

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 25<sup>th</sup> June 2015

The House met at 2.30 p.m.

*[The Deputy Speaker  
(Hon. (Dr.) Laboso) in the Chair]*

### PRAYERS

### PETITIONS

#### ILLEGAL ACQUISITION OF TOWNSHIP PRIMARY SCHOOL LAND

**Hon. Njuki:** Thank you, Hon. Deputy Speaker, for giving me this opportunity to present this petition by the residents of Chuka/Igambang'ombe Constituency on the alleged grabbing of public land belonging to Township Primary School.

I, the undersigned, on behalf of the residents of Chuka/Igambang'ombe Constituency, draw the attention of the House to the following:-

1. That, Article 60(1) of the Constitution states that land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable and in accordance with the principles of law;
2. That, the Constitution classifies public land as land in which no individual or community ownership can be established by any legal process and that public institutions, for instance; schools, hospitals, libraries and sports arenas are located on public land;
3. That, there have been numerous cases of grabbing of public land, especially that belonging to public schools;
4. That, Chuka Township Primary School located in Chuka/Igambang'ombe Constituency is a public school and that a private developer has allegedly grabbed part of the school's land and erected a fence;
5. That, Chuka Township Primary School management has tried in vain to acquire the title deed for the school land;
6. That, cognizant of the fact that the school in question is a public school and offers education to over 700 pupils and that every citizen has a fundamental right to education as stipulated under Article 53(1)(b); and,
7. That, the matter in respect of which this petition is made is not pending before a court of law.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Lands:-

(i) Recommends that the Ministry of Lands urgently fast-tracks issuance of a title deed to Chuka Township Primary School; and,

(ii) Intervenes to ensure that the petitioners' plight is addressed.

Your petitioners will ever pray.

**Hon. Deputy Speaker:** Thank you, Hon. Njuki. The petition stands committed to the Departmental Committee on Lands.

Hon. ole Sakuda!

INQUIRY INTO COMPULSORY ACQUISITION OF  
LAND PARCEL L.R. NO. NGONG/NGONG/1959

**Hon. ole Sakuda:** Thank you very much, Hon. Deputy Speaker. I wish to present the following public Petition by residents of Kajiado West Constituency, Kajiado County, on the inquiry into the compulsory acquisition of Land Reference No. Ngong/Ngong/1959.

I, the undersigned, on behalf of residents of Kajiado West Constituency in Kajiado County, draw the attention of the House to the following:-

1. That, vide Gazette Notice No.890 of 1957, published pursuant to the provisions of the Native Lands Trust Ordinance, Cap. 100, Laws of Kenya (now repealed), on 5<sup>th</sup> March 1957, the Government vested approximately 1,510 acres of land to the Veterinary Department for purposes of developing a veterinary farm and a training centre;
2. That, the said Gazette Notice clearly indicated that the setting apart was for the benefit of the natives by reason of the use to which the land was going to be put;
3. That, contrary to this noble idea for which the land was set aside, it has never been utilized for the purpose and the Veterinary Department seems to have no intention of utilizing it as envisaged.
4. That, the said parcel of land has over time been illegally excised thereby disenfranchising the Keekonyoike Community of Kajiado, the local community being thereto referred to as "The Africans" in the Gazette Notice.
5. That, approximately 473 acres have since been irregularly excised and title deeds issued for purposes not in tandem with the original intention for the setting aside of the said parcel.
6. That, if urgent intervention is not made, the remaining 1,037 acres of the said parcel of land stand the risk of being allocated to purposes not beneficial to the community.
7. That, efforts to have the land reverted to the community since the Veterinary Department is not using it have been fraught with frustrations.
8. That, the matter in respect of which this petition is made is not pending before any court of law or constitutional body.
9. That, nearly 1,037 acres registered as L.R No. Ngong/Ngong 21400 currently remains un-alienated.

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Lands, does the following:-

- (i) Investigates the circumstances under which part of the above-mentioned community land, that was set aside for the Veterinary Department, was irregularly allocated to private owners and title deeds issued;
- (ii) The Petitioners urge the Government to compel the Veterinary Department to surrender the entire land back to the community for adjudication and re-distribution to its original owners in keeping with the provisions of Article 63 of the Constitution and the Land Act, 2012 regarding community land.

Your Petitioners will ever pray. Thank you, very much, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Thank you, Hon. ole Sakuda. That is another petition committed to the Departmental Committee on Lands. What is your point of order, Hon. Iringo?

**Hon. Kubai Iringo:** Hon. Deputy Speaker, I wanted to raise my concern on a petition which I made in this House on 21<sup>st</sup> April 2015, which was committed to the Committee on Health, regarding private medical practitioners and to date, the Committee has not called me or the Petitioners. I do not know the position. I would like to be updated on the same.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Is the Chair of the Committee on Health here? Please, remember Standing Order No.227 which provides that you must, within 60 days from the day of the prayer, respond to the petitioner by way of a report or address to the petitioner or petitioners as laid on the Table.

Hon. (Ms.) Nyamai, Chair of the Committee on Health, what is the position or status of his Petition?

**Hon. (Ms.) R.K. Nyamai:** Thank you very much, Hon. Deputy Speaker. I acknowledge that the Parliamentary Committee on Health received the said petition. We invited the health institutions that are concerned. I request that I be allowed to look for it immediately, so that I can present the information. I am aware that the matter is duly investigated.

**Hon. Deputy Speaker:** The one who presented the petition says that you have not even consulted or called him and he is the petitioner. So, that seems to be an anomaly. Who is asking for a point of order? Is it Hon. Wamwalwa? We cannot have both of you standing. Hon. (Ms.) Nyamai is on the Floor. If she is accepting the point of order from Hon. Wamalwa, then she needs to find somewhere to sit until he has given his point of order. Yes, hon. Wamalwa.

**Hon. Wakhungu:** Sorry, Hon. Deputy Speaker. Mine was on a petition, but not necessary concerning Hon. (Ms.) Nyamai. Maybe, she can finalize her matter, and then you can give me chance.

**Hon. Deputy Speaker:** It is because you asked for a point of order. I thought it is related to what Hon. (Ms.) Nyamai, has said.

**Hon. Wakhungu:** No. It is just on the petitions. Can I go on, Hon. Deputy Speaker?

**Hon. Deputy Speaker:** No! No! Hon. Nyamai has not finished. Can she complete her undertaking? I do not know whether you are aware about the length of time. We have

just committed the two petitions. Please, be familiar with Standing Order No.227 and the timelines related with how you react or act on petitions.

**Hon. (Ms.) R.K. Nyamai:** Hon. Deputy Speaker, I am aware of the fact that there are timelines. We are expecting additional information from the National Hospital Insurance Fund (NHIF) concerning the private practitioners. I promise to bring the information within a week.

We are also going to invite the petitioner so that he can give us his side of the story. Thank you very much.

**Hon. Deputy Speaker:** Hon. Wamalwa.

**Hon. Wakhungu:** Thank you, Hon. Deputy Speaker. I rise on a point of order to seek your direction pertaining to a petition that I had put on this Floor sometime back. In my constituency, there is a chief who was appointed, but he resides outside the location. *Wananchi* have been demonstrating all through. There are no services and the offices have been closed. I raised this issue with Dr. Monica Juma, the Principal Secretary of the Ministry of Interior and Coordination of National Government and she requested me---

**Hon. Deputy Speaker:** Are you telling us about a petition or about your conversation with the Executive because this is not the Executive? Can you, please, tell us about the actions relating to this House?

**Hon. Wakhungu:** It is about the petition, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Yes, but tell us the actions relating to this House.

**Hon. Wakhungu:** Okay.

*(Loud consultations)*

**Hon. Deputy Speaker:** Order, Members! The consultations are high.

**Hon. Wakhungu:** Hon. Deputy Speaker, *wananchi* are demonstrating everyday in the said location. It was in the newspapers and even on television. There are no services being rendered on issuance of identification cards (IDs). I tried to raise the issue even with the Cabinet Secretary who happened to be a Member of this House, but he did not listen to me. So, what do I do because this is an issue of emergency? The Chairman of the Committee is here. What can we do to expedite so that the issue of the chiefs can be resolved and Government services like issuance of IDs can be rendered?

**Hon. Deputy Speaker:** Hon. Wamalwa, we know that the matter you are discussing is grave. The question is: Have you presented a petition before this House?

**Hon. Wakhungu:** Yes. I presented the petition in this House formally. Unfortunately, the Chair and the Vice Chairman were not here when Hon. Cheboi was on that Chair. They allowed the people from Trans-Nzoia County to prosecute this issue and to ventilate on it because it is a serious matter. It was on television.

**Hon. Deputy Speaker:** You know the proceedings of this House. We do not go by what is in the media.

*(Laughter)*

**Hon. Wakhungu:** So, we need to get a commitment from Asman. When can we have these issues resolved by you calling the Cabinet Secretary and the Principal Secretary to be answerable on this matter immediately?

**Hon. Deputy Speaker:** Order, Members! Hon. Wamalwa, I have been informed that your petition only came to this House two weeks ago or is it last week?

**Hon. Wakhungu:** Yes, but it is an emergency.

**Hon. Deputy Speaker:** I have just read Standing Order No.227 which clearly gives them up to 60 days to be able to prosecute the matter. The Chairman of the Departmental Committee on Administration and National Security, proceed.

**Hon. Abongotum:** Thank you very much, Hon. Deputy Speaker. This issue is very weighty and quite a number of Members have raised it. But because the Hon. Member gave this petition two weeks ago, we will take it up, expedite with the Cabinet Secretary for Interior and Coordination of National Government and report to this House before 60 days elapse. Thank you.

**Hon. Deputy Speaker:** Hon. Bare Shill, on a point of order.

**Hon. Shill:** On a point of order, Hon. Deputy Speaker. I do not know whether you heard Hon. Wamalwa referring to Hon. Kamama as Asman, instead of calling him Hon. Kamama. Is it in order for him to call him Asman?

*(Laughter)*

**Hon. Deputy Speaker:** Hon. Members, we are all honourable Members. Can we refer to each other using our titles?

**Hon. (Dr.) Pukose:** Hon. Deputy Speaker, when Hon. Wamalwa was asking about this very weighty matter that is affecting his constituents, the Leader of the Majority Party was saying that Monica is away. So, I do not know whether the Chairman of the Departmental Committee on Administration and National Security can confirm whether she is in office or she is away.

**Hon. Deputy Speaker:** As far as I am concerned, I thought that the people that we deal with in this House are the Cabinet Secretaries. The question of who is around or who is out does not arise because those are office holders. The office will continue. Hon. Members, please let us not go beyond this. Hon. Kaluma, what is so pressing?

**Hon. Kaluma:** Thank you, Hon. Deputy Speaker. I wanted to request that while the Departmental Committee on Administration and National Security deals with the matter, we deal with it in the context of the entire nation instead of having to repeat this petition. In some of our constituencies, we have chiefs who have to move for over 30 kilometres to cover a location. So, the issue of the locations, their sizes and population would--- Motorbikes and all those issues should be addressed. So that we utilise time well, could we deal with this thing at once; in which case we could be notified when it is being dealt with and we attend and present our respective issues instead of taking time to make presentations?

**Hon. Deputy Speaker:** I think that is good. Issues of administration are going to touch a lot of Members of this National Assembly. So, when the matter is being prosecuted, please, publicise it to the Members who are interested or have issues in their

constituencies so that it can be handled holistically, as you address Hon. Wamalwa's issue. Members allow us to proceed.

Hon. Members, we seem to be very blessed this week with many visitors. In the Speaker's Gallery, we have Moi Educational Centre, Nairobi County, Gilgil Garrison Secondary, Nakuru County and in the Public Gallery we have Sosiot Girls High School, Kericho County and Koibeyon Secondary School, Bomet East Constituency, Bomet County. You are all welcome to the National Assembly.

*(Applause)*

### PAPERS LAID

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table of the House, today Thursday, 25<sup>th</sup> June 2015:-

The Report of the Auditor-General on the Financial Statements of the Ministry of Land, Housing and Urban Development for the year ended 30<sup>th</sup> June 2014 and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of Kenya Railways Corporation for the year ended 30<sup>th</sup> June 2014 and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of National Quality Control Laboratory for the year ended 30<sup>th</sup> June 2014 and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of Jomo Kenyatta University of Agriculture and Technology for the year ended 30<sup>th</sup> June 2014 and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of Konza Technopolis Development Authority for the year ended 30<sup>th</sup> June 2014 and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of Kenya Institute of Special Education for the year ended 30<sup>th</sup> June 2014 and the Certificate therein.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** The Chairman of the Departmental Committee on Lands.

**Hon. Mwiru:** Thank you so much, Hon. Deputy Speaker. As I lay this Paper, I want to seek your indulgence and that of the House to look at our today's Order No. 16. That is because the Paper I am going to lay is the same. The Committee realised that there were quite a number of observations that were left out at the time of the compilation of the earlier report. We thought that the amendment would have affected the morphology and the state of that report. Therefore, the Committee decided that we table afresh amendments that we had already done.

So, with your indulgence, I beg to lay the following Paper on the Table of the House today, Thursday, 25<sup>th</sup> June, 2015:-

The Report of the Departmental Committee on Lands on land issues in Taita Taveta County.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Next Order! Hon. (Dr.) Ottichilo.

## NOTICES OF MOTIONS

ESTABLISHMENT OF SELECT COMMITTEE ON  
GENETICALLY MODIFIED ORGANISMS

**Hon. (Dr.) Otichilo:** Hon. Deputy Speaker. I beg to give notice of the following Motion:-

THAT, aware that the Government banned the importation of genetically modified (GMO) imports in the year 2012; further aware that the Ministry of Health which initiated the ban has consistently maintained that GMO foods are not safe for human and animal consumption; considering that no tangible evidence on the same has been provided, cognisant of the fact that local and international scientific institutions and stakeholders have consistently endorsed the use of GMO foods as a necessary measure for the present and future food security in the country; concerned that the National Biosafety Authority (NBA) established under the Biosafety Act was not involved in the decision to ban the use of GMO foods in the country; concerned that the country continues to lose millions of shillings monthly in lost business opportunities related to GMO products; further concerned that research on biotechnology and biosafety has stalled, this House resolves to establish a Select Committee to comprehensively investigate and inquire into all matters relating to GMOs, consider and review all related research findings and make recommendations and table its report within 90 days and approves the following Members to constitute the Committee:-

*(Loud consultations)*

**Hon. Deputy Speaker:** Order, Hon. Members! The Member is presenting a rather controversial Motion and all of you should be attentive so that you can get the gist of that Motion. Please, continue, Dr. Otichilo.

**Hon. (Dr.) Ottichilo:** Hon. Deputy Speaker, I wish to continue.

(1) Hon. (Dr.) Wilber Ottichilo, MP – Chairman.

(2) Hon. Japhet Kareke Mbiuki, MP

(3) Hon. (Ms.) Amolo Rachel Ameso, MP

(4) Hon. Barua Njogu, MP

**Hon. A.B. Duale:** On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** What is your point of order, Hon. Leader of the Majority Party?

**Hon. A.B. Duale:** Hon. Deputy Speaker. I do not want to interrupt my good friend, but he said “Hon. Ottichilo, Chair. That is out of order. If the House approves the list, the first sitting of the select committee will be to choose a Chairman who will not necessarily be the Mover. There should be an election.

**Hon. Deputy Speaker:** I believe that there is precedent to this. In the past, we have always had the owner of the Motion heading the select committee. Please, proceed.

**Hon. (Dr.) Ottichilo:** Thank you, Hon. Deputy Speaker for coming to my help. Let me continue with the membership.

(5) Hon. (Ms.) Sunjeev Kaur Birdi, MP.

- (6) Hon. Bosire Timothy Mosei, MP.
- (7) Hon. (Ms.) Emanikor Joyce Akai, MP.
- (8) Hon. (Eng.) Gumbo Nicolas, MP.
- (9) Hon. (Ms.) Florence Kajuju, MP.
- (10) Hon. Robert Pukose, MP.
- (11) Hon. (Ms.) Cecilia Chelangat Ng'etich, MP.
- (12) Hon. Johnson Arthur Sakaja, MP.
- (13) Hon. (Ms.) Rachael Koki Nyamai, MP.
- (14) Hon. Osman Hassan Aden, MP.
- (15) Hon. Harrison Garama Kombe, MP.
- (16) Hon. Ferdinand K. Wanyonyi, MP.
- (17) Hon. Richard Katemi Makenga, MP.

**Hon. (Dr.) Pukose:** On a point of order, Hon. Deputy Speaker.

**An Hon. Member:** Put the Question!

**Hon. Deputy Speaker:** What is your point of order? There is no Question being put. Who is talking about a question? This is a Notice of Motion. What is your point of order, Hon. Pukose?

**Hon. (Dr.) Pukose:** On a point of order, Hon. Deputy Speaker. Hon. (Dr.) Wilbur Ottichilo has referred to me as Hon. Robert Pukose, but I am Hon. (Dr.) Robert Pukose.

*(Laughter)*

**Hon. Deputy Speaker:** I am sure it is the doctor part of your name that has put you in this Committee. Members, that is a Notice of Motion. We have another Notice of Motion by the Chairperson, Committee on Lands.

Members, you will have time to debate this Motion when it comes on the Floor.

ADOPTION OF REPORT ON LAND ISSUES IN TAITA  
TAVETA COUNTY

**Hon. Mwiru:** Hon. Deputy Speaker, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Lands on land issues in Taita Taveta County, laid on the Table of the House today, Thursday, 25<sup>th</sup> June 2015.

In this regard, I wish to step aside Motion No.16, with your indulgence.

**Hon. Deputy Speaker:** Next Order!

**STATEMENTS**

Let us have the Leader of the Majority Party.

BUSINESS FOR THE WEEK COMMENCING  
30<sup>TH</sup> JUNE TO 2<sup>ND</sup> JULY, 2015



**Hon. A.B. Duale:** Hon. Deputy Speaker, pursuant to Standing Order No.44(2) (a), on behalf of the House Business Committee, I rise to give the following Statement regarding the business appearing before the House the week beginning Tuesday, 30<sup>th</sup> June 2015.

The House Business Committee met on Tuesday, 23<sup>rd</sup> June 2015, to prioritise the business of the House. Next week on Tuesday, the House will consider, in the Committee of the whole House, the Water Bill 2014. Also to be considered for Second Reading is the Private Security Regulation Bill, 2014 and the Special Economic Zones Bill, 2015.

Further, on the same day, priority will be accorded to the Nineteenth Report of the Public Investments Committee (PIC) and the Report of the Departmental Committee on Lands on land issues in Taita Taveta County, should we not conclude them today.

The House Business Committee will also prioritise the following Sessional Papers, should we not conclude them today. These are:-

(1) Adoption of Sessional Paper No.3 and No.4 of 2013 on the National Productivity Policy and the Employment Policy and Strategy for Kenya, respectively.

(2) Adoption of Sessional Paper No.2 of 2013 on the National Industrial Training and Attachment Policy.

(3) Adoption of Sessional Paper No.5 of 2014 on the National Policy for Peace-building and Conflict Management.

(4) Adoption of Sessional Paper No.2 of 2014 on the National Social Protection Policy.

(5) Adoption of Sessional Paper No.4 of 2014 on Governance, Justice, Law and Order Sector (GJLOS) Policy.

(6) Adoption of Sessional Paper No.9 of 2013 on the National Cohesion and Integration.

I urge the Chairpersons of the responsible committees to expedite consideration of the Sessional Papers and table their Reports. This will enable the House to comprehend the content of the Sessional Papers and put them forward for comments. These Sessional Papers have overstayed in the National Assembly and are crucial to both the Executive and the people of Kenya. So, it is good that we clear them next week.

Concerning the Cabinet Secretaries appearing before committees on Tuesday, 30<sup>th</sup> June 2015, the schedule is as follows:-

The Cabinet Secretary for Transport and Infrastructure will appear at 10.00 a.m. before the Departmental Committee on Transport, Public Works and Housing to answer to questions from. Hon. Kimani Ichung'wah.

(2) Cabinet Secretary (CS) for Labour, Social Security and Services at 11.30 a.m. before the Departmental Committee on Labour and Social Welfare to answer questions from Hon. Kamoti Mwamkale, Member of Parliament and Hon. Joe Mutambu, MP.

(3) Cabinet Secretary for Education, Science and Technology at 10.00 a.m. before the Departmental Committee on Education, Research and Technology to answer questions from Hon. Esther Mathenge MP, Hon. Abdullahi Diriye MP and Hon. Ronald Tonui MP.

In the same breath, I would like to indicate that this is the last chance that this House will be giving to the Acting Cabinet Secretary for Labour, Social Security and Services to appear before the relevant committee to respond to questions. On three

occasions, the Acting Cabinet Secretary, Madam Raychelle Omamo has not appeared. We are giving her a last chance and if she does not appear---

**Hon. Ng'ongo:** *Kazi mingi!*

**Hon. A.B. Duale:** Hon. Mbadi is saying *kazi mingi*. I do not know whether he speaks for the President or for the Cabinet. You are the Member for Suba. You are not the Secretary to the Cabinet unless you want to apply. Hon. Deputy Speaker, I need your guidance because that Acting Cabinet Secretary must be compelled to appear before the Committee. Parliament must not accept excuse letter that will be written to the Clerk.

On the same note, I would like to inform the House that the Cabinet Secretary for Devolution and Planning is out of the country until 6<sup>th</sup> July 2015 on official duties that started on 23<sup>rd</sup> June 2015. We have allocated time for that Cabinet Secretary to attend to all committee issues and to appear before the Departmental Committee on Labour and Social Welfare on July 7<sup>th</sup> 2015.

Finally, the House Business Committee (HBC) will meet on Tuesday, 30<sup>th</sup> June 2015 at the rise of the House to consider the business for the rest of the week.

I wish to lay the Statement on the Table of the House.

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

**Hon. Deputy Speaker:** Thank you, Leader of the Majority Party. I can see a point of order. Is it relating to the Statement by the Majority Leader? Hon. Wandayi.

**Hon. Wandayi:** On a point of order, Hon. Deputy Speaker. You will recall yesterday that you made a clear ruling that the CS for Devolution and Planning appears before us on Tuesday next week to answer, among other issues, the question of the National Youth Service (NYS) scandal. The Leader of the Majority Party confirmed that she would appear. Now we are being told that the said CS is out of the country. Is it coming as a surprise to the Leader of the Majority Party that the said CS is out of the country or is it a way of circumventing the matter of the NYS scandal? Can we be told so that this House can take the necessary steps to address this matter? This matter cannot wait because it is a matter that touches on national security. As we speak, marauding gangs are arming themselves. It is also important to note that these gangs are not just ordinary gangs. They are gangs which have been financed, provided with uniforms and they are going all over attacking and harassing innocent Kenyans in the name of defending NYS.

**Hon. Deputy Speaker:** Hon. Wandayi, you are now completely out of order. What you are telling us no longer concerns the CS for Devolution and Planning. You seem to need the CS for Interior and Co-ordination of the National Government. The things you are talking about have nothing to do with the CS for Devolution and Planning. Order, Wandayi!

Hon. Members, I am sure the reason why the Leader of the Majority Party gave that ruling was precisely because he knew that we had given a ruling about her appearing on Tuesday. Many times, when Principal Secretaries (PSs) have come to replace CSs, you have refused to even listen to them. When you are now given an answer that the CS is not there to answer to what we had agreed and ordered, you are now complaining. We have given her one week. Immediately she returns, that matter will be brought up. If there

is any serious crisis in the country, it is not the Ministry of Devolution and Planning that is going to handle that crisis. Can you direct it to the right Ministry?

You still want to comment on the same, Leader of the Majority Party? We should dispense with that matter.

**Hon. A.B. Duale:** Hon. Deputy Speaker, I want to confirm that after that undertaking yesterday, notwithstanding the many gangs that Hon. Wandayi is talking about, CS Anne Waiguru has been out of the country since Monday this week. I have confirmed that she will be back in the country on 6<sup>th</sup> July 2015. I have also talked to her and confirmed that she is ready to appear and answer all the questions on 7<sup>th</sup> July 2015.

On issues to do with national security, Maj-Gen Joseph Nkaisserry is in town and if a question is filed, we will bring him here on Tuesday.

**Hon. Deputy Speaker:** Members, we have dispensed with that matter. We are moving to the next Order. Engineer Gumbo, let us not--- What is your issue? Allow us to move because we have serious issues and matters to discuss this afternoon.

**Hon. (Eng.) Gumbo:** On a point of order, Hon. Deputy Speaker. Thank you for giving me the opportunity. I rise to seek your indulgence and considered ruling on a matter which I believe has grave implications for the independence of Parliament as an institution and the whole principle of separation of powers. Before I get to the substance of my point of order, allow me to draw your attention to the Oath of Affirmation of a Member of Parliament, which all of us in this House took. The Oath goes as follows:-

“I, having been elected a Member of Parliament, do swear in the name of the Almighty God that I will bear true faith and allegiance to the people and the Republic of Kenya; that I will obey, respect, uphold, preserve, protect and defend this Constitution of the Republic of Kenya; and that I will faithfully and conscientiously discharge the duties of a Member of Parliament.”

I am not swearing. I am just drawing your attention to the fact that we are all required to defend and protect the Constitution. Article 94 of the Constitution talks of the role of Parliament.

Article 94(1) states: “The legislative authority of the Republic of Kenya is derived from the people and, at the national level, is vested in and exercised in Parliament.”

Article 94(2) states: “Parliament manifests the diversity of the nation, represents the will of the people and exercises their sovereignty.”

Article 94(4) states: “Parliament shall protect this Constitution and promote the democratic governance of the Republic.”

Article 94 (5) states: “No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation.”

Article 115 (1) of the Constitution refers to the presidential assent and referral. It states as follows: “Within 14 days after receipt of a Bill, the President shall-

- (a) assent to the Bill; or
- (b) refer the Bill back to Parliament for reconsideration by Parliament, noting any reservations that the President has concerning the Bill.”

I raise this issue because on Thursday last week, we considered, under the Committee of the whole House, amendments to the recommendations by His Excellency the President to the Public Procurement and Asset Disposal Bill and the Central Bank of

Kenya Bill. Those recommendations by His Excellency the President raise fundamental questions of law which I would want you to consider. Unless this House pronounces itself on this matter with finality and emphatically, it will continue recurring. I would, therefore, request you that, as you make your considered ruling, please consider the following:-

- (1) Whether in making reservations, recommendations and/or referrals, the President can propose texts for legislation arising from the text of the Constitution that I have read.
- (2) Whether when the President proposes a new text/texts that was or were previously never considered by the Assembly, it should not go through the entire law-making process of consideration by the relevant committee, pre-publication stage, publication stage, public hearings and first, second and third readings.
- (3) Whether accepting the proposed legislative text/texts that has or have not gone through the normal law-making process as outlined above should require a two-thirds majority.
- (4) Whether, while voting in considering whether to agree with, disagree or reject the President's reservations, referrals or recommendations, the House is properly constituted with less than two-thirds of the Members present.

Hon. Deputy Speaker, this matter has continually come to this house and it will continue coming. It is very clear that the legislative authority of the Republic of Kenya is vested in this House. By no means do I want to undermine the authority of the President, but we live in an environment where we have to respect the principle of separation of powers. When the President presents a recommendation to this House and we consider it when we are not quorated to two-thirds and we are required to raise two-thirds to reject it, are we not in essence saying that the President then can write laws and bring them here and we will have no otherwise than to accept them?

*(Applause)*

Hon. Deputy Speaker, I want a very sober debate on this matter because we are looking at a situation where we are going to muddle out the whole principle of separation of powers.

Hon. Deputy Speaker, what happens if we pass a law and the President decides that he does not agree with the law we have passed, and that he is presenting a Memorandum which proposes a new Bill? What will we then be doing here? Will we then be going about it with about 40 to 50 Members to accept or reject it? What will that do to us? Does the Constitution, as currently framed, allow the President to make recommendations or it merely allows the President to make reservations?

Hon. Deputy Speaker, so that this matter is finally put to rest, I call upon you to take your time and allow some Members to ventilate on this matter so that we can have a considered ruling to finally have a way forward on this matter. Personally, I do not think the intention of the Constitution that gave the President the power of assent and referral also intended for him to write laws from outside Parliament.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Jakoyo Midiwo, can you move to the Dispatch Box? Increase the volume.

**Hon. Midiwo:** Thank you, Hon. Deputy Speaker. I am sorry I did not carry my card along with me.

Hon. Deputy Speaker, the matter raised by Hon. (Eng.) Gumbo is grave. This is the first Parliament under this Constitution. Parliament is run on precedents and we have dealt with presidential rejections, assents or vetoes before. This is my third term and it is the first time I am seeing something very strange, and which I believe is very unconstitutional. It is taking culture and root in our most powerful law-making body.

Hon. Deputy Speaker, the law under Article 94 is clear that the President cannot--and the notation is based on his feelings when he is uncomfortable with something in a Bill passed by this Parliament. We need to put this matter to rest because there are issues. What this Parliament is engaged in is, in effect, giving away our legislative powers to the Executive. There is bad advice by the Attorney-General (AG).

Hon. Deputy Speaker, let me begin by telling you that a few months ago, I was sitting there when the President talked about the list of the Ethics and Anti-Corruption Commission. It was tabled here, debated as an annexure to the President's Speech because it was talking about the issue all these Members wanted to be dealt with. I was happy because we looked like we were beginning to scratch the surface of corruption. But the resultant effect of that simple tabling of annexure which is purported to accompany the President's Speech, is that we have ended up with people being witch-hunted. This House cannot open the window because that process was flawed and we need to address it.

Hon. Deputy Speaker, I want to ask you that as you bring your considered ruling-- - We are not just asking for a ruling but we want a written ruling that will go in the HANSARD and the records of this Parliament like it has been done before. We also want you to address the issue of annexures to the Presidential Speech because the law is clear on what the President can do. The President cannot just come and table a list. That is not a speech. As you do that, tell us if that is in order.

Hon. Deputy Speaker, a notation cannot be a suggestion of amendment. But only this House, as read by Hon. (Eng.) Gumbo, can amend or reject. If in its wisdom they want to reject the notation, then it means the original position in the Bill stays. That original position in the Bill will then mean the Bill is passed as it is and the House will have to be constituted by having, at least, two-thirds majority of Members. We want to move forward without having confrontations every time the Executive is not happy with something.

Hon. Deputy Speaker, as I conclude, I want this House to consider a scenario where a good Bill is brought before this House and the President rejects it and goes ahead to bring a draconian Bill. That is the window we are opening. A President can look at a Bill passed by this House, but then decides to bring something draconian knowing this House must master two-thirds majority to pass. The window we are opening is dangerous and we must, as a nation, put our differences aside and follow matters of law as per the intention of the law.

*(Applause)*

Hon. Deputy Speaker, some issues that may come before us are not necessarily partisan. You must also consider a scenario of one day having the possibility of having a president who does not control a majority in Parliament. For those scenarios and all these things, we must and you must help us because the intention of our law is not to hurt our people. It is to protect our people. This Parliament has Members who are paid by taxpayers' money to protect this document; that is all of us, to the last person.

I thank you, Hon. Deputy Speaker.

**The Deputy Speaker:** Let us hear a few Members on this - the Leader of the Majority Party.

**Hon. A.B. Duale:** Thank you, Hon. Deputy Speaker. I will join my colleagues to also give a communication on this matter after listening to all of us.

First of all, I want to say categorically that under Article 115 of the Constitution, Presidential Assent and Referral---

**The Deputy Speaker:** Hon. Leader of the Majority Party, I realise that we have many members in the Speaker's Gallery, if you could just give me a minute to recognise these young Kenyans who are with us in the Gallery.

There is Moi High School from Kaplamai Nandi County, welcome; Mukalwa Junior Academy, Matungulu Constituency; Tulaga Secondary School in Kinangop Constituency; William Ngiru High School in Githuguri Constituency; Bishop John Njenga Secondary School, Taveta Constituency and one called Pupils' Reward Scheme Programme. You are all welcome to the National Assembly, if you are still here with us.

*(Applause)*

I am told Sosiot Girls were not here when I recognized them earlier, but you are all welcome to the National Assembly. Thank you.

**Hon. A.B. Duale:** Thank you, Hon. Deputy Speaker. Article 115 of the Constitution is in this great Constitution because of the wishes of the people of Kenya. So, this Article is not in this Constitution by default neither is Standing Order No.155. Both of them stipulate, and for the Constitution, Article 155 whose sub-heading is: "Presidential Assent and Referral"---

**Hon. Midiwo:** It is not Article 155.

**Hon. A. B. Duale:** It is Article 115, thank you. Presidential Assent and Referral on Article 115 is not there by default. If you look at Article 1(3) of the Constitution, it says:-

"Sovereign power under this Constitution is delegated to the following State organs which shall perform their functions in accordance with this Constitution:-

- (a) Parliament and the legislative assemblies in the county governments;
- (b) The national executive and the executive structures in the county governments; and,
- (c) The Judiciary and independent tribunals.

So, all those organs, including the legislative power of Parliament, draw their sovereign power from the people under this Constitution.

The three arms of Government, the legislative authority of the National Assembly for example, the Judiciary and the Executive are independent, but they are inter-dependent in the reading of both the letter and the spirit of this Constitution. There is no absolute in the Constitution and I use the word “absolute” legislative authority of Parliament just as there is no absolute power of any of the other institutions. Why do I say so? If you allow me because I am explaining, each arm checks the other. The framers of the Constitution put Article 115 of the Constitution in order to check both omissions and commissions of the legislative authority of Parliament. That everything that goes through Parliament is not absolute. Even Parliament itself has the oversight role of the Executive, both in terms of operations and resources to make sure that Parliament denies the Executive that absolute authority. That is why the Judiciary, as an institution, checks both the absolute power of Parliament and the Executive.

How does it check the absolute power of Parliament? When Parliament passes legislation and the President assents to that legislation, the Judiciary has the powers, given by this Constitution, to annul in totality that legislation passed by Parliament or to annul sections of that legislation. That happened during the very infamous 18<sup>th</sup> December security laws in which the Judiciary annulled some sections of it. Why did the Constitution give that power to the Judiciary? It is for the Judiciary to be the fall-back for the people and citizens of this country. It is so that the excesses in Parliament and the Executive can be checked by the Judiciary.

I am sure that Article 115 of the Constitution, in the opinion of the framers of the Constitution, had in mind that the absolute legislative powers given to the National Assembly under Article 94 can be checked through Article 115. I served with you and Hon. Jakoyo in the last Parliament and Article 115 of the Constitution was not introduced to this Constitution then. It was in the last Constitution. I remember, for those of us who were here, we received many referrals and requests for re-considerations from the President then. Parliament, in my opinion, cannot eat its cake and have it. If we go this way, then the description of a rogue Parliament will fit in. The best institution to interpret the usage of Article 115 of the Constitution on Presidential Assent and Referral is the Supreme Court of the Republic of Kenya. This is my opinion.

The other interpretation is for this to be subjected to a constitutional amendment so that if we agree, as a country, that the absolute legislative authority of Parliament cannot be checked and that Parliament will enjoy absolute authority; and that it is either their way or the highway, which in my opinion is not what this Constitution has envisaged, then I have a feeling that Article 115 is in its right place. The President has the---

**An Hon. Member:** On a point of order, Hon. Deputy Speaker.

**Hon. A.B. Duale:** I am on a point of order! So, you just relax. You will have your time. If you read Article 115 from Sub-article 1 to the last, and with your permission, this is the Communication the substantive Speaker made in the days when the House, the Speaker and the Clerk receives a memoranda from the President and how it should be treated.

With regard to the Ethics and Anti-Corruption Commission (EACC) issue, the Ethics and Anti-Corruption Commission Act provides that the Commission will submit quarterly reports to the President and the National Assembly. The same Act further says that the President and Parliament can demand any information from the Commission. Finally, when the President is addressing a joint sitting of the two Houses of Parliament, he is under obligation to address the nation based on Article 10 of the Constitution. Article 10 talks about national values and principles of governance. What are national values? Corruption is within the framework of Article 10 of the Constitution.

*(Laughter)*

Article 10(1) says that:-

“The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—

- (a) applies or interprets this Constitution;
- (b) enacts, applies or interprets any law; or
- (c) makes or implements public policy decisions.

The Constitution says the President is to address a joint sitting of Parliament based on national values. Integrity is part of national values. Corruption is a national value and we must fight it. So, the President is within the Constitution to annex any document to his Address as long as that document will enrich his Address based on national values as enshrined in Article 10.

The concept of Article 115 of the Constitution--- The legislative process is that a Bill is read the First Time, subjected to public participation, comes for the Second Reading and goes to the Third Reading. The new sub-clause the President introduced was a sub-clause that the Departmental Committee on Finance, Planning and Trade introduced and the Senate rejected it. Article 115 and Standing Order No.155 have given the President the leeway and the constitutional mandate to do any referral and make one or two recommendations, which is within the Constitution. It does not only happen in Kenya, but in all jurisdictions of democratically-elected governments like in the USA. As you make that Communication, I am sure you will take each and everybody’s opinion and give us the way forward.

**Hon. Deputy Speaker:** Members, let us not dwell on this so much. What is your point of order, Hon. Wamalwa? Not everybody can speak. We must listen to each other. Are you giving Hon. Kaluma your opportunity to raise a point of order or what is it?

**Hon. Wakhungu:** Hon. Deputy Speaker, mine is a point of order. You saw the Leader of the Majority Party trying to meander around while referring to Article 115 of the Constitution.

**Hon. A.B. Duale:** *(Inaudible)*

**Hon. Wakhungu:** “Meandering” means going round and round without hitting the real subject matter. He tried to meander around and he referred to Article 115 of the Constitution which talks about Presidential assent. There is nowhere it is referred--- We have about six clauses. I believe we have gone to school properly, if not better than the Majority Leader. In this case, the sub-articles are six of them. He needs to be specific and



tell us which sub-article he is referring to that says the President can recommend. The issue is reservations, which are totally different from recommendations. What the President is trying to do is to recommend and legislate through the backdoor. There is nowhere this article talks about the President recommending anything. Can he specify which sub-article under Article 115 talks about that?

**Hon. A.B. Duale:** *(Inaudible)*

**Hon. Deputy Speaker:** Let us give a chance to Hon. Tong'i. He wants to say something. I will give you a chance. Let the others also say something.

**Hon. Tong'i:** Thank you, Hon. Deputy Speaker. Mine is a point of order. I want to know whether corruption is a national value because I thought it is supposed to be a vice.

*(Laughter)*

**Hon. Deputy Speaker:** Order, hon. Members! The national values are clearly stated and corruption is not one of them. Hon. Tonui, were you putting up your hand?

Order Members! I will take points of order only on this matter, please. We have many other businesses. Remember the issue was that you wanted us to give some considered opinion or at least---

**Hon. Wandayi:** On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Wandayi, you have spoken today. Please, allow other people to also speak.

Hon. Kaluma.

*(Loud consultations)*

Order, Members!

**Hon. Kaluma:** Thank you, Hon. Deputy Speaker, for the opportunity to address this matter. This is a matter which has exercised my mind as a lawyer for some time. I want to request that we remember that ours is a presidential system. Properly speaking, neither of us is in Government nor the Opposition. In fact, there is a good reason as to why the people of Kenya decided it so. There is a good reason as to why His Excellency the President and the Cabinet Secretaries (CSs) no longer sit in the House. The idea is that we will be more liberal and bipartisan on matters which affect the people.

As you make your decision, I wanted your mind to be directed to properly characterise for this House what the word 'reservations', used in Article 115 of the Constitution, means. I am begging you because I know there are previous Communications on this or related matters. As a lawyer, I know of a judge who kept reviewing his decisions whenever they were not in tandem with the moments. That is Lord Denning. He holds a special place in the history of law as one of the best judges the entire world continues to celebrate.

What are 'reservations'? That is number one. Do they enable the President, in the exercise of that mandate, to come up with whole provisions unconnected to what is already in the Bill referred to him for assent? In the context of the Bills we are talking about, you will see what was introduced through the power donated to the President

under Article 115 at Clause 11A. It is not just a sub-clause. The President is proposing whole new provisions entirely unconnected to what has already gone through the parliamentary processes to the point of it being presented to him.

As you define ‘reservations’, I wish to alert the House that when you do a Bill, there is usually what we call the ‘mischief rule’, the intention of the law. It may be captured by just one provision. How much can the President - and I know you will rule on this - propose in terms of new provisions to a Bill if he were to have that power? I am saying ‘if he were’ because in my solid legal belief, I do not believe ‘reservations’ permit the President to have a legislative section somewhere in State House crafting a whole provision of a Bill for Parliament to pass.

Lastly, as you consider that, still under Article 115(1)(b), would you also define in your Communication to the House what the limit of reconsideration is? The law says if the President has issues with a Bill presented to him for assent, he will refer it back to Parliament for reconsideration.

The question is: What is to be reconsidered by Parliament? Is it the Bill presented to the President with his reservations, which in my understanding are just concerns? Is the President saying: “I have a concern with this particular provision in this direction, can you reconsider it?” Or is it new legislative proposals coming from the Executive to be considered in that process?

Hon. Deputy Speaker, as you consider that, may we be reminded, and this is the last consideration I would beg your Chair to think about very deeply, for us, as a Parliament, to disagree with the President in the reservations, strictly so-called, we need two-thirds. That can only happen if we debate the Bill. That invites another fundamental question. What should the quorum be for debating, from the very beginning, Presidential Memoranda, reservations or references to the House? Because, really, if you need two-thirds to alter it - and by the way, you can only debate to alter, affirm or come up with new provisions - what should the quorum be? Is it possible that we can have a situation where, for instance, we are dealing with our national values and democratic principles, and because it is known that Parliament at a particular time is not going to have the two-thirds, by way of reservation, the Executive can sit somewhere and you have a Bill saying that Kenya will be a dictatorship and we fall flat on it? Before we reach even the level of saying how the arms and organs of Government can check one another, how do we deal with this issue properly and conclusively?

Lastly, and this is my view of it, reservations are mere concerns and Parliament being the only organ of Government with the authority to make provisions, I request that we detach ourselves from politics over these issues because ultimately, it is for all for us.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Jamleck Kamau.

**Hon. Kamau:** Thank you very much indeed, Hon. Deputy Speaker. Before I give my comments on this, it is good to put it clear that, of course, integrity is a national value. Corruption, of course, is not a national value. It is a vice. I think we have to be clear that the Leader of the Majority Party, when he talked about national values, was talking about integrity being a national value and therefore, corruption is a vice. If you are corrupt then, of course, you are not a man of integrity. That is basically what, I think, Hon. Duale meant.

Allow me to look at Article 115. I see the simple word which was well articulated by the previous speaker, the issue of reservations. I want Hon. Kaluma to listen to me on this one because he is the one who came up with it. Hon. Kaluma was able to put it so well only that there is one aspect that he left behind. The aspect is very simple. Once the President decides that he is not comfortable with a Bill presented to him, he is supposed to give this House his reservations. That is the bottom line. The question is how does he give this House his reservations? In what form does he give this House his reservations? There are only two ways that he can do it.

The first way in which he can do it is to give a general statement that: "I am not happy with this clause. Therefore, you need to look at it." But if the President does that, there is going to be a genuine fear that at the end of the day, the House may not actually get it very clearly as to what the President wants to say. If the statement or those reservations are not clear, there is a likelihood of those reservations being misunderstood by this House. Therefore, we go to the second option.

The second option is for the President to present his reservations to this House in form of a draft clearly stipulating that: "You, as Members of Parliament, talked about this clause. I would prefer this clause to go this way." Once he has done that, it becomes extremely clear to this House that, indeed, that is exactly what the President wants. After that, it is incumbent upon this House to look at those reservations given by the President and if you are not happy with them, we have the two-thirds. That is the Constitution. We can have two-thirds and say no. If we are satisfied, we simply do a simple majority.

The issue which is here is presentation. How does the President present it to this House? To me, it is clear. But at the end of the day, this is a House of traditions, practices and rules. These kinds of reservations were even presented to this House during the Tenth Parliament and they were in the same form that they are presented today. Unless there is a constitutional amendment, to me, this is the way as it is.

Thank you.

**Hon. Deputy Speaker:** Hon. Mbadi, before you speak, I had called and welcomed Koibeiyon Secondary School from Bomet East Constituency, my very own county. You are welcome to the National Assembly. We have heard the reservations and the points that have been made. Allow this House--- Because we have a lot business. We will get a Communication on this. The issues have really been brought out. You are on a point of order.

**Hon. Ng'ongo:** Thank you, Hon. Deputy Speaker. First of all, I want to thank you for allowing us to ventilate on this matter and allow the Chair to make an elaborate and well-informed ruling. I would urge that even as you make your ruling, I am sure and I have confidence in our legal department that they will do research and make comparisons with other jurisdictions where we have a presidential system of government to exactly determine what the veto power by the presidency means.

I want to agree with Hon. Duale that this particular provision is not new in this Constitution. It was uplifted from the old Constitution. Even as I say that, I agree that we have three levels of Government. I wish Hon. Duale, the Leader of the Majority Party, could listen to me on this. I want to remind Hon. Duale that the three arms of Government are given powers to check each other but the power of checking is also checked. Hon. Duale spoke about the Judiciary making pronouncements on legislation.

What the Judiciary does is that it can express an opinion saying that a matter that has been legislated on is unconstitutional and should not be used, but I have never seen where the Judiciary has gone ahead to recommend how the law should look like. The Judiciary cannot say that this provision is wrong that it should read one, two and three. That is a power that is vested in Parliament.

As we seek for the interpretation of reservations and reconsiderations because these words should be defined, I also want the word as used in this article “noting” to be defined. The article he refers to says that within 14 days the President shall refer the Bill back to Parliament for reconsideration by Parliament noting any reservation. The word “noting” also needs to be defined. Does “noting” mean the President comes up with recommendations on how the Bill should look like or he notes what he feels should be corrected?

When you go down to Sub-clause 2, it says if the President refers a Bill back for reconsideration, which reconsideration will be defined, Parliament may, following the appropriate procedures under this part, reconsider. That reconsideration should be defined.

Hon. Deputy Speaker, I also request that this appropriate procedure should also be defined. In my understanding, the President could express his reservations to the National Assembly or the Senate, whichever the source of the Bill, citing what he feels should be done differently. But he should not go ahead and recommend how the Bill should look like. That is legislative authority vested in Parliament.

Since this matter has been canvassed a lot, if the intention was to have the President do a Bill or fresh provisions in the Bill, how have you accommodated the requirement that any legislation must go through public hearing? In fact, Parliament is a House of people’s representatives.

The National Assembly is defined in the Constitution as representing the people of Kenya. There is no any other House which is referred to as representing people of constituencies except the National Assembly. Even for us to legislate, the law still requires that that legislation must go through public hearing for the people of Kenya to own it. So, how will you accommodate the interest of the people of Kenya if the President will just make suggestions?

In conclusion, this is a real challenge to this House. If we sit here and see the institution of Parliament being destroyed in terms of taking away its legislative power, which is given under Article 94 of the Constitution, history will judge the Eleventh Parliament harshly. I want to remind this House that the Parliaments of 1983 and 1988 sat probably where we are or where the Senate is, mutilated, removed their power and gave it to one individual namely, the then President of the Republic of Kenya. The consequences were dire. People were tortured and some lost their lives.

A person like Hon. Kenneth Matiba, up to today, is in ill health just because of a rogue Parliament. It was a Parliament that was not considerate or sensitive enough to realise that giving power to one individual is suicidal. The people of Kenya could not be careless enough to vote in August, 2010 to give one person powers to write the laws that would govern this country.

**Hon. Deputy Speaker:** Hon. Mbadi, your point has been made. Hon. Members, I have allowed you to ventilate on this so that we can get views. Hon. Naomi Shaban, do you have a word to say?

Hon. Members, please, allow us to move forward, but I will give a chance to Hon. Naomi Shaban. The problem is that there is a list here, but I think some people are logging in because they want to speak in the next Order. Please, let us not repeat what has been canvassed.

**Hon. (Dr.) Shaban:** Asante sana, Naibu Spika kwa kunipatia nafasi hii. Jambo la muhimu ambalo limetajwa na wenzangu wote ni kwamba kazi yetu ni kutengeneza sheria. Lakini juu ya hayo, sheria huwa imetengenezwa kwenye vipengele. Ukimpelekea vipengele fulani na hakubaliani navyo, yeye pia ana haki kuwarudishia akisema hivyo. Hawezi kuleta hapa insha kwa sababu kazi yetu si kuangalia insha. Kazi yetu ni kuangalia vipengele vya sheria.

Hivyo basi, ukiangalia Kipengele 115(4) cha Katiba, utaona kinasema kwamba akiwa hajakubaliana na sisi, atarudisha hiyo sheria hapa na akiirudisha hapa, baada ya sisi kuangalia mapendekezo yake tutapiga kura. Haikusema ni lazima watu wawe asilimia sitini na saba wakati tunaangalia mapendekezo.

Kwa hivyo, tunataka Wakenya wote waelewe kwamba Katiba hii ilipopitishwa katika Mwaka wa 2010, Bunge lilikuwa na haki ya kurekebisha yale maswala ambayo yalikuwa yakitututiza. Tulikataa kufanya hivyo and tukaamua kufanya sarakasi tukisema kwamba---

**An Hon. Member:** Jaluo hapana sikia!

**Hon. (Dr.) Shaban:** Itawabidi wajifunze.

**An Hon. Member:** She is speaking in---

**Hon. Deputy Speaker:** But it is her right to speak in the language that she has chosen to speak in. Order, Members!

**Hon. (Dr.) Shaban:** Naibu Spika, ninaomba nisikizwe. Katika Mwaka wa 2010, tuliposema---

*(Loud consultations)*

Naibu Spika, unajua sikio la kufa halisikii dawa. Katika Mwaka wa 2010, tuliposema tufanye marekebisho fulani, watu hawakutaka kusikiza. Pia, Wabunge waliokuwa hapa hawakutaka kusikiza. Tulikuwa na Mbunge kama Jakoyo Midowo hapa na hakutaka kusikia. Sasa hivi, kuna matatizo kwa sababu hatufurahii yale yaliyo kwenye Katiba. Kama hatufurahii yale yaliyo kwenye Katiba, tuna njia mbili tu. Moja, ni kupata kura asilimia sitini na saba kubadilisha vile Mhe. Rais amependekeza. La sivyo, turudi kwa wananchi na tuwaambie kwamba kipengele hiki hakitufai.

**Hon. Deputy Speaker:** Hon. Members, we really cannot go on like this. Let us have Hon. Kajwang' because he is going to take over from here.

**Hon. Kaluma:** Hon. Temporary Deputy Speaker, Dr. Shaban has spoken in---

**Hon. Deputy Speaker:** Hon. Kaluma, I thought you did a Kiswahili test before coming to Parliament. You could not be a Member here if you did not pass the Kiswahili test. It is the Mheshimiwa's constitutional right to speak in the language that she has spoken in.

**Hon. Kajwang’:** Thank you, Hon. Deputy Speaker. I suspect that we do not have any more time on this. I just want to address one issue which my friends have raised. With a little emphasis, somebody talked about the word “reconsideration”. This is the only thing that I want to focus on because the rest of them have been canvassed very well. This is, “the President shall refer the Bill back to Parliament for reconsideration”.

As you will be making your ruling, you will need to look at what this word “reconsideration” used in sub (1) and (2) means. Remember that this word has been used in Article 94.

Article 94(3) is on canvass that Parliament may consider. So, the question of consideration or reconsideration is a legislative exercise. As it is a legislative exercise, you see that the Constitution uses the words “if Parliament amends” and “the President also sends it to Parliament”.

This is where I want to raise an issue. Every time the President refers a Memorandum to us, what we have traditionally done is to take it to the Committee of the whole House. This is where my point is, that to take a Presidential Memorandum directly to a Committee when this consideration should be made by Parliament---

In the Committee of the whole House, is Parliament considering that legislation? It seems to me that there is need for debate. There is an element of debate which should ensue on a Memorandum brought back to Parliament.

In fact, I would think that this is something which needs to go to a committee and public hearing, if it is a matter which is introducing an aspect which is not deleting a provision of that law.

So, mine is just to request you to consider what reconsideration is and rule that it involves considering it in session; in the Plenary and not in a Committee. This is because that gives Parliament namely the National Assembly or the Senate the opportunity to debate it. If it introduces something, then it should go to a Committee so that we can have public hearing on that subject.

**Hon. Deputy Speaker:** Hon. Members, we have really ventilated on this.

**An Hon. Member:** Two-thirds!

**Hon. Deputy Speaker:** What is the meaning of two-thirds?

*(Laughter)*

Is it the one on the gender rule or it is another two-thirds? This is the only two-thirds that I understand. Hon. Nyikal, because you are a respected person because you have been in Government for a long time, I will give you a chance.

**Hon. (Porf.) Nyikal:** Thank you, Hon. Deputy Speaker. Mine is not about reservations but it is about the process of two-thirds. I raised this issue the first time this issue came up. The problem that needs to be addressed is what happens if at the point we are starting debate or a referral from the President, we do not get two-thirds. It has happened twice. We went for the “Ayes” and the “Nays” and when it was felt that the “Nays” had it, we turned round and said that there were no two-thirds in the House. So, the meaning of the “Nays” was inconsequential. The “Nays” turned into “Ayes”.

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

**Hon. (Prof.) Nyikal:** My colleagues, I am not talking about that side or this side. This is for the country and things can change. People who are on that side can be on this side. What the majority side can do is they can deny the minority side the two-thirds knowing that without it the only response you can get is “Ayes”. This is because the “Nays” cannot have their way if there are no two-thirds. That is the point I wanted to raise.

**Hon. M’uthari:** Hon. Deputy Speaker---

**Hon. Deputy Speaker:** Hon. M’eruaki, I honestly think we have ventilated enough on this. Please allow us to continue. Hon. Members, we have had our say. I am sure when this Communication is given, you will still be given time to digest it.

Hon. Members, I rule that you will receive a comprehensive Communication. I ask our Legal Department to really look at these matters very carefully and study that provision in the Constitution or the definitions that you have alluded to, whether it is reservations or the two-thirds. Let us get a comprehensive understanding. This is because this is our House and legislation is our main mandate. This is not a partisan issue. It is in all our interest to clearly understand the process of assenting to Bills and how they come back to this House. So, hon. Members let us leave that matter. Let us give our Legal Department time. That is why they are there. They will consult widely and the Speaker can then come up with an opinion that has considered all the views. I leave that matter. Let us not put a timeframe on this. We may need a little more time to be able to give a comprehensive Report.

Thank you.

## MESSAGE

### PASSAGE OF COUNTY ALLOCATION OF REVENUE BILL

**Hon. Deputy Speaker:** Hon. Members, I have a Message that should have been read a little earlier but a lot has been happening in the House. We have a Message from the Senate.

Hon. Members, Standing Order 41(4) relating to Messages from the Senate provides:

“If a message is received from the Senate, at a time when the House is in session, the Speaker shall report the message to the House at the first convenient opportunity after its receipt and in any event not later than the next sitting day.”

*(Loud consultations)*

Hon. Members, there are communications going on when the Speaker is upstanding.

In this regard, I wish to report that this afternoon, I received a Message from the Senate regarding the passage by the Senate the County Allocation of Revenue Bill, 2015. Hon. Members, the Message states:

“THAT, the County Allocation of Revenue Bill (Senate Bill No. 5 of 2015), as published in the Kenya Gazette Supplement 41 of 17<sup>th</sup> April, 2015, and as a Bill originating from the Senate, was passed by the Senate on Wednesday 24<sup>th</sup> June, 2015 with amendments. Consequently, the Senate now seeks the concurrence of the National Assembly on the Bill.”

Hon. Members, the County Allocation of Revenue Bill is a special Bill concerning county governments in terms of Articles 110 and 111 of the Constitution. It is crucial for the operations and budgeting of counties. Aware of the strict statutory timelines with regard to passage of the Bill and pursuant to Standing Order 41 (6), I direct that the Bill be prioritised for the First Reading.

I also refer the Message to the Budget and Appropriations Committee for the necessary consideration of the Bill.

Due to the urgent nature of this Bill, the Committee is expected to submit a report to the House by Tuesday, 30<sup>th</sup> June, 2015 to aid in conclusion of this Bill.

I thank you.

Yes, Hon. Lessonet

### PAPER LAID

**Hon. Lessonet:** Hon. Deputy Speaker, I beg to lay the following Paper on the Table of the House today, Thursday 25<sup>th</sup> June, 2015:-

The Constituencies Development Fund (CDF) allocations and the sharing criteria for the 2015/2016 Financial Year

This is essentially the CDF allocations for each constituency for 2015/2016 Financial Year. We request constituencies to submit their proposals towards this figure by 15<sup>th</sup> July, 2015.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Let us move on to the next Order.

### PROCEDURAL MOTION

#### EXTENSION OF SITTING TIME

**Hon. A.B. Duale:** Hon. Deputy Speaker, I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order 30(3)(b), this House resolves to hold a sitting today, Thursday 25<sup>th</sup> June, 2015 after the 2.30 p.m. sitting that we are in.

Hon. Deputy Speaker, this is a very clear message. The Budget and Appropriations Committee has its Report of the Supplementary Estimates II, 2015. If the House approves it, this money must be used between now and Tuesday, which will be the end of the financial year. This cannot be done without the Appropriations Bill both for the Judiciary, the Executive and Parliament. We indulge our colleagues that we have another sitting with another Order Paper where we will deal with just the First, Second and Third Readings of the Supplementary II Appropriations Bill. If we do not do that,



then our next sitting is on Tuesday and if we approve it, then it will be just a waste because we will approve in the afternoon and that is the last day of the financial year. I am sure a number of programmes in Parliament, in the Judiciary and in the Executive will be hampered. I ask my colleagues to indulge that we maintain a quorum of, at least, 50 Members.

I ask the Chair of the Budget and Appropriations Committee, on whose behalf I am moving this Procedural Motion, to second.

**Hon. Musyimi:** Thank you, Hon. Deputy Speaker. The Leader of the Majority Party has put it very clearly. This morning, we had a meeting with the National Treasury and for the umpteenth time we sought to make it clear to them that we are getting tired of Supplementary Budgets coming here at the eleventh hour. We want to agree on a cut-off date.

As the Budget and Appropriations Committee, we do not want to entertain Supplementary Budgets after 30<sup>th</sup> April of any financial year. This is because the national Government is empowered by the law to spend up to 60 days and then come to us for approval. So, we are constrained to seek the indulgence of our colleagues here.

Indeed, much of this money has already been spent. The items here are crucial. If we do not pass this today, as the Leader of the Majority Party has said, we will end up passing it on Tuesday 30<sup>th</sup> June, 2015. It is absolutely crucial that we agree to extend our sitting today so that we can indulge the Executive for another five days in the hope that they will not be put through this shredder again.

Hon. Deputy Speaker, I beg to second.

*(Question proposed)*

**Hon. Midiwo:** Thank you, Hon. Temporary Deputy Speaker. I rise to oppose this Motion. It is not a small matter that the national Government seeks a Supplementary Budget to spend over the weekend. Money is to be released from the National Treasury. Who knows, the money may have already been released. If you look at what they are asking, you will find that the Fisheries Department should get Ksh650 million to spend in three days. What are we going to do? Are we going to get back Migingo? This is not a matter we can support.

Yesterday, we were here and issues were raised. I want to raise the issue and I want to ask you specifically to respond to it, before we even move on with today's Sitting. The law only allows the Government to access 10 per cent of the Budget. The Standing Order talks about 15 per cent which is unconstitutional. We cannot have before us a Standing Order which is unconstitutional.

Let me refer you to Article 223(5) of the Constitution which says that in any financial year, the national Government may not spend under this Article, more than 10 per cent of the sum appropriated by Parliament for the financial year unless under special circumstances Parliament has approved higher percentage.

I was in the House Business Committee (HBC) on Tuesday evening. A trend, of a bad habit and unlawful habit, which we cured when we sat in the leaders' meeting in Mombasa--- There is no way what was not discussed yesterday can come back as a

Motion. Even Order No.8 on the Procedural Motion, to extend the Sitting, was not discussed in the HBC.

The Leader of the Majority Party comes here and moves a Motion which he has discussed probably with you, the Chair or with the Office of the Clerk without the other side. So, why do you need the HBC? You cannot do that. You cannot tell us that we want to talk about a special circumstance that the leadership of this Assembly has not sat in the HBC and deliberated that there is a special circumstance in this country. There is none.

If yesterday's event is anything to go by, do you know what the special circumstance is? It is the Standard Gauge Railway (SGR), the cash cow of the day. That is the special circumstance. Let me plead with the Chair of the Budget and Appropriations Committee, a man of the Lord---

**Hon. M'uthari:** On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Order Hon. Jakoyo! There is a point of order by Hon. M'eruaki

**Hon. M'uthari:** Thank you, Hon. Deputy Speaker. Is it in order for Hon. Midiwo, my good friend, to talk about the SGR being a cash cow? What does he mean? Can he substantiate his statement?

**An hon. Member:** Why substantiate the obvious?

**Hon. M'Uthari:** What is obvious?

**Hon. Midiwo:** "A cash cow" is a cow that instead of giving milk, it gives cash.

*(Laughter)*

"A cash cow" is like the National Youth Service (NYS) thing, the Goldenberg scandal and others. He has asked me for a clarification. I am just clarifying what a cash cow is.

*(Hon. A.B. Duale stood up in his place)*

You do not have to be happy the Leader of the Majority Party.

**Hon. Deputy Speaker:** Yes, the Leader of the Majority Party. Hon. Members, do not wind each other up.

**Hon. A.B. Duale:** Hon. Deputy Speaker, you have to listen to us. My good friend has made a serious allegation and unless he substantiates you must say something. He has said the SGR is equivalent to a cash cow. That is a serious allegation. It cannot go to the HANSARD. He needs to substantiate. You were with the senior clerk as Hon. M'eruaki was speaking.

**Hon. Deputy Speaker:** Yes, I was. I did not hear what he said.

**Hon. A.B. Duale:** We, as leaders and as a House, must follow Standing Orders. Members of Parliament should not make statements that they cannot substantiate. The Deputy Leader of the Minority Party is a very good friend of mine, but this is a very serious statement.

**Hon. Deputy Speaker:** Hon. Jakoyo, your point was made until you brought up this reference.

**Hon. Midiwo:** Hon. Deputy Speaker, did you hear the Leader of the Majority Party call me a mole?

**Hon. Deputy Speaker:** Just apologise and continue with your contribution unless you have the evidence that it is a cash cow.

**Hon. Midiwo:** But Hon. Deputy Speaker, with a light touch, they are asking for cash for it. Let me tell you that my friend, Eng. Kamau, is in court for the consultancy of the SGR. Eng. Kamau is my friend, but he is in court for impropriety of the SGR. The mere fact they are investigating theft in SGR means it is a cash cow for some people. My friend, Nduva Muli is being investigated for cashing this cow and not milking it.

*(Loud consultations)*

**Hon. Deputy Speaker:** Hon. Jakoyo, apologise.

**Hon. Midiwo:** My friend, Nduva Muli is in court because they are saying they cashed this cow. If you cash a cow, what does that mean? It means these people are cashing the SGR.

**Hon. Deputy Speaker:** Hon. Deputy Leader of the Minority Party.

**Hon. Midiwo:** Hon. Deputy Speaker, they asked me and I am only explaining.

**Hon. (Dr.) Shaban:** On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** What are you explaining? Yes, Hon. Naomi.

**Hon. (Dr.) Shaban:** Hon. Deputy Speaker, I thought this is a House of rules. Eng. Kamau is not in court because of the SGR. Let us be factual. We cannot use this Floor to clean the names we have been given in our political parties, moles or whatever you call yourselves. It is very unfair to use this Floor---

*(Hon. Midiwo consulted loudly)*

He is becoming a nuisance!

**Hon. Deputy Speaker:** Hon. Jakoyo, you are a senior Member of this House. So, say you have apologized and we continue. Leave this matter because it is a matter you know you do not have evidence to provide. As I said, this is a non-issue. It is not an issue that is helping us advance the issues that we are talking about except to trade insults. Can we please leave this line of argument, hon. Members?

**Hon. Gikaria:** On a point of order, Hon. Deputy Speaker.

*(Hon. Ng'ongo consulted loudly)*

**Hon. Deputy Speaker:** Order, Hon. Mbadi!

**Hon. Gikaria:** Thank you, Hon. Deputy Speaker. I am a bit disappointed by my good friend, Hon. Jakoyo Midiwo. Would I be in order to ask him to apologise and withdraw the remarks that he has made? This is bearing in mind that the Chair of the PIC which is a very powerful Committee and is a member of CORD brought a Report of the SGR here which was approved. It was given a clean bill of health.

So, how does the issue of the cash cow come in? He cannot even substantiate. It is sad because some of us sit here because we want to contribute. For example, I have been

waiting to pass the business they are talking about. It is unfortunate that the whole afternoon, we have basically sat here and done nothing. We are just going round in circles as Hon. Wamalwa said. We have not transacted any business and yet we are paid to transact business in this House.

Would I be in order to ask---

**Hon. Deputy Speaker:** You are very much in order and I asked Hon. Jakoyo the same question.

**Hon. Gikaria:** Would I be in order to ask the senior ranking Member to apologise and withdraw his remarks?

**Hon. Deputy Speaker:** Hon. Members, I am not going to entertain any more matters on this. Hon. Jakoyo, are you apologising for the comment that you have made on the cash cow so that we move on?

**Hon. Ng'ongo:** On a point of Information.

**Hon. Midiwo:** Hon. Deputy Speaker, I accept the information.

**Hon. Ng'ongo:** Thank you, Hon. Deputy Speaker. I wanted to inform Hon. Jakoyo that when a report or information is within Parliament, you are not under any obligation to substantiate.

On 26<sup>th</sup> March, 2015, the President brought here a list of those suspected to be corrupt. In that list, there is a provision that specifically mentions that Engineer Kamau, through a firm associated with him, was awarded fraudulently a contract for the SGR. In that case, the President is telling us that the SGR is a cash cow where people are being awarded contracts contrary to the law. Therefore, his Cabinet Secretary had to step aside for investigation. If the Jubilee side is telling us now that there is nothing like that, then the President should, first, apologise to this House and the people of Kenya for misleading us that SGR is a cash cow.

Actually, he is the one who called it "a cash cow" without mentioning the words. We are just trying to improve English for him that SGR is actually a cash cow.

*(Laughter)*

However, I do not expect the Leader of the Majority Party to get it wrong because he even said that one of the Jubilee Government's pet thing is corruption.

**Hon. Deputy Speaker:** Order, Hon. Mbadi! Yes, the Leader of the Majority Party!

**Hon. A.B Duale:** Hon. Deputy Speaker, I think we are not following the procedures. You asked Hon. Jakoyo whether he will substantiate or withdraw the statement and apologise. Then all of a sudden he---

**Hon. Deputy Speaker:** No, he asked for the information, which is allowed.

**Hon. A.B Duale:** If you allow me, Hon. Deputy Speaker, we are dealing with the Procedural Motion. The Standing Orders provide that we should not get out of the confines but now, we are dealing with a list which Hon. Jakoyo said earlier on was unconstitutional.

Secondly, we are dealing with entities called "Michael Kamau and SGR". I remember you asked Hon. Jakoyo whether he has sufficient evidence to table and if not to withdraw and apologise. Now, we have got information from Hon. Mbadi which,

again, is taking us to one Engineer Kamau. So, Hon. Deputy Speaker, can you guide the House?

**Hon. Deputy Speaker:** The Leader of Majority Party, you are perfectly in order in what you have said. However, a point of information was sought and I am not the one who gave it. It was asked of Hon. Jakoyo Midiwo and he accepted the point of information. So, Hon. Jakoyo, can you now finish what I had asked you to do, which is to apologise? I am not taking any more contributions on this matter.

**Hon. Midiwo:** Thank you, Hon. Deputy Speaker. I accept the point of information from Hon. Mutava Musyimi. It is procedural.

*(Laughter)*

**Hon. Musyimi:** I thank you, Hon. Deputy Speaker. I thank Hon. Jakoyo for indulging me. I want to read from the Report that I tabled yesterday on this matter:

“Article 223(5) of the Constitution, limits Supplementary Appropriation in a given Financial Year to not more than 10 per cent of the approved Budget for that year except if Parliament has approved a higher percentage. The total Supplementary Appropriation for 2014/2015 Financial Year amounts to an additional expenditure of Kshs244.2 billion, which is a 15 per cent increment from the approved Budget for 2014/2015 Financial Year.”

The Motion that we shall be debating later today when we resume debate, I am informing Hon. Jakoyo, reads as follows:-

THAT, this House adopts the Report of Budget and Appropriations Committee on the Second Supplementary Budget for the 2014/2015 Financial Year, laid on the Table of the House on Tuesday, 23<sup>rd</sup> June 2015 and:

- 1) Pursuant to Article 223(5) of the Constitution, approves expenditure of 15% over and above the sum appropriated for 2014/2015 Financial Year.

I rest my case.

**Hon. Ababu:** On a point of order.

**Hon. Deputy Speaker:** Order! Hon. Ababu Namwamba, what is your Point of Order?

**Hon. Ababu:** On a point of order, Hon. Deputy Speaker. I have been trying to catch your eye for quite a while but it looks like you are not paying attention to the digital nature of the House. I wanted your guidance on the rule of relevance and anticipation of debate. The Motion before the House was on extension of time to allow the House to consider some matter. What we are doing right now, with all due respect to all of us who are contributing to this matter, is actually anticipating debate. The content of the Motion that is the subject, whether you are talking about SGR or any other content of that Motion, is not yet before the House or has not yet been moved. What this House is seized of at this moment, is whether or not we should extend time. I believe, Hon. Chair, that you should have or you should guide the House for us to make a decision on that. Should we or should we not extend the time? When it comes to the content of the Motion that we expect to be moved on the matter of the Supplementary Budget, then we can raise all other issues substantively. We can even attempt to block debate on that Motion for whatever reasons whether constitutional or otherwise. What we are doing right now, is

that we are anticipating debate. Therefore, whether it is Point of Information on SGR or anything else, we are violating the Standing Orders of this House. The only thing that distinguishes this House from a market place, a political rally or anything else, is that we are a House of rules. I now invite you to guide us that we are anticipating debate. We should make a decision on whether or not we are extending time and then we will engage in the debate of the substantive Motion when that becomes due.

I rest my case.

**Hon. Deputy Speaker:** Thank you, Hon. Ababu. Can you now, Hon. Jakoyo, because you are the one who has taken us down this road, apologise and we put the Question to the matter that is before us. You have been quite informed by the Hon. Musyimi. He has already explained the reason why he has given that Motion.

**Hon. Jakoyo:** Hon. Deputy Speaker, I just want to say two things and sit down and that is coming. With all due respect to my friend, Hon. Ababu, he did not follow the Mover of the Motion. The Mover of the Motion referred to this debate and how the money must be spent by Monday. That was the object of the Motion by the Mover. I am an avid debater, I follow when somebody moves a Motion. He drew us to the reason why we must extend time. That reason is to deal with Budget before expiry of the time. Secondly, as to the issue at hand, Hon. Mbadi has said that the documents are before the House. I want to follow the law. Standing Orders state that if the House is unable to accept that the documents are before it, that the SGR is costing this country three times more than it is costing Ethiopians--- I want to follow Standing Order No. 91. I will be glad; I will be happy; I will be excited; and I will be lovely to bring those documents before the House on Tuesday at 2:30 p.m.

I oppose. Thank you.

**Hon. Deputy Speaker:** That is allowed if he is bringing the evidence on Tuesday. You will give the evidence then or you will apologise at that point. Hon. Members, we will put the Question.

*(Question put and agreed to)*

Next Order.

## **BILLS**

### *First Readings*

THE FINANCE BILL

THE EXCISE DUTY BILL

THE TAX PROCEDURES BILL

THE MISCELLANEOUS FEES LEVIES BILL

THE BETTING, LOTTERIES AND GAMING (AMENDMENT) BILL

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

## MOTION

### ADOPTION OF REPORT ON SECOND SUPPLEMENTARY BUDGET

THAT, this House adopts the Report of Budget and Appropriations Committee on the Second Supplementary Budget for the Financial Year 2014/2015, laid on the Table of the House on Tuesday, 23rd June 2015 and:

(i) pursuant to Article 223(5) of the Constitution, approves expenditure of 15% over

and above the sum appropriated for Financial Year 2014/2015; and

(ii) further approve the issuance of the a sum of Kshs198,322,650,616 from the consolidated fund to meet the expenditure during the year ending 30<sup>th</sup> June 2015 in respect of the votes as indicated in the Schedule in the Report.

*(Hon. Musyimi on 24.6.2015)*

*(Resumption of Debate interrupted on 24.6. 2015)*

**Hon. Deputy Speaker:** Hon. Mutava Musyimi, Chairman of the Budget and Appropriations Committee, we are on Motion No. 13.

**Hon. Musyimi:** I had moved.

**Hon. Deputy Speaker:** Okay, you had already moved and it was proposed. So, it is debate now going on. Hon. Justice Kemei.

**Hon. Kemei:** Thank you, Hon. Deputy Speaker. I wish to support. At the outset, this country has adopted a programme-based Budget. As such the roles of the line ministries and the respective committees of Parliament in terms of the Budget preparation are very cardinal. The role of the National Treasury is basically facilitative and we should not see it as the Lord Ministry. We want to regard it as the Ministry that facilitates the process of Budget making.

In terms of the increase beyond the required 10 per cent, I want to support especially on the account of State Department of Agriculture. There is an increase of Kshs3.5billion towards irrigation. As we note, agriculture and generally economic activities in this country are moving to the marginal areas of our country. As such irrigation is key so that those areas can be more productive as opposed to the situation in the past when they were regarded with less emphasis. There was also an increase of Kshs650million towards purchase of an offshore fishing vessel. This is key so that we can exploit the fishing potential that this country has in its deep seas. Finally, there is an increase of funds required for purchase of subsidised inputs, fertilisers and seeds which is good so that this country can produce more food.

Hon. Deputy Speaker, I support. Thank you.

**Hon. Deputy Speaker:** Hon. George Omondi.

**Hon. G.W. Omondi:** Thank you, Hon. Deputy Speaker for giving me the opportunity to support the Second Supplementary Estimates. I want to raise two issues.

**Hon. Deputy Speaker:** You do not even know the Motion that you put your microphone to contribute? It is Hon. Mutava's Report, Motion No. 13.

**Hon. G.W. Omondi:** I am right, Washington.

**Hon. Deputy Speaker:** If you are not ready for it, we---

*(Laughter)*

**Hon. G.W. Omondi:** Hon. Deputy Speaker, in supporting the Second Supplementary Estimates, I want to raise two issues. One is that this House is now doing its job as far as the figures are concerned but the National Treasury has not got any right because it is not providing details when giving variation of the Budget which is the Second Supplementary Estimates.

Two, the National Treasury is not following the law. Whereas the Budget and Appropriations Committee is doing its job and I remember yesterday the Treasury came in and tried even to vary the current Budget which is supposed to take effect on 1<sup>st</sup> July 2015--- They came with different figures that the Budget and Appropriations Committee refused saying that they must provide more information. Without information, there is no way that we are going to know what the Executive is doing. I want to state very clearly that this is where the corruption starts when no information is given as to the figures which are coming before this House. So, I want to insist that this House should in future reject any figures whether they are of the Budget or the Supplementary Budget which are brought here without any information.

Three is that any figures coming to this House which do not follow the law must not be accepted in future. We should not be given figures and at the same time given the request to accept the higher variation of 10 per cent. The presentation of information will give this House the opportunity to interrogate expenditures and present the abuses that are given discretionally to the authorities of the Executive.

With those few remarks, I want to support the Second Supplementary Estimates. Thank you.

**Hon. Deputy Speaker:** Hon. Gikaria.

**Hon. Gikaria:** Thank you, Hon. Deputy Speaker, for giving me this opportunity to support the Second Supplementary Budget Estimates. When the Chairman was moving the Motion yesterday, he made it very clear as to why we require to adopt it and the sectors that are going to benefit. The transport industry, the energy sector, the infrastructure through Kenya Rural Roads Authority (KeRRA), Kenya Urban Roads Authority (KURA) and Kenya National Highways Authority (KeNHA), the security sector and the agriculture sector through irrigation are going to benefit from the allocation that is going to be spent.

The few issues which were raised by the Hon. Chairman of Budget and Appropriations Committee is that the Committee was not sure as to how the funding would be done. They did not know whether it was going to be funded through borrowing or increase of taxes. This is a fundamental issue that we needed to look into as we pass this. In the statistics that they have the Chairman had indicated that so far the 2014/2015



budget's performance percentage is at 71 per cent. He indicated some of the Ministries which have already overspent their budget, such as the Ministry of Sports and Culture. I think this is an area where we have done poorly. In sports, we have seen how some of our national teams have been suffering because of being given very little money in the budget. In the current Budget, we have tried to push through the Ministry so that they can be given an additional funding, so that our sports fraternity which is employing many talented young people does not suffer because of lack of funding. You heard of the *Malaika* the other day, when they won the African crown but when they were preparing, they were in a very pathetic situation. They were not doing it adequately. Much as they were not considered in the second Supplementary Budget. In future it is important for us to think on how we can be able to factor then in.

Some very important Ministries were mentioned by the Chairman when he was moving. Their absorption rate was only at 55 per cent. That is a little bit worrying that such huge Ministries absorption rate is at the 55 per cent. It is not possible for us to have such Ministries which will have to give back a lot of money to Treasury in a few days. The respective Committees for these Ministries need to get this Report. The law provides where respective Ministries are supposed to give us periodic reports. So the respective Committees need to look at the Chairman's Report and be able to question their respective Ministries as to why their absorption rate was low. The observation by the Committee was a little bit worrying. They did indicate that despite them getting the figures from the Treasury, the figures did lack in details. The Chairman did say that this is going to curtail the oversight aspect of the Budget and Appropriations Committee. In future, it is important to have the details. The Chairman has made it very clear that they will not be accepting Supplementary Budgets after April. I think that is very important.

Secondly, they said that the Supplementary Budget is not program based. He said that if you look at the output from the budget itself, it does not match. So, when we have a Supplementary Budget that is not program based then it is worrying.

Finally, as the Chairman had said, Equilisation Fund which has been an issue for the last one year, has not been factored in and this is a fund that was going to assist the poor.

It is important that the 14 counties need to explore how they are going to spend this amount. With those few remarks I want to support the Motion.

**Hon. Deputy Speaker:** Let us have Hon. Rachael Nyamai

**Hon. (Ms.) R.K. Nyamai:** Thank you, Hon. Deputy Speaker. I am rising on a point of order based on Standing Order No. 95 that Mover be called upon to reply. The reason as to why I am saying this is because the discussions that we are having now or rather our debates are based on matters that have been raised at the Committee level. Each Parliamentary Committee has looked at the budgets and the matters that have been raised by various committees and put recommendations which have been sent to the Budget and Appropriations Committee. So, I am seeking your indulgence that the Mover be called upon to reply.

Thank you.

**Hon. Members:** Point of Order

**Hon. Deputy Speaker:** What is your point of order Hon. Mbadi? Hon. Racheal Nyamai was on a point of order. You have cross executed your point of order.

**Hon. Ng'ongo:** Thank you, Hon. Deputy Speaker. I want to urge for caution in this House. There is a very dangerous trend setting in. This House is not debating any Motion or Bill. The Moment it is moved, it is seconded and then just two members contribute or even none and then the Mover is called upon to reply. Our fundamental responsibility is to appropriate funds. That is why the people of Kenya voted for us. This culture of asking for the Mover to reply when we are dealing with the Supplementary Budget is not good. Remember the Golden Berg was paid through Supplementary Budget. I want to urge my good friend Hon. Nyamai, probably you have not taken time to look at this report properly but there are other Members who can contribute so please allow us to contribute to this Motion. Then at an appropriate time after sufficient number of Members will have ventilated then you can ask for the Mover to be called upon to reply. We still have time. We have even extended time.

Thank you.

**Hon. Deputy Speaker:** Okay. I will use my discretion and ask a few more Members to contribute. Let us have Hon. Nassir, the Hon. Member for Mvita.

**Hon. Nassir:** Thank you very much. This is something that is very heavy on us as Kenyans. We will recall in December last year when this House approved a debt ceiling from Kshs 1.2 trillion to Kshs 2.5 trillion. When we did that there were issues that were done including a Sessional Paper that was brought to the Departmental Committee on Finance Planning and Trade by the Cabinet Secretary. It was properly thrashed out. That matter was brought to this House, debated and approved by this House.

Today we wonder why once again the Constitution is being violated. I know others have raised this matter. The Article 223(5) of the constitution which says

“In any particular financial year, the national Government may not spend under this Article more than ten per cent of the sum appropriated by Parliament for that financial year unless in special circumstances, Parliament has approved higher percentage.”

There are two issues. First, the CS did not even bother to request Parliament for increasing the budget. This is by the Report of the Chairman on the Budget and Appropriations Committee Himself. His report says on page five which says that “The National Treasury is required to present to the House a request for approval of a higher amount above the ten per cent in the budget for the Financial Year 2014/2015, before approval of this Second Supplementary estimates. It is very clear and evident that Treasury itself has not requested formerly for this approval and it is the Committee itself that is requesting this House to be able to increase that estimate from the 10 per cent allowed to the 15 per cent. It is for this reason that we need to amend the Public Finance Management (PFM) laws. There is a word here. In the Constitution it says, unless in special circumstances.

There is a phrase in the Constitution which says “unless in special circumstances”. That is when we can increase this budget from the required 10 per cent to more. To me, “special circumstances” would probably mean that this country is at war, has unprecedented famine or it has been hit by floods. That is what we expect to hear when we are told that it is “special circumstances”. Kenyans need to know the truth of what is happening and have it explained.

Kshs198 billion is what has been requested. Of that Kshs198 billion, Kshs130 billion has been appropriated for the Standard Gauge Railway (SGR). We have to wonder what the urgency of SGR being put into a supplementary budget was when we only have three more days before the closing of this financial year. We have to wonder what the dangers are. I am going to give the facts and figures that have been given out by the Budget and Appropriations Committee.

I was looking for the exact quote that the President made. He had even told his Cabinet that he would not allow any more supplementary budgets to be passed. This was said by the President. Unfortunately, I am not in the Cabinet, so I am not privy to that information. However, he said in one of his speeches that the Executive and the Cabinet Secretaries (CS) are not allowed to come up with these extraordinary supplementary budgets.

I just want to give some small examples. A Member, who unfortunately is not here, had talked about this and said that these things have passed through committees. One example is the roads. The budget for road construction for the year 2014/2015 was Kshs91,926,718,573. The Supplementary Estimates state Kshs103,642,026,573. These are not figures that have been alluded to by me but when we come up with the key indicators that were put in place in the main budget, what this means is that a kilometre of road costs Kshs609 million. These are the figures there. I know that my brothers and sisters from the opposite side look shocked but that is the reason why you need to read this. That is the reason why we need to go through these figures. It was said that Goldenberg was passed through supplementary budgets. We wonder what is being passed within these three days. The question is how this House will be judged.

Budgets, when they are created, have key performance indicators, targets and outputs that are put in place. The Judiciary had a Budget Estimate of Kshs17 billion. Supplementary Estimates reduced their figures to Kshs13 billion making them lose out on Kshs3.6 billion. Out of this, the targets that they are expected to meet have increased from the establishment of 4 mobile High Courts to 17 mobile High Courts and from 3 new High Courts constructed with appropriate facilities to 4 more. The rest remain standard. We wonder how the Judiciary is expected to perform with the decrease of Kshs3.6 billion. Hon. Members, I plead with you to once again read these documents. This is how Kenyans are losing money. This is how money disappears and is not seen or explained.

I am only giving three examples out of respect for time and my fellow Members. With regard to health, what was budgeted was Kshs4.18 billion. The Supplementary Budget shows Kshs7.14 billion which is an increase of Kshs2.9 billion. This is just with regard to health policy planning and financing. Mind you, health is a devolved function. Looking at the key indicators from the same ministry namely rural health centres and dispensaries, there has been an increase from 20 per cent of what was the target in the year 2014/2015, to 45 per cent in the Supplementary Budget. If we were going as per the current rate of inflation, because this country has not seen an inflation rate of more than two figures and we have not even gone above nine per cent in our inflation rate from July last year till now, we are now looking at a variation of Kshs7.08 billion instead of Kshs5.2 billion, a difference of an extra Kshs2 billion.

I know time is not on my side, but I am urging my colleagues not to pass this. The way forward is for Treasury to come back and tell us that this is what they have already spent. Whatever it is they plan to spend should be put in the rightful manner. As we say in English, at one point we smelt a rat, but with the way these figures are coming up, very soon we will not be smelling rats but we will be seeing a pack, swarm or a horde of rats.

**Hon. Dido:** Thank you very much, Hon. Deputy Speaker. I wish to contribute to these Supplementary Estimates and the Report given by the Committee.

First of all, I wish to thank the Committee for this Report. Overall, in the Budget, there must be equity in resource distribution in this country.

Secondly, we have had the Supplementary I and II Budgets. We need serious transparency in the budgetary process in our country. The Budget and Appropriations Committee must provide the platform for this to happen.

With regard to fair resource distribution, we see that resources are moved from one ministry or department to another. We need to be sure that one ministry or department is not seriously underfunded to the extent that its function is seriously undermined. In the Report, the Committee is on record saying that some of the increases are not fully justified. That is a serious indictment on the part of the National Treasury not to justify how money is going to be spent.

Hon. Deputy Speaker, the Efficiency Monitoring Unit (EMU) and the Inspectorate of State Corporations have been moved from their parent Department of Planning to the Presidency. The Report indicates that this move affect implementation and accountability.

I thank the Committee for rejecting a proposal to move the Equalisation Fund. According to the Constitution, in Article 224 (2), money from the Equalisation Fund shall remain in the Consolidated Fund within the National Treasury, if it is not used. I wish to urge the Committee to ensure that there is transparency in the use of the Equalisation Fund, particularly in providing the House with a compendium of projects that will be undertaken in marginalized areas across the country.

Hon. Deputy Speaker, on the use of funds, particularly by the State Department for Education, money has been moved. However, because we have provided for it using one line Budget Item, it does not provide much information. We need to be convinced that the Ministry of Education, Science and Technology will not be affected by moving the Kshs70 million.

On the National Land Commission (NLC), as Kenyans, we are fully aware of the problems that we are experiencing in terms of land demarcation, issuance of title deeds and addressing issues of land across the country generally. Through the Supplementary Budget II, the NLC lost Kshs162 million. It is important for us to know what effect this reduction will have on this Commission.

Hon. Deputy Speaker, in the Supplementary Budget II, the Ministry of Sports, Culture and Arts has been allocated more resources. When we investigate the level of performance by Ministries, we realise that sometimes it is dependents on the resources we allocate them. The output must be in the form of performance. On this one, I thank the Committee for observing that the output is not to our expectation. Therefore, more resources need to be provided.

Finally, I note that 92 per cent of the Supplementary Budget II is for Development Expenditure, while 8 per cent is for Recurrent Expenditure. At some point, it will be necessary for the National Treasury to explain whether the money is meant for new or ongoing projects. If it is for ongoing projects, to what level have they been accomplished?

With those remarks, I beg to support.

**Hon. Deputy Speaker:** Yes, Hon. Dalmas Otieno.

**Hon. Anyango:** Thank you, Hon. Deputy Speaker. For the first time, I am feeling very uncomfortable with budgetary matters. I would like the Chairman of the Budget and Appropriations Committee to note that.

The Committee is asking us to approve 15 per cent additional Budget. What does it mean? Revenue collection this year declined by 70 billion and yet the Committee Chairman wants us to approve an additional sum of Kshs198 billion. In a way, he is requesting us to approve a borrowing of additional Kshs268 billion to be spent between today and Tuesday.

*(Applause)*

I would like to point out that 92 per cent of the money he is requesting is for Development Expenditure. There was a report to the effect that the absorption rate of the Development Budget was hardly 70 per cent. How will the spending entities absorb Kshs198 billion between today and Tuesday? This can only mean that people have spent the money in advance or they have accumulated pending Bills---

**Hon. (Ms.) Otucho:** On a point of information, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Dalmas Otieno, the Vice-Chair of the Budget and Appropriations Committee wants to inform you.

**Hon. Anyango:** I am willing to listen, Hon. Temporary Deputy Speaker.

**Hon. (Ms.) Otucho:** Hon. Deputy Speaker, Hon. Dalmas Otieno is concerned about how this money will be consumed in the remaining few days of the current financial year. I want to inform the House that the Supplementary Budget is about money that has already been spent. It is also money that will be paid out. However, most of it has already been spent.

**Hon. Anyango:** Thank you for revealing that position. The Committee has not done its job. The Committee is bringing to us for approval what the Government has already spent without our approval. He has acknowledged that the Government has already spent the money on development. They are now looking for money to pay pending bills and yet the law does not allow any procurement without the money being approved by Parliament. As the responsible Committee, are they asking us to approve monies they have spent without our approval? Do they want us to rubberstamp their inefficiency?

**Hon. Musyimi:** On a point of information, Hon. Deputy Speaker.

**Hon. Anyango:** I wish to hear him.

**Hon. Deputy Speaker:** Please, proceed.

**Hon. Musyimi:** Hon. Deputy Speaker, Article 223(5) of the Constitution allows the Executive to spend up to 10 per cent of the sum appropriated by Parliament for the

financial year and, under special circumstances, with approval of the House, up to 15 per cent. This is as long as those approvals are sought from this House within two months.

Thank you, Hon. Deputy Speaker.

**Hon. Anyango:** Sorry for betraying yourself further. Is he telling us that in the last one month the Executive has spent Kshs198 billion because it expects our Budget and Appropriations Committee to rubberstamp that expenditure? Is he explaining to us what is happening at the National Youth Service (NYS) – somebody rushing to spend hundreds of millions of shillings in the last one month and then he brings this Supplementary Estimates for our rubberstamping? Please, help us understand.

**Hon. Deputy Speaker:** The Committee Chair, before you respond, let us hear Hon. Nassir, who is on a point of order.

**Hon. Nassir:** Hon. Deputy Speaker, the Vice-Chair of the Committee has said it very clearly. Parliament is a House of records. We would like to be told when the Government is going to take appropriate action against the person who broke the law and violated the Constitution? We want this to be very clear.

The Chairman of the Budget and Appropriations Committee has repeatedly quoted section 223(5) of the Constitution that in any particular financial year, the national Government may not spend under this Article more than 10 per cent of the sum appropriated by Parliament for that financial year unless, in special circumstances, Parliament has approved a higher percentage.

Hon. Deputy Speaker, it is very evident that what we are doing right now is paying for the neglect of certain individuals because they spent money without it being budgeted for or being approved. When we look at these supplements and the key performance indicators that are there, things are not tallying. Things are totally not tallying. We are coming back to the same question: “Why the rush to push this in three days before the next financial year?”

**Hon. Anyango:** If you had not been informed by the National Treasury please admit it before us.

**Hon. Musyimi:** Thank you, Hon. Deputy Speaker. Today we are not here discussing the National Youth Service (NYS) so I have no wish to be dragged into that issue. I know it is very juicy politically but that is not what we are discussing. What we are discussing is the Supplementary Budget and the special circumstance. When we asked the National Treasury, they came out clearly that it is the Standard Gauge Railway (SGR). We repeat that it is the SGR and the figure requested is Kshs130 billion. The Committee that oversees the SGR is the Departmental Committee on Transport, Public Works and Housing. They have not raised any question on this matter. When the National Treasury came, we raised our questions and we were satisfied that our questions, which are similar to the ones Hon. Dalmas Otieno is asking, were answered. That is why we were able, as the Budget and Appropriations Committee, to agree almost unanimously that we bring this Report here. This is the Report of the Budget and Appropriations Committee and that Committee has people from both sides of the divide sitting in it. I stand by this Report on behalf my Committee and I also stand here with the explanation given to us by the National Treasury as satisfactory.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Proceed, Hon. Dalmas.

**Hon. Anyango:** Hon. Deputy Speaker, even after I take the Kshs135 billion for the SGR, there is still another Kshs133 billion being requested. Not only that. In the next few days, you want to give the Ministry of Devolution and Planning Kshs12.4 billion and we gave them another Kshs26 billion in the next financial year. Where is the logic which this Committee should answer? Why should Development Expenditure not be made to wait for the next financial year? If you are going to encourage the Executive to keep bursting the ceilings, spending more than what Parliament already approved only to use tyranny of numbers at the last minute, even you people are betraying Kenyans.

*(Loud consultations)*

**Hon. Deputy Speaker:** Just hold on, the hon. Chairman is here.

**Hon. Musyimi:** Thank you, Hon. Deputy Speaker. I was at pains earlier on to explain how disappointed we are with the National Treasury with respect to Supplementary Budgets coming to us after 30<sup>th</sup> April. I made that point on my own volition and my Committee Members will bear me out that I spoke with the same feeling this morning when we met with the National Treasury and not for the first time. So, we too are not happy with Supplementary Estimates coming late. We really hope that this is the last time we are going to be put through this. As I sit, I wish to inform my good friend that much of this money has actually already been spent.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Linturi? Let him finish, I hope you are. Is your time up?

**Hon. Anyango:** Yes. This is the first time we are doing two Supplementary Estimates. We did a Supplementary Budget of Kshs50 billion which was reasonable. Normally, we check revenue collection before we allow Supplementary Budgets. This is a situation where revenue performance has not been doing well yet the Executive has secretly been spending huge sums of money knowing revenue collection was in shortfall. I am happy that I have heard something from the Mutava I knew.

**Hon. Members:** Yes.

*(Applause)*

**Hon. Anyango:** Up to now, this Mutava that I did not know is being manipulated to do things he has never believed throughout his life. I appeal to him to appeal to the House to reject this approval except for the SGR which has already been funded for us by the Chinese. This is a precedent we must not allow to be established in this House; a 15 per cent additional expenditure over and above 10 per cent. All along they knew they are limited to 10 per cent. Either we have misled them due to the tyranny of numbers until they are now taking us for granted. The Mutava I know would never chair a committee where any Kenyan is being taken for granted. So, it is a shock to me that his Committee has been manipulated to a point that it makes his integrity, that of other members of the Committee including the Vice Chairperson who tried to explain something to me, questionable. We should put our feet down. The money for the SGR is already given to us by the Chinese. It remains ours. It can be spent from Wednesday next week, after 30<sup>th</sup>

June. Any other request for development here will be absorbed within what we have allocated for development from next Wednesday.

This request is ridiculous and should be rejected roundly by everybody.

**Hon. Deputy Speaker:** Hon. Linturi.

**Hon. Linturi:** Thank you, Hon. Deputy Speaker, for giving me this opportunity. I want to start by thanking my colleagues on the other side for really being diligent in trying to interrogate the Budget and more precisely on the figures and the use that this money is going into. That is one of the cardinal duties of this Parliament.

I feel obliged to make some corrections because if this is not allowed, then the impressions that may have been created by arguments or submissions by Hon. Dalmas is that whatever this Report is seeking this House to do which is the provision of this money could be illegal and unconstitutional.

I hold a complete different opinion and I would not want to submit on whether or for what reason this money is going for because I do not have the details concerning the reasons for making those payments. I want to concentrate and restrict myself to whether it is fair, within the law and constitutional for this House to approve this money at this point in time.

I want to invite anybody to look at Article 223 of the Constitution of Kenya. This Article talks about Supplementary Appropriations. For the avoidance of doubt, I would seek your indulgence so that I can read it for those who may not have the Constitution and so that we can probably reason together to understand the intention of this Article or what it was meant to achieve. Hon. Deputy Speaker and Members, I beg for your audience. The Article says that:

“(1) Subject to clauses (2) to (4), the national government may spend money that has not been appropriated if-”

The words being used here are not mandatory. The words are “may spend any money that has not been appropriated.” However, there are conditions under which the Government may spend such money. The condition being set out under Article 223(1)(a) is:

“The amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act.”

So, what it means is that the Executive has the authority to spend money that is not appropriated. That money can only be spent for a matter that has arisen and there was no money set aside for that purpose. Article 223(2) says:

“The approval of Parliament for any spending under this Article shall be sought within two months after the first withdrawal of the money.”

My interpretation of this provision is that the Government has authority to spend money that has not been appropriated, but immediately after the withdrawal of any money that has not been appropriated, they must seek parliamentary approval. So, in the current circumstance, and I said I do not want to address myself to what this money is meant for, I want to imagine that the reason why the Government is coming very late is that, as Hon. Dalmas has said, in the first instance it may have accumulated money to an amount that they are seeking we approve today. The law has that provision which allows them to spend but requires us to approve today. In the event that there is no approval then



it means we will be getting into the next year with pending bills and that would be completely inappropriate because it is expected that we should not get into the next financial year with bills that should have been taken care of in this financial year.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Dalmas, let it not be a conversation between you and Hon. Linturi because so many of these Members also want to make contributions.

**Hon. Anyango:** The clause we put there says, “if a need arises.” Needs cannot be worth Kshs133 billion. What has happened is that the Government leaves what was budgeted for during the financial year, creates new expenditure avenues in the course of the financial year, comes here to claim those new needs arose and they want to circumvent parliamentary approval and hammer it in the last four days as an emergency by forcing loyal Members of the House to approve. I am cautioning that this is a bad precedent which if we let pass, even before the next financial year is halfway, they will have created new needs.

Why am I talking of “new needs”? These are things I know. I am talking of “new needs” on projects of interest to particular individuals. The projects are brought in during the financial year, given emergency and urgency status to exploit this Article and then expenditure is commenced and tenders are awarded for those projects of particular interest to particular people. The projects which were submitted to and approved by Parliament are ignored while the absorption rate lags by 40 per cent. They want to bulldoze us here to accept special interest projects on which particular individuals have interest.

I am objecting because we must not allow the practice in our financial management where priority in development is on the basis of who benefits from which project and not on the basis of what is in the interest of the whole country and which has been publicly presented before the House and approved for one financial year. You cannot subvert it and create new projects that become priority and you want to exploit this Article in the Constitution.

Thank you.

**Hon. Kaluma:** On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Kaluma, what is your point of order?

**Hon. Kaluma:** Thank you, Hon. Deputy Speaker. I am rising to request for the House’s interpretation of Article 223(5) of the Constitution. I thought we would just be debating the Supplementary Budget as a lawful issue, but I am concerned that there is a fundamental constitutional issue that we need to dispense with before we proceed any further.

Article 223(5) says that:

“In any particular financial year, the national government may not spend under this Article more than ten per cent of the sum appropriated by Parliament for that financial year unless, in special circumstances, Parliament has approved a higher percentage.”

The provision is in the negative. It says “may not spend more than ten per cent.” That is the first part of the provision. Remember the other provisions that precede it.

The literal interpretation in law, and I beg my colleagues including the Chairperson of the Budget and Appropriations Committee to listen, is that the national

Government may in fact spend money that has not been appropriated without prior approval of Parliament, but only up to 10 per cent of the appropriated amount. Going beyond 10 per cent requires prior approval. Without saying that we want to deny the Government Supplementary Budget and continuation of these programmes, could there be a distinction coming from the Chairperson of the Committee in terms of what falls within the 10 per cent as having been spent so that we separate those development programmes and they continue as opposed to sanctioning an unconstitutionality? As a House, we are required to uphold and protect the Constitution. This is an obligation imposed on us and everybody.

You may want to look at the expenditure sheets which my colleagues have spoken about. Let me beg the Chairman that these are very serious issues. We dealt with the Supplementary Budget the other day and shifted money meant for HIV supplements to something he called “Cancer Excellence Centre” without saying specifically what the money was to do in that centre. We thought because we were in a rush and dealing with cancer patients, we were purchasing something but without saying so. The money dedicated and committed by this House for the wellbeing of people suffering from HIV/AIDS, mainly in my constituency, was taken away to some unknown issue.

I beg that we get an interpretation of this provision lest we proceed as a House by sanctioning an illegality and unconstitutionality. This is not an issue that the Chairman of the Budget and Appropriations Committee can help me interpret. I think that in law I am a better lawyer than him.

**Hon. Deputy Speaker:** Hon. Patrick ole Ntutu.

**Hon. ole Ntutu:** Hon. Deputy Speaker, thank you for this opportunity, first of all, to support this second Supplementary Budget. I want to put this on record. Indeed, as the Budget and Appropriations Committee, we asked the National Treasury many questions, like the ones Members are asking. Let me say that indeed, this is the first time, in the history of Kenya, that we are approving 15 per cent of the Supplementary Budget. There are a number of items that have been mentioned in this Supplementary Budget. There are a number of items that have been mentioned in this Supplementary Budget. One of them is security. Somebody asked why the Government spent this money. I want to tell hon. Members on the other side that the Government spent Kshs11 billion for security operations. We all agree. My colleagues from Mombasa and I from Maasai Mara know that the tourism industry is almost down. Right now if we are not going to take care of security, the tourism industry will not be there. You know the people of Mombasa and the people of Maasai Mara depend on it.

When this issue of security was brought to our Committee that this money has already been spent, we totally agreed because it came from the Departmental Committee on Administration and National Security.

When you look at the other development items the money has been spent on, like infrastructure, the Kshs130 billion that Hon. Dalmas Otieno was talking about, it is not money from the Chinese Government. It is the money that the Government is going to spend with an additional funding from the Chinese Government or other donors. Therefore, as a country, we need this money so that the railway does not stop. If it stops, it will be another white elephant project just like many others that are all over this country. Therefore, these items are needed by this country.

Let me also help Members to understand that our Kenya Airways was also going down. When the National Treasury said that they needed Kshs4.2 billion as an emergency loan for the Kenya Airways, if the Government had waited for this House to approve the loan, today we would not have the Kenya Airways. That is why they spent that Kshs4.2 billion. Many Members are asking why the Government used this money. Members who have spoken before me have said that the Constitution allows the National Treasury to use a certain amount of money without the approval of Parliament but later they have to come and ask Parliament to approve. That is what we are doing today. I do not know why anybody would say that we are just rubber stamping. We are not rubber stamping, otherwise we would have done that during the Committee stage. That is why we have brought it here so that Members of this honourable House can debate and approve or reject. That is what we are doing here. I agree totally with this Report.

The National Treasury wanted to spend money from the Equalisation Fund. We rejected the spending of money for the 14 counties because they wanted to spend about Kshs3 billion from the Equalisation Fund. We rejected that and said that the money should be left in that account until we have regulations on how the money will be used.

Let me tell Members of Parliament, so that they can understand where the National Treasury is coming from. They needed Kshs13.5 billion to fund the Ministry of Energy and Petroleum for geothermal generation and transmission. Today the price of electricity connection has gone down to Kshs15, 000 from Kshs35, 000. That is helping our country. This must be taken into consideration. This money is not going to Jubilee or to ODM. It is going to Kenyans and it is going to help them. I would like to tell hon. Members that we are also at pains to understand where the National Treasury was coming from. It is not easy when the National Treasury comes and says: "We did not have a choice. We had to use this money and then ask for approval of this House." That is why we are here today. I ask hon. Members to be honest. I know for most of us who are new comers, this is probably the third Supplementary Budget that has been brought to this House. Even past parliaments approved Supplementary Budgets. So, I do not know why this one is becoming a big deal.

I want to stop there and ask other Members to approve this Supplementary Budget because money has already been spent anyway. Thank you.

**Hon. Deputy Speaker:** Hon. Mbadi who calls himself the Shadow Finance Minister.

**Hon. Ng'ongo:** Thank you, Hon. Deputy Speaker. I sit in the Budget and Appropriations Committee. This is the full disclosure. The full disclosure is that this extra amount of money that is being approved to be spent, if you ask me or if you ask any Member of that Committee, I would guarantee you no one knows how much has been spent and how much will be spent between today and Tuesday. That is the full disclosure. If you ask the National Treasury, they will tell you that we have spent some money and they will spend some but as to the specifics, if you want to squeeze the specifics from the National Treasury, it is like squeezing water from a rock. Therefore, I agree with Members of this House who have expressed reservations and have said that as a House we need to come in and assert our authority.

Let me take this House to the Kshs130 billion that is being provided for the Standard Gauge Railway (SGR). The first question we asked is why there is need and

necessity to put this money in the Budget a few days to the end of the financial year. Why can the National Treasury not defer this to the next financial year? I can tell you that there was no satisfactory answer to that question.

I want to add something to that. What I want to add regards what Hon. Dalmas Otieno said. Hon. Deputy Speaker, there is a bit of high level consultation. The Leader of the Majority has arrived. I want to announce the arrival of the Leader of the Majority Party so that we can have peace.

As a House, we are being asked to spend more than what the Constitution provides. We are being asked to allow, approve or authorise the Executive to spend 15 per cent more than what was appropriated in the financial year. That is unconstitutional, but the Constitution has a rider that you can spend up to beyond 10 per cent under special circumstances and with the approval of Parliament.

When Treasury appeared before us, they insisted that the money meant for the SGR, which is a loan from the Chinese Government, is not supposed to be included under that requirement of 10 per cent. We had an argument.

*(Loud consultations)*

**Hon. Deputy Speaker:** Order, Members! The consultations are too high.

**Hon. Ng'ongo:** Hon. Deputy Speaker, I was raising a fundamental issue. The reasoning of the Treasury when we asked them why they were going beyond 10 per cent, they initially insisted that the money that is being borrowed externally should not form part of the 10 per cent provision. I reminded them that the provision of Article 223(5) talks about money appropriated. Parliament appropriates money including loans; external financing. Therefore, that is when this argument of special circumstances came about.

If the Kshs130 billion for the SGR is a special circumstance, we can understand that. If the loan had been negotiated with the Chinese Government and it was agreed that, that payment has to come in before 30<sup>th</sup> June, and it is money from our development partners, why can we not just deal with that and remove these other expenditures which are not under any special circumstance, for instance, the money going to the NYS of Kshs4.9 billion? There is no special circumstance to force us to spend that money.

What Hon. Dalmas Otieno said is very fundamental. We had a Budget deficit for this financial year. By increasing the Budget by over Kshs200 billion, we are increasing the Budget deficit, whether we like it or not. Further, Hon. Dalmas said that the under-collection that is declared by the KRA was Kshs70 billion. That Kshs70 billion was only upto March. If you try to figure it out and extrapolate it to the end of the financial year, you will come up with Kshs93 billion. So, if you add Kshs93 billion to Kshs250 billion, you are talking of over Kshs300 billion extra Budget deficit that you are likely to incur in the previous year. Where do you get that money? You will get that money from external loans and domestic borrowing. The net effect is that you are going to affect and cause disturbance in the entire financial sector.

**Hon. Gichigi:** On a point of order, Hon. Speaker. Is it in order for a Member of a Committee, who was present and fully supported the deliberations that led to this particular Report and who made the Chairman to bring this Report as it is, to then turn around during the debate and oppose it just because people are watching him on television? Is it in order for the Member to do that?

*(Loud consultation)*

**Hon. Ng'ongo:** Hon. Deputy Speaker, first of all, I understand the Member for Kipipiri is very new in this House. There is no time I have mentioned that I am opposing the Report. That does not mean I cannot criticize it. In fact, I am saying exactly what I said in the Committee. If I am wrong, the Chairperson will confirm. I am the one who even told the Cabinet Secretary that the external loan must be considered within the 10 per cent. I even repeated that you can only ask Parliament to spend under special circumstances and you must seek authority of Parliament. The HANSARD is there. I said it. I know there is no HANSARD recording, but that is what I said.

So, whatever you say, I must make my point clearly. Sometimes when you are in the Committee, you express your reservations and no one listens because it is a vote. But these reservations must be expressed. I want to repeat that a lot of provisions that we have made are not necessary. Even Hon. Gichigi cannot tell us whether this money has been spent yet he sits in that Committee. That is the truth. No one told us.

The Jubilee Administration, through the Treasury, must respect the budget-making process of this country. For the first time, I am seeing a confused budget process in this country. You cannot even understand where you are going. Today, we were being asked to re-allocate Kshs2 billion for the Mumias Sugar Company, which was meant for rights issue. We were being asked to take it away. Just because the President visited Mumias yesterday, today we were called in a hurriedly convened meeting and asked to return that money. This is not how to run the Treasury.

*(Loud consultations)*

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

**Hon. Ng'ongo:** Hon. Deputy Speaker, Hon. Cecily Mbarire does not sit in that Committee. How does she know what I am saying?

**Hon. Deputy Speaker:** Order! She is on a point of order.

**Hon. (Ms.) Mbarire:** On a point of order, Hon. Deputy Speaker. Is the Chairman of ODM telling us that he thinks what the Jubilee Government is doing to bail out Mumias Sugar Company is wrong? Is that what he is saying? Is he saying that the thousands of cane farmers that I saw yesterday in Mumias do not deserve a bailout? That

we cannot go out of our way to save them? I hope the people of western Kenya are hearing this from the Chairman of ODM. It is a shame.

**Hon. Ng'ongo:** Hon. Deputy Speaker, the importance of listening cannot be over-emphasized. Hon. Mbarire does not listen. I said that we had already provided for that Kshs2 billion. It is this reckless Jubilee Government which was trying to re-allocate it. Today, because they went to Mumias, they were removing the money that we had already approved. The Kshs2 billion was there in the Budget. So, this reckless and confused Jubilee Administration was trying to re-allocate the money, but when they went to Mumias, now they saw the need and they were bringing it. We are supporting the bailing out of Mumias Sugar Company.

*(Loud consultation)*

**Hon. Deputy Speaker:** Your time is up, Hon. Mbadi!

**Hon. Ng'ongo:** Why are you switching me off?

**Hon. Deputy Speaker:** Hon. Mbadi, make your point without shouting! Why are you shouting? You are switched off when your time is up!

**Hon. Ng'ongo:** Why are you switching me off!

**Hon. Deputy Speaker:** Hon. Mbadi, I am not the one who is controlling the time, Hon. Mbadi, it is the Clerks. Who is on a point of order? Hon. Mbadi, who has switched you off?

**Hon. Ng'ongo:** Why have you switched me off?

**Hon. Deputy Speaker:** Hon. Mbadi, who has switched you off, Members, allow other Members to also contribute. I have a list here. Hon. Joseph M'eruaki.

**Hon. M'uthari:** Hon. Deputy Speaker, in as much as I support this particular Supplementary Budget, there are other flaws within the system and we have to see it. By the end of the day, it is wrong to have two Supplementary Budgets within one year. That is a sign of poor planning. These things should have been foreseen from the word go.

However, we know that there are certain expenses that need to be met. Some jobs have been carried out and contractors require to be paid. For us to have a smooth running of the operations especially in development in terms of meeting our commitments, we require that we pass this Supplementary Budget and we move on. However, we should highly discourage this process where our National Treasury comes every time to adjust the Budget and we have the Supplementary Budget.

I believe we are people who are well trained in this country, who have the focus and who can plan well ahead and not make these kinds of changes every time. I support this Supplementary Budget with reservations. Let us pass it and move on.

**Hon. (Eng.) Gumbo:** Hon. Deputy Speaker, I do not sit in the Budget and Appropriations Committee. Looking at the arguments that are going on, I do not even wish to sit there. What we have done today is a really terrible indictment of this

Committee. I respect Hon. Mutava Musyimi very much but when we debate issues like these which are clearly faulty, it starts to look like the Budget and Appropriations Committee is merely rubberstamping issues that they are not even seized of. This is giving a very bad image of Parliament.

**Hon. Deputy Speaker:** The Chair of Budget and Appropriations Committee is on a point of order.

**Hon. Musyimi:** On a point of order, hon. Deputy Speaker. Is the hon. Member in order to get personal? That seems to be the case on the other side. I can tell you that we burnt the candle on both ends for the sake of the Kenyan people to make sure that we bring information that has integrity to this House. Is the hon. Member in order to keep dragging my name as it happens often? This is all about Mumias and ODM politics in western Kenya. Let us proceed to vote on this matter and move on.

*(Applause)*

**Hon. (Eng.) Gumbo:** Hon. Deputy Speaker, if the Chair and his Committee burnt the candle on both ends, then I must also say that in the process they also burnt their thinking cap. I am not being personal. This thing is making Parliament look bad. We cannot sit here and look. The figures just do not add up. We are being asked to approve spending of several billions for three days. How can we sit here and say that Parliament is looking good? It is not looking good. Honestly, there is nothing personal. He is the Chair of the Committee. I am only saying that everybody in the Budget and Appropriations Committee must up their game. All of us are going to look bad. When things happen like this, Parliament is lynched by everybody. Honestly there is nothing personal here. So, the budgeting and appropriation of public resources is one of the most---

**Hon. Deputy Speaker:** Hon. Gikaria, what is your point of order?

**Hon. Gikaria:** On a point of order, hon Deputy Speaker. I rise on Standing Order No.95. Just like the Chair of the Budget and Appropriations Committee has just indicated, there is nothing new that is coming from the other side or this side. We are just talking about the same thing. This thing has been raised by Hon. Nyamai and you gave us an opportunity to debate. There is totally nothing new coming out of the debate of this House. It is just repetition, irrelevance and people dragging other issues that are of no business in this Motion. Under Standing Order No. 95, would I be in order to ask the Mover to reply? I plead with you. First, when Hon. Rachel Nyamai rose on the same, you did give--- It is now over one-and-a-half hours since she rose on the same. I just plead that you call for us to vote. If they defeat us then we will continue with the debate. I plead with you.

**Hon. Deputy Speaker:** Hon. Members, it is true that when Hon. Rachel raised the matter, we said that not enough Members had had an opportunity to speak. So, hon. Members, allow hon. Gumbo to finish and then we will put the Question.

**Hon. (Eng.) Gumbo:** Hon. Deputy Speaker, we are accountable to the people of Kenya individually and severally. When we have estimates which purport that a kilometre of road can be done for Kshs600 million, do we not have a right to question? Go to the Parliamentary Budget Office and get the analysis.

**Hon. Deputy Speaker:** Order, hon. Gumbo! What is your point order, Leader of the Majority Party? Allow him to prosecute his point of order.

**Hon. A.B. Duale:** On a point of order, hon. Deputy Speaker. My good friend, hon. Gumbo, the issue of the three days on this Supplementary Estimates has been said. I want to put it in order and tell the House that the Cabinet Secretary (CS) for National Treasury brought the Supplementary Budget II and was tabled on the Floor of the House two months ago. It is the business of this House to have passed it then. It is not that the Supplementary Budget II from the national Government has been brought one hour ago or two days ago, it has been here for two months. It was with the Budget and Appropriations Committee.

**Hon. (Eng.) Gumbo:** That is debate, hon. Deputy Speaker. I want to conclude by requesting-- Hon. Mutava Musyimi and his Committee know that I have appeared before the Budget and Appropriations Committee to complain about entries which I did not agree with. We are here to look at spending on behalf of the people of Kenya. Why are we here? I am only asking that we must up our game. When we go out there and when we appear on television debates we are asked to be collectively responsible for what Parliament does. Nobody can ask us that when things are not working we just keep quiet. It is not good for the image of this House. We must pronounce ourselves on them.

Hon. Deputy Speaker, I oppose.

**Hon. Deputy Speaker:** Hon. Members, we have had occasion to ventilate. We put everything to the vote and if it is lost then we continue. The Question I am putting is for the Mover to be called upon to reply.

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

Let us have hon. Musyimi.

**Hon. Musyimi:** Thank you, hon. Deputy Speaker. I rise to thank the hon. Members for their contributions.

I beg to reply.

**Hon. Deputy Speaker:** Order, hon. Members! There was a matter that was raised by Hon. Kaluma who I see is on his way out. The Motion that is before us is asking for that approval that you are requesting. Part of this Motion we are working on addresses that matter that you raised on the Floor.

*(Question put and agreed to)*

Hon. Members, on the next Order the Committee is not ready. Therefore, we will allow them time to bring that later. We will move on to the next Order.

*(Committee of the whole House on the Securities and Investment Analysts Bill deferred)*

## MOTION



NINETEENTH REPORT OF THE PUBLIC  
INVESTMENTS COMMITTEE

*(Hon. Keynan on 23.6.2015)*

*(Resumption of Debate interrupted  
on 23.6.2015)*

**Hon. Deputy Speaker:** Hon. Member, I think this was an on-going debate, I do not know if there was anybody on the Floor. Any Member who wants to contribute on this Motion, I have Hon. Eng. Kiragu as the first one on the list.

**Hon. Musyimi:** On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** What is your point of order Chair of the Budget and Appropriations Committee?

**Hon. Musyimi:** I thank you, Hon. Deputy Speaker: I beg through you, to just ask Hon. Members whether we will be in order to leave the Chamber before we prosecute the matter that will be before us in another 20 minutes, that is, with respect to Supplementary Bill. Will we be in order to leave the Chamber before we finish that whole matter?

**Hon. Deputy Speaker:** Okay. Is Hon. (Eng.) Kiragu contributing on this?

**Hon. J.K. Chege:** Thank you, Hon. Deputy Speaker, for giving me the opportunity to contribute to the 19<sup>th</sup> Report of the Public Investments Committee (PIC). I want to share some of the experiences that the PIC has gone through while looking at the accounts of the 72 companies that the Government has invested in heavily.

We have seen that there has been wastage in most of the parastatals and lack of planning. We have also experienced opportunities where people looted money and we have not followed up on embezzlement of public funds. I want to thank the President for making it possible for us to save some parastatals which are so crucial to the economy of this nation. At the age of 18 years, I had the opportunity to be recruited into Mumias Sugar Company, where I was trained before I went to the university and during the time that I was in the university. This company has contributed a lot to this nation and for the President to make a bold step to save this parastatal, is an indication of a commitment that we care for the whole nation.

In reports, we have seen deterioration of certain companies like the Telkom Kenya, Kenya Railways, Kenya Airport Authority and many others. What I can say is that in order to save these companies, we need to empower the Office of the Auditor-General. We need to make it strong. We need to provide funds for it so that they can interrogate accounts for the very many organizations that fall under the PIC.

It is my hope that Members will read and reflect on the recommendations that the reports have carried. It is important that we make ourselves aware of how as a nation, we are faring on, with public investments.

Some of the recommendations in some of these reports have far reaching implications to some people's careers, but it is important that we follow these recommendations. We are calling upon the various organizations and agencies that are

responsible in following up matters of investigations and prosecution to ensure that those that have looted public organizations are brought to book.

There is also another important issue. When it comes to privatisation of public organizations, we have to be very careful so that privatisation is done in a way that the public interest is safeguarded. A case in point is the Kenya Oil Refinery, the Telkom Kenya and concessioning of the Kenya Railways, among others. As a nation, we have to be very careful about people who plan and make it possible that foreigners can come and loot important investments in these organizations.

It is important that we safeguard strategic companies in this country to make sure that they provide returns for the monies that have been invested. It is also important to safeguard the interest of this nation and make it possible for us to compete in the global economy as we move on.

The matter of land and grabbing of public land particularly for parastatals is an issue that has come up. It is also important to make sure that all these issues are looked into and parastatals are protected so that even as we go ahead, there will be areas for future development and expansion of some the facilities that need to be expanded, but this calls for vigilance. This House has a role to play to make sure that interests of Kenyans are safeguarded at all times. It does not matter what it would take to make sure that we are there for the public.

*[Hon. Deputy Speaker left the Chair]*

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Shebesh) took the Chair]*

As I close, I recommend that Members get time to go through the recommendations. I want to thank the Committee for the work that they have put in to go through over 70 reports of parastatals. It is such a hard job. I want to thank the leadership of the Committee and its Members for a job well done.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Silverse Anami.

**Hon. Anami:** Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to give my views about this Report. First, I would like to thank the Committee because they have consistently given us reports on how these fabric institutions are performing. Using the example of Mumias Sugar Company, we have come to appreciate that we must change tactics and style on appointments of management of institutions that are public. We have to find a way of indulging people because when institutions like this go under, the losers are members of the public who are after all, impoverished. This makes their situation even worse. We need to find a way of indulging the public so that there is direct public participation in appointment of management.

The other issue is de-politicising issues. Most of these institutions have been politicized to an extent that even the appointments are the recycling of friends and people who have failed elsewhere. It is high time we de-politicised these institutions so that people do not run away with public funds.

Our concern as a Government is to alleviate poverty. The best way to do this is to indulge strategically any corporate social responsibilities where institutions like these are called upon to participate in alleviating poverty. I would like to take this opportunity to thank the Committee and to support the reports that they have made, embracing all the recommendations in there.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Johana Kipyegon.

**Hon. Kipyegon:** Thank you very much, Hon. Temporary Deputy Speaker for this opportunity to support the Report of the Public Investments Committee (PIC). I sit in that Committee and I want to say that great work was done. I must congratulate the Chair for the way he steered the Committee through the several audit activities that we did.

There are so many challenges that we faced especially when dealing with some of these institutions. There are so many institutions which as we speak, are not able to explain past activities because some of the audit reports date back to so many years. Some of the managers and people who were running those institutions either have retired, were sacked or are died. Therefore, the current management could not respond to audit queries.

Hon. Temporary Deputy Speaker, one thing I must commend the Committee for is the relentless effort to make sure that these institutions' reports are in order. As I said previously, as Members of Parliament, one thing we must understand is that we are one arm of Government. Sometimes people think that when you speak, you speak on behalf of the Government or the Opposition. We must understand that as Members of the Committee or National Assembly, we are one arm of the Government. Therefore, it is our responsibility, as the Constitution provides, to look into issues that affect this country without necessarily thinking of your political party.

I had requested and I will still request the Chairman, when he will be replying to table the list containing names of parastatals that were involved in corrupt deals. I remember what the Head of State said in Mumias the other day. He said those people who were involved in corruption in Mumias Sugar Company must be followed not only to jail but also their properties be sold to recover public money that was taken. It would be an effort in futility if the Chairman of this Committee does not table the names of companies that are known to have fraudulently acquired land, houses that belong to parastatals and messed up these parastatals.

As we speak, Telkom Kenya and so many other parastatals including ADC went under. The ADC is like a walking ghost today. It exists only in name but it does not perform the duties which it was meant to perform. It is the same case with the National Cereals and Produce Board (NCPB). These were major parastatals which went a long way to assist farmers of this country. Nobody is brave and smart enough to even tell this country that so and so plundered this particular parastatal, they just go round in circles.

Hon. Temporary Deputy Speaker, when are we going to play our role as Members of Parliament? I wish in this particular one, the Chairman of this Committee would stand firm, especially given that he is purported to be from the Opposition, which to me is in Government because we are an arm of Government. We need to name and shame these people who have plundered this country. If we sit in this Committee and House looking at the audited reports and then nothing happens to these people, this country will blame us.

Hon. Temporary Deputy Speaker, I still insist that we must have, for the first time, companies that we are going to blacklist. We need to shame the people who will be forwarded to the Ethics and Anti-Corruption Commission. Names need to be forwarded to the Director of Public Prosecutions (DPP) for serious investigations. I wish to see EACC functioning. It is unfortunate that we do not even have a commission in place, we only have the secretariat. We do not know whether the secretariat is strong enough to bring these people to book. We also have a DPP who is being fought left, right and centre to the extent that some of them are scared even to deal with matters that are referred to them. In the same way, the EACC was fought until they had to leave office. We are expecting this country to move in the right direction. I wish the Chairman of this Committee and this House would make serious recommendations that would put the parastatals on their toes so that we can move forward.

Hon. Temporary Deputy Speaker, we looked at many issues, but those are the ones I have highlighted. Most of the concerns that we encountered were on financial constraints. In most of the companies and parastatals that are run by this Government, CEOs mismanage funds.

Another issue which came up and we thought it was one of the major concerns was land; land which was acquired illegally either by the parastatals or individuals. Most of the land in areas like ADC has been grabbed. People have taken away most of it. Most of the land belonging to the Kenya Airports Authority (KAA) and Kenya Civil Aviation Authority (KCAA) has also been acquired illegally by several individuals. I wish to say that when we are making recommendations, we must ensure that we put the management of various parastatals on their toes so that we can move forward and help this country move forward.

Hon. Temporary Deputy Speaker, I do not want to take a lot of time because I know there are friends in this House who would want to make serious contributions. I just want to end by saying that when we talk about money that has been stolen in this country, no one should be silenced. Whether you are in the Opposition or on the other side, no one should be silenced. I have heard a politician going round telling people: "Although you did not vote for us, we will still help you." How are you helping us? This is taxpayers' money. When it comes to matters of taxpayers paying taxes, it is across the country. It does not matter whether you are in Government or not, you pay taxes. When it comes to spending that money, it must be spent equally across the country.

I wish to support. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Justice Kemei.

**Hon. Kemei:** Thank you, Hon. Deputy Speaker. As I support and congratulate the Committee for doing a good job, I am an extremely worried man when I look at such Reports. I am worried if the Central Bank of Kenya (CBK) which is the country's last bank and keeper of foreign resources has not been audited since 2010. That is a great worry. I am a worried man when most of the strategic institutions of our country have unqualified accounts. I am worried when I see land belonging to strategic institutions being grabbed.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Let me take that point of order from Member for Muhoroni.

**Hon. Oyoo:** Thank you, Hon. Temporary Deputy Speaker. Given the mood of the House and noting that Members are repeating themselves because my good friend and neighbour, the Sigowet/Soin Member of Parliament had talked about this thing before and even talked about the concern that Kshs3.5billion had been factored for irrigation when we know it only went to Mwea, it is time for you to call the Mover to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I do not see the Mover in the House but you can complete what you were saying.

**Hon. Kemei:** With due respect Hon. Temporary Deputy Speaker, I can complete in a minute.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Go ahead.

**Hon. Kemei:** Hon. Temporary Deputy Speaker, although I was interrupted, I would wish to say that when you get State corporations like Kenya Airports Authority (KAA) inflating a tender by 74 per cent, then things are not right in this country. I saw in President Uhuru Kenyatta the markings of a great man some time back. I still believe that President Uhuru Kenyatta will be a great man for this country but that will depend on how he can fight corruption and streamline affairs in State corporations.

We have talked about Mumias Sugar Company. That institution was brought down deliberately by people that we keep on seeing on television screens of our country. I will reserve my comments on Mumias Sugar Company until when the report of the Departmental Committee on Agriculture, Livestock and Cooperatives is brought to this House. That is when we will say that although it is good to give Mumias Sugar Company a bailout of Kshs1billion, those people who looted it must be brought to justice.

Thank you, Hon. Temporary Deputy Speaker, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Members, are we in agreement that the Mover be called to reply?

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Wamalwa.

**Hon. Wakhungu:** Thank you, Hon. Temporary Deputy Speaker. First and foremost, I would like to thank the hon. Members who have ably contributed to this particular Report. It is, indeed, important to note that State parastatals have a responsibility to ensure that the investments they make must bring value for money for the Kenyans. In line with our Standing Orders, this Committee is in charge of looking at the prudence of investments. Some of the critical issues that hon. Members have raised for instance is the issue of absorption rate. We mentioned that State corporations must be monitored as they spend money. You realise that right now, we are doing supplementaries and some that have low absorption rates should not even be asking for supplementaries.

As clearly put by other hon. Members, there is the land issue. It has been a problem. A lot of land that belongs to these State corporations has been fraudulently acquired. For example, we have seen the issues of Kenya Civil Aviation Authority (KCAA) and Kenya Ports Authority (KPA). We call upon the relevant ministry plus the

National Land Commission (NLC) to move with speed so that these State parastatals can acquire the ownership of this land.

There is also the issue of procurement. When it comes to issues of procurement, we know a lot of corruption cases. So, we call upon the State corporations to follow the laid down law in line with Article 227 of the Constitution and the Public Procurement and Disposal Act.

There is also the issue of the Auditor-General. It is good that the Budget and Appropriations Committee Chairman is here. We are happy for the good work that you are doing despite the challenges. The independent bodies that contribute so much as far as fighting corruption is concerned should be well funded. These are issues to do with the Auditor-General's Office. The Auditor-General must be well funded.

We are also aware about the Director of Public Prosecutions (DPP). Most of the recommendations that this Committee has done--- Hon. Johana Ngeno who is a member of this Committee has not read the Report because it has also named some of the individual members who have misappropriated money.

**The Temporary Deputy Speaker** ( Hon. (Ms.) Shebesh): Beware of the time.

**Hon. Wakhungu:** In line with Article 226 of the Constitution, they have to be surcharged. I want to thank everyone for supporting this Motion and I move. Thank you.

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Members, we will not put the Question at this time. The time being 6.30 p.m, this House stands adjourned until 6.35 p.m.

The House rose at 6.30 p.m.