

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 22<sup>nd</sup> April, 2015

The House met at 2.30 p.m.

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

### PRAYERS

### COMMUNICATION FROM THE CHAIR

**Hon. Speaker:** Hon. Members, those who are still standing can take their seats now.

Hon. Members I have two Communications to make. The first Communication relates to a retreat for all Members of the National Assembly called by the Select Committee on Constituencies Development Fund.

#### RETREAT ON CONSTITUENCIES DEVELOPMENT FUND

The Select Committee on Constituencies Development Fund, as part of its mandate, oversees the implementation of the Fund, considers and recommends to the National Assembly any matter requiring action by the House pursuant to the provisions of the Constituencies Development Fund Act.

Honourable Members, following the High Court ruling on the constitutionality of the Constituencies Development Fund (CDF), the Select Committee has taken the lead in seeking ways of redress over the High Court ruling and championing the restricting of the Act in line with the Constitution, among other remedies. Given the strategic importance of this kitty, it is imperative that the National Assembly strives to ensure that the Fund remains intact for the benefit of all Kenyans.

Honourable Members, the Committee has therefore scheduled a one day retreat for all Members of the National Assembly where they will be briefed on the steps being taken by the Committee and other stakeholders on CDF matters. The forum will bring together the Select Committee on CDF, the CDF Board, Government technocrats and other experts from different fields to ventilate on the matter. Members will have an opportunity to interact with the experts at hand, raise concerns, and make proposals on the restructuring of the CDF. You are therefore invited to the one-day retreat on Friday, 24<sup>th</sup> April, 2015 at the Safari Park Hotel, Nairobi, starting at 9.00 a.m.

DELEGATION FROM THE ASSOCIATION OF PARLIAMENTARY  
LIBRARIES OF EASTERN AND SOUTHERN AFRICA

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I wish to introduce to you a delegation from the Association of Parliamentary Libraries of Eastern and Southern Africa (APLESA), a forum composed of 20 countries aimed at sharing information and best practices among parliamentary Libraries in the region. The countries and institutions represented include: Angola, Botswana, Cameroon, the East African Legislative Assembly (EALA), Ghana, Malawi, Mozambique, Namibia, the Pan-African Parliament, South Africa, Swaziland, Seychelles, Uganda, Zambia, Zimbabwe and the host Kenya. The delegation seated in the Speaker's Gallery, is taking part in the 16<sup>th</sup> APLESA Conference at the Sarova Stanley Hotel from 20<sup>th</sup> to 25<sup>th</sup> April, 2015. On my own behalf and that of the honourable Members, I wish to welcome them to the National Assembly and wish them fruitful engagements. Thank you.

### PAPERS LAID

**Hon. Speaker:** The Leader of the Majority Party.

**Hon. A.B. Duale:** Thank you, hon. Speaker. I beg to lay the following Papers on the Table of the House, today Wednesday 22<sup>nd</sup>, 2015:-

The Report of the Auditor-General on the Financial Statements of the Engineers Board of Kenya for the year ended 30<sup>th</sup> June 2013, and the Certificate of the Auditor-General therein.

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

The Report of the Auditor-General on the Financial Statements of the National Transport and Safety Authority for the year ended 30<sup>th</sup> June 2014, and the Certificate of the Auditor-General therein.

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

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

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

The Report of the Auditor-General on the Financial Statements of the Kenya Reinsurance Corporation Limited for the year ended 31<sup>st</sup> December 2014, and the certificate of the Auditor-General therein.

The Report of the Auditor General on Financial Statements of Development Bank of Kenya Limited for the year ended 31<sup>st</sup> December 2014, and the certificate of the Auditor-General therein.

The Annual Report and Financial Statements of Kenya Airports Authority for the year ended 30<sup>th</sup> June, 2014 and the certificate of the Auditor-General therein.

Thank you, hon. Speaker.

**Hon. Speaker:** Is the Chairperson of the Departmental Committee on Agriculture, Livestock and Cooperatives present? If he is not, is the Deputy Chairperson present? Is there a group of Members who do not know what time the House commences sitting in the afternoon?

Very well, hon. Kajuju!

**Hon. (Ms.) Kajuju:** Hon. Speaker, I beg to lay the following Paper on the Table of the House:-

The Report of the Select Committee on Regional Integration on the Committee's visit to the East African Community institution in Entebbe, Kampala and Jinja, in Uganda from 27<sup>th</sup> to 31<sup>st</sup> January 2015.

**Hon. Speaker:** Very well, Chairperson or Vice Chairperson of Departmental Committee on Administration and National Security.

**Hon. Lentoimaga:** Hon. Speaker, I beg to lay the following Paper on the Table of the House:-

The Report of the Departmental Committee on Administration and National Security on the Senate Amendments to the Public Service (Values and Principles) Bill, 2014.

**Hon. Speaker:** For the second time, Chairperson or Vice-Chairperson of the Departmental Committee on Agriculture, Livestock and Cooperatives.

For the information of the House, the Vice-Chairperson was supposed to table a Report on the Petition made by hon. Muthomi Njuki, Member for Chuka/Igambag'ombe, on behalf of Chuka Farmers Cooperative Society Limited (under liquidation) and for the removal of the appointed liquidator of the society as well as the Petition by hon. Kathuri Murungi, MP for South Imenti, on behalf of South Imenti Tea Farmers, regarding decline in tea prices and effects of the Ad-valorem levy. The Members will be at liberty to seek--

I can see the Chairman walking in like he is in a happy mood. Hon. Nooru, the House sits from 2.30 p.m. on Wednesday afternoon. If you know that you are going to be late, you can delegate the matter to your deputy. What are you doing?

**Hon. Nooru:** Hon. Speaker, I had left my card here; I am trying to trace it. I am sorry for coming late. I was waiting for the head of the secretariat of Committee to give me the Papers. I was delayed a little bit.

**Hon. Speaker:** But you do not have the Report.

**Hon. Nooru:** Yes, I was just waiting. That is why---

**Hon. Speaker:** But the Reports have been approved by me for tabling.

**Hon. Nooru:** I was told that the Report was ready. So, I was waiting for the head of the secretariat to give it to me.

**Hon. Speaker:** Well, the matter is deferred to tomorrow.

## PROCEDURAL MOTION

### APPROVAL OF THURSDAY MORNING SITTING

**Hon. A.B. Duale:** Hon. 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 on Thursday, 23<sup>rd</sup> April, 2015 between 9.30 a.m. and 1.00 p.m.

Hon. Speaker, the House has a lot of business to consider before we proceed for the long recess next week. Firstly, between now and the recess, we have the Committee of the whole House on the Fair Administrative Action Bill, 2015, which has a constitutional deadline of 27<sup>th</sup> May, 2015. The Bill is also supposed to go to the Senate for concurrence.

Secondly, we have a Committee of the whole House on the Public Procurement and Asset Disposal Bill, 2014, which also has a constitutional deadline of 27<sup>th</sup> May, 2015. The Bill is yet to be referred to the Senate for consideration. Thirdly, the House needs to consider the Senate Amendments to the Public Service (Values and Principles) Bill (National Assembly Bill No.29 of 2014), which has a constitutional deadline of 27<sup>th</sup> May, 2015.

Finally, the House must consider the Senate Amendments to the Environmental Management and Co-ordination (Amendment) Bill (National Assembly Bill No. 31 of 2014), which also has a constitutional deadline of 27<sup>th</sup> May, 2015. Now that it has come back from the Senate, once we consider it, it will go for assent by His Excellency the President.

Given the enormity of the Bills that I have mentioned, on behalf of the House Business Committee which met last night, I propose that the House sits tomorrow, Thursday, 23<sup>rd</sup> April, 2015 between 9.30 a.m. and 1.00 p.m.

All the Bills that I have mentioned have a constitutional deadline of 27<sup>th</sup> May, 2015. The Bills concern the county governments and as such, they require consideration by the Senate. We felt that, in order not to interfere with the recess of May, as a House, we must consider the four urgent Bills before we proceed for the recess. On the other side of the coin, yesterday we submitted the names of the three Members of the Mediation Committee on the Division of Revenue Bill. I am sure that in the course of our recess, under your guidance, the House might be recalled to sit for a day to consider the Report of the Mediation Committee on that Bill, which is important to the country.

Hon. Speaker, this is a straightforward Procedural Motion. Therefore, I request the Leader of the Minority Party to second it.

**Hon. Speaker:** Proceed, hon. Nyenze.

**Hon. Nyenze:** Thank you, hon. Speaker. I rise to second the Procedural Motion. The idea of the Motion is good because these Bills have a constitutional deadline.

I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. Speaker:** Hon. Members, for avoidance of doubt, the passage of this Procedural Motion means that the House will sit in plenary tomorrow at 9.30 a.m. And as usual, the provisions of Article 121 of the Constitution apply with regard to quorum. Next Order!

## MOTIONS

## RECONSTITUTION OF PUBLIC ACCOUNTS COMMITTEE

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

THAT, pursuant to the resolution of the House of April 14, 2015 regarding the reconstitution of the Public Accounts Committee, and in accordance with the provisions of Standing Order 173, this House approves the appointment of the following Members to the Public Accounts Committee:-

- (i) The Hon. Kangogo Bowen, M.P.
- (ii) The Hon. Kanini Kega, M.P.
- (iii) The Hon. Joseph Manje, M.P.
- (iv) The Hon. Jude Njomo, M.P.
- (v) The Hon. Joel Onyancha, M.P.
- (vi) The Hon. Kareke Mbiuki, M.P.
- (vii) The Hon. Gonzi Rai, M.P.
- (viii) The Hon. Julius Melly, M.P.
- (ix) The Hon. Jackson K. Rop, M.P.
- (x) The Hon. Fathia Mahbub, M.P.
- (xi) The Hon. Mathias Robi, M.P.
- (xii) The Hon. Stephen Manoti, M.P.
- (xiii) The Hon. John Sakwa, M.P.
- (xiv) The Hon. Arthur Odera, M.P.
- (xv) The Hon. Timothy Bosire, M.P.
- (xvi) The Hon. David Eseli, M.P.
- (xvii) The Hon. Junet Sheikh Nuh, M.P.
- (xviii) The Hon. John Mbadi, M.P.
- (xix) The Hon. Kyengo Katatha Maweu, M.P.
- (xx) The Hon. Silvanice Onyango Osele, M.P.
- (xxi) The Hon. Manson Nyamweya, M.P.
- (xxii) The Hon. Alice Nyanchoka Chae, M.P.
- (xxiii) The Hon. Andrew Mwadime, M.P.
- (xxiv) The Hon. Abdikadir Omar Aden, M.P.
- (xxv) The Hon. Geni Charles Mong'are, M.P.
- (xxvi) The Hon. Jessica Mbalu, M.P.
- (xxvii) The Hon. (Eng.) Nicholas Gumbo, M.P.

Hon. Speaker, the history of this reconstituted PAC is known to all of us. This is as a result of the Report by the Committee on Powers and Privileges on alleged breach of privilege and code of conduct by the membership of PAC. In one of their recommendations, they recommended that the Committee on Selection nominates, within seven days, for consideration by the House, another list of membership of PAC. It is on this background that this list is before us today. In consultation with the Leader of the Minority Party and both the Minority and the Majority Whips, this list was drawn as

required by the Standing Orders and presented before the Committee on Selection and finally approved last night by the House Business Committee.

The Committee ensured that Standing Order No.173 (4) was adhered to. It ensured that no Member who was adversely recommended in the Report---The Report stated that five Members should not be included in the reconstituted PAC. That was adhered to. This is, therefore, a straight matter. The PAC is a very important Committee of this House. It is the one that looks at the accounts of the money that we appropriate to the national Government. Our colleagues in the Senate deal with accounts belonging to the county governments. The PAC has the mandate to look after each and every coin that has been passed in this House for various financial years. If this list of names is approved by this House, the PAC is expected to sit in the shortest time possible in order to elect a Chairman and a Vice-Chairman. I am sure they have a lot of pending reports and accounts to be audited. We want them to rise above regional politics. We want them to stand together united and to make sure that Kenyans get value for the money they pay as taxes.

The reconstituted PAC has no choice, but to uphold the dignity of this House. The integrity and the dignity of the Eleventh Parliament under your leadership should be protected by all committees and every Member of this House. I am sure the new PAC will learn a lot from the previous leadership of PAC. Never again in the history of Kenya shall we hear of Kshs5 million, Kshs2 million, or even Kshs10 million. Never again shall we hear of people recording each other and their party leaders. I wanted to say more and more, but I have realized the mood is good and people want to support the new blood. We now have five new Members of PAC. We hope that never again shall we be made to form another committee on privileges and procedures. Hon. Kaluma was a lucky legal officer. He was representing some of the people who appeared before that Committee. I want to thank him because next time when people want to deal with me, I am sure he will offer me free service because he is a good lawyer.

Hon. Kaluma, you have stood up and we want to support you. I am told it is called *pro bono*. There are many lawyers here including hon. Kajuju, but they do not see that. However, hon. Kaluma knows that when a Member is a victim he needs to offer free legal service.

I beg to ask the Leader of the Minority Party to support.

**Hon. Nyenze:** Hon. Speaker, I second. The Members have not been accused of corruption; rather they have been accused of breach of privilege. We have to make it very clear that those Members who had been mentioned and the print media went ahead to tarnish their names in their constituencies--- We are many Members here. We are not corrupt and there was no proof. So, the accusations were never proved. I wanted to make that very clear so that Kenyans know that even those Members who were removed from PAC are not being removed because of corruption. It is good for the country to know that. It is very easy to tarnish a legislator's name. It is also very difficult to defend yourself when it has been printed all over the media that you are being removed because of corruption.

The Powers and Privileges Committee did a god job. We went by their instructions. We only replaced five Members but the rest of the Members were left. We did not want to disturb and disrupt a Committee that has been doing a good job.

Hon. Speaker, we do not want improper motives to be imputed on some Members where corruption has not been proved. The Public Accounts Committee is one of the most powerful and the most privileged committees of this House.

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

**Hon. Speaker:** There is a point of order from hon. Ali Rasso.

**Hon. Dido:** Thank you, hon. Speaker. I stand under Standing Order No.95. Both sides of the divide have agreed to this list. We are not likely to change it so, I beg for the Mover to be called upon to reply.

*(Loud consultations)*

**Hon. Speaker:** The Leader of the Minority, proceed.

**Hon. Nyenze:** Thank you, hon. Speaker. You can see the interest that is generated by this Report. The findings of the Powers and Privileges Committee were that they should not reconstitute the whole Committee and that confirms that PAC has been doing a good job. This Committee looks into accounts of public entities once the National Assembly appropriates the Budget. This is a Committee where the word “corruption” should never be heard of. It should be above board. It was a lesson that if you accuse your fellow Members of corruption, you have to prove it beyond any reasonable doubt. I thank the Powers and Privileges Committee for recommending that you only deal with the five Members who were found to have breached the privilege but not of being accused of corruption. Those are the only Members who have been taken out.

Without dwelling on this straightforward matter, the newly reconstituted PAC will do a good job. Let us not delay reports. They have done well in the past and let us follow the same route of working out and working fast.

With those few remarks, I second. Thank you.

*(Hon. Tong’i and hon. Sumra stood at the gangway)*

**Hon. Speaker:** Order, hon. Members who are on their feet including the thirsty one, hon. Tong’i and hon. Sumra!

*(Question proposed)*

**Hon. Members:** Put the Question.

**Hon. Speaker:** Is that the mood of the House?

**Hon. Members:** Yes.

*(Question put and agreed to)*

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

**Hon. Members:** Division! Division! *Hurumia wao!*

**Hon. Speaker:** Hon. Members, order! The Standing Orders are very clear. I can hear those calls for *hurumia* but hon. Members, it is unbecoming that to express displeasure, you want to adopt the language of public rallies. I will not entertain it here.

*(Applause)*

If you are aggrieved, rise on a point of order but do not purport to address a public rally in the Chamber.

Hon. Members, we are live on national television. It is not fair. It reflects very badly on the House. So, if a Member has an issue, please, press the intervention. Those Members who are opposed, I imagine they are the ones who stood in their places. Is that correct?

**Hon. Members:** Yes.

**Hon. Speaker:** Can I see how many they are?

Order! Order, hon. Members! Those Members standing claiming to call for a division were only 21. You are required to be 30 and above. So there is no division. The “Ayes” still have it.

Yes, hon. Murugi!

**Hon. (Ms.) Mathenge:** Hon. Speaker, I believe that if somebody has a point of order, you must also listen to them. It does not matter whether the people who are opposing are few, you must also listen to us and hear our side of the story.

**Hon. Speaker:** Hon. Murugi, I have given you the chance to speak because you pressed the intervention button.

**Hon. (Ms.) Mathenge:** Thank you very much. The reason as to why I am opposing this Report is that, if hon. Cecily Mbarire was removed from the PAC, I expected a woman to take her position. It is not that I doubt hon. Kanini Kega, I believe that he can do the job but it is only fair that if we are talking about affirmative action and gender balance, we must replace a woman with a woman. If the Jubilee Coalition has a shortage of women, I believe that the Coalition for Reforms and Democracy (CORD) can loan us a woman.

**Hon. Speaker:** Hon. Members, for avoidance of doubt, the House has already voted on the Motion shown as Order No. 9. The House has voted. So, there is nothing to canvass on this one. It is immaterial. No matter how appealing the sentiments may be, the House has voted one way or the other. Let us proceed. We cannot go back. That is not procedural.

#### APPOINTMENT OF MEMBERS TO HOUSE COMMITTEES

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

THAT, further to the resolution of the House of October 08, 2013 on appointment of Members to respective Committees, this House approves the appointment of the following Members to the respective Committees:-

(i) The Hon. Cecily Mbarire, M.P, to the Departmental Committee on Energy, Communication and Information;



(ii) The Hon. James Bett, M.P, to the Departmental Committee on Justice and Legal Affairs;

(iii) The Hon. Ababu Namwamba, M.P, to the Constitutional Implementation Oversight Committee;

(iv) The Hon. Peter Edick Omondi Anyanga, M.P, to the Departmental Committee on Energy, Communication and Information;

(v) The Hon. Ahmed Ibrahim Abass, M.P, to the Budget and Appropriations Committee; and,

(vi) The Hon. Richard Tong'i, MP, to the Budget and Appropriations Committee.

Hon. Speaker, this is another very straightforward matter. I am sure gender has been considered in these nominations. Because there were various Members who left PAC, as the leadership of the House working in collaboration with the Minority and Majority Whips, we have decided that those Members should have Committees where they can discharge their oversight role. Hon. Mbarire, hon. Abass, hon. Ababu, hon. James Bett and hon. Anyanga are not in the reconstituted PAC. It is very fair and just that our colleagues should also serve in other Committees.

It is a very straightforward matter, which we have addressed, in consultation with both sides of the coalitions.

I beg to move and ask the Leader of the Minority Party to second.

**Hon. Speaker:** Yes, Leader of the Minority Party!

**Hon. Nyenze:** Hon. Speaker, I rise to second.

I want to make it clear to the Members so that it is understood. We only did a cross transfer. If you move from a certain Committee to PAC, then you are replaced by a member from PAC. We agreed on that and that is why there should not be complaints. In the case of hon. Cecily Mbarire, when she moved out, she exchanged with the person who was in that other Committee, who is the one who came to PAC. It was likewise in CORD. Those Members who are moving to PAC have been replaced by the Members who have been taken out of PAC. That is what our Coalition and the Jubilee Coalition agreed. We were following instructions from the Powers and Privileges Committee.

With those remarks, I beg to second.

*(Several hon. Members stood on the gangways)*

**Hon. Speaker:** The Members standing on the gangways, what are you doing now? You cannot just move from there and start walking around.

*(Question proposed)*

**Hon. Members:** Put the Question! Put the Question!

**Hon. Speaker:** Hon. Members, I hope that anybody claiming to rise on a point of order now is raising a point of order. Otherwise, you will face the full wrath of the Chair. There is a point of order from the Member for Homa Bay, is it so?

**Hon. Members:** Put the Question!

**Hon. Speaker:** Hon. Members, the mood is that I put the Question. There is something that this House does not seem to rethink. It is not everything that is for debate. These are straightforward matters. They affect your colleagues.

**Hon. Member:** On a point of order!

**Hon. Speaker:** Order! Order! The next time you repeat that when I am on my feet, you will be walking out!

**Hon. Angwenyi:** On a point of order, hon. Speaker!

**Hon. Speaker:** Even you?

*(Laughter)*

If you repeat that when I am on my feet, you will see the door!

Hon. Members, we agreed that we are going to enforce the Standing Orders.

*(Question put and agreed to)*

*(Hon. Members walked into the Chamber)*

**Hon. Speaker:** Hon. Members, those making your way please take your seats. Just take your seats especially those who are greeting each other and shaking hands. Instead of shaking hands on the passage, do it in your places.

## COMMUNICATION FROM THE CHAIR

### FIRST SITTING OF RECONSTITUTED COMMITTEES

**Hon. Speaker:** Hon. Members, I wish to make the following Communication: Pursuant to the passage of the Motion shown as business No. 9 which is on the reconstitution of the Public Accounts Committee (PAC) and in accordance with the provisions of Standing Order No. 179 on when a committee that has been constituted first sits, this reconstituted Committee falls within the category of a committee that has just been reconstituted. It is therefore governed by Standing Order No. 179(1). Therefore, it is directed that members of that Committee will first sit seven days from the date of today for the purposes of electing a Chairperson and a Vice-Chairperson. On the appointed date, if 30 minutes after the time appointed for the meeting elapses and if there will be no quorum for the meeting, the meeting shall stand adjourned. It is so ordered. Sorry. It is within seven days.

Those that may wish to caucus for whatever reasons can do so. You know how best to deal with this matter because you are politicians. I do not think you need my guidance on that. You are the experts on how to be elected into positions. You are all here courtesy of that. Let us proceed.

Next Order.

## MOTION

## ADOPTION OF REPORT ON REMOVAL OF TWO EACC COMMISSIONERS

**Hon. Speaker:** Who is the Mover? Is she the Mover?

**Hon. Members:** Yes.

**Hon. (Ms.) Kanyua:** Thank you, hon. Speaker. I beg to move the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the Petition for Removal of two Commissioners of the Ethics and Anti-Corruption Commission (EACC), laid on the Table of the House on Tuesday April 21, 2015, and in accordance with the provisions of Article 251(3) of the Constitution and Standing Order 230(5), finds that the Petition does disclose sufficient grounds for the removal of Mr. Mumo Matemu and Ms. Irene Keino as Commissioners of the Ethics and Anti-Corruption Commission.

The Departmental Committee on Justice and Legal Affairs received a Petition for the removal of Mr. Mumo Matemu and Ms. Irene Keino as Chairperson and member of EACC respectively. The Petition by Mr. Geoffrey Oriaro was based on the following grounds:

That, Mr. Mumo Matemu and Ms. Irene Keino have committed serious violation of the Constitution;

That, there are serious violations of the Ethics and Anti-Corruption Commission Act, Anti-Corruption and Economic Crimes Act and the Penal Code;

That, there has been gross misconduct in the performance of their functions and that they have been incompetent.

Hon. Speaker, the Departmental Committee on Justice and Legal Affairs went into great length to look at this Petition. We were able to hear the Petitioner, Mr. Geoffrey Oriaro. We were also able to hear the Chairman, Mr. Mumo Matemu, the Vice-Chairperson, Ms. Irene Keino, the Chief Executive Officer (CEO), Mr. Halakhe and the Deputy CEO, Mr. Mubea.

In the evidence that they provided to the Departmental Committee on Justice and Legal Affairs, we found a lot of guidance in the letter of 9<sup>th</sup> September, 2014 that they wrote to the President. Although the letter is in the Report and in the bundle we have given as part of the evidence that we have found, I want to look at that letter and take the House through it because in it we find the sort of information which when you get on a commission, you cannot turn your eyes away. In bringing this Motion, let me commit here that the Departmental Committee on Justice and Legal Affairs is committed to the fight against corruption. It is the issues that we found in the Commission that have led us to the recommendations that we are making to the House.

In the letter of 9<sup>th</sup> September, 2014 written by Ms. Irene Keino and Jane Onsongo to Hon. Uhuru Kenyatta who is the President of the Republic of Kenya on the subject seeking the removal of the Chairperson of EACC due to incompetence and non-performance, the two Commissioners, Ms. Irene Keino and Jane Onsongo, wrote to the President on the issues that they thought were really critical to the conduct of the Chairman. They wrote that they were sure that the Chairperson, Mr. Mumo Matemu could not perform the roles of the Commission in the Ethics and Anti-Corruption Commission Act, 2011. When they assumed office, the Commission was

underperforming in several areas without leadership since September 2011. The morale of the staff was extremely low and many senior staff had resigned.

The desperate situation needed urgent intervention. They embarked on several measures that were supposed to aid the Commission. They sought a legal opinion from the Attorney General on the question of their acting and that was allowed. But on the challenges, which is where I want to spend a little bit more time, this is what the two persons had to say:-

“We wish to bring to your attention our displeasure in the leadership of the person of the Chairperson of the Ethics and Anti-Corruption Commission attributable to incompetence, lack of desire to fight corruption and lack of vision. This is detailed below:-

The Commission is currently investigating Anglo-Leasing contracts and the entire secretariat is focused on this. We are, however, disappointed to inform you that the Chairperson is secretly engaged in meeting the architects of the scam i.e. Mr. Kamani. Since the Chairperson joined the Commission, matters to do with Charterhouse Bank have resurfaced. As we speak now, a case has been filed against the Commission and we are not sure that the Chairperson is not involved.

To date, one cannot identify and thus quantify any achievement related to his leadership. A number of policies have been pending. Though we had started the process of formulation of policies on security, partnership, information management, conciliation, mediation and negotiation, all of these have stalled because of lack of strategic direction and harmony.”

They accused the Chairperson, Mr. Matemu for failure to consult and inform Commissioners on what was going on in the Commission. Press releases, media briefs and conferences where important Commission matters were discussed were not discussed with the Commissioners. The Commissioners also accused the Chairperson of failure to brief the Commission on regional and international linkages to the East African Association of Anti-Corruption Authorities (EAAACA) in which he served as president, Association of African Anti-Corruption Authorities (AAACA), Association of Commonwealth Anti-Corruption Authorities (ACACA) and yet these are important activities which the Commission should be involved in.

They generally accuse the Chairperson of a poor leadership style leading to low staff morale, a lot of falsehoods circulating in the Press about senior management some of which may be originating from the Commission.

Hon. Speaker, the letter is quite detailed on what the two Commissioners wrote to the President. In conclusion, they asked His Excellency the President, knowing his desire to fight corruption, to take action on the Chairperson, Mr. Mumo Matemu. The letter was signed by Ms. Irene Keino and Prof. Jane Onsongo detailing what we have found to be a Commission that is riddled in many problems and a Commission that has no leadership. Mr. Mumo Matemu has failed to offer leadership to the Commission.

We have also, in the Committee, looked at the Commission on Administrative Justice (CAJ) Report that was given by the Chairperson. The CAJ received a complaint against the Ethics and Anti-Corruption Commission (EACC) on alleged impropriety and abuse of power by selectively awarding the Deputy Commission's secretary a salary beyond the rates approved by the Salaries and Remuneration Commission (SRC). There

were also grave allegations of impropriety by some EACC officials through alleged acquisition of houses allegedly donated or facilitated by the National Social Security Fund (NSSF) at a time when the body was under investigation. The letter is also part of the bundle. We want to look at the last paragraph on page 3 where the CAJ found out that Mr. Michael Kamau Mubea knowingly misled the CAJ investigators to believe that he was not aware and did not sign a contract with a basic salary starting from Kshs400,000 with an annual increment of five per cent. The CAJ came to the conclusion that the EACC leadership is collectively culpable of negligence for failing to implement the salary structure for EACC staff as advised by the SRC.

On the same report, the CAJ looked at the issue of housing. On the question of housing, the NSSF houses in particular, the CAJ established that Ms. Irene Cheptoo Keino, the Vice-Chairperson of EACC, bought two houses, and the land registration numbers are given, from the NSSF. The two properties are in Phase V of Nyayo Estate in Embakasi. The CAJ noted that Ms. Irene Keino informally got information of the sale of the houses by NSSF two years and three months after the closing date. Ms. Keino said that she got information from her secretary that the houses were on sale. We found a conflict of interest on the question of Ms. Irene Keino finding out two years and three months after the closing date about the NSSF houses.

More importantly, the CAJ was able to find out that no records were available of the payments made by the Vice-Chairperson of EACC, Ms. Irene Keino, in relation to the Kshs806,000 as contained in the notice of repossession dated 4<sup>th</sup> March, 2014. As we looked at this matter in the Committee, we found no evidence that Ms. Irene Keino paid for the houses. The NSSF was unable to give proper accounts and records of general payments for the two houses. The CAJ noted serious faults in internal processes of the NSSF and in particular demonstrated by the fact that the NSSF issued a repossession notice of a house to Ms. Irene Keino and later, the NSSF admitted that it was an error. On that question, the Committee feels very strongly that a tribunal would be the one to establish whether Ms. Irene Keino was guilty or not. We find that we cannot close our eyes to some of these allegations. The letter by the CAJ ends by noting that it was an unwise decision on the part of the Vice-Chairperson to get into those purchases of houses at a time when the NSSF was under investigation and there was a possibility of conflict of interest.

We have also looked at the resignation letter of Commissioner Prof. Jane Kerubo Onsongo. It is a short letter. I want to read it verbatim because it continues to show the weaknesses and the incompetence of both Mr. Matemu and Ms. Irene Keino, and the reason why we want this Petition to be upheld. Prof. Jane Kerubo Onsongo wrote to the President on 31<sup>st</sup> March, 2015. This is what she had to say:-

“Resignation as Commissioner of EACC.

It is with great regret that I have to tender my resignation as a Commissioner in the above named Commission. I have served as a Commissioner since taking my oath of office on 27<sup>th</sup> September, 2012. Over this period, I have come to the realization that the Commission as currently constituted may not be able to discharge its mandate. The events of the past few weeks have crystallized this view. I believe that the threat from corruption is the single-most challenge facing the country and your Government. Unfortunately, the fight against corruption cannot be won by a divided Commission.

Consequently and in order to offer the country an opportunity to reconstitute the Commission and strengthen the institutional framework in the fight against corruption, I have offered to resign.

I thank you and the people of the Republic of Kenya most sincerely for giving me the opportunity to serve in this position.”

We underscore and underline the fact that Prof. Jane Onsongo wrote and said: “The fight against corruption cannot be won by a divided Commission.” That this Commission as constituted cannot assist the country in the fight against corruption. In looking at the evidence, we also looked at the report of the Tenth Parliament, the Committee that is a predecessor to our own Committee and we particularly looked at the recommendations at the end of that report. It is also in the bundle of documents that we have attached. The Departmental Committee on Justice and Legal Affairs of the Tenth Parliament, after deliberations on the nominees, found the nominees unsuitable for appointment as members of the EACC. In paragraph 18, the Committee notes that after deliberating on the nominees to the EACC, the nominees lacked passion, initiative and the drive to lead the fight against corruption in this country. The nominees did not demonstrate sufficient interest in the fight against corruption. All the nominees had excellent careers with excellent academic qualifications but lacked the passion to lead the EACC which qualifications could be relevant to other levels. Following the above deliberations, the Committee recommended that the three nominees should not have been appointed. As we looked at the evidence---

*(Loud consultations)*

**Hon. Speaker:** Order, Members! Consult in low tones.

**Hon. (Ms.) Kanyua:** Thank you, hon. Speaker. As we looked at the evidence, we were guided by that report of the Tenth Parliament which found the three nominees unsuitable. Even as we look at all this evidence, I also want to look at the issues that we have identified for determination as a Committee; the issues that were raised in the Petition by Mr. Oriaro and the issues that we found were necessary for our determination. One of the issues was whether Mr. Mumo Matemu and Ms. Irene Keino have exhibited gross misconduct in the performance of their functions to warrant their removal from office. The Committee observed, when we met and we did the hearings, that Ms. Irene Keino and Mr. Mumo Matemu had miscondacted themselves in the various ways that we have shown and the letters that we have read.

We also found out that Mr. Mumo Matemu and Ms. Irene Keino were incompetent and this warrants their removal from office. We looked at the report of the Tenth Parliament and we also found evidence that Ms. Irene Keino, Mr. Mumo Matemu and Prof. Onsongo have been wrangling and instead of resolving their issues amicably, Ms. Keino and Prof. Onsongo wrote to His Excellency the President seeking removal of Mr. Mumo Matemu from office. Ms. Keino and Prof. Onsongo later came before the Committee and admitted that they were duped by the Commission’s secretary and by Mr. Michael Mubea. We found that information very worrying because these are commissioners and the others were secretariat. They signed the letter themselves. Ms. Irene Keino confirmed that they signed the letter that was indeed sent to the President.

Hon. Speaker, we looked at the evidence on the existing files and we looked at the work they have done and we found out that even on the Anglo Leasing cases that they brought to court, it was after an ultimatum by the Committee giving them 14 days to bring the files to court. Before that, very little evidence and very little work had been done in the fight against corruption.

There were other issues beyond those that were raised in the Petition for instance, the case of Mr. Mumo Matemu which is in the Supreme Court. The Committee found that the principle of *sub judice* did not apply to Mr. Oriaro's Petition as argued by Mr. Matemu because the issues in the Supreme Court were unrelated to the issues in the Petition that we were seeking to prosecute. The matter in the Supreme Court looks at the original appointment of Mr. Matemu. The Petition before us looked at the performance of Mr. Matemu after his appointment and we have found out that Mr. Matemu has indeed failed to offer leadership to the Commission.

Hon. Speaker, the Committee also looked at the future of the Commission and its impact in the fight against corruption. This is extremely critical because many Kenyans and many Members are concerned about what will happen if Mr. Matemu and Ms. Keino were to leave. We want to confirm that, that question was looked at by the Committee and the evidence on record is that the relationship between the Commissioners and the secretariat has been very acrimonious. The commissioners have accused the secretariat which has in turn accused the Commissioners but we have found out that the work in the Commission will go on. The investigations department is working. The inter-agency committees are working. The relationship between the Commission and the Director of Public Prosecutions (DPP) remains intact. Any of the files that the Commission will process will be taken to the DPP and the prosecutions will proceed as indeed required by law. There will be no effect on the Commission in terms of the work that it is doing but what we found is that the wrangling, the infighting and lack of guidance was, in fact, impeding the fight against corruption. Having these Commissioners is what will collapse the fight against corruption.

These Commissioners have to leave for the Commission to do its work properly. We found that based on all that evidence, it was important that the House resolves that a tribunal be set up to look at these matters that affect both the Chairperson and the Vice-Chair, Ms. Irene Keino.

The Committee also looked at the question of the list of 60 days given by the President and in our report on Page 55, the Committee addresses itself to that issue. It finds that there will be no effect to the list that the President provided here. The President himself said that the list came from the secretariat and not from the Commissioners. The Committee observes that the 60 days' timeline by the President to conclude investigations is not necessarily a legal timeline and it can be extended but we find that the removal of the Chairperson and the Vice-Chairperson will not affect the work that is going on in terms of the matters in that list. The Committee is persuaded that the agency can finalise investigations and take appropriate steps towards prosecution of suspects in the absence of the two Ethics and Anti-Corruption Commission (EACC) Commissioners.

In conclusion, the recommendations of the Committee are as follows: Having considered the provisions of Articles 73, 75, 76, 125, 161, 171, 172, 173, 245 and 251 of the Constitution of Kenya and having considered the provisions of the EACC Act, the

Standing Order No.230, the Committee reports to the House that the Petition discloses grounds for the removal from office of the following members of the Commission; Mr. Mumo Matemu and Ms. Irene Keino and recommends to the House as follows: That, the House resolves that the Petition herein together with the material in its support be sent to His Excellency the President pursuant to Article 251 of the Constitution. It also recommends that the House resolves that His Excellency the President appoints a tribunal to deal with the matter in accordance with Article 251(5) of the Constitution and that considering the matters to which the Petition herein relates, the House resolves that His Excellency the President suspends the Commissioners herein pending the determination of the tribunal.

Hon. Speaker, those are the recommendations of the Committee supported by the evidence which includes, again just to underscore, the letter of 9<sup>th</sup> September, 2014, the Commission on Administrative Justice (CAJ) Report, the resignation letter of Prof. Onsogo, the Tenth Parliament Report and many other documents that we have availed in the list that is in Page 2. We have put in the documents even those relating to the ownership of the Integrity Centre and all the documents we received from the various people we were able to hear during the process of this Petition.

We have also said that the removal of these Commissioners will not in any way stall the processes and the matters under investigation. We feel as a Committee that the removal of these two Commissioners will give the Commission a new lease of life.

I wish to beg the House to adopt the Report of the Departmental Committee on Justice and Legal Affairs and to assure everybody that the Committee remains steadfast. It was after an ultimatum by the Committee that the EACC took the Anglo Leasing files to court. They did not go to court on their own. The Commission went to court after ultimatums, pressure and timelines were given by the Departmental Committee on Justice and Legal Affairs. The Committee is completely convinced that the fight against corruption needs a different set of commissioners who can lead this Commission well.

I beg to move and ask hon. Mohamed Abdi Haji, Member of Parliament for Banissa to second the Motion.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. Mohamed Haji. Get him there.

**Hon. Mohamed Abdi:** Thank you, hon. Speaker, for giving me this opportunity. At the outset, I want to say that, as a Committee, we have looked at all the evidence that has been provided. We have talked to all those who are concerned with this Petition and we are satisfied that the Petition discloses grounds for removal of people who have been mentioned.

Hon. Speaker, immediately we got the Petition, we looked at all matters and because of the gravity of allegations in the Petition, we went back and looked at the Tenth Parliament Report on how these Commissioners were recommended in the first place to lead this Commission. To our surprise, we found that the Departmental Committee on Justice and Legal Affairs at that time recommended that these people were not suitable to run this Commission. How they were approved is what we did not understand. The House overturned that recommendation and these guys were given that job.



They have been in office for over two years and yet they have not demonstrated in any way their capability to fight corruption. That one has come out clearly in a letter they wrote to His Excellency the President on 9<sup>th</sup> September, 2014. In that letter, we found that the Commission which was supposed to be focused in fighting corruption was fighting each another, accusing one another and maligning one another's name in the media and everywhere. The Petitioner borrowed a lot from that letter which was in public domain and it is his right to do that.

We also sought guidance from the Commission on Administrative Justice (CAJ) and they have indicated clearly that these Commissioners have no integrity and that one has been elaborated by the Mover.

The biggest problem ruining this country is corruption. Even the insecurity that we have has got its root in corruption. Therefore, it is the responsibility of every person in this nation to fight corruption. To fight corruption, we have to remove these Commissioners.

With those few remarks, I beg to second this Motion.

**Hon. Speaker:** Order, Members!

*(Question proposed)*

**Hon. Kajwang':** Hon. Speaker, thank you for allowing me to rise. I have given notice of an intended amendment. Before this Motion is discussed on merits, you have approved an amendment in the text that this Motion be amended by inserting the following new recommendation immediately after---

**Hon. Speaker:** Hon. Kajwang', it is true that I have approved a raft of proposed amendments, but in keeping with our own Standing Orders and for purposes of order in terms of Standing Order No. 54(6), I have indicated and determined that the amendments will be moved in the following order:

The amendment proposed by hon. Maanzo will be the first to be moved when he is ready. The amendment by hon. Kajwang' will follow and then finally the amendment proposed by hon. Kaluma which would fall if the House makes a decision one way or the other on the amendments by hon. Maanzo because of the provisions of the Standing Order No.54(7) and (8). In that respect, we would want the amendments to come in that order. Every one of them is entitled to be moved, but depending on the decision taken with regard to the amendment by hon. Maanzo, then the amendment proposed by hon. Kaluma may fall. However, Hon. Kajwang's amendment will still move on. Do you want to hear some contribution, or we hear the amendments?

**Hon. Members:** We want to hear the amendments.

**Hon. Speaker:** Can we hear the amendments first? We will then, whichever decision we make, discuss the Motion either as amended or as it is. Hon. Members, it is fair that if we can hear the amendments then we can dispose of the matter. So, let us allow hon. Maanzo if he is ready to move his amendment.

**Hon. Maanzo:** Hon. Speaker, I beg to move the following amendment:-

THAT, the Motion be amended by deleting recommendations 1,2 and 3 on Page 55 of the Report and substituting therefor with the following recommendation: That, the Ethics and Anti- Corruption Commission (EACC) expeditiously investigates and reports

to the House within 14 days on the circumstances surrounding the current ownership of the Integrity Centre including ascertaining the institutions, corporations, individuals and State officers involved in the defeating of the interest of depositors entrusted to the Deposit Protection Fund by effecting change of ownership of the property.

The reason I am moving that we drop recommendations 1,2 and 3 on Page 55 is because the Articles cited, that is, 73, 75, 76, 125, 161, 171, 172, 173, 245 and 251 of the Constitution, are all accommodated by Article 251. The recommendations given in 1, 2 and 3 under Article 251 of the Constitution are obvious. I will read one of them so that I can convince this House that immediately we approve this, then the recommendations are automatic. The President is required to do all the following as recommended herein.

Article 251(3) states:

“The National Assembly shall consider the petition and, if it is satisfied that it discloses a ground under Clause (1), shall send the petition to the President.”

So, by saying that the House resolved that the Petition herein together with the materials be sent to the President, it is an obvious thing. Under the Constitution, the President will receive all these. So, the House cannot just sit to resolve the obvious.

Two, the House resolved that His Excellency the President appoints a tribunal. It is obvious under Article 251(5) that the tribunal shall consist--- So, it is automatic that the President will set up a tribunal if the House agrees on this.

The third one and the last one is: “Considering the matters to which the Petition herein relates, the House resolves that His Excellency the President suspends the Commissioners herein pending the determination of the tribunal.”

The Constitution is so clear about what the President must do. So, the House need not be directing him, we will be just wasting our time because it says: “The tribunal shall consist of a person who holds or has held office ---” It goes ahead to describe all of them.

Article 251(4) states:

“On receiving a petition under clause (3), the President-

(a) may suspend the member or office holder pending the outcome of the complaint.”

Here, the President is required to act immediately. It goes on to give a command that, “shall appoint a tribunal in accordance with Clause (5).” It is automatic for the President to appoint a tribunal. That is why I was now proposing another recommendation because on Page 54, the second last paragraph reads:

“From the foregoing, the Committee is convinced that the future of the Commission is bleak and the fight against corruption shall fail. The problems at the Commission are attributed to both the Commissioners and the secretariat as the two cannot work together.”

Therefore, this House is already saying that we let the Commission and the secretariat go. One of the matters adversely mentioned in this is about the building they are sitting in and that the secretariat has presented their documents. I can Table that. I believe all of them were presented at the Committee stage. Because the Committee represents the House, it is good that we make the necessary amendments so that we move with a reasonable report which all of us can work on.

I urge hon. Kaluma to second my amendment.

**Hon. Kaluma:** Thank you, hon. Speaker. I also thank hon. Maanzo for according me the honour of seconding this particular amendment. As hon. Maanzo has explained, this is a Petition under Article 251 of the Constitution. If we look at Article 251(3) the mandate of the National Assembly in relation to this Petition is very clearly stated. At the risk of repetition I beg to read it:

“The National Assembly shall consider the petition, and if it is satisfied that it discloses a ground under clause (1), shall send the petition to the President.”

That is our mandate, to get the Petition, look at it and if it discloses grounds for removal, we send it to the President. It does not fall upon the National Assembly to determine for the President what to do. In fact, under Article 251(4) of the Constitution on receiving a Petition under clause (3) – that is if we are to uphold the Committee’s recommendation and deliver the Petition to the President in the manner that the Committee has already recommended – the President has only two things. One, the President may suspend the Member or office holder, pending the outcome of the complaint, and two, he shall appoint a tribunal, in accordance with clause (5).

The word ‘may’ is very critical. It may be argued in the context of my amendment. I will not go into the details of it.

It is not for this Parliament to tell the President to appoint a tribunal. Ours is to transmit the resolution of the House. When the Petition lands on the desk of the President, the Constitution imposes a mandatory obligation on him to proceed and appoint a tribunal. In terms of recommendations 1, 2 and 3, essentially, the argument is that they are surplusage, superfluous and tautological.

As I conclude, let me address this House on the substantive amendment that hon. Maanzo has brought with regard to investigations into the Integrity Centre. Let me take this House to the Report by the Public Investments Committee (PIC) on the National Cereals and Produce Board matter. When you are in the process of investigating something, as a Committee or House, and you come across information falling within the oversight powers of the Committee, you cannot shut your eyes and be blind to it. That is why I am seconding this amendment.

Let me tell the House about Integrity Centre. When the Commissioners, in respect of whom we are seeking appointment of tribunal to remove them from office, appeared before the Committee, they came with documents. They said that one of the reasons as to why they were before the National Assembly was that corruption could be fighting back. I may have taken them for granted. Remember the President addressed this House a short while ago. I want you to look at the Report that the President gave us on the day we gave him a standing ovation.

At paragraph 94, the President himself said that when he took a personal interest in the matter of Anglo-Leasing, infighting and finger-pointing started at the Commission. He says that he strongly believes that the in-fighting was a further attempt to subvert the successful prosecution of the Anglo-Leasing cases. The Commissioners told us the same. The people behind Anglo-Leasing are occasioning in-fighting in the Commission. I will get enough time to say how. I will demonstrate to this House, based on documents brought before us, the origin of this Petition. It will surprise you at that stage.

**Hon. Speaker:** Hon. Kaluma, you are doing very well but can you just limit your contribution to the amendment.

**Hon. Kaluma:** Yes, I will limit myself to it.

Hon. Speaker, the property on which Integrity Centre, which houses the EACC, stands--- The Commissioners told us that it was their investigation into that matter which was partly attributable to this Petition. It was owned by a company called “Rivack Limited”. The documents were placed before us. That property was charged to the Trust Finance Bank Limited on 5<sup>th</sup> November, 1999. The House knows that Trust Finance Bank Limited collapsed. When it collapsed because of the Central Bank of Kenya Act, the documents were not there.

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

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

*(Loud consultations)*

Order, hon. Members! You are not the ones responsible. That is my business. You have yours. They are separate. Every Member will be given a chance to be heard.

**Hon. Baiya:** Hon. Speaker, this is a House of rules. The Member is speaking to an amendment. Is it in order for him to go into the substance of the Report?

*(Loud consultations)*

**Hon. Speaker:** It is not your business, hon. Members. I must hear so that I am able to determine.

**Hon. Baiya:** Is the submission concerning what the Committee has discussed relevant to this amendment, whether it is supported or not?

**Hon. Speaker:** Hon. Kaluma, as I have just cautioned, the amendment by hon. Maanzo is specific. I allowed you to veer off just to buttress your argument in support of the amendment. However, if you go too far, then you will be speaking to the Motion. Just stick to the amendment.

**Hon. Kaluma:** I will stick to the amendment, hon. Speaker.

The amendment is that hon. Maanzo is seeking a resolution of this House, so that the matter of ownership of Integrity Centre, which we came upon during these investigations, is also resolved. I am giving the reasons as to why it is necessary that we effect the amendment.

Due to the collapse of Trust Finance Bank Limited, the Deposit Protection Fund took charge of that property to protect the interests of the depositors in the bank. On 23<sup>rd</sup> March, 2010, the lease of the property was surrendered to the Commissioner of Lands by Oraro and Company Advocates, on behalf of the Deposit Protection Fund. On 23<sup>rd</sup> April, 2013, the Deposit Protection Fund Board wrote to the Commissioner of Lands, saying that they were surrendering the lease and a new title should be issued to somebody else. I want you to be alert to where we are going.

On 6<sup>th</sup> December, 2012, a new letter of allotment was issued to a company called “Rivack Limited”. A letter of allotment is a document by which the Government grants lease of a property for free, so long as you pay rent. A new letter of allotment was issued.

We are not told how the interests of the depositors were secured, but the letter of allotment was issued and the property was given to Rivack Limited.

The most important thing is that on 2<sup>nd</sup> May, 2013, a new title deed was issued to Rivack Limited. A month later, Rivack Limited transferred the property to a company known as “Tegus Limited”. Who is Tegus Limited? Investigation reports were put before us confirming the ownership of Tegus Limited. It is a conglomerate of companies called Watu Watu Limited, Sunnex Enterprises Limited, Rachel Wanjugu and other individuals. Who are the shareholders of Watu Watu Limited? They are Ahmed Adan and Asman Adan. The shares of all these other companies had been transferred to Watu Watu Limited. Essentially, during the investigations, Integrity Centre was owned by Ahmed Adan. We are investigating this matter.

Having stumbled on this matter, and not knowing how the interests of the depositors were dealt with, the House Committee recommends that we investigate how this matter came about.

With those remarks, I humbly second the amendment.

*(Loud consultations)*

**Hon. Speaker:** Order, hon. Members! Hon. Maanzo has not supplied me with a copy of his amendment.

*(Loud consultations)*

Hon. Members, we must be able to transact business. The Motion has been moved and seconded. The next step is for me to propose the Question.

**Hon. Members:** Yes.

**Hon. Speaker:** When you engage in loud consultations, then you will not hear what it is that I will be proposing.

*(Question of the first part of the amendment,  
that the words to be left out be left out, proposed)*

The amendment is signed by hon. Daniel Maanzo, Member for Makueni Constituency. It is, therefore, important for you to understand why hon. Kaluma had to go to the depth of this. It is because this is what this amendment is all about. I have proposed the Question. Are there Members who wish to contribute to it?

**Hon. Members:** Yes.

**Hon. Speaker:** The Leader of the Majority Party.

**Hon. Members:** Put the Question.

*(Loud consultations)*

**Hon. Speaker:** Order, hon. Members!

**Hon. A.B. Duale:** Hon. Kaluma is not making full disclosure. It is Wetang'ula, Makokha and Aden Advocates.

**Hon. Members:** No.

**Hon. A.B. Duale:** Yes, it is. I want the House to listen to me because I want to raise---

*(Loud consultations)*

**Hon. Speaker:** Order, hon. Members!

**Hon. A.B. Duale:** Hon. Speaker, I want to raise a matter of procedure.

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

**Hon. Speaker:** What is your point of order? It must be a point of order.

**Hon. A.B. Duale:** Hon. Speaker, I am on a point of order.

**Hon. Speaker:** Are you not contributing to the Motion?

**Hon. A.B. Duale:** No, I am not contributing. I am raising a point of order on a matter of procedure.

**Hon. Speaker:** Okay. Proceed.

**Hon. A.B. Duale:** Hon. Speaker, I need your direction and communication. You must rule on this. The question I want to raise is whether this House - Members should listen to me - can introduce a matter that was not sought in the prayer of a Petition? They want to remove a member of a commission or independent office from office. This is a House of rules and procedures. This is a House that follows on practice and precedents of other Parliaments. It is a House that is guided by the Standing Orders and the Constitution.

The Petition on which this Report is based, and which is before this House, seeks the removal from office of Commissioners Mumo Matemu and Ms. Irene Keino on specific grounds. The grounds are serious violation of the Constitution, the Ethics and Anti-Corruption Commission Act, the Anti-Corruption and Economic Crimes Act and the Penal Code, gross misconduct in the performance of their functions and incompetence.

The role of a relevant Departmental Committee to which a Petition is committed is to interrogate the Petition and report to the House on whether that Petition discloses one or more grounds as set out in Article 251(1) of the Constitution. The matter I am raising is of fundamental importance. Your ruling is going to determine how Petitions will be handled by committees.

The Standing Orders provide guidance in this regard. Standing Order No. 230(4) says---

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

**Hon. A.B. Duale:** I am on a point of order. Read your Standing Orders. Standing Order No. 230(4), (5) and (6) says:-

“(4) Upon receipt of a petition under paragraph (3), the relevant Departmental Committee shall investigate the matter and shall, within fourteen days, report to the House whether the petition discloses ground for removal under Article 251(1) of the Constitution.

(5) The House shall, within ten days of the tabling of the report of the committee under paragraph (4), resolve whether or not the petition discloses a ground for removal under Article 251(a) of the Constitution.

(6) Where the House resolves that a petition discloses a ground for removal, the Speaker shall, within seven days of the resolution, transmit the resolution and the petition to the President.”

Hon. Speaker, this is the fundamental question I want to ask you this afternoon. The role of the Departmental Committee on Justice and Legal Affairs and this House is expressly limited to the interrogation and resolving whether the allegation brought against Commissioner and Chairperson Mumo Matemu and Commissioner and Vice-Chairperson Irene Keino discloses at least one ground for their removal. The resolution is further limited in terms of the person to whom it is directed for implementation.

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

**Hon. A.B. Duale:** You should relax. I have the Floor. I am on a point of order.

*(Loud consultations)*

Hon. Speaker, if you allow me---

**Hon. Speaker:** Hon. Members, he is on a very serious and fundamental point of order. I will allow a few of you to make observations on the issues he is canvassing. In fact, I am proposing to suspend the sitting for 30 minutes because I can do a piece very quickly to deliver to the House. This is absolutely important.

Proceed.

**Hon. A.B. Duale:** Thank you, hon. Speaker. I am a very serious Member of this House. I do not come up with frivolous issues. The matter I am raising is of monumental value to this House today and tomorrow.

Only the President can implement the resolution of the House with regard to Petitions. The House cannot, therefore, introduce a new matter that was not sought in the prayer of a Petition to remove a member of a commission. The Petition before the House has one common denominator as stipulated in Standing Order No. 230. You cannot even introduce a third member. For example, there are three commissioners, but one of them, Prof. Jane Onsongo resigned. If Prof. Jane Onsongo did not resign, nobody could introduce her name into this Petition. Nobody can even introduce the secretariat. Nobody can even introduce the matter of Integrity Centre in relation to Wetang’ula, Aden and Makokha Advocates.

Hon. Speaker, the issue that I want you to rule on this afternoon is whether a Member of this House can stand and introduce a foreign element to a Petition before a committee has dealt with it and a report presented for adoption. We need your ruling on that matter.

Thank you.

**Hon. Speaker:** Hon. Members, it is absolutely important that those of you getting a chance to say something, confine yourselves to the issues in the content of the Petition. You must restrict yourself to the provisions of Standing Order No. 230, and read it against the provisions of Standing Order No. 56 on amendments. No politics please. Just

address issues on whether the issue raised by hon. Duale can be canvassed in the proposed amendment by hon. Maanzo. Let me give the first shot to hon. Chris Wamalwa.

**Hon. Wakhungu:** Thank you, hon. Speaker. As you have clearly said, this is a House of rules, procedures and records. In this House, no one is above the law, including the Leader of the Majority, as we are governed by the Standing Orders.

I listened carefully and the HANSARD will bear me witness. After the transaction you asked: "Is there anyone who wants to contribute or discuss on this matter?" The Hon. Leader of the Majority Party is on record and he said he wanted to contribute. He did not rise on a point of order.

*(Applause)*

Is he right to mislead this House because rules, accusations--- We have seen Members who have gone through the Powers and Privileges Committee going through a lot of punishment for breach of privileges. Today the Leader of the Majority Party has breached privilege. It is in order if he is found guilty to be named. I want to justify this. I want people to know that we are all equal. It does not matter whether you are the Leader of the Majority Party, or the Leader of the Minority Party. We are all hon. Members.

The Leader of the Majority Party is on record. When he rose, he brought in the issue of hon. Moses Wetangula, who is my party leader. First, I have a document here which I am going to table. It is certified from the Registrar of Companies; when it comes to the ownership, we have Watu Watu whose owners are Ahmed Adan and Asman Ahmed Adan. I have not seen the name of hon. Wetangula here. He needs to bring evidence to show that the name of hon. Wetangula is here.

*(Applause)*

If it is found that he has breached privilege, he should be named because he stood on a point of contribution and not a point of order. We must apply the law equally. He is not above the law. So, I request that you call for the HANSARD, so that we get to know the truth, and if he violated our rules, he should be named.

Thank you.

*(Hon. Wakhungu laid the document on the Table)*

**Hon. Speaker:** Hon. Members, I want us to first of all deal with this issue of the proposed amendment. Yes, hon. Kajwang'.

**Hon. Kajwang':** Hon. Speaker, I rise to share my ideas on the issues which have been raised by hon. Duale, and which were substantive arguments in opposition to the amendments sought by hon. Maanzo. Whether they have come by way of a point of order or by way of contribution, I will refer to them.

Secondly, listening to the tone in his submission, it will impact very closely with the amendments which I have in mind, although I do not want to pre-empt debate. We need to understand the role that the Constitution has given us in this august House. That role is indicated in Articles 94 and 95 of the Constitution. Limiting myself to the issue of integrity, Article 95, as read with 94, gives these Members of the National Assembly the



constitutional right of oversight of all public bodies. Where a committee or the House in plenary, gets to know an issue, finds that an institution over which it has supervisory powers has acted in some way, it has the authority to order for certain things to be done; that way the House will play its role of oversight.

*(Applause)*

Even though the issue that we are going to deal with in Recommendation Nos. 1, 2 and 3 directly relate to the Petition, and when we will argue over the Petition, we will argue over whether it has merit or not. After dealing with that, there is information that has come to this National Assembly, whether in plenary or in committee, that the House cannot close its eyes to. If we close our eyes to it, the public will not close their eyes to it. They know that Integrity Centre has gone. It has been grabbed by somebody. They will know that Integrity Centre, which was used to protect the depositors of the collapsed Trade Bank, is gone to an individual and his wife for a song. There is no money at all that was given to the Deposit Protection Fund.

These are issues over which the House, whether on a Petition or no Petition, under Articles 94 and 95 has the authority and oversight role. Listening to the Leader of the Minority Party, he asked: “Do we have rules in the Standing Orders by which we are able to go beyond what has been disclosed in the Petition?” He cites Articles 252 and 253. You will see that the Standing Orders that we have, have not fully stated how for example this House can discharge its mandate under Article 95 (5) which says:-

“The National Assembly-

- (a) reviews the conduct in office of the President, the Deputy President and other State officers and initiates the process of removing them from the office; and
- (b) exercises oversight of State Organs”.

If we had a problem as we may, with a State officer how, under the Standing Orders, are we able to deal with that State officer? This is why when there was a Petition before us against the Attorney General, we found out that there was no provision in the Office of the Attorney General Act that says how he can be removed from office.

Secondly, when we had a judge in the Judicial Service Commission (JSC), we found out that there was no legislative provision in the Standing Orders or in the law under which we could remove the member of the JSC. But will this House stop functioning under Articles 94, 95 and 96 just because there is no legislation and the Constitution has expressly provided for that order?

So, hon. Speaker, when we come before the House to ventilate issues, we must come in the spirit of the Constitution, because that alone is the supreme document. Legislation is done in the House. Rules are done in the House. The Constitution itself says that we should not emphasise procedure over substance. If the Constitution does that, I want to submit that even though the hon. Leader of the Majority Party has eloquently tried to find out how unconstitutional or how illegal this amendment is, when viewed against the provisions of the Constitution, hon. Maanzo is perfectly in order to raise a matter that is related to the oversight of these institutions.

(Applause)

How can we go out there and say that we cannot talk about integrity, just because we do not have a legislation or a Standing Order? That will be the day when all our constituents, who brought us here, will say that we are completely useless, or *bure kabisa*.

(Laughter)

**Hon. Speaker:** Hon. Baiya, just contribute to this debate.

Hon. Members, this is interesting, and it is good. Remember that these are matters of law. Let us hear these learned colleagues.

**Hon. Baiya:** On a point of order, hon. Speaker. I am rising on a point of order to raise concern about compliance of this Motion with the Standing Orders. The amendment says that the Motion be amended by deleting recommendations 1,2 and 3 on page 55 of the Report. To that extent, that part violets Standing Order No. 56(2), which is clearly to the effect that no amendment shall be permitted if, in the opinion of the Speaker, it represents a direct negation of the question proposed. The proposal to delete a resolution proposed by the Report is seeking to negate it. The logic of this Standing Order is to ensure that you can actually vote against resolution and achieve what this Motion wants us to achieve.

The second aspect is that the proposal to substitute another recommendation offends Standing Order No. 56(1), which is to the effect that an amendment should be relevant to the Motion. Every amendment shall be relevant to the Motion it seeks to amend, and shall not raise any question which, in the opinion of the Speaker, should be raised by a substantive Motion after notice is given. Clearly, this is a Report by the Committee, dealing with a Petition which touches on commissioners. This amendment seeks to direct the Ethics and Anti-Corruption Commission to undertake another investigation. It does not require any stretch of imagination to see that this amendment is a distraction; it is an attempt to divert the House from dealing with the business before it; it is clearly a violation of the Standing Orders.

I would urge that the amendment itself be ruled out of order.

(Applause)

**Hon. Speaker:** Could you address yourself to this particular issue, hon. Nyikal?

**Hon. (Prof.) Nyikal:** Thank you, hon. Speaker. I know that legally educated people have spoken. I know that people who understand the Constitution and the Standing Orders inside out have spoken. But I also know that all of us here, after gathering information, will have the right to make a decision.

You said that you are going to make a ruling. The question is that a Petition was forwarded to a Committee. As a Committee investigates the issues raised in the Petition, they find a matter touching on that Petition, which may, if investigated by the Committee, change the content and purpose of that Petition. Will the Committee then say that they cannot look at the other issue, and that they can only look at the Petition as it is? If they

make a decision that changes everything, later on, they can prosecute that matter differently. What if the decision they make on the Petition actually makes it impossible? If the best issue for the removal of these people turns out to be the irregular sale of Integrity Centre, and we remove them, shall we, later on, say that we shall reinstate them?

Hon. Speaker, I put this before you because I know that you will make a ruling. We are gathering it from the legally educated people, and the people who know the Standing Orders inside out. We are just making interpretation as Members who are intelligent, but who may not have information.

Thank you, hon. Speaker.

*(Applause)*

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

**Hon. Cheptumo:** Thank you, hon. Speaker. I am a Member of the Justice and Legal Affairs Committee. So, I have participated in the entire process of this Petition. But for now, I would like to confine myself, as you have directed, to the proposed amendment by my good friend, hon. Maanzo.

Article 251 of the Constitution is very clear, especially when it comes to the removal of a commissioner of a constitutional commission from office. Sub-Article (2) of that Article reads:

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

This Petition is very specific, and it is grounded on specific facts. The facts are listed not only in the Petition but also as set out in Article 251 of the Constitution. The grounds are set out in Article 251, Sub-Article (1), paragraphs (a), (b), (c) and (d). The allegations are so serious that grounds are set out in the Constitution. To now go ahead and try to amend the resolution of the House, to include matters which are not recognized by the Constitution is, in my considered view, not right.

Hon. Speaker, the sale of Integrity Centre became an issue in the process of considering the Petition. Introducing the issue of the sale of Integrity Centre in this Report to form the basis of our recommendations, would be moving away completely from the prayers sought by the Petitioner. I believe that, as we address this issue now, the Petitioner is listening to us, as elected leaders of this nation. The whole nation will be sad if, for reasons we may choose to pursue, we divert from this very important Petition.

We have several Kenyans who have been suspended from their offices because of allegations of corruption. If we move in a direction that diverts attention from the Petition and pursues the issue of the sale of the Integrity Centre, we will be failing as national leaders.

Hon. Speaker, I appeal to you that, as you make your ruling, be guided, first and foremost, by the provisions of Article 251 of the Constitution; as you bring out the issues raised by hon. Baiya regarding the issues raised by hon. Maanzo. The issues raised by hon. Maanzo are not relevant. They are contradictory to the Petition before the House. They are completely out of order because the resolutions of the House must relate to the

Petition as read out by you to this House, after which you directed us to consider it and report back to this House. We spent time in Nairobi and Mombasa on the Petition. It will be sad for us, if we reduce this process to a tool for diverting attention from the real issue.

I respect your ruling. I know you will guide the country because Kenyans, including the Petitioner, are watching us in this House.

**Hon. (Ms.) F.M. Mutua:** Hon. Speaker, I wanted to speak on the actual Report not on the amendment.

**Hon. Speaker:** Let us get those who are speaking to the amendment.

**Hon. Linturi:** Hon. Speaker, I rise to speak to this amendment, and especially share my ideas and thoughts on the fact that you have to make a ruling on this matter raised by the Leader of the Majority Party. I beg and persuade you to be guided by the following: That, the document before us this afternoon has gone through a process that is provided for by this Constitution. If I look at the power of this Committee that was collecting evidence and handling this particular matter, for purposes of avoidance of doubt, this Committee had the power to summon any person to appear before it for the purpose of giving evidence or providing information. I understand that the matter the Committee was looking at was a matter to do with collecting information on establishing whether there are grounds to advise on the formation of a tribunal to suspend the EACC commissioners.

During the course of taking evidence, very important information was taken to the Committee. This important information should guide this Committee further. If there are issues that are being raised on the integrity of the Commissioners, and if there are issues that are being raised concerning certain public assets being transferred to individuals, then that information cannot be wished away. This is a House of procedure and rules. I want to invite you to look at Article 159 of the Constitution. Considering that the Constitution is the basis of all laws and subsidiary legislation, Article 159(d) says that justice shall be administered without due regard to procedural technicalities. If the issues that hon. Maanzo wants this House to consider can only be said to be inadmissible because the procedure does not provide for them, then I want to state that the Constitution is the supreme law.

I want to persuade this House to find that the matter about Rivack and Tegus is a very important one, if we are to completely dispense with the matter objectively. The information that I have is that Rivack and Tegus, as Members have just said, is owned by the gentleman called Adan and his wife. The person who brought this petition before Parliament is an employee of Mr. Adan.

**Hon. Members:** Shame! Shame!

**Hon. Linturi:** Hon. Speaker, it is this Adan who owns Rivack. The EACC pays rent to Rivack, a company that owns the Integrity Centre, whose owner is Mr. Adan. I want to know whether Members dared to further establish whether this gentleman declared interest on this Petition. This is because being an employee of Mr. Adan, he may have been acting on his instructions. As we look into this particular matter this afternoon, let us understand that we have a serious responsibility as Members of the Eleventh Parliament to protect public assets, and make sure that whatever we do is for the best interests of this country, anything else notwithstanding.

**Hon. (Ms.) Kanyua:** Hon. Speaker, on the question of the ownership of Integrity Center, this is not a question that the Committee has been blind to. This is a matter that has come before the Committee. It is a matter that the Committee has had due regard to. If you look at our Report on Page 49, you will see that the CEO, Mr. Halakhe Waqo undertook to provide a full report on the ownership of the building in two weeks' time.

I confirm to this House that the Committee is looking at the question of the ownership of the Integrity Centre. If you look at the allegations on one of the Commissioners, they actually relate to the questions of the ownership of Integrity Centre. However, I wish to confirm that the removal of Commissioners is the subject of the Petition that we have before us. The question of ownership of Integrity Centre is an operational issue on the Ethics and Anti-Corruption Commission. The Committee has even recommended to the Commission to consider finding alternative place for doing its own business.

Under Standing Order No. 216(5), we have the functions of a Departmental Committee which shall be to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, which is already happening. The Committee is seized of the question of the ownership of Integrity Centre, and we have received documents that are with us. As for today, let us confine ourselves to the Petition on the removal of the Chairperson, Mr. Mumo Matemu and the Vice-Chairperson, Ms. Irene Keino. That is the Petition we have and that is what we will deal with today.

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, when we agree that every Member will be heard in silence and then you resort to that behaviour, then we are not an hon. House. The reason you are hon. Members is because you are expected to disagree very vehemently here, but then go out there and have a cup of tea together. Therefore, I do not see the need for this unnecessary heckling of Members. We can hear a few of you on these points. I want to hear Dalmas Otieno.

**Hon. Anyango:** Hon. Speaker, the thrust of the Report we are discussing is that we have the Commission fighting itself. Commissioners are accusing one another and the secretariat. The members of the secretariat are accusing themselves too. It has arisen and is part of the Report that the ownership of Integrity Centre was an issue that may have created very serious conflict within the Commission. What I would beg of Daniel Maanzo is this: Do not delete Clause one, two and three. Just add the fourth one because it also arises out of the Report, and so many Members feel it should not be left out.

Similarly, if a Member has details of other properties or other investigations, that may have created this serious conflict within the Commission, and that has led us to resolve that the entire Commission is not competent--- If at all we had the power to handle that we would have done so, but our mandate is limited to dealing with the Commissioners and not employees of the Commission.

Hon. Speaker, hon. Maanzo is right to say that the Commission got material and indicated that issues regarding Integrity Centre are a critical example of what generated conflict within the Commission, and that we should not adopt this Report without also

requiring that we receive a direct report from the Commission on this particular matter. If the Deputy Chair of the Committee is saying that they are seized of the matter requesting that the Commission gives a report, it will still be given to the Committee, and it will bring it to the House, but it should not be ignored when it is one of the critical issues that have divided this Commission, and have revealed to us their incompetence and conflict, hence their inability to manage the Commission as required under the law.

Thank you.

**Hon. Speaker:** Hon. Kajuju.

**Hon. (Ms.) Kajuju:** Thank you, hon. Speaker. May I take this opportunity to try and energise the debate that is before this House today. I would like previous speakers to know that this House is not a court. What the Committee was undertaking was not a judicial process. When you cite Article 159 of the Constitution, you turn this House into a court, which it is not. Neither can we turn this House into a tribunal. We are seeking to establish the basis upon which the President can proceed to have a tribunal constituted. Other issues will then follow.

The Committee has done what it was supposed to do. If you look at this Report, you will find that the Committee conducted public participation. The Committee asked whoever had issues with the Petition to appear before it by advertising in the daily newspapers. The issues that are being brought today by way of an amendment are just diversionary. If there was an issue that ought to have arisen at the right stage, then it ought to have been brought to the attention of the Committee when it called for public participation.

We cannot allow Members to go on a fishing expedition.

Hon. Speaker, I am on my feet.

*(Loud consultations)*

The Committee had to deal with the issues that were before it. We are told that this Motion must be amended to suit certain interests, but we cannot accept that. We are not here to serve particular interests. We are here to make laws and oversee institutions. When this Petitioner appeared before us with issues that were before us, the Committee did its bit by ensuring that it asked the public to address it, which they did. That is why we are saying that the amendment is null and void; it has been brought to the House late.

I oppose the amendment.

**Hon. Speaker:** Hon. Members, as we move on, it has become much clearer. I may not even be required to move an inch and make a ruling. So, let us debate. We are dealing with the issues about the need for this amendment.

Yes, hon. Simba Arati,

**Hon. Simba:** Mhe. Spika, nataka kwanza mwelekeo kutoka kwako. Mwelekeo ambao nautaka ni kwamba mwenyekiti wa kamati ya Justice and Legal Affairs, Mhe Chepkong'a, amekuwa hapa Bungeni, lakini ameachia makamu wake kuisoma ile Ripoti. Najua kwamba hii inakubalika katika sheria zetu.

Mhe Spika nataka nikueleze leo hii kwamba nilipata nafasi nzuri ya kuingia katika ile kamati kama rafiki wa kamati.

**Hon. Speaker:** Hon. Simba Arati, we are speaking to the amendment. I know you may not have the necessary experience. You are required to be relevant. Deal with the issue of the amendment proposed by hon. Maanzo. I do not care about your background, but you have to be relevant to the amendment.

**Hon. Simba:** Mhe Spika, nataka kuongea juu ya marekebisho hayo.

**Hon. Speaker:** Hon. Simba Arati, I am not going to engage in an argument with you. You must limit yourself to this amendment.

**Hon. Arati:** Mhe. Spika, nataka kurudia mambo ambayo ni muhimu sana kwa sababu ya ile nyumba ambayo kamisheni inatumia. Mimi mwenyewe ndio nilioyaleta yale katika ule mkutano. Kwa hivyo, nikingea naelewa vizuri kwamba yale ninayogusia ni kwa sababu yanamgusa moja kwa moja mwenyekiti wa ile kamati. Nataka nikueleze kwamba mwenyekiti wa ile kamati amehusika kwa njia moja ama nyingine kuhakikisha kwamba wale makamishina--- Mmoja ni kamishina Keino ambaye aliweza kupatiana ripoti pale kwamba mhe. mwenyekiti wa kamati---

**Hon. Speaker:** Hon. Simba Arati, one minute. Hon. Simba Arati, I am sure you recall that severally I have asked Members to familiarise themselves with Standing Order No.87. If you are desirous of bringing a Motion to discuss the conduct of any Member or any other person, please, seek guidance. The Leader of the Minority is here, you can ask him how it is done. It is not done just because you rise in your place.

Hon. Simba Arati, now that you are unable to contribute to this amendment, I am giving the opportunity to hon. John Olago Aluoch. Resume your seat.

*(Loud consultations)*

**Hon. Aluoch:** Thank you, hon. Speaker. I look forward to the day when Members of this House will cheer or object not on the basis of which side of the House one stands, but on the substance of what one says. I say so because I know that the issue raised by hon. Maanzo is weighty and serious. We should listen to one another without booing, whether we are popular or not popular. Fortunately or unfortunately, those very sharp views expounded by the speakers before me are from colleagues who in our profession are my hon. Juniors. So, I want to treat them with a lot of respect.

We want to confine ourselves to this very serious issue. I am glad that at the end of this debate on the amendments, it will not be tyranny of numbers but your own wisdom that will guide the House.

Petitions are given a very special place in our Standing Orders. The Standing Orders that we have derive their authority from the Constitution, because petitions are very special. Part VIII of our Standing Orders confines itself totally to how petitions can be drawn and what can be done or not done with petitions. One of the issues that are very clear in the Standing Orders is that once a petition is presented to the House, it cannot be amended. The other thing that is very important, to which I want to draw the attention of the House, is what Members can or cannot do. Standing Order 220(2) says as follows:

“Notwithstanding paragraph (1)(b), a Member shall not be eligible to present a petition on his or her own behalf.”

What does that mean in relation to the amendment proposed by hon. Maanzo? If we are to accept it, what does it mean? Removal of holders of constitutional offices is

given another special place in the Standing Orders, so that if you are going to deal with a public petition that seeks to remove a member of a constitutional commission, then you must do certain things. At the end of the day, the House can only come to one conclusion. It is very clear that at the end of the consideration of the Petition, the House can only decide to remove or not to remove an officer from office.

Hon. Speaker, you will notice from the body of the Report that the issue of Integrity Centre is very serious. In the body of the Report, we have been told that the issue of ownership is under investigations, as we speak. Does the House want to take over this investigation from the body authorised to do so? Do we have the right to take over the investigations, if they are ongoing? These are fundamental issues that we must deal with as we debate this issue. The very important thing that we must now do is to look at how we can deal with these very fundamental issues. Depending on your ruling on this Motion to amend the Report, we may decide on the other two proposals. This is because, if we are going to introduce new matters that may fundamentally alter the body of the petition, then your ruling on this Motion will affect the two other amendments that are coming after this one.

As much as we are passionate about these matters, I beg that we deal with them procedurally, so that we get to the bottom of this serious issue. We cannot do so if we are going to lump them together with what has not been asked by the Petitioner. This House has no right to introduce something else to the Petition. I am not saying this to be cheered. I am saying this to be understood. We must find a way of getting to the bottom of the issues raised by hon. Maanzo. We cannot do it under this Petition but we can do it in other ways.

Under those circumstances, I am sorry to say that I oppose the proposal to amend the Report.

**Hon. Speaker:** Yes, Hon. Gichigi!

**Hon. Gichigi:** Thank you, hon. Speaker. I wish to draw the attention of the House to the first proposed amendment by my colleague, hon. Maanzo on deletion of recommendations one, two and three. People are focussing on the intended replacement clause rather than where the issue is.

As my learned senior has well articulated, Article 251 requires this House to simply make a decision as to whether to send the Petition to the President or not. Those are the two decisions we need to make. Now, hon. Maanzo is proposing to delete recommendation one, which is asking this House to resolve to send the Petition to the President. Basically, if that recommendation is removed, this House will not have passed any resolution, according to the Constitution. This particular amendment cannot stand unless we want to violate the Constitution.

Secondly, the Petition does not belong to this House. It has been brought by somebody who is outside this House. Under the Constitution, it is not going to be possible to forward to the President the proposed recommendation from hon. Maanzo, that the Integrity House issue be investigated. That is not an issue that we can forward to the President. It is an issue that can be properly brought to this House either through another Petition, a question or a report, as indicated by the Vice-Chairperson of the Justice and Legal Affairs Committee. As we speak, it is not going to be possible to



approve these proposed amendments and then have a report to forward to the President. It is not going to be possible.

Therefore, I oppose the amendment and advise my brothers and sisters in this House that it is not viable. It cannot stand and it must be rejected.

**Hon. Speaker:** Yes, hon. John Mbadi!

**Hon. Ng'ongo:** Hon. Speaker, listening to my colleagues, I have the following to say on this matter. First, hon. Kajuju has just left but I wanted to remind her that when we are transacting business, especially with regard to listening to information from any person we invite, we have the powers of the High Court. That is provided for under Article 125 of the Constitution. Therefore, she should not say that this House cannot act like a court of law.

I have listened to my friend, hon. A.B. Duale, and I wish he was around so that I persuade him. When you take your patient to be treated for malaria and in the process it is discovered that he has acute cancer problem, I do not know whether the doctor will just close his eyes to the cancer, because the doctor was told that the patient was suffering from malaria.

Hon. Speaker, we are dealing with a situation where, in the process of curing malaria, the Committee of this House, which was ably chaired by the gracious lady from Nyeri County - a lady we respect very much in this country - discovered that there was a cancer problem. The cancer problem is the ownership of Integrity Centre, which has been included in the Report. I want this House to remember that the grounds upon which the Commissioners were expected to be asked to account were:

- (a) serious violation of the Constitution of Kenya;
- (b) Violation of the Ethics and Anti-Corruption Commission Act and the Anti-Corruption and Economic Crimes Act;
- (c) gross misconduct; and
- (d) incompetence.

I want to zero in on parts (b) and (d). There is serious violation of the Ethics and Anti-Corruption Commission Act, the Anti-Corruption and Economic Crimes Act and incompetence. If in the process of conducting this investigation the Committee discovered further that there was serious violation of the Ethics and Anti-Corruption Commission Act and the Anti-Corruption and Economic Crimes Act, with regard to un-procedural, corrupt and fraudulent activities relating to Integrity Centre, it would only be right for us, as a House, to pronounce ourselves and to capture it.

Hon. Duale is back and I wanted to persuade him, as a friend, that it is even worse for this country to close its eyes, especially eyes of the people's representatives. We need to ask ourselves why Parliament became necessary. It became necessary because people realised that there should be no taxation without representation. The main reason why we are here is because taxpayers are paying money to the Executive and we have to watch over that money. What am I saying in a nutshell? I am saying that Standing Order No. 56, which was read by hon. Njoroge Baiya to the effect that an amendment shall be relevant to the Motion which it seeks to amend was in order.

I want to say that the amendment being proposed is actually relevant to this Motion. It is relevant because what we are canvassing is captured in the Report. We are

not importing any foreign information to the Report. It is there only that it has not been captured in the resolutions and hon. Maanzo wants to do so.

Finally, that same Standing Order No. 56(2) says that:

“No amendment shall be permitted if in the opinion of the Speaker, it represents a direct negative of the question proposed.”

I am happy that was read because it says that “it must be in the opinion of the Speaker.” Hon. Speaker, you have reminded us that we are not Speakers. There is only one Speaker in this National Assembly and in this Republic, who guides appropriately, and it is that one hon. Speaker, one hon. Justin Muturi, who has approved the amendment.

*(Applause)*

Therefore, Mr. Njoroge Baiya can never be the Speaker unless we vote for him. I wish he could wait until 2017 if he will have stolen my heart to vote for him to be the Speaker of this Assembly and if I will prefer him to you.

*(Applause)*

Finally, I will urge hon. Duale to support the President in the fight against corruption. The President has spoken to this House and this nation that we should not tolerate corruption, whether it is by whoever high up in Government. If we have realised that there is corruption around Integrity Centre, then hon. Duale, as the Leader of the Majority Party, please, I beg you to support Mr. President my brother. We are ready to support him to fight corruption. Join us in this fight. Join us to help the President of the Republic of Kenya to fight corruption, at least up to 2017.

Thank you.

**Hon. Speaker:** Hon. Members, a lot of issues have been canvassed. It is good for me to just inform the House about certain powers. I want to go straight to Article 125(1) and (2) of the Constitution. Clause 1 and 2 thereof say:

(1)“Either House of Parliament, and any of its committees, has power to summon any person to appear before it for the purpose of giving evidence or providing information.

(2) For the purposes of clause (1), a House of Parliament and any of its committees has the same powers as the High Court.”

So, that is the power. The same powers to do what? Powers to summon any person to appear before it for the purpose of giving evidence or providing information. That is the extent of the powers the Houses of Parliament have.

Having said that, there should be no doubt in our minds as to what is it we can do and what we cannot do.

Secondly, hon. Members, I want to go to Article 251 of the Constitution which I think many of you have successfully canvassed. Clauses (1) is about how a member of a commission or an independent office may be removed from office. For our purposes, Article 251(3) says:

“The National Assembly shall consider the petition and, if it is satisfied that it discloses a ground under clause (1), shall send the petition to the President.”

What is it that we shall send? We shall send the Petition to the President if we are satisfied that it discloses sufficient grounds for removal. Having satisfied ourselves about those two, it is important we are clear about that.

Then, our Standing Orders go ahead to provide what else we should send to the President. All of you have referred me to Standing Order No. 230(5) which says that:

“The House shall, within ten days of the tabling of the report of the committee under paragraph (4), resolve whether or not the petition discloses a ground for removal under Article 251(a) of the Constitution.”

Standing Order No. 230(6) says:

“Where the House resolves that a petition discloses a ground for removal, the Speaker shall, within seven days of the resolution, transmit the resolution and the petition to the President.”

Does the House find the Petition to disclose sufficient ground for removal? If it finds, the Speaker has a mandatory requirement to submit both the Petition and that resolution to the President. The resolution will not contain the HANSARD of what we have been saying, it will just be a simple communication that the House on this and that day resolved that the Petition attached herein discloses sufficient grounds for removal. Indeed, I have sympathy with hon. Maanzo’s proposal.

**Hon. Members:** But---

**Hon. Speaker:** There is no “but” hon. Members, because what he is seeking to remove--- Very lately I have heard hon. Gichigi make reference to recommendations 1,2 and 3. In my opinion, Recommendations 1, 2 and 3 are neither here nor there. If you have resolved, and I want to read it for avoidance of doubt how this Report has ended:

#### “6.0 RECOMMENDATIONS

Having considered the provisions of Articles 73, 75, 76, 125, 161, 171, 172, 173, 245 and 255 of the Constitution of Kenya, the provisions of the Ethics and Anti-Corruption Commission Act and Standing Order No. 230, the Departmental Committee on Justice and Legal Affairs reports to the House that the Petition discloses grounds for the removal from office of the following members of the Commission: Mr. Mumo Matemu and Ms. Irene Keino and recommends to the House as follows- ”

That is when recommendations 1, 2 and 3 come in. Having found that the Petition discloses sufficient grounds for removal, Recommendations 1, 2 and 3 are neither here nor there. You can either attach them or not. If this House approves this recommendation, that the Petition discloses grounds for removal, then we will have wasted the afternoon. We have been arguing, contributing and splitting hairs over nothing. However, more importantly hon. Members is the fact that hon. John Mbadi made reference to our Standing Order No. 56(1) and (2) that the amendments complied with the requirements for writing and the timing. In my opinion, they are lawful and do not seem to negate this Report.

It is for that reason that I approved them but this afternoon, having listened to several of you and the weighty issues that you have had occasion to raise, I am still of the view that the amendments proposed by hon. Dan Maanzo and hon. T.J. Kajwang', for avoidance of doubt, do not violate the provisions of Standing Order No.56(1), and will therefore remain in the House and on the Order Paper for the House to express themselves on and make a determination.

I also find that, one, the amendment proposed by hon. Maanzo is material to the grounds upon which the Petitioner requested the National Assembly to consider recommending the removal of the two persons to His Excellency the President. The amendment is, therefore, admissible.

Two, as to whether the House can add names of other persons whose names were not included in the original Petition, I rule that so long as that amendment is not seeking an express resolution of the House on those extra persons, it would be lawful as long as it is seeking a recommendation to other authorities to process and investigate their removal in accordance with the relevant provisions of laws that govern their removal. As for now, we are only dealing with the Petition relating to the removal of the two Commissioners.

*(Applause)*

Therefore, the upshot of all this is that none of the amendments that I have approved result in a direct negative and I rule that debate continues.

*(Applause)*

**Hon. Members:** Put the Question of the amendment.

**Hon. Speaker:** Hon. Members, I get the view that I put the Question.

*(Hon. Oyoo consulted loudly)*

Hon. Oyoo or somebody next to you, just remain silent.

*(Question of the first part of amendment, that the words to be left out be left out, put and agreed to)*

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

*(Question of the Motion as amended proposed)*

**Hon. Speaker:** Debate continues on the Motion as amended. The amendment by hon. Maanzo, having been carried, therefore, means the proposed amendment by hon. Kaluma is dropped. Is that correct hon. Kaluma? You agree with that?

**Hon. Kaluma:** Yes.

*(Proposed amendment by hon. Kaluma dropped)*

**Hon. Speaker:** Very well. We are left to consider the amendment proposed by hon. T.J. Kajwang’.

**Hon. Kajwang’:** Hon. Speaker, I rise with greatest humility to talk to my colleagues and Members of the National Assembly, both as a Kenyan and a person who stood when the President came before the National Assembly to address us on the State of the Nation and gave the President a standing ovation. I begin from the Report itself on page 54. The Report states as follows:

*(Loud consultations)*

There is a lot of consultation in the Chamber. I am sure hon. Members are excited about--

**Hon. Speaker:** Hon. Members, please desist from exchanging words across the aisles.

**Hon. Kajwang’:** Hon. Speaker, I refer to page 54 of the Report in which the Committee expresses itself in the following words on the paragraph at the foot of that page.

“From the foregoing, the Committee--”

Before I go there, let me move the amendment.

Hon. Speaker, I beg to move:-

THAT, the Motion be amended by inserting the following new recommendation immediately after recommendation three. The recommendations will be re-ordered depending on the other amendments on Page 55 of the Report. It will be in the following terms:-

- (a) That, pursuant to Articles 95(5) and 260 of the Constitution as read with Sections 16(2) and 17 of the Ethics and Anti-Corruption Act, 2011, the Committee’s observation contained on page 54 of the report that the problems at the Commission are attributable to both the Commissioners and the secretariat, this House recommends to the Commission to initiate the process of removal of Mr. Halake Waqo, the Secretary to EACC; and,
- (b) That the process of removal under resolution (a) above shall be in accordance with Section 17 of EACC Act.

The basis of this amendment is found on page 54 in which the Committee itself finds that the problems at the Commission are attributable to both the Commissioners and the secretariat, and the two cannot work together.

If you consider various portions of this Report, in particular if you look at pages 16 and 19, you will find that there are a lot of issues that have been raised by the Commissioners themselves. They are saying that the relationship between the Commission and the secretariat has deteriorated to such an extent that work cannot continue.

If you look at page 46 of this document - I want to prepare the foundation for my amendment in the Report itself - when the Committee examined submissions by Michael Mubea on the relationship between the secretariat and the Commission, it says that the

relationship with the Commission in the recent times has been acrimonious. In the next paragraph, it says the bad relationship between the Commission and the secretariat has impeded the fight against corruption and he was ready to leave the Commission if his departure would enhance service delivery. This is the Deputy CEO saying that he has disagreed with the Commission, and if his departure will make things be different, he is ready to leave because they cannot work together.

On page 49, it is Halake himself, the CEO.

*(Loud consultations)*

There are two caucuses on the other side of the House and even on this side of the House; they include the Chairperson of the relevant Committee. I wish she could pay attention because she will give a response. On page 49, Halake says this in paragraph 7 on whether the EACC can continue functioning well in view of the current state of affairs and leadership; he says:-

“With disharmony and mistrust between Commissioners themselves, the Commission and the secretariat, the Commission is as good as dysfunctional. There must be a new beginning even if it means me going home.”

Mr. Halake himself says that things have become so bad that even if it means himself going home--- Nothing can work between him and the Commission.

Hon. Speaker, when we find ourselves in this situation, then we now know that we are dealing with a deeper issue than just the removal of the Commissioners. It turns out that the perception of the secretariat and the way the secretariat is viewing its job is such that it cannot continue to perform its functions as the secretariat. In fact, I mentioned with a lot of humour to the secretariat that according to him, nobody can even fart in the Commission without his authority because he was saying that the Commission cannot do anything without referring to him. With this kind of fellow who believes that he is a God in the Commission, you therefore see that his continual presence in that Commission becomes a problem.

Let me go to page 42 of the Report. This is the information and observation by the Committee that we have. The list document shows that the owners of Integrity Centre have links to the firms of Michael Dawood Advocates, Aden Wetangula and Makhokha Advocates and Mr. Michael Mubea who once worked with Aden and Wetangula. Hon. Kaluma has travelled with us in several documents that now I had a mind to table these documents. But having explained these documents, I see no reason why I should table them. But all these documents seem to suggest that there is somebody whom they have been paying rent to. This somebody by some means that has not been investigated may or may not have paid the Deposit Protection Fund any money and, therefore, that was the reason he should have been the subject of investigation. It is the Chief Executive Officer (CEO) himself who pays rent and he is the one who knows the person that takes rent from him. So, he knows that the person who is paying rent is a person that he, himself, should be investigating.

Hon. Speaker, with all this information that we have and with these connections that I have alluded to, it is clear and you have expressed yourself in very clear terms that, at the end of the day, what you will be transmitting is the Petition whether to remove

these people or whether the Petition dies before us here. If it goes to the President, then he will form a tribunal and other things that he can do but, again, this House is entitled under the Constitution, in Article 95, to express itself nonetheless, although that resolution does not go to the President. But it can express itself under Article 95 which states that the National Assembly reviews conduct of State officers and initiates the process of removing them from office. I am very proud that I am the first one to rise to make an amendment that will create a precedent on how we can play the role of oversight on State officers in this country. As Members, we have a right, authority and express power in the Constitution.

Hon. Speaker, I do not know whether I can have two minutes to express this. I am just on the winding sections but I am saying that we have power under Article 95 to review the conduct of State officers. Those State officers have been defined by Article 260 and we know who they are. In this case, they have been said to be people who are mentioned in the national legislation and the national legislation dealing with this is the EACC Act. In Section 16, the Secretary of the Commission has been specifically said to be a State officer. We are not---

**Hon. Speaker:** Two minutes for hon. Kajwang’.

**Hon. Kajwang’:** If I do not say this, people will think that Parliament is doing something which is not lawful. We are not disciplining the Chief Executive Officer (CEO). We do not have power to discipline him. We only have powers under the Constitution to initiate his removal. His removal is contemplated under Section 17 of the Act, which is by the Commission. In other words, that fellow will be disciplined by that Commission. That Commission will be the one to remove him or not.

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

**Hon. Kajwang’:** Hon. Speaker, I end before that point of order by saying that it is perfectly in order that proceeding under Article 95, this House has found reasons to initiate the removal of this State officer. Let us send him home so that he will be dealt with in accordance with Section 17 as provided for in the law. It is perfectly in order.

Thank you, hon. Speaker. I request my friend and age mate hon. Linturi to second this amendment.

**Hon. Speaker:** Hon. Linturi Franklin.

**Hon. Linturi:** Thank you, hon. Speaker. I rise to support this amendment. At the outset, let me clarify---

**Hon. Speaker:** Are you supporting or seconding?

**Hon. Linturi:** I am seconding the amendment so that people do not start guessing whether this House has power or not to remove the Commission Secretary of the EACC. I want, from the beginning, to state that Parliament cannot remove the Commission Secretary. But looking at powers conferred to this Parliament by Article 95(5) of the Constitution, we have the power to initiate a process to remove State officers. The Commission Secretary to the EACC is a State officer. We only find it necessary that we amend this Report to make a provision that the Commission Secretary should be one of the first people that should be dealt with according to the provisions of Section 17 of the EACC Act, just in the event that the Commission is sent home.

What we are doing is providing or advising the incoming Commission that the first term of reference, the first duty when you get to office, is to deal with the

Commission Secretary. We are suggesting that they deal with the Commission Secretary for very obvious reasons. If I was to borrow from the Report of the Departmental Committee on Justice and Legal Affairs, you will find that the Committee lacked some bit of strength in terms of expressing themselves clearly on this particular matter. I do not understand why this was left out as just an opinion and advisory because when you look at Page 54, the Report says that there is evidence on record that the Chief Executive Officer (CEO) submitted to His Excellency a list of corruption cases with suspects without following due process - for example, tabling it at the Commission for approval. This one in itself is a ground because there can never be any other form of insubordination to a Commission than this. That is one of the reasons why we feel that the secretary must be dealt with by the Commission.

Secondly, you find that from the foregoing, the Committee is convinced that the future of the Commission is bleak, the fight against corruption will fail and that the problems are attributable to both the Commissioners and the secretariat. The Commission Secretary is charged with the responsibility of overseeing the day to day running of the Commission and so, if the problems in that Commission are attributable to him and the Commissioners, it is a demonstration that he is incompetent and unable to give direction on how matters in the Commission should be run.

Without wasting much time, I think it is only necessary for Members of this House to agree that since it is within our constitutional duty, we start this process. We need to demonstrate to the country that we are serious in the fight against corruption. We support the measures that have been taken by the Executive in fighting corruption. Corruption can only be fought by all of us and each one of us taking personal responsibility.

Thank you, hon. Speaker, I support the amendment.

**Hon. Speaker:** Hon. Members, the gist of the amendment is that pursuant to Articles 95(5) as well as 60 of the Constitution, as read together with Section 16(2) and Section 17 of the Ethics and Anti-Corruption Commission Act, 2011 and the Committee observation contained on Page 54 of the Report that the problems at the Commission are attributable to both the Commissioners and the secretariat, this House recommends to:-

- (a) Initiate the process for removal of Mr. Halakhe Waqo, the Secretary to the Ethics and Anti-Corruption Commission (EACC); and,
- (b) the Process of removal under Resolution (a) above shall be in accordance with Section 17 of the EACC Act.

Do I get the feeling that---

**Hon. Members:** Put the Question!

*(Question, that the words to be added be added, proposed)*  
*(Question put and the House divided)*

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

**Hon. Members:** Division! Division!



**Hon. Speaker:** Hon. Members, those who are claiming for a Division have the numbers. Ring the Division Bell for ten minutes.

*(The Division Bell was rung)*

Order! Order, hon. Members! Members, resume your seats.

*(Hon. Members resumed their seats)*

I now order that the Bar be drawn and all doors closed.

*(The Bars were drawn and the doors closed)*

I will put the Question once again but there will be no response. It is for the information of Members as they prepare their minds over which way to vote.

*(Question put and the House divided)*

*(Loud consultations)*

Order, hon. Members! Hon. Members, you have been saying that you have been here for a few years. I am informed that there are some of you who, as usual, do not have their cards. However, very soon, they are going to begin suffering. This is just a reminder. You told me to enforce the Standing Orders strictly. I am sympathetic because we are just about to take a long recess. Soon thereafter, if you come here without your card, we will just assume that you came to listen in the same way that you attend public rallies to listen and others attend to listen to you. You will not be allowed to contribute if you do not have your card. Further, you will also not be allowed to take part in any voting because all voting will be electronic. However, for today, up to next week, I will allow those of you who have not carried their cards to vote. Therefore, those of you who know that you do not have your cards should come to my left and right.

Hon. Members, it does not matter where you stand. You can vote either way. You can vote “Yes” or “No” irrespective of which side of the House you are sitting on. You are in the plenary of the National Assembly of the Republic of Kenya.

Hon. Members, I presume that everybody who is not here has their card. Can you, first of all, remove your cards?

*(Loud consultations)*

Order, Members! There are still some cards logged in. I can see the cards for hon. Jacob Macharia and hon. Michael Kisoi. Are those Members here? Now they are logged out. Every one of you has removed their card.

Hon. Members, you know the Question. You now have 60 seconds within which to log in.

*(Hon. Members logged in)*

Hon. Members, you may now vote. You have 60 seconds. Not yet? Hon. Members, wait for the machine to be ready.

Vote now! End of voting, Members. Order! Order! You may now draw the Bar. Hon. Members, those of you who are walking, allow me to read the results.

*(Hon. Abass stood in the gangway)*

Hon. Abass, please, you know I have to announce the results. Please try to be a little bit more still in the Chamber.

Hon. Members, these are the results: The “Ayes” have 69 electronic votes and three manual votes, totalling to 72 votes. The “Nays” have 99 electronic votes and four manual 4 votes, totalling to 103 votes. There are three abstentions. The “Nays” have it. The proposed amendment is defeated.

*(Question negatived by 103 votes to 72)*

**AYES:** Messrs. Kubai Iringo, Wandayi, Maanzo, Nyamweya, Muluvi, Wahome, Losiakou, Gakuya, Mukwe, Ng’ongo, Onyura, Kisoi, Khamisi, Linturi, Wekesa, Simba, Opiyo, Aburi, Chea, Andayi, Ngikor, Mulu, Musimba, Makau, Waluke, Naicca, Kangara, Kitungi, Nyenze, Otaalo, Makenga, Bishop R. Mutua, Manje, Magwanga, Mwamkale, Odanga, Omondi, Kariuki, Kajwang’, Chumel, Tiren, Onyango, Ogolla, Mule, Kasuti, Njagagua, Mwadeghu, Kombe, Geni, Wakhungu, Kisang, Bitok, Shimbwa, Karithi, Momanyi, Lessonet, Ms. Mbalu, Ms. F.M. Mutua, Ms. Amolo, Ms. R.N. Wanyonyi, Ms. Nyamunga, Ms. Nyasuna, Ms. Chebet, Ms. Musyoka, Ms. Chae, Ms. Chidzuga, Ms. Ombaka, Prof. Nyikal, Dr. Simiyu, Dr. Kibunguchy, Dr. Ottichilo and Eng. Rege.

**NOES:** Messrs Elmi, Kato, K.K. Kinyanjui, ole Kenta, Gethenji, Mohamed, Abdinoor, Aden, A.O. Ahmed, Farah, A.B. Duale, Dido, Wario, Washiali, Gimose, Anyango, Kiaraho, Lagat, Busienei, Nderitu, Waititu, Njenga, Kipchoim, Dukicha, Osman, Abass, Sane, Mwaura, Rop, Macharia, Ekomwa, Kamau, Omagwa, Kihagi, Serut, J.M. Nyaga, Gitari, J.K. Ng’ang’a, Limo, Lomwa, M’uthari, Melly, Kemei, Kanini Kega, Mbiuki, Murungi, Keynan, Mwashetani, Ichung’wah, Barchilei, ole Lemein, Aramat, Sang, Robi, M.D. Duale, Huka, Abdi, ole Sakuda, Cheboi, Kuria, Barua, Wangamati, Mwangi, Rotino, Akujah, Letimalo, Tonui, Mitaru, Mwaita, Chepkong’a, Gichigi, Arama, Karani, Ramadhani, Wetangula, Ndirangu, Cheptumo, Chanzu, Opore, Baiya, Njomo, Nooru, Serem, Banticha, Ms. A.W. Ng’ang’a, Ms. Mbarire, Ms. F.I. Ali, Ms. Kajuju, Ms. Kiptui, Ms. Emanikor, Ms. Korere, Ms. Mbugua, Ms. Seneta, Ms. Munene, Ms. Ibren, Ms. Gathecha, Ms. S.W. Chege, Ms. Sunjeev, Ms. T.G. Ali, Eng. J.K. Chege, Eng. Ngare, Eng. Mahamud and Dr. Pukose.

**ABSTENTIONS:** Messrs. Kabando wa Kabando, Kipyegon and Dr. Shaban.

*(Loud consultations)*

**Hon. Speaker:** You can now open the doors.

**Hon. (Ms.) S.W. Chege:** On a point of order, hon. Speaker.

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

**Hon. (Ms.) S.W. Chege:** Thank you, hon. Speaker. Reading the mood of the House and given that this matter has been deliberated upon, I rise on Standing Order No. 95 to request that the Mover be now called upon to reply.

Thank you, hon. Speaker.

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, you know very well that under Article 122 of the Constitution, the Speaker has no vote. He can only make a ruling. On this one, it is not my business to make a ruling. It is for you to decide.

**Hon. Members:** Yes.

**Hon. Speaker:** The Member claims that the Mover be called upon to reply.

**Hon. Members:** Yes.

**Hon. Speaker:** I am putting the Question.

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

*(Several Members stood up in their places)*

**Hon. Members:** Division! Division!

**Hon. Speaker:** Yes, the numbers are there. Hon. Members, I direct that the Division Bell be rung.

*(The Division Bell was rung)*

Order! Members take your seats.

Hon. Members, let all the doors be closed and the Bar drawn. Please, ensure that Members are not locked in the toilets. Remember, the Question is that the Mover be called upon to reply.

Hon. Members you may now log out. Remove your cards. The unfortunate Members without cards can come and stand by the Speaker.

Hon. Members, you can now log in. Hon. Kaluma, it was reported last time that your card did not work. Have you confirmed whether it is now working?

**Hon. Kaluma:** It is working, hon. Speaker.

**Hon. Speaker:** Hon. Members, you may vote now. I will announce the results shortly. The electronic votes for Ayes are 120. Manual Votes are 7 and thus the total is 127

The electronic votes for Noes are 45, manual, 3 and therefore the total is 48. There are 2 abstentions.

*(Question carried by 127 votes to 48)*

**AYES:** Messrs. Akujah, Ms. Munene, Messrs. Wario, Waweru, Ogolla, Elmi; Ms. Kipchoim, Ms. A.W. Ng'ang'a, Ms. Wahome; Messrs. Dukicha, Osman, Abass, Sane, Kiptanui, Rop, Macharia; Ms. Banticha, Messrs. Gakuya, Lentoimaga; Ms. Ekomwa, Messrs. Murgor, Katoo, Kamau, Washiali, K.K. Kinyanjui, Omagwa, Kipyegon, Kihagi, J. M. Nyaga, Kangara, Gitari, J.K. Ng'ang'a, Limo, Lomwa, M'uthari, Manje, ole Kenta, Mr. Gethenji; Ms. Emanikor, Messrs. Melly, Kemei, Ms. Mbarire; Messrs. Njagagua, Abongotum, Kanini Kega, Mbiuki, Murungi, Mirenga, Keynan, Mwashetani, Ichung'wah, Barchilei, Bitok, ole Lemein; Ms. Korere, Messrs. Aramat, Sang, Gimose, Abass Mohamed; Ms. Mbugua, Ms. Seneta, Messrs. Abdinoor, Robi, Aden, Anyango, A.O. Ahmed, Bowen, M.D. Duale, Huka, Shidiye, Mohamed Abdi, Eng. Mahamud, Mr. Kiaraho, ole Sakuda, Messrs. Cheboi, Lessonet, Kuria, Losiakou, Wekesa; Ms. Ibren, Messrs. Lagat, Barua, J. K. Chege, Ngare, Dr. Kibunguchy, Messrs. Koinange, Mwangi, Rotino; Ms. Kanyua, Ms. F.I. Ali, Ms. R. K. Nyamai; Messrs. Farah, Letimalo, Ms. Kajuju, Ms. R. N. Wanyonyi; Messrs. Nderitu, Tong'i, Tonui; Ms. Mitaru, Mr. A.B. Duale, Ms. S.W. Chege; Messrs. Mwaita, Chepkong'a, Gichigi, Chumel, Isaack; Ms. Gure, Messrs. Waititu, Karani, Ramadhani, Kasuti; Ms. Sunjeev, Ms. Chebet, Messrs. Mwadeghu, Njenga; Ms. T.G. Ali, Messrs. Ndirangu, Dido, Cheptumo, Kisang, Chanzu, Opopre, Tiren, Shill, Kaluma, Bii, Karithi, Serem, Njomo, Kamanda, Baiya; Ms. Muhia and Mr. Nooru.

**NOES:** Dr. Simiyu, Mr. Mwamkale, Ms. Chae, Messrs. Simba, Andayi, Kitungi, Bishop R. Mutua, Mr. Wakhungu; Ms. Ombaka, Messrs. Kubai Iringo, Maanzo; Ms. F.M. Mutua, Messrs. Nyenze, Odanga, G.W. Omondi, Ms. Nyasuna, Ms. Kiptui, Messrs. Kombe, Mukwe, Prof. Nyikal, Mr. Opiyo, Ms. Mbalu, Messrs. Naicca, Magwanga, Ndiege, Kajwang', Nyamweya, Muluvi, Ng'ongo, Kisoi; Ms. Odhiambo-Mabona, Messrs. Linturi, Sumra, Chea, Ngikor, Dr. Oginga, Messrs. Musimba, King'ola; Ms. Amolo, Messrs. Otaalo, Makenga, Ms. Nyamunga, Messrs. Onyango, Wetangula, Dr. Ottichilo, Mr. Akujah; Ms. Munene, Messrs. Shimbwa, P.E.O Anyanga and Kaluma.

**ABSTENTIONS:** Dr. Shaban and Kabando wa Kabando.

**Hon. Speaker:** Hon. Members, the Mover may now reply.

**Hon. (Ms.) Kanyua:** Hon. Speaker, I want to thank all the Members and pray that the Petition is upheld. The grounds are enough. The Petition discloses the grounds that are required to send Mr. Matemu and the Vice-Chairperson home.

*(Question put and agreed to)*

*(Several Members stood up in their places)*

**Hon. Speaker:** Order, hon. Members! Order, hon. Naicca!

I do not know what has incensed you. Today you are in a rather difficult mood. You are not like that usually.

Hon. Members, those standing claiming for a Division have the numbers. I, therefore, order that the Division Bell be rung. For avoidance of doubt, Standing Order No.30(5) says as follows:-

“If at the time appointed for the interruption of business, a Division is in progress or a question is being put from the Chair and a Division results immediately thereon, such interruption shall be deferred until after the declaration of the numbers and the result of the Division.”

Therefore, we are accordingly guided so that Members do not start rising on purported points of order. Ring the Division Bell.

*(The Division Bell was rung)*

Is the bell ringing?

**Hon. Members:** Yes.

**Hon. Speaker:** Order, Members! You can stop ringing the Division Bell. Hon. Members, take your seats. Close all doors and draw the Bar.

I hope there are no Members in the convenience places behind. I will read the Question once again, which is:-

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs as amended by hon. Dan Maanzo on the Petition for removal of two Commissioners of the Ethics and Anti-Corruption Commission (EACC), laid on the Table of the House on Tuesday, April 21, 2015, and in accordance with the provisions of Article 251 (3) of the Constitution and Standing Order 230(5), finds that the Petition does disclose sufficient grounds for the removal of Mr. Mumo Matemu and Ms. Irene Keino as Commissioners of the Ethics and Anti-Corruption Commission.

That is the Question. There are some Members whose cards are still in their places. Please, remove them.

*(Loud consultations)*

I must continue with my earlier sympathies for those whose cards cannot work or those without cards. Please avail yourselves to either side of the Speaker. Hon. Members, you can log in the meantime. But this one of Moses Kuria is--- Hon. Moses Kuria, your card is showing.

Vote now.

**Hon. Members:** Yes.

**Hon. Speaker:** Voting has ended. Hon. Members, these are the results:- Electronic votes are 124, manual votes are six and thus the total is 130. For Noes, there are 50 electronic votes and 22 manual votes. Total is 52. Abstentions are 3. The result of the vote is that the Ayes have it. You may now open the doors.

*(Question carried by 130 to 52 votes)*

**Ayes:** Ms. A.W. Ng'ang'a; Stephen Kariuki; Ms. Wahome; Mr. Lentoimaga; Ms. Kipchoim, Ms. Kiptui; Messrs Dukicha, Osman, Abass, Sane, Kiptanui, Rop, Macharia;

Ms. Banticha; Messrs Gakuya, K.K kinyanjui, Murgor, ole Kenta, Messrs. Kamau, Washiali, Gethenji, Kangara, Omagwa, Kihagi, Serut, J.M. Nyaga, Kitungi, Gitari, J.K Ng'ang'a, Limo, Lomwa, M'uthari, Manje, Elmi, Ndiege; Ms. Emanikor; Messrs Njomo, Melly, Kemei; Ms. Mbarire; Messrs Njagagua, Abongotum, Kanini Kega, Murungi, Mirenga, Keynan, Mwashetani, Ichung'wah, Barchilei, Bitok, ole Lemein; Ms. Korere; Messrs Aramat, Sang, Gimose, Mohamed Abass; Ms. Mbugua, Ms. Seneta; Messrs Robi, Abdinoor, Aden, Kubai Iringo, Anyango, M.D. Duale, Huka, Shidiye, Mohamed Abdi, Eng. Mahamud, Sumra, ole Sakuda, Cheboi, Lessonet, Kuria, A.O Ahmed, Bowen, Kiaraho, Losiakou, Barua, Wekesa, Farah, Lagat, ole Ntutu, Messrs. J.C. Chege, Bii, Koinange, Mwangi, Rotino; Ms. Kanyua, Ms. Nyamai; Messrs Ngare, Letimalo, A.B. Duale; Ms. R.N. Wanyonyi, Ms. F.I. Ali; Messrs Tong'i, Dr. Pukose, Mr. Tonui; Ms. Mitaru; Mr. Dido; Ms. S.W. Chege; Messrs Mwaita, Chepkong'a, Gichigi; Ms. Kajuju; Mr. Isaack; Ms. Gure; Messrs Tiren, Nderitu, Karani, Wario, Ramadhani, Kasuti; Ms. Sunjeev, Ms. Chebet; Messrs Waititu, Njenga, Katoo, T.G. Ali, Ndirangu, Cheptumo, Kisang, Chanzu, Opore, Baiya, Serem, Karithi, Kamanda; Ms. Muhia and Mr. Nooru.

**Noes:** Dr. Simiyu; Messrs. Mwamkale, Opiyo; Ms. Chae; Messrs Simba, Momanyi, Andayi, Bishop R. Mutua, Messrs. Geni, Wakhungu; Ms. Ombaka; Mohamed Diriye, Dr. Kibunguchy; Ms. F.M. Mutua; Messrs Nyenze, Odanga, G.W. Omondi, Ogolla; Ms. Nyasuna; Messrs Ekomwa, Prof. Nyikal, Mr. Opiyo; Ms. Mbalu; Messrs Mutambu, Naicca, Magwanga, Kajwang', Nyamweya, Muluvi, Ng'ongo, Kisoi, Linturi, Chea; Ms. Ibren; Mr. Ngikor, Dr. Oginga, Messrs. Musimba, King'ola, Wangamati; Ms. Amolo; Messrs. Otaalo, Makenga; Ms. Nyamunga; Messrs Chumel, Onyango, Mule, Mwadeghu, Bosire, Wetangula, Shimbwa and Kaluma.

**Abstentions:** Ms. Odhiambo-Mabona, (Dr.) Shaban and Mr. Kabando wa Kabando.

## ADJOURNMENT

**Hon. Speaker:** Hon. Members, it is time to adjourn the business of the House. The House is adjourned until Thursday, 23<sup>rd</sup> April, 2015 at 9.30 a.m.

The House rose at 6.49 p.m.