

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 27th June 2018

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Speaker: Ring the Quorum Bell.

(Quorum Bell was rung)

Stop the Bell.

COMMUNICATION FROM THE CHAIR

CONSIDERATION OF LEGAL NOTICE RELATING TO PROVISIONAL COLLECTION OF TAXES AND DUTIES ORDER, 2018

Hon. Members, this Communication relates to guidance regarding consideration of Legal Notice No. 128 of 21st June 2018 relating to the Provisional Collection of Taxes and Duties Order, 2018.

Legal Notice No.128 of 21stJune 2018, which has been tabled by the Leader of the Majority Party, relates to the Provisional Collection of Taxes and Duties Order in respect to the Finance Bill, 2018 and was published in the Gazette on 19thJune 2018.

Article 210(1) of the Constitution provides that no tax or licensing fee may be imposed, waived or varied except as provided by legislation. Further, Section 2 of the Provisional Collection of Taxes and Duties Act regarding provisional orders provides that:

“If a Bill is published in the Gazette whereby, if such Bill were passed into law, any tax or duty, or any rate, allowance or administrative or general provision in respect thereof, would be imposed, created, altered or removed, the Cabinet Secretary may, subject to this Act and notwithstanding the provisions of any other written law relating to taxes and duties, make an order that all or any specified provisions of the Bill relating to taxes or duties shall have effect as if the Bill were passed into law”.

Hon. Members, you recall that under the Statutory Instruments Act and National Assembly Standing Orders, all Orders are statutory instruments and therefore require approval of the House. Provisional Collection of Taxes and Duties Order, in respect of the Finance Bill, 2018, is a ways and means matter. I will, therefore, refer the Legal Notice to the Departmental Committee on Finance and National Planning for consideration and not Committee on Delegated

Legislation which is the Committee mandated by the Statutory Instruments Act and Standing Orders to scrutinise statutory instruments. This is because the matters in the Gazette Notice as published relate to matters dealing with finance.

Hon. Members, the Committee is required to scrutinise the Order and submit its report on or before – and this is important – Wednesday, 4th July 2018.

I thank you.

Hon. Speaker: Next Order.

MESSAGES

NOMINATION OF PERSONS FOR APPOINTMENT TO OFFICES OF SALARIES AND REMUNERATION COMMISSION AND COMMISSION ON ADMINISTRATIVE JUSTICE

(Hon. Abdullswamad Nassir walked in the aisle)

Hon. Speaker: The Member for Mvita, there is a Message. The Speaker can only give this Message when he is on his feet.

Hon. Members, this is Message No.009 of 2018.

Pursuant to the provisions of Standing Order No. 42, I wish to convey the following two Messages from His Excellency the President relating to nomination of persons for appointment to the Offices of the Chairperson of the Salaries and Remuneration Commission; The Chairperson of the Commission on Administrative Justice and members of the Commission on Administrative Justice.

In the First Message, His Excellency the President conveys that, in exercise of powers conferred by Article 230(2)(a) of the Constitution and Section 7(10) of the Salaries and Remuneration Commission Act, 2011, as read together with Sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011, he nominates Dr. Ben Chumo for appointment as the Chairperson to the Salaries and Remuneration Commission.

In the Second Message, His Excellency the President conveys that, in exercise of powers conferred by Article 250(2)(b) of the Constitution and Section 11(6) of the Commission on Administrative Justice Act, 2011, as read together with Sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011, he nominates the following persons for appointment to the respective offices in the Commission on Administrative Justice:

The Hon. Florence Kajuju as the Chairperson of the Commission on Administrative Justice; and

Mr. Washington Opiyo Sati, a person with disability as member of the Commission on Administrative Justice; and,

Ms. Lucy Kamunye Ndung'u as member of the Commission on Administrative Justice.

His Excellency the President therefore seeks the approval of this House on the nominees for appointment to the aforementioned positions.

Standing Order No. 45 requires that, upon receipt of notification of nomination for appointment, such nomination shall stand committed to the relevant Departmental Committee of the House for consideration. Pursuant to the provisions of the said Standing Order therefore, and paragraph (3) of Standing Order No. 42 relating (Messages from the President), I hereby refer

the Message relating to appointment of persons to the offices of the Commission on Administrative Justice to the Departmental Committee on Justice and Legal Affairs to undertake the necessary approval hearings, while the nomination of the Chairperson of the Salaries and Remuneration Commission will stand referred to the Departmental Committee on Finance and National Planning.

Section 7(11) of the Salaries and Remuneration Commission Act, 2011 and Section 11(7) of the Commission on Administrative Justice Act, 2011, requires the National Assembly to either approve or reject the nominees to the respective positions within 14 days and 21 days respectively. In this regard, I wish to guide the two Departmental Committees and the House as follows:

That the Committees should notify the nominees and the general public of the time and place for holding the approval hearings, in good time.

The notification should therefore be made on Thursday, 28th June 2018; and,

That the Committees should thereafter commence the necessary approval hearings and submit their respective reports to the House within the statutory timelines.

Following a House Business Committee resolution on Tuesday, 26th June 2018, the Leader of the Majority Party is to give notice of Motion seeking to alter the Calendar of the House so that the House proceeds on recess on from 6th July 2018. With this and hoping the House agrees with the proposal, the period set by law for approval hearings will lapse while the House is on short recess. The Committees are therefore at liberty to seek extension of the approval hearings from the House as they find appropriate.

I thank you.

Hon. George Theuri.

PETITIONS

HARASSMENT AND CONFISCATION OF SLOT AND GAMING MACHINES

Hon. George Theuri (Embakasi West, JP): Thank you, Hon. Speaker.

I, the undersigned, on behalf of residents of Embakasi West Constituency, draw the attention of the House to the following:

THAT, the Counties Amusement and Gaming Society is a Kenyan owned organisation duly registered by the Societies Act and with over 600 registered members;

THAT, Counties Amusement and Gaming Society of Kenya operates legal businesses with the necessary permits from county governments and they have complied with all statutory regulations as well as upholding to the high standards set by the Betting, Lotteries and Gaming Act;

THAT, the Society has created employment to hundreds of youths in Embakasi West Constituency and more than 50,000 Kenyan citizens directly and indirectly through slot and gaming machines. The said machines are owned, run and managed by Kenyans as well as directly benefitting Kenyan communities;

THAT, members of the Society in the last few months have been arbitrarily arrested, harassed and their constitutional rights violated, slot and gaming machines confiscated, destroyed and burnt hence their earning stolen in the process;

THAT, in the recent past there has been a crackdown on slot and gaming machines and thousands of youth and members of the society rendered jobless, hence affecting the economy negatively;

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

THAT, the matter presented in this petition is 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:

1. Causes investigation into the alleged harassment of the Members of the Counties Amusement and Gaming Society and confiscation of their property by authorities;
2. Recommends that Kenyans be allowed to own, manage and franchise slot and gaming machines as stipulated by the Betting, Lotteries and Gaming Act; and
3. Makes any other order or direction that it deems fit in the circumstances of the matter.

Thank you.

Hon. Speaker: Hon. Members, let the other Petition be read out so that I allow you some limited time to make comments on the two. Hon. George Murugara Gitonga.

Hon. George Murugara (Tharaka, DP): Thank you, Hon. Speaker.

I, the undersigned, on behalf of the residents of Tharaka Constituency in Tharaka Nithi County draw the attention of the House to the following:

THAT, the Wildlife (Conservation and Management) Act, 2013 contemplates formulation of innovative measures for mitigating human-wildlife conflict and compensating victims of human-wildlife conflict;

THAT, in the year 1966 the Meru National Park was gazetted under the Legal Notice Number 4756 as a National Park;

THAT, Tharaka Constituency borders Meru National Park to the North, with Ura River as the boundary. The Park has created many employment opportunities and other investments such as the Annual Ura Gate Cultural Festival therefore promoting the economy and culture of the Tharaka Community;

THAT, in the recent past human-wildlife conflict has been on the rise, mostly due to lack of a perimeter fence along the Meru National Park and this has led to loss of lives and destruction of crops. Nevertheless, the relevant authorities have failed to compensate the affected residents;

THAT, in May 2017, three people lost their lives and four were injured in Marimanti, Gatunga and Nkondi areas;

THAT, efforts to resolve the matters have been futile;

THAT, the matter presented in this petition is 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 Environment and Natural Resources:

1. Prevails on the Ministry of Environment and Natural Resources through Kenya Wildlife Service to ensure that an electric fence is put up around Meru National Park, along the Ura River where it borders Tharaka Constituency;

2. Kenya Wildlife Service compensates in full all those adversely affected by the human-wildlife conflict in the region including and not limited to those beaten by snakes.
3. Makes any other order, direction or guidance that it deems fit in the circumstances of the matter.

And your Petitioners will ever pray.

Hon. Speaker: Hon. Members, before we proceed to allow Members to make comments on the two petitions, allow me to recognise the presence of pupils from Pupils' Reward Scheme (PURES) State House, Dagoretti North Constituency, Nairobi County in the Speaker's Gallery and the 995 students and five teachers from Kilalai Secondary School, Igembe South Constituency, Meru County and those from Utumishi Academy, Gilgil Constituency, Nakuru County in the Public Gallery. You are well welcome to observe proceedings in the National Assembly this afternoon.

I hope all the Members who have put intervention want to comment on the petitions. Member for Imenti South.

Hon. Kathuri Murungi (South Imenti, Independent): Thank you, Hon. Temporary Deputy Speaker. I want to give my two brief comments on the two petitions if you allow me. I will start with the one submitted by Hon. Theuri, Member for Embakasi West. This issue of betting and gambling is a problem in this country, especially to the young people. As much as I support what my colleague is alluding to, unless this sector is controlled our youth will get into problems. Besides the slot coin machine that my colleague is talking about, even betting itself has become a problem. Even though it is a bit sophisticated because it involves the use mobile phones and computers, betting and gambling which is used in Embakasi is the same all over. Unless both games are well controlled, our youth will continue getting problems and that is why the Government saw it wise to burn those machines. Even today they were burned in my constituency. I support that move because it is helping us to curb that vice. All the same, what is needed is to regularise both betting and gambling. The issue of taxation also needs to be checked so that the owners of betting companies pay enough taxes and hence help most of the youth from getting into that vice.

The other comment is on human-wildlife conflict which is a menace in Meru and Tharaka Nithi counties. Two days ago, I saw in the media that in my constituency, members of the public killed an elephant because it strayed from the forest to the residential area, and harassed the residents. Two people were hurt in the Igoji West Ward. During the last Parliament we did a very good law on Wildlife Management and Conservation Act in the Departmental Committee on Environment and Natural Resources which I was a Member and we put measures including what to do with loss of lives. We put Kshs 5 million as compensation for loss of life. In case of crop destruction, people could be compensated. Up to now, the Ministry of Environment and Mineral Resources has not put aside money for compensation. I can see Hon. Mwadime, he has been raising these issues since the last Parliament and he is very agitated when I mention compensation. This Parliament has a responsibility in the next financial year to ensure that enough resources are set aside to compensate people whose crops and lives have been affected by this elephant menace. As a professional conservationist, the best thing is to put fences in all the national parks and forested areas, so that this will be a one off expenditure and these elephants will be contained in the forests. That is the best method.

Thank you for giving me that chance to contribute.

Hon. Speaker: Now, Hon. Members, remember this period is limited to maximum of 30 minutes. So if you speak for more than two minutes... choose which petition you wish to comment on. Hon. Wanga Nyasuna.

Hon. Gladys Nyasuna (Homa Bay CWR, ODM): Thank you, Hon. Speaker. I would like to comment on the Petition brought by Hon. Theuri and I would like to state that when the Departmental Committee on Sports, Culture and Tourism is looking at this Petition, they must look at the wellbeing of our young people. There has to be a balance between making profits from betting and the lives of our young people who spend their whole time betting in the slots.

In fact, I was shocked to see that even in my rural home, across the road in the shopping centre, somebody had actually brought a betting machine there, the one with a slot. And children were not even going to school. They were just sitting there the whole day, putting coins and trying to get more money. Our children must learn that there is no money that comes easily. Money that you get you must have worked for it. Those are the values that we must instil in our children. This *potea pata* of getting money we must control.

Briefly on the issue of human-wildlife conflict, I would like to support that petition. Hon. 'Kamashinani' from Igembe has said...

Hon. Speaker: We do not have any Member by that name.

Hon. (Ms.) Gladys Nyasuna (Homa Bay CWR, ODM): Oh, Hon. Kathuri Murungi. His name in the village is, even his number plate is written, 'Kamashinani'.

Hon. Speaker: How is the Speaker going to know what happens in the village?

(Laughter)

Hon. (Ms.) Gladys Nyasuna (Homa Bay CWR, ODM): As a conservation expert, he should also advise on the matter of these crocodiles that are eating people in Lake Victoria. You said we can fence the forest. What can we do about the crocodiles that are eating people in the lake? This must also be answered.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Rasso, Member for Saku.

Hon. Ali Dido (Saku, JP): Thank you very much, Hon. Speaker. Quickly I will comment on both petitions. Article 95 of the Constitution tells us that we can bring anything before Parliament, but I think it would be misguided for this Parliament to encourage gambling, use of drugs and allow youngsters to steal money from families. That is unacceptable. But the Member has the right to bring whatever petition.

On the second one of human-wildlife conflict, I think it is a serious issue in this country. As soon as the 11th Parliament passed the Wildlife Act, KWS has not been able to compensate throughout the country. The Ministry should come before this House to explain the difficulties they are experiencing. It is not just limited to Meru National Park. It is a countrywide issue.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Mwatate.

Hon. Andrew Mwandime (Mwatate, ODM): Thank you, Hon. Speaker. On the first petition on gambling, this is a problem in the country.

Hon. Speaker: You do not have to comment on both of them. You can choose, so that your two minutes are well utilised.

Hon. Andrew Mwandime (Mwatate, ODM): Thank you, Hon. Speaker, for guidance. Control should be put. Secondly, on the wildlife petition, this is cancerous. It is a big problem.

As we speak, in my place called Mwakitau, lions have been mauling cattle, goats and lambs, and the situation is very serious. Just the other day, 11 cattle of a very poor person were all mauled by lions. The Act clearly states that these people should be compensated. The other day I heard that there are amendments which are being brought on the Wildlife Act, 2016 such that it will not include paying people whose cattle have been killed by lions. If KWS can fence the parks, this problem will go once and for all.

Also, our environment committee is not supportive. Last time, they put money for compensation, but I do not know why the wildlife committee never assisted this department for them to do the same. Even the last petition which I presented, 60 days will end on 24th of July. The Speaker guided you. You have to answer in the next 60 days. Kindly we expect the answer to tell us that you have started compensating.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Igembe North.

Hon. Richard Maore (Igembe North, JP): Thank you, Hon. Speaker. I also wanted to comment on the two petitions. First, the Member for Embakasi West had the request to go soft or somehow allow the machines that have destroyed families. I remember several kids have committed suicide. They are given money by their parents to go and pay school fees but they go either to SportPesa or those machines. I wish the Committee would be courageous and seek the indulgence of the Communications Authority (CA) and telephone companies to stop it, because that one has no age limit and there is no way of controlling it. It is just about big money. They can corrupt everybody. They can mess up everybody who wants to regulate them. You can see what happened when they were taxed; how they made a big cry when they were told a 35 per cent tax would be enforced. They blackmailed everybody until the Government has slowed down. If the Government can get the support of the House not to soften or go the Embakasi way, I would request the Committee to use it and stop the Embakasi West Member of Parliament. I wish to urge the Government to be strong. They need the support of this House.

Lastly, on the Meru National Park, I think there is another petition pending before the Committee. They can amalgamate the two petitions and bring a comprehensive report, given that it is actually a countrywide problem. So, Hon. Speaker, we can have your guidance whether they can merge the two petitions rather than doing this one and then we wait for 60 days to have another report. Maybe, there will be another one. Since it is a countrywide problem, there is a way you can guide us on what should happen.

Hon. Speaker: Of course, there is nothing we can say because he represents Embakasi West. Tomorrow maybe the Member for Suba South might be petitioned by his constituents and he brings something similar. What do you do? This process is guided by the provisions of Standing Order 226. That is why I am trying to give some guidance that please do not take too long, because it is couched in permissive language: That the Speaker may allow comments, observations or clarifications in relation to a petition presented or reported but such total time for that is only 30 minutes.

The Member for Kiminini, you want to talk about gambling or the other one?

Hon. Chrisantus Wakhungu (Kiminini, FORD-K): Hon. Speaker, I will comment only on one. The issue of gambling has become a national disaster. My friend Hon. Theuri, whom I respect so much, and you know it is not easy to come for a second term from the constituency he represents and he is a second term... Maybe he is representing the people of Embakasi West. My humble request to the Committee is they should be able to do a cost-benefit analysis. I have a friend who went to China where these machines are coming from. Even in China they are not

allowed to operate. They are only made for Africa. They only come here to benefit some few unscrupulous businesspeople.

As the Committee looks into this, they should look at the bigger picture of families. I know some families are breaking up because of this. I know of a family where the father, a serious gambler, ended up spending the money he is sent to buy meat. We have seen children who, instead of paying school fees spend it on gambling. Even *sadaka* in church has reduced because instead of taking *sadaka*, people use the money to gamble. You cannot get anywhere through shortcuts. As the Committee will be looking into this matter, they should look at the bigger picture. Where I come from, chiefs no longer allow this because it has become a security threat. I am aware there is also a government policy banning this. So, as you come up with recommendations, look at the existing policies for the bigger good of the public and the entire family and children.

I thank you, Hon. Speaker. I am reluctantly opposing it.

Hon. Speaker: Member for Kitui South.

Hon. (Ms.) Rachel Nyamai (Kitui South, JP): Thank you, Hon. Speaker. I wish to comment on the petition that has been brought by Hon. Murugara. I neighbour Tsavo East and I also have a game reserve in my constituency. To my constituents in Mutha, Athi and Kanziku wards, I have many cases of snake bites—in thousands. They come to my office to tell me that they have done what the Government requires them to do. When you are bitten by a snake you need to report to the police. You need to get treatment documents and present them to KWS and you get P3 forms.

Hon. Speaker, having been in the 11th Parliament, I have been collecting all these documents and we have made files together with the two Deputy County Commissioners (DCCs) for Mutomo and Ikutha. The question is: Where is this compensation that is being talked about? Are we serious about giving budgetary allocation for this? Is there a solution to all that has been said in this House?

So, as they look at this matter brought from Tharaka Nithi, I would like them to widen the scope and ask the stakeholders what is going to be done about the many people who have been affected by wildlife.

Thank you.

Hon. Speaker: Very well. Hon. Members, we have to stop at that point because we have to do business. This issue of reptiles and bites is going to be very difficult. Perhaps, it may call for this House again to carefully examine it. If proper recommendations are made, the House could provide the necessary budgetary allocation, if it will be enough. So, the two petitions stand committed to the relevant departmental committees. The one on wildlife shall be committed to the Departmental Committee on Environment and Natural Resources and the one on betting machines to the Departmental Committee on Sports, Culture and Tourism headed by Hon. Victor Munyaka.

Next Order

PAPERS LAID

Hon. Speaker: The Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Speaker I beg to lay the following Papers on the Table of the House:

Legal Notice No. 128 of 21st June, 2018 relating to the Provisional Collection of Taxes and Duties Act (Cap 415) from the National Treasury.

The Second Report of the Cabinet Secretary for the Ministry of Foreign Affairs to the National Assembly on Treaties Ratified by the Republic of Kenya for the period June, 2018 (pursuant to section 15(1) of the Treaty Ratification Act, 2012 (Revised, 2014).

National Ethics and Corruption Survey Report from the Ethics and Anti-Corruption Commission (EACC) for the year 2016.

Annual Report and Financial Statements of the Kenya Society for the Blind for the year 2017.

Second Policy and Criteria for Sharing Revenue among marginalised areas from the Commission on Revenue Allocation (CRA).

Performance Audit Report from the Office of the Auditor-General on the Provision of Sewerage in Major Towns in Kenya (a case study of Kisumu City) for the period April, 2018.

Performance Audit Report from the Office of the Auditor-General on the Provision of Mental Healthcare Services in Kenya for the period December, 2017.

The Reports of the Auditor-General and Financial Statements in respect of the following Institutions for the year ended 30th June, 2017 and the certificates therein:-

- (a) The Presidency.
- (b) Kibabii University.
- (c) Kenya Agricultural and Livestock Research Organization (KALRO).
- (d) National Police Service Commission.
- (e) State Department of Trade (Vote 1174).
- (f) Ministry of East Africa Community, Labour and Social Protection.
- (g) State Department for Information, Communication and Technology and Innovation and
- (h) South Nyanza Sugar Company Limited.

Hon. Speaker: Very well. The guidance issued earlier on as I indicated is that Legal Notice 128 of 21st June 2018 relating to Provisional Collection of Taxes and Duties Act is not going to be taken to the Committee on Delegated Legislation because it is touching on taxes, finances and levies.

Now that I can see the Chair of the Departmental Committee on Finance and National Planning is in the House, the early instruction is that your Committee should sit and table a report on or before 4th July, for some reasons so that the House can deal with that issue on that legal notice.

Let us have Hon. Keynan

Hon. Adan Keynan (Eldas, JP): Thank you Hon. Speaker, I beg to lay the following Paper on the Table:

The Report of Parliament of Kenya Delegation to the 19th Annual Forum of Parliamentarians for Global Action held in Milan, Italy, from 27th -28th November, 2017.

Thank you, Hon. Speaker.

Hon. Speaker: Next Order

NOTICES OF MOTIONS

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

ALTERATION OF HOUSE CALENDAR

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to give notice of 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 14th February 2018 and altered on 1st March 2018 by proceeding to a recess from Thursday 5th July 2018 at the rise of the House and resuming its regular sittings on Tuesday 24th July 2018.

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

MEASURES TO ENSURE KENYAN TERRITORIAL INTEGRITY IS GUARANTEED

Hon. John Ng'ongo (Suba South, ODM): Hon. Speaker, I beg to give notice of the following Motion:

THAT, aware that Lake Victoria, the largest fresh water lake in the Kenya is located in three East African countries, further aware that the islands of Migingo, Remba, Sigulu and Kiwa among others in the surrounding waters of the lake are located within Kenyan borders; recognising the progress made in the East African Community (EAC) integration process in deepening and widening the integration process including ensuring border communities are sensitised on these matters; cognisant of the fact that Kenyans living along the borders, including fisherfolk and pastoral communities have continuously suffered from external threats through harassment, raids and arbitrary arrests, with even those operating in economic zones not immune to such threats; cognisant of the fact that the provisions of Articles 238 (1), 239 and 241(3)(a) of the Constitution stipulate that national security involves the protection of Kenya's territorial integrity and sovereignty of its people, their rights and national interest against internal and external threats; deeply concerned that Kenyans especially those around Lake Victoria, the Indian Ocean and other border areas continue to face harassment and displacement by persons from neighbouring countries; this House resolves that the Government exercises its power to protect Kenyans from harassment by external threats and takes adequate measures to ensure that Kenyan territorial integrity is guaranteed and safeguarded.

Thank you.

Hon. Speaker: Very well. That is a party sponsored Motion. So, for the Members who have not looked at their Standing Orders, it means that it takes priority over many Private Members' Motions. That is what should be noted.

Next Order

These Members who have their cards on intervention such as Hon. (Dr.) Pukose, what do you want to intervene on?

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Speaker, I had wanted to intervene on the petition that had been made earlier. Unfortunately the 30 minutes elapsed before I was given an opportunity, but still...

Hon. Speaker: No. You cannot say that. The 30 minutes is the maximum. Since it is at the discretion of the Chair, even 10 minutes can be enough. But, since we will deal with the

Report when it comes I am sure Hon. Pukose will contribute. There is also another Member who has put an intervention, Hon. Ogutu Abel, Member for Bomachoge Borabu. What is your intervention about?

Hon. (Prof.) Zadoc Ogutu (Bomachoge Borabu, Independent): Hon. Speaker, I want to contribute to the Petition but, can you allow me to make a comment on what the Leader of the Minority Party has said.

Hon. Speaker: No! That was a notice of Motion. There are no comments on notices.

Hon. (Prof.) Zadoc Ogutu (Bomachoge Borabu, Independent): Thank you, Hon. Speaker.

Hon. Speaker: Next Order!

BILL

First Reading

THE DIVISION OF REVENUE (AMENDMENT) BILL

*(Order for First Reading read - Read the First Time and
Ordered to be referred to the relevant Departmental Committee)*

Hon. Speaker: Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Hon. Patrick Mariru) took the Chair]*

THE TAX LAWS (AMENDMENT) BILL

Temporary Deputy Chairman (Hon. Patrick Mariru): Members, we are now in the Committee of the whole House. Therefore, I want us to move together. We are considering the Tax Laws (Amendment) Bill (National Assembly Bill No.11 of 2018). The procedure for this Bill is just like that of a Statute Bill.

(Clause 2 agreed to)

Schedule

Provisions relating to the Income Tax Act of 1973, Cap. 470

Section 2

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Chair, Departmental Committee on Finance and National Planning, you have the Floor.

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

THAT the Schedule to the Bill be amended—

(1) in the proposed amendments to the Income Tax Act by—

(a) deleting the proposed amendments to section 2 and substituting therefor the following new amendment—

(b) inserting the following new paragraph immediately after the proposed amendment to section 22C(2)—

s.2 Delete the definition of “winnings” and substitute therefor the following new definition—

“winnings” means the positive difference between payout made and stakes placed in a given month, for each player, payable to punters by bookmakers licensed under the Betting, Lotteries and Gaming Act;

(b) inserting the following new paragraph immediately after the proposed amendment to section 22C(2)—

This is in cognisance that the Bill provides this for the first time. Winnings in this country have never been taxed before. Even when you win Kshs.100 million you just take it but now the Bill is proposing to tax. For this purpose, we are defining winnings to provide that it will be the difference between what the person wins and what he has put in. For example, a situation whereby maybe you have put in Ksh80 and you win Ksh100, then the tax will be the difference between the Ksh100 and 80 to be fair to everyone in terms of taxation as per the law.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Nyikal! We will just have a few members so that we can make progress.

Hon. (Dr.) James Nyikal (Seme, ODM): I want a clarification regarding the punters. When you bet for a game you may do so several times but only one bet wins. When calculating the difference, I would like to know whether it is the total of all the bets you made or the single bet that won.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): The Chair has said taxation is on the winning bet. Therefore, if you lose, you have not won. If you lose seven times but win once, you will be taxed on the one you have won and the difference. I think the Chair has made this very clear.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes. Hon. Dawood.

Hon. Abdul Dawood (North Imenti, JP): Thank you, Hon. Temporary Deputy Chairman. I think what has been misunderstood is, for example, if a punter places a bet and loses Ksh100 and at the end of the month gets Kshs200, the Ksh200 will not be taxed but the difference between Kshs200 and Kshs100. In the Committee, we went through this, but it has flaws as well. How do you prove how many times a person has placed bets and the amount of money lost

before winning? We are at the mercy of the betting companies. I support but we need to strengthen this in the next amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Before the Chair gets the Floor let us have Hon. Omboko.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Temporary Deputy Chairman for this opportunity. When the Chairman brought the amendment, it looked very sweet, nice and very clear but as we look at it in your definition of “winnings,” you know the betting exercise is such that people do try many times and finally win. If you ask those who have won, they will tell you: “I have been doing this.” So, when we listen to the Leader of the Majority Party, he seems to say that we only take that particular one where you won. But if that is the case then, Chair, I would really wish you redefine the word “winnings” so that they take care of the processes that this person went through and how much he spent before winning.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Before I give any other Member, I shall give the Chairman an opportunity, probably, to extrapolate further this particular amendment so that we make progress.

Hon. Joseph Limo (Kipkelion East, JP): Thank you, Hon. Temporary Deputy Chairman. Let me make it very clear. I know Members have really understood but I think the issue is how to put a period. If you listen carefully to the amendments that have been proposed, for the purpose of tax, there should always be a defined period so that within a month... You know this withholding tax is actually done monthly. So, the definition has taken care of that by saying: “The positive difference between the pay-out made and stakes placed in a given month.” So, in every month, it is the total of what you put in and the difference between the total of what you put in and what you have won in that month. So, it takes care of the fears of the Members.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, that having been said, I now put the Question.

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

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

(Section 2 as amended agreed to)

(Section 10 agreed to)

Provisions relating to the Income Tax Act of 1973, Cap. 470

Section 22C (2)

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, there was an interference by the Chairman of the Budget and Appropriations Committee. I am sorry that I did not pay particular attention. I hope you are in the New Section 30A.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, we are now in Section 22C (2). That is an amendment on affordable housing. I hope the Chairman of the Budget and Appropriations Committee does not come back to you.

Hon. Joseph Limo (Kipkelion East, JP): No, he was making some consultation.

Hon. Temporary Deputy Chairman, I beg to move:

THAT. This particular section be amended by inserting the following new paragraph immediately after the proposed amendment to section 22C (2)—

NEW Insert the following new section immediately after section 30—

30A.(1) A resident individual who satisfies the Commissioner that in a year of income that the person—

Afford
able
housin

(a) is eligible to make an application under an affordable housing scheme;

(b) has applied and is awaiting the allocation of a house an affordable housing scheme;
and

(c) is saving for a purchase under an affordable housing scheme approved by the Cabinet Secretary in charge of housing, shall for that year of income be entitled to a personal relief in this Act referred to as the affordable housing relief.

(2)A person who has been allocated a house under the affordable housing scheme and has been subject to an affordable housing relief under sub-section (1) shall not be re-eligible for a subsequent relief.

Hon. Temporary Deputy Chairman, the justification for this is you know currently by law there is a maximum amount you can contribute, which is Kshs4,000 per month, which translates to Kshs48,000 annually. However, now we are proposing to double it to Kshs8,000, which will make the savings every year for this particular individual who is to benefit from the affordable housing scheme to Kshs96,000, that is Kshs8,000 per month. That is in sub-section (1).

In sub-section (2), it is providing that the person will only be eligible for this relief once and, therefore, you cannot repeat twice. Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairman, I support this amendment but I think the wording in (b) is not correct. It says: "...has applied and is awaiting the allocation of a house an affordable housing scheme." It looks to me like that should be "under affordable housing scheme." The Chairman can move that amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chairman, maybe you can speak to that for purposes of record. It is just a correction on the face of the statement.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, if I am not wrong, I think I must have really also discovered that there are some typos. I want to move that under sub-section 2, a person who has been allocated a House under the affordable housing scheme...

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Member! The one we are referring to is (b). Clearly, there is the word "under" that is left out. That is basically an error on the fact of it. Why do you not speak to it?

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, under sub-sections 1(b), it should read: "has applied and is awaiting the allocation of a house under an affordable housing scheme." There is the word "under."

The Temporary Deputy Chairman (Hon. Patrick Mariru): The correction is noted.

(Question, that the words to be inserted)

be inserted, put and agreed to)

(Section 22C(2) as amended agreed to)

(Section 34(1) agreed to)

Provisions relating to the Income Tax Act of 1973, Cap. 470

Section 35 (1) and (3)

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

THAT, the Schedule be amended by-

(c) inserting the following new paragraph immediately after the proposed amendment to section 35(3)—

NEW s.132 Insert the following new subsection immediately after subsection (1)—

(1A)Notwithstanding subsection (1), for purpose of collection of withholding tax for winnings, a person shall not be required to have a personal identification number and a withholding tax certificate.

That is under the new sub-section. This is cognisant of the fact that if we do not do this, implementation will be an effort in futility. In the past, there have been attempts to do this. According to the Kenya Revenue Authority (KRA) and the National Treasury, it is sometimes very difficult to implement some of those proposals, especially when dealing with withholding tax which is done monthly.

The players are small-timers who play on their mobile phones. When you talk about the personal identification number (PIN) and withholding tax certificates and they have won Kshs50 or Kshs100 - which is the bulk of winnings - it becomes an effort in futility. They will remit the tax but they will not be required to be accompanied by a PIN certificate and withholding tax certificate.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule be amended by-

(d) in the provisions relating to the Part I of the First Schedule by-

(i) deleting the proposed new paragraph 56 and substituting therefor the following new paragraph—

“56. Compensating tax accruing to a power producer under a power purchase agreement”;

(ii) deleting the proposed new paragraph 57;

(e) inserting the following new amendment immediately before the proposed amendment to Paragraph 3 of Head B in the Third schedule—

NEW Head A Insert the following new paragraph immediately after paragraph 2—
Affordable housing relief.

3. The amount of affordable housing relief shall be 15% of the gross emoluments but shall not exceed Kshs108,000 per annum.

The justification for this is that you know...

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, we are dealing with Sections 35 (1) and (3). We appreciate your desire to move fast on this one but let us move one section after the other. That helps.

Hon. Joseph Limo (Kipkelion East, JP): Well guided.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairman, maybe I do not understand but how can it be that somebody who will be taxed and has made a considerable winning is not required to have an identification number? Are we talking about children or foreigners? We are really opening it wide. If the purpose is the difficulty in tax collection, we should relook at the whole of that unless I do not understand what it means.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Before I come to you Hon. Pukose, let us have the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I advise the Chair of the Departmental Committee on Finance and National Planning to drop this amendment. The principle of collecting taxes is anchored on the PIN and withholding tax certificate. There is no way we will collect tax on winners if the person does not have those documents. It is incumbent upon the same companies to register their clients. They must register their clients and have their ID cards and PIN.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Chair. I will give you a chance. Let us hear from Hon. Pukose.

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Temporary Deputy Chairman, I oppose this amendment and advise the Chair to withdraw it. When you say that “Notwithstanding subsection (1), for purpose of collection of withholding tax for winnings, a person shall not be required to have a personal identification number.”, it encourages children to participate in betting. In tax collection, for proper accounting, you must have a PIN. The issue of removing the PIN is mischievous. I ask the Chair to withdraw that amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Kathuri.

Hon. Kathuri Murungi (South Imenti, Independent): Thank you, Hon. Temporary Deputy Chairman. I support the sentiments of my other colleagues. If you do not have a PIN, you cannot be taxed in this country. Therefore, either the Chairman withdraws this amendment or we vote and defeat it.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Mwashetani. I am sure the Chair is noting the issues raised. We will give him an opportunity to respond.

Hon. Khatib Mwashetani (Lungalunga, JP): Thank you, Hon. Temporary Deputy Chairman. I wanted to add my voice to this amendment. It is not possible for tax to be collected when there is no PIN. It has to be there and you have to register your ID. In fact, for anyone who is currently gambling to collect their winnings, it is better for them to register using a PIN. That is the way of monitoring collection of taxes.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Manje. I will come to you, Chair of the Budget and Appropriations Committee.

Hon. Joseph Manje (Kajiado North, JP): Thank you, Hon. Temporary Deputy Chairman. I also want to tell the Chair that the Government is doing very well on e-platforms like e-citizen and getting this certificate is free. It is easier to give out those certificates and identify the person as a Kenyan who pays tax.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Before I give an opportunity to other Members, can the Chair speak to this amendment and the issues raised by the Members?

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, while I appreciate the comments from the Members, we had a serious stakeholders' meeting. Even before those other players came into the market, Charity Sweepstakes had existed since time immemorial. They sell their tickets at Kshs10, Kshs20 or Kshs50. Charity Sweepstakes proposed - and listen very carefully - that we put a threshold on taxing winnings, namely, you do not tax anything below Kshs10,000. Anything above Kshs10,000 is taxed and complies with everything. If you tax Kshs50 or Kshs100, what will happen is...

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order Chair! I am not cutting you short but please speak to that amendment. I can tell the Members are talking about...

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I am actually giving justification that our Committee, after hearing all the stakeholders, the explanation from them on why they required that we do not tax anything below Kshs10,000...

The Temporary Deputy Chairman (Hon. Patrick Mariru): The amendments and the issues which have been raised are about the Kenya Revenue Authority PIN. You are using a longer route to contribute.

Hon. Joseph Limo (Kipkelion East, JP): Just accept my explanation. The reason why there is an exemption for PIN is because when you tax winnings of Kshs10,000 and other small amounts, implementation becomes futile. If somebody wins Kshs50 and does not have a PIN certificate and withholding tax, there will be a penalty of Kshs1000 for every failure. The Charity Sweepstake appeared before the Committee and said that if we require that everybody gives PIN certificate and withholding tax, these small timers will fail to do it because it is expensive to go to a cybercafé to process one. We had to choose not to tax people who win Kshs10,000 and below or tax everybody, including the one who wins Kshs1000 and Kshs100. However, we will not require them to submit PIN certificate.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chair of the Budget and Appropriations Committee.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairman. I support the Chair of the Departmental Committee on Finance and National Planning for this particular reason. One, the requirement for PIN is to ease KRA's collection of taxes. However, withholding tax means that it is withheld by the person who is paying out the winnings. Therefore, the requirement for a PIN for that particular winning may not be very important other than to provide information to KRA that there is a person who has earned an income and will pay later.

(Loud consultations)

Hon. Temporary Deputy Chairman, protect me from these people who are shouting.

The Temporary Deputy Chairman (Hon. Patrick Mariru): You are certainly protected, Hon. Chair. I suspect you are almost concluding.

Hon. Kimani Ichung'wah (Kikuyu, JP): The Member for Buuri will have an opportunity to articulate what he wants to say without shouting.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Please proceed, Chairman of the Budget and Appropriations Committee.

Hon. Kimani Ichung'wah (Kikuyu, JP): I was saying that I support the Chair's position on the basis that it is the company that will pay out the winnings that will withhold this tax and remit it to KRA. The PIN information on the winner will be helpful to KRA to follow up later on Income Tax and other taxes. If you insist that you must have a PIN to tax the winnings, a lot of people will not be taxed on the winnings. The Government will lose revenue because you cannot collect tax from someone who does not have a PIN. It is only fair to allow the tax to be withheld whether or not you have a PIN. It is the same with shares at the Nairobi Stock Exchange (NSE). Whether you have a PIN or not, at the time you are being given dividends, the company withholds tax.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I will give the opportunity to two other Members and then the House will make a decision on this particular matter.

Hon. Kimunya.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Temporary Deputy Chairman. I sympathise with the Chair of the Departmental Committee on Finance and National Planning, and the Chair of the Budget and Appropriations Committee. It is important that we first of all contextualise betting. It is for people who are over 18 years. If we have to control betting, this House has an obligation to first of all make sure that people do not bet if they are not registered to be taxed.

You can bet with your Kshs20 and win Kshs200 million and you do not even have a PIN. Because you are not in a position to provide the PIN, based on this amendment, withholding tax will be withheld. The gaming company will tell KRA that we have withheld Ksh20 million from somebody whom we do not know because he does not have a PIN. The KRA will not track what happens to his or her spending on the Kshs180 million that he or she has won from other Kenyans and how you progress with it.

So, it is very important that we have this PIN. It is important to understand why PIN was introduced in this country. It was for purposes of broadening the tax base and being able to track the flow of revenues and payments between a payer and payee. The KRA then reconciles who is claiming tax and who is paying it, so that when you claim the final tax, already KRA knows that withholding tax has been paid on your behalf and they are expecting you to pay the balance. How do they expect you to pay the balance when they do not have reference?

The Temporary Deputy Chairman (Hon. Patrick Mariru): I will give the opportunity to Hon. Nixon and then we subject the amendment to a vote.

Hon. Nixon Korir (Langata, JP): Thank you, Hon. Temporary Deputy Chairman. I agree with the Chairman. We are talking about the winnings. Around 10,000 people win every day. When some of these people win, they are paid directly through their Mpesa accounts. How then will the betting companies withhold the tax? If it is a requirement of KRA that we have the withholding tax and PIN, then it means the betting companies will not comply with this requirement if we do not make it easy for them to submit this tax.

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Chair looks like he has a hot issue which he wants to raise on this particular amendment.

Hon. Joseph Limo (Kipkelion East, JP): I am persuaded to withdraw the amendment but I just want to state very clearly that some of the laws should not provide an environment where it

will be futile to implement. If we want to tax the winnings, we should put a threshold of Kshs10,000 or below.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, I have to put the Question. The House has to decide on this amendment because we must move on.

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

(Section 35(1) and (3) agreed to)

Provisions relating to the Income Tax Act of 1973, Cap. 470

First Schedule Part 1

The Temporary Deputy Chairman (Hon. Patrick Mariru): It is good for the Chair of the Budget and Appropriations Committee to sit next to the Chair of the Departmental Committee on Finance and National Planning, so that they can support each other and then we make progress.

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

THAT, the Schedule to the Bill be amended—

(d) in the provisions relating to Part I of the First Schedule by—

(i) deleting the proposed new paragraph 56 and substituting therefor the following new paragraph—

“56. Compensating tax accruing to a power producer under a power purchase agreement”;

(ii) deleting the proposed new paragraph 57;

The amendment to Part I of the First Schedule seeks to delete new paragraph 56, which seeks to exempt licensing of special economic zones developers and operators from capital gains.

The proposed amendment will give undue advantage to developers and operators who might not entirely be within the zone. So, by exempting them, it will give them an undue advantage. Therefore, we propose to delete.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Kimunya. The Leader of the Majority Party will speak after Hon. Kimunya.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Temporary Deputy Chairman. In the original Bill, Paragraph 56 refers to a licensed developer under the Special Economic Zone or an operator. The Committee is deleting the developer and the operator and affording relief to a power producer under a power purchase agreement. Why are we moving away from developers to specific individuals; a power producer under a power purchase agreement? These are the people we are calling to come and do power development through thermal in certain areas and a PPA. We are saying that the person who has developed the whole infrastructure will not get relief, but the PPA will. We are now deleting what is provided for in the Bill, which is capital

gain accruing to a licensed Special Economic Zone developer or operator and we are doing it to a power producer. I want to get the logic behind removing the Special Economic Zone. I thought the whole of this was to help stimulate and entice people to come and develop the Special Economic Zone. We are not moving from the Special Economic Zone to enticing power producers who may be anywhere not necessarily in the Special Economic Zone. I just want the Chair to clarify that to us, so that we can know whether we are talking the same thing or not.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I will give the Chair an opportunity to speak to it later. Let us now have the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, the deletion the Chair has proposed on Paragraph 56 of the First Schedule of the Income Tax is the position of the National Treasury. They support the deletion. The reason they have given, which I totally agree with, is that it will give undue advantage to developers and operators especially those operating outside the Special Economic Zone. The developers and operators in these zones only enjoy tax benefits and, therefore, should not be exempted from the Capital Gains Tax. So, when they are within the Special Economic Zone, they enjoy certain tax benefits and rebates. The Bill was giving them extra capital gains. So, on that one, even the National Treasury agrees with the Chair with the deletion.

On the power producers, the amendment to Part 1 of the Schedule of the Income Tax seeks to delete the proposed new paragraph, but the input of the amendment by the Chair on power is to attract more investment in the power sector and consequently lower the cost of energy in our country. There are many investors who want to invest in solar, wind and geothermal energy outside the Special Economic Zone. They are not in the Special Economic Zone. The Chair is trying to delete those in the Special Economic Zones. Those people enjoy certain tax benefits whether they are in Mombasa, Mai Mahiu, Nakuru, Eldoret or Ruiru. This is meant to attract investors, so that ultimately, we can get cheaper power. The Chair is not explaining it very well that those who want to invest in wind and solar energy in the north or geothermal in Naivasha, the amendment gives them tax rebates.

That is the essence of what the Chair is trying to move.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chair of the Budget and Appropriations Committee.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairman. I agree with the position taken by the Leader of the Majority Party and the National Treasury to support the deletion by the Chair. I want to speak on the cost of power. Unless we attract investors to the power sector to bring down our cost of power, which is one of the key drivers of the manufacturing agenda of our Big Four Agenda... We will achieve the Big Four Agenda without producing cheap power. And not just cheap power for manufacturers but even for consumers in homes. The cost of power is still very high largely because we are still dependent on thermal energy. The only way to assure new investors to come into the energy sector is to create incentives. This will be such a good incentive.

As the Leader of the Majority Party has said and the position taken by the National Treasury, we should not be seen to be overgenerous with tax incentives to the Special Economic Zones. They are already enjoying a lot of benefits for operating in those zones. Therefore, it makes a lot of sense to share the gain with those investing in the power sector. Even those within the Special Economic Zones will still enjoy the low cost of power that will be produced under this proposed amendment by the Chair.

I beg to support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Nyikal, do you want to speak to this?

Hon. (Dr.) James Nyikal (Seme, ODM): Yes. Quite often, I seek education before I make a decision. If it is the Capital Gains Tax, my little understanding of tax is that it has to do with exchange of property. I would, therefore, understand that if people are in Special Economic Zones, they would not be involved in issues of property purchase. If they are outside, obviously, they will be involved in purchase of estate. My fear and why I would oppose this is that it can be used so that people will get relief on the Capital Gains Tax that may actually not be related to the production of power. To that extent, unless someone clarifies that for my mind, I will still oppose the proposed amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Kimunya.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Temporary Deputy Chairman. I have been guided. Perhaps, for the benefit of the House, Paragraphs 56 and 57 are being deleted. So, a gap is being created and there is a new provision which would have been 58 being added. So, the confusion is probably because of drafting. Once we delete Paragraphs 56 and 57 of the Bill, then the new Paragraph 56 talks about compensating tax to a power producer. If we are doing it from that angle, then it is perhaps a sequencing or drafting issue. Let us deal with deletion of the two, then we can do an insertion of a new Paragraph 56. Paragraph 56 is not a substitution of the current Paragraph 56 with the wording of another one. It is a totally different thing and that is where the confusion is coming from.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Nyikal.

Hon. (Dr.) Nyikal (Seme, ODM): If that is so, then it is important for Members. We are not all tax experts, but we have to contribute. We need to get a proper explanation of the new one that is going to be proposed to replace this one. We cannot make a decision which is dependent on something that will be proposed and we still do not know. So, even without going ahead, let us get that explanation then we move on.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Dawood, must you really speak to this?

Hon. Abdul Dawood (North Imenti, JP): Yes, Hon. Temporary Deputy Chairman, because I am in the Departmental Committee on Finance and Planning. Paragraph 56 should have been deleted completely. It is Paragraph 57 that we are amending and not Paragraph 56. The way it has been worded in this Order Paper is wrong. Paragraph 56 should be deleted. We are replacing Paragraph 57 not 56.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Finally, the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): We are confusing Members. Based on the support of the National Treasury who owns this Bill, we are deleting Paragraphs 56 and 57. Those provisions are giving investors in the Special Economic Zones undue advantage in terms of getting extra tax rebates in the name of capital gain. We are deleting that. This new amendment gives power producers outside the Special Economic Zone incentives to invest in the country in order to reduce our power cost is a different amendment by the Committee. First, we need to deal with the deletion and that can be New Section 56. The problem is the procedure. Let us first deal with that. It can come under new clauses.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let me give some guidance. Essentially, the spirit and the essence are very clear. The issue is deleting 56 and 57. Mr.

Chairman, you will be at liberty to move inclusion of the new clause which you can as well label 56(A) so that we can make progress.

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

(Paragraphs 56 and 57 deleted)

Paragraph 56(A)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chairman, you are now at liberty to move the inclusion of Paragraph 56(A), which is new so that we can tidy how we dispense with that part.

Hon. Joseph Limo (Kipkelion East, JP): Thank you, Hon. Temporary Deputy Chairman. This is now the right thing.

Hon. Temporary Deputy Chairman, I beg to move:

THAT the Schedule to the Bill be amended—

(d) in the provisions relating to the Part I of the First Schedule by inserting the following new paragraph 56—

“56. Compensating tax accruing to a power producer under a power purchase agreement”;

The justification is the one that was given earlier, which will make our power producing entities more vibrant to produce more power. It will even make it cheaper. Thank you.

(Question of the amendment proposed)

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

(Paragraph 56(A) inserted)

Provisions relating to the Income Tax Act of 1973, Cap. 470

Third Schedule, Head B, Paragraphs 3 and 5

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

THAT the Schedule of the Bill be amended by –

(e) inserting the following new amendment immediately before the proposed amendment to Paragraph 3 of Head B in the Third Schedule—

NEW HEAD A Insert the following new paragraph immediately after paragraph

2—

Affordable housing relief.

3. The amount of affordable housing relief shall be 15% of the gross emoluments but shall not exceed Kshs108,000 per annum.

The justification for this is that we moved to double the savings amounts for purpose of acquiring affordable housing from Kshs48,000 annually to Kshs96,000. However, the view of the stakeholders including the KPMG and even our Committee was that given that the objective is to provide cheap housing for the lower cadre, they might not have savings given a chance to double it. So, the best way of helping this particular cadre of Kenyans is to provide some relief so that they can afford. To qualify for this, you must have already been chosen to become a beneficiary so that it does not benefit everybody.

Thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): So that we move in a tidy manner, why do you not move the amendments in (e), (f) and (g), together so that we are able to dispense with that Schedule - Head B together?

Hon. Joseph Limo (Kipkelion East, JP): I propose that we do one by one because they are not related.

(Question of the amendment proposed)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): I am told you have a further amendment to Paragraph 3 and Paragraph 5, both of which are related.

Hon. Joseph Limo (Kipkelion East, JP): Yes, they are related. I will move the two together. In the proposed Bill, we were talking about punters. For the first time, we are proposing tax winnings.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule of the Bill be amended by –

(f) deleting the word “twenty” appearing in the proposed new subparagraph (i) in the proposed amendments to Paragraph 3 of Head B in the Third Schedule and substituting therefor the word “ten”; and

(g) deleting the word “twenty” appearing in the proposed new subparagraph (i) in the proposed amendments to Paragraph 5 of Head B in the Third Schedule and substituting therefor the word “ten”

The import of this is to reduce the rate of tax proposed from 20 per cent to 10 per cent given that it is being done for the first time. The punters who appeared before us were proposing 3 per cent. That is the practice worldwide. In Kenya, we are not proposing only to raise tax, but also to discourage betting. So, we are proposing to move from 3 per cent to 10 per cent.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Dawood.

Hon. Abdul Dawood (North Imenti, JP): I am in the Finance and National Planning Committee, but I disagree with this proposal. When the CS for the National Treasury proposed this amendment, it was at 35 per cent. He reduced it so that he could get enough income. Fifteen per cent was to go to betting companies and 20 per cent to the punters. Now, if we are going to reduce even that 20 per cent to 10 per cent, how will the CS of the National Treasury fulfill whatever he has said?

I oppose this amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Kimani.

Hon. Francis Kimani (Molo, JP): Thank you very much, Hon. Temporary Deputy Chairman. I am in support of this amendment. As a country, we need to get away from where we want to impose higher taxes hoping that we will collect more revenue by increasing taxes. Sometimes when you tax less, like 10 per cent instead of 20 per cent, you are likely to have more gains and collect more taxes, especially when the intention is to collect more taxes.

With that, I support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kubai.

Hon. Kubai Iringo (Igembe Central, JP): Thank you, Hon. Temporary Deputy Chairman.

I oppose the amendments. Betting and gambling is a gainful act, but we should look at it as a societal misnomer. We tax beer, cigarettes and the other pleasures. We cannot reduce taxes on gaming and gambling and make this country a gambling nation. If you want to gamble, go out there and gamble at a cost. These taxes should be increased. Why do we increase taxes on cigarettes and other things? It is because they are luxuries and they need to be taxed heavily.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): I also oppose this. The issue of tax on gambling has two purposes. The first one, which I think is a smaller one, is raising taxes. The other one, as this country stands today, is to try to reduce betting. Betting is an addictive thing. People destroy their families and property because of betting. It is just like a drug addiction. It is something that we should discourage.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Before I come to you Hon. Mohamed, let us have the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Let me give the position of the National Treasury. I think our starting point as Hon. Dawood puts it is that the current taxation net betting income is at 35 per cent, according to the Kenya Revenue Authority. Information given to the Committee is that the estimated gross income from this sector is Kshs206 billion. The total winnings are Kshs181 billion out of that. So, the net betting income is Kshs25 billion. The genesis of taxing winners is coming from this position. What the Chair is trying to do is to change what was on the Bill. The Bill provides for 20 per cent for winnings and 15 per cent for betting. From this figure, you can see that winnings are Kshs181 billion. It is the chunk of the money where we need to tax.

Hon. Chair, let us have 20 per cent and 10 per cent.

The Temporary Deputy Chairman (Hon. Patrick Mariru): What is your point of order, Hon. Kathuri?

Hon. Kathuri Murungi (South Imenti, Independent): I think the Leader of the Majority Party has misled this House. Out of the betting that people do, you can bet 10 times and win once. It is misleading to tell us winnings are more than what the betting companies get. Winnings are very minimal, indeed. They are very minimal.

The Temporary Deputy Chairman (Hon. Patrick Mariru): What is the point of order over that point of order, Leader of the Majority Party?

Hon. Aden Duale (Garissa Township, JP): Every statement you make in the House must be a statement of fact. What I am giving is a fact from the KRA. What is he giving to tell me that I am misleading the House? This is a statement of fact and I can table this document on the Floor of the House. In a year, the estimated gross income from this sector was Kshs206 billion. Out of

it, total winnings were Kshs181 billion. The net betting income was Kshs25 billion, which is what we taxed. The Government taxed the Kshs25 billion. That is why we want to amend the provision and say that those guys who go away with Kshs181 billion should be taxed. How many times one loses is not important. What is important is how many times you win. The ratio between winning and losing is not here or there. We want to deal with the number of winnings.

I am telling the Chair that he needs to withdraw these amendments. I am opposing. I want him to withdraw.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Mohamed.

Hon. Mohamed Mohamud (Wajir South, JP): Thank you, Hon. Temporary Deputy Chairman. I want to bring to the attention of the House that gambling is a very crucial thing. It is a very critical thing for our society. Societal aspects and impacts must be examined before any amendments are considered. The effects of gambling on the society are obvious and well recorded. Given that that is the position, increment of tax will discourage many people from it. Just like in developed countries, they have put higher taxes on cigarettes, alcohol and all that addictive items.

I oppose this amendment. Higher tax is more preferable in this case.

(Hon. Jimmy Angwenyi stood in his place)

The Temporary Deputy Chairman (Hon. Patrick Mariru): You even stood! Hon. Angwenyi, I will give you a chance, certainly.

Hon. Joshua Kandie (Baringo Central, MCCC): I am a Member of the Departmental Committee on Finance and National Planning. To put it right, the Leader of the Majority Party has the correct figures. I also got some from those who bet themselves. They gave me a figure of Kshs190 billion. So, I am supporting the side of the Government where we tax 20 per cent and not 10 per cent.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Before we go to Hon. Angwenyi, let us have Hon. Owino.

Hon. Martin Owino (Ndhiwa, ODM): Thank you, Hon. Temporary Deputy Chairman. This is dead on arrival. What is missing here is how much the Government uses to maintain those who are addicted. You will find it is twice that amount. I oppose it. Let us go to the highest taxation. In fact, it could be more deterrent than just encouraging people by lesser taxes.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Angwenyi. Hon. Chairman of the Departmental Committee on Finance and National Planning, I will be giving you a chance to speak to this shortly.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Thank you, Hon. Temporary Deputy Chairman. I support my leader. This tax has two objectives. One is to raise revenue. Two, it is to act as a deterrent to our people the same way Dr. Nyikal said. So, I oppose reducing the tax to 10 per cent. Instead, let it remain at 20 per cent. Even with that, we have already given some exemptions.

The Temporary Deputy Chairman (Hon. Patrick Mariru): We will have to subject this to a vote. Before then, Hon. Chair, do you want to speak to this?

Hon. Joseph Limo (Kipkelion East, JP): Let me just give information. As the Leader of the Majority Party has put it very rightly, this is a proposal from the National Treasury. As a Committee, we invited the stakeholders. During deliberations, we realised that we can be talking

about collecting more. Honourable KK here has put it very correctly that if you are taxing these winnings for the first time, there are two objectives.

First, to collect tax and discourage the players. If the rate is punitive, the players have an option of playing on international platform and, therefore, lose on revenue. As the Leader of the Majority Party has put it, we can maintain it at 20 per cent, but at the same time, I will give you information as there are open options.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let the House decide.

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

*(Provisions relating to Paragraphs 3 and 5,
Head B, Third Schedule put and negatived)*

*(Provisions relating to the Income Tax Act of
1973, Cap. 470 as amended agreed to)*

Provisions relating to the Stamp Duty Act Cap.480

Section 117(1)

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

THAT, the Schedule to the Bill be amended –

(2) in the proposed amendments to the Stamp Duty Act by inserting the following new paragraph immediately before the proposed amendment to Section 117—
s.10A.(1) Delete and substitute with the following new subsection—

10A. (1) The Collector of Stamp Duties shall refer to the Chief Government Valuer or a registered and practicing valuer any conveyance or transfer on sale of any immovable property before or after registration of the relevant instruments in order to determine the true open market value of such property as at the date of the conveyance or transfer for purposes of ascertaining whether any additional stamp duty is payable.

The Temporary Deputy Chairman (Hon. Patrick Mariru): What is it, Leader of the Majority Party?

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, after we defeated the Chair's amendment, then we put the one in the Bill to vote.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Thank you, Leader of the Majority Party for your hawk eye. Clearly that is the position.

Let us now move to the amendment on the Stamp Duty as I was proposing.

Hon. Joseph Limo (Kipkelion East, JP): The import of this amendment is that currently, there are only 44 Government valuers in the whole country. Given that the Government is moving to affordable housing, it will be a tall order for the Government valuers to work alone. Therefore, the proposed amendment will bring in the registered and practising valuers to help achieve this.

(Question of the amendment proposed)

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairman, as much as the Government is slow sometimes, there is a danger of misuse. So, the only thing I would like to be advised on is whether the valuers have a regulator? Are they regulated because if they are not, there will be a danger. I just need that to help my mind make the decision.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kangogo, you have the Floor.

Hon. David Bowen (Marakwet East, JP): Thank you, Hon. Temporary Deputy Chairman. I am equally concerned on this because unless you say that the valuers are prequalified in the ministries concerned, this is subject to misuse. If you open it to everybody in the market, people will be opening offices and calling themselves valuers. Some of the valuers may go ahead to steal people's land. There is need for the Chair to amend or provide a clear picture on this. We need to know whether private valuers are prequalified in the Government funds before they are given opportunity to work on this exercise.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Adipo.

Hon. Andrew Okuome (Karachuonyo, ODM): Thank you, Hon. Temporary Deputy Chairman. I am a Member of the Departmental Committee on Finance and National Planning. We must note that the valuers we are saying should be added to the Government valuers are people who have gone through a process to get their qualification. They have university degrees and are fully trained. They are like those who are working in the Government. If we say that they cannot do the valuation, and valuation is only left to Government valuers who are only 44 compared to the 500,000 units of houses that we are going to put up in accordance to the Big Four Agenda, we will be failing the system. I support the amendments as they are.

The Temporary Deputy Chairman (Hon. Patrick Mariru): What is your point of order, Hon. Leader of the Majority Party?

Hon. Aden Duale (Garissa Township, JP): For us to make progress, the Chair needs to tell us what he is deleting as part of the explanation. Then we can move on.

The Temporary Deputy Chairman (Hon. Patrick Mariru): That is a fair point by the Leader of the Majority Party. It is good to help Members to appreciate the context and what you are deleting in that section so that even as they engage, they do so from a point of information.

Hon. Joseph Limo (Kipkelion East, JP): In the current Act, it is only the Government valuer who is doing valuation. So, we are just adding.

(Hon. Aden Duale consulted loudly)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order Hon. Leader of the Majority Party, you are the one who raised the issue, so it is good for you to be keen.

Hon. Joseph Limo (Kipkelion East, JP): Thank you, Hon. Temporary Deputy Chairman for making the Leader of the Majority Party to listen. The only addition we are making to the current...

Hon. Members: There is deleting and substituting.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, on the amendment as per as the Order Paper, the statement reads 'delete and substitute with the following new subsection'. All the Members want to know is what you are deleting.

Hon. Joseph Limo (Kipkelion East, JP): We are deleting the section which says ‘the Government valuer will do the valuation’ and adding a new section after the words “Government Valuer or a registered valuer.” We should have said ‘deleting and inserting a registered and practising valuer’.

The import of this is to bring in valuers who are registered under their association just like the engineers of Kenya. These are registered valuers and they are 600 in the country while Government valuers are only 44.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, just to make it clearer, are you saying that what you are adding is after the statement ‘Government valuer’. That is what you are adding to.

Hon. Kirima.

Hon. Moses Kirima (Central Imenti, JP): Hon. Temporary Deputy Chairman, on this matter, I have been in the field for a period. Mine is that by opening this section as proposed by the Chair, it will be subject to abuse. It will be like the doctors. This will be seen and I will be remembered for it. The moment doctors were allowed to have private clinics, that is when the Ministry of Health became chaotic. Doctors are mainly in their clinics and they have no time to sit in public hospitals.

On this issue, the moment this is opened up, when a person wants a property to be valued and goes to a Government valuer, they will be referred to private valuers always. It will be a cartel where Government valuers will always refer the people to private valuers for purposes of making deals. Up to now, Government valuers are not being overused. They are adequate in the field. For those who have not been in the field and have just been doing things selectively, they may think that is not a fact. But that is the position. Let it be opened up and the common *mwananchi* is going to suffer. That is the position.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Angwenyi. You will be given a chance. Hon. Omboko.

Hon. Omboko Milemba (Emuhaya, ODM): Thank you, Hon. Temporary Deputy Chairman. This amendment, and with due respect to the Chair and the Committee, I do not support it. It will be subject to serious abuse. An imagination that you looked at valuers as qualified people who went to university, all these are career persons who have similar qualifications. What will happen is that the valuers will be compromised. Let me tell the Committee that we are moving to a level where we want to put more money in the housing project and, therefore, land, to achieve one element of the Big Four Agenda. We want to loosen this by allowing any valuer to provide valuation. That would be dangerous for us. Therefore, I oppose the amendment. I suggest that if there is need, the Budget and Appropriations Committee should add money to the ministry, so that Government valuers can be increased. This will be better. Let us not open this to private valuers.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Before I give opportunity to Hon. Waihenya, Leader of the Majority Party, what is it?

Hon. Aden Duale: Hon. Temporary Deputy Chairman, let us understand this amendment. Once the House has understood, then we can vote on it. These four key projects of the Jubilee Government, particularly the housing project, the greater part of it is being done by the private sector. We do not want to have a bureaucratic bottleneck from what the Chair is talking about. Even the valuers the Chair is talking about are Kenyans. The law is clear on who they are. They must be registered by the Chief Valuer in the Government. So, I want the Chair of the Committee on Finance and National Planning to change that amendment and give powers to

the Chief Valuer of the Government to have the discretion to engage his Government valuers and if possible, private valuers. This is because there is the element of the private sector. The amendment is good but lacks some flesh. About 80 per cent of the housing we are talking about is going to be done by the private sector. So, we do not want to have a situation where we have only 44 valuers. We must provide in law that the Chief Government Valuer must have overriding powers.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I will give opportunity to a number of Members on this particular one because I can see the interest. Hon. Waihenya.

Hon. Isaac Ndirangu (Roysambu, JP): Thank you, Hon. Temporary Deputy Chairman. The essence of this new provision is to open up space for private surveyors and valuers to participate in the Big Four Agenda in terms of housing. You realise that in this housing component, many people will be involved through public private partnerships (PPPs) and investors from outside. Limiting the 500,000 houses to only 44 Government valuers and you know how bureaucratic our system is, means that it is going to be very slow. So, we are simply saying that if we have private auditors working for the Government, we should also have private surveyors and valuers working in Government projects.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I can tell Hon. Angwenyi is quite... I did not want to use the word agitated. It is you, Hon. Nyikal, who used that. Hon. Angwenyi, then I move to my left.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Hon. Temporary Deputy Chairman, I do not know why we want to impute improper motive on these professionals. Surveyors are registered professionals the same way as an accountant I am registered. You are not saying that those 44 valuers who are working for the Government are angels. They are all Kenyans and they are qualified. We are opening up.

Hon. John Ng'ongo (Suba South, ODM): (*Off record*)

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Please, I taught you and you must respect me.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Angwenyi. Please, speak through the Chair.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Hon. Temporary Deputy Chairman, what we are saying is that since these people are professionally qualified and registered with a recognised institute, we should allow them to do the work so that the work can be expedited, Kenyans can get the housing that they want and the Government can get the taxes that they want to raise.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I will come to my right. I must give opportunity to Hon. Owino, then the Leader of the Minority Party. Then I will get back this way.

Hon. Martin Owino (Ndhiwa, ODM): Thank you, Hon. Temporary Deputy Chairman. How fast do we forget? The CS for National Treasury had the discretion of allowing people to import sugar and here we have a problem already. There is a reason there are only 44 Government valuers because we can hold them to account. We cannot allow and open this wide net so that the 500,000 houses fall on people. It does not matter the profession. What we are saying is that we have seen it and we do not want to see it again.

So, I oppose.

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Leader of the Minority Party.

Hon. John Ng'ongo (Suba South, ODM): Hon. Temporary Deputy Chairman, first, my teacher is complaining bitterly, but I was just wondering because accountants are regulated in this country by the Institute of Certified Public Accountants of Kenya (ICPAK) and I have never seen his name in the list of ICPAK members. He has told me he is a chartered accountant. Maybe he forgot to register. Anyway, let me move on.

You will forgive me for lack of understanding. This amendment is talking about the collector of stamp duties that shall refer to Chief Government Valuer or a registered and practising valuer.

My problem with the registered and practising private valuers is that many times we know what they do in this country as professionals. For purposes of collecting stamp duties, chances are that Government can lose a lot of money if we are going to allow private valuers. You can even find a property worth Kshs10 million valued at Kshs2 million for purposes of stamp duty. I wanted to have a system where we can hold someone accountable. So, a Government valuer, to me, is a public servant whom we can easily hold accountable. In that case, unless I am convinced otherwise, I do not think this amendment is desirable in my view.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I will move to that side, but before I do that, we will have Hon. Nyamai and then Hon. Kimunya.

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Thank you. I am looking at the fact that we are talking about the individual to whom the collector of stamp duty should make reference to. Putting the Chief Government Valuer at the same level with other registered valuers... In simple English, it means they are at the same level. The Leader of the Majority Party, I just wanted to finish my statement. The Government is going to lose money through under valuation if we allow this amendment to proceed.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Kimunya.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon Temporary Deputy Chairman. I can speak with authority having been Minister for Lands, for Housing and for Finance. All the three come together on collection of stamp duty.

The reason we put the responsibility on the Chief Government Valuer was obviously because of the under-valuations when people are declaring tax and over- valuations when they are selling to the Government. You saw it happen in the Ruaraka land which was valued by a private valuer at Kshs239 million per acre. If it was the Government selling, it would have been valued at Kshs10 million per acre. So, we must hold somebody to account. I also hear what Members are saying that there is going to be lots of housing schemes coming up that may require stamp duty, but remember, there shall be no stamp duty on a first-time buyer. They are exempted and there will be no valuation.

Let us go by the Bill. There will be no stamp duty accruing on a first-time buyer of an affordable house. So, we might be thinking there is a lot of valuation required, but there will be no valuation required anyway because there is no stamp duty.

Secondly, it is only at the resale point that we will then have the requirements for valuations. However, be that as it may, recognising that there will be a lot of housing, I am willing to concede to a situation where we then have the Chief Government Valuer or registered practising valuers approved by the Chief Government Valuer so that whatever happens, he must take disciplinary action against them if they undervalue. Once we have that amendment, then we will take care of the increase in numbers and at the same point, we have one person who is accountable for doing it or approving somebody to do it.

Thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Before I give any other Member, why can we not give the Chance to the Chair? He could be speaking to all the issues that the Members are raising. Then I will open it up.

Hon. Joseph Limo (Kipkelion East, JP): Thank you, I hereby do a further amendment. Members have made some inputs that are very important. The whole thinking of bringing in the valuers is good so that the process will not be slow, but it is good to have a control over the same valuers.

Therefore, I am proposing to move the amendment in the form which I had moved but with a further amendment by inserting the words “appointed by the Chief Government Valuer “immediately after the words “practising valuer.”

So, these valuers will be appointed by the Chief Government Valuer to lessen his job.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Members, I have to propose. Hon. Kimani, you will not speak until I propose to that so that you can speak to that amendment.

(Question of the further amendment proposed)

I open the Floor for Members to speak on that amendment. Order, Hon. Kimani.

Hon. Patrick Wainaina (Thika Town, Independent): Thank you. When we hear Hon. Members through the Temporary Deputy Chair talking about valuers, we must remember that we have a Valuers Act. This defines a valuer and there are qualifications to a valuer which are not less than those of Government valuers. Billions of shillings have been lost through people who have been appointed by the Government. So, why can we not empower these professional bodies? They should become self-regulating, so that valuers can be regulated by their professional bodies because they are equally qualified as Government valuers?

With that I support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order Members. I shall be putting the Question. Hon. Mohammed Sheikh, why are you completely agitated on this particular one?

Hon. Mohamed Mohamud (Wajir South, JP): Thank you. Apologies. I was not agitated but I wanted to raise this. We are holding this country into shackles or chains. We want our professionals to develop, practise and deliver. Therefore, we should not be living in the old days thinking that private practitioners cannot deliver truthfully and justly. Therefore, we must support private practitioners the way we support private medical practitioners who take care of us. We should be allowing professionals who can deliver and represent this country. So, I am digressing from the Leader of the Minority Party.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Muhammed. Order Members.. You absolutely have the right to speak and present the way you are doing. It is completely within your right.

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

(Section 117(I) as further amended agreed to)

(Provisions relating to the Stamp Duty Act)

Cap.480 as amended agreed to)

Provisions relating to the Value Added Tax Act 2013 Act No.35 of 2013

First Schedule, Section A Part I

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chair, you have some amendments.

Hon. Joseph Limo (Kipkelion East, JP): Thank you, Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule to the Bill be amended-

(3) in the proposed amendments to the Value Added Tax Act, 2013—

(a) in section A of Part I of the First Schedule —

(aa) by deleting the proposed new—

(i) paragraph 94;

(ii) paragraph 95;

(iii) paragraph 100;

(iv) paragraph 101;

(v) paragraph 102;

(vi) paragraph 104 and

(vii) paragraph 107.

(bb) by deleting the expression “ordinary bread” appearing in the proposed new paragraph 103;

To bring Members to speed, the Bill is proposing to move quite a number of items from zero-rated to exempt. These particular items, if moved, it means that the manufacturers of these particular goods will not claim input tax

After meeting with the stakeholders, the Committee went through it and decided on the basis that some of these items will hurt the members of the public who are the consumers... Therefore, we are proposing to delete particular items, which will make goods more expensive for Kenyans. If manufacturers are not able to claim tax, they will increase the prices.

We are proposing to delete Paragraph 94, which talks about taxable supplies on housing and construction because it will make the same houses we want to become cheaper expensive. Paragraph 95 talks about construction of hotels and other Special Economic Zones.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order Chair. For purposes of tidiness, we want Members to follow that we are dealing with Paragraphs 94 and 95. I advise that we first deal with them because as you can notice between Paragraphs 94 and 100, there are four paragraphs which do not have amendments. We do not want to confuse Members. So, let us dispense with this.

Hon. Joseph Limo (Kipkelion East, JP): Thank you, Hon. Temporary Deputy Chairman. I stand guided. We should deal with Paragraphs 94 and 95 which we are proposing to delete.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Leader of the Minority Party.

Hon. John Ng'ongo (Suba South, ODM): Thank you, Hon. Temporary Deputy Chairman. I can hear my teacher shouting put the Question. I think once we dispose of with this, the others will be very easy because they are almost the same.

As the Chair has said, there is a distinction between zero-rating and tax-exempt and many times it confuses many people. For example, if you are talking about exempting housing, it means you are unable to claim input tax, but you will not charge output tax. In zero-rating, you are able to claim, for example, on the items you have used like nails, iron sheets and paint. The person who has constructed a building is able to claim back the tax paid on those items.

Therefore, when items are tax-exempted, they become more expensive as opposed to zero-rating. Therefore, because these are essential commodities, I think this House should just revert to where they were and tell the National Treasury that we do not agree with their decision to exempt these items.

I support the amendments. Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have the final person.

Hon. Members: Put the Question!

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

(Paragraphs 94 and 95 deleted)

(Paragraphs 96, 97, 98 and 99 agreed to)

Paragraphs 100, 101 and 102

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chair, you have some amendments to this.

Hon. Joseph Limo (Kipkelion East, JP): Thank you, Hon. Temporary Deputy Chairman. In the same way, we are also proposing to delete Paragraphs 100, 101 and 102 to avoid making life expensive for Kenyans. Paragraph 100 is dealing with medicine and Paragraph 101 is dealing with gas. We need to make cooking gas cheaper to save our forests. Paragraph 102 is about milk.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I must propose the deletion first.

(Question of the amendment proposed)

Hon. Kimunya.

Hon. Amos Kimunya (Kipipiri, JP): I am doing a quick consultation because perhaps the Committee had the advantage of consulting. The First Schedule is goods exempt supplies from VAT. The assumption is that we are deleting from exempt and they will be retained within the zero-rated items. I just want to confirm whether they are in the zero-rated schedule? I was doing a quick reference because I am not sure they are.

I want to confirm for the benefit of the House so that we do not delete them from the First Schedule and they are not in the zero-rated schedule. It will mean that they are Vatable. I want to make sure they qualify.

Hon. Joseph Limo (Kipkelion East, JP): Thank you, Hon. Temporary Deputy Chairman, I just want to clarify. The proposal in the current form is that they are being moved from zero-rating to exempt. Now that we are deleting this particular proposal, we are also deleting... At a later stage, you will see we will be deleting the proposal with regard to moving these particular items from the Second Schedule. We will also take action there.

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Leader of the Minority Party.

Hon. John Ng'ongo (Suba South, ODM): Thank you, Hon. Temporary Deputy Chairman. I am familiar with the VAT Act because I brought a raft of amendments in 2014 after the Government had put to Vatable almost all basic commodities. I remember these are the same items we took back to zero-rating. The Government was trying to take them from zero-rating to tax-exempt. If we amend by deleting, it means we are not taking them to tax-exempt, but reverting back to zero-rating. That is the position.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): The Bill belongs to the National Treasury. I am the one who brought it. The Bill is deleting all those zero-rated items. Once we agree with that, it goes back to exempt and it will make it very expensive for the people. The cost will go to packaging and many things. So, we need to move.

Put the Question.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Dawood, must you speak to it?

Hon. Abdul Dawood (North Imenti, JP): Yes. Thank you, Hon. Temporary Deputy Chairman. I agree with what the Chairman is saying. The National Treasury moved these things. First, it was in zero-rating. It moved to exempt one year back and then it was moved again. So, the National Treasury should do taxes for eternity because we cannot be moving every year.

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

(Paragraphs 100, 101 and 102 deleted)

Paragraph 103

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairman, you have an amendment.

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

THAT, the Schedule to the Bill be amended-

(3) in the proposed amendments to the Value Added Tax Act, 2013—

(a) in section A of Part I of the First Schedule —

(bb) by deleting the expression “ordinary bread” appearing in the proposed new paragraph 103;

The import of this is to make bread cheaper and affordable for the Kenyan people.

(Question of the amendment proposed)

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

(Paragraph 103 as amended agreed to)

Paragraph 104

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chairman, you have an amendment to Paragraph 104.

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

THAT, the Schedule to the Bill be amended-
(3) in the proposed amendments to the Value Added Tax Act, 2013—
(a) in section A of Part I of the First Schedule —
(aa) by deleting the proposed new—
(vi) paragraph 104.

Hon. Temporary Deputy Chairman, this is on agricultural pest control products. So, it is going to help farmers because the products will be, at least, cheaper.

(Question of the amendment proposed)

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

(Paragraph 104 deleted)

(Paragraphs 105 and 106 agreed to)

Paragraph 107

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chairman, please, speak to the amendments.

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

THAT, the Schedule to the Bill be amended-
(3) in the proposed amendments to the Value Added Tax Act, 2013—
(a) in section A of Part I of the First Schedule —
(aa) by deleting the proposed new—
(vii) paragraph 107.

This is on medicine. It is going to make medicine expensive for Kenyans. Therefore, it will go against the access of universal healthcare.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Angwenyi.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Hon. Temporary Deputy Chairman, I am a Member of the Departmental Committee on Finance and National Planning and we discovered, from the stakeholders, that this was going to make it impossible to manufacture medicines in this country. We will be importing medicines from South Africa, Zambia, Zimbabwe and elsewhere because to manufacture them in this country would be too expensive. Therefore, our people will suffer.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Leader of the Minority Party.

Hon. John Ng'ongo (Suba South, ODM): I just wanted to add that it was going to make imported medicine cheaper than medicine manufactured locally. On a light note, I want to say that maybe they were advised by Hon. Kimunya. You know Hon. Kimunya is a capitalist in this House. He wants to tax Kenyans. I hope he did not go to the National Treasury to advise them.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kimunya was busy writing. He did not catch what you said. I am sure he will be told by Hon. Sankok. Hon. Kimani.

Hon. Francis Kimani (Molo, JP): Probably also to add to submissions made by the stakeholders, this was going to make it cheaper to produce in Tanzania and import to Kenya rather than producing in Kenya and creating employment for our youth in the country.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Finally, the Chairman of the Budget and Appropriations Committee, you want speak to this. You have the Floor.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Chairman, I want to support for that basic reason that it is, indeed, true. I have a pharmaceutical company operating from Kikuyu and in the last three to four years, they have really suffered because of the medicine produced in Tanzania. Even small economies like that of Zambia, people produce medicines cheaply, even transport it to Kenya and sell it cheaper. Therefore, I support the amendment as proposed by the Chair.

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

(Paragraph 107 deleted)

Provisions relating to the Value Added Tax Act 2013 Act No.35 of 2013

Second Schedule Part A

The Temporary Deputy Chairman (Hon. Patrick Mariru): There are a number of amendments to that.

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

THAT, the Schedule to the Bill be amended-
(b) in Part A of the Second Schedule-
(aa) by deleting the proposed amendments to—
(i) paragraph 11.

Hon. Temporary Deputy Chairman, this amendment on the Second Schedule is meant to harmonise what we deleted under the First Schedule. Therefore, I am proposing to delete

Paragraph 11 to harmonise with the First Schedule. This is basically to harmonise the Bill after we amended the First Schedule.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairman, just to get it clearly from you, are the various paragraphs under deletion related so that we can move them together? If they are related, then why can you not move them together?

Hon. Joseph Limo (Kipkelion East, JP): So that we can move faster, I propose that these deletions under paragraphs---

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, as the Members have said, it would be good for you to explain further the import of what you are doing so that we are together.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, you remember Hon. Kimunya had indicated before that we should be sure that whatever we are deleting here is also harmonised under that paragraph. When it was proposed to move Paragraph 94 to the exemption Schedule, it was moved at the same time under the Second Schedule. Therefore, after we moved it to the exemption Schedule, we also deleted it in the Second Schedule so that it is harmonised.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I am sure you will speak to that.

(Question of the amendment proposed)

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

(Paragraph 11 deleted)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chair, have you moved the further amendment?

Hon. Joseph Limo (Kipkelion East, JP): As I indicated earlier, paragraph 11 was on import of raw materials for the manufacture of pharmaceuticals. I am now moving to delete Paragraph 13, which is touching on bread.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Second Schedule be further amended in Part A—

(aa) by deleting the proposed amendments to Paragraph 13 and substituting thereof with the following new paragraph-

(13A) Supply of ordinary bread.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I wanted it to be clear. I am told there was a further amendment. I just wanted you to confirm that. Very well.

(Question of the further amendment proposed)

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

(Question, that the words to be inserted in place thereof be)

inserted, put and agreed to)

(Paragraph 13 as amended agreed to)

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I am moving to delete it in the Second Schedule.

The Temporary Deputy Chairman (Hon. Patrick Mariru): The House has already dispensed with that. It is good enough to explain so that we are together.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, when I was moving...

The Temporary Deputy Chairman (Hon. Patrick Mariru): You can now move to the next amendment on the Order Paper. That is (bb). Order Chair, what is it, Hon. Kimunya?

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chair, I may have missed it, but in the original Bill, there was deletion of Paragraphs 7 and 8, which we need to dispose of before we go to the amendment to Paragraph 11. In Part (aa), we have covered Paragraphs 11, 13, 15, 16 and Part C. Within the original Bill, there was deletion of Paragraphs 7, 8, 14 and 17, which have not been amended by the Committee. We need to make sure those become part of the Bill.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Members, we dispensed with paragraphs 11 and 13, but there were Paragraphs 7 and 8 in the original Bill.

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

(Paragraphs 7 and 8 deleted)

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

THAT, the Schedule to the Bill be amended-
(b) in Part A of the Second Schedule-
(aa) by deleting the proposed amendments to-
(iii) paragraph 15;
(iv) paragraph 16; and
(v) Part C.

(Question of the amendment proposed)

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

(Paragraphs 15 and 16 deleted)

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have not reached Part (bb) as well.

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

THAT, the Schedule to the Bill be amended-

(b) In Part A of the Second Schedule-

(bb) by inserting the following new amendment immediately after the proposed amendment to Paragraph 17—

New Insert the following new paragraph immediately after Paragraph 17—

18. Inputs or raw materials for electric accumulators and separators including lead battery separator rolls whether or not rectangular or square supplied to manufacturers of automotive and solar batteries in Kenya”.

This is in the spirit of supporting the manufacturing pillar by making those inputs zero-rated. This will make the goods which are manufactured in Kenya, especially batteries, competitive, able to compete with the rest of the region and even internationally. This will support the Government agenda on employment.

(Question of the amendment proposed)

Hon. Kimani Ichung’wah (Kikuyu, JP): Hon. Temporary Deputy Chairman, I wish to support that amendment. As the Chair of the Departmental Committee on Finance and National Planning has mentioned, we are talking about the manufacturing sector of our economy. All of us are drivers and many of the batteries we use in this country are Chinese made. Manufacturers in our neighbouring country of Tanzania manufacture cheaper batteries and sell them here at the expense of our local manufacturers. I fully agree with the Chair that this will give new gravitas and impetus to the manufacturing of batteries locally, not just to create employment, but also to reenergise our manufacturing. The second issue is about the cost of power.

As I mentioned earlier, if we are to drive the manufacturing agenda, we must make sure that the cost of power comes down. The solar batteries are the ones which will help to bring the cost of power down not only for our manufacturing industries, but also for our consumers of electricity.

With those few remarks, I beg to fully support the amendment.

Hon. Members: Put the Question!

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let me proceed and put the Question.

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

(New Paragraph 18 inserted)

The Temporary Deputy Chairman (Hon. Patrick Mariru): I beg to move:

THAT, the Schedule to the Bill be amended -

(3) in the proposed amendments to the VAT Act, 2013 –

(b) in Part B of the Second Schedule –

(i) by deleting Paragraphs 6 and 7.

(Question of the amendment proposed)

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

(Paragraphs 6 and 7 deleted)

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

THAT, the Schedule to the Bill be amended-
(3) in the proposed amendments to the VAT Act, 2013 –
(b) by deleting Part C of the Second Schedule.

This touches on medicine which was proposed to be exempted but we have returned it to zero-rating status now.

The Temporary Deputy Chairman (Hon. Patrick Mariru): For purposes of clarity, you are basically opposing the proposed deletion in the Bill.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I want to make it clear. Remember that the Bill was proposing to move medicine from the current zero-rated status to exempt status. There is a proposal to delete Part C in the Bill, so that it reverts back to zero rating status.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): I hope the Members understood the proposed amendment. Hon. Dawood.

Hon. Abdul Dawood (North Imenti, JP): Hon. Temporary Deputy Chairman, in this proposal, we want to retain Part C as it is instead of deleting completely what has been proposed by the Mover of this Bill.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, allow me to put the Question.

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

(Part C deleted)

*(Provisions relating to the Value Added Tax Act 2013
Act No.35 of 2013 as amended agreed to)*

Provisions relating to the Betting, Lotteries and Gaming Act Cap. 131

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, in the same spirit, the proposal by the National Treasury is that we should bring everybody on board.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Chair. These are totally new provisions. So, you need to move the Second Reading.

QUORUM

Hon. Kubai Iringo (Igembe Central, JP): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): What is it, Hon. Iringo?

Hon. Kubai Iringo (Igembe Central, JP): Hon. Temporary Deputy Chairman, I stand under Standing Order No. 35. Given the weight of the amendment that is about to be moved here, our number in the House is small. We are too few to transact this very serious business. It needs a proper quorum. The number of the Members who are here cannot make that decision. That is my observation.

Thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let that be confirmed. Let the Quorum Bell be rung for 10 minutes.

(Quorum Bell was rung)

Order Members. We now have quorum.

(Loud consultations)

We must proceed. By the time quorum was raised, the Chair was on the Floor moving the Second Reading. We must start now.

Hon. Members, I hope we are together on the Order Paper. The Chair will explain where we are. Please, because there are a number of Members who have just come in, it is important for you to explain in detail so that they get the context of where we are. Hon. Chair, you have the Floor.

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

THAT, the Schedule to the Bill be amended-

(4) by inserting the following new item in its proper alphabetical sequence –

NEW

The Betting
Lotteries and
Gaming Act
(Cap. 131)

s.29A(1) Delete the expression "thirty-five" and substitute therefor the word "fifteen".

s.44A(1) Delete the expression "thirty-five" and substitute therefor the word "fifteen".

s.55A(1) Delete the expression "thirty-five" and substitute therefor the word "fifteen".

s.59B(1) Delete the expression "thirty-five" and substitute therefor the word "fifteen".

The Temporary Deputy Chairman (Hon. Mariru): Please, explain the import with a bit of detail, because I can hear Members want to know where we are so that the ones who have come in are able to understand the import of the Second Reading.

Hon. Joseph Limo (Kipkelion East, JP): Let me explain for the benefit of the Members who have just come in. We are discussing amendments which are proposed in the new tax laws to share the tax burden for the first time.

Currently, the winnings are not taxed. In the analysis that was presented by the Leader of the Majority Party from the National Treasury and Kenya Revenue Authority (KRA), in betting, lotteries and gaming, 88 per cent of what is put in goes to winnings, but we have not been taxing that. So, in the new proposal, the National Treasury wants to bring in the winners and tax them 20 per cent. Already, it has been explained that in the split, the industry contributes a reasonable amount though the proposals are a mixture of raising tax at the same time trying to bring in the players, the punters who have been getting away with it and now they are being brought in. In the same spirit, the same punters normally play within Kenya or on the international platform. The presentation made by National Treasury and KRA is that if we want to bring in more people, we have to also ensure that these particular players are in.

The proposal here is to ensure that though we are discouraging gambling, we also have a sustainable way of ensuring that these particular companies which sometime contribute to the social activities in this country remain in business. In the minds of Members here, we not only have Betin and Sportpesa, but also Kenya Charity Sweepstake which has always played a key role in this country.

For Members who have just come in, we have already passed that all the winners will be taxed at the rate of 20 per cent. There was a proposal by the players that it should come down to 3 per cent. The Committee proposed to have a middle ground of 10 per cent, but this House has just adopted 20 per cent. In the same way, this particular section which we are now amending will bring harmony in terms of harmonising the tax rate to 35 per cent by amending Sections 29(A)(1), 44(A)(1), 55(A)(1) and 59(B)(1).

I beg to move.

(Question of the amendment proposed)

Hon. James Mugambi (Othaya, JP): Hon. Temporary Deputy Chairman, I stand to oppose this amendment. The betting, lotteries and gaming tax is a sin tax. So we cannot be seen to reduce sin tax because we are all aware what gaming is doing to our children. It is one business we should start to discourage. It is not business because our young people cannot feed chicken with layers mash and wait for an egg to come out, because they are used to quick money through betting. They think that is the way to get rich.

That is why the National Treasury had the idea of increasing that tax to 35 per cent. You know that every other genuine business in this country is taxed at 30 per cent. Corporations are paying tax at 30 per cent. Our genuine workers earning little money are paying tax at 30 per cent. Why would you want to give an incentive of 15 per cent to people doing business and do not employ enough people? We know what this kind of business is doing to our children. Our administrators down there are all over trying to fight this kind of business. We should, therefore, support them by agreeing that it is illegal and it should be taxed at 35 per cent.

I oppose.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I want to bring to the attention of the House what this Bill from the National Treasury is doing. Those of us who were in the 11th Parliament know that it is the President who returned a memo for 35 per

cent. I want the House to listen to me. I am ready to table the letter from the National Treasury because they had to make a commitment that they support what is in this Bill.

The letter is about the justification for the introduction of the withholding tax on winning. The current taxation is on net betting income at 35 per cent as Hon. Mugambi has said. The letter states that according to KRA, the estimated gross income is Kshs206 billion while total winnings are Kshs181 billion; and net betting income is Kshs25 billion. The current taxation is on a net betting income at a rate of 35 per cent giving the annual tax revenue yield of Kshs8.7 billion. This means that only 12 per cent of the gross income is subjected to tax, leaving out 88 per cent. This is inequitable and needs to be corrected in order to enhance equity and fairness.

Taking the above into consideration, and I want the Chairman who met the stakeholders to also convince the House that the 35 per cent is not being reduced. He is proposing to tax the next betting income for operations at 15 per cent and the winnings at 20 per cent.

Let me also tell Members that we are at the tail-end of this Bill. We have already passed that the winners will pay 20 per cent and the betting company 15 per cent because they pay corporate tax, VAT and other taxes.

Right now, what this Chairman is trying to tell the House is that we have already passed the stage of the 20 per cent for the winnings and the 15 per cent for the betting company. He is trying to analyse. This is the letter to show the House that the 35 per cent on taxation on betting and lottery is still intact and not a single per cent is being reduced.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Seroney.

Hon. Sammy Seroney (Nominated, WDM-K): Thank you, Hon. Temporary Deputy Chairman. Sincerely speaking, this is not an investment that we can embrace for our youth. This is just a game owned by foreigners. I want to be in the records that I am totally opposed to reducing the taxes. If you have never been into those gaming houses, you will not understand what is happening there. We should retain it at 35 per cent.

Hon. Aden Duale (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): What is the point of order, Hon. Leader of the Majority Party?

Hon. Aden Duale (Garissa Township, JP): We are not talking about betting. My religion does not allow me. We are dealing with taxation. We know this thing is bad. We need to discourage it.

Hon. Sammy Seroney (Nominated, WDM-K): Much as we want to see that the country earns revenue, we should not earn revenue at the expense of our youth. Giving foreigners 15 per cent does not make sense. It should have been 40 per cent. My point is to discourage this activity in the country as much as possible.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kimunya.

Hon. Amos Kimunya (Kipipiri, JP): I know this matter can be emotive, but I want to ask that we understand what the issue is all about. I rise to support the amendments proposed by the Committee and I will tell you why. Members may recall that the Statute Law (Miscellaneous Amendments) Bill No.2 was tabled here. It contains these amendments.

You may also recall that the Speaker directed that the amendments that relate to tax be taken to the tax committee to debate and incorporate within the Tax Laws (Amendment) Bill and bring them to this House. First of all, let us note any one point that these amendments have come from the Committee. They came with the original Bill which is the Statute Law (Miscellaneous Amendments) Bill No. 2. If you look at them, they are on page 410. What the Committee has

done is to ensure that when the Tax Laws (Amendment) Bill is passed by the House, the amendments to the Gaming Act accord with the amendments in the Tax Laws (Amendment) Bill. They would then be brought in through the Statute Law (Miscellaneous Amendments) Bill No. 2. The import of what is happening is that we sat here today and said we are going to move portions of the taxations for gaming income – portions to be borne by the winner and the company that is carrying on the betting activity.

Let us also remember one thing which is important: the 35 per cent currently under implementation only applies to companies registered in Kenya. Companies operating out there and deriving an income from here are not answerable to the 35 per cent. It is only when the companies are registered in Kenya that they pay the 35 per cent. For people doing all those other forms of betting but registered out there, we are not getting any income. We will be getting that income when the punter receives his winnings which are 20 per cent. All others are paid 15 per cent. The Government gets 35 per cent in total. So, there is no loss in income. I can guarantee you that we will get more income.

Most importantly, I want to exonerate the Committee from any feeling that, perhaps, they sat and decided to change the rate from 35 per cent to 10 per cent. In fact, that came from the Government in the Statute Law (Miscellaneous Amendments) Bill No. 2. What has happened is to bring those forward to today, instead of being discussed within the framework of the Statute Law (Miscellaneous Amendments) Bill No. 2. These are taxation issues and we are discussing tax matters today. I want to persuade Members that we do not do double taxation. Do not tax somebody at the winning and the company because we are going to kill both.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I will shoot to the back now. Hon. Danitah.

Hon. (Ms.) Dennitah Ghata (Nominated, ODM): I thank you Hon. Temporary Deputy Chairman or this opportunity.

It is important honourable ladies have their voice when we are discussing such serious issues as taxation and money. You need to be looking at us because we also talk about serious monies here. I am opposing. For the sake of our children and our young people who have found themselves in gaming and betting, this taxation should be high to foreigners who have pitched all these companies everywhere, even in the estates. What we should be talking about is not deleting. We are not talking about deleting this 35 per cent to 15 per cent. We should be talking about increasing it. Over and over again in this House, I have questioned what the cause of these companies is. If you look around all this gaming and lotteries, what cause are they supporting in this country? They are making money and going away.

I oppose.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Musili.

Hon. Julius Mawathe (Embakasi South, ODM): Thank you, Hon. Temporary Deputy Chairman.

It is totally out of order for somebody to attempt to lie or mislead the House that you are not reducing the tax from 35 per cent to 15 per cent by deleting 35 per cent and inserting 15 per cent. You are reducing the taxation from gamblers and the gaming companies from 35 per cent to 15 per cent.

Hon. Amos Kimunya (Kipipiri, JP) *Off-record*.

Hon. Julius Mawathe (Embakasi South, ODM): Hon. Temporary Deputy Chairman, protect me for a few minutes.

It is wrong for us to allow these foreign companies you are saying are out there to come and mislead our children; to come and make our children nothing but gamblers. Then, we are saying that the Government is supporting them to come and make our children nothing but gamblers; moving them away from education. What they are normally waiting for nowadays is to get Kshs20 or Kshs50 to go and gamble. That is wrong. This is a sin tax.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well.

Hon. Julius Mawathe (Embakasi South, ODM): Give me time, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Musili, you know I have to give chance to a few other Members.

Hon. Julius Mawathe (Embakasi South, ODM): I understand and I appreciate that, Hon. Temporary Deputy Chairman. So, I stand to oppose. This tax should not be decreased from 35 per cent. It should be increased, if possible, to 40 per cent. Then, the winner, because there is a separation, we should tax not only the winner, but also maintain the tax at 35 per cent or make it 40 per cent.

I stand to oppose. Put the Question.

(Laughter)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Musili, you cannot speak and tell me to put the Question when you have finished. Order, Members. Before I decide the next step...

(Hon. Samuel Atandi stood in his place)

Hon. Atandi, you cannot be standing. I have not given you a chance yet. Before we move, can I give a chance to the Chair?

Hon. Joseph Limo (Kipkelion East, JP): When we are transacting this business in this House, we are also human beings. We normally see the mood of the House. Therefore, because it looks like there are so many issues which are cropping up I am proposing that, to allow further consultation, I withdraw this.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order Members.

Hon. Kathuri Murungi (South Imenti, Independent): On a point of order.

Hon. Kubai Iringo (Igembe Central, JP): On a point of order.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Kathuri and Hon. Iringo. Order! The Chair has withdrawn. When he has withdrawn, there is nothing more to discuss because there is nothing before the House. That is accepted. Therefore, that is now withdrawn from the Chair.

Hon. Ayub Angatia (Lugari, ANC): On a point of order.

The Temporary Deputy Chairman (Hon. Patrick Mariru): What is the point of order, Hon. Savula?

Hon. Ayub Angatia (Lugari, ANC): Hon. Temporary Deputy Chairman, under what Standing Order did he withdraw or shelf the idea on the amendment on betting and lottery? Explain to us. Are you circumventing due to some pressure from somewhere because of this sin tax? Sin tax is charged or pegged at the highest level everywhere in the world. It is on cigarettes,

beers and such. Even in church, you cannot tithe using money from prostitution or money from sales of dogs. Sin tax must be charged at the highest level.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Savula. Your right to speak to that issue is respected, but the House has moved on. What is it Leader of the Majority Party?

Hon. Aden Duale (Garissa Township, JP): By him withdrawing his 35 per cent, all of us are now okay. The amendments of the CS are out. You cannot say no to his withdrawal, the original 35 per cent tax has remained.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Members. I gave a very little latitude to go back to an issue that the House had concluded.

*(Provisions relating to the Betting, Lotteries
and Gaming Act Cap. 131 withdrawn)*

(Title agreed to)

Clause 1

The Temporary Deputy Chairman (Hon. Patrick Mariru): There are some amendments relating to the coming into effect of the various laws. Hon. Chair, do not speak to the provisions relating to the Betting, Gaming and Lottery Act because it is not before the House now.

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

THAT, Clause 1 be amended by-

(i) numbering the existing provisions as sub-clause 1.

(ii) by inserting a new sub-clause immediately after the renumbered sub-clause.

2. this Act shall come into operation or be deemed to have come into operation as follows.

On the basis that you have already ruled, I will jump (a) and I will go to;

(b) provisions relating to Income Tax Act CAP 470 on 1st July 2018

(c) provision relating to Stamp Duty Act CAP 480 on 1st October, 2018

(d) provisions relating to VAT 2013 on 1st July 2018

(e) in the marginal note by inserting the expression and commencement immediately after the word "title"

(Question of the amendment proposed)

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

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

(Clause 1 as amended agreed to)

(Loud consultations)

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Leader of the Majority Party, is there a contention on whose Bill it is?

Hon. Aden Duale (Garissa Township, JP): The Member for Embakasi should have time to read the Standing Orders.

Hon. Temporary Deputy Chairman, I beg to move that the Committee do Report its consideration of the Tax Laws (Amendment) Bill and its approval thereof with amendments.

This Bill has many things outside betting. There are many other taxation measurers. If you are interested in betting, go and look for the betters.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT AND THIRD READING

TAX LAWS (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms. Jessica Mbalu): Let us have the Chairperson report to the House.

Hon. Patrick Mariru (Laikipia West, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Tax Laws (Amendment) Bill and approved the same with amendments.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report. I request Hon. Limo, the Chair of Departmental Committee on Finance and National Planning to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Speaker. I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms. Jessica Mbalu): Hon. Members, I am not able to put the Question. I, therefore, defer it to the next appropriate time as it will be stated in the Order Paper. Next Order.

(Putting of the Question deferred)

MOTION

REPORT OF THE INQUIRY INTO ALLEGED LAND IRREGULARITIES

THAT, this House adopts the Report of Departmental Committee on Lands on the inquiry into the alleged irregularities in the compensation for part of Land LR. No. 7879/4 to M/s. Afrison Import Export Ltd and Huelands Ltd by the National Land Commission laid on the Table of the House on Thursday, June 7, 2018.

(Hon. Rachael Nyamai on 26.6.2018)

(Resumption of Debate interrupted on 26.6.2018)

The Temporary Deputy Speaker (Hon. (Ms. Jessica Mbalu): We will start with the Member for Isiolo North. Hon. Hulufu Oda.

Hon. Hassan Hulufu (Isiolo North, KPP): Thank you very much, Hon. Temporary Deputy Speaker. I did not get the opportunity to contribute to this Report yesterday.

I want to start by thanking the Departmental Committee on Lands for coming up with a very comprehensive Report based on the Petition relating to the land in Ruaraka. I would like to highlight a few issues in the Report. Let me start by saying that I fully agree with the recommendation of the Committee. The process of acquiring land compulsorily for public use is clearly spelt out in our Constitution. There are clear provisions in our Constitution, especially Article 40(3) as well as the Land Act 2012, which provides for clear procedures on how the Government can acquire land compulsorily from private land owners. It is amazing that land which has been in public use where a school has been operating from for the last 30 years is being acquired in 2018.

Ideally, when the Government acquires land through compulsory acquisition, what we would expect is that there is need for land to be set up for some public utility. According to the provisions of the law, especially the Land Act, 2012, the proposal has to come from the relevant organs of the national Government or county government. This is specifically the County Executive Committee Member responsible for the department which requires that the PS, land or the CS, in the case of the national Government, under whom the department that requires that land falls, is responsible.

Looking at this Report, we realise that the process was initiated from the National Land Commission (NLC), which is against the provisions of the existing laws. It is the NLC which wrote to the Ministry of Education, Science and Technology seeking some advice on how it can acquire land for a school which has been in existence for the last 31 years. Again, if you look at the process of compensation, the valuation of the land which was to be acquired should be arrived at through very clear procedures. Looking at the Report and the finding of the Committee, it is very clear that there has been outright violation of all existing regulations as relates to compulsory acquisition of land for public use. Therefore, the recommendation of the Committee to hold NLC accountable for the loss of Kshs1.5 billion is quite in order. I agree with it and I support it.

When I look at the amount of money we have lost and the needs that we have in sectors like education, especially in the ASAL areas where most of our schools have no facilities and I try to count the number of laboratories which we can set up in our day schools using that money; I look at the number of dispensaries that can be constructed using this money which, from the look of the Report, allocated to a purported private land owner fraudulently, it is very amazing. I

did some simple calculation as a pastoralist and realised that what we lost, in pastoralist terms, amounts to close to 30,000 camels, if I were to explain to my constituents in the language that they understand.

Therefore, it is very important for us as a House, which has the responsibility of safeguarding the wealth of this country, especially now that we have budget deficits, to try and make sure that public officers who abuse their offices, who collude with private land owners and fraudulently rob us of our hard-earned money as a nation, are made to account for their wrong deeds. I fully agree that the NLC, which is mandated by the Constitution and the Lands Act to be the constitutional commission responsible for enabling all Government institutions to acquire land for public use, be held fully responsible. I agree that other Government departments, especially the Ministry of Education, Science and Technology whose views were sought; the AG, who also gave his opinion, as well as the Ministry of Lands, also need to be investigated so that we can establish whether there was collusion amongst these various actors in the public sector and, therefore, apportion each one of them a fair share of the blame for making us lose Kshs1.5 billion.

It is very interesting that there was no public participation in this process. Ideally, once the need for land is established, once the relevant county or national Government department makes preliminary notice to the NLC and they agree with the need for that land and the necessary regulations are set in motion and the land owners, if they are genuine, are notified of the intention of the Government, what is supposed to happen is for that intention to be publicised so that all interested parties, including all stakeholders and the public, are made aware of the same through the *Kenya Gazette* and county gazette as appropriate. It is very clear, although notification in the *Kenya Gazette* is mentioned, there was no effort on the part of NLC or other relevant ministries to notify the public and provide opportunity for them to look at what is being proposed, whether they know the ownership of the land is appropriate, the size of land in question, whether the proposed amount of compensation is fair and so on. All these things were not done.

Ideally, also, the procedure requires that once the notification is done and the public and all interested parties give their input to the process, the Registrar is supposed to register the intention and a survey is supposed to be done. But this land is already surveyed. The school has been in existence. Therefore, it is a very clear case of fraud. I support this report and fully agree with all the recommendations.

Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this Report.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): I can see that we have an amendment. I need to consult with the Chair whether she is ready for the amendment.

Member for Kiharu.

Hon. Samson Nyoro (Kiharu, JP): Thank you very much, Hon. Temporary Deputy Speaker. I rise to support the Report by the Committee on Lands. I have to say that they have done a very holistic work that is very commendable. In fact, you would think they have investigative arms within the Committee. So Dr. Nyamai you have done a great job with your Committee and I support.

Even as we talk about Ruaraka land that belongs to the two schools, I have to say that the corruption in this country has reached unprecedented levels. The kind of impunity we are seeing in our country has never been of that magnitude before. The NLC has failed Kenyans in almost

all respects. This commission was formed to sort out land matters in this country. But after its creation and existence, we have seen more land problems than solutions.

I am perturbed reading the committee report. Even after the AG's opinion, even before they engaged somebody of the level of headteacher of Ruaraka Primary school and the other secondary school, the NLC colluded with the Treasury and went ahead to pay the hefty Kshs1.5 billion. This is a huge amount by all standards and I side with the other Members who are even quantifying how much this money can do even within the same education sector. Therefore, this is an issue of high magnitude and I am sure that even in the ensuing debate we will see more involvement of Members because this is a report like no other that we have seen in this Parliament. It beats logic and commonsense that public institutions have been on the same land for over 33 years without any complaint from any quarter, then somebody comes up and claims the land is theirs and the government entities go ahead to pay a hefty amount.

Beyond the Ruaraka land, we have more issues that we are dealing with in regard to corruption in this country. It is very clear that there was collusion and public money was lost in this transaction. More worrying is that the CS for Treasury and the Treasury itself went ahead to pay Kshs1.5 billion which was not budgeted for in this Parliament. It is very clear that the laws were flouted and the National Treasury did what ought not to have been done at that time.

Corruption is the reason some of us are coming up with amendments in our corruption laws. The kind of impunity we are seeing in our country is because one can do anything in this country even in broad daylight. You go to our courts and come out scot free. We have to make people fear being corrupt and that is one of the reasons some of us are going ahead to amend our anti-corruption laws to include stiffer penalties, including enlisting some of these crimes to be punished through capital punishment. I was very happy that last week in China, someone who had received bribes, who was a deputy mayor at some town in China, was sentenced to death after being found guilty of colluding and collecting bribes.

Even as we borrow from countries that have eradicated or brought down levels of corruption, I am happy about a country such as Singapore which we can borrow from so that we can mitigate and protect public money from this kind of blatant stealing. In 1986, there was a Cabinet Secretary in Singapore who was in charge of housing. He was accused and was under investigations before being found guilty. He tried to call President Lee Kuan Yew then, but the president advised this gentleman who was his personal friend to first finish up with the equivalent of the Ethics and Anti-Corruption Commission (EACC) in Singapore. But because of the shame that he brought to the President, the man committed suicide.

In our country, we are at a level where instead of being ashamed when you are found committing corrupt acts, we are actually celebrated. This has to come to an end and we must have stiffer penalties. I am happy reading recommendations of the Committee. They are very specific even to the officers. As we talk about the National Land Commission (NLC), it is not led by animals or robots. It is led by individuals and these individuals led by the Chair, Professor Swazuri, have to carry personal responsibility even as we continue with the probe of this theft and as our multi agencies carry out investigations.

I am very disappointed by the many commissions we formed in the new Constitution. The NLC was instituted to provide solutions to the much bedeviled land sector in this country. However, since the inception of the NLC, we have had more land problems than before. The National Transport and Safety Authority (NTSA) is another commission that has witnessed more accidents during its tenure on our roads. The Salaries and Remuneration Commission (SRC) has witnessed ballooning of the wage bill since its creation.

As I wind up starting with the NLC, we have to rethink whether these commissions are serving Kenyans or it is just a way of siphoning public money through increasing the recurrent expenditure that we are all trying to bring down so that we can create more money to go to the development of this country.

Therefore, all the officers that are mentioned starting with Professor Swazuri to the people who paid at the National Treasury and the Attorney General, they all have to carry personal responsibility.

With those few remarks, I support this Report.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have Hon. Kimunya Muhinga as I consult with the Chair on a proposed amendment which has already been approved by the Hon. Speaker.

Hon. Amos Kimunya (Kipipiri, JP): Thank you. I support this Motion by the Committee. At the outset, I commend the Committee for a very comprehensive Report and more so in the manner that they have focused on the issues. They have not taken it upon themselves to apportion blame but identify the issues and further delve into matters affecting the agencies set for this purpose.

I am very happy with the whole flow of this Report. I agree that we need the Director of Criminal Investigation to look deeper into some of these issues. I want to take cue from what Hon. Nyoro has said. We went to Bomas of Kenya as part of the process of creating the new Constitution. As a result of the land grabbing which took place in the 1990s there was the formulation of the Njonjo Land Commission and Ndung'u Land Commission. One of the things which came up is that the duties of the then Commissioner of Lands were allowing people to mess up with our land management system.

Therefore, it was decided that perhaps these duties should be moved from an individual level and institutionalised as the National Land Commission. We all thought we were safe and that land would be managed and valuations done properly. We are seeing the ills we were trying to cure of Government land being sold at the lowest price and Government buying land at very high prices. We are seeing more escalation of prices. This matter becomes very clear if you look at the land acquired for the Standard Gauge Railway (SGR), schools and roads. This is almost creating some speculative purposes. People are busy looking where the next road is planned to buy land because the NLC will overvalue it. The public ends up losing the value of that road because all the money goes to compensate people for the land.

We need to figure out when the rain started beating us and how we can help as a House. I believe when discussing the Land Value Index Laws we might get an answer. This trend has gone beyond Government acquiring land from members of public. You can see development projects being impeded by the haggling between two Government bodies, where one owns the land. They say the Government cannot use the public land until they are compensated. I believe the Departmental Committee on Lands will look at this to see how we can deal with it.

I am also surprised because this land was planned in 1984, the owners had notice they were the ones who had applied for re-planning. However, they waited for 33 years speculating on the land, or probably when people could not remember what had happened to say that the land had been occupied by a school and hence they needed to be compensated. I wonder whether this was triggered by the hefty SGR compensation which people saw. We need to ask ourselves when a similar thing happens, should we compensate at the rate which would have been used in 1984 or the current rate? We do not want to end up having a school that is now worth Ksh2.3 billion on 13 acres of land.

If you know where Ruaraka is land cannot be valued at Ksh239 million per acre. Land in Muthaiga is not going for Ksh230 million per acre, it is around Ksh200million per acre. If you are buying land in Ruaraka even those plots, I doubt if you will buy at that price. But, because it is the Government buying and we know it is a cartel then it is bought at that price. As we were told by the Leader of the Majority Party, the Kshs.1.5 billion seems to have disappeared into several cheques and the owner is still waiting for the balance to accrue in his account. It tells us that this was a major rip-off. Actually, they should return that money so that we can end up with value for money.

We are talking about building affordable houses in the Big Four Agenda. If the Government is going to acquire land across the country for the Big Four in this fashion, then you can be sure that the houses we have been told will cost Kshs1.5 million will be a pipe dream. They will never be realised because one acre of land will be costing Kshs239 million. How many houses can you put on that to be able to sell to poor Kenyans? So, it is something that we need action at the highest level in terms of reining in on the officers who were involved in this as the DCI and other agencies also look into this matter.

Coming to the recommendations, obviously, I am very happy that the Committee has tried to assign various responsibilities. There is only one or two, specifically the EACC, for all its failings and ills. We know it has had its major failures but on this particular issue, I am actually lost in terms of where they come in within the money payment chain. This money was seen to have been approved within by the accounting officers and they went in to investigate after the money had gone and had been disbursed within the banks. If they are culpable at some point, it will come out. I do not quite agree with Recommendation No. 6 that the EACC should take responsibility for loss of public funds because they are not part of the Integrated Financial Management Information System (IFMIS) and the payment approval system. Hence, perhaps, we may have overstretched in terms of trying to rein in as many players as possible. Obviously, everyone down the chain, from the person who initiated the transaction to the person who disbursed the money to the banks that have been used in the redistribution of that money, all those people should be investigated by the DCI and then we can see where our Kshs1.5 billion disappeared to and what we have received in return.

As I close, I want to restate what I said before that yes, we got a new Constitution and we all said we are happy. We created all these independent commissions on the understanding that they were going to help remove the excesses of the Executive. However, the proliferation has not brought value to the Kenyan people and it is important that we now relook at them because they are independent but some of them seem to appear to say they are not answerable to anyone. If they have to become relevant into the future, then we need to see that we are getting value from them. NLC is obviously one of those bodies plus so many others that we keep questioning here in terms of what value they are actually adding to this country.

We all support the fight against corruption by the President and the Executive and we would like to see recovery of some of these monies that have disappeared. If they could come back, perhaps, it could give some faith that in fact this talk about fighting corruption is not just fighting at the low level. Where if somebody disappears with Kshs1.5 billion and he is still claiming Kshs1.8 billion and he has not given titles for Kshs4.7 billion, we actually determine that no public funds will be lost through fictitious or inflated payments because of people colluding to take public money into their pockets and deny the Kenyan children the right to school and the medication that would have been done. Indeed, as people have asked, how many more schools would have been done with Kshs3.2 billion?

With those words, I beg to support and ask the Chairman to take into consideration our recommendations.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Thank you, Hon. Kimunya. Hon. Members, the Chairperson, Hon. Nyamai, has an amendment which has already been approved procedurally. Hon. Nyamai, you can move your amendment.

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Hon. Temporary Deputy Speaker, I beg to move:

THAT, Paragraph 6 of the recommendations of the Report be deleted.

Hon. Temporary Deputy Speaker, this is the recommendation that talks about EACC. We have been seated here listening to the mood of the House. The EACC has done a very good job in terms of following up on this matter. I would like to ask the Members to agree on that amendment of expunging the EACC from Recommendation No.6.

I beg to move and ask Hon. Kimani Ichung'wah to second.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have Hon. Kimani Ichung'wah seconding the amendment proposed by the Chair.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Speaker. Before I second, I just want your confirmation that this will not prejudice me from speaking to this Motion because I want to move a further amendment.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Ichung'wah, you will speak. It is an amendment but we will still go back to the original Report. It is an amendment to the Report. You are seconding the amendment to the Report.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Speaker. I wanted that confirmation because there is a further amendment that I had discussed with the Chair which I intend to move tomorrow.

I support the proposed amendment by the Chair where she says clearly that it was pursuant to the mood of the House. I clearly shared those views that we should not be seen as a House to be punishing EACC in the course of their work as an investigative agency. Since this matter is still under investigations by the EACC and we are bringing the Directorate of Criminal Investigation into it, it is only right that we are not seen to be asking the EACC to take responsibility. At the end of the day, as Hon. Muhinga has mentioned - Hon. Muhinga is Hon. Amos Muhinga Kimunya - the EACC does not have access to the payment systems of Government. They may not know. I was just sharing with the Vice-Chair of the Committee on a point of information that EACC had initially stopped this payment but then allowed it to continue. Even with that, you must accept that the EACC may also be constrained as to how long they can hold a payment that is due since the Government has the Asset Recovery Unit and other agencies that can recover this money from the people who were paid.

Even as I second, let me not get into the other things. I will say them tomorrow as I move the further amendment. I, therefore, wish to support that we expunge the taking of responsibility by the EACC so that we charge the EACC and the DCI to investigate this matter to its logical conclusion and ensure that all the monies that were lost - and not just on this school land because this only covers 13 acres - are recovered. There is also the land that was paid for the General Service Unit that holds the mother title deed. There was compensation on land that was paid by one of the road agencies for the expansion of Outering Road. All those monies should be recovered.

I beg to second the amendment.

(Question, that the words to be left out be left out, proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, I will give an opportunity to Hon. Omboko.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Temporary Deputy Speaker. I also want to beg that my indulging in this particular issue of amendment should not remove my organic jurisdiction to comment on this issue because when I came to the House, I really wanted to comment on the issue and I have my notes.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Member, if I will give you direction, you can only speak to the amendment. It will not interfere with your right to speak to the Report. I have proposed the amendment. Hon. Members, if you are speaking to this, you are only speaking to the amendment.

Hon. Omboko Milemba (Emuhaya, ANC): Very well. I wanted to raise the issue of our capacity at this particular juncture to make that amendment because this was a very emotive issue. I have followed it very clearly since yesterday and I want to thank you, Hon. Temporary Deputy Speaker, because you have also followed it throughout. Given that we do not have the requisite quorum in the House, we should not move too fast to make a determination on this amendment.

Yesterday, a few Members said that the EACC should not be held responsible for its actions. At the same time, other Members gave a contrary opinion and even went to extreme extents of imagining that the EACC was involved. It is, therefore, my prayer that we should finalise this particular amendment when we have the requisite quorum.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The amendment which is in paragraph 6 is on recommendations. You should either support or oppose it.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you. I further proceed to say that I do not support this particular amendment because at one point the EACC almost saved the country this money. However, along the way, they released the money and it was paid to some people. From the contributions and the Report which we got from the Chair, we saw a straight collusion beginning from the firm that raised this matter and said that they needed to be compensated. The collusion moved very fast and it passed around the Ministry of Education, Science and Technology.

I saw that money at one particular time but we did not block it because of the way it appeared before the Departmental Committee on Education and Research. The collusion moved quickly and went to the National Treasury to facilitate quick movement. The Attorney-General gave an assertion on this particular Report. He did not take responsibility. He had the chance to say “no” or “yes”. The EACC also changed its mind and did not capture the money. In my opinion, the EACC should not be expunged.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Member, thank you for raising your concerns about the Report. I can tell you that we will not go to that other point.

Hon. Wamunyinyi, you are contributing on the amendment of the Report.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Thank you, Hon. Temporary Deputy Speaker.

First, I want to thank the Chair because she is responsive. It is true that there have been concerns. In cases where theft, corruption or large amounts of money are involved, it usually involves many and big people. You start from the National Treasury, where payment processes

take place and the money is channelled to other departments. Hon. Kimunya knows this. For them to release huge amounts of money, it is not normally because of a small person. It must have been somebody at the top.

The Ministry of Education, Science and Technology, the Attorney-General, Ministry of Lands and Physical Planning, National Lands Commission and all the other parties involved should be held responsible. They even sometimes put in place measures in order to beat anybody who is trying to block the payment, including EACC and other Government agencies. I would also like to speak on the main Motion at some point. We all appreciate that people who conspire to steal, commit crime or fraudulently acquire...

This one was done when land was being taken away, listed, registered or subdivided. It then moved on to the point of payment being pursued. I would like to give the benefit of the doubt to the Ethics and Anti-Corruption Commission because I strongly feel that if at the first attempt they had wanted to stop payment, someone from Government must have convinced them that there is nothing wrong with that. We need to agree that people conspire at all levels to steal. Because of that, I do not want to take a lot of time on this. Because they attempted to stop the payment, we also expect that a lot more needs to be done on this particular matter.

I support the proposed amendment. We should pass it and move on. Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Shaban.

Hon. (Dr.) Naomi Shaban (Taveta, JP): Asante sana, Mhe. Spika wa Muda. Ninaunga mkono Mwenyekiti wa Kamati ya Ardhi ya kwamba Kipengele cha 6 kiondolewe kwenye Ripoti hii kwa sababu Tume ya Maadili na Kupambana na Ufisadi ijapokuwa kwa upande wao walijaribu kupigana na suala hili, hawakuwa na nguvu ya kusimamisha pesa sizipeanwe katika njia ile iliyotumika.

Vile vile, sababu yangu nyingine ni kuwa suala hili la Tume ya Maadili na Kupambana dhidi ya Ufisadi hapa nchini tumeibaidilisha mara nyingi kwa sababu hatujafurahia kazi ambayo imekuwa ikiendelea. Lakini Tume ya sasa imejaribu. Watu wakijaribu, tusiwapatie adhabu kwa kujaribu kazi ambayo wamefanya. Kwa hivyo, wakati tanapoendelea kuzungumzia Ripoti hii, itakuwa ni vizuri kulirudia tena jambo la pesa za mwananchi kutumika vizuri na kama hazijatumika vizuri, Kamati ifuatilie masuala hayo yote vilivyo.

Asante sana, naunga mkono.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. King'ara Ng'ang'a, Member for Ruiru Constituency.

Hon. Simon King'ara (Ruiru, JP): Asante sana, Naibu Spika wa Muda. Nimesimama kuunga mkono kuondolewa kwa kipengele cha sita cha Ripoti hii kinachohusisha EACC. Sababu yake ni ukizingatia mambo mengi yamezungumziwa humu Bungeni, tumeona EACC ndio shirika ambalo tutahitaji kufanya upelelezi na utafiti wa mwisho wa ile Ripoti tumeleta Bungeni.

Vile vile wakati tulikuwa tunaandika Ripoti, tulipata hawakuwa na uwezo wa kusimamisha malipo ya pesa kwa sababu hilo si jukumu lao. Na kama tungependa kuendelea ni vizuri tuangalie ni akina nani wamehusika na tuone ni akina nani wanaweza kutusaidia kutafuta mwelekeo wa wale wamehusika.

Kwa hivyo, nimeunga mkono kuondolewa kwa kipengele hicho ndio tukamilishe Ripoti hii muhimu ambayo nchi yetu ya Kenya huenda ikapoteza pesa nyingi.

Asante sana. Naunga mkono.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Mhe. Mwashetani, you have one minute.

Hon. Khatib Mwashetani (Lungalunga, JP): Asante sana Mhe. Spika wa Muda kwa kunipa fursa hii nchangie kwa kuondolewa kwa kipengele cha 6 katika maamuzi ambayo tulikuja nayo. Sababu yetu kama Kamati kuchukua msimamo huo, ilikuwa ni tulipowaita EACC kuwauliza maswali kuhusu swala hili walituambia kuwa kwa sababu ni swala ambalo lina umuhimu, ni lazima masuala mengine yafichwe.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Thank you, Hon. Mwashetani. You will have your nine minutes to speak to the amendment in the next sitting in the time appropriated for the same.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, the time being 7.00 p.m. This House stands adjourned until tomorrow Thursday 28th June 2018 at 2.30 p.m.

The House rose at 7.00 p.m.