

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 27th August, 2014

The House met at 2.30 p.m.

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

PRAYERS

Hon. Speaker: Hon. Omari Mwinyi, you have the Floor.

PETITION

LEASING/REALLOCATION OF PUBLIC LAND IN CHANGAMWE

Hon. Shimbwa: Thank you, hon. Speaker. I have a public Petition by the residents of Changamwe Constituency on the land meant for expansion of Moi International Airport, Mombasa.

The undersigned, on behalf of the residents of Changamwe Constituency, Mombasa County, draw the attention of the House to the following:-

That, in the 1970s Plot Number 122 23/VI/MN belonging to the natives of Bokole in Airport Ward, Changamwe Constituency, was taken by the Government for the purpose of constructing residential houses for the workers of Kenya Petroleum Refineries Limited (KPRL);

That, this was supposed to be compensation to Kenya Petroleum Refineries Limited for a piece of land they had given Kenya Pipeline Corporation (KPC) for construction of their offices and Pump Station No.1

That, the land the Kenya Petroleum Refineries Limited had given to the KPC was about 20 acres. The land KPRL was given was about 100 acres, of which they are using only 16 acres leaving 84 acres idle to date.

That, the lease for land which was left idle has expired and is due for renewal.

That, Airport Ward has a population of 60,000 residents but does not have adequate social amenities, including schools, health facilities, markets and polytechnics due to unavailability of land.

That, youth and women lack employment and the said piece of land could be used to construct a business park. This will go a long way in remedying the situation and establish a wholesale market which can serve residents and the neighbouring counties as well as decongest Nyali, Kongowea and Mombasa Town.

That, lack of schools in Airport Ward has caused a lot of congestion in schools in the neighbouring wards, thus affecting the education standards in the constituency and the county at large.

That, Changamwe Constituency is one of the 60 constituencies in the Republic selected to benefit from the national Government's plan to establish new technical, vocational and educational training projects, and that these projects may not commence due to lack of public land for the same.

Noting that money has been set aside for construction of the TIVET by the national Government to the tune of Kshs40 million and the Constituency Development Fund (CDF) is to contribute Kshs10 million for the construction of the polytechnic.

That, Changamwe CDF has allocated Kshs40 million for the construction of primary and secondary schools, libraries, conference halls, stadia and other social amenities, but this is not possible to implement due to unavailability of land.

That, numerous attempts by the previous owners to get back their parcels of land have been futile, and that the matter in respect of which this Petition is presented is not pending before any court of law or tribunal.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Lands, intervenes to have the Government discontinue any further leasing or re-allocation of the same parcels of land and the parcels be allocated for public use by Changamwe residents.

Your petitioners will ever pray.

This petition is presented by hon. Omari Mwinyi Shimbwa, MP, Changamwe Constituency, son of a fisherman.

The petition is signed by so many residents of Changamwe Constituency. They are so many that I cannot even count them.

Hon. Speaker, I wish to have your indulgence to give a brief overview of the situation in Changamwe.

Hon. Speaker: Hon. Shimbwa, you know you are only limited to five minutes. You are dangerously closing on those five minutes.

Hon. Shimbwa: I just beg your indulgence for just two minutes,

Hon. Speaker: Any hon. Member is at liberty to comment on it; if he or she so desires. But if nobody else seems to be keen--

Hon. Shimbwa: Thank you, hon. Speaker. I wish to inform this House that the natives of Changamwe Constituency have had a very raw deal in respect of their land.

Hon. Speaker: Have you laid it on the Table?

Hon. Shimbwa: It is actually here.

Hon. Speaker: Lay it on the Table because you are done.

Hon. Shimbwa: The place where Moi International Airport is at the moment was actually land occupied by the natives of Changamwe and it was taken away without any compensation.

Hon. Speaker: Is there any other hon. Member who intends to comment on this matter? Please, use your watches, those who have them.

Hon. Daniel Maanzo, you have the Floor.

Hon. Maanzo: Thank you, hon. Speaker. Changamwe is generally cosmopolitan. It serves people from all over Kenya. There is usually a lot of inconvenience, probably, due to poor planning. As the Member has explained, when you are getting in and out of the airport - I am sure hon. Members have seen it - it is bad. Therefore, it will be good for the Petition to be looked into. The historical land rights in the area should also be looked

into, so that the indigenous people, and all the people who have settled in Changamwe can be happy and co-exist peacefully.

I have had opportunity to visit the Member in his area. He welcomed me very well and I discovered that a lot of people from my constituency also reside there and he takes care of them. So, I urge the Committee - I would also like to participate - to give the people of Changamwe the best.

Hon. Speaker: Is there any other Member who wishes to comment on this? Hon. Muthomi Njuki, do you want to comment on this? It is not everybody who wishes to comment on this.

Hon. Njuki: Hon. Speaker, first of all, I would like to thank the Member for Changamwe for coming to the rescue of the residents of Changamwe. The Technical, Industrial, Vocational and Entrepreneurship Training (TIVET), or the technical training institutes that are going to alleviate the problem that we have at the moment--- We are suffering from education programmes that are not prepared to deal with the technicalities that exist in dealing with the recent technology that has come to help build Kenya. As my friend has said, the face that we have between the round-about and the Moi International Airport is not a face to be proud of. It is supposed to be the face of Kenya because it is where the tourists access our country through. The issue of being compensated by the Government for the TIVET land, even though both the TIVET and the airport land, belongs to the Government, it is only fair that they re-organise themselves, so that we can have order towards the airport and at the same time get TIVET. We can have a win-win situation for the people of Changamwe, which is a cosmopolitan neighbourhood. It accommodates people from all walks of life in Kenya.

I support.

CONTRAVENTION OF ARTICLE 227(1) OF CONSTITUTION
BY TRANS NZOIA COUNTY GOVERNMENT

Hon. (Dr.) Pukose: Thank you, hon. Speaker. I want to present a Public Petition by the residents of Trans Nzoia County on the irregular purchase of Trans Nzoia County Referral Hospital.

I, The undersigned, on behalf of the residents of Trans Nzoia County, draw the attention of the House to the following.

(i) That Article 227(1) requires that when a State organ, or any other public entity, contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost effective.

(ii) That the County Government of Trans Nzoia, as a public procuring entity, has been contravening the said Article of the Constitution.

(iii) That recently, the County Government procured an abandoned structure ostensibly to set up Kitale County Referral Hospital.

(iv) That no valuation of the property or public participation as envisaged under Article 174(c) of the Constitution was carried out before the said purchase.

(v) That the current location of the proposed Kitale County Referral Hospital is close to Kitale District Hospital, which is already serving the area around Kitale Town and has minimal room for expansion.

(vi) That the structure had recently been bought by persons close to the County Government for Kshs23 million, and it was immediately sold to the County Government for Kshs175 million.

(vii) That the actions of the County Government have occasioned loss of public funds, thus denying the residents of the county much needed services.

(ix) That the matter in respect of which this Petition is presented is not pending before any court of law.

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Finance, Planning and Trade, directs that a special audit be conducted into the circumstances leading to the purchase of the referral hospital with a view to immediately taking the necessary measures to have the matter dealt with through the relevant Government financial agencies. Your Petitioners will ever pray. Presented by myself, hon. (Dr.) Robert Pukose, Member of Parliament for Endebbes Constituency, which is a constituency within Trans Nzoia County.

This hospital was bought in April and immediately in May, it was sold at an inflated price. I present this Petition on behalf of my colleagues and the constituency. They are here to support this Petition.

Hon. Speaker: Well, hon. Members, if you look at your Standing Order No.225, it allows comments. Hon. David Wafula.

Hon. Wekesa: Hon. Speaker, as the Member of Parliament for the area where this property is, and for purposes of transparency and accountability, I support this Petition, which I believe will enable us to establish when the current seller bought this property and at what price compared to what he is selling at to the county government.

Hon. (Ms.) Wanyama: Hon. Speaker, I also want to support the Petition which was presented by our colleague here. It is true that the project, or that house, has been there for the last 15 years and it was not in use. As hon. Pukose has said, that house was purchased in March at Kshs46 million. After two months, he sold it at Kshs185 million. We want to see that transparency and accountability are observed in Trans Nzoia.

Hon. F.K. Wanyonyi: Hon. Speaker, I stand to support the Petition. I am from Trans Nzoia. The most worrying thing is that this is being done behind closed doors. As leaders from Trans Nzoia County, and there are five of us, we have not been involved. I, therefore, support the idea by hon. Pukose. The audit should be done as soon as possible. I have also been trying to get information, which has been very scanty. I know for sure that the deal is suspect. If, indeed, what hon. Pukose has stated is true, that the land was purchased in April for only Kshs23 million and after two months, it was sold at Kshs175 million, there is much more than meets the eye.

There is nothing to worry about. The county government should not worry. We just want to find the truth. If it is true that the land has appreciated to that extent, then we have no problem. I know the property, which is in Saboti Constituency, is a condemned. The Ministry of Public Works looked at the piece of land and found that it was not worth that much. It was condemned. The purchase amount is enough to expand Kitale and Mount Elgon district hospitals. There is much more than meets the eye. I support the Petition and ask the Departmental Committee on Finance, Planning and Trade to look into this as fast as possible, so that an audit can be carried out to satisfy the people of Trans Nzoia.

Hon. Korir: Hon. Speaker, as the Member for Cherangany, which is in Trans Nzoia, I stand to support the Petition; as a representative of the people, they are complaining of why that much money has been spent on a building that is already in a pathetic state. Also, the land on which the building stands is in the Ndungu Report as one of the parcels of land that were grabbed. So, how can land that is already in question be bought by the county government? We know, and everybody in Cherangany or Trans Nzoia knows, that the facility is required in Trans Nzoia. A referral hospital is required in Trans Nzoia, but we want to make sure that due diligence is followed and people get value for their money. That is what we are asking for, and we hope that we will get a good answer very soon.

There is the Mt. Elgon Hospital which has a lot of land that can be used to build and expand so as to have a big referral hospital in Trans Nzoia. We are wondering, and so are the people of Trans Nzoia, why buy a new thing while you already have an existing structure owned by the Government that can be expanded, reconstructed and made to provide what that building can provide? We support the Petition.

Hon. Speaker: Is there a further comment on this Petition?

Hon. Ng'ongo: Hon. Speaker, first of all, I must appreciate that I do not come from that area, but the Petition that has been presented by Hon. (Dr.) Pukose raises a fundamental issue, which this country is grappling with. There is possible corruption, because you cannot explain how within three months land value can rise from Kshs23 million to Kshs175 million. Definitely that is contrary to any economic variable or indicator. Either the county government is corrupt in this deal or the person who sold that land to the county government made unnecessarily high profit at the expense of the taxpayers, the people of Kenya. Therefore, I support that this matter should be considered. The Committee should even engage experts to do a proper valuation of that land; it is something that we are likely to face in the future. We have faced a lot of this many times.

Hon. Serut: Hon. Speaker, the land in question is well known to me. I know Kitale very well; it borders my constituency. I am shocked that what is being bought is an old building which stands on about three acres of land; as you know land is not scarce in Trans Nzoia. I am wondering why the county government of Trans Nzoia went ahead to spend such a colossal amount of money to purchase that land. I want to take this opportunity to urge the Departmental Committee on Finance, Planning and Trade to carry out valuation through a Government valuer to establish whether that particular piece of land is worth such a colossal sum of money. This will inform the Senate to ensure that, at least, before any purchase of land, there is law to the effect that no land will be purchased unless due diligence is undertaken.

Hon. (Dr.) Simiyu: Hon. Speaker, I wish to thank Hon. (Dr.) Pukose and his constituents, who have brought this Petition to this House. It raises a very important issue which borders on what has been ailing this country since Independence, corruption. It also points to an important matter that this House passed through a mediation committee about county development boards, so that hon. Members can deliberate on matters, so that we do not have this sort of situation arising again.

As I support the Petition, I would like your guidance on the issue of the various jurisdictions of the Senate and the National Assembly on this matter. We would like your direction on this.

Hon. Speaker: Did you say you sought guidance?

Hon. (Dr.) Simiyu: Hon. Speaker, I seek your guidance regarding this particular matter between the Senate and the National Assembly, given that this is a county matter and I support the Petition.

Hon. Speaker: A Petition can be brought by any Kenyan and also by hon. Members touching on any issue that is of concern to the people using our mandate under Article 95(2) to discuss, deliberate and resolve matters of interest or concern to the people. We already have it both in the Constitution and our Standing Orders; it is provided for; it is in order that any hon. Member may bring up the matter. It is after investigations that then the concerned committee can come and either say that the matter be referred to either House. I think it is in order for hon. Members, or even citizens to---. Actually, even citizens can petition the National Assembly and so I think it is perfectly in order.

Hon. Chumel: Hon. Speaker, first and foremost, I want to thank Hon. (Dr.) Pukose and the Members of Parliament from Trans Nzoia for the unity they have shown. In fact, last weekend we had a function in Kitale and all those hon. Members who were there talked much about that institution. This will be a lesson not only to the Governor of Trans Nzoia and his team but also the whole nation. The issue of corruption is now a reality. The Departmental Committee on Finance, Planning and Trade will, through your direction, go there, work and bring here a proper report.

I know this will give others a signal that nothing can happen without involving other leaders. An individual cannot wake up in the morning and decide on something that can affect a whole community. I am a neighbour to that place and a resident of Trans Nzoia. I know that people are happy about the facility, because it is only to Eldoret that everybody from Turkana, West Pokot and many other places runs. If a facility is in Kitale, Trans Nzoia will be there; it will help raise the living standards of the people as far as health is concerned.

Hon. Speaker: Hon. Members, before we go to the next Order, I wish to recognize the presence in the National Assembly of the following:-

the Aga Khan Academy from Kisumu Town Constituency;

Children from Kamukunji Children Assembly, Kamukunji Constituency.

They are at the Speaker's Gallery. On the Public Gallery there are

Simbolei Primary School from Keiyo North Constituency;

Ewat Primary School from Kipkelion Constituency; and,

Kapchebit Primary School, Marakwet West Constituency.

Hon. Murungi: On a point of order, hon. Speaker. On 24th February, 2014, I submitted a Petition on behalf of tea farmers in South Imenti Constituency and on 1st July, 2014, I inquired through you why a report of the Petition had not yet delivered to the House. On that date, the Chairman of the Departmental Committee on Agriculture, Livestock and Cooperatives gave a pledge to bring that Petition to the in three weeks' time. Those three weeks lapsed on 23rd July, 2014. I appeared before that Committee, and interrogated the Cabinet Secretary for Agriculture; the Chairman of the Committee has

been telling me that he is waiting for written submissions from both the Ministry of Agriculture and the Treasury. The farmers have directed me not to step into the constituency without an answer to their Petition or prayers. Just yesterday, the tea prices were---

Hon. Speaker: Let us not debate. Hon. Nooru, what is your response? Hon. Members, let us learn to raise issues without necessarily debating. It may be a debating Chamber---

Hon. Murungi: Hon. Speaker, this has taken too long. Honestly, it is unbearable.

Hon. Nooru: Thank you, hon. Speaker. As the hon. Member has confessed, we have been interrogating the Cabinet Secretary (CS), Agriculture, Livestock and Fisheries. We were left with the National Treasury, which appeared before us on Monday this week. We are left with some information. We are waiting for him to come back on Friday and give us that information; we will then compile a report.

Hon. Speaker: But you know it is becoming too much. Your Committee every now and then is giving excuses. Is it that the Cabinet Secretaries (CSs) have no respect for your Committee? The CSs are treating you like a small baby. You are the Chair, Departmental Committee on Agriculture, Livestock and Cooperatives.

Hon. Nooru: Hon. Speaker, I agree but we have postponed our meeting three times because of the CS, National Treasury. He appeared before us on Monday. We were left with a few things which he will clarify on Friday, and then we compile a report.

Hon. Speaker: No, it cannot be forever. When petitions are submitted they are supposed to be processed within the timelines available. Tell the CSs that. When they appear before you, you do not just smile and laugh with them. It is serious business. You can hear the Member is saying that he is even being told by his constituents not to step in the constituency. Put yourself in the shoes of the hon. Member. Tell the CS, whoever it is, that we require the response in the next 14 days. Your Committee must, therefore, be through with the report.

Hon. Nooru: It is not 14 days, hon. Speaker. I said this Friday. That is only tomorrow.

Hon. Speaker: Of course, you have to do a report.

Hon. Nooru: Agreed, hon. Speaker. We will write the report next week.

Hon. Speaker: The report must be ready within two weeks.

Hon. Nooru: Thank you.

Hon. Speaker: Hon. Members, these other interventions, are they on the area of petitions?

Hon. Muluvi: Hon. Speaker, it is on the area of Statements.

Hon. Speaker: No, we are not yet there. Read your Order Paper. We are on petitions. Standing Order No.225 says that once a petition has been presented Members can be allowed to ventilate and discuss for a maximum of 30 minutes. That was what we were doing. There was no debate. It is good for you to always move with what is on the Order Paper.

Let us move on to the next Order.

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Wednesday, 27th August, 2014.

The Report of the Auditor-General on the Financial Statements of Taita-Taveta University College for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Quarterly Report to Parliament on all new laws contracted by Government prepared pursuant to Public Finance Management Act, Section 31(1) and (3).

(Loud consultations)

Hon. Speaker: Order, hon. Members! Consultations must be in low tones.

Hon. A.B. Duale: Hon. Speaker, the Report of the Auditor-General on the financial statements of NEPAD, Kenya Secretariat, for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of Auditor-General on the Financial Statements of the Kenya Agricultural Research Institute (KARI) for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Water Towers Conservation Fund for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the National Council for Persons with Disabilities for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Lake Basin Development Authority for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

Thank you, hon. Speaker.

Hon. Speaker: Yes, Chairperson, Committee on Implementation. She has just come. Parliament starts at 2.30 p.m. Since that one is not ready, can we hear hon Moses Cheboi?

Hon. Cheboi: Thank you, hon. Speaker.

Hon. Speaker, I beg to lay the following Paper on the Table of the House today, Wednesday, 27th August, 2014.

The Fourth Report of the Procedure and House Rules Committee on amendments to the Standing Orders.

Hon. Speaker: Very well. Is she ready now? Are you using David Gikaria's card?

Hon. (Ms.) Tuya: Yes, hon. Speaker.

Hon. Speaker: You should have said that.

Hon. (Ms.) Tuya: Hon. Speaker, I am not trying to impersonate my Vice-Chair.

Hon. Speaker, I beg to lay the following Paper on the Table of the House today, Wednesday, 27th, 2014.

Report of the Committee on Implementation on the study visit to the Parliament of Portugal between 12th and 16th May, 2014.

Hon. Speaker: Very well. Where is the report by the leader of delegation on Santa Cruz? Hon. Shinali, you were in Santa Cruz?

Hon. Shinali: Hon. Speaker, I beg to lay the following Paper on the Table of the House today, Wednesday, 27th August, 2014.

Report on the Kenyan Parliamentary Delegation to the International Parliamentary Union (IPU) Conference on the Rights of the Indigenous people held in Santa Cruz de la Sierra, Bolivia from 7th to 9th April, 2014.

Thank you, hon. Speaker.

NOTICE OF MOTION

ADOPTION OF FOURTH REPORT ON AMENDMENTS TO SOS

Hon. Cheboi: Hon. Speaker, I beg to give notice of the following Motion.

THAT, this House adopts the Fourth Report of the Procedure and House Rules Committee on amendments to the Standing Orders laid on the Table of the House today, Wednesday 27th August, 2014.

Hon. Speaker: Very well. I can see an intervention from hon. Ken Okoth, the Member for Kibra. What is the issue?

Hon. Okoth: Hon. Speaker, I was just being strategic for the next item for debate.

Hon. Speaker: I see. Very well. You are still on the list.

Next Order.

REQUESTS FOR STATEMENTS

Hon. Speaker: Member for Sirisia, John Waluke.

INSECURITY IN SIRISIA TOWN

Hon. Koyi: Thank you, hon. Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding cases of insecurity in Sirisia Town, Sirisia Constituency.

Hon. Speaker: Hon. Asman Kamama.

Hon. Abongotum: Hon. Speaker, we will give a comprehensive Statement in two weeks.

Hon. Speaker: Two weeks, hon. Waluke?

Hon. Koyi: It is okay.

Hon. Speaker: Very well. The Member for Nyali, hon. Hezron Awiti. Your card is not showing. Do you have a card?

HOUSING CONDITIONS OF POLICE OFFICERS IN THE COUNTRY

Hon. Ramadhani: Thank you, hon. Speaker. On behalf of hon. Awiti, I wish to request a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding housing conditions of the regular and Administration Police (AP) officers in the country.

Hon. Speaker---

Hon. Speaker: Hon. Kamama. Forget about all those stories. You have not even given us any written authority from the hon. Awiti that you have his permission to ask for a Statement on his behalf, hon. Dori. Hon. Kamama.

Hon. Abongotum: Hon. Speaker, this will be a voluminous report because we will have to cover the whole country and give the Member the requisite answer. So, we need one month, hon. Speaker.

Hon. Speaker: Yes, a month given that there is something happening tomorrow. Hon. Isaac Mwaura.

SCRAPPING OF READER'S ALLOWANCE FOR TEACHERS WITH VISUAL IMPAIRMENT

Hon. Mwaura: Thank you, hon. Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology regarding the scrapping of reader's allowance for teachers with visual impairment in Kenya.

Hon. Speaker: Hon. Melly.

Hon. Melly: Thank you, hon. Speaker. We shall be able to respond to this in the next two weeks; we shall invite hon. Macharia to come to the committee for the hearing. I am sorry; it is hon. Mwaura and not hon. Macharia.

Hon. Speaker: Yes, hon. Mwaura, two weeks?

Hon. Mwaura: Thank you, hon. Speaker. I am not hon. Macharia. Hon. Macharia in Kikuyu means to search for; maybe, it means searching for my people – the ones I represent – I will accept it.

I think it is not realistic to ask for two weeks. I think it should be four weeks because we are going on a recess. I do not want you to give me unrealistic deadlines. You need to be genuine.

Hon. Speaker: Hon. Member for Bomet Central, hon. Ronald Tonui.

LOSS OF KCSE CERTIFICATES IN RUSEA SECONDARY SCHOOL

Hon. Tonui: Thank you, hon. Speaker. I rise to request a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology regarding the loss of KCSE certificates in Rusea Secondary School in Bomet County. Thank you.

Hon. Speaker: Hon. Julius Melly.

Hon. Melly: Thank you, hon. Speaker. I think we shall be able to respond and give a Statement after we are back from our recess. That is in four weeks' time.

Hon. Speaker: Hon. Tonui, I think hon. Julius Melly is being honest.

Hon. Tonui: Thank you, hon. Speaker. I think we have no option. I will wait for those four weeks.

Hon. Speaker: That is correct.

The Member for Kitui East, hon. Marcus Muluvi.

DELAYS IN DISTRIBUTION OF RELIEF
FOOD IN NZAMBANI/MUTITO SUB-COUNTIES

Hon. Muluvi: Thank you, hon. Speaker. I wish to request a Statement from the Chairperson of the Departmental Committee on Finance, Planning and Trade regarding delays in distribution of relief food to the residents of Nzambani and Mutito Sub-Counties in Kitui County.

Hon. Speaker: Hon. Benjamin Langat.

Hon. Langat: Thank you very much, hon. Speaker. I request the hon. Member to give me two weeks to respond.

Hon. Speaker: Hon. Muluvi.

Hon. Muluvi: It is okay, hon. Speaker.

Hon. Speaker: Very well. Thank you.
Member for North Horr, hon. Chachu Ganya.

NON-DEPLOYMENT OF AP OFFICERS
IN MARSABIT NORTH DISTRICT

Hon. Ganya: Thank you, hon. Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the non-deployment of Administration Police (AP) officers in parts of Marsabit North District in North Horr Constituency.

Hon. Abongotum: Thank you, hon. Speaker. First of all, I want to confirm to my good friend, hon. Chachu, that there is no policy that has been formulated to deny all sub-counties AP officers. That policy is not there and at the moment there are shortages. So, this Statement will be given in the next ten days, but I agree that the problem is countrywide. We need to address it by way of having more officers employed. However, the situation is real and I will give the Statement in ten days' time.

Hon. Ganya: Hon. Speaker, for clarity, I am talking about chiefs and not District Officers (DOs) or District Commissioners (DCs) and ten days will be okay.

Hon. Speaker: The report will come as agreed.
Member for Ikolomani, hon. Shinali.

INCREASED CASES OF INSECURITY IN
KAKAMEGA/VIHIGA COUNTIES

Hon. Shinali: Hon. Speaker, pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Administration and National Security on the increased cases of insecurity in parts of Kakamega and Vihiga counties.

Hon. Speaker: Hon. Kamama.

Hon. Abongotum: Hon. Speaker, we will give a Statement in two weeks.

Hon. Speaker: Two weeks, hon. Shinali?

Hon. Shinali: Hon. Speaker, the security situation in those two parts of the county, especially in Ikolomani Constituency, is very grave. We need an urgent intervention. People are in their houses before Seven o'clock in the evening.

Hon. Speaker: Hon. Shinali, the House is due to go on recess tomorrow. So, would you want the response tomorrow morning, or what are you suggesting as a practical response from the hon. Kamama?

Hon. Shinali: Hon. Speaker, there are requests I have made in this House and I have not been receiving responses to them, especially from this particular Departmental Committee on Administration and National Security.

Hon. Speaker: Yes, but I think really the situation practically is that the House is due to go on recess after tomorrow, unless the House resolves otherwise. In fact, I think if you were to be honest, it should be as soon as the House resumes. That will be the more logical way of asking for the answer. This is because if the House is going on recess tomorrow, unless it resolves otherwise--- If you can convince the House not to go on recess tomorrow, then, perhaps, you can seek a response in a period shorter than the period that hon. Kamama has asked for.

Hon. David Karithi, Member for Tigania West, insert your card.

STATUS OF KUNENE/MBEU ROAD IN TIGANIA WEST

Hon. Karithi: Thank you, hon. Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing regarding the status of Kunene–St. Anne–Kagaene-Mbeu Road in Tigania West Constituency.

Hon. Speaker: Hon. Maina Kamanda or hon. (Eng.) Mahamud Mohamed; Leader of the Majority Party.

Hon. A. B. Duale: Thank you, hon. Speaker. Neither Hon. Kamanda nor his Vice-Chair is around. I will give the undertaking to inform them to present to the House a Statement in two weeks' time.

Hon. Speaker: Very well.

Hon. Karithi: Thank you, hon. Speaker. I think two weeks are good for me.

Hon. Speaker: The Member for Homa Bay, hon. Peter Kaluma.
The Member for Njoro, hon. Joseph Kiuna.

STATE OF POACHING IN NATIONAL PARKS/RESERVES

Hon. J. K. Ng'ang'a: Thank you, hon. Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Environment and Natural Resources, regarding the state of poaching in our parks and national reserves, and also the compensation of affected farmers.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Amina Abdalla

Hon. (Ms.) Abdalla: We will give him a response in one month's time, when we come back.

Hon. Speaker: As soon as the House resumes from recess.

Hon. J. K. Ng'ang'a: I do not mind, hon. Speaker; it is okay.

Hon. Speaker: Very well; Member for Moiben, hon. Silas Tiren.

LIVING CONDITIONS OF POLICE OFFICERS IN MOIBEN

Hon. Tiren: Thank you, hon. Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the living conditions of police officers in Moiben Police Station and vehicles for Moiben and Karonai Police Stations in Moiben Constituency.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Kamama.

Hon. Abongotum: Hon. Speaker, we will need three weeks to get satisfactory response to the hon. Member.

Hon. Speaker: Hon. Members, since we all know; it is in our Calendar, which is gazette, that the House is due to go on recess tomorrow, unless it resolves otherwise. I think it is reasonable that, instead of asking for two weeks or 10 days and you know in 10 days there will be no plenary of the House, it is better to say as soon as the House resumes. I think that is more practical.

Hon. Tiren, the response will be in three weeks.

Hon. Tiren: After we resume our sittings will be okay with me.

Thank you, hon. Speaker.

Hon. Speaker: Very well, Member for Naivasha John Kihagi.

CIRCUMSTANCES SURROUNDING DEATHS OF P.K. NJUGUNA/M. WANYOIKE

Hon. Kihagi: Thank you, hon. Speaker. I seek a Statement from the Chairman, Departmental Committee on Administration and National Security regarding the circumstances that led to the deaths of Master Paul Kiarie Njuguna and Mr. Moses Wanyoike in Naivasha Constituency.

Hon. Speaker: Hon. Kamama

Hon. Abongotum: Hon. Speaker, this being a matter about life, we were intending to take 10 days, but because of the recess that you are talking about, I will say as soon as the House resumes.

Hon. Kihagi: It is quite in order, hon. Speaker.

Hon. Speaker: The Member for Kathiani, hon. Robert Mbui.

INCREASED CASES OF ARSON/DESTRUCTION OF PROPERTY IN SCHOOLS

Hon. Mbui: Hon. Speaker, I wish to request a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology regarding increased cases of arson attacks and wanton destruction of property in schools.

Hon. Speaker: Hon. Julius Melly.

Hon. Melly: Thank you, hon. Speaker. We shall respond to this Statement request as soon as we resume from our recess.

Hon. Speaker: Member for Saboti, hon. David Wafula.

GOVERNMENT POLICY ON TRAINING/OPTIMAL
UTILIZATION OF STAFF

Hon. Wekesa: Thank you, hon. Speaker. I wish to request a Statement from the Chairperson of the Departmental Committee on Labour and Social Welfare regarding the Government policy on training development and optimal utilization of its staff.

Hon. Speaker: Hon. David Were.

Hon. Were: Thank you, hon. Speaker. I will bring a response one week after the recess.

Hon. Speaker: Very well, David Wafula is that okay.

Hon. Wekesa: That is okay, hon. Speaker.

Hon. Speaker: Hon. Benjamin Langat.

PROCUREMENT/DISPOSAL OF SCRAP METAL/IRON AT KRC

Hon. Langat: Thank you, very much, hon. Speaker. I wish to request a Statement from the Chairperson of Public Investments Committee (PIC) regarding the procurement and disposal of Scrap metal, scrap cast iron and scrap locomotive materials worth millions of shillings under stores and inventories at Kenya Railways Corporation and the urgent need to cause a special audit to examine the irregularities.

Hon. Speaker: Hon. Keynan.

Hon. Keynan: Thank you, hon. Speaker. This requires a lot of information, I will request for three weeks in order to deal with all the issues.

Hon. Speaker: How many weeks?

Hon. Keynan: Three weeks, if that is acceptable to the Member.

Hon. Speaker: Hon. Langat, is that okay?

Hon. Langat: Yes, that is okay, hon. Speaker.

Hon. Speaker: Very well, hon. Members. Before we go to the next Order. I wish to further recognize the presence in Parliament of pupils from Progressive Starlight Academy in Bureti Constituency.

Hon. Gatobu, what is your point of order?

Hon. Kinoti: On a point of order, hon. Speaker. I rise under Standing Order No.193 on the issue of vote of no confidence in the chairperson and vice-chairperson of a committee.

Since last year when we came to this House, committees on which I sit, including one that is currently dealing with a vote of no confidence in the chairperson and vice-chairperson--- I request your wise guidance on what happens once a Motion of no

confidence against a chairperson and vice-chairperson is moved. Should the business of the committee continue or what happens after that.

This is because the challenge we have had is that the committee has been handling some very key matters of this country and the House, but after the Motion of no confidence against the chairperson and vice-chairperson, it has become very difficult situation and we have not been sitting for the last almost two months. Hon. Speaker, I request your guidance, please. Thank you.

Hon. Speaker: Just follow the Standing Orders. The Standing Order you are reading, what does it say should happen? You do not spend time asking the Speaker to give you guidance on the obvious, which is provided for in your own Standing Orders.

Hon. Kinoti: I am sorry hon. Speaker, there is no guidance given. Standing Order No. 193 states that a committee may by a resolution supported by a majority of its Members resolve that it has no confidence in the chairperson or vice-Chairperson, and a Member designated by the committee for that purpose shall there upon report the resolution to the Liaison Committee, which shall as soon as it may be practicable, direct the Clerk to conduct an election for the chairperson or vice-chairperson, as the case maybe in accordance with the Standing Order No.179. This is open to a very loose interpretation. It talks of as soon as is practicable, but it has taken two months for the Liaison Committee to give direction on this issue. That is why, hon. Speaker, I request your guidance.

Hon. Speaker: What Committee is this that has conducted itself in the manner you have alleged?

Hon. Kinoti: Thank you hon. Speaker. It is the Committee on Health Club and Members' Welfare. Maybe to show how serious this issue has been, it is the same Committee that used to sit and look at issues like offices in which Members sit. Let us take for instance when members from my constituency visit my office at Kenyatta International Conference Centre, which is in a pathetic condition; some of the issues we used to discuss in this Committee were about offices, lifts not working in the Harambee Plaza where we serve wananchi and so many other issues. The Committee has not been sitting for two months; there is a lot that has gone wrong, hon. Speaker.

Hon. Speaker: Are you saying that you have passed a vote of no confidence in the Chairperson?

Hon. Kinoti: The Motion was discussed and then the vote was eleven in support of the Motion and eight against the Motion.

Hon. Speaker: But the Standing Order says a simple majority?

Hon. Kinoti: The main focus is what happens after that about sittings of the Committee and deliberating on issues that are of key importance to this country. If the Chairperson and the Vice-Chairperson have been removed, as we see in the practice of the House--- If you are not available, there is somebody to take the Chair in the House and sittings continue.

Hon. Speaker: Have you designated a Member of the Committee to give communication to the Liaison Committee? The Liaison Committee is then supposed to direct the Clerk to hold an election.

Hon. Kinoti: Yes, we designated a Member to communicate the issue to the Liason Committee, but then nothing has been heard since then.

Hon. Speaker: There is no information. Do you want information? Well, you know you cannot give information to somebody who does not want it.

Hon. Kinoti: No, hon. Speaker I do not want to be informed, I just wanted your guidance on this issue.

Hon. Speaker: The order is as the Standing Orders themselves say; if you have communicated and no action has been taken, I want to see the deliberations of the Committee.

Hon. Kinoti: The minutes were forwarded and the Member designated by the Committee to communicate on the same was appointed. He gave the communication to the Liaison Committee. The challenge is that the Standing Order just says, 'as soon as is practicable'. There being no time frame on this, based on Standing Order No.1, I thought you had the powers to give guidance on "as soon as is practicable" according to standing Order No. 193; there is no timeframe on this.

Hon. Speaker: I want to tell you this, hon. Kinoti, and, indeed, Members of other Committees--- If a matter of that nature has happened and no action has happened, it is not fair to just come and raise it here. I do not know what other processes have been followed. I do not know, for instance, whether the Liaison Committee has been accordingly informed. I cannot just direct. I need to know whether the Liaison Committee has been informed; if they have been informed what decision have they taken? They are supposed to direct the Clerk to hold a fresh election. In a matter of this nature, Members of that Committee, or as many as feel that they want to petition, ought to first of all see the Chair of the Liaison Committee and find out what has happened. It is not a matter that I am just going to direct on from the Chair. I am not seized of any proceedings that have taken place, including the alleged coup. I have no information.

Hon. Kinoti: Thank you hon. Speaker; I raised this point of order as a matter of last resort; since the Committee is not sitting and I am not a Member chosen to pass communication to the Liaison Committee, then my hands are tied; the Committee is not in a sitting and I have no legal mandate to sit in the Liaison Committee; that is why I sought your guidance on this.

Hon. Speaker: You know I do not sit in the Liaison either. You are bringing a matter to the wrong person. If you were complaining about the Liaison Committee, it would be a different matter. I have not seen minutes of the alleged voting, as you claim, I have not seen any communication or correspondence to the Liaison Committee; you are not the one who was mandated to report to the Liaison Committee. So, you do not know if the person you chose to report to Liaison Committee has reported. What guidance do I give?

Hon. Kinoti: Mine was simply on the timeframe. The Standing Order states---

Hon. Speaker: Hon. Kinoti, there is no debate; the Standing Order says "as soon as is practicable", but has there been that communication? You are not saying that there has been communication and the Liaison Committee has not acted. There is nothing for me to direct on.

Hon. Kinoti: Okay hon. Speaker, I will seek information and then communicate to you. Thank you, hon. Speaker.

Hon. Speaker: Hon. Kagongo

Hon. Bowen: Thank you hon. Speaker. Two weeks ago, I requested a Statement from the Leader of Majority Party on a serious issue about the admission of students to Kenya Medical Training College KMTC, but up to now, students have not been admitted to KMTC because of the confusion caused by the KMTC and the Kenya Universities and Colleges Central Placement Service. The Leader of Majority Party promised to bring a Statement this afternoon.

Hon. Speaker: Leader of Majority Party.

Hon. A. B. Duale: Hon. Speaker, one there is no confusion. The students have been admitted. The only confusion was who was to do the placement; was it the KMTC or the placement board? This afternoon I had a meeting with Cabinet Secretary in the Ministry of Health and Permanent Secretary in the Ministry of Education, Science and Technology; we will bring an answer next week on Tuesday. We have to do a lot of consultation.

Hon. Dawood: Thank you hon. Speaker. Two months ago, I got a response from the Chairperson of the lands committee regarding land in Meru. There was one special committee which was supposed to be formed to sort out many issues, and we were getting a tarmac very soon; we would be having fights over the land. To date, that committee has never done anything. I just wanted the lands committee chairman, my dark brother, to probably answer that question. Mwiru means dark in Kimeru. Thank you hon. Speaker.

Hon. Speaker: Well there is no darkness in the Chamber and I do not see that dark person, hon. Mwiru. There being no person to respond, you can do your communication in writing. You can make your complaint to the Speaker in writing.

Yes, hon. Muluvi

Hon. Muluvi: Thank you hon. Speaker. Sometime in May, I asked about construction of a bridge in my Constituency.

Hon. Speaker: Hon. Kamanda is not in the Chamber

Hon. Muluvi: I want to make a point.

Hon. Speaker: To make a what?

Hon. Muluvi: What I want to say is that the contractor was supposed to report on site.

Hon. Speaker: Who is going to respond to you after you say what you want to say?

Hon. Muluvi: Hon. Members of the Committee are here and I have been in touch with him

Hon. Speaker: No; it is not going to be Members of Committee; we are not going to engage in unstructured debate. Surely, even if not the Chair of the Committee or the Vice-Chair, we can have somebody we can direct to respond to your issue. Now you want me to allow Members of the Committee to respond?

Hon. Muluvi: I had a very serious discussion this morning, and that is why I thought it was important for me to make it very clear.

Hon. Speaker: To make it clear to whom?

Hon. Muluvi: He gave the answer to the House; I thought it was only fair for me to give a response. He said that by 22nd July, the bridge would have been handed over. I wanted to say that the contractor has never reported on site, and that if today the rains

come, as I had said in my Statement, we will take a detour of about three kilometers to enable children to cross the river.

Hon. Speaker: I have allowed you to say that to yourself and to us, since there is nobody to respond.

Hon. Muluvi: It is okay; I take your advice but I will request that if he comes, you give me an opportunity; I will say the same.

Hon. Speaker: More importantly, hon. Muluvi, the Committee on Implementation should check on the undertakings which have not been honoured.

Hon. Muluvi: Hon. Speaker, I have been doing it with the Chairman. It is as if he is being let down by the Ministry, through the Kenya National Highways Authority (KENHA). We had a discussion last week and this morning but nothing looks like is moving. In my view, the Chairman is desperate. He needs to be assisted.

Hon. Speaker: Hon. Muluvi, there is a notice of Motion which was given by hon. Cheboi a while ago, and which is coming up tomorrow. I would want you to be around, so that when we debate it we see where we are headed. I understand the frustration of not having undertakings given by Chairs of Committees honoured.

Hon. Muluvi: Thank you, hon. Speaker.

Hon. Speaker: Hon. Cyprian Iringo, do you also have a point to make?

Hon. Iringo: Yes, hon. Speaker. Sometime in June this year, I asked for a Statement from the Departmental Committee on Education, Research and Technology regarding distribution of hardship areas in the Republic, and what criteria is used to declare a place hardship area. To date, I have not received an answer. Sometime back I said in this House that we had a problem. We ask for Statements, we are given timelines but those timelines are not honoured. We are not even given an explanation as to why they are not honoured. Sometimes it becomes an effort in futility to request Statements. Some of them are even forgotten, if they are not pursued. I do not know whether they keep a record of the same or not.

Hon. Speaker: Yes, hon. Melly.

Hon. Melly: Hon. Speaker, we discussed the matter with the hon. Member a few minutes ago. His Statement request is on schedule. We are going to invite him to attend a Committee sitting, possibly tomorrow, or after two weeks. The issue is that sometime when we schedule to discuss the Statement request, the Ministry officials delay to come. As a Committee, we are merely a conduit. We are supposed to bring to the House what they deal with. So, I promise to follow up the matter to ensure that we have the response to the request in good time.

Thank you.

Hon. Speaker: Hon. Members, before we go to the next Order, I wish to draw your attention to the existence of a Supplementary Order Paper; I ask you that when we get to its business switch to the Supplementary Order Paper. I hope that sufficient copies have been distributed. If copies are at the entrance to Chamber, I would kindly request every hon. Member to have a copy of the Supplementary Order Paper.

Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[The Speaker (Hon. Muturi) left the Chair]

IN THE COMMITTEE

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

THE FINANCE BILL

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, we are now in the Committee of the whole House to consider the Finance Bill (National Assembly Bill No.26 of 2014). May I know if the Chairman of the Departmental Committee, hon. Benjamin Langat, is present in the House?

Hon. Langat: I am present, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang'): Please, take your place?

Clause 3

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

THAT, clause 3 be amended in sub-paragraph (a) (ii) by-

(a) deleting the word "paragraph" and substituting therefor the word "paragraphs";

(b) inserting the following new paragraph immediately after the proposed paragraph (h)-

“(i) compensation for property acquired by the Government for infrastructure development”.

This proposal seeks to expand the tax base by requiring that compensation for property acquired by the Government, for example, for roads is also brought to the tax purview so that as one gains, the State gets part of that gain.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, wherever you are; in the gangway or on your seats note that we are on the Supplementary Order Paper, copies of which are available at the entrance to the Chamber.

Member for Kipipiri, we are looking at page 384 of the Supplementary Order Paper, at the bottom of the Order Paper.

Hon. Gichigi: Hon. Temporary Deputy Chairman, I do not think I quite got the thrust of what the Chairman said about this amendment in relation to taxation. At this stage, it is important that everybody in this House understands the implications of the proposed amendment.

The Temporary Deputy Chairman (Hon. Kajwang): Be on your feet again. Hon. Members are complaining that you have not said enough to persuade them. These

hon. Members are going to vote. So, they need to understand where you are coming from, so that when we put it to vote, they know what they are voting for.

Hon. Langat: Hon. Temporary Deputy Chairman, I think hon. Gichigi should be specific on what he wants. I have explained myself and if he did not understand, he should say that, so that I can repeat my explanation, rather than trying to say that all hon. Members in the House have not understood me.

The Temporary Deputy Chairman (Hon. Kajwang): Order! Order, hon. Langat! Do not go that direction. Just explain the meaning, or the substance, of your amendment and leave it at that.

Hon. Langat: Hon. Temporary Deputy Chairman, I have already said that this is meant to bring in taxation and compensation by Government for the acquisition of property for infrastructure development. The House is alive to the fact that billions of shillings are paid in form of compensation; some of the compensations is exaggerated. The proposal seeks to ensure that compensation is also taxed.

The Temporary Deputy Chairman (Hon. Kajwang): Thank you. That is fair enough.

Hon. Gichigi: Hon. Temporary Deputy Chairman, I have in the past before this House supported re-introduction of capital gains in this country. Even in future proposed amendments, I will be doing it. If that is the import of the proposed amendment, the Government will forcefully, or compulsorily, acquire my land, my one acre that is already encroached on by a road or an electricity line. They come and value the land at Kshs500,000 and give me that Kshs500,000 to go and acquire another parcel of land where I can find it; the Government is now telling me that they will tax the Kshs500,000. Is this right? I will be forced to go to use my own money to get a similar land parcel. That is one of the worst provisions that can be introduced in House.

If the Government is telling me to move to that other land--- It can actually buy me another parcel land, shift me there and I will not have a problem. But it should not take my land, give me the purported value of that land, and when I go to replace it, I have to go back to my pocket. That is a law that is inhuman and unconstitutional because you are grabbing my asset without compensating me fully. I oppose that amendment completely.

Hon. Eng. Gumbo: Hon. Temporary Deputy Chairman, I also wish to join the hon. Member for Kipipiri in strenuously opposing this amendment. This amendment is very unfair, especially to those of us who represent rural constituencies. I will plead with the Chair of the Departmental Committee on Finance, Planning and Trade to drop this amendment, because in most cases even the compensation that people are given during compulsory acquisition is too low. Why would the Government, which is supposed to protect enterprise, take your money, then tax it and you are left with money that cannot help you get a parcel land of the same value? It is not correct to say that in most cases valuation is inflated. Some of us who come from areas where the Government has compulsorily acquired land to construct roads and other public projects--- We know that in most cases the valuation are low.

Therefore, I strenuously oppose this amendment and ask the hon. Member to withdraw it. This idea of trying to look for taxes everywhere, even in areas where

wananchi need a remedy, shows that we have a Government which is heartless, and which does not care for the enterprises of its people. Therefore, I oppose.

The Temporary Deputy (Hon. Kajwang): Alright, I will give this chance to hon. Member for Mt. Elgon

Hon. Serut: I wanted to contribute to this amendment.

The Temporary Deputy Chairperson (Hon. Kajwang): Okay, make it short because we do not want to remain for too long on this.

Hon. Serut: Thank you, hon. Temporary Deputy Chairperson. We are talking of compulsory acquisition. That means it is by force; this is a situation where your land is taken, whether you like it or not. The price given is not commensurate to the value of your piece of land. When you do not get the value of land--- If you do not take the money, it is deposited at the High Court at no interest.

This idea of introducing taxes through the backdoor should be stopped in this country. I oppose the amendment.

The Temporary Deputy Chairperson (Hon. Kajwang): Lastly on this, let us hear from hon. Member for Bondo. You also had an intervention. Is that true?

Hon. Ogolla: Yes. But I just want to contribute to the amendment.

The Temporary Deputy Chairman (Hon. Kajwang): But you are moving me on an intervention rather than by a request.

Hon. Ogolla: Then you have indulged me, hon. Temporary Deputy Chairman.

I do not know whether the other hon. Members were getting the Chairman of the Committee right. I think there is some mix-up in terms of the kind of amendment that we are talking about here. There are those who are talking about grabbed land, or illegal land that the Government moves in to take back, and those talking about a legally acquired and developed land that the Government moves in to properly compensate for. For example, our pensions are taxed yet they are funds that we have build up ourselves over a long period. If you are taking your NSSF benefits at ago, and at the same time--- Therefore, the Chair was right to talk about compensation when it comes to development of infrastructure. So, I am trying to support him.

The Temporary Deputy Speaker (Hon. Kajwang'): There is an hon. Member on some intervention.

An Hon. Member: There seems to be some confusion here, because this specific amendment refers to Clause 1. Clause 3 talks about the time when this particular Act shall come into operation.

The Temporary Deputy Chairperson (Hon. Kajwang): Are we together?

An Hon. Member: I thought we were on Clause 1.

The Temporary Deputy Chairperson (Hon. Kajwang): No; we are on Clause 3.

An. Hon. Member: Okay; that is right.

The Temporary Deputy Chairperson (Hon. Kajwang): All right. hon. Member for Suba, is there some problem?

Hon. Ng'ongo: Yes, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairperson (Hon. Kajwang): Why are you not rising on a point of order, so that I can recognize you?

Hon. Ng'ongo: I just want to talk.

The Temporary Deputy Chairperson (Hon. Kajwang): You just want to talk. Will your talking elucidate this issue and then we move one? We should not take too long on it!

Hon. Ng'ongo: Hon. Temporary Deputy Chairperson, what we have been calling for about capital gains is not this one. If the Government takes your property, or your land, to construct an infrastructural facility and you are compensated; you are paid the value of that property. Why should you be taxed? You have not made any gain. Surely, it does not make sense. What we have been calling upon the Government to tax is where I buy and then sell it at a profit. If I build a house and sell it at a profit, I should be taxed, but on this one, I say no.

The Temporary Deputy Chairperson (Hon. Kajwang): Hon. Chair of the Committee, the question that is before you to respond to is whether this taxation will relate to funds from compulsorily acquired property, and whether it is not inequitable to tax such compensation.

Hon. Langat: Thank you very much, hon. Temporary Deputy Chairman. I appreciate the points put across by hon. Members. But again they should be alive to the fact that, in fact, many places like Nairobi are taking advantage of the Government acquisition of land to inflate prices of land almost three times, because there is a tribunal.

The Temporary Deputy Chairperson (Hon. Kajwang): Order! Just a minute! Order! There is a tribunal to set levels of compensation for compulsory acquisition of land. If a purchaser, or a party, feels that the price is inequitable--- What do you say to such a party? We want to understand this very quickly and vote. There you go.

Hon. Langat: You know I was on a point, and then you brought up another point.

The Temporary Deputy Chairperson (Hon. Kajwang): That makes us understand issues very fast.

Hon. Langat: Hon. Chairman, I want specifically hon. Ng'ongo, who is an accountant like me--- This is actually part of capital gains, because the Government buys land at market rates. In fact, if it is compulsory acquisition--- You are a lawyer and should know that it cannot happen without negotiation; it always happens at market price, and that should be taxed.

The Temporary Deputy Chairman (Hon. Kajwang): All right, Members, what you refer to as points of order are actually contributions. I think Members now understand what you are facing. You are in a position to vote one way or the other. Member for Mount Elgon, you have explained yourself very well and the Members understand you. You are an authority on acquisition of land.

Hon. Serut: Yes, I am, hon. Temporary Deputy Chairman. I know that there is no land which can be acquired by the Government without a Government valuer coming in. So, the issue being raised by the Chair is neither here nor there. He is misleading the House.

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

Hon. Members: No! No!

The Temporary Deputy Chairman (Hon. Kajwang’): You did not understand? Order! No, no. I will not allow that under my watch. Just a minute, Members!

An hon. Member: But we voted!

The Temporary Deputy Chairman (Hon. Kajwang’): Just a minute. What you have done is to reverse the first vote that you did. You have gone back on the first vote that you did. You have already voted on it, and now we are going to Clause 3. There is no amendment now to Clause 3.

Hon. Members: No!

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, you are on Clause 3 without amendments. It will not happen under my watch. You need to understand what you are voting for. Let me put the Question again.

(Clause 3 agreed to)

(Clause 4 agreed to)

Clause 5

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

THAT, Clause 5 be amended by-

(i) renumbering the proposed amendment to subsection (4) of section 5 as paragraph (a);

(ii) inserting the following new paragraphs further amending subsection (4) of Section 5 as follows –

(b) by deleting the words “low income employees in a canteen or cafeteria operated or established by the employer (whether the meals are supplied by the employer or not) within his premises” and substituting therefor the words “employees in a canteen or cafeteria operated or established by the employer or provided by a third party who is a registered taxpayer (whether the meals are supplied in the premises of the employer or the premises of the third party) where the value of the meal does not exceed the sum of forty eight thousand shillings per year per employee”

(c) by deleting the definition of “low income employees” appearing in paragraph (g);

(iii) deleting the proviso to the proposed paragraph (aa) and substituting therefor the following new proviso–

“Provided that –

(a) this paragraph shall cease to apply on the 1st July, 2015;

(b) the period of vacation shall not exceed seven days; and,

(c) the term “employee” shall include the immediate family members of the employee”.

To take the Members to Clause 5, this Bill had provided that all the expenditure which is incurred by the employer to finance the employee to go for local tourism will be allowed for tax purposes. I am proposing to limit that facility for one year, so that it ends on 1st July, 2015. I am also saying that the vacation period shall not exceed seven days. The reason is that we can have as many people as possible enjoying that benefit.

The other thing that we are trying to do is to extend the definition of “employee” in that section to include the immediate family members of the employee, so that if you are going for a trip to Maasai Mara, you can go with your family, and that can be allowable to the employer. This seeks to enhance that section.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Order! I can see that Members are struggling to understand. What we have done is that at Clause 3, there was an amendment which was proposed by the Committee. You voted on it and negated it. So, we went back to the original clause. I hear that Members are having problems with what I see at (g), but remember there was no proposed amendment to (g). I did not have it on the Order Paper and I have not had any Member move an amendment in writing, the way you should. So, what will be in law is Clause 3 as it is. Now we are on Clause 5.

Hon. A.B. Duale: Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): The Leader of Majority Party, since I had promised the Member for Ainabkoi, can he be first and then I will hear you?

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, we defeated the proposed amendment to Clause 3, and that was in order. You then asked us to vote on Clause 3 as amended.

The Temporary Deputy Chairman (Hon. Kajwang’): No; without an amendment.

Hon. Chepkong’a: The “Ayes” were fewer than the “Noes”, who were ourselves, who were us. Then you said that could not happen under your watch, yet we knew what we were doing.

The Temporary Deputy Chairman (Hon. Kajwang’): So, why did you not repeat what you were doing in the second vote?

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, we knew what we were doing. In fact, we wanted to defeat this particular clause. We do not agree with the Capital Gains Tax.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, with a lot of respect to the Chair, Members are conversant with this law and the procedure. We do not want you to come in. If a situation like this arises, then there is the re-committal. Please, we are here following the Bill and we defeated his amendment. He has accepted it and we can carry the one of---

An hon. Member: No, no. we did not carry it.

Hon. A.B. Duale: According to the Chair, we carried the one in the Bill. If you have an issue with anything, you have the chance to re-commit and we need to move on. So, will you, please, educate hon. Members!

The Temporary Deputy Chairman (Hon. Kajwang’): I hear you. We can re-commit a particular clause, which you feel should be reconsidered, but that re-committal must come from the Floor.

Yes, Member for Kitui Central.

Hon. Mulu: Hon. Temporary Deputy Chairman, maybe I need your guidance. If an amendment has been proposed to a clause and that amendment is defeated, what is the implication? I thought automatically you go to the original clause.

The Temporary Deputy Chairman (Hon. Kajwang’): Let us not get into the discussion. If Members feel that a particular clause should be re-committed--- Can I hear a Member moving a re-committal? That is what I want to hear. Who is doing this? Yes, Member for Kipiripiri.

Hon. Gichigi: Hon. Temporary Deputy Chairman, I am moving that this Committee should re-commit clause 3 of this Bill for the following reasons---

The Temporary Deputy Chairman (Hon. Kajwang’): I hear you but you know we are going to re-commit at the end of the Orders. Just keep it.

We are on clause 5; can we have proposals on clause 5? We will come back on the re-committal of Clause 5. Hon. Members are saying that they did not understand the substance of your amendment to Clause 5.

Hon. Langat: Hon. Temporary Deputy Chairman, I think there is a problem here.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, I think you need to concentrate.

Hon. Langat: Hon. Temporary Deputy Chairman, also help us; we are on Clause 5, and hon. Members are going back to clause 3, which we passed a long time ago. The best way is for us to be where we are right now, which is at clause 5. I will do another explanation for the benefit of the many who never understood my earlier explanation.

The Temporary Deputy Chairman (Hon. Kajwang’): Let us not have too many points of order. When you are on a point of order, you are not listening to what he is saying.

Hon. Langat: Hon. Temporary Deputy Chairman, let me go back to my explanation. I have already said that clause 5 in the original Bill relates to expenditure incurred by an employer on his employees to go for local tourism, which clause 5 sought to allow for tax purposes to make employers encourage their employees to know their country.

The amendment I am proposing is this, I am saying that, that provision should be restricted to one year, which is up to next year, 1st July. When you allow it, it will mean the Government will be losing some revenue, but we are saying we should allow it, but limit it to one year, after we review it.

The other thing I am also proposing is that the period for vacation, if you go with your family to Maasai Mara or wherever, should be limited to seven days, so that as many Kenyans as possible can also enjoy without the Government losing revenue.

The other thing I am also proposing in the amendment - I wish hon. Members can follow - is to define an employee to include immediate family members, so that if you want to go, you can go with your wife and children. That is the natural thing to do, so that we encourage the family to---

The Temporary Deputy Chairman (Hon. Kajwang’): That is all right; we now know where we are. Instead of points of order, can we have a discussion on Clause 5? Can all points of order come down and we have requests.

Hon. (Dr.) Simiyu: On a point of order, hon. Temporary Deputy Chairman. The Chairman is being economical with the truth. He has explained clause 5(3), but he has not explained Sub-Clause (2); what he has talked about is all in (c)(a), (b), (c) but he has not talked about 5(2)(b). He has not explained himself on that.

The Temporary Deputy Chairman (Hon. Kajwang’): Is it a deletion?

Hon. (Dr.) Simiyu: He has not explained it.

The Temporary Deputy Chairman (Hon. Kajwang’): All right; let me take it together with the Member for Nakuru East who is on a point of order.

Hon. Gikaria: On a point of order, hon. Temporary Deputy Chairman. I am just seeking your indulgence as hon. Makali had said. If we defeat an amendment by the Chairman, then where do we go? We thought hon. Makali was right to seek your guidance, because we might have cases as we go along. So, should we go back to that without knowing the position after we defeat an amendment? If we defeat an amendment, then it means that we revert to the original clause. That is why hon. Makali was asking you to give direction. We know that if we defeat an amendment, then the only option left is to go back to the original version and give some input.

The Temporary Deputy Chairman (Hon. Kajwang’): I hear you, hon. Gikaria. What we will do is that in respect of clause 3--- I see that the Chairman took you back to a vote that you had taken. Because of that, it is not clear in the minds of the Chairman--- The Standing Orders say so; if I am in doubt, then a clause can stand re-committed. So, let us go through the clause; we will re-commit that particular clause. That has nothing to do with any other clauses. It is only that clause that I think I need to be clear on what hon. Members want to vote. Now, you want to discuss clause 5.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, the Chairman should make it very simple. This is a Finance Bill. This is basically meant for the revamping of the declining tourism sector; if you look at what hon. (Dr.) Simiyu said about Clause 5(3)--- The Chairman explained that it talks about the period of seven days. Clause 5(2) defines employees and the next of kin. It is about who you pick for holiday and the period. We are saying that next year, 1st July, 2015, we will revisit this matter. If the sector will have recovered, then we will not go back to it. It says how long you go for vacations because it has to be defined. It is limited to seven days. But you can send your staff on holiday for one month; basically this gives Kenyan workers a holiday.

The Temporary Deputy Chairman (Hon. Kajwang’): All right! Hon. Members, I think now you understand where we are. We are ready to vote. Do I put the Question?

Hon. Members: Not yet!

The Temporary Deputy Chairman (Hon. Kajwang’): Let me hear another voice that has not been heard.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I am getting worried about the way we are dealing with amendments. In clause 3, there were two clean up amendments, but when we voted--- The area where people have a problem is the age; because there was no explanation for numerals 1 and 2; we voted against the entire amendment without understanding what it was about. What Hon. (Dr.) Simiyu is saying

about Clause 5 is similar, without an explanation on (1) and (2) regarding cafeteria, employees and the rest--- If we agree with him on the issue of limiting holidays to 31st July, 2015, and expanding the explanation of who are family members, we might be agreeing to an amendment that has not been explained. With your indulgence, it is possible because this is the Finance Bill; my experience is that the Finance Bill and Statute Law (Miscellaneous Amendments) Bill are where mischief takes place. Unless he explains everything, it is not a good thing to vote on an entire clause.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Langat, can you explain so that we move? Make full disclosure.

Hon. Langat: Hon. Temporary Deputy Chairman, I have understood what Hon. (Dr.) Simiyu meant.

Under clause 5(2), what the amendment seeks to do is that currently low income employees have a benefit of food. They are not taxed but only when it is provided within the premises of the employer. What happens is that there are many employers with many employees, but they may not maintain a cafeteria system. It is discriminatory to say that those who are able to provide in house facility to do so. Since priority is to employees, then we can say even the same for employees who can get food from a neighbouring--- They can also benefit and not be disadvantaged because their employer cannot provide an in-house facility as it is at Parliament and big companies. We have employers who are not able to provide in-house service, but can afford for their employees to eat at an arranged place. The figure we are putting there is Kshs48,000 per year per employee. This means a maximum of Kshs4,000 per month and about Kshs200 per day. This will ensure that the employees eat and not be taxed. That is the import of Clause 5(1). I hope hon. Members have understood Clause 5(2).

The Temporary Deputy Chairman (Hon. Kajwang’): Okay. I think now hon. Members have understood. Hon. Ng’ongo, you are a Member of this Committee, or are you not?

Hon. Ng’ongo: No, I sit in the Budget and Appropriations Committee and not in the Departmental Committee on Finance, Planning and Trade.

The Chair has just explained one part of this amendment. The way I understand it is that apart from saying that even meals that are provided by employer outside the premises--- His amendment is removing it from low income earners and giving it to all employees. I think this House needs to be clear that with his amendment it is not only low income earners who will benefit, but even those who earn super salaries will also benefit from meals provided by the employer.

I feel that it will do this House some justice if that was also explained. I will support it; let me explain why. Sometimes defining a low income earner is not easy. Unless you define it in law you may not know who is a low income earner; his low income in one sector is probably high income in another sector. I think this amendment is okay, because it restricts benefits to a maximum of Kshs4,000 per month. It used to be Kshs3,000 but it has now been increased to Kshs4,000. I support the amendment; if the employer decides to go and buy food for the employees outside the premises, that is okay as long as it is restricted. Again, it is all employees and not just low income earners.

Thank you.

*(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 5 as amended agreed to)

The Temporary Deputy Chairman (Hon. Kajwang): Let us move on to

Clause 6.

Hon. Members: It has been overtaken by events!

Hon. Langat: Hon. Temporary Deputy Chairman, given the fact that the House rejected my earlier amendment and this is part of it, I withdraw this amendment.

(Proposed amendment to Clause 6 by hon. Langat withdrawn)

(Clauses 6, 7, 8 and 9 agreed to)

Clause 10

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

THAT, Clause 10 be deleted and replaced with the following new clause-

Amendment to section 34 of

Cap.470

10. Section 34 of the Income Act is amended –

(a) in subsection (1) by inserting the following new paragraph immediately after paragraph (i) –

“(j) tax upon the capital gains of a person charged under section 3(2)(f) shall be charged at the rate of five percent and shall not be subject to further taxation”;

(b) by deleting subsections (1A) and (1B);

(c) in subsection (2), by –

(i) inserting the words “or natural resources income” immediately after the word “royalty” appearing in paragraph (b); and,

(ii) deleting paragraph (k) and inserting the following new paragraph –

“(k) compensation for property acquired by the Government for infrastructure development”.

Hon. Temporary Deputy Chairman, there are two sections here, but what the amendment seeks to achieve is to bring the capital gains tax into force. I know many hon.

Members had expressed themselves to the Chair. However, I want to say that the House should consider capital gains tax favourably. This is because many people are making a lot of gain and we need to ensure that they also contribute to the economy that has supported them.

The other section is cleaning up so as to recognize the natural resource income which--- The Ninth Schedule deals with extractive industry. So, it seeks to put the natural resource income formally into the tax law.

Hon. Temporary Deputy Chairman, the other one is the controversial one, which the House spoke to. For the convenience of the House, and so that we make good progress, may I drop the amendment appearing in (c)(ii). This is because the House has already expressed itself on it.

The Temporary Deputy Chairman (Hon. Kajwang’): It is so ordered! The amendment is, therefore, dropped.

(Part (c)(ii) of the amendment by hon. Langat dropped)

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I have no problem with imposition of capital gains tax, although you understand that this is an issue which has elicited a lot of debate, particularly with regard to securities, and especially trading at the Nairobi Stock Exchange. There have been a lot of fears. I hope the Chairman of the Committee is listening to me. There have been a bit of fears that by introduction of capital gains tax, you are going to reverse the gains that have been made particularly in the capital markets. I think the imposition of 5 per cent is okay, but we have to be very clear how we are going to value intangible assets; this is where the problem comes in. If you are going to impose capital gains tax and apply it in a subjective manner, then I am afraid that the objective will not be achieved. So, as long as we are going to have an objective mathematical criterion of applying capital gains tax to both tangible and intangible property, I think it is a good idea and I will support it.

Hon. Serut: Thank you, hon. Temporary Deputy Chairman. Allow me to join my colleague, hon. Gumbo, in this. My worries are that many times the valuers from the Government have been used to determine the value of most of the properties. Because the Government tries to look for revenue, they have pushed the prices beyond the market value. As such, those who are disposing of their properties will lose at the end of it.

We hope that when we accept the 5 per cent, there will be a way of settling disputes between the buyer and the seller, or the Government and whoever will be disposing of assets.

Hon. Mulu: Thank you, hon. Temporary Deputy Chairman. I want to support this amendment because it is important that the capital gains tax is re-introduced. This is because a lot of speculative kind of behaviour to do with land and houses is actually associated with lack of this tax. It is important that this tax is re-introduced, so that those who engage in speculative practices can pay and contribute to the development of this country.

The Temporary Deputy Chairman (Hon. Kajwang’): The hon. Member for Suba, what do you want to clarify?

Hon. Ng’ongo: Thank you, hon. Temporary Deputy Chairman. You know, I think first of all when I listened to contributions, especially by the Member for Mount Elgon, I had a feeling he did not understand what capital gains means. This is because capital gains do not take place until there is an arms length transaction where you are selling either movable or immovable property. So, it is not a question of someone doing a valuation of your property, for example, and saying you have made gains. It will only occur when you are making a transfer under a transaction.

However, hon. Temporary Deputy Chairman, you remember I tried last year unsuccessfully to reintroduce this capitals gains tax; I think at the time I was seen as being in the Opposition. Now I am happy that the Jubilee side has realized---Now they have seen the light and have introduced this tax. I am only worried about the percentage, but I can put up with it for the time being. I am only urging the Jubilee Government to be careful, and even take proposals from the Opposition. Now, you see they have lost revenue for a whole one year just because it was introduced by Mbadi.

The Temporary Deputy Chairman (Hon. Kajwang’): Okay, Member for Suba. This is now in the Committee of the whole House. This is now our Bill as the National Assembly. It is not a Jubilee matter anymore. It is not a CORD matter anymore. It could have been at the Second Reading or First Reading. When we are in the Committee of the whole House we own the process; it is the Committee’s amendment. So, why do we not vote and get over with this? Let me put the Question.

*(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, I beg to move:-
THAT, Clause 11 be deleted and replaced with the following new clause –

- Amendm 11. Section 35 of the Income Tax Act is amended –
ent to (a) in subsection (1), by –
section
35 of
Cap.470
- (i) inserting the words “or natural resource income” immediately after the word “royalty” appearing in paragraph (b); and
 - (ii) deleting paragraph (k);
 - (iii) inserting the following paragraph immediately after paragraph (l) –
 - (m) compensation for property acquired by the Government for infrastructure development.
- (b) in subsection (3), by -
- (i) inserting the words “or natural resource income” immediately after the word “royalty” appearing in paragraph (g);
 - (ii) deleting paragraph (j) and inserting the following new paragraph -
 - (j) compensation for property acquired by the Government for infrastructure development.

(c) deleting subsections (3A) and (3B).

This is just to clean up pursuant to our earlier amendment on natural resource income. We are just updating the Act.

The other thing which I want to do is to withdraw the amendment appearing under 11(a)(ii) (m), which talks about compensation for property, and which the House has expressed itself . Then (b)(iii)(j), which also talks about compensation for property acquired by the Government. It is the same thing.

Thank you.

*(Proposed amendment to Clause 11(a)(ii)(m)
and (b)(iii)(j) by hon. Langat withdrawn)*

(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)

(Clauses 12, 13 and 14 agreed to)

Clause 15

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 15 be amended in the proposed new section 54B,
by-

- (a) (a) deleting the introductory portion and substituting therefor the following –

“54B. Every person carrying on a business shall notify the Commissioner of any changes in the following particulars within thirty days of the occurrence of the change –”

- (b) inserting the word “trustees” immediately before the word “settlers” appearing in paragraph (b)(iii).

This is just to clean up. If you look at the Bill as published, Clause 15 reads that: “Every person whose income is chargeable to tax---;” I am proposing to change it to: “Every person carrying on a business---” so, that it is not a person whose income is chargeable but every person who carries on business should disclose the particulars which have been identified like the place of business. If you change your place of business, you should inform the Commissioner. If you change the directors, you should inform the Commissioner and so on.

The other thing is to include the word “trustees”. If all the trustees, who have been charged with particular management, change their place of business they should also disclose that to the Commissioner; he should be aware that you have moved from this office to the next for the purpose of carrying out business and levying taxes.

(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, 17, 18, 19, 20 and 21 agreed to)

Clause 22

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 22 be deleted and replaced with the following new clause -

Amendment
of Third
Schedule to
Cap. 470

22. The Third Schedule to the
Income Tax Act is amended -

(a) in paragraph 3, by –

- (i) deleting the words “other than management or professional fee deductible under paragraph 5(2)(g) of the Ninth Schedule” appearing in subparagraph (a);

(ii) inserting the words “or natural resource income” immediately after the word “royalty” appearing in subparagraph (b);

(iii) deleting the words “other than interest which is deductible under paragraph 5(2)(h) of the Ninth Schedule” appearing in paragraph (e)(i);

(iv) deleting subparagraph (i);

(v) deleting subparagraph (j); and

(iii) deleting subparagraph (n) and inserting the following new paragraph –

“(n) compensation for property acquired by the Government for infrastructure development, five percent of the gross amount payable”;

(b) in paragraph 5, by –

(i) inserting the words “or natural resource income” immediately after the word “royalty” appearing in subparagraph (g); and

(ii) deleting subparagraph (k) and substituting therefor the following new subparagraph –

(k) compensation for property acquired by the Government for

infrastructure development, five percent of gross amount payable, provided that the tax so deducted shall be final.

(c) by deleting paragraph 6.

This is basically to update this section given that we have recognised natural resource income and capital gains, but again I am going to drop any mention of the word “compensation for property acquired by the Government” for the same reasons that I have given. So, this is just updating the Act, given what we have amended already. So, I will drop the one on (n) and (k) because the House has already spoken to them.

The Hon. Temporary Deputy Chairman (Hon. Kajwang’): Let us just clean up the Act for the HANSARD. Can you be on record clearly that you are dropping amendments proposed to Clause 22?

Hon. Langat: Yes, hon. Temporary Deputy Chairman. I am saying I am dropping any mention of the words “compensation for” - in Clause 22(a)(vi) and Clause 22(b)(ii).

(Proposed amendment to Clause 22(a)(vi) and 22(b)(ii) by hon. Langat agreed to)

(Question of the amendment proposed)

Hon. (Ms.) Abdalla: Thank you, hon. Temporary Deputy Chairman. I just wanted to congratulate the National Treasury for streamlining the income derived from the extractive industry. I also want to indicate that when we get to the Committee Stage of the Mining Bill we should note that we have streamlined income and avoid exemptions that mining investors will be asking for; we have given them too much in this amendment.

(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 22 as amended agreed to)

(Clauses 23 and 24 agreed to)

NEW PARTS

The Temporary Deputy Chairman (Hon. Kajwang’): Mover, are you there, on page 390?

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, the following New Parts be inserted immediately after Part II –

PART IIA – VALUE ADDED TAX

Insertion of new
section 25A in No.
25 of 2013.

25A. The Value Added Tax Act, 2013 is amended
by inserting a new section 25A as follows –

Withhold
ing Value
Added
Tax. **25A.**(1) Government Ministries, Departments
and agencies shall, on purchasing taxable
supplies, withhold six percent of the tax
payable thereon at the time of paying for the
supplies and remit the same directly to the
Commissioner.

(2) Subsection (1) shall not apply to taxable supplies
for official aid-funded projects.

(3) For the avoidance of doubt, the withholding of tax
under subsection (1) shall not relieve the supplier of
taxable supplies of the obligation to account for tax in
accordance with this Act and the regulations.

Amendment to section 68 of Act, 2013 is amended by inserting the following new subsection immediately after subsection (4) –

“(4A) For the avoidance of doubt and despite any other provision of this Act or other written law for the time being in force, the expression “remission of tax” in subsection (4) shall, in the case of an official aid-funded project, be deemed to include express provision in the agreement in respect of that project for the remission of tax on any taxable goods or services supplied for the implementation of the project, where the agreement was concluded before the commencement of this Act:

Provided that a remission to which this subsection applies shall remain in force for a period of five years with effect from the commencement of this subsection”.

Amendment of the First Schedule to No. 35 of 2013 .

25C. The First Schedule to the Value Added Tax Act, 2013 is amended –
(a) in Section A of Part I, by –

- (i) inserting the following tariff numbers and descriptions thereof in item 38 immediately after tariff number 8802.20.00 –

8802.30.00	Aeroplanes and other Aircrafts on unladen weight exceeding 2,000 kgs but not exceeding 15,000 kg.
8802.40.00	Aeroplanes and other Aircraft of unladen weight exceeding 15,000 kgs.
8803.30.00	Other parts of aeroplanes or helicopters.

(ii) by inserting the following new item immediately after items 46 –

47. Tractors.

48. Inputs or raw materials supplied to solar equipment manufacturers for manufacture of solar equipment or deep cycle-sealed batteries which exclusively use or store solar power as approved from time to time by the Cabinet Secretary for the National Treasury, upon recommendation by the Cabinet Secretary responsible for energy and petroleum.

(b) In Part II by inserting the following new paragraph immediately after paragraph 18

–

19. The supply of taxable services in respect of goods in transit.

PART II B – CUSTOMS AND EXCISE

Amen
dment
of
section
117A
of
Cap.47
2.

25E. Section 117A of the Customs and Excise Act is amended by inserting the following new subsection immediately after subsection (5)–

6) This section shall not apply to goods imported -

(a) for the implementation of an official aid - funded project;

Cap.179

(b) for official use by a diplomatic mission, institution or organization gazetted under the Privileges and Immunities Act; or

(c) by the United Nations or its agencies.

Hon. Temporary Deputy Chairman, after consultation with the National Treasury, what has been happening is that the Government has been paying contractors 100 per cent inclusive of the VAT. This proposal seeks to ensure that Government agencies will pay their contractors inclusive of 10 percent of VAT. They will withhold six per cent of it. This provision was there before; we will limit the amounts of refunds, which will be claimed eventually because already Government agencies will have six per cent to take to KRA, and then the contractor will go and work on input and output balances. If there will be any set- offs to be done, then it will be taken to the KRA.

What we had was that on average when you compute the net effect of input-output, it is roughly six percent. This provision was there initially; 16 per cent was withheld by Government agencies, but this one is fairer to both sides, because we are saying we withhold six per cent and pay the contractor their dues plus 10 per cent of the VAT; they will go and do their other things and file returns; if there will be any set-off, then it will be--- Already the Government has six per cent of their amount.

This is also very good for the contractors because it will not lead to piling up of amounts payable to KRA, because already the Government will have taken part of it. For

example, if you go to the KRA and find that maybe you still need to pay, say an addition two percent, it will be fair on the side of the contractor. I would want the House to support this; it was there before at 16 per cent and 100 per cent withholding. Now, we want to balance both sides, the Government and the contractors, so that the law is fair to both sides.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. Can you help Members understand that you have explained Clause 25A, B and C? For the benefit of Members, will you just be clear that you have clarified all those paragraphs?

Hon. Langat: Hon. Temporary Deputy Chairman, if you look at Clause 25B it states; “(4A) For the avoidance of doubt and despite any other provision of this Act or other written law for the time being in force, the expression “remission of tax” in subsection (4) shall, in the case of an official aid-funded project, be deemed to include express provision in the agreement in respect of that project for the remission of tax on any taxable goods or services supplied for the implementation of the project, where the agreement was concluded before the commencement of this Act.”

What that provision seeks to achieve is actually to have a transitional clause where there were remission agreements before the commencement of the Act. It seeks to extend this, so that by the time the project is completed then there will be an end of the remission exercise.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chairman, I am not cutting you short. I was just telling you that you explain parts A, B and C, so that Members can contribute.

There is a Member here who does not have a card, can you proceed to the Dispatch Box. Let me propose first---

Hon. Langat: Hon. Temporary Deputy Chairman, can I finish? I want to explain 25C.

The Temporary Deputy Chairman (Hon. Kajwang’): So, you had not explained all the parts?

Hon. Langat: On 25C I am seeing my good friend rising up. It seeks to exempt the aircraft which have been identified according to the codes, which are shown. If you look at the amount of refunds which have been accumulated by Kenya Airways, they are huge; in fact, they are almost “killing” the company. We seek to ensure that we exempt aeroplanes, so that we make our airlines competitive. This is because Kenya has been a hub for maintenance of aircraft in the region. When we introduced the taxation, we became very uncompetitive and risked losing this business to another country. I am sure hon. Wambugu will bear me out on this.

The other thing is that we seek to ensure that agriculture, which is the backbone of our economy, whether in sugarcane area, tea or maize growing--- We want to encourage our farmers to mechanize; therefore that additional item for tractors is to ensure they are exempted. Farmers can acquire tractors at a low price. The other things we are doing are that in the previous amendments we exempted solar panels, whether imported or locally manufactured; those of us who are in business know that if you are a local manufacturer and you are exempted, it becomes more costly to you as a person. You will incur VAT input but you cannot claim it because you are exempted.

What we are doing is that because we exempted solar panels and related items, we are only saying let us exempt the raw materials for the benefit of the local manufacturer; those are the people who have developed confidence in our country, and put in their investments here, and we do not want to “kill” them. There are only two investors who have actually set up solar manufacturing plants in Kenya. Therefore---

The Temporary Deputy Chairman (Hon. Kajwang’): All right; thank you.

(Question of the New Parts proposed)

(New Parts read the First Time)

(Question, that the New Parts be read a Second Time, proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): I see a lot of interest in this. Let us start with the captain.

Hon. Wambugu: Thank you hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Make your contribution very short, so that everybody gets a chance.

Hon. Wambugu: Hon. Temporary Deputy Speaker I support. This is just to reduce the workload on refund claims of Value Added Tax (VAT) from the Government, and also to make sure that businessmen do not re-plough VAT back into their businesses. On 25B, that is only an explanation. On 25C, this is the one that is dealing with the aviation industry. In the last VAT Bill, we were able to include aircraft below 2000; this is including aircraft between 2000 and 15000 and above. This is so that we can be in line with other countries; it is only in Kenya where we have VAT on aircraft.

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

Hon. Gichigi: Hon. Temporary Deputy Chairman thank you. I am also supporting these amendments. I am happy about Clause 25A; previously, all Government enterprise, or business with Government attracted VAT, but it was found to be a bit cumbersome. I think a mistake was made by withdrawing that particular law. What happened practically was that the Government was completely unable to collect VAT from most small and medium size enterprises. What this law is going to do now is that anytime an enterprise will do business with Government, its data will be captured and the Government will be able to follow up even the remainder of VAT. This is going to help the Kenya Revenue Authority in its administration of VAT law. I urge this House to support this particular Bill.

Under 25B the situation is this, currently, if a donor country like China is giving us money, we do not require them to pay VAT on the grant. What this provision is doing is setting the requirement that anything that is imported into this country, tax is actually paid, even if it is on donor funding. The Government will include that in its Budget. It will pay tax on behalf of the donor because the donor will not pay the tax. This is a situation where a Chinese company contracted by the Government to do a road and brings materials for the road project but uses them to do an estate, since it is actually VAT exempt, it will not pay VAT on a project that is not intended to be exempted.

The Temporary Deputy Chairman (Hon. Kajwang’): All right; Members there is a new trend emerging: you are asking to debate through interventions. Some of you must have figured it out that it is a shorter way of catching my attention. Unless you really have a point of order, do not press the intervention button. If you are requesting to contribute, press the contribution button.

Member for Rarieda, let it be an intervention.

Hon. (Eng) Gumbo: on a point of order, hon. Temporary Deputy Chairman. I am pleading through the Chair of the Finance Committee. This VAT law has been there even before the Withholding Tax, but it was very punitive. Would I be in order to ask the Chairman to explain? There is a lacuna in this proposed amendment. We have, for example, Government Ministries. What does he mean by Government agencies? This is where the problem has been. It is not explained anywhere in the proposed amendment.

The problem with this is that even people who do business private to private, can be described as “Government agencies”. As part of the explanation that the Chairman of the Committee was giving us on this one, he should have explained what exactly he meant by government agencies. This is where the devil, normally, is; he is in the detail and a lot of times, people at Kenya Revenue Authority---

The Temporary Deputy Chairman (Hon. Kajwang’): You know the contribution you are giving is wonderful, but give it in form of a contribution, and not point of order. I have listened to you, Member for Rarieda, with a lot of respect; what you have done is raise a good debate, but not a point of order.

Can we go on with the request list? Member for North Imenti.

Hon. Dawood: Thank you The Temporary Deputy Chairman. From the outset I would like---

The Temporary Deputy Chairman (Hon. Kajwang’): Chair, can you take notes because I will ask you to respond to what Members are asking.

Member for North Imenti, proceed.

Hon. Dawood: Thank you, hon. Temporary Deputy Chairman. I want to support the amendment under 25A. Withholding Tax used to be there before, and now it has been brought back. Under 25B, we are giving a transitional period of five years.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda, go to the Bar.

Hon. Dawood: Clause 25B provides for five years for this to kick in, and I think that is a good thing. Clause 25C is the best thing which has happened; when we last passed the VAT Bill, I think there were some problems in the numbering and we left out what has been proposed today. What is happening is that Kenya Airways wants to lease aircraft today, but it has to keep this on hold because of paying that 16 per cent VAT; this makes undertaking uncompetitive. This will work out well with contractors as well; I support it.

Thank you.

Hon. Ng’ongo: Thank you, hon. Temporary Deputy Chairman. First, is this amendment to Clause 25A? I support it fully because really there was no reason.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Suba just one minute. The Member for Cherangany is on an intervention.

Hon. Korir: On a point of order, hon. Temporary Deputy Chairman. My point of order is to the Chairman, because I wanted to ask a question to the Chairman of the---

The Temporary Deputy Chairman (Hon. Kajwang’): Can the Chairman pay attention to this Member?

Hon. Korir: When the Chairman talks of Government Ministries--- We have two governments. We have the national Government and the county governments. Is he referring to both national and county governments? Which Government was he talking about?

The Temporary Deputy Chairman (Hon. Kajwang’): All right Chair, I hope you are taking notes. This is related to the question that the Member for Rarieda has asked.

Proceed Member for Suba.

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, Government is government, whether at the county level or the national level. They are supposed to be used---

As I was saying, there was really no reason why the Government, or the National Treasury, stopped WithholdingTax; this ensured that VAT collectable or payable actually reached the Kenya Revenue Authority. I support this because usually when there is input and output tax, as the Chairman put it, the difference is just about six per cent. So, it reduces claims. It has the effect of reducing the claims of input tax and at the same time also helping the Government to get money.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you very much.

Hon. Ngo’ongo: Hon. Temporary Deputy Chairman, just allow me---

The Temporary Deputy Chairman (Hon. Kajwang’): I am trying to push you so that when we--- We are not on the Second Reading; we are at the Committee Stage.

Hon. Ng’ongo: We have been blamed in this House for passing Bills without reading them. I think this is the right time to put our thoughts to it. The issue of agency and departments should not worry anyone. Really, agencies are Government parastatals, State corporations, Constituencies Development Fund, but not private bodies, in my understanding.

The Temporary Deputy Chairman (Hon. Kajwang’): I think what Members are saying, Member for Suba, is that they would have been comfortable if there was a clear definition, which is clearly in the VAT Act.

Hon. Ng’ongo: If you go to the parent Act, you will see the definition of “Government agencies.” I am sure that is there.

On the issue raised by hon. Wambugu, I think this is a mistake we made as a House. I remember hon. Wambugu pleading with us to allow this amendment but, because of the law which is in place about a money Bill, we could not consider it. We are now presented with an opportunity to correct it.

Finally I am only worried about this amendment in 25C(b), the supply of taxable services in respect of goods in transit. This has been misused a lot of times in this country. We have ended up exempting goods from tax and then the same goods are diverted to the local market.

The Temporary Deputy Chairman (Hon. Kajwang’): We are not there yet.

Hon. Ng’ongo: We are there hon. Temporary Deputy Chairman. I am very alert. This is the last bit of Clause 25.

The Temporary Deputy Chairman (Hon. Kajwang’): All right I have got you.

Hon. Ng’ongo: I am seriously concerned about this, because I know this has been misused a lot of times; we exempt goods from taxation and then they end up being diverted to the local market; they flood our local market unnecessarily. So, I do not know whether this is a good amendment or the Chairman can consider removing it, so that we pass the good apples.

Thank you.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, having heard some contributions, let us now vote for paragraph by paragraph. Committee Chairman, can you clarify in respect of Clause 25C, because listening to hon. Members, they all support you on Clauses 25A and B. It is on C that I have heard different views.

Hon. Langat: Hon. Temporary Deputy Chairman, they have also supported me on C. They have supported me on everything, except that there was a request on the definition of “Government agencies”. If you look at the phrase in Clause 25A, you will appreciate that it is self-explanatory. It refers to Government Ministries, departments and other agencies. We all know Government Ministries and departments. Government agencies has reference to parastatals and others bodies. Any organisation owned by the Government is a Government agency. “Government” includes county governments because Kenya is one. The Government withholds this tax and takes it to KRA.

The other issue raised by hon. Mbadi is on tax in respect of goods in transit. Goods in transit are exempted but in the amendment that we did, we are leaving VAT on transport of those goods, which will be paid by people outside Kenya – people who are not necessarily registered in Kenya. So, it will be very expensive to load VAT to somebody in Uganda, who is not registered for VAT. He cannot claim import VAT in Kenya. The standard practice has been that any export is naturally zero-rated or exempted from VAT. It will just be additional cost to somebody outside this country, and it makes our country vulnerable.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you, Committee Chairman. Member for Mbita, are you on an intervention?

Hon. (Ms.) Odhiambo-Mabona: Yes, hon. Temporary Deputy Chairman. Is the hon. Member in order to purport to give a definition of “Government agency” which is not legal? I know that hon. Mbadi made reference to a law which defines a “Government agent”. As a lawyer, I know that unless it is defined by law, it does not matter how much the Committee Chairman tries to explain it to us. I have been trying to go to the internet to get the actual definition of a “government agency”. Unfortunately, all that our WIFI brings us is “Sonko free network”, which you cannot even get. So, can we also get WIFI in the House, so that when we want to make reference to the law, as we always do, it becomes easy? Instead of the “Sonko free wifi”, which is not really free, let us have some reliable WIFI in the Chamber.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you.

Yes, Member for Suna East!

Hon. Nuh: Hon. Temporary Deputy Chairman, I stand to oppose the amendment at Clause 25A. This is going to affect the Government in a big way in terms of collection of taxes. This is a Government which has been taken over by businessmen. A lot of the money from the revenue Estimates goes back to the Government in the form of taxes at

the end the financial year. So, if we allow businessmen to retain those monies, the Government will have a very big reduction in tax collection. This is a proposal by the businessmen within the Jubilee Coalition – which should be opposed vehemently.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you.

Hon. Members, can we take a vote on this amendment? Member for Kisumu East, are you on a point of order?

Hon. S.S. Ahmed: On a point of order, hon. Temporary Deputy Chairman. The Chairman of my Committee has, perhaps, not told us the real fact. When he talks of supply of taxable services in respect of goods in transit, he must realise that taxation on goods in transit within East African is done at the point of entry, be it in Uganda or Tanzania or Rwanda. So, within the East African context, tax is actually levied at the point of entry, on behalf of that Government. So, trying to say that there is going to be no VAT on goods in transit is misleading, because goods in transit are within the East African Community EAC region. So, there is a communication problem.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you very much.

Hon. Members, I am tempted to disallow all the interventions that I am seeing because all the interventions that I have allowed turned out to be contributions. However, there is a Member on an intervention, whom I want to recognise because I have not heard his voice in a long time.

Yes, Member for Nandi Hills!

Hon. Alfred Keter: Thank you, hon. Temporary Deputy Chairman. I was here yesterday. I am always here. I normally intervene when I feel that it is very, very necessary.

I would like the Committee Chairman to come out very clearly in his use of the word “government”. We are in a different constitutional regime, where “government” is a very strong word. You can be misinforming to say “government” when you mean “national Government”. He should be very specific, because we might---

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

(The New Parts were read a Second Time)

The Temporary Deputy Chairman (Hon. Kajwang’): All right; we are going to vote now because all those interventions are contributions. I want us to vote for the clauses. We are on Clause 25A.

*(Question, that Clauses 25A, 25B and 25C
be added to the Bill put and agreed to)*

(Clauses 26 and 27 agreed to)

Clause 28

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

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

THAT, clause 28 be amended by deleting the words “abuse its dominant position” appearing in the proposed new subsection (2) and substituting therefor the words “be dominant”.

Hon. Temporary Deputy Speaker, this is just a cleanup exercise.

An hon. Member: A clean up of what?

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Langat, you have heard an hon. Member ask “A clean up of what?” So, please, tell us what corridor this amendment is cleaning? You are on page 392 of the Order Paper. You are amending Clause 28, which is on page 2753 of the Bill. So, tell the hon. Members who the broom is and what is to be cleaned.

Hon. Langat: Hon. Temporary Deputy Chairman, just give me a minute.

The Temporary Deputy Chairman (Hon. Kajwang’): Let me propose the Question as the Chair is refreshing from his notes. The Vice Chair is next to you and he is part of your Committee; so, he can help us on this.

(Question of the amendment proposed)

As the Chair is recollecting himself together let us hear from the hon. Member for Garissa Township. You are going to contribute, but as I see the amendment on page 2753, it is better you clarify.

Hon. Chepkong’a: Thank you, hon. Temporary Deputy Chairman. The proposal by the Chairman of the Departmental Committee on Finance, Planning and Trade, with a lot of respect, is obsolete. If you look at the text in the Bill itself, it refers to abuse of dominant position by a significant market player. You then provide what a significant market player is. Why I note this is because I was a former regulator. Safaricom has abused its dominant position in the market place. So, when you remove the word “abuse” and leave “dominant”, then you do not achieve what you are seeking to achieve in the amendment that is contained in the main Bill.

The Temporary Deputy Chairman (Hon. Kajwang’): All right; thank you.

Yes, Member for Likuyani Constituency.

Hon. (Dr.) Kibunguchy: Thank you, hon. Temporary Deputy Chairman. I have been following this very closely and when we came to page 391, does it not appear that we have skipped that part?

The Temporary Deputy Chairman (Hon. Kajwang’): I am sorry; can you repeat yourself?

Hon. (Dr.) Kibunguchy: I was just saying that on page 391, right at the end, under Customs and Excise, there is clause 25E. I think we have skipped it.

The Temporary Deputy Chairman (Hon. Kajwang’): I am sorry; I see where the confusion is. It is in the new clauses. We will reconsider it at the end of the consideration of the Bill. I think that is where you may have been lost. There are new clauses and according to the Standing Orders, we consider them last.

Chair of the Committee, are you back here? Let us hear from the hon. Member for Kipkelion East.

Hon. Limo: Hon. Temporary Chairman, I was requesting to contribute.

The Temporary Deputy Chairman (Hon. Kajwang’): You were requesting under a previous one?

Hon. Limo: Yes.

The Temporary Deputy Chairman (Hon. Kajwang’): Let us hear from the hon. Member for Cherengany Constituency. Members are getting confused. Let us hear from the hon. Member for Kabondo Kasipul Constituency.

Hon. Oyugi: My matter has been sorted out by his statement.

The Temporary Deputy Chairman (Hon. Kajwang’): Let me go to hon. Members whom, with a lot of respect, I think are awake. Let us hear from the hon. Member for Rarieda Constituency.

Hon. (Eng) Gumbo: Hon. Temporary Deputy Chairman, I think I want to take up from where hon. Chepkong’a has left off. This amendment is trying to remove abuse of--- This amendment is so important because, as hon. Chepkong’a has just said, dominant players normally abuse their dominant positions. The problem with dominant players is that more often than not, they have no problem setting the rules, the same way they have no problem abusing the rules. An example is Safaricom Limited, which sets the rules and abuses them. It is so important that the Chairman of the Committee should explain to us why he is deleting it.

Without that explanation, I urge the House to oppose this amendment because we are just allowing a dominant player to start abusing the rules, which they themselves set. So, please explain to us, so that we decide whether to support you, oppose you or you withdraw the amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): You know Chair of Committee these are semantics that are really making us excited. Therefore, can you just help us, so that we proceed?

Hon. Langat: Hon. Temporary Deputy Chairman, I am sorry for that. I can see hon. Members have become very agitated. We sought to clean up by amending Section 23 on the Competition Act 2010. The intention of that section was to introduce further definitions of organizations which are dominant. They may not have abused their dominance, but it at least defines what is to be in a dominant position.

The Temporary Deputy Chairman (Hon. Kajwang’): But are you persuading hon. Members that your amendment---

Hon. Langat: I am simply saying it was just cleaning up what was actually a typing error.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members are saying that the effect of your amendment makes the legislation more difficult to understand. That is the point they are making. Therefore, can you make it more clear?

Hon. Langat: What I am saying is that the intention of that section was to further define what it means to be in a dominant position in a market. The issue of abuse of dominance is covered in another section of the Competition Act. I am trying to correct that by deleting the words “abuse of dominance”, and saying “be dominant”, so that it reads as follows:

“Notwithstanding Sub-Section (1) an undertaking shall also be deemed to be in a dominant position for the purposes of this Act where the undertaking is”

These are, though not dominant controls, at least 40 per cent but not more than 50 per cent of the market share, unless it can show that it does not have a market power. Two, it controls less than 40 per cent but has a market power. This is to ensure that organizations which control more than 40 per cent of a market--- They may not abuse that power but they are so powerful. This is because if they can act in a market with a 40 per cent share, the market will be disturbed. This is just to provide the Competition Authority with further definitions to that section, so that you may not be in a dominant position, but you control a substantial share of it; this has been identified here. Therefore, it is not really about abuse of dominance.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, I think you are fully persuaded. I know that sugar could be going low, but you need to be patient with this Chair, because he has considered these amendments a little further.

If you have the Bill in your hands, we could travel together to page 2777, and to the parent legislation at Section 23; it defines “dominant undertaking.” For purposes of this Section, “dominant undertaking” means--- Then, you come to his amendment which is on page 2753. He is saying that notwithstanding sub-section (1), which we have looked at, an undertaking shall also be deemed to be dominant for the purpose of this Act where the undertaking--- He goes on to enumerate on the other side of the page, at paragraphs (a) and (b). With that clarification, you should be able to get the flow of that amendment. Now, you are ready to vote.

Hon. Member: Ainamoi!

Hon. Chepkong’a: Thank you, hon. Temporary Deputy Chairman. Of course, you know the Chair is the Member for Ainamoi and not Ainabkoi. With the clarification that he has given, the definition of what a dominant player is, is contained in Section 23 of the substantive Act. So, the proposed amendment in the Bill is saying that, notwithstanding that interpretation of what a dominant player is, it will be deemed that you have abused your market power if you possess or control the market in excess of 40 per cent or less than 40 per cent. For instance, Safaricom - and this is a very important one - there is no other player who is able to come up because of the control of the dominant position by Safaricom, which controls 70 per cent of the market. So, if it comes up with policies that do not appear to be emasculating the small players, they are still abusing their dominant power by slashing the rates. If you slash the rates, that is an abuse of the dominant player. That is what the Competition Authority is seeking to curtail. So, the proposed amendment was very good. In fact, by removing it, you are negating what you were seeking to regulate. We should reject this amendment by my counterpart.

The Temporary Deputy Chairman (Hon. Kajwang’): Okay. Then, Members, you are in a position to vote. Mine is to get you to vote if you know what you are voting for. Can we call for the vote?

Hon. Members: Yes.

The Temporary Deputy Chairman (Hon. Kajwang’): I will now call for the vote. Give the ranking Member the microphone.

Hon. Kamau: Hon. Temporary Deputy Chairman, it is important for us to get it clearly. Perhaps, we still do not understand it. My understanding of this, if you look at it clearly, is that the amendment does not relate in whatever way to a dominant player. It is actually saying that notwithstanding Sub-section 1, which now talks about a dominant

player, any other undertaking shall be deemed to possess dominant position for the purposes of this Act, where the undertaking, though not dominant, controls, at least, 40 per cent; but not more than 50 per cent of the market share. Two, it is not dominant, meaning it does not have over 50 per cent of the market share but it has, at least, 40 per cent of the market share - but has market power.

(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. Members: No! No!

The Temporary Deputy Chairman (Hon. Kajwang’): But Members, you know what to do. If you think the vote has been pronounced improperly, you rise in your place and claim a Division. I am seeing only one Member rising. There are no numbers to claim a Division.

Hon. Members: Repeat!

The Temporary Deputy Chairman (Hon. Kajwang’): No, I cannot repeat. That is the problem I had with Clause 3. So, I am not going to repeat. I know that you knew what you were doing when you were voting.

(Clause 28 as amended agreed to)

(Clauses 29, 30, 31, 32 and 33 agreed to)

Clause 34

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

THAT, Clause 34 be deleted.

The effect of this is to delete that amendment---

Hon. Members: Clause 33A!

The Temporary Deputy Chairman (Hon. Kajwang’): Clause 33A is a New Clause. So, Members, do not shout. Look at your Standing Orders and then you know the order in which we go. Chair, are you through with the explanation? We stopped you at some point.

Hon. Langat: Hon. Temporary Deputy Chairman, the effect of the amendment to Clause 34 is to delete---

Hon. Muchai: On a point of order, hon. Temporary Deputy Speaker.

The Temporary Deputy Chairman (Hon. Kajwang’): No, Member for Kabete. Can we have something proposed, so that we can have something to discuss?

Hon. Langat: Hon. Temporary Deputy Chairman, the effect of that is to delete that clause. Those are amendments to the NSSF Act and during our deliberations it came out clearly that there were no consultations between the two Ministries, namely, the Ministry of National Treasury and the Ministry of Labour, Social Security and Services.

It was the view of the Committee that we delete the amendments and let them consult. Once they agree in future, we can carry over the amendments. Again, we did the amendments to the NSSF Act less than a year ago.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. This is a deletion.

(Question of the amendment proposed)

Hon. David Were, the Member for Matungu. Since you are proposing the same deletion, can you be the first one to support your colleague because it is the same action?

Hon. Were: Thank you, hon. Temporary Deputy Chairman. I will support my colleague in deleting Clause 34.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, let me just explain the reason for this deletion as we agreed in our Committee. The amendment was suggesting that we insert after “Pension Fund” the words “Provident Funds” as funds that you can move from the NSSF to another secondary provider. The old funds were all provident funds. The funds as included in the old Act were all provident. They have now been ring-fenced as provident. Right now, in the NSSF Act, there are two areas, namely, pension and provident. In a pension fund, you can contribute tier one up to a certain level and then when you go to tier two, you can now decide as an employer to move those funds to another secondary provider. But when you include the words “Provident Fund”, it means you are giving an opening to even take some of the old funds that existed in the NSSF to another body.

So, I support the deletion.

The Temporary Deputy Chairman (Hon. Kajwang’): With that explanation, Can I put the Question?

Hon. Members: Yes!

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

(Clause 34 deleted)

Clause 35

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

THAT, Clause 35 of the Bill be deleted.

It was proposed that we reduce the period within which employers who collect money from employees remit the money to the NSSF. In the Act, it is 30 days and in the proposed Bill, they were talking of ten days. As a Committee, we felt that 30 days was fair enough and that is why we were saying we delete the proposed amendment.

(Question of the amendment proposed)

(Question, that the words to be left out

be left out, put and agreed to)

(Clause 35 deleted)

Clause 36

The Temporary Deputy Chairman (Hon. Kajwang’): Make it very brief.

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

THAT, Clause 36 of the Bill be deleted.

I believe that you have understood me all through. I told the House that during our engagement with the two Ministries; the Ministry of Labour, Social Security and Services and the National Treasury, it was very clear that there were no prior consultations and it was the feeling of my Committee that we delete this amendment for now pending further consultations in future between both Ministries. That was mainly the reasoning. In fact, Clause 47, according to the Cabinet Secretary for Labour, Social Security and Service, they seem to have been saying that the management of NSSF will be Retirement Benefits Authority (RBA). But we gave them time to consult and when they agree, we can bring it in future.

The Temporary Deputy Chairman (Hon. Kajwang’): With that clarification, can we now propose the Question.

(Question of the amendment proposed)

Hon. Were: Hon. Temporary Deputy Chairman, I am in support because apart from what the Chairman has said, Part (5) and (6) of the NSSF Act already outline how benefits and funds will be managed. So, there was no need of bringing in another portion or another Act which would have negated what is here in this Act.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, I remember that Act as a practising advocate.

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

(Clause 36 deleted)

Clause 37 agreed to)

Clause 38

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

THAT, Clause 38 of the Bill be deleted.

The effect is to delete because it also required further consultations.

(Question of the amendment proposed)

Hon. Oyoo: Hon. Temporary Deputy Chairman, you have caught me unawares; I was making consultations. I will contribute when I am ready. I am waiting for a particular amendment.

(Laughter)

Hon. (Ms.) F.I. Ali: Hon. Temporary Deputy Chairman, I wanted to contribute on the New Clause 39.

Hon. Gikaria: Hon. Temporary Deputy Chairman, I wanted to contribute before but I never got a chance.

The Temporary Deputy Chairman (Hon. Kajwang’): But you see, you can just release so that we can recognize you in the new chance.

Hon. Gichigi: Hon. Temporary Deputy Chairman, what is in the Bill is a proposal by the Government to get all civil servants out of contributions at the NSSF. As you all know, we have had serious problems with the Government creating a pensions scheme for its employees and every other time a civil servant retires, they end up in a lot of trouble trying to get their money from the Government. Now, in this financial year, the Government has set aside about Kshs10 billion to set up the scheme and yet, instead of doing it, it wants to opt out of NSSF. The watchmen and house girls are supposed to pay but civil servants are not supposed to save for their own future. This clause by the Chairman of the Departmental Committee on Finance is the appropriate one. Let us support it and delete this particular clause.

The Temporary Deputy Chairman (Hon. Kajwang’): Can we take a vote?

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, this is to support the deletion of this because it is cheeky for somebody to include an amendment here to remove all civil servants from contributing to NSSF. The Public Service Superannuation Scheme Act that is referred to in this amendment is an Act that is said will come into effect when the Cabinet Secretary in charge will decide. So, the Cabinet Secretary can decide five years from now or even ten years from now that, that Act does not come into effect. I, therefore, support the deletion of this amendment on the basis that civil servants are also Kenyans. The Government must contribute for them to the NSSF just like all our house girls have been told to contribute.

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

(Clause 38 deleted)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, we are now going to the New Clauses which many hon. Members were waiting for. Can we have the next clause?

Hon. (Ms.) Sunjeev: Thank you, hon. Temporary Deputy Chairman. I would like to tell hon. Members of Parliament who are in this House this afternoon that the nature of this amendment--- I am sorry. I seek your guidance, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Move the amendment first.

New Clause 12A

Hon. (Ms.) Sunjeev: Hon. Temporary Deputy Chairman, I beg to move:-

THAT the following New Clause be inserted immediately after clause 12-
Amendment 12A. Section 42 of the Income Tax Act is amended by inserting the
of section following new subsection immediately after subsection (1)-
42 of Cap
470

“(1A) A foreign tax payable by a person in respect of income derived from performance in a public or private place for the purposes of participating in any sporting event shall be allowed as a credit against tax chargeable in respect of the person’s ascertainable income”.

We are currently experiencing rampant insecurity and as a result, few international tourists are visiting the country. This has made us lose a lot of income. I understand that this Bill is trying to collect taxes for the development of our country. However, this section reads:-

“A foreign tax payable by a person in respect of income derived from performance in a public or private place for the purposes of participating in any sporting event shall be allowed as a credit against tax charged in respect of the person’s ascertainable income.”

We are trying to promote our local athletes who run abroad and, as a result, they are promoting our country’s name. For example, in the United Kingdom, our athletes will pay 20 per cent but when they come back to Kenya, they pay 30 per cent. That means that they are taxed 50 per cent.

Those people will bring their earnings back to our country and back to their constituencies. I am saying that if they are paying 20 per cent abroad, when they come back to Kenya, they can show the certificate to the Kenya Revenue Authority (KRA) and say that they have paid 20 per cent. Then they should pay 10 per cent in Kenya.

I urge hon. Members to support this amendment.

(Question of the new clause proposed)

(New clause read the First Time)

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

Hon. Korir: Thank you, hon. Temporary Deputy Chairman. I would like to support what hon. Mbadi has said about this. The only foreign income generators in this country right now after the “death” of tourism are our athletes. When we say this, we are not talking about exempting athletes from paying taxes. We are saying that what they have already paid out there should be used as credit when they come to this country. If

we do not recognize what the athletes have paid out there and they pay when they come here, you will be double-taxing them.

Hon. Temporary Deputy Chairman, I will give an example as an athlete. If you go to a country like the United States of America (USA), they charge you 30 per cent upfront, your agent takes 15 per cent and your coach takes 10 per cent. If we do not recognize the money the athletes have already paid out there, we will be killing the sport in this country. Many of our athletes are running away because we are killing them.

Hon. Temporary Deputy Chairman, I really support this amendment and hope that hon. Members will support it.

Hon. Bitok: Thank you very much, hon. Temporary Deputy Chairman for giving me this opportunity to contribute to this important matter relating to our great athletes who emanate from the great land of Nandi, Uasin-Gishu and Trans Nzoia.

I support the amendment because it will be a double-taxation if we do not pass it. This will be punitive instead of promoting the culture of sporting in Kenya.

Thank you.

Hon. Chepkong'a: Thank you, hon. Temporary Deputy Chairman. Just to inform hon. Mbadi, in my constituency of Ainabkoi, we have over 12 training camps for the athletes. I am supporting the amendment by hon. Sunjeev because it is important that we do not continue to support double-taxation.

Secondly, the Constitution is very clear. It says that no person shall be exempted from paying tax. The athletes have already paid foreign tax. The Constitution does not differentiate between foreign tax and local tax. Once you have paid tax, that should be taken into account when calculating your income of how much tax you should pay. So, we are within the Constitution and anybody purporting to say that it is unconstitutional is unconstitutional himself when he rises to speak.

Thank you.

Hon. Langat: On a point of order, hon. Temporary Deputy Chairman. I would like to tell the Mover of this amendment to look at Section 38(2) of Income Tax Act.

This section says "If any citizen of Kenya chargeable to tax in Kenya for any year of income on employment income accrued in or derived from another country proves to the satisfaction of the Commissioner that he has paid a tax in such other country for such year of income in respect of the same income, he shall be entitled to set-off by way of credit of the same tax against the tax charged in Kenya on such income."

So, this is already provided for. What is only required is for you to prove to the satisfaction of the Commissioner to avoid a situation where some people want to claim fraudulently. I have read the relevant Act. So, I oppose that amendment because it is already catered for.

The Temporary Deputy Chairman (Hon. Kajwang'): That is where the problem is, hon. Chair. I allowed you to speak on an intervention as though something was out of order, but you ended up debating. I would have wanted you to ask whether it is in order for the Members to say this when this and that is happening.

Hon. Members, this is an issue which is drawing a lot of excitement and attention. We need to discuss it without a lot of constraint. With the remaining time, we may want to report progress first and then we have sufficient opportunity to come back to this point. Keep your notes because we will begin from this point.

Okay, Chair. Yes, Leader of Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I want the Chairman of the Departmental Committee on Finance, Planning and Trade to go back to--- This is a money Bill under Article 114. Did hon. Sonia Sunjeev appear before the Budget and Appropriations Committee or the Departmental Committee on Finance, Planning and Trade because of this amendment? This is because we do not want to violate the Constitution. If yes, then we can continue. He has the answer to that and the minutes can show because the amendment is touching on the Constitution and this Bill is a money Bill and Article 114 applies. So, the Chairman of the Departmental Committee on Finance, Planning and Trade must tell the House whether this amendment---

The Temporary Deputy Chairman (Hon. Kajwang’): All right. I have heard you. Leader of Majority Party, what you have just expressed is a very valid issue of a point of order. It is the only first point of order that I have heard since this procedure came in. Many of them were debates because you are raising a point of order on the unconstitutionality or otherwise of this amendment, which is fine. However, I think Members should debate it when we have time. So, I call for the Chair to move reporting.

PROGRESS REPORTED

THE FINANCE BILL

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Finance Bill, National Assembly Bill No.26 of 2014 and its approval thereof with amendment and now seeks leave to sit again.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The Chairperson to report.

Hon. Kajwang’: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Finance Bill and approved the same with amendment and now seeks leave to sit again today.

Hon. Langat: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request hon. Gaichuhie to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Gaichuhie seconded.

(Question proposed)

Hon. Gichigi: Hon. Temporary Deputy Speaker, I will also support the Motion but I am moving an amendment that the Motion be amended by inserting the words “subject to re-committal of Clause 3”.

(Question proposed)

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

(Clause 3 recommitted)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Leader of Majority Party.

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

Hon. A.B. Duale: Thank you, hon. Temporary Deputy Speaker. Pursuant to the provisions of Standing Order No.30(3)(a), this House resolves to extend the sitting time until the conclusion of business appearing under Order No.8 on today’s Order Paper.

Hon. Temporary Deputy Speaker, the matter is very straightforward. I do not want to anticipate debate. The House is going on recess tomorrow. That is if the Motion of the Calendar of the House is adopted and because of that, I think it is very prudent that we finish with the business in No.8 which is the Finance Bill. I will ask hon. Jamleck Kamau to second.

Hon. Kamau: Hon. Temporary Deputy Speaker, I second the Motion. Indeed, it is extremely important for us to finalise on this issue today as the hon. Leader of the Majority Party says, without anticipating debate. If we have to go tomorrow, then I think it is imperative that we finish on this particular Motion today. I second.

(Question proposed)

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

*[The Temporary Deputy Speaker
(Hon. (Ms.) Mbalu) left the Chair]*

IN THE COMMITTEE

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

THE FINANCE BILL

*(Resumption of consideration
interrupted in Committee today)*

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, we now have enough time to consider those issues. The matter that required disposition was the one raised by the Leader of Majority Party, as to whether the amendment proposed by the Nominated Member was constitutional or otherwise, having regard to Article 114 of the Constitution. On the other matter raised by the Chair of the Departmental Committee, referring us to the legislation, if this House chooses to pass another law, the way to reconcile is another matter. It is not a problem. This House is *Hammurabi*, the law giver. It makes and repeals laws. So, the issue that we need to discuss should be limited as to whether the amendment is unconstitutional, with regard to Article 114 of the Constitution. Let us just contain ourselves to that aspect, have just a few hon. Members to discuss it and then we make a decision on it.

Yes, Member for Suba!

Hon. Ng'ongo: Hon. Temporary Deputy Chairman, really, speaking as a professional in financial matters and the one who has read that Article extensively, it is true that the matter before us actually constitutes a money Bill. What I do not know is why it was approved without going through the normal process. It is a money Bill because it talks about a proposal to increase or reduce tax. What we have before us is a proposal to reduce tax. So, that is my understanding.

The Temporary Deputy Chairman (Hon. Kajwang'): Can we hear the Member for Ainabkoi, not on a point of order but rather to substantively discuss the subject.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, when the Chairman of the Departmental Committee on Finance, Planning and Trade rose to speak, in fact, he contradicted himself by saying that the exemption is already provided under Section 38(2) of the parent Act. So, the current proposal for the amendment is purely strengthening that particular provision. It is not negating it.

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Chepkong'a, on that one, I have ruled that it is neither here nor there. What I consider it to be an issue is the one before us.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, secondly, the Constitution is very clear. This matter has already found its way into the Order Paper. The Speaker was seated there. He never expressed himself or herself on this matter. The Constitution, in Article 114(2), only recognises the opinion of the Speaker, and not the opinion of hon. Duale. Hon. Duale owns no opinion. He owns only views, which the Speaker can rule on. So, there is nothing unconstitutional about this matter since the matter has already been ruled on by the Speaker. He has allowed it to appear on the Order Paper. He has never expressed any opinion. So, it is incumbent upon hon. Members to

express any opinion, on behalf of the Speaker. The Constitution is very clear. It says: “In the opinion of the Speaker---”

Hon. Members: On a point of order!

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, discuss the matter. Let us not have this language of “point of order” all the time.

Member for Mbalambala, raise matters that are only related to the issue that we are looking at.

Hon. Aden: Thank you very much, hon. Temporary Deputy Chairman.

The matter before us is of the nature of a money Bill. In respect to our Constitution, it would be unconstitutional for us to do what we are trying to do now. I also want to refer you to a point in time when I was new in this House. I wanted to move a similar amendment on the Value Added Act, 2013. In the very way it is today, my amendment had found itself to the Order Paper but because of the constitutionality of the matter, I had to withdraw the particular amendment. It had to be dropped. In order for this particular amendment to proceed, not only should it have been before the Budget and Appropriations Committee, but it should also have gone through the process of consultations with the Treasury. So, for that purpose, this particular issue is unconstitutional. We cannot prosecute it.

The Temporary Deputy Chairman (Hon. Kajwang’): Leader of Majority Party, because the point of order came from you, let us just hear a few more hon. Members and then you will have a word.

Hon. Ng’ongo: On a point of information, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Who do you want to inform?

Hon. Aden: Hon. Temporary Deputy Chairman, I would like hon. Mbadi to inform me.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Mbadi, hon. Aden’s time has expired. How do you inform somebody whose time has expired?

Member for Suba, you have just spoken. So, just allow other hon. Members to speak on this matter.

Yes, Member for Mbita!

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I rarely agree with hon. Duale but on this one, fortunately, I agree with him. When a matter is a money Bill, it must have the approval of the Budget and Appropriations Committee. Not only does it have to have approval, but also the necessary consultations as per the Constitution. I have moved two Bills before this House. In fact, as at this morning, the same Chairman of the Departmental Committee on Justice and Legal Affairs moved an amendment to my own Bill, after consultations with the Budget and Appropriations Committee. We were inserting issues that are of budgetary nature. So, that is the way to go.

More fundamentally, I have been trying to raise this issue with the Speaker’s Panel. The Speaker’s Panel keeps on giving us conflicting guidance on issues which are unconstitutional. I want to urge the Speaker’s Panel to sit and go through the correct process when a Bill or a provision of a Bill is considered unconstitutional. Even earlier

today, something came up where hon. Joyce Laboso said she was going to give a substantive ruling on it.

Hon. Temporary Deputy Chairman, when you sit in the Speaker's Panel, the position you hold is equal to that of a Judge of the High Court. Therefore, issues or elements like standards must apply. You cannot give a ruling on a situation today, the next time the Deputy Speaker gives a different ruling, and the next time the substantive Speaker gives a different ruling. If you gave us more consistent rulings, we will not bother you all the time, raising issues when we know the correct procedure.

So, I am appealing to the Speaker's Panel to sit down and give us the correct procedure because the Chairman of the Departmental Committee on Justice and Legal Affairs was suggesting that it is only the Speakers who, on their own volition, can declare a Bill unconstitutional. During the last Parliament, there were many rulings which said that at any point, an hon. Member can raise the issue of unconstitutionality and the Speaker will stop at that point and make a ruling as to whether it is unconstitutional or not.

So, please, guide us on that matter.

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you. You know that I have been very patient to listen to your literary remarks, because they are not tied to the discussion before the House. Whereas I reserve my comments on the comments that you have made, let me first of all, remind you that there is no Speaker's Panel. There is only the Chairpersons of Committee. So, I sit here as the Chairperson of Committee. However, you have spoken your mind. It is well taken care of. We will work on it in good faith.

Hon. Members, we are not going to waste time on this matter. Give me the law. Let us go by the law. The law is the Constitution. Can you pick your copies of the Constitution so that we can read together to avoid wasting time on this matter?

Hon. Duale, you deserve a second chance.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, even the process of Article 114 is within the procedures of Parliament. If you are bringing any amendment that touches on that Article, you make sure you appear before the relevant Committees of Parliament; that is the Departmental Committee on Budget and Appropriations and the Committee on Finance, Planning and Trade. The National Treasury is engaged and it is agreed.

Therefore, I think you need to give direction. You just need to hide in Article 114 (2). I am sure if the Speaker was here he could have agreed. I want to agree with hon. Ng'ongo. He can give me little information---

The Temporary Deputy Chairman (Hon. Kajwang'): Order! Order, hon. Members! Do not think that the person who is sitting on the Chair lacks knowledge of law so that there is some substantive Speaker who would rule himself different from this Speaker on the Chair.

Let us look at the law and then we will pronounce ourselves. The hon. Member for Suba Constituency can give us some little information.

Hon. Ng'ongo: Hon. Temporary Deputy Chairman, I want to give some little information to the Leader of Majority Party based on what hon. Chepkong'a has said.

Actually hon. Chepkong'a should have gone ahead to read the Constitution. The Constitution has not left it ambiguous on what is a Money Bill. It goes ahead to define it. Therefore, it is not just the discretion of the Speaker. But finally, this House has already considered this matter previously. There was a time I remember when we had a similar situation where an amendment had already been approved by the Speaker and, again, the Speaker did make a ruling that if it is discovered that this is a money Bill by nature, it is not admissible.

The Temporary Deputy Chairperson (Hon. Kajwang'): All right. That is not any new information. We have that information here with us. It is the law. You are interpreting the law, which we have. Let us look at the law together on page 77 of the Constitution, if you have this version that I have. I am reading Article 114 of the Constitution; I know many of you do not have to be lawyers to follow this. You just need to be a Kenyan to understand it. Article 114 (1) states as follows:

“A money Bill may not deal with any matter other than those listed in the definition of “a money Bill” in sub-clause (3)”

Sub-Clause (3) defines what “a Money Bill” is and says:-

“In this Constitution, “a money Bill” means a Bill specified in Article 218 that contains provisions dealing with taxes, the imposition of charges on a public fund or repeal of any of those charges, appropriation, receipt, custody of public money---”

If you go to Sub-section (2) - and this is the sub-section that you need to understand because hon. Members have made discussions on it - it states as follows:-

“If, in the opinion of the Speaker of the National Assembly, a Motion makes provision for a matter listed in the definition of “a money Bill”, the Assembly may proceed only in accordance with the recommendation of the relevant Committee of the Assembly after taking into account the views of Cabinet Secretary responsible for Finance.”

Now the Constitution begins with these beautiful words. “If, in the opinion of the Speaker” So that if the Speaker feels that a particular amendment is in the nature of money Bill, then the Speaker will direct that the money Bill be dealt with according to the recommendation of the Committee and taking into account the views of the Cabinet Secretary (CS).

In the Order Paper, there is an amendment on which due notice was given to the Speaker and the Speaker authorized it to come on the Order Paper. Therefore, I find that the Constitution expressly states itself on this matter and it is very clear to me beyond a pre-adventure and to the extent that I have an amendment appearing in the Order Paper.

Hon. Members, I remember I was one of those that in another instance, I proposed a Bill which was a money Bill and because of Article 114, I could not be able to move it on the Floor of the House because I had not sought guidance from the Committee and the Cabinet Secretary. That was because, in the opinion of the Speaker, that was a money Bill. I was not allowed to move it. I find that this ruling is very consistent with what I see in the Order Paper and, therefore, I am not prepared to rule it unconstitutional.

*(Question that New Clause be read a
Second Time, put and negatived)*

Hon. Members: No! No!

The Temporary Deputy Chairman (Hon. Kajwang’): That is how business is conducted in the National Assembly. Just a minute!

(Several hon. Members stood up in their places)

All right, Members. I will ask the Clerks-at-the Table to recognise if there are enough Members to claim for a Division. I am informed that you do not have numbers to force a Division. Hon. Members, that is how to proceed in the National Assembly. Your duty is to debate and vote the way you have voted and differ or accept the way you have. Next New Clause!

New Clause 22A

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

THAT, the following New Clause be inserted immediately after Clause 22 –

22A. The Eighth Schedule to the Income Tax Act is amended –

(a) by deleting paragraph 2 and substituting therefor the following new paragraph –

Amendment of Eighteenth Schedule to Cap.470

2. Subject to this Schedule, income in respect of which tax is chargeable under section 3(2)(f) is the whole of a gain which accrues to a company or an individual on or after 1st January, 2015 on the transfer of property situated in Kenya, whether or not the property was acquired before 1st January, 2015.

(b) in paragraph 3, by adding the following new subparagraph immediately after subparagraph (2) -

(3) The gain which is exempt from tax under paragraph 36 of the First Schedule is not chargeable to tax under section 3(2)(f).

(c) in paragraph 6, by adding the following new subparagraphs immediately after subparagraph (2)(g) -

(i) by the transfer of an asset between spouses, or former spouses, as part of a divorce settlement or *bona fide* separation agreement;

by the compensation for property acquired by the Government for infrastructure development which is subject to tax under section 3(2)(i);

(d) in paragraph 7, by deleting the words “deemed to be nil” appearing at the end of subparagraph (3) and substituting therefor the words “the market value as determined by the Commissioner”;

(e) by deleting Part III.

The purpose of those amendments is basically to provide for the computation of the Capital Gains Tax which we have already passed. It is just providing for a procedure of calculating the Capital Gains Tax.

(Question of the New Clause 22A proposed)

(The New Clause 22A read the First Time)

(Question, that the New Clause 22A be read a Second Time, proposed)

Member for Wajir! Dropped. Member for Muhoroni! Dropped. Member for Muhoroni, you know, when you constantly do what you are doing, it amounts to gross disorder. Member for Rarieda! You are speaking to this new amendment.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, the amendment as proposed is good and I support.

Hon. Gichigi: Hon. Temporary Deputy Chairman, I support it but the Chair may consider dropping the provision on page 389(h)(i) which is talking about compulsory acquisition.

The Temporary Deputy Chairman (Hon. Kajwang’): Chair, can you pronounce yourself on the (h)(i), so that you clean up this?

Hon. Langat: Hon. Temporary Deputy Chairman, I want to agree with him. Because we had already dropped it, it is not necessary for it to be there. I should have said it earlier on, so that the Member should not have raised it.

The Temporary Deputy Chairman (Hon. Kajwang’): I want to hear the words that you are prepared to drop.

Hon. Langat: I am dropping (c)(i) which relates to compensation of property acquired by the Government. It is the same one as here.

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, whereas I agree with this amendment which he is proposing, even to start the calculation of capital gains tax, even though I would have wanted it to kick off immediately, I am concerned about 22(a)(2)(c)(h). When you make a transfer to your spouse in case of the divorce, should we get the value and start taxing a lady who is already seriously hit because she is losing

her husband? She is getting property from the husband and then you start calculating Capital Gains Tax and taxing this lady any, maybe, the property is in form of a fixed property like a house. Where will she get the money or is she going to liquidate the house to pay the tax? This is a very fundamental issue. Suppose today I am divorcing - and God forbid I will not divorce my wife - but if I was divorcing my wife and I have transferred a house to her, then when we calculate the Capital Gains Tax and ask this lady to pay and she has a house which she cannot sell, where is she going to get the resources to pay? That is my concern.

The Temporary Deputy Chairman (Hon. Kajwang’): That is very clear. Member for Subukia.

Hon. Gaichuhie: I support because we are in agreement with my Chair.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Wajir! Member for Nyeri Town!

Hon. (Ms.) Mathenge: Hon. Temporary Deputy Chairman, I think I want to agree with hon. Mbadi because when somebody has gone through this exercise and then you are taxing the lady---

The Temporary Deputy Chairman (Hon. Kajwang’): What exercise are you talking about, Madam?

Hon. (Ms.) Mathenge: The taxing of the asset that has been transferred. The capital gains that the wife or the husband has got. They should not be taxed.

The Temporary Deputy Chairman (Hon. Kajwang’): Can I have the Chair to be the last one to speak about this? This is very personal to both Members and Kenyans out there.

Hon. Langat: Hon. Temporary Deputy Chairman, on the contrary, what (c) (h) and (i) are proposing is to exempt matrimonial property which is subject to divorce and also to exempt the compensation for property acquired by the Government, which I have dropped. The reason for this exemption was because we had provided for a rate of taxing that compensation at 5 per cent, which was supposed to be final tax. That is before the House disagreed with me. But since I have dropped that one, I want to allay the fear that we are about to tax the matrimonial property which is subject to divorce. On the contrary, that (c) and (h) seeks to exempt it from the Capital Gains Tax. There should be no fear.

The Temporary Deputy Chairman (Hon. Kajwang’): With that clarification, perhaps, now we can take it to vote. Can we take it to vote?

Hon. Members: Yes.

The Temporary Deputy Chairman (Hon. Kajwang’): I will now put the question.

*(Question, that the New Clause 22A be read a
Second Time, proposed)*

*(Question, that the New Clause 22A be read
a second Time, put and agreed to)*

(The New Clause 22A was read a Second Time)

(Question, that the New Clause 22A be added to the Bill, put and agreed to)

New Clause 24A

Hon. Gaichuhie: Thank you, hon. Temporary Deputy Chairman. I beg to move:-

THAT the following New Clause be inserted immediately before clause 25 under Part III—

Amendment
of section 6
of Cap.
469.

24A. Section 6 of the Kenya Revenue Authority Act is amended by deleting subsection (5).

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chair, could you explain this amendment. It is an insertion.

Hon. Langat: Hon. Temporary Deputy Chairman, after consultations, I wish to drop that amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, that amendment is dropped.

(Proposed amendment by hon. Langat dropped)

New Clause 25E

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

PART II B – CUSTOMS AND EXCISE

Amen
dment
of
section
117A
of
Cap.47
2.

25E. Section 117A of the Customs and Excise Act is amended by inserting the following new subsection immediately after subsection (5)–

(6) This section shall not apply to goods imported -

for the implementation of an official aid - funded project;

Cap.179

(b) for official use by a diplomatic mission, institution or organization gazetted under the Privileges and Immunities Act; or

(c) by the United Nations or its agencies.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chair, could you explain this amendment?

Hon. Langat: Hon. Temporary Deputy Chairman, it says that this section shall not apply to goods imported for implementation of an official aid-funded project. This is to exempt Customs and Excise Duty on goods imported for the purpose of official aid-funded projects and for official use by diplomatic missions, institutions and organizations gazetted under the Privileges and Immunities Act.

This is actually to comply with the Vienna Convention which provides that all the missions that sign that Convention should exempt each other from Excise Duty. This is especially people who give us aid. We cannot again tax them and yet they are giving us free money. I think this is a very noble provision which the House should support.

(Question of the new clause proposed)

(New clause read the First Time)

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

Hon. Gikaria: Thank you, hon. Temporary Deputy Chairman. I support the Chairman with regard to the institutions that have been mentioned here. I think they play a very big role in terms of economic development within the country. Their exemption from paying tax is a welcome idea and I totally agree with the Chairman.

Organizations like the United Nations (UN) offer many functions that go a long way in the development of this country. This is especially in very remote areas. This will go a long way to assist and encourage those organizations to continue with their very good and noble work.

I support.

Hon. Aden: Thank you, hon. Temporary Deputy Chairman. I rise to support this amendment. Indeed, the aid agencies go a long way in bridging the gaps that we have in terms of development and emergencies. So, we want to encourage them to bring in supplies at times like those when some parts of the country are experiencing drought. The

UN should also be granted this privilege. We are proud to host the largest agency of the UN and we wish to support them to continue with their operations.

However, this provision must not be abused. This is because certain products which are available locally should not be imported under the pretext that they are coming in for use by aid agencies. Even as we support this amendment, we must be very cautious. The gatekeepers who qualify items for taxing must be careful that items that can be sourced locally should not necessarily be subjected to this.

Hon. Ng'ongo: Hon. Temporary Deputy Chairman, whereas parts (b) and (c) are very clear to me on the UN and diplomatic mission *et cetera*, I would have expected the Chair to give some qualification on Part (a) that before you get exemption, you need to get approval from the Treasury. This used to happen before. If you leave this amendment as it is, many goods will be brought into this country without being subjected to Customs and Excise Duty which really do not qualify.

The Temporary Deputy Chairman (Hon. Kajwang'): But should you not be speaking to a further amendment, the Member for Suba?

Hon. Ng'ongo: So, do I propose a further amendment?

The Temporary Deputy Chairman (Hon. Kajwang'): You are a veteran Member here. So, I will not tell you what you need to do. This is because you know what to do.

Yes, the Member for Marakwet East.

Hon. Bowen: Hon. Temporary Deputy Chairman, I would like to support the Chairman. Where I come from, the donor community is like the Government to us. Given that they are removing the taxes, I really support this amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): All right. The last to speak here is the Member for Kitui South and then we take a vote.

Hon. (Ms.) Nyamai: Thank you, hon. Temporary Deputy Chairman. I would like to support this amendment because of the fact that it gives an opportunity for institutions that may be providing aid to our country - which is most needed - to have an opportunity to give it without being exposed to taxation.

So, hon. Temporary Deputy Chairman, I support.

The Temporary Deputy Chairman (Hon. Kajwang'): All right. Member for Rarieda.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I just wanted to actually, in my view, emphasize what the Member for Suba has said.

The Temporary Deputy Chairman (Hon. Kajwang'): Then why do you not hold it then since he is processing something with the Clerk-at-the-Table so that you will come and address it?

Hon. (Eng.) Gumbo: Yes, so that I am on record hon. Temporary Deputy Chairman, if we leave this provision in Clause (a) as it is, definitely, it is going to be abused. There are a lot of frivolous---

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Suba is doing what he knows must be done. So, when it is done, we will handle it at that point. Member for Mbita, I hope you are not supporting your colleague with whom you share boundaries.

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Temporary Deputy Chairman. I definitely must support my colleague because both Suba and Mbita receive a lot of aid because of the many years we have been marginalised. So, I really support him but with the further amendment so that it is not abused.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes. All of you are speaking to something which the Member for Suba has not done. Member for Cherangani.

Hon. Korir: Hon. Temporary Deputy Chairman, I support the insertion by the Chair but looking at the mood and how people are against our athletes in our country--- But I also want to include those clothes that athletes come to run with. Athletes are now being taxed for the clothes that they are given when they go outside and when they come back to this country. They come with them to use them to run and not to sell. At the airport, they are forced to pay taxes on them. So, if you can include that on your further amendment, I will really support you because we need to support our athletes. If the trend continues of rejecting our athletes, then that is against the---

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Member for Suba on a point of order. The Member for Suba is speaking to a further amendment.

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, I propose that the amendment proposed by the Committee be further amended by inserting the words “subject to approval of the Cabinet Secretary for Finance” immediately after the word “project” in paragraph (a).

The Temporary Deputy Chairman (Hon. Kajwang’): All right, I hear you. Let us just clean up your proposed amendment. Can it read something like “for the implementation of an official aid-funded project as may be approved?” Leave that word “subject” since it is going to confuse legislation.

Hon. Ng’ongo: For the implementation of an official aid-funded project as may be approved by the Cabinet Secretary in charge of finance.

The Temporary Deputy Chairman (Hon. Kajwang’): Use the words “responsible for finance” That is the word contained in the Constitution.

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, let me put it differently: “--- for the implementation of an official aid-funded project as may be approved by the Cabinet Secretary responsible for finance”.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, I propose the Question that New Clause 25E be further amended in paragraph (a) by removing the semi-colon after “project” and inserting the words “as may be approved by the Cabinet Secretary responsible for finance;”

(Question of the further amendment proposed)

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, my worry as may be---

The Temporary Deputy Chairman (Hon. Kajwang’): Just a minute, Member for Seme. Chairperson of the Health Committee, I am just raising it so that we help each other. I know that you have a further amendment to the further amendment. So, I am

asking you to approach the Clerks-at-the-Table. Hon. Mbadi knows what to do. You may not have known what to do. Just approach the Table, so that we can help each other.

Member for Seme, you were speaking to the further amendment. Please, proceed.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, my concern about “as may be approved” implies that sometimes that approval is not necessary. My worry is that a structure and a process for approving the same are going to be set up in the Ministry. The use of the word “may” in this case implies that officers can actually just let it pass. So, I would be happier with the use of more definitive words “as approved” and leave out the word “may”.

That is my suggestion.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Seme, using the words “as approved” implies discretion of the Cabinet Secretary. He may choose to approve or not to approve it. Anyway, it is not my mandate to discuss the amendments. I am straying from my mandate. I am trying to get people who have not spoken today, like the Member for Nambale.

Hon. Bunyasi: Hon. Temporary Deputy Chairman, I just want to speak specifically on the amendment. It should not be optional. In every case, it should be approved. So, if we could get a language that captures that position, it would be a better option. Secondly, is the Cabinet Secretary we are referring to the one for Finance or the one for the National Treasury? The Constitution refers to the Cabinet Secretary for the National Treasury.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, Member for Mbalambala!

Hon. Aden: Thank you, hon. Temporary Deputy Chairperson. I beg to disagree with my colleague and friend, hon. Ng’ongo on this amendment. I do not think we should include it. As it is now, it says:-

“For the implementation of official-aid.” By the time a project becomes an official aid, it must have gone through various processes between the Government and the implementing agency to approve it to be an official aid acceptable to the Government. For that reason, we do not need to restrict it and say the Cabinet Secretary for National Treasury alone needs to have another restriction to that particular issue. An official aid has been approved by the Government, let us implement it and let it be so.

The Temporary Deputy Chairman (Hon. Kajwang’): I was going to put the Question, but I see the hon. Member for Gem requesting to speak.

Hon. Midiwo: Thank you, hon. Temporary Deputy Chairman. Let me agree with hon. Aden. The context in which this amendment is being sought is in the national Government and county governments. County governments are getting a lot of funding, which are official to the counties. For you then to ask them to come back to the Minister is creating unnecessary hurdle. Let me just give an example. Recently, I was told that Great Britain (GB) had donated medical equipment to Jaramogi Oginga Odinga Hospital in Kisumu. But this permission was never given. Therefore, the duty was more than the cost of the equipment. The equipment is still rotting at the Port of Mombasa.

An hon. Member: Demurrage charges!

Hon. Midiwo: Yes, the demurrage and all those things. Therefore, if it is an official aid going to Wajir County, for example, they do not need to come to Treasury. I

want to encourage my friend, hon. Ng'ongo to withdraw that particular amendment because it creates unnecessary bureaucracy.

The Temporary Deputy Chairman (Hon. Kajwang'): All right. Let us hear from the hon. Member for Homa Bay on a point of order.

Hon. (Ms.) Nyasuna: It is just a contribution and to add to what hon. Ng'ongo has said. I was in agreement with hon. Ng'ongo's amendment until a point when I have reflected on it. We know after contracted such---

The Temporary Deputy Chairperson (Hon. Kajwang'): Order! That is the hallmark of an honest legislature because you keep on thinking about these issues and you keep on changing your position according to the reflection you get.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, I am just considering the matters of aid and when you talk about official aid, it is already official enough. When you talk about approval by the Cabinet Secretary for National Treasury, you create room for individuals who might want to frustrate such projects to come in and frustrate official aid-fund projects.

Hon. Temporary Deputy Chairman, we are not new to this issue of push and pull between the civil society and the Government. You might find that some particular aid agency has been marked and is in the red. Once that aid agency brings in anything, they would be stopped and there will not be approval and it will be the people who will suffer.

Therefore, I urge my friend, hon. Ng'ongo to withdraw that further amendment.

Hon. Ng'ongo: Hon. Temporary Deputy Chairman, I see that this is a double-edged sword. Given the argument that is coming up, it seems to be more convincing especially when it is abused by the Government machinery. Then I withdraw that further amendment.

(Proposed further amendment by hon. Ng'ongo withdrawn)

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you. The further amendment is withdrawn. Therefore, we go back to the amendment as it is in the Order Paper.

Can I put the Question?

Hon. Member: There is a further amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): But Chairman, as a ranking Member, you cannot speak from my right until you have talked to us on the Table. Come round because that is the best way. Can I put the Question?

(Loud consultations)

Hon. Chepkong'a: On a point of order, hon. Temporary Deputy Chairman. I rise on a point of order pursuant to Standing Order No.83 which allows a Member to rise on a point of order. There was a clause that had been agreed upon by the Committee, namely, Clause 24A, which the Chair made an attempt to drop. Unfortunately, it had been moved by the Vice-Chairman. At the time the Chairman came, it was unprocedural to drop because the Vice-Chairman had already moved it. So, in terms of procedure, he had no capacity to drop because the Vice-Chairman had already moved. I ask that this be

recommitted for purposes of further deliberation. There was confusion there. The Committee itself and the Vice-Chairman were quite right.

The Temporary Deputy Chairman (Hon. Kajwang’): For the recommittal, can you liaise with the Chairman.

Hon. Chepkong’a: I have spoken to him and he has agreed to.

The Temporary Deputy Chairman (Hon. Kajwang’): So, if he chooses to recommit it, he will mention it in the reporting of progress.

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, in fact, he says that because of multi-tasking and multi-walking, he lost it in the process. But he agrees that it needs to be recommitted.

The Temporary Deputy Chairman (Hon. Kajwang’): On intervention, Member for Kigumo.

Hon. Kamau: Hon. Temporary Deputy Chairman, actually it was not intervention, but contribution. My only concern was that, indeed, most of us are of the opinion that with respect to 6(a), there should be some caveat, such that the approval has to be sought from the Cabinet Secretary. When I wanted to bring an amendment, you have ruled it out of order.

The Temporary Deputy Chairman (Hon. Kajwang’): No, I have not spoken to it. Do not put words in my mouth.

Hon. Kamau: No, the Clerks-at-the-Table. Therefore, I do not know what else we are supposed to do.

So, can I move the amendment, hon. Temporary Deputy Chairman?

The Temporary Deputy Chairman (Hon. Kajwang’): What is exercising the mind of the Chair at this point is that a Member has made an amendment which there has been ventilation from the Floor and, because of the persuasion or otherwise of hon. Members, he has withdrawn. Another hon. Member is rising in his place to propose the same amendments. It is exercising my mind because my mandate is to make the debate as fair as it can get. It is part of my mandate to make sure that the debate is handled in the fairest manner to all hon. Members available. So, I am trying to do the best I can, which is not perfect, I will travel on this amendment paragraph by paragraph. If you, hon. Members, negative those amendments, so be it. If you approve them, so be it. I am going to go by the amendments as proposed by the Chairman of the Committee and as it appears on the Order Paper. So, retain your suggestions for the voting. The way the voting will come is what the National Assembly shall have decided on this issue.

*(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)*

The Temporary Deputy Chairman (Hon. Kajwang’): We will now go to 25E(b).

New Clause 25E(b)

NEW PARTS

THAT, the following new Parts be inserted immediately after Part II –

PART II A – VALUE ADDED TAX

Insertion of new
section 25A in No.
25 of 2013

25A. The Value Added Tax Act, 2013 is amended by inserting a new section 25A as follows –

Withhol
ding
Value
Added
Tax.

25A.(1) Government Ministries, Departments and agencies shall, on purchasing taxable supplies, withhold six percent of the tax payable thereon at the time of paying for the supplies and remit the same directly to the Commissioner.

(2) Subsection (1) shall not apply to taxable supplies for official aid-funded projects.

(3) For the avoidance of doubt, the withholding of tax under subsection (1) shall not relieve the supplier of taxable supplies of the obligation to account for tax in accordance with this Act and the regulations.

Amendment to
section 68 of No.
25 of 2013.

25B. Section 68 of the Value Added Tax Act, 2013 is amended by inserting the following new subsection immediately after subsection (4) –

“(4A) For the avoidance of doubt and despite any other provision of this Act or other written law for the time being in force, the expression “remission of tax” in subsection (4) shall, in the case of an official aid-funded project, be deemed to include express provision in the agreement in respect of that project for the remission of tax on any taxable goods or services supplied for the implementation of the project, where the agreement was concluded before the commencement of this Act:

Provided that a remission to which this subsection applies shall remain in force for a period of five years with effect from the commencement of this subsection”.

Amendment of the
First Schedule to
No. 35 of 2013

25C. The First Schedule to the Value Added Tax Act, 2013 is amended –

(a) in Section A of Part I, by –

- (ii) inserting the following tariff numbers and descriptions thereof in item 38 immediately after tariff number 8802.20.00 –

8802.30.00	Aeroplanes and other Aircraft on unladen weight exceeding 2,000 kgs but not exceeding 15,000 kg.
8802.40.00	Aeroplanes and other Aircraft of unladen weight exceeding 15,000 kgs.
8803.30.00	Other parts of aeroplanes or helicopters.

(iii) by inserting the following new item immediately after items 46 –

47. Tractors.

48. Inputs or raw materials supplied to solar equipment manufacturers for manufacture of solar equipment or deep cycle-sealed batteries which exclusively use or store solar power as approved from time to time by the Cabinet Secretary for the National Treasury, upon recommendation by the Cabinet Secretary responsible for energy and petroleum.

- (b) In Part II by inserting the following new paragraph immediately after paragraph 18

19. The supply of taxable services in respect of goods in transit.

(New Clause read the First Time)

(Question, that the New Clause be read a Second Time, proposed)

(Question, that the New Clause read 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)

The Temporary Deputy Chairman (Hon. Kajwang’): We will now go to 25E(c).

(New Clause 25E(c))

PART II B – CUSTOMS AND EXCISE

25E. Section 117A of the Customs and Excise Act is amended by inserting the following new subsection immediately after subsection (5)–

(6) This section shall not apply to goods imported -

(a) for the implementation of an official aid - funded project;

Cap.179

(b) for official use by a diplomatic mission, institution or organization gazetted under the Privileges and Immunities Act; or

(c) by the United Nations or its agencies.

(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 33A

Hon. Were: Hon. Temporary Deputy Chairman, after wider consultations with various hon. Members, I have decided to withdraw my amendment.

(Proposed amendment by hon. Were withdrawn)

Hon. Members: No!

(Several hon. Members stood up in their places)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Were will be heard without interference. Can everybody sit down? Just resume your seats.

Hon. Were: Hon. Temporary Deputy Chairman, what I have said is that I have withdrawn this amendment after serious consultations.

Hon. Members: No!

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, I do not want to poison the debate and so, I will give you enough opportunity to ventilate yourself and then the Chair will express himself ultimately. So, let me start with a Member who seems to be very agitated.

Hon. Oyoo: Thank you very much, hon. Temporary Deputy Chairman. This day will go into the history of the workers of this country as the saddest day in their lives. Those workers include hon. Members of Parliament.

The Chair is a Chair of a Committee. Last time when we were deliberating on the new NSSF Act, a mischievous Member of the Committee came and pushed in the amendment in the last minute in the absence of some Members. Today, again, after we have exhaustively walked the talk – we have exhaustively deliberated on this matter as a Committee and agreed that this amendment be brought before the Floor of this House in the interest of the workers of this country--- Those are workers who have been manipulated and are suffering as a result of unscrupulous politically-correct officers who are plundering their savings. That is the case and yet the Chair comes here and tells us that he has consulted seriously. He has consulted with whom? All the Members are here. We agreed yesterday and that is why the matter is here. I also want you to know that this is the poorest performing Committee in the National Assembly. We are lagging behind in reports---

The Temporary Deputy Chairman (Hon. Kajwang’): Order! Order! Learn something; that you will not impute improper motive on a Member unless you bring a substantive Motion before the Assembly.

Hon. Midiwo: Thank you, hon. Temporary Deputy Chairman. Let me plead with my colleague, hon. Oyoo to calm down. I have been a Member of this House for many years. Under your leadership, there seems to be a very bad habit being practised by Members and, particularly, Committee leadership.

There is no way the Chairman of a Committee, who is just a vehicle via which an issue gets to the Floor, can purport to withdraw an amendment on behalf of a Committee.

(Applause)

If a meeting was held, the Chair owes this House an explanation. We need to have even the minutes of the Committee.

An hon. Member: Yes!

Hon. Midiwo: But you can see obviously Members are protesting. The Chair is not the Committee. He is just a leader of the Committee. That is seriously out of order.

Hon. Muchai: Thank you, hon. Temporary Deputy Chairman. I want to begin by saying that I am a Member of the Departmental Committee on Labour and Social Welfare. I believe that there are quite a number of Members in the House who are members of that Committee.

Hon. Temporary Deputy Chairman, the guidance you are about to give on this issue will make or break the functions or the role of a Departmental Committee. This is for a simple reason. A Committee has been convened, sat, deliberated on a matter, actively engaged on that matter and finally came to a position collectively. It is being said

by the Chairman of the Departmental Committee on Labour and Social Welfare that after consultations with a number of Members--- It is not on the basis of those consultations that a Chairperson of a Committee can withdraw a matter. This has to be in a properly constituted and convened Committee meeting. This is where the matter is referred back to, debated and either agreed or disagreed on before a Chairman of a Committee can be allowed to withdraw it.

I urge the Temporary Deputy Chairman to rule the Chairman of the Departmental Committee on Labour and Social Welfare as out of order in purporting to withdraw a position that had been agreed in the Committee.

Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Thank you. Member for Uriri.

Hon. Kobado: Thank you, hon. Temporary Deputy Chairman. It is unfortunate that we are witnessing this happening in this House. That is because there are several members of the Departmental Committee on Labour and Social Welfare Committee who are seated today here and I want to confirm to you that no consultations have been made with the members of the Departmental Committee on Labour and Social Welfare.

(Applause)

Hon. Temporary Deputy Chairman, the National Social Security Fund (NSSF) is extremely sensitive and if this is going to continue, then I think it is only prudent that the Chairman resigns.

Hon. Temporary Deputy Chairman, this issue has threats that we wanted to interrogate today and if we do not do so, the threats will turn into disasters and it is my position that we request our dear Chair to step aside before we take any action. Thank you.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Thank you very much. Member for Mount Elgon.

Hon. Serut: Thank you, hon. Temporary Deputy Chairman. Let me declare my interest. I am a member of the Departmental Committee on Labour and Social Welfare. There were no consultations to the effect that this particular amendment was to be withdrawn. If there is anybody who is in his or her sensible mind who thinks it should be withdrawn, I do not think that is in the minds of the members of that particular Committee.

Hon. Temporary Deputy Chairman, I want to plead with you that this particular amendment should not be withdrawn. We should be given time to explain why we have brought this particular amendment. Thank you.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Thank you. We are going to have very few people on this. Member for Homa Bay.

Hon. (Ms.) Nyasuna: Thank you, hon. Temporary Deputy Chairman. I am distraught at the move by the Chair of my Committee; the Departmental Committee on Labour and Social Welfare. It was not a simple exercise to put this amendment on the Order Paper to be moved by the Committee. Many members were even willing to move

this amendment as individual Members. But the Committee reached a decision after extensive discussions that this amendment would be moved by the Committee.

Hon. Temporary Deputy Chairman, it is total blackmail and the Chair should explain why he is withdrawing this amendment if there are forces that are coming in outside of the Committee. The Chairman of the Departmental Committee on Labour and Social Welfare is moving this amendment in trust and on behalf of Committee members who sat for long hours to reach this decision.

Hon. Temporary Deputy Chairman, we should not be bullied or blackmailed by committee chairs. If the Chair is unwilling to move an amendment on behalf of the Committee, he should state it so that individual members can move such amendments. But to reach here and withdraw the amendment is a major act of cowardice and I would urge my own Chair, whom I respect, to resign on the basis of this act of cowardice.

(Applause)

(Loud consultations)

The Temporary Deputy Chairman (Hon. Kajwang’): All right. I must make a decision one way or another. Member for Ainabkoi, let me ask something as those contributions are coming. The Chair of the Committee on Finance, Planning and Trade, let me just inquire because I am putting all this in my mind as I reflect on it.

(Loud consultations)

Order! You know when you throw words, this is a House of persuasion, and you may make a Member who was just about to be persuaded by your point of view to be further from where he was. So, take a position that helps the other Member to come nearer to your position as possible. Now, Chair, your Committee was the one where all the amendments from Members were sent to. Is that correct?

Hon. Langat: Yes, hon. Temporary Deputy Chairman. First of all, if you note---

The Temporary Deputy Chairman (Hon. Kajwang’): Is that correct, I am just asking you a few questions.

Hon. Langat: Yes, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Did you make a Report to the House?

Hon. Langat: Hon. Temporary Deputy Chairman, the summary of the Report we have is the amendments we have as a Committee and if you realize, we deleted all the amendments related to NSSF. That is because it was very clear there were no prior consultations and we said, let us defer all those amendments pending further discussions. Coming to the point, unless this will be the first board to say it cannot continue because two people are absent, that amounts to killing NSSF. You are saying the board has quorum---

(Loud consultations)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Ainabkoi, make it very short and try to give us a solution as much as possible.

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, let me situate this matter correctly.

The Temporary Deputy Chairman (Hon. Kajwang’): Order! Order!

Hon. Chepkong’a: May I situate this matter. Hon. Jakoyo is my very good friend and he normally listens to me. It is important for us to situate this matter correctly. Firstly, there is no amendment on NSSF Act under the Finance Bill, proposed by Government itself. So, to purport to introduce an amendment when there is none on the NSSF Act itself contravenes our own Standing Orders. The sponsoring Committee as you have correctly pointed out, is the Committee of Finance, Planning and Trade.

Just like we were the sponsoring Committee on the miscellaneous amendments, if we wanted to reject any amendment from any committee, we would not have brought it. It would have been incumbent upon any Member thereafter to bring an amendment in the normal manner. You have heard that the Chairman of the Committee on Finance, Planning and Trade---

(Loud Consultations)

Hon. Temporary Deputy Chairman, it is important that you listen to me. You, better listen to me.

The Temporary Deputy Chairman (Hon. Kajwang’): I hear you.

Hon. Chepkong’a: Now, Standing Order No.180, I am on a point of order. It says: “Subject to the provisions of these Standing Orders and the directions of the committee, a chairperson of a committee shall-

(b) perform the functions and exercise the powers assigned to the office of the Chairperson by the committee, resolutions of the Assembly or legislation.”

He has said that in consultation with the Chair of the Committee of Finance, Planning and Trade, this particular amendment is here in an unprocedural manner, and, therefore, he has withdrawn it.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Thank you, one minute, Member for Kasipul Kabondo.

Hon. Onyango: Thank hon. Temporary Deputy Chairman. Allow me to put it on record that I am a Member of this Committee. There are provisions of the Finance Bill that were also to be amended touching on the National Social Security Fund and National Hospital Insurance Fund. This is about the workers. The matter was referred to us as a Committee to deliberate and make a decision. Our Committee sat for long and mandated the Chairman to bring those amendments. I would have been so glad as a Member of Parliament to allow them, but let them be defeated by the tyranny of numbers before the Members. But for so long, the Members I have respected have deliberately withdraw the amendment like that. Parliament is represented in the Parliamentary Service Commission where their matters are handled. Whatever we have here is about workers’ money and we are talking about the representation of the workers.

The Temporary Deputy Chairman (Hon. Kajwang’): You are going into the merits. Members for Suna East, one minute.

Hon. Nuh: Hon. Temporary Deputy Chairman, the way you can see the Members of the Labour and Social Welfare Committee speaking, this is a matter---

(Loud consultations)

Protect me from K'Oyoo hon. Temporary Deputy Speaker

The Temporary Deputy Chairman (Hon. Kajwang'): No, he is hon. Oyoo.

Hon. Nuh: Hon. Oyoo yes. This matter had been deliberated very well at the level of the Committee of Labour and Social Welfare. The matter has been taken and referred to the Finance Committee by the same Committee. At that point, when they were referring this matter to that Committee as the parent Committee, there was no objection from the Chair of the Finance Committee.

The Temporary Deputy Chairman (Hon. Kajwang'): All right. I hear also that one. Hon. Members, now I am in a position to express myself and I will say the following: I just made a decision a few minutes ago about whether an amendment could be made in respect to a matter that has been withdrawn and Members have ventilated on. It is said that when something goes up, it comes down. This is exactly where I find myself on the facts of the issue. I have been looking at my Standing Orders and it does not help me to see the responsibility of a Chair of Committee. I am trying to differentiate a Chair and a Member. It is very clear how the Bills are dealt with. It is not very clear how amendments will be dealt with in the Third Reading. I have looked at all factors that Members have said, and I am unable to find a Standing Order by which I can stop a Member from withdrawing any particular issue which has been presented before the Assembly. But because this Chair happens to operate not in a vacuum, I will pronounce myself as this: When we have finished the amendments, that particular New Clause will stand recommitted and it will be your business whether you want to persuade each other to bring an amendment and support it, or bring an amendment and defeat it and do whatever it is you want to do in your capacity as Members of the Assembly. That way, it will be a decision of the House. It will not be a decision of the Chair. So, I rule that there is nothing within the Standing Order by which I am able to force a Member not to withdraw his amendment. I suggest that we are able to recommit this tomorrow so that you have sufficient time through the night to think through this, so that we make legislation which is from the National Assembly. Next Clause.

(Clause 33A recommitted)

Before I call out the next clause, let us deal with the amendment by the Member for Kipipiri, on page 395.

New Clause 33A

Hon. Gichigi: Hon. Temporary Deputy Chairman, because we have not consulted widely on those issues, I wish to drop the proposed New Clause 33A.

The Temporary Deputy Chairman (Hon. Kajwang'): Okay, amendment dropped!

*(Proposed New Clause 33A
by hon. Gichigi dropped)*

Next clause!

New Clause 33B

Hon. Gichigi: Hon. Temporary Deputy Chairman, after further consultation with the necessary stakeholders, I wish to drop this clause as well.

*(Proposed New Clause 33B
by hon. Gichigi dropped)*

The Temporary Deputy Chairman (Hon. Kajwang’): Next clause!

New Clause 35A

Hon. Gichigi: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, the following New Clause be inserted immediately after Clause 35-
Amendment
Of section
36 of No.45
of 2013

35A. Section 36 of the National Social Security Fund Act, 2013 is amended-

(a) in subsection (4) by inserting the words “the Fund or” immediately after the words “name from”;

(b) by deleting subsection (5) and substituting therefor the following new subsection-

“(5) Where the pension is purchased from the Fund or a Registered Insurer, the terms and conditions applicable to such pension including options elected by the member and the determination of any benefits arising on his death, shall be agreed between the member and the Fund or Registered Insurer and shall be set out in writing by the Fund or Registered Insurer”.

Hon. Temporary Deputy Speaker, as we speak, a member of the NSSF who gets his money can actually buy what we call an “annuity” from any existing insurance company. You can actually put your money in an insurance company and negotiate with them to be giving you an interest per year.

*(Hon. A.B. Duale entered the Chamber
without bowing to the Chair)*

The Temporary Deputy Chairman (Hon. Kajwang’): Order, Leader of Majority Party! Go back to the Bar!

Hon. A.B. Duale:---(*off-record*)

The Temporary Deputy Chairman (Hon. Kajwang’): Order! Have you not read the Standing Orders for the two terms you have been in this House? This House proceeds in Committee as though it is in the House constituted as the National Assembly.

(Hon. A.B. Duale went to the Bar and bowed to the Chair)

Proceed, hon. Gichigi.

Hon. Gichigi: Hon. Temporary Deputy Chairman, what NSSF members wish to do is open a section or a service where its member can decide to take his money and buy an annuity from an existing insurance company for purposes of earning an interest, as negotiated. The NSSF wishes to establish that section, so that a member can decide to retain his money and buy an annuity from the NSSF. So, members will have the option of either going to invest their money in an insurance company and earn an interest or buy the same annuity from NSSF, negotiate for an interest and be getting it from the NSSF. So, this amendment simply seeks to give the NSSF the capacity to establish that particular section. It is not about detaining workers’ money. Workers have the option of moving out with the money or retaining it with NSSF.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Thank you very much.

(Question of the new clause proposed)

(New clause read the First Time)

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

Hon. Ng’ongo: Hon. Temporary Deputy Chairperson, I oppose. An amendment of such magnitude affecting even possibility of investing funds of pensioners, you need to engage extensively and discuss with even the employees’ representatives.

COTU needs to be involved and all the other groups that are for the welfare of employees. Just bringing this amendment here at this point in time without even subjecting it to Committee, would do this particular legislation injustice.

I oppose this amendment totally.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Thank you. Let us hear from the hon. Member for Kitui Central.

Hon. Mulu: Hon. Temporary Deputy Chairman, I wanted to contribute on the earlier matter. Therefore, about this one, I am just annoyed beyond control. Let me keep quiet.

The Temporary Deputy Chairman (Hon. Kajwang’): Okay. You will have time to do so. Can I put the Question?

An hon. Member: Yes.

*(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 38A

Hon. Were: I beg to move:-

THAT the Bill be amended by inserting the following New Clause after Clause 38-

38A. The National Social Security Fund Act (No.45 of 2013) is amended in the second schedule by deleting paragraph 7 and substituting therefor the following-

7. Notwithstanding any provision of this Act to the contrary, any person who immediately before the commencement of this act is-

(a) an employee of the previous Fund shall, on the commencement date, continue in office and is deemed to have been appointed to this office by the Board established under this Act.

(b) a member of the Board of Trustees shall, on the commencement date, continue in office and is deemed to have been appointed to that office under this Act effective from that date.

Going by the mood of the House and on the issue of consultation, I would wish to withdraw this New Clause 38A.

(Proposed New Clause 38A by hon. Were withdrawn)

Hon. Korir: I beg to move:-

THAT, the Bill be amended by inserting the following New Clause immediately after clause 38-

Amendment of Second Schedule Section 7 of Act No.45 of 2013

38A. National Social Security Act, 2013, is amended in the second Schedule by inserting the following proviso after paragraph 7 – “Provided that the existing board members shall not be eligible for re-appointment after the expiry of their current term, if they have served more than six years in the board”

Hon. Temporary Deputy Chairman, because of what is going on, I would like to drop this Clause too. It seems as if the issues concerning NSSF have not been well handled. Therefore, I drop this clause and I propose we drop all the other ones that involve NSSF until we consult. I am a member of that Committee; we drop all of them until we consult very well.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Amendment dropped.

(Proposed New Clause 38A by hon. Korir withdrawn)

New Clause 39

The Temporary Deputy Chairperson (Hon. Kajwang’): All right. Chairman of the Departmental Committee on Finance, Planning and Trade.

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

Amendment of THAT, the following New Clause be inserted immediately after Clause 38 –
Section 2 of 39. Section 2 of the Public Finance Management Act, 2012 is
No.18 2012 amended by inserting the following definition in proper
alphabetical sequence –

Government to government loan” means any loan that is negotiated with or covered by any government or national government entity including any government Export Credit Agency (ECA) or investment insurance agency or financial institution that acts as an intermediary between the Government and exporters to facilitate export financing, whether by means of buyer or supplier credit, credit insurance, financial intermediary loans, guarantees, organization for Economic Co-operation and Development (OECD) tied-aid credit or officially supported export credit depending on the mandate granted to such export credit by the relevant government for the purposes of facilitating trade investment between the two countries.

Hon Temporary Deputy Chairman, what the amendment seeks to achieve in terms of the Public Financial Management (PFM) Act, is to expand the definition of “Government loan”. When we did amendments on the Floor of this House to the PFM (Amendment) Bill, many of the projects which had already been engaged stopped because of the new changes. That is because we have *quasi* government bodies which, after the amendment, they are not supposed to pay directly to their creditors. Therefore, I want to propose that amendment because many of us here have projects which have been funded by different bodies. This seeks to include those international bodies which are semi-government in the definition of “government to government loans.” Therefore, all the projects that have stalled can continue because the law accommodates all the other bodies.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Thank you very much.

(Question of the new clause proposed)

(New clause read the First Time)

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

Hon. Ng'ongo: Hon. Temporary Deputy Chairman, first of all, this House will recall that we were very unhappy that the Senate had proposed an amendment using the County Allocation of Revenue Bill to the Public Finance Management Act. I want to also inform this House that already the Treasury has proposed a raft of amendments to the Budget and Appropriations Committee on the PFM Act. The PFM Act needs not to be amended through other legislations at will.

The Temporary Deputy Chairman (Hon. Kajwang'): Are you suggesting that this amendment has the effect of amending the PFM Act?

Hon. Ng'ongo: Yes. I urge this House to oppose this amendment because it is so ambiguous. If you read it, it does not even make sense.

The Temporary Deputy Chairman (Hon. Kajwang'): But those are two things; whether it is ambiguous and it does not make sense is another matter. Your issue is that it amounts to an amendment to the PFM Act.

Hon. Ng'ongo: It is proposing to amend the Public Finance Management Act, 2012, under Section 2, by creating a definition for "government to government loan, which is not even in the parent Act. I have looked at this Act and even though it is saying expanding, I do not know what it is expanding. If you look at the PFM Act, there is no definition of "government to government loan". There is only public debt and such things. So, we need to be clear and consistent. This amendment is not necessary. There is no urgency.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Ainabkoi!

Hon. Chepkong'a: Thank you, hon. Temporary Deputy Chairman.

(Loud consultations)

The Temporary Deputy Chairman (Hon. Kajwang'): There are many of us who are awake and when you are awake, you get recognised.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, hon. Mbadi will remember that last year, during the Finance Bill, an amendment was brought to exempt loans from Government to Government from the provisions of the Public Procurement Act. The problem that occurred is that there was no definition of what "government to government loan" is. In 2012, the Belgium Government gave the Kenya Government a loan that was negotiated by the former Prime Minister for water to be taken from my constituency to Iten Township.

Hon. Nuh: You refused to vote for him.

Hon. Chepkong'a: Forget about that. That is beside the point.

The Temporary Deputy Chairman (Hon. Kajwang'): Do not even think about it, Chair!

Hon. Chepkong'a: Hon. Junet! He knows---

The Temporary Deputy Chairman (Hon. Kajwang'): Order! I know that you know how to keep your patience. So, practise it now. Proceed.

Hon. Chepkong'a: He knows he has a lot of---

The Temporary Deputy Chairman (Hon. Kajwang'): Proceed!

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, you know that hon. Junet has---

The Temporary Deputy Chairman (Hon. Kajwang’): You know you will not be interrupted, but you will allow to be interrupted if you go that direction.

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, that loan could not be dispersed because part of the loan was being given by Exim Bank, which is owned by the Belgium Government. In the interpretation, it is not indicated what “government to government loan is”, but this particular interpretation, which is purely an interpretation, in Section 2 of the PFM Act, states what “government to government loan” is. This includes negotiated loans between governments. This is purely government to government.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I want to indulge my friend, hon. Mbadi. There are a number of projects and I want to cite one in Marsabit County; the Wind Project funded by the Spanish Government. Hon. Mbadi is aware that it also came last year in the PFM Act. Until now, those projects have stalled. This amendment seeks to define “government to government” loans to include negotiated or covered by any government or national Government entity, including export credit agency or investments insurance agency.

Hon. Temporary Deputy Chairman, this is something which is very real. If hon. Lekuton and hon. Ganya of Marsabit County were here, they would tell you what they are going through. The Spanish Government wants to release the money directly to those companies which are involved in that project; the wind project, for example in Marsabit. This has become a serious issue and I want to indulge my friend, hon. Ng’ongo, that this came last time in the--- There are many interpretations.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. That is the last speaker on this. Let us put it to vote.

(The new clause was read a Second Time)

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

(The new clause was read a Second Time)

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

Clause 3

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, we are now in Clause 3.

Hon. Langat: Hon. Temporary Deputy Chairman, I do not know what you need me to do because somebody else was requesting a recomittal.

The Temporary Deputy Chairman (Hon. Kajwang’): Well, when a matter is recommitted, it comes back to the House afresh. So, we are reconsidering it afresh. Let us go through the Motion again.

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

THAT, Clause 3 be amended in subparagraph (a)(ii), by-

(a) deleting the word “paragraph” and substituting therefor the word “paragraphs”;

(b) inserting the following new paragraph immediately after the proposed paragraph (h)-

“(i) compensation for property acquired by the Government for infrastructure development”.

The Temporary Deputy Chairman (Hon. Kajwang’): You may not need to take long in explaining it because you had spoken to it.

Hon. Langat: Hon. Temporary Deputy Chairman, as I had explained, this seeks to recognize tax on compensation of property acquired by the Government for infrastructure development as taxable. That is because we have withdrawn the other amendments. I may not even say the other details.

(Question of the amendment proposed)

Hon. Members: On a point of order!

The Temporary Deputy Chairman (Hon. Kajwang’): No, we cannot go by points of order. The Chair sees what is happening. Clarity or otherwise is a debating issue. It is not a point of order. The matter has been recommitted. When an issue is recommitted before the House, it is a fresh issue. So, debate it as a fresh issue. Let me hear hon. Makali.

Hon. Mulu: Hon. Temporary Deputy Chairman, I just need your guidance on this matter.

(Loud consultations)

The Temporary Deputy Chairman (Hon. Kajwang’): Order, hon. Members! You have heard remarks to the Chair who brought you back to a vote. Can I have order in the House? Those Members on the gangway consulting, please--- You have heard the remarks from the Chair. The Chair has returned you to a vote. So, this time, vote knowing what you are talking about and vote consciously so that we get it over with.

Hon. Mulu: Hon. Temporary Deputy Chairman, what I was saying is that I need your guidance on this matter because, based on Clause 3 and the earlier decision, we have dropped a number of other amendments in Clause 12 and other clauses. We dropped those amendments based on Clause 3. So, even as we debate this clause, we need to bear in mind that we have already dropped other amendments based on the decision on that clause. Can you guide us on how we can move forward? Do we re-open all the other clauses?

The Temporary Deputy Chairman (Hon. Kajwang’): No! Just persuade hon. Members one way or the other and we take a vote and it is done.

(Loud consultations)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, what the hon. Member for Kitui Central has said is very important. Many amendments have been made in considering the amendment that we made here. I plead with the Chair to take us through the proposed amendments subject to withdrawal of items h(i) and then everything will be cleaned. That is because we also must use our time well. We do not want to sit here until midnight.

Hon. Langat: I think it is good for the Temporary Deputy Chairman to guide the House. Whoever did the recommittal of Clause 3 should tell us what his intentions were. According to me, I have accepted---

The Temporary Deputy Chairman (Hon. Kajwang’): I think you are very legitimate. It is correct. He does not know the reason why the person requested for the recommittal. The Chair is saying that it is not upon him to explain. It is upon the Member for Kipipiri to explain because he is the one who moved for the recommittal.

Yes, the Member for Kipipiri.

Hon. Gichigi: Thank you, hon. Temporary Deputy Chairman. When we were dealing with this clause, the Chairman of the Departmental Committee on Finance, Planning and Trade indicated that it was dealing with compulsory acquisition of property. I have since consulted him. Since the original provisions in the clause are not dealing with that, in my humble opinion, those are clauses that I am actually supporting.

The Temporary Deputy Chairman (Hon. Kajwang’): Order! Just a minute! You know you can take the Chair round until the Chair gets confused, but this Chair will not get confused. I will give you the background of this amendment. There was a withdrawal of h(i), a question was put and the “Nays” had it. This means that it was negated. After that, we were voting on the clause without the amendments. That was going back to the Bill as it were. Then a few Members, notably the Member for Kigumo took issue with Clause 3(g). The Chair by oversight because the Chair can only act by oversight – everything is correct and it cannot be a mistake – took the House to a vote. When hon. Members were voting for the first time, they knew what they were doing.

So, now it is back to you to now express yourself and let it be in the HANSARD that you knew what you were doing. So, perhaps, to be fair to you, can I have the Member for Kigumo making a small discussion on this and then we can put it to vote? The situation where we are is this: We are not considering what you see there as Clause 3(1). That one was disposed of. The point where we are is that we are back to the clause in the Bill. So, the question is that we want to vote on the Bill as it is. That is where we are. However, Members notably through the hon. Member for Kigumo--- So, I will propose the Question.

Hon. Kamau: Hon. Temporary Deputy Chairman, my understanding of this is that when you put the Question, indeed, the Ayes had it and not the Noes.

The Temporary Deputy Chairman (Hon. Kajwang’): The HANSARD will bear me out. If I remember very clearly, we are back to the original Bill before the amendment. So, I have proposed the Question on Clause 3 as gazetted. Since I heard your contribution around this subject, I have allowed you to speak.

Hon. Kamau: Hon. Temporary Deputy Chairman, then in that case I am okay with it. Let it be in the Bill as it is right now.

(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 3 as amended agreed to)

Schedule

Hon. Langat: Hon. Temporary Deputy Chairman, I did consultations with the Chair of the Departmental Committee on Energy, Communication and Information and I wish to drop my amendments in favour of his amendments.

The Temporary Deputy Chairman (Hon. Kajwang’): Not in favour. Just drop or withdraw your amendments. Speak to the HANSARD.

Hon. Langat: Hon. Temporary Deputy Speaker, after consultations with the Chairman of the Departmental Committee on Energy, Communication and Information, I wish to withdraw the amendment.

(Proposed amendment by hon. Langat withdrawn)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Member for Kigumo.

Hon. Kamau: Hon. Temporary Deputy Chairman, this specific amendment basically was to define the commissioning plan which is on page 2771 and, indeed, the definition is as contained in the Order Paper and I move that it actually goes because there is no definition. There is absolutely none and, therefore, nobody understands the words “the commissioning plan”.

(Schedule agreed to)

Clause 2

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

THAT, Clause 2 of the Bill be amended by inserting the following proviso at the end of the proposed new definition of “permanent establishment” –

“Provided that –

(a) the permanent establishment of the person shall be deemed to include, the permanent establishment of the person’s dependent agent; and,

(b) in paragraph (a), the expression “dependent agent” means an agent of the person who acts on the person’s behalf and who has, and habitually exercises authority to conclude contracts in the name of that person”.

Hon. Temporary Deputy Chairman, this is just an extension of the definition of “permanent establishment” to include somebody who is outside the country and has an agent here. So, that definition includes the permanent establishment of the entity which is outside the country and has an agent here. So, it is just an extension because we have companies which are outside Kenya and have agents here. We make them to state that their permanent establishment is where their agent is.

The Temporary Deputy Speaker (Hon. Kajwang’): All right. Thank you, very much.

(Question of the amendment proposed)

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

(Clause 2 as amended agreed to)

PART IIA – VALUED ADDED TAX

The Temporary Deputy Speaker (Hon. Kajwang’): Chair, just look at the Supplementary Order Paper on page 390 and 391, there is the heading which appears there as Part IIA – Value Added Tax. Can you pronounce yourself on the HANSARD, if you still propose that amendment on the heading?

Hon. Langat: Hon. Temporary Deputy Chairman, I need your guidance because, we passed Clause 25A. Unless you are saying I propose the title Part IIA- Value Added Tax be part of the Bill. Is that what you want?

The Temporary Deputy Speaker (Hon. Kajwang’): Okay, I will help you. Let me pronounce myself on the HANSARD, that the title Part IIA – Value Added Tax, be part of the Bill.

(Part IIA – Value Added Tax agreed to)

PART IIB – CUSTOMS AND EXCISE

The Temporary Deputy Speaker (Hon. Kajwang’): On page 391, I put the Question that the title Part IIB- Customs and Excise be part of the Bill.

(PART IIB – CUSTOMS AND EXCISE)

Next Clause.

Clause 1

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Mover, the Chair of the Committee.

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

THAT, Clause 1 of the Bill be amended –

(a) in paragraph (a), by deleting the expression “5” and substituting therefor the expression “5, and paragraph (i) of the proviso”;

(b) in paragraph (b), by deleting the expression “34”;

(c) by inserting the following new paragraph immediately after paragraph (c) –

(cc) paragraphs (ii) and (iii) of the proviso to section 5; sections 25A, 25B, 25C, 25D, 25E and 39, on publication;

(d) in paragraph (d), by inserting the expression “22A” immediately after the expression “22”.

Hon. Temporary Deputy Chairman, this is mainly to rearrange that section, given the amendments we have passed.

(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 1 as amended agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): Next Clause.

(Title agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): Chair of the Committee.

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move that the Committee of the whole House has considered the Finance Bill (National Assembly Bill No. 26 of 2014) and approved the same with amendments.

The Temporary Deputy Chairman (Hon. Kajwang’): You have not finished your address, have you?

Hon. Langat: What else?

The Temporary Deputy Chairman (Hon. Kajwang’): All right. I will put the Question. Chair, can I hear you again on your Motion?

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move that Committee of the whole House has considered the Finance Bill, (National Assembly Bill No. 26 of 2014) and approved the same with amendments.

The Temporary Deputy Chairman (Hon. Kajwang’): Apologies for those consultations. They were necessary. The Member was asking for the avoidance of doubt the effect of the amendment we have carried in the Schedule relating to paragraph 1 and 12, and I have just directed him because he moved the 9th Schedule as a whole. Paragraph

9 and 12 have been carried in the amendment. Thank you very much for raising that. Chair!

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Finance Bill (National Assembly Bill No.26 of 2014) and its approval thereof with amendments and seek leave to sit again tomorrow.

Hon. Gaichuhie seconded.

(Question put and agreed to)

(The House resumed)

*[[Hon. Deputy Speaker (Dr.)
Laboso] in the Chair]*

REPORT AND THIRD READING

Hon. Kajwang’: Hon. Deputy Speaker, I beg to report that the Committee of the whole House has considered the Finance Bill (National Assembly Bill No.26 of 2014) and approved the same with amendments and seeks leave to sit again tomorrow.

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

I request hon. Gaichuhie to second the Motion.

Hon. Gaichuhie: Hon. Deputy Speaker, I beg to second my Chairman on this very touchy Bill.

(Question proposed)

Hon. Deputy Speaker: Yes, hon. Mbadi!

RE-COMMITTAL OF CLAUSES 24 AND 33A

Hon. Ng’ongo: Hon. Deputy Speaker, I beg to move:-

THAT, the Motion be amended by adding the words “subject to re-committal of Clauses 24 and 33A.”

Hon. Deputy Speaker, this is in line with the requests by hon. Chepkong’a and hon. Gladys Wanga that the two clauses be recommitted, so that we can transact them tomorrow.

Thank you.

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

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

Hon. Deputy Speaker: Hon. Members, please, note that those two clauses are the only ones that will be recommitted tomorrow. No other clause will be re-committed in tomorrow's sitting.

ADJOURNMENT

Hon. Deputy Speaker: Hon. Members, it is now time to adjourn the business of the House. Therefore, the House stands adjourned until tomorrow, Thursday, 28th August, 2014, at 2.30 p.m.

The House rose at 8.00 p.m.