

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

THE HANSARD

Tuesday, 23rd March 2021

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

WITHDRAWAL OF SPECIFIC PROVISIONS IN THE BUSINESS LAWS (AMENDMENT) (NO.2) BILL

Hon. Speaker: Hon. Members, as you may be aware, the Business Laws (Amendment) (No.2) Bill (National Assembly Bill No.50 of 2020) was published vide *Kenya Gazette Supplement* No.228 of 14th December 2020, to effect various amendments to 10 statutes. The Bill, which is sponsored by the Leader of the Majority Party, was read a First Time on 22nd December 2020. It was, thereafter, referred to various departmental committees for consideration in accordance with their respective mandates, with the lead Committee being the Departmental Committee on Justice and Legal Affairs, as indicated in my Communication of 9th February 2021.

I wish to notify you that I have received a request from the Leader of the Majority Party dated 16th March 2021, seeking my consent for the withdrawal of proposed amendments to the following two statutes as contained in the Bill:

- (1) The National Construction Authority Act (No.41 of 2011); and
- (2) The Land Registration Act (No.3 of 2012).

In his request, the Leader of the Majority Party indicates that, following consultations with the Executive and the urgent need to expedite consideration of the Bill, he wishes to withdraw the proposed amendments relating to the aforementioned two statutes, so as to ensure that the Bill no longer concerns county governments.

Following our usual consultations, the Speaker of the Senate had on 5th January 2021 indicated that the Bill is one that concerns county governments and, therefore, will require to be considered by the Senate after passage by the National Assembly, in terms of Article 110(4) of the Constitution. Thereafter, in another letter dated 16th March 2021, the Speaker of the Senate indicated that, if the aforementioned provisions are withdrawn from the Bill, it would no longer concern county governments and, therefore, be considered and enacted by the National Assembly alone, in terms of Article 109(3) of the Constitution.

It is on that basis that I have acceded to the request of the Leader of the Majority Party, which implies that the Bill will now proceed as though the withdrawn sections were not part of it.

In this regard, the Bill will now undergo Second Reading and other stages without making reference to the two withdrawn provisions.

The House is accordingly guided.

MESSAGE

NOMINATION OF PROF. FATUMA NYAGUTHII CHEGE AS PRINCIPAL SECRETARY

Hon. Speaker: Hon. Members, I wish to report to the House that I have received a Message from His Excellency the President conveying his nomination of Prof. Fatuma Nyaguthii Chege, for appointment as a Principal Secretary in the newly created State Department for Implementation of Curriculum Reforms, under the Ministry of Education.

His Excellency the President, having exercised his powers under Article 155(3) (a) of the Constitution, is now seeking the approval of the National Assembly on the appointment of Prof. Fatuma Chege as a Principal Secretary for the aforementioned State Department.

Standing Order No.45 requires that, upon receipt of notice of nomination for appointment of a person to such office, the nomination shall stand committed to the relevant departmental committee of the House for consideration. Further, Section 8 of the Public Appointments (Parliamentary Approval) Act, as recently amended, requires the committee to consider such nomination and table a report for debate and decision of the House within 28 days.

In this regard, pursuant to the provisions of the said law and Standing Order No.42(3) relating to Messages from the President I, hereby, refer the Message, together with the curriculum vitae of Prof. Fatuma Nyaguthii Chege, to the Departmental Committee on Education and Research for it to undertake the necessary approval hearings. The Committee should notify the nominee and the general public of the time and place for holding the approval hearings in good time. Upon conclusion of the hearings, the Committee should table their report in the House by Thursday, 15th April 2021, to enable it to consider the matter within the stipulated timelines.

PETITION

LACK OF ACCESS TO CITIZEN REGISTRATION SERVICES BY RESIDENTS OF GARISSA AND WAJIR COUNTIES

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I, the undersigned, on behalf of the residents of Garissa and Wajir counties, draw the attention of the House to the following:

THAT, after nearly 60 years of Independence many residents of Garissa and Wajir counties still do not possess identification documents;

THAT, Articles 1(1) and 2(1) of the Constitution provide that sovereign power belongs to the people of Kenya, and further stipulates that the Constitution be the supreme law that binds all persons and state organs at both levels of government;

THAT, Article 12 of the Constitution provides that every citizen is entitled to the rights, privileges and benefits of citizenship that include a Kenyan passport and any document of registration or identification issued by the State to its citizens;

THAT, despite the clear provisions of Articles 1(1), 2(1) and 12 of the Constitution, many Kenyans residing in Garissa and Wajir counties have been denied registration and identification documents which have in essence rendered them stateless;

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THAT, failure by the State to issue registration and identification documents to those specific areas of the country amounts to denial and infringement of the fundamental human rights and freedoms guaranteed under the Bill of Rights;

THAT, on account of this denial of these critical documents, most Kenyan citizens residing in Garissa and Wajir counties are unable to access Government services including health and education services, and have further been denied their political and economic rights that include voting, access to banking services and formal employment;

THAT, the situation has been further compounded by the recently-launched National Integrated Identity Management System which requires one to possess an identification card in order to obtain a Huduma Card which is linked to numerous services including medical services, mobile phone services, registration of businesses, access to public utilities, voter registration and several other services;

THAT, lack of registration and identification documents has been attributed to double registration where Kenyans residing in Wajir and Garissa counties were registered in the refugees data base mainly at Dadaab and Kakuma refugee camps, in order for them to access services such as medical and education opportunities, and who are now fated to a stateless life without dignity in their own country;

THAT, over 20,000 Kenyan Somalis in Garissa and Wajir counties are presently registered as refugees which was the only alternative they had in securing relief food occasioned by the massive drought experienced in the 1990s;

THAT, efforts to have the matter resolved by the Director of Registration of Persons through the Ministry of Interior and Coordination of National Government have not borne much fruit as exemplified by the fact that despite verification of a few thousand youths in Garissa Township, Lagdera, Ijara, Fafi, Dadaab and Wajir South constituencies through a Government taskforce in 2019, the youths have to-date not been de-registered as refugees which is a prerequisite for issuance of relevant identification and registration documents; and

THAT, the matters raised in this Petition are not pending in any court of law in Kenya.

Now therefore, your humble petitioners pray that the National Assembly, through the relevant Departmental Committee on Administration and National Security, does the following:

- (i) Investigates the matter with a view to recommending to the Ministry of Interior and Coordination of National Government to de-register these youths as refugees and all persons that were vetted and confirmed through their parents as citizens, to guarantee and be issued with relevant identification and registration documents.
- (ii) To recommend that this matter is concluded in the shortest time possible.
- (iii) To make any other recommendation that it deems fit in the circumstances of the Petition.

And your petitioners will ever pray.

Thank you, Hon. Speaker.

Hon. Speaker: The Petition is committed to the Departmental Committee on Administration and National Security.

Hon. Member: Some Members want to comment.

Hon. Speaker: Comment?

Hon. Member: Yes, those who are affected.

Hon. Speaker: No! No! No! That is too long. It has taken so long that it has taken away the right to...

(Several Members raised up their hands)

I can see everybody raising their hands. Is it Hon. (Ms.) Sophia Abdi who is raising one finger? The other one is the Member for Dadaab. Is it Hon. (Dr.) Mohammed? But the Member for Mandera North is not affected or he just wants to be in solidarity? Each of you will have one minute to comment.

Hon. Sophia.

Hon. (Ms.) Sophia Noor (Ijara, PDR): Thank you Hon. Speaker, for giving me the opportunity to contribute to this very important matter that concerns our youths. This is a very passionate issue to the people of northern Kenya, particularly the youth.

Hon. Speaker, as Hon. Duale has narrated in the Petition, the Identification Card (ID) issue has been a problem throughout. The matter of ID, particularly for those who have been in the refugee camps has been a big issue and the Government and the United Nations (UN) have dealt with it. Some of us have been going round in offices because there are many youths who have been captured in the UN's database as refugees. Some of these youths were born about five years after the establishment of the refugee camps. Some of them are 25 years old; they have finished secondary school, yet they do not have any documentation. They are thus denied their right to services and their security. They do not have any security.

Freedom of movement is a nightmare for the youth in the region. This has become a major problem in terms of these youths getting services like educational services. You know that we have a major security threat in the country and when these youths do not have any identification, they are vulnerable to harassment from security officers. That has been happening to the youth in Garissa and Wajir counties.

With regard to my constituency Ijara, we have been heavily affected in terms of youths who have joined refugee camps. Their parents and because of lack of basic needs, which Kenya...

Hon. Speaker: Member for Dadaab. Do you have a card?

(Hon. Mohamed Duale spoke off record)

Press the intervention button, or does that not operate in Dadaab? In the meantime as you search, let us give a chance to the Member of Eldas.

Hon Adan Keynan (Aldas, JP): Thank you, Hon. Speaker. Kenya is a responsible member of the international community. As a result of an informed decision by the Government of Kenya, in 1991, we accepted to host many refugees from Somalia and gave them a big chunk of northern Kenya. But there is one thing that we did not look into: the risk the decision posed to the local community.

An ID is a basic constitutional right. There are several things: we have refugee camps, the host community, Kenyans who are entitled to an ID, the Kenya Government and the petition by the international community. All these have jeopardised the rights of innocent Kenyans who have

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been affected by famine over the years. What happens? When there is serious drought and famine and there is food in refugee camps, people will naturally go there to register as refugees in order to survive. Their data is captured. There is one thing the Kenya Government has not done, and over the years we have been taken round it: there are innocent Kenyans who have proved beyond any reasonable doubt that they are Kenyans and have been forced during times of drought to register as refugees in order to get food. Why would they be punished? Why would the Government not use its intelligence facilities to verify such cases? If there are Kenyans who are affected by the drought, sort them out and give them documents but if people are refugees, take them to where they belong. It is as a result of the confusion that we are being punished collectively. It is high time the Government walked the talk and allowed the innocent Kenyans to get IDs.

Hon. Speaker: Member for Dadaab.

Hon. Mohamed Duale (Dadaab, KANU): Thank you Hon. Speaker for giving me an opportunity to contribute to this Petition.

I represent Dadaab Constituency which hosts over 200,000 refugees. The issue of double registration may not be understood by many Kenyans. When refugees are in the camps, they share with us our local resources and equally we share with them the resources they get from the international community, including food and shelter. Consequently, the Kenyans who registered themselves as refugees in order to get food and shelter have now been caught in double registration. These Kenyans cannot access ID cards. Consequently, they have become stateless. This matter had been raised at the highest level of Government and a task force was appointed and a process to...

Hon. Speaker: Member for Endebess.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. I want to support the Petition by Hon. Duale, Member for Garissa Township Constituency.

Those of us who live in the border counties - my constituency borders Uganda - face almost similar conditions, but theirs is worse because we have people registered as refugees and so they cannot get IDs. This is very inhuman. It needs to be addressed urgently.

People living in border constituencies should have access to IDs because it is a very critical instrument for them to access services. I support the Petition.

Hon. Speaker: Member for Mandera North.

Major (Rtd.) Bashir S. Abdullaih (Mandera North, JP): Thank you, Hon. Speaker. I stand to support this Petition by Hon. Duale. I congratulate him because this matter has now found itself on the Floor of the House. I call upon the House to rise to the occasion.

Double registration, as has been mentioned, is mainly done because of economic gain. It is not something of their own making, there has been a task force before and a report was given to the Government. Unfortunately, that has not been resolved. The issue about ID cards has been a thorn in the flesh of the people of the greater northern Kenya. Youths do not have IDs thus they cannot get jobs and cannot have education. I encourage the Committee to look into this matter and come up with solid recommendations. Even after formation of a task force nothing has been done. Nothing has been implemented. Let us encourage the Committee of the House to ensure youths across northern Kenya...

Hon. Speaker: Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): Thank you very much Hon. Speaker. I stand to support the Petition by “His Excellency” Hon. Aden Duale. It is very important because people cannot be denied services yet they have been vetted and proved that they are Kenyans. Any child born on the Kenyan soil is actually a Kenyan.

Hon. Speaker, I do not see the reason it should go to the Departmental Committee on Administration and National Security. Being the third most powerful person in Kenya, Hon. Speaker, give a directive that the people who have been proved to be Kenyans be given IDs and Huduma Namba. Hon. Speaker, you are third in command, give that directive.

Thank you.

(Applause and laughter)

Hon. Speaker: Hon. Kubai.

Hon. Kubai Iringo (Igembe Central, JP): Thank you Hon. Speaker, for giving me an opportunity to comment on the Petition by Hon. Duale.

I support the Petition. The problem of issuance of ID cards is a thorn in the flesh across board. It is not only in the marginal areas or counties or constituencies which border our neighbouring countries, it is there internally, for example, in Meru. You will find that officers have nobody to supervise them. In my constituency an office has one or two staff and every other day we have youths who turn up there to get ID cards but they never get them. The Registry of Persons should be overhauled holistically and corrective measures put in place so that once a teen gets to the age of maturity...

Hon. Speaker: Member for Kiminini.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Speaker. I support Hon. Duale.

Some time back when I was still teaching at the University of Nairobi, I was a lead consultant in the development of refugee policy in this country. When we went to Dadaab we realised that, indeed, it is true that the locals voluntarily go to register as refugees so that they can get benefits from the refugee camps. In that context, they cannot be given an ID. To me, this is a matter that is long overdue. A committee should be put in place. The affected persons can do some renunciation so that they can access ID cards for purposes of looking for jobs and engaging in investment ventures.

Thank you, Hon. Speaker. I support the Petition.

Hon. Speaker: Member for Mwea.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Speaker. I also stand to support this Petition by Hon. Duale. Even as I do so, I take note that our Committee made a visit to Dadaab and heard from the community the challenges they go through. It is true that we have a lot of challenges there especially on double registration. The youth that were looking for opportunities registered as refugees and now they want to get back their national ID cards.

As we support this Petition, we want to take note that this is a challenging area and it is only fair for the Committee be given enough time to look at the Petition and come up with recommendations that will also balance out...

Hon. Speaker: Member for Dagoretti South.

Hon. John Kiarie (Dagoretti South, JP): Thank you, Hon. Speaker. I would like to congratulate the former Leader of the Majority Party because this is a matter that needed to find its way to the Floor of this House.

The issue of double registration and the problem of registration of people who are actually Kenyans is not limited to northern Kenya only. In Dagoretti South Constituency, we host people who are formerly from Congo, Rwanda and some who were born here but cannot access Government services because they are not registered. In terms of registration of persons, this matter is so compounded. Even as we debate about the referendum, we know there are some young people who are not registered as voters who shall be disenfranchised when they have to make a decision either way on this matter that is coming up. If they want to vote and yet they have not been registered as voters, Hon. Speaker, they shall be disenfranchised.

Hon. Speaker: Member for Mandera West.

Hon. Yussuf Adan (Mandera West, EFP): Thank you Hon. Speaker, for giving me this opportunity. I stand to support this Petition.

I wish to add that two joint Committees of this House were sent about two years back to Dadaab and they interviewed all those people who had double registration. They also interviewed others and the leaders there, and came up with a report and recommendation on that matter. Unfortunately, I have not seen any implementation of that recommendation. If that recommendation could have been implemented, today, the former Leader of the Majority Party would not have brought this Petition. Therefore, it is important to make sure that whatever we do as Committees is not done in vain. The recommendation should be implemented to the letter so that we can deal with that issue once and for all.

Hon. Speaker: Member for Kinango.

Hon. Benjamin Tayari (Kinango, ODM): Asante sana, Mhe. Spika. Nachukua nafasi hii kuunga mkono Mhe. Duale kwa kuleta dua hii katika Bunge kwa sababu hili swala liko kila mahali nchini.

Katika eneo Bunge langu, niko na jamii kubwa sana ya Wasomali ambao pia wameteseka kwa miaka mingi bila vitambulisho. Kwa upande ambao tunapakana na Tanzania, pia tuko na Wamaasai wengi ambao wamefikisha umri wa miaka 25, lakini bado hawajapata vitambulisho.

Kwa hivyo, naunga mkono Mhe. Duale ili dua hii itiliwe maanani haraka kwa sababu vijana wengi wanateseka sana.

Asante sana, Mhe. Spika.

Hon. Speaker: Member for Ndaragwa.

Hon. Jeremiah Kioni (Ndaragwa, JP): Thank you, Hon. Speaker. I support the Petition by Hon. Duale. In addition, I also ask that the Committee pays a visit to the dump sites in the slum areas of this country. We have Kenyans there who are not known even by names. It is useful for us to extend to them the same service.

Thank you.

Hon. Speaker: Member for Bomachoge Borabu.

Hon. (Prof.) Zadoc Ogutu (Bomachoge Borabu, Independent): Thank you, Hon. Speaker. I also support this Petition. The issue of issuance of ID cards is not new. I would just appeal that, as the Committee reflects on this matter, we provide necessary mechanism to ensure provision of

ID cards. Students in secondary schools should be provided with ID cards before they leave schools.

Looking at my constituency, we have a backlog of many youths who have no ID cards. We have ID cards in offices that have never been distributed because we have no facilities that can move these people around to take ID cards. So, it is a big issue that needs a clear pathway for this matter to be settled.

I support the Petition. Thank you, Hon. Speaker.

Hon. Speaker: Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Speaker. I also rise to support the Petition by Hon. Duale. I come from a constituency that borders Uganda and our case is more or less the same and unique. It is unique in the sense that we intermarry so much with Ugandans. You find that a Ugandan lady has stayed in Kenya for 50 years, but she is not allowed to be issued with an ID card for the obvious fact that she did not follow the normal process of immigration. We need to extend that Petition to cover those kinds of issues.

For that matter, I support. Thank you.

Hon. Speaker: Hon. Sossion.

Hon. Wilson Sossion (Nominated, ODM): Thank you, Hon. Speaker. I rise to support the Petition by Hon. Duale. I wish to bring to the attention of this House that the youth in northern Kenya have been balkanized in different ways and denied their rights. It is also important to note that refugees all over the world have rights. Therefore, there is need to expedite the registration of the youth in northern Kenya. Further, registration of persons ought to be automated and even linked to the birth certificates so that this issue does not become a challenge as the young Kenyans grow.

Thank you.

Hon. Speaker: Member for Kisauni.

Hon. Mbogo Ali (Kisauni, WDM - K): Thank you, Hon. Speaker, for giving me this opportunity. First and foremost, I wish to congratulate the former Leader of the Majority Party, Hon. Duale, for bringing this Petition. As you are very much aware, Mombasa is dominated by a big business community that is from the Somali community. However, majority of the youth from that community, up to today, are still suffering in acquiring ID cards that can enable them get the necessary services in this country. So, this Petition should be opened up and not be limited to only North Eastern so that whatever recommendations that may be put forward by the Committee, should be able to be applied to the other regions like Mombasa.

Thank you.

Hon. Speaker: Hon. Mbarire.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Thank you, Hon. Speaker. I rise to also support this Petition by the former Leader of the Majority Party. It is timely because citizenship is a human right, and therefore, it beholds this Government to ensure that every Kenyan citizen is registered as per the law. Therefore, I support that, and going forward, there is need to ensure that we devolve the units that register Kenyans as citizens because, right now, we have very many young people in the villages who have not yet been issued with national ID cards.

Thank you.

Hon. Speaker: Member for Kajiado South.

Hon. Katoo ole Metito (Kajiado South, JP): Thank you, Hon. Speaker. I support the Petition. This issue is the same along the border counties, for instance, in my constituency where we border Tanzania, intermarriages have occurred between Tanzanians and Kenyans. You will find that in a family, the father and the children have national ID cards, but the mother who is as old as 60 years does not have a national ID card. One should become a citizen through marriage. So, once you are married by a Kenyan, you should be issued with a national ID card because you have become a Kenyan. Therefore, the Committee will look into this Petition and look at those issues of intermarriages between people from different countries. Furthermore, as people from the East African region, we do not even require visas to cross to the other countries.

I support the Petition.

(Hon. Aden Duale spoke off record)

Hon. Speaker: No, no, no. Let everybody comment. In any event, the Petition is going to be referred to the Committee. So, these statements are just comments.

Member for Kwanza you have the Floor.

Hon. Ferdinand Wanyonyi (Kwanza, FORD - K): Hon. Speaker, I also take this opportunity to say that the State Department of Registration of Persons should be directed by this House to start registering youths over the country. I come from Trans Nzoia and we have very many youths who lack opportunities because they do not have ID cards. Therefore, I take this opportunity to thank Hon. Duale for bringing up this Petition. It affects everybody which you can see from the contributions in this House. So, the officers from the State Department of Registration of Persons should get out of their comfort zones and register the youths for their own benefits.

I support the Petition. Thank you.

Hon. Speaker: Very well. The Petition is referred to the Committee as earlier directed. Next Order!

PAPERS LAID

Hon. Speaker: The Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Tuesday, 23rd March 2021 in the Afternoon Sitting:

The Legal Notice No. 15 of 2021 relating to Exemption from Income Tax for Japanese Companies, Consultants and Japanese Personnel and the Explanatory Memorandum from the National Treasury.

Legal Notice No. 27 of 2021 relating to the Public Finance Management (National Drought Emergency Fund) Regulations, 2020, and the Explanatory Memorandum from the National Treasury.

The Legal Notice No. 16 of 2021 relating to the Dairy Industry (Registrations, Licensing, Cess and Levy) Regulations, 2021, and the Explanatory Memorandum from the Ministry of Agriculture, Livestock, Fisheries and Cooperatives.

The Legal Notice No. 17 of 2021 relating to the Dairy Industry (Returns, Reports and Estimates) Regulations, 2021, and the Explanatory Memorandum from the Ministry of Agriculture, Livestock, Fisheries and Cooperatives.

The Legal Notice No. 18 of 2021 relating to the Dairy Industry (Compliance Officers) Regulations, 2021, and the Explanatory Memorandum from the Ministry of Agriculture, Livestock, Fisheries and Cooperatives.

The Legal Notice No. 19 of 2021 relating to the Dairy Industry (Produce Traceability and Recall) Regulations, 2021, and the Explanatory Memorandum from the Ministry of Agriculture, Livestock, Fisheries and Cooperatives.

The Legal Notice No. 20 of 2021 relating to the Dairy Industry (Milk Sales Contract) Regulations of 2021 and the Explanatory Memorandum from the Ministry of Agriculture, Livestock, Fisheries and Cooperatives.

The Legal Notice No.21 of 2021 relating to the Dairy Industry (Imports and Exports) Regulations of 2021 and the Explanatory Memorandum from the Ministry of Agriculture, Livestock, Fisheries and Cooperatives.

The Legal Notice No.22 of 2021 relating to the Dairy Industry (Dairy Produce Safety) Regulations of 2021 and the Explanatory Memorandum from the Ministry of Agriculture, Livestock, Fisheries and Cooperatives.

The Legal Notice No.23 of 2021 relating to the Dairy Industry (Pricing of Dairy Produce) Regulations of 2021 and the Explanatory Memorandum from the Ministry of Agriculture, Livestock, Fisheries and Cooperatives.

The National Government Budget Implementation Review Report for the First Half of the Financial Year 2020/2021 from the Office of the Controller of Budget.

The County Governments Budget Implementation Review Report for the First Half of the Financial Year 2020/2021 from the Office of the Controller of Budget.

The Annual Report and Financial Statements of the National Cohesion and Integration Commission for the Financial Year 2018/2019.

The Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30th June 2019 and the certificates therein:

- (a) University of Nairobi Press; and,
- (b) State Department for University Education.

Thank you, Hon. Speaker.

Hon. Speaker: Just to appreciate, the Papers are automatically referred to the Committee on Delegated Legislation to deal with.

Next is the Chairman of the Public Accounts Committee (PAC), the Hon. Opiyo Wandayi.

Hon. Opiyo Wandayi (Ugunja, ODM): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the PAC on the Examination of the Report of the Auditor-General on the Financial Statements for the national Government for the Financial Year 2017/2018 (Volumes I and II)

Thank you, Hon. Speaker.

Hon. Speaker: Very well. I wanted to appreciate that that is a Report. Members, because there are some who have not seen these kinds of Reports in the past, that is for Financial Year 2017/2018. Hon. Opiyo Wandayi's Committee has to still deal with 2018/2019, 2019/2020 and 2020/2021.

Next is the Chairman of the Budget and Appropriations Committee.

Hon. Kanini Kega (Kieni, JP): Thank you so much, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

Report of the Budget and Appropriations Committee on its consideration of the Supplementary Appropriation Bill (National Assembly Bill No.9 of 2021)

Hon. Speaker: Next is the Chairman of the Departmental Committee on Justice and Legal Affairs.

Hon. Clement Kigano (Kangema, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Justice and Legal Affairs on its consideration of the Business Laws (Amendment) No.2 Bill (National Assembly Bill No.50 of 2020) incorporating Reports from the following Committees:

- (i) The Departmental Committee on Finance and National Planning.
- (ii) The Departmental Committee on Health.
- (iii) The Departmental Committee on Labour and Social Welfare.
- (iv) The Departmental Committee on Lands.
- (v) The Departmental Committee on Transport, Public Works and Housing.

Hon. Speaker: Next Order.

NOTICE OF MOTION

ADOPTION OF PAC REPORT ON NATIONAL GOVERNMENT EXPENDITURE

Hon. Opiyo Wandayi (Ugunja, ODM): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Public Accounts Committee on the Examination of the Report of the Auditor-General on the Financial Statements for the National Government for the Financial Year 2017/2018 Volume I and Volume II, laid on the Table of House on Tuesday, 23rd March 2021.

Hon. Speaker: Next Order.

ORDINARY QUESTIONS

Question No.062/2021

STATUS OF OWNERSHIP OF L.R. NO. 6944/2 ON KENYATTA ROAD

Hon. Jude Njomo (Kiambu, JP): Hon. Speaker, I beg to ask the Cabinet Secretary for Lands and Physical Planning the following Question:

- (i) Could the Cabinet Secretary provide the status of ownership of Land Reference No. 6944/2 on Kenyatta Road, Kiambu County, and in particular the section of the land which was to be allocated to occupants of Olive Gated Estate in November 2018?
- (ii) What steps has the Ministry taken to ensure that the said land is sub-divided and marked with beacons by M/s Banda Homes Company as agreed during the purchase of land for development by the buyers?
- (iii) When will the Ministry issue title deeds to the purchasers?

Hon. Speaker: The Question will be replied to before the Departmental Committee on Lands.

The next Question is by the Member for Teso North, Hon. Kaunya. He indicated that he had requested Hon. John Olago Aluoch to ask the Question on his behalf.

Question No. 078/2021

INTRODUCTION OF PARKING LANES ON NORTHERN CORRIDOR ROAD AT MALABA AREA

Hon. Olago Aluoch (Kisumu West, FORD-K): Hon. Speaker, I have instruction from the Member for Teso North, Hon. Oku Kaunya, to ask this Question on his behalf. This Question was raised in the last Session but it lapsed and he has revived it. It is Question No.078/2021, directed to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works:

- (i) What plans does the Ministry have to introduce parking lanes on Road A104 (The Northern Corridor Road at Malaba Area), which connects Kenya to Uganda, Rwanda, Burundi, South Sudan and Eastern DRC in view of the challenges currently experienced by motorists who use the road?
- (ii) When will the construction of the parking lanes commence?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be replied to before the Departmental Committee on Transport, Public Works and Housing.

The next Question is by the Member for Ikolomani, the Hon. Benard Masaka Shinali. Press the intervention button.

Question No. 080/2021

UTILISATION OF PETROLEUM DEVELOPMENT LEVY FUND

Hon. Benard Shinali (Ikolomani, JP): Hon. Speaker, I rise to ask the Cabinet Secretary for Mining and Petroleum the following Question:

- (i) Could the Cabinet Secretary provide details of how much money has been collected since the inception of the Petroleum Development Levy to date considering that the charges were increased to Kshs5.4 per litre, up from Kshs0.4 in July, 2020?
- (ii) How is the Petroleum Development Levy Fund administered in terms of collections and expenditure?
- (iii) Could the Cabinet Secretary give details of how the money collected through the Fund will be utilised to stabilise fuel prices, and explain the role of the National Oil Corporation of Kenya (NOCK) in stabilising fuel prices?
- (iv) Could the Cabinet Secretary confirm whether the Petroleum Development Levy and Petroleum Development Fund comply with the requirements of Article 201 of the Constitution and Section 25 of the Public Finance Management Act, 2012?
- (v) What measures has the Government put in place to ensure that Kenyans enjoy predictable and affordable fuel prices now that the Hedging Fund is in place?

Hon. Speaker: That Question will be replied to before the Departmental Committee on Energy. The next Question is by the Member for Magarini, Hon. Kingi.

Question No. 082/2021

WAIVER OF DEBT OWED TO SETTLEMENT FUND TRUSTEES

Hon. Michael Kingi (Magarini, ODM): Thank you, Hon. Speaker. I rise to ask Question No. 082 of 2021 to the Cabinet Secretary for Lands and Physical Planning:

- (i) Could the Cabinet Secretary explain the plans in place to ensure that residents of Magarini Sub-County do not lose their land to the Settlement Fund Trustees due to the current outstanding land related fees, considering that land is their only source of livelihood?
- (ii) What measures is the Ministry putting in place to waive the accumulated debt and relieve the burden owed to the Settlement Fund Trustees in the former Magarini Settlement Scheme?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be responded to before the Departmental Committee on Lands. The last Question is by the Member for Kwale County, Ms. Zuleikha Hassan.

Question No. 097/2021

STATUS OF PENSION PAYMENT TO CIVIL SERVANTS FROM COAST REGION

Hon (Ms.) Zuleikha Hassan (Kwale CWR, ODM): Thank you, Hon. Speaker. This Question was asked last year and it lapsed as well.

I rise to ask Question No. 097/2021 to the Cabinet Secretary for the National Treasury and Planning:

- (i) Could the Cabinet Secretary explain why the thirty four (34) retired civil servants from Coast Region with the following Personal Nos. have not been paid their pension dues to date- (Personal Nos. 021492, 029116, 030373, 034166, 034383, 031139 and 034084 who retired in year 2014; 1977054282, 030474, 034514, 019420 and 061982 who retired in year 2015; 034386, 059038, 057976, 030366 and 034604 who retired in year 2016; 034167, 034068 and 019400 who retired in year 2017; 053274, 058219, 034295, 034631 and 198206890 who retired in year 2018; and, 050566, 034185, 037177, 030474, 034320, 034163, 034268, 050507 and 034554 who retired in year 2019)?
- (ii) What measures is the Ministry putting in place to ensure that the listed beneficiaries receive their pension dues without any further delays?

Hon. Speaker: The Question will be replied to before the Departmental Committee on Finance and National Planning.

The next segment is on Statements. Let us have the Statement by Hon. Muturi Kigano, Chairman of the Departmental Committee on Justice and Legal Affairs.

STATEMENT**STATUS REPORT ON CONSIDERATION OF THE CONSTITUTION
OF KENYA (AMENDMENT) BILL**

Hon. Clement Kigano (Kangema, JP): Thank you, Hon. Speaker.

As you are aware, the National Assembly Departmental Committee on Justice and Legal Affairs and the Senate Standing Committee on Justice, Legal Affairs and Human Rights are jointly considering the Constitution of Kenya (Amendment) Bill, 2020.

At a meeting held on Friday 19th March 2021, the Committees deliberated on various issues arising from the views received from the public and various stakeholders by way of oral submissions and written memoranda. In total, we had 65 persons/groups. In so doing, the Committee identified a number of weighty constitutional, legal and procedural issues for consideration by the Committee, which were clustered under the following six (6) thematic areas:

- (i) Nature of the Bill;
- (ii) Public participation;
- (iii) Processing of the Bill;
- (iv) Substantive issues on the Bill;
- (v) Referendum issues, and
- (vi) Status of litigation.

The Committee further observed that this was the first time that the Houses were considering a proposal to amend the Constitution by way of popular initiative under Article 257 of the Constitution and that it was therefore expected that various constitutional, legal and procedural issues would arise. Further, the Committee noted that it was imperative that the emerging issues were carefully considered by the Committee as they would not only guide the ongoing process but also future processes for amendment of the Constitution by popular initiative.

The Committee thus resolved that there was need to engage experts in constitutional, legal, procedural and governance matters in order to advise on the issues arising in the thematic areas as identified. In this regard, the Joint Committee observed that under Standing Order Nos. 203 and 217 of the National Assembly and Senate Standing Orders, respectively, Committees may, with the approval of the respective Speaker, engage such experts as it may consider necessary in furtherance of its mandate.

The Committee therefore resolved as follows:

That a sub-committee of the Committee is established comprising the following Members:

1. Hon. Muturi Kigano, MP - Chairperson, JLAC
2. Hon. (Dr.) Otiende Amollo, SC, MP – Member, JLAC
3. Hon. Jennifer Shamalla, MP - Member, JLAC
4. Sen. Erick Okong’o Omogeni, SC, MP - Chairperson, JLAHRC
5. Sen. Naomi Jillo Waqo, MP - Vice Chairperson, JLAHRC; and
6. Sen. James Orengo, EGH, SC, MP - Member, JLAHRC.

It was agreed that the sub-committee identifies experts who are well versed in the process and who have a wide experience in constitutional governance, legal and procedural matters to be procured to provide consultancy services on the matters before the Committee.

That, the sub-committee develops the terms of reference that shall guide the operations of the experts in this exercise.

The sub-committee at a meeting held yesterday, Monday, 22nd March 2021, considered the matter of identification of experts.

The sub-committee urged the secretariat to ensure that owing to the urgency of the matter, and noting that the matter is one of national and public interest, the engagement of experts be undertaken without delay so that they may commence work. The proposed terms of reference for these experts are:

1. To conduct extensive research on thematic areas identified by the Committee and the issues arising thereafter or on such other issues as maybe, identified by the Committee.
2. To analyse the Constitution of Kenya (Amendment) Bill, 2020 and advise the Committee on the salient features on the provisions of the Bill.
3. To review submissions received from the public and stakeholders on the Constitution of Kenya (Amendment) Bill, 2020
4. To regularly advise the Committee on the various thematic areas, and the issues arising thereunder.
5. To attend meetings of the Committee to discuss issues arising thereunder.
6. To provide such other services as maybe necessary on the thematic areas and issues arising thereunder or on such other issues as maybe identified by the Committee.
7. To provide such other advice on the Constitution of Kenya (Amendment) Bill, 2020 as maybe required by the Committee.
8. To help prepare a final report for approval by the Committee on the various thematic areas, and the issues arising thereunder.

We are, therefore, asking for more time to comprehensively consider the Bill and table the report soon thereafter. The grounds for seeking this approval in brief are:

- a. We have held public participation, received views and memoranda from 65 individual groups and institutions including the promoters.
- b. Public participation took three full days which extended to the night.
- c. The Joint Committee held a retreat last Thursday to Sunday inclusive.
- d. The Committee has therefore sought the Speaker's approval to engage servants under Standing Order No.203.
- e. The Committee is collecting divergent views to make the Bill coherent and fully constitutional in all respects.

Thank you, Hon. Speaker.

Hon. Speaker: I am surprised that this Committee is now looking for experts.

(Loud consultations)

There was a directive that they were to table their report today. As a House, we can allow some comments here and there. They are at liberty to engage those experts. The Member whose name has been read out – the Vice Chair of the Committee - was an expert with the Committee of Experts and now wants to be advised by some other new experts. Hon. Junet, I know your signature appears on that Bill.

Hon. Junet Nuh (Suna East, ODM): Thank you, Hon. Speaker for indulging me.

I have keenly listened to the Chairman of the Departmental Committee on Justice and Legal Affairs Committee. It occurred to me that we may be talking about different Bills. I think the Committee is coming up with another Bill, which they want to change the Constitution.

(Loud consultations)

I did not attend because I am a promoter of the Bill. I was giving you time to give the Bill justice. This Committee is now claiming to have formed a sub-committee to go and look for experts. They are forgetting that this Bill is through a popular initiative. I and the promoters had engaged experts at length for two years and your directive was very clear: they should table the report on 23rd March 2021.

This House should remind the Committee of their mandate. I think there is some confusion. The Committee may have misunderstood the kind of work they were to do on that Bill. When you hear a Committee now saying that they are looking for a Committee of Experts or consultants to advise them on the constitutionality and legality of the Bill, then we are obviously taking a very dangerous path pertaining this Bill. The House must get back to this Bill. I am seeing the House lose this Bill. The first mistake we committed was to have a Joint Committee of Senate and the National Assembly. The Senate normally deals with perpetual issues in the law, burial of permits, chicken dying in the house and such kind of things. The people who would have given justice to this Bill are the JLAC of this House. There is a reason I am saying that. It is my honest request to you, Hon Speaker, as a promoter and a Member of this House that you must give firm instructions that are equivalent to the one you gave earlier, that this Bill must be presented.

Article 257 is very clear. They are supposed to handle this matter expeditiously and the House is supposed to vote on it, pass it on a majority vote and not even by two-thirds.

(Loud consultations)

Hon. Dr. please behave. I am not a goat that you treat as a veterinary doctor. Give me time to speak, Hon. Speaker.

Hon. Speaker, the Report the Chairman has presented here is fake, vague and is not one that this House can use to determine the future of this Report.

In conclusion, this Committee is almost getting to a position that may force us to request that it be dissolved. If a Committee can get out of its mandate to go and look for other lawyers, yet some of its Members are lawyers... They want to seek the opinion of others in town! Hon. Speaker, please, save the situation; bring back the Bill to the House. The Bill belongs to the House and not the Committee as it were.

Thank you.

Hon. Speaker: Hon. Duale, kindly you have the Floor.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, before I comment on this matter, this House should be aware that Hon. Junet sometimes speaks in tongues. You do not take Hon. Junet's statements lightly. He might be telling you to go south, when he himself is heading to the north.

Hon. Speaker, I remember we altered the Calendar of this House and went on recess early. The Leader of the Majority Party, my good friend, told us that on 23rd March 2021, the Joint Committee would table its Report. We do not want to be subjected to the rumours in the newspapers. This is a legislative matter and as the Chair... Hon. Speaker I want the Chair to listen to me.

(Hon. John Kiarie consulted loudly)

No, no, no, he is consulting the Minority Leader; he needs to listen to me. On this matter the media is reporting a lot of issues and so many things have changed. You know I am sitting next to the Member for Fafi. His party leader is becoming a serious candidate. Therefore, a lot of things are changing. Hon. Gideon Moi is his party leader.

Therefore, I want the Chairman to tell us two things. He is entitled to an extension of time but he should be candid to the House. Why do they want an extension? Is there a problem in the Committee? What are the reasons? We are reading a lot. There are serious underlying issues and some of us are preparing for the Committee. In fact, I have started preparing from what I am hearing to find out whether their actions can lead to something because Hon. Mbadi, I and a number of other people participated in the 2010 constitutional making. We sat late in the night, until midnight. The Chair can tell us how much time he needs because we cannot alter the Calendar of the House on record yet today you are telling us... You know you have talked a lot but I picked nothing. What are the reasons? We did not pick anything. What are the reasons you want an extension and how long do you want the extension? This is a document by popular initiative. It belongs to the people of Kenya. It does not belong to a committee of the House. Even if Hon. Junet says it belongs to ODM, somebody else in the Government was saying it belongs to him but this is a popular initiative. It belongs to the people of Kenya. Therefore, the Chairman should tell us the reasons he wants extension and please tell us what it going on in the boardroom.

Hon. Speaker: Hon. John Mbadi.

Hon. John Mbadi (Suba South, ODM): Hon. Speaker, I want to thank you for allowing me also to give my comments on this matter. I am actually shocked that the Joint Committee which we gave....

(Loud consultations)

Hon. Speaker there are loud consultations.

Hon. Speaker: Order, Member for Dagoretti South, lower those consultations.

Hon. John Mbadi (Suba South, ODM): Hon. Speaker I just wanted to make my contribution or be heard on this matter. I am surprised that the Chair of JLAC is requesting for extra time to deal with this matter and even asking that they would invite other experts to give input to this matter. With all due respect to this Committee, I know that it is a Committee that is populated with lawyers in this House and these are not just lawyers but renowned lawyers in this country. They are lawyers who when you hear their names, you cannot have doubt that they understand what they are doing. I am surprised that they can make such a request to this House when they very well know the provisions of the Constitution. Article 257 of the Constitution was put there to stop anybody who would want to derail any Kenyan or a group of Kenyans who want to amend the Constitution. We all know that the role of Parliament in general and committees in particular is basically ceremonial.

We need to appreciate that what the Committee should have done was to just compile a report to this House for future references. There is no way that this House is even going to change a comma in the proposed Bill. How then do you change what Kenyans appended their signatures on? Kenyans decided that they wanted this Constitution to be amended in a particular way. If you want to amend this Constitution through parliamentary initiative, you do it because that is also provided for in law. What I think the Committee should do is to avoid this filibustering and derailing and delaying the process and bring a report to us. We want to deal with this proposed constitutional amendment Bill and give it back to the people of Kenya to make a decision.

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We have no capacity as a House to even amend it, not even a comma. So, why should the Committee?

(Hon. David ole Sankok consulted loudly)

It comes because the Constitution says so. You know this Hon. ole Sankok is developing a very bad habit. He shouts even at his seniors in this House; people he should be listening to, to learn from. These are people who have been elected many times like me. I want to request Hon. ole Sankok... I know he has only been elected once and we had to massage some votes for him. He was elected Chairman of Students Organisation of Nairobi University (SONU) but we know what we did for him to become the Chairman of SONU.

So, I just want to say that this request from the Committee is strange and it should not put this country to unnecessary panic and discussion. The discussion out there today in the media is whether there is disagreement between Jubilee and ODM, or between handshake partners, yet it is these Members who have issues which they should sort out themselves. Therefore, that request of extension of time is completely unnecessary. Chairman, please go back to your Committee and give us a report quickly. Kenyans have made submissions. Put those submissions together. In fact, when we were forming this committee we were even debating in the House Business Committee whether it was necessary really to refer this matter, but we said this is going to provide an opportunity for Kenyans to also canvass some issues which may inform future constitutional amendments.

Hon. Speaker, I rest my case.

Hon. Speaker: Let me hear from the Deputy Whip.

Hon. Maoka Maore (Igembe North, JP): Hon. Speaker, I want to apologise, my card is being rebooted by your staff and that is why I was shouting around and I apologise for that.

I want to agree with the sentiments raised by the three predecessors, Hon. Duale, Hon. Mbadi and Hon. Junet. We are worried as a House that the mandate we gave to high-powered joint committee of both Senate and the House did not understand the terms of reference. In addition, the terms of reference were that today they would table a report. They have no business coming to amend or intercept the terms of reference and propose something called "fresh terms of reference" where they are giving themselves sweeping powers, which they do not have.

As per Article 257 where you are going directly to the people, the House is doing a ceremonial role. You cannot expand that mandate by delving into referendum issues, litigation issues, public participation, constitutional issues, legal and governance issues. Since he does not have the mandate of amending what he was requesting, he actually does not need more time. He asked for extension for an indefinite period of time which the House may not be willing to grant because you may not know when it will end.

Hon. Speaker I want to make them refer to the Book of Genesis about that project called the Tower of Babel. When they met, the team of lawyers, politicians and the innuendos inherent in between, did not know their mandate. It is for that reason that I wish to plead with you to intercept this Report from this Committee and make sure they have a maximum of next week when they should table it or they get out of it.

I thank you, Hon. Speaker.

Hon. Speaker: Let us have the Member for Kisumu West.

Hon. Olago Aluoch (Kisumu West, FORD-K): Hon. Speaker, I have the privilege of serving in the Departmental Committee on Justice and Legal Affairs as a ranking Member. I do

not want to appear before you as in-subordinating my Chairman. However, I have something to say. The message delivered by my Chairman is good, but it was poorly delivered.

(Laughter)

I have been participating in this process throughout. The message that we wanted to bring to this House today is that the matter before us is so historic. It will be subject to some litigation. All we wanted was to, at least, have two weeks to prepare a proper report for tabling.

Hon. Speaker, the idea of getting experts is something that has caught me by surprise. I counted the number of lawyers that were sent by the Senate and the National Assembly to those two committees. Cumulatively, the lawyers in those two committees have got 250 years of practice. Which other lawyer do we need in Kenya with more than 250 years to do it for us? I would like to tell my Chairman, with all due respect and humility; that, we do not want experts. I am asking with humility that you give us two weeks and forget about the experts. We are the experts.

I thank you Hon. Speaker.

Hon. Speaker: Hon. Sankok, you also want to weigh in on this one?

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Speaker. Though I was extensively mentioned by Hon. Mbadi, who insinuated that I was fraudulently elected as the Students Organisation of Nairobi University (SONU) Chairman, I want to put it on record that I was elected with the highest ever cast votes in SONU. He is an expert in finance and not in election matters.

Hon. Speaker, we need an extension. In fact, the extension should not be two weeks. It should be six months because this is a very weighty issue.

Hon. Members: No!

Hon. David ole Sankok (Nominated, JP): Hon. Speaker, they have had 65 sittings. It is one year. They met over 65 groups, including a group of persons living with disabilities. In the midst of this pandemic, sometimes their meetings had not been up to standard because of social distancing. There are people who have not yet appeared before them. Hon. Junet said that we are not supposed to amend even a comma. It is the Constitution that dictates that it should come to this House and be debated in an informed position.

So, I totally support the Committee because we gave them that mandate. It is, therefore, not up to us to make that decision. They have asked Hon. Speaker for an extension. They have not asked Junet or Mbadi. So, Hon. Speaker, it is for you to make a decision. I urge you to give them the extension even if it is for six months.

I thank you, Hon. Speaker. I rest my case.

Hon. Speaker: Let us have Hon. Kajwang'.

Hon. T.J. Kajwang' (Ruaraka, ODM): Hon. Speaker, when you hear a nominated Member speak the way he has done, you want to see whether he is speaking things which, when you look at them 10 years from now you will want to feel the weight of them. However, he is saying that you are the one who will decide. He should know that you do not have a vote in this matter. It is, we, the Members of this House, who will make a decision.

(Applause)

Secondly, of course, my senior, Hon. Olago, has now put us back to the rail. I was getting very worried when I heard all these things being mentioned. I was about to think that this Committee changed their position and became the promoters of this Bill. Listening from Hon. Olago, I see where we are. I think they deserve some time. They deserve the two weeks that Hon. Olago has asked for. I get worried at times when I hear Members speak as though they are not Members of this House.

Some Members come here and say that we are ceremonial. I have heard people say that we are just ceremonial and that we are just coming to watch as things happen. The same Constitution talks about Article 94. The same Constitution talks about Articles 95 and 96. Then you come here and tell us that you are ceremonial. You are ceremonial in whose ceremony?

(Laughter)

When you talked about those things out there, we did not even know what you were talking about. We waited for you to bring up the matter before us. Since you have brought it before us in the form of a Bill, we will deal with it as the National Assembly. We have a voice to deal with this matter, and how we deal with it is what we have charged the Committee to let us know. So, you cannot come here and talk about being ceremonial. You cannot speak politics when we are speaking parliamentary language here.

(Some Hon. Members interjected)

Well, if you feel that you are ceremonial, then you leave your duty under Articles 34 and 35 and go and do those un-ceremonial things out there. Here, we are serious Members of the National Assembly. We have come here to prosecute issues, and there are a lot of issues that we are dealing with.

There is this animal called “public participation.” We have now understood what this animal is all about. We are trying to tame it so that we can use it within our understanding and get it done. They have done a good job with public participation. There are other issues that we have seen that we have to get seized of and see how then, when we release this Bill to the people to make a decision on a referendum, it becomes something which they can interact with. So, the only issue that got me startled is this claim that we are ceremonial. I am not in anybody’s ceremony.

Hon. Speaker, I think we should give them time, but we should have a report that we can deal with and see how we can properly interact with this thing.

I thank you, Hon. Speaker.

Hon. Speaker: The Chairman wants to respond.

(Loud consultations)

Hon. Speaker: I will give two minutes to each Member, starting with the Member for Saku.

Hon. Ali Rasso (Saku, JP): Thank you, Hon. Speaker. I thank the Chairman for asking for more time. This is about the law of this country into the future. It is not just about the BBI. So, we must look at time and for posterity.

Hon. Speaker, for the first time, we are casting aspersions on this Committee. How many laws has the Departmental Committee on Justice and Legal Affairs brought to this House and we

agreed with them only for us to turn around at this time, just because of the BBI, and say that it is not good and it should be disbanded?

Hon. Speaker this House is the one that makes the law of the land. It is not just a gallery or a gathering. If anything will not be approved by the House, I do not know how it is going to be implemented out there on the streets. For that reason, Hon. Speaker, use your wisdom to give the Committee more time so that what comes before us is concrete.

I thank you, Hon. Speaker.

Hon. Speaker: Let us have Hon. Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Speaker for giving me this opportunity. This is the only House that has legislative authority. The framework of this Bill is clearly outlined in Article 257 of the Constitution. With due respect to the Co-Chair, Hon. Muturi Kigano, we know very well the Joint Committee was in line with Article 118 of the Constitution, as far as public participation is concerned when it comes to matters legislation.

I want to thank Hon. Olago for the clarification. This Committee needs the extension of time, but the issue is that their responsibility is to compile a report as per the views of the public. My humble request is that this is a delicate balance. But I strongly believe that in one week they can compile that report.

I want to agree with Hon. Mbadi that this House is ceremonial in the sense that it is a conveyor belt. It does not matter whatever decision we make but we must debate this Bill. It has to go to His Excellency the President for purposes of assenting and then we go for a referendum. Without wasting time, I humbly requesting the Justice and Legal Affairs Committee to be given one week, to compile the report and bring it to the Floor of this House, for Parliament to make a decision.

Thank you.

Hon. Speaker: You have the Floor Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Speaker. I want to support the request by the Chair, Justice and Legal Affairs Committee for an extension. First, it is because BBI is not an emergency. If the Chair was seeking the extension for vaccination of COVID-19 or things dealing with Kenyan's livelihoods, maybe, then we would be debating. But to me, BBI is not an emergency and, therefore, I support the extension.

I had an opportunity to listen to some of the issues raised during public participation. One of the most profound issues I heard was on the question of delimitation of our boundaries; constituency boundaries and new constituencies. Those are not light matters we can say the Committee can just brush aside. It is true because they have a repository of very good seasoned experts. The Committee of Experts is ably represented by the Vice-Chair of the Committee, Hon. Otiende Amollo.

The issues raised are so pertinent even to Members in this House. We cannot accept that this House will just become a conveyor belt to this BBI business. It is only right that we give the Committee time to interrogate all the issues, including political and constitutional ones like delimitation of constituencies. Why should we expect a half-baked report only for it to be challenged in court tomorrow? Let us give this Committee time so that they give us a well-reasoned report that can stand and withstand the test of time and legalities even in the courts of law.

Thank you, Hon. Speaker. I beg to support the extension.

Hon. Speaker: Member for Nyando.

Hon. Jared Okelo (Nyando, ODM): Thank you, Hon. Speaker. As per your directive which you gave a fortnight ago, I came here ready to debate the Bill. Only to be told that the

Committee that was given the mandate to look into this is seeking an extension of time. This is betrayal.

The members of our county assemblies in the 47 counties did their part within a very short period of time. We are here procrastinating about the need to move this to the next level. Whereas there could be typo issues that call for additional time, asking for an indefinite period of time is also a more betrayal to Kenyans. We can accept a period of one week and wait in order to get the best of document for the people of Kenya.

Just like my colleagues have alluded, the work of Parliament at this stage is to move it to the next level without necessarily getting into the depth and width of the entire document. All the people represented in this House subscribe to political parties which took their views before several committees. If we interfere at this point in time, it feeds into what we were told two weeks ago, that there are members of the Executive who are out to meddle with the affairs of this constitutional-making process. We reject in totality that kind of a move.

Thank you, Hon. Speaker. One week will make do for me and for this House as well.

Hon. Speaker: Let us now have the Member for Tharaka.

Hon. George Gitonga (Tharaka, DP): Thank you, Hon. Speaker. I sat in that Committee and we had weighty deliberations. In fact, we took an entire day trying to isolate issues which came out of the public participation. I can inform this House that public participation is not just cosmetic, that we go sit in a room, listen to people and brush aside whatever they say. According to the courts, if we try that, we will not go far. This is because it will be annulled and whatever we do will be declared null and void.

The position is that we have come up with several issues that require in-depth legal interpretation and legal research that must be done by our legal team. It is true and we must confess - even if Hon. John Aluoch has said we never talked about experts - we actually talked of them and made an allusion that there are some areas we may need to hear from experts. I am a lawyer and not an expert in everything. There are areas that I or the Committee may require help. This is the reason we made an allusion of experts.

The truth is that various weighty issues have come up. One of them is by the Independent Electoral and Boundaries Commission (IEBC). Another one is by a public participant who informed us in broad day light that we may not need to go to a referendum. This is because looking at Article 255(1) of the Constitution, most of the issues therein may not be in this Bill. Therefore, we need to look into this. I have to give my opinion. When we come to this House, we will bring all these issues in the form of a report that this House will...

Hon. Speaker: Hon. Members, let me hear from the Member for Homa Bay Town.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Speaker. This is the first time possibly we may be having our Constitution subjected to a referendum following a popular initiative. When we did our public participation for those who cared to watch, there were very many issues that arose from many individuals, very serious organisations and other government institutions, including the Kenya Law Reform (KLR).

Our thinking as a Committee was that this being the first time we are doing this, we should come up with a report which will not only guide the interpretation of the over 12 matters pending in court as we speak, but also guide the other processes for posterity. Those issues may never include a definite position of this Parliament. This is because coming from the Committee is what really is Parliament's role in this process, if we take what Hon. Kajwang' was talking about. We may say Parliament has no role, but in what provision of the Constitution is that?

Hon. Speaker, I am requesting that you allow us only 14 days. We have delineated these issues very clearly. They are about seven of them and we have tasked our legal team to research into them. Hon. Speaker, with your leave, we had agreed we will be meeting towards the end of the week to make a resolution on them. Then we do a report which can guide the process. We request for 14 days. I urge hon. colleagues to enable us do a good job and not the prefatory job we are being pushed into.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, I have heard quite a number of you and there is no need for the Chairman to explain what he calls substantive issues. This is because in any event, he will deal with those issues in the report. The case has been made for the request. There is no need. There is nothing to explain at this point, Chairman. We will strike a balance. Hon. Kigano, you have the Floor.

Hon. Clement Kigano (Kangema, JP): Most of the Members can appreciate. I just gave them a retinue of what is involved so that they will be able...

Hon. Speaker: No need. The case is made. That is what I am saying.

Hon. Clement Kigano (Kangema, JP): I stand guided.

Hon. Speaker: You have made a case. In any event, I have a copy of the statement which you made and which shows the issues you call six thematic areas and the various components of it. I will grant an extension of 10 days. We must strike a balance. We grant you 10 days from the date of today meaning that you will table the report on Thursday, 1st April, what is called “Fool’s Day”, in the afternoon.

(Laughter)

Since we meet on Tuesdays and Thursdays, they will table their report on 1st April, otherwise popularly known as “Fool’s Day”. Of course, none is expected to be a fool, but you will table the report on 1st April. If you say you want experts, I do not know from where now. You are going to get experts from some place. Is it from the Democratic Republic of Congo? Get the experts, but table your report on 1st April. Chairman, as you will expect, I am always kept abreast of developments even in committees and, therefore, I even know the status of the draft. So, I know you could even have tabled it on 30th of this month, but I have given you an extra 3 days. So, you can table the Report on 1st April. I want the House to note this. Notwithstanding what the Committee Members are saying, I am fully aware of the status of the draft. You have already embarked on doing the report. I am aware. Maybe, you may not know that I know, but I know the status of the draft reports. Whether you are going to call experts from heaven or wherever, please, bring the report here on 1st April.

Hon. Members, as a consequence of that directive, I, therefore, order that the Constitution of Kenya (Amendment) Bill 2020 be on the Order Paper for Second Reading on 1st April with or without a report. This House has very many experts and you will see when debate commences. Indeed, as you may wish to look at the Order Paper, you will see that there is a proposal to increase the number of minutes each Member will be allocated if the House agrees. Let us go to the next Order.

PROCEDURAL MOTIONS

LIMITATION OF DEBATE ON BILLS UNDER ARTICLE 257 OF THE CONSTITUTION

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Hon. Speaker: Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to move the following Motion:

THAT, pursuant to the provisions of Standing Order 97(1) and notwithstanding the Resolution of the House of February 10, 2021, each speech in debate on Bills under Article 257 of the Constitution (Amendment of the Constitution by Popular Initiative) shall be limited as follows:

A maximum of sixty (60) minutes for the Mover in moving and thirty (30) minutes in replying and a maximum of fifteen (15) minutes for any other Member speaking, except for the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Committee (if the Bill is not moved by a Committee) who shall be limited to a maximum of thirty (30) minutes each, and that priority in speaking be accorded to the Leader of the Majority Party, the Leader of the Minority Party and Chairperson of the relevant Committee, in that order.

Hon. Speaker, as Members will agree, we are dealing with a very important matter and it is important that Members be given maximum opportunity to deliberate on the matters contained within the BBI Bill. Ten minutes may not suffice and hence the request that we extend, by 50 per cent - the normal time that is usually allocated for debate in the House. I wish to get some protection from loud consultations. Thank you.

The other request we will be requesting is even as we get to the debate, you know our Standing Orders do not allow Members to read notes. You are supposed to debate. However, on this particular matter, we will be asking you at the appropriate time to allow Members to actually have some notes that they could even substantively read to put on record their thoughts so that future generations will be able to see what this House went through clause by clause. To arrange the 15 minutes to make it more productive and efficient, we will be asking for that at some appropriate time using Standing Order No. 1 to guide in terms of exemption to the extent to which Members can actually use notes not just for reference, but substantively.

This is a very straightforward matter and, hence, I really do not want to get deeper into it. I thank you for your ruling that we have this matter debated on 1st April because it is important. We cannot keep Kenyans guessing for a long time. We need to unlock other systems and we promised that this House will be able to handle this matter expeditiously. Kenyans out there are actually looking at when the House is going to pronounce itself on this matter and put our thoughts on this matter clause by clause, so that future generations will know what the views of the House on the first major constitutional amendment were.

With those few remarks, I beg to move and request Hon. John Mbadi, the Leader of the Minority Party, to second.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker. This is a Procedural Motion. For the first time, we are going to debate on a Bill that has the effect of actualising Article 257 of the Constitution. Therefore, it is not just any other Bill. That is why we are requesting that Members be given a little bit more time to be able to prosecute issues that they want to prosecute for record purposes and for history. This is because several years from today, Kenyans and even other people will make reference on what was actually said about this Bill. So, I do not want to belabour the point.

I just want to say I second this Procedural Motion. Thank you.

Hon. Speaker: Order, Hon. Members!

(Hon. Patrick Makau walked in the isle)

Who is this Member? Take your seat.

(Question proposed)
(Question put and agreed to)

Hon. Speaker: Next Order. Chairperson, Budget and Appropriations Committee.

REDUCTION OF PUBLICATION PERIOD FOR A SPECIFIED BILL

Hon. Kanini Kega (Kieni, JP): Thank you very much, Hon. Speaker. Hon. Speaker, I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Order 120, this House resolves to reduce the publication period of the Supplementary Appropriation Bill (National Assembly Bill No. 9 of 2021) from seven days to one day.

This is a Procedural Motion and what we intend to achieve is to hasten the process. I am made to understand that the National Treasury has not been disbursing exchequer releases. If we can enact this, Ministries, Departments and Agencies will be getting their rightful share for this Financial Year. With those few remarks, I want to request the Majority Whip to second.

Thank you, Hon. Speaker.

Hon. Emanuel Wangwe (Navakholo, JP): Thank you Hon. Speaker. I rise to second the Motion by the Chair of the Budget and Appropriations Committee. Being a straightforward Motion, I would not want to belabour and take much time. Therefore, I second.

(Question proposed)

(Question put and agreed to)

Hon. Speaker: Next Order

BILLS

First Reading

THE SUPPLEMENTARY APPROPRIATION BILL

(Order for First Reading read - Read the First Time - Ordered to be read the Second Time today by leave of the House)

Second Reading

THE DIVISION OF REVENUE BILL, 2021

(Hon. Kanini Kega on 18.3.2021)

(Debate concluded on 18.3.2021)

Hon. Speaker: Member for Kangema, just remain like that!

(Hon. Clement Kigano froze)

(Question put and agreed to)

(The Bill was accordingly read the Second Time and committed to a Committee of the Whole House today by the leave of the House)

Hon. Speaker: Next Order! Chair, Budget and Appropriation Committee

Second Reading

THE SUPPLEMENTARY APPROPRIATION BILL

Hon. Kanini Kega (Kieni, JP): Thank you very much, Hon. Speaker. Hon. Speaker, I beg to move:

THAT, the Supplementary Appropriation Bill (National Assembly Bill No. 9 of 2021), be now read a Second Time.

Just to jog the memories of Members, we submitted a Report to this House last week on Thursday and it was adopted. Basically, this Bill is a copy and paste of the Report. I really want to thank Members who contributed to it; both who made their recommendations and those who had reservations. We assure you that we would take into account those comments as we move on.

However, just to pick a few highlights, the Supplementary Appropriations Bill (National Assembly Bill No. 9 of 2021) has been prepared and introduced in this House pursuant to Standing Order No. 127(2). It is in line with the PFM Act 2012 and Article 223 of the 2010 Constitution.

I would like to confirm that the contents in the Supplementary Appropriation Bill, 2021 are in line with the House resolutions of the approved Reports of the Budget and Appropriations Committee. This is in accordance with the provisions of Standing Order No. 244(b). The Supplementary Appropriations Bill, 2021 thus seeks to give authority for the issuance of Kshs125.16 billion out of the Consolidated Fund and apply it towards the supply granted for the services for the year ending 30th June 2021. The projected revenue collection for the Financial Year has been revised downwards to Kshs1.85 trillion from the estimated Kshs1.89 trillion in the beginning of the Financial Year. However, the expenditure in this supplementary is increasing by Kshs125.6 billion.

As I mentioned in the approved Report, the increase in this Supplementary is mostly under the development budget which has increased by Kshs58.81 billion. This is on account of adjustment of donor funding as well as several adjustments across the board. I am glad to note that there is an additional allocation of Kshs13.6 billion to cater for arrears in the NG- CDF. Further, the recurrent expenditure has increased by Kshs20.22 billion, while the Consolidated Funds Services has increased by Kshs45.65 billion.

During our review of the Supplementary Budget, we noted that it was based on the need to take care of the post COVID-19 related interventions, payments of pending bills, salary adjustments, change in development-partners-funded-projects and also rationalisation of the budget, among other things. We also noted that the impact of the macro-economic framework upon approval of the Supplementary Budget is retained at the fiscal deficit, that is, 8.7 per cent of the Gross Domestic Product that is taking into account the amendments that were approved by this House

It is, however, important to mention that if the arrears for the county governments for the 2019/2020 Financial Year are actualised in this current financial year, then the fiscal deficit, as a percentage of GDP, will substantially increase.

Hon. Speaker, it is our expectation that the National Treasury will speed up the release of these funds to the relevant Ministries, Departments and Agencies (MDAs), as well as Parliament and the Judiciary. The Committee and this House expects that the spending agencies will be prudent and compliant to the fiscal responsibility principles in the utilisation of the appropriated funds, and focus on achieving the planned outputs and targets that will benefit the people of this great Republic.

We continue to urge that priority in terms of requisition and payments should be focused on settlement of pending bills. Pending bills are literally everywhere - in all ministries, in all departments and also in county governments. Pending bills are actually choking the country. So, it is our request and also directive that the Government should focus on settling those pending bills.

Hon. Speaker, it is, therefore, my pleasant undertaking, on behalf of the Budget and Appropriations Committee, to recommend that the Bill be read a Second Time. In addition, I would like to inform the House that I will be moving a slight amendment, in the Committee of the whole House, whose intention is to correct an omission to cater for adequate salary provision for the Kenya Industrial Estate.

I thank you. I request the Majority Whip, Hon. Emmanuel Wangwe, to second.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Speaker. I rise to second the Motion by the Chairman, Budget and Appropriations Committee.

As Members are going through the Appropriation Bill for the First Supplementary Budget, it is important to note very salient issues that are in this proposal. For instance, there are issues which we noted as a Committee, in terms of the legal observations. For example, the Committee noted that there are some gaps in the formatting, structure and content of the Supplementary Budget. It is important, in as much as we are dealing with figures, to note the configuration of those figures and how they have come about.

Hon. Speaker, there is also the issue of expansion of the fiscal deficit where the revenue is expected to significantly under-perform in the current financial year, whereas there is an increase in spending through these Supplementary Estimates. It is important that we incur expenditure, as a Government, but it should be contained. That is why it is important that, as Members debate these Supplementary Estimates, they note that fact.

There is the issue of extensive budget cuts for State-owned enterprises, an issue which is important that the Departmental Committee on Finance and National Planning should advise the National Treasury. Why are we keeping these State-owned enterprises? Why are we incurring costs to pay salaries? Why should we do that and yet, the Government can easily diversify, get way from supporting the State-owned enterprises and commercialise them? This is a good thing

that the Departmental Committee on Finance and National Planning should look at as we go through the Supplementary Estimates.

Hon. Speaker, in the Supplementary Estimates, Members need to note the issue of pending bills. A solution needs to be found to eliminate pending bills. This can only be done through the Public Finance Management (PFM) Act (2012). It is important that, as Members discuss the Estimates, they need to know that pending bills are on the increase. Today we are talking of about Kshs150 billion in terms of pending bills only, which have been awarded by courts. How about those other pending bills which have not gone through the courts and are due for payment? Therefore, it is important that we look at the issue of pending bills in line with the Public Finance Management Act, 2012, so that we can push the National Treasury officials when they are doing their budgets. Let them move quickly to consider the issues of pending bills.

There are also issues of prioritisation in terms of completion of projects, whereby we do not want projects to continue piling. New projects are coming up and old ones are not getting completed. Let us look at the issue in which they have allocated the projects in line with how they have been started and which are the other new ones that are coming up.

With those many remarks, I second. I thank you.

(Question proposed)

Hon. Speaker: I see the new Member for Kabuchai wants to make his maiden speech.

(Applause)

As usual, Hon. Members, the Member is to be heard in silence.

Hon. Joseph Majimbo Kalasinga (Kabuchai, FORD – K): Thank you, Hon. Speaker, for giving me this time to make my first remark in this august House. I rise to support the Supplementary Appropriation Bill (National Assembly Bill No.9 of 2021). I ask the Government, again, to prioritise the payment of pending bills. If you look at how we are doing businesses in this country, you will realise that most businessmen doing business with the Government and other institutions their properties are being auctioned because delayed payment.

I now want to, first of all, to thank the people of Kabuchai. The people of Kabuchai woke up in the morning and queued in long lines on 4th March 2021 to elect me to come to this Honourable House. I commit myself that while here, I will serve them. I will do all that they want me to do in terms of legislation, oversight and other things that pertain to this august House, today and in future, that is, for the one year and some months remaining.

Hon. Speaker, I also want to take this time to thank you. I know that if I die today, which I do not want to, your name will be written in my obituary having been the Speaker who presided over my swearing-in. It was my first time to stand on this Floor being my first time as a Member of Parliament. I say this because never did I know that this House can be occupied by anybody, including anybody like me coming from the lower hills of Kabuchai. I have come here to serve the people. I will serve the people without fear of contradiction. I will serve without prejudice. I will serve the people of Kenya because this is a national Parliament.

Hon. Speaker, as I come to the conclusion, as a country, we must see what pains our people. We must see the tax regime that hurts our economy. When we have tax regimes in place, we must first of all ask: Are they favourable? In essence, tax is supposed to take wealth from the rich class and uplift the lower class to attain a common economic front. Look at the tax regime in our county

governments down there. A *mama* selling bananas in a market sells them for, say, Kshs20 and then the county government requires her to pay Kshs50. That does not make sense to that businesswoman! We must see how to exempt small businessmen and young men from some taxes. They need to come up with businesses. We should encourage them to start businesses.

I cannot finish my speech without thanking the people who came together and supported me in winning this election, and coming to the august House. I cannot forget my party leader, Hon. Moses Masika Wetangula. I cannot forget leaders like Hon. Kalonzo Musyoka. I cannot forget leaders like Gideon Moi. I cannot forget Musalia Mudavadi. They came to my rescue when I was being fixed. Here I come to this House. I thank Hon. Chris Wamalwa. He was my chief agent. I see serious ladies who came to the ground. Here I am. I will serve. After the elections, I will serve everybody, whether they supported me or not.

Here we are as a House. We must bring our heads together. This is a House of brains. We must bring our brains. Whether the brains come from Coalition A or B, brains are brains. We must develop the people of Kenya.

Last Sunday, when I was in church praying with one of my good schools, Luuya Girls Secondary School, I took time to wish all the candidates success in their exams. I still want to do so in the honourable Floor of the House. I wish all the candidates in Kenya as a whole success in their exams, because I am now talking as a national Member of Parliament. I am here to represent Kenyans.

As is the practice of the House, I am learning the Standing Orders. I will be close to people, even those who were not with me, like Hon. Wamunyinyi. I will respect him. I will go to him so that he can teach me the Standing Orders.

When I was at home, I knew less. When songs were sung in this House that Kimunya must go, I never knew the meaning. Recently, when I came here, I saw the true Kimunya. Let us put our heads together. He gave an update about the National Government-Constituencies Development Fund (NG-CDF). Let it be followed because our kids on the lower side of Kenya rely on bursaries. They rely on NG-CDF. The NG-CDF works more than other monies in this country.

I rest my case. I am Majimbo Kalasinga from the lower hills of Kabuchai.

(Applause)

Hon. Speaker: Let us have the Member for Kikuyu.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Speaker, let me begin by congratulating the Member from the lower hills of Kabuchai on his win.

I rise to support the Supplementary Appropriations Bill. As I contributed to the Report last week, I raised concerns on the issue of pending bills. You have heard from the Chair and those who have contributed before me that there is a real and legitimate concern on the issue of pending bills. Last year, when the COVID-19 pandemic struck, we created the Kshs53 billion COVID-19 package. I cannot remember what we called it. We allocated close to Kshs13 billion to pending bills. It is shocking that to date, departments like the State Department of Correctional Services, the Prisons Department, are yet to settle claims and pending bills that are owed to people. The same thing happened to the National Youth Service that was specifically allocated funds to cater for the pending bills. This continues to date. The concern that the Committee has raised on pending bills is very legitimate.

If you go through the Report, you will notice a building like the one next to us, namely, Sheria House, that houses the Attorney-General's Chambers. There is ongoing work there. Those are some of the buildings that were targeted for reductions. That will just create unnecessary pending bills in the coming years. Were it not for Commissioner Keynan moving an amendment, the building that the National Assembly has been constructing would get us into more pending bills, if we continue cutting development expenditure. I plead with the National Treasury to desist from cutting development expenditure in the course of the financial year because it creates a lot of unnecessary bills.

Let me also commend the Committee because, the National Treasury had erred by going against the provisions of Regulation 48 of the Public Finance Management (PFM) Regulations in allocating money to new projects. My concern is that some of the new projects that you see are not of an emergency nature. That is why I commend the Committee because they declined the allocation of an additional Kshs100 million to a new project to construct a slaughterhouse in Marsabit. I commend the Committee because starting new projects that were not planned for in the course of the financial year is not only against the PFM Regulations, but is also a very bad step to take in terms of financial management. How I wish that new money was allocated to things that are of an emergency nature. How I wish that money was being allocated to ensure that Kenyans get the vaccine in their local dispensaries. How I wish that those people who have lost jobs were able to get money.

When you see Members raising issues about NG-CDF, it is because that money will invigorate economic activities at the grassroots, give money to people at the grassroots level and, therefore, help our economy to grow. I only wish that the National Treasury will endeavor in future to ensure that any new money that comes in, in the course of the year, is allocated to new projects that are in strict adherence to the PFM Regulations, our own statutes and the PFM Act, and that no new project is initiated in the course of the year.

You see a lot of money going to revitalise state corporations and others that are not state corporations. Kenya Airways (KQ) is not a State corporation, *per se*, in the strict definition of what ought to be a State corporation because there is private equity and private shareholders. Yet, we continue to inject billions of shillings to it. I indicated last week that we are injecting not less than Kshs28 billion to an institution or organisation like KQ that has cumulatively lost close to Kshs46 billion. What assurances are there that this Kshs28 billion will go to reinvigorate KQ and ensure that it returns to profitability? What assurances are there that, that money will not sink into the same hole that we have sunk Kshs46 billion? Those are the concerns that I want to raise and ask the National Treasury to be careful in terms of prioritising where to take money.

We are in a very dire situation in this country. Our revenues are badly battered, not just by the pandemic, but also because the nature of our economy is such that, we have been over-dependent on a few revenue streams. When those revenue streams are battered, it affects all our national collections in revenue. Many of us subscribe to the narrative of a bottom-up approach because when you empower people from the bottom, you create a large tax base. The challenge we have had in this country is having a very shallow tax base. We continue to overtax a few million Kenyan taxpayers who are employed and are in other forms of engagement. Not more than 6 million people pay taxes while tens of millions of others depend on the few taxpayers. If we expand our tax base at the bottom of the pyramid, we will be able to create new taxpayers, who will then be converted from being a burden to the economy to being contributors to the national revenues. That is how we will be able to grow.

I agree with what the President said yesterday in Dodoma during the requiem mass for the late President Magufuli. He said that the late President Magufuli showed us that it is possible for countries to develop and grow in Africa without depending on foreign aid and borrowed funds. I am not saying that it is bad to borrow, but let us borrow money and put it into productive economic activities that will grow our economies.

Even as we support this Appropriations Bill, we must caution the National Treasury that we will be vigilant to ensure that money is going to the right priorities. I commend the Budget and Appropriations Committee. We should not allow new projects like the construction of a slaughterhouse. There is nothing of an emergency nature in the construction of a slaughterhouse, as much as I have been a butcher of repute for many years. There are other ways we can do many of these things, including supporting the Kenya Meat Commission (KMC) and others that are already established without necessarily going into things that may be politically expedient for us.

I also want to ask the Cabinet Secretary (CS), National Treasury, to be balanced in how he is allocating funds particularly in the region where he comes from. It is a question of financial prudence and good governance to ensure that when you are in public service and in a public office, you do not use that office to do things that are politically expedient and things that will favor certain regions or certain ethnic communities at the expense of other regions. I challenge the Cabinet Secretary, National Treasury, to rise above small issues and become a leader who will allocate resources across the nation.

Hon. Speaker, let me support this Appropriations Bill and in closing, say that because we are in the NG-CDF agitation period, when you see Members of Parliament become very agitated and aggressive in asking for the resources to be released to their accounts... I am glad that, as of today, there is close to 38 per cent of what was budgeted for in this Financial Year. I have seen a letter that the Leader of Majority has, committing to Ksh2 billion every week. Let me be on record to tell the National Treasury that, that must not be cosmetic. As much as it was put in writing, it must not be something to hoodwink Members of Parliament here. If by 30th April, CS Ukur Yatani has not disbursed the entire amount that was budgeted this year and by 27th June the arrears of Kshs13 billion will not have been disbursed, I do not think we will have any business considering the annual estimates for the next financial year if we cannot actualise what we budgeted for in this financial year. We must send that warning to CS Ukur Yatani and tell him: "Before you bring the estimates, ensure we have the full allocation for NG-CDF for F/Y 2020/2021 and the arrears before we process those estimates." It is not a threat; it is good advice to the CS Ukur Yatani.

Thank you, Hon. Speaker. I beg to support.

Hon. Speaker: Hon. (Dr.) Makali Mulu.

Hon. (Dr.) Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Speaker for giving me this opportunity. Let me also join my Chair of the Committee in supporting this Supplementary Appropriations Bill. This Bill is drawn from a Report which was discussed and passed by this House last week. So, we are just now making it an Act of Parliament by passing this Bill.

Importantly, I want to make the following observations. Most of these things are things we have said in the past in this House. I want to agree with Members who are saying that the National Treasury needs to take their time and do a more serious job in terms of the budgeting process.

The challenge we have in this country, which we must address, is that we are doing our budgets at a time when revenues are not behaving the way they are expected to. Our projections in terms of revenue are to some extent not realistic. I have said this many times! We need to ask ourselves: Where are we not getting it right? If you look at Hon. Mwai Kibaki's time as the President of this country, we were collecting about 23 per cent of the Gross Domestic Product

(GDP) in terms of revenue. We have now gone down to about 15 per cent if you look at the current projections. The question I ask myself is this: What has happened? Why are things not working as expected?

Hon. Speaker, many factors are attributed to this. Some like where we have leakages in the system; some where we are giving waivers and people are taking advantage of that and just the general administration of revenue collection. What is happening is that if we have to help this country, our first point in terms of focus should be the way we collect our revenue. Once we collect revenue, you will realise that issues of supplementary budgets where we are talking of under-provision, no provision at all or emergencies will be taken care of.

Therefore, my contribution would be that the Departmental Committee on Finance and National Planning, working closely with all other relevant committees, needs to interrogate the issue of revenue collection and try to find out why we are not getting it right.

The other issue is about parastatals, and I like what my colleagues have said. That we must come up with a way of really ensuring that the money we give to the parastatals ends up improving the lives of Kenyans. Most of those parastatals have just become institutions that draw money from the Exchequer and nothing comes from them. What we need is a situation where, as a House, we interrogate their budgets. I have said this many times. If we want to get this Budget right, a time might come where we will start demanding for itemised budgets for some of those SAGAs, so that we can see what it is that they are doing with the money that they are given. When you give those institutions only money for paying salaries and they are supposed to be investment institutions for this Government, then there is a question mark. I really want to encourage us to start interrogating budgets for those parastatals in more details.

If you look at this Supplementary Budget, you will realise that we are now providing for under-provided salaries; or we either want to meet that gap or something that was left out completely, and we now want to provide for it. I was asking myself this question: In a year in any organisation, you know all your employees. You know how many clerks you have, senior officers and chief executive officers. Informed by that, you come up with a budget on salaries. So, unless you have sacked people, employed additional people or salary increments, you have no reason to ask for more resources on salaries. This is something that does not come out clearly every time we discuss the Budget. Why are we being asked to provide for salaries? Is it that people were sacked, over-employed or people had salary increments? This is an area we need to push hard because I see a situation where this House might be appropriating resources to pay ghost workers. If that happens, then we are automatically in shit in terms of financial management.

The other important point as we discuss this Supplementary Budget is the issue of new projects. The law is clear that in a Supplementary Budget, you should not introduce new development projects. The law is very clear. I do not see why this should even be a matter of debate in this House. We should just get a Supplementary Budget where that is not there. And if you really think that these new projects are important, then we are almost doing the estimates next month. You can bring those new projects in the estimates so that we can start introducing some credibility in the budget-making process. I think that is lacking to some extent.

The other important issue is that time has come where we need to tighten our belts. I think we are biting more than we can swallow. We are biting more than we can chew. Time has come for us to tighten our belts which in technical terms we call austerity measures. As a House, we now need to be more thorough and ensure that we are only approving what I would call 'growth enhancing expenditure'. That is expenditure that is going to grow the cake. By growing the cake and in economics we say 'growing the cake' is economic growth, now the cake will be bigger and

we can share it such that people get a bigger cake. In that case, then we will be able to accommodate our needs as a country. This is an area we need to push on.

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

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

I have said many times that when we see resources being requested for *Kazi Mtaani* and when hon. Members are asking for more money to NG-CDF, it makes a lot of sense. This is because, this is the money which will go to the grassroots and immediately kind-of stimulate demand. By stimulating demand, our suppliers will be able to provide goods and services and the economy will grow. So, to me, these are the kinds of expenditure we need to promote as a House so that, at the end of the day, the economy realises some growth and we will be able to factor our things.

Public debt is an issue we have to live with. The currency in which our debt is denominated has now become an issue of concern. The Kenya Shilling keeps on depreciating and, as a result of the depreciation, the loans, without anything changing, become more expensive in terms of repayment. That is why in the Supplementary Budget, we have to keep on providing additional resources to factor in the fluctuating exchange rate. I wish there is a way we could denominate our public and foreign debt in a currency like the Kenyan Shilling so that as we negotiate, we push for a situation where the denomination is Kenyan Shilling so that issues to do with exchange rate do not affect us. This year has been worse, looking at the demand for the US Dollar in the world because of what is happening all over the place. The exchange rate has contributed to a big portion in these changes. These are some of the things which, as we approve the Supplementary Budget and this Bill to become an Act of Parliament, we cannot ignore as a House. The House needs to be more thorough and alert so that, as we approach the future, we start narrowing our budgeting process to areas where we enhance growth in this country.

With those remarks, I support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Shall we have Hon. Ogutu Abel? He has taken leave. Then let us have Hon. Kimani Kuria.

Hon. Kuria Kimani (Molo, JP): Thank you very much, Hon. Temporary Deputy Speaker, for giving me a chance to contribute to the Supplementary Appropriation Bill of 2021.

This Supplementary Appropriation Bill seeks authority to disburse Kshs125.16 billion out of the Consolidated Fund towards services provided by the Government for the year ending June 2021. I was asking myself why we are here for the Supplementary Budget. Why are the expenses whose distribution we want approved in the Supplementary Budget not there in the main Budget? The biggest reason we were given as the Budget and Appropriations Committee was poor revenue performance due to the COVID-19 Pandemic that begot us last year. We are also here because this House, in its wisdom, following a request by His Excellency the President, reduced several taxes that would have netted the gap that we are trying to finance today. The reduction of Income Tax from 30 per cent to 25 per cent, VAT from 16 per cent to 14 per cent, and the bandwidth we removed for PAYE. As a result, we find ourselves not being able to finance the Budget that we passed as a House and, therefore, coming up with this Supplementary Budget. Is it important? Do we need to do this?

Once we approve this Supplementary Appropriation Bill, it is going to unlock funds that will be disbursed to our constituencies as the National Government Constituencies Development Fund (NG-CDF), go towards payment of pending bills and completion of Government projects.

Pending bills have been a great concern to this House. It is an illegality. Year in, year out, we must discuss a Supplementary Budget to approve payment of pending bills. When I served in the Public Accounts Committee (PAC), the question of pending bills would be flagged off by the Auditor-General every year. We would sit down and ask why we always had pending bills. Pending bills lock finances of business people. That is why business people no longer want to work with the Government, unless one is a multi-billionaire. A young person cannot possibly take a bank loan at 14 per cent interest rate per annum to do a government project expecting to get paid upon completion of the work. Pending bills relating to the National Youth Service (NYS) and the Kenya Prison Correctional Service have been a discussion in this House since I joined Parliament in 2017. So, what is happening? Why do accounting officers refuse to distribute the funds towards payment of pending bills?

The issue of expenditure has been discussed. I want to over-emphasise the issue of parastatals. Our Committee, in its wisdom, refused to appropriate funds for institutions like Utalii College. It does not make sense for Government institutions like Utalii College to make losses. Academic institutions in this country make billions of shillings annually. We have institutions like Mount Kenya University, a private institution that has opened branches across Africa. Why is Kenya Utalii College making losses? Boma Hotel, which is owned by the Red Cross Society and offers similar courses as those offered by Kenya Utalii College, is making a lot of money as profit. Although the hospitality industry has been hard hit by the COVID-19 Pandemic, we still have many restaurants and hotels posting profits. Why is it that Kenya Utalii Hotel continues to post losses? It is because of imprudent use of Government resources and plunder. This has to change.

This House has to make a decision whether we really need to have Government offering those services to the people, through Government parastatals, or we collapse all of them and sell them off and offer essential services that can only be offered by the Government. If training can be offered by a private institution, then let the private institution offer that training and not the Government. If a product can be offered by the private sector, let it be and not by a Government institution because this leads to plunder of Government funds.

Let me speak to the disbursement of these funds. Once we approve, as a House, what we have appropriated to the Ministries, it is at the discretion of the National Treasury to know which funds should be distributed when. Last week, we almost had a standstill on the Supplementary Estimates because funds that were supposed to go to the NG-CDF had not been disbursed, whereas some Ministries had received 100 per cent of their requests. Why is it that money which should go directly to Wanjiku is not disbursed on time? Let me give another example. Last week, we heard university students saying that they would go on strike because funds that were meant for the Higher Education Loans Board (HELB) had not been disbursed. I am a product of HELB. I come from a village that had nothing. I went to Kenyatta University. Were it not for the HELB loan that I received, I would probably not be debating this issue on the Floor of this House. The National Treasury knows that comrades are suffering. This is a generation we expect to build this country's economy in the future. The National Treasury knows that we do not even have the NG-CDF money and, therefore, we cannot disburse bursaries to them. Yet, they fail to disburse the HELB money to them. This is a decision the National Treasury needs to make. I wish the people who sit at the helm of those institutions could understand the plight of the average Kenyan and put the money

where the mouth is. Programmes that touch on Government spending and the local *mwananchi* should be given preference when disbursement is done.

With those many remarks, I beg to support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker. I stand to support the Supplementary Appropriation Bill of 2021.

The Supplementary Estimates are made, pursuant to Article 223 of the Constitution of Kenya, which allows the National Treasury to request additional funding as long as they do not exceed 10 per cent of the appropriated funds. It is important that a few issues are made clear as we approve this Supplementary Budget.

First, the contemplation under Article 223 of the Constitution was basically to address emerging issues that were not contemplated at the time when the main Appropriations Bill was being passed. However, for the few years I have been here, I have noticed a very worrying trend that the Treasury uses the Supplementary Budget to introduce new projects that were never approved in the first instance. That is unconstitutional and illegal. I urge the Budget and Appropriations Committee to play its role and check this excessive application to ensure that we do not break the law to disfranchise the people of Kenya.

Secondly, as Members of Parliament, we have complained bitterly and continuously. Probably, we need to look at the provisions of Article 95(4) of the Constitution that bestows the power of making budgets to this House, so that from whatever the Treasury brings, we are capable of changing and shifting money from one point to another even if it means reviewing the Public Finance Management (PFM) Act.

The Treasury has made a habit of lumping several Government departments into sectors and giving them what they call budget ceilings without regard to what ought to happen outside there. If it is possible, in the fullness of time, we need to look at that arrangement to allow us, as Members of Parliament, to move funds to those sectors that are engine drivers of this economy. We seem to have a lot of funds being directed to non-growth sectors and ignoring the growth sectors. We are not going to grow this economy if we continuously undertake that approach.

The issue of Supplementary Budget cuts in the Development Vote, it even cuts under the Recurrent Vote, especially staff emoluments. I wish to address myself to the issue of cuts in the development budget. At the start of the financial year, State Departments have clear procurement plans. At the start of the financial year when they have been appropriated funds, State Departments plan how to spend that money. Some of them immediately initiate the tendering process or the procurement process. Some go to an extent of awarding tenders. That is why you will find pending bills are mounting every single day. It shows that there is either an element of disorganisation, poor planning or poor forecasting on the issue of revenue and sources of funds.

We believe the Treasury is populated with highly technical and experienced persons and professionals who should have developed models of forecasting revenue and economic performance. They should not subject Kenyans and State Departments to frequent cuts that have no bearing to reality on the ground. The pending bills, as my colleagues have stated, are chocking this economy. It is a basic principle of economy that funds must circulate for people to work and pay taxes. If we do not pay the Small and Medium Enterprises (SMEs) who are the small-scale suppliers at both the national and county governments, we are denying these people a chance to run the economy.

Therefore, it is important that the Budget and Appropriations Committee must find a way of forcing the Treasury to release funds to these State agencies to pay pending bills, so that we can

reinvigorate the economy. You cannot run an economy if SMEs have collapsed. We keep saying all the time that SMEs are the critical cog in attainment of the Vision 2030 goals yet we literally kill them by refusing to pay them in good time.

Another question that seems to arise is the budget absorption rate. Surely, it is inconceivable. It is an act of bad faith - let me use that word - for the Treasury to release funds for development two months to the end of the financial year knowing very well that it is not possible to procure and execute an assignment or a project within two months. It is basically a way of telling those departments that: "We are giving you money with the right hand and we will take it with the left hand." They know they will not spend that money so, that money will have to be returned to the National Treasury. So, we need to find a working system whereby funds meant for development are released early enough to enable them have the impact they ought to have on the national economy.

Finally, there is the issue of taxation. One of the main reasons we have had supplementary budgets is that the revenue has underperformed. As my colleagues have continuously said, very few Kenyans shoulder the burden of taxation. Very few Kenyans raise the money to run this country yet, probably, almost 70 per cent of Kenyans depend on the revenue raised by only 30 per cent or less.

The Kenya Revenue Authority (KRA) has been very hard on those genuine taxpayers to a point of driving some of them out of business due to punitive measures they take to enforce tax collection. It is important for the Departmental Committee on Finance and National Planning to look clearly on how to deepen taxation. How do we ensure that every single Kenyan makes a contribution towards the revenue to run this economy?

As I conclude, there are enablers in this economy that require to be addressed. One of the key enablers is power, energy or electricity. Kenya remains the country with the highest electricity tariffs, yet if you read many sector reports, they say the Kenya Electricity Generating Company (KenGen) can produce electricity at a far much lower cost. Instead, we have those independent power generators that the country has to buy from and resell to Kenyans at exorbitant prices.

These are some of the issues that we request the two relevant committees to have a very sober and objective discussion to try to rejig this economy for the purposes of supporting the people of Kenya.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Let us have Hon. Sara Korere. By the way, it will also be very important to hear from the chairpersons of committees as well. I can see there are very few chairpersons here. I can see the one for the Departmental Committee on Energy as well as the Departmental Committee on Defence and Foreign Relations.

Proceed, Hon. Sara.

(Hon. (Ms.) Odhiambo-Mabona spoke off record)

No, I am not saying that we give preference to the chairpersons. We will give preference to everyone.

Hon. (Ms.) Sara Korere (Laikipia North, JP): Thank you, Hon. Temporary Deputy Speaker. I support the Supplementary Appropriations Bill of 2021. As I do this, there are pertinent issues that have been raised on the Floor of this House. It is also good to note that the economy is not doing very well and the Treasury has had problems of disbursing funds especially taking into consideration that we are just coming from the pandemic.

Having mentioned that, issues of equity and equality have been raised on the Floor of this House. When we were going through serious times, there was a call for serious measures. Prioritisation is not a privilege, but something that must be seen to be done and must be done by the Treasury. When I talk of equity and equality, it is a bit worrying that as we appropriate funds in this House, you see certain regions getting the lion's share yet every Kenyan in this country pays taxes just like any other person.

When we talk of the Supplementary Appropriation Bill, it is very unfortunate that the Treasury uses the supplementary budget to introduce new projects when we have ongoing projects that mean a lot, but have stalled.

A good example, which I sometimes think it is just very sad to say but we must say, is the Mitihani House. Mitihani House has been under construction for the last 40 years. One just wonders what they have been building for 40 years. When you are told that examination officials are using air tickets got from taxpayers' money to go to London to verify exams simply because there is no examination centre in this country, that is very worrying.

I must mention that some regions are disadvantaged, especially where you and I come from. You know the Mahiga-Olmoran Road has not been funded year in, year out. Tenders are awarded but roads are not funded.

On Kazi Mtaani, it is good to give the youth of this country money, but how equitable is that when you are told that Kazi Mtaani is only done in slums and other informal sectors? Where I come from there are *manyattas*. I do not know what kind of settlement *manyattas* are.

On the National Government Constituency Development Fund (NG-CDF), I thank the Members of this House. I thank the Budget and Appropriations Committee. Finally, we have united because of the problems of Kenyans. The NG-CDF is the only Fund that you can be sure will reach *wanjiku*. It is the only Fund that you can be sure *mama mboga* and that young fellow in the village will benefit from. One might just get a contract to construct a classroom without seeing some big person in the Government. The NG-CDF is a classic example of what devolution is and what devolution ought to be.

As I support the Supplementary Appropriations Bill, I want to kindly ask the National Treasury to prioritise budgets. Even as they appropriate money to parts of this country, equity must be seen to be done. They should stop sneaking new elements and forgetting development projects that have stalled.

On this issue of pending bills, we know Kenyans are dying. It is not just because of COVID-19. Some of them are dying from high blood pressure and others from frustration. Some of them have been auctioned and they are hanging themselves before the auctioneers come. So, pending bills must be prioritised and must be paid so that, at least, there is circulation of money in this country. That will enable Kenyans do business with the Government without regrets.

With that, I beg to support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): What is it, Hon. Gitonga? What is out of order? What is the intervention for?

Hon. George Gitonga (Tharaka, DP): Thank you, Hon. Temporary Deputy Speaker. Allow me to intervene. We have heard high quality debates on the Supplementary Appropriations Bill. It is a carry forward from what we had last week. What we have done today is actually highly commendable. However, we need to progress farther. Therefore, pursuant to Standing Order No.95, I pray that you now call upon the Mover to reply.

(Applause)

The Temporary Deputy Speaker (Hon. Patrick Mariru): There is no debate on that one. It is for me to establish from the House whether the Mover should be called to reply.

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

Mover.

Hon. Kanini Kega (Kieni, JP): Thank you so much, Hon. Temporary Deputy Speaker.

I really want to thank the Members who have contributed. We have heard your reservations some of which we have noted. We had provided for some in the Report. I want to say that the concerns have been noted and we will make sure they are followed up. We especially note the concern on pending bills. As I said earlier on, this country is choking because of pending bills. There are many people who have also lost their lives. Some have committed suicide basically because they did business with the Government. It is a concern that we need to follow up.

I beg to reply.

(Hon. Elisha Odhiambo walked along the aisle)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Elisha.

(Question put and agreed to)

(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)

What is out of order, Member for Nakuru Town East Constituency?

Hon. David Gikaria (Nakuru Town East, JP): Thank you, Hon. Temporary Deputy Speaker. I am not here to dispute what was raised by Hon. Murugara, but it is important for us to be heard in this House. Sometimes it is very unfair to come into this Chamber and not be heard especially when you want to make some comments pertaining to Committee work that you have gone through.

(Applause)

When the Supplementary Budget was brought before this House, you ordered that every Departmental Committee should go and look at it, interrogate it, and make recommendations. From what I have learnt, quite a number of committees' recommendations were not taken into consideration. I just want to say...

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Member. Order, Hon. Gikaria. You see, we cannot open up that issue again. Obviously, the point that you have raised is very important. You remember I had suggested that chairs need to speak to this matter. When a Member raises on such a point of order, the Speaker must establish whether that is the mood of the House. That was done, but your point is valid and on point. Hon. Gikaria, we cannot go back there. That is closed. It is gone. I am sure there will be the Committee of the whole House where Members can speak to it.

Next Order.

Second Reading

THE BUSINESS LAWS (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. Patrick Mariru): The Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Temporary Deputy Speaker.

I beg to move that the Business Laws (Amendment) (No.2) Bill (National Assembly Bill No.50 of 2020) be read a Second Time.

As Members will be aware, the Business Laws (Amendment) (No.2) Bill was published on 14th December 2020. It came for First Reading on 22nd December 2020. It was then committed to the various committees because it is an omnibus Bill that covers a number of business laws. As was communicated by the Speaker this afternoon, the Bill was deemed to be one concerning counties. Two statutes that were touching on counties have been withdrawn. Hence, even as we will be moving, I am doing so without those two statutes as was agreed upon with the Speaker.

This Bill is part of the wider reforms that are all aimed at easing the cost of doing business and putting Kenya on a higher pedestal as a way of attracting investors. Investors are not only looking for where businesses are profitable, but where it is easier to register a business, continue engaging with Government, ease of land registration and all the hurdles that appear to be put on the business community. We are now doing very well as a country in terms of the World Bank ranking on ease of doing business within countries. Kenya has made progress and His Excellency the President promised to ensure that Kenya moves to be among the top 50 countries in terms of reforms of doing business. Anyone who wants to invest first of all looks at the World Bank Report on ease of doing business within countries. If you are among the top 50, you are likely to attract investors faster than if you are at number 100. The Government has decided to look at the laws that people are complaining about. For instance, the creation of the Huduma Centres was meant to ease how citizens get documentation. At the corporate level, based on what people have been saying, a number of clauses are set to be amended.

Clause 2 of the Bill seeks to amend the Law of Contract which is Cap.23 to eliminate the requirement of a company seal in execution of documents for companies. This provision was put in the Companies Act, 2015, but it is still within Cap.23 of the Law of Contract. So, on one hand, we are saying that you do not need a company seal, but on the other hand, the Law of Contract says that you need a company seal. It seeks to harmonise the two laws by removing that requirement. When you look at businesses in the new regime, when doing online registration of documents for companies, how do you put seals online? It was deemed that a seal was necessary in old days, but not in the new regime.

Clause 3 of the Bill seeks to amend the Industrial Training Act to provide for remittance of the Training Levy at the end of a business financial year and not at the 9th day of the month following the end of the year. This would be a similar amendment in the National Hospital Insurance Fund (NHIF) Act to harmonise these remittances to about the same day as the payment of other taxes. This will ensure that you do not end up with different dates as you remit these deductions to the Government. You will, therefore, submit your Industrial Training Levy, Pay As you Earn (PAYE) and NHIF remittance on a single day and hopefully within a single area.

Clause 4 of the Bill seeks to amend the Stamp Duty Act to reduce the cost of doing business by exempting payments of a fixed Kshs100 duty on contracts. This reduces the tax obligation on businesses by reducing the number of tax returns they file in each month which means that they can use that time more productively to make money rather than paperwork.

I also spoke about the NHIF Act of 1998. There is an amendment to create that common date for payment of all the taxes and deductions. Similarly, the National Social Security Fund (NSSF) Act, 2013 is being amended for purposes of harmonisation. The NHIF Act, the NSSF Act and the Industrial Training Act are amended to make the date coterminous with the PAYE date, which is 9th of every month.

Clauses 14 to 17 seek to amend the Companies Act No.17 of 2015. The first one is to eliminate the reference to the use of company seal because it was deleted at the Business Laws (Amendment) Bill of 2020, but is still resident in the Law of Contract, and there is need to harmonise that. Fundamentally, an amendment to the Companies Act has been brought out by this COVID-19 Pandemic where physical meetings have been a challenge and companies started conducting virtual meetings through an advisory by the Solicitor-General, but the law has not been amended. Some few members have been attending physical meetings while others attend by virtual means. We now have this opportunity to amend the Companies Act to provide for businesses to hold virtual meetings, so that the decisions made are based on the law and not just an advisory.

Clauses 18 to 59 which are the bulk of the Bill propose changes to the Insolvency Act of 2015. The first amendment is to allow a floating charge holder to apply to court if they are dissatisfied with the 20 per cent apportionment of the net asset secured under the floating charge to unsecure the creditors. This proposal seeks to allow creditors to seek judicial redress when they are dissatisfied with that apportionment secured under a floating charge

The second amendment is to introduce a pre-solvency moratorium in the Act which seeks to give a company redress by allowing it to stage enforcement action proceedings against the company while it considers its options for rescue, whether by a new investment or formulating a restructuring plan. The other provision coming in is to replace the reference of the term “supervisor” with the term “monitor” for better nomenclature and to avoid confusion of terms because at times it is referred to as the supervisor but the job is on monitoring

Clause 60 of the Bill proposes to amend the Small Claims Courts Act, 2016 by providing for adjudication of these small claims by providing a 60-day timeline. If you look at the nature of claims that appear before the Small Claims Court, they directly impact Small and Medium Enterprises that have a value of below Kshs1 million yet we know that these SMEs have the capacity to generate employment, wealth and hence any roadblock we put on them kills that overarching objective. By providing a 60-day timeline, it would expedite the hearing of all these issues and give businesses some predictability with which to operate.

Hon. Temporary Deputy Speaker, this Bill has been looked at by various Committees. The Justice and Legal Affairs (JLAC) was the overarching Committee that coordinated the process. We have had the Departmental Committee on Labour and Social Welfare; the Departmental Committee on Finance and National Planning; the Departmental Committee on Health; the Departmental Committee on Lands, although we have had to withdraw the lands date; and the Departmental Committee on Transport, Public Works and Housing.

All these Committees have prepared their Reports. When you look at the recommendation of the individual Reports of these Committees and the consolidated outcome from the JLAC, they only have one issue. Unfortunately, the issue is on the Statutes that I withdrew. There is total agreement on the others that the Committee does not propose to make any amendments. It is one

of those rare situations where a Committee has met, looked at it, is satisfied with it and does not intend to make any amendment. It means we can expedite this so that by the time we are talking of the next review by World Bank in terms of what Kenya has been doing on business, our ranking is better.

With COVID-19, there is a lot of money out there looking for decent places for people to invest. However, people are not just looking at where to put their brick and mortar but also on promises by governments: road shows by investment authorities of those countries; when they get to the ground, how easy it will be for them to do business in terms of how to register, get licence, get electricity connected and pay taxes like the harmonisation that we are now talking of. For example, on 9th of every month you can pay your taxes together rather than sending somebody every day to pay NHIF for you as we normally do. When the other one is due, you go and pay again. However, by just writing a single cheque, one person can go and do all that in a day. We are not going to attract this money unless we change our operating and legal environment, specifically where people are looking for predictability.

I want to ask for the support of the House to expedite this process so that we pass it. It is very simple. It may look bulky but most of them are small items. The Committees have looked through it, and have identified one item for rejection. Fortunately, it is also within one of the Bills that we have withdrawn because it affects the counties.

With those remarks, I beg to move and request our very experienced Member of the Departmental Committee on Justice and Legal Affairs Committee, Hon. George Murugara, to second.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Murugara.

Hon. George Gitonga (Tharaka, DP): Thank you, Hon. Temporary Deputy Speaker. Kindly, allow me to second the Business Laws (Amendment) (No.2) Bill (National Assembly Bill No.50 of 2020), which touches on various business laws we have in the country which aide in carrying out business, especially by investors.

We cannot talk of any meaningful development without having to constantly relook at our business laws and updating them to ensure that they are in consonance with the various business needs of the country so that when investors – whether local or foreign – come to do business in our country, they find the environment attractive.

We have several laws that we are dealing with today, including the Law of Contract Act, the Companies Act, the Insolvency Act, the Small Claims Court Act and the Stamp Duty Act, among many others. It is very important to bring to the attention of the House that in this country, we have had a lag in terms of developing our business laws. For a long time, we were relying on the English Companies Act of 1948 up to when we were in law school. In as much as we draw influence from it, today we are proud to say that we have our own Companies Act which came into force in 2015. It deals with companies matters right from incorporation to dissolution, in a manner that is Kenyan. We do not have to borrow what happens in England. The commercial laws of this country, on which we have always emphasised, mainly deal with corporates. Companies incorporated under the Companies Act have to invest, pay taxes and make returns, including, where necessary, repatriation to their mother countries. It is, therefore, important that we ease the conduct of businesses of companies so that at all times we have people who have money out there coming to invest in Kenya. It is for the benefit of the country, citizens and modern day trade.

Today's world is modern. We are moving away from the traditional way of doing business, where we would always say a contract was a meeting of minds between two people and agreeing on what their contractual terms are. Today we do business without even having to know who the

other party is because it is online. Through modern technology, we are able to do business in Kenya with partners in Japan, United States of America or wherever without having to physically go there. That is why we had requirements that a contract should be valid and have a company seal. How do we fix a seal when doing business online? It is not possible. The need for this amendment arises and is, therefore, timely.

There are various sections of the business laws that are proposed to be amended. In brief, I will refer to the Reports of the various Committees, including the consolidated Report from the JLAC, which deals with particular amendments as recommended. I will start with the Insolvency Act because whether it is bankruptcy or insolvency, it is important that the matter is dealt with quickly because it leads to loss of money. We need to know how this will be done when liquidating companies and declaring individuals bankrupt *et cetera*.

It is also important to note about the Small Claims Court because we have just established the Small Courts Claims Act of 2016. The idea is that even small enterprises for individuals doing businesses claim that when they go to court, they know for sure that it will take a lot of time for their cases to be concluded, especially when there are complicated large commercial transactions which require interpretation of the law and documentation that is bulky. In as much as we are saying that we have set up commercial courts in this country, we want commercial cases expeditiously disposed of.

We have small claims by medium and small enterprise human beings, which must also be dealt with faster. A small person does not have a lot of money. We would hate to hear cases where somebody owes another person Kshs50,000. Also, the defence for such persons should be simple. You might say you agree that you owe me but you keep me in court for the next five years. We must, sincerely, move away from this. That is why it is important we buttress the Small Claims Court in our system and way of doing business. It is, therefore, important that we consider timelines within which small claims have to be settled in court. It is proposed that judgement should be delivered on the same day and where it is not, the entire claim ought to be finalised within a maximum period of 60 days.

It is, therefore, important that we have a timeline within which small claims have to be settled in court and it is proposed that, in fact, judgment will be delivered the same day. Moreover, where it is not delivered the same day, the entire claim ought to be finalised in a maximum of 60 days. All these are to ease business and to make Kenya an attractive destination for doing business, so that when we are ranked by the World Bank, the World Trade Organisation and any other person keen on knowing whether it is worthy bringing their money into the country... Kenya ranks among the countries in Africa and the world where you can invest your money prudently, get your returns well and if you have any disputes, they are quickly handled through arbitration or through our judicial systems. Therefore, these laws are very timely, I too urge the House to agree, and we pass these amendments so that we make doing of business in our country easy and attractive.

With those remarks, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Patrick Mariru): We shall start to my left. Hon. Okelo. Hon. Odoyo has taken leave. Therefore, I will start with Hon. Ole Sankok David.

Hon. David Ole Sankok (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker for giving me this opportunity to also inject my voice on this very important Bill that is the Business Law (Amendment) (No.2 of National Assembly). It is a very timely Bill because our

country has been rated as being not the best, but above there, in terms of doing business and ease of doing business. We have been attracted business magnets because of this friendly environment and we need to make it friendlier.

As I support this Bill, as a country, we need to put our priorities right. On the just concluded Supplementary Estimates, around Kshs250 million has been slashed from the National Council for Persons with Disabilities of which Kshs50 million is to buy sunscreen lotion to protect our brothers with albinism from getting cancer from the effect of sunrays. Therefore, we should at times set our priorities right and this Bill has really prioritised our businesses in this country.

The business laws of our country are kind of outdated. If you read these laws when they were enacted, some of them date back to 1960s and 1970s and most of them trace their roots from our former colonizer, namely, the British. Moreover, these laws are not customised to fit our environment because Kenyan problems require Kenyan solutions. Kenyan businesses and the way we do businesses is not the way the UK may do their business. India has customised their way of doing business. They have put social attachment into their way of doing business and if you see businesses owned by Indians, they are communal and family businesses. In addition, they have a way of doing it. Our Muslim brothers have a custom in which they do not charge interest on loans they have given to their family members. They call it *Haram*. They have grown businesses. Therefore, these laws should be customised into our economy and into our traditions, so that we can run our economy.

Furthermore, any economy is run by businesses not Government employment. Government employees are consumers of our taxes while SMEs are generators of innovations, employment, taxes and are the wheels that run and move our economy. For those who do not know, a salary is a bribe to bribe you forget your ambition so that you can assist somebody else to achieve his ambition. Most of the time, the Government has been bribing our very intelligent people. They forget their ambitions of innovation and running businesses and end up being in Government running businesses that never make money. Most of our parastatals are making losses. For example, we have been injecting a lot of money into KQ. We have been forcing all our Government officials to travel on KQ, so that they can make profits, but they make losses.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order! What is it, Hon. Thuku Kwenya?

Hon. Thuku Kwenya (Kinangop, JP): Hon. Temporary Deputy Speaker, I just wanted to bring to your attention that the Member is using the term "bribing" in a context likely to distort the actual meaning of that word. Bribery we know, of course, is payment to induce or to cause someone to behave otherwise to look the other side. Therefore, I call upon you, Hon. Temporary Deputy Speaker, to ask the Member to withdraw and apologise to the House for misleading us.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Kwenya, are you trying to teach Hon. Sankok some bit of English? I thought Hon. Sankok knows a bit of English and he seems to have justified the use of that term. However, anyway, Hon. Sankok, maybe you are now well educated.

Hon. David Ole Sankok (Nominated, JP): Hon. Temporary Deputy Speaker, in primary school, I was taught by somebody by the name Ms. White, who was a relative to the Queen of England.

(Laughter)

Therefore, I speak the Queen's English direct from the source and there is something called similes. Very many times, I have been called a "lion." This does not mean I move on my four limbs. It only means that I am brave. Therefore, if I say that a salary is synonymous with a bribe to make you forget your ambitions and make others achieve their ambitions, I mean what I say, I say what I mean, and I know that is the truth.

Moving forward before I was rudely interrupted, this Bill tends to solve the issue of our court cases in which businesses and business magnets have been scared out of our country because of long lasting court cases. You come and invest in our country, you buy land, you have done all the due diligence, you have gone to the lands registration office, you have been issued with a title deed, but all of a sudden, some people from whichever corner - Government officials - emerge and say that this is Government land, forest or road reserve.

In addition, Taj Mall was not built inside a pocket. It was built in broad daylight. However, all of a sudden, it is a road reserve and we have regulatory bodies that deal with road reserves that make sure that as you start your building, they will tell you this is the wrong place. However, they do not tell you it is the wrong place. They wait for you to invest billions of shillings and then all of a sudden, you will see bulldozers claiming that the land is riparian land. Fort Jesus is actually on riparian land, however, you find some buildings in Nairobi just next to a dam being brought down.

You have seen court cases dragging for many years while businesses suffer. We need to make sure that we prioritise. However, as we prioritise this, laws must also bring into play the issues that we have just discussed early of pending bills. There is what we call access to Government procurement opportunities by persons with disabilities, women, and youth. That was a very well thought out idea by our President with very good economic intentions to economically empower our hustlers. To economically empower people who are down to access Government tenders. These ones have become a curse in disguise. That is why there is the Contract Law. You do business with a county government having borrowed from a bank and it will take five years for you to be paid! The interest that you were supposed to make is taken up by the interest by the bank because yours is a bank loan! These laws have come at the right time. Just like the Mover of the Bill and the Seconder have said, I urge the House to support this Bill. On the implementation part of it, I persuade the Leader of the Majority Party that we stand as a House and make sure that it is implemented as soon as we have passed it. I also urge my President to assent to the Bill faster than any other Bill.

Thank you very much and I support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Let us have Hon. Nyikal, the Member for Seme.

Hon. (Dr.) James Nyikal (Wambura, Seme): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute.

I rise to support this Bill. The issue of ease of doing businesses is extremely important. Sometimes when investors, namely, local ones, want to do business, they meet a lot of obstacles on the way. One needs many permits and licenses, for example, for building, from the National Environmental Management Authority (NEMA), and even the single business permit. If you are in a situation where you need to work with professionals, you have to go through very many regulatory authorities. So, it is always difficult. The processes drag you a lot making some people to lose interest. Even the attitude in offices where you go to look for the licences, many officers feel that the citizens owe them without really realising that it is because of the citizens that they

are there. Instead of taking steps to help the citizens get the business licences and move the country, they think they are doing them a favour!

So, any effort towards making starting a business in Kenya easier is welcome. Therefore, I support this bid. If you are going to do things online, it is much easier although sometimes there are problems with slow connectivity and networks. However, you have to do returns to various authorities, including the Kenya Revenue Authority, the National Social Security Fund, the National Hospital Insurance Fund and others. Again, all these authorities, though necessary, if things can be made easier, then it will be extremely useful in terms of promoting business. This Bill, as the Mover has said although it looks big, is actually pretty simple.

They have identified certain areas that need to be looked into in various businesses. If you look at the issue of the use of a company seal, it is addressed under Clauses 2, 8 and 12. We are talking about the use of company seals. Clauses 14 and 17 again talk about the company seal. So, a good job has been done, that is, issues are being relooked. If you look at the timing of payments, you find that one has to start with NHIF. They are talking of the 9th day. It is the same thing for the NSSF. Indeed, things have been harmonised and I like that. Any issue that has been picked has been harmonised through all the laws. I think that is really the way to go. The issue of the seal has been done throughout. The issue of when you should make payments has been done throughout. Under clauses 18 to 59, the Insolvency Act, time is introduced so that when you are going to be insolvent, you are, at least, given time before the credit runs nil on you or your company. I think that is extremely important. There are small payments that you do not have to go through the court to make. I think this proposed law makes that extremely easy now.

On claims, people get tired of making small claims and leave them. For that reason, there are a lot of unclaimed assets. In fact, we had to set up the Unclaimed Financial Assets Authority because of the small claims and the long processes of recovery. One might as well forget about them! So, if we make it easy, people will make those small claims on their money. Look at the examples of those of us who travel. You buy something and then for the tax return, you just fill a form at the airport. You put it in a box and you come back to this country and within a month, you get your refund. I think we should make things as easy as that.

I support this Bill.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Very well. Let us have Hon. Koske Kimutai.

Hon Gideon Koske (Chepalungu, CCM): Thank you, Hon Temporary Deputy Speaker for giving me this opportunity to also add my support to this very important Bill. Kenya enjoys a stable micro economic environment. The Government operates sound micro-economic policies that promote growth and provide a secure environment for private sector investment. Kenya also is a multi-party democracy with a unicameral Parliament that creates laws. It is very important that we pass this Bill because the only thing that has been lacking all along in the business environment is the ease of operating business. That matter is addressed in this law that has been brought before us this afternoon.

Hon. David ole Sankok (Nominated, JP): On a point of order.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order Hon. Kimutai. What is it Hon Sankok.

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Speaker, whatever goes to the HANSARD should be very true. The Member has said that this country is a unicameral Parliament yet it is a bi-cameral Parliament. We have the Senate and the National Assembly.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Did you say the teacher that taught you English is a relative of the Queen? I am sure Hon. Kwenya is appreciating that reality. Hon. Kimtai, I am sure we are all advised now.

Hon Gideon Koske (Chepalungu, CCM): I can challenge him because I am talking from a point of information when it comes to a unicameral multi party regime. This was done by the second founding father of this Government who is the late Mzee Daniel Toroitich Arap Moi. So, I do not want to indulge much on Hon. Sankok's remarks because he has a lot of challenges, part of which could be understanding what I have said. We know him as part of the people who are here because of some challenges. I do not want to indulge Hon. Sankok.

On the NSSF, the NHIF and all the other mandatory statutory contributions, it is very important that we unify them and do the payments on the 9th of every month. This will assist many accountants when they are doing the pay roll as the amount of money will be deducted automatically. Some of these bodies, for example, the NSSF, normally charge you a penalty which is double the contribution. So, it is very important that we match when we are preparing pay slips with the time we are remitting statutory deductions.

I wanted to make an appreciation on the Supplementary Budget which was done by the Budget and Appropriations Committee. For the first time in history, my constituency, Chepalungu, which has a C14 Road that has never been tarmacked. In the entire Republic of Kenya, it is the only constituency with a C14 road that has never been tarmacked. The team should ensure that they put money to Kyogong-Sigor-Chebunyo Road which starts from Sigor going to Lelaitich, Kapsamy, Nyakichiwa, Kiprerer all the way to Longisa. This is the only road that has never been tarmacked. I want to appreciate the Budget and Appropriations Committee for ensuring that Chepalungu also benefits from this Supplementary Budget.

Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to support the Bill.

The Temporary Deputy Speaker (Hon. Patrick Mariru): You know, Hon. Murugara, you do not need to be surprised. What Hon. Kimutai did is to sneak in issues of his constituency on this one. Hon. Hassan Juma.

Hon. (Ms.) Zuleikha Hassan (Kwale (CWR), ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I also stand to support this Bill with the intention of improving the ease of doing business in the country.

There are various clauses speaking of having one collection date for the NHIF and the NSSF remittances. This is welcome because many a times, employees suffer a lot when seeking services in hospitals only to be informed that they have not paid their remittances for that month. I also commend the NHIF for being very particular in this regard, and at least moving it to the 9th. The Government delays salaries because of the economic situation we are experiencing. This will help a lot in ensuring that employed Kenyans get access to healthcare when they need to.

I also support the National Construction Authority (NCA) getting powers to establish causes of defects in buildings. Unfortunately, due to corruption in the country, many buildings have many defects resulting to them crashing and destroying people's businesses and lives. Since we are speaking about businesses, they have brought a lot of losses to various small businesses.

One thing I am concerned about in the Bill regards land issues. Clause 10 speaks about the Land Registration Act being amended by inserting a section that states that:

“55A Notwithstanding any contrary condition contained in the lease, the Registrar shall dispense with the production of the written consent of the lessor under Section 54 and

55 in respect of a lease where the Government is the lessor, before any dealing with the lease is registered”.

I am concerned about this because sometimes in Kwale County, we see people’s land grabbed under the pretext that the Government wants to start some projects. Even though these may be good intentions, many times we have rogue Government officials who are out to make Kenyans poor.

I also want to add that we cannot progress in this country if the general status of the economy is not very good. Recently after the death of President Magufuli of Tanzania, we heard many tributes about him raising Tanzania to become a middle-income country. I want to commend this Bill for trying to improve businesses. I hope eventually that those in charge of the Executive will ensure that the very small businesses get to benefit and not only the bigger businesses that get assistance. A lot of the love that has been shown to the late President Magufuli of Tanzania has been from small business even *boda boda* riders and what we call in Kenya *mama mboga*. They have had more freedom in doing their businesses and, therefore, improving the incomes of their families. With that, I want to thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Ngugi Nduati. Before Hon. Ngugi, I just want to remind Members that I have heard Hon. Hassan give reference to the National Construction Authority Act and the Land Registration Act. It is important for Members to appreciate that those were withdrawn. So, they are not part of what we are dealing with. They were withdrawn. The Leader of the Majority Party and the Speaker did communicate. Let us have Hon. Ngugi.

Hon. Joseph Nduati (Gatanga, JP): Thank you very much, Hon. Temporary Deputy Speaker, for clarifying that. In fact, I want to congratulate the Leader of the Majority Party for dropping what was proposed to be done by the NCA. As a professional in that sector, some of those rules are not acceptable and we have even challenged them in court. Thank you very much, Leader of the Majority Party.

I also want to support the Business Laws (Amendment) (No.2) Bill especially when it comes to ease of registering a business. Before, it was very difficult even just to register a mere company, but now doing it online is very easy. I would encourage even our young people, because we have many jobs which we are doing in the constituency, to register companies. However, I would like to plead with the Attorney-General, especially for our youth. The registration is still very expensive. To register just an ordinary company, a young person would require to pay maybe Kshs200 to do a name search. You can imagine if he is searching two names that will be Kshs400. On approval, he would be required to pay about Kshs600, which is becoming very expensive especially when we are implementing NG-CDF projects in the rural areas. The NG-CDF Board has insisted that for you to do an NG-CDF project, you have to register a company and then again you have to register with the NCA, which is very expensive. It is about Kshs8,500. For a youth to do an ordinary toilet which will cost about Kshs200,000, maybe you would require about Kshs10,000, which I feel is too expensive and we need to do something about it.

She says that she would like Kenya Power to pull up its socks because power connection is still a huge problem in this country. Water connection is also still a problem. Obtaining a construction permit is also very difficult. It takes a very long time especially where professionals are involved. This is because just to construct an ordinary house, you will be required to have a registered architect and you know how expensive it can be. Maybe you will need a registered engineer. Then you will take those drawings to the county government and pay for the architectural drawings to be approved. You will still pay some money to have those drawings approved by the

structural department and still pay money to the roads section and the National Environmental Management Authority (NEMA). Even when you start building, you will still require a holding permit and a signboard permit. These are things which we need to look at holistically because when an investor comes here, they cannot understand. To improve our ease of doing business, these are some of the things we need to look at.

I really support this idea of doing away with companies seal. This is very old technology. I have never understood why we have ever needed a company seal. So, I really support that.

I am very happy the new Bill has allowed us to be having online meetings. This is very good, although some of us are technologically challenged. We hope to improve on it. On small courts, I support. However, I think Kshs1 million is still very little money. Maybe we need to move it to about Kshs5 million because Kshs1 million is a very small business.

On statutory payments, I was happy. I was even thinking that we could move it to 20th, so that as you pay your VAT, landlords like me and your withholding tax, you pay it on the same day. Sometimes you have to pay your NHIF, NSSF, industrial trading levy and you even forget the dates. So, I would propose that we do all the Government taxes on one day because 9th and 20th are very critical days especially if you have accountants who forget. It is important that we harmonize these dates.

I have talked about the youths and I wanted to contribute during the Supplementary Appropriation Bill 2021. To support our local business and to support our youth, I need to plead with National Treasury that the idea of allocating money for projects, then when you are 20 per cent through with the project the money is deducted, is very unfair and it is really killing local businesses. We are going back to the olden days where having an old track or a crane somewhere used to be very lucrative. Contractors will bring those things and claim money. Interest on idle plant machinery used to be very expensive. Although we are saying that when Government delays payments you will get interest on delayed payments, again for the big contractors, this is very risky because we are now seeing new business opportunity in this country. Interest on this payment is about 14 per cent. You can imagine if you are a big investor that has invested about Kshs500 million, then the first year the Government fails to pay you your first Kshs500 million, you earn Kshs70 million in interest and the following year, another Kshs70 million. That is like ordinary residential House. This is something that the National Treasury needs to look at. One of the major problems we have in this country is where the National Treasury does not allow technical ministries to sign technical contracts. The National Treasury are the ones signing those contracts and it is messing this county. I want to plead with Budget and Appropriations Committee, before we fund any project, we must ensure that the technical ministry is involved. I am seeing this a lot because I am a Member of the Public Accounts Committee (PAC). The short time I have been there, I have seen many instances where the technical ministry is not involved in contracts.

The other thing is holding assets of our people. When you are doing a contract of about Kshs500 million, to get that performance bond, you need some assets somewhere to secure it. When you are not paid, that asset is stuck there for a long time and you cannot use the asset to borrow. It is really frustrating this country.

With those few remarks, I want to say thank you very much for giving me this opportunity to make my contribution.

Temporary Deputy Speaker (Hon. Patrick Mariru): Member for Nyando.

Hon. Jared Okelo (Nyando, ODM): Thank you very much for this opportunity. I rise to support the Bill before us, namely, the Business Laws (Amendment) (No.2) Bill (National Assembly Bill No.50 of 2020), advanced by the Leader of the Majority Party, my brother and

friend, Hon. Amos Kimunya. This Bill could not have come at a better time. Just a couple of weeks ago, we put pen to paper on the Economic Partnership Agreement with the United Kingdom. The gist of that agreement was to open up the European market, particularly the UK market, to Kenyan exporters. At this time, all exporters within this country have a latitude to open up their business enterprises, both the existing and the prospective exporters.

Hon. Temporary Deputy Speaker, even as we look at ways of easing business in this country, we just have to juxtapose it with other business enablers. A survey was carried out and it revealed that every month, Kenyans lose Kshs100 billion in traffic jams just in Nairobi alone. So, even as we make it easier for businesses to be opened and to thrive, we must also take cognizance of the importance of infrastructure in this country. Assuming we were having the highway railways, the speed trains, the bullet trains and all those that would consequently reduce the time that we waste on our roads, you can only imagine if we would inject a lot more Ksh100 billion into our economy, that will go a long way into creating jobs and addressing most of the challenges that we have as a nation.

In ancient and even in contemporary African society, a handshake was just enough. The idea of pedantic inscription of things on paper is a creation of the West. They have put us into this situation so that we can trade as they do. The advent and upsurge of coronavirus has curtailed movement across nations. So, you wonder, how I would be travelling...

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Patrick Makau, why are you agitated? What is out of order?

Hon. Patrick Makau (Mavoko, WDM-K): Thank you, Hon. Temporary Deputy Speaker. With a lot of respect for the Hon. Member, this is a House where all Kenyans are watching and, indeed, at very difficult times. Is he in order to create fear amongst Kenyans by saying it was recently reported that Kenyans are spending Kshs100 billion per month on the roads? Can he substantiate the source of the information so that we can reference and tell Kenyans what he is saying is true? If it is not true, he is out of order because it is not in order to create fear amongst Kenyans.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Patrick Makau, what fear is being created by him saying that Kshs100 billion is being lost in traffic jams? I am sure he will tell you where he got that information from. He seems well-read.

Member for Nyando, Hon. Makau would like to know where you got that information from. Be kind enough to...

Hon. Jared Okelo (Nyando, ODM): Thank you, Hon. Temporary Deputy Speaker. Just to buttress your point, I am well-read. The Kenya National Bureau of Statistics (KEBS) did carry out that survey and the report is in the public domain. If he needs a copy, I can supply it to him immediately I step out of this House. I have all that data within my domain. Suffice to say, his intention was to distort my thought process.

We have to enable our businesses to thrive by not just making it easier for businesses to be opened but also these punitive taxes around customs, imports and so many other very punitive charges levied on business people must be removed so that our businesses can thrive just as those in other nations. When we talk about making businesses to thrive, we do not just consider the high calibre businesses. We are looking at the *mama mboga* and *bodaboda* riders who are also subjected to certain charges by the county governments for absolutely offering no service in retrospect. Therefore...

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Member for Nandi. It is 6.30 p.m. The House must rise. This is not concluded. When this business resumes, you will have your three minutes to finish what you were prosecuting.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Members, the time being 6.30 p.m., the House stand adjourned until this evening, at 7.00 p.m.

The House rose at 6.30 p.m.