



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT

NATIONAL ASSEMBLY

THE HANSARD

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THE HANSARD

Tuesday, 1st October 2024

The House met at 2.30 p.m.

[The Speaker (Hon. Moses Wetang'ula) in the Chair]

PRAYERS

Hon. Speaker: Hon. Members, we have quorum to transact business. Clerk, proceed.

*(Hon. Charles Gimose and several other
Members walked into the Chamber)*

Hon. Members on their feet, take the nearest seats. Member for Hamisi, take your seat.

COMMUNICATION FROM THE CHAIR

Hon. Members, I have two Communications to make. The first one is a recognition of a delegation from the Senate of Nigeria.

RECOGNITION OF DELEGATION FROM THE SENATE OF NIGERIA

Hon. Speaker: Hon. Members, I wish to introduce to you a delegation from the Senate of Nigeria which is seated in the Speaker's Row. The delegation comprises Members of the Committee on Constitutional and Electoral Review and the Committee on Women Affairs. They are:

1. Sen. Patrick Ndubueze, Member of Parliament – Leader of the delegation,
2. Sen. Kawu Sumaila — Member of Parliament,
3. Hon. Miriam Odinaka — Member of Parliament
4. Hon. Tajudeen Kareem — Member of Parliament.

Hon. Members, the delegation is accompanied by four parliamentary staff and one official from UN Women, seated in the Speaker's Gallery. The delegation is in the country to benchmark on strategic inter-parliamentary relations, share experiences pertaining to parliamentary practices, and gain deeper insights into legislative processes and gender-responsive legal reforms.

On my behalf and that of the National Assembly, I welcome them to the Parliament of Kenya and wish them fruitful engagements during their stay in the country.

I thank you.

(Several Members walked into the Chamber)

Members at the back, take the nearest seats. Let us go to the next Order. I will come back to the second Communication in a little while.

Clerk, call out the next Order.

PAPERS

Hon. Speaker: Leader of the Majority Party.

Hon. Owen Baya (Kilifi North, UDA): Hon. Speaker, I beg to lay the following Papers on the Table:

1. Annual Report and Financial Statements of the Kenya Tourism Board for the Financial Year 2021/2022 from the Ministry of Tourism and Wildlife.
2. Audit of the Financial Statements for the Office of the Auditor-General and Staff Car Loan and Mortgage Schemes for the years ended 30th June 2018, 30th June 2019, 30th June 2020, 30th June 2021, and 30th June 2022.
3. Performance Audit Report on the Management of Cash and Domestic Debt by the National Treasury for September 2024 from the Office of the Auditor-General.
4. Performance Information System Audit Report on the Pensions Department Management Information System for September 2024 from the Office of the Auditor-General.
5. Reports of the Auditor-General and Financial Statements for the year ended 30th June 2024, and the certificates therein in respect of the following institutions:
 - (a) Central Bank of Kenya.
 - (b) Public Sector Accounting Standards Board.
 - (c) Capital Markets Authority.
6. Reports of the Auditor-General and Financial Statements of the National Government-Constituencies Development Fund (NG-CDF) for Subukia Constituency for the year ended 30th June 2023, and the certificates therein.
7. Report to Parliament on all new loans contracted by the Government of Kenya from 1st May 2023 to 31st August 2024 from the National Treasury and Economic Planning.
8. Annual performance Report for the Micro, Small and Medium Enterprises (MSMEs) Credit Guarantee Scheme from 1st July 2023 to 30th June 2024 from the National Treasury and Economic Planning.

Thank you, Hon. Speaker.

Hon. Speaker: Leader of the Committee on Delegated Legislation, Hon. Gladys Boss, do you have a paper to lay? Go ahead.

Hon. Deputy Speaker: Apologies, Hon. Speaker. Give me a minute. They are bringing it from my office.

Hon. Speaker: Hon. Shollei, how quickly is your paper coming?

Hon. Deputy Speaker: In the next five minutes.

Hon. Speaker: Okay. Next Order.

(Several Members walked into the Chamber)

Order, Hon. Members. Members on their feet, take your seats. I have a second Communication to make.

COMMUNICATION FROM THE CHAIR

NOTICE OF MOTION FOR PROPOSED REMOVAL FROM OFFICE,
BY IMPEACHMENT OF H.E RIGATHI GACHAGUA, EGH,
AS THE DEPUTY PRESIDENT OF THE REPUBLIC OF KENYA

Hon. Speaker: Hon. Members, pursuant to Article 150(1)(b) of the Constitution and Standing Orders 64 and 65, I wish to notify the House that I am in receipt of a notice of a

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Special Motion dated Thursday, 26th September 2024 and received on Friday, 27th September 2024 from the Member for Kibwezi West Constituency, Hon. Eckomas Mwengi Mutuse. The Hon. Member seeks a resolution of the House for the removal from office, by impeachment, of H.E Rigathi Gachagua, EGH, as the Deputy President of the Republic of Kenya.

Article 150(1)(b) of the Constitution provides as follows, and I quote—

“150. (1) The Deputy President may be removed from office—

(b) on impeachment—

- (i) on the ground of a gross violation of a provision of this Constitution or any other law;
- (ii) where there are serious reasons to believe that the Deputy President has committed a crime under national or international law; or
- (iii) for gross misconduct.”

The Notice of the Special Motion by the Member for Kibwezi West seeks a resolution of the House for the removal from office, by impeachment, of our Deputy President on the grounds specified under Article 150(1)(b) of the Constitution and sets out the particulars in respect of each ground.

The Special Motion before the House presents an unprecedented constitutional moment in our democracy. Without doubt, it summons this House to test, for the first time under the 2010 Constitution, the provisions of our Constitution relating to the removal from office, by impeachment, of our Deputy President.

It will be recalled that during the term of the 6th Parliament on 27th April 1989, the then Member for Embakasi, Hon. David Mwenje, successfully moved the House to pass a vote of no confidence in the then Vice-President and Minister for Home Affairs, H.E Josphat Karanja. The Motion received an affirmative resolution from the House.

It is instructive to note that upon the promulgation of the new Constitution of Kenya in August 2010, the then office of the Vice-President assumed a new clothing as the office of the Deputy President. This new clothing embedded in it a new manner of election, assumption of office and removal from office of the Second-in-Command.

Whereas the previous Constitution conferred upon the President the power to appoint and remove the Vice-President, the Constitution of Kenya 2010 shifted the removal of the Deputy President to Parliament. This lays the ground for the notice of the Special Motion by the Member for Kibwezi West.

Hon. Members, Standing Order 64(2), relating to removal, by impeachment, requires the Speaker to dispose of a Special Motion within three days of receipt of notice by a Member. Standing Order 64(2) as read in the light of Articles 259(5) and (6) of the Constitution, gives the Speaker the deadline of today, Tuesday, 1st October, 2024 to notify the House of receipt of the Special Motion and its admissibility or otherwise.

Having notified the House of the Special Motion, I will now highlight the preliminary procedural and legal requirements relating to processing a Special Motion for removal from office, by impeachment, of the Deputy President.

(Several Members walked into the Chamber)

Members at the Bar, take the nearest seats.

(Loud consultations)

Order! Order, Members!

(Hon. Eric Wamumbi walked into the Chamber)

Hon. Wamumbi, take the nearest seat.

(Loud consultations)

Order! Order, Members!

Hon. Members, Article 150(2) of the Constitution provides that the provisions of Article 145 of the Constitution shall apply, with the necessary modifications, to the removal from office, by impeachment, of the Deputy President. In particular, Article 145(1) of the Constitution provides that—

“a member of the National Assembly, supported by at least one third of all the members, may move a motion for impeachment of the President—

- (a) on the ground of a gross violation of a provision of the Constitution or of any other law;
- (b) where there are serious reasons for believing that the President has committed a crime under national or international law; or
- (c) for gross misconduct.”

Procedurally, Standing Order 64(1) provides that—

“Before giving notice of motion under Article 150 of the Constitution, a Member shall deliver to the Clerk a copy of the proposed motion in writing—

- (a) stating the grounds and particulars in terms of Article 145(1) of the Constitution upon which the proposed motion is made;
- (b) signed by the Member; and
- (c) signed in support by at least a third of all the Members.”

Further, Standing Order 64(1A) lays out the criteria for admissibility of grounds for removal from state office. For clarity, Standing Order 64(1A) states and I quote—

“(1A) The grounds specified in a motion under this Standing Order shall be admissible if—

- (a) framed clearly to particularise and disclose a gross violation of the Constitution or other written law, where gross violation of the Constitution or other written law is indicated as a ground for the intended removal;
- (b) stating with precision, the provisions of the Constitution or other written law that are alleged to have been grossly violated, where gross violation of the Constitution or other written law is indicated as a ground for the intended removal; and
- (c) accompanied by necessary evidence, including annexures or sworn testimonies in respect of the allegations.”

The foregoing procedural and legal requirements for processing Special Motions are buttressed by precedents and jurisprudence in various Speaker’s Rulings and Court decisions.

Today, I will refrain from re-stating the jurisprudence and focus on determining the admissibility of the Notice of the proposed Special Motion filed by the Member for Kibwezi West. In determining the admissibility of the Special Motion, I am required to examine its form, threshold, framing of the grounds and attachment of the necessary evidence.

Standing Order 64(1) provides for the criteria for determining whether the proposed motion meets the requirements of the Constitution and the Standing Orders as to form and the threshold. On form, it should—

- (a) be in writing;

- (b) state the grounds and particulars in terms of Article 150(1)(b) of the Constitution upon which the proposed motion is made;
- (c) be signed by the Member; and
- (d) be signed in support by at least one-third of all the Members of the Assembly.”

Having examined the Notice of the Special Motion by the Member for Kibwezi West, I find that the Special Motion meets the requirements relating to form and threshold set out in the in Articles 145(1) and 150(1) (b) of the Constitution and Standing Order 64 (1).

(Applause)

I have also satisfied myself that the number of Members who have appended their signatures in support of the Special Motion exceed the minimum threshold of 117 Members of this House.

Hon. Members, with regard to admissibility of the grounds set out in the Special Motion, I am guided by Standing Orders 64(1A), which provides that the grounds specified in a Special Motion shall be admissible if—

- (a) framed clearly to particularise and disclose a gross violation of the Constitution or other written law, where gross violation of the Constitution or other written law is indicated as a ground for the intended removal;
- (b) stating with precision, the provisions of the Constitution or other written law that are alleged to have been grossly violated, where gross violation of the Constitution or other written law is indicated as a ground for the intended removal; and
- (c) accompanied by necessary evidence, including annexures or sworn testimonies in respect of the allegations.

Having examined the proposed Special Motion, I note that in keeping with the requirements of Article 150 (1) (b) of the Constitution and Standing Order 64 (1A), the Member has stated 11 grounds for removal from office, by impeachment, of H. E. the Deputy President. In addition, I do note that the Special Motion as submitted to my office also contains the particulars upon which the Member seeks to move the House to consider the Special Motion.

With respect to evidence, the Member has attached documents, including annexures and a sworn affidavit to substantiate the grounds stated in the Special Motion.

Consequently, I find that the proposed Special Motion by the Hon. Eckomas Mwengi Mutuse, meets the requirements of Articles 145(1) and 150(1) (b) of the Constitution and Standing Orders 64 and 65 with regard to form, threshold and grounds necessary for a Member to move a Special Motion for the proposed removal from office, by impeachment, of the Deputy President.

Having determined that the Special Motion is admissible, let me now focus on the next step of giving Notice of the Special Motion to the House. Standing Order 47 (4A) provides that, with respect to a motion for removal of person from office, a Member shall give Notice of Motion in the House within three sitting days following approval by the Speaker.

In the circumstances therefore, the Member for Kibwezi West ought to give Notice of his Special Motion either today or tomorrow. Given the nature of timelines applicable to this Special Motion, at Order No 6, that is ‘Notices of Motion’, I will accord an opportunity to the Member for Kibwezi West to give the Notice of the Special Motion. Thereafter, I will give further guidance on the next steps to take.

The House is accordingly guided.

I thank you.

Next Order. Hon. Gladys Boss, are you ready? We will go back to Order No 5.

PAPER

Hon. Gladys Boss (Uasin Gishu County, UDA): Hon. Speaker, I beg to the following Paper on the Table:

Report of the Kenyan Delegation to the 64th Session of the OACPS Parliamentary Assembly and the 1st session of OACPS-EU Joint Parliamentary Assembly held in Luanda, Angola from 17th to 21st of February 2024.

Thank you, Hon. Speaker.

(Loud consultations)

(Hon. Raphael Wanjala and Hon. Emmanuel Wangwe stood along the aisle)

Hon. Speaker: Order, Hon. Members. Take your seats. The Member for Budalangi and the Member for Navakholo, take your seats.

Next Order.

NOTICES OF MOTIONS

REPORT OF THE KENYAN DELEGATION TO THE
64TH SESSION OF THE OACPS PARLIAMENTARY ASSEMBLY

Hon. Gladys Boss (Uasin Gishu, UDA): Hon. Speaker, I beg to give notice of the following Motion:

THAT this House notes the Report of the Kenyan Delegation to the 64th Session of the OACPS Parliamentary Assembly and the First Session of the OACPS- EU Joint Parliamentary Assembly held in Luanda-Angola from 17th to 21st February 2024, laid on the Table of this House on Thursday, 26th September 2024.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Mutuse, I will allow you to speak from the Dispatch Box. He will be heard in silence.

PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF H.E RIGATHI GACHAGUA,
EGH, AS THE DEPUTY PRESIDENT OF THE REPUBLIC OF KENYA

Hon. Mwengi Mutuse (Kibwezi West, MCCC): Thank you, Hon. Speaker for the opportunity to move this Motion. This is a historical moment and therefore, with your permission and that of the Hon. Members, allow me to proceed to give notice of the following Motion.

Hon. Speaker, I beg to give notice of the following Special Motion:

THAT, pursuant to the provisions of Article 150 (1) (b) and (2), Article 145 of the Constitution of Kenya 2010 as read together with Standing Orders 64 and 65, this honourable House resolves to remove from office, by way of impeachment, His Excellency Rigathi Gachagua, EGH, the current Deputy President of the Republic of Kenya.

(Applause)

This Special Motion was lodged with the Clerk of the National Assembly on 27th September 2024 and contains 11 grounds for impeachment. Hon. Speaker, in compliance with the law, as

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stated earlier, the grounds are concise, precise and particularised in the Motion and are supported by cogent, convincing, persuasive, evidentiary material like documents, affidavits and electronic evidence. I will also present witnesses and *viva voce* evidence, who will testify to corroborate the evidence we have adduced to support the grounds for impeachment.

(Applause)

In the interest of the time allocated, I am not able to go clause by clause. The grounds themselves constitute about 42 pages and with the rest of the material, we have nearly 100 pages. Therefore, with your guidance, allow me to summarise the 11 grounds as follows: Generally, as Members will realise, the particulars of these grounds are that His Excellency Rigathi Gachagua has engaged himself in acts of omission and commission that constitute offences under our Constitution, international law and our statutes.

(Applause)

1. Ground one, we will be demonstrating before this House that His Excellency Rigathi Gachagua has grossly violated articles 10(2)(a), (b) and (c); Articles 27(4), Article 73(1)(a) and (2)(b); Article 75(1)(c) and 129 (2) of the Constitution of Kenya, as well as Articles 147(1), as read with article 131(2)(c) and (d) of the Constitution of Kenya. When the time comes, I will lay the details Article by Article to show the violations.
2. Ground number two, at the opportune time, I will demonstrate to Kenyans that His Excellency Rigathi Gachagua has violated Article 147(1) and Article 152(1) of the Constitution of Kenya—the most progressive Constitution in Africa.

(Applause)

3. Ground three, I will demonstrate before this House, Kenyans, and the international community that His Excellency Rigathi Gachagua has violated Articles 6(2), 10(2)(a), 174, 186(1), 189(1) of the Constitution, as well as the Fourth Schedule of the Constitution of Kenya.

(Applause)

This is the Constitution of the Republic of Kenya. It is not a mere document. It speaks to the soul of this Nation.

4. On ground four, I will demonstrate that His Excellency Rigathi Gachagua has violated Article 160(1) of the Constitution of Kenya.
5. I will further demonstrate on ground five that His Excellency Rigathi Gachagua, the current Deputy President of the Republic of Kenya, has grossly violated Article 3(1), as read together with Article 148(5) (a) of the Constitution.
6. On ground six, I will demonstrate that the Hon. Rigathi Gachagua has committed crimes under Section 13(1) (a) and 62 of the National Cohesion and Integration Act—the Act that speaks to our nationhood, our multi-ethnicity and our society remaining together as a cohesive society. I will demonstrate with videos, affidavits and documents that the man holding the Office of the Deputy President has violated the same law that he swore to protect in his oath of office.

(Applause)

7. Under ground seven, I will demonstrate before this House that His Excellency Rigathi Gachagua has committed crimes under Section 45(1), Section 46, Section 47(a)(3), Section 48(1) of the Anti-Corruption and Economic Crimes Act by using his office to unjustly enrich himself, by using his office to acquire properties, wealth beyond Ksh5.2 billion within two months.

(Applause)

I will demonstrate before this House that during the Presidential Debate, if I may be listened to...

(Loud consultations)

Hon. Speaker: Order, Hon. Members.

Hon. Mwengi Mutuse (Kibwezi West, MCCP): During the Presidential Debate, His Excellency Rigathi Gachagua declared that he was worth Ksh800 million. We are aware that he is paid slightly over Ksh1 million, meaning that for the last two years, the much he could have accumulated justly is about Ksh24 million. But I will demonstrate before Kenyans that in my research, I discovered that he has properties worth Ksh5.2 billion Kenyan shillings. These are unexplained assets. We must lay the dragon of corruption from the highest office.

Under the same ground, I will also demonstrate that His Excellency Rigathi Gachagua has violated Sections 2, 3, 4, and 7 of the Proceeds of Crime and Money Laundering Act.

You are aware that the proceeds of Crime and Money Laundering Act is one of those laws pursuant to Section 2 of the Constitution of Kenya that we domesticated because of our international obligations about money laundering. Therefore, by proving the same, I will demonstrate before Kenyans that His Excellency Rigathi Gachagua has committed international crimes.

8. Underground eight, I will demonstrate that the Deputy President of the Republic of Kenya has committed crimes under Section 132 of the Penal Code and Section 29 of the Leadership and Integrity Act. Hon. Members will realise that the Leadership and Integrity Act is the law that was enacted by this Parliament to give effect to Chapter Six on Leadership and Integrity of the Constitution.
9. Under ground 9, the ground of gross misconduct. I will speak to the House in a very clear manner as to what constitutes gross misconduct as interpreted by our courts. I will show that the Deputy President is a bully. He has been threatening public officials. He has carried himself in a manner that brings disrespect to the office that he holds and therefore has grossly misconducted himself.

(Applause)

10. Under ground 10, I will specifically demonstrate that the Deputy President has committed an offence of gross misconduct in the manner of in subordinating the Presidency and the Kenyan state. The Kenyan state is our soul. If you insubordinate the state, you are not worth being a state officer.

(Applause)

11. Lastly with your permission, when the time comes, I will demonstrate that Hon. Rigathi Gachagua has committed crimes of gross misconduct, as I had earlier alluded to, in terms of bullying and threatening public officers.

In compliance with the provisions of Article 145(1) of the Constitution, as read together with the National Assembly Standing Order No. 65, a total of 291 Members of the National Assembly have graciously appended their signatures in support of this Motion.

(Applause)

It will be remembered that at this stage of moving the Motion, the law requires that the Motion should be supported by one-third, which translates to about 117 Members. However, we have 291 Members. I, therefore, wish to thank my colleagues and Members of Parliament for supporting this Motion to over 83 per cent, way beyond the threshold of two-thirds, which is 67 per cent that is required at the next stage of voting for this Motion. There are times when we used to say this is an open and shut case.

As a requirement of our Standing Orders, please allow me to read the names of the Members who signed in support of this Motion.

(Loud consultations)

Hon. Speaker: Order. Go ahead.

Hon. Mwengi Mutuse (Kibwezi West, MCCP): For purposes of completeness of the record, the Standing Orders require that the mover of the Motion reads all the names of the Members who are in support of the Motion for openness.

Hon. Members: Yes.

Hon. Mwengi Mutuse (Kibwezi West, MCCP): I therefore read the names of the patriots, borrowing from Senior Peter Kaluma:
I begin with myself, Hon. Mwengi Mutuse.

2. Hon. Owen Baya
3. Hon. Japheth Nyakundi
4. Hon. Mathias Robi,
5. Hon. Kimani Ichung'wah, Member for Kikuyu and the Hon. Leader of the Majority Party.
6. Hon. Rahim Dawood.
7. Hon. Patrick Ntwiga.
8. Hon. Eric Wamumbi, Member for Mathira.
9. Hon. George Kariuki.
10. Hon. Daniel Karitho.
11. Hon. Dorothy Muthoni,
12. Hon. Mwangi Kiunjuri,
13. Hon. Mpuru Aburi
14. Hon. Elizabeth Kailemia.
15. Hon. Edwin Gichuki
16. Hon. Mugambi Rindikiri.
17. Hon. Jane Kagiri.
18. Hon. Ann Wamuratha
19. Hon. John Paul Mwirigi.
20. Hon. David Gikaria.
21. Hon. (Eng) John Kiragu.

22. Hon. Mary Maingi.
23. Hon. Alice Ng'ang'a.
24. Hon. Michael Wainaina
25. Hon. John Waithaka.
26. Hon. Kuria Kimani.
27. Hon. George Murugara.
28. Hon. Simon King'ara.
29. Hon. John Kiarie.
30. Hon. (Dr) Shadrack Mwiti
31. Hon. Joseph Wainaina, nominated.
32. Hon. Betty Maina.
33. Hon. Ruku GK.
34. Hon. GG Kagombe.
35. Hon. Julius M'anaiba.
36. Hon. Duncan Mathenge.
37. Hon. Kwenya Thuku.
38. Hon. Njuguna Kawanjiku
39. Hon. (Dr) John K Mutunga
40. Hon. Junet Mohamed, Hon. Leader of the Minority Party.
41. Hon. Abdikadir Mohamed.
42. Hon. Yakub Adow.
43. Hon. Ken Chonga.
44. Hon. Ali Wario.
45. Hon. Ruweida Mohamed.
46. Hon. Khamis Chome.
47. Hon. Abubakar Ahmed
48. Hon. Zamzam Mohammed.
49. Hon. Rashid Bedzimba.
50. Hon. Said Hiribae.
51. Hon. Peter Shake.
52. Hon. Peter Masara.
53. Hon. Mishi Mboko.
54. Hon. Atieno Bensuda.
55. Hon. Fatuma Masito.
56. Hon. Mohamed Machele.
57. Hon. Aduma Owuor.
58. Hon. Jerusha Momanyi.
59. Hon. Dr Lilian Gogo.
60. Hon. Millie Odhiambo-Mabona, the one and only.
61. Hon. Irene Mayaka, my sister.
62. Hon. Dick Oyugi
63. Hon. Joshua Oron
64. Hon. Walter Owino
65. Hon. Patrick Osero
66. Hon. Nolfason Barongo
67. Hon. Mark Nyamita
68. Hon. Tom Odege
69. Hon. Clive Gisairo
70. Hon. Oku Kaunya
71. Hon. Rozaah Buyu

72. Hon. Charles Ong'ondo
73. Hon. Fatuma Mohammed
74. Hon. Paul Abuor
75. Hon. Bady Twalib
76. Hon. David Ochieng'
77. Hon. Caleb Amisi Luyai
78. Hon. Elisha Odhiambo
79. Hon. Farah Maalim
80. Hon. Elijah Memusi Kanchory
81. Hon. Kakuta Maimai Hamisi
82. Hon. Aden Mohammed Daudi
83. Hon. Raphael Wanjala
84. Hon. Peter Orero
85. Hon. Martin Owino Peters
86. Hon. Peter Kaluma
87. Hon. TJ Kajwang'
88. Hon. Chiforomodo Mangale
89. Hon. Dorice Donya
90. Hon. Stephen Mogaka
91. Hon. Phelix Odiwuor
92. Hon. Geoffrey Odanga
93. Hon. Tim Wanyonyi
94. Hon. (Dr) Christine Ombaka
95. Hon. Hussein Weytan
96. Hon. George Aladwa
97. Hon. Maero Oyula
98. Hon. John Bwire
99. Hon. Omar Mwinyi
100. Hon. Catherine Omanyo
101. Hon. Danson Mwashako of Wiper Party
102. Hon. Innocent Mugabe
103. Hon. Charles Nguna, Member for Mwingi West Constituency of Wiper Party
104. Hon. Elsie Muhanda
105. Hon. Julius Sunkuli of Kilgoris
106. Hon. Amina Siyad
107. Hon. (Dr) John Namoit
108. Hon. Nicholas Mwale
109. Hon. (Dr) Otiende Amollo, Senior Counsel

(Applause)

Hon. Speaker, the House takes notice that Hon. Otiende Amollo is one of the drafters of the Constitution that we are implementing.

110. Hon. Christopher Wangaya
111. Hon. Paul Nabuin
112. Hon. Nicholas Ng'ikor
113. Hon. Yussuf Farah Mohamed
114. Hon. Abdikadir Mohamed Hussein
115. Hon. James K'Oyoo
116. Hon. Sarah Korere

117. Hon. Umulkher Harun
118. Hon. (Dr) James Nyikal, Member for Seme

(Applause)

119. Hon. Daniel Manduku
120. Hon. Mohamed Adow
121. Hon. Ali Wario Guyo
122. Hon. Paul Katana
123. Hon. Bisau Kakai
124. Hon. Emmanuel Wangwe
125. Hon. Bernard Shinali
126. My friend, Hon. Nabii Nabwera
127. Hon. Patrick Makau of the Wiper Party, Member for Mavoko Constituency and Commissioner of the Parliamentary Service Commission (PSC) very ably voted by Members of this House. I thank you in a special way my senior brother.

(Applause)

128. Hon. Shakeel Shabbir
129. Hon. Adan Keynan

(Applause)

130. Hon. Fatuma Jehow
131. Hon. Amina Mnyazi
132. Hon. Gertrude Mwanyanje
133. Hon. Adipo Okuome
Hon. Speaker, if you allow me, I can have a sip of my water.
Hon. Speaker: Go ahead.

(Applause)

Hon. Mwengi Mutuse (Kibwezi West, MCCC):

134. Hon. Abdi Shurie, the Chairperson of the Public Debt and Privatisation Committee.
135. Hon. Anthony Oluoch
136. The Member for Dagoretti North, Hon. Beatrice Elachi

(Applause)

137. Hon. Samuel Arama
138. Hon. (Prof.) Guyo Jaldesa
139. Hon. Antoney Kibagendi, my brother
140. Hon. Samuel Atandi, my brother
141. Hon. Ruth Odinga, Women's Representative, Kisumu County

(Applause)

142. Hon. Eve Obara

143. Hon. Johnson Naicca of Mumias East
144. Hon. Johana Kipyegon
145. Hon. Omboko Milemba
146. Hon. Maisori Kemero
147. Hon. Moses Kirima
148. Hon. Haika Mizighi
149. Hon. Yusuf Adan
150. Hon. Mumina Bonaya
151. Hon. Charles Gimose
152. Hon. Bidu Mohamed
153. Hon. Zaheer Jhanda
154. Hon. Clement Sloya
155. Hon. Suleka Harun
156. Hon. Jackson Lekumontare, Member for Samburu East
157. Hon. Kenga Mupe, ukimuona mpe
158. Hon. Major (Rtd) Abdullahi Sheikh
159. Hon. Didmus Barasa
160. Hon. Malulu Injendi
161. Hon. Geoffrey Mulanya
162. Hon. Fred Ikana
163. Hon. Peter Nabulindo
164. Hon. Titus Khamala
165. Hon. Joseph Hamisi
166. Hon. Ernest Kivai
167. Hon. Vincent Musau a.k.a Kawayia, the Member for Mwala Constituency
168. Hon. Fabian Muli
169. Hon. Caleb Mule
170. Hon. Joshua Mwalyo
171. Hon. (Dr) Rachael Nyamai
172. Hon. Nimrod Mbai a.k.a KPLC
173. Hon. Ali Raso
174. Hon. Joseph Lekuton of Laisamis
175. Hon. Silvanus Osoro, Chief Whip
176. Hon. Abdisirat Khalif
177. Hon. Abdul Haro
178. Hon. Mary Emaase
179. Hon. Irene Njoki
180. Hon. (Eng.) Nebart Muriuki
181. Hon. George Gachagua
182. Hon. Wachira Karani
183. Hon. Githua Wamacukuru
184. Hon. Rahab Mukami

(Applause)

Hon. Speaker, for completeness of the record, there are names that I have cancelled and signed against the cancellation.

185. Hon. Antony Wainaina
186. Hon. Elijah Kururia
187. Hon. Daniel Nanok

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188. Hon. Muthoni Marubu
189. Hon. Kenneth Tungule
190. Hon. Stanley Muthama
191. Hon. Joseph Emathe
192. Hon. Faith Gitau
193. Hon. Cecilia A. Ngiriti
194. Hon. Pamela Njeru
195. Hon. Robert Basil, the Member for Yatta under the Wiper Party

(Applause)

196. Hon. Protus Akujah
197. Hon. Kassim Tandaza
198. Hon. Pauline Lenguris
199. Hon. (Dr) Robert Pukose
200. Hon. George Sunkuyia
201. Hon. Joash Nyamoko
202. Hon. Kitilai Ole Ntutu
203. Hon. Leah Sankaire
204. Hon. Lemanken Aramat
205. Hon. Agnes Pareyio
206. Hon. Gabriel Tongoyo
207. Hon. Rebecca Tonkei
208. Hon. Catherine Wambilianga
209. Hon. John Makali of Kanduyi
210. Hon. John Chikati
211. Hon. Susan Ngugi, the Women's Representative of Tharaka-Nithi County
212. Hon. Kahangara Mburu
213. Hon. Geoffrey Wandeto
214. Hon. (Capt.) Ronald Karauri
215. Hon. (Dr) Jackson Kosgei
216. Hon. Adams Korir
217. Hon. Kangogo Bowen
218. Hon. Jematiah Sergon
219. Hon. Kassait Kamket
220. Hon. Caroline Ng'elechei
221. Hon. Kiborek Reuben
222. Hon. Gideon Kimaiyo
223. Hon. Musa Sirma
224. Hon. Joseph Makilap
225. Hon. Joshua Kandie
226. Hon. Charles Kamuren
227. Hon. John Waluke
228. Hon. Richard Yegon
229. Hon. Kilel Richard
230. Hon. Brighton Yegon
231. Hon. Francis Sigei
232. Hon. Victor Koech
233. Hon. Linet Chepkorir Toto
234. Hon. Justice Kemei

235. Hon. Nelson Koech
236. Hon. Beatrice Kemei
237. Hon. Joseph Chererot
238. Hon. Kibet Komingoi
239. Hon. Hilary Kosgei
240. Hon. Benjamin Lang'at
241. Hon. Alfred Mutai
242. Hon. Liza Chelule
243. Hon. Joseph Tonui
244. Hon. Paul Chebor
245. Hon. Fred Kapondi
246. Hon. Lillian Siyoi
247. Hon. Naomi Waqo
248. Hon. Faisal Bader
249. Hon. Alfah Miruka
250. Hon. Dekow Mohamed
251. Hon. Innocent Obiri
252. Hon. Gideon Ochanda
253. Hon. Sabina Chege
254. Hon. Peter Lochakapong
255. Hon. Samwel Chumel
256. Hon. Rael Kasiwai,
257. Hon. David Pkosing,
258. Hon. Titus Lote,
259. Hon. Joseph Samal
260. Hon. Letipila Eli
261. Hon. Kareke Mbiuki
262. Hon. Martin Wanyonyi
263. Hon. Wanami Wamboka
264. Hon. David Ochieng'
265. Hon. Ferdinand Wanyonyi
266. Hon. Gladys Boss
267. Hon. Paul Biego
268. Hon. Marianne Kitany
269. Hon. Samwel Chepkonga
270. Hon. Janet Sitienei
271. Hon. Cynthia Muge
272. Hon. Josses Lelmengit
273. Hon. David Kiplagat
274. Hon. Julius Melly
275. Hon. Julius Rutto
276. Hon. Bernard Kitur
277. Hon. Phylis Bartoo
278. Hon. Oscar Sudi
279. Hon. Dan Wanyama
280. Hon. Adagala Beatrice
281. Hon. Amina Dika
282. Hon. Abdi Ali Abdi
283. Hon. Hussein Abdi
284. Hon. Gonzi Rai

285. Hon. Ibrahim Saney
286. Hon. Umul Kheir Kassim
287. Hon. Farah Yakub
288. Hon. Caroli Omondi
289. Hon. Gichimu Githinji
290. Hon. Michael Muchira
291. Hon. Jared Okello

That makes a total number of 291 Members.

Hon. Speaker: Wind up, please.

Hon. Mwengi Mutuse (Kibwezi West, MCCP): Hon. Members, as I alluded to earlier, I presented the names to the Clerk of the National Assembly.

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

1. The Special Motion dated 26th September 2024. This was received by the Clerk on 27th September 2024. I have it in my hands, and I would be laying it shortly.
2. A list of the 291 Members of the National Assembly who signed in support of the Motion.
3. The bundle of evidence in support of the grounds in the Motion.
4. List of witnesses contained in this bundle.

Kenyans would be shocked when we unravel and demonstrate the grounds for the impeachment and the supporting evidence.

Through you, Hon. Speaker, I humbly request the House Business Committee to allocate me ample time when I would be moving the Motion so that Kenyans can appreciate in detail the injustices that have been committed against them by the person of the Deputy President.

I, thank you, and I beg to give notice of the Special Motion and to lay the said documents on the table of the House. Please allow me to highlight the following.

Hon. Speaker: Order!

Hon. Mwengi Mutuse (Kibwezi West, MCCP): Hon. Speaker, I am a Christian, and I often read the Bible. And the Holy Bible in the book of Proverbs 29:16 says: “When the wicked are in authority, sin flourishes, but the godly, will live to see their downfall.”

Further, Mark 9:42-47 says: “If one causes one of these little ones, those who believe in me to stumble, it would be better for them if a large millstone were hung around their neck and they were thrown into the sea. If your hand causes you to stumble, cut it off. It is better for you to enter life maimed, than have two hands, and go to hell where the fire never goes out. And if your foot causes you to stumble, cut it off. It is better for you to enter life crippled than to have two feet and to be thrown into hell. And if your eyes cause you to stumble, pluck it out. It is better for you to enter the kingdom of God with one eye than to have two eyes and be thrown into hell.”

If Kenyans cannot get services because of Deputy President Rigathi Gachagua, pluck him out of Government.

Hon. Members, it is my belief that these two quoted verses are also true to the Quran and other holy books.

Hon. Members, turning on to our own jurisprudence, and because many of us are political practitioners, even those who are not lawyers would remember that in...

Hon. Speaker: Order, Hon. Mutuse, you are not debating the Motion.

Hon. Mwengi Mutuse (Kibwezi West, MCCP): I am finishing. In nullifying the 2017 Presidential elections, His Lordship the Chief Justice Emeritus, Hon. David Maraga, pronounced himself in the following words: “The greatness of any nation lies in its fidelity to the Constitution and adherence to the rule of law, and above all, respect to God.”

It is this persuasion that has made me to bring this Motion of Impeachment against the person of the Deputy President, His Excellency, Rigathi Gachagua. For the record, and

Kenyans listen, I have no grudge, malice, ill will nor personal vendetta against His Excellency, Rigathi Gachagua. I am just doing my duty as a citizen of the Republic of Kenya, and executing my mandate as a Member of this House, as mandated under the Constitution, to bring this Motion. I will, therefore, with your permission, lay the documents before the House, and beg to give notice of the Motion.

I, thank you, Hon. Speaker.

(Hon. Mwengi Mutuse laid the documents on the Table)

(Applause)

Hon. Speaker: Hand over the documents to the Clerk.

Hon. Ruku GK (Mbeere North, DP): On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Ruku, what is it?

Hon. Speaker: In relation to the Motion?

Hon. Ruku GK (Mbeere North, DP): Yes.

Hon. Speaker: Go on.

Hon. Ruku GK (Mbeere North, DP): Hon. Speaker, I rise to seek your clarification on the Special Motion for the removal of the Deputy President. As you are aware, four seats in the House are vacant following the resignation of the Hon. Opiyo Wandayi and Hon. John Mبادi upon being appointed as cabinet secretaries.

Further, as you are aware, the seat of Magarini Constituency was declared vacant following a successful election petition. The Banissa Constituency seat was also declared vacant following the unfortunate demise of our colleague. In this regard, we now have 345 Members in this House, and not 349. What threshold shall you use to determine whether the Special Motion meets the Constitution threshold? To pass this Motion, shall we require two-thirds, 345 or 349 Members? In my view, vacant seats should not be counted.

Hon. Speaker: Order, Hon. Ruku. You cannot ask a question and answer it.

(Laughter)

Hon. Ruku GK (Mbeere North, DP): Let me prosecute. I am trying to prosecute my point of order. In my view, vacant seats should not be counted in determining the voting threshold. Further, I wish to seek your clarification on whether our proceedings are valid in light of the four vacant seats.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you. You have made your point. Hon. Bashir.

Hon. Major (Rtd) Abdullahi Sheikh (Mandera North, UDM): Hon. Speaker, Articles 145 and 150 of the Constitution provide for removal of the Deputy President. Our Standing Orders go to great lengths on the same; to explain the procedure for removal of the Deputy President as stipulated under Standing Orders 64 and 65. From the reading of Articles 145 and 150 of the Constitution, it is clear that the role of this House is just to pass the resolution as to whether the Deputy President shall be impeached or not. It is the exclusive role of the Senate to conduct the trial process. It is simply put that we are the initiators and the Senate will be the trial House.

Consequently, I seek your guidance on whether it is necessary to invite the Deputy President to this House in terms of the right to be heard, noting that we have nothing to do with the real process. In my view, the Deputy President shall be required to appear before the Senate but nevertheless, I seek your indulgence on this matter.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, we leave it there. Yes, Hon. Junet.

Hon. Junet Mohamed (Suna East, ODM): Hon. Speaker, I do not intend to anticipate debate.

Hon. Speaker: I will not allow you to.

Hon. Junet Mohamed (Suna East, ODM): Yes. I understand that this is just a notice of Motion. However, there are matters that surround the notice of the Motion that need your guidance and action because this is a very momentous issue. As you are aware, when this country gave itself the new Constitution, Kenyans were very happy. This is one of the moments in this House when we are going to exercise Article 150 of the Constitution. This has not happened before so this is a very important matter for this nation that is being exercised through this House. Having said that, you are aware that Members from our side and the Majority side have signed this Motion.

As the Speaker of this House, I want to get your assurance that the safety and security of 291 Members of Parliament who have signed this Petition will be guaranteed because the Motion does not end at the notice today. It will go through a process; it will be formally moved again, Members will debate, and vote on it.

We want those 291 Members of Parliament to turn up here on the voting day, without fail. It was just the other day that we passed the appointment of the new Inspector-General of Police, Mr Kanja.

(Laughter)

(A Member spoke off the record)

Not really. He must take responsibility. As the Inspector-General of Police of the country, he must guarantee the safety and security of the 291 Members of Parliament. What we are doing is not a small thing. You will recall what Trump attempted to do when he was being impeached in the United States. You know what can happen here. Let us not fight and begrudge anyone because what the House is doing is constitutional. The House is just exercising its mandate; it is not doing anything outside the Constitution.

You can impeach a Cabinet Secretary, Deputy President, or the President, if you wish to do so. This is an exercise that is given to us by the Constitution.

Hon. Speaker: You have made your point.

Hon. Junet Mohamed (Suna East, ODM): I have made my point, but I conclude by saying that when we were elected as Members of Parliament, we became the staff of the Parliamentary Service Commission. Each Member here is an employee of the Parliamentary Service Commission, which you are the Chairman. So, I have spoken on behalf of the Members because when they were signing the Petition, that is what they told me. As their Minority Leader, they told me that they support the impeachment. That they are ready to move, but things must be done legally, procedurally and within the Constitution, inside and outside Parliament.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you. I do not want to open debate.

Hon. Silvanus Osoro (South Mugirango, UDA): On a point of order, Hon. Speaker.

Hon. Speaker: Majority Whip, what is your point of order?

Hon. Silvanus Osoro (South Mugirango, UDA): Hon. Speaker, I also seek your guidance and indulgence on the notice of Motion that has just been tabled here today. We all agree that post 2010 Constitution, this is unprecedented. As much as it happened years back, this is very new, post 2010 Constitution, and we will need a bit of some guidance. Ordinarily, any Motion that is brought before this House that is of public interest goes through the entire

process, including public participation. I seek your guidance and indulgence on the place of public participation as far as this notice of Motion is concerned.

Looking at the jurisprudence that has been made by the courts and the lower legislative arm, which is the county assemblies, on the impeachments of the governors and deputy governors, you will realise that many impeached governors or their deputies challenge their impeachment based on the process of public participation. This is unprecedented and it is my view that we replicate the same to what happens on the impeachment of governors and deputy governors and invoke the element of public participation across the country.

Hon. Speaker: You have made your point.

Hon. Silvanus Osoro (South Mugirango, UDA): Thank you.

Hon. Speaker: Before the Leader of the Majority Party speaks, let us have Hon. Farah. He has been raising his hand. I give you one minute.

Hon. Farah Maalim (Dadaab, WDM): Hon. Speaker, I also join my colleagues in this, but I just have one important issue to raise. Not only do we have to protect the lives of 291 Members of Parliament who have appended their signature there, but we must also protect the system. The Inspector-General of Police must protect our President to the hilt, because you know the kind of a Constitution we have. Any reckless thug can decide to change the course of history if, God forbid, anything was to happen to our President. I hope you get my point. There are people who we have been so worried about lately, and I get the feeling that they even have the capacity to plan something like that. Let us make sure this information goes out. Our President must be protected to the hilt until this Motion is over. If, God forbid, anything was to happen, then we have something bigger to worry about.

Hon. Speaker: Thank you. Hon. Ichung'wah, you are the last on this.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Speaker. If you indulge me, I will add something about security. Before that, under Standing Order 85(2), I beg that you guide Members that it shall be out of order to anticipate the debate of a Motion of which notice has been given by discussion upon a substantive Motion or amendment. I say this because we are in an open and transparent society, and many of us will be invited to media stations to discuss this impeachment Motion whose notice has been given today. Just to caution Members, it will be completely out of order to discuss the substance of the Motion on media stations before debate, as is contained in our Standing Orders. So, when we are invited to media stations, we should be guided in what we discuss so that we do not go into the substance of the Motion until we are done with the debate. After the debate, we are all at liberty to discuss it. That includes both those who have appended their signatures, like myself, and the 58 Members who have not appended their signatures.

To add to what the Hon. Farah and Hon. Junet have said, the security of Members of Parliament is paramount. I say that looking at you, Hon. Speaker, because you know on 25th June this year, none other than yourself was a target. And not a target for harm but for elimination based on the position you hold as the Speaker and the ranking order, should anything happen to the President or the Deputy President. I beg that you take with a little more weight the issue raised by Hon. Junet and Hon. Farah Maalim. We have seen on social media and have been told by certain quarters that before March 2025, *bendera itapepea nusu mlingoti*. These are weighty issues.

I hear what Hon. Farah Maalim is saying on the security of the President, and we have no business to advise the Inspector-General and the Director of the National Intelligence Service on what to do. But for Members of this House, all the 349 of them, you must direct the Inspector-General of Police, who was approved by this House less than a month ago, to ensure that when Members of this House are sitting within the precincts of Parliament or outside, including committees and in their homes, they are secured. I say this because of the information

you and I were privy to on 25th June. As Hon. Junet has said, we are not dealing with an ordinary matter or an ordinary man. We are dealing with a black man with a very black heart.

Thank you.

(Loud consultations)

(Several Members stood in their places)

Hon. Speaker: Order, Hon. Members. Order, Members on their feet. Order, Hon. Deputy Speaker. Take your seats, those who are on their feet.

Hon. Members, I will address those points raised later in the day. I direct members of the House Business Committee (HBC) to retreat to Room 9 so that we can have a meeting to address the process of disposing of this Motion in the shortest time possible, so that we do not maintain anxiety unnecessarily, and the issues that you have raised about public participation and other things. After the HBC meeting, the Speaker will come back to the House at about 5.00 p.m. and give you direction on what we shall do from here going forward. I will now direct the Deputy Speaker to come and take the Chair, so that members of HBC—Hon. Junet and your team—can all troop to Room 9 for a meeting immediately.

(Hon. Gathoni Wamuchomba spoke off the record)

I have closed that chapter, Hon. Wamuchomba. You did not raise your hand when I was giving Members a chance.

(Hon. Gathoni Wamuchomba spoke off the record)

That chapter is closed. I am sorry I did not see you.

Hon. Deputy Speaker, take the Chair.

[The Speaker (Hon. Moses Wetang'ula) left the Chair]

[The Deputy Speaker (Hon. Gladys Boss) took the Chair]

Hon. Deputy Speaker: Next order.

QUESTIONS AND STATEMENTS

Hon. Deputy Speaker: Order, Hon. Members. Member for Funyula, do you have a statement?

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Thank you, Hon. Deputy Speaker.

(Loud consultations)

Hon. Deputy Speaker: Order, Hon. Members! Order, Hon. Members! We can proceed.

Member for Funyula, let us allow (Dr) Pukose, Chairperson of the Departmental Committee on Health, to make his statement then you go next.

STATEMENT

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SHIFT FROM NHIF TO SHIF AND ROLLOUT
OF UNIVERSAL HEALTH COVERAGE

Hon. (Dr) Robert Pukose (Endebess, UDA): Thank you, Hon. Deputy Speaker. I wish to make a statement on the shift from the National Health Insurance Fund (NHIF) to the Social Health Insurance Fund (SHIF) and the rollout of Universal Health Coverage (UHC).

The Ministry of Health and the Social Health Authority (SHA) are today rolling out the healthcare services and benefits under three funds—the Primary Healthcare Fund, the Social Health Insurance Fund, and the Emergency, Chronic and Critical Illness Fund—established under the Social Health Insurance Act (No.16 of 2023) enacted by this House almost a year ago. This Act is being operationalised by the Government. Access to SHA healthcare services and the benefits being offered are being rolled out today, 1st October 2024.

As the Chairperson of the Departmental Committee on Health, I rise to give a statement on matters concerning the procurement of the Integrated Health Information Technology System by the Ministry of Health, which has elicited a lot of debate.

Hon. Deputy Speaker, Members of the Departmental Committee on Health raised concerns regarding the procurement of this system. In response to these concerns, the Ministry of Health was invited to clarify the procurement process and provide evidence of compliance with the Public Procurement and Asset Disposal Act, 2015, CAP. 412C. The Committee made the following observations from its engagements with the Ministry.

One, the Ministry of Health, through the State Department for Medical Services, undertook the procurement of Integrated Health Information Technology System as part of the implementation of universal healthcare in the country. They submitted that the primary aim of this integrated system is to address the existing challenges in the healthcare sector, including issues of interoperability, data quality, accessibility, and affordability.

The Ministry of Health is aligned with the Kenya Health Sector Strategic and Investment Plan, the Kenya Health Data Collaborative and the Kenya Digital Economy Blueprint which are all under the guidance of Section 105 of the Health Act, CAP. 241. The system procurement involves a contract valued at Ksh104,808,136,478 set to be executed over a 12-year period. The Ministry of Health has partnered with MS Safaricom PLC as a strategic partner with the procurement conducted under the Specially Permitted Procurement Procedure (SPPP). It covers the development and implementation of integrated health information technology system, including digital healthcare platforms. The tender is structured in two major cost components: initial investment by the strategic partners of Ksh34,003,483,013 over two years and infrastructure support and maintenance of Ksh70, 804,653,465 over 10 years.

In adherence to the Public Procurement and Asset Disposal Act, 2015 and the tender regulations, the Ministry indicated that the procurement process began on 6th June 2023. The then Cabinet Secretary for Health requested the use of SPPP for the medical equipment supply project, healthcare information technology and the supply of Community Health Promoters (CHPs) kits. The National Treasury approved the request on 13th June 2023, subject to conditions regarding the preparation of tender documents that included specifications, conditions of tendering and contracting, and justification for the use of SPPP detailing the procedure of on boarding the strategic partners. This process was followed by the Ministry's compliance and further approvals.

The bid documents were issued on 9th May 2024 and closed on 15th May 2024. After the tender evaluation and negotiation, the Ministry submitted a draft contract to the Office of the Attorney-General for review and necessary advisory, in line with Section 134(2) of the Public Procurement and Asset Disposal Act. It obligates the accounting officer of a procuring entity to seek clearance from the Attorney-General before signing contracts of a value exceeding Ksh5 billion.

As mandated by Section 114(a) of the Public Procurement and Asset Disposal Act 2015, a SPPP can be utilised under the following circumstances:

1. A procuring entity may use a procurement procedure specially permitted by the National Treasury. It may allow the use of SPPP:
 - (a) Where exceptional requirements make it impossible, impractical or uneconomical to comply with the Act and Regulations.
 - (b) Where the market conditions or behaviours do not allow the effective application of the Act and Regulations made under the Act.
 - (c) For specialised or particular requirements which are regulated or governed by harmonised international standards or practices.
 - (d) Where strategic partnership sourcing is applied.
 - (e) Where credit finances procurement is applied.
 - (f) In such other circumstances as may be prescribed.

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, please be quiet. The Chairperson is saying something about the new Social Health Insurance Fund that is very important to our constituents so let us pay attention.

Hon. (Dr) Robert Pukose (Endebess, UDA): The Ministry of Health invited Safaricom PLC to submit a proposal using the provisions of Section 114(a), (d) and (e) of the Public Procurement and Asset Disposal Act, 2015. They submitted technical and financial proposals as a consortium with Konvergenz Network Solutions Limited and Apeiro Limited.

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, those who want to have small *kamukunjis*, kindly go to the lounge so that we can listen to this very important Statement.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Deputy Speaker, with Safaricom PLC being the lead bidder in the consortium, its roles involve overseeing the entire project, ensuring that all consortium partners are fair to their contract terms and deliver their respective components as per the agreed scope.

Safaricom PLC was approached as a strategic partner owing to its strong capacity to manage and coordinate the project effectively. It is the largest telecommunication company in Kenya, and one of the most advanced in East Africa. It has major technological advantages, particularly its extensive 5G network which currently reaches 77 per cent of the Kenyan population. In addition, its network covers over 99 per cent of the country, providing connectivity in remote areas. These factors make it the most suitable partner for a large-scale project that requires robust and reliable digital infrastructure.

Konvergenz Network Solutions Limited, founded in Canada, is a leading digital transformation, Information and Communication Technology (ICT) company with its headquarters in Nairobi. It established operations in Kenya in 2014, when it was incorporated on 2nd April 2014. From its profile, it has presence across East Africa in seven countries including Rwanda, Zambia and Uganda. It specialises in cyber recovery solutions, identity security management, analytics and data modelling, Internet of Things (IoT), enterprise system integration, integrated physical security and enterprise collaboration, and customer engagement.

On the other hand, Apeiro Limited is a private company limited by shares. It was incorporated in Abu Dhabi global market on 11th July 2023. Its business activities are computer programming activities, treasury financial systems and applications development, call centres

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activities, regulation of the activities of providing healthcare, education, cultural services and other social services, excluding social security, market research and public opinion polling, computer consultancy and computer facilities management activities, data processing, hosting and related activities. It is owned by Sirius International Holding which offer 25 subsidiaries and presence in over 28 countries. It is an international holding company which is the largest in United Arab Emirates (UAE) with over US\$250 billion market capitalisation and 479 subsidiaries across nine industries.

Hon. Deputy Speaker, I wish to inform this House that the system being procured is not only a social health system but also a national integrated information technology system for the entire health sector—a digital superhighway. Therefore, it will not only manage social health insurance but also provide for the various components aimed at delivering a comprehensive and integrated healthcare system for the country. These components encompass the development of a health information management system, a health information exchange platform, core business services such as provision of telemedicine, and track and trace pharmaceutical products. The Social Health Authority Insurance management platform, an enterprise resource planning system, national logistics, and supply chain management software, a learning platform and analytic system as well as the necessary digital health infrastructure to support these systems.

The Ministry of Health averred to the Committee that it secured the necessary approvals from the Cabinet Secretary for the National Treasury and the Attorney General for the use of the specially permitted procurement procedure with the main justification for the procurement of the system being the obligation set out in Section 105 of the Health Act, Cap.241 of 2017. This section provides for the establishment and maintenance of a comprehensive and integrated health information system by the Ministry of Health.

The Ministry also clarified that due diligence on the contract had been conducted by Kaplan and Stratton Advocates, and not Danton, Hamilton, Harrison, and Matthews as widely reported on social media.

Hon. Deputy Speaker, the Committee had also expressed concerns about electricity and network connectivity challenges in certain hospitals especially those in remote areas. The Ministry of Health and the Social Health Authority (SHA) acknowledged the issue noting that 4,065 health hospitals face difficulties with power and internet access. To mitigate these challenges, hospitals will receive devices with power banks for power backup.

Additionally, the digital system will function in offline mode ensuring hospitals can operate without internet access. The Ministry of Health is also collaborating with the Ministry of Energy to secure infrastructure upgrades including reliable electricity to facilitate the full implementation of the digital health system. The Ministry further assured the Committee that there are, at least, three connectivity lines available to support the system in case of system turn down or failure.

The Ministry of Health, and the SHA in the meeting held with the Committee yesterday, Monday, 30th September 2024, highlighted its preparedness on the rollout of access to social health benefits. The Ministry submitted that as of 20th September 2024, the SHA system had registered approximately 2 million new members while 9 million members from the NHIF system were to be transitioned to the SHA platform.

In conclusion, the integrated health information technology system if implemented by the Ministry of Health in the manner that the latter explained to the Committee would contribute significantly to the digitisation and modernisation of Kenya's health care system ensuring accessible, affordable and high-quality care for all Kenyans, as envisioned in the Kenya Health Policy 2014 – 2030 and the Kenya Universal Health Coverage Policy 2020 – 2030.

Thank you, Hon. Deputy Speaker. I submit.

Hon. Wanami Wamboka (Bumula, DAP-K): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: Do you have a point of order?

Hon. Wanami Wamboka (Bumula, DAP-K): Thank you, Hon. Deputy Speaker. We just want to interrogate the Statement. I have a few concerns.

First, as a National Assembly, we should sit back and understand what is going on. I am seated with some Members of the Departmental Committee on Health, and they are expressing dissatisfaction with what is going on. Let me highlight a few fundamental issues about such a thing. I do not understand how such a programme can go on without public participation. This is a House of rules; we enact laws and we are supposed to follow them.

Secondly, the greatest system, the most sophisticated like that of the Kenya Revenue Authority (KRA) are not as expensive. I have never heard of a system that costs Ksh104 billion. I am told that the platform that NHIF ran on only needed Ksh700 million to be upgraded. A whopping Ksh104 billion is expensive. We must also understand that these people did single sourcing. The government went for single-sourcing for such a large amount of money. We cannot allow this to go on in this country. We are saying that they should take a step back and listen to what Kenyans are saying. We cannot take all the important infrastructure of this government from one foreigner called Adani. We cannot. We cannot give him the airport; we cannot give him Kenya Electricity Transmission Company (KETRACO) and we cannot give him our health system. It is going to collapse.

Lastly, I have read and interrogated this Statement very well. The benefits that NHIF was giving were superior to those this system is going to give. I beseech this National Assembly that when the country is headed in the wrong direction, we must say no. Let us step back and listen. This is a bad thing. It is causing damage to our country. We will not have a country at the end of the day.

Let the Hon. Chairman of the Committee sit back, go, and follow processes. A contract of Ksh104 billion cannot be awarded by single sourcing. We cannot. The eating is just too much. We should not allow this eating and looting in this country.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Yes, Hon. Justice Kemei.

Hon. Justice Kemei (Sigowet/Soin, UDA): Thank you, Deputy Speaker.

Hon. Deputy Speaker: Make it brief so that the Chairperson can respond

Hon. Justice Kemei (Sigowet/Soin, UDA): I will be very brief, Hon. Deputy Speaker. Mine is not related to the Statement that has been given by the Chairman of the Departmental Committee on Health. Hon. Deputy Speaker, on the....

Hon. Deputy Speaker: I am not entertaining any comments on what the Chairperson has said. What do you want to talk about?

Hon. Justice Kemei (Sigowet/Soin, UDA): Hon. Deputy Speaker, I sought a Statement from the Chairman of the Departmental Committee on Health on 15th August 2024, on the state of Mpox in this country.

Hon. Deputy Speaker: That is not relevant to what we are discussing now. So you will have to ask that at another time.

Hon. Member for Funyula, then I will come to you, Hon. Beatrice Elachi.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Hon. Deputy Speaker, I will make it very brief.

I am shocked beyond belief. I am shocked that a Member of Parliament can come and stand here and justify the massive rip-off. Ksh104 billion just to run a system! To be honest, we beseech the Hon. Chairman. He is a Kenyan. Let him be mindful of the people of Kenya. Ksh104 billion going to the hands of insiders of this government is a rip-off. We cannot afford to steal from Kenyans to this extent. How heartless can they be? Let the Hon. Chairman just

go back. Single sourcing Ksh104 billion! Where on earth does that happen? Let the Hon. Chairman just go, reflect, think about it, involve Committee Members, and tell yourself that this The Hon. Chairman is a Catholic Christian like me. He cannot afford to steal when you have no remorse.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Elachi.

Hon. Beatrice Elachi (Dagoretti North, ODM): Thank you, Hon. Deputy Speaker.

I ask the Hon. Chairman to guide us because we have many people with chronic diseases who have been using NHIF. From today, we are changing to the Social Health Insurance Fund (SHIF). They need to understand that people tried *147#, but they were not able to enter into the system. What is a bit sad for me is that we can imagine somebody who is going for dialysis will not know what to do when they arrive in the hospital.

How I wish the Ministry of Health could put out a public notice saying that those under NHIF that are going through dialysis will be put into the new system when they go to hospital and that they will be given a SHIF card. That will help us.

Lastly, if we want to be people who look at humanity in the eye, I am hoping that the system never cost us Ksh104 billion at a time when the President is struggling with Eurobond, which again was a bad mistake. That Eurobond cost us 16 per cent to the dollar, while at the same time Egypt was getting the same Eurobond at 3 per cent. Let us not go back to those things that happened in 2013/2014. It will be wrong and evil.

Thank you.

Hon. Deputy Speaker: Hon. Kibagendi, then I will come to you, Hon. Nyikal.

Hon. Antony Kibagendi (Kitui Chache South, ODM): Hon. Deputy Speaker, I sit in the Departmental Committee on Health and I have raised concerns about a bulk of what fellow Members have raised here this afternoon.

One of my concerns was about the cost of this particular system given that some of the most sophisticated systems that we have in this country such as Kenya Revenue Authority, Safaricom, M-Pesa and a few others cost less than Ksh10 billion. I am wondering why we should genuinely spend Ksh104 billion on a system that those who created the National Health Insurance Fund (NHIF) system were willing to upgrade for less than Ksh1 billion. Ksh104 billion is adequate to take care of primary school children for 10 years. For only Ksh9 billion per year, they would have lunch in school.

Secondly, why should this system offer an inferior benefit yet members pay more now? Imagine they are saying only one individual in a family can benefit from diabetes test each year, and it is only Ksh4,000. Again, only one person can benefit on matters to do with dental, and it is about Ksh2,000. In addition, only one member in a family can benefit from optical medical care. This is absurd given what we had in NHIF.

If indeed NHIF had issues, our focus should have been to review the Claims Management Department. I would like to bring to your attention that even in the Social Health Authority, there is a scheme to outsource the core mandate of this particular authority, which is the Claims Management Department and that will mean loss of funds that would have been used to support poor Kenyans. This is something that has been disturbing me all this time and I am impressed that Members have actually taken it up.

(Applause)

I have forgotten to mention that in our Committee, we requested the Ministry to produce even one photo of a public participation event and they could not produce the same. There was no public participation anywhere in this country. There is a lot that we can talk about. As a

Member of that particular Committee, I would request that we step back and review this and the costs.

I also forgot to mention that the companies that benefited from this particular contract have never developed any kind of system anywhere in the world. One of them was just registered the other day in July. You can imagine the haste in which those who intended to benefit from this had. Thank you.

Hon. Deputy Speaker: We just have one more voice and then we can end this. I will allow...

(Hon. Owen Baya spoke off the record)

Okay, all right. I will go to Deputy Leader of the Majority Party and then I will...

(Hon. (Dr) James Nyikal spoke off the record)

Oh yes, I am sorry Hon. Owen. Hon. Nyikal was next and then I will come to you.

Hon. (Dr) James Nyikal (Seme, ODM): Thank you, Hon. Deputy Speaker. I am a Member of the Departmental Committee on Health. The Statement our Hon. Chairman has read does not reflect the position of the Members of that Committee.

One, and I say it with courage...

Hon. Wanami Wamboka (Bumula, DAP-K): On a point of order, Hon. Deputy Speaker.

Hon. (Dr) James Nyikal (Seme, ODM): Let me finish. Two...

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

Hon. Wanami Wamboka (Bumula, DAP-K): Hon. Deputy Speaker, if Members of the Departmental Committee on Health are saying that the Statement their Chairman has read to this House is not representative of the views of Members of the Committee, then why are we discussing it in the first place? Is it in order?

(Hon. (Dr) Robert Pukose spoke off the record)

Hon. Deputy Speaker: Let me allow Hon. Nyikal and then you will have a chance to respond to this, Hon. Pukose.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Deputy Speaker, to begin with, we were not even aware that this Statement was going to be made here. There are three issues.

One, is the issue of the integrated health information system, whose purchase costs Ksh104 billion.

Two, is the transition process that Hon. Elachi was talking about.

Three, is the issue of the outsourcing of claims.

Let me talk about the issue of the integrated system. The information we got from the Ministry as far as the procurement process was concerned, is that they followed the law as they interpreted it but we were not satisfied.

These are the issues we raised and requested more information on. First, we could not ascertain whether the Cabinet was aware of this. The procurement start with the Ministry and you do not see any information behind that is linking it with the Cabinet. At one time, the Principal Secretary was saying the Cabinet can be informed or given information when purchasing at Ksh104 billion. We did not agree with that.

Second, we were not satisfied that enough effort was made to get other institutions or partners that would provide this at a lesser cost or even compete. It was not clear to us how

Safaricom is the only one that got the request for proposal and not others. We said we would need that information later.

It was not clear to us whether due diligence was done on the partners in the consortium where Safaricom was the lead, particularly Apiero, because there had been a lot of information about Apiero that we did not get and at the end of the meeting, we agreed that we would either get that or do it ourselves. The Ministry did not give us enough information on that due diligence.

It was not clear to us how this money is going to be paid. When we asked the Principal Secretary, he said it is the users. This system is huge and will involve private health institutions, regulatory authorities of the health sector and health facilities in the counties, and yet it was not clear how these users will actually pay for it. We were informed that they are going to do a simulation of how this will be paid and we had not reached that level yet. With that, we were not satisfied and we are surprised that our Hon. Chairman is reading it in this House.

When it comes to transition, we were sure that people were not given enough information. What Hon. Elachi was asking is: if you have NHIF and we are transiting to SHA, will you get treatment? We were told 'yes', but that information is not with the people. We therefore asked what was being launched. You can launch the beginning of a process, but you cannot say you have shifted and therefore people will not get that service. So, we were not satisfied.

Hon. Deputy Speaker, that was one of the biggest issues we raised during the discussion on this law. We asked and they said, for the time being SHIF itself will do it. We are not sure whether that is so, because the law provided for, "may." Those who were here may remember that we were concerned about the "may."

Therefore, Hon. Deputy Speaker, in the view of the Committee, we have not reached a conclusion about this. With that, Hon. Deputy, Speaker, I say it does not represent the views of the members of the Committee.

Hon. (Dr) Makali Mulu (Kitui Central, WDM): On a point of order.

Hon. Deputy Speaker: Let me give this opportunity to Hon. Makali, who is on a point of order. Just note them down, Hon. Pukose. I will come to you so that you can respond to the allegations.

Hon. (Dr) Makali Mulu (Kitui Central, WDM): Thank you very much, Hon. Deputy Speaker. Hon. (Dr) Nyikal, is a ranking Member in this House. He is also a serious expert in health matters. He has made statements here since this is a House of records. He said, the Hon. Chairman of this Committee has submitted a report in the House which does not reflect the views of the Committee Members. Will I be in order to demand that the Chairman of the Committee tables the minutes of the Committee and a list of Hon. Members who have signed for the adoption of that Report? That is the only way we can clear the air.

(Applause)

Hon. John Kiarie (Dagoretti South, UDA): On a point of order.

Hon. Deputy Speaker: What is your point of order, Hon. KJ?

Hon. John Kiarie (Dagoretti South, UDA): Hon. Deputy Speaker, as much as this is a House of records, it is also a House of procedure and traditions. In my mind, what has been laid on the Floor of the House today is not the property of any Committee, neither is it the property of the Hon. Chairman. In fact, I was keen enough to listen to what the Hon. Chairman, (Dr) Pukose said when he was moving this Statement. He said that he is presenting a statement from the ministry. The ministry is at liberty to transmit statements to this House at any moment. Even responses that come from requests for statements are directed to chairpersons. They rarely go through any processing by committees but find their way to the Floor of the House.

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Therefore, Hon. Deputy Speaker, I find this House not utilising the little time that it has fairly, in prosecuting a matter that in itself is not substantially before this House. What was put here, Hon. Deputy Speaker, you would have been right in your place to just listen to Hon (Dr) Pukose and proceed to other business. All he did is equivalent to a communication, a notice and an announcement. To open it up to a debate is to take the Statement to be a substantive Motion in this House, which is not. We might open up debate so that we may be on posters or cameras because we want to play to the gallery. The truth of the matter is, there is no substantive Motion before this House open for debate or comment. It was just a statement that was laid on a momentous day, when the ministry was transitioning from one order to the next one and at their liberty, decided to communicate to the House.

Therefore, I do not see a place for debate or comments on a matter that is not a Motion. I say this because we are guided by Standing Orders. We might not be able to debate something that is not substantially before this House.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. KJ, the tradition of the House has been that when Hon. Members make statements or ask questions, usually if there is an interest by Members to comment on it, we allow them.

(Hon. (Dr) Robert Pukose spoke off record)

Hon. (Dr) Pukose, you are out of order. Do not speak from there. You will get a chance to respond like I have said. I have already corrected him so it is done.

Hon. Owen.

Hon. Owen Baya (Kilifi North, UDA): Hon. Speaker, I would like to say that when Hon. (Dr) Pukose spoke, he said he was issuing a statement. Hon. (Dr) Nyikal is a ranking Member who has a lot of respect. However, it is also important to listen from the beginning. Was Hon. (Dr) Pukose laying a report from the Committee or a Statement from the ministry? If you say you disown that the Committee did not participate or agree on that statement, you are actually right but you are on the wrong lane. He was not laying a position paper of the Committee, he was laying a Statement from the ministry. The ministry has a right. As the Hon. Chairman of the Committee, he transmits business from the ministry to the House. Which is totally in order.

Therefore, I would request you, Hon. (Dr) Nyikal, being a ranking dignified Member of this House with a lot of respect, it is important that you withdraw that statement on the basis that you are commenting on something that has not been presented to the House. This House has not received a Committee report. It has received a statement from the Cabinet Secretary. That is the position. For you as a ranking Hon. Member and my neighbour, it is good practice to say, "I did not understand it, I spoke on something that was not proper and therefore I withdraw."

Secondly, Hon. Deputy Speaker, I would like to speak to my friend, Hon. Jack Wamboka. He has a good voice, he is very articulate and he says a lot of things that people celebrate. However, it is also very important that when you come to contradict a statement from the ministry, the tradition of the House is for you substantiate your statements. Bring documentations to substantiate. Say something contrary with proof, facts and documentations. Even what Hon. Kibagendi did is just to hype something that does not exist. If they talk about what Adani has done, good practice that we have inherited from our forefathers in the House is that you come and substantiate by saying, "I have documentation that shows contrary information." Therefore, I want to substantiate.

Hon. Deputy Speaker, from the statements that are being said here, it is very important that we protect programmes that Government has initiated that are going to take care of millions

of Kenyans, like the one that is being rolled out. If we go out and say things without proof and substantiating on those items, they kill a good government programme, just because somebody has the opportunity to come to Parliament and speak about them and is heard all over without substantiating.

We must take debate in this House to another threshold. This thing that you come here and because you have a loud voice, you can say whatever you want to say and it carries the day. Hon. Deputy Speaker, if I were you sitting on that seat, I would have told them to withdraw these statements because they are not good for this country. They are not substantiated and they are not statements of fact.

Hon. Deputy Speaker, what they did was wrong. I applaud Hon. (Dr) Pukose because he stands for what is true.

I thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Let me allow Hon. (Dr) Pukose, to respond.

Hon. Caroli Omondi (Suba South, ODM): On a point of order.

Hon. Deputy Speaker: What is your point of order, Hon. Caroli Omondi.

Hon. Caroli Omondi (Suba South, ODM): Hon. Deputy, Speaker, I rise on Standing Order. I think Hon. Owen Baya is completely out of order to try and undermine the authority of this House and the discretionary power that the Hon. Deputy Speaker has, to allow any kind of debate to be admitted on the Floor of the House, especially on a matter that is as important as this. I hope you are not going to close it after the response of Hon. Chairman. We do no sit in the Committee but we have our views to present on the Floor of the House. We did not ask them to come and make the statement. They have walked into our territory. We must have the opportunity to speak now. I hope it will not be closed at that.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Members, let us allow Hon. (Dr) Pukose to confirm so that he can clarify whether it is a Ministry or a Committee report. Hon. Members from the Committee, I think if Hon. (Dr) Pukose has submitted and it is a ministry report, then yes, it is true that it did not come to your Committee but let us allow him to respond so he can clarify those issues. Yes, this particular topic is very important to Kenyans.

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Deputy Speaker, this is a Statement. We are on Order NO. 7, which is Statements. You allowed me to make a Statement on behalf of the Ministry on the roll out from NHIF to SHIF. That is the roll- out of the Universal Health Coverage which is happening today. That was the basis on which I was given this position to make that Statement. Unfortunately, my colleagues are assuming that this is a Committee report. It is not. This is a Statement. That should be distinguished.

Secondly, the points raised by my colleagues, Hon. Nyikal and other Members, are not relevant to my Statement. None of them has disputed anything that I have raised in this Statement. They have actually gone ahead to make their own points based on what they know. That is very wrong. It is based on hearsay.

(Loud consultations)

When I brought this Statement, my aim was to reassure Kenyans that we are moving from NHIF to SHIF. During this movement, people out there are worried about whether they will access health services. That is the point. I mentioned that the nine million people on the NHIF will be moved to the SHIF from today going forward. It is not a one-off event. This is a transition. The process starts today. Two million people have already been registered for the SHIF. People are talking about a system but this is a digital superhighway. The Enterprise Resource Planning (ERP) for the SHIF is just a small component. It is a huge system. My Committee Members, Hon. Kibagendi and Hon. Nyikal, are aware. This is not a....

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(Loud consultations)

Unfortunately, I listened to you and I did not dispute what you were saying, but you were talking from a point of ignorance.

Hon. Deputy Speaker: Just proceed. Explain. Give him an opportunity to complete his explanation.

Hon. (Dr) Robert Pukose (Endebess, UDA): Unfortunately, we get problems because you want to go and explain to your people, yet you do not have facts. This digital superhighway is connected to the National Registration Bureau and many other systems. It is a huge system. The digital superhighway system has two components. This is not a Social Health Authority system. It is a digital health authority system. It is a Ministry of Health system. Safaricom PLC is one of the lead agencies that has come in, together with others, to invest in two components, which are, infrastructure and maintenance and service for 12 years. They used the specially permitted procurement procedure. That is as per the ministry. They presented their documents. I did not read that part. The Attorney-General and the National Treasury have commented on it and they have given them the go-ahead. We are not stopping anything that is happening here. The Committee is still in the process of looking at certain areas, and we agree that that is the Committee's position. However, the Ministry has its position. As the Chairperson of the Departmental Committee on Health, I am communicating the Ministry's position.

Hon. Deputy Speaker: Hon. Pukose, you have clarified the issue. You have said that that is the Ministry's position. Hon. Nyikal, you have confirmed that the Committee is still interrogating the matter. That will not prohibit the Committee from continuing....

(Hon. (Dr) James Nyikal spoke off the record)

Hon. (Dr) James Nyikal (Seme, ODM): If the Ministry wishes to make a statement to the public, it should not be through this House. If the Ministry wants to make a statement, it should not make reference to the discussions before the Committee. Once the Ministry mentions issues that are being discussed before the Committee, it becomes our discussion as well. You have mentioned all the things that the Ministry officials said before the Committee. Therefore, you are including the Committee in the Ministry's statement and yet, we have not completed our deliberations. You are giving the impression that the Committee agrees with the Ministry's statement. On that, there is nothing to withdraw and apologise.

Hon. Deputy Speaker: Hon. Nyikal, Standing Order 44(2)(b) states:

“(2) During the Statements Hour –

(b) the Leader of the Majority Party, the Leader of the Minority Party, the chairperson of a committee or their designees may make a statement relating to their responsibilities in the House or the activities of a committee;”

So, yes, the Committee is responsible for overseeing the Ministry of Health. He is in order to make that Statement as one coming from the Ministry to the people.

(Loud consultations)

He has not referred to the Committee. He has made it clear that it is the Ministry's Statement. The Committee will be at liberty to continue interrogating this issue. It does not affect your operations because you can still question the ministry. The ministry can appear before the Committee and you can still question them on that issue.

(Hon. Owen Baya spoke off the record)

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Hon. Owen Baya, let us just close this matter and move to the next business. The comments were based more on...

(Hon. Caroli Omondi spoke off the record)

I will allow you, Hon. Caroli, but be brief.

Hon. Caroli Omondi (Suba South, ODM): Thank you, Hon. Deputy Speaker. Yes, I am normally very brief. Ever since this matter came into the public limelight, both the country and the House have been addressing the wrong issue. Let me explain how. What is touted as being supplied by a consortium led by Safaricom PLC is nothing other than an information management system – a digital superhighway – as they call it. Safaricom PLC has become an expert in fronting opaque contracts as was evidenced by the one for surveillance of the city, and in avoiding the tendering process. If you look at the amounts of money allocated to this particular process....

(Hon. Owen Baya spoke off the record)

No. Ksh104 billion is equivalent to US\$700 million which would capitalise a big insurance company to offer healthcare services to Kenyans. That is not the case here. We are being told that an information management system that is being acquired without competition and transparency will cost Ksh104 billion, which was the value of the first Eurobond Kenya ever borrowed. We should be asking about the financial details of this transaction. What is the interest rate? What is the repayment period? This House should see the financial element of this contract. This is a financing arrangement where a service provider walks to a user and says, “Okay, you do not have the money to do this. I will do it at this cost.” Without testing. That is what we should be talking about. This is a financial instrument.

Hon. Deputy Speaker: Hon. Caroli Omondi, we have already agreed that this matter is before the Committee. It is before the Committee, is it not?

Hon. (Dr) Robert Pukose (Endebess, UDA): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order, Hon. Chairperson?

Hon. (Dr) Robert Pukose (Endebess, UDA): Hon. Deputy Speaker, Hon. Caroli has claimed that this is a health information management system, but from my reading, the system is not solely managing the SHIF but provides for various components aimed at delivering a comprehensive and integrated health system for the country. Those components encompass the development of a health information management system, a health information exchange platform, core business services such as provision of telemedicine, track and trace for pharmaceutical products....

(Loud consultations)

You are not listening. The health information system is just one. There is track and trace for pharmaceutical products. There are core business services such as provision of telemedicine. There is development of a health exchange platform. They are many things.

(An Hon. Member spoke off the record)

No, those are different things. The problem is that you are not listening.

Hon. Deputy Speaker: Hon. Robert Pukose, I think we are now flogging a dead horse. The Committee is at liberty to interrogate this issue. It can summon the Cabinet Secretary for Health. Do not defend the Ministry's position. I am saying you have read it and therefore, we let the Committee work on it. It is obvious that Members have questions. You will deal with it at the Committee level. We are not going to deal with it here on the Floor of the House and therefore, let us end this debate.

Hon. Owen Baya.

Hon. Owen Baya: Hon. Caroli Omondi is a bright lawyer who understands what he is saying. I also want to know more about what he is talking about. However, you are using the wrong path. We can summon the Public Procurement Regulatory Authority (PPRA) to come and explain how it allowed that to happen. I also want to know how Ksh104 billion would be used on this. But then, do you want to pose the question to Hon. Robert Pukose? There are people in this country tasked do that.

I also want the Minister for Finance and National Planning and PPRA to come and explain to us how almost the value of a Eurobond would be used on one system. However, do not attack him.

Hon. Deputy Speaker: You have made your point, Hon. Owen Baya. Let us proceed to the next Order of Business. I think we have another Statement from the Member for Funyula Constituency, Hon. Wilberforce Oundo.

(An Hon. Member crossed the Floor)

Hon. Deputy Speaker: Order! An Hon. Member has just crossed the Floor. Please go back.

REQUESTS FOR STATEMENTS

WELFARE OF PRISON OFFICERS

Hon. Wilberforce Oundo (Funyula, ODM): Hon. Deputy Speaker, pursuant to the provisions of Standing Order 44(2)(c), I request for a Statement from the Chairperson of the Departmental Committee on Administration and Internal Security regarding the welfare of prison officers and other various reports including the Marsden Madoka Committee Report of 2008, the Maraga Task Force Report of 2023 and other Ministry of Interior and National Administration reviews that have repeatedly identified and documented the challenges facing the Kenya Prisons Service. Despite these comprehensive evaluations and recommendations, the situation remains largely unchanged. The state of affairs was affirmed in the Maraga Task Force Report which stated that the situation remains the same as per what the Madoka Committee established about 15 years ago.

In essence, the conditions within the Kenya Prisons Service remain precarious and pose a potential threat to the national security if the Service ultimately becomes dysfunctional. It is against this background, that I request for a Statement from the Chairperson of the Departmental Committee on Administration and Internal Security on the following:

1. Status of implementation of the recommendations of the Maraga Task Force Report and specifically, in relation to the promotion of prison officers, some who have stagnated in the same job grade for over ten years and the constitution of the Prisons Council as provided under Section 21(c) of the Prisons Act.
2. Any plans to provide decent housing for prison officers under the Affordable Housing Programme and the status of these arrangements.

3. The status of harmonisation of the terms of service including salaries for all officers and their various services and specifically, between the National Police Service and the Kenya Prisons Service to ensure parity and fairness in elimination of working conditions.

Thank you.

Hon. Deputy Speaker: That Statement would be dealt with by the Departmental Committee on Administration and Internal Security.

Next Statement? Do we have anyone from that Committee?

Hon. George Murugara (Tharaka, UDA): Thank you very much, Hon. Deputy Speaker.

I wish to request for a Statement from the State Department of Correctional Services which falls under Departmental Committee on Justice and Legal Affairs. I believe it is the right Committee mandated to handle this Statement within 14 days if it is forwarded immediately to the State Department of Correctional Services.

Hon. Deputy Speaker: Thank you for that correction. Indeed, it was moved to the Departmental Committee on Justice and Legal Affairs. The next Statement is by the Member for Lang'ata Constituency.

CURRENT MANAGEMENT AND PUBLIC ACCESS TO UHURU GARDENS

Hon. Phelix Odiwour (Lang'ata, ODM) Hon. Deputy Speaker, pursuant to the provisions of the Standing Order 44(2)(c), I rise to request for a Statement from the Chairperson of the Departmental Committee on Defence, Intelligence and Foreign Relations regarding The current management and public access to Uhuru Gardens.

Uhuru Gardens is one of Kenya's most significant national monumental facility. It holds deep historical value as it is the site where the Kenyan flag was hoisted during the Declaration of Independence on 12th December 1963.

It symbolises the birth of the nation and Kenya's freedom from colonial rule. The facility is a site that represents Kenya's national identity and pride. This is where citizens can reflect on the country's history, achievements and aspirations. For many years, Uhuru Gardens was a valuable recreational space for the local community and tourists. The expansive green space allowed people to engage in physical activities such as morning runs, picnics, relaxation, and now, content creation for the young people – Generation Zs and hence, promoting physical and mental well-being. Public access to such facilities is essential for the community health and social cohesion. The situation changed when the facility was placed under the military oversight which has restricted public access.

It is against this background, that I rise to request for a Statement from the Chairperson of the Departmental Committee on Defence, Intelligence and Foreign Relations on the following:

1. Clarification on whether Uhuru Gardens will remain an open public space as it was earlier or has become a space of controlled visits and access.
2. A report on the Status of the Completion of the Renovation of Uhuru Gardens by the Kenya Defence Forces (KDF) and when the public would be granted access.
3. Reasons why certain activities such as marathons and music concerts are allowed in Uhuru Gardens while the general public is denied access.
4. Plans in place to ensure that Uhuru Gardens is listed under the E-citizen platform and specifically, the 222 222 portal to allow citizens to make payments

or bookings for its public access and events, thus ensuring accountability and transparency.

I, thank you.

Hon. Deputy Speaker: Thank you. That request would be marked to the Departmental Committee on Defence, Intelligence and Foreign Relations. Do we have a Member of that Committee here? Deputy Majority Leader, please ensure that it is acted on. And please tell them they have two weeks to respond.

Next is a request for a Statement by Hon. Fatuma Zainabu, the Member for Migori Constituency.

MINING ACTIVITIES IN MACALDER GOLD BELT IN MIGORI COUNTY

Hon Fatuma Mohammed (Migori County, Independent): Hon. Deputy Speaker, pursuant to the provisions of Standing Order 44(2)(c), I rise to request for a Statement from the Chairperson of the Departmental Committee on Environment, Forest and Mining regarding Mining Activities in Macalder Gold Belt in Migori County.

Hon. Deputy Speaker, the Macalder Gold Belt in Migori County is known for its richness in precious minerals such as gold and copper. The minerals are precious national resources that ought to be extracted for the benefit of the nation, the local communities and the future generations as envisaged under Article 69 of the Constitution. It is of great concern that mining activities in Macalder seem uncoordinated hence violating the rights of the residents to the benefit of the minerals.

Additionally, in September 2023, the Cabinet Secretary for Environment, Climate Change and Forestry gazetted 6,165 acres of land in Macalder area as forest land despite the land being ancestral home to over 20,000 households that have lived on and practised artisanal mining on the land for many years. The gazettement of the land without public participation threatens to permanently disinherit residents of their ancestral land and disconnect them from lifelong benefits expected to accrue from the minerals in the region. This has caused spates of violent conflicts among artisanal miners, small mining companies and foreign mining companies as locals seek to preserve their right to land and benefit from the mineral resources.

Hon. Deputy Speaker, it is against this background that I seek a Statement from the Chairman of the Departmental Committee on Environment, Climate Change and Forestry on the following:

1. Provide a report on all reconnaissance, prospecting or mining licences issued under the Mining Act, CAP 306, for mining in Macalder, including details of the firms, terms of the licences, the minerals in respect of each licence, and the status of mining activities for each mineral.
2. Criteria for award of mining licenses and clarification on the reasons for granting licences to foreign firms, including the number of local miners from Migori County granted mining licences.
3. Provide a report on whether the directive of cessation of copper mining in Macalder region citing its declaration as a strategic mineral followed the process set out in the Mining (Strategic Minerals) Regulations, 2017 and if not, the reasons for its enforcement in Macalder.
4. An explanation for the gazettement of Macalder as a forest despite being ancestral home for the local residents and steps being taken to revoke the gazettement and issue locals with title deeds.
5. Provide a report on pay-out of royalties to Migori County Government and the local communities for minerals mined from Macalder, and if not, the reasons for non-remittance; and,

6. Steps being taken to resolve the stalemate between locals and foreign miners that led to closure of mining activities and when the area will be re-opened since it supports livelihoods of many.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Thank you. Yes, Hon. Member. I cannot quite see you.

Hon. Tom Odege (Nyatike, ODM): I am from the constituency where Macalder sits.

Thank you, Hon. Deputy Speaker. I want to support the Statement by my County Women Representative from Migori County. I would like to inform the House that we have a Petition with the Departmental Committee on Environment, Forestry and Mining on the gazetting of that land, where the Cabinet Secretary for Environment, Climate Change and Forestry totally refused to appear before the Committee.

Hon. Deputy Speaker, listening to our County Women Representative, you will realise that the Statement captures both the Ministry of Environment, Climate Change and Forestry and the Ministry of Mining, Blue Economy and Maritime Affairs. In mining, she has clarified that there are a lot of issues to be sorted to assist the community to benefit from the minerals. Hon. Deputy Speaker, in order to help our people, I would request that we make the Cabinet Secretary for Environment, Climate Change and Forestry honour summons from both Committees.

I would also request that we extend the Statement so that we get some clarity from the Ministry of Mining, Blue Economy and Maritime Affairs, for the benefit of our people.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: That Statement from Hon. Fatuma will be placed before the Departmental Committee on Environment, Forestry and Mining. However, the two can be consolidated with the earlier Petition that you have alluded to. Leader of the Majority Party, you will ensure that happens because I cannot see any Member of that Committee here.

STATUS OF DELIMITATION OF ELECTORAL UNITS

Hon. Deputy Speaker: Let us proceed. There is a Statement by Hon. Mohammed Adow, Member for Wajir South.

Hon. Mohammed Adow (Wajir South, ODM): Thank you very much, Hon. Deputy Speaker.

Pursuant to the provisions of Standing Order 44(2)(c), I rise to request for a Statement from the Chairman of the Departmental Committee on Justice and Legal Affairs regarding the status of delimitation of electoral units.

Hon. Deputy Speaker, Article 89(2) of the Constitution requires the Independent Electoral and Boundaries Commission (IEBC) to review the names and boundaries of constituencies at intervals of not less than eight years, and not more than 12 years. Such review ought to be completed at least 12 months before a general election. These units are a key consideration in resource allocation in the country and their absence thereof creates inequity in representation and access to national resources.

Hon. Deputy Speaker, my constituency, Wajir South, spans approximately 22,000Km² and is the second largest constituency in the country. It is 10 times the size of Kiambu County. The constituency faces a myriad of challenges such as administrative inconveniences that have often led to the merging of some areas that are close to one another, under-representation in the county assembly, a high population density and considerable absence of equity in resource allocation.

It is against this background that I request for a Statement from the Chairman of the Departmental Committee on Justice and Legal Affairs on the following matters:

1. The expected timelines for the delimitation of electoral units, in accordance with Article 89(2) of the Constitution; and,
2. Measures put in place by the Government to ensure that residents of constituencies and areas like Wajir South Constituency and North Horr that are overpopulated have access to more resources while awaiting the boundary reviews.

Hon. Deputy Speaker: Thank you. That Statement will be marked to the Departmental Committee on Justice and Legal Affairs, Hon. Sir George Murugara.

(Hon. Irene Mayaka consulted loudly)

Hon. Irene Mayaka, you are destructing the Chairman. Hon. Murugara, did you hear about the status of the delimitation of the electoral boundaries? When will you give a response on this?

Hon. George Murugara (Tharaka, UDA): Thank you very much, Hon. Deputy Speaker. We do not have an IEBC that we can give these particulars. I recollect being told at the Liaison Committee that I should be making a Statement regarding the progress we are making to constitute IEBC. I confirm that the process is ongoing, but I need to give a better Statement tomorrow after I have collected all the facts. We were just from a litigation on the Selection Panel, but it is over in terms of the interim order that was enforced. We expect the President to gazette this Selection Panel which will sit within the given timelines set by this House to constitute IEBC. Once it is in office, we can start answering such pertinent questions as regards delimitation and other issues.

Hon. Deputy Speaker, let me give the first Statement tomorrow and then after that, we can deal with this.

Hon. Deputy Speaker: Thank you.

SALE OF UFUNDI CO-OP PLAZA BY UFUNDI SACCO

Hon. Deputy Speaker: There is a Statement by the Hon. Agnes Pareyio, the Member for Narok North.

Hon. Agnes Mantaine (Narok North, JP): Thank you, Hon. Deputy Speaker.

Pursuant to the provisions of Standing Order 44(2)(c), I rise to request for a Statement from the Chairman of the Departmental Committee on Trade, Industry and Cooperatives regarding the sale of Ufundi Co-operative Plaza by Ufundi Sacco.

Ufundi Co-op Plaza in the Nairobi CBD has for several years been the subject of a vicious court battle between Ufundi Savings and Credit Co-operative Society Limited and its 14,999 members. In 2022, a three-judge bench ordered that the land and the Plaza, which are co-owned by the Sacco and the investing members, should be sold and the proceeds be shared after clearing debts owed to the Co-operative Bank of Kenya. The proceeds would be shared between the Sacco and investing members at a ratio of 58.88 per cent and 49.12 per cent, respectively. The ruling made by the court intended to bring closure to the long-standing dispute and provide a fair resolution for all stakeholders.

Despite the clear directives provided by the court, ongoing wrangles between the investing members and the Sacco continue to impede the sale of the Plaza. Unfortunately, the wrangles have affected constituents of Narok North, who are members of the Sacco. Some of the affected constituents are Mr Peter Gisemba of ID No.1576966 and Mr Ngugi Gitere of ID No.0094256. The inordinate delay in the sale and payment of dues has caused anguish and financial distress to members who are now elderly. Some are now deceased, with their

dependents equally suffering. For instance, Mr Isaac Kamau Ngure of ID No.0242136, a constituent of Narok North, passed away before he could receive payment of his dues.

Hon. Deputy Speaker, it is against this background that I request for a statement from the Chairperson of the Departmental Committee on Trade, Industry and Cooperatives on the following:

1. Provide a report with clear timelines on the status of implementation of the court order on the sale of Ufundi Co-operative Sacco Society Limited and its land and the modalities for settlement of the sale proceeds between the Sacco and its investing members.
2. Steps taken by the Ministry to ensure compliance by the Sacco in the execution of the sale in order to safeguard the interests of investing members.
3. Measures put in place by the Ministry for effective governance and regulation of co-operative societies to protect the savings of members and avert disputes like those facing Ufundi Co-operative Society Limited.

I thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Thank you. That request is marked to the Departmental Committee on Trade, Industry and Cooperatives. Is the Chairperson of that Committee here? Yes, Hon. Oundo.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Thank you, Hon. Speaker. The Chair and Vice-Chair are not present in the House at the moment. I undertake, being a founder member of the Committee, to bring the Statement within two weeks.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Thank you. Next is a request for Statement by Hon. Kazungu Tungule, the Member for Ganze.

INCREASED INVASIONS BY ELEPHANTS IN GANZE

Hon. Kenneth Tungule (Ganze, PAA): Thank you, Hon. Deputy Speaker, for this opportunity. Pursuant to the provisions of Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Tourism and Wildlife regarding the increased invasions by elephants in Ganze Constituency. The current state of elephant invasions in Ganze has become a matter of great concern, particularly in Mitangani, Ndigiria, Bandari, Mrima wa Ndege, and pockets of Bamba and Mahera locations. The elephants have exhausted all water sources utilised by residents for domestic and livestock use. Furthermore, the invasion of the mentioned areas has rendered farming activities impossible, leading to increased dependence on unreliable and erratic relief food supplies.

In addition, the risk caused by the elephants has compelled parents to escort their children to and from school, hence impeding them from engaging in profitable economic activities. The fear of attacks by elephants is causing schools to commence later and end earlier than scheduled, which negatively affects learning in schools.

The matter was reported to Kenya Wildlife Service (KWS) officers in Gedi, Malindi, but the response has been lethargic. As a result, for the last six months elephants have been roaming freely in residential and agricultural areas. It is also regrettable that for the last six months the Ministry of Tourism and Wildlife has done little on rounding up the herds of elephants from residential areas.

It is against this backdrop that I seek a Statement from the Chairperson of the Departmental Committee on Tourism and Wildlife on the following:

1. Provide a report on the measures that the Ministry is taking to ensure that the herds of elephants are returned back to Tsavo East National Park or other

designated conservation areas, and the challenges that KWS is facing in such situations.

2. Policies that the Government is implementing to cushion the affected locals from hunger caused by the destruction of crops by the marauding elephants.
3. Steps taken to compensate farmers whose farms have been destroyed and families that have lost their kin, including timelines for compensation.

I thank you, Hon. Deputy Speaker.

[The Deputy Speaker (Hon. Gladys Boss) left the Chair]

[The Temporary Speaker (Hon. Farah Maalim) took the Chair]

The Temporary Speaker (Hon. Farah Maalim): The request is marked to the Departmental Committee on Tourism and Wildlife. The Deputy Leader of the Majority Party, Hon. Baya, a Statement has been sought from the Departmental Committee on Tourism and Wildlife by Hon. Kazungu Tungule, the Member for Ganze. Can you give an undertaking on exactly when the Statement will be in the House?

Hon. Owen Baya (Kilifi North, UDA): Give us two weeks, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Farah Maalim): On a Tuesday, two weeks from today?

Hon. Owen Baya (Kilifi North, UDA): Correct.

The Temporary Speaker (Hon. Farah Maalim): Okay. Hon. Tungule, you have heard that.

Next Order.

BILL

Second Reading

THE TECHNOLIS BILL
(National Assembly Bill No.6 of 2024)

(Moved by Hon. John Kiarie on 24.9.2024)

(Debate concluded on 26.9.2024)

(Question put and agreed to)

The Temporary Speaker (Hon. Farah Maalim): Next Order.

SPECIAL MOTION

APPROVAL OF MR DAVID KIBET KEMEI FOR APPOINTMENT AS
THE DIRECTOR-GENERAL OF THE COMPETITION AUTHORITY

The Temporary Speaker (Hon. Farah Maalim): The Deputy Leader of the Majority Party, Hon Baya.

Hon. Owen Baya (Kilifi North, UDA): Hon. Temporary Speaker, the Chair of the Departmental Committee on Finance and National Planning will move this Motion.

The Temporary Speaker (Hon. Farah Maalim): Where is he?

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Hon. Owen Baya (Kilifi North, UDA): He is around.

The Temporary Speaker (Hon. Farah Maalim): Proceed, the Chairperson of the Departmental Committee on Finance and National Planning.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Speaker, I beg to move the following Special Motion:

THAT, taking into consideration the findings of the Joint Committee of the National Assembly Departmental Committee on Finance and National Planning and the Senate Standing Committee on Finance and Budget in its Report on the vetting of a nominee for appointment as the Director-General of the Competition Authority, laid on the Table of the House on Thursday, 26th September 2024, and pursuant to Section 12(1) of the Competition Act, CAP 504 and Sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act, 2011, this House approves the appointment of Mr David Kibet Kemei as the Director-General of the Competition Authority.

The Competition Authority of Kenya is a regulatory body responsible for enforcing competition law in Kenya. It aims to promote fair competition, prevent anti-competitive practises and protect competition and consumer welfare. The Competition Authority of Kenya plays a critical and crucial role in fostering a competitive market environment which is essential for economic growth and innovation in Kenya.

The Office of the Director-General of the Competition Authority is established under Section 12(1) of the Competition Act Cap 504 in the following terms: Director General. (1) There shall be a Director General of the Authority who shall be appointed by the Authority and approved by Parliament from persons having knowledge and experience in competition matters. Section 12(1) of the Competition Act also provides for the qualification for a person to be appointed as a Director-General of the Competition Authority as having knowledge and experience in competition matters.

The then Acting Cabinet Secretary for the National Treasury and Economic Planning, in exercise of powers conferred to him by Section 12 of the Competition Act Cap 504, nominated Mr David Kibet Kemei as the Director-General of the Competition Authority through a letter dated 6th August, 2024.

The message by His Excellency Musalia Mudavadi, then Acting Cabinet Secretary, was conveyed to the House by the Speaker of the National Assembly and the Speaker of the Senate. Pursuant to Section 4 of the Public Appointments (Parliamentary Approval) Act and Standing Order 216(5)(f) of the National Assembly Standing Orders and Standing Order 77(1) of the Senate Standing Orders, the name of the nominee was submitted to the Departmental Committee on Finance and National Planning and the Senate Standing Committee on Finance and Budget, which, sitting jointly, conducted the approval hearings.

Following the referral of the nomination of the Committees, the Clerks of both Houses requested information on the nominee from the statutory institutions, which are: the Ethics and Anti-Corruption Commission (EACC), the Kenya Revenue Authority, the Higher Education Loans Board (HELB), the Director of Criminal Investigations and the Office of the Registrar of Political Parties (ORPP). These institutions wrote to the Joint Committee and gave the nominee a clean bill of health. Additionally, the nominee presented before the Committee clearances from these particular institutions.

The Committees, in determining the suitability of the nominee, took into consideration the provisions on leadership and integrity as outlined under Chapter 6 of the Constitution. Also, the Committees considered the nominee's academic qualifications, employment record and work experience, membership to relevant professional associations, public office, political activities and affiliations, potential conflict of interest, suitability to the position, tax

compliance and other thematic areas relevant to the duties and responsibilities of a Director-General of the Competition Authority of the great Republic of Kenya.

Having considered the suitability of the candidate, the Committees noted the following. One, the nominee is a Kenyan citizen with no dual citizenship and therefore meets the requirement of Article 78(1) of the Constitution. Two, the nominee was cleared by all the Chapter 6 agencies and thus meets the requirement of Chapter 6 of the Constitution on leadership and integrity and three, the nominee possesses the required relevant experience for the position of Director-General of the Competition Authority of Kenya. He is the Managing Director of DGMB Training Solutions Ltd and has vast experience in developing monitoring and evaluation strategies vital for the running of an organisation. A background in management and organisational leadership is a critical tool for any person discharging the duty like that of the Director-General of the Competition Authority of Kenya.

The nominee clearly demonstrated to the Joint Committee that he clearly understood the current issues affecting the Competition Authority of Kenya. He also shared practical strategies of addressing the various issues that exist around matters of competition in this country. This placed him as a suitable candidate who will provide leadership to the Competition Authority.

The nominee demonstrated a satisfactory understanding of the mandate of the Competition Authority of Kenya, the need to ensure fair prices to protect consumers and promote a transparent business environment, and the enforcement strategies that he would employ to monitor businesses.

The nominee demonstrated his ability to effectively manage the funds and resources of an institution. He further demonstrated his ability to discharge the role of an accounting officer that is required of the Director-General.

The nominee is 59 years old, having been born on 12th December, 1964. The Committee further finds that the Competition Authority of Kenya Cap 504 does not provide for the age requirement for the officeholder of the Director-General. Further, Article 27(4) of the Constitution of Kenya prevents the State from discriminating against any Kenyan on account of age. It is important to note that the Joint Committee received a memorandum from one Mr Owino, a member of the public challenging the nomination of Mr Kemei as the Director-General of the Competition Authority of Kenya on the basis of his 59 years of age. Having consulted all our legal teams, it was eminent that one, the qualifications set by the Competition Authority of Kenya do not have a limit for the age of a nominee. Two, it goes against the precepts of our Constitution to discriminate anybody vying for any position in this country based on race, religion, colour, age, ethnicity or even political affiliation.

In relation to a matter that was raised by the EACC regarding the judgement to surcharge the nominee when he served as a Kenya Medical Training College (KMTC) Board Member for the impugned recruitment of the organisation's Corporation Secretary, the Committee found that the nominee was not part of the said suit so he could not have had the opportunity to defend himself. Therefore, it could have utterly been unfair to judge him on that matter.

The matter in question – just to give this House some basis – is when the nominee served as a Board Member of the KMTC. The Board then recruited him to the position of the Corporation Secretary of KMTC. However, the said nominee was found not to have the requisite academic requirements which included the need to possess a degree in law and to be a certified corporation secretary.

However, that was a Board's decision. Although a court ruling had been issued, the lawsuit was against the Kenya Medical Training College (KMTC) Board as a body corporate, but not him as an individual member of that Board. Considering he was not party to the lawsuit and was not accorded time to justify and defend himself, and a chance for his version to be

heard, the Joint Committee found that using that as a basis to deny that candidate the approval for this particular position as the Director-General would be unfair and make him not have recourse to be heard.

It is, therefore, against this background that I request this 13th Parliament to agree with the Joint Committee of the National Assembly Departmental Committee on Finance and National Planning and the Standing Committee on Finance and Budget of the Senate, and approve Mr. David Kibet Kemei as the Director-General of the Competition Authority of Kenya (CAK).

I beg to move, and request the Chairman of the Departmental Committee on Justice and Legal Affairs to second. Thank you.

The Temporary Speaker (Hon. Farah Maalim): Hon. Murugara.

Hon. George Murugara (Tharaka, UDA): Thank you very much, Hon. Temporary Speaker. Let me begin by thanking the Departmental Committee on Finance for some work well done in vetting and approving the appointment of Mr. David Kibet Kemei.

Without having to rehearse exactly what the Chairperson of the Departmental Committee on Finance and National Planning has submitted regarding that candidate, I can confirm that the candidate has immense experience in competition, finance and business matters. It is important to note that CAK is actually under the Competition Act, Chapter 5 and 4 of the laws of Kenya. It was established specifically to ensure that the issues of competition in the country are dealt with in a manner that protects and promotes business in the country. The purpose of CAK is to promote and safeguard competition. It also ensures that our national economy is protected, and the consumers - who are the beneficiaries of the protection - are not subjected to unfair and misleading market conduct or conditions in the country.

Therefore, the task ahead of Mr. David Kemei is to ensure that we, as consumers in the country, are protected from unfair competition practices which happen quite often in Kenya. They include bringing in substandard commodities. They also bring in under-cutting, charging less than the market can allow and practices which expose consumers to substandard goods.

Mr. Kemei will have to move to enforcement and compliance with the Competition Act of Kenya. Here, we will require him to ensure that this law is actually implemented to the fullest to ensure that consumers and the economy of the country are protected. It is important to note that Mr. David Kemei underwent full vetting. He satisfied Members of the Departmental Committee on Finance and National Planning that he was suitable for this job.

Therefore, in view of the Report that has been given to us and the submissions that have been made here, we do not have any hesitation in agreeing with the Departmental Committee on Finance and National Planning, in calling upon this honourable House today to approve the appointment of Mr. David Kemei.

With those remarks, I beg to second the Motion. Thank you very much.

(Loud consultations)

The Temporary Speaker (Hon. Farah Maalim): Order, Hon. Members. Take your seats.

(Question proposed)

Hon. Baya.

Hon. Owen Baya (Kilifi North, UDA): Hon. Temporary Speaker, I stand to support the findings of the Joint Committee of the National Assembly Departmental Committee on Finance and National Planning and the Senate Standing Committee on Finance and Budget in its Report on the vetting of a nominee for appointment as the Director-General of CAK.

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As Members are aware, CAK plays a crucial role in enhancing the welfare of Kenyans by promoting and protecting competition in markets and preventing misleading market conduct. Therefore, the importance of the Office of the Director-General cannot be gainsaid. I note that in considering the suitability of the nominee, the Committee paid due regard to the constitutional and statutory requirements relating to the office in question, and whether the nominee's abilities, experience and qualities met the needs of the State office.

The Committee was guided by the Constitution and statutory requirements such as the national values and principles of governance, conduct of public officers, and leadership and integrity prerequisites. Additionally, the suitability of the nominee was assessed after scrutiny of his background, academic credentials, other professional qualifications, work and professional experience, personal integrity, as well as his performance. The nominee, Mr. David Kibet Kemei, has over 33 years-experience across many sectors, including academia, regulatory tourism, health, communication and energy.

Through his extensive employment record and work experience, the nominee is well-equipped with the skills and expertise that is needed as Director-General of CAK. Further, he has clearly demonstrated a clear roadmap, according to the Report, to promote growth in the sector, including creating a level playing field for businesses, advocating for regulatory reforms that promote transparency and competition, developing a regulatory framework that supports their competition, and promoting regional and global integration to foster a competitive environment that benefits both local and international business.

In conclusion, I urge this House to make a swift and favourable decision in approving the appointment of Mr. David Kibet Kemei as the Director-General of CAK. This will reinforce our commitment to protecting, strengthening and improving the efficiency of our economy which is vital for driving economic growth. I support the appointment of Mr. David Kemei as the Director-General of CAK. The Report is available. The Committee did a good and commendable job. I thank the Departmental Committee on Finance and National Planning and the Senate Standing Committee on Finance and Budget.

I, therefore, request this House not to waste time, but approve the appointment of Mr. David Kemei Kibet to be the Director-General of CAK. I support the Motion and request the Members to support it. If Hon. Pukose is around, he can request that we put the Question and approve that nominee.

I thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Farah Maalim): Member for Suba South, Hon. Caroli Omondi.

Hon. Caroli Omondi (Suba South, ODM): Thank you very much Hon. Temporary Speaker. I rise to support the nomination of David Kibet Kemei to the position of Director-General of Competition Authority. As I do so, I can see Hon. Marianne Kitany smiling. There is a particular reason for that smile. Hon. Kitany and I happen to have worked with David Kibet Kemei many years ago, when we established the first independent regulatory authority, Energy and Petroleum Regulatory Authority (EPRA), formerly known as Electricity Regulatory Board (ERB). I give Mr. Kemei a very strong recommendation because from that group at ERB, now EPRA, our inaugural Chairman is now the Speaker of this House; our inaugural CEO is now the Deputy Chief Justice of this Republic. Hon Marianne Kitany, the first lady Chief of Staff in the Republic of Kenya, is now an Hon. Member of this House; our good engineer, Kevin Kariuki, is now the Head of Power at African Development Bank and yours truly, Hon. Caroli Omondi, the first Chief of Staff in the Republic of Kenya, is now an Hon. Member of this House.

Let me begin by giving further information about David Kemei. He was very instrumental in helping us set up the rules and regulations that would deal with competition in the power sub-sector, consumer protection, compliance issues and dispute resolution. I am very

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confident that David Kemei will be a good director-general and will properly discharge the functions of a regulator by exercising independent authority and ensuring that the market works and consumers are protected and that disputes that emerge are settled expeditiously and equitably.

I support. Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Farah Maalim): Next is Hon. Marianne Kitany. Proceed.

Hon. Marianne Kitany (Aldai, UDA): Thank you, Hon. Temporary Speaker. I stand to support the nomination and appointment of Mr. David Kemei to the position of Director-General of Competition Authority.

Just like my colleague, Hon. Caroli Omondi, has said, we worked with David Kemei at one time in our lives. I can actually vouch for his experience and professionalism in the work that he does. He is very articulate and very straight to the point. Knowing that the Competition Authority takes care of businesses and industry regarding competitive advantage, where some companies may want to take advantage of other companies, I think he comes in with the right skills and professionalism to steer our industry and ensure that every entrepreneur in Kenya gets the right forum or environment where competition is not curtailed. For example, we know that there are businesses in this country that want to take advantage of others to make huge profits. I know that David Kemei will perform that duty. I know that he is qualified and he displays professionalism in everything that he does.

I support. Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Farah Maalim): Next is the Member for Kikuyu and Leader of the Majority Party, Hon. Kimani Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Temporary Speaker. I rise to support the nomination and appointment of David Kemei to the position of the Director-General of the Competition Authority of Kenya. As I support his nomination, from his vast experience, he is a good professional who can deliver the mandate having been vetted by the Departmental Committee on Finance and National Planning. I must take this opportunity to tell David that he is taking office in a very crucial authority in our country.

The Competition Authority has been moribund since its formation. I hope and pray that David Kemei will give that Authority teeth to bite. We are in a country where corporations like Safaricom want to operate like a monopoly. They do not desire to have competition from anybody. The other day, I was shocked by a debate online and across the country about a letter by Safaricom to the Communications Authority of Kenya on the rollout of Starlink Satellite Technology in Kenya. As much as Safaricom may have a point regarding the national security issues and traceability and use of gadgets, corporations like Safaricom and others take advantage of their dominance in the market to kill competition in the country. In any economy without competition, people will be taken advantage of. If we look at the case of Starlink, Kenyans today are paying an average of Ksh1,300 per month for data that is very fast and easy to access from any corner of the country, irrespective of whether there is a base station or not. Why would anybody want to derail Kenyans from accessing such technology simply because they have invested in base stations over the years? If they have been slow in advancing their technology with changing times in the world, it is not Kenyan's problem. This is where the Competition Authority must step in to ensure that no corporation or individual in this country denies Kenyans the right of choice because that is what competition is all about. Competition is about the right to choose. Kenyans must be able to choose whether they want power connected to their homes by Kenya Power Lighting Company (KPLC) or by another competitor who can distribute power from the national grid. It cannot be that for the last 60 years; we have depended on KPLC.

Hon. Temporary Speaker, I saw something online, which I think was in India or Bangladesh, where people are using solar lighting and creating a grid in a village by inter-connecting their own solar panels across their village. That is the beauty of technology that we must harness to ensure that we leverage on the innovations of our young people in this country. This will ensure there is competitive trade in our economy and that, at the end of the day, the ordinary Kenyan is able to access either services or products at the cheapest possible cost, including data and airtime. As much as I do not like Elon Musk, he promised us that with time, we will be able to make emergency calls for free by converting our cell phones to satellite phones. That is the kind of innovation and technology we want so that I do not have to pay three shillings per minute for airtime that could be free for heaven's sake.

Hon. Temporary Speaker, I support this nomination, but I ask Mr. David Kemei to make sure that the Competition Authority of Kenya has teeth to bite, ensure Kenyans get value for their money, and that all industries are competitive.

Thank you.

The Temporary Speaker (Hon. Farah Maalim): Next is the Member for Wajir North, Hon. Saney. I can see your name here. Are you in the House?

Hon. Ibrahim Saney (Wajir North, UDA): Thank you, Hon. Temporary Speaker. I have no problem with the nominee for the position of the Director-General. David Kibet Kemei is qualified and competent to do the job.

However, I have serious concerns on how opportunities are being shared in this country. Ethnicity, marginalisation and diversity, very important values that are clear in our Constitutions, are just on paper. They are not in action. Opportunities have become the preserve of only the major tribes in this country. I am not a flower girl who sits in this House to always approve names for only a few communities. Kenya belongs to 47 tribes. Day-in, day-out, we are approving names. I ask: Are other Kenyans not competent? Are they not qualified? I am reminded that, that gentleman's predecessor, Dr. Adano, has been serving in an acting capacity for 21 months in the same position. That begs many questions. There were many irregularities in the recruitment of officers in the same office. As much as I approve the appointment of Kibet, my concern is that Kenya does not belong to two, three or four tribes. Kenya belongs to 47 tribes.

I do not know when a nominee from Ajuran, which is also a tribe in this country, shall come to the Floor of this House for approval. There is a monopoly of only appointing people from a few tribes. Kenya is one and our unity is manifest in the 47 communities or tribes. In as much as I approve the appointment of the nominee, I beg for regional balance and equity. I beg that all Kenyans be treated equally. I beg that Somali is viewed as an ethnicity and not a tribe. The Somali community is a nation of tribes. Many times, we are shrouded and concealed in that name. Kibet should be approved for appointment as the Director-General, but Kenya belongs to 47 tribes, and not just in name but in action as well.

I support his appointment but I am not happy. I am crestfallen because of the way positions in public service are being given to just a few tribes. Otherwise, I support the Motion.

Thank you.

The Temporary Speaker (Hon. Farah Maalim): Hon. Makilap.

Hon. Joseph Makilap (Baringo North, UDA): Thank you, Hon. Temporary Speaker.

(Loud consultations)

The Temporary Speaker (Hon. Farah Maalim): Hon. Members, please consult in low tones.

(Hon. Kimani Ichung'wah, Hon. Silvanus Osoro and

Hon. Naomi Waqo consulted loudly)

Hon. Joseph Makilap (Baringo North, UDA): Thank you, Hon. Temporary Speaker. Protect me from the leadership. They are consulting loudly.

The Temporary Speaker (Hon. Farah Maalim): Hon. Kimani Ichung'wah and Hon. Osoro, please consult in low tones. I will not mention the lady's name. She is my colleague.

Hon. Joseph Makilap (Baringo North, UDA): Thank you, Hon. Temporary Speaker. First, I rise to support David Kibet Kemei's appointment to the position of Director-General of the Competition Authority of Kenya. During the vetting process, he demonstrated a lot of experience and knowledge in matters of law and competitors. He has vast knowledge of the industry.

Following what the Leader of the Majority Party has said, David Kibet Kemei has a lot of work to do. If he is approved by this House, he should sort out the competition in the power sector, as the Leader of the Majority Party has said, so that Kenya Power does not enjoy a monopoly in power production in this country.

Secondly, competition between M-Pesa, commercial banks and microfinance institutions needs to be sorted out. That industry is not regulated by law. That is a job that is waiting for David Kemei.

In the manufacture of cement, there is one manufacturer who processes clinker and cement. He is the manufacturer, wholesaler, retailer and distributor. How do you expect the small businesspeople to compete? That is an area that needs to be sorted out. The same happens with steel manufacturers. One person manufactures steel, distributes it, retails and mines pellets, among other things. How do you expect a small hustler who has opened a shop in Baringo North, for example, to compete with that kind of manufacturer? That industry requires a man of David Kibet's calibre to sort out the issues that are affecting it, including taxes. We have a situation where one tax regime...

(Loud consultations)

The Temporary Speaker (Hon. Farah Maalim): Order, Hon. Members! Order! I can understand that there is a lot of excitement in the House today but, please, consult in low tones. Allow Hon. Makilap to be heard. Proceed, Hon. Makilap.

Hon. Joseph Makilap (Baringo North, UDA): Thank you, Hon. Temporary Speaker. The Competition Authority must create a fair playground for all businesspeople in Kenya. That is the man who will put in order the monopolies that are in business.

Look at the milk industry. Milk production and its value chain are skewed towards one competitor who works very hard to kill the other industries, including the New Kenya Co-operative Creameries (KCC). Milk production and its value chain, together with milk processors, requires order so that the businesspeople on the ground – the people who keep cows and produce milk – get value for money for their milk.

A lot in this country needs to be regulated so that there is fair competition, and so that people who want to build the economy such as young economists can do so. There is need for order in the digital economy, so that everyone has space to play in growing the economy of Kenya.

I support the appointment of David Kibet as the Director-General of the Competition Authority of Kenya.

The Temporary Speaker (Hon. Farah Maalim): Member for Jomvu, Hon. Bady. *Mheshimiwa Bady Bady.*

Hon. Bady Twalib (Jomvu, ODM): Ahsante sana, Mheshimiwa Spika wa Muda, kwa kunipatia fursa hii ili niungane pamoja na wenzangu katika kuchangia mada hii. Nataka

kushikana pamoja na Wajumbe wenzangu katika kuunga mkono uteuzi wa Bwana David Kemei katika Mamlaka ya Ushindani ya Kenya.

Vile vile, niko na sababu ambazo zinanifanya niunge mkono Hoja hii. Watu wengi wameongea kuhusu utendakazi wa Bwana David Kemei. Wamesema kuwa ni mtu ambaye atasaidia kuhakikisha kuwa halmashauri hii imenawiri. Tumemsikia Kiongozi wa Chama cha Walio Wengi, ndugu Kimani Ichung'wah, akizungumzia juu ya hali ilivyo katika *Kenya Power*. Ni muhimu nami nimuunge mkono na kusema kuwa ni muhimu mwananchi aweze kujichagulia. Lakini hali ilivyo sasa, mwananchi hana budi. Lazima atumiwe nguvu za umeme za *Kenya Power*.

Vile vile, nataka kumwambia Bwana David Kemei kuwa kazi yake ni ngumu sana. Lazima ajitolee na lazima Serikali impe nguvu za kuhakikisha kuwa ameimarisha ushindani baina ya mabwenyenye ambao watakuwa wakitaka kuzuia kazi yake ili waweze *kumonopolise* biashara. Katika uwekezaji wa nafaka, yaani *grain handling*, kuna makampuni ambayo yanataka kushindana na makampuni mengine kule Mombasa, ili yafanye biashara ile. Lakini makampuni hayo yanawekewa vikwazo vingi visivyowaruhusu katika uwanja wa ushindani, ili yafanye biashara ile. Kijana mmoja ambaye ni mkurugenzi mchanga sana pale anayeitwa Mohamed aling'ang'ana na mambo ya *documentation* na mengine mengi, ili ashindane na wale mabwenyenye wengine.

Hatuwezi kuinuka ikiwa tutaacha wale mabwenyenye peke yao wenye nguvu wafanye biashara. Kwa hivyo, ni muhimu kwa Bwana David Kemei kusikiliza yale maneno ambayo tutamweleza atakapoingia ofisini. Akifanya hivyo, atafungua mlango wa ushindani wa kibiashara na mambo mengine kwa watu wetu. Vile vile, leo tuna hasara. Kuna mafuta yaliyopatikana kule Turkana. Zamani, pale kwetu Mombasa, kulikuwa na *refinery* pale Changamwe. Hivi sasa, imefungwa na hakuna ushindani ambao unaweza kuendelea. Haya mafuta yanapopatikana, yanapelekwa nchi za nje kisha kurudi nchini yakiwa *refined* ndipo sisi tunauziwa. Mambo kama haya kwa Kiswahili tunasema 'goji kiriba na kiriba goji'. Yaani, sisi tuna mafuta tuyatoe nje, tufanyiwe *refining*, kisha turudishiwe. Hii kampuni ya *refinery* lazima ifufuliwe na Serikali ili ishindane na wale Waarabu wengine katika nchi za nje. Pia, itasaidia watu wetu kupata kazi ambazo walikuwa wakifanya katika hiyo *refinery*. Leo, watu wengi wamefutwa kazi. Wameenda kutafuta kazi katika nchi za nje. Kuna mume wa mama yangu mdogo, anaitwa Kibwana, alikuwa mfanyakazi katika *refinery*. Kwa *experience* yake, baada ya *refinery* kufungwa, sasa anafanya kazi Qatar, ambayo ni nchi ya nje. Wanasaidia watu wengine na hali ni radi ikifunguliwa wataleta ushindani na watu wetu kufanya kazi hapa.

Mhe. Spika wa Muda, nashukuru sana. Pia nampongeza Bwana David Kemei. Ahsante sana.

The Temporary Speaker (Hon. Farah Maalim): Hon. Ng'elechei, Member for Elgeyo Marakwet, *akifuatiwa na Mhe. Mama Zamzam*.

Hon. Caroline Ng'elechei (Elgeyo Marakwet County, Independent): Thank you so much, Hon. Temporary Speaker, for giving me this opportunity. I would like to contribute to the appointment of Mr. Kemei. I know him personally. He is a very hardworking person who has steered a very successful DGMB Finance Services Limited. He has proven to be a person who can take an organisation from one level to another, and that is the experience we nowadays need in the public service. Many times, we fail not because we lack people with the right knowledge, but because they lack experience. This is the best way we can handle that noble organisation.

Lastly, Mr. Kemei is also known to be very transparent and honest. He is someone you can depend on and guarantee that he can discharge his duties without fear or favour. Therefore, I support the Committee on the appointment of Mr. David Kemei.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Farah Maalim): Mhe. Zamzam.

Hon. Zamzam Mohammed (Mombasa County, ODM): Ahsante sana, Mhe. Spika wa Muda. Kwanza, kabla sijaendelea, naomba kuelezea wale ambao wanashughulika na *Parliamentary Broadcasting Unit (PBU)*, wasitoe mazungumzo yangu hewani kwa maana tumeingia Bungeni kuzungumza. Watu wetu wanaangalia.

Nachukua fursa hii kumshukuru na kumpongeza ndugu yetu, Bwana David Kemei, kwa kuteuliwa katika halmashauri hiyo. David Kemei ni mtu mwenye mjitama wa kueleweka. Pia ako katika hadhi ambayo inatakiwa katika halmashauri hiyo.

Nampigia upato ndugu yangu, Mhe. Bady, vile alivyosema kuwa halmashauri nyingi zina uzoefu wa mtu mmoja kutaka kufanya biashara peke yake, yaani *monopoly*.

[The Temporary Speaker (Hon. Farah Maalim) left the Chair]

[The Speaker (Hon. Moses Wetang'ula) took the Chair]

Mtu mmoja anataka kufanya biashara peke yake. Kwa mfano, Grain Bulk Handlers Limited kule Mombasa. Kuna wenzetu ambao wana uwezo wa kufanya biashara hiyo, lakini mtu mmoja ameikatalia. Yeye tu ndiye anafanya hiyo biashara. Wenzake wamepewa nafasi ya kufanya kazi lakini anaenda kortini kusimamisha shughuli zao. Kwa hivyo, tunajua ndugu yetu David Kemei anaweza kuinyoosha na mambo yawe sawa.

Katika Halmashauri ya Stima, kuna mambo mengi ambayo yanaendelea. Akitoa mwanya, tutapata watu wengine ambao wanaweza kufanya hizi shughuli na mambo ya stima yataenda vizuri.

Nachukua fursa hii kumwambia ndugu yangu, Mhe. Bady, pole sana kwa kumpoteza *bodyguard* wako. Mwenyezi Mungu amrehemu na kumhifadhi na wema. Pia akupe nguvu ndugu yangu, Mhe. Bady.

Mhe. Spika wa Muda, ahsante sana.

Hon. Speaker: Hon. Lilian Gogo.

Hon. (Dr.) Lilian Gogo (Rangwe, ODM): Thank you so much, Hon. Speaker.

Hon. Owen Baya (Kilifi North, UDA): On a point of order, Hon. Speaker.

Hon. Speaker: Hold on, Hon. Lilian. Yes, Hon. Owen Baya.

Hon. Owen Baya (Kilifi North, UDA): Hon. Speaker, I support the sentiments on Mr. David Kemei, but there is a point of irrelevance in this debate. Is it right for Members to fight a company without a substantive Motion? The issue of Grain Bulk Limited is being fronted as if it is the main Motion. Grain Bulk Limited is a respectable company that is doing good business out there. However, when we drag its name here because of whatever war some people have in Mombasa, I think it is unfair for that company and their staff. As a country, we need to support that organisation without having to badmouth them in Parliament just because you cannot compete with them out there.

(Applause)

They need to withdraw those statements and stick to the Motion on Mr. David Kemei and competition, without necessarily badmouthing a company that has done Kenya great job. When no one could handle grain in this country, Grain Bulk Limited came in and invested. Is it right for us to fight them in this Chamber?

Thank you, Hon. Speaker.

(Hon. Zamzam Mohammed spoke off the record)

Hon. Speaker: Mhe. Zamzam, kuna nini?

Hon. Zamzam Mohammed (Mombasa County, ODM): Ahsante, Mhe. Spika. Naomba nimweleze Mhe. Owen Baya ajue kuweka matusi na maneno kando. Nimesema anafanya kazi nzuri lakini atoe mwanya wa wenzake pia waweze kufanya biashara ile ile. Isiwe ni mtu mmoja tu. Kwa hivyo, hatujamtusi. Usiweke fitina. Katika Bunge hili, tunataka mgao wa taifa uelekee kwa Wakenya wote. Mhe. Baya, mimi ni Mpwani kama wewe na unajua bandari ni yetu sisi sote. Lazima tuweke Wakenya wote wapate matunda ndani ya bandari.

Ahsante sana, Mhe. Spika.

Hon. Speaker: Hon. Lilian Gogo.

Hon. (Dr.) Lilian Gogo (Rangwe, ODM): Thank you, Hon. Speaker, for giving me this opportunity to also rise and support the nomination of Mr. David Kemei to be the Director-General of the Competition Authority of Kenya. I congratulate him. He is well known for his astuteness in the work that he does.

The point I would like to add onto what my colleagues have already said, is that the appointment of Mr. Kemei comes at a point when, as Kenyans, we are entangled in the national debate on inclusivity. We have the agenda of everybody and all of us being included. I appreciate his qualifications and experience, but he comes at a time when the national dialogue and agenda is on inclusivity. I appreciate the work that the Committee has done. I also implore Kenyans that it is important to include all regions when we are distributing the national cake.

Currently, most Kenyans have been exposed to education and are experienced. They have the capacity to do a good job. I implore that as we appoint noble Kenyans in the various capacities for them to serve this country, we follow the desire of the Constitution of the Republic of Kenya. We must follow the law of the land, the ultimate Bible of the law of Kenya, that we include all Kenyans.

I have nothing personal against David. He is not known to me in person. But my dear friend the Member for Aldai knows him in person, and I hold her in very high regard. For that particular reason, I am going to give him marks. As much as we want to do this, we also need to start getting it right. Even with the Motion pending before this House, on which you are about to give direction and wisdom, I know that people will still question why it is only one particular community that qualifies for certain jobs. I have nothing personal against my dear brother, but I pray that we give each other equal opportunity and balance all the State corporations. As he starts the work of implementing the Competition Act, I pray that he does so with the diligence and the decorum that is expected of him. A time has come that he has to clip certain companies in this country. For example, you buy data worth Ksh1,000 or Ksh3,000 from a certain company and by morning, that data is finished. Even when you are not using your phone, your data just disappears.

I wish my brother well and pray that he serves Kenyans with the diligence and respect that they deserve.

I thank you, Hon. Speaker.

Hon. Speaker: Yes, Member for Mathira.

Hon. Eric Kahugu (Mathira, UDA): Thank you very much, Hon. Speaker. I rise under Standing Order 95. I feel that this matter has extensively been deliberated upon and I request that you call upon the Mover to reply. Thank you.

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

Hon. Members: Yes.

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

Mover.

Hon. Kuria Kimani (Molo, UDA): Hon. Speaker, I thank this honourable House for the great and robust debate that we have had on this candidate. Because I am sure the candidate is listening, if this House approves his candidature to be the D-G of the Competition Authority of Kenya, I hope he is going to take into consideration the concerns of this House, which is to ensure there is robust competition in this Republic and to stop monopolies. Monopolies have been shown by research to cause many problems, such as substandard products in the market, price manipulation, hindering the growth of small and medium-term enterprises, abuse of the market, prevention of economic efficiency, or the concentration of economic power to a few people or institutions. We hope that the D-G-designate will stamp his authority and ensure that there is compliance to competition law, so that every Kenyan and every business is given the right, time and the required support by this administration to present their products in the market. That way, we will ensure Kenyans have access to competitively priced products of good quality, prevent dominance and give a chance to everyone to shine in whichever industry they seek to thrive in.

I do not know whether I am allowed to donate part of the remaining minutes to Hon. Julius Rutto (CPA), who is a member of the Committee.

Hon. Speaker: You have no minutes remaining. In future, if you want to donate any minutes, you do so before you reply. The moment you reply, it is closure.

Hon. Kuria Kimani (Molo, UDA): Well guided, Hon. Speaker. And with that, I beg to reply.

Hon. Speaker: Thank you, Hon. Kimani.

(Question put and agreed to)

(Several Members stood up in their places)

Hon. Makilap, Hon. Caroli and Member for Webuye, please take your seats.

COMMUNICATION FROM THE CHAIR

GUIDANCE ON CONSIDERATION OF THE MOTION FOR REMOVAL FROM OFFICE OF THE DEPUTY PRESIDENT

Hon. Speaker: Hon. Members, I have a further Communication on the consideration of the Special Motion for the removal from office, by impeachment, of His Excellency Rigathi Gachagua as the Deputy President of the Republic of Kenya.

Hon. Members, you will recall that earlier this afternoon, at the commencement of this Sitting, I notified the House of receipt of a Notice of Special Motion by the Member for Kibwezi West, Hon. Eckomas Mwangi Mutuse, seeking the removal from office, by impeachment, of His Excellency Rigathi Gachagua, as the Deputy President of the Republic of Kenya.

You may further recall that after the Notice of the Special Motion was given by the Member, several Members rose in their places and raised a number of procedural concerns for my guidance. The Members who spoke include the Leader of the Majority Party, Hon. Kimani Ichung'wah; the Leader of the Minority Party, Hon. Junet Mohamed; Whip of the Majority Party, Hon. Silvanus Osoro; Hon. Farah Maalim; Hon. Geoffrey Ruku and Hon. (Rtd.) Major Bashir Abdullahi.

Cognisant of the obligation of the House to dispose of the Special Motion with urgency, I undertook to address the concerns expeditiously in order to allow the House to proceed with the next stages of the Special Motion. As Members are aware, the seven days that are available

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to this House to dispose of the Motion will lapse on Tuesday, 8th October 2024. In this regard, I retreated to my Chamber to apply my mind to the issues and convene a meeting of the House Business Committee for purposes of deliberating on the next steps to be taken with regard to the Special Motion, and the procedural concerns raised in the House.

I have summarised the issues raised by Members as follows:

1. Calculation of the number of Members required to meet the voting threshold that apply to the impeachment of a Deputy President.
2. Whether the House shall conduct public participation in its consideration of the Motion and, if so, the modalities of such an exercise.
3. The right of the Deputy President to be afforded an opportunity to be heard.
4. Security arrangements for Members of Parliament.

Hon. Members, allow me to examine each of the issues.

With regard to the first issue on calculating the number of Members required to meet the voting threshold that apply to the impeachment of a Deputy President, the attention of the Speaker was drawn to the current membership of the House in light of the four vacancies relating to Magarini, Ugunja and Banissa constituencies, and the seat recently vacated by Hon. John Mbadi, upon his appointment to the Cabinet. The query around this issue sought guidance on whether calculating the voting threshold prescribed in Article 145 of the Constitution would take into account the vacancies and the existing 345 Members of the House.

I wish to refer the House to the express provisions of Article 145 (1) and (2) of the Constitution, which provide clear guidance on this issue. The Article provides—

1. A Member of the National Assembly, supported by at least a third of all the Members, may move a Motion for the impeachment of the President—
 - (a) On the ground of gross violation of a provision of this Constitution or any other law.
 - (b) Where there are serious reasons for believing that the President has committed a crime under national or international law.
 - (c) For gross misconduct.
2. If a Motion under clause 1 is supported by at least two-thirds of all the Members of the National Assembly —
 - (a) The Speaker shall inform the Speaker of the Senate of that resolution within two days.
 - (b) The President shall continue to perform the functions of the office pending the outcome of the proceedings required by this Article.

Members will note the instructive words in both provisions subject to the prescribed threshold to all the Members to the extent that no reference is made to existing Members. The thresholds can only be applied to the membership of the National Assembly that is prescribed under Article 97 of the Constitution.

In this regard, a Member who proposes a Motion for the impeachment of a President or Deputy President must be supported by at least one-third of the 349 Members of the House, being 117 Members. By extension, for the House to pass a resolution on a Motion for the impeachment of a President or Deputy President, the Motion must be supported by at least two-thirds of the 349 Members of the House, being 233 Members.

A related issue raised with respect to the first issue was whether the validity of the proceedings of the House would be affected in light of the four vacant seats. Notably, Article 124 (3) of the Constitution provides that the proceedings of a House of Parliament are not invalid merely on account of a vacancy in its membership. That settles the issue.

Hon. Members, the second issue was on the conduct of public participation in consideration of the Special Motion and the modalities of such an exercise. At the very outset, permit me to note that it would be absurd for any person to imagine that a Motion, such as the

one presently before the House, may be concluded without the participation of the public. Article 118 (2) of the Constitution categorically enjoins Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its committees. My attention has also been drawn to various court decisions relating to the removal from office of State officers, including county governors. I am, indeed, persuaded that public participation is an integral element of the process of removal of an elected State officer from office. Having reiterated the centrality of public participation in the process, how then shall the public participate in the consideration of the Special Motion?

In answering this question, the House Business Committee has addressed this issue during its meeting this afternoon and approved a programme of public participation across the country to be coordinated from the 47 counties. The Clerk shall communicate the full details of the programme for the information of the public, through print and electronic media advertisements, which will run from tomorrow, 2nd October 2024. With regard to the administrative arrangements to facilitate public participation, the House Business Committee also resolved on the following modalities—

1. That the public participation will be undertaken on Friday, 4th October 2024. Consequently, all other parliamentary activities previously scheduled between Thursday, 3rd October 2024 until Monday, 7th October 2024, shall be suspended. This unprecedented occasion is one which requires the House to summon all Members to avail themselves and participate in all activities relating to the Special Motion.
2. Further, Standing Order 68 provides that a Motion for the removal of a person from office takes precedence over all other businesses on the Order Paper. Consequently, the consideration of the Special Motion shall have priority over all activities in the House, whether domestic or foreign.
3. That, the House Business Committee will seek a resolution of the House to:
 - (a) Suspend the sitting of the House on Thursday, 3rd October 2024, in order to facilitate the administrative arrangements for public participation.
 - (b) Hold a morning sitting on Tuesday, 8th October 2024, and commence an early afternoon sitting on the same day to consider the Special Motion.

Further, Hon. Members, I have been requested by the Mover of the Motion, and in consultation with the House Business Committee, to convene a forum for a briefing of Members on the modalities of the public participation programme. In this regard, I will interrupt tomorrow's Morning Sitting at noon and adjourn the House for this purpose. I also direct the Clerk of the National Assembly to make the necessary arrangements for the briefing of the House at that Session.

The third issue touched on the manner of affording the Deputy President an opportunity to be heard and the modalities of the same. In this case, Standing Order 67 obligates the House to afford the Deputy President an opportunity to be heard either in person, through a representative or both. Further, the House is under an obligation to accord him the right to fair administrative action, under Article 47 of the Constitution, and the right to fair hearing, under Article 50 of the Constitution. Drawing from the foregoing and the timelines provided for the House to dispose of the Special Motion for which notice was given today, the Deputy President of the Republic of Kenya is entitled to appear before the House in person, through a legal representative or both, during the consideration of the Motion. Noting that the Special Motion shall be considered on 8th October 2024, I have directed that the Deputy President be notified of his right to appear on the said date, and the allocation of time from 5.00 p.m. to 7.00 p.m., which is two hours.

The fourth and final issue that was raised for guidance was on the security of Members whose support of the Special Motion may affect their personal safety. The security and safety of Members is a paramount priority of the Parliamentary Service Commission, which is charged with providing services and facilities to ensure the efficient and effective functioning of Parliament. As the Chairman of the Parliamentary Service Commission, I assure all Members that, apart from the existing arrangements that have been made for their security and safety, additional arrangements shall be considered, if the need arises, in consultation with the National Police Service (NPS).

As I conclude, I urge each one of us and the public to truly grasp the magnitude of the unprecedented journey the House is about to undertake. In promulgating the Constitution, Kenyans bestowed upon themselves and generations yet to come, a document that has shaped the very soul of our nation. Indeed, our Constitution is a living document that espouses the aspirations of our people. To this end, on Friday, 27th August 2010, Kenyans affirmed their sovereign and inalienable right to establish a Government that is anchored in democracy, social justice and the rule of law. The power to impeach is a profound check on the conduct of a State officer. To safeguard the rights of an affected State officer, the Constitution prescribes high and graduated thresholds on the National Assembly. They reflect the gravity of the task before the House.

This Special Motion is not only an inquiry into the conduct of a State officer, but also it is a momentous test of the resilience of the constitutional procedures that were meticulously designed by the framers. As you proceed to scrutinise the conduct of the Deputy President, the House is also under scrutiny, with respect to its fidelity to the Constitution and its obligation to uphold the rights of every Kenyan. I have no doubt that we will rise to this defining moment. We shall confront this test with dignity, resolve and utmost integrity. I am confident that the House shall prove itself worth of the trust that has been placed on it by the Constitution and Kenyans.

Hon. Members, in summary, therefore, I wish to guide the House as follows:

1. That, while the threshold for admitting the Special Motion under Articles 145 and 150 of the Constitution is 117 Members, the threshold for passing a resolution on the Motion for the impeachment of the President or Deputy President is 233 Members of this House.
2. That, public participation is an integral element of the process of removal of an elected State officer from office. In this regard, the House Business Committee has approved a programme of public participation across the country to be coordinated from the 47 counties on 4th October 2024, that is, Friday this week.
3. That, in order to observe the requirements of Articles 47 and 50 of the Constitution and Standing Order 67, His Excellency the Deputy President shall be notified of his right to appear before the House on Tuesday, 8th October 2024, and allocation of time between 5.00 p.m. and 7.00 p.m.
4. That, in addition to the existing arrangements that have been made for the security and safety of Members, additional arrangements shall be considered in the usual manner in consultation with the National Police Service.

The House is accordingly guided. Thank you. Who is that? Hon. Kamket, do you want to comment on the ruling? Okay, give him the Floor.

Hon. Kassait Kamket (Tiaty, KANU): Thank you, Hon. Speaker. While I appreciate your guidance, I seek slightly more guidance on the matter of public participation. The threshold for public participation is not very clear.

Hon. Speaker: Hon. Kamket, take your seat! If you listened carefully, I said we will adjourn the House tomorrow at 12.00 noon for the House to retreat into a special informal sitting to be briefed on that process. So, if you hold your horses, you will know tomorrow. I

suspect you were not listening. Yes, Hon. Kamket, your Colleague here says you were thinking about banditry.

Hon. Kassait Kamket (Tiaty, KANU): Far from it, Hon. Speaker!

Hon. Speaker: Yes.

Hon. Kassait Kamket (Tiaty, KANU): It is a genuine concern. But I am happy by that guidance, except that in the Constitution and in the Standing Orders, there is no clear threshold on that matter of public participation. So, I will stand guided by that ruling.

Hon. Speaker: Lawyers will tell you that the threshold is defined by what a reasonable man, and I believe a reasonable woman too, will see as reasonable.

Hon. Kassait Kamket (Tiaty, KANU): Very well.

Hon. Speaker: Yes, Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Speaker. I just wish further clarification on the issue of listening to the Deputy President, and what follows thereafter, considering that the Motion must be dispensed off on the same particular day.

There is a reasonable expectation that after being heard, whoever is hearing you is given adequate time to review what you have said, and incorporate the same in the decision. I believe, a House sitting as it is, is equivalent to a court of law or high court, and very rarely do they make immediate decision or make an immediate judgement before the review and they analyse all the evidence presented.

Hon. Speaker, I hope you will apply ourselves and guide us adequately so that whatever decision we make at the end of the proceeding or the Sitting, is not invalidated on account of unfair treatment of the accused, so to speak.

Thank you, Hon. Speaker.

Hon. Speaker: Yes, Hon. Zamzam.

Hon. Zamzam Mohamed (Mombasa County, ODM): Mhe. Spika, nina swali. Mbona aje saa kumi na moja mpaka saa mbili? Naona muda utakua umekwenda sana na tutakua na wasiwasi. Wajua, giza ina siri zake. Kwa hiyo, sijui mbona asije mapema tuimalize kwa mwangaza.

Ahsante sana.

(Laughter)

Hon. Speaker: To Hon. Oundo, if you read the Constitution very carefully, you will see that this is the House where charges are framed. The trial chamber is the Senate. This Chamber could easily vote on the Motion after the Mover and the Seconder, if there is nobody debating it and forward all the material to the Senate for trial. To the extent that we will debate the matter and with abundance of caution, we have invited the subject of the Motion, if he wishes, to come before the House and say whatever he may wish to say to the issues that he will have been confronted with.

We are not obliged to bisect, dissect or respond to what he says. You are obliged to vote and then forward the materials to the Senate for trial. That, notwithstanding, having given him 5.00 p.m. to 7.00 p.m. to speak, the House should be informed that, should there be interest to continue with the debate thereafter, we are going to move a Procedural Motion for the House to sit on Tuesday 8th from 9.00 a.m. to midnight. So, you will still have time to deal with any issue.

Mama Zamzam, huwa naskia eti shetani anapenda usiku, lakini huyo shetani haishi hapa bungeni.

(Laughter)

Yes, Hon. Member for Kabuchai.

Hon. Majimbo Kalasinga (Kabuchai, FORD-K): Thank you very much, Hon. Speaker, for giving this very ample time. Mine is a true comment. Your judgment is purely Solomonic. You have made a decision that will never be challenged anywhere. We do not want to make a decision that will be challenged. You have given us the procedure from the beginning to the end.

Hon. Speaker, you have offered him a chance to be heard. That will give this House all the rights and safety. My only worry is that some regions are somehow volatile. Security might be required for public participation in those regions. That is my only concern. But I know as we retreat tomorrow to discuss and dialogue, those are a few things we will touch on.

Otherwise, Hon. Speaker, thank you for that Solomonic wisdom.

Hon. Speaker: Who is that? Hon. Tim Kipchumba. Yes, Hon. Timothy. Clerks, give him the microphone. My clerks today are firing blanks. Give Hon. Timothy Kipchumba the microphone. There is one next to you, Hon. Tim.

Hon. Timothy Kipchumba (Marakwet West, Independent): Thank you, Hon. Speaker, for giving me an opportunity to raise an issue that I wish you to clarify.

Hon. Speaker, we need to give the Deputy President a fair hearing and you are a neutral arbiter on this matter. This Chamber sits as a trial chamber and is similar to the High Court.

Hon. Speaker: This is not a trial chamber, Hon. Tim. The trial chamber is the Senate.

Hon. Timothy Kipchumba (Marakwet West, Independent): Irrespective of that, Hon. Speaker, you are a neutral arbiter in this House. It is on record that you have made a pronouncement or you are known to have taken sides on this matter. As a neutral arbiter, you have expressed yourself on this subject matter together with the Deputy Speaker. So that the Deputy President is given a fair hearing, would it be in order for you and the Deputy Speaker to recuse yourselves from his matter? We can have a panel of speakers in this House so that the Deputy President can be given a fair hearing on the Floor of this House.

Hon. Speaker: Hon. Timothy Kipchumba, to begin with, the Hon. Speaker here has taken no position. I want to assure you that on Sunday, the Hon. Speaker was invited by the Women Representative for Machakos to attend a church service and the priest, called Father Vincent, based his homily on the Book of Mark 9: 38 onwards. The Book says that, if there are wicked people in society, tie a huge stone around their neck and toss them into the sea. It is not me who said it. It is the Book. The Book also says that, if your right hand makes you stumble, chop it off. If your left leg makes you stumble, chop it off. If your left eye makes you stumble, gouge it out. All the Hon. Speaker said was that the homily was apt and our society should live that way. I am not conflicted in any way. I have no vote in this matter, I have no dog in this fight and I can assure you the proceedings will proceed in accordance with fairness as per the law, the Constitution and the rules of natural justice.

Yes, Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Speaker, just for information to Hon. Kalasinga, the Chairperson of the Departmental Committee on Administration and Internal Security, Hon. Tongoyo, has already convened a meeting between the House leadership and the security agencies tomorrow morning at 10:00 a.m. Allow me to take this opportunity to invite the entire leadership of the Minority Party, the Majority Party and of course, Hon. Speaker. You will be chairing that meeting. In the meeting, there will be the Chairperson and the Vice-chairperson of the Departmental Committee on Administration and Internal Affairs together with the Inspector-General of Police and other security agencies. The issue that was raised by the Member for Kabuchai, is critical especially as we get into this.

Lastly, you spoke about the Book of Acts. I listened to you on Sunday.

(An Hon. Member spoke off the record)

Hon. Kimani Ichung'wah (Kikuyu, UDA): Sorry, the Book of Mark. I listened to you on Sunday, Hon. Speaker and, maybe, it is something that Hon. Kipchumba should also have listened to, especially the other bit of what you said. Knocking your head against a wall is not bravado; it is sheer stupidity. I saw the media take that out of context. A few Sundays ago, Bishop Njiriri of Stewards Church read from the Book of Acts 28 which talks about the viper that was on Paul's hand. When I also spoke about that viper and how you should shake it off so that you can allow your hand to do that which the Lord has purposed it to do, I saw people saying that there are people who have been called snakes. I have seen some people claiming that they are the snake, without anybody calling them a snake. Bishop Njiriri did not write the Bible. The priest who you have spoken about in Machakos County never wrote the Bible. We are just good Christians who love peace and this country. Therefore, let me just finish by telling Hon. Kipchumba that, there is no bravado in hitting your head against a wall. It is sheer stupidity, as quoted by the Hon. Speaker, Moses Wetang'ula, *esquire*.

Hon. Speaker: Yes, Hon. Karoli, you are the last one on this. For those who want clarifications, we have two hours tomorrow from 12:00 noon to 2:00 p.m. We will give you time.

Hon. Caroli Omondi (Suba South, ODM): Thank you, Hon. Speaker. I just want to give some comfort to Hon. Kipchumba that, if you look at our Constitution, the process that we are undertaking here is equivalent to what is called trial by jury in America - grand jury. And you are absolutely right. Your role is fairly limited. I do not foresee any occasion where you could show bias or influence us. It is a situation where, probably, somebody misunderstood what happened at the church service. But the real trial by jury will be in the Senate.

Hon. Speaker: Absolutely.

Hon. Caroli Omondi (Suba South, ODM): That is where the real trial will be. Here, you are being indicted by a grand jury. We frame the issues, we leave it there, and then the trial will take place elsewhere. I have full faith of your neutrality, at least, on this matter.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you. Next Order. Clerk.

BILL

Second Reading

THE ETHICS AND ANTI-CORRUPTION COMMISSION (AMENDMENT) BILL (National Assembly Bill No.11 of 2024)

Hon. Speaker: Who is moving this? Sir George, go ahead.

Hon. George Murugara (Tharaka, UDA): Hon. Speaker, I beg to move that the Ethics and Anti-Corruption Commission (Amendment) Bill, (National Assembly Bill No.11 of 2024), be now read a Second Time.

Hon. Speaker, this is a small Bill that was brought to this House by the entity known as the National Dialogue Committee (NADCO), in their deliberations, when they retreated to look at what recommendations they would make for better governance of the country.

When the Bill was brought in draft form, we were informed by NADCO that we would not alter the Bill, not even a comma. Therefore, ours was to ensure that the Bill is published, there is public participation, and it is brought here for a Second Reading. When the Bill came after First Reading, it was committed to the Departmental Committee on Justice and Legal Affairs, who considered it alongside the communication as to what extent we would involve ourselves with the amendment to the Bill.

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The Departmental Committee on Justice and Legal Affairs made a Report which was tabled in this House. It agreed with the NADCO on the proposed amendments, save to propose a slight amendment which this House will consider at the Committee of the whole House as regards Clause 3 of the proposed amendments.

This Bill proposes to amend, in Clause 2, Section 5 of the Ethics and Anti-Corruption Commission Act 2011, which we refer to as the Principal Act. It proposes that the Bill be amended by deleting subsection 1, and then substituting, therefore, with the following new subsection. The new subsection 1 is going to read as follows: “The chairperson of the Commission, (and the commission here means the Ethics and Anti-Corruption Commission), shall be a person who is qualified to hold the office of a judge of the High Court under the Constitution.

[The Speaker (Hon. Moses Wetangula) left the chair]

[The Deputy Speaker (Hon. Gladys Boss) took the chair]

In essence, this means that the person to be selected as the chairperson should actually have served as a legal practitioner for 10 years, or a magistrate under the Act, or a person of academic qualifications which meet the threshold of appointment as a judge of the High Court.

I wish to confirm to the House that the Departmental Committee on Justice and Legal Affairs agreed with this proposed amendment in view of what we have been receiving from stakeholders regarding the performance of the Ethics and Anti-Corruption Commission. I regret to inform the House that it has not been very commendable, and especially in view of how their cases have been treated by the Office of the Director of Public Prosecutions. The EACC executes its own decisions. It is not the work of the Chief Executive Officer (CEO). Therefore, when it comes to defending decisions before the Directorate of Public Prosecutions (DPP) and elsewhere, it is the Commission that goes to make that defence.

Secondly, economic crimes that are anticipated by the EACC Act transcend many local and international laws. Many laws are involved. So, it becomes a bit difficult for a person who is not qualified and who does not know the law, to comprehend, especially when those laws are intertwined and have to be interpreted.

The parent Act came into force in 2011 after the promulgation of the new Constitution. This particular Section should remain as proposed so that the person holding the office of the chairperson of the Commission will have to be qualified for appointment as a judge of the High Court.

Clause 2 is a proposal to amend Section 5 of the original Act so that when Clause 1 comes into force, Clause 2 would protect the person holding the office of the chairperson of the Commission for the remainder of their term. We did not have any particular problem with this Clause, save for the fact that it is clear in our laws that cardinal principles of legality cannot approbate and reprobate at the same time. Secondly, there is no point in guaranteeing that which cannot be executed otherwise.

Clause 3, which touches on Section 2 of the Act, deals with an accrued right of the current Chairperson of the Commission. That person has a contract that cannot be terminated through this legislation or any other legislation. The person will serve for the remainder of their contract. Our only problem with this Clause is what would happen after the person has served the remainder of their contract. In that case, Section 2 would become a dead letter law. It would not protect anyone else from that period until this Act is repealed. So, we asked ourselves if there was any need to legislate on what we would consider as illegal terms? This is because you cannot interfere with that contract until it comes to an end. That is the fact in law. So, we proposed to delete that Section so that it does not remain in our statute books after the

chairperson of the Commission completes their term, whatever number of years are remaining. It would thus be a tidy statute that does not have any dead letter provisions in it.

The assurance under our laws which are wide, whether commonwealth laws, our own practice, laws of equity, or principles of equity, is that you cannot interfere with an individual's accrued right unless that person consents or agrees to the interference. Therefore, the position of the chairperson of the Commission is secured until their term is over, after which we go back to Clause 1.

In brief, let us agree with Clause 1 and Clause 2, which proposes to amend Section 5(1) of the parent Act. However, we can delete Clause 3, which proposes to amend Section 2 of the parent Act, so that we do not have to keep this provision in our laws after the term of the chairperson expires.

As I conclude, may I make it very clear that the current Chairperson should not be worried because all the laws protect him; the laws on contract, employment, the doctrines of equity and even our common law practice. He is protected, and not targeted.

However, let us make it very clear that every Kenyan is looking upon the Ethics and Anti-Corruption Commission (EACC) to deliver on corruption cases. We are putting the standard on the chairmanship quite high, so that that person can answer on issues of law where they come into play. Today, the Commission may not have any advocate apart from a coterie of qualified advocates amongst the staff. These do not sit in the Commission, and when it is called upon to go and defend itself, sometimes, it may be difficult for the commissioners to express themselves as lawyers.

Therefore, we propose that Clause 2, which amends Section 5, be allowed by the House. The House agreed with us in spite of the provisions in the National Dialogue Committee (NADCO) Report, that we should not touch any provision. We want to convince this House that Clause 3, which amends Section 2, would soon become dead letter law.

With those remarks, I beg to move. I request the Deputy Leader of the Majority Party to second this.

Hon. Owen Baya (Kilifi North, UDA): Thank you very much, Hon. Deputy Speaker. I also thank the Committee for a job well done in looking at that law. It is very important that progressively as a democracy, we review the laws, and also look at how the functioning of the law that has been in place has impacted on the country, either positively or negatively.

A review of the Ethics and Anti-Corruption Commission (Amendment) Bill that we have here today is very important, especially to look at the qualifications of the office bearers at that high level. There has been an issue in having a non-lawyer or non-advocate serve as chairman, and it has had repercussions on the Commission.

Therefore, it is very important that we look at that. When we put somebody with credentials in law and one that is qualified as a Judge of the High Court to be the Chairman of EACC, we will be raising the bar. We will also be demonstrating that we are serious about fighting corruption in this country by ensuring that we have a board that has people that qualify to sit there.

The work of the Commission is usually nitty-gritties of law that spread across many areas. So, it is very important that the Chairperson of the Board has the prerequisite qualifications to ensure that he or she can conduct board meetings, and is able to follow through whatever is happening.

I want to support Hon. Murugara's sentiments that although the current Chairperson may not have those qualifications, he sits there because he is a man of integrity. He is a person who can be counted to stand for that organisation and Kenya, to ensure that the fight against corruption is taken to the next level. We have tremendous respect for him, but the law provides that as long as he still sits in the board, we will allow him to finish his term. As the new law kicks in, he can now pave way for a new chairperson.

I want to assure the Commission that there will be no disruption as we approve this law, but it is important that progressively as a country, we relook at the laws. We also need to know what needs to be done to firm up the law so that we are at the forefront of fighting corruption with a board that has the prerequisite legal requirements to fight.

I also thank the Commission that is there for the job that they are doing. Currently, in terms of fighting corruption in Kenya, we have had high profile cases go to court, and high-profile investigations are going on. I think a good job is being done at the Commission.

I also thank the current Chief Executive Officer (CEO) for steering that organisation and taking it away from politics and ensuring that it is doing some professional work.

I stand to second.

Therefore, I second and ask Hon. Members to support this amendment so that, going forward, we can strengthen the Commission and make sure that it has teeth to bite and take Kenya to the next level in fighting corruption.

I thank you, Hon. Deputy Speaker.

(Question proposed)

Hon. Deputy Speaker: Hon. Caroli Omondi.

Hon. Caroli Omondi (Suba South, ODM): Thank you, Hon. Deputy Speaker. I am looking at the Clock and I am not sure if we can exhaustively debate the Bill, but I want to have a go at it. You will allow me to have a first bite when it next comes up for debate. I rise to oppose these amendments. I do not think the Bill is well aligned with the legislative structure of the Commission and the provisions of the EACC Act.

Let me begin by giving some examples of the most efficient and effective anti-corruption agencies in the world. The first one is the Corrupt Practices Investigation Bureau of Singapore. Singapore is always rated as the least corrupt country in the world. That particular agency, as a matter of fact, is headed by a senior police officer. Not a man with the qualifications of a judge of a high court. The second most efficient anti-corruption agency in the world is in Sweden, a country known for least corruption. The agency is the National Anti-corruption Police Unit, headed by a police officer.

I am giving these examples because the idea behind this proposal for amendment is that EACC is not able to conduct effective investigations because it does not have a legal mind heading it. Nothing could be further from the truth. The Australian National Anti-corruption Commission is headed by a judge, but for very specific reasons.

Let us look specifically at the EACC Act we have in Kenya. Section 7(2) of the Act provides that the commissioners - the Chairperson and the members - serve on a part-time basis. They are not full-time employees of the Commission. To try and appropriate inefficiencies to them is actually to miss the point. They are part-time employees of the Commission. How that affects the work of the Commission should have been the focus of any proposed amendments.

Secondly, the mandate of the EACC is broader than criminal investigations. Functions of EACC are much broader than investigations. They include suppression, detection, public awareness and other functions. There is no particular reason why a judge should head a commission on a part time basis.

Thirdly, this country does not have a Criminal Investigations Act. As a matter of fact, I have proposed that we enact one. We do not know the standards, qualifications and training of investigators. This is where the problem is. It is not with the person heading the EACC. We do not have a Criminal Investigations Act. If we had an Act that stipulates how criminal investigations are to be conducted, empowers investigators, be they DCI or EACC officers,

with sufficient power and tools they need to investigate corruption crimes, there would be no problem with EACC.

If you go further, the functions of the commissioners under the current Act include policy formulation, ensuring performance of the staff, providing strategic direction, strategic linkages and partnerships, and internal discipline. Why do you need a judge to discharge those functions?

Hon. Deputy Speaker: Hon. Caroli, time is up. You have a balance of six minutes, and tomorrow, you will be the first person to contribute. Thank you.

Hon. Caroli Omondi (Suba South, ODM): Thank you, Hon. Deputy Speaker.

ADJOURNMENT

Hon. Deputy Speaker: Hon. Members, the time being 7.00 p.m., this House stands adjourned until Wednesday, 2nd October 2024, at 9.30 a.m.

The House rose at 7.00 p.m.

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