

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 21st November, 2013

The House met at 2.30 p.m.

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

PRAYERS

Hon. Speaker: Hon. Rose Nyamunga, the early bird catches the worm. I think it is a strategy. I thought that there was something that hon. Simba Arati had a petition on because I had seen his request.

Very well. Next Order.

NOTICES OF MOTIONS

HARMONISATION OF FEES CHARGED IN HEALTH FACILITIES

Hon. (Ms.) Musyoka: Hon. Speaker, I beg to give notice of the following Motion: -

THAT, aware that the cost of health care is increasingly rising and making it more difficult for patients to access quality health care in existing facilities across the country; deeply concerned that many Kenyans needlessly lose their lives due to lack of funds to access specialised care; noting that some Kenyans spend their life savings seeking cheaper treatment in foreign countries among them India for illnesses that can be easily treated locally but the cost is prohibitive and varies greatly among local health care facilities; this House urges the Government to harmonise the fees charged in health facilities across the country in order to make specialised health care accessible to all Kenyans.

Hon. Speaker: Very well. Hon. Sarah Korere.

ESTABLISHMENT OF DAY CARE FACILITIES BY EMPLOYERS

Hon. (Ms.) Korere: Thank you, hon. Speaker, Sir. I beg to give notice of the following Motion: -

THAT, aware that an increasing number of women living in Kenya are juggling both motherhood and individual careers, concerned that given this fact the work environment is not conducive and has not made adequate provisions for those women; noting that it is stressful and unproductive for the employers as well as for the mothers who have to keep shuttling between home and work to take care of their infants; this House resolves that the Government implements a policy to ensure all

public and private companies and institutions operating in Kenya establish a fully equipped and staffed day care facilities for children under the age of one within their premises.

Hon. Speaker: Well, that is a Motion. As you can see, the Parliamentary Service Commission (PSC) has already addressed the issue. So, those who may be in those kinds of situations do not have to suffer. I think it is in the right spirit. Hon. Florence Mwikali Mutua, you have an intervention. What is it?

Hon. (Ms.) Mutua: Thank you, hon. Speaker. I had a request for a Statement that I made on 25th September, 2013 to the Chairperson of the Departmental Committee on Education, Research and Technology regarding the delay by the Kenya National Examinations Council (KNEC) in releasing Kenya Certificate of Secondary Education (KCSE) certificates for a large number of students in the country, particularly in Busia.

Hon. Speaker: Hon. Mwikali, look at your Order Paper. We are at Order No.6 which is Notices of Motion. So, if you intend to raise a matter of that nature, you will wait until we get to Order No.7 on Statements. You are, therefore, jumping the gun.

Next Order.

PERSONAL STATEMENTS

CLARIFICATION OF COMMENT MADE BY SPEAKER

Hon. (Ms.) Mbalu: Hon. Temporary Deputy Speaker, pursuant to Standing Order No.84, I wish to make a Personal Statement regarding a comment that was made by the Speaker in one of the many light moments in the proceedings of the House, but which has since been taken out of context by the media.

Hon. Speaker, during the House proceedings on Wednesday 6th November, 2013, when enforcing order in the House, you asked a Member not to wag or exchange pleasantries or greetings in the Chamber when debate was ongoing. In particular, the Speaker mentioned the new Member for Kibwezi East who was embracing another Member and the matter was captured in the HANSARD Report of the Afternoon Sitting of Wednesday 6th November, 2013.

Hon. Speaker, it is possible that you were referring to my colleague from my neighbouring constituency who was receiving congratulatory messages from his colleagues in the House following his successful re-election through a by-election.

Hon. Speaker, Sir, unfortunately, those comments were later on reported by the media negatively with the effect of causing anxiety, excitement and concern amongst the people of Kibwezi East Constituency.

(Laughter)

The media comfortably chose to focus on sideshows instead of reporting the important business transacted in the House on the said day.

In keeping with the earlier constant communication that we hold the House in decorum, I know that your intention was in good faith and was meant to enforce Standing Order No.104 which prohibits Members from crossing from one place to another or standing along gangways and more importantly to maintain decorum at all time. It is in

this regard that I wish to request the media to focus on real business before the House and refrain from sideshows.

Thank you, hon. Speaker, Sir.

(Applause)

Hon. Speaker: Indeed, hon. Jessica Mbalu, it is fair that the correction be made by the Chair outrightly. The HANSARD should bear this correction. The Member who was hugging and/or embracing was hon. Kimani Ichung'wah who was, as you have said, apparently congratulating the Member for Kibwezi West, hon. Patrick Musimba. It is correct that those are the two Members that the Chair intended to caution and not the hon. Member for Kibwezi East, hon. (Ms.) Jessica Mbalu who was not anywhere near there.

(Laughter)

Hon. Kimani Ichung'wah and hon. Patrick Musimba are not in the Chamber but I am sure that they will agree with me that they were the ones who were hugging and/or kissing along the gangways. So, I direct that the HANSARD do bear this correction that it was meant to stop the two Members from doing what they were doing to the detriment of the proceedings of the House then.

Yes, hon. Kimani Ngunjiri.

HON. MEMBER ATTACKED BY THUGS ALONG UHURU HIGHWAY IN NAIROBI

Hon. Ngunjiri: Hon. Speaker, Sir, I rise to make a Personal Statement under Standing Order No.84. Yesterday at 9.30 p.m. along Uhuru Highway, my children and I were attacked by thugs at gunpoint. I was stopped when I was in a traffic jam opposite Laico Hotel. The thugs were on a motorbike and they stopped the car. They pulled a gun, my son opened the window and we were robbed of all mobile phones and the goods that we had at that time. I called the Officer Commanding Police Division (OCPD) but I could not get him. After that, we came out of the car and made a lot of noise. Some policemen around that area came and tried to help us but the thugs took off towards University Way and disappeared.

The way the thugs came on a motorbike and stopped my vehicle appeared like they had a plan to shoot me. I would like to inform this House that I had a problem with the police in Nakuru. I would like to tell this House that my life is in danger. My children are also in a problem and I have recorded a statement with the police. Even before I reported this matter, the Chairman, Departmental Committee on Administration and National Security wrote a letter to the Inspector-General of Police, Mr. Kimaiyo, who had withdrawn my gun and security. Since I do not have a gun and security officers, there must be a plan to eliminate me. Since the motorbike stopped near my car and there were very many cars, it means that the thugs knew what they were doing or they were being directed by somebody. So, I would like to tell this House that my life is in danger.

Hon. Members: *Pole! Pole!*

(Several hon. Members stood up in their places)

Hon. Speaker: Hon. Members, as you know, personal statements do not elicit debate. So, do not get excited. Hon. Members, this is a Personal Statement. Look at your Standing Orders, I am not making them. This Statement does not elicit debate but it is a matter of concern.

Hon. Kimani Ngunjiri, like any other Member of Parliament, and I am using the word “Parliament” as contained in Article 93, is entitled to personal security provided by the State.

(Applause)

It is, therefore, accordingly directed that the Inspector-General of Police provides hon. Kimani Ngunjiri with a personal bodyguard of his choice. This must not be a matter to be taken lightly. It is just recently we witnessed the murder of the parents of an hon. Member who had raised a similar issue on the Floor of the House. It can no longer be taken lightly. It is the kind of issue upon which this House could easily adjourn business to debate.

(Applause)

Therefore, the Inspector-General of Police is accordingly directed to act immediately.

STATEMENTS

Hon. Speaker: Let us move on to the next Order. All the responses that are listed today will be handled by the Chairperson, Departmental Committee on Administration and National Security, Hon. Asman Abongotum Kamama.

Hon. Abongotum: Hon. Speaker, Sir, just before I give the response on the Statement requested by hon. Mbadi, I want to remind you that our Committee wrote a letter. However, I do not know whether I will be breaching our rules because the security issue is really hot especially taking cognizance of the fact that hon. Ngunjiri is my good friend. We actually wrote a letter to the Cabinet Secretary two months ago and it was copied to you, hon. Speaker. We said that by denying hon. Ngunjiri personal security, the Ministry is breaching the provisions of Article 27(4) of the Constitution.

Hon. Ngunjiri is being discriminated against and we have taken action. I want the Inspector-General of Police to implement your directives as a matter of urgency. That is because we do not want to hear next time that hon. Ngunjiri has been murdered and yet, he has volunteered all the information. I agree with you, hon. Speaker, and we want to confirm that we had taken action and even copied the letter to you.

With those remarks, I wish to proceed. Hon. Mbadi requested for a Statement on the issue of narcotics but the answer that I have is really scanty.

On persons who hold positions in this country, I have shared with hon. Ng’ongo that he gives me up to Tuesday next week, so that we can sort out this matter. So, we are in concurrence, hon. Speaker

Hon. Speaker: Yes, hon. Ng’ongo

Hon. Ng'ongo: Thank you hon. Speaker. At least the Chair of the Committee took his time to share with me that he was not very comfortable with the response from the Ministry. This is a matter that is weighty; it touches on important personalities in this Republic. The matter is also very sensitive because it is about narcotics, and the effect it has on our children. I think if the Committee can investigate it further and bring a comprehensive answer, the better for us and the better for this nation. So, I accept.

Hon. Speaker: Very well, hon. Abongotum. So, that one you will deal with it next week, but it means that the response can only come on Wednesday morning in keeping with the rules.

Hon. Abongotum: That is fine, hon. Speaker. I wish to give the Statement that was requested by hon. Shill. I do not know whether he is around because it really touches on police posts in his constituency. I do not know. Do I proceed without him? Maybe other Members from Garissa---

Hon. Speaker: Is hon. Shill out on official duty? I thought he is. He is out of the country on parliamentary business. So, it is deferred.

Hon. Diriye, I want you to learn this; you have this habit of always shouting 'no'. The Member who requested this Statement is hon. Shill. He represents a constituency which is not yours. He is out on parliamentary business. He has a right to know when the response is coming. Even if you are his neighbour, you will get a chance to make your intervention.

We will move to the next one, hon. Abongotum.

Hon. Abongotum: This is a Statement that was requested by hon. Farah. I think I saw him around; yes he is around.

TERRORIST ATTACK AT DIVISION OFFICES CAMP IN MANDERA

The Member wanted a Statement on the terrorist attack at the division offices camp at Bulla Jamhuria in Mandera where one Administration Police officer was killed while three others were injured. The Member wanted to be informed on the following: -

- (i) The action taken by the Government since that incident occurred;
- (ii) The identity of the perpetrators and whether any action has been taken against them;
- (iii) Whether the incident has any linkage with the Westgate Mall tragedy;
- (iv) What action or strategies the Government has put in place to deal with the deteriorating security in Mandera and forestall any further attacks and, in particular, attacks against security installations.

I wish to state as follows: -

On 27th September, 2013 at about 3.00 a.m., suspected *Al Shabaab* militia attacked an Administration Police camp situated within the precincts of the Assistant County Commissioner's Office in Mandera Town. A fierce gunfire exchange ensued between the attackers and the police officers where, unfortunately, two police officers were killed and two others were injured. Three office blocks were extensively destroyed, while 12 vehicles, three of them Government-owned, were also damaged. Though the Westgate Mall and the DO's office attack were in different places and at different times, both incidents are suspected to have been perpetrated by the *Al Shabaab* militia.

(Loud consultations)

Hon. Speaker: Order, Members! Consult in lower tones, lower than---

Hon. Abongotum: Thank you hon. Speaker for your protection.

Following the incident, the Government has employed the following measures to address insecurity in Mandera town: One, more police officers have been deployed in order to upscale patrols. Two, several security meetings have been conducted to sensitize the people on the need for being vigilant and co-operate with security officers in the fight against crime through volunteering information. Three, intelligent information gathering has been intensified. Four, the Government has deployed officers drawn from GSU and rapid border patrol units along the border in order to deter foreign militia from crossing over.

To address insecurity in Mandera and the county at large, the Government has established a taskforce to operationalize the *Nyumba Kumi* and community policing strategy, which is aimed at enhancing security. Two, the Government has recruited 7,000 police officers who are currently undergoing training; after their training a good number of them will be posted to north eastern region especially Mandera, Wajir and the eastern parts of Garissa. That is the Statement.

I also want to confirm to Members that our joint committee on the investigation of Westgate Mall terror attack actually visited Mandera last week for a fact-finding mission and the report will be tabled in this Parliament in a week's time. I want to thank your office, hon. Speaker, for facilitating that trip.

Thank you, hon. Speaker Sir.

Hon. Speaker: Yes, hon. Farah.

Hon. Farah: Thank you, hon. Speaker Sir. I am not quite satisfied with the answer given by the Chair. It seems to be just the normal rhetoric from Government officers. It makes our Chairs vulnerable to criticism; it makes our Chairs conveyor belts of lies. I am sorry to use that word. I do not know how to describe response No. 2 and No. 3 about intelligence and up-scaling up of security and whatever. Point No. 1, this is a blatant lie. There is no officer, including the former officers, in Mandera---

Hon. Speaker: Hon. Farah,

Hon. Farah: Yes, hon. Speaker Sir.

Hon. Speaker: Can you withdraw the word 'lie' because the Statement has been read out by your colleague, the Chairperson of the Committee. It is not used in Parliament.

Hon. Farah: I am sorry. I withdraw it. But the Statement is signed by the Cabinet Secretary in charge of the Ministry of Internal Security and not by him. So, it is not my colleague's Statement.

(Laughter)

Hon. Speaker: Whatever it is, your colleague is the one who has read it out.

Hon. Farah: I am sorry, hon. Speaker. I withdraw.

Hon. Speaker: You cannot use that word against your colleague.

Hon. Farah: The fact is that there were no officers who were taken to Mandera East District. That can be confirmed and if it is true, I am liable for it.

On Number Four, he said that the Government has deployed the General Service Unit (GSU) border patrol unit. This is not also true. I went to the Inspector-General of Police at 10.00 p.m. in the night and he told me that there is no one specific officer he can give to that district because he does not have officers.

During the KCPE and KCSE examinations, most of the schools were shifted from their centres to Mandera District Headquarters simply because the Government could not provide security to guard those centres. Other than that several AP Camps were closed in between the incident and now purportedly because of lack of enough security officers in those centres. The centres that were closed include Kalaliyo and Hareri Division Headquarters. Now where are those officers who were taken to Mandera?

Hon. Speaker: In as much as I would expect hon. Kamama to make a response, I really would not even expect him to answer what are direct questions. Sincerely, that is not his business. This system, and we have spoken about this severally, has its own inadequacies. If you ask him direct questions, obviously it is not going to be possible for him to answer some of them. He can only stand by what he has been given. When you are dissatisfied with the response, the rest is to move that the House, by way of a resolution, deals with the matter that you are raising. That is how parliaments work.

Hon. Abongotum: Hon. Speaker, I want to admit that there is a shortage of officers all over the country including in my own constituency. This should be addressed by deploying the officers who will pass out sometime early next year. We will inform the Cabinet Secretary to ensure that the far-flung areas--- It is those areas occupied by pastoral communities that are most affected.

The hon. Member seems to know a lot of weaknesses in the systems in Garissa. Sometime next week I will call the Cabinet Secretary together with the Inspector-General so that the Member can come and prosecute his matter in the Committee. We have other five issues to handle with them. The issues he is raising are just too many. It is not also possible for him to know the details of how the police manage their personnel. Those issues will be addressed in the Committee. We did that with hon. Muluvi and he got satisfied.

However, the problem of shortage of officers is key and it has to be addressed. We sympathize that there was a problem during the examination time. We hope that it will not be repeated next year.

Hon. Speaker: I want to agree that hon. Abdulaziz Farah could very well prosecute the issues he has raised if he is invited to appear before the Committee when both the Cabinet Secretary and the Inspector-General are present. Those are the people who can answer some of the direct questions he has been raising including his allegation that where officers are said to have been posted none has been posted.

The practice I have adopted, hon. Members, is that requests for Statements are not questions. It is only hon. Abdulaziz who is entitled to seek clarification. I can see others who are getting excited trying to raise the attention of the Chair. What hon. Abdulaziz has sought to be clarified has not been clarified. So, even if you raised an issue touching on your constituency and not his, you are not going to get an answer. It is just going to be a debate. So, allow hon. Abdulaziz to make his last intervention.

Hon. Farah: Hon. Speaker, I am most obliged to appear before the Committee. The crux of the matter is that the GSU and the rapid border patrol unit are not things that can be hidden.

Hon. Speaker: Hon. Abdulaziz, you have said that you will appear before the Committee. Go and raise those issues there. As you know, I do not command GSU or those ones you are calling rapid results however rapid they could be. Go and raise it there. They will, possibly, react rapidly.

Hon. Farah: Hon. Speaker, you are right, but the crux of the matter is that we are being fed with such things. This House needs to debate this matter. Why are we being fed with those things?

Hon. Speaker: Hon. Abdulaziz, are you asking me why you are being fed with that? It is because you sought the Statement.

Hon. Farah: But that is not true.

Hon. Speaker: It does not matter. You sought the Statement and you have been given. The rest you will deal with it in the Committee when you will raise the issues with the responsible people. The Speaker is not responsible for those rapid or slow. It does not matter.

(Loud consultations)

Hon. Kamama, proceed with the next Statement.

Hon. Abongotum: Hon. Speaker, I have not received the Statement that was requested by hon. Kiuna, but I will expedite the process. I could have it delivered on Tuesday or Wednesday morning.

Hon. Speaker: Very well, Wednesday morning. Hon. Kiuna, you have heard what hon. Kamama has said. Hon. Kiuna, it looks like you do not have your card. Then you lose your chance to speak. If you forget your card, we agreed, your business here will be to vote by acclamation only. You lose your right to open your mouth in the Chamber.

DELAYED RELEASE OF KCSE CERTIFICATES BY KNEC

Hon. (Ms.) F.M. Mutua: Hon. Speaker on 25th September, 2013 I made a request for a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology regarding the delay by the Kenya National Examinations Council (KNEC) in releasing the KCSE Certificates to a large number of students in the country and particularly in Busia County. The Chairperson at that time promised that the Committee would deal the matter in two weeks. However, I have not heard from the Committee ever since.

Hon. Speaker, the delay in releasing the certificates is a big cause for worry to both parents and students because of the many opportunities that they are missing. I would like a response from the Committee before we go on recess.

Hon. Speaker: Is the Chairperson present? What about a representative? Hon. Keter.

Hon. Eric Keter: Thank you, hon. Speaker, Sir. On behalf of our Chair, I would like to plead with the Member that she gives us one more week. I recall this issue was handled last week, but I do not have the written Statement at hand. I promise to have it next week.

Hon. Speaker: Very well, I think that is reasonable. Hon. Mwikali, next week either on Wednesday morning or Thursday afternoon, that is what it means.

Hon. (Ms.) F.M. Mutua: Thank you, hon. Speaker, Sir.

Hon. Speaker: Hon. Maison Leshoomo, take the Floor.

Hon. (Ms.) Leshoomo: Asante sana, Bwana Spika. Ningependa kumuliza Mwenyekiti wa Kamati ya Usalama taarifa ile niliuliza na hajanijibu. Alisema apewe wiki moja na mpaka sasa hajajibu.

Hon. Speaker: Hon. Kamama, take the Floor.

Hon. Abongotum: Bwana Spika, ni kweli Mhe. Maison Leshoomo, alikuwa ameuliza taarifa na nikasema kwa sababu jambo hili lilikuwa la haraka, nitalijibu baada ya wiki moja. Lakini mpaka sasa, hiyo taarifa haijafikia meza yangu na nitajaribu kuhakikisha kwamba tunaipata wiki ijayo. Naomba hivyo, Bwana Spika.

Hon. Speaker: Is it possible for hon. (Ms.) Leshoomo to be invited to a sitting of the Committee? The issues she raised in her Statement will actually require that the Inspector-General of Police and all those others involved in the security system to give her some direct responses. Is it possible, hon. Kamama?

Hon. Abongotum: We will do that, hon. Speaker. *Tutafanya hivyo.*

Hon. Speaker: Very well, hon. (Ms.) Leshoomo, you have heard that it will be next week.

Hon. (Ms.) Leshoomo: Ningeomba Mwenyekiti achukue mambo kwa njia inayotakikana kwa sababu wakati unauliza hiyo taarifa, lazima kuwe kuna shida kubwa. Ikiwa tunaomba taarifa tujibiwe ili tujue vile wananchi watakaa, halafu, haitakuja kwa njia inayotakikana, haitawasaidia Wakenya.

Hon. Speaker: The Chairperson has indicated that he is also treating the matter with the seriousness it deserves. Hon. Gladys Wanga, what is the nature of your intervention?

Hon. (Ms.) Nyasuna: The nature of my intervention was earlier on when the Chair of the Committee on Administration and National Security was giving his response and it was evident that it was lacking in details and he was unable to give further clarifications. This is not just about his report but several other reports that this House has received. I was just thinking aloud and wondering whether that is part of the 20 per cent of the Constitution that we need to review, and whether Article 152(3) should not be among it, so that we have Members in this House who can respond adequately to issues and we can interrogate them to get final answers. We keep asking and as you keep on guiding us, we cannot really push our colleagues to the wall. But we never seem to get comprehensive responses. Is Article 152(3) one of those that we should consider revising as we revise the 20 per cent of the Constitution?

Hon. Speaker: Well, that is a collective decision of Kenyans, but you have every right to raise it, hon. Wanga. Leader of Majority Party, take the Floor.

BUSINESS FOR THE WEEK COMMENCING 26TH TO 28TH NOVEMBER, 2013

Hon. A.B. Duale: Pursuant to Standing Orders 44 (2)(a) and on behalf of the House Business Committee, I rise to give the Statement regarding the business appearing before the House for the week beginning Tuesday 26th November, 2013.

The House Business Committee met on Wednesday this week at the rise of the House after the morning sitting to give priority to the business of the House. Next week on Tuesday, the House will consider the First Reading of the Retirement Benefits (Deputy President and Designated State Officers) Bill (National Assembly Bill No.38 of

2013). Further, in the event that consideration of the Wildlife Conservation and Management Bill, 2013, the Truth, Justice and Reconciliation (Amendment) Bill 2013, the National Social Security Fund Bill 2013 and the Kenya Heroes Bill 2013 are not concluded today, then it follows that these Bills will also be put on the Order Paper for Tuesday, next week.

Next week, the House will consider the Second Reading of the following Bills: -

(i) The Statute Law (Miscellaneous Amendments) Bill 2013, whose period of referral to the Committee was reduced by this House.

(ii) The National Police Service Commission (Amendment) Bill 2013; and,

(iii) The National Police Service (Amendment) Bill 2013.

The House Business Committee has also received a request from hon. John Mbadi, Member of Parliament for Suba to reduce the period of referral for the Value Added Tax (Amendment) Bill, 2013, which was read the first time this morning. The House Business Committee will, therefore, be seeking a resolution of the House in this regard this afternoon.

I am aware that you have been asked to guide us on certain matters relating to the two Police Bills to build consensus across the divide before the House. We, therefore, welcome your earliest guidance on this matter. Allow me to remind Members about the resolutions passed yesterday by the House in resolving to hold sittings on all Thursday Mornings before the recess. Committees are requested to re-adjust their programmes accordingly and pay more attention to the Bills before the House.

It has been the view of the House Business Committee that we ought not to alter the calendar of the House. Members are, therefore, encouraged to be present in the House to contribute to the remaining Bills in the Second and Third Readings. It is expected that the first week of December will be dedicated to Committee of the whole House for the various Bills not concluded by then. The Motion on the Report considering nominees to the Parliamentary Service Commission will also be considered.

Finally, the House Business Committee will meet on Tuesday, 26th November, 2013 at the rise of the House to consider business for the rest of the week. I now wish to lay the Statement on the Table of the House. Thank you, hon. Speaker, Sir.

(Hon. A.B. Duale laid the document on the Table)

Hon. (Eng.) Gumbo: On a point of order, hon. Speaker, Sir. Would I be in order, through you, to request the intervention of the Leader of Majority Party on a matter that touches on the legislative mandate of this House? As you are aware, the construction industry in Kenya is one of the fastest growing sectors and with growth comes, inevitably, entropy. In 2011, this House, in a bid to regulate the construction sector, passed two key laws. One of them was the National Construction Authority Act, No.41 of 2011. The lifeline of that Authority as provided for under Section 21 is the levies which are to be charged. Section 42 of that Act provides for the Cabinet Secretary in consultation with the Board of the Authority to make regulations that govern it. Another important law which was passed that year was the Engineers Act, No.43 of 2011. Section 58 of that Act provides for the rules and regulations for the better carrying out into effect of the provisions of the Act.

Those are very important laws. For the Engineers Act, for example, the rules and regulations provide for the standards of professional practice, conditions of engagement of professional engineering services, revised scales of fees for engineering services, hourly rates for report and advisory work and all other guidelines for ethical engineering practice in Kenya. Finally, those rules, but not entirely, provide for the composition, conduct and regulation of business and affairs of the proposed Kenya Academy of Engineering and Technology.

The reason I am raising this matter is because it is almost two years since those Acts were passed and they are very important, as I said, for regulating the sector and yet, this House, which is supposed to approve the regulations governing those two Acts, has not been seized of the matter.

Hon. Speaker, Sir, so would I be in order to request, through you, if the Leader of Majority Party could take up this issue as a matter of priority, so that those regulations come here and we debate them, so that we regulate that important sector?

Hon. Speaker: Indeed, what you are saying, hon. Gumbo is that the Cabinet Secretaries responsible may be sleeping on their jobs and it is this House that approved their appointments and that the same House, if it finds them to be in deep slumber, it can decide that they remain in slumber and we get others.

Hon. (Eng.) Gumbo: Hon. Speaker, Sir, that could be so, but one of them, unfortunately, is a senior colleague in the distinguished profession of engineering. So, I would not want to go that way. But I would like to request, kindly, that the Leader of Majority Party takes up this matter, so that we debate those regulations to bring order into the sector.

Hon. Speaker: Leader of Majority Party, the request is that you do as hon. Gumbo has said.

Hon. A.B. Duale: Hon. Speaker, Sir, of course, I am not a member of the Engineers Association, but I agree with you that Cabinet Secretaries should not sleep on their jobs. I want to assure the Member that next week on Thursday, I will give an answer on when the regulations, both for the National Construction Authority and for the engineers are coming to the House.

Hon. Speaker: Hon. Gumbo, I was not in the House, but I am informed that just before the House was dissolved, those regulations were laid before the House. That was in January, both for the National Construction Authority and for the engineers. It may not be the case, and I have always raised this issue, but at that time when the House is at the tail end of its life, very many things could happen. I think we need to check the record to see whether they were laid. If they were, then we see whether we can resuscitate them or proceed in terms of the Statutory Instruments Act, 2013, which provides that after 21 days, they become operational.

Hon. (Eng.) Gumbo: Hon. Speaker, Sir, as you know, I am an interested party, particularly in the rules and regulations governing the practice of engineering in Kenya. I do not recollect, but the information I get from my colleagues when we have our professional meetings is that those regulations have not come here.

Hon. Speaker: The Leader of Majority Party, find out the position. At the same time, also check with the HANSARD of January.

Hon. A.B. Duale: Hon. Speaker, Sir, if they have already been tabled, then we will fast-track through Parliament and send it to the relevant Committee of the House, for

them to be brought to the House for discussion. If it is with the Government, then I will give an answer next Thursday on the status.

Hon. Ng'ongo: Hon. Speaker, Sir, I can see that among the issues that are supposed to come up next week for First Reading, one of them is the Retirement Benefits (Deputy President and Designated State Officers) Bill. I see it is given to the Leader of Majority Party. My concern is that I sponsored this Bill, it went through the process, it has gone for publishing and it has come back. But I do not know at what time the Leader of Majority Party snatched my Bill. I want to understand if it is in the same context and content as the one that I generated. If he has a different one, has his also gone through a similar process? I sit in the Budget and Appropriations Committee and I cannot remember having seen any Bill from the Leader of Majority Party brought before us. I do not know why the Leader of Majority Party is snatching my Bill; rather he is mutilating it and bringing a different Bill from the one that I proposed. I hope it is not for mischievous reasons. Could he explain?

Hon. A.B. Duale: Hon. Speaker, Sir, I want my good friend, because I am trying to help him with the VAT Bill, to hold his horses. He should not pick a war with me. There are two Bills and that one is from the National Treasury, which has my signature and all Bills from the Government, once they go through the First Reading, they go to the Committee. So, if he waits, it will come to the Budget and Appropriations Committee and it will have it for 21 days. I am sure his will come, but we can sit together and agree on the content and even support one of the Bills. So, after this, we can have a chat. But this is from the National Treasury.

Hon. Speaker: I think both yourself and hon. Mbadi can resolve that in the course of next week or in the course of the weekend.

Hon. Midiwo: Hon. Speaker, Sir, I do not think “snatching” is Parliamentary language. But since hon. Mbadi is jittery that his Bill may have been taken away, the correct way forward, probably would be for them to meet. That is our normal way of doing business. It can be shown to hon. Mbadi and some agreement can be reached, so that we are not fighting over a non-issue. We have a common interest.

Hon. Speaker, Sir, while you were away, the House agreed that the “Berlin Wall” is brought down. So, as we are, we opted to do business in a cordial manner. So, if you could mediate between hon. Mbadi and the Leader of Majority Party, so that we spare our energy for some other enemies that we have in common, it would be better. Just as you said, in January regulations for the National Construction Authority may have been tabled. We are guilty because so much was coming; so much was churned out as a matter of compliance with the constitutional deadlines, but also we needed some things for the nation so that we could go into a smooth election. So, there may have been things which passed here, which we may need to correct. I think your direction suffices.

On the same breadth, yesterday in the House Business Committee, we also said that we need to take our time with some of those Bills, so that we do not keep making the same mistakes over and over again.

Hon. Speaker, Sir, it is good to bring to the attention of the House that some of the Bills listed by the Leader of Majority Party will be considered when time is available. That is especially because this Bill has so many things to do with the National Assembly. We cannot go through the Statute Law (Miscellaneous Amendments) Bill within the next two or three weeks. It is a Bill that needs to be discussed when we come back, and when

hon. Members are fresh from Christmas. This is going to be the first Christmas for 80 per cent of hon. Members. So, they need to go home without tension. I think as a nation we are faced with too many things and I think we need to help ourselves manage our stress.

Hon. Speaker, Sir, I know and trust that the road map we agreed on yesterday, including the very contentious Bill of the Police Service Commission (Amendment) Bill, we will negotiate so that we are not seen to be fighting all the time over issues mature people can negotiate, iron out and do correctly.

I thank you, hon. Speaker.

Hon. Speaker: I think that is the spirit we would want to adopt. For avoidance of doubt, the Bill which is dated 8th November, 2013 is titled the “The Retirements Benefits (Deputy President and Designated State Officers) Bill, 2013”, being National Assembly Bill No.38. The Memorandum of Objects and Reasons dated 29th October, 2013 is signed by hon. John Ng’ongo, Member of Parliament.

Therefore, hon. John Ng’ongo, you are right. That is the Bill which will be before the House. It has not been snatched; if we borrow your language. So, the correction is made.

Hon. (Ms.) Abdalla: Hon. Speaker, Sir, I want to bring to your attention and seek your opinion on a disturbing matter that I overheard today as I was heading to this House.

Hon. Speaker, I came to the House late and the radio stations were having live proceedings of the Senate and there was a ruling--- Kindly protect me from my opponents on the other side. We have just been told by hon. Midiwo that we have other enemies and I am trying to demonstrate what the other enemies are up to. Therefore, if hon. Odhiambo-Mabona can have a ceasefire with me until I finish what I am trying to say, then we can sort each other out there. She has just told me that she is supporting me. I am very reluctant to get into institutional wars and rivalry. But I am very concerned with the tone of the ruling that has been made by the Speaker of the Senate; which, in essence, says that, in his opinion, the Supreme Court Advisory opinion is a ruling and that every Bill emanating from this House must comply with what he calls a ruling.

Hon. Speaker, Sir, I am concerned. We are actually amending Bills that do not touch on finances of a county, such as the one we have passed today on the Wildlife Conservation and Management Bill. We have gone further and proposed amendments to ensure that committee members are paid through the national coffers so that we prevent this question of having it being a county Bill. We have gone so far and I am fearful that if we do not address this matter now, we will then be taken back to the court and spend another Kshs55 million to just try and appease an institution that, in my opinion, might be looking for relevance and space.

(Applause)

Hon. Speaker, Sir, I really think that to avoid another unnecessary cost and the bravado nature in which the Senate is addressing the purported conflict with this House, kindly do something so that we do not go the rogue routes as they have forced us in getting that opinion.

Hon. Speaker, Sir, an opinion is an opinion. If it is not compliant with what is in the Constitution, which in my opinion, a majority of it is not, we cannot allow the Senate to force us to re-write the Constitution. If they want to amend the Constitution, let them

go to the people and have the Constitution amended. So, I want to urge restraint on your part, but action and pro-action on your part, so that this bravado of our sister House does not put us into problems again.

Thank you, hon. Speaker.

Hon. Speaker: Now that you have mentioned your good friend, hon. Millie Grace Akoth Odhiambo, can we hear from her?

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Speaker, Sir. My good old friend, hon. Amina Abdalla, does not realize that this is one of those rare moments when I support her. She did not even notice that I already knew what was in her mind. I do support her and I also happen to have got information about what happened at the Senate. Indeed, even language and terminology that they are using in reference to this House, which I will not repeat because I do not want to incite hon. Members---

But hon. Speaker, Sir, I would want to say that this House is increasingly being depicted as the aggressive and unreasonable House, when a lot of things we are doing are within the constitutional framework. I would want to encourage that we take the path that hon. Abdalla is saying and stay within the separation of powers. I know that it has been suggested that you should have a meeting with the three arms of Government and, I would want to say that, when you sit with the three arms of Government; when the Executive heads its arm, when the Legislature heads its arm, and the Judiciary heads its arm and you sit heading this arm, you are equals.

I know for some people, they might find that to be controversial, but because I know you are a lawyer, you understand what I am saying. You were elected by this House and you are our chief or our master in the Legislative arm. What the Senate is doing is trying to provide or to act as a supervisor over this House. It does not have any supervisory roles over this House. I know that Americans always refer to founding fathers. I happen to be one of the founding mothers of this nation; by virtue of the Constitution. Hon. Amina Abdalla and I were the founding mothers. That is why we are speaking with authority and confidence. I can see the proud general now wants me to acknowledge that he was also a founding father. But there is no connection between fatherhood and motherhood in this relation.

(Laughter)

What I would want to encourage is that, instead of taking a confrontational approach – that is why I am not even saying what they have said - I would like to say that, let us be the more mature House; be proactive and let us sort this issue once and for all. Let us look at the legislation before us and move this country forward.

Thank you.

Hon. Speaker: Hon. Members, let us not make it a long debate because I can see many of you want to contribute - John Ng'ongo, Rachael Shebesh, Alice Wahome, Silvanse Osele, do not be too many.

Hon. Ng'ongo: Thank you hon. Speaker, Sir. I did not intend to make too many remarks but, now that I am there, I do not know how to handle myself. But let me proceed.

Hon. Speaker, Sir, really, I think we are dealing with a very fundamental issue and I wanted just to tell ourselves, together with the Senate, that the two Houses really do

not have to be in any competition whatsoever. That is because our concern is to ensure that legislation is done in a proper and constitutional way.

Hon. Speaker, Sir, I really fail to understand at times where the confusion comes from because, in my view, Article 109 directs us. I know many of us have read this and we understand it, but let me just repeat it for record.

Article 109 states as follows: -

“(1) Parliament shall exercise its legislative power through Bills passed by Parliament and assented by the President.

(2) Any Bill may originate in the National Assembly.

(3) A Bill not concerning county government is considered only in the National Assembly and passed in accordance with Article 122 and the Standing Orders of the Assembly.”

So, if a Bill does not concern a county government, it is clear that it should only be passed in the National Assembly. Then the question that we need to be addressing ourselves to with regard to any Bill is whether it concerns county government or it does not. Hon. Speaker, Sir, the Constitution has gone ahead to explain what those Bills are which concern the county.

Article 110 says:

“...a Bill concerning county government” means –

(a) a Bill containing provisions affecting the functions and powers of the county governments set out in the Fourth Schedule;”

I think this is where we have issues with the Senate. That when it talks about functions and powers of county government, it does not end there. It proceeds to say that those functions and powers are set out in the Fourth Schedule. So, you just need to go to the Fourth Schedule and check the functions and powers of the county government and compare it with the Bill we have before us at any time. If that Bill does not affect those functions and powers, then the Senate would not be involved.

Hon. Speaker, Sir, let me conclude because this Constitution is big and you can go on and on. There is need to dialogue with the Senate. That is because we might be doing the right things and the Senate thinks they are doing the right things and Kenyans out there see it differently.

In my view, there is nothing that is so difficult in the Speaker of the Senate and the Speaker of the National Assembly sitting down with a view to making it clear what is meant by “functions and powers of county governments” as set out in the Fourth Schedule of the Constitution. Really, we cannot be on the same thing for two years. When we started, it made sense to disagree but we are now almost going to the 12th month and we are still stuck at the same point to an extent of, sometimes, talking of “upper House” and “lower House”.

Hon. Speaker, let us accept one fact – that the Kenyan Senate is not the American Senate. If the Kenyan Senate was the American Senate, it would, obviously, be the upper House. In our case, Kenyans, in their own wisdom, made the two Houses equal. I do not want to say that the situation is probably vice versa. If Kenyans feel that the Senate should be the upper House, let us amend the Constitution and make it the upper House. Some of us would want to go the Senate. The only reason as to why I did not want to go to the Senate is because I feel that there is more legislative work at the National

Assembly. The moment Kenyans make the Senate powerful, I will stand for the position of Homa Bay County Senator in 2017.

Some of us do not want less power for the Senate. We want more power for the Senate, so that we can graduate. We do not want to be here forever. So, let the Senators go and ask the people of Kenya to amend the Constitution, so that we can have a Senate with all the powers that they need and then we will go to the ground and compete with them. I am sure that some of us will most likely find ourselves as one of the 47 elected Senators.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Members, I do not want to keep repeating myself on this matter because this matter is as clear as we know that the sun rises in the East and sets in the West. It is not the kind of thing that should confuse people's minds.

Yes, hon. Shebesh.

Hon. (Ms.) Shebesh: Thank you, hon. Speaker. I want to take advantage of the opportunity given to me by hon. Amina Abdalla to bring up the issue of the Senate and raise the issue that you are very well aware of but, maybe, the House is not aware of. It is probably good that the House is aware. We were made a subject of discussion, as the National Assembly, at the Pan African Parliament (PAP) when the Speaker of the Senate wrote and contradicted the letter that you had sent there, introducing Members of the National Assembly and the Senate from Kenya to PAP.

It led to an embarrassment of the Kenyan delegation. Only hon. Millie Odhiambo and I were sworn-in. The other two Members who had come had to sit outside the House. They were not allowed into the House, as we tried to grapple with a letter that was about 12 pages long, describing how, as the National Assembly, we had usurped the powers of the Senate; how you have no authority to write to PAP; how the Report of the PAP must end up at the Senate and that the Senate is the final authority on issues of Pan Africanism.

Hon. Speaker, it shocked me. It embarrassed us as a country and, more importantly, because Kenya was very heavily on the agenda of the PAP because of the issue of Westgate and terrorism as well as the issue of Internal Criminal Court. Instead of the Kenyan delegation being able to participate in the proceedings of PAP, we were busy explaining to other PAP Members why the Speaker of the Senate had contradicted the Speaker of the National Assembly. It was very embarrassing.

Therefore, I would like you to make it very clear, as hon. Amina Abadalla has indicated, in terms of explanation and giving guidance. We would like you to make it clear to us, even as the delegation to PAP because we have a Report I am holding onto. According to the letter by the Speaker of the Senate, I should hand it over to the Senate. I would rather hold onto that Report because it is only this House and the Committees of this House that can implement what the Report talks about.

Hon. Speaker, the tone of the letter was very derogatory to the National Assembly and, especially, to you. I really had to explain to people your role. I had to get the Constitution of Kenya to show them where you come in, in terms of your role as the Speaker of the National Assembly as provided in the Constitution *vis a vis* the role of the Speaker of the Senate. So, please, hon. Speaker, as hon. Mbadi has said, enough is enough in terms of the power games that the Senate is trying to play. Please, give guidance, so that we can stop embarrassing ourselves not only in the country, but also in Africa and international forums.

Hon. Speaker: Yes, hon. Alice Wahome.

Hon. (Ms.) Wahome: Thank you, hon. Speaker. I will just take a minute.

Thank you for giving me the opportunity to also address myself on the issue raised by hon. Amina Abdalla. I believe that from the courts, we get three types of communication. One of them is a ruling that arises from an application. There is, of course, judgement by a court, which arises from a determination of a case. Thirdly, because of the new Constitution, we now have an advisory opinion coming from the Supreme Court. The Supreme Court can give an advisory opinion if that is what has been sought. It can also give a judgement or a ruling, depending on the matter before it.

In this particular case, as you alluded to it before, we got an advisory opinion. All of us have been advised in different ways. We also give advice in different forums and platforms. An advisory opinion, as indicated by hon. Amina Abdalla, is an advisory opinion. That is it. It cannot be a binding ruling. It could possibly have a persuasive impact, but that is it. You may be persuaded or not persuaded, but it is advisory. So, possibly, the hon. Speaker of the Senate needs to be more advised by the technical people in the Senate and elsewhere.

Hon. Speaker, the Attorney-General and this House need to come out very clearly and state that, that is the position. We still must reinstate and stamp the authority of this House and, particularly, the authority of the Speaker of the National Assembly. If that is eroded, this House will stand ridiculed as it is being suggested every now and then. It is sad that whenever we want to get away from this matter and concentrate on legislation matters, the Senate takes us back. There is so much to do in so far as Senate work is concerned. I do not see why they feel that they can only do their work when they do what the National Assembly is doing. Therefore, it is important for you to give another direction, in light of that debate, to which I also listened.

As a lawyer, I would want to just tell hon. Members that we really need to reflect on what is generally happening in Parliament as well as outside Parliament, so that whenever our space and place is being affected or taken, we can stand firm. I want to thank hon. Millie Odhiambo for standing firm to defend the National Assembly and the Speaker.

Thank you, hon. Speaker.

Hon. Speaker: Yes, hon. Silvanse Osele.

Hon. Onyango: Thank you, hon. Speaker. As we ventilate on this issue, most of the things I wanted to talk about have been addressed squarely well by hon. Mbadi. However, I believe that the problem with the Senate is that there seems to have been much work in the National Assembly as compared to what they have. It is high time the Senate is told that the counties out there are making outrageous laws. That is their role. They are not seeing that. They should start assisting the county governments establish themselves and help the people of Kenya to realise devolution.

Today, devolution still has a problem. Money that was supposed to go to the people is still hanging somewhere at the county level. What is the Senate doing about that instead of bickering with the National Assembly?

Hon. Speaker, the Chair of the Parliamentary Service Commission (PSC) is superior to the Speaker of the Senate and those things are in the Constitution. We are not just making them here. Even when you are meeting as the three arms of the Government, it is you who represents the Legislative arm. Due to that, we encourage as a country a

situation where we try to balance and have discussions, but then a House decides to be rogue. I saw them yesterday talking about the *Uwezo* Fund and yet, it is the National Assembly that is charged with the responsibility of distributing national funds. How do they come into those things? So, if they are so much into it, we can also assign them some duties that we identify are problematic at the county level. We should identify those problems and make them work on them because that is the reality here. I think there are many problems in the counties and they should address them.

So, hon. Speaker, I support a situation where you sit and discuss those things but it should not involve ceding some powers that are constitutionally bestowed on us. Thank you.

Hon. Speaker: Hon. Mutahi.

Hon. Kimaru: Thank you, hon. Speaker. I would like to speak to this issue about the sibling rivalry that is being perpetuated by the Senate because it is not this House that brings about that squabbling and rivalry. Every other time that the Senate does this, and this squabbling that is there, I have no problem saying that it is trivial. I think there is even a better term but I will not use it here today because it might be un-parliamentary. As my sister said there, all this is about the Senate finding space and relevance and I do not think the people of Kenya created the two Houses in order to have daily squabbles and bickering. I agree with the hon. Member who spoke earlier and talked about tidying up the Constitution so that the 20 per cent that we have in the Constitution that is not good can be tidied up. I think the best thing would be to unify those two Houses so that we do not have this squabbling and I also think it would entail doing away with the Senate because I do not think it is serving any purpose whatsoever. That is because if their issue is everyday causing disorder both here in Kenya and even globally and contradicting the Speaker of the National Assembly who speaks for Parliament, then I think it is something that was shameful. Instead of discussing the more important things at the Pan African Parliament, Kenya was discussed because of a letter that was sent by the Speaker of the Senate.

Hon. Speaker, when we were doing induction in Mombasa the other day, I had opportunity to speak to Members from United States of America (USA) and they said those kinds of things never come to the public. If there are any differences between the two Houses, they are sorted out amicably and maturely. This squabbling that is being played out there, I do not know if I will be allowed to say, is juvenile. I do not know whether that is parliamentary and I think the Senate should adopt a more mature way of dealing with those issues so that the dignity of Parliament is upheld. I would urge hon. Kang'ata that his proposed Motion or Bill to scrap the Senate should come sooner rather than later.

Thank you, hon. Speaker.

Hon. Speaker: Finally, can we hear hon. Nkaissery.

Hon. (Maj.-Gen.) Nkaissery: Thank you very much, hon. Speaker. I want to begin by telling Kenyans that, as a father of the Kenyan Constitution, I opposed the Senate in Naivasha. In fact, during the last elections, my constituents told me to go for the Senate seat and I told Kajiado residents that there is no work in the Senate. It is very important for us to speak the truth. Kenya is a very small country. It is the size of Texas. If it is representation of the counties, we have County Woman Representative (CWRs)

who can do the job from the Floor of this House. So, the sooner we close this House called the Senate, the better for this country.

Thank you, hon. Speaker.

(Laughter)

Hon. Speaker: Hon. Momanyi.

Hon. Momanyi: Thank you, hon. Speaker, Sir for allowing me to air my views about the Senate and the National Assembly. Indeed, there is no reason why we should every time quarrel in this House about the Senate and the National Assembly. When you go through the Constitution it is so clear that the National Assembly is, indeed, supreme. It has reached a point where the Senate and the National Assembly are behaving as if they are fighting for the half a loaf of bread that we used to have during the last coalition Government.

Hon. Speaker, the National Assembly is supreme. Let the Senate know that the National Assembly is supreme. Everybody had an opportunity to go for any position that one wished. When we went into being Members of the National Assembly, we knew exactly what we were doing. If, indeed, the Senate wants some powers, we are not afraid. I agree with the Members who spoke before me that let us go for a referendum and even if it means scrapping the Senate, we do so.

It is a national shame that when there is a letter from the Speaker of the National Assembly, there is also another letter by the Speaker of the Senate. It is quite shameful. Let us put our House in order and let the Senate subject themselves to us and clearly know that we are their senior.

They should clearly know that we are senior to them. Let them follow your directions as the Speaker of the National Assembly and the third person in this country in terms of national hierarchy. It is clear in the Constitution that in the absence of the President and the Deputy President, the Speaker of the National Assembly will take charge as the President.

(Applause)

It is not ambiguous and it is very clear. So, let the Speaker of the Senate know clearly that the Speaker of the National Assembly is senior to him. This matter should rest there.

Thank you very much, hon. Speaker, Sir.

Hon. Simba: On a point of order, hon. Speaker, Sir. I would like to know from the hon. Member who was on the Floor if, indeed you are No.3 in terms of seniority in this county. If that is the case, you should be confirmed. If you are No.3, then I do not see the cases at The Hague bringing a problem. You should take charge of this country.

Thank you.

(Laughter)

Hon. Speaker: Hon. Simba Arati, I think you wanted to engage in a light moment.

Yes, hon. Wanjiku Muhia.

Hon. (Ms.) Muhia: Thank you, hon. Speaker, Sir, for allowing me to add my voice on this matter. I want to say that it is crystal clear in the Constitution. I want to say that we have a five-year contract and one year is almost over. I want to imagine a situation where when we have a Bill in this House, it has to go to the Senate, it has to come here and then it is forwarded to the President for assent. Five years will end, maybe, before we finish even five Bills.

Hon. Speaker, Sir, the Senate should supervise the Members of the County Assemblies (MCAs). Why do I say this? Recently in my county, an MCA moved a Motion to say that the water that comes from Nyandarua should be subjected to certain conditions. This was very scaring to Nairobi, Nakuru and other counties. As a Member of the National Assembly, I had to intervene and make a correction. Had this been noticed by the Senate, they could have made the correction. So, the Senate should not imagine supervising the National Assembly.

I want to acknowledge and congratulate the general who has confirmed that the County Women Representatives like me and the other 46 women can also assist in county matters. Personally, I work with the MCAs most of the time because I represent a county. So, it is simple. We cannot afford to waste time moving Bills from point “A” to point “B”.

I encourage hon. Jakoyo who recently came up with the debate of the wage bill and it is true that our wage bill is very high, to pursue the issue to see how we can reduce it.

Hon. Mule: Thank you, hon. Speaker, Sir, for giving me this opportunity to join my colleagues to ventilate on an issue where we are trying to behave the African way. This is where the old men do not want the young boys to take up business. It is certain that the Senate has refused to follow the Constitution. As we speak here, it is very sad that the Senate’s role is to oversee the county governments. I want to confirm to you, hon. Speaker, Sir, that because of Senate’s failure to oversee operations of the county governments, there has been misuse of public funds.

(Applause)

It is very clear that the national Government released money to health centres, sub-district hospitals and sub-county hospitals but, because of lack of direction from that House, that money has not reached the said health centres. That money is hanging somewhere. It is high time we bite the bullet. We want to bring the wage bill of this country down. The best thing we need to begin with is to trim this Parliament. We should do away with one House and remain with the National Assembly so that Kenyans can get services without sideshows.

If hon. Shukra was nominated by this House to represent young Kenyans at Pan African Parliament and the grandfather writes a letter saying “do not accept that daughter”, what are we doing?

(Laughter)

As a House, we must have clear direction on this issue so that we do not take Kenyans for a ride for five years. It is important that this comes out very clearly. This House is

superior and the Senate needs to go and oversee the county governments. If they cannot oversee the county governments, we will come up with a Motion to give them duties for each county so that they can be there and leave us to legislate in order for this country to move forward. This will ensure that we do not have issues of debating between the National Assembly and the Senate. *Hii iwe ya mwisho*. Let it be the last. It is painful.

(Laughter)

Right now we are speaking and doctors are resigning from the county level because they are being harassed by county governments. This is the case and yet the Senate is just looking at what the National Assembly is doing. What are they doing? I am sorry to tell them to take up their duties and let the National Assembly take up its duties. Let every Kenyan know that hon. Speaker, Sir, you are No.3. When we talk about the ICC cases, they are wondering who will take over. You will take charge and we will be behind you.

(Laughter)

As young Parliamentarians, we are saying that we expect respect from our older brothers at the Senate.

Hon. Langat: Thank you very much, hon. Speaker, Sir. I am just from out there. A few minutes ago, I was watching the proceedings of the Senate. What strikes me - and this is a very good opportunity - is that every Member of the Senate kept on saying that the lower House should do this and that. It is very clear in the Constitution which House is lower and which one is upper House. There should be no confusion on that.

The other day, we had a small discussion about the rising cost of managing this country. I think this is the greatest opportunity to tell the country the truth. It is not wise to waste time sending a Bill from the National Assembly to the Senate, back to the National Assembly and we disagree. There are people who are trying to give excuses so that Kenyans do not know whether they have work to do or not.

This House has passed almost 15 Bills. I want to challenge the other House, if it is really the upper House, to give us the number of Bills it has passed. Let us tell Kenyans the truth. How many Bills have they passed? The only Bill they have done is the County Allocation of Revenue Bill. The other one is the one they went to court wasting a whopping Kshs55 million in terms of legal fees. Kenyans must know the cost of running this country. In my view, the work allotted to the Senate should be done by a Committee of this House. In my view, that way, we will save Kenyans billions of shillings because a Committee of this House will not incur extra costs.

Hon. Speaker, in the meantime, they must read Articles 95 and 96 which are very clear. I am sure you are also very passionate about that Article in terms of the roles of the National Assembly and the Senate. We are really suffering as a country. Kenyans are suffering out there. In fact, I received text message the other day from a constituent who was asking me if we were working to pay salaries for some people or not. He made a proposal which anyone in this House can guess in terms of what can be done. I do not want to say more than that.

We need to protect this House and ourselves. What we are doing in this House is national legislation and yet the other House wants to interfere. I think we need to refuse and do our job.

Hon. Speaker: Leader of Majority Party, I had not noticed your request. I thought you were keeping out of this.

Hon. A.B. Duale: Hon. Speaker, I want to speak with the tone of my good friends, Benjamin Langat and Silvanse Osele concerning our colleagues. It was the wish of Kenyans when they went to the referendum to create different levels of governance, that is, the county assembly, county governments, National Assembly, Senate and the leadership of the national Government. It is Kenyans who decide who to send to the Senate and to the National Assembly and who becomes the county assembly representative, the President, the Deputy President and Governor.

This Constitution is very clear in terms of the roles of all those institutions. One fundamental factor is to deliver service to the people of Kenya. When a question arises, the two Speakers of Parliament will sit. It is when a question arises that the two Speakers will sit. That is what the Constitution says. It does not say that every time a Bill is published in the country, you must look for the Speaker of the Senate or he must look for you. We have serious Legal Departments in both Houses and so when a question arises, that is when you consult your colleague on the other side.

In the event you do not agree, the Constitution anticipated that and provides for the formation of a mediation team. Articles 95 and 96 have given those two Houses their functions on how to serve Kenyans.

I was very much disappointed when a coalition agreed on who to present--- It is the leadership of the coalitions that can amend a Motion on the Floor. The Speaker's role is to moderate the House. When we agreed and sent membership to the Pan African Parliament, it was very disappointing for the Speaker of the Senate to write to that parliament. I expected the Acting Leader of the Minority Party in the Senate, the Senator for Wajir County to have written, or the Whip, the Senator for Machakos, on behalf of the CORD Coalition to write a protest letter to the Pan African Parliament. Unfortunately, the Speaker took the role of the leadership of the CORD Coalition. I am sure the CORD Coalition must be alive to the fact that there was somebody somewhere who wanted to usurp the leadership of the great coalition in the Senate. It looks like your leadership is not doing its work in the Senate.

Hon. Benjamin Langat said that Kenyans will judge in the last eight months what every House has done. I am sure they watch television. We are the ones who gave the Executive, the Cabinet Secretaries and the Principal Secretaries what they are using to run the country today. The budget-making process comes through this House. I want to urge you, hon. Speaker, not to get involved in those semantics. I want to urge my colleagues: Please, let us give ourselves a break. You know, where I come from, as a pastoralist, if you have 100 camels you have no time for your neighbour because you have to protect those camels, feed them and take them to the best place where there is water and pasture. At night, you are awake nine out of the 12 hours to make sure that the camels are not attacked by lions – you are so busy. However, the guy who has two or three goats can sleep the whole night. Furthermore, he is helped by other members of the community. Please, let us not lose focus.

I want to talk about the Constitution. Hon. Speaker, what the Supreme Court did-- Article 163(6) states that the Supreme Court may give an advisory opinion at the request of the national Government, any state organ, or any county government in respect to any matter concerning county governments.

I have a lot of respect for the Supreme Court Judges and I have a lot of friends there. Even that one again is a matter of debate. If you want to start a debate, and the country should heed that, the Senate is forming committees that are not national in nature. I am told that there is a Defence and Foreign Relations Committee in the Senate. I think this debate is healthy. We need to create debate and have a national conference between the two Houses so that the Constitution is done. You see, today, the Cabinet Secretary for National Treasury is called by the Senate to be asked questions touching on national Budget. A report was being done by two committees of this House on the Cabinet Secretary for Health. When the report was tabled here in the afternoon, the following morning the Senate started calling hon. Charity Ngilu to start fresh investigations.

Those are the cross-purposes which we are doing. I am sure, by the time we are going for recess, this House will have assented close to 21 Bills, passed many reports, vetted so many people and passed the Budget. We want our colleagues to give the country their score-card.

(Applause)

There should be a performance index for the two Houses but, of course, I have seen hon. Kaluma from Homa Bay talking about the 20 per cent. I was among the people who rejected it but later become a water melon in 2010 and this 20 per cent should not only be extended to the Cabinet Secretaries. I think it should be extended to reduce the governance structure in this country. The wage bill is too high; we cannot deliver services to our people. All the national Budget of Kshs.1.2 trillion is going to salaries, allowances and mileage, not commensurate with your performance. In fact, I think we should peg what we get based on performance and how many Bills have been passed. If you look at the Order Paper and compare it with the one of the Senate, going to the counties and looking at the---The ones which are in the Fourth Schedule and bringing a report.

I do not want us to lose focus. In fact, I want to urge my colleagues not to also lose focus. Very soon, they will be our neighbours and we will do some bonding. The problem is that they will be across the road; this road is becoming a problem. I am sure as soon as they come to the new Chamber, we will buy them tea and take them through the Constitution and give them their roles because a friend learns through his or her colleagues.

Let us give them until January, by the time they come in February, I am sure hon. Kaluma will take them through Article 95, another Member through Article 96, the articles on mediation and the role of the Supreme Court. They want to go to the Supreme Court over the *Uwezo* Fund. How many trips will they make to the Supreme Court, if I may ask? Every time they have issues with the National Assembly, they want to seek advisory opinion. That is not the reason Kenyans created the Supreme Court. It has other better functions to offer to the country.

My parting shot is that, let us not waste energy or lose focus. We should make sure before we go on recess, we do what the Kenyan people brought us here to do for the five years. As hon. Mbadi has said, unless the Senate is given more powers, personally, I have no wish to be there. The Senator for Garissa County can comfortably be there for the next 20 years because I do not want to go there. But in the unlikely event they get more powers, I am sure I will join hon. Mbadi to vie for the Garissa County senatorial seat.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Members, I think this matter came up by way of a point of order raised by hon. (Ms.) Amina Abdalla. It is not really necessary for us to again say what is obvious but, for the avoidance of doubt, because it has been raised by certain quarters, we also need to defend and uphold the Constitution of Kenya. In the Constitution, Article 1 is so clear that sovereignty belongs to the people and goes ahead to explain how it is exercised. The supremacy of the Constitution immediately follows in Article 2, which is not in doubt. This same Constitution in Article 93, created the Parliament of Kenya and it is put in the following order: -

“93(1) There is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate”, again that order in not in doubt.

It is also clear that the National Assembly and the Senate shall perform their respective functions in accordance with this Constitution. Hon. Mbadi went to great lengths to remind us and, indeed, all Kenyans what is clear in Article 109. More importantly so that there is no doubt in anybody’s mind, I may just wish to restate and this has nothing to do with anybody using it to usurp whatever positions, Article 96 on the role of the Senate states: -

“(1) The Senate represents the counties and serves to protect the interests of the counties and their governments.” So, they represent the corporate.

“(2) The Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties as provided in Articles 109 to 113.”

No.3 of their roles and they are not very many is: -

(Laughter)

“(3) The Senate determines the allocation of national revenue among counties, as provided in Article 217 and exercises oversight over national revenue allocated to the county governments”. They exercise that oversight and finally,

“(4) The Senate participates in the oversight of state officers by considering and determining any resolution to remove the President or Deputy President from office in accordance with Article 145.” Of Course, that action must emanate from the National Assembly. So, it is a function that this House has to initiate. It is a role which if this House does not initiate, it will not arise. Hon. Mbadi also did refer us to Article 109 and I think it is important that, at all times, we remain faithful to this. Article 109(2), states that any Bill may originate in the National Assembly. It is not hon. Mbadi who has put this; it is Kenyans who decided that this is the way it should be.

109(3) “A Bill concerning county government may originate in the National Assembly or the Senate, and is passed in accordance with Articles 110 to 113, Articles

122 and 123 and the Standing Orders of the Houses.” But, much more importantly the point raised by hon. Mbadi is: What are Bills concerning county government? This is the sub-heading to Article 110, Bills concerning county governments.

“110(1) In this Constitution, “a Bill concerning county government” means-

(a) a Bill containing provisions affecting the functions and powers of the county governments set out in the Fourth Schedule.”

So, if a Bill does not contain provisions which affect the functions and powers which are in the Fourth Schedule, exclusive to the county governments, then it means that it is not a Bill that can be considered elsewhere other than in this Assembly.

“(b) A Bill relating to the election of members of a county assembly or a county executive.” Those are Bills concerning county governments and are being referred to in Chapter 11, which deals with devolution and we all know that.

Indeed, Members, I do not want to bore you with repeating what is the role of this Assembly as contained in Article 95. But in case anybody has any doubts, I may wish them to just make reference to Articles 95 and 96. The National Assembly determines the allocation of national revenue between the levels of Government as provided for in Chapter 12, Part 4 – Revenue Allocation. I am sure hon. Members, you are aware that this Assembly has already dealt with that and nobody has faulted the Division of Revenue Act 2013, even as we sit. Nobody has declared it unconstitutional.

So, even as people express their opinions, we want to know who has declared that Act as being unconstitutional for having been passed by this Assembly un-procedurally or not in accordance with the Constitution. The National Assembly appropriates funds for expenditure by the national Government and other state organs, namely, the Parliamentary Service Commission, the Judicial Service Commission and all those commissions and independent offices created under Chapter 15 of the Constitution. More importantly, the National Assembly exercises oversight over national revenue and its expenditure and reviews the conduct in the Office of the President, the Deputy President and other State officers. It also initiates the process of removing them from office. The National Assembly exercises oversight of State organs without limitation.

Indeed, if anybody was in doubt as to the place of the Assembly, finally sub-clause 6 of Article 95 says clearly that the National Assembly approves declarations of war and extensions of states of emergency. So, I took the liberty to do this; I am not in dispute or any contestation with anybody. We must follow this Constitution. We all swore to defend it and to abide by it.

In the performance of our duties and functions, we must follow this same Constitution. That is what it mandates and dictates. Members, in Article 107(2), it is clear that at a joint sitting of the Houses of Parliament, the Speaker of the National Assembly shall preside, assisted by the Speaker of the Senate. Members, if anybody had cobwebs in their minds, now this matter should be put to rest. I do not know whether we need to engage in this. It is diversionary. As the Leader of the Majority Party has clearly stated, there is a lot of business lined up for transaction by this House. It is wrong for anybody to assume that they have a supervisory role over the Assembly, especially in the performance of its duties and functions under the Constitution. If anybody has any issues with laws passed by the Assembly, the right place to go and challenge that is in the High Court on constitutionality. That is the avenue that is available. It is not necessary for us to spend endless valuable man-hours debating who should pass which one. We are very

clear on this and this is not an issue of power, hon. Simba Arati. It is just doing our job as we should do it.

But should it be necessary, as suggested by hon. Mbadi, we will look for an opportunity to have a joint sitting of the two Houses at which then we can hear from those who are of contrary views from the provisions of the Constitution, so that we can understand why they should entertain such contrary views. That should be the best way to go because we all have a lot of work to do and we must do it. Thank you, Members.

BILLS

First Readings

THE PARLIAMENTARY SOCIETY OF KENYA BILL

THE VALUE ADDED TAX (AMENDMENT) BILL

*(Orders for First Reading read – Read the First
Time and ordered to be referred to the relevant
Departmental Committees)*

Members, as you note on the Order Paper, Order No.10 is Committee of the whole House. Thereafter, is Order No.11, the Truth, Justice and Reconciliation (Amendment) Bill, National Assembly Bill No.22 of 2013. The Chairperson of the Departmental Committee on Justice and Legal Affairs is not present. He is away with permission of the Speaker. I, therefore, order that when you complete the business on Order No.10, you will go to the business listed as Order No.12 and proceed to business under Order No.13. Business under Order No.11 is therefore, withdrawn from the Order Paper. It is accordingly so ordered.

(Business under Order No.11 withdrawn)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Hon. Speaker left the Chair]

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Hon. Kajwang') took the Chair]*

THE CAPITAL MARKETS (AMENDMENT) BILL

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, you may resume your seats and observe order in the House. This is the Committee of the whole

House of the National Assembly convened to consider the Capital Markets (Amendment) Bill, National Assembly Bill No.8 of 2013.

(Clauses 3, 4 and 5 agreed to)

Clause 6

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, I beg to move: -
THAT, Clause 6 be amended—

(a) in paragraph (a), by deleting the words “futures market” and substituting therefor the words “derivatives market”;

(b) in paragraph (b), by—

(i) deleting the words “futures broker” in subparagraph (iii) and substituting therefor the words “derivatives broker”;

(ii) deleting the words “futures contracts” wherever they appear and substituting therefor the words “exchange-traded derivatives contracts”;

(iii) deleting the words “futures exchange” in subparagraph (iv) and substituting therefor the words “derivatives exchange”;

(iv) deleting the words “futures exchange” in subparagraph (vi) and substituting therefor the words “derivatives exchange”;

(v) deleting subparagraph (vii) and substituting therefor the following new subparagraph—

“(vii) by deleting the word “rules” and substituting therefor the word “notices” in paragraph (v).”

That is just a simple amendment. Initially, the Bill intended to introduce a market segment within the security exchange called futures exchange, but after consultations with the stakeholders and the regulator, it was agreed that because what we call futures is just one product within that sector, we use a more comprehensive name, which is “derivatives market”. Therefore, the amendment is just to take care of that change of name from “futures exchange” to “derivatives market”. So, it is just changing every clause that refers to futures market into derivatives contract.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 6 as amended agreed to)

Clause 7

Hon. Langat: Hon. Temporary Deputy Speaker, Sir, I beg to move: -
THAT, clause 7 be amended in paragraph (b), by—

(a) deleting subparagraph (i) and substituting therefor the following new subparagraph—

“(i) deleting the introductory paragraph and substituting therefor the following new paragraph—

(1) The Minister shall formulate such rules and regulations as may be required to regulate—”;

(b) deleting the words “futures brokers” in subparagraph (ii) and substituting therefor the words “derivatives brokers”;

(c) deleting the words “futures contracts” in subparagraph (iii) and substituting therefor the words “exchange-traded derivatives contracts”;

(d) deleting the words “futures exchange” in subparagraph (iv) and substituting therefor the words “derivatives exchange”;

(e) deleting the words “futures contracts” wherever they appear in subparagraph (vi) and substituting therefor the words “exchange-traded derivatives contracts”;

(f) deleting the words “futures exchange” appearing in subparagraph (vi) in the proposed new paragraphs (p) and (q) and substituting therefor the words “derivatives exchange”, respectively;

Hon. Temporary Deputy Chairman, that amendment seeks to harmonize the Bill because it was generally agreed that the Minister makes the rules and regulations. Therefore, it is just to harmonize the Bill in terms of who makes the rules and actually it is clear that it is the Minister who makes the rules.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. Hon. Members, we are considering page 459 of the Order Paper. The amendments as proposed appear very clearly on the Order Paper. Again, to deal with the issue of the person that---

Hon. Langat: Hon. Temporary Deputy Chairman, the other section within the Order Paper is just to harmonize the name from the “futures exchange” to the “derivatives exchange.”

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 7 as amended agreed to)

Clause 8

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move: -

THAT, clause 8 be amended by inserting the following new subsection immediately after subsection (2) in the proposed new section 12A—

“(3) The guidelines and notices issued under subsection (1) shall be subjected to comment by stakeholders and the general public for a period of thirty days from the date of issue, and notification for that purpose shall be made through advertisement, in at least, two daily newspapers of national circulation and the electronic media”.

Hon. Temporary Deputy Chairman, Sir, this section relates to the making of guidelines and notices by the regulator and the Committee felt that this should be subjected to stakeholder consultations before enforcement. So, that is just to ensure that they approach the stakeholders before they are effected.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, guidelines and comments by stakeholders, that again appears on page 459 of the Order Paper.

(Question of the amendment proposed)

(Question, that the words to be inserted be inserted, put and agreed to)

(Clause 8 as amended agreed to)

(Clause 9 agreed to)

Clause 10

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, I beg to move: -
THAT, clause 10 be amended—

(a) in paragraph (a), by deleting the words “futures exchange” and substituting therefor the words “derivatives exchange”;

(b) in paragraph (b), deleting the words “futures market” and substituting therefor the words “derivatives market”;

(c) in paragraph(c), by deleting the words “futures exchange” and substituting therefor the words “derivatives exchange”;

Hon. Temporary Deputy Chairman, the effect is just the renaming, just as we have done before.

The Temporary Deputy Chairman (Hon. Kajwang’): The Chair is talking about cleaning up the language.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 10 as amended agreed to)

Clause 11

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, I beg to move: -

THAT, clause 11 be amended—

(a) in paragraph (a), by deleting the words “futures exchange” and substituting therefor the words “derivatives exchange”;

(b) in paragraph (b) (i), by deleting the words “futures exchange” and substituting therefor the words “derivatives exchange”;

(c) in paragraph (c), by—

(i) deleting the words “futures exchange” in subparagraph (i) and substituting therefor the words “derivatives exchange”;

(ii) deleting subparagraph (ii);

(d) in paragraph (d), by deleting the words “futures exchange” and substituting therefor the words “derivatives exchange”;

(e) in paragraph (e), by deleting the words “futures exchange” and substituting therefor the words “derivatives exchange”;

(f) in paragraph (f), by deleting the words “futures exchange” and substituting therefor the words “derivatives exchange”;

(g) in paragraph (g), by deleting the words “futures exchange” and substituting therefor the words “derivatives exchange”.

Again, this is about changing the names from “futures exchange” to “derivatives exchange” wherever it appears.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 11 as amended agreed to)

Clause 12

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Langat, I need to direct you. I have seen your proposal to amend Clause 12 in paragraphs (a), (b), (c) and (e) on the Order Paper. I have also seen an additional proposal to amend paragraph (e) as a Floor amendment.

Hon. Langat: That is correct, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): So that the record can be clear, I suggest that you, first of all, move the amendment proposals for paragraphs (a),

(b), (c) and (e). You will then move your Floor amendment on paragraph (d) separately, so that we can be very clear.

So, can you now begin?

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, I beg to move: -

THAT, Clause 12 be amended—

(a) in paragraph (a), by deleting the words “futures exchange” and substituting therefor the words “derivatives exchange”;

(b) in paragraph (b), by deleting the words “futures exchange” and substituting therefor the words “derivatives exchange”;

(c) in paragraph (c), by deleting the words “futures exchange” and substituting therefor the words “derivatives exchange”;

(d) in paragraph (e), by deleting the words “futures exchange” and substituting therefor the words “derivatives exchange”.

Hon. Temporary Deputy Chairman, this is, again, about the change of names.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, we are dealing with the cleaning up of those technical terms, from “futures exchange” to “derivatives exchange” as they appear in paragraphs (a), (b), (c) and (e) of Clause 12.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

Hon. Langat, can you complete the process? I see a Floor amendment. What do you want to do with it?

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move: -

THAT, clause 12 be amended by deleting paragraph (d)

This was a Committee amendment. Unfortunately, it was missed out when the other amendments were put on the Order Paper. The effect of this is to delete amendment under Clause 12(d). In the main Act, this relates to determination of fees by the Exchange. Under the current Act, the law allows the existing Exchange to determine the fees. The proposed amendment is seeking to remove that power. The Members of the Committee decided that this thing should be determined by the marketers as it was the case before. So, that is the effect of the amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, as you realise, Section 21 of Cap.485 contains paragraph (b). It was intended by the amendment proposed in the Bill to delete that sub-section. The Committee Chairman has a Floor amendment seeking to delete that proposal – removing the sub-section that has been part of the law. As you know, a Member who is in charge of a Bill may move an amendment on the Floor of the House without notification. It is for that reason that this amendment has been raised before us. So, the substance of this amendment is actually to retain what has been in the law books as it were before.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Clause 12 as amended agreed to)

Clause 13

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move: -

THAT, clause 13 be amended—

(a) in paragraph (a), by deleting the words “futures exchange” and substituting therefor the words “derivatives exchange”;

(b) in paragraph (b), by deleting the words “futures exchange” and substituting therefor the words “derivatives exchange”;

(c) in paragraph (c), by deleting the words “futures exchange” and substituting therefor the words “derivatives exchange”.

Hon. Temporary Deputy Chairman, this amendment seeks to replace “futures exchange” with “derivatives exchange”.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 13 as amended agreed to)

Clause 14

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, I beg to move: -

THAT, Clause 14 be amended—

(a) in the proposed new section 22A, by—

(i) deleting the words “futures exchange” wherever they appear and substituting therefor the words “derivatives exchange”;

(ii) deleting the words “futures market” wherever they occur and substituting therefor the words “derivatives market”;

(iii) deleting the words “futures contracts” wherever they appear and substituting therefor the words “exchange-traded derivatives contracts”;

(b) in the proposed new section 22B, by—

(i) inserting the word “not” immediately before the word “exceeding” appearing in the proviso to subsection (3);

(ii) deleting the words “futures exchange” wherever they appear and substituting therefor the words “derivatives exchange”;

(iii) deleting the words “futures market” wherever they occur and substituting therefor the words “derivatives market”;

(iv) deleting the words “futures contracts” wherever they appear and substituting therefor the words “exchange-traded derivatives contracts”;

(c) in the proposed new section 22C, by—

(i) inserting the following new subsection immediately after subsection (4)—

“(5) An exchange-traded derivative contract approved to trade on a derivatives market of a derivatives exchange by the Authority under this Act shall be lawful for all purposes and shall not constitute a gaming or wagering contract under the Betting, Lotteries and Gaming Act”;

(ii) deleting the words “futures exchange” wherever they appear and substituting therefor the words “derivatives exchange”;

(iii) deleting the words “futures market” wherever they occur and substituting therefor the words “derivatives market”;

(iv) deleting the words “futures contracts” wherever they appear and substituting therefor the words “exchange-traded derivatives contracts”;

(d) in the proposed new section 22D, by—

(i) deleting the words “futures exchange” wherever they appear and substituting therefor the words “derivatives exchange”;

(ii) deleting the words “futures market” wherever they occur and substituting therefor the words “derivatives market”;

(iii) deleting the words “futures contracts” wherever they appear and substituting therefor the words “exchange-traded derivatives contracts”;

(e) in the proposed new section 22E, by deleting the words “futures exchange” and substituting therefor the words “derivatives exchange”.

Hon. Temporary Chairman, the net effect of all these amendments is just replacement of the previous name with the new name that has been agreed to with the stakeholders.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, the Departmental Committee Chairman has proposed to amend Clause 14 by doing two things: One, cleaning up the terminology that has been used; and, two, inserting the word “not” immediately before the word exceeding. You need to be careful and understand what you are doing, so that you do not surprise yourselves that you have put in things that you did not intend to put in this Bill.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 14 as amended agreed to)

Clause 15

THAT, Clause 15 be amended—

(a) in paragraph (a), by deleting subparagraph (i) and substituting therefor the following new subparagraph—

“(i) inserting the words “derivatives broker, REIT manager, trustee” immediately after the word “stockbroker””;

(b) in paragraph (b), by deleting the words “futures exchange” and substituting therefor the words “derivatives exchange”.

Hon. Temporary Deputy Chairman, this is, again, about re-naming.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 15 as amended agreed to)

(Clauses 16 and 17 agreed to)

Clause 18

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move: -

THAT, Clause 18 be deleted and replaced with the following new clause—

Amendments to
Section 25A of
Cap.485A.

18. Section 25A of the Principal Act is amended—

(a) inserting the words, “rules, guidelines, notices or directions” immediately after the word “regulations” appearing in the introductory paragraph of subsection (1);

(b) deleting the words “in such amounts as may be prescribed” appearing immediately after the word “penalties” in subsection (1)(a)(vi) and substituting thereof the words “not exceeding ten million shillings”;

(c) deleting the words “as such amounts as may be prescribed” appearing immediately after the word “penalties” in subsection (1)(b)(iv) and substituting

thereof the words “not exceeding five million shillings”;

(d) inserting the following new subsections immediately after subsection (4)—

“(5) For the purposes of this Act, an act, omission or failure of an agent, employee or any other person acting on behalf of a licensed person shall be considered to be the act, omission or failure of the licensed person as well as of the agent, employee or any other person acting as such.

(6) The financial penalties with respect to—

(a) a breach of trading rules of a securities exchange by a licensed person shall be double the brokerage commission payable to the licensed person on the relevant trade, or double the annual fees, whichever is higher;

(b) failure to comply with a reporting requirement by a listed company or a licensed person shall be double the applicable prescribed annual listing fee or license fee, whichever is higher, for every calendar quarter during which the reporting requirement remains outstanding; and

(c) failure on the part of the securities exchange to enforce and ensure compliance with this Act and the rules of the exchange as approved by the Authority, shall be equal to the annual license fee of the securities exchange”.

Hon Temporary Deputy Chairman, the effect of that amendment is to replace what was initially there upon the agreement with the stakeholders which is on the Order Paper. The effect is to provide administrative amounts in which the regulator can charge in case somebody or the licensed person fails to comply with some of the requirements. So, that is the effect of that amendment so that it gives the figures that can be charged to any licensed person. It is actually administrative action that can be taken by the regulator. In case you do not comply with one or two things, it makes it certain on what the authority may enforce on you.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 18 as amended agreed to)

Clause 19

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move: -

THAT, Clause 19 be amended in the proposed new section 26A(1)(a), by deleting the words “futures exchange” and substituting thereof the words “derivatives exchange”.

Again, this is just the name.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 19 as amended agreed to)

(Clause 20 agreed to)

Clause 21

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move: -

THAT, Clause 21 be amended—

(a) in paragraph (b) by deleting the words “futures exchange” wherever they appear and substituting thereof the words “derivatives exchange”;

(b) by deleting the words “futures broker” wherever they appear and substituting thereof the words “derivatives broker”.

Hon. Temporary Deputy Chairman, again that is renaming.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 21 as amended agreed to)

(Clauses 22 agreed to)

Clause 23

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move: -

THAT, Clause 23 be amended—

(a) in the proposed new section 30A, by deleting subsections (4), (7) and (8);

(b) in the proposed new section 30B, by deleting subsections (2), (3) and (4);

(c) by deleting the proposed new section 30C and substituting thereof the following—

Filing of

Information
Notice.

30C. An issuer or officer shall file an information notice with the Authority—

(a) in respect of a restricted public offer of securities—

(i) where the minimum amount which may be paid under the offer of securities is not less than such amount as the Authority may prescribe from time to time; or

(ii) where the securities are denominated in such an amount as the Authority may prescribe from time to time;

(b) in the case of any issue or offer exempted from issuing a prospectus or a short-form prospectus, except in respect of asset-backed securities.”

(c) by deleting the proposed new sections 30D and 30E;

(d) in subsection (3) of the proposed new section 30G, by—

(i) deleting the expression “subsection (1)(a),(b) or (c)” appearing in paragraph (a) and substituting thereof the expression “subsection (1)(a) or (b)”;

(ii) deleting the expression “subsection (1)(b), (d), (f) or (g)” appearing in paragraph (b) and substituting thereof the expression “subsection (1)(b), (c), (e) or (f)”;

(e) in the proposed new section 30L, by deleting the words “these Regulations” appearing in subsection (1) and substituting thereof the words “this Act”;

(f) in the proposed new section 30O, by deleting the words “securities trust” appearing immediately before the words “may consider” in subsection (3) and substituting thereof the words “securitisation trust”.

Hon. Temporary Deputy Chairman, the effect of this is to delete in the proposed new Section 30(A) 4,7 and 8. Then in the proposed new 30(b) we delete sub-clauses 2,3 and 4. We are removing them from there because we felt these are too many details which can be captured by the regulations which are normally done by the Cabinet Secretary and the regulating authority. The effect is that most of those things will be captured in the regulations which are issued by the Capital Markets Authority (CMA) and the Cabinet Secretary in charge of the National Treasury.

(Question of the amendment proposed)

*(Question, that the words to be left out be
left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 23 as amended agreed to)

(Clauses 24 and 25 agreed to)

Clause 26

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, I beg to move: -

THAT, clause 26 be amended—

(a) in the proposed new section 32A, by inserting the following new paragraph immediately after paragraph (b) in subsection (2)—

“(c) “insider” means a person in possession of inside information”;

(b) in the proposed new section 32F, by deleting the words “futures contracts” appearing in subsection (2) and substituting therefor the words “exchange-traded derivatives contracts”.

The effect of that amendment is simply to introduce one definition and change the name as earlier explained.

(Question of the amendment proposed)

(Question, that the words to be inserted be inserted, put and agreed to)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 26 as amended agreed to)

(Clause 27 agreed to)

Clause 28

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, I beg to move: -

THAT, Clause 28 be amended by—

(a) deleting the opening paragraph and substituting therefor the following—

“The principal Act is amended by deleting section 33C and substituting therefor the following new sections—”;

(b) renumbering the proposed new sections 33D, 33E and 33F as sections 33C, 33D and 33E, respectively.

That is just tidying up of the Bill.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 28 as amended agreed to)

Clause 29

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, I beg to move: -

THAT, Clause 29 be amended in the proposed new section 34A, by—

(a) deleting the proviso appearing in subsection (1);

(b) inserting the following new subsections immediately after subsection (3)—

“(4) The amount of restitution or compensation for which a person is liable under subsection (2), is—

(a) the loss sustained or adverse impact of the breach on the person or persons claiming compensation or restitution;

(b) the profits that have accrued to the person in breach;

(c) where harm has been done to the market as a whole, the illegal gains received or loss averted as a result of the illegal action as may be determined by the court.

(5) To the extent that a person convicted of an offence under subsection (1) profited by committing that offence, but those harmed cannot reasonably and practically be determined, the payment under subsection (3) shall be made to the Compensation Fund established under this Act”;

(c) renumbering subsection (4) and (5) as subsection (6) and (7), respectively.

The effect of that amendment is just to clarify on the compensation--- Let me confirm this, hon. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Hon. Kajwang’): Can I help you, hon. Chairman? You are looking at page 464 of the Order Paper and over the page is 465. Go on.

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, this is really not new provisions but they are being moved from Section 34 to Section 34(A) through the amendment to Clause 29. The amendment says that Clause 29 be amended in the proposed New Section 34(A). So, we are just bringing it to the right place.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chairman, can you consider again Clause 29? Your proposal is contained on page 464 of the Order Paper. Relate it closely with page 219 of the Bill and you will get your right footing.

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, if you look at this in full context, you will find that it is just transferring these provisions to the right context given the fact that the amendments have now been passed.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chairman, I still have you on the Floor. I need my records to be correct on the HANSARD. The legislative proposal you have before us is to delete the provision in subsection 1. If you do that then instead of the penalties which I see proposed in the Bill--- I can see specific penalties on

the individual company. If you insert in your proposal “b” new subsections in Subsection 3, first of all, you will be taking away these penalties by deleting that proposal.

Secondly, you will be creating some amounts to be paid on restitution or compensations. You are creating the criteria of paying those compensations. That is what I see. You are creating what is called the “Compensation Fund”. You are making this payment payable to the Compensation Fund by Subsection 5. However, they are your proposals and I need you to own them up.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): The Floor is open now and I need this to be very clear in my records.

Hon. Okoth: Hon. Temporary Deputy Chairman, I would like the Chairperson of the Committee to explain why we are getting rid of the penalties which were in the original Bill and why this remedy and amendment he is proposing is a better one.

The Temporary Deputy Chairman (Hon. Kajwang’): Well, I suppose that the detailed explanation is in the Committee Report that accompanied this, but could you own it up and explain this well?

Hon. Langat: Hon. Temporary Deputy Chairman, we are leaving it where it is now, but we are introducing them again subsequently after Subclause 34(3). We are just realigning. We are deleting it where it is now, but then introducing it subsequently after Subclause 34(A)(3).

The Temporary Deputy Chairman (Hon. Kajwang’): The inquiry by the Member for Kibra is legitimate. I am advised that you are deleting the proviso which has to do with the financial penalties. We are looking at Page 220 of the Bill. You are removing those provisos which are contained in (a), (b) and (c).

Member for Kibra, are you still inquiring on why the Chairman is proposing to remove those provisos?

Hon. Okoth: Yes, because I am not a financial expert although I am concerned. Could this be explained to us laymen clearly in lay terms? Why the change?

The Temporary Deputy Chairman (Hon. Kajwang’): I suppose so that we do not have double jeopardy or something.

Hon. Gichigi: Hon. Temporary Deputy Chairman, sorry I have just got in. I am afraid that the proposed amendment may not be right for this country. The proviso that the Chairman is attempting to remove is actually one that imposes penalties on brokers who breach the rules.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chairman, can you approach the Chair?

Hon. Gichigi: It also has good provisions particularly Subclause (a) where the court may order that a person who has been convicted of an offence to compensate another person or the person who suffers from the loss occasioned by that offence and that such compensation may be in addition to or in substitution to another remedy available to the aggrieved person.

I have a feeling that if the Committee is persuaded to remove this clause then it is not right. This is something that should be opposed. We know how Kenyans have suffered in the hands of brokers. If you have a law that says that people should be

compensated, there should be restitution. I do not think that is a law we should remove here if we want to protect the majority of investors in the stock exchange.

The Temporary Deputy Chairman (Hon. Kajwang’): There are two things, however, and you might want to express yourself on them. There is removal of penalty and imposition of compensation. How does that impact on the debate that you have just given us? Is it complementary or does it take away? Does it protect the average dealer in the market or does it harm them? Where are we?

Hon. Gichigi: My worry is in the investor, that is, the person who gives his money to the broker. I may be wrong, but---

The Temporary Deputy Chairman (Hon. Kajwang’): Does it not buttress? Does he not give him? There is penalty and compensation. What is your view on it?

Hon. Gichigi: The position is that the law as it is provides for compensation unless I am convinced otherwise that the intended amendment is, therefore, removing that compensation.

The Temporary Deputy Chairman (Hon. Kajwang’): Gichigi, let us move back. We need to be clear here. The Chairman is proposing to remove the proviso. We are looking at Page 220 of the Bill. He is proposing to remove the proviso down that page which states thus: “---provided that financial penalties with respect to (a), (b) and (c).”

He is also proposing to insert or include restitution and compensation. That may not necessarily mean that he is taking away the penalties because the penalties have already been provided for in paragraph 1(a), (b) and (c), that is, the ones which are not being deleted.

Do you want to reconsider that?

Hon. Gichigi: Hon. Temporary Deputy Chairman, my reading of the proposed amendment is right. The person who has suffered rather than being compensated by the culprit is being told to go to the Compensation Fund. The current position is that he has to request both. If I am wrong, I beg to be corrected.

Hon. Mwaura: Hon. Temporary Deputy Chairman, we must make sure that we have proper laws that are very clear on penalties. The idea that we would want to have a situation where this is not clear, in my opinion, may be subject to abuse.

Hon. Temporary Deputy Speaker, you have just come from removing an amendment in Clause 7 that was proposing stakeholder participation. We should not give too much leeway to the bodies that we are establishing in this law. We must make sure that there are proper mechanisms to address the issue.

Hon. Waweru: Hon. Temporary Deputy Chairman, I think we are confusing penalties for listed companies and penalties for participants, licensees and so on. There are different kinds of penalties. It is good for the Chairman to clarify what penalties he is deleting and why they are being reintroduced. According to Page 220, I do not see anything to do with intermediaries. I think it is talking about breaching of trading rules of security exchange of a licensed person. On the listed companies, there are different provisions.

Hon. Okoth: Hon. Temporary Deputy Chairman, my concern is about who is there and how we are making these laws to make sure that the interests of the common investor are protected as they participate in this market. What are the penalties to deter the dealers that operate in this market from making mistakes or from acting wrongly in ways that harm the interest of the investors? This has happened in Kenya before and we

want to ensure that the laws we create are very clear so that the interests of the common investor are protected. A compensation fund as the only recourse sounds not deterrent enough. People will make judgment on what deals they can pull that harm common investors knowing how much profit they can make and what little they can contribute to the compensation fund and get accountable for it.

So, I really think that penalties including clearly large and significant financial penalties to deter wrong doing, including jail terms should be put in there. What is going on in the world, for instance, the financial collapse of the USA housing market a few years ago, and you have just come from a study tour in Florida, Massachusetts--- These are things in the headlines today. Banks like JP Morgan and Citi Bank are having to pay billions in fines. As we start in Kenya with new derivatives market system which we have never had before, let us start on the right foot. Let us not create loopholes. Let us learn from the lessons that others have already learnt. That is where my concern is. I am willing to be informed clearly by the Chairman so that I know that what we are supporting is clearly in the interest of Kenyan investors.

The Temporary Deputy Chairman (Hon. Kajwang’): Your debate speaks to the philosophy of that policy, that is, what underlies the belly of that policy. Could you, please, explain two things hon. Members have asked: One, whether the penalties and the compensation are adequate remedies to protect the investor, or whether they loosen up the investor at the mercy of the brokers?

Two, if in the previous clauses that we have dealt with, there are sufficient safeguards that speak to the same issue. Thirdly, the Member for Kibra is asking the underbelly; the philosophy of that policy and whether that policy is a sufficient guide to protect the investor, so that we do not get into those examples that he has mentioned here.

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, I am sorry the Bill has been very long until somehow, I missed something.

The Temporary Deputy Chairman (Hon. Kajwang’): I appreciate. It is okay.

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, I had said earlier that we are just removing them there because we have already captured that. I want to refer you to page 462 of the Order Paper. If you look at the amendments under Clause 18---

The Temporary Deputy Chairman (Hon. Kajwang’): Is it to Section 25(a) of the principal Act?

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, we are just deleting from there and bringing them to the right place where they can stand properly. If you look at (b), (v) and (vi), the financial penalties with respect to breach of trading rules, this is just copy pasting from the other section to this one. We have captured this under the amendments to Clause 18. I beg that we move because if you look at page 462---

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. That is clear. Members, just to explain it, the Chair is explaining that we have already captured it on the earlier clause that we dealt with on Clause 18. I have just been doing a test run on it and I have seen clearly that the proviso that he is deleting here are word for word what we had included in Clause 18. So, those are now inbuilt in the legislation. The question of compensation is now complementary. It is an additional component, is not? Hon. Member for Kibra, you still want to have a bite on the cherry?

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, he said that he is not an expert. He said that he is a layman.

The Temporary Deputy Chairman (Hon. Kajwang’): But he is a Member of the National Assembly. He is sad with the policy.

Hon. Langat: I am using his own words, hon. Temporary Deputy Chairman, Sir. Those are his own words. He said in a layman’s language. So, I want to say in a layman’s language to him that there is also what we call Investor Compensation Fund, which is already established within the existing law. Remember this is just an amendment and there is already a law that seeks to compensate the investors in the event of a loss occasioned by the problems in the sector. So, be guided and that fear should not arise.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. We took too long on this because we want to be very clear on what we are doing. We are not rubber stamps. This National Assembly, at least, the 11th Parliament, will not be a rubber stamp.

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted be inserted, put and agreed to)

(Clause 29 as amended agreed to)

(Clauses 30 and 31 agreed to)

New Clause 12A

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, I beg to move: - THAT, the following new clause be inserted immediately after clause 12—

Insertion of
new sections
21A and 21B
in Cap. 485A.

12A. The principal Act is amended by inserting the following new sections immediately after section 21—

Securities exchange to make rules.

21A. An approved securities exchange may make rules for the carrying out of its functions and, in particular, for the regulation of its activities, products, systems and fees. Authority’s may abrogate rules.

21B. The Authority may abrogate any rules made under section 21A if there exists risks that have not been adequately mitigated in the rules.

We are giving the market time to regulate itself, but we are also saying that the Authority may, if it finds that the rules have some risks, which have not been mitigated, still come in.

The Temporary Deputy Chairman (Hon. Kajwang’): You have referred to me to page 461 of the Order Paper. Is that correct?

(Question of the new clause proposed)

(New clause read the First Time)

*(Question, that the new clause
be read a Second Time, proposed)*

We are dealing with what you have proposed on page 461 of the Order Paper.

Hon. Chanzu: Hon. Temporary Deputy Chairman, Sir, that is good, but I wanted the Chair to explain further how that self-regulation is achieved. Just to leave it that the rules will be there for self regulation, who oversees that or takes care of that? How will it be taken care of?

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, if you read the amendment, it provides that approved securities exchange may make rules for the carrying out of its functions and, in particular, for the regulation of its activities, products, systems and fees. Then if you read 21B, it will answer your question because it provides that the Authority may abrogate any rules made under Section 21A if there exists risks that have not been adequately mitigated in the rules.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, Sir, I wish to move a further amendment to the New Clause 12A as follows: -

THAT, the New Clause 12A be amended by deleting the whole of section 21B and replacing it with-

“Not less than thirty days prior to the proposed dates of introducing any such rules, an approved exchange shall submit the same to the Authority for review and consideration to determine if there exists risks that have not been adequately mitigated in the proposed rules.”

I want to beg the Chair to agree with me that this amendment seeks to ensure the protection of investors’ interests by allowing the Authority to mitigate risks that may not have been adequately addressed before the rules are applied in a market. This will go a long way to ensure that risks are not addressed when they have already affected the investors. It is like a precautionary measure. I want to beg the Chair of the Committee just to agree with me to that further amendment. I really beg him.

The Temporary Deputy Chairman (Hon. Kajwang’): Alright. But let us do the right things before you even go there. That is a further amendment on the amendment. Hon. A.B. Duale, your proposal is a further amendment.

Hon. A.B. Duale: Yes, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): So, can you, for the benefit of the hon. Members and of the record, state clearly if you are seeking to delete the proposal of Clause 21B and insert a new clause, in terms of what you have just read? Just go on record in saying so.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, it is to delete that clause and replace it with the new clause. The rationale, as I have explained, is just a mitigation measure. But the amendment seeks to ensure protection of the investors’ interests.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. Let me propose it first so that we can look at it.

(Question of the further amendment proposed)

Hon. Okoth: Thank you, hon. Temporary Deputy Chairman, Sir. I really think that what the hon. Leader of Majority Party is proposing is very helpful in that direction of pro-investor rights and interests. For that, I would take it further and ask that, that period be 45 days instead of 30 days. I think once we have these derivatives markets, we need to understand this is where our pension funds are going to be getting bids to see whether they can make a difference for our pensioners and their rights. So, we really want to make sure that these markets are tightly regulated. Even hon. Members of the august House, like me, who have some education, have to pause and look at things carefully, before we fully understand.

Therefore, I think it is really giving us time. Instead of the 30 days as proposed, I propose a further 45 days for these rules to be clearly looked at. I would even request that they be published more widely.

The Temporary Deputy Chairman (Hon. Kajwang’): So, the hon. Member for Kibra Constituency is actually in support of the further amendment. He is supporting both the amendment and the further amendment as proposed.

Hon. Gichigi: Hon. Temporary Deputy Chairman, I also rise to support the amendment and further amendment. Majority of the people who have put their coins in the stock exchange are people who have absolutely no knowledge on this very specialized area. I am a lawyer and even looking at what is before us today, I still have difficulties. I think it would be safe to say that before the rules are passed, let the experts look at them. I think the Authority will have these experts. It has been given statutory powers and obligation to do exactly that.

I urge the hon. Members present to support this particular final and further amendment.

Hon. Mwaura: Thank you, hon. Temporary Deputy Chairman. I rise to support the further amendment because it seeks to preclude the idea that these approved securities can have their own rules and regulations. As long as it does so, then they are admissible for use for any member of the public who then invests in that security.

Hon. Temporary Deputy Chairman, I think we need to have a proper way of disclosure because information is very critical when it comes to money markets. It is about the confidence in the market and it is about speculation. Therefore, any rules or regulations have got a direct bearing on any earnings that one may want to speculate about. We know that there have been allegations of even in-trading within these securities. Therefore, this period would allow members of the public and any other stakeholder to interrogate what rules are being proposed because as the Chair knows very well, if you were not able to determine the rules, you play by the rules of others. Therefore, such scrutiny is critical so that we can have a more open society.

Hon. Temporary Deputy Speaker, I support this because if you look at our pensions and the investments that are accruing, very soon this country is going to have a very big burden of catering for older people. This circle of regulation has caused turmoil in the USA and in the Western hemisphere. Therefore, we need to ensure that we learn from the mistakes that they have done and more and more scrutiny by an authority that is established by this House is critical so that we do not have those lapses.

I rise to support.

Hon. Waweru: Hon. Temporary Deputy Chairman, Sir, worldwide I think the trend is to have self-regulation as a practice. That does not mean that the regulator is out of the picture. What it simply means is that, an industry regulates itself before they go to the regulator. That has been the practice worldwide. But my only concern is when the regulator is coming up with the rules. They have not been very consultative enough and that has been an issue which I think our regulator has to look at. So, I will support that provision but I think it is important for it to be very interactive going forward.

Hon. Langat: Hon. Temporary Deputy Chairman, after a lot of consultations with my Leader of Majority Party, I want to accept. But I want to say that, there is some fear; that when people regulate themselves, they are not responsible.

Hon. Temporary Deputy Chairman, I to want inform this House, and that is where the take of the Committee is, the Nairobi Stock Exchange has been in existence for a very long time, regulating itself. The regulator came just the other day and nothing really serious happened all those years when the CMA was there. Therefore, this fear should not arise because the market is there and people are disciplined.

Hon. Temporary Deputy Chairman, Sir, we have a product called M-PESA in the market and there is law that governs it. So, I just wanted to put that thing into perspective so that the House can see why the Committee arrived at that decision. I am in agreement to allay those fears.

Thank you.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, although it is procedural that it should come from the Floor, can we re-commit this clause so that I give hon. Members time to digest this information. When you look at the provisions of the amendment that you are proposing, it is stated that approved securities may make rules. The proposal that is contained in the further amendment helps you to deal with how the rules can now be presented for review. But in case, therefore, the Authority finds that there exists risks, it should be able to do something, which is the content of what the hon. Member is trying to delete.

Therefore, it means that hon. Members may abrogate it. In other words, the three texts can exist together, starting with the approval in (a), going to the proposal of introducing the rules for review. If they find that there exists risks, they may abrogate those rules. So, in order to avoid wasting time on this amendment, let us have it re-committed and deal with the rest of the amendments. Departmental Committee Chairman, you can consult as we get this done.

Yes, hon. Chairman.

Hon. Langat: Hon. Temporary Deputy Chairman, if the amendment by the Leader of the Majority Party is on course, there is no need for re-committal. Clause 21B now ceases to have any meaning because we are saying, not less than 30 days the rules must be given to the Authority for it to re-consider and approve. So, Clause 21B may actually be deleted but it can still remain without any harm. Let us continue with it to avoid wasting time. Re-committal is a very long process.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, I do not want to entertain a lot of interventions on this one. Hon. Gichigi, is there something that you want to make clearer?

Hon. Gichigi: Hon. Temporary Deputy Chairman, mine is just a comment. You have opened my eyes. It will be very useful if we had the three paragraphs rather the two.

Let us retain paragraph 21A and execute the further amendment that has been proposed by the Leader of the Majority on paragraph 21B, so that the current paragraph 21B can be paragraph 21C. This gives the Authority power to have a look at the rules before they are made. However, subsequently, if a rule is found to have a problem, the Authority can still abrogate it. The Authority can recall and review it. So, I quite agree with us having the three of them rather than deleting paragraph 21B.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, hon. Member for Kibra.

Hon. Okoth: Hon. Temporary Deputy Chairman, I also rise to support the enactment of pro-investor and pro-*mwananchi* laws, so that we do not stifle business completely but also we do not just make laws that are purely pro-industry. I do not think there is any loss in passing this amendment. There are more gains by making a law that will allow us a 30-day review period to reconsider the position, so that the current paragraph 21B can become paragraph 21C, allowing the Authority, in the interest of the public, if information or knowledge comes out clearly later, to abrogate any rules that did not make sense in the beginning. So, again, I concur with hon.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Gichigi, for the record, if you are so convinced that, that is how we must go; it must come by way of a further amendment to what hon. Duale has brought to us. So, you have to address the record in that manner because it must come by further amendment to the further amendment.

Hon. Gichigi: Thank you, hon. Temporary Deputy Chairman. I am proposing that the further amendment by the Leader of the Majority Leader be paragraph 21B and then paragraph 21B be re-numbered to read “paragraph 21C”.

The Temporary Deputy Chairman (Hon. Kajwang’): No, no, no! You are alright. We already have paragraph 21B. You are further amending the further amendment to insert new paragraph 21C. So, can you read out your proposed paragraph 21C into the record?

Hon. Gichigi: Hon. Temporary Deputy Chairman, therefore, I propose that we introduce paragraph 21C.

The Temporary Deputy Chairman (Hon. Kajwang’): Which is in what terms?

Hon. Gichigi: Hon. Temporary Deputy Chairman, the amendment by the Leader of the Majority Party was actually deleting it. So, I would like paragraph 21C to read: “The Authority may abrogate any rules made under section 21A if there exists risks that have not been adequately mitigated in the rules.”

The Temporary Deputy Chairman (Hon. Kajwang’): Can that text say “Subject to Section 21B, the Authority---”? Can you subject it to Section 21B?

Hon. Gichigi: Hon. Temporary Deputy Chairman, I beg to move the amendment to read: “Subject to Section 21B, the Authority may abrogate any rules made under section 21A if there exists risks that have not been adequately mitigated in the rules.”

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. We are now on the right order. I now propose that Clause 12A be further amended as proposed by hon. Duale, in the terms that have been read on the record.

(Question of the further amendment proposed)

*(Question, that the new clause be read a
Second Time, put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be
added to the Bill put and agreed to)*

New Clause 28A

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move: -
THAT, the following new clause be inserted immediately after Clause 28—

Amendment
of section 34
of Cap.
485A.

28A. Section 34 of the principal Act is amended by deleting subsections (2), (3), (4) and (5).

We are just cleaning up the Bill because the provisions which were there initially have been captured under 34A.

(Question of the new clause proposed)

(New clause read the First Time)

*(Question, that the new clause be
read a Second Time, proposed)*

*(Question, that the new clause be read a
Second Time, put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be added to
the Bill, put and agreed to)*

New Clause 32

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move: -

THAT, the following new clause be inserted immediately after
Clause 31—

Insertion of
new section
36A in Cap.
485A.

32. The principal Act is amended by inserting the following new
sections immediately after section 36—

Exemption
of existing

securities
exchange.

36A. (1) Notwithstanding the provisions of this Act or any regulations or rules made thereunder in relation to derivatives or futures exchanges and participants therein, any securities exchange approved by the Authority under this Act as on the date this section comes into force shall be entitled to conduct the business of a derivatives exchange, whether by itself or through its wholly owned subsidiary, for a period of up to three years, subject only to complying with any requirements for its current approval as a securities exchange, provided that such an exchange will be required to—

(a) have an issued and paid up share capital of a minimum of five hundred million shillings only;

(b) make arrangements for the efficient and effective clearing and settlement of transactions effected through the exchange and its clearing house, and for the management of settlement risk;

(c) implement an effective and reliable infrastructure to facilitate the trading of derivatives listed on the exchange;

(d) formulate rules for the listing of derivatives contracts, for trading, clearing and settlement on the exchange and its clearing house, and for dispute resolution and for compensation of investors, and will have submitted these for approval by the Authority.

(2) At the end of the period referred to in subsection (1), a securities exchange shall be required to comply with all the requirements governing a derivatives exchange.

(3) During the period referred to in subsection (1), and notwithstanding any other provisions of this Act and any regulations made there under, all trading participants who are or who become trading participants of such exchange shall be entitled to be derivatives brokers subject only to complying with the licensing requirements for a trading participant subsisting on the date this section comes into force.

(4) The Authority may approve the rules of the exchange aforesaid relating to its derivatives operations within thirty days of submission of the draft rules or of any changes requested thereon by the Authority.

The effect of that amendment is to give a transitional clause to any existing exchange that may wish to offer these new products and the effect of that is to create a three-year period but we are saying they must have a minimum capital of Kshs. 500 million which was a compromised position between the stakeholders. This is because initially there was a provision that they required one billion to start but we said that even for banks when the capital--- Again, we are also saying that provided that they will make arrangements for efficient and effective clearing and settlement of transactions effected through the exchange and this clearing house and the management of settlement risk. So, that is only a transitional clause so that if there is any approved exchange when this becomes an Act, they can continue doing that business and then they can comply gradually within three years.

(Question of the new clause proposed)

(New clause read the First Time)

*(Question, that the new clause be read
a Second Time, proposed)*

*(Question, that the new clause be read a
Second Time, put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be added
to the Bill, put and agreed to)*

Clause 2

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move: -

THAT, Clause 2 be amended—

(a) in paragraph (a), in the definition of “agent”, by deleting the words “futures market” and substituting therefor the words “derivatives market”;

(b) by deleting paragraph (b);

(c) by deleting paragraph (c) and substituting thereof the following new paragraph—

“(c) in the definition of “collective investment scheme” by—

(i) deleting the words “which is incorporated or organized under the laws of Kenya” appearing immediately after the words “other scheme” and substituting therefor the words “whether or not established or organized in Kenya”;

(ii) deleting the phrase “occupational pension scheme” and replacing it with “retirement benefits scheme” in item (vi)”;

(d) in paragraph (d), by deleting the words “futures contracts” and substituting therefor the words “exchange-traded derivatives contract”;

(e) in paragraph (e), by deleting the words “futures contracts” and substituting therefor the words “exchange-traded derivatives contracts”;

(f) in paragraph (g), by deleting the word “futures exchange” appearing in the definition of “futures contract” and substituting thereof the words “derivatives exchange”;

(g) by deleting paragraph (i) and substituting therefor the following new paragraph—

“(i) in the definition of “investment adviser”, by deleting the phrase “by rules or regulations, determine” appearing in paragraph (5) and substituting thereof the word “prescribe””;

(h) in paragraph (j), by deleting the words “futures contracts” and substituting thereof the words “exchange-traded derivatives contracts”;

(i) in paragraph (k), by—
(i) deleting the word “futures exchange” appearing in subparagraph (a) and substituting therefor the words “derivatives exchange”;
(ii) deleting the words “futures market” in subparagraph (b) and substituting thereof the words “derivatives market”;

(j) in paragraph (m), by deleting the word “futures exchange” appearing in the definition of “securities exchange” and substituting thereof the words “derivatives exchange”;

(k) by deleting paragraph (n) and substituting thereof the following new paragraph—

“(n) in the definition of “trading participant”, by deleting the phrase “licensee of the Authority” and substituting thereof the words “licensed person””;

(l) in paragraph (o), by—

(i) deleting the word “futures exchange” appearing in the proposed definition of

“futures broker” and substituting thereof the words “derivatives exchange”;

(ii) deleting the words “futures contracts” in the definition of “futures broker” and substituting thereof the words “exchange-traded derivatives contracts”;

(iii) deleting the definition of “futures exchange”;

(iv) deleting the words “futures exchange” appearing in the proposed definition of “futures member” and substituting thereof the words “derivatives exchange”;

(v) deleting the definition of “futures market”;

(vi) inserting the following new definitions in their proper alphabetical sequence—

“derivatives exchange” means a securities exchange which has been granted a license to list exchange-traded derivative contracts by the Authority under the Act or approved for such purposes and in accordance with the regulations issued thereunder; “derivatives market” means a place at which, or a facility, whether electronic or otherwise, by means of which offers or invitations to sell, purchase or exchange-traded derivative contracts are regularly made on a centralized basis, being offers or invitations that are intended or may reasonably be expected to result, directly or indirectly, in the acceptance or making, respectively, of offers to sell, purchase or exchange-traded derivative contracts, whether through that place, facility or otherwise, but does not include—

(a) the office or facilities of a derivatives broker; or

(b) the facilities of a clearinghouse;

“exchange-traded derivative contracts” means standardized type of securities or financial instruments which derive their value from the value of underlying assets, indices, or interest rates that are transacted on a licensed derivatives exchange;

“REIT manager” means a company incorporated in Kenya and licensed by the Authority to provide real estate management services in respect of a real estate investment trust;

“trustee” in relation to real estate investment trust or a collective investment scheme, means a person appointed under a trust deed of a real estate investment trust or a collective investment scheme, as the case may be, as its trustee”.

It may look very long but the only thing happening there is the changing of names from the previous name which had been given to this exchange to the new name which was agreed on by the stakeholders which we have captured throughout in these other sections. This Clause 2 deals with definition of terms. So, what we are doing there is that where it is referring to “future exchange” we are changing it to “derivatives exchange” and basically that is an amendment section. We are not introducing anything new.

(Question of the amendment proposed)

Hon. Okoth: Hon. Temporary Deputy Chairman, we need a clarification on page 456 as we are looking at the document. Deleting the words “which is incorporated or organized under the laws of Kenya” appearing immediately after the words “other scheme” and substituting therefore the words “whether or not established or organized in Kenya,” does this mean that these security exchanges and derivative markets will be operating both here and internationally? I just need an explanation of what this exactly means.

The Temporary Deputy Chairman (Hon. Kajwang’): I think that is clear in the definition. Before it had to be incorporated within the borders of this country but now the Chair is proposing that they could be within or without. I think that is what I get from it. Is it so?

Hon. Langat: Hon. Temporary Deputy Chairman, let me just again in a layman’s language which my friend prefers inform him that it is actually correct that we are saying this should be an international exchange. So, it can either be organised inside Kenya or outside Kenya. It can either be organized in Kenya or outside Kenya to take care of issues of East Africa, East African Protocol and other issues.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, I take it that you have looked at the proposals with a toothcomb. This is definitive section that may as well be the waterloo of legislation. I take it that you have understood the change and the exchanges of the terms as they are. You probably want to look at page 457 on defining “derivatives exchange”, “derivatives markets”, “exchange-traded derivatives contracts” and this fellow they call the “REIT manager” and so forth.

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted
in place thereof be inserted, put and agreed to)*

(Clause 2 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

Hon. Langat: Hon. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Capital Markets (Amendment) Bill, National Assembly Bill No.8 of 2013 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Hon. Cheboi) in the Chair]*

The Temporary Deputy Speaker (Hon. Cheboi): Order, Members! You may now resume your seats. The Temporary Deputy Chairman, please.

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE CAPITAL MARKETS (AMENDMENT) BILL

Hon. Kajwang’: Hon. Temporary Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered the Capital Markets (Amendment) Bill, National Assembly Bill No.8 of 2013 and approved the same with amendments.

Hon. Langat: Hon. Temporary Deputy Speaker, Sir, I beg to move that the House do agree with the Committee in the said Report.

Hon. Okoth seconded.

(Question proposed)

(Question put and agreed to)

Hon. Langat: Hon. Temporary Deputy Speaker, Sir, I beg to move that the Capital Markets (Amendment) Bill, National Assembly Bill No.8 of 2013 be now read a Third Time.

Hon. Gichigi seconded.

The Temporary Deputy Speaker (Hon. Cheboi): This would be the opportunity to put the Question, but considering the circumstances within the Chamber, that will be deferred. Let us go the next Order.

(Putting of the Question deferred)

Second Reading

BILL

THE NATIONAL SOCIAL SECURITY BILL

The Temporary Deputy Speaker (Hon. Cheboi): Is that by the Leader of Majority Party?

Hon. A.B. Duale: Thank you, hon. Temporary Deputy Speaker. I beg to move that the National Social Security Bill be read a Second Time.

Hon. Temporary Deputy Speaker, the National Social Security Fund known as NSSF was established by an Act of Parliament in 1965 as a mandatory national scheme. The main objective of this was to provide basic financial security benefits to Kenyan workers when they reach the end of their working lives. This fund was set up as a provident fund providing benefits in the form of lumpsum.

Today we have the National Social Security Fund Bill, but we want to position the NSSF as a public mandatory social security scheme that covers all the employees in the formal sector and a voluntary scheme for the self employed and workers in the informal sector who wish to pay contributions to this fund.

The current NSSF provident fund is characterized by limited membership in terms of coverage and a number of inadequacies both in the form of lumpsum payment and also the level of benefits. The new Bill that creates this model seeks to achieve the following:

One, it increases the coverage of the NSSF. Two, it improves the adequacy of the benefits provided by the NSS. Thirdly, it provides benefits in the form of a pension; a regular income. Fourthly, it retains a link between the benefits and the contributions with the benefits largely being determined on a defined contribution basis. Fifth, the new NSSF Bill ensures sustainability and affordability. Finally, it provides for the option to partially opt out of making contributions to the new NSSF. The member has the so-called partial option at one stage to say that he wants to contract out of the NSSF scheme.

The conversion of the NSSF from a provident fund to a pension scheme is inconsistent with the Government policy and tenets of the new Constitution Section 43, which gives every Kenyan the right to social security. The new NSSF will be subject to the regulatory oversight of the Retirement Benefits Authority and will comply with the provisions of the Retirement Benefits Act, subject to modification to cater for the unique benefits being offered. The NSSF Bill before this House will have two sub-funds. One, the pension fund, which will cover all employed persons in the formal sector who are above the age of 18 years and have not attained the pensionable age and two, the provident fund which will cover all the self-employed persons and workers in the informal sector who wish voluntarily and want to make contributions to the NSSF.

The rates of contribution to the NSSF are subject to a maximum monetary ceiling of Kshs400 per month translating into a contribution of less than 1.2 per cent of the national average income. The rates of contribution to the new pension fund that this Bill provides will be at the rate of 12 per cent of the pensionable earnings, namely, the basic earnings split as follows: - From 1.2 per cent, we are bringing it to 12 per cent. The

employers will pay 6 per cent and the employees will pay 6 per cent. There is a ceiling of earnings, which are pensionable, and of which the contributions are payable four times the national coverage. The Bill provides that the pension fund will have two tiers of contributions as follows:- Tier one, contributions being in respect of pensionable earnings up to the statutory minimum wage targeting basic minimum level and tier two, contributions will be made in respect of pensionable earnings between the statutory minimum range and four times the national average.

I am just giving the highlights of this Bill before it comes for Third Reading and the report of the Committee on Labour and Social Security, which is before this House. The distinct categories of benefits are provided under this provident fund and the pension fund and they shall include, one, the retirement pension, the invalidity pension, the survivors benefit, the funeral grant and immigration benefits. Consideration is being made with a view to including the following benefits in the future: - maternity grant and unemployment grant which I am sure if this country reaches that stage, then we will be a country that takes care of its population in terms of social security.

With regard to finance, administration and management of the fund, when the fund will invest its funds in accordance with the Retirement Benefits Act--- Of course, there are very many issues in the last 50 years, in as far as how the fund has invested its funds in accordance with the laid down regulations of that time.

Secondly, the expenses of the fund are capped and shall not exceed 2 per cent of the total fund assets. This is more in terms of the governance structure of this new fund.

Hon. Temporary Deputy Speaker, Sir, in corporate governance, the provisions in this Bill have been made very clear. It subjects NSSF to strong governance criteria by way of the annual general meetings, the board compositions, the capping of administrative expenses and investments among others

In conclusion, I want to urge my colleagues to support this Bill as it will change the pension industry in this country. It will have a huge impact on the economy as it will encourage national saving and thereby avail resources, not only for our people, but also for the national development.

Hon. Temporary Deputy Speaker, I want to ask the hon. Chair of the Committee to second and allow hon. Members to contribute more on Tuesday because of lack of time.

The Temporary Deputy Speaker (Hon. Cheboi): Yes, is that hon. David Were?

Hon. A.B. Duale: One minute, hon. Temporary Deputy Speaker. I want to give a serious critique of the Bill. I ask hon. Gichigi to second and the Chair can have more time to explain the Committee's deliberations and the Seconder's response. So, I will ask hon. Gichigi.

Hon. Gichigi: Thank you, hon. Temporary Deputy Speaker, Sir. I rise to second this particular Bill. This is a Bill that is going to change the game in the country. By the term "game" I mean the pension sector in the country.

Hon. Temporary Deputy Speaker, as the Mover has indicated, currently, it is only a fraction of the working population in this country which contributes to our pension scheme. In fact, it is indicated that it is less than a million people who are making contribution to a formal pension scheme. It is not mandatory for an employer who had less than four people to pay NSSF any money.

Hon. Temporary Deputy Speaker, Sir, as has been indicated, the contributions to NSSF for a long time have stuck at Kshs200.00 by the employer and Kshs200.00 by the employee. According to the experts, even if a person works for 25 to 30 to reach 55 years old, the only amount that he can get as provident fund, is Kshs150,000.00 having worked for 30 years. The new law has been brought in to take care of that.

It is going to take care of, at least, Kshs5 million Kenyans by bringing them into the pension bracket.

Two, the intention of raising the contribution by 2 per cent is to ensure that when one retires, he will at least get between 40-45 per cent of his last salary. It may not be complete compensation of what one was getting before retirement but it will be sufficient relief. We are aware the society's culture of people taking care of their elderly parents is changing. We can no longer rely on people to take care of their parents. We have rural-urban migration. Most of the time, the elderly are left in the rural areas as young people migrate to urban areas.

Personally, I have a neighbour whom we have to take care of because his children are nowhere to be seen. Even if one is employed as a house girl or watchman and is earning the minimum wage of Kshs8, 000 per month, he is required to contribute 6 per cent. His employer will also contribute 6 per cent. That means anybody earning a salary in this country will have pension at the end of the day.

Hon. Temporary Deputy Speaker, the way the NSSF Act is currently structured, it is a provident fund. What that means is that once you retire, you get a one-off payment. So, you can imagine a situation where one gets Kshs50,000 or Kshs100,000. The maximum we have talked about is Kshs150,000. That person attempts to invest in something that he had never done before he retired, and the money goes.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Gichigi, how much time do you require to second the Bill? I want to know whether to propose an extension of the sitting time. We have about one-and-a-half minutes.

Hon. Gichigi: Hon. Temporary Deputy Speaker, I have a few more things that I wanted to say. My Chairman will not be here next week. So, I need more time than the remaining time for this sitting.

The Temporary Deputy Speaker (Hon. Cheboi): That is perfectly in order. Proceed. You will have more time in the next sitting.

Hon. Gichigi: Hon. Temporary Deputy Speaker, let it be clear that I am doing this, on behalf of the Chairman, who will not be with us next week. So, I will require the time that is normally allocated to the Chairman for seconding.

I was saying that once this new law comes into force, we will have a pension fund, instead of a provident fund. Any contributor to the NSSF will get a monthly pension equal to about 45 per cent of his last salary. So, instead of having a person who is dejected, having gotten Kshs100, 000 and attempting to invest it in a kiosk only for it to collapse shortly afterwards since he has no experience in that sector; such person can, at the end of the day, have social security. So, this Bill is worth supporting.

Hon. Temporary Deputy Speaker, this Bill also takes care of---

The Temporary Deputy Speaker (Hon. Cheboi): Order! Order, hon. Gichigi!

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, it is now time for interruption of our business. This House is, therefore, adjourned until Tuesday, 26th November, 2013 at 2.30 pm.

The House rose at 6.30 pm.