

NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 2<sup>nd</sup> March, 2017

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

**Hon. Speaker:** There is no quorum. Can you ring the Quorum Bell?

*(The Quorum Bell was rung)*

We have quorum now. We can commence.

### COMMUNICATION FROM THE CHAIR

#### SUBMISSION OF ELECTION-RELATED REGULATIONS BY IEBC

**Hon. Speaker:** Hon. Members, as you may have just heard, the Independent Electoral and Boundaries Commission (IEBC) has submitted the final drafts of five sets of election-related Regulations. I am aware that the Committee on Delegated Legislation has had several formal engagements with the IEBC between 13<sup>th</sup> February and 22<sup>nd</sup> February 2017 to consider earlier drafts of the Regulations. The IEBC has, therefore, done its part by providing the Final Draft Regulations for tabling and ultimate consideration by the House, through the Committee on Delegated Legislation, and within the timelines that are specified in Section 109(3) of the Elections Act.

Hon. Members, I urge the Committee to expeditiously consider the Regulations, so as to allow the IEBC to publish the final Regulations within stipulated timelines of the Act. The Committee is also reminded that pursuant to Sections 18 of the Statutory Instruments Act, a desire to annul a statutory instrument requires the approval of the House, and would need to be fast-tracked to ensure adherence to the statutory deadlines. Once the Committee has considered the Regulations, it is expected that a comprehensive brief will be given to the House on the content of the final Regulations, given the importance of this matter.

I thank you.

*(Hon. Kaluma walked into the Chamber)*

**Hon. Speaker:** Is the Member for Homa Bay in the National Assembly or in Homa Bay

Town?

### MESSAGE

#### NOMINATION OF MR. WILFRED BUYEMA FOR APPOINTMENT AS CEO OF NG-CDF

**Hon. Speaker:** Hon. Members, this is a Message from the National Treasury on the nomination of Mr. Wilfred Buyema for appointment as a Chief Executive Officer (CEO) of the National Government Constituencies Development Fund (NG-CDF).

Hon. Members, pursuant to the Provisions of Section 20(1) of the NG-CDF Act, 2015; Regulation 4 of the National Government Constituencies Development Fund Regulations, 2016; and Section 5(1) of the Public Appointments (Parliamentary Approval) Act, 2011, I wish to convey to the House that I have received a request from the Cabinet Secretary for Devolution and Planning, asking the House to approve the appointment of Mr. Wilfred Buyema as the CEO of NG-CDF.

*(Loud consultations)*

Hon. Members, there must be silence. Regulation 4(2) of the National Government Constituencies Development Fund Regulations, 2016 requires the National Government CDF Board to forward to the Cabinet Secretary for Devolution and Planning three names of selected candidates, from among whom the Cabinet Secretary nominates one and notifies the National Assembly on the same. Pursuant to this requirement, therefore, the Cabinet Secretary for Devolution and Planning has nominated Mr. Wilfred Buyema as the Chief Executive Officer of the National Government Constituencies Development Fund.

On its part, Section 20(1) of the National Government Constituencies Development Fund Act, 2015 requires the nominee for appointment to the position of CEO of the Fund to be vetted and approved by the House before appointment.

*(Hon. Abass stood up in his place)*

Order Hon. Abass. That is gross disorder! Anyway, let me proceed.

In furtherance of the said provisions, Standing Order 45 No.(1) provides that upon receipt of the notification of nomination for appointment, such nomination shall stand committed to the relevant Departmental Committee of the House for consideration. In this regard and, for purposes of ensuring that the vetting exercise is conducted by the most appropriate Committee of the House, I hereby refer the name of the nominee, including his curriculum vitae, to the Select Committee on the National Government Constituencies Development Fund to undertake the necessary approval hearings. Thereafter, the House shall consider the nominee in accordance with the provisions of the Public Appointments (Parliamentary Approval) Act, 2011. Section 8 (1) of the said Act requires the National Assembly to either approve or reject the nominees within 14 days from the date on which the notification of nomination was given.

In view of the foregoing, I wish to guide the Committee and the House as follows:

- (1) That the Committee should notify the nominee and the general public of the time and place for holding the approval hearings, in good time. The notification should, therefore, be made immediately.
- (2) That the Committee may, thereafter, commence the necessary approval hearings and submit its report to this House on or before Tuesday, March 21, 2017.

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

**Hon. Speaker:** Hon. Members, it is out of order for you to shout points of order when you are seated.

Before we proceed to the next Order, allow me to recognize the presence of students and pupils from the following institutions who are in the Speaker's Gallery.

- (1) St. Mary Academy, Embakasi East Constituency, Nairobi County;
- (2) Vision Hope Educational Centre, Embakasi East Constituency, Nairobi County;
- (3) Mung'aria Primary School, Kandara Constituency, Murang'a County;
- (4) Ithumbu Primary School, Gatanga Constituency, Murang'a County; and,
- (5) Paul Mbiyu Primary School, Gatanga Constituency, Murang'a County.

They are welcome to observe the proceedings in the House. Let us move on to the next Order.

## PETITIONS

### DISCRIMINATION AGAINST LOCAL STAFF AT HOTEL INTER-CONTINENTAL NAIROBI

**Hon. Ng'ongo:** Thank you, Hon. Speaker, for giving me this opportunity to present a Petition on behalf of a concerned Kenyan regarding the employment practices at the Hotel Inter-Continental Nairobi.

I, the undersigned, on behalf of a concerned citizen, draw the attention of the House to the following—

THAT, Article 41 of the Constitution states that every person has the right to fair labour practices;

THAT, fair treatment of workers is a key component of social justice and guided by the principles of non-discrimination as stipulated in Article 27 of our Constitution;

THAT, these statutory requirements appear to have been flouted at the Hotel Inter-Continental in Nairobi with regard to preferential treatment that appears to be exhibited towards foreign workers at the expense of local workers in the organization;

THAT, in this regard, there have been efforts to replace one, Mr. Fred Ogutu, who is the Director of Food and Beverages, with an expatriate for no discernible reason, contrary to principles of fair administrative action;

THAT, further, there has been endemic discrimination and harassment of local staff by the management, which has left the staff with little recourse for action; and,

THAT, the issues in respect of which this Petition is made are not pending before any court of law, constitutional or legal body.

THEREFORE, your humble Petitioner prays that the National Assembly, through the Departmental Committee on Labour and Social Welfare:

- (i) Intervenes to have this matter resolved on behalf of the hotel staff; and,
- (ii) Makes any other further order(s) deemed fit in the circumstances of the petitioners.

Your humble Petitioner will ever pray.

Hon. Speaker, the concerned Kenyan through whom I received this Petition is called Holyfield Owiti Ochieng'. The details are here. I want to just---

**Hon. Speaker:** There is no debate. I know you have not been coming to the House of late and so, you may have forgotten the provisions of the Standing Orders.

Please, let us have the Member for Kitui Rural.

#### COMPENSATION FOR LAND ACQUIRED TO CONSTRUCT THWAKE DAM

**Hon. C.M. Nyamai:** Thank you, Hon. Speaker. Allow me to present this Petition on behalf of the residents of Kanyangi Ward, Lower Yatta District, Kitui Rural Constituency on compensation by the Government for land acquired for the construction of Thwake Dam.

I, the undersigned, on behalf of concerned residents of Kanyangi Location in Kanyangi Ward, Lower Yatta District in Kitui Rural Constituency, draw the attention of the House to the following---

THAT, land is an important factor of production that sustains livelihoods of many households in Kenya, and access to it is a key facilitator of economic empowerment for rural communities in the country;

THAT, in 2013, the national Government, through the Ministry of Lands, sought to acquire some land from residents of Kanyangi location, Kanyangi Ward, Lower Yatta District in Kitui Rural Constituency for the construction of Thwake Dam;

THAT, the Government partially undertook to compensate residents for voluntarily surrendering their parcels of land for the construction of the said dam for public utility;

THAT, whereas Article 40(3)(b)(1) of the Constitution provides that whenever private land is acquired for public use requires prompt payment in full or just compensation to the persons, 11 plot owners who surrendered their land to the Government are yet to be compensated;

THAT, those who were compensated raised various complaints of under-compensation, specifically the manner in which the acreage measurement was taken as they were characterized by a lot of errors ranging from omission of various items of development and cultural aspects;

THAT, the possible delay in the implementation of the project due to the initial under-valuation of the said land by about Kshs1.5 billion may result to under-compensation;

THAT, efforts to resolve the matter with the relevant Government ministries or agencies have been futile; and,

THAT, the matter in respect of which this Petition is made is not pending before any court of law or constitutional body.

THEREFORE, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Lands, liaises with the relevant Government ministries and agencies to establish whether:

- (i) The survey for acreage for the plots was done professionally and, if not, recommends a repeat of the exercise to address the concerns of the residents.
- (ii) Intervenes to ensure that the affected persons are rightfully compensated by reviewing payments that each resident is entitled to and clearance of outstanding compensation amounts.
- (iii) Recommends to the relevant ministry agreeable timelines to undertake mitigation exercise or re-evaluation of the completion of the compensation exercise in line with Article 43(b) (i) of the Constitutions.

(iv) The Committee makes any other order or direction that it may deem fit in mitigating this case.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, there are quite a number of Petitions and, therefore, if there will be time for comments, it will be determined on the basis of whether we shall meet the threshold provided for in Article 121 of the Constitution for any Questions to be put.

The next Petition is by the Member for Mwingi West, Hon. Bernard Kitungi.

#### FAILURE TO PAY TERMINAL DUES TO MAJ. (RTD) MUSYONA

**Hon. Kitungi:** Thank you, Hon. Speaker, for giving me this chance to present this Petition to this House on behalf of Major (Rtd) Manzi Musyona.

I, the undersigned, on behalf of Major (Rtd) Manzi Musyona, a resident of Mwingi West Constituency, draw the attention of the House to the following:

THAT, in 1977, Major (Rtd) Manzi Musyona of Service No.17679 was employed by the Government as a Cadet Officer in the Armed Forces.

THAT, on 19<sup>th</sup> March, 1995, he was appointed Staff Officer II Trainee and transferred from the Department of Defence Headquarters Nairobi to the Western Command.

THAT, on 14<sup>th</sup> March 2001, his service was terminated without any benefits and the reasons for termination were not given;

THAT, Major (Rtd) Musyona's case was subjected to a court martial process and the court martial directed that the case be transferred to the Employment and Labour Relations Court.

FURTHER, that Maj. Musyona filed in Nairobi High Court a Miscellaneous Petition Case No.586 of 2006 which was later transferred to the Employment and Labour Relations Court Petition Case No.51 of 2012.

THAT, on 4<sup>th</sup> April, 2016, the Employment and Labour Relations Court in Milimani, Nairobi, ruled in his favour and granted the Petitioner to be paid his terminal benefits and compensation.

THAT, the Department of Defence has failed to honour the Court Orders and, as a result, the Petitioner is languishing in misery;

THAT, multiple follow-ups by the officer have not received any redress to date; and,

THAT, the matter presented in this Petition is not pending before any tribunal or court of law.

THEREFORE, your humble Petitioner prays that the National Assembly, through the Departmental Committee on Defence and Foreign Relations:

(i) Recommends that the Department of Defence honours the court order and pays the Petitioner all his dues as directed by the court; and,

(ii) Makes any other order or direction that it deems fit in the circumstances of the case.

And your humble Petitioner will ever pray. Thank you.

**Hon. Speaker:** The Department of Defence has refused, neglected and/or failed to honour the court judgement. If that is so, the Principal Secretary responsible could be in contempt of court orders. Is that not so? I thought there is an easier way of enforcing contempt through courts of law than coming to debating it here. But anyway, you have chosen that way of doing it. Maybe, the Departmental Committee may be one to enforce the court order. That is the assumption, Hon. Kitungi. That is a matter that has gone through the court and it has ruled in

favour of the Petitioner. There is a Principal Secretary responsible. That is the person to be taken to court to answer why they are not honouring the judgement of the court. That is the person responsible as the Accounting Officer. But, any way, you will argue the case before the Committee. The Departmental Committee on Defence and Foreign Relations is requested to deal with the matter as they find appropriate.

Let us now hear the Member for Kathiani.

PAYMENT OF UNAUTHORIZED SCHOOL LEVIES IN  
PRIMARY SCHOOLS IN KATHIANI CONSTITUENCY

**Hon. Mbui:** Thank you, Hon. Speaker, for giving me this opportunity to present this public Petition by primary school parents regarding the funding of co-curriculum activities in 2017.

I, the undersigned, on behalf of primary school parents and guardians - especially in Kathiani Constituency - draw the attention of the House to the following:

THAT, Article 43(1)(f) of the Constitution of Kenya and Section 28 of the Basic Education Act, 2013 entitles every Kenyan child to free and compulsory basic education and obligates the State and parents to facilitate access to quality basic education.

THAT, co-curriculum activities are an integral part of the education process that, not only ensures that the education process produces all rounded persons, but also serves as an income earner to learners who pursue co-curriculum related careers.

THAT, Section 54(7)(r) of the Basic Education Act further recognizes the importance of co-curriculum activities by obligating the County Director of Education to manage it alongside other sports education, talent development among others in the counties.

THAT, in furtherance of the Government's policy to provide free basic education, the Ministry of Education, Science and Technology banned charging extra levies in primary schools and provided for capitation of Kshs76 per child to fund co-curriculum activities vide a circular dated 7<sup>th</sup> February 2017, which we highly appreciate.

THAT, the said capitation of Kshs76 per child is given to the schools and they have been instructed to share it at various levels of utility as indicated herein:

- (i) The school level retains Kshs46 per pupil.
- (ii) The sub-county level retains Kshs15 per pupil.
- (iii) The county level to get Kshs10 per pupil; and,
- (iv) The regional level is to get Kshs5 per pupil.

THAT, The proposed funding arrangements that leave the school with a meager Kshs46 per child is not adequate for regular purchase of consumable games equipment likes balls and nets and to sustain the mandatory co-curriculum activities including transport, meals and accommodation in primary schools

THAT, if the situation is not mitigated, many budding talents in primary schools may fail to blossom by not having the opportunity to go beyond school level.

THAT, efforts to have the Ministry of Education, Science and Technology review its capitation of co-curriculum activities upwards or approving supplementary levies to be charged by schools have not yielded satisfactory action; and,

THAT, issues in respect of which this Petition is made are not pending before any court of law, constitutional or legal body.

THEREFORE, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Education, Research and Technology:

- (i) Engages the Ministry of Education to consider up-scaling Government capitation for co-curricular activities in primary schools from the Kshs76 currently given to, at least, Kshs150 per pupil, with a view to avail sufficient activity funds at school level for the 2017 co-curricular activities. Therefore, that is very urgent.
- (ii) Liaises with the Ministry of Education to initiate an audit of the co-curricular activities per pupil at school level with a view to recommending a reasonable capitation for co-curricular activities in subsequent sporting years.
- (iii) Recommends that the share of the said capitation for the sub-county, county and region be submitted directly to the relevant offices instead of going through the primary schools.
- (iv) Makes any other order that is deemed fit in the circumstances of the Petitioners.

And your humble Petitioners will ever pray.

**Hon. Speaker:** Yes, the Member for Maragwa.

#### FRAUDULENT CHANGE OF OWNERSHIP OF LAND

**Hon. Mwangi:** Thank you, Hon. Speaker for giving me this chance to present this Petition by Methi and Swani Farmers Co-operative Society on fraudulent change of ownership of their land.

I, the undersigned, on behalf of Methi and Swani Farmers Co-operative Society in Maragwa Constituency draw the attention of the House to the following:

THAT, Article 40(1) of the Constitution entitles every person the right, either individually or in association with others, to acquire and own property.

THAT, in the early 1970s, a total of 3,147 farmers consolidated their resources and formed the Methi and Swani Farmers Co-operative society and registered it under the then Ministry of Co-operatives.

THAT, through the Society, members acquired various coffee farms with the aim of growing coffee so as to reap dividends from the sale of coffee and later settle its members.

THAT, in 1988, the land was subdivided into 3,147 plots, each measuring half acre and issued to each of the society's members.

THAT, in 2011 two parcels of land belonging to the Society, LR No. Mitumbiri/Wempa Block 2/2575 measuring 13.98 hectares and LR. No. Mitumbiri/Wempa Block 2/2576 measuring 13.485 hectares were fraudulently transferred to M/S Kenjap Limited thereby alienating the owners of their hard earned land.

THAT, the alleged fraudulent change of ownership has exposed members of the society and their families to untold suffering as efforts to reclaim their land have proven futile; and,

THAT the issues in respect of which this Petition is made are not pending before any court of law, constitutional or statutory body.

THEREFORE, your humble Petitioners pray that the National Assembly through the Departmental Committee on Agriculture, Livestock and Co-operatives:

- (i) investigates the circumstances surrounding the fraudulent transfer of land belonging to Methi and Swani Farmers Co-operative Society with a view to recommending revocation of the illegal transfer of the said parcels of land;

- (ii) intervenes to ensure that persons found culpable of the illegal transactions related to the transfer of the said land are prosecuted for criminal impropriety;
- (iii) recommends nullification of the illegal transfer of the said parcels of land with a view to reverting the land to its genuine owners; and,
- (iv) makes such other order or direction it deems fit in the circumstances of the petitioners.

And your petitioners will ever pray.

**Hon. Speaker:** All the five Petitions are committed to respective committees to which they are addressed. For the convenience of the House, I will not allow any further comments and/or information seeking because we have some urgent business that requires to be transacted.

Next Order!

### PAPERS LAID

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table of the House today, 2<sup>nd</sup> March 2017:

Election-related Regulations plus their Explanatory Memoranda and Regulatory Impact Assessment from the IEBC as follows: Draft Elections (Technology) Regulations, 2017; Draft Elections (Voter Registration) (Amendment) Regulations, 2017; Draft Elections (General Regulations) (Amendment) Regulations, 2017; Draft Elections (Voter Education) Regulations, 2017 and Draft Elections (Party Primaries and Party Lists) Regulations, 2017.

The Reports of the Auditor-General on the Financial Statements in respect of the Kenya African Democratic Union (KADU-ASILI) for the years ended 30<sup>th</sup> June, 2012 and 2013 respectively and the certificates therein.

The Report of the Auditor-General on the Financial Statements in respect of Westlands Constituency Development Fund for the year ended 30<sup>th</sup> June, 2015 and the certificate therein;

The reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June, 2016 and the certificates therein:

- (a) Kenya Copyright Board;
- (b) Asiatic Widows and Orphans Pension Fund; and
- (c) The Kenya Nuclear Electricity Board.

**Hon. Speaker:** Let us now have the Chairperson, Committee on Environment and Natural Resources, Hon. Amina Abdalla.

**Hon. (Ms.) Abdalla:** Hon. Speaker, I beg to lay the following Papers on the Table of the House today, 2<sup>nd</sup> March, 2017:

Reports of the Departmental Committee on Environment and Natural Resources on:

The Proposed Degazettement of 1,577.36 hectares of Turbo Forest Reserve comprising the Mautuma Settlement Scheme in Lugari District, Kakamega County;

The Petition by residents of Mwatate Constituency regarding human wildlife conflict and illegal grazing in Tsavo West National Park presented by Hon. Andrew Mwadime, MP;

The Petition by residents of Yatta Constituency regarding pollution of Athi River presented by Hon. Francis Mwangangi, MP; and,

The Petition by residents of Indian Bazaar in Kiambu County regarding pollution and establishment of Giotto Dumpsite in Hekima Estate presented by Hon. Jude Njomo, MP.

**Hon. Speaker:** The Chairperson, Departmental Committee on Lands, you have the Floor.



**Hon. Mwiru:** Hon. Speaker, I beg to lay the following Paper on the Table of the House today, 2<sup>nd</sup> March, 2017:

The Report of the Departmental Committee on Lands on the Petition by Mochongoi residents regarding the gazettelement and issuance of title deeds in Mochongoi Settlement scheme.

**Hon. Speaker:** Next Order!

### NOTICE OF MOTION

#### ADOPTION OF REPORT ON DEGAZETTEMENT OF TURBO FOREST RESERVE

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

THAT, this House adopts the Report of the Departmental Committee on Environment and Natural Resources on the proposed de-gazettelement of 1577.36 hectares of Turbo Forest Reserve comprising the Mautuma Settlement Scheme in Lugari District, Kakamega County laid on the Table of the House today, Thursday, 2<sup>nd</sup> March, 2017.

**Hon. Speaker:** Next Order!

### STATEMENTS

#### BUSINESS FOR THE WEEK COMMENCING 14<sup>TH</sup> TO 16<sup>TH</sup> MARCH, 2017

**Hon. A.B. Duale:** Hon. Speaker, pursuant to Standing Order No.44(2)(a), and on behalf of the House Business Committee (HBC), I rise to give the following Statement.

The HBC met today. Without appearing to anticipate debate, Members are aware that we have scheduled a Motion for adjournment of the House to a day other than the next normal sitting today. Upon passing the Motion, Members will take a break for the next 11 days and resume on Tuesday, 14<sup>th</sup> March, 2017. The following business will be accorded priority when we resume from recess:

- (i) consideration of the Budget Estimates for the 2017/2018 financial year;
- (ii) consideration of the County Allocation Revenue Bill, 2017;
- (iii) consideration of the Finance Bill, 2017; and,
- (iv) any election-related regulations.

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

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

**Hon. Speaker:** Yes, the Member for Tigania West.

#### SAFEGUARDING THE TENETS OF FREE MARKET ECONOMY

**Hon. Karithi:** Hon. Speaker, pursuant to Standing Order No.84, I beg to make a Statement on "Safeguarding the Tenets of Free Market Economy".

Hon. Speaker, macadamia is one of the main cash crops in Meru County, contributing to about 40 per cent of the people's income, particularly in Tigania West Constituency. It is my

considered view that since agriculture is a devolved function, it should be fully embraced by county governments with specific regard to crop control and licensing.

Currently, some Chinese investors are buying macadamia nuts directly from farmers at a fair price of Kshs120 per kilogramme compared to local buyers, who purchase the same nuts at Kshs60 per kilogramme. It is saddening to note that various local buyers have resorted to scaring away the Chinese, who are the only potential investors in that county to the point of detaining them without valid reasons.

A Chinese investor has been in detention for a week without any valid reason. It is on the account of this grave concern that I wish to request the relevant laws to be amended to allow liberal operationalisation of the dynamics of free market economy that will enable our farmers to sell their products directly to their preferred buyers. This will also safeguard investors from exploitative cartels and other forms of unfair competition and trade practice.

Thank you.

**Hon. Speaker:** Hon. A.B. Duale, it appears that you have a new Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Speaker, I really wanted my sister to enjoy the privilege of sitting on the seat of the Leader of the Majority Party because it is only very few people who get a chance to sit here. I want to assure Hon. Midiwo and Hon. Mbadi that they have a long way to go before they can sit on this chair.

## PROCEDURAL MOTION

### HOLDING OF EXTRA SITTING

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

THAT, pursuant to the provisions of Standing Order No. 30(3)(b), this House resolves to hold another sitting today, Thursday, 2<sup>nd</sup> March, 2017 for not more than three hours to commence 15 minutes following the adjournment of the current sitting.

Hon. Speaker, we are doing this because of the Appropriation Bill. This House has passed the Report on the Supplementary Budget Estimates. Because we are going on recess, it is right that we pass this Procedural Motion. The Supplementary Estimates Bill is already with the Office of the Clerk.

At around 4.00 p.m., if there will be no much business, we can reconstitute another sitting so that the issue of the CDF billions, some of which went to the education and the road sectors – whose implementation we were arguing about – can be solved. If we do not get this money in the next 10 days, then we will be eating up into our time.

I want to ask colleagues that we sit here today and complete the business on the Appropriations Bill and have the Question put so that the Speaker can send it for presidential assent either tomorrow or on Saturday. The Parliamentary Service Commission (PSC) takes care of our salaries and foreign travel. The committees can only get resources if we pass the Supplementary Estimates Bill.

I beg to move and ask Hon. Midiwo to second.

**Hon. Speaker:** Hon. Midiwo.

**Hon. Midiwo:** Hon. Speaker, I beg to second. The Leader of the Majority Party has explained the nature of business to be transacted in the second sitting. I want to inform Members

that we need quorum to constitute a sitting. I want to ask us to be kind to the nation because the Government needs the monies released so that the State can function.

I second.

**Hon. Speaker:** Hon. Members, I assume that each one of you has heard the reasons that have been advanced. As soon as the Supplementary Appropriation Bill is brought to the House, we will have to deal with it as explained by the Leader of the Majority Party. It will require the presence of all of us, including myself.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. Kombe:** On a point of intervention, Hon. Speaker.

**Hon. Speaker:** What is it, Hon. Kombe?

**Hon. Kombe:** Hon. Karithi made a statement on macadamia but you have not referred it to the relevant committee. Kindly advise us.

**Hon. Speaker:** Hon. Kombe, the appropriate English word that I used was that they are referred to the respective Departmental Committees to which the prayers relate. The Member seated next to you can tell you what that means. The prayer was clear as to which Committee it was seeking to be referred to. Maybe you could get the member next to you to tell you what that meant because the prayer was clear as to which Committee it was seeking it to be referred to. So, nothing is out of order.

## BILLS

### *First Readings*

THE NAIROBI INTERNATIONAL FINANCIAL CENTRE BILL

THE HOUSING (AMENDMENT) BILL

THE PRESIDENT'S AWARD BILL

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

## MOTION

### CONSIDERATION OF REPORT

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

*(Resumption of Consideration interrupted on 1.3.2017 – Afternoon Sitting)*

**Hon. Speaker:** Let us have the Leader of Majority Party. Who was reporting?

**Hon. A.B. Duale:** Hon. Speaker, you know there are too many people who are dreaming, including the Member for Gem. He should stay there and compete with Hon. Nyenze.

Hon. Speaker, I beg to move that this House doth agree with the Report of the Committee of the whole House on its consideration of the Statute Law (Miscellaneous Amendment) Bill (National Assembly Bill No.45 of 2016) subject to re-committal of provisions relating to the Retirement Benefits (Deputy President and Designated State Officers) Act.

Hon. Speaker, yesterday we dealt with that matter but our legal department said there is a bit of cleaning up. I would like to ask the chair of the Justice and Legal Affairs Committee just to second and explain to the House as we move. There is an object which is moving around here. I do not know if it is from Hon. Kajuju.

**Hon. Chepkong'a:** Thank you, Hon. Speaker. I have been destabilised by the objects that are moving in the House. They are used for certain purposes which are not to be mentioned in this House.

I rise to second the Motion for the re-committal of the Retirement Benefits (Deputy President and Designated State Officers) Act No.8 of 2015. The reason is that yesterday when we moved the amendment at the Committee of the whole House, there was some little bit of confusion with regard to the Deputy Chief Justice (DCJ) and the Chief Justice (CJ). The reference was made to those who retired in 1993 but the intention is for the benefits to be conferred upon the CJ and the DCJ who will retire after the promulgation of the new Constitution that was done after 27<sup>th</sup> August, 2010. That is the reason.

We just want to clarify that and also to clarify who the CJ and the DCJ are. It was not very clear and we do not want people to go to court to seek interpretation in something that Parliament can make clear. We do not want anyone to go and ask what the mind of Parliament was. We can express ourselves and we can be very lucid.

I thank you, Hon. Speaker.

*(Question proposed)*

*(Question put and agreed to)*

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

## IN THE COMMITTEE

*(The Temporary Deputy Chairman  
(Hon. Cheboi) took the Chair]*

## THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**The Temporary Deputy Chairman** (Hon. Cheboi): Order! Hon. Members, this will be a fairly brief one. We are now in the Committee of the whole House dealing with the Statute Law

(Miscellaneous Amendments) Bill (National Assembly Bill No.45 of 2016). We will be dealing with the re-committed clause.

**Hon. Kajwang’:** On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): What is it, Hon. Kajwang’? Let us have the Mover and then I will give you an opportunity, Hon. Kajwang’.

*The Retirement Benefits (Deputy President and Designated State Officers) Act*

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Retirements Benefits (Deputy President and Designated State Officers) Act, No.8 of 2015 by –

(i) inserting the following new item immediately before the proposed amendment to section 3-

s.2 Insert the following new definitions in their proper alphabetical sequence—

“retired Chief Justice” means a person who, having held the office of Chief Justice, has ceased to hold the office as such in the manner specified in the Constitution;

“retired Deputy Chief Justice” means a person who, having held the office of Deputy Chief Justice has ceased to hold office as such in the manner specified in the Constitution.

(ii) deleting the proposed amendment to section 3 and substituting therefor with the following new amendment—

s.3 Delete and substitute therefor the following new section—

Persons entitled to benefits.

3.Subject to sections 5(3) and 15, the persons entitled to the benefits conferred by this Act shall be persons who—

- (a) at any time after the 1st January, 1993, retire as Deputy President, Prime Minister, Vice-President or Speaker; and
- (b) at any time after the 27th August, 2010, retire as Chief Justice or Deputy Chief Justice.

The import of this is, one, to clarify the definition of retired CJ and, two, to also clarify the definition with regard to the retired DCJ. I would like to move this on an amended form. It will read as follows:

Section 2 inserting the following new definitions in their proper alphabetical sequence:

1. Retired Chief Justice means a person who having held the office of the Chief Justice has ceased to hold the office as such in the manner specified in the Constitution promulgated on the 27<sup>th</sup> August 2010.
2. Retired Deputy Chief Justice means a person who having held the Office of the Deputy Chief Justice has ceased to hold office as such in the manner specified in the Constitution promulgated on the 27<sup>th</sup> August 2010.

The amendment on Section 3 reads as follows:

That subject to Section 5(3) and Section 15, the persons entitled to the benefits conferred by this Act shall be persons who-

- (a) At any time after the 1<sup>st</sup> January 1993, retire as the Deputy President, Prime Minister, Vice President and Speaker.
- (b) At any time after the 27<sup>th</sup> August 2010, retire as the Chief Justice and Deputy Chief Justice of the Republic of Kenya.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Before I proceed, let me give Hon. Kajwang' a chance.

**Hon. Kajwang'**: Thank you, Hon. Temporary Deputy Chairman. What the Chair of the Committee is doing makes sense because he is clarifying the law. I think the Chair owes us an apology because the truth of the matter is that the Chair knows that he did not come to the House to ask for re-committal of this. Sometimes we get fed up when procedure is subverted very clearly.

Yesterday I was in the House the whole day and the only issue which came for re-committal was proceedings relating to the Advocates Act. Even though we can see what he is doing makes sense, in good practise, he should just rise to apologise to the House that some procedures were not taken care of.

Secondly, he has also moved a further amendment. He should have started with what was before the House, we dispense it of procedurally and then he rises to move the further amendment.

This is the procedure. If you are going to have a House where the Leader of Majority goes behind the House and discovers that certain things were not done and then he brings Motions here without following the procedure, we will not have a National Assembly. We will have an assembly for the Leader of the Majority Party. The Chair of the Committee owes us an apology in good faith.

**The Temporary Deputy Chairman** (Hon. Cheboi): I will be giving opportunity to the Chair of the Committee. I know the two of you are very good friends. Probably, you need to apologies to each other at an appropriate time. I was not in the House yesterday. Therefore, I do not have the benefit of knowing what transpired. The issue which I know is clear is that this has been brought to the House and the House agreed with it. As far as I am concerned, I will quickly dispense with it in that manner. Probably, the Chair of the Committee would have something to say. I may have to agree a little with Hon. Kajwang', that sometimes we should dispense with issues at the particular moment they arise. If that does not happen and the House approves it, then we are within the right procedure.

Can I hear the Chair?

**Hon. Chepkong'a**: Thank you, Hon. Temporary Deputy Chairman. As you know, Hon. T.J. Kajwang' is a sharp mind and a stickler of rules. I moved this amendment yesterday. It was unwritten. Unfortunately, there were some errors that were noticed by the clerks thereafter. We are seeking to clean up the amendment that I moved yesterday. It is not a new one. Therefore, I am not moving it. It is just that it was unwritten. While we were trying to make sense out of it, we realized that it was a little bit confusing. In order for us to have clarity in terms of the legislation, we thought we should bring it back, so that we can make it clearer. This amendment

had already been moved, but there was confusion in terms of the dates. That is the only thing that remained.

**The Temporary Deputy Chairman** (Hon. Cheboi): Whereas that is perfect, Hon. Chepkong'a, there is also another issue that Hon. Kajwang' has raised. This is the issue of a further amendment. You have just indicated that the reason we are in this quagmire is because there was some handwritten amendment. In the particular one that we are handling now, you realize that you have just proposed a further amendment, which you have not had a very good opportunity to explain. You moved it in an amended form, which means we have not had the benefit of working with it. It looks fairly straightforward, but for purposes of the Membership of the House, it is important that when you have an amendment or a further amendment, you have it presented to the presidium in good time, so that we can have the benefit of understanding it before it is presented in the House. That being the case, I will proceed and give a chance to a few Members because I have proposed the Question. I will give a chance to two Members, namely, Hon. Jakoyo and Hon. Nyagah, in that order.

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, I thank you for indulging me. The issue raised by Hon. Kajwang' is substantive. The attitude of the Chair of the Committee is casual. We know that our colleagues in the Jubilee Coalition do not like following procedures. They hate the law, but this is a House of rules.

**The Temporary Deputy Chairman** (Hon. Cheboi): That is not very good for the House, Hon. Kajwang', because inside this House as you know, we are all Members.

**An Hon. Member:** He is Hon. Midiwo.

**The Temporary Deputy Chairman** (Hon. Cheboi): I meant the Member for Gem, the land of many professors.

**Hon. Chepkong'a:** On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): What is your point of order, Hon. Chepkong'a?

**Hon. Chepkong'a:** Thank you, Hon. Temporary Deputy Chairman. It is unfair for a leader in this House to say that I am very casual in the manner in which I approach serious business of the House. He knows that I am a very serious man. I take things seriously. I cannot be casual at my age. I have practiced law for the last 26 years. For somebody to say that I am casual, he must be out of order.

For me to realize that we had excluded the former Vice-President, Hon. Kalonzo Musyoka, I must have been keen. He should have thanked me for being a very serious man to have noticed this anomaly. He should even be congratulating me for helping one of their members in NASA and who has been captured by us. That notwithstanding, we want to thank him for noticing that we are helping them in any event so that they do not cause trouble.

**The Temporary Deputy Chairman** (Hon. Cheboi): Member for Gem, I have taken seriously what Hon. Kajwang' stated. You know he is a very seasoned lawmaker and stickler of rules, as the Departmental Committee Chair rightly put it, but there are issues which we can see are fairly straightforward. For example, the issue of the further amendment is something that we can dispense with. I understood it easily. I would rather you speak to this particular one, whether you were supportive of it, so that we can move. Hon. Chepkong'a is one of the very serious Members of this House, for sure. Very serious!

**Hon. Midiwo:** Thank you, Hon. Temporary Deputy Chairman. Chepkong'a would not be here if he could differentiate between casual and serious. That is why he has joined where we are

like sheep. Like animals, some of you are better than us, but when it comes to English, it is the people of Gem who top.

*(Laughter)*

Let me support the substance of what he is saying because if it is left to go the way it is, the implications are huge. This House sometimes may have to bend some rules. But the Chair must first of all explain how we are here un-procedurally. That is what is important and it must go on record. I want to support him because I know he is saving the taxpayer. Under Article 95, we have that responsibility. This House deserves respect. He said that he is helping one of our own. I want to thank him for the good heart. If his heart was so good, how come Raila and Kalonzo have never got their retirement packages in the past years? If his heart is so good, why is he hurting Raila and Kalonzo? I want to support him, but he must know that I know that he is now tired. I know that this Government, devoid of any imagination or definition, is on its deathbed. It is going home. They are only serious when they do the Standard Gauge Railway (SGR) and other wrong things like looting of the National Youth Service (NYS) funds.

I support.

**Hon. Ichung'wah:** On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): What is it, Hon. Ichung'wah?

**Hon. Ichung'wah:** Hon. Temporary Deputy Chairman, I do not know whether you find Hon. Jakoyo to be in order. The projects being done by the Jubilee administration are not projects for the Jubilee administration. They are projects for the posterity of this country. You cannot talk ill of the SGR, knowing it is headed to Western Kenya and Uganda.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Ichung'wah, I, of course find the Member for Gem to be out of order, but you are equally out of order because you have proceeded to argue. You have made it a point of argument. Your point of order is not valid. You have made your point anyway.

**Hon. Ichung'wah:** I wanted you to establish if it is in order.

**The Temporary Deputy Chairman** (Hon. Cheboi): I have indicated that it was not in order, but you were equally out of order.

**Hon. Chepkong'a:** On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): Allow us to proceed, Hon. Chepkong'a. Okay, Hon. Chepkong'a.

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I rise pursuant to the Standing Order No.83. Is it in order for Hon. Midiwo to claim that there is someone who is dying when he knows we are not in hospital? There is nobody who is sick here. So, for somebody to imagine a very healthy person like me intends to die is wrong. We do not intend to die. Some words he has used are very bad in my culture. They should be expunged from the HANSARD.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Chepkong'a, this is a House of debate. What surprises me is that Hon. Jakoyo is supporting your position. The issue whether somebody can die without going to hospital is a matter of argument. People can die without going to hospital. Since we are not dealing with that specifically, I think he has done well. He has supported your position. I will give opportunity to one last Member and that is most likely going to be the Member for Meru. She will have the last chance on this.

*(Hon. Kajwang' laughed mincingly)*



**The Temporary Deputy Chairman** (Hon. Cheboi): Order, Hon. Kajwang'! You are completely out of order. You must laugh in a certain formula in this House. I do understand, of course, that you and Hon. Kajuju were classmates elsewhere, but you are now Housemates here because we are in the same Chamber. Let us hear Hon. Kajuju. And it has to be very brief.

**Hon. (Ms.) Kajuju:** Thank you, Hon. Temporary Deputy Chairman. I would expect Hon. Kajwang' and the Chair to do what they are doing because of conflict of interests, but that is history.

**The Temporary Deputy Chairman** (Hon. Cheboi): Now, you are completely out of order. I do not understand the conflict of interest between you and Hon. Kajwang', but proceed.

**Hon. (Ms.) Kajuju:** The conflict is between the Chair and Hon. Kajwang'.

**The Temporary Deputy Chairman** (Hon. Cheboi): The Chair of Departmental Committee on Justice and Legal Affairs did not declare any conflict. You are out of order, Hon. Kajuju. You know that. Now go straight to the point, otherwise, I will take the microphone from you. If you move further than the steps you have already taken.

**Hon. (Ms.) Kajuju:** I am only saying, Hon. Temporary Deputy Chairman, that we cannot forget history. But the point is that I fully support the amendment by the Chair. When the Chair speaks, it is the Departmental Committee on Justice and Legal Affairs that is speaking. So, it is not fair to say that at any one point there was any casual procedure to this programme. I, therefore, support.

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

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

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

*(The Retirement Benefits (Deputy President and Designated State Officers) Act  
as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have the Mover to move for reporting.

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.45 of 2016) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## REPORT

### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**Hon. Speaker:** The Chairperson.

**Hon. Cheboi:** Hon. Speaker, I beg to report that a Committee of the whole House has considered the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 45 of 2016) and approved the same with amendments.

**Hon. Speaker:** Mover.

**Hon. Chepkong'a:** Hon. Speaker, I beg to move that the House do agree with the Committee in the said report. I request Hon. Kajuju to second.

**Hon. (Ms.) Kajuju:** Hon. Speaker, I second.

*(Question proposed)*

**Hon. Speaker:** Hon. Members, as you know, the rules are very clear. Maybe we can deal with that last aspect of the matter when we have the second Sitting.

Just to make a small correction, Hon. Members. I was listening to you debating that particular aspect of the amendment. The correct title of the law that you were amending is the Retirement Benefits (Deputy President and Designated State Officers) Act. It is not just officers, but designated officers. I was wondering Hon. T.J. Kajwang', who I know is very thorough, also missed that particular aspect and he took part in the deliberations.

Hon. Members, we can deal with the second aspect only when we quorate.

**Hon. Speaker:** Hon. Midiwo.

## QUORUM

**Hon. Midiwo:** Hon. Speaker, since we need the requisite Quorum to conduct this business, I propose that we look at the issue of quorum. There is no Quorum in the House and I ask that you order the Bell to be rung, so that Members can come in the Chamber. There are Questions that you must put before we can continue. I request that of you, Sir.

**Hon. Speaker:** Very well. Ring the Bell.

*(The Quorum Bell was rung)*

## ADJOURNMENT

**Hon. Speaker:** Hon. Members, having failed to realize the quorum, in terms of the Procedural Motion passed earlier on concerning the Second Sitting; the House will adjourn for 15 minutes. The Second Sitting of the afternoon will start 15 minutes from now. The House is, therefore, adjourned.

The House rose at 4.01 p.m.