

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 30<sup>th</sup> August, 2018

The House met at 2.30 p.m.

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

### PRAYERS

### COMMUNICATIONS FROM THE CHAIR

**Hon. Speaker:** The Members who are unable to sit could find a way of ensuring that they are able to sit.

#### DELEGATION FROM AFRICA-UK

**Hon. Speaker:** Hon. Members, I wish to introduce to you delegates attending the first Africa–United Kingdom (UK) Public Accounts Committee Workshop hosted by the Commonwealth Parliamentary Association-UK, (CPA-UK) in collaboration with the Parliament of Kenya. The delegates, seated in the Speaker’s Row, comprise of parliamentarians who are members of Public Accounts Committees or equivalent committees from 10 countries. They are:

- (1) Cameroon - Hon. Moutymbo Rosette Julienne Epse Ayayi, Member of Parliament (MP) and Chairperson and two other Members.
- (2) Ghana - Hon. James Klutse Avedzi, MP and Chairperson and two other Members.
- (3) Mauritius - Hon. Marie-Aurore Marie-Joyce Perraud, MP and Chairperson and one other Member.
- (4) Mozambique - Hon. Esperanca Laurinda Franscisco Nhiuane Bias, MP and Vice-Chairperson and one other Member.
- (5) Namibia - Hon. Mike Kavekatora, MP and Chairperson and two Members.
- (6) Nigeria - Hon. Kingsley Chinda, MP and Chairperson and one other Member.
- (7) Seychelles - Hon. Jean-Francois Ferrari, MP and Chairperson and one other Member.
- (8) Sierra Leone - Hon. Sengehpoh Solomon Thomas, MP and Chairperson and two other Members.
- (9) The Gambia - Hon. Muhamed Magassy, MP and Chairperson and two other Members.
- (10) United Kingdom - Hon. Meg Hillier, MP and Chairperson.

The delegations are also accompanied by committee clerks and officials from CPA-UK. The delegates are here for a three-day workshop which will focus on regional challenges and opportunities through effective exchange of knowledge and practice, and collaboratively develop an approach for pan-Commonwealth coordination of Public Accounts Committee work.

On my own behalf and that of the House, I wish to welcome them to the National Assembly and wish them fruitful engagements during the workshop.

*(Applause)*

Hon. Members, I ought to have mentioned that, also in that delegation is the Chairperson of the Public Accounts Committee - Kenya, Hon. Opiyo Wandayi, MP.

*(Laughter)*

#### CPA-UK TRAINING ON PARLIAMENTARY PRACTICES AND PROCEDURES

**Hon. Speaker:** Hon. Members, the second Communication relates to the CPA-UK Branch, which has over the years partnered with parliaments of member-States to the Association on a wide range of capacity-building programmes for legislators and staff of parliaments. The Parliament of Kenya has, indeed, benefitted from initiatives by the CPA-UK, which has carried out several capacity-building programmes for Members and staff, both locally and at the seat of the UK Parliament in London.

Some of the programmes include the annual Westminster Seminar on Parliamentary Practice and Procedures, the Westminster Seminar for Public Accounts Committee as well as various tailored trainings for Members and staff of our Parliament. The programmes have been noted to be key in improving mastery and flair of parliamentary procedures among Members of Parliament. Several Members, including the Leader of the Majority Party, Hon. Duale, the Leader of the Minority Party, Hon. Mbadi, and Hon. Kimunya, among others, have benefited from the programmes.

The CPA-UK, in collaboration with the National Assembly of the Republic of Kenya, has organised a two-day training programme for Members of Parliament on Friday 5<sup>th</sup> and Saturday 6<sup>th</sup> October, 2018 at a venue to be confirmed later. The programme is aimed at furthering Members' understanding of parliamentary practices, including a comparative analysis of other jurisdictions. Some of the topics to be covered include parliamentary oversight in a presidential system, ethics and integrity of Members, decorum and order in the House, conduct of parliamentary inquiries and parliamentary control and scrutiny on delegated legislation.

Participants will get a rare opportunity to interact with two key facilitators, namely, Lord David Steel, a seasoned British Liberal Democrat, whose legislative career was launched in 1965 and has been a Member of the House of Lords since 1997, and Baroness Hillary Armstrong, who was made a peer in July 2010, having retired from the House of Commons after twenty-three years.

The programme targets Members interested in improving their procedural flair, whether serving their first or subsequent term. In this regard, Members desirous of participating in the programme are required to register their interest with the Office of the Clerk by Friday, September 14<sup>th</sup> 2018. Given the limited slots available, only the first 60 Members to register will be considered for the training.

## PETITIONS

### ILLEGAL ARREST OF MR. DON BOSCO GICHANA OOGA

**Hon. Speaker:** Hon. Members, Standing Order No.225(2)(b) requires that the Speaker reports to the House any Petition other than those presented through a Member. I, therefore, wish to convey to the House that my Office has received a Petition from Mr. Dan Okemwa of P.O. Box 8271-00200, Nairobi, regarding the alleged illegal arrest of Mr. Don Bosco Gichana Ooga by Kenyan authorities and his handover to Tanzanian authorities.

The Petitioner alleges that Don Bosco Gichana Ooga was illegally arrested by Kenya authorities in March 2013 at the Namanga border, transferred to Tanzanian authorities under unclear circumstances and has been in detention in a remand prison in Dar-es-Salaam, Tanzania for five years without trial since his arrest. The Petitioner further states that there has been an abuse of the legal process and court orders relating to Don Bosco Gichana, which has led to his prolonged stay in prison.

The Petitioner, therefore, prays that the National Assembly investigates into the matter and establishes whether diplomatic protection has been offered to Don Bosco Gichana and recommends any action to be taken to safeguard his human rights and ensure he receives justice.

Pursuant to the provisions of Standing Order No.227, this Petition, therefore, stands committed to the Departmental Committee on Defence and Foreign Relations for consideration. The Committee is requested to consider the Petition and report its findings to the House and the Petitioner in accordance with Standing Order No.227(2).

Let us have Hon. Alfred Keter.

### DISMISSAL AND BLACKLISTING OF EMPLOYEES OF EASTERN PRODUCE KENYA

**Hon. Alfred Keter** (Nandi Hills, JP): Thank you, Hon. Speaker. I wish to present a public Petition regarding the dismissal and blacklisting of employees of Eastern Produce Kenya (EPK).

I, the undersigned, on behalf of dismissed and blacklisted employees of EPK vested in Nandi Hills Constituency, draw the attention of the House to the following:

THAT, the economy of Nandi Hills Constituency mainly relies on existing tea estates of EPK Limited, which is the largest multinational company in the Rift Valley consisting of about 12 out of 20 tea factories in Nandi County, namely Kibabet, Kapsumbeiwa, Kipkoimet, Kepchomo, Chemomi, Savani, Sitei, Kaboswa, Kipkeibon, Siret, Kaprachoge and Kibwari.

THAT, the said multinational company provides employment to over 40,000 workers who are drawn from within Nandi Hills Constituency and other parts of the country.

THAT, the termination erupted two years ago after the ruling of the Employment and Labour Relations Court that all tea industries in Kenya to hike their employees' payment by 30 per cent.

THAT, EPK allegedly disregarded the decision of the Employment and Labour Relations Court forcing the employees to exercise their constitutional right of seeking justice through demonstrations.

THAT, EPK Limited did not honour the court's verdict hence employees held demonstrations to express their displeasure and dissatisfaction.

THAT, the summary dismissal of the said employees was based on a blanket judgement, hence it was irregular and breaches the constitutional provisions in the bill of rights.

THAT, in 2016, the employees petitioned the Court to have their salaries reviewed based on the advice from the Central Organisation of Trade Unions (COTU).

THAT, the dismissal was unlawful since some of those dismissed were sick inwards while others were on leave.

THAT, further, the dismissal was erroneous and against rules of natural justice since employees were not accorded an opportunity to be heard contrary to Article 50 of the Constitution.

THAT, the termination was solely aimed at instilling fear in workers and, therefore, denying them their right to a fair trial.

THAT, blacklisting dismissed workers from working within the multinational company is forbidding punishment which will in turn lead to emergence and escalation of social crimes within the region.

THAT, efforts to resolve the matter with the relevant ministries or agencies have been futile.

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

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

- (i) Investigates the circumstances under which employees were dismissed with a view to address the Petitioners' plight.
- (ii) Causes the management of EPK to give clear reasons for summary dismissal and blacklisting of workers.
- (iii) Recommends EPK to compensate and reinstate workers for the unlawful dismissal and the damages caused.
- (iv) Makes any other direction it deems fit in the circumstances of this matter.

Your Petitioners will forever pray.

**Hon. Speaker:** Let us have Hon. Kathuri Murungi.

#### IMPLEMENTATION OF ANTI-DOPING LAWS IN KENYA

**Hon. Kathuri Murungi** (South Imenti, Independent): Thank you, Hon. Speaker. I wish to present a public Petition regarding the implementation of anti-doping laws in Kenya.

I, the undersigned, on behalf of Kenyan citizens, draw the attention of the House to the following:

THAT, in 2011, the World Anti-Doping Agency reported that over 30 per cent of athletes participating in the 2011 World Championships admitted to having used banned substances during their careers and 44 per cent of them had used them untested.

THAT, Kenya complying with international standards and etiquettes of anti-doping established through an Act of Parliament the Anti-Doping Act, 2016.

THAT, to date Kenya being a leading country in long distance races has not done much to implement the said role and has continued to be criticized by the International Association of Athletics Federation (IAAF) for non-compliance.

THAT, the Ministry of Sports, Culture and Arts, which has been tasked with the responsibility of ensuring sports development through follow up and implementation, is not doing much.

THAT, further, there are concerns that the criteria for recruiting both local and international trainers to various training camps is not known.

THAT, efforts to resolve this matter with the relevant Government agencies has been futile.

THAT, the matters presented in this Petition are not pending before any tribunal, court of law or independent body.

THEREFORE, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Sports, Culture and Tourism, recommends that the Athletics Association of Kenya and the Anti-Doping Association of Kenya table an audit report of the Kenyan athletes who have tested positive and achievements so far realized if any, by Kenya as a country, since the enactment of the anti-doping laws.

Recommends that Athletics Kenya and the Ministry take audit of foreign trainers in the country and how they are vetted to establish their credibility and or suitability.

Recommends formulation of new policies by the relevant ministry to ensure compliance and enhancement of Kenya's reputation of sports internationally and makes any other order or direction that it deems fit in the circumstances of the matter.

Your Petitioners will forever pray.

**Hon. Speaker:** Member for Sigowet/Soin, Hon. Koros Kipsengeret.

#### EVICITION OF RESIDENTS OF MAU FOREST COMPLEX

**Hon. Kipsengeret Koros** (Sigowet/Soin, Independent): Thank you Hon. Speaker for giving me this opportunity to present a Petition regarding Government eviction of residents of the Mau Forest Complex.

I, the undersigned, on behalf of persons residing in the Mau Complex and its environs, draw the attention of this House to the following:

THAT, Article 31 of the Constitution of Kenya provides that every person has an obligation to respect, uphold and defend the Constitution and this is inclusive of, but not limited to Government entities or offices and individuals holding such offices responsible in decisions and policy making.

THAT, the intention by the Government to evict the residents of Mau Complex despite possessing valid ownership in the form of title deeds by the Government violates their fundamental rights and freedom as enshrined in Article 27 of the Constitution.

THAT, every citizen has the right to acquire and own property whether individually or in association with others and that Parliament is legitimately born to protect such rights and ensure that any entity or person does not arbitrarily deprive citizens' legal possessory rights.

THAT, in executing its obligation to protect the environment, the Government should not take advantage of a section of citizens in resolving a matter and entirely disregarding the very basic rights of the affected populace.

THAT, the decision to arrive at evictions is ill informed as the resources invested by the Government to build schools, establish health facilities, administrative units such as chiefs' offices, police stations and rural electrification among others through taxpayers' money will amount to gross wastage.

THAT, the intended evictions of the Mau occupants would immensely interfere with 40,000 people and 5,000 school going children some of whom are candidates preparing to sit for national examinations. Most of the schools have not resumed for their third term activities which began on 27<sup>th</sup> August, 2018 due to uncertainties caused by the planned evictions.

THAT, if the Mau evictions are allowed to continue, it will lead to a massive intrusion of social and economic rights as critical services such as health care, social security, access to adequate housing and reasonable sanitation, food insecurity will be severely interfered with, particularly given the fact that the Government does not have a plan to resettle the current occupants of the Mau Forest thus creating unwarranted social discrepancy.

THAT, the Government legitimately issued title deeds to the residents having met the due process of the law. However, it is in bad faith and distasteful for the same Government to allege that the title deeds were fraudulently obtained.

THAT, cognizant of the fact that land issues in the country have been emotive, exhaustive, tiring and tainted with apparent injustices, the intended evictions ought to be dealt with thoughtfulness in order to promote cohesion and principles of good governance.

THAT, in the event that such evictions should continue, there is need for proper mechanism of identifying an alternative land for resettling the affected persons before the evictions commence. However, the Government has plainly demonstrated its lack of commitment to resettling the affected persons.

THAT, the Government's intention to cancel all the subject area title deeds forthwith and issue a block title deed to the County Government of Narok will aggravate the already volatile situation.

THAT, efforts to have the matter resolved amicably and render permanent solution through the concerned Government departments has have been unsuccessful.

THAT, the matters in respect of which this Petition is raised 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 Administration and National Security, considers the matters raised in the Petition pursuant to the provisions of Standing Order 216 5(a) and make recommendations thereof.

And your Petitioners will forever pray. Thank you.

**Hon. Speaker:** Hon. Members, because we have many petitions, I will directly refer them to the relevant committees to which the prayers have been directed to, to consider them. I will not allow any debate and/or comments. Sorry, I can see some of you thought this is an opportunity to get some *bonga points*, but unfortunately, I will not give you an opportunity to do that. Let the committees to which the petitions are referred bring reports and then you can debate. The House must also follow the rules.

### PAPERS LAID

**Hon Aden Duale** (Garissa Township, JP): Hon. Speaker, Member 00I is intimidating me claiming that he wants to vie for Narok North Constituency in the coming elections and he wanted to contribute. I have told him that, that is the preserve of the Speaker. I have no powers to help him.

Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Protocol to eliminate illicit trade in tobacco products and accompanying memorandum.

Report of the Auditor-General and financial statements in respect of the following institutions for the year ended 30<sup>th</sup> June 2017, and the certificates therein:

- (i) Kenya Utalii College.
- (ii) Eldoret National Polytechnic.

Report of the Auditor-General and Financial Statements in respect of the following constituencies for the year ended 30<sup>th</sup> June, 2017, and the certificates therein.

- i. Bura Constituency.
- ii. Kiminini Constituency.
- iii. Magarini Constituency.
- iv. Galole Constituency.
- v. Mosop Constituency.
- vi. Cherangany Constituency.
- vii. Kilifi North Constituency.

I repeat, Members from these constituencies, it is in your interest that you get a copy of these audited reports and financial statements from the Auditor-General.

Report of the Auditor-General and Financial Statements of the Kenya National Shipping Line Limited for the year that ended 30<sup>th</sup> June, 2016, and the certificate therein.

Thank you, Hon. Speaker.

**Hon. Speaker:** Next Order!

## NOTICES OF MOTION

### ADOPTION OF REPORT ON ENVIRONMENTAL POLLUTION BY LONDON DISTILLERS KENYA LIMITED

**Hon. Chachu Ganya** (North Horr, FAP): 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 an increase in complaints on environmental pollution by London Distillers Kenya Limited, laid on the Table of this House on Wednesday 29<sup>th</sup> August, 2018.

**Hon. Speaker:** Very well. Next Order.

## STATEMENTS

### RECENT ALLEGATIONS OF CORRUPTION DURING DEBATE ON THE SUGAR REPORT

**Hon. Speaker:** Hon. Shakeel Shabbir.

**Hon. Shakeel Shabbir** (Kisumu East, Independent): Thank you, Hon. Speaker.

Hon. Speaker, pursuant to Standing Order No.43, I rise to make a Statement on behalf of the Members of the African Parliamentarian Network against Corruption (APNAC) Kenya, on the Report of the Joint Committee on illegal sugar, regarding the recent allegations and counter-allegations by Members on corruption following the consideration of the Sugar Report.

The APNAC Kenya is a recognized parliamentary caucus born out of the realization that parliamentarians, by virtue of the unique position they occupy in society, are centrally placed to mobilize action for change in the fight against corruption. We are concerned that corruption is increasingly becoming an endemic vice in the country and APNAC Kenya is actively championing the struggle against it.

We strongly condemn the manner in which the recent debate in respect to the Sugar Report disintegrated into controversial allegations of interference with recommendations of the Report, and claims of bribery to alter and shoot down the Report. We condemn, in the strongest terms, this affront to the integrity of Parliament and the Members of Parliament. It is against this background that we unilaterally support the Speaker's action to invite the Ethics and Anti-Corruption Commission (EACC) and, the Office of the Director of Public Prosecutions (DPP) to investigate the alleged claims and commence conclusive action against the perpetrators of this crime in order to reclaim the integrity and dignity of Parliament for the realization of Chapter 6 of the Constitution.

Thank you, Hon. Speaker.



## PROPOSED BUDGET CEILINGS FOR CONSTITUENCIES FOR 2018/2019

**Hon. Speaker:** Hon. Maoka Maore.

**Hon. Maoka Maore** (Igembe North, JP): Hon. Speaker, I rise to issue a Statement on the proposed budget ceiling for each constituency for the 2018/2019 Financial Year. During the Financial Year 2018/2019, the National Treasury allocated Kshs35,758,596,000 to the National Government Constituencies Development Fund (NG-CDF). The NG-CDF Board/Secretariat has computed the proposed budget ceiling for each constituency for the 2018/2019 Financial Year as follows;

- i. The total allocation for the 2018/2019 is Kshs35,758,596,000.
- ii. The allocation to the Board of Kshs1,547,929,800. So, the approved allocation for the Board is 4.3 per cent of the total amount.

This is subject to Section 23(1) which requires that not more than 5 per cent of the total allocation to the Fund in the financial year may be used for the purpose of running the board. So, the total allocation to the constituencies is Kshs34,210,666,200. The emergency reservation stands at Kshs1,787,929,800. This is subject to Section 8(1), which provides that a portion of the Fund equivalent to 5 per cent, referred to as emergency reserve, shall remain unallocated and shall be available for emergencies.

The equal constituencies share stands at Kshs32,472,736,400. Therefore, the proposed allocation per constituency is as follows. Equal share of the Kshs32 billion divided by 290 constituencies will be Kshs111,802,500,039 per constituency. When you add the emergency reserve of Kshs6,165,000,275 per constituency, the proposed allocation per constituency for the 2018/2019 Financial Year is computed as follows: Equal share of Kshs111,802,539; emergency of Kshs6,165,000,275.17 and the total each constituency is expected to get is Kshs117,967,814.48.

In line with the provisions of Section 36(6) of the Act, the management is to establish the total Appropriation in Aid (AIA) per constituency in the 2017/2018 Financial Year and factor the amount as an additional allocation to the relevant constituencies. Detailed tabulation of the budget ceiling to constituencies and the ministry allocation to the Fund is annexed herewith, dated 30<sup>th</sup> August, 2018. I wish to table the document.

*(Hon. Maoka Maore laid the document on the Table)*

*(Applause)*

**Hon. Speaker:** Very well. I hope every Member will get a copy of that Statement so that you are accordingly informed.

Order Members! Every Member who is upstanding, take your seats. I have two long Communications to make but, before I do so, allow me to recognize the presence, in the Public Gallery, of students and pupils from the following institutions:

Gatumbi Primary School, Kigumo Constituency, Murang'a County; Gianchere Secondary School from Kisii County; Githunguri High School, Ruiru Constituency, Kiambu County and Kamburu Primary School, Igembe South Constituency, Meru

County. They are welcome to observe the proceedings in the National Assembly this afternoon.

## COMMUNICATION FROM THE CHAIR

### RESCISSION OF HOUSE DECISIONS

**Hon. Speaker:** Hon. Members, this is Communication No.44 of 2018. It deals with the question of rescission of a decision of the House relating to the Joint Report on Alleged Importation of Illegal and Contaminated Sugar into the Country.

As you would recall, on Thursday 9<sup>th</sup> August 2018, this House rejected the Report of the Joint Committee on Agriculture and Livestock and Trade, Industry and Co-operatives on the inquiry into alleged importation of illegal and contaminated sugar into the country. Soon thereafter, there arose allegations and counter allegations that a section of Members of this august House had allegedly been influenced to vote in a particular manner on the said Report. This has since prompted some Members to seek my leave to approve a Motion to rescind that decision with a view to either allowing the House to reconsider the matter or establish a select committee to undertake a fresh inquiry.

For clarity, I will address the two issues separately, that is, the request to rescind the decision of the House on the relevant Report and the question of alleged bribery of Members of this House.

On 14<sup>th</sup> August 2018, my Office received a letter from the Member for Mathare, Hon. Anthony Oluoch, certified as ‘very urgent’, on a notice of intention to request leave of the Speaker to allow for fresh inquiry into alleged importation of illegal and contaminated sugar into the country. The letter was premised on the provisions of Standing Order 49 of the National Assembly Standing Orders. For avoidance of doubt, the said Standing Order reads:

49. (1) No Motion may be moved which is the same in substance as any question which has been resolved (either in the affirmative or in the negative) during the preceding six months in the same Session.

(2) Despite paragraph (1) –

(a) a Motion to rescind the decision on such a question may be moved with the permission of the Speaker.

(b) a Motion to rescind the decision on a question on a Special Motion shall not be allowed.

Hon. Oluoch’s letter raised the following issues requiring the Speaker’s guidance:

(a) Whether question has same meaning as Motion in terms of the Standing Orders.

(b) Whether the window provided in Standing Order 49(2)(a) may be applied on a decision on a report of a committee of the House. And if yes, whether the parameters of the contents of the report may be varied.

- (c) Whether the said six months restriction of Standing Order 49(1) is applicable to a petition filed by an aggrieved member of the public.

Other Members, particularly the Member for Saboti, Hon. Caleb Luyayi Amisi, the Member for Kanduyi, Hon. Wafula Wamunyinyi, and the Member for Homa Bay Town, Hon. Peter Kaluma, also weighed in on the matter vide letters addressed to my office on 14<sup>th</sup> and 15<sup>th</sup> August 2018. The requests by Hon. Wafula Wamunyinyi and Hon. Kaluma are of similar import as that by Hon. Anthony Oluoch. On his part, Hon. Amisi sought leave to introduce a Motion to establish a select committee to relook into matters relating to the sugar sector.

Before I proceed to guide the House, let me first explain the concept of reversal of decisions of the House. As you would expect, the concept of rescission may be traced to the practice and tradition of the Parliament of the United Kingdom, along which Kenya's Parliament was modeled. Much of these practices and traditions have been chronicled in various editions of Erskine May's *A Treatise on the Law, Privileges, Proceedings and Usage of Parliament*.

Erskine May contemplates three ways of reversal of decisions already made by a House of Parliament. The first is through a discharge of an order. Secondly, a decision may be reversed through a declaration of an order that proceedings be null and void. Finally, there is rescission, which is the subject of my Communication, particularly so because of the three forms of reversal of House decisions, rescission is entrenched in the National Assembly Standing Orders and practice.

It ought to be understood at the earliest opportunity that, in principle, a hallowed Chamber of Parliament was expected to take a decision on a matter, having conscientiously applied itself to the substance of the matter and consequence on a decision it makes, one way or the other. That is why, as recorded by Erskine May's *A Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 24<sup>th</sup> Edition, on Page 426:

“A question, being once made and carried in the affirmative or negative, cannot be questioned again, but must stand as a judgment of the House.”

The question that would arise would be: If the decision once carried were to remain as a judgment and could not be questioned again, what was the wisdom behind permitting reversal?

Erskine May points out that the flexibility of Parliament to create a window for reversing decisions already made was necessitated by the practical inconvenience of that rigid rule, especially where the House as a whole wished to change its opinion. With that rule, it proved too inhibitive for a legislative body that is confronted with the ever-changing problems of Government. Hence, a rule prohibiting reconsideration of a decided question had come to be interpreted very narrowly, so as not to prevent open rescission when it is decided that it is desirable.

What is interesting to note from the United Kingdom's experience is that even though the latitude to reverse a House decision was eventually granted, it was not in form of a blank cheque. In the Parliament of the United Kingdom, exercise of the power of rescission has been

restrictively invoked. Indeed, the power of rescission has been exercised only in the case of a resolution resulting from a substantive Motion and, even then, sparingly.

Hon. Members, making your way, please, come in quickly, otherwise, you will stand for a very long time.

*(Several Members walked into the Chamber)*

The element of finality of actions of a House of Parliament, evidenced in the Parliament of the United Kingdom, is also replicated in the Congress of the United States of America. According to Mason's *Manual of Legislative Procedure*, a decision of the House on a substantive Motion or question has an element of finality that ought not to be questioned by the same House. In essence, this self-restraint is important for the House to make progress and is only invoked as a matter of procedure and not to allow revisiting decisions on substantive Motions.

From my reading of Mason's Manual, I also gather that, while appreciating the necessity to permit changing actions already taken by the House, Mason cautions that it is common practice to restrict the right to reconsider, as in many cases this is essential to the progress of the institution. Consequently, Section 65 of the Manual provides that:

“It is necessary that it be possible to put to an end a debate on controversial questions, otherwise, a minority could continue to make Motions concerning the matter and keep it under consideration to the exclusion of other matters and to the point that progress of the body would be seriously impeded.”

The practice in Parliament of Australia is not far from that of the UK and USA in so far as rescission is provided for. However, it is a rare occurrence. Interestingly, in the rare occasions on which that power to rescind a decision of Parliament is resorted to, it is only carried if it garners the support of absolute majority of the House. It is my view, that the high threshold set for rescinding a decision of the House implies that just like is the case in the UK and the USA, the Australian Parliament treats its actions with finality and would not wish to re-consider a substantive matter to which a vote was already taken.

In principle, the power of rescission allows a House of Parliament to reconsider and perhaps deviate from its earlier decision on a question. However, it is worth noting that rescission of a decision of the House is invoked only to the extent that it allows the House to proceed from a situation of uncertainty and not to necessarily revert a matter to the House or committee.

Hon. Members, let me now turn my focus to the experience of the Parliament of Kenya on rescission of House decisions. The practice in Kenya mirrors that of the House of Commons of the UK and the Congress of the USA to the extent that there exists a restriction on reconsideration of decisions taken by the House ‘during the preceding six months in the same session’.

Nonetheless, Standing Order 49(2)(a) provides the House with a window to review its decision with immediacy, with the exclusion of decisions made on special Motions.

It states thus:

2 (a) a Motion to rescind the decision on such a question may be moved with the permission of the Hon. Speaker.

Hon. Members, allow me to refresh your mind by sharing with the House, and, indeed, the general public, incidences where the House invoked or attempted to invoke the power to rescind its decision.

In the first incidence of 14<sup>th</sup> February 2017, the 11<sup>th</sup> Parliament passed a Motion to rescind its decision on agreement with the Committee of the whole House on the Privatization (Amendment) Bill, 2016, having been sought by the Leader of the Majority Party. The aim of this rescission was to allow re-committal of Clause 3 that had been inadvertently passed with granting the power to approve Members of the Privatization Commission to the relevant committee of the House instead of the National Assembly.

Secondly, the clause made usage of the term ‘Parliament’ as construed before bicameralism hence necessitating correction of the error to specifically refer to the National Assembly as the House responsible for approving the said appointments.

Earlier, on 9<sup>th</sup> March 2016, the House rescinded the decision on rejection of appointment of Members to the Budget and Appropriations Committee after being moved by the Leader of the Majority Party. The purpose of the rescission was to allow a fresh appointment of the committee within six months following rejection of the Motion thereby extricating the House from a procedural limbo that would have left the budget making and budget-related oversight functions of the House unattended for six months.

In the third incidence, on 21<sup>st</sup> October 2015, the House rescinded the decision on agreement with the Committee of the whole House on the Parliamentary Powers and Privileges Bill, 2014 to allow re-committal of clauses 34 and 37 of the Bill. The purpose of the rescission was to disentangle the House from having inadvertently made erroneous decisions and allow it to revisit the matter.

Much earlier, on 31<sup>st</sup> March 2004, the House rescinded rejection of appointment of Members to the House Business Committee. The object of the rescission was to allow re-establishment of the committee without which the House would have been in limbo and without business for six months.

Finally, on 15<sup>th</sup> December 1999, in the Eighth Parliament, the House rescinded a decision through which the House had negated an amendment by the then Member for Kitutu Masaba Constituency, the late Hon. George Moseki Anyona, to a Motion by the then Member for Lang’ata Constituency, Rt. Hon. Raila Odinga.

Hon. Anyona’s amendment sought to expand the scope of Hon. Raila’s Motion by inserting a provision for establishment of a select committee to lead and coordinate the Constitution of Kenya review process following a stalemate in the appointment of commissioners to the Constitution of Kenya Review Commission (CKRC). The aim of the rescission was to enable the House to constitute a select committee that would spearhead discussions on the Constitution review process and unlock the then prevailing standoff that arose from the inability of the Attorney-General to convene a meeting following disagreement on nomination of Members of the CKRC which had condemned the process to abeyance.

Hon Members, the foregoing instances of rescinding actions of the House in the history of the Parliament of Kenya suggest that rescission has been invoked on matters of procedure, particularly to allow the House to proceed unimpeded or where it was established that the House had erroneously made a decision.

Further, I have deduced that the power to reverse an action of the House has been sparingly invoked in the Parliament of Kenya just as in the jurisdictions earlier mentioned in this Communication.

For clarity, I have singled out the following observations:

- (i) That the exercise of the authority to rescind a decision of the House has only been invoked by the House to extricate itself from an imminent limbo that would otherwise obtain should the rescission not be permitted. Put otherwise, rescission has been sought as an avenue for finding procedural resolutions or other such decisions that aided the House to rescue itself from abeyance.
- (ii) That there is no evidence of the Hon. Speaker having granted leave for a Motion to rescind an action of the House for the mere purpose of allowing the House to reconsider or reverse a position it already took on a question.
- (iii) That no rescission has so far been sought and granted on a resolution relating to a report of a committee.

Hon. Members, from the foregoing particularly under paragraph (iii), the questions raised and request sought by Hon. Oluoch and echoed by Hon. Kaluma and Hon. Amisi present a unique question on the procedure and application of Standing Order No.49(2) in respect to a negatived report of a committee.

The closest necessity to rescind a negative decision of the House on a report of a committee was on 28<sup>th</sup> March 2006 just before the tabling of a Report of the Public Accounts Committee (PAC) on a Special Audit on the Procurement of Passport Issuing Equipment by the Department of Immigration, Office of the Vice-President and Ministry of Home Affairs then. The then Assistant Minister, Hon. Mirugi Kariuki, rose on a point of order challenging the tabling of the report and its admissibility thereof. Among other grounds for his objection, Hon. Kariuki claimed that pursuant to the then Standing Order No.42, the report was not properly before the House noting that the House had previously rejected a report of the committee on the same matter. He averred that the House could only reconsider the Report upon an affirmative consideration of a Motion to rescind the action by which the previous report had been rejected.

Hon. Members, the Speaker was being invited to make a finding that the inquiry leading to the second report by the PAC on a similar matter as had previously rejected was in contravention of the six-month restriction imposed under the then Standing Order No.42, which is our current Standing Order No.49, hence could not be proceeded with unless the decision rejecting the previous report was rescinded. Consequently, the then Speaker was required to either:

- (a) Rule that the report was inadmissible to the extent that it contravened the then Standing Order No.42; or,
- (b) grant leave for the moving of a Motion to rescind the rejection of the first report and pave way for admission of the second report.

From the ensuing debate, both the Members and, indeed, my predecessor, Speaker Francis ole Kaparo, did admit that that was an unprecedented incidence. The Speaker did pronounce himself that that was the first time in the history of Parliament of Kenya that the House was being called upon to exercise the power to rescind its decision on a report of a committee. I have reviewed the Hansard of the proceedings containing the debate of 28<sup>th</sup> March 2006 and the Speaker's ruling of 30<sup>th</sup> March 2006 and established that the then Speaker observed:

- (a) The recommendations of the Special Audit Report by the Public Accounts Committee were rejected by the House during the Third Session on 3<sup>rd</sup> November 2004, and not during the Fourth Session;
- (b) the rejection of the PAC Report on the Special Audit in its totality during the Third Session was, as far as I can establish, the first time this has ever happened in the history of this House. Ordinarily, such reports have been adopted either in whole or as amended;
- (c) this is the first time that the tabling of a Paper containing the report of PAC has ever been challenged in this House; and,
- (d) because of the unprecedented action on the part of the House, this is also the first time PAC has, on its own Motion, and in conjunction with the Controller and Auditor-General, revisited an issue on receipt of new evidence. This new evidence was not presented to the Committee when it was still on the issue. I may hasten to add here that the new evidence came to the attention of the Committee in a very public manner in the form of what has since been dubbed "The Githongo Dossier."

Hon. Members, on account of the aforementioned observations, the then Speaker Kaparo proceeded to rule that, on the necessity to rescind the decision of the House on the First Report of PAC, that:

“The Report of the Special Audit was resolved in the negative on 3<sup>rd</sup> November, 2004 and not during the Fifth Session. The Fifth Session is now. This is a new session. Clearly, the Hon. Assistant Minister did not consider the provisions of Standing Order No.42 when he raised his objection. In light of the provisions of Standing Order No.42, that argument fails.”

Consequently, the Speaker did not grant leave to rescind the previous decision as the said decision had been carried in a different session. Therefore, Standing Order 42 did not bind its re-introduction to the House.

Hon. Members, the question one would ask is: What action did the Speaker take thereafter? The argument for rescission having failed, the Speaker did observe that PAC had embarked on a fresh inquiry, notwithstanding the rejection of its earlier report on the basis of emergence of new evidence in the public domain contained in the so called “Githongo Dossier.” He went ahead and ruled that:

“...new evidence emerged in public domain in the said "Githongo Dossier" and the Committee somehow seized the opportunity and sought to receive and did receive the new evidence... It is for this greater public interest... that I am inclined to admit this Report for consideration by this House.”

Clearly, the Speaker allowed tabling and subsequent consideration of the Report for reconsideration by the House on the basis of new evidence and not to merely accord the House a second chance to review its decision on a Report with similar contents.

Hon. Members, let me now relate the analogies I have drawn to the questions raised by Hon. Anthony Oluoch, MP, with regard to the application of Standing Order 49 and wish to provide the following guidance:

1. On the first question as to whether the usage of the terms “Question” and “Motion” as used in Standing Order Nos.49(1) and (2) has same meaning in the terms of the Standing Orders, indeed, the two are used interchangeably. The understanding is that any

substantive matter before a House of Parliament is considered through a Motion, which is then decided by way of a question at the conclusion of deliberations. Therefore, the usage of the term “Question” in Standing Order No.49(1) is implicit of a Motion.

2. As to whether the window to rescind a decision of the House on a Motion under Standing Order No.49(2) is applicable to a decision on a report of a committee of the House, the answer is in the negative. I have taken this position on the strength of the arguments that:
  - (i) The review of incidences of rescission of House decisions demonstrate that the power to rescind has been construed as an action meant to facilitate the House to remove itself from situation of uncertainty and not as a window to reconsider the action taken. It is more of a question of procedure than reversal of an action or change of mind.
  - (ii) According to section 481(1) of Mason’s Manual of Legislative Procedure, “a legislative body can rescind an action previously taken as long as no vested interests have arisen from the original action.” I am persuaded that the accusations and counter accusations of alleged external influence that may be attributed to the rejection of the Report in question are suggestive that there may have been vested interests then and that there is no certainty of those interests have fizzled out. I am, therefore, afraid that the requests to rescind the decision of the House of 9<sup>th</sup> August 2018 on the relevant Report are devoid of evidence that there is new evidence which may alter the substance of the rejected Report and therefore increase the prospect of the House taking a different decision.
  - (iii) The terms of Erskine May’s *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 24<sup>th</sup> Edition published in 2011, the power of rescission cannot be exercised merely to override a vote of the House, such as a negative vote. Proposing a negatived question a second time for the decision of the House would be contrary to the established practice of Parliament.

Hon. Members, when a rejected Question has to be reconsidered, sufficient variation would have to be made, not only from the form, but also from the substance of the rejected question, so as to make the second question a new question. None of the claims submitted to my Office by the Members who sought leave to rescind the decision in question suggested the possibility of new evidence that would alter the substance of the negatived Report and qualify it for reconsideration in a new form. Having found no basis to grant leave to rescind the said decision, the argument of whether the parameters of a rejected Question may be varied after being rescinded does not, therefore, arise.

Hon. Members, as I mentioned earlier, the Member for Saboti Constituency had also placed a request to establish a select committee to inquire into the spent matter of alleged importation of contaminated sugar. The question one would ask is: What would the proposed select committee alter in terms of substance of the rejected Report that would move the House to vote differently? As I indicated earlier, I have no information as to whether there has emerged new evidence that, if considered by a Committee of this House, would vary the substance of the earlier Report.

3. Regarding the third question on whether the gag imposed under Standing Order No.49(1) debars a member of the public from submitting a petition to the House, praying that the House reconsiders a report that it had previously negatived in the preceding six months, the answer is yes, although secondarily. Even though the right to petition Parliament as



granted under Article 119 of the Constitution is inalienable, the admissibility of public petitions and consideration thereof is bound by the procedure and practice developed pursuant to Article 124 of the Constitution. Hence, a public petition of the nature contemplated by Hon. Oluoch may not be referred to a committee or committees of the House on the basis of the restraint imposed by Standing Order No.49(1).

Hon. Members, as I conclude on this matter, I must emphasise it is a principle of law, which is also applicable to Parliament, in the carrying out its quasi-judicial function, that once a House rejects a report of a committee, that decision effectively renders the relevant committee or committees *functus officio* upon the report being rejected by the House. Consequently, it would be an exercise in futility to attempt to re-introduce the same matter, be it through the same committee, a select committee or by way of a public petition, as long the parameters remain similar to those of the rejected report.

One would wonder, what options does the House have in light of the prevailing circumstances? You will recall that I did refer to a precedent that was set in the 9<sup>th</sup> Parliament when PAC, upon learning of emergence of fresh evidence contained in the famous “Githongo Dossier” a matter it had investigated and a report thereof rejected by the House, the Committee commenced a fresh inquiry *suo moto*.

In light of this precedent, my guidance does not preclude the relevant committee or any Member of this House from attempting to move the House to revisit the matter of the alleged importation of illegal and contaminated sugar into the country, as long as that attempt is made in strict compliance with Standing Order No. 49(1). I hasten to state that in this case, the provisions of Standing Order No.49(2) do not arise. This settles the first issue on the decision of the House on the Report on alleged importation of illegal and contaminated sugar into the country.

Hon. Members, I will now proceed to the second issue which relates to the claims and counter-claims of alleged bribery that have been awash in both print and electronic media in the aftermath of the rejection of the Report on importation of alleged illegal and contaminated sugar into the country by this House. As you may recall, on 31<sup>st</sup> August 2017, you took an oath or affirmation of office to, among other things, faithfully and conscientiously discharge the duties of a Member of Parliament. In so doing, you are constantly invited to make decisions on matters of varied nature during the entire term of your Membership to this House. Indeed, as part of the prayer for this House, which we do now and then, it states that you have been called to the performance of important trusts in this Republic.

I am persuaded to reaffirm these solemn words in the National Assembly prayer book because as a hallowed Chamber, your decisions would be looked at with disfavour if you act in a manner that causes the public to believe that you have betrayed their trust in you. Hon. Members, I must emphasise, in no uncertain terms, that the oversight function of this House as carried out through committees elevates it to a status akin to that of the High Court. The exercise of this unique quasi-judicial function is expected to strictly adhere to and apply the principles of natural justice and fair hearing. Every process or action taken by the House or its committees must be seen by all to be above board, taking into account the fact that decisions of this House bear the element of finality. Therefore, I implore you, in the wisdom of the late Justice Robert Houghwout Jackson, a former Associate Justice of the Supreme Court of the United States of America (USA), that we must act with integrity that borders infallibility. Justice Jackson rightly observed: "We are not final because we are infallible, but we are infallible only because we are final."

Hon. Members, in the wake of alleged bribery by a section of Members of this House, I directed the National Assembly Committee on Powers and Privileges to investigate the claims and report its findings, including any recommendations it may deem fit, to this House. Other than media reports, a number of Members of this House have publicly alluded to having witnessed incidences of bribery of their peers before the House took a vote on the Report in question. In this regard, a number of Members are or may be required to appear before the Committee on Powers and Privileges as whistle-blowers to assist the Committee to get to the bottom of those grave allegations of bribery in the House.

*(Applause)*

Among the Members who will be of interest to the Committee in its inquiry into this matter is the Member for Kimilili Constituency, Hon. (Capt. Rtd.) Didmus Wekesa Barasa, and the Member for Muhoroni Constituency, Hon. Onyango Oyoo. I have singled out the two Members because they are Members of the Committee on Powers and Privileges that forms the jury that will hear and determine claims of bribery. As a principle of law, you cannot wear the hat of a judge on a matter in which you are appearing in the hat of a witness.

Hon. Members, I have also received complaints and alibis from a number of Members against some media houses for vilified publication of their names as having allegedly partaken of the bribes to vote in one way or the other on the Report on alleged importation of illegal and contaminated sugar into the country, and yet they were not in attendance when the matter was decided. I have referred their complaints to the Committee on Powers and Privileges for review.

Therefore, it is my considered ruling that:

(1) As your Speaker, I will not allow any Motion which asks the House to rescind its decision of Thursday, 9<sup>th</sup> August 2018 on the Report of the Joint Departmental Committee on Agriculture and Livestock and Departmental Committee on Trade, Industry and Cooperatives on the inquiry into alleged importation of illegal and contaminated sugar into the country as doing so, I will offend the provisions of Standing Order No.49 since the discretion of the Speaker to grant leave on such Motions does not extend to a report of a committee which has been adopted or rejected by way of a conscious vote.

(2) The Member for Kimilili Constituency, Hon. (Capt. Rtd.) Didmus Wekesa Barasa, and the Member for Muhoroni Constituency, Hon. Onyango Oyoo, who are Members of the Committee on Powers and Privileges of the National Assembly are reported to have made allegations of bribery. They will recuse themselves from the sittings of the Committee until the Committee has concluded the inquiry on the allegations of possible bribery, since they will be invited by the Committee to adduce evidence in the matter; and,

(3) I encourage Members to refrain from making utterances or canvassing inaccurate information and hearsay on the matter in the media. Instead, those desirous of commenting on the subject can approach the Committee on Powers and Privileges and volunteer any information in their possession that would be beneficial to the Committee as it investigates the allegations of bribery by Members of this august House. The Committee on Powers and Privileges has been called for a meeting on 5<sup>th</sup> September 2018. The House is accordingly guided.

*(Applause)*

The Members who are making their way, please, come in. Make your way quickly because there is another Communication.

#### RECONSIDERATION OF A HOUSE RESOLUTION

Hon. Members, this is the second Communication. I wish to bring to the attention of the House that my office has been petitioned vide a letter dated 22<sup>nd</sup> August 2018 from the firm of Omogeni and Company Advocates on behalf of their client, M/s. Kenafric Industries Limited, in relation to a resolution by this House with regard to the Report of the Departmental Committee on Agriculture and Livestock and the Departmental Committee on Trade, Industry and Cooperatives on the crisis which face the sugar industry in Kenya which was adopted in the 11<sup>th</sup> Parliament. In their letter, M/s Omogeni and Company Advocates note that the Petitioner, M/s. Kenafric Limited, was adversely mentioned in the Report which recommended the cancellation of their import licences. The firm of advocates further notes that during the hearings held by the Departmental Committee on Agriculture and Livestock and the Departmental Committee on Trade, Industry and Cooperatives, their client was not afforded an opportunity to be heard, despite her attempts to be heard before the preparation and tabling of the Report of the Committee. Consequent to the tabling and adoption of the Report, the Sugar Directorate of the Agriculture, Fisheries and Food Authority (AFFA) has since delayed the processing of their import permit.

As you are aware, Standing Order No.209 establishes the Committee on Implementation whose mandate is to scrutinise the resolutions of the House and examine whether or not they have been implemented, and the extent to which legislation passed by the House has been operationalised. Indeed, and in the discharge of its mandate, the Committee on Implementation invited the Sugar Directorate to update the House on the status of the implementation of the resolutions made in the last Parliament with regard to the crisis in the sugar sector. It is in the implementation of a resolution of this House that the Sugar Directorate has delayed the processing of import permits for companies which were mentioned adversely in the Report.

Since the receipt of the letter, I have scrutinized the text of the Report tabled and adopted by the House and I confirm that the minutes attached to the Report show that the said company Kenafric Limited, who is a Petitioner in this matter, sought audience before the Committee in writing to respond to allegations made by the Kenya Sugar Board prior to the conclusion of the writing and tabling of the Report. The minutes record thus:

- “1. The Committee deliberated on the issue and resolved that it was in a position to hear more witnesses since the Report was long overdue.
2. If the complaint feels aggrieved, he could seek recourse after the Report is tabled in the House.”

Owing to delay in processing the import permit, the Petitioner is presently in court to seek legal redress arising from the alleged condemnation by the House without having being given an opportunity to present their case.

Hon. Members, the on-going court case notwithstanding, I am of the considered view that turning a blind eye to the issues raised in the letter by the law firm would not serve the best interests of the House. As a House of procedure guided by the Constitution and our Standing

Orders, we cannot be seen as establishing a precedent of condoning the condemnation of persons without affording them an opportunity to be heard. The right to a fair hearing, as one of the twin principles of natural justice, is entrenched in Article 50 of our Constitution which precludes individuals from being penalized by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the case, a fair opportunity to answer it, and the opportunity to present their own case.

In addition to this, Article 47 of the Constitution provides for the right to fair administrative action which is expeditious, efficient, lawful, reasonable, and procedurally fair. Indeed, this House enacted the Fair Administrative Action Act in 2015 to operationalise Article 47 in order to further guide the conduct of administrative actions and other proceedings adversely affecting the rights of individuals.

Affording persons the right to present their case is in line with guiding principles of parliamentary practice as noted in the updated version of the Benchmarks for Democratic Legislatures issued by the Commonwealth Parliamentary Association (CPA), of which Members of this House are members. As a safeguard against the abuse of the freedom of speech granted to the Legislature, Benchmark 1.4.4 states, and I quote, “The Legislature shall have mechanisms for persons to respond to adverse references made to them in the course of the Legislature’s proceedings.”

In conducting hearings, preparing and tabling its Report and recommendations, the Departmental Committee on Agriculture, Livestock and Cooperatives was under an obligation to apply and be seen to have applied a standard, methodical, open and fair process in its deliberations. It is only in applying such a process that the decisions of this House may stand the test of whichever challenge is made outside Parliament. Any compromise of such a process exposes the House to ridicule and reduces the confidence of the public in the procedures of the House and its role as a forum for the deliberation and resolution of issues of concern to the people. The House cannot on one hand pass the Fair Administrative Action Act, 2015 and on the other blatantly flout the basic requirement of according adversely mentioned persons the fundamental right to be heard.

Noting the glaring omission highlighted by the Petitioner and, indeed, on admission of the Committee itself that the Petitioner was not afforded an opportunity to rebut the allegations, it, therefore, behooves this House to revisit its resolution made when adopting the Report of the Departmental Committee on Agriculture, Livestock and Co-operatives. This will necessarily entail affording the Petitioner a chance to present its case for consideration by the House.

As the concern raised does not constitute new evidence, there exists no jurisdiction to reopen and reconsider the entire subject matter of the Report. The appropriate Committee, therefore, to undertake this exercise is the Committee on Implementation currently seized of the implementation of the resolutions made from the Report to act as an appellate forum for the Petitioners to present their prayers. Indeed, such forum will examine the claims made by the

Petitioners and also safeguard the authority of the House on matters for which it has inquired into and arrived at a resolution, before any other authority steps in.

I am fully cognizant of the provisions of Standing Order 89 on matters *sub judice* or secret. It is, however, my considered view that reference to this matter by the Committee on Implementation shall not in any way prejudice the fair determination of the on-going court proceedings. Both the House and the aggrieved party would be best served by the urgent rectification of this glaring omission. For the avoidance of doubt as to the nature of the exercise to be undertaken by the Committee on Implementation, I direct that the Committee is to limit itself to:

- (i) Only receiving submissions from the Petitioner on the resolution made by the House from the recommendation contained at Paragraph 108 of Page 50 of the Report;
- (ii) considering the submissions from the Petitioner; and,
- (iii) reporting its findings to the House within thirty (30) days.

I need not add that the Committee must observe the rules of natural justice in this exercise. In the meantime, the implementation of the resolution on this matter will stand suspended until such a time as the House makes a further resolution informed by the report of the Committee on Implementation.

The House is accordingly so guided. Thank you.

Hon. Eseli Simiyu.

**Hon. (Dr.) Eseli Simiyu** (Tongaren, FORD-K): Thank you Hon. Speaker for your considered and judicious ruling considering that you are the head of this legislature. It, therefore, behooves you to always give direction.

In your second Communication, you mentioned a very important Article of the Constitution, Article 95, which talks about the role of the National Assembly especially Article 95(2) which says that the National Assembly will consider and resolve matters of concern to the general public. It has left me a bit confused because we have not resolved the issue of sugar, which is a matter of concern to the general public. Would it mean, therefore, that the National Assembly would be acting against the Constitution by not resolving this matter?

I do not know how to handle that because I find it a bit difficult. I beg your wisdom as to how the National Assembly will carry its head high without resolving a matter that is of such concern to the general public, namely, the importation of sugar.

Thank you, Hon. Speaker.

**Hon. Speaker:** The answer lies in the earlier Communication. The answer lies in the avenues available. Hon. Keter.

**Hon. Alfred Keter** (Nandi Hills, JP): Thank you Hon. Speaker for your ruling. I rise on a different issue. I want to seek your guidance and direction on a matter that is touching on two committees of this House, namely, the Departmental Committee on Finance and National Planning and the Budget and Appropriations Committee.

I had the privilege of being a Member of the 11<sup>th</sup> Parliament and I remember the way the two committees used to work together. They used to correlate very closely because the majority of Members who sat in the Departmental Committee on Finance and National Planning were Members of the Budget and Appropriations Committee, which is not the scenario now. There is a challenge and I sympathise with the National Treasury officials who want to make a presentation to the Departmental Committee on Finance and National Planning and to the Budget and Appropriations Committee. In most cases, we represent the people and are sensitive to issues that affect the people. The Members who sit in the Departmental Committee on Finance and National Planning in most cases want to bring down taxation and those in the Budget and Appropriations Committee want to improve on budgeting and appropriation, which is a challenge and it affects two Bills, namely, the Finance Bill and the Appropriation Bill. This is like a family where the revenue collection is different from resource allocation. They must go together. We need to find a way of harmonizing, so that those who sit on the committees give input on how to improve on the finances.

**Hon. Speaker:** Well, that is a matter that obviously would require further debate. Engage the leadership to see the need for coordinating. Of course, it is also important to appreciate that Membership in any committee does not necessarily depend on expertise because the institution of Parliament is the one that is supposed to provide that technical advice to all the committees, but we hear you, Hon. Keter. It is a matter that will require some debate outside of this forum and then we can get a report.

Member for Emuhaya, you are still seized of raising one finger salute.

**Hon. Omboko Milemba** (Emuhaya, ANC): Hon. Speaker, I am sorry, but you know we are going back to KANU. Anyway, that is not what I wanted to say.

Hon. Speaker, I rise to thank you for the Communication that you have given. It, at least, brings orderliness to the House. While you were away, we remained unsure of the two issues. One, the issue of corruption, which you have talked about and have correctly guided the House on, which is with regards to what should be done so that we can bring the issue to a complete rest.

The second issue you have talked about, and which you have provided guidance on, is the issue of sugar. In your Communication, you have also given guidance. However, the great wisdom which you have brought should also be brought to bear, so that despite the fact that the House has its orders and rules, and it is a House of rules, those rules should not gag the House from dealing with any issues that affect the public. The sugar issue remains a big issue that Kenyans and farmers will be expecting this House to deal with. So, in your wisdom, moving forward, further guidance to that extent, would be welcome especially by the farmers of Kenya.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, this should not be a debate. Member for Nyando.

**Hon. Jared Okelo** (Nyando, ODM): Thank you, Hon. Speaker for a very well-reasoned judgement on the sugar issue that has refused to die off. I want to take cognizance of the three arms of the Government. We know about the Executive that has the latitude to make changes or even rescind some of the decisions that it has made at certain times including the Executive fiat which may not be very popular with the people. I also want to bring this to the attention of the

House, and the Judiciary, which is a creation of the Constitution. We have several tiers of courts from the magistrate's court all the way to the Supreme Court. In cases where people are not satisfied with the decisions of the various tiers of courts to the last stage, even though the decision of the Supreme Court is binding on all the lower courts, it excludes the Supreme Court from practicing what may then be construed to be a tradition of the court. In Section 21 of the Supreme Court Act says that even though decisions of the Supreme Court will be binding, there is provision upon which somebody can ask for review of the Supreme Court's decision itself. A clear reading of the Regulations of the Supreme Court gives a litigant, who is dissatisfied with the decision of the Supreme Court, to file a review within a set time, which is 14 days upon the delivery of judgment. My concern basically is that we know that this is a House of rules. It is governed by its own set rules, traditions, Standing Orders, the Constitution and many other things. But to take you back a little bit to the issue of the Supreme Court, it only takes somebody for litigation on issues that are extraneous and exceptional circumstances.

Coming back to this House, the sugar issue is an exceptional circumstance. I thank you for a very well-reasoned judgment, but I would also want to step back a little bit and look at the fundamental issues surrounding the sugar issue that has refused to die. I do not see it dying any time soon. Our rules would always ask us to bring such a Motion within a time period of six months. It is very good and we have to follow it. But I thought this is one of those exceptional and extraneous matters that ought to have given further attention to this House to relook into. As you just correctly said, once a committee has failed to proceed with a report, it becomes *functus officio*, which means dead. So, it cannot be resurrected to handle a similar issue.

I think there could be a provision upon which a new committee can be crafted to look into these issues in depth, so that Kenyans out there would know what happened to the mercury in sugar and the trade element that killed the sugar industry in its entirety in the Republic of Kenya. For the first time in the history of this country, we will have results and answers.

Otherwise, I thank you for giving that very well-reasoned judgment. I finally agree that no one should allege impropriety without providing substantial evidence to corroborate the allegations made against any Member.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, let us not discuss this because obviously, as you know, even the Judiciary, the ways for review are also guided. It is not a blanket review. Just like the traditions of the House, and not just our House. We cannot be an island that operates in isolation. That is why we are Members of various international bodies. The avenues given are the ones that I have enumerated.

We are not going to discuss this ruling. Certainly, I am not here today to preside over debate on sugar. Hon. Members, you know you have the powers to bring Motions to discuss anything. Obviously, there was a specific issue which we were dealing with. There are several other ways of dealing with the issues you would want to bring to my attention about sugar. There is no debate on this.

Hon. Maore, is yours different?

**Hon. Maoka Maore** (Igembe North, JP): Hon. Speaker, I want to applaud your ruling as well, specifically on how the Report issue has met its final nail. We were wishing that we would make your desk as the resurrection square for the bad manners that manifest in this episode of the sugar Report. If you recall, from inception, that is where the rain started beating us. When you raised the issue of getting a select committee, the spirited fight, specifically by the Leader of

the Majority Party and the Leader of the Minority Party, changed the wish that we should have had a committee that would not have had vested interest like the way it has been manifested in this committee.

I wish to state it is a shame for this House that the report went the way it went. But because of the rule that we cannot open a matter that we closed because of vested interests, let us live by that shame. We never wanted the issue of corruption and the names of those who imported sugar to come out. That is why it was very easy to fight the names from coming out.

Thank you. Hon. Speaker.

**Hon. Speaker:** Next order.

## MOTION

### ALTERATION OF THE CALENDAR OF THE HOUSE

**Hon. Aden Duale** (Garissa Township, JP): Thank you, Hon. Speaker, for that well-guided ruling. I am sure they are seeing the effects of the mercury but the effects are dying slowly.

Hon. Speaker, I beg to move the following Motion:

THAT, pursuant to the provisions of Standing Order 28(4), this House resolves to further alter its calendar for the Second Session (2018) as adopted on 14 February 2018 and amended on 1st March 2018 and 28 June 2018, by proceeding to a recess from Thursday, 30 August 2018, at the rise of the House, and resuming its regular sittings on Tuesday, 2 October 2018.

Members will agree with me that we have had a long legislative calendar. As such, this recess is timely and important for us to join our constituents and families and friends so that Members can have time to interact. As the Chair of the CDF Committee has indicated, the amounts for Financial Year 2018/2019 are out. I am sure our constituency committees, under our guidance, will prepare work plans for 2018/2019 for the Board to approve.

Number two, I am sure the great women of the 47 counties have also approached me that the Board is missing, hence the operation of the Affirmative Action Fund is in limbo. I have taken that matter and discussed it with the relevant Government authorities, so that in the next two weeks, that Board will be put in place and the other members to the CDF Board are also brought to the House.

This recess will also allow committees enough time to consider the various petitions and reports pending before them. I am sure by the time we come back, public participation will have been done and enough reports for consideration by the House will be tabled.

Hon. Speaker, we have no intention... If you would like to form a select committee, you can form as many as possible. It is the House to decide. It is not Hon. Mbadi and I who will decide. I leave that as part of the effects of mercury. With this one month recess, the body will get time to drain itself, for those who have that mercury in their system.



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

**Hon. Speaker:** Hon. John Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Speaker. We sat in the HBC and agreed that we request the House to change the calendar. The date when we start the recess remains the same, 30 August 2018, but the resumption date be adjusted by an extra week to 2 October 2018 as opposed to 25 September 2018.

The reason we wanted to come a little earlier was because we thought we may not be able to dispose of the Finance Bill, which has timelines ending in September, that is, 90 days from the date of passing the Appropriations Bill. So, we request that Members give themselves one more week to have time with their constituents. As the Leader of the Majority Party has ably put it, this is a time that you need to engage in exercising your supervisory role in terms of development of your constituencies. This is basically a procedural Motion.

As I sit down, if you allow, Hon. Maoka Maore made a very interesting allegation regarding the formation of a select committee. He said that if that committee was constituted, then conflict of interest would have been removed. First of all, we do not even know who those Members would have been to be sure that there would have been no conflict of interest. Again, we formed the various committees early enough; no one knew that there would be an inquiry into any issue around sugar. So, certainly, we would have not known that the membership of that Committee were people who would have conflict of interest. I think it is just an admission that probably some extra work should have been done by the two committees, an admission that many have not been able to accept previously because of political expediency.

I want to ask Parliament that, at times, we belabour issues that we can resolve differently. Actually, the issue of sugar that I see people talking about can still be resolved even by the agriculture committee taking it up. That is because what was resolved in the negative was just the issue of bad sugar. Anyone can come with issues around the problems in the sugar industry and no one would stop that. It will not even be affected by your ruling as far as I am concerned. If the Agriculture Committee wants to do its work and not to play politics, they can still investigate other issues around sugar and bring a report. We will adopt it. I think a lot on this issue of sugar is politics, so to speak. I have been here long enough to know when people play politics and when they mean business. If people really want to help the sugar sector, the Agriculture Committee should even start sitting tomorrow and invite various stakeholders to come and make presentations and even investigate all those other matters that they want investigated.

Thank you, Hon. Speaker. I second the Motion.

**Hon. Speaker:** Well spoken, Hon. John Mbadi. I do not understand why the House is not looking at the Standing Orders and the mandate of departmental committees. Even if you want to investigate how long it takes to grow cane, you can do it. It cannot be that the only thing you can investigate is mercury or copper. No! You can investigate so many things in the sugar sector in this country. Who said that the sugar sector is only about mercury and copper and lead, unless

the committees have decided to only deal with things around the city? It is only fair that the Committee on Agriculture should take heed. You can investigate anything in that sector.

*(Question proposed)*

**Hon. Members:** Put the question.

**Hon. Speaker:** If that is the desire of the House, I put the question.

*(Question put and agreed to)*

**Hon. Speaker:** It looks like everybody is desirous of the extra week.

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*(Hon. Speaker left the Chair)*

#### IN THE COMMITTEE

*(Hon. Chairman took the Chair)*

#### THE DIVISION OF REVENUE (AMENDMENT) BILL

**Hon. Chairman:** Hon. Members, we are now proceeding to consider the Division of Revenue (Amendment) Bill (Senate Bill No.14 of 2018). You will have to be very keen because the Bill has only three clauses, none of which...

What is it, Hon. Washiali?

**Hon. Benjamin Washiali** (Mumias East, JP): Hon. Chairman, I just want to urge Members that the fact that we have gone into the Committee of the whole House to consider the Division of Revenue Bill Members does not mean that they must walk out. We need quorum in the House to be able to prosecute all the business on the Order Paper so that we can proceed on recess.

**Hon. Chairman:** Agreed but sit somewhere strategic as the Majority Whip.  
Let us proceed.

*(Clause 2 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

Hon. Lessonet, kindly move the Motion for reporting to the House.

**Hon. Moses Lessonet** (Eldama Ravine, JP): Hon. Chairman, I beg to move that the Committee doth report to the House its consideration of the Division of Revenue (Amendment) Bill (Senate Bill No.14 of 2018) and its approval thereof without amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## REPORT AND THIRD READING

### THE DIVISION OF REVENUE (AMENDMENT) BILL

**Hon. Moses Cheboi** (Kuresoi North, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Division of Revenue (Amendment) Bill (Senate Bill No.14 of 2018) and approved the same without amendments.

**Hon. Moses Lessonet** (Eldama Ravine, JP): Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said report.

I request the Leader of the Majority Party to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, as I second, I would like to urge the county governments and the national Government that this money from the World Bank, the Swedish International Development Agency (SIDA) and the European Union (EU) must be used for the interests of the people in Kenya in promoting agriculture, mitigating the effects of climate and infrastructure development.

I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. Moses Lessonet** (Eldama Ravine, JP): Hon. Temporary Chairman, I beg to move that the Division of Revenue (Amendment) Bill (Senate Bill No.14 of 2018) be now read the Third Time.

I also request the Leader of the Majority Party to second.

**Hon. Aden Duale** (Garissa Township, JP): I second.

*(Question proposed)*

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed)*

## MOTION

### ADOPTION OF REPORT ON TAX PROCEDURES (TAX AGENTS) REGULATIONS, 2018

**Hon. (Ms.) Gladys Boss Shollei** (Uasin Gishu, JP): Hon. Temporary Deputy Speaker, I beg to move: -

THAT, this House adopts the Report of the Committee on Delegated Legislation on The Tax Procedures (Tax Agents) Regulations, 2018 laid on the Table of the House on Thursday, August 23, 2018 and pursuant to the provisions of section 15 (1) of the Statutory Instruments Act and Standing Order 210 (4) (b), annuls in entirety the said Regulations.

Hon. Temporary Deputy Speaker, the Committee on Delegated Legislation was seized with this matter on 4<sup>th</sup> July 2018 when the House committed the regulations to the Committee. Section 112 of the Tax Procedures Act 2015 provides that the Cabinet Secretary (CS) may make regulations for the better carrying into effect of the provisions of this Act. The said regulations had the effect of achieving the following objectives:

One was to prescribe the conditions and procedures for registration of tax agents. Two, it was to outline the functions of tax agents and three, to establish the tax agents committee, which was to consider applications for registration of tax agents and lastly, to prescribe the procedure for investigation of allegations of misconduct by tax agents. The expected benefit for the regulations is to allow taxpayers to seek the services of professional tax agents and to allow compliance with the requirements of the tax law. This is meant to ensure that tax compliance is improved across the country and also to improve the economy at large. It will also enhance revenue administration.

*(Hon. Onyango Oyoo consulted loudly)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Oyoo, you will allow the Chair of the Committee on Delegated Legislation to move the Motion. Hon. Oyoo, you

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are quarrelling. You are not consulting. Let the Chair of the Committee on Delegated Legislation to prosecute her Motion.

**Hon. (Ms.) Gladys Boss Shollei** (Uasin Gishu CWR JP): Thank you, Hon. Temporary Deputy Speaker. I will be done in a minute. These particular regulations should have been similar to those that are held by the advocates, doctors or surveyors, where they have disciplinary committees or rules for disciplining advocates who do not adhere to the regulations and also for the purpose of issuing practising certificates. It is very similar.

The Committee also wishes to report that it is required by Section 16 of the Statutory Instruments Act to consult with the regulation-making authority. In this case, the Committee met with the National Treasury in order to consult in relation to these particular regulations. During that time, the Committee considered the regulations against the provisions of the Constitution, the Tax Procedures Act, the Statutory Instruments Act and the Interpretation and General Provisions Act. The Committee, in its findings, observed and recommended that the regulations are void for the following reasons; or must be nullified for the following reasons:

1. On account of defective drafting.
2. That the penalties prescribed exceed that by the parent statute; and,
3. There is no provision for professional indemnity to protect persons that are served by those tax agents.

The regulations do not provide for a transitional mechanism as well as the status of existing tax agents. You may recall that there are tax agents existing at the moment. The regulations do not provide how the old tax agents will transit into these new regulations. For that reason, that is deemed as defective drafting because regulations must have transitional mechanisms or clauses.

The second reason is that the offences and penalties that are provided in these regulations exceed that of the parent statute. Specifically, Regulation 10 prescribes the offences and also provides for the penalties for persons who are found culpable in contravening the regulations set out. It indicates that those persons shall be liable for a fine not exceeding Kshs200,000 or an imprisonment for a term not exceeding two years. However, this exceeds what is provided by the Tax Procedures Act, which provides that it should not exceed Kshs20,000 or such terms of imprisonment not exceeding six months or both. It, therefore, also contravenes Section 24 of the Statutory Instruments Act which also caps a limit to the penalties and prison terms that can be meted out to such persons.

The third reason is that it is common practice as seen in lawyers and doctors that professionals take out professional indemnity to cover legal costs and expenses incurred in their defence as well as damages or costs that may be awarded if they are alleged to have provided inadequate advice or services to their clients. The Committee observed that the regulations do not provide for this professional indemnity or insurance or compensation to taxpayers and, therefore, contravenes the parent statute.

Lastly, the Committee also found that contrary to the Section 11 (1) of the Statutory Instruments Act, the regulation-making authority did not provide an explanatory memorandum which details out the manner in which public participation was carried out as required by the Constitution. The Committee was dissatisfied with the regulation-making authority's explanation that it did not find public participation necessary since the regulations existed as the Kenya Revenue Authority Tax Agents Regulations 2012 and had, therefore, considered it as a transition

from the previous Kenya Revenue Act which has since been repealed. The Committee observed that this was in contravention with Section 5 of the Statutory Instruments Act.

Therefore, it was the finding of the Committee that the regulations are contrary to the Constitution, Tax Procedures Act and the Statutory Instruments Act and, therefore, recommended that they must be nullified in their entirety. It is the recommendation of the Committee that the Tax Procedures (Tax Agents) Regulations, 2018 be annulled in their entirety.

I beg to move and kindly request that Hon. Jennifer Shamalla, a member of the Committee on Delegated Legislation to second this Motion.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us have Hon. Shamalla.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to second the Motion for the annulment, in its entirety, of these particular regulations. I will not belabour the point because yesterday, we addressed the issue of public participation. We addressed the issue of the fact that counsel may not be advising relevant ministries or state agencies appropriately.

However, one other major concern that we have noted as the Committee on Delegated Legislation is the tendency for these regulations to provide almost astronomical amounts when it comes to fines. There are fines in the realm of Kshs200,000 when, really, the limit is only Kshs20,000. It must be clear to both the ministries and agencies that regulations will not be used as a way to actually collect revenue if, indeed, you do flout these regulations. Flouting of regulations is not supposed to be punitive. These are for criminal offences and not so much for regulations that border on those of a civil nature.

With those few remarks, I second.

*(Question proposed)*

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Maanzo, I can see that you have interest but you are a member of this Committee. I will give the opportunity to Hon. Maanzo and then the Leader of the Majority Party.

**Hon. Daniel Maanzo** (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Speaker. With regard to this particular regulation, there was an Act which was repealed. The regulations in the repealed Act continued to be used elsewhere. These tax agents came and protested here in Parliament that they were not heard by the relevant authorities. There was no public participation. The moment an Act of Parliament is nullified, it is nullified together with the regulations. There is a need for new regulations to be made in this peculiar matter so that the process can begin afresh under the new Act.

I thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): The Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, we take a lot of time to read and research. I beg to support the Report of the Committee. This is a very important Regulation and Report. This tells you that there is an increased positive attitude to the submission of tax returns among Kenyans. Various compliance strategies have been used over

the years to pressure and ensure that taxpayers habitually pay their taxes. Failing to submit tax returns is no longer fashionable in our country. As the leadership, we are delighted to see the level of enthusiasm which is exhibited by the citizens when they are applying to fill the tax returns. You see very long queues.

I want to look at the reasons which were given by the Committee. Before I go to that, I want to say that tax agents across the world play a very pivotal role in our economy. They offer tax planning. They give advice to individuals and businesses, and assist in the tax return in its preparation towards the end of the period. They are presumed to be persons that have nurtured certain competence. That is why this morning, we are dealing with amendments which were brought by Institute of Certified Public Accountants of Kenya (ICPAK) to the Departmental Committee on Finance and National Planning. Tax agents develop relevant skills through education and knowledge. They obtain specific career. These are the people who support and help us plan to file the tax returns.

This House approved the publication of the Tax Procedure Act in 2015 which commenced after assent on 19<sup>th</sup> January 2016. The procedure for registration of tax agents existed previously. The regulation-making authority did not find it necessary to consult with the relevant stakeholders and engage in public participation before the publication of the Tax Procedure (Tax Agents) Regulations 2018. The Committee is raising the element of public participation. It is a fundamental violation of the provisions of the Constitution. It goes against the tenets of Constitution and the spirit of Article 10 of the Constitution on national values and principles of governance. It also goes against Article 201 of the Constitution which provides that there shall be openness, public participation and accountability in all aspects of public finance.

The courts and this House have been very categorical that no one is exempted from ensuring that the public is involved in the formulation of law and policy. It is very clear. Any legal officer in any Government department cannot violate Article 10 and Article 201 of the Constitution. It is very disheartening to note that an important matter such as regulations making process is conducted in a very casual manner, without regard to the Constitution times that we are living in. Public participation is so critical that if this House violates it, then that law can be annulled by a competent court. As a leader who is concerned with the welfare and the prosperity of our nation and all of us together, and as many of you agree, I, as the Leader of the Majority Party, find no joy in annulling and supporting the Committee on Delegated Legislation.

I want Hon. Shollei to listen to me. Hon. Kimunya was playing golf in the morning because he was not here when we were dealing with the Finance Bill. Some of us do not play golf. We ride camels. I want Hon. Shollei to listen to the reasons that we are giving. We do not find any joy when this Committee annuls an important statutory instrument merely because there is lack of adherence to the rule of law. What they have said is so important and critical. The element of public participation must be followed by every Government officer. There is seemingly lack of alertness in the regulation making process and the limits and options which we, as a House, have to adhere to the tenets and spirit of the Constitution. I will consult my sister, at an opportune time, who is the Chairperson of the Committee on Delegated Legislation, and the relevant Government agencies to formulate an appropriate mechanism for articulating the common frustration which is experienced by my Office and the Chair and the Committee. We will talk to the Cabinet Secretaries (CSs) individually and Government agencies in future to make sure that the time of the Committee and the House is not wasted. I must be convinced about something in my office. This Committee convinced me not once, twice or three times. I am

sure that during this recess, we will sit with Government departments to make sure that they will never bring statutory instruments that violate the Constitution.

I beg to support.

*(Question put and agreed to)*

### SPECIAL MOTION

APPROVAL OF NOMINEES FOR APPOINTMENT AS  
CHAIRPERSON AND MEMBERS OF THE SALARIES  
AND REMUNERATION COMMISSION

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Chair of the Departmental Committee on Finance and National Planning.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Speaker, I beg to move:

THAT, taking into consideration the findings of the Departmental Committee on Finance and National Planning in their Report on the vetting of the nominees for Approval as Chairperson and Members of the Salaries and Remuneration Commission, laid on the Table of the House on Wednesday, August 29<sup>th</sup> 2018, and pursuant to the provisions of Article 250(2)(b) and Section 7(11) of the Salaries and Remuneration Commission Act, this House:

(a) approves the appointment of the following to the Salaries and Remuneration Commission:

(i) Ms. Lyn Cherop Mengich - Chairperson;

(ii) Dr. Leah Mumbua Munyao - nominated by the Teachers Service

Commission;

(iii) Ms. Halima Abdille Mohammed - nominated by the Parliamentary

Service Commission;

(iv) Mr. John Kennedy Monyoncho - nominated by the Defence Council;

(v) Dr. Amani Yuda Komora - nominated by the umbrella body

representing Employers;

(vi) CPA Sophie Moturi - nominated by a Joint Forum of

professional Bodies;

(vii) Ms. Margaret Sawe - nominated by the Senate on behalf

of the County Governments; and,

(viii) Hon. Dalmas Otieno Onyango - nominated by the Public Service

Commission;

(b) rejects the appointment of Ms. Nelly Peris Ashubwe, a nominee of the umbrella body representing Trade Unions to the Salaries and Remuneration Commission.

*[The Temporary Deputy Speaker (Hon. Christopher Omulele) left the Chair]*

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



**Hon. Members:** Why?

**Hon. Joseph Limo** (Kipkelion East, JP): Alright. We have heard you.

*(Loud consultations)*

**Hon. Speaker:** Order, Members. Take your seats. Hon. Members, it is immaterial how you feel about a recommendation. The reason we are here is to debate. So, allow the Chairman to go through the Motion. Those of you, who have an opinion, because some of you have some small opinion, will contribute. Who says that if you shout, the Motion will not be moved? Allow the Chairman to move the Motion so that you can express yourself. Let him move the Motion.

**Hon. Joseph Limo** (Kipkelion East, JP): Thank you Hon. Speaker, for protecting me against the current situation. As I move, it is important for this House to realize that we are following the law which gives us the opportunity to vet. In vetting, it is either to approve or reject. Therefore, listen and make a decision. Ours is only to recommend. Whatever way the House votes will carry the day. Let us be respectful of this particular process. I remember two weeks ago, I moved another Motion to reject and there were no murmurs. Let us avoid sideshows.

Pursuant to Standing Order No.42, the Speaker of the National Assembly made a Communication on Tuesday, 7<sup>th</sup> August 2018 regarding His Excellency the President's nomination of Ms. Lyn Cherop Mengich as a nominee for appointment to the position of the chairperson. Ms. Halima Abdille Mohammed, Hon. Dalmas Otieno Onyango, Leah Mumbua Munyao, John Kennedy Monyoch, Margaret Sawe, Nelly Peris Ashubwe, Dr. Amani Yuda Komora and CPA Sophie Moturi as nominees for the appointment for the position of the members of the Salaries and Remuneration Commission (SRC).

The Speaker referred the notification for nomination of the chairperson and members of the SRC to the Departmental Committee on Finance and National Planning to undertake the necessary approval hearings. The Clerk of the National Assembly requested for memoranda from the public on the suitability or otherwise of the nominees and, by close of deadline for submission, three memoranda had been submitted. Two of them were in support of Ms. Halima Abdille Mohammed and one was against the nomination of Nelly Peris Achubwe.

On Wednesday, 22<sup>nd</sup> August 2018 and Thursday, 23<sup>rd</sup> August 2018, the Committee undertook the approval hearings for the nominees. The Committee, in compliance with the constitutional and other legal requirements and established procedures of vetting, ensured that the approval hearing meetings were open to the public and covered by the media. The nominees were interviewed based on their academic credentials, relevant experience, knowledge of sector issues and leadership and integrity. Based on their performance exercise during the vetting exercise, the Committee found the nominees had various knowledge and qualifications required for the appointment for those positions.

Pursuant to provisions of Section 7 of the Public Appointments (Parliamentary Approval) Act, the Committee considered the nominees' suitability by considering the procedure used to arrive at the nomination, any constitutional and statutory requirements relating to the office in question and the suitability of the nominees for appointment proposed, having regard to whether the nominees' abilities, experience and qualities meet the needs of the body for which those particular nominations were made. In this particular approval, we considered the requirements by the Salaries and Remuneration Commission Act, particularly Section 5 which specifies qualifications for appointment. And subsequently, we also considered the provisions of Public Appointments (Parliamentary Approval) Act which in Section 7, clearly states the issues to be taken into account in the consideration of the nominees. The issue for consideration by the relevant House of Parliament in relation to any nomination shall be:

- a. The procedure used to arrive at the nominee.
- b. Any constitutional or statutory requirements relating to the office in question.
- c. The suitability of the nominee for the appointment proposed, having regard to the nominee's abilities, experience and qualities. Qualities are observed to be the needs of the body in which the nomination is made.

Having considered all those, the following are the observations for each of the nominees:

For the Chairperson, Ms. Lyn Cherop Mengich appeared for vetting before the Committee on Thursday 23<sup>rd</sup> August 2018. The Committee observed that Lyn Mengich, a Kenyan citizen - her qualifications displayed by the certificates thereof - holds a Master's of Science degree in human resource and has studied in various universities. We also observed that she has long experience in human resource management. The nominee is a member of the Institute of Human Resource Management. She has a wealth of experience in executive and management roles.

She is currently the Chief Executive Officer (CEO) of Nuevo Consulting and she was previously in leadership position having been a Human Resource Director of Barclays Bank of Kenya and Kenya Commercial Bank. She has also worked in different positions at Kenya Shell and was a Human Resource Director at Smithkline Beecham. This particular nominee displayed a very clear understanding of the topical issues on human resource. She has never been dismissed from any position and has never been arraigned in any court of law. She appears to have a lot of knowledge, experience and qualification.

The next nominee we considered is Hon. Dalmas Otieno Anyango. Hon. Dalmas Otieno Anyango is a renowned politician in this country. He has occupied several positions, including being a Member of this House in the 11<sup>th</sup> Parliament. He held various positions including being Minister from early 1990, where he was the Minister for Public Service. He is an associate of chartered insurance institute and expert in insurance. He has been deeply engaged in issues around human resource, other than being a politician. Having considered Dalmas Otieno, it was of the considered view of the Committee that he has requisite experience and he has proper qualification for this particular position.

The other nominee is Dr. Leah Mumbua Munyao. Dr. Leah Mumbua Munyao was nominated by the Teachers Service Commission (TSC). She is a Director of Academic Affairs at the Kenya School of Government. Prior to that, she worked in the education sector. This

nominee also displayed a lot of knowledge in the field of human resource and the Committee felt that she meets the qualifications for being a Commissioner in that Commission.

The next nominee is Ms. Abdille Mohammed Halima. She is a young lady who happens to have been a nominated Senator in the 11<sup>th</sup> Parliament. Having served in the Senate, she was an Executive Member of Kenya Women Parliamentary Association (KEWOPA) and held a position as the Kenya Women Senators Association as well as the Kenya Young Parliamentarian Association. Before joining Parliament, this nominee was teaching and she was working at the Arid Lands Development Focus Kenya together with several other positions especially in the Nation Bureau of Statistics. She has also worked as volunteer at the Kenya Red Cross Society. It was noted that other than being a young person, she comes from a minority society from the northern part of Kenya. This nominee displayed her ability to represent the young people in that particular Commission.

The next one is Mr. John Kennedy Monyoncho. He is a nominee of the Defence Council. He has an MBA in Finance from the University of Nairobi and he has a lot of experience ranging from working in different areas, including the current position where he is the Director Research, Compliance, Policy and Planning in the Salaries and Remuneration Commission (SRC). He is currently working with the SRC. He has been a manager in various areas including Nairobi Securities Exchange. He has also worked in the Ministry of Finance and Planning. During the interview, this nominee displayed a lot of capability in terms of understanding the topical issues around the SRC.

The next nominee is Margaret Sawe. She was nominated by the Senate on behalf of the county governments. She holds a Master's Degree in Business Administration in Strategic Management. Prior to this particular appointment, she was a County Executive Committee Member in the County Government of Uasin Gishu. She has a lot of experience in human resource ranging from General Motors, Caltex and Sian Flora. She displayed a lot of knowledge in human resource management. She looks very competent in terms of holding a position at the SRC.

The next nominee is Dr. Amani Yuda Komora. I am very sure that Members remember the name of Yuda Komora. He holds a PhD in human Resource Management and a Master's degree in Human resource Management from Jomo Kenyatta University of Science and Technology together with several other qualifications attained before then. He is a full member of the Institute of Human Resource Management. Currently, he is the General Manager in Human Resource and Administration at the Kenya Ports Authority. Dr. Amani has a good experience. During the vetting process, the nominee displayed a lot of knowledge in the human resource field. It was, therefore, a considered opinion of the members of our Committee that he has all the requisite qualification to serve in that Commission.

The next one is CPA Sophie Moturi. She has a Master's degree in Banking and Finance and is a member of the Institute of Certified Public Accountants (ICPAK) having qualified. She has experience in various fields, especially on finance issues. During the interview, she displayed a lot of knowledge in finance. Therefore, it was the considered opinion of the Committee that the nominee is going to be useful at the SRC in terms of finance matters.

The last one is Nelly Peris Ashubwe, the nominee by the umbrella body representing trade unions. She has educational qualifications as follows: First, she qualified as a teacher having got a Bachelor's degree in Education. Later she studied law at the University of Nairobi.

She is currently a managing partner at Eshiwani, Ashubwe and Company Advocates. She has had teaching experience in various schools, including Riara Schools, Consolata School, Kakamega High School, prior to her being an advocate. Thereafter, she left teaching and joined legal practice.

During the interview, there was an objection on this particular nominee, which emanated from the Trade Unions Congress of Kenya, a body representing several unions other than the ones represented by COTU-K. The requirement is that the nomination should come from an umbrella body of trade unions. The law recognizes two bodies which represent workers as umbrella bodies. The President had the liberty to pick from any body. Therefore, the issue in dispute is normal. During the interview, there was a concerted effort by the same bodies. Other than presenting memoranda, they appeared before the Committee. As a rule, we could not allow them to oppose the nominee because already, we had their memoranda with us, which were sufficient for us to decide.

In line with the Public Appointments (Parliamentary Approval) Act, we are required to consider the nominees in terms of abilities, experience and qualities. I wish this House could listen. For all these other nominees, we considered even qualities. When we were interviewing this nominee, she displayed a lot of qualities which did not convince the committee that she was going to be a team player. She did not display negotiation skills.

*(Loud consultations)*

While appearing before the Committee, the nominee presented herself in a manner that gave the impression that she does not have diplomacy and negotiation skills required for the position she had been nominated to. When you present yourself to a vetting committee and your language displays some arrogance, you cannot qualify. In the 11th Parliament, we are aware...

*(Loud consultations)*

**Hon. Speaker:** Order Members. Order Members. Let the Chairman explain.

*(Loud consultations)*

**Hon. Joseph Limo** (Kipkelion East, JP): Alright! I understand what you are saying but at the end of the day....

**Hon. Speaker:** Order, Members. Hon. Junet is on a point of order.

**Hon. Junet Nuh** (Suna East, ODM): Thank you, Hon. Speaker. I stand on a point of order but not to interrupt the Chair. Is he in order to tell the House that the nominee did not have negotiation skills? When you put into consideration whether one of the qualifications was to have negotiation skills, were they negotiating something outside the committee?

(Laughter)

**Hon. Speaker:** Hon. Junet, the Chairman might not have intended that they were negotiating something, but he might have meant something else. Maybe, the Chairman can explain what those negotiations were about.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Speaker, my brother Junet is a politician just like me. Therefore, I can read his mind about negotiations. But that is not the direction we are taking. That negotiation is not applicable here. You can leave it for another forum. On this one, the decision of the Committee is guided by the provisions of Section 7 of the Public Appointments (Parliamentary Approval) Act where one of the issues to be considered is the nominee's attributes *vis-à-vis* the requirements. This is a serious body. You remember very well that during the 11th Parliament, we had issues with SRC. If during the interview, the nominee herself was arrogant to the Committee in answering questions, what else can you do when asked to give the qualities of the nominee?

Are we saying that this House has turned into a forum where it always rubber stamps and we do not need to go to the details of the nominee? Are we saying that this House is only supposed to call the nominees, sit there, rubberstamp and say: "Because you have come before us, even if you are arrogant, we are okay with it because you come from this place or the other?" This House must stamp its authority. If you are in a committee where you do not have the capability of measuring qualities of a leader, then you are in the wrong House. This House must have the capability to measure the qualities, abilities and qualifications of a leader. My work here is to present the observations of the committee. As to whether you will approve or not, depends on us as a House. Our duty as a Committee is to present the Report, which we have done.

Members must appreciate that SRC requires somebody with negotiation skills as one will be expected to engage regularly with stakeholders. Diplomacy skills cannot be gained through the backdoor. This House must be protected. We cannot allow this House to be one of bashing. When we were presenting to this House the nominee by the name Dr. Chumo, nobody was making noise. We cannot operate like this.

**Hon. Speaker:** Chair, do not argue with the views that may be coming from outside. Just present your report. Hon. Chairman, we have said that you are to follow the law and go into the depth of every nominee from the date of birth, whether they went to school or not. Proceed. Maybe arrogance was not part of the considerations.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Speaker, I conclude as follows: Our Committee concluded that this House approves the appointment of the following to the Salaries and Remuneration Commission (SRC):

- (i) Ms. Lyn Cherop Mengich - Chairperson
- (ii) Dr. Leah Mumbua Munyao - nominated by the Teachers Service Commission
- (iii) Ms. Halima Abdille Mohammed - nominated by the Parliamentary Service Commission

- (iv) Mr. John Kennedy Monyoncho - nominated by the Defence Council;
  - (v) Dr. Amani Yuda Komora - nominated by the umbrella body representing employers
  - (vi) CPA Sophie Moturi - nominated by a Joint Forum of Professional Bodies
  - (vii) Ms. Margaret Sawe - nominated by the Senate on behalf of the county governments;
- and,
- (viii) Hon. Dalmas Otieno Onyango - nominated by the Public Service Commission.
- b) Rejects the appointment of Ms. Nelly Peris Ashubwe, a nominee of the umbrella body representing trade unions to the Salaries & Remuneration Commission.

*(Loud consultations)*

Thank you Hon. Speaker and I call upon the Deputy Chairperson, Hon. Ndirangu, to second.

**Hon. Speaker:** Let us have Hon. Waihenya Ndiragu.

**Hon. Isaac Ndirangu** (Roysambu, JP): Thank you, Hon. Speaker. I thank my Chair for ably moving this Motion and I second him.

As all Members are aware, the SRC is the body established by the Constitution under Article 230 to determine salaries and remuneration of Public Service in the county governments and the national Government. As most of the Members know, we have 13 members in this Commission as per the law. We have the Chair and Commissioners seconded from various commissions who we have been given to vet. They are 12 in total including from the Federation of Kenya Employers (FKE), Trade Unions, the Public Service Commission (PSC), Parliamentary Service Commission (PSC), Teachers Service Commission (TSC), National Police Service Commission (NPSC), the Defence Council and one person selected by the Senate on behalf of the county governments.

Hon. Speaker, among the nominees, we had six gracious ladies and three men of diverse backgrounds. I am satisfied that after interrogating and interviewing them, we concluded that they have the capacity to serve.

All of them, in summary, are experts in human resource management. Others are trainers, mentors and role models. Among them, we have two lawmakers, a former MP and Minister, Dalmas Otieno, who is also a former ambassador and Hon. Halima, a former Member of the Senate. We also have finance experts, HR experts, governance experts, quality assurance experts and academicians, administrators and personnel development experts.

In the name of John Kennedy, we have a statistician and a mathematician who has been working in Government for over 20 years in different capacities.

We also have negotiators among them and peace makers. Others are experts in demography. So, it is our pleasure to present to this House our findings and recommendations to appoint the following:

- (i) Ms. Lyn Cherop Mengich - Chairperson
- (ii) Dr. Leah Mumbua Munyao - nominated by the Teachers Service Commission
- (iii) Ms. Halima Abdille Mohammed - nominated by the Parliamentary

## Service Commission

(iv) Mr. John Kennedy Monyoncho - nominated by the Defence Council

(v) Dr. Amani Yuda Komora – an expert in human resources and handles the Docks Workers Union (DWU)

(vi) CPA Sophie Moturi - nominated by a Joint forum of Professional Bodies

(vii) Ms. Margaret Sawe - nominated by the Senate on behalf of the County Governments; and,

(viii) Hon. Dalmas Otieno Onyango - nominated by the Public Service Commission.

(b) We rejected the appointment of Ms. Nelly Peris Ashubwe, a nominee of the umbrella body representing trade unions to the Salaries & Remuneration Commission.

*(Loud consultations)*

In conclusion, I plead with this House to let the committees do their work. Otherwise, it will be in vain for committees to make resolutions. You know Members; you will have the final say. So, kindly, take our proposals and deliberate on them.

With those few remarks, I beg to second.

**Hon. Speaker:** Order Members. This Member who is so frantic, what are you doing? Hon. Momanyi, you cannot walk when I am on my feet. Remain upstanding. You are just laughing. Hon. Momanyi, this is a House.

*(Question proposed)*

Hon. Members, my work was to propose the Question in the form of the Motion as laid. I see Hon. Oundo wants to raise an issue.

**Hon. Wilberforce Oundo** (Funyula, ODM): Hon. Speaker, thank you for giving me the opportunity. You have always ruled, time and again, that we can raise the issue of constitutionality at any given time during any debate. The Constitution contemplates that anybody appointed or proposed to be appointed to any position in public service must meet the qualifications set out in an Act of Parliament, Constitution or any other law or regulations in force. The Salaries and Remuneration Commission (SRC) Act No. 10 of 2011, under Section 5, is categorically clear on the qualification of somebody to be appointed as a chairperson and as a member. With your indulgence, I wish to read that particular section that talk about a member:

“A person shall be qualified for appointment as a member if the person-

- (a) holds a degree from a university recognised in Kenya;
- (b) has knowledge and, at least, ten years’ experience in matter relating either-
  - (i) public management;
  - (ii) finance and administration;
  - (iii) human resource management;
  - (iv) economics;
  - (v) labour laws;
- (c) has knowledge of labour market trends in Kenya as relates to income in the public and private sector; and,

(d) meets the requirements of Chapter Six of the Constitution.”

Out of the nominees who have been proposed for appointment, one does not meet the requirements of Section 5 of the respective Act. So, the question is: Are we being forced to approve a matter that is unconstitutional? I am talking about the third nominee said to be nominated by the Parliamentary Service Commission, one Halima Abdille Mohammed. If you look at the Committee Report on Page 29 all the way to Page 32, it is very clear. Again, with your indulgence, I want to read:

“Personal background

Senator Halima Abdille Mohammed is a Kenyan citizen of Identity Card No.... and was born in Wajir in 1988.”

Hon. Speaker, I was a lecturer at the University of Nairobi before I came here. Basic calculation tells me that ordinarily students graduate either at the age of 22 or 23. So, generally, she ought to have graduated from the university in 2011 with a Bachelor’s degree in Education (Science) from Kenyatta University. Basic calculation tells me that 2011 to 2018 does not meet the requirements of 10 years of distinguished career in the relevant field. Are we being taken down a route of illegality or what are we looking at here?

Hon. Speaker, we need your guidance. Thank you.

**Hon. Speaker:** Hon. Makali Mulu, what is it?

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Speaker. I thank the honourable Member who has just spoken. That is a very important issue which I wanted to raise. As a matter of procedure, it will be important for the Committees, when they are presenting their Reports, to indicate the requirements for the people they are interviewing. This is because even procedure is important. In a situation where people are also required to apply for positions, we need to be told as a House whether people applied before they are even shortlisted because there is a procedure. I support what the honourable Member has said. That is because if the law requires that you must have experience of at least 10 years, it is not us who put it there. If you do not meet it, that is automatic disqualification. You should not even be in the list.

Hon. Speaker, we want your guidance on this matter before we proceed.

**Hon. Kuria Kimani** (Molo, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** The Member for Molo, what is your point of order?

**Hon. Kuria Kimani** (Molo, JP): Thank you, Hon. Speaker. The honourable Member raised an issue about the experience of the candidate whose approval is being sought in this House. The youth of this country have a stake not just at voting, but even where decisions are made. You cannot tell us that an honourable Member who has served as a Senator and even as a Vice-Chairperson of the Committee on Education of the Senate has no experience. Unless...

**Hon. Speaker:** Just a minute. Please, I want you to avoid being emotional. Hon. Oundo raised the issue of the law. Let us just address the issue of the law as opposed to generalities. I am being asked to rule on the law and not on age, gender or anything like that. It is on the law. So, address me on the law.

**Hon. Kuria Kimani** (Molo, JP): Thank you, Hon. Speaker. The law says that they need to have 10 years of experience but...

**Hon. Speaker:** Which law?

**Hon. Kuria Kimani** (Molo, JP): Thank you, Hon. Speaker. The Public Appointments Act talked about 10 years of experience but the same...



**Hon. Speaker:** You are wrong. That is not the law. If you do not know, please, avoid displaying your ignorance.

**Hon. Kuria Kimani** (Molo, JP): Hon. Speaker, on the qualifications of appointment of chairperson and members, Section 5 (2) talks about 10 years of experience as the honourable Member has accurately said. However, the same law does not state that the 10 years of experience need to start from the time of graduation from the bachelor's degree. This candidate has worked as a teacher before. Her accumulated years of experience are 13 and not 10. We need to inform this honourable Member that experience does not just start when you complete your bachelor's degree. If you went for your teaching attachment or have worked prior to being a graduate or you have worked as a student, that should amount to experience. That is why this Committee realised that this candidate has accumulated 13 years of experience. I thank you.

**Hon. Speaker:** Hon. Members, I have just been given a copy of the Salaries and Remuneration Commission Act No. 10 of 2011 as revised in 2012. Please, let us just deal with this issue because, Hon. Members, we debate reports here where you say this and this did not follow the law and then you sanction people. You say that this one breached this law, which laws you are the makers. I want you to address me on this issue because it is not a light matter. It is the law. You cannot just stand here and tell me that because you are this height or because this is... That is not the issue. When the law was made, it never looked at the issue of height, size or volume. So, please, let us just deal with the law. I have just been given a copy of this Act and I think it is only fair that we address it.

Let us have Hon. John Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Hon. Speaker, first of all, let me agree with Hon. Oundo that matters of constitutionality and following law can be raised at any time because, as a House, we need to be sure that when we make a resolution, it is a resolution that is informed by the law. That is why, sometimes, we want to beseech committees. The reason why we delegate some of these responsibilities to committees is because they have more time to actually address themselves to these fundamental issues.

One of the qualifications for appointment states that the nominee should have knowledge and, at least, 10 years' experience in matters relating to public management, finance, human resource, economics or labour laws. Going forward as a House, we may need to be very clear when we legislate on what constitutes "knowledge and at least 10 years' experience". What constitutes experience? Is it post-qualification experience or experience at a lower level? When I was a student of accounting at the University of Nairobi, we used to be employed by Deloitte and Touché and PricewaterhouseCoopers (PwC) and worked during recess. Does that constitute experience or do you have to wait until you qualify?

That takes me to the next question. There are Kenyans who nowadays go to school at a very advanced age. This is probably after you left school at Form IV or high school and then later on after working for some time, you go back to school and get your degree. Will your experience be calculated from the day you get your degree qualification or not? This lady could have demonstrated that when she was still a student, she got attachments somewhere and worked for some time. That is why I said that the Committee should have done much better by clearly telling us whether this lady met the prescribed qualifications in the Act.

It is a very grey area. I do not know how we will address it. In my view, qualification does not mean that you have to wait until you get your degree to gain experience. You can gain experience. Some people get involved in charitable organizations. My daughter has a lot of

engagement on matters of marketing and youth issues. She went to Ghana just last year. She just finished her degree a few weeks ago. In my view, all that experience should be calculated cumulatively. We do not have to wait for her to be given that degree certificate to start gaining experience.

**Hon. Speaker:** Hon. Wamalwa, you will speak to it.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Speaker. The matter that the Member has raised is very critical. We have both been lecturers in the same university.

I have done some calculations. Mrs. Halima was born in 1988. She is 30 years old. She cleared school at the age of 18. She started her employment. I have looked at that Act keenly and there is nowhere in the Act where it indicates that you must have 10 years post-graduate experience after you finish university. We should not confuse the issue at hand. There are many people who have started jobs and then later on go and acquire a degree. You can go up to the masters and PhD level. With regard to the issue of 10 years' experience, the nominee qualifies. It is not indicated anywhere in the Act that 10 years must be post-graduation.

As far as this matter is concerned, the nominee qualifies. There is nowhere it is indicated that you must have graduated to gain the 10 years' experience. The nominee is currently pursuing a master's degree. This nominee has been a sitting Senator of this Parliament where she was involved in making the laws of this country. I humbly request you to dismiss this request because there is nowhere it has been specified that for you to gain the 10 years' experience; you must have acquired a degree so that you qualify for that position.

I support the Motion.

**Hon. Speaker:** Hon. Members, there is no Question to be put. Fortunately, you can all speak but there is no Question. At the end of the day, it will require my decision. You should be addressing only me. There will be no Question to be put on this. It is good to hear what Members are saying.

Let us have the Member for Emuhaya.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Speaker. I am also looking at that particular law which shows the five qualifications for appointment of the Chairperson. It talks about knowledge and at least 10 years' experience in matters relating to different fields. The Act goes on to list them. It does not indicate that you start acquiring this experience after getting a degree. There are people who are in school and acquiring a degree even today. Some of them are old and are in this House. If we reduce this experience to the time after you get the degree, we may have lost it completely.

I am currently pursuing a master's degree. When my name comes to this House, I do not want you to rule me out just because I acquired it this year and yet, I have public experience as a teacher and have been involved in many other issues like the trade union. We shall be losing the point. I tend to think this lady qualifies.

**Hon. Speaker:** Let us have Hon. Kimunya.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Speaker. The question that has been raised by Hon. Oundo is weighty. That is why we are in this Parliament. In the 11<sup>th</sup> Parliament, a number of laws were taken to court, challenged and thrown out. We do not want the 12<sup>th</sup> Parliament to follow that trend. That is why we came back. I may have brought this Bill to this House when it was passed and so, I know it. I knew the Salaries and Remuneration Commission (SRC) Act as a Bill and as an Act.

For a person to determine the salaries of Kenyans, it presupposes that, that person understands the labour market, public administration and the financial implications of the decisions the SRC makes. That is why it was not by accident that the specific five disciplines were contained in this Act. It was not any other knowledge. You must have knowledge in public management and finance administration because of the financial implications of the decisions you make as the SRC. You must have knowledge in human resource management, economics and labour laws or, at least, have one of them so that the combination of five people having knowledge in those disciplines creates an SRC that has all the knowledge required to determine the salaries and financial implications of those salaries.

It goes further to state in part (c) that the person should have knowledge of labour market trends as it relates to income in the public and private sector. Apart from just having knowledge in those five disciplines and 10 years' experience in any of those five, you must also have, in addition, knowledge of labour market trends in Kenya as relates to income in the public and private sector.

I know people can work at different times. When we were young, we used to pick pyrethrum in our farms. We started working at six years of age before going to school. Is that the relevant experience that is required?

I have looked at the experience of this specific nominee, whose CV you have in the Report. She was a Board of Governors (BOG) teacher in Wajir Girls Secondary School from January to April 2011. She served with the Electoral Commission of Kenya (ECK) as a presiding officer during the Referendum in 2010. She served as a supervisor during the national population census in 2009.

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

**Hon. Amos Kimunya** (Kipipiri, JP): What is out of order? She worked with the ECK as a clerk in December, 2007. She worked with the Kenya Red Cross from April to July 2007. She served as an education project officer from January 2012 to January 2013. She was a nominated Senator, Parliament of Kenya, from 2013 to 2017. There is provision of experience in law. I am trying to find where public management, finance and administration, human resource management, economics and labour laws come in. The most important question is where the candidate gathered knowledge of labour market trends in Kenya because it relates to income in the public and private sector.

We may do things here for convenience or because the nominee is our friend. However, we are bound by the law. Remember that this is a constitutional Commission that is set up pursuant to Article 230 of the Constitution. Therefore, whatever we do here is a constitutional matter. We swore in this House to uphold the Constitution of Kenya and not to do things because of friendships or because we want to be sympathetic. When you make your ruling, I urge you to be guided by whether this particular nominee's experience, which is detailed in this Report, fits with what the law says. If it does not, then we will legislate here, appoint somebody and commit an illegality. Somebody will go to court and challenge the legality of the appointment, and it will be nullified.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Shamalla.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you, Hon. Speaker. I listened keenly to your very profound Communication this afternoon on the joint Report on the alleged importation of illegal and contaminated sugar. In your Communication, you stressed that our

oversight functions elevate us to the status of the High Court. You also said that we must apply the rules of natural justice. I want to add very humbly that we must also apply the law that has been passed and enacted by this very House. We cannot be rubberstamps.

My simple question today is whether all nominees comply with Section 2 of the Salaries and Remuneration Commission (SRC) Act. It is my considered opinion that my colleague, Hon. Kimunya, has put it very clearly. We, as a House, cannot pass laws that will then be challenged in the courts of this country. Given that this is a House of records, you implored us today to act with integrity that borders on infallibility. We swore to uphold the Constitution of Kenya. Hence we must ask ourselves whether these nominees comply with Section 2 of the SRC Act.

**Hon. Speaker:** Hon. Junet.

*(Hon. John Mbadi consulted the Hon. Speaker)*

**Hon. Junet Nuh** (Suna East, ODM): Hon. Speaker, I want to add my voice to this Motion. I wish the Leader of the Minority Party can give me a minute, so that you can listen to me. Hon. Oundo has raised a very important matter of law. However, the law does not say that you must have 10 years' experience from a certain period. It only says that you must have 10 years' experience as a person.

The argument that has been propelled here by Hon. Kimunya is more subjective than objective. I want every nominee to be subjected to that kind of scrutiny. There are nominees in that list who have no qualifications at all. They are there. Let us not be subjective but objective. The law says that you must have 10 years' experience. This nominee has five years' experience in public service. Which other public service can one do other than being a Senator or a Member of Parliament. In your own wisdom, I want you to give a ruling that this lady is qualified and that she has 10 years' experience and all the other qualifications.

**Hon. Speaker:** Hon. Shollei.

**Hon. (Ms.) Gladys Boss Shollei** (Uasin Gishu (CWR), JP): Thank you, Hon. Speaker. I stand on a point of information to Hon. Junet and Hon. Chris Wamalwa. They are reading the law in part. Let us look at Section 2 of the SRC Act No.10 of 2011. It clearly says that a person shall be qualified for appointment as a member of SRC if he/she holds a degree from a recognised university in Kenya. The nominee we are talking about has a degree. There is no dispute on that.

Secondly, the person must have knowledge and at least 10 years' experience in the fields which have been itemised. The experience which Hon. Kimunya is talking about, of picking pyrethrum, is not relevant. We are talking about relevant experience in finance and administration, public management, economics, human resource management or labour laws. Does the nominee have 10 years' experience in those specified fields? There is no dispute on the requirements of Chapter Six of the Constitution. The nominee meets those requirements because we have seen the documentation. Do not forget requirement (d), which says that the nominee must have had a distinguished career in her field. So, it is not just any career. You must have a distinguished career. There is a very big difference between a distinguished career and just a career.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Maanzo.

**Hon. Daniel Maanzo** (Makueni, WDM-K): Thank you, Hon. Speaker. On top of the arguments which have been presented here, the Constitution of Kenya is the supreme law of this land. It supersedes these Acts.

Article 55 of the Constitution is on youth. It states that the State shall take measures, including affirmative action programmes, to ensure that the youth:

- (a) Access relevant education and training;
- (b) Have opportunities to associate, be represented and participate in political, social, economic and other spheres of life;
- (c) Access employment;
- (d) Are protected from harmful cultural practices and exploitation.

The Constitution identifies that the youths can acquire cultural, social, political and economic experiences while going through relevant education. My argument in this matter is that we must look in totality whether there is evidence. When this nominee was interviewed, was she interviewed in relation to these fields? Does she have experience?

The Chairman of the Committee should enlighten us on that. There could be information which may not necessarily appear in the Report. From the interview of the candidate, the Chair of the Committee should tell us whether she had those experiences.

Finally, I started working with lawyers when I was a student of law. Trust me; I acquired a lot of experience even before I became a qualified lawyer.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Nyikal, finally. I will make a decision. The matter is clear.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Speaker, we are called upon to make a decision based on the facts that have been made available. The facts of the law are clear. The nominee needs ten years of experience in relevant fields.

When somebody applies for a job, he or she knows its requirements. He or she knows that they require ten years of experience. Therefore, they will make maximum effort to put that in their CVs. The CV as presented to us goes up to 2009. There is nobody who is going to look for a job that will leave out some experience that will help them acquire that job. Whatever we feel, we can only go by what is presented to us. I am not a lawyer, but that is what lawyers always say. So, if we are carried by any other feelings, we will let the country down. Let us go with what is here. The experience that people are talking about is here. Thank you.

**Hon. Speaker:** Finally, Hon. Chege Wanjiru.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Thank you, Hon. Speaker. I have been listening to your wise counsel this afternoon and I am waiting to hear more from you. This is a House that is supposed to uphold law and what the law says is very clear, unless the House wants to turn a blind eye on it. The law is very clear on the experience and other qualifications that are required.

I was very disappointed when I heard the reasons given for a nominee rejected by the Committee, while they did not even notice that one nominee whom they passed is not qualified. Actually, the nominee the Committee purports to drop is qualified for the job we are debating. I hope the House, apart from being gender sensitive, which is very good; it is not part of the

requirement. If it was, and I heard Hon. Maanzo referring to the Constitution, it would have been stated here very clearly, but it is not.

One of my seniors that I respect said that once you go for a job interview, you present your CV with all your credentials. We have what was presented and we cannot purport to imagine other jobs that the nominee may have done. The experience the nominee has is from the year 2009. I hope we will uphold the integrity of this House and decide accordingly.

I appreciate, Hon. Speaker, the time you have given me. Thank you very much.

**Hon. Speaker:** Hon. Members, I have this to say: The requirements for appointment to various bodies are under Article 230 of the Constitution are quite clear. The particular nominee who Hon. Oundo raised issues about, indeed, is a nominee of the Parliamentary Service Commission (PSC). But remember the PSC is not Parliament. It is a commission like other constitutional commissions in Chapter 15 of the Constitution. It is important that I make that clear so that, if PSC makes a mistake, it cannot bind Parliament. Therefore, we should not feel shy in discussing this matter because it came from the PSC.

Hon. Nyikal has laid it bare. I have heard several Members saying that the nominee has experience. Experience is one of those things stated in the Report. The nominee has experience from 2009 to 2018. For those who are very good in mathematics or very poor, could make it 19 years of experience, I suppose.

**Hon. Member:** Nine years.

**Hon. Speaker:** I am saying it deliberately so that we see whether we are on the same page. Does it make it 19 years of experience or nine years experience?

**Hon. Members:** Nine years.

**Hon. Speaker:** Anyhow, Hon. Members, I do not need to read to you the requirements of Section 5 of the Salaries and Remuneration Commission Act, but it also says in Section 6 (2) that, a person shall not be qualified for nomination under Article 230 (2) (d) or (e) of the Constitution unless such person holds the qualifications specified in Section 5 (2). Therefore, it is very clear, unless the Chairman of the Committee has other information that he has not put in the Report. I would want to get it from the Chairman, what the experience of the nominee is calculating from the materials presented to him of this particular nominee.

Hon. Members, sometimes you have to make very hard decisions. We have just said that if the person does not possess the qualifications, you are setting the person up for embarrassment because somebody will go and challenge the approval of the nominee in a court of law. This House will be left with an egg on its face. The issue was raised by one of you. It is not about emotions. On various occasions, I have stood in defence of this institution and Members. I have to do it also after due consideration of every matter that may come under attack or debate. So, the House must make a decision given the information I have in the Report, which shows that this candidate has shown that she worked in some semi-arid areas and as a clerk of the Independent Electoral and Boundaries Commission between 2009 and 2018. Does she meet the threshold which is here? Section 6 (2) of the Salaries and Remuneration Commission says: "A person shall

not be.” It is couched in mandatory terms: “Shall not be qualified.” Are we being fair to ourselves in the face of the public? What will the public think of this House?

The House has the function of oversight over State organs and State officers. One of the issues in the reports you bring here every now and then, are about a person violating a certain law, for example, violation of the provisions of the Public Procurement and Assets Disposal Act by not doing this or that. How will this House appear in violating the provisions of Section 6 (2)? Do we then have the moral authority to oversee any person and say a person has not obeyed a law? If as a House, you do not obey the laws passed by the same House; shall we have the moral authority to say that somebody is not following the law? We bring reports here recommending somebody should be punished for disobeying a law. Do we want to assume we are the people who are not obliged to follow any law, yet we are the ones who make those laws?

Having looked at the Report, I want to give the Chairman an opportunity to tell us whether there is further experience that goes beyond 2009. I want this to be on record. If it does not go beyond, then I will make a decision right here on how to proceed. Hon. Limo.

**Hon. Joseph Limo** (Kipkelion East, JP): Thank you, Hon. Speaker. In her CV, she had indicated that she had an opportunity to work at the Red Cross in 2007. That is the time we can count.

**Hon. Speaker:** It is on what page in the Report? Mention the page, I have the Report.

*(Loud consultations)*

Hon. Limo, please, we want to make progress. You have made some recommendation even on rejection of another nominee. We want to make progress.

**Hon. Joseph Limo** (Kipkelion East, JP): I can actually confirm beyond doubt that the Report that did not pick that particular item from her CV. The Report only picks that while at the university, she was a student leader, but the CV specified that she worked at the Red Cross. If that CV is required, it is within the precinct of Parliament.

**Hon. Speaker:** Hon. Members, you know I do not shy away from making decisions; I cannot shy away. When you start telling us that somebody has experience of being a student leader... And we are talking about the laws passed by Parliament requiring experience and you say somebody was a student leader, is that knowledge in any of these areas - public administration, finance, economic and human resource?

**Hon. Adan Keynan** (Eldas, JP): On a point of order, Hon. Speaker!

**Hon. Speaker:** There is no point of order! Hon. Keynan, you are a Commissioner. This matter came from the Parliamentary Service Commission (PSC). These issues would not have been here, if the Commission would have done its due diligence. In fact, I must in a way absolve the House from having to deal with this matter because, had the Commission done its due diligence, we would not have been in this kind of situation. The House has had to deal with matters which should not have been here. Then the Committee is telling us about being a student leader.

Hon. Members, I am the Chair of the PSC, but I am not the Commission.

*(Laughter)*

Are we saying that some Members will need evening classes for some of these simple things? I am only Chair of the Commission, but not the Commission. Just like Hon. Alfred Keter says rightly, he is a Member of Parliament, but he is not Parliament.

*(Laughter)*

If a body makes a mistake, it must own it. This mistake has been brought to the House by the PSC. Happily Hon. Angwenyi and Hon. Gladys Wanga are not in the Commission. Those who are in the Commission know themselves. They are the ones who have brought the House in this kind of situation. I want to thank Hon. Oundo for raising it. It is not a light matter because we do not want to send a Kenyan to failure. If the law has not been followed, another person will just walk to the courts and the Commission will be told to do its due diligence, bring qualified people and the House will deal with them on the basis that they are qualified.

I, therefore, make the following order. Having looked at the law in agreement with what has been said by several Members, I rule that the nominee, Ms. Halima Abdille Mohammed, from the PSC, is not qualified to be considered by the House as a nominee to the SRC and, therefore, no decision on her will be made by the House. It is accordingly ordered.

Hon. Members, I had received a notice of a Motion of an intended amendment by Hon. Alfred Keter, who was proposing to move that the Motion to be amended by deleting the word “reject” appearing in paragraph (b) and substituting therefore with the word “approve”.

Let me give you direction on how this is done. I appreciate the intention, but the procedure will not be correct. The procedure to be followed should be that, if the House agrees with you, Hon. Keter, it should reject by resolution paragraph (b). Thereafter, any Member or you should rise in your place to claim that the House replaces it with a positive resolution. It amounts to the same thing, but that is the procedure in terms of rules. I understand your intention, but if you proceed like that, you will be in breach of the rules of the House.

Therefore, we can debate the Report as it is, with the exception of nominee No.3.

Hon. Wamalwa.

**Hon. Chris Wamalwa** (Kiminini, Ford- K): Thank you, Hon. Speaker. I rise to support this Report partially. The SRC is a very important Commission. I have gone through the list of these nominees and I want to mention the nominee who is to be the Chair. Ms. Lyn Mengich qualifies. I have had personal experience with her. I met her in my early days and when it comes to matters of human resource, this lady has the qualifications and I have no doubt, she will be the right chair when it comes to the SRC. The core function of SRC is a human resource function. It is, indeed, important that the people we are going to pass on the Floor of the House must, at least, have expertise in human resource. I humbly request colleagues that when it comes to the chair, I want to assure you that Lyn Mengich qualifies to be the chairperson.

I want to talk briefly about Dalmas Otieno. He has been with us in this Parliament. In terms of public service, he has good experience. I have no doubt that he will make a very good commissioner.

I also want to talk briefly about Nelly Peris Ashubwe. The Committee on Finance and National Planning has let us down badly. This lady really qualifies to be an SRC commissioner. I want to give the following reasons. In parliamentary practice, if a committee has brought a report on the Floor of the House, we must look at its adoption at the committee. When you look at the



last page of the Report, out of 18 members, only nine have signed the adoption of this Report. In terms of percentage, it is only about 50 per cent. This is to tell you that this Committee has done a shoddy job. We do not even know whether people have not signed because they were dissenting.

When you look at the Executive Summary, the Committee confirms that a memorandum was submitted, but not in line with the SRC Act. This is because an affidavit, as far as we know, must be on oath. So, it was sent back. Therefore, you cannot come and claim that the lady by the name Nelly Peris Ashubwe, had a memorandum presented against her, and yet the memorandum was rejected. This lady is a lawyer. We want a legal mind in this commission. Issues to do with labour laws only a lawyer will be better at interpretation. We are very disappointed with this Committee. It is high time they took their work seriously.

**Hon. Joseph Limo** (Kipkelion East, JP): On a point of order, Hon. Speaker.

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

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Speaker, is the Member in order to mislead the House that the Committee did a shoddy job by having only nine members approve the Report while, in my knowledge, the report has been signed by 10 members which is above the 50 per cent required? He should not mislead the House. Can he speak on the substance and not mislead the House?

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): Thank you, Hon. Speaker. This is a House of records. Normally, you look at the adoption page. I said when you minus the Chairperson, the other members are nine. Common sense dictates when you add nine and the chairman, it is 10 members. That is what I said. Minus the Chairperson, there are only nine members who signed the adoption of the Report.

I want to demonstrate how this Report is shady. The Executive Summary explains the entire Report in summary. This is what the Chair says in the second paragraph:

“The Clerk of the National Assembly requested for memoranda from the public on suitability or otherwise of the nominees. By close of the deadline of submission, three memoranda had been submitted: Two on Halima Abdille Mohammed and one against Peris Ashubwe. However, the memoranda had not been written in the form of affidavits.

That means the memoranda had not been sworn on oath. In line with the Public Appointments (Parliamentary Approval) Act, if a memorandum has been submitted and is not on oath, obviously it is rejected. It is not admissible. This Committee has gone to the extent of using this memorandum to deny a chance to this highly qualified lady from western by the name Nelly Peris Ashubwe. I have demonstrated why this Committee was not serious with its business. They have gone to the extent of saying that when the lady appeared before them, she lacked diplomacy and public relations skills. Did you have a *diplomacy-meter* that you were using to measure diplomacy skills? When you look at the Act, there is nowhere in terms of criteria where it says that the nominee must be vetted based on diplomacy or negotiation skills. The form is very clear.

You are supposed to look at academic qualifications and integrity. The Committee was in a fishing expedition, which we are not going to accept.

We want the list to have regional balance. I have not seen another employee who comes from where this lady comes. The Committee did not look at regional balance in approving this list. The lady by the name Nelly Peris Ashubwe is more than qualified in terms of the required 10 years of experience. I want to encourage my friend Hon. Alfred Keter so that we can amend this report not to reject, but to approve this lady. This lady has a Bachelor of Education. She further has a law degree. She is an Advocate of the High Court. You need a lawyer at the SRC to interpret labour laws. It is a big embarrassment and let down. This is the highest time that we must put sense into the Committee. You do not have to reject people because you did not like the way they were smiling. I humbly request colleagues who are here to approve the list. We leave out the one who is not qualified as the Speaker has said and we approve Nelly Peris Ashubwe to bring a legal mind to the Commission. The Commission is very critical; it is going to determine salaries in the entire country.

Hon. Speaker, I do not want to talk too much. I support.

**Hon. Speaker:** Hon. Makali Mulu. Let us try to get some diversity.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Speaker. I want to support this Report. Before I give my comments, I want to declare that I have read this Report thoroughly and so, as I contribute, I will mention what the Report says.

I want to start by congratulating the nominees. Some of them are very qualified and they are going to do a good job. It is important we remind Members where we are coming from. Those of us who were in the 11th Parliament did not have a good experience with the SRC of the time. I want to urge Members, as we pass these names, let us be very objective so that we do not regret later. Please, let us not be subjective in passing these names. We have Hon. Dalmas Otieno. All of us know him. We have read what his CV says. He is very qualified to be in this Commission. I am sure he is going to do a good job. I would urge the House to approve him.

We must thank you, Hon. Speaker, for what you have said about the nominee who is not going to be discussed. We do not have any personal issues with the individuals. We are looking at the Constitution and procedure. I want to refer Members to page 23 of the Report. The nominee by the name Nelly Peris Ashubwe is very qualified. But I want us to read from No. 11 to 14. No.11 says:

The foregoing notwithstanding, and without any prejudice therefore, Ms. Nelly Peris Ashubwe was not validly nominated as her nomination was not subjected to competitive recruitment, neither was it conducted in a transparent manner as decreed by Section 6(1) and 7 of the SRC Act; which requires that any such recruitment ought to be conducted in a competitive and transparent manner.

Just below there, it is said that, Ms. Nelly Ashubwe never applied to be nominated and neither was she ever shortlisted as one of the persons who had applied as per the advertisement issued by COTU as evidenced by the list published in the local dailies. It goes on to state that she

has never worked as a public servant; neither as a State officer nor has any trade union background.

Therefore, I neither know this person nor the region she comes from, but in terms of procedure, it is important that the same name still comes to this House.

*(Loud consultations)*

This is the Committee's Report and based on it, my position is that this person is qualified, but the procedure was not followed. So, I support the Report of the Committee when they say that, for now, we can, as a House, decline that appointment, but she can reapply and follow the procedure.

On that note, I support the Report. Thank you.

**Hon. Speaker:** Well, Hon. Members. Recently, I have had some of you led by Hon. Junet Mohammed, appealing to me to strictly apply Standing Orders. I want to tell you, I have considered that appeal and request. I am almost getting tempted to begin strictly applying it. This is because Members who are deemed to have experience and knowledge of Standing Orders are the ones who constantly breach the rules. Please, even if you think a Member is wrong, you will have an opportunity to controvert what they are saying. There is nothing out of order.

I want to urge that when you are rising on a point of order, it must be something that is pointing to a breach of the order of the House or the rules. If a Member is saying something which you vehemently disagree with, please, just bear with it. I know you could be burning in your systems to controvert, but just bear with the situation. That is the way the debating Chamber is.

Therefore, Hon. Wanga, you could have very serious issues about what Hon. Makali Mulu is saying, but allow him to be heard in silence. It would be better when he later hears you and gets embarrassed that he may have been reading the wrong things so that tomorrow, he may not do it. Not that I know Hon. Makali to make such mistakes; but you will be at liberty to correct him.

Hon. Members, I want to give the Majority Whip to move a Procedural Motion.

## PROCEDURAL MOTION

### EXTENSION OF SITTING TIME

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Speaker, I beg to move:

THAT, pursuant to the provisions of Standing Order No. 30(3) (a), this House resolves to extend its Sitting today Thursday, 30<sup>th</sup> August 2018 until the conclusion of business appearing as Order No.11.

Hon. Speaker, I have sat here and have been checking the mood in this House. I had imagined as a Whip that we will comfortably conclude this matter within the required time. Members should know that if we do not make a decision either way, the Commission stands appointed. As a House, it is important that we make our decision in good time so that it is recorded. Therefore, I request Members to support this Procedural Motion so that we can conclude on this matter. Since we are discussing a Report from the Finance Committee, I move

and request the Chair of the Departmental Committee on Finance and National Planning, Hon. Limo, to second.

**Hon. Joseph Limo** (Kipkelion East, JP): Thank you, Hon. Speaker. This is a very important business of the House and, therefore, without much ado, I second.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. Speaker:** Hon. Members, now we can proceed. Let us have Hon. Wang.

**Hon. (Ms.) Gladys Wang** (Homa Bay CWR, ODM): Thank you, Hon. Speaker, for giving me this opportunity. The SRC is a very important Commission. In fact, it affects the lives of many workers in this country, including MPs because of the mandate that the Constitution gives it in Article 230.

First, I would like to start by noting that the sections that were being referred to by Hon. Makali Muli in his presentation were sections listed in a memorandum or a petition that was brought by people who were opposing this nominee. It is not part of the Report, but just quoting the petition that people brought. So, there is no matter necessarily of fact that was stated there or verified.

Hon. Speaker, going over that, I would like to state that I support the nomination of many of these nominees, particularly Hon. Dalmas Otieno, who has immense experience in public service. There is an array of experience that these members bring.

Ms. Lyn Cherop Mengich who is the Chairperson and we are happy that she is a woman, has an MSc in Human Resource. I mentioned Hon. Dalmas Otieno. Dr. Leah Mumbua Munyao comes with a PhD in Education. Mr. John Kennedy Monyoncho has an MBA in Finance. We have competency in education and accountancy. The only profession that is mentioned in the Act and is missing is law.

That is why I want to disagree vehemently with the Committee in declining to approve one Ms. Ashubwe who has been nominated by the trade unions. I find the declining of this nominee's nomination quite baseless. The Committee says that she is a Kenya citizen, holds a bachelors degree in law and another one in education. She meets requirements of Chapter Six. She has never been charged in a court of law or never been dismissed from office for contravention of any part of the law, but then the Committee goes ahead to state that they noted that the nominee did not exhibit capacity. What capacity are we talking about? Capacity to do what!

Hon Speaker, you have spoken very strongly about the law this afternoon. It would have been nice for the Committee to tell us what capacity they were looking for. Capacity for this nominee to do what exactly? As far as the law is concerned, she has met every requirement. The law has been read and repeated severally in this House this afternoon. I do not want to repeat, but I would like to state that this nominee is not only the only lawyer in this panel, but the only Luhya as well. We must also look at regional balance. She is the only lawyer and the only Luhya.

Therefore, I strongly propose to this House that we amend this Report and negate the section stating that we should decline to approve and, instead, approve this very qualified woman for appointment to the SRC. Those who worry about this particular nominee not being

“agitative” enough, this nominee has actually been a lawyer for trade unions. She knows about agitating for workers’ rights. Perhaps, she is the only person who has a background of agitating for human rights and trade unionism. This is the nominee to count on in this Commission.

With those many remarks, I support the Report, subject to amending it to approve the nomination Ms. Nelly Ashubwe, for appointment to SRC.

With those many remarks, I support.

**Hon. Speaker:** Hon. John Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. John Mbadi, I am aware that there have been concerns by the general membership that the House has become a House of leadership only.

**Hon. Members:** Yes.

**Hon. Speaker:** But what do we do about Article 108 of the Constitution?

**Hon. John Mbadi** (Suba South, ODM): Hon. Speaker, they just amend Article 108 of the Constitution and the answer shall be found.

Hon. Speaker, thank you for giving me this opportunity to contribute to this Motion. First, I do not want to belabour the point that we have a number of Kenyans among these nominees who actually qualify. I do not want to repeat what my colleagues have said about Dalmas Otieno. We all know who he is. I really do not know many of these nominees, but I am relying on the Report of the Committee. However, on the issue of this lady, Ashubwe, I think that is the point of contention.

I seriously want to fault the Departmental Committee on Finance and National Planning. I want to repeat. The Chair of the Committee is not even listening. It is interesting that we are allowing our Committees not to do a thorough job as we task them to do. I say this because, as Hon. Wanga said, what Hon. Makali Mulu quoted are 14 points about this lady Ashubwe and these 14 points have come from a Petition from one Charles Mukhwana, who is a very good friend of mine. According to the Committee, the Petition was not legitimate. It was invalid. Therefore, how do you reproduce a Petition that you have determined to be invalid and then you make us get confused into thinking that these were the findings of the Committee? That just demonstrates that the Committee did not really exercise caution when drafting this Report.

More fundamentally, when we give opportunity to nominating bodies to do some work, we also have to give them space to do that work and do it thoroughly. The COTU-K did this nomination on behalf of the employees of this country. I respect Hon. Omboko Milemba, who is also leading a very important trade union. But if you asked any Kenyan to tell you the trade union that Kenyans associate with more in terms of representing workers, you will be told it is COTU-K. You may not like Atwoli but once COTU-K has done something, respect it. I think someone somewhere is trying to fight Atwoli through this appointment. It is not our business to be in Parliament to help other people fight their wars with one Francis Atwoli. If you want to fight Atwoli, go and fight him out there. But you cannot scandalise and deny a Kenyan who has qualified to be in a commission, just because you do not like Atwoli.

I cannot agree more with my colleagues who have identified the error in trying to deny this lady an opportunity to be in the SRC. To me, the ground set out by the Committee is very trivial. You cannot talk about negotiation or diplomacy when those were not requirements. We expected this Committee, in approving or denying the approval, to explicitly state according to the law as spelt out in this Act. They should have told us that this lady does not qualify because

of not meeting this requirement, like we have extensively discussed the issue of Halima, although in a form of a point of order.

We were purely discussing the qualifications. When we bring the case of Nelly Ashubwe, now it is the issue of diplomacy and negotiation. I do not want to go the direction of appearance or whatever it is. This House must send a warning to this Committee and any other committee that will play around with the vetting process. The vetting process is very important in a presidential system. We should not take it so casually. In my view, this Committee took this job so casually. That should not be encouraged. Hon. Limo should listen to me. He is actually my junior and a very good friend of mine. So, he should listen to me. Next time we give you a job, please, we expect that job to be done with professionalism and not with favouritism and other considerations external to this Parliament.

I support the Motion, but with variation that, when it comes to voting, we are going to defeat part (b) and bring back that lady to the Commission. Probably, this is the person we need. I was told that the lady is arrogant. I do not know which kind of equipment was used to measure arrogance. Someone told me that when you are intelligent, a lot of times you are regarded to be arrogant because you tell people what they do not want to hear.

Thank you.

**Hon. Speaker:** Hon. Shinali, Member for Ikolomani.

**Hon. Bernard Shinali** (Ikolomani, JP): Thank you, Hon. Speaker. At least, my sitting here has borne fruits at the last minute. I stand here to partially support this Report. We have worked with Hon. Dalmas Otieno in this House, who is also a nominee. Going by the contributions he has made here, and considering the way he has worked in the civil service, he is going to the Commission with a wealth of experience in public management.

I also confirm that I know one Nelly Ashubwe, the lawyer and nominee in this case. She comes from Khwisero, a constituency near to mine. I know her because she is a reputable lawyer. Going by the nominees that we have seen, they have a wealth of experience. What is missing is the experience which is with Mrs. Ashubwe. This is a lady who has been a teacher. She graduated with a bachelor's degree in education. She went ahead and studied law. She has been nominated by the Central Organisation of Trade Unions (COTU), which is an umbrella body for the workers' unions. I want to remind Members that when we had problems in the 11<sup>th</sup> Parliament with the Salaries and Remuneration Commission (SRC), it is only COTU which stood by us and tabulated clearly that international labour laws do not allow for reduction of salaries. That is where she has come from. It is from her advice that COTU came strongly to defend the welfare of this House.

I request that once this amendment is proposed, we pass it to include the name of Nelly Ashubwe on the list.

I support the Motion.

**Hon. Speaker:** Let us have Hon. Junet

**Hon. Junet Nuh** (Suna East, ODM): Hon. Speaker, I want to draw your attention to the fact that debate on the approval of these nominees is going on, but the media is reporting that we have approved those nominees. I am really shocked at how the Kenyan media works. When debate on the Report is going on, they are reporting that we have approved the nominees.

The SRC is a very important commission in this country. You remember what the previous commission did to the last Parliament. If they are approved, these nominees must know that they are not being formed into a commission for the sole purpose of Parliament. They are

being formed to look into the remuneration and salaries of State officers. Members of Parliament are only one part of State officers. They are not the only State officers in this country. You will find that when this commission begins work, you will think that they have been purely formed to only look into the salaries and remuneration of Members of Parliament (MPs). They then end up having big wars with Members of Parliament.

Secondly, I congratulate the nominee from my county, Hon. Dalmas Otieno, EGH. Among the people who have been listed here, he is the most qualified, having served as a Member of Parliament for a long period and having been a Minister of Public Service at one time. Nobody will understand better than him how that commission should function.

Lastly, why is the Committee refusing the nomination of Madam Nelly? This lady was nominated by none other than COTU. The Committee is listening to opinions from backstage unions that we do not understand in this country. COTU has 2.5 million workers as its membership. Which other union can you listen to if you do not speak to COTU? There are only four people we listen to in this country, namely, President Uhuru, his Deputy, the former Prime Minister and Hon. Atwoli. Once Atwoli has nominated someone, you do not ask who that person is. You just approve him or her.

With those few remarks, I want to give other Members a chance.

I support the Report.

**Hon. Speaker:** Hon. Members, we want to operate within our rules. I am aware of efforts by certain quotas to mobilize people to go and take tea for some obvious reasons. People should be ashamed. If you are a Member of this House and are rooting for a candidate and he or she is not approved, that is not the end of the day. It is not the end of life. It is not fair. It is very bad.

Let us have Hon. Mutunga.

**Hon. John Mutunga** (Tigania West, JP): Thank you, Hon. Speaker for giving me the opportunity to contribute to this Motion. I have listened to the conversations in this House this afternoon and I will apply my background to make a statement. I have worked in public service and the private sector.

I was a Chief Executive Officer (CEO) for more than 14 years. I have employed many people. I was in the employment sector. When we talk about relevant experience, it must be in tune with the requirement of the job. If you do not employ a person who has the correct experience and background, the job will not be done or you will do it yourself. In this case, the Salaries and Remuneration Commission (SRC) may not have an opportunity to have anybody to do the job, but a shoddy job will be done.

I have looked at this Report very keenly. I note the reasons that the Members have given for purposes of rejecting this particular nominee. I stand to ask the House to note that this list does not reflect the map of Kenya. If you look at the names here, they are from certain regions. We have passed many names for commissions and appointments in this House. Whenever we pass these names, we look at the regional balance and the map of Kenya representation. This list does not reflect that. I want to particularly point out that there is nobody from the Mt. Kenya region who is in this list. Does it mean that they are not qualified? I know that when you request institutions to nominate, you can give them guidelines to give you the correct person. That is if you want to reflect the map of Kenya. The Committee did a shoddy job because they did not do that.

Although I support the approval of this particular Report, I would like to caution that in future, we need to look at how we do business in this House. It is turning out to be a House of

dishonour instead of honour. Individuals are pushed through for employment and recognition which is very wrong in this House. I believe that Parliament is the end and it does the oversight role. We cannot execute that mandate when we are biased. There is a lot of bias in this particular Report. That is why we are saying that even if we approve it; let us approve a few names. I can vouch for somebody like Hon. Dalmas Otieno who all Kenyans know that he is a good man. He has experience and is a renowned leader. All these others are not known by most of us. Even if they were appointed by institutions, we should have guided them to give the correct people.

I do not support this Report fully. I only support the nomination of Hon. Dalmas Otieno. Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Muhoroni.

**Hon. Onyango Oyoo** (Muhoroni, ODM): Thank you very much for recognising me. A lot has been spoken about this Report. I want to say that the Committee did a very good job. However, they digressed at one point and sorted out cheap political differences which were not supposed to be involved here. I want to say that almost all those who are nominated are very able Kenyans who will add value to this Commission, once they are appointed.

I want to say sorry to the nominee whom we have stood down because she lacks the requisite qualification. I want her proponent to understand that this was not the Speaker's invention or our wish. She carried the interest of the youth. We would have loved her but since we are lawmakers, we must preserve the law. I want them to understand, albeit with bitterness, that it is not our wish. We would have wished this young lady to be a member of this Commission. However, the law which we make and swore to protect says that she does not have the requisite qualification. Because she has this interest, we hope that she will be approved next time. Six years is just a stone throw distance. She will stand a chance.

We will support this list except the amendment which Hon. Keter will shortly float. The Chair of the Departmental Committee on Finance and National Planning is my neighbour back at home. When fire guts my house, he will come before the Member for Bondo arrives. So, he is my friend. The Committee has problems with Mr. Atwoli. I read it very loudly from the nominee that they were fighting. The reason which they advanced here or the excuse they gave us was circumlocutory. I never saw any serious reason like she is unable, uneducated or in jail. When we are dealing with serious issues like this in future, we want those who are charged with the responsibility to make sure that if those people are Kenyans and they meet the threshold of the advertisement, they should be given the right to serve.

People should not try to subvert things because they are perceived to be close to some people who may be inhibiting the advances of the people of your choice in their political escapades. This is very wrong. I want to tell this House that this list is very good. Hon. Keter is just about to table an amendment which I want you to adopt and support, save for the lady that the Constitution barred. The rest are very good nominees. We should fast-track their passage.

I support the Report.

**Hon. Speaker:** There is a Member in a *buibui*. You are raising your hand. The Hon. Member next to Hon. Kamket. The female Member. Let us have the Member for Tana River.

**Hon. (Ms.) Rehema Hassan** (Tana River CWR, MCCC): Ahsante Bwana Spika.

Nimesimama kuiunga mkono Ripoti hii. Bado napinga wazo la kumtoa huyu dada yetu, Ashubwe. Sababu moja ambayo napinga ni kuwa wanadamu kadri tunavyoishi huko nje tuna maadui wengi sana. Hakuna yule ambaye hakutakii mazuri atakaye kuunga mkono. Kwa hivyo, katika wale watu wa Central Organisation of Trade Unions (COTU) ambao walipinga uchaguzi



wa huyu mama, pengine wengine ni watu walikosana naye kwa njia moja ama nyingine. Kwa hivyo, mimi sioni kama hiyo ni sababu ambayo inapaswa ichukuliwe kwa uzito kumnyima mama huyu nafasi. Naomba marekebisho yafanyike na mama huyu achukuliwe kuwa mmoja wa Tume hii.

Naunga mkono Ripoti hii hasa kwa upande wa Dkt. Amani Yuda Komora. Ni mtu ambaye namjua kwa undani sana na ambaye amefanya kazi sehemu nyingi. Namjua kwa njia zote. Ako na uzoefu wa kazi.

*(Loud consultations)*

Bwana Spika, tafadhali naomba unitetee.

**Hon. Speaker:** Endelea Mhe. Rehema. Wengine hawafahamu Kiswahili sanifu.

**Hon. (Ms.) Rehema Hassan** (Tana River CWR, MCCP): Mambo mengine ni yangu mwenyewe. Mambo mengine hata nikisema ni ya undani, ni yangu mwenyewe na ni siri yangu. Lakini ni mtu namjua ako na uzoefu wa kazi, hana shaka kwa kazi ya Serikali na hata kazi zinginezo.

*(Applause)*

Kwa sasa, ni Mkurugenzi Mkuu katika Bandari ya Mombasa. Anatuwakilisha vilivyo bila tashwishi. Kwa hivyo, naona ametosha kuwa katika Tume hii.

Naiunga mkono Riporti hii.

**Hon. Speaker:** Let us have the Member for Emuhaya. The Member for Muhoroni is seated next to him. Let us first hear the Member for Emuhaya which is in the next county.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Speaker, for giving me this opportunity. I support this Report. It has good nominees, namely, the Chairlady, the likes of Yuda Komora, who is even well-known and Dalmas Otieno who is a very seasoned negotiator. I also wish to assert that I welcome an amendment which is about to be introduced to also include Madam Peris Nelly Ashubwe, as a member of this Commission.

The President had looked into these nominations very keenly and had taken into account the issue of ethnic and regional balance and gender. Unfortunately, the Committee which did a quasi-good job disapproved a candidate who qualifies to be in this Commission. I do not know Ms. Peris Ashubwe. When I read the Act, I noticed that she qualifies in all aspects of Section 5. Furthermore, she was the consultant of the workers' unions when they were coming up with the five sets of labour laws. They are the Employment Act, the Labour Institutions Act, the Labour Relations Act, the Work Injury Benefits Act and the Occupational Safety and Health Act. Therefore, she will take with her a lot of experience to the Commission.

I want to indicate that the information that was brought to the House by Members, that she did not apply to be part of this Commission, was false. The Central Organisation of Trade Unions (COTU) was asked to nominate a member to this Commission. In the first incidence, the Chair should have told the House, COTU carried out an interview and nominated Mr. Matiang'i from the Kenya National Union of Teachers (KNUT). When we changed the law and said that this Commission will be permanent, that particular individual declined. Therefore, I want to inform the House that COTU was forced to reconvene another interview. That is why one Member said earlier that Ms. Peris Ashubwe was not there. Her name was there but it was a new

interview that was done to replace the member who had declined to take this position. Therefore, that Petition by Trade Unions Congress of Kenya (TUCK) is null and void. If anything, the Petition by TUCK, as we have already heard, had no sworn affidavit.

Hon. Speaker, I also want to bring to the attention of the House that TUCK mentioned a statement about this nominee, Ms. Ashubwe. A letter, which talks about that, is in the House. It will be presented before us. Through its Secretary-General, Hon. Wilson Sossion, conferred and agreed with COTU that this should be the nominee of the trade unions in Kenya. I talk authoritatively as a person who comes from that particular background. The communication we have been given about the Petition that complains about Ms. Ashubwe was communicated by the Chair of TUCK.

In the understanding of the trade unions movement, chairmen do not communicate official reports to institutions. Therefore, the communication by one Hon. Wilson Sossion should suffice. He agreed in totality with COTU that Ms. Ashubwe is the nominee for trade unions. Therefore, I find no reason why the Committee Chair, who is not listening, accepted a communication from the chair, but not from the secretary-general of the union. That was faulty because unions do not communicate through their chairmen.

Therefore, I beg this House that we amend this Report to approve the nomination of Ms. Ashubwe for appointment as Commissioner of the SRC.

With those remarks, I support.

**Hon. Speaker:** Hon. Members, before we proceed, I want to allow Hon. Alfred to move his amendment, which is not the same as the earlier one.

**Hon. Alfred Keter** (Nandi Hills, JP) Hon. Speaker, I beg to move:

THAT, the Motion be amended by:

- (a) inserting paragraph 8 immediately after paragraph 7 of part (a) to read Ms. Nelly Peris Ashubwe a nominee of the umbrella body representing trade unions to the Salaries and Remuneration Commission.
- (b) deleting paragraph (b)

Hon. Speaker, having looked at the observations of the Committee, I first commend it for doing a very good job. It is just unfortunate for the other lady because of some laws that prescribe a ten year of experience which she does not have.

The Committee looked at suitability, integrity and capacity and raised issues on capacity and not on suitability and integrity. The Committee noted that the nominee did not exhibit capacity to serve as a member of the SRC. Her education background indicates that, at some time, she represented trade unions in industrial courts. I believe she has the capacity because there are many issues touching on labour laws and we need a lawyer to be part of the commission which was missing because the other nominees do not have that background. There is no need of saying that she has no capacity to negotiate and she has no experience in diplomacy because we are not looking for an ambassador. There is no way we can measure negotiation skills. A good negotiator must be convincing and most practicing lawyers have the ability to convince. If they can convince a court of law, she will do a job for this country at the SRC.

It will be wrong for us to deny her the chance to serve in the SRC because she has the capacity. She is suitable and she has no issues on her integrity.

I ask Hon. Wangwe to second. Thank you.

**Hon. Speaker:** Member for Navakholo.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Hon. Speaker, I beg to second the amendment by Hon. Keter that we include the name of one Nelly Peris Ashubwe, in the first phase and delete part (b) of the Report.

This lady comes from our county. I know her personally. I know she is a very good lawyer. She is the representative of legal services in Central Organization of Trade Unions (COTU). The COTU Kenya Chapter is one of the most respected trade unions in the world. That is why Francis Atwoli sits on the ILO. He commands much in terms of labour relations in the whole world.

I fault the Committee on one perspective. This is where they say that they want to assess the capacity and diplomacy capability of a nominee. I would not want to look at the Committee like it had instruments of measuring the capacity and capability of diplomacy *per se*, but I give them the benefit of having given us the nominee up to this level.

Without much ado, in terms of assessment of the nominee, I second the amendment by Hon. Keter and urge my colleagues to support it. Thank you, Hon. Speaker.

*(Question, of the first amendment that the words  
to inserted be inserted, proposed)*

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

**Hon. Speaker:** I hope Members understand why it reads that way because what was initially paragraph (3) was taken out.

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

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

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

**Hon. Speaker:** So, the Motion has been amended.

*(Question of the Motion as amended proposed)*

What is your point of order, Hon. Kamket?

**Hon. Kassait Kamket** (Tiaty, KANU): Hon. Speaker, I rise to support the Motion as amended. I was not rising on a point of order, I was rising to contribute. This Committee has done a commendable job. The only problem is that it looks quite unfortunate that there may be trouble at the PSC, because if a mistake of that magnitude could find itself to the Assembly...

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): On a point of order, Hon. Speaker.

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

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Since you ruled on the matter that the Hon. Member is alluding to, and looking at the mood of the House, it is like everybody is in agreement. I kindly request that we close the debate and if you find it okay, put the question so that we can vote and agree as a House.

**Hon. Speaker:** Which question?

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): I am not sure it is the one on Standing Order No. 95 for closure of debates, but I kindly ask for your intervention for the Mover to reply.

**Hon. Speaker:** You have one minute hon. Kamket.

**Hon. Kassait Kamket** (Tiaty, KANU): I just want to say that the PSC must put its house in order. Such mistakes should not find their way on the Floor of the Assembly to the disadvantage of members who have many issues with welfare.

I support.

**Hon. Speaker:** Before I put the Question for the Mover to be called upon to reply and for you to determine, I want to give this direction. That the Clerk of the National Assembly is hereby directed to write to the Secretary of the PSC informing him and the Commission that one Ms. Halima Abdille Mohamed has been found to be unqualified to serve as a commissioner in the SRC and requires that the PSC immediately commences the process of selection and/or nominating a suitable Kenyan to represent Parliament.

Hon. Members, the question that has been raised on a point of order by Hon. Sabina Chege is that the Mover be called upon to reply.

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

**Hon. Members:** One minute!

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Speaker, I know that the mood of the House is that Hon. Members should be now going for recess and they are urging me to bow. However, I want to take this opportunity to thank this House for all the contributions which have been made during the debate on this Report. I also want to take this opportunity to thank the Departmental Committee on Finance and National Planning for the very busy schedule they had. All in all, they delivered what they had to and the House has pronounced itself. I just want to ask the House that we continue being together and uphold the rule of law. At the same time, we should ensure that when we are given work by the House, we should not impute improper motive on any Member. We should work with a lot of respect. And we have done that.

I beg to reply, Hon. Speaker.

*(Hon. Rehema Hassan stood up when the Speaker was on his feet)*

**Hon. Speaker:** Hon. Rehema, allow us to conclude this business. Hon. Members, that latter instruction is to demonstrate that the Speaker is not the Commission. Indeed, the Speaker of the National Assembly is principally advised by the Clerk of the National Assembly. So, the Clerk of the National Assembly is to write to the Secretary to the Commission, who is the Clerk of the Senate, and the Commission will sit, at which the Speaker will be the Chair. When the Commission makes a decision, it is subject to resolutions of this House. The Commission must know that this House has oversight role over it. I have heard people raising queries about why we came up with the Committee on Members' Services and Facilities. It is to oversee that Commission. The National Assembly has oversight authority over all State organs and the Commission is a State organ. Therefore, it is overseen by the National Assembly.

That was just for information. I now put the question. In keeping with the practice, the House has to express itself with respect to each and every nominee.

*(Question of the Motion as amended, put and agreed to)*

*Resolved accordingly:*

That this House approves:

THAT, taking into consideration the findings of the Departmental Committee on Finance and National Planning in their Report on the Vetting of the Nominees for Approval as Chairperson and Members of the Salaries & Remuneration Commission, laid on the Table of the House on Wednesday, August 29, 2018, and pursuant to the provisions of Article 250(2) (b) and section 7(11) of the Salaries and Remuneration Commission Act, this House approves the appointment of the following to the Salaries & Remuneration Commission:

- (i) Ms. Lyn Cherop Mengich - Chairperson;
- (ii) Dr. Leah Mumbua Munyao - nominated by the Teachers Service Commission;
- (iii) Mr. John Kennedy Monyoncho - nominated by the Defence Council;
- (iv) Dr. Amani Yuda Komora - nominated by the umbrella body representing Employers;
- (v) CPA Sophie Moturi - nominated by a Joint forum of professional Bodies;
- (vi) Ms. Margaret Sawe - nominated by the Senate on behalf of the County Governments;
- (vii) Hon. Dalmas Otieno Onyango - nominated by the Public Service Commission; and.
- (viii) Ms. Nelly Peris Ashubwe, a nominee of the umbrella body representing trade unions to the Salaries and Remuneration Commission.

Hon. Members, those eight nominees are now approved by the House and the decision will be communicated to the appointing authority.

**ADJOURNMENT**

**Hon. Speaker:** Hon. Members, the time being 7.25 p.m. and the Motion of Adjournment having been in the terms that, as soon the House concludes the business, which was No.11, this House, therefore, stands adjourned until Tuesday, the 2<sup>nd</sup> October 2018 at 2.30 p.m.

Hon. Members, I wish you all the best during the recess.

The House rose at 7.25 p.m.