he was given direction and if he took action; or it was an opinion.

**Hon. Speaker, Sir,** Article 245 is very clear and it is written here. This is a House of debate; it is not a House of sycophancy, tribal or whatever it is. We are legislators here and Article 95 is very clear. It says we are here to legislate, represent and play oversight role.

**Hon. Speaker,** Article 226(2) grants national oversight role over public spending by public institutions. We can only discuss the expenditure by looking at the auditor's report. When you look at this report, there is no annex of the report of the Auditor-General, who can only tell us whether anything was violated.

**Hon. Speaker:** There is a point of order, hon. Wakhungu. What is your point of order?

**Hon. Kang'ata:** On a point of order, hon. Speaker, Sir.

**Hon. Speaker:** What is your point of order?

**Hon. Kang'ata:** Hon. Speaker, Sir, is the hon. Member in order to refer to the petitioner in question as Irungu instead of referring to him as Riungu to the extent that he is confusing people?

**Hon. Speaker:** Proceed.

**Hon. Wakhungu:** Hon. Speaker, Sir, hon. Irungu is my very good friend. Unfortunately, when I was talking he was not listening. A good leader must be able to listen to others when they are speaking. When I was making a clarification hon. Irungu was not listening. I want to clarify that the petitioner is not Irungu. The petitioner is Riungu Nicholas Mugambi.

**Hon. (Dr.) Pukose:** On a point of order, hon. Speaker, Sir. Standing Order No.230(1)(b) which is on petitions for removal of a member of a constitutional commission states: "may contain affidavits or other documents annexed to it."

So, it is not mandatory.

**Hon. Wakhungu:** Hon. Speaker, Sir, on the matter that we are discussing, we are talking about Judiciary and the Judicial Service Commission. The JSC is there to enable the functioning of the Judiciary. So, in terms of the threshold I want to say this: The functioning of the JSC has a very strong positive correlation in terms of the success of the Judiciary. So, on a matter like this, the threshold must be established and we must set a precedent. When you are talking of removing commissioners, it is not an issue to joke around with because here we are talking proudly of the reformed Judiciary. The success of Judiciary has a very strong positive correlation in terms of the functioning of JSC.

Hon. Speaker, as I continue, when I look at this Riungu petition---

**Hon. (Ms.) Mbarire:** On a point of order, hon. Speaker. The hon. Member is misleading this House. When he talks about threshold, is he saying that there are commissions which are more important than others and more important to the point that they cannot even come before a parliamentary committee? Is that what the hon. Member is telling us here today? Stop misleading this House.

**Hon. Wakhungu:** Thank you, hon. Speaker, Sir. This is a petition of someone who is making allegations. The allegations must be proven beyond any reasonable doubt and especially if this person never appeared before the Committee.

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

**Hon. Speaker:** Hon. Wamalwa, it is your right to hold whatever view under the sun but honestly it is not also permitted that you must either mislead yourself and proceed to mislead the House. You can mislead yourself but not the House.

(Laughter)

**Hon. Wakhungu:** Hon. Speaker, Sir, if you give me time and protect me from interference, I will prosecute my ideas here. I started by saying that there is a clear strong positive correlation. The terms are “strong positive correlation”. What I meant is that the functioning of the JSC has a very positive correlation with the Judiciary. The JSC has 11 commissioners. Here we are talking about six commissioners. If the six are removed, we are going to remain with five. Again, when it comes to the petition, we have different commissioners. It will have been in order to have strong witnesses against all the commissioners.

Hon. Speaker, I have looked at this report and I have not seen anywhere where there is strong evidence against these commissioners. This is a House of debate.

**Hon. Member:** On a point of order, hon. Speaker, Sir. As much we have freedom to gesture in the House, I think for some of us we are very peaceful. It is very uncomfortable when the Member keeps on poking his hand and pointing at the Speaker in a threatening manner and shouting. He has to be restrained from doing that.

(Laughter)

**Hon. Speaker:** Fortunately, the Speaker never gets threatened. As you can see, I am as calm as usual.

(Laughter)

Proceed, hon. Wamalwa. Let hon. Wamalwa make his point, please.

**Hon. Wakhungu:** Thank you, hon. Speaker. I am not going to point. You know very well I cannot threaten you. The issue is that this is a House of debate and we must have facts in place. The issue is that I oppose this and I justify why; it is because we do not know the petitioner. He never appeared before this Committee. We know he is a Kenyan but we need to know his identity.

**Hon. Speaker:** Hon. Wamalwa, you are not contributing. When you are not on the microphone, you are not contributing.

**Hon. Wakhungu:** Hon. Speaker, Sir, if you allow me I am about to finish this. The Auditor-General’s report is missing.

**Hon. Speaker:** You finished long time ago. Hon. Pukose.

**Hon. (Dr.) Pukose:** Thank you, hon. Speaker for giving me this chance to contribute to this Motion. I stand to support the report of this Committee and for purposes of no doubts; I refer to Standing Order No.219 on the meaning of “petition”. It states:

“For purposes of this Part other than Standing Order 230(*Petitions for removal of a member of a Constitutional Commission*), a petition means a written prayer to the House under Article 37 or 119 of the Constitution by a member of the public requesting the House to consider any matter within its authority, as contemplated in Articles 94 and 95 of the Constitution, including enacting, amending or repealing any legislation.”

For my colleague who has just left the Floor, I think he needs to understand what a petition is. Under the same Standing Order No.230, we said for any petition to be presented to the House, it has to meet the necessary threshold and for this petition to have reached the

Departmental Committee on Justice and Legal Affairs, it must have met the threshold that is required.

Hon. Speaker, when a commission or anybody, whether you are in a private capacity or not, is summoned to appear before a parliamentary committee it means that you are given an opportunity to give your side of the story. This Committee felt that it was not necessary for this person to appear before it and, therefore, this was contempt not just to that Committee but also to this House.

Hon. Speaker, Sir, the issues that have been presented by the Committee raise very serious issues on Chapter Six of this Constitution on integrity. We expect that officers who are serving in the JSC or any other commission must be able to meet Chapter Six on integrity. When you look at the issues that have been raised, when it comes to issues of finance where they are abrogating themselves the responsibility to be able to determine how much should be paid to so-and-so, it means they have gone beyond their responsibility of oversight. It means they are transacting business which they are not supposed to be transacting.

Hon. Speaker, Sir, I want to congratulate the Committee for the report which they have come up with. This report does not dismiss the JSC. What it does is that it recommends for a tribunal to be formed to establish the truth. It gives them a chance to also give their side of their story.

*(Hon. Kipyegon distributed bottled water to hon. Members)*

**Hon. Speaker:** Order, Members! Hon. Ng'eno, you appear to have assumed the role of distributing water in the Chamber.

*(Laughter)*

**Hon. (Dr.) Pukose:** Hon. Speaker, for clarity purposes, this House has not dismissed the JSC. What this House has done is that it has recommended that the JSC should be probed. The JSC should be able to give their story when a tribunal is formed so that we find out the truth of the matter. Therefore, our colleagues who feel that maybe we are after anybody's position should support this report and adopt it the way it is.

With those few remarks, I support this Motion.

**Hon. Nyamweya:** Thank you, hon. Speaker, Sir, for giving me a chance to oppose this report.

*(Applause)*

I will be very precise. I want to go to the report which is not numbered. This shows how poorly the report was prepared. The report says that the said Judicial Service Commission Commissioners breached Article 161(2)(c) of the Constitution that designates the Chief Registrar of the Judiciary as the Accounting Officer. This is by purporting to approve and disapprove money for the expenditure and money allocated to the Judiciary. I have gone through this report and what I see here is a document which only supports the allegations.

Hon. Members, let us go through this report and be factual. Section "F" talks about delayed salaries. It says:-

“Due to some unavoidable technicalities, the salaries for the month of September for magistrates, Khadhis and staff of the Judiciary will delay a little. We are, however, working hard to solve the problem with a view to paying the salaries this week.”

It is not stated anywhere that the delay was caused by JSC. I find this very unfair unless there is another document which is not here. So, the first allegation is based on no fact or statement that is attached to this report.

Part 2(b) says that the Commissioners violated Article 173(1)(3). There is a designated Chief Registrar of the Judiciary who is the administrator of the Judiciary Fund. By directing payment to be done by persons not authorized to approve expenditure, it increased the vulnerability of the Judiciary. I have looked for those documents in this report. I have looked at part “B” and “E”. Where are these facts in this report that we, as Members, should approve?

Let us go, first, to part “E”. There is a correspondence written by the Chief Registrar to the Principal Secretary, National Treasury asking for the role of the Accounting Officer to be clarified. I want to quote part of that letter. It says:-

“In my reading of the law, I am of the opinion that the Finance Administration Subcommittee of the JSC should be concerned with the finances of the JSC and not of the Judiciary as the two are distinct and separate.”

I can tell you today that the Parliamentary Service Commission plays an oversight role on all of us. Equally, the JSC plays an oversight policy role for everyone and that is why it is there.

I want to go to the Annex. I will refer to the report and nothing else. If you go to Annex “B”, you will see the lease of the house which they are buying for the Chief Justice. Another Annex shows the lease of a building for the Court of Appeal in Upper Hill which was paid for before it was completed. They must look at the interest of the customer that they will serve. This building was paid for in dollars. Are we in Zambia?

*(Applause)*

I cannot understand what happened. All were involved. The Chief Registrar and the JSC were all involved. None of these guys is innocent.

**Hon. Members:** That is why they should go!

**Hon. Nyamweya:** Hon. Speaker, Sir, I am saying that there is a process to be followed in order for them to go.

**Hon. Members:** They must go!

**Hon. Speaker:** Order, hon. Members! Allow hon. Nyamweya to make his point.

**Hon. Nyamweya:** Hon. Speaker, Sir, there are three allegations which they have made. The other allegation is on Article 245(4) which provides that no person may give direction to the Inspector-General with respect to the investigation of any particular offence. The said member of the JSC signed a resolution directing the police not to arrest and charge staff who were alleged to have stolen. If these guys did this, it is criminal and they should go to court. The Inspector-General of Police should arrest them. It is not the work of this House---

**Hon. Chepkong'a:** On a point of order, hon. Speaker, Sir. Pursuant to Standing Order No.83 read together with Standing Order No.107, is it in order for hon. Nyamweya to mislead this House that the JSC did not approve this and yet he has seen the minutes which are dated 21<sup>st</sup> January, 2013? The meeting was chaired by the Chief Justice who is the Chair of the JSC. It is reported under Minute No.2 on Resubmission of Proposed Leasing and Occupation of Elgon Court place premises by the Court of Appeal.

*(Applause)*

They rescinded their decision and then approved the leasing. They then tasked the Chief Justice to inform the Court of Appeal Judges that they would move to Elgon Court. This is in paragraph three. How can the hon. Member mislead this House on clear evidence?

**Hon. Nyamweya:** Hon. Speaker, Sir, it is me who brought up the issue. I said that the payment was being made in dollars and yet Kenya is not Zambia. Secondly, I said that the place is in Upper Hill. Thirdly, I said that the building was paid for before it was completed. However, the big issue here is that we need a report from the expert.

Normally, such issues are investigated by the Auditor-General who gives a report to this House, it is debated and adopted. We should not sit here and act out of emotions as Members of Parliament.

Finally, I want to say that the problem is bigger than we are seeing it. The issue here is: Who is in charge and who wants to control the budget of the Judiciary? That is the fight.

From this report, there is huge corruption and we need to dig deeper by setting up---

**Hon. Members:** What is he saying?

**Hon. Speaker:** Hon. Nyamweya, when you talk about corruption in the report are you, therefore, saying that the Committee is corrupt? It is good that you clear this. This is your own Committee.

**Hon. Nyamweya:** Hon. Speaker, Sir, how can we take a lease in this country in dollars? How can you do it? How can the building be paid for before it is completed?

**Hon. Members:** That is why they should go!

**Hon. Speaker:** Order, hon. Members! Allow hon. Nyamweya to make his points.

**Hon. Nyamweya:** Hon. Speaker, Sir, finally, it is true that these people never appeared before the Committee but the Committee never put it in the report as one of the reasons for them-- If they did not appear, was it a breach of the Constitution? That is the issue that we have as Members. What is the remedy if the JSC Commissioners refused to appear before the Committee? Otherwise, it is baseless for us to adopt this report. I strongly oppose this report because it is poorly prepared. The report is not even numbered and some pages are missing.

Hon. Speaker, Sir, with those few remarks, I support--- I oppose the report.

*(Laughter)*

**Hon. (Ms.) Wahome:** Thank you, hon. Speaker, Sir, for giving me the opportunity to contribute to this report. I am surprised that the last speaker, hon. Manson, has become the advocate and defender of people who did not want to defend themselves. The petitions were presented and the Committee has done an exemplary good job. Before arriving at their decision or recommendations to this House, they looked at the petitions.

I want to refer hon. Manson to page 20, where the Committee says the following:-

“The Committee wrote letters inviting the affected members of the Commission to present written representations to the Petition and granting the affected Commissioners liberty to appear before the Committee and make oral presentations”.

It is further stated that the affected members of the Commission did not deliver any written presentations on the matter. The members of the Commission also did not find the Committee on Justice and Legal Affairs worthy of their attention. Therefore, they also failed to

honour the request to appear to defend themselves against the memoranda and the petitions as stated by Kenyans. The JSC has confused their functions and their role with the judicial authority as stated in Article 160. They have referred this House to Article 60, but for avoidance of doubt, I honestly believe that one of the reasons that they failed to appear is because they equate themselves with the Judiciary or the Judges of the High Court when they are dispensing their functions as judges.

Article 160 states:-

“In the exercise judicial authority, the Judiciary, as constituted by Article 161, shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any person or authority”.

That is the Judiciary, which is different from the JSC. Nobody will direct the judges when they sit and make judgments in the exercise of their mandate as per this Constitution. But an organ of the JSC that tells this House in very clear and uncertain terms that “you cannot summon us”, then we will ask the question: Who then will question their actions if they act outside the law, if it is not this Parliament?

It is very clear that the Committee found various violations. They found that Articles 161, 163 and 173 were violated. According to the Committee, there was a petition because of violation of Article 245 of the Constitution. Finally, there were also indications that Article 75 that provides:-

“A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids—

(a) any conflict between personal interests and public or official duties;

(b) compromising any public or official interest in favour of a personal interest---”

There are many things that the Committee has enumerated, but who can be standing in this House to defend the Commissioners who had the opportunity, time and were also allowed to appear, but because they are independent, they did not appear before this House? This provides an opportunity to this House to confirm the work of this Committee. It also provides an opportunity for this House to put things right. I am an advocate in practice and I know the difference between a member of the JSC and a sitting judge when they exercise their constitutional mandates. The two only meet when the JSC, which is mainly a human resource organ, is employing the judges.

If you look at some of the accusations, it is that the JSC would like to administer the Judiciary Fund. The Constitution is very clear that the Accounting Officer and the administrator of the Judiciary is the Chief Registrar of the High Court, but these JSC Commissioners, who are paying themselves Kshs80,000 per sitting, have now abandoned their role and have taken up the role of the Chief Registrar of the High Court. Indeed, hon. Manson in his contribution says that the question is about control of the Judiciary Fund, but the Constitution gives that control to the Office of the Chief Registrar. It is not the JSC. Hon. Nyamweya, my good friend, must read the Constitution and avoid applying different standards. I honestly believe that he is an able Member and he has said that we must observe the law.

We are saying: Is the Constitution violated? Are these members of the JSC thinking that this House has mandate over them or not? If this House does not seize this opportunity to put things right in the Judiciary, we are likely to go back to those dark days when the Judiciary was used and was a monster. It had horns that made my good friend, hon. Justice Ringera, say “it is time to hold the bull by the horns”. The horns of the JSC can only be trimmed by this House through our oversight role. It is only this House that can question and say “your actions must be

interrogated". We are not removing the JSC; we are saying that they must be sent to the tribunal where they can be questioned.

The recommendations of the report to this House are very clear. One, that the House resolves that the petitions herein together with the materials in support therefore be sent to His Excellency the President pursuant to Article 251 of the Constitution. Two, that the House resolves that His Excellency the President appoints a tribunal to deal with the matter in accordance with Article 251 (5) of the Constitution. All these materials plus time and opportunity for the Commissioners to defend themselves through the tribunal will be availed. I strongly support the report.

**Hon. Speaker:** Yes, hon. Kaluma.

**Hon. Kaluma:** Thank you, hon. Speaker, for giving me the opportunity to speak on this Motion.

As a Member of the Justice and Legal Affairs Committee, I needed to tell the Members of this House the difficulties we experienced in considering this matter. Somebody like me was taught the Law of Contracts and enforcement of contracts by Commissioner Ahmednasir Abdullahi. I believe one of the Judges mentioned in this report – Judge Warsame – is one of the best judicial minds that we have in this country. I know Magistrate Ominde and most the people sitting in the JSC. So, that is how difficult it was for us.

Therefore, what I wanted to say is very brief. If there are people who would not recommend this on grounds other than law and principle, it is me. My own spouse is an employee of the JSC but we have to make these decisions. I wanted to confirm that we invited the members of the JSC, through the Clerk of the National Assembly but they did not bother to come. Instead, we received a letter from a lawyer, saying that there is need for respect and constraint. What has since happened is that we have seen these members of the JSC before a judge, whose recommendation seeks to gag Parliament from discharging its mandate.

Hon. Speaker, you have made a ruling on this matter and, therefore, I do not want to go far. However, I wanted to confirm to the nation and this House that there is a litany of cases – over 10 – quoted in the book I am holding. If the Judiciary, including the Court of Appeal, stated that the courts never interfere with the functions of Parliament--- In fact, it is stated that Kenyan courts lack jurisdiction to inquire into internal proceedings and the workings and functions of the Parliament. It has never happened before and it surprises me that the JSC, given an opportunity to converse with the leadership of the nation at the forum of Parliament, through a Parliamentary Committee, chooses not to come and goes elsewhere. This is the second time they are doing it. It would have been possible for the Committee to even listen to them and come up with considerations that are different from our recommendations but they denied us that opportunity. How do we do it as Parliament? This is a Commission spitting on the face of the representatives of the people.

I want to confirm that, really, we are not recommending their removal from office. Hon. Members have spoken about this and that not being right. I am even seeing tempers flaring. People are talking about their tribes, faiths and other things. May I refer to a document here; there is a letter written by a Commissioner to two judges dealing with a matter in which he is the claimant claiming money from a former client. He is, in fact, a very serious legal mind. When does an advocate, more so an advocate who is a party to a matter before court, write to judges directly? In fact, if you wanted the matter mentioned, you do a letter through the Deputy Registrar to mention the matter before the judges. That is why we are saying that the hold that some members of the JSC have on the Judiciary is worrying.

In fact, those judges ought to have cited this particular Commissioner for contempt even in his capacity as an advocate. There is a letter written by one of the Commissioners to the Advocates Complaints Commission (ACC). Remember that the Commission is chaired by the Attorney-General of the Republic of Kenya. He has written telling him: "Please, Commissioner, there is a complaint against you. Can we have your response?" The following is what he said to the ACC, which is chaired by the Attorney-General: "You are at liberty to proceed as you wish."

*(Loud consultations)*

Hon. Speaker, I want to confirm that, looking at this report, you see a very mild report. We had a lot to deal with. We sat, as a Committee, and determined that it was not for us to find as to the guilt or culpability of any of these individuals but let me tell hon. Members that, on an affidavit, a party said that one of these Commissioners coached the Chief Justice. We said that the Chief Justice is not petitioned against and, therefore, we could not entertain it, in fairness. In an affidavit, a party said that one of these Commissioners had been seeking intimate involvement with clients as a condition for representing them. You do not see that allegation in our report. We said that, in all decency, we do not want to go into such issues.

It worries me when I see a very "skinny" report against what we dealt with. A party came and said: "Contrary to the provisions of the Advocates Act, I have been acting for a Commissioner as his agent for extortion and he has been paying me." The Advocates Act says that an advocate cannot share the profits of his legal practice with a lay person. That person did not only say it but he brought cheques which were signed. I do not know where the Chairman is saying the cheques have gone to. There were several cheques, adding to millions of shillings, being shared. Is that not a breach of the provisions of the Advocates Act? What does Article 251 mean when it says "serious violation of the Constitution or other law"?

The Commissioner, who is a serious lawyer of about 50 years of age and former Company Secretary of the National Bank comes and says that a Commissioner ought to hand over confidential material – in fact, confidential communication between the advocate and the bank. It is the confidential material being sent to the judges directly by the Commissioner, in the letter I referred to. He says: "I lodged a complaint when this happened." Do you know that the Commissioner confirmed appearing on television and saying, when asked whether he would seek renewal of his term: "Within a week, the Judge's disciplinary action is going to be withdrawn." In that same week, that Kenyan was removed as the Company Secretary of that company. Where would that Kenyan go, if we said: "The Judiciary is not for us to protect?" So, there is a litany of issues.

In terms of finances, the provisions of the Constitution require this House to provide every Commission established, under Chapter 15 of the Constitution, with sufficient funds. I do not know whether the JSC sought a budget from us but I think they are confusing the money that we should be giving them for their operations with the money running the Judiciary. I want to remind this House that the former Chief Registrar of the Judiciary sought to appear before us, as a Committee, but we declined. We did not want to muddle what appeared to be disagreements between them. We wanted to consider the issues very impartially. Let us not look at the Chief Registrar of the Judiciary as Madam Gladys Shollei. We are looking at the quasi powers of the Office of the Chief Registrar and the quasi powers of the JSC and saying that there is no interface.



Hon. Speaker, the Leader of Majority Party said something very important yesterday. We need to stand for law and principle. The Speaker has given directions. There is a misconception out there that Parliament has some bone to pick with the Judiciary. The Judiciary is defined, beginning Article 159 of the Constitution. The JSC is not the Judiciary. In any event, it is not that if we resolve to support this Motion, we are going to remove these gentlemen from office. They refused to appear before us. The President will establish a tribunal and they will appear before that tribunal. That is what the rule of law is about. The tribunal, in their wisdom, will either find them culpable or release them. In any event, they do not have to be suspended. The Constitution is also clear on that bit. We are saying, for those Kenyans with these pertinent grievances, let them be dealt with.

In conclusion, let me say that there is a constant complaint of incompetence against one Commissioner. This is a very intelligent member of the JSC – Commissioner Abdullahi, whom as I told you, taught me; but the law requires that in order for you to be advocate, there are processes that you go through. This is something that has gone to the disciplinary committee. It is a matter which has gone to court. If it cannot be resolved so that my brother, Ahmednassir is given an opportunity to confirm that he is the intelligent advocate that he is, are we being fair to him, as Kenyans? If we cannot give the Kenyans who are saying that this guy is not a qualified advocate a forum to ventilate on this matter in good faith, are we being fair to those Kenyans? So, in fairness to these Commissioners and in fairness to all of them, let the truth be established through the due process.

**Hon. Speaker:** Yes, hon. Sakaja.

**Hon. Sakaja:** Thank you very much, hon. Speaker. I want to start by quoting one Thomas Penn, who stated: “A body of men holding themselves accountable to nobody should be trusted by nobody.”

Hon. Speaker, I am not an Advocate of the High Court like hon. Kaluma and the rest but I am a good student of law. I understand that the doctrine of separation of powers, for a long time, has been misconstrued and misused. It has become a veil for institutions whenever they want to go against the Constitution. Again, I quote Albert Venn Dicey, writing in 1915. These problems have been there for a long time. He states that the doctrine of separation of powers is the offspring of double misconception because time and time again, when you find an institution such as the Judiciary or the Legislature or the Executive going against clear provisions of the Constitution, they claim interference by another institution or they claim that the other institution must follow the doctrine of separation of powers.

Hon. Speaker, you have very articulately said what most of us wanted to say. You have very articulately broken it down. When the Judiciary was summoned, during the budget-making process to come and explain why they needed certain appropriations, they were very quick to come. Even when they wanted money for purchase of an aircraft, they were very quick to come. However, when the same Committee sought their appearance with regard to a matter of administrative nature, touching on allegations of financial impropriety, they suddenly became independent. It is very clear that this House cannot decide to say: “Yesterday somebody was caught stealing chicken and this was your judgment. We want you to reverse it.”

Hon. Speaker, it is clear that we draw our line on the operation of the law, or judicial independence and that must remain sacrosanct in this country. However, when it comes to oversight, this House must play its role. I want to thank hon. Neto who put it very clearly that the JSC is not the Judiciary. In fact, the only difference between the JSC and the TSC is the alphabets “J” and “T”. Otherwise they are all commissions and they are created in the same

manner in the Constitution. They must also be treated in the same manner. Parliament has to play the oversight role.

The Executive has its role to play. Even the President can be impeached by this House. So, you ask yourself: Who does the JSC then report to? Who oversees them? Do they only report to God? If this House cannot oversee them on matters that we have appropriated to them--- Hon. Members, I think yesterday you set the tone. The tone was set yesterday very clearly. Let us act and consider matters for posterity; let us not consider any other factors be it ethnic or personal relationships. This is because we must legislate and act in the interests of this country.

Hon. Speaker, for separation of powers to work we need a serious interdependence of institutions. Even as Members of the Legislature, when the Executive is implementing policies we are subservient to it; we abide by what it does. When we are called to court, we go there. So, that is not a place to hide.

I also want to make it very clear; Members like hon. Chris Wamalwa, who is my neighbour in Trans Nzoia, and who--- I do not know if he is a lawyer, but I would like to ask him to make it his habit to read the Constitution time and time again.

*(Laughter)*

We are law makers. Read the Constitution once in a while. When you talk about thresholds, the work of this Committee was not to determine guilt or innocence on the part of the JSC. At a *prima facie* level, it was just to determine if there was substantial ground for the formation of a tribunal where now the members of the JSC--- In fact, I think a few of them are my friends. I have nothing against the individuals, but the institution itself must be run in the right way. It must follow the rule of law. The question is: Are there sufficient grounds that warrant a tribunal to be formed for investigations to be done on whether they have violated the Constitution? Yes, such grounds exist.

Hon. Speaker, the Committee has shown us that there was violation of Articles 161(2). Also Article 173(1) and 173(3) are very clear. We know that the Judiciary funds must be administered through the Office of the Chief Registrar of the Judiciary. There are allegations that a certain committee within the JSC was actually acting as if they held the authority to incur expenditure. That is something that must be looked into impartially and objectively.

There was violation of Article 245 (4), which I cannot even fathom. That the JSC can write to the Inspector-General of Police while the Constitution is very clear that no one can give directives to the Inspector-General on who to arrest or investigate or not to--- There are certain members of the Judiciary who were mentioned in allegations that they had misappropriated Kshs80 million, which is taxpayers' money. That is money that was appropriated by this House yet directions are given to the Inspector-General of Police that certain people should not be arrested.

If we are to live up to our role as Parliament, let us be impartial and objective. Let us play our role the way Kenyans who elected us expect us to do.

With those remarks, I strongly support this report.

**Hon. Aluoch:** Hon. Speaker, from the outset I want to say that I have had the honour and privilege of serving in the Departmental Committee on Justice and Legal Affairs of the 10<sup>th</sup> Parliament and now in this 11<sup>th</sup> Parliament. I want to say with courage that on the report we are discussing, I have recorded my dissent.

Hon. Speaker, I agree with you totally in what you have clearly set out as the position of the Judiciary *vis-à-vis* the Judicial Service Commission. In fact, the failure of the Commissioners to attend before the Committee on more than one occasion--- They were asked repeatedly but they refused to come. I can see from the mood of the House that has incensed the Members, and rightly so. This has incensed the Members to the extent that a lot of what we are discussing this afternoon will be hinged on that.

I want to urge my colleagues to remember that as much as it was very bad on the part of the Commissioners not to attend, failure to attend is not one of the grounds in the petition. You need to understand that. Action ought to have been taken against those Commissioners for failing to honour the summons.

Secondly, I agree with you that, indeed, the courts cannot gag Parliament. I have a lot of respect for Justice Odunga; he has a very clear mind, but I think he has been subjugated by the JSC to the extent that he issued the orders that he issued. We cannot obey those orders because they are clearly unconstitutional and illegal.

Having said that, I want to go on record as giving my opinion not based on what is popular, but on what is constitutional. Yesterday, I raised an issue which I expected that you were going to give a ruling on, or my learned friend, hon. Chepkong'a, the Chairman of the Committee, was going to address his mind to. I, however, notice that it was not addressed. The fact that Standing Order No.196 states that where a decision of the Committee is not unanimous it is expected---

**Hon. Speaker:** Yes. It is Standing Order No.196.

**Hon. Alouch:** It provides to the effect that where decisions of the Committee are not unanimous, it is expected that the report will indicate the names of those who voted for the report, those who abstained and those who voted against the report. That is clearly lacking in the report and up to now, it has not been addressed.

Hon. Speaker, Sir, you heard yesterday from the Chairman of the Committee, as he was moving this Special Motion, that three dissents were recorded; these were hon. Nyokabi, hon. Ayah and myself. But later on, after the meeting, hon. Nyokabi decided to remove my names from the dissent record. Is that an admission of an irregularity in the record? Is that something that we can simply cover up and move on?

I am saying all this because for the first in the history of this country, and for the first time under the Constitution of Kenya 2010, this House is being asked to set a precedent. We are going to set a precedent, but it is not going to be followed long after we have gone. It will be a precedent on what this Parliament can do as a House in terms of constitutional offices set up under Article 261.

Hon. Speaker, Sir, hon. Wamalwa cleared the point, but I think the way he was gesticulating all over and appearing very frivolous, he was not given the chance. But he was trying to say that under the Constitution, removing an officer under the article, there must be not just an irregularity; it must be a serious irregularity.

Why was the word "serious" put in the Constitution? The word "serious" was put because---

**Hon. (Ms.) Korere:** On a point of order, hon. Speaker, Sir.

**Hon. Speaker:** Do not just shout, you must press to indicate that you are rising on point of order.

**Hon. (Ms.) Korere:** On a point of order, hon. Speaker, Sir. Can the hon. Alouch tell this House how “seriousness” is measured? Unless he is telling the House that there are small sins and big sins, I think I need to understand this.

**Hon. Alouch:** Hon. Speaker, Sir, I am glad you have not said anything on that because the way I see it, that is an opinion, not a point of order. There is nothing out of order that I said; I can continue now in view of that.

I said that those words appear in the Constitution.

**Hon. Oyugi:** On a point of order, hon. Speaker, Sir.

**Hon. Speaker:** There is a point of order.

**Hon. Oyugi:** On a point of order, hon. Speaker, Sir. Thank you, hon. Speaker, Sir. Of course, you know I have very good regard for my learned senior, hon. Olago Alouch. But is the hon. Member in order to mislead the House that the only ground for removing a commissioner from the office is a serious violation of the Constitution?

My reading of Article 251(1) (a) through to (e) actually gives five grounds amongst which are:-

“(b) gross misconduct, whether in the performance of the member’s or office holder’s functions or otherwise.

(c) physical or mental incapacity to perform the functions of office;

(d) incompetence; or

(e) bankruptcy.

Is the hon. Member in order to only insinuate that serious violation of the Constitution is the only ground which you can use to remove a commissioner from office?

Thank you.

**Hon. Speaker:** What is your reaction, hon. Alouch?

**Hon. Alouch:** Hon. Speaker, Sir, I have read Article 251 very clearly. Serious violation is just one of them. I did not say that that is the only one. I should be understood. The grounds are set out very clearly under Article 251 and they go from (1) (a) to (e) and (2) up to (7). I understand all of them.

What I wanted to say is this, if we are going to look at the petition objectively, then we should look at what is alleged against each Commissioner individually and not all of them collectively. I listened very carefully as hon. Kaluma was speaking and you could tell from what he was saying to the House that the evidence against one of the Commissioners, Ahmednasir, is overwhelming and I agree with him on that.

It is so overwhelming that if we were to isolate the Commissioners and deal with him individually, then I would boldly say that Commissioner Ahmednasir should face a tribunal. But we are dealing with the six of them collectively. So, instead of dealing with them collectively; I said that we need to deal with them individually and find out--- It is a matter that the Committee did not give much attention to because of time.

**Hon. Chepkong’a:** Thank you, hon. Speaker, Sir. I rise pursuant to Standing Order Nos. 83 and 107.

Hon. Speaker, Sir, I have a lot of respect for my senior, hon. Olago Alouch. I have benefitted a lot from his guidance. In fact, he retains what we call institutional memory in Justice and Legal Affairs Committee. Just to recap what he has been telling me, he told the Chair that these Commissioners are very dangerous people and we must deal with them seriously.

In fact, he assisted me when referring to the PIC Report. In fact, I was not aware and none of the hon. Members was--- We pinned the PIC report to our report. When he was

contributing in a number of sessions earlier, he told me that Commissioner Ahmednasir is very nasty. In fact, it took him time to calm him in the last Parliament. He was the one who calmed him and it is in the HANSARD.

Thank you, hon. Speaker.

*(Laughter)*

**Hon. Speaker:** Order, hon. Members! Order! May I, therefore, order that we remain calm.

**Hon. Alouch:** Thank you hon. Speaker, Sir. Maybe, I need to address what my Chairman has said.

Indeed, I referred my Committee to the report of the PIC where I served. Specifically, that was in relation to the actions that were alleged against Commissioner Ahmednasir. I did not talk about any other Commissioner in that report, because in the PIC no other Commissioner was referred to.

So, I wanted to help the Committee by referring to Commissioner Ahmednasir appearing before us, and that is why one of the witnesses in this report, Mr. Brian Irungu, also appeared. I believe that helped Members of my Committee to understand exactly who Commissioner Ahmednasir is. That was that.

Hon. Speaker, Sir, I want to finish by saying that the only way you can gauge the veracity of an allegation is by having the person making the allegation appear before you. You will then have a chance to see him, his demeanor and assess the veracity of the matter. It is important to note that too many important witnesses did not give the Committee a chance to make that assessment.

The petitioner, Mr. Mugambi, did not appear. The Inspector-General did not appear.

**Hon. Speaker:** Hon. Olago Alouch, because this is a House of rules, I am happy that actually you were in the last Parliament. I would like, as you contribute with regard to that matter you tell us where in our own rules, it is a requirement for physical appearance. When a Kenyan hands in a petition, in terms of the Constitution is he required to appear in person?

**Hon. Alouch:** Hon. Speaker, Sir, within the Standing Orders, and I will address my mind to it, clearly there is no provision that they must appear. But out of a sense of responsibility, there is no harm in asking a witness to appear. That is why in most committees we ask witnesses to come. When we suspect that the witness is going to be difficult, or may not be truthful, we say, let that witness give evidence on oath.

Committees do that because they have the right and responsibility to swear witnesses. That applies to this report. If we feel that we are dealing with very grave issues, it would have been prudent that we have these persons appear before us, we assess and cross-examine them. That way we would get to know exactly who they are and what they have to say.

Hon. Speaker, Sir, I would like to caution the House that as we debate this Motion, let us understand that Kenyans for many years to come are going to make reference to what we are doing today. Let it be reasoned. Let it not be based on emotions, or the fact that the Commissioners refused to appear before the Committee. Let it not be based on the fact that some of the Commissioners are known to us, or they come from our constituencies or we share the same religion with them. Let us be dispassionate about this, so that we set a precedent that will be alive and valid 100 years to come. I am not scaring anybody.

Thank you.

**Hon. (Ms.) Kanyua:** Thank you, hon. Speaker. I am happy to contribute to this debate and I am one of those people who actually come into this Legislature in this new term having been elected by the good people of Nyeri County. Not very long ago, I appeared before the courts and not very long ago, I appeared actually when the courts were not reformed and when the courts have been reformed. I really want to say that I support the judicial reforms going on and the gains that have been achieved, especially the pro-poor access to justice that is led by the Chief Justice, Dr. Willy Mutunga.

Hon. Speaker, I support a lot of what is going on. I support a lot of the work of the Judicial Service Commission. Therefore, when these matters came to us, it became a very difficult matter because we recognise that some work has been done; where the water left the river was when the JSC refused to appear before us. I think that they really worsened what was in essence a matter that could have been resolved by the Committee easily and without a lot of acrimony.

We invited the JSC several times. We made the distinction in separation of powers between what JSC is and what the Judiciary is. We tried to really interpret that Parliament has an oversight role; despite pleas the JSC did not appear and one of the mistakes they also made was to refuse to be guided by Article 125 of the Constitution that gives Parliament and the committees of Parliament the powers of a court to summon persons. When you are summoned, even if the notice is short, you have to appear and make an application for more time. That is what we do in court every other time. Adjourning a matter in court is not a big issue. You should appear before the Committee. You explain that you only received summons two or three days ago. You say that the matter that you are being asked to respond to is grave, and you then request that: "Dear members of the Committee, we request one week or two weeks." If they did that, I think that the Committee would have indulged them, but to say you are the Judiciary and refuse to appear at all is just to create the situation we now find ourselves in.

Hon. Speaker, the JSC and other commissioners, and that is the message Parliament is sending out today, when you are summoned even if you do not want to respect the summons you have no choice. It is not a matter that you need to make a choice upon. You have to show up as directed by the letter from the Clerk at the appointed time and during meeting--- It has happened to the Independent Electoral and Boundaries Commission (IEBC); you can actually make a request. You can even request to be represented by counsel and the Committee will have to make that determination at that time. So, to the extent that the JSC did not respect all of those wishes, I think we were left with no choice really but to make the recommendations that the Committee has made in a report that we have today.

Hon. Speaker, I also want to compare the JSC to the Parliamentary Service Commission. We call these in law *sui generis* commissions. They are commissions *sui generis*. They are commissions of their own kind and commissions of their own nature. Even when they are commissions of their own nature, they have to appear before Parliament in matters of oversight. Our own PSC, chaired by no less an individual than yourself, hon. Speaker, does appear time and again before the Budget Committee to explain matters to the very House that gave them the money that they are using. It was by the same power that the JSC was summoned. Since it is a commission *sui generis* there was no reason for them not to appear before the Committee.

Hon. Speaker, so as I support the report, I do not want us to be mistaken. We continue to support judicial reforms. We continue to support the good work that is going on in the Judiciary. We continue to be proud that we have a Judiciary that we can speak about but we want the JSC to really make amends, accept and really submit themselves to the oversight capacity, ability and

role of this Assembly through parliamentary committees including the Justice and Legal Affairs Committee. When people are elected representatives it does not matter how many years of practice you think you have. It does not matter how senior a counsel you think you are. The people of Nyeri found it fit to choose a lawyer of 10 years standing. You really have got to appear before that lawyer of 10 years standing even when you are a lawyer of 30, 40, 50 years standing; that is the message that this Assembly is giving today.

I beg to support the report of my Committee and I also want to support my Chairman. Thank you, hon. Speaker.

*(Applause)*

**Hon. Speaker:** Maybe we need to hear from a Bishop. Let us hear a Bishop now.

**Bishop R. Mutua:** Thank you, hon. Speaker for giving me this great opportunity to contribute to this important report. Yesterday, I was very keen to see the passion of the people that are in this House – the hon. Members – to uphold the rule of law and particularly defend the Constitution.

*(Applause)*

Today, I believe we are on the same footing defending the Constitution and what this Committee, which I belong to, did. It tried to look at the issues that were brought up and we determined that it was only fair that a tribunal be formed to get to the bottom of the issues that have been raised for three reasons. One, it is very important for this country to realise that we need to restore the rule of law. Integrity that we have been talking about can only be restored by us applying the law equally to all the people.

*(Applause)*

Hon. Speaker, one of the problems that we have is vested interests that are sometimes stressed more than the issue on the table. The issue on the table here is the petition that was brought to us and, therefore, we had to confine ourselves to the petition but there are people who are trying to extrapolate the report. That is to bring in issues that were not before the Committee. So, this Committee's report is specifically addressing itself to the petition that was brought to us.

The second thing, hon. Speaker, that I want to say, and I hope Kenyans are listening, is this, the greatest reason why poverty is not going away in this country is because of dishonesty. This dishonesty is protected by people who are influential, well informed and who can twist the truth to look like the lie and twist the lie to look like the truth.

*(Applause)*

This is why we are saying that time has now come for the truth to remain the truth and the lie to remain the lie.

When that begins to happen then we can begin to talk about the great Kenya we all dream about. We can never have a great Kenya when people cover wickedness simply because it is done by their friends, clan or tribe. Let us in this House rise beyond the clans, ethnicity and

friendship. There comes a time when friendship has to take a back seat, so that the truth may also sit on the driver's seat.

So, hon. Speaker, this is an occasion when this country has a great opportunity. We are not saying the commissioners are going to be removed. We are only saying they are going to be examined by a body that is qualified enough to go into the details as they separate the truth from the lies. That is all we are saying. So, when some people become a little bit uncomfortable and they do not want these people to be examined, what are they telling Kenya? Are they telling Kenya that impunity is there to stay?

Hon. Speaker, as I conclude, I want to say only two things to this country, that today we need to rise, as a House, and leave out anything that makes us look tribal. We should leave out anything that makes us look trivial and focus on those things that can make this country the great country that everybody believes it is. Kenya belongs to all of us and Kenya is counting on you and I to make it the most important country in Africa. We can only do that if we adhere to the rule of law and when we say what we mean and mean what we say. Corruption in this country must be rooted out, but it is so much in the blood system of some people that every time you talk about corruption, they think you are talking about them.

*(Laughter)*

So, I want to support this report because it is the first step towards rooting out corruption in this country.

Hon. Speaker, Sir, with those few remarks, I seriously support this report and every Kenyan should support it.

**Hon. Abongotum:** Thank you, hon. Speaker, Sir. First, I want to join my colleagues and the Chairman of this Committee in fully supporting this report. They say that the devil resides in the detail.

When you have a situation where the independence of the Judiciary becomes a licence to defraud, steal, misappropriate and misallocate funds belonging to Kenyans then we are in a sorry state of affairs. Nobody is above the law in this country up to, and including His Excellency the President and His Excellency the Deputy President. They both can be impeached by this Parliament. I want to kindly tell my colleagues, who are opposing - of course they have a right to oppose - that let us not block any form of investigation. If you do this then you are telling a good story that something is being hidden.

Hon. Speaker, Sir, I want Members not to take the Rift Valley Alliance route or the Western Alliance route. Let us not follow our usual alliances. Let us be above that. As Kenyans, we expect members of the Judicial Service Commission to be above reproach. They can only prove themselves to be above reproach if we set up a tribunal - of course, the President will do it - to clear their names. Let us not clear the names of people or suspects from this House. Let us not play that role. This is because some people want us to clear them here now.

I have seen people in senior positions step aside, having been in this House for 11 years. They were the late Prof. Saitoti and Hon. Mwiraria. Some suspicion was shown and the President had to tell them to step aside. When they were cleared, they went back to their positions. This included Hon. Kimunya. Why do you want to clear these people from this House? Let them be cleared by a tribunal.

Hon. Speaker, Sir, when we summoned these people to come and explain to us issues to do with money in the Judiciary, what did they do? They got two injunctions but they would



always be here 10 minutes before time when we asked them to come here so that they could be allocated money, even money to buy an aeroplane, if it was possible.

*(Applause)*

However, they become too independent when we want them to account for this money. We have to bring this to a stop.

Personally, I have people I respect from the pastoral communities in the group of seven. These are people who have worked very hard; they are from places like Suguta Valley, Banissa and Koturo, which are remote. To join a university from those places and rise to the level of a judge is not easy. So, it is a decision that is very hard to make for some of us.

We want to recommend that these ladies and gentlemen who are members of the JSC, the seven of them, be taken through a tribunal. We want them back once they are cleared. However, if they will not be cleared--- Of course, they must face the full force of the law.

Hon. Speaker, Sir, lastly, we have to draw a line between the Judiciary and this Commission. This is a constitutional commission like others. There is a super commission called the "JSC". They are both constitutional commissions and they must be treated equally. If this report is adopted, we want the President to deal with this matter expeditiously, so that it is cleared within the shortest time possible. If some of them are cleared, let them go back to their positions, but if they are not cleared, we will tell them we are sorry that we cannot have them in our JSC.

Somebody raised the issue of seismometer. There is no seismometer. There is no barometer to measure seriousness or whether this is a small sin or a big sin. Both of them will take you to hell. If you are a Christian, both a small sin and big one will take you to hell. Of course, we are told that during the day of judgment Africans will attend late because they are always late comers.

Hon. Speaker, Sir, in summary, I want to say that I totally support this report. I want to request hon. Members that let us support it, so that we can stop impunity in a respected institution. Please, do not block investigations from this House. I support the report.

Thank you very much.

**Hon. Speaker:** Hon. Members, I can see several of you are looking at me as if I have committed the biggest sin on earth, but you must appreciate that it is only fair that we hear one person from one side and then another from the other side. I must also look at regions and gender.

**Hon. Omulele:** Thank you, hon. Speaker, Sir, for giving me an opportunity to speak to this very important Motion. I stand here to support this Motion. I do so for good reasons. We have a situation here where a constitutional commission, which has been given a very clear mandate to perform and a role to play in this Republic of ours--- We have received a petition as Parliament that the members of the Commission have acted outside the mandate they have been given by the Constitution. In legalistic terms this is what is called "*ultra vires*". They say that this is going outside what they have been mandated to do. The *ultra vires* actions that they have involved themselves in have been clearly set out in this report.

I have heard from a couple of my learned friends, who seem to be deviating from this report and saying that the matters that have been placed before this House are not of a serious nature. I stand here to say that there is no matter that can be more serious than alleged contravention of constitutional provisions. This is because Article 173 of the Constitution

provides for the setting up of a Judicial Fund. This Fund, it is very clear from the provisions of that Article, shall be administered and managed by only the Chief Registrar of the Judiciary. Some of these Commissioners placed themselves in what they are calling a “sub-committee of the JSC,” which now places itself in a position superior to the Chief Registrar of the Judiciary and purport to direct and manage this Fund. This is a clear contravention of the clear provision of the Constitution. For this reason, the contravention and the evidence that has been placed before this House---These Commissioners must be investigated by a tribunal.

The second issue, which we have all seen, is a contravention of Article 245 of the Constitution. Article 245 is very clear. We need to have an Inspector-General of the Police, who acts independently in the role that we have given him to investigate and prosecute criminals in this country. When a group of the JSC takes it upon itself to purport to direct the IGP as to how he will perform this constitutional duty, then, clearly, that is a contravention of the Constitution that warrants investigation by a tribunal. On those two grounds, I say that this is a good report that we must adopt.

Thirdly, we have a clear contravention of the express provision of the Judicial Service Act, which also reinforces the provisions of the Constitution at Article 173 in providing that the Chief Registrar shall be the manager and administrator of the funds of the Judiciary, which are given to the Judiciary directly from the Consolidated Fund. This role of the Chief Registrar was confirmed by no lesser person than the Cabinet Secretary in charge of Finance. Despite the clear directions of the Cabinet Secretary that the Chief Registrar of the Judiciary should be the administrator and manager of this Fund, the Commissioners still continued their impunity of purporting to direct as to how the finances of the Judiciary shall be utilized. On this third ground, they must be investigated.

As an Advocate of the High Court, I know how difficult it is to achieve the qualifications and certification of the Law Society of Kenya and the Chief Justice to become an Advocate of the High Court. When I look at the documents which have been placed before me, one of the Commissioners has not attained those qualifications, so that he can become an Advocate of the High Court. For him to become a Commissioner, he had to first of all, be an Advocate of the High Court of, at least, 15 years standing. This is the same qualification that the Judges of the Court of Appeal have. So, if the primary document that makes him an advocate is not there or was forged, as it is alleged in this report, it is only fair that this is a matter that is fit for investigation and for clearance by a tribunal.

That particular Commissioner, when he was sitting in the Commission and performing the role of interviewing potential judges for the different positions that we had in the Judiciary, he was very clear and told some of the applicants who appeared before the JSC that they had attained inferior grades and degrees. He told them that they got lower second class degrees which are equivalent to third rate degrees. For that reason, he threw them out of their jobs. So, if there is an allegation that he did not qualify, it is only fair that he is investigated. This is good law. This is constitutionality. We must live by the Constitution of this country. If the Constitution says that this is the way you must perform the roles that have been given to you, then you must comply. If there is an allegation, as we have seen here today, that you have not acted within the Constitution, then you must avail yourself for an investigation.

For these constitutional reasons, I support the Motion.

**Hon. Member:** On a point of order, hon. Speaker. Considering the mood of the House and Standing Order No.95, I stand to request if the Mover could be called upon to reply. We need to dispose of this matter, which is very serious. Unless we dispose of it today, as the Leader

of Majority said, it will lapse. Therefore, I urge that you now call upon the Mover to reply, so that you can put the Question, we conclude this matter and move on to other matters.

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, I may wish again to continually remind ourselves that in Parliament we do not always make decisions by the fact of contributions; it is not possible for all of us to contribute to any one Motion on a given day. So, there comes a time when you must make your decision in the usual manner, not necessarily by having to stand to say what you must say. As we agreed, we cannot all have time to speak. Yesterday, some of you contributed and today others have contributed. It comes a time when we must make some decision. The decision is that I will put the Question that the Mover be called upon to reply.

*(Question, that the Mover be now called upon to reply, put and agreed to)*

**Hon. Chepkong'a:** Hon. Speaker, at the outset, I would like to thank hon. Members for their very lovely contributions and the debate that has just gone on in this august House. We have debated this matter in a very mature manner. I am sure that we are able to conclude this matter in the same manner that we have debated it. I would like to thank even those who opposed the report. In democracy, the majority must have their way as the minority have their say.

A Parliamentary investigation is an attempt to answer very immediate and urgent questions and provide a platform for ventilation of preliminary matters. This role is so central to parliamentary democracy that it is impossible to imagine its removal or breaching in any form or way---

**Hon. Speaker:** Hon. Chepkong'a, hon. John Mbadi has a point of order.

**Hon. Ng'ongo:** On a point of order, hon. Speaker, Sir. It is a bit unfortunate that I did not find time to speak on a serious matter like this one.

*(Loud consultations)*

**Hon. Speaker:** Hon. John Mbadi, you are not the person without whom Parliament cannot make decisions.

**Hon. Ng'ongo:** Hon. Speaker, my point of order is about the petition. The grounds of the petition are that the Chief Registrar of the Judiciary, as the Accounting Officer of the Judiciary, by purporting to approve or disapprove expenditure of monies allocated to the Judiciary, causes inordinate delays in the processing of salaries of judicial staff. Is it in order for us to take a decision on a report that does not address the petition? I want to qualify it.

**Hon. Speaker:** Hon. John Mbadi, you have asked a question.

**Hon. Ng'ongo:** Hon. Speaker, I want to go further to explain why I asked the question.

**Hon. Speaker:** No! No! No! Hon. John Mbadi---

*(Loud consultations)*

**Hon. Ng'ongo:** Hon. Speaker, there must be order in this House.

**Hon. Speaker:** Order! Order, hon. John Mbadi! Hon. John Mbadi, you are not the person without whom this House cannot make decisions.

**Hon. Members:** Yes!

**Hon. Ng'ongo:** Hon. Speaker Sir---

**Hon. Speaker:** Hon. John Mbadi, you are out of order! You cannot engage in an argument with the Chair.

Hon. Members, please, note that as much as you have a right to contribute to debate, if you do not contribute to a Motion, it does not mean that the House cannot make a decision. You have a right to vote one way or another. This is so simple that it does not require restatement.

Hon. John Mbadi, making a decision is not a matter of being able to contribute. It is not right. It is totally out of order for you to say that on a serious matter like this one, you have not had time to contribute. On occasions when you contribute and others do not contribute, does it mean that those who do not contribute are lesser Members of this House? That was out of order. So, let hon. Chepkong'a complete his reply. You will make a decision one way or another. As I always say, happily, I do not have to vote and make a decision like you have to. So, you are the ones to take the decision.

Continue, hon. Chepkong'a.

**Hon. Chepkong'a:** Thank you, hon. Speaker. I totally concur with hon. Kamama that we should not block people from being investigated. This is not the final round. They will be given an opportunity to appear before a tribunal, where they can produce the evidence they failed to produce before our Committee.

With those remarks, I beg to move that the report be adopted.

**Hon. Speaker:** Hon. Members, as you know, it is a requirement of your own Standing Orders and the Constitution, under Article 121, that you must have a quorum of not less than 50 Members before you can transact business. It has been ascertained and determined that you have the requisite number. Therefore, I will put the Question.

*(Question put and agreed to)*

*(Several hon. Members stood up in their places)*

**Hon. Speaker:** Order! Order! Are the hon. Members standing claiming a division?

**Hon. Members:** Yes!

**Hon. Speaker:** Okay, let us have the count of those hon. Members who are standing to see whether they meet the threshold.

*(Hon. Members who were standing were counted)*

Hon. Members, you are required to be 30 but you are a paltry 15.

Hon. Members, given the time of the day, we will skip the business appearing under Order No.9 and go to the business appearing under Order No.10 – The Election Campaign Financing Bill (National Assembly) Bill No.14 of 2013).

## **BILL**

### *Second Reading*

THE ELECTION CAMPAIGN FINANCING BILL

*(Hon. (Ms.) Kanyua on 24.10.2013)*

*(Resumption of Debate interrupted on 30.10.2013)*

**Hon. Speaker:** Who was on the Floor? Any hon. Member can contribute.

Hon. Kigo, do you want to contribute? Please, proceed.

**Hon. Njenga:** Thank you, hon. Speaker---

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, allow hon. Kigo Njenga, the Member for Gatundu North, to contribute.

**Hon. Njenga:** Thank you, hon. Speaker. For a long time in this country, election outcomes have been determined by the amount of money somebody seeking a seat had. All of us have spent a lot of our money even though we knew very well that our parties should be supporting us to contest. In the past, this has not been forthcoming. The passage of this Bill will enable us to have systems in place that will provide for order in terms of how much money we spend and, therefore, give our people a chance to make decisions not based on a candidate's financial ability, but based on the quality of the leadership that we are looking for.

Once this Bill becomes law, it will give us the infrastructure on which expenditure on campaigns will be managed. Even candidates will participate in the management of the said expenditure. The Budget Committee, on which I sit, is of the view that political parties be financed by the Government. Unless and until we have the authority and the means to spend the said money, we will not be able to spend it. We will have to continue with the old order, which is not only inconsistent with the current Constitution, but is also unethical. It is an order that cannot give us the leadership that we are looking for.

In view of the new constitutional order, we shall expect professionals, academicians and businesspeople to feel that even if they do not have money, they can still compete for elective positions. We should also remember the history of our country. We have people who got money through dubious means. That money has been used to bring leaders to Parliament – leaders who made laws that even made us to fight one another in this country.

Hon. Speaker, when I look at this kind of spending I believe it also requires accountability. I know that accountability is well covered and so is the involvement of the Auditor-General and a time frame in which you are supposed to give your budgets and audited accounts. There is also a penalty for not complying. If you do not comply within 20 days even after nomination you will not get yourself to the final election. I believe this will bring discipline and sanity.

Most importantly, in the future, we should try to harmonise this law with the Elections Act. I look at a situation where there is funding from various parties. Even your own money is categorized and you are required to disclose. A disclosure requirement brings in accountability. This is good law. What about if it is said that the money we contribute in *Harambees* during election time should also be disclosed, so that it is categorized as expenditure? The beginning

point is to pass this law. Once we pass it, we can always amend it as we move on to include such strict measures.

As we legislate here, there are Kenyans who are busy doing business to come with money, which they will purport to use for the benefit of the people. In the real sense, the money will be intended for use to defeat us and make sure that the turnover in this Parliament is, as usual, less than 20 per cent of the sitting Members. We need to be accountable even with the funds that we give indirectly to our campaigners. It is true that such funds influence voting.

This Bill has the aim of bringing in proper democracy. We know that democracy has been fought for, for so many years in this country. It has been fought for since the days of our colonial masters and the independence that we got. We are now going to celebrate 50 years of independence. We also had the second liberation and the fight for multipartyism. This particular law will make us benefit and reap the fruits of the struggles waged from generation to another.

In the future, our children will come to this House. Even if you come from a family which is not so able, your children could make it here. So, there is consistency of good leadership. We need evaluation of people not based on their economic merit. I believe and trust that if this Bill becomes law the next election will be manageable. It will be easier to conduct elections, and most of us will be in a position to come back. This Parliament does not have much money now that there is taxation sanctioned by the Constitution and the reduction of salaries that was proposed by Serem and her Commission. We do not have a lot of money to spend. This is a very good law that will favour us and will not discriminate against those who are out there working hard to oust us.

I ask all Members to see this as a friendly law. We should pass it, so that the President assents to it and then we will have discipline, accountability, transparency and integrity in our future campaigns.

I support.

**Hon. Speaker:** Hon. David Gikaria, you have put in a request?

**Hon. Gikaria:** Hon. Speaker, Sir, I think I spoke on this and I do not want to contribute again on it.

**Hon. (Ms.) Korere:** Thank you hon. Speaker, Sir. While I contribute to this Bill on the Election Campaign Financing, I would like to say the following: I have a lot respect for the hon. Members of this House. But what I am about to say might not be very pleasing, but I will have to say it.

During elections and campaigns, those of us who will be honest and have witnessed what goes on will literally put this country into an auction or a market, where the highest bidder carries the day. If you look at the representation of women in this House since independence, it will tell you a lot. But in my own study and findings, as a student of gender and matters related to gender mainstreaming, the biggest hurdle that has prevented a lot of women from getting into elective positions is lack of access to massive resources that are needed during campaign time.

Hon. Speaker, Sir, I think we have come of age and the country will appreciate that the leadership of every member; male or female, has a lot to contribute to the development of this country. As one hon. Member has just mentioned, most of the money used during campaigns is got from undesirable sources. It is money from poaching, drugs, piracy, name it; these have become the real thing in this country. You wonder what kind of people will end up in this House, if those are the sources of the resources that determine the kind of hon. Members who land in this august House.

Hon. Speaker, Sir, as I said earlier, I respect hon. Members of this House and I respect this august House. That is why I will urge my colleagues to protect, guard and defend with a lot of jealousy the dignity of this august House. While doing so, I think we need to pass this law, so that we can, hopefully, restore some sanity in the coming elections.

With those very few remarks, I support the Bill.

**Hon. (Ms.) Muia:** Thank you, hon. Speaker, Sir. I am very happy for having been given this opportunity to contribute. I do not think I am going to say much because most of the issues have been spoken.

I rise to support this Motion because during campaigns, most women go through very difficult times. When you are campaigning and your colleagues are men, they dominate the area and then they surround our party leaders. We, women, have no opportunity to do that. If I have to be very honest, in the last elections I went through a very difficult time. I went for party nominations with people who never belonged to my party, because they were able to pay some good money to the party. I am a woman and they think that women always have no money. That is why we are subjected to this kind of treatment; that is why we are not able even to be supported.

Hon. Speaker, in the last Parliament many of our fellow hon. Members fought so hard to have very many women on the Floor of the House, but when it comes to nomination there is no body or commission which checks on this issue. Sometimes you go for nomination and because you do not have a lot of money, when you go to pick your certificate, you find it is not there and there is no one there. Furthermore, there is no place you can go and complain. I am sure this law is going to protect us; I hope that everybody is going to be very serious. Sometimes the elections commission can bar a political party from even producing candidates if they are not going to follow the law.

Hon. Speaker, in the last two or three general elections I was not a candidate, but during the last two weeks to the elections I witnessed people being given certificates without going for nomination, just because their pockets were very heavy. This time round, I hope all political parties are going to be serious on this issue, which affects mostly women. Last time if it was not for this issue of gender, the 47 women would not be here. So, if this law is going to be followed to the letter this time, I am sure we will not need to pass a law on gender equality.

Many women are going to compete with their fellow women and men and then voters will vote in the best candidates. However, if it is not going to be followed and at the end of the day we will be humiliated, there will be no need of fighting for a seat; all the time women are subjected to very difficult times, humiliation, and intimidation during campaigns. I hope this time the law will be followed. The IEBC should check on this so that during and after nominations we do not have candidates who have never gone for nomination, and who do not belong to a party. So, I am sure we will have very many women running for political positions, whether they have money or not.

I hope this time round women will seek to avoid this issue when the time comes and there will be a body that will check on this strictly. Many political parties will be barred from even nominating candidates if they do not follow the law.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. Eng. John Chege.

**Hon. J.K. Chege:** Thank you, hon. Speaker. I would like to contribute to this Bill. First, I would like to support it mainly because it is about time that we had laws that govern our campaign financing. As much as I would like to support this Bill, we know that we have

challenges in this country which arise from our own society. Our society has continued to depend on election. During the campaigns, there are those people who believe that it is time to earn a living. However, if you reflect on it, you will find that the biggest challenge we have as a country is that a majority of our own people are unemployed. They have no sources of survival. Most of them wait for politicians to give them handouts, including even Kshs50. They wait for the whole day for this.

Hon. Speaker, Sir, as we continue to organize this society, and make sure that our elections are fair, we also need to make sure that we address the fundamental issues in our society. We must create employment and wealth in this nation, so that every Kenyan has value for his or her time. This will ensure that there will be no time when we will buy votes from our people at Kshs50 or Kshs100.

We have to work to make sure that there will be fairness in the way we do our campaigns for high offices. We know that at present, money is a key factor. We have to put systems in place which will encourage young people, who may not have enough resources, to get into these positions. The only way to do it is to create laws which are fair and will facilitate competition not only in terms of finances, but also in terms of talents that people may have.

There have been many challenges which have made this country suffer from clashes and problems that arose particularly in the 2007/2008 elections; people believed that if elections went in a certain way, they were likely to benefit from the results of those elections.

Hon. Speaker, Sir, if we enact this law, we will know that whoever will win, they will win fairly and everybody will accept the results of the elections. I support this Bill, and call upon all the institutions that help to shape the destiny of this nation to ensure that we address the problems that really keep our people at a level where they are misused by the people in power.

With those few remarks, I support this Bill.

**Hon. F.K. Wanyonyi:** Hon. Speaker, Sir, I rise to support this Bill because there will be some sense in the campaigns. Without any proper arrangement, you will find some people saving funds for campaigns and when the time comes for the elections, they just go and buy voters out there.

We want Kenyans to choose, or elect, leaders based on their ideas and manifestoes. As it is now, all one needs to do is to have Kshs10 million, go out there and without any regard give out money from one house to another in the village. After that he or she will be elected a Member of Parliament. We have many problems out there because that Member will come to this House, sit back and recover what he spent. The Election Campaign Financing Bill will bring some sense in the campaigns.

Secondly, people sometime go into elections because of their own interests. Yesterday, I had an opportunity to visit one of the counties and I was impressed with what is happening in Machakos County. I want to say that the governor has done a very good job. He has a very good plan to help the people of Machakos County. I was there as late as 8.00 p.m. in the evening and people were working. Those are the people we want to lead this country. As it is---

## ADJOURNMENT

**Hon. Speaker:** Order! Hon. F.K. Wanyonyi, you have a balance of eight minutes.

Hon. Members, we have come to the end of today's sitting. Therefore, the House stands adjourned until Tuesday, 12<sup>th</sup> November, 2013, at 2.30 p.m.



The House rose at 6.30 p.m.