

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 11th February, 2016

The House met at 2.30 p.m.

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

PRAYERS

PETITIONS

UNLAWFUL TERMINATION OF INDU FARM (EPZ) LTD EMPLOYEES

Hon. Speaker: This is Petition No.4 of 2016 relating to unlawful termination of employment for over 300 employees of Indu Farm (EPZ) Limited.

Hon. Members, pursuant to the provisions of Standing Order No. 225(2)(b), I hereby convey to the House that my office is in receipt of a petition from over 300 former employees of Indu Farm (EPZ) Limited, also referred to as Indu Farm Processing, located at the Sameer Industrial Park No.4, regarding unlawful termination of their employment.

The Petitioners allege that they were sent on compulsory leave on 13th July 2015, subsequent to which they were informed of a temporary closure of the company and immediate termination of their services. The Petitioners claim that this action contravenes Article 41 of the Constitution and the provisions of the Employment Act of 2007, Chapter 226 of the Laws of Kenya. The Petitioners therefore pray that the National Assembly:-

- (i) Examines the legitimacy of the process applied in termination of their services and confirm whether due process was followed; and,
- (ii) Finds that should the closure or winding up of the company be inevitable, the company ought to expeditiously pay terminal dues and other benefits owed to the employees.

Hon. Members, you will agree with me that the prayers sought by the Petitioners are, indeed, justifiable before an industrial court or any other appropriate court of law. However, Article 95(2) provides that the National Assembly deliberates on and resolves issues of concern to the people. The Article obligates the House to attempt to address such matters with a view to resolving them. It may well be that the grievances of the Petitioners may be resolved better without having to resort to a judicial process.

This Petition, therefore, for whatever it may be, stands committed to the Departmental Committee on Labour and Social Welfare for consideration. The Committee is requested to consider the Petition and report its findings within 60 days in accordance with Standing Order No.227 (2).

I thank you.

Hon. (Dr.) Makali Mulu, I am told that you have a Petition.

CHALLENGES FACED BY BRAILLE TECHNICIANS AND TRANSCRIBERS

Hon. Mulu: Hon. Speaker, this public Petition relates to challenges faced by braille technicians and transcribers. This is now technical.

I, the undersigned, on behalf of the citizens of Kenya and in particular the braille technicians and transcribers draw the attention of the House to the following:-

THAT, braille technicians and transcribers play a critical role in the education sector, in particular the educational materials, in order to facilitate pupils and students living with visual disability;

THAT, the Government, through the Ministry of Education, Science and Technology, has continuously disregarded their plight;

THAT, although the braille technicians are professionally trained, the Ministry of Education, Science and Technology has not established a scheme of service for the sake of the said professionals;

THAT, in execution of their duties, the said group is faced with numerous challenges, including inadequate remuneration, facilities and equipment; and,

THAT, efforts to resolve the stalemate have been futile.

Noting further that the issues in respect of which this Petition is made are not pending before any court of law or any constitutional or legal body, your humble Petitioner prays that the National Assembly, through the Departmental Committee on Education, Research and Technology, recommends that the Teachers Service Commission engages the braille technicians and transcribers on permanent and pensionable terms and develops a scheme of service for braille technicians and transcribers.

Your Petitioners will ever pray.

Thank you.

Hon. Speaker: Is it the indication I get that some Members may wish to make comments on the two Petitions? Obviously, today Hon. Isaack Mwaura has overtaken Hon. Daniel Maanzo.

Hon. Mwaura: Thank you, Hon. Speaker. I rise to very highly support this Petition by my very good friend Hon. (Dr.) Makali Mulu. The braille transcribers are very critical in the education of learners with visual disabilities. I went through a special school – Thika School for the Blind. Those are the persons who were helping the totally blind students and the low vision learners to translate print into braille. They also go ahead and help in the marking of exams by transcribing from braille into print. They do a lot of work.

The issue of braille transcribers and other teacher aid relating to learners with disabilities is very critical in this country. In fact, after this, I will be bringing a Motion on the teacher rate scheme. There are several issues that need to be looked into even as we look at this Petition. Firstly, those workers are on casual basis. They have no proper terms of engagement and yet, they are the ones who do the bulk of the work. Secondly, there is the Marrakesh Treaty about how to have publishers turn print materials into braille for the use by learners with visual disabilities. This is a critical agenda because most of our visually impaired persons are not able to access materials that are very relevant to their own education.

The other issue is the need to ensure that we have what we call “unified braille”. That is because right now, we have Braille 1 and Braille 2. But there is need to ensure that we have a unified braille system for learners with visual disabilities. This will, of course, ensure that there

is a proper literacy, numeracy and functionality of those very important learners of our education system.

Hon. Speaker---

Hon. Speaker: There is no debate. That should be enough. The comments are not supposed to be an excuse for debate, Hon. Mwaura. The entire House has a maximum of only 30 minutes. If you take five minutes, what are you trying to suggest?

Hon. Maanzo!

Hon. Maanzo: Thank you, Hon. Speaker. I would like to comment on the public Petition on massive termination of employment following the closure of an EPZ company. Many companies have turned into this practice, especially when they run bankrupt or for no proper reasons, the owners migrate to another country. It is time Parliament assisted members of the public to get their dues, especially when they are not able to file a case in court. The district labour offices are supposed to arbitrate those matters. It seems that for the matter to come to Parliament, those Petitioners have really suffered. I would like to urge the Departmental Committee on Labour to pursue the matter. I would like to attend the sittings of the Committee, together with other interested Members of Parliament, so that such practices may cease. Whatever happens, the contracts must be respected so that the particular persons can be paid their dues.

Thank you.

Hon. Speaker: Hon. Pukose.

Hon. (Dr.) Pukose: Thank you, Hon. Speaker. I want to thank Hon. Makali Mulu for presenting the issue of the braille. Those are issues that, at times, we take for granted. Those are people with special needs. Within our society, we find that there are people who are blind. They learn through braille system to translate and pass information. We also have those who are dumb and others with different kinds of special needs. This is the right time for the society to also consider them.

The issue of employees is also key and, therefore, needs to be addressed. It would not be prudent for people to be just dismissed like that in the 21st Century. When you consider 300 people being sacked at once, you realise that it is a big family.

The other issue pertains to this House. As we talk about employment, we should also think about our welfare. Yesterday morning, somebody delivered meat on a motorcycle. It is circulating within the social media and it is not good. It was chicken from suspicious grounds, meant for Members' consumption. This is very bad. We need to sit down, maybe in a special *kamukunji*, and address such issues. I do not know whether you are listening, Hon. Speaker. I am raising a very serious issue that pertains to the health of hon. Members of this House. Meat wrapped in polythene bags and delivered to Parliament for hon. Members' consumption should raise health concerns.

(Loud consultations)

What I am saying is relevant to the Petition because it is about food. It concerns our health. When our health is threatened Hon. Speaker, it is a very serious matter. This pertains to the Public Service Commission (PSC). I am talking about employment.

Hon. Speaker: Hon. Pukose, surely, there are certain matters that belong to other fora. This is the plenary of the National Assembly. We cannot be here always talking about food.

Indeed, Hon. Pukose, I am informed that you are a Member of the House Catering Committee. You should discuss such issues at the Committee level. Let the plenary deal with other more serious issues, please.

Next Order!

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, Hon. Pukose is trying to relate braille to a motorbike and some chicken.

Hon. Speaker, I beg to lay the following Papers on the Table of the House today, 11th February, 2016:-

The Special Audit Report on Kenya Bureau of Standards Tender No. KEBS/T057/2014-2015 for the provision of pre-export inspection services for used motor vehicles;

The Special Audit Report on Kenya Bureau of Standards Tender for the Construction of Mombasa regional offices and laboratories;

The reports of the Auditor-General on the financial statements in respect of the following institutions for the year ended 30th June 2015 and the certificates therein:-

- (i) Information and Communication Technology Authority.
 - (ii) Kenya Pipeline Company Limited.
 - (iii) Embu University College.
 - (iv) Kenya Vision 2030 Delivery Secretariat.
 - (v) Judicial Service Commission.
 - (vi) Kenya Law Reform Commission.
 - (vii) Witness Protection Agency.
 - (viii) Water and Sanitation Services Improvement Project Component No.3 (IDA Grant 5103-KE), Lake Victoria North Water Services Board.
 - (ix) ADF Loan No. 210015546 and Grant No. 5800155000101, Water Services Board Support Project (P-KE-E00-005) - Northern Water Services Board.
 - (x) Upper Tana Natural Resources Management Project IFAD Loan 1-867-KE and Spanish Trust Fund Loan 1-E-8-KE, Ministry of Water and Irrigation.
 - (xi) Audit Report of Kenya Plant Health Inspectorate Service.
 - (xii) The New Partnership for Africa's Development (NEPAD) Kenya Secretariat.
 - (xiii) National Council for Law Reporting.
 - (xiv) Kenya Copyright Board.
 - (xv) East African Portland Cement Company Limited.
 - (xvi) Capital Markets Authority.
 - (xvii) Brand Kenya Board.
 - (xviii) Kipchabo Tea Factory Limited (A subsidiary of Nyayo Tea Zones Development Corporation).
- Thank you, Hon. Speaker.

NOTICES OF MOTIONS

Hon. Mwaura: Hon. Speaker, I beg to give notices of the following four Motions:-

ESTABLISHMENT OF TEACHER-AID SCHEME
FOR LEARNERS WITH SPECIAL NEEDS

THAT, aware that many learners with disabilities are not able to attend school due to various barriers such as negative attitudes from the society, poverty and depravity; concerned that only 2 per cent of learners with disabilities are enrolled in learning institutions as per research conducted by the United Nations Educational and Socio-Cultural Organization (UNESCO); noting that the completion rates of learners with disabilities from primary, secondary and university education remain low; cognizant of the fact that teachers of learners with disabilities require more time to teach students with disabilities than other children; mindful that they do this without due assistance whatsoever from other co-curricular or auxiliary support services such as feeding, orientation and mobility, toileting, interpretation and braille transcription, this House urges the Government, through the Ministry of Education, to allocate resources to establish a teacher-aid scheme for schools and units of learners with special needs.

ENFORCEMENT OF STRUCTURAL DESIGN ADJUSTMENTS TO CATER FOR
PERSONS WITH DISABILITIES

THAT, aware that Article 54 (c) of the Constitution provides that persons with disabilities are entitled to reasonable access to all places, public transport and information; further aware that Section 21 of the Persons with Disability Act (Act No. 14 of 2003) provides that persons with disabilities are entitled to a barrier-free and disability-friendly environment to enable them have access to buildings, roads and other social amenities, assistive devices and other equipment to promote their mobility; concerned that over the years, persons with disabilities have not been given the right to enjoy all their fundamental freedoms; cognizant of the fact that accessibility is vital in increasing the mobility of those individuals and reducing the ratio of dependency on people, this House urges that the Government takes the necessary measures in terms of structural design adjustments to all public buildings, Government ministries, departments and agencies to make them more user-friendly to persons with disabilities, and that the National Council for Persons with Disabilities approves all new public structures to ensure their designs are compliant to minimum accessibility standards for persons with disabilities.

INTRODUCTION OF KENYAN SIGN LANGUAGE IN PRIMARY SCHOOLS

THAT, aware that Article 7(3)(b) of the Constitution provides that the State shall promote the development and use of indigenous languages, Kenyan sign language, braille and other communication formats and technologies accessible to persons with disabilities; further aware that Article 54(d) provides that a person with disability is entitled to use Kenyan sign language or other appropriate means of communication; noting that Kenyan sign language for the

deaf is the most important source of knowledge, access to national participation and of great importance to their school work; cognizant of the fact that Kenyan sign language is the medium of communication for the deaf within the community, this House urges that the Government introduces the Kenyan sign language to be taught in schools as part of the primary school curriculum to enable Kenyans to acquire basic skills to communicate with people that have a hearing impairment.

SUPPORT OF YOUTH INNOVATION BY THE GOVERNMENT

Hon. Mwaura: This is the final one, Hon. Speaker.

THAT, aware that there are many talented people amongst the youth in this country; having noted that those talents have been severally displayed through various inventions and innovations by the youth in platforms such as the Science Congress and the Annual Youth Innovation Week; concerned that most of those discoveries do not go beyond making sensational newspaper and electronic media stories; noting that most of those innovations are aimed at addressing the problems that afflict us as Kenyans on a daily basis; further concerned that there is inadequate enabling legislation and administrative measures to support those innovations; cognizant of the fact that the Kenya Vision 2030 seeks to make our country an industrialised middle-income economy in the next 14 years; aware of the immense potential for wealth creation and job opportunities that such innovations would generate if well-developed and commercialised; also recognising that our imports are well in excess of Kshs1.3 billion shillings, a gap that would be narrowed if we had our own local production, this House urges the Government to support youth innovation by creating an innovation fund and a national incubation system among other measures to support our talented youth.

Hon. Speaker: Hon. ole Sakuda.

Hon. ole Sakuda: Hon. Speaker, I beg to lay six notices of motions on behalf of the Departmental Committee on Lands.

Hon. Speaker: Are you laying six notices or you wanted to give six notices?

Hon. ole Sakuda: I want to give six notices.

Hon. Speaker: I see. You give notice.

Hon. ole Sakuda: Hon. Speaker, I was a bit distracted by the motor cycle that I say today bringing some meat for Hon. Members.

Hon. Speaker, I beg to give notices of the following Motions:-

ADOPTION OF REPORT ON LAND ADJUDICATION ISSUES IN MERU AND THARAKA NITHI

THAT, this House adopts the Report of the Departmental Committee on Land on land adjudication issues in Meru and Tharaka Nithi Counties laid on the Table of the House on Wednesday, 3rd December 2014.

ADOPTION OF REPORT ON COMPENSATION OF GALLERIA MALL
EVICTEES/EXPANSION OF LANG'ATA ROAD

THAT, this House adopts the Report of the Departmental Committee on Lands on the compensation for evictees of Galleria Mall and the expansion of Lang'ata Road laid on the Table of the House on Wednesday, 3rd December 2014.

ADOPTION OF REPORT ON SIRIKWA SETTLEMENT SCHEME

THAT, this House adopts the Report of the Departmental Committee on Lands on Sirikwa Settlement Scheme laid on the Table of the House on Thursday, 6th August 2015.

ADOPTION OF REPORT ON NYALI CONSTITUENCY LAND ISSUES

THAT, this House adopts the Report of the Departmental Committee on Lands on the Nyali Constituency Land Issues laid on the Table of the House on Thursday, 3rd December 2015.

ADOPTION OF REPORT ON STATE HOUSE CRESCENT LAND

THAT, this House adopts the Report of the Departmental Committee on Lands on the State House Crescent Land laid on the Table of the House on Tuesday, 24th November 2015.

ADOPTION OF REPORT ON LAND CONFLICT IN KEDONG RANCH

THAT, this House adopts the Report of the Departmental Committee on Lands on land conflict in Kedong Ranch laid on the Table of the House on Thursday, 6th August 2015.

Thank you, Hon. Speaker.

Hon. Speaker: Very well, Hon. Kamama.

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

ADOPTION OF REPORT ON ALLEGED IRREGULARITIES
IN DISBURSEMENT OF FUNDS

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on the investigations into alleged irregularities in the disbursements of funds to civil society groups by the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) laid on the Table of the House on Tuesday, 17th November, 2015.

ADOPTION OF REPORT ON GARISSA UNIVERSITY COLLEGE

TERRORIST ATTACK

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on the investigations into the Garissa University College terrorist attack laid on the Table of the House on Tuesday, 17th November, 2015.

Hon. Speaker: Next Order!

STATEMENTS

The Leader of the Majority Party

BUSINESS FOR THE WEEK COMMENCING 16TH TO 18TH FEBRUARY 2016

Hon. A.B. Duale: Hon. Speaker, pursuant to Standing Order No.44(2)(a), and on behalf of the House Business Committee, I rise to give the following Statement regarding the business that will appear before the House the week beginning Tuesday, 16th February 2016. The House Business Committee met on Tuesday this week at the rise of the House to give priority to business.

On Tuesday next week, the House will deal with and debate the Second Readings of the following Bills, should they not have been concluded this week:-

1. The Community Land Bill (National Assembly Bill No.45 of 2015).
2. The Land Laws (Amendment Bill) (National Assembly Bill No.55 of 2015).
3. The Energy Bill (National Assembly Bill No.50 of 2015).
4. The Kenya Regiment (Territorial Force) (Repeal) Bill (National Assembly Bill No.39 of 2015).

Other Bills that will be given priority next week include the:-

1. Miscellaneous Fees and Levies Bill (National Assembly Bill No.30 of 2015).
2. The Kenya Roads Bill (National Assembly Bill No.27 of 2015).
3. The Public Finance Management (Amendment) Bill (National Assembly No.4 of 2015).
4. The Warehouse Receipts System Bill (National Assembly Bill No.12 of 2015).

The roster of Cabinet Secretaries who are scheduled to appear before the Committees on Tuesday, the 16th February 2016 is as follows:-

- (1) The Cabinet Secretary for Foreign Affairs and International Trade at 10.00 a.m. before the Departmental Committee on Defence and Foreign Relations to answer questions from Hon. Joseph Gitari, Hon. Irshadali Sumra, Hon. Christopher Nakuleu, Hon. Robert Pukose and Hon. (Ms.) Rose Nyamunga.
- (2) The Cabinet Secretary for Environment and Natural Resources at 10.00 a.m. before the Departmental Committee on Environment and Natural Resources, to answer questions from Hon. Wilberforce Ottichilo, Hon. Christopher Nakuleu, Hon. Patrick Makau, Hon. (Ms.) Zuleikha Juma, Hon. Joseph Lekuton and Hon. Francis Mwang'angi.
- (3) The Cabinet Secretary for Interior and Co-ordination of National Government at 10.00 a.m. before the Departmental Committee on Administration and National

Security, to answer questions from Hon. Mohammed Diriye, Hon. Robert Duba, Hon. Wilberforce Ottichilo, Hon. (Ms.) Janet Nangabo and Hon. Joseph Manje.

The House Business Committee also resolved to give priority to committee reports and motions awaiting debate.

Finally, the House Business Committee will reconvene on Tuesday, 16th February, 2016, at the rise of the House, to consider business for the rest of the week. Next week, we also anticipate to host the leadership retreat that is set to take place between 18th and 21st February 2016.

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

(Hon. A. B. Duale laid the Statement on the Table)

Hon. Speaker: Can those Members who are upstanding take their seats?

COMMUNICATION FROM THE CHAIR

USE OF UN-PARLIAMENTARY WORDS

Yesterday, in the afternoon sitting, Hon. Chris Wamalwa rose in his place claiming to be standing on a point of order and alleged, among other things, that Hon. John Munuve had referred to certain Members as having mediocre brains and, therefore, sought that Hon. John Munuve, among others, withdraws and apologizes for the use of those words.

I have in my possession the transcript of the HANSARD of what happened yesterday. It is true that Hon. John Munuve used the words “mediocre brains”, but it is not in reference to what Hon. Chris Wamalwa alleged.

Hon. Chris Wamalwa alleges that a letter was written in accordance with the Political Parties Act. No such letter has been made available. It is, therefore, not possible to connect his alleged letter written on the authority of the Political Parties Act to anybody. Therefore, the reference by Hon. Munuve about people with mediocre brains is not in direct reference to any Member of this House. I, therefore, see no need for Hon. John Munuve to withdraw the use of the words “mediocre brains” because those words are in themselves plainly not un-parliamentary.

(Laughter)

It is accordingly so ordered.

Order Members! Hon. Member for Seme, please, take your seat.

GUIDANCE ON ORDER OF BUSINESS ON THE ORDER PAPER

Before proceeding to the next business, I wish to guide the House with regard to the dispensation of Order No. 9 and 10 on today's Order Paper.

To start with, you will note that the Motion for the adoption of the Report of the Public Accounts Committee on the Judicial Service Commission and the Judiciary has received not less than eight proposed amendments.

For the convenience of the House and pursuant to Standing Order 54(6), the amendments will be considered in the following order:-

- (1) Proposed Amendments on Recommendations Nos. 2, 4 and 5 by Hon. Hon. David Ochieng;
- (2) Proposed Amendments on Recommendation No. 6 by Hon. Benjamin Washiali;
- (3) Proposed Amendments on Recommendation No. 19 by Hon. Amina Abdalla;
- (4) Proposed Amendments on Recommendation No. 20 by Hon. Samuel Chepkong'a. Should those amendments be passed or rejected, the amendments by Hon. Irungu Kang'ata will automatically be dropped since they are similar;
- (5) Proposed Amendments on New Recommendation No. 23 by Hon. Benjamin Washiali.

With regard to the Motion for the adoption of the Report on the Crisis Facing the Sugar Industry in Kenya, this morning, I received a letter from Hon. Opiyo Wandayi withdrawing his proposed amendments to the report. Consequently, the amendments by Hon. Wandayi appearing on page 13 of the Order Paper will not be considered if we get to that business.

Thank you, hon. Members.

Yes, Leader of the Majority Party.

Hon. A.B. Duale: Thank you, Hon. Speaker, for the guidance. The proposed amendments by Hon. Wandayi, which he has now purportedly withdrawn, were on the Order Paper since October last year. I need your guidance on that. This Report can be debated on Tuesday so that any other Member of that Committee or any other Member of the House can bring back those amendments. Those amendments belong to a number of colleagues, and now Hon. Wandayi is not in the House to propose them. He has not told us whether he has “eaten” or been seen by the forces of sugar.

Therefore, this Report, through your guidance, should be shelved so that it comes to the Floor of the House on Tuesday and then other Members can propose those amendments. The amendments are very important. You cannot just have amendments on the Order Paper since October last year and then you purport to withdraw them this afternoon. I am told the Members of the Departmental Committee on Agriculture, Livestock and Cooperatives were aware of that amendment. He was proposing it on behalf of the Committee. We should not play games. We represent the people of Kenya. This is similar to the Report on the Judicial Service Commission. When amendments are on the Order Paper on a very controversial report like the one on the sugar crisis, they should not be withdrawn.

With regard to the amendments on the Judiciary Service Commission Report, all the Members have not withdrawn their amendments.

Hon. Speaker, none of the hon. Members, including Hon. Chepkong'a, Hon. David Ochieng and Hon. Amina Abdalla, has withdrawn their amendments. Their amendments have been there since October last year. Those amendments by Hon. Wandayi were on the Order Paper. A number of the members of the Departmental Committee on Agriculture, Livestock and Cooperatives were part and parcel of those amendments. We do not want those tricks to be played in the House unless a reason is given as to why he is dropping his amendments. I am sure

that my colleagues will agree with me so that we postpone moving debate today in order for us to have time to bring the amendments.

Hon. Speaker: Hon. Members, I saw Hon. Wandayi walk in during the course of the intervention by the Leader of the Majority Party. I would like to announce to the House that the Chairman of the Departmental Committee on Agriculture, Livestock and Cooperatives, Hon. Noor Mohammed, and a few Members of his Committee approached the Chair a while ago requesting that this debate be adjourned to Tuesday next week because the Committee has left the Chamber to undertake a site visit this afternoon. They made a request that the debate be put off to Tuesday next week.

Hon. Wandayi wrote to me, and it is his right to do so. He is at liberty to indicate otherwise. Hon. Wandayi, this is not occasion for debate. In any event, the Chairman of the Committee has requested that the debate on this Motion be adjourned to enable him and his Members to visit another site. That is a legitimate request. Hon. Wandayi can say what he wants to say, but let it not be a debate.

Hon. Wandayi: Hon. Speaker, those were my personal amendment proposals. I filed the proposals way back in April 2015. It is important to put this in context because what Hon. Duale is trying to do is very dangerous. I am a very active Member of the Departmental Committee on Agriculture, Livestock and Cooperatives. When we were writing this Report last year at the Windsor Hotel, I raised specific objections. I have not signed that Report, if you will be keen enough to note. I insisted that for the Report to be complete and to satisfy the interests of this House and the country as a whole, the Committee must adopt the Draft KPMG Forensic Audit Report on Mumias Sugar Company. I was overruled by majority Members because the draft report was not admissible. The recommendations in the KPMG Forensic Audit Report were so pertinent. I felt they needed to have been incorporated. I was overruled. Therefore, I proposed the amendments---

Hon. Speaker: Hon. Wandayi, the House is not debating the Report or what you are referring to as the KPMG Forensic Audit Report. The KPMG could mean many things. The “K” could stand for “Kenya” or “Kisumu” or “Kapedo”.

(Laughter)

Hon. Wandayi: Hon. Speaker, I insisted that we needed to have a complete report but because I was overruled, I insisted on filing amendments which drew heavily from the sections of that report. Because the final report of the KPMG has since come out, my view is that my amendments are unnecessary. The KPMG report should be adopted alongside many reports for it to have the effect of putting on the dock all those who are culpable of bringing down Mumias Sugar Company. I have absolutely no interest in the shenanigans that Hon. Duale is trying to entertain.

Hon. Speaker: Hon. Wandayi, everybody has heard you. It is within your right to withdraw your amendments. Whoever alleges that you are acting on behalf of other members would be at liberty to propose amendments. There is nothing for us to debate.

Hon. Members, if you want to do a minority report, it is within your right to do so. Do not think that by standing to say it, you are making any point.

Next Order!

BILL*Second Reading*THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS
SUBJECT TO RATIFICATION) BILL*(Hon. A.B. Duale on 16.12.2015)**(Resumption of Debate interrupted on 10.2.2016)*

Hon. Speaker: Hon. Members, the debate on this Motion was concluded yesterday. I will, therefore, proceed to put the Question.

*(Question put and agreed to)**(The Bill was read a Second Time and committed
to a Committee of the whole House tomorrow)***MOTION**

ADOPTION OF PAC REPORT ON SPECIAL AUDIT REPORT OF JSC

Hon. (Eng.) Gumbo: Hon. Speaker, I beg to move the following Motion:-

THAT, this House adopts the Report of the Public Accounts Committee on the Special Audit Report of the Judicial Service Commission (JSC), and the Judiciary of May, 2014, laid on the Table of the House on Tuesday, 7th July 2015.

Hon. Speaker, the PAC Report consists of eight parts. Part I comprises background information and the Auditor-General's findings. Part II consists of the Executive Summary, while Part III focuses on issues for determination. Part IV summarizes witnesses' and Committee sittings, while Part V is on evidence from witnesses. Part VI covers the Committee's findings and observations, while Part VII is on culpability. Part VIII is on the Committees' recommendations.

The PAC derives its mandate from Standing Order No. 205(2) of the National Assembly, which provides that it shall be responsible for the examination of the accounts showing the appropriation of the sum voted by the House to meet the public expenditure and such other accounts laid before the House as the Committee may deem fit.

The primary mandate of PAC is, therefore, to oversee expenditure of public funds by Ministries, Government departments, constitutional commissions and independent offices to ensure value for money, optimal application of public resources and adherence to Government financial regulation and procedures. The Committee executes its mandate on the basis of annual and special audit reports, such as this one, which was prepared by the Office of the Auditor-General.

Hon. Speaker, in our guiding principles in execution of our duties, the Committee is guided by core constitutional and statutory principles on public finance management as well as established parliamentary customs, traditions, practices and usages. Those principals include the following:-

Constitutional principles on Public Finance; Article 201 enacts the fundamental principles that shall guide all aspects of public finance in the Republic. The principles are:-

- (a) “there shall be openness and accountability, including public participation in financial matters;
- (b) the public finance system shall promote an equitable society and in particular –
 - (i) the burden of taxation shall be shared fairly;
 - (ii) revenue raised nationally shall be shared equitably among national and county governments; and
 - (iii) expenditure shall promote the equitable development of the country, including by making special provision for marginalised groups and areas;
- (c) the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations;
- (d) public money shall be used in a prudent and responsible way; and
- (e) financial management shall be responsible, and fiscal reporting shall be clear.”

The PAC places a premium on those principles, among others, and has been guided by them in the entire process that has culminated in this Report.

On direct personal liability, Article 226(5) of the Constitution is emphatic that:-

“If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not”.

The PAC considers high this constitutional provision as the basis for holding each individual accounting officer and other public officers directly and personally liable for any loss of public funds under their watch. The Committee has and will continue to invoke this provision in its recommendations to hold those responsible personally accountable. This is also intended to serve as a deterrent measure.

Hon. Speaker, on obligations of accounting officers, Section 68(1) of the Public Finance Management Act, 2012 provides, *inter alia*, that:-

“An accounting officer for a national government entity, Parliamentary Service Commission and the Judiciary shall be accountable to the National Assembly for ensuring that the resources of the respective entity for which he or she is the accounting officer are used in a way that is lawful and authorised; and effective, efficient, economical and transparent.”

This provision obligates all accounting officers to appear before PAC of the National Assembly to respond to audit queries in their respective ministries and departments.

Section 74(2) of the same PFM Act stipulates that:-

“If a Cabinet Secretary reasonably believes that an accounting officer is engaging in or has engaged in improper conduct within the meaning of subsection (4), the Cabinet Secretary shall:-

- (a) take such measures as may be provided in regulations; or
- (b) refer the matter to the relevant office or body in terms of the statutory and other conditions of appointment or employment applicable to that accounting officer.”

This section empowers the appointing authority to discipline errant accounting officers which could include revoking their appointment. This provision has sealed a long standing loophole that has previously seen accounting officers continuously commit or preside over fiscal indiscipline and malpractice in their Ministries with impunity without sanctions.

Hon. Speaker, PAC strongly holds the view that those provisions of the law were intended to be fully applied to give effect to the high principles in Article 201 of the Constitution stated herein above to ensure prudent and responsible use of public funds.

The Committee has accordingly applied those provisions to recommend diverse disciplinary actions, investigations and surcharging of various persons found to bear responsibility for breaches of the law and/or responsible for the loss or wastage of public funds.

The Committee membership is as listed in the Report. On behalf of the members of the Committee, and pursuant to Standing Order No. 199(6), it is my pleasant duty to table the Report of the Public Accounts Committee on its consideration of the Special Audit Report of the Judicial Service Commission and the Judiciary of May 2014, for deliberation and adoption by the House.

In this regard, my Committee thanks your office and the Office of the Clerk and wishes to extend its most sincere gratitude to the services offered by our technical staff.

Hon. Speaker, the Committee was seized of the matter following a public altercation between the Chief Justice, Hon. (Dr.) William Mutunga and the then Registrar of the Judiciary, Mrs. Gladys Boss Shollei and members of the JSC. On 17th October 2013, the Committee requested the Auditor-General to conduct a special audit on the financial transactions of the Judiciary and the JSC. The Special Audit was to cover 2011/2012 and 2012/2013 financial years.

Twenty three witnesses appeared before the Committee in 10 appearances. The Committee notes that the Head of the Judiciary, the Chief Justice, was invited to appear and shed light on matters under investigation, but failed to honour the invitation. From the evidence and testimonies of those who appeared, the Committee made the following conclusions *inter alia*:-

- (i) The leadership of the Judiciary at the advent of the new Constitution inherited an institution with weak structures and lacked proper institutional set-up.
- (ii) The Judiciary failed to implement its own Judiciary Transformation Framework (JTF) 2012-2016 as a blueprint to reposition the Judiciary in line with the Constitution of Kenya, 2010 and the demand for better services by the citizens.

This is evidenced by the fact that two years after the framework’s policy guidelines were in existence, decisions were still centralized and the Office of the Chief Registrar and the Judicial Service Commission were not working in synergy.

- (iii) The budget for the Judiciary increased from Kshs3 billion in the 2010/11 Financial Year to Kshs16 billion in the Financial Year 2012/2013. Parliament’s desire to have an efficient administration of justice led to an increased budgetary allocation, but this was undermined by apparent financial mismanagement, weak internal

controls and refusal or failure to follow public procurement laws, guidelines and regulations by the Judiciary.

- (iv) The JSC has been involved in operational activities and/or failed to carry out certain basic activities; for example, the failure to keep minutes of meetings, approval of payments to suppliers, payment vouchers, irregular direct procurements, approval or irregular allowances, among others. That is cited in this Report.
- (v) Procurement was done in a manner that flouted provisions of the Public Procurement and Disposal Act, 2005 and regulations. This was noted from irregularly constituted tender committees, direct procurements, and acquisition of the house for the Chief Justice, pre-fabricated premises, and lease of office space at Rahimtulla Towers, Elgon Place and Mayfair Court Center.
- (vi) Human resource management was extremely poor starting with lack of a guiding policy. Recruitment was not coordinated as the end user departments were not involved with some moving up to two job groups in a year. Allowances and salary advances were irregularly issued.
- (vii) There were general weak internal control mechanisms from poor record keeping to imprest management. The Judiciary operated bank accounts without the approval of the Treasury and some had single signatories in clear violation of both the Public Finance Management Act of 2012 and the regulations governing management of public finances. The Judiciary also spent over Kshs60 million on the Presidential inauguration despite Parliament having enacted a law on presidential assumption of office and having appropriated funds to that effect, accordingly.

Hon. Speaker, the Committee notes with grave concern the apparent widespread financial and procurement mismanagement at the Judiciary, compounded by what bears the hallmarks of a culture of impunity that routinely condoned breaches of procurement procedures and financial regulations.

The Committee finds that the former Chief Registrar of the Judiciary, Mrs. Gladys Boss Shollei failed to perform her duties as stipulated in Article 161 of the Constitution and as spelt out in the JSC Act, 2011. She was the accounting officer of the institution and was responsible for approving all expenditure. The Committee also takes great exception that the former Chief Registrar deliberately gave misleading information with regard to procurement of Mayfair Court premises in her recent submission.

The Committee found that the Judicial Service Commission (JSC) failed to perform a task vested upon it under Article 172 of the Constitution, as spelt out in the JSC Act. The Committee further faults the Chief Justice (CJ) for not providing firm leadership to the Judiciary, giving a *carte blanche* to the then Chief Registrar of the Judiciary and the JSC in general. It is also of the concern to the committee that the CJ, who is in general the custodian of law, declined summons to appear and give evidence before the Committee, thereby violating the provisions of the Constitution that he is expected to uphold and protect.

The Committee found that certain companies were involved in widespread malpractices with the Judiciary. An example is the Jomo Kenyatta University of Agriculture and Technology (JKUATES) Ltd. which was contracted by the Judiciary as a consultant for various projects. This company was directly sourced under the guise of Government to Government procurement and yet, its income was privately shared to the tune of 95 per cent.

The Committee recommends that the Director of Public Prosecutions (DPP) swiftly institutes investigations and proceedings against those directly linked to financial impropriety and mismanagement, as enumerated in the Culpability Chapter of this Report.

The Committee also recommends that those found guilty by a court of law make good the losses attributed to them in accordance with Article 226 (5) of the Constitution.

The Committee also strongly recommends that those found guilty by a court of law for loss of public funds and failure to perform duty bestowed upon them by law, be barred from holding public office for such a period as the a court will determine.

The Committee further recommends that the Judiciary moves with speed to implement the Judiciary Transformation Framework and ensures sound policies are in place to guide all operations of the Judiciary.

The Committee recommends that the Ethics and Anti-Corruption Commission (EACC) investigates the formation of JKUATES Limited and the manner in which it was identified and contracted by the Judiciary. Any company found to have been involved in malpractices and/or professional negligence should be blacklisted by the Government and individuals behind those companies prosecuted. They should be de-listed by their respective professional bodies.

The investigation by EACC should be further extended to all public universities and institutions of higher learning to identify amorphous bodies like JKUATES Limited, who operate under the guise of being public bodies with sole purpose of side-stepping the public procurement laws to confine financial benefits to private entities and individuals.

The Committee recommends full recovery of irregularly paid allowances advanced to the staff of the JSC and the Judiciary. Also to be recovered are monies owed to the Judiciary in form of advance rates paid for premises which ended up not being occupied by the staff of the Judiciary.

Hon. Speaker, I will quickly rush to the observations and findings, which I will just say in summary.

The observations and findings have identified weak leadership and governance structures within the Judiciary. They have also identified the structural inefficiencies of the Judiciary Transformation Framework. This is worth to go on record. The observations have also identified sudden increase in budget allocation. I beg your indulgence to read it because it is only two paragraphs. It reads:-

“There was a sudden upsurge in budgetary allocation to the Judiciary which created a recipe for an insatiable appetite for reckless expenditure. The budget for the Judiciary for the Financial Year 2010/2011 was Kshs3 billion. This tripled to Kshs9 billion in the 2011/2012 Financial Year, and jumped to Kshs16 billion in the subsequent financial year. In other words, in two short years, the Judiciary’s budget had increased five times.

Even though the Committee notes that this rise in the Judiciary budget was essential for efficient administration of justice, it takes a great exception to the manner in which those charged with the management of its affairs and resources failed to develop structures in line with the Judiciary Transformation Framework (JTF) to effectively and efficiently absorb the funds.”

The observations have also identified strained working relationship at the JSC. We have also identified irregular procurement procedures and processes, particularly the weaknesses with the tender committee and the procurement of Elgon Place, which the Committee has explained in

details in the observations.

We have also identified procurement lapses in the procurement of space at Rahimtulla Towers and also the procurement of JKUATES Enterprise Services limited. We have also identified procurement lapses with regard to the purchase of the residence of the CJ, leasing of space at Mayfair Court Center and the prefabricated court structures. We have also identified procurement lapses with regard to leases from the Agricultural Finance Corporation (AFC).

The observations have also identified poor human resource management, irregular payment of allowances and irregular salary advances payment *in lieu* of leave days. We have also identified lapses with regard to extremely poor record keeping, irregular imprest management and refunded expenditure on presidential inauguration. On irregularly operated bank accounts, it is good to go on record that the Committee observed that some accounts still have former employees as signatories, posing risk of loss through transaction by non-employees. An example is the Milimani Law Courts revenue account that still has the former Chief Registrar of the Judiciary (CRJ) as the signatory, even though she has left the Commission.

More disturbing to the Committee is the fact that some accounts had a single signatory, for example the Milimani Law Court Deposit Account Number 1116930854 at Kenya Commercial Bank (KCB) operated solely by the former CRJ and the Milimani Law Courts Recurrent Account Number 229777367 at KCB operated solely by Mr. Gilbert Mutembei.

The Committee notes that single custody of accounts leaves a loophole for a possible loss of funds for personal enrichment. It also takes great exception to how any bank of repute would permit single signatory account for public funds. It was also noted that the funds collected as being bonds and deposits were used to pay suppliers, contrary to regulations which requires that they are only held for purposes for which they were paid.

Hon. Speaker, Kshs67 million was misapplied from the Milimani Law Courts deposit account. The Committee also observes irregularities with regard to procurement of security consultancy.

On culpability, the Committee was guided by witness statements, evidence submitted and its observations in the many site visits it conducted to assign responsibility and culpability for errors of omission and commission. With this, the Committee is alive to Article 226(5) of the Constitution that states that:-

“If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not.”

Specifically, the Committee notes that the powers and functions of the Chief Justice as spelt out in Section (5) of the Judicial Service Act 2011 are as follows:-

1. “The CJ shall be the head of the Judiciary and president of the Supreme Court and shall be the link between the Judiciary and other arms of Government.
2. The CJ shall:-
 - (a) Assign duties to the Deputy Chief Justice, the President of the Court of Appeal, the Principal Judge of the High Court and the Chief Registrar of the Judiciary.
 - (b) The CJ shall give an annual report to the nation on the state of the Judiciary and the administration of justice and cause the report to be published in the Gazette and copy thereof sent under a hand of the CJ to

each of the two clerks of the Houses of Parliament for each to be placed before their respective Houses for debate and adoption.

(c) exercise general direction and control of the Judiciary.”

Furthermore, the Committee notes the functions and powers of the Chief Registrar as spelt out in the Constitution and Judicial Service Act are as follows:-

In addition to the functions conferred by Article 161(2)(c) of the Constitution which assigns the Chief Registrar the role of being the Chief Administrator and Accounting Officer of the Judiciary, Section 8 of the Judicial Service Act states that the Chief Registrar shall in particular:-

- (a) Be responsible for the overall administration and management of the Judiciary.
- (b) Perform judicial functions vested in the Office of the Chief Registrar by law.
- (c) Exercise powers vested in the Office of the Chief Registrar by virtue of any law or regulation and give effect to the directions of the Chief Justice.
- (d) Account for any service in respect of which monies have been appropriated by Parliament and for which issues are made from the Exchequer account.
- (e) Be the authorized officer for the Judiciary who shall be responsible for the efficient management of the day to day operations and administration of human resources in the Judicial Service.
- (f) Be in charge of support services in the Judiciary and, in particular, planning, development and the organization of staff;
- (g) Monitor and enhance administration and office procedures to maximize on efficiency and quality of service.
- (h) Plan, prepare, implement and monitor the budget and collect, receive and account for revenue.
- (i) Prepare reports and proposals on administrative issues.
- (j) Be in charge of the procurement of all stores, and the management and maintenance of all physical facilities.
- (k) Maintain and develop co-operation with key staff in the public service and other institutions and agencies.
- (l) Ensure the efficient devolution of the administrative units to county levels, including a High Court division in each county.
- (m) Perform such other duties as may be assigned by the Chief Justice from time to time.

The Committee also notes that the powers and functions of the Judicial Service Commission as spelt out in Article 172 of the Constitution are:-

- (1) The Judicial Service Commission shall promote and facilitate the independence and accountability of the Judiciary and efficient, effective and transparent administration of Justice and shall—
 - (a) Recommend to the President persons for appointment as judges;
 - (b) Review and make recommendations on the conditions of service of—
 - (i) judges, judicial officers other than their remuneration; and
 - (ii) the staff of the Judiciary;

- (c) appoint, receive complaints against, investigate and remove from office or otherwise discipline registrars, magistrates, other judicial officers and staff of the Judiciary in the manner prescribed by an Act of Parliament;
 - (d) Prepare and implement programmes for the continuing education and training of judges and judicial officers.
 - (e) Advise the national Government on improving the efficiency of administration of justice.
- (2) In the performance of its functions, the Commission shall be guided by the following—
- (a) competitiveness and transparent processes of appointment of judicial officers and other staff of the Judiciary.
 - (b) the promotion of gender equality.

In addition, Section 13 of the Judicial Service Act 2011 states as follows:-

- (1) In addition to the powers of the Commission under Article 253 of the Constitution, the Commission shall have the power to—
- (a) Purchase or otherwise acquire whole charge of disposed movable or immovable property.
 - (b) Borrow and lend money
 - (c) Enter into contracts
 - (d) Do or perform such other things or Acts necessary for the proper performance of its functions under the Constitution or under this Act which may be lawfully done or performed by a body corporate.

Based on the above functions and responsibilities as stipulated in law, the Committee drew the following conclusions:-

On the Chief Justice, the Hon. (Dr.) Willy Mutunga, the Committee notes as follows:-

The Committee takes great exception to the Chief Justice's decision not to honour summons issued to him. This was in direct contravention of Article 125(1) of the Constitution which states that either House of Parliament and any of its Committee has powers to summon any person to appear before it for the purpose of giving evidence or providing information.

Article 125(2) of the Constitution further states as follows:-

“For the purposes of Clause 1, a House of Parliament and any of its committees has the same powers as that of the High Court-

- (a) to enforce the attendance of the witnesses and examine them on oath, affirmation or otherwise.
- (b) to compel the production of documents; and
- (c) to issue a commission or request to examine witnesses abroad.

Evidence before the Committee indicates that the Chief Justice failed to provide leadership on several occasions. This was evident in the procurement of his House, the Elgon Place, radiation saga and the general relationship between the CRJ and JSC.

Article 161(2)(a) of the Constitution is explicit that the Chief Justice is the head of the Judiciary. The Committee was concerned that the Judiciary Transformation Framework (JTF) was not effectively implemented. The scandal of financial impropriety went on for almost a year before the JSC finally dismissed the former CRJ. Even after the Chief Justice admitted in his address on the state of the Judiciary, there is no evidence of any tangible steps he took to ensure

improved financial management and governance of the Judiciary in general. The statement may, therefore, have been full of lyrics but hollow in substance, intention and resolve. The Chief Justice appears to have lost control of the Judiciary. Several correspondences were tabled to show open defiance of his directives and at one time, he snapped at the former CRJ to the effect that he was not the “headless head” of the Judiciary.

This Committee finds that the fact that the commissioners could hold so many meetings without the Chief Justice’s knowledge and approval demonstrates a Judiciary “without a head”. It is inexcusable that the Commission has routinely transacted personal business at the Kenyatta International Convention Center (KICC) disguised as official meetings only to end up lodging claims for payments for the same, without the Chief Justice’s knowledge. Despite that, it drew no sanctions at all from the head of the Judiciary.

There is no doubt that Hon. (Dr.) Willy Mutunga, the Chief Justice of the Republic of Kenya is one of the most academically gifted lawyers in the country. With hindsight, the wisdom of blessing a man with limited public service experience and no record of having led a large organization to head a crucial arm of Government like the Judiciary must not only be questioned, but should be a critical point of consideration in similar future appointments. In total disregard of the Treasury’s written advisory, the Chief Justice on several occasions went ahead to direct the JSC to approve irregular payments as directed by the Finance and Administration Committee.

The Chief Justice was found to be a beneficiary of irregular salary advances from the Judiciary to the tune of Ksh1,564,440. The Committee recommends that future payments in lieu of leave days that are being commuted be made only on leave days already earned.

The Chief Justice must also share responsibility for the losses incurred by the Judiciary through single sourcing of a security consultant contractor, who he personally introduced to the CRJ and was subsequently engaged and paid large sums of money without due process of procurement.

On the Judicial Service Commission, the Committee finds that the Judicial Service Commission as a whole failed to deliver on its mandate, and is alive to the fact that the Chief Justice is its chair while the CRJ is the secretary. The JSC exceeded its powers by purporting to approve payment to various suppliers. In so doing, it went beyond its oversight mandate to delve into operation issues at the Judiciary. In its sitting of 28th August 2013, the JSC’s Finance and Administration Committee approved payment to 12 suppliers amounting to Kshs51,815,435. This is an operational activity that should have been left to the administrators. Accordingly, the Finance and Administration Committee of the JSC must be held responsible for bypassing financial management procedures and directing and demanding approval of payments irregularly, thus occasioning losses. The advance/deposit payment of Kshs59,999,840 to the Kenya Prisons for supply of furniture must also be seen as irregular. The JSC is yet to submit proof that all the furniture paid for was delivered.

The Commission went head to directly procure offices at Mayfair Court and instructed the then Registrar of the High Court, Ms. Lydia Achode, to effect the transaction. The rent for the premises was again paid upfront two years before occupation to the tune of Kshs7,392,000.

The Committee also found out that the Judicial Service Commission (JSC) in its entirety and through its secretary failed to properly manage its meetings by not confirming and approving minutes. In some instances, minutes were not seen. Some of the meetings were not properly constituted in accordance with Section 22(5) of the Judicial Service Act and yet, the

Commissioners went ahead to approve Kshs1.6 million in allowances to themselves. The irregular allowance payment was extended to non-Commissioners who attended JSC meetings, to the tune of Kshs9.8 million. The irregularly paid allowances should be recovered from the affected Commissioners.

The Committee also finds that the JSC failed to provide leadership in providing broad guidelines for finance and human resource policies. The Commission should also have been in the forefront in implementing the Judiciary Transformation Framework by providing leadership. By delving into operational matters and in some instances usurping the powers of the CRJ and various departmental heads, the JSC is culpable of overstepping its mandate and failing to discharge its powers in the spirit of Article 172 of the Constitution. The many public altercations members of the JSC had with the CRJ brought the Judiciary into disrepute.

By not having a list of approved prequalified suppliers and approving tenders without budgetary provisions, the Judiciary opens itself to obvious procurement malpractices. It is inexcusable that an entire arm of Government resorted to engaging suppliers/contractors many times either through phone calls or by word of mouth. The excuse of wanting things done fast in tandem with the Judiciary's ambitious reform programme could not be justification for flouting laws and regulations.

The Committee further finds the tendency by some Commissioners of the JSC to ask to be paid sitting allowance for court visits and trainings that they attended as not only irresponsible, but also reprehensible in the extreme. It may seem that the JSC was seen more as a cash-cow by some Commissioners.

During the period under review, Mrs. Gladys Boss Shollei was the Chief Registrar and presided over the many administrative malpractices. As the chief administrator and accounting officer and with wide ranging powers vested in her office, some of which she quoted in her defence over alleged interference by the JSC, this Committee finds her largely culpable. The Committee takes great exception to the former Chief Registrar for deliberately misleading it on the matter of the acquisition of Mayfair Court Centre and strongly reprimands her. Irrefutable evidence shows that she personally accepted the offer by signing the letter of offer from the landlord's agents and executed the lease on 16th September 2011. Those premises went on unoccupied for two years after payment of rent of Kshs7,392,000.

The Committee finds that she was unable to cultivate a healthy working relationship with her employer, the JSC. Section 8(k) of the Judicial Service Act states that the Chief Registrar should maintain and develop co-operation with key staff in the Public Service and other institutions and agencies. During her submission, she informed the Committee that the JSC was at constant loggerheads with her. She operated in a fractious and dysfunctional environment and sometimes failed to attend Commission sittings, notwithstanding her statutory position as the secretary to the Commission. Management of minutes of sittings of the Commission was appallingly poor.

Mrs. Gladys Boss Shollei constituted the tender committee in the Judiciary and was responsible for ensuring that they met the threshold required. The Committee finds that the Finance Directorate and the tender committee secretaries were not the most qualified in their respective directorates. This is after Mrs. Shollei's assertion that they were more qualified than their seniors at the time.

The lease of office space and second hand furniture at Rahimtulla Towers were found to be dubious. The premise remains at 50 per cent occupancy level to date, indicating a

procurement process that lacked foresight, prudence and due diligence. That represents wastage of Kshs24,358,193.50, of the total Kshs48,719,307 that was paid for the premises. Moreover, the agreement provided for a rent deposit of six months amounting to Kshs32,400,000, which was based on rent payable effective 1st July 2017. The Accounting Officer in this particular instance did not act in the interest of the Judiciary, thus causing a loss of Kshs6,482,056.50.

The Committee also found that direct procurement was used in the purchase of second hand furniture. The Committee was not satisfied with the explanation for direct procurement. Mrs. Shollei was the Accounting Officer who sanctioned those awards and payment to PriceWaterHouseCoopers (PwC) to the tune of Kshs59,699,492.

It seems unbelievably coincidental that this figure is almost the exact same amount the Judiciary paid the Prisons Service as deposit for supply of furniture. This begs the question: Were those mere whimsical numbers thrown around by an organisation in a rush to spend public funds or the result of careful and meticulous market research and valuation? It looks more likely that those figures were the result of hurried impulsive spending of public funds.

Failure to provide for open and competitive bidding denied the taxpayer best bargains and made it difficult to establish whether the Judiciary got value for money. Mrs. Gladys Boss Shollei is culpable in the procurement of the Containerised Data Centre. The Committee finds that this project was the brainchild of Mrs. Shollei and the then Director of ICT, Mr. Tom Atak. While the stated objectives were noble, the real intentions of this flawed procurement seemed to have been no more than a poorly constructed scheme to fleece taxpayers.

The procurement was un-procedural from the start as evidence disputes a needs request from the directorate and this is indicated by failure to commission the project to date. In any case, the project remains incomplete and unusable. More than Kshs106,720,048.97 was spent on this imprudent expenditure, plus a further Kshs18 million as warranty that was supposed to be included in the contract price. Evidence received showed that Mrs. Shollei not only brought this matter to the attention of the JSC after expenditure, but also flouted JSC directive of being involved in any expenditure exceeding Kshs50 million.

The Committee finds Mrs. Shollei responsible for directly procuring services from Jomo Kenyatta University of Science and Technology Enterprise Services Limited and proceeding to award it several contracts, among them valuation of second hand furniture and the Chief Justice official residence. The Committee disagreed with the explanation that it was a Government to Government procurement.

The JKUATES Limited was a limited liability entity whose proceeds were shared among private individuals behind it, including lecturers in their private capacities and a private company, namely, Align Architects, to the tune of 95 per cent. Engagement of this private firm is found to have contravened the provisions of the Public Procurement and Disposal Act as it was meant to circumvent the law as a Government to Government contract (See annexure 10).

Mrs. Gladys Shollei is also culpable in the procurement of prefabricated court houses in seven towns in the country. The Judiciary made several advance payments of Kshs126,703,827 to M/s. Timsales Limited and Kshs26,469,832 to Economic Housing Group contrary to Section 14(7) of the Government Financial Regulations and Procedures which provide that payment to contractors should be made on the basis of signed contracts and a payment voucher prepared that is supported by certified delivery of goods, works and/or services. Those constructions proved costly at Kshs626,535,974, defeating the stated purpose of affordability and reduced contract periods. A site visit to Runyenjes Court, for example, showed that the project cost was more than

that of a parallel construction of a sub-county headquarters in the same neighbourhood. In the Bomet case, a parallel construction of a permanent court house was ongoing, leading to double expenditure. The Committee also notes that those projects were directly sourced in contravention of Sections 29(3) and 74 of the Public Procurement and Disposal Act, 2005.

Several leases, including of the Rahimtulla Towers at Kshs67,082,169, Elgon Court at Kshs70,147,605, Agricultural Finance Corporation (AFC) offices at Kshs43,537,609 and Vomorono warehouses at Kshs3,379,776 were irregularly entered into. During the period under review, they had not been registered, a responsibility of the accounting officer.

The Committee, in its site visits, noted that the requisitioned space was unnecessary and lay unused despite the fact that large sums of money - as shown above - had already been spent. Moreover, the Judiciary failed to fully pay for the leases, leading to losses to the AFC and exposing it to possible litigation.

The Committee finds that Mrs. Gladys Shollei, being the accounting officer, failed to prudently manage finances towards allowances. Being the final authority on payments, the accounting officer allowed hefty allowances to be paid to non-members of the JSC, at Kshs.80,000 per sitting. Some staff members are listed in the special audit report as having earned as much as Kshs7 million each in allowances within six months. See the annex.

The accounting officer allowed payment of allowances for meetings not properly constituted and lacking quorum. The table is attached. Mrs. Gladys Boss Shollei personally owes the Judiciary Kshs3,048,298.90 to date in form of salary advances and a further Kshs2,314,215, current grant, Kshs400,000 and personal expenses on staff credit card of Kshs334,173.90.

Mrs. Gladys Boss Shollei is culpable of opening and/or operating bank accounts without Treasury's approval, contrary to Section 28(1) of the Public Finance Management Act, 2012 which states that:-

“The National Treasury shall authorise the opening, operating and closing of bank accounts and sub-accounts for all national Government entities in accordance with regulations made under this Act.”

Mrs. Shollei further went ahead to operate a bank account, Milimani Law Courts Deposit Account No. 1116930854 at KCB as a sole signatory and allowed another Milimani Law Courts Recurrent Account No. 1129777367 at KCB to be operated by Gilbert Mutembei, also as a sole signatory. This points to a failure to institute internal controls and was a high risk occurrence. It was also found that imprests were improperly issued and managed with some staff members failing to surrender imprest within 48 hours, and even some not using the imprest for the intended purposes.

Mrs. Gladys Boss Shollei oversaw poor management of affairs at the Judicial Training Institute (JTI). She authorised the expenditure of Kshs62,816,343 for the presidential inauguration even after Parliament passed laws providing a vote for the same. This amount has not been refunded and as such, starves the JTI of the much needed operational funds. Moreover, the audit exposed poor management of cash books contrary to Section 5(9) of the Government Financial Regulations and Procedures that require daily balancing and closing. Further still, the JTI incurred an over-expenditure of Kshs128,903,491 that had neither been budgeted for nor approved by Parliament.

Mrs. Gladys Boss Shollei oversaw negotiations into the purchase of the Chief Justice's house without a proper valuation being done. Evidence suggests that she relied on an indicative figure rather than a professionally done valuation report. Mrs. Gladys Boss Shollei directly

procured a security consultant in the name of Simiyu Werunga. She further went ahead to approve payments to Mr. Werunga to the tune of Kshs29,934,975 without a valid contract. Moreover, the project was undertaken both without the services of an independent consultant and signing of a minuted contract as should have been the case for such projects. It was also strange that the consultant who provided the initial report became the implementer of his own recommendations and the final checker/verifier as to the cost and quality of the project. Most of the security equipment has since stopped working, leading to direct loss to the taxpayer. Moreover, it is not clear why public funds were used to undertake work in the private residences of senior Judiciary staff. Mrs. Shollei must bear the greatest responsibility for this wasteful and unnecessary loss of public funds.

Mr. Benedict Omolo conceded irregularities in payment of allowances. He went further to approve advance payment to contractors of Kshs126,703,827 to M/s. Timsales Ltd. and a further Kshs 26,469,832 to Economic Housing Group contrary to Section 14 (7) of the Government Financial Regulations and Procedures which provides that:-

“Payment to contractors should be made on the basis of signed contract and a payment voucher prepared that is supported by certified delivery notes and/or certificates for goods, works or services.”

Mr. Omolo further approved payment of Kshs106,720,048.97 for the Containerised Data Centre which was not operational several months later. Mr. Omolo approved payment of Kshs29,934,975 to Mr. Simiyu Werunga without requisite accompanying documentation like a properly signed contract, payment certificate, delivery notes and proper invoices.

The Committee finds that the now interdicted Director of Finance approved payments contrary to Article 226(5) of the Constitution that places direct liability on public officers.

The Director of Supply Chain Management oversaw gross mismanagement in the organisation. Procurement regulations were flouted and his evidence to the Committee was indicative of a public officer who deliberately failed to perform his duties as is expected of him in Section 26(8) of the Public Procurement and Disposal Act, 2005, which states that:-

“For the purpose of this section, a "procurement professional" means a person who—

- (a) has professional qualifications in procurement and supply management from a recognized institution.
- (b) is engaged in a calling or occupation in which recourse to procurement is directly or indirectly involved and has experience in the practice of procurement.
- (c) is a member of a recognized institute of purchasing and supply.

The Committee finds that this neglect of professional duty is inexcusable, considering the fact that the officer was a former employee of the Public Procurement Oversight Authority (PPOA) and thus ought to have known better.

During the period under review, the Judiciary directly procured services from JKUATES and PricewaterhouseCoopers without justification. As the director in charge, Mr. Okwatta is expected to have overseen all procurement processes and ensured they complied with the law. Mr. Martin Okwatta is therefore culpable of gross mismanagement of procurement procedures and regulations in the supply chain department.

The Director of Information and Communication Technology (ICT) is culpable of conspiring with the former CRJ, Mrs. Gladys Shollei, to commit public funds for the acquisition

of the Containerised Data Centre which failed to follow due process. Moreover, in spite of injection of large amounts of public funds the project remains unused and unusable. Evidence points to the fact that the need for this facility was made by Mr. Atak without involving other officers in the directorate. The officers tendered evidence before the Committee that this acquisition was needless and un-demonstrated. The Judiciary lost Kshs.106,720,048.97 in that purchase. The Committee finds that Mr. Atak failed to provide professional leadership in acquiring cheaper and even better alternatives like cloud computing than a facility that has completely failed to achieve the stated objectives.

Hon. Speaker, as I go to the recommendations, allow me to say that the 10th Parliament passed the Judicial Service Act. Records in this House show that when that Act was passed, I pronounced myself to my objection to the fact that the two members of the Judicial Service Commission are members of the Law Society of Kenya (LSK) who are practising advocates. This House, as the law making body of this country, must pronounce itself on this matter because over time, I see lawyers whom nobody knows much about, the moment they become members of the Judicial Service Commission (JSC), their profiles just balloon. I find it such a contradiction that the JSC can purport to be investigating a matter of impropriety involving a member of the public and yet, one of the people sitting in judgement is a lawyer for that individual. This is a conflict of interest.

I will propose an amendment to the Judicial Service Act so that as long as you sit in the JSC, you are barred for the time that you sit in the JSC from representing clients in any court in Kenya. There is evidence of interference that was tendered before us. The JSC is the employer of judges and advocates in Kenya. Is it not a contradiction that you should appear before your employee to seek judgement. Look at what is happening at City Hall now; magistrates are being asked to look at improper expenditure at City Hall. One of the people who are understandably involved in those irregular procurements is a member of JSC. That report is supposed to come to him. How are those poor magistrates supposed to give an objective judgement when they are faced with an employer who will determine their career growth and whether they will be promoted or not?

We must accept that it was a mistake to allow practising lawyers to sit in the JSC. This House must propose an amendment so that the moment you become a member of JSC, you suspend representation of clients in court. You cannot have your cake and eat it. You are the employer and yet, you are coming before your employees for judgement. The fellows who are practising advocates and members of the JSC can hardly think of any cases they have taken before a judge and lost. How are they supposed to lose anyway? If the judge gives him the wrong judgement, he is putting his promotion on the line. I argued as a layman in matters of law. Later on, I appeared before the late Hon. Mutula Kilonzo because he was one of the people who opposed my amendment. When he saw what was unravelling at the JSC and how those advocates who had been nominated by the Law Society of Kenya were riding rough over everybody in the JSC, he agreed with me that even though I am not a lawyer, I saw what he ought to have seen. So, this House must propose an amendment. It is either you sit in the JSC or if you want to appear in court, you have to quit your position as an advocate sitting in the JSC.

With those remarks, I now go to the recommendations.

Hon. Speaker, the Committee recommends as follows:-

1. There is need for every Kenyan to adhere to the rule of law, particularly Article 125 of the Constitution that gives Parliament the power to call for evidence from any

person. The Committee notes with concern the Chief Justice's refusal to honour summonses to appear before the Public Accounts Committee (PAC) during the probe into the Judiciary and the JSC expenditure. As the head of the Judiciary, he should lead from the front in demonstrating fidelity to the rule of law and constitutionality in Kenya.

2. This recommendation was done when we did not have an amendment. An amendment has since been proposed. Therefore, I will skip it because it was talking of submitting reports which you have seen. We apologise as a Committee because we did not get the full information.

3. The Chief Justice should forthwith refund the leave allowance irregularly drawn from the Judiciary. He should henceforth exercise effective general direction and firm control of the Judiciary as provided for under Section 5(2)(C) of the Judicial Service Act, 2011.

4. For his failure to provide leadership, the Chief Justice must take personal responsibility for allowances paid to Commissioners of the JSC for attending meetings that were not convened with his knowledge and approval. Similarly, an audit of such meetings should be undertaken and the responsible Commissioners surcharged accordingly.

5. For disregarding the National Treasury written advisory on management of public funds, the Chief Justice must take personal responsibility for all payments which were irregularly made on his instructions.

6. The Director of Public Prosecutions (DPP) should commence prosecutions against the following:-

(i) Mrs. Gladys Boss Shollei for gross breach of the Government Financial Regulations and Procedures, the procurement laws and failing to safeguard public funds as the accounting officer of the JSC, thus occasioning loss of public funds amounting to Kshs2,207,400,000.

(ii) Mr. Benedict Omolo for approving irregular payments and not adhering to Government Financial Regulations and Procedures as illustrated above.

(iii) Mr. Tom Atak, for his role in the procurement of the Containerised Data Centre: He should be held personally liable and be surcharged for the loss of Kshs106,720,048.97 and a further Kshs18 million for a three-year warrant for the Containerised Data Centre for the Judiciary, in accordance with the provisions of Article 226(5) of the Constitution.

(iv) Mr. Martin Okwatta for flouting procurement procedures and Government regulations contrary to the Public Procurement and Disposal Act, 2005 leading to various procurement irregularities and loss of funds at the Judiciary.

7. The current Chief Registrar of the Judiciary should take the necessary steps to ensure that Government Procurement Regulations and Procedures are strictly adhered to while procuring goods and services in the Judiciary. Towards this end, the Chief Justice should present to the National Assembly a status report on procurement, record keeping, leases of premises that the Judiciary currently occupies on or before 30th July 2015 every year, in accordance with Sections 5(2) (b) of the Judicial Service Act.

8. The Chief Registrar should forthwith effect recovery measures of irregularly paid allowances to JSC Commissioners, members of staff, allowances paid and not already earned as at this date, and improperly accounted for imprest.

9. The JSC should initiate investigations on the staff that benefitted from accelerated promotions, assess them through a job evaluation programme and place them within their rightful job cadres.

10. The JSC should forthwith cease from getting involved in operational activities of the Judiciary. The design of Article 172 is to make the JSC a policy body but we have found in the course of this investigation that it could routinely delve into operational activities of the Judiciary and even, sometimes, assume the roles that are constitutionally mandated on the judicial officers.

11. The Chief Registrar should move with speed to secure Judiciary's interests in signed leases by registering them and take possession of title deeds of all Judiciary land. The premises that are not fully occupied should be rationalised and negotiations held with the leasers.

12. The Chief Registrar should institute recovery measures on contractors who were paid and are yet to make a full delivery for goods and services and officers found responsible for the loss surcharged. The Government should further blacklist from its tenders, the firms and entities that were involved in financial impropriety at the Judiciary during the stipulated time. The Auditor-General and the Ethics and Anti-Corruption Commission (EACC) should conduct detailed further investigations into how Dimension Data, PriceWaterHouseCoopers, Timsales Limited, JKUATES Limited, Align Architects, Johnson Muthama Holdings and Simiyu Werunga ended up with inflated irregular and unprocedural procurements from the Judiciary. Those found culpable should be recommended for prosecution, recovery of public funds wasted and blacklisted from engagement in future Government contracts.

13. The Chief Registrar should fully institute and strengthen a functional internal audit control system.

14. The Chief registrar should strengthen internal control mechanisms. To this end, an inventory of all bank accounts operated by the Judiciary should be made and all the accounts operated without the Treasury approval should be closed forthwith and those with sole signatories be properly mandated and signatories regularised.

15. The JSC should operationalize the Judicial Transformation Framework and develop policies that will guide all operations of the Judiciary.

16. The Ethics and Anti-Corruption Commission (EACC) should investigate circumstances under which the Kenya Commercial Bank Limited allowed public accounts to be operated on a sole signatory mandate and take necessary action on any irregularities. Should the Kenya Commercial Bank Limited be found to have knowingly permitted lapses in procedure for operating Government accounts, punitive actions, including being suspended from holding Government accounts, should be instituted against the bank.

17. The Office of the Auditor-General and the EACC should investigate the membership and clandestine nature of operations of JKUATES Limited and similar entities in all public universities and other institutions of higher learning and,

consequently, recommend appropriate legal action on those found culpable of malpractices, including recommendation for de-registration.

18. The JSC should move with speed to complete renovations of the official residence of the Chief Justice and have the premises occupied.

19. The security update recommended by Simiyu Werunga, a security consultant and contractor, should be subjected to detailed audit by an independent security consultant working jointly with relevant departments of the Government, and any sums paid over and above the market value be claimed from the consultant/contractor. The Chief Registrar should immediately engage the beneficiaries of this project with a view to recovering public funds used in their private dwellings. In the meantime, the Chief Registrar should stop forthwith further injection of public resources in maintaining security installations in those private dwellings.

20. The members of the Finance and Administration Committee of the JSC should be individually investigated by the EACC for their roles in some of the financial improprieties and irregularities at the JSC.

21. All the money irregularly paid to the JKUATES Limited must be calculated and recovered from them. The JKUATES should refund all the money over-charged by not applying correct fees scale for homogenous duplicated designs, namely, repetitive work. All the professionals involved in this scheme to defraud the Judiciary should be investigated in their private capacities for purposes of refunding the extra fees charged over and above the statutory charges. Additionally, they should be referred to their respective professional bodies for disciplinary action.

22. Lastly, in the instances where it becomes necessary to provide enhanced specialized security to senior members of the Judiciary, the relevant arms of the Government should be actively involved, just as they do with other senior public State officers, instead of using such situations as opportunities for flouting the law by engaging private security consultants and contractors un-procedurally.

Hon. Speaker, I wish to thank you for the opportunity and the support Parliament has given us. I wish to move and ask Hon. Jackson Rop, the Vice-Chair of the Committee, to second.

Hon. Speaker: Well spoken, Hon. Rop.

Hon. Rop: Thank you, Hon. Speaker for giving the opportunity to second this very important Motion on the Report of the Public Accounts Committee on the Special Audit Report of the JSC. The Chair has gone through the whole Report. I will just sum-up because I want other Members to contribute to it.

I want to thank the Committee for a job well done. The Committee conducted a lot of interrogations, got a lot of facts and as a result, we have made the 22 recommendations that have been read by the Chair.

The Judiciary is one of the three arms of the Government that initially was poorly funded. Right now, it is in public domain that there are issues that we raised as a Committee that are being acted upon out there. As a House, we should recommend that there is an urgent need to do a surgical and radical clean-up of the Judiciary to clear the mess that is happening in that arm of the Government.

There is lack of confidence from the public on the Judiciary because of the integrity that is in question. The public does not trust the judges and the commissioners because of a leadership that is wanting. Some structural changes ought to have been effected in the Judiciary.

The issues raised in the Report were as a result of a sudden increase in the budgetary allocation to the Commission. In the 2010/2011 Financial Year, the Judiciary had a budget of Kshs3 billion. In 2012/2013, the budget increased five-fold to Kshs16 billion. Parliament's desire was good. We wanted to have an efficient and fair administration of justice by the Judiciary. As a result, the JSC and the CRJ went on a spending spree. We realized that there was financial mismanagement and irregular procurement procedures by the JSC and the CRJ.

The issues of irregular imprests, irregular allowances and advanced payments, as has been raised by the Chair, were rampant during that time. They went on a spending spree doing the leasing of premises, renting and making payments up-front. There were a lot of general weaknesses. Internal controls were not in place due to the failure by the Chief Justice to provide leadership, though he has contested this through the protest letter that he wrote to you. I am happy he also acknowledges that yes, he was paid those allowances, but he has refunded. That shows that the Committee did a thorough job.

There is the issue of Rahimtulla Tower, where there were no lease agreements. They were not duly executed and registered. The lease payments were made from deposit account as the Chair has stated, yet the amount that was in question was the voted provisions that were passed by this House. They went to the deposit account and made irregular payments. They have acknowledged those payments and said that they have refunded the money. That was an irregularity that the Committee noticed.

There was also the down payment of rent; six months down the line, yet the premises were not fully occupied. There was the lease of Elgon Place where Kshs70,147,605 was paid. That premise was meant to be occupied by the Court of Appeal, but it was not fully occupied. Those are issues that were raised by the Committee. We visited the AFC premises countrywide and found that most of the premises were not occupied with the exception of Kakamega and Meru, which were partially occupied and yet, payments had already been made.

The Mayfair Court Centre, which was meant to house the Commissioners, was also another irregularity where Kshs7.3 million was paid up-front two years down the line before even the occupation of the premise. Funny enough, the Commissioners were even allowed to design their own bathrooms in those premises. On the issue of the purchase of the official residence for the Chief Justice, initially, the house was supposed to be fully furnished. The initial figure was supposed to be around Kshs425 million which was renegotiated to Kshs310 million and upon acquisition, they decided not to furnish the house. An extra amount of money had to be looked for to furnish the house. This property was also not valued by the Government Valuer. The JSC sanctioned the purchase of the house from Mutuma Mutuma Holdings Limited, upon request by the Chief Justice. He wrote a letter to the then Head of the Public Service requesting that he and you, Hon. Speaker, ought to be housed.

We made several visits to these premises and found that the house was in a pathetic state and no works were going on. The premise had not been occupied and yet Kshs310 million had been paid for the house. This is a house we were told the Chief Justice himself invited Court Martial, that is a private security firm, to inspect the security of the surroundings. Those were American Court Martials who were invited. Up to now the same premise has not been occupied.

There is also the issue of construction of prefabricated houses where monies amounting to millions of shillings had been spent. The intentions were very good. They wanted to provide a quick solution to justice and improve service delivery. They wanted to incur the lowest cost possible. They also wanted to make it cheap because they thought constructing stone-walled

houses would have been very costly and so they ended up opting for prefabricated houses. But apparently, by the time we made the visit, all these structures had not been completed and they were not in use. That was the case and yet millions of shillings had been spent. In fact, the Auditor's Report indicates that over Kshs626, 535, 974 has been paid. He questioned the cost because we made a comparison.

I visited the Runyenjes Court House personally which is just next to the district headquarters. While the district headquarters cost about Kshs29 or 30 million, the Runyenjes Court House cost Kshs99 million. This is a prefabricated house. I could detect a spending spree in that house because all of the prefabricated houses cost between Kshs81 million and Kshs99.9 million. Surely, we could see, as a Committee, that there was a spending spree by that Commission.

The Committee's recommendation requires that the JKUATES that did the valuation even for the pre-fabricated houses--- They took 10 per cent of the initial value of Kshs951 million although this was later revised to Kshs626 million.

Hon. Speaker: Hon. Rop, I will give you one extra minute to finish seconding.

Hon. Rop: I was winding up, Hon. Speaker.

The JKUATES has really taken a lot of money from the Government, purporting to be a government to government body. When we did our investigation we found another company called "Align Architects" taking 95 per cent of the proceeds, while 5 per cent went to the Government body, which was the JKUATES. Therefore, we want this body to be investigated because it seems some lecturers are privately making money out of this in the name of the Government.

Our recommendations should be implemented although most Members have contested them. We will listen to their proposals to delete some of the recommendations we have made. We will invoke Article 226(5) of the Constitution.

I beg to second.

(Question proposed)

Hon. Speaker: Hon. Members, in order to proceed in a manner that is well-understood and structured, I gave guidance earlier on that we will, first of all, deal with the proposed amendments so that we know upfront, even as we continue to either support or oppose the Motion, whether we are moving with it as amended or in its original form as moved by the Chair of the Committee.

Therefore, I straight away call upon Hon. David Ochieng' to move his proposed amendment.

Hon. Ochieng: Thank you very much, Hon. Speaker. Before I move the amendments, I want to congratulate the Mover of the Motion, Hon. Gumbo, the Chairman of the PAC for a very well-balanced report that gives us an in-depth analysis of what the happenings have been in the Judiciary and how his Committee and him thinks we can handle these problems.

Hon. Speaker, I do not know if you want me to contribute as I move my amendments or I move my amendments first.

Hon. Speaker: At this point, Hon. Ochieng, move your amendments. As the procedure shows, that does not mean that you lose your right to contribute to the Motion as amended, if at all it will be amended. Just move your amendments.

Hon. Ochieng: Hon. Speaker, I beg to move that the Motion be amended as follows:-

By inserting the following words immediately after the words “Tuesday, 7th July, 2015”-

“Subject to the –

(i) deletion of recommendation number 2 appearing on page 136 of the Report;

(ii) deletion of recommendation number 4 appearing on page 136 of the Report, and substituting therefor with the following –

“The various Commissioners of the Judicial Service Commission must take personal responsibility for allowances paid to them for attending meetings that were convened without the knowledge and approval of the Chief Justice. An audit of all such meetings should be undertaken and the responsible Commissioners surcharged;” and

(iii) deletion of recommendation number 5 appearing on page 136 of the Report;”

With regard to the first amendment, I am happy that the Mover of the Motion, the Chairman of the Committee, had conceded that this is a factual error that need not have appeared in the Report. I thank him for that concession. By that, I assume that that amendment is agreed upon.

Hon. Speaker: Yes. With the Chairman having spoken in the manner that he did, in that he jumped Recommendation No.2, then it means that his Motion is moved without Recommendation No.2. That is the way it is taken.

Hon. Ochieng: Thank you very much, Hon. Speaker.

My second amendment is with regard to Recommendation No.4 that states:-

“For his failure to provide leadership, the Chief Justice (CJ) must take personal responsibility for allowances paid to the Commissioners of the JSC for attending meetings that were not convened with his knowledge and approval.”

My amendment is to question the wording. If you are conceding as a Committee that these meetings were done without knowledge and approval of the Chief Justice, why do you want to make him responsible? My amendment is that the Commissioners who participated in the meetings without the CJ’s approval are the ones to be surcharged. That is why I propose that the text currently be deleted and substituted with a new text saying:-

“The various Commissioners of the JSC must take responsibility for allowances paid to them for attending meetings that were convened without the knowledge and approval of the Chief Justice.”

Also, an audit of all such meetings should be undertaken and the responsible Commissioners surcharged. The idea is to place the responsibility where it lies - on the people who attended the meetings without the knowledge of the CJ, and who should have known better. This is why I propose that amendment.

My third amendment is to delete Recommendation No.5 appearing on page 136. Currently, it states that for disregarding the Treasury’s written advisory on the management of public funds, the CJ must take personal responsibility for all payments irregularly made on his instructions. If you look at page 124, you will find that the Committee basically lays down the roles of the CJ as:-

“He shall be the Head of the Judiciary, the President of the Supreme Court and shall be the link between the Judiciary and the arms of Government.”

In addition to that sub-section, he must assign duties to the Deputy Chief Justice, the President of the Court of Appeal, the Principal Judge of the High Court and the Chief Registrar and give annual reports as may be necessary.

Hon. Speaker, having gone through this Report, it is clear to me, based on what is available, that there has been a tug of war among the Office of the Chief Justice, the JSC and the Registrar of the Judiciary. The question almost asked at every point is, who should or should not approve? We even saw correspondence between the Chief Registrar and the CJ, with the Registrar telling the CJ that if he wanted to have a say on how public funds are managed, he should apply to the National Treasury to be made the accounting officer. If you are telling the CJ that he does not have a role play in that regard, why should he take responsibility for monies paid on instructions he did not have the capacity to give? How do you take responsibility for things you did not have the capacity to do? That is why I want that part deleted. The CJ did not have a role to play in payment in the Judiciary.

With those remarks, I beg to move and ask Hon. Chepkong’a to second.

Hon. Speaker: Hon. Chepkong’a, as you rise to second, his proposal to amend recommendation number two is dropped because it was skipped by the Mover for some reasons which he explained. You are seconding recommendation numbers four and five. We will put the Question with respect to each of the two.

Hon. Chepkong’a: Thank you, Hon. Speaker. I rise to second but I am not sure whether I want to second the third part of the amendment. I am only seconding part (ii) but not part (iii) for very good reasons.

I rise to second the fact as enunciated in the Report, which is that the various commissioners of the JSC must take personal responsibility with respect to allowances they received when they never attended meetings. In terms of culpability, it should be to the person who committed the crime and not the person who never committed it. We are agreeing on that one.

Hon. Speaker, with respect to part (ii), the position is very clear. On matters of accountability and transparency, no one should run away from them.

As you know, the former President of the USA, Franklin Delano Roosevelt, ruled for four terms. Thereafter, he came up with a law that no one should rule for more than two eight-year terms. He said: “The buck stops with me as the President of the USA”. When I was the Chief Executive Officer, as the Director-General of Communications Commission of Kenya (CCK), the buck stopped with me. It never went anywhere. I took personal responsibility for every action and decisions made in that institution. If you go to the CCK today, you will see the sort of regulations and rules that we had put in place. It did not matter who the Director-General who took over thereafter was. He was bound by those rules. Whenever there is a mess, we must take responsibility.

With regard to part (iii) of the amendment, I oppose it with all my heart. Although I am seconding part (ii) of the amendment, the Mover has to look for a seconder for part (iii) of the amendment. It is not a wholesome secondment. As you have said, on this one, we will vote individually. Hon. Ochieng is my good friend but on matters of accountability, they are non-negotiable. I heard an Hon. Member not shouting but mouthing that if we go in the direction proposed by Hon. David Ochieng, we will be promoting impunity in this country. Therefore,

when you are appointed chair of a particular institution, you will not take responsibility for anything, and when bad things happen you blame your juniors. We appoint you because you are better than your juniors but if the juniors are better than you, then you have no business sitting in that position. You should have left office long time ago. We pick people on the basis of their competence, technical skills and people relationship. It is about management. If you are not technically competent, then you have no business being in that office. You are supposed to provide leadership to institutions. These are the basic things we are taught in leadership classes. Nobody should sit in a position of leadership and thereafter, scapegoat and say that it is the juniors who failed. Passing the buck must never be accepted.

The former Chief Registrar must take responsibility. As the head of the administration wing, she ought to take responsibility. Equally, everybody, including me at my constituency level, must take responsibility. When things go wrong with the Constituencies Development Fund (CDF), the Member of Parliament is blamed. I know of a former Member from my county who cannot be re-elected to this House. When he was the Member of Parliament and was asked why he stole CDF money, he replied that the CDF did not belong to anyone's mother. He is reminded everyday that the seat does not belong to his mother either, and is thus not elected. We must be clear on some of these things so that you are not appointed to a position only for you to abuse others. We will not accept such a thing.

With those remarks, I support part (ii) of the amendment but Hon. Ochieng should shop for a seconder for part (iii) of his amendment.

Hon. Ochieng: Hon. Speaker, what has just happened this afternoon is an interesting thing that you would probably want to rule on for future reference. It is not a small matter. I can see Hon. Chepkong'a laughing at it. The rules about seconding are clear. If you agree to second a Motion but you stand and oppose it, you have not seconded. It is not a small matter.

Hon. Speaker: Hon. Ochieng, please get somebody else to second the third part.

Hon. Ochieng: Hon. Speaker, I will request Hon. Mulu to second.

Hon. Mulu: Hon. Speaker, do I second the entire amendment?

Hon. Speaker: No, just second part (iii) of the amendment. The issues being proposed are straightforward. I do not think we should spend too much time on them. As we have agreed, we want to dispose of the amendments so that we know that as we contribute, we are contributing on the Motion as amended or in its original form.

Hon. Mulu: Hon. Speaker, with all due respect to Hon. Chepkong'a, we are all aware of what capital finance management in this country demands.

Hon. Speaker: Hon. Makali, just second the relevant part.

Hon. Mulu: Hon. Speaker, the recommendations are clear that the CJ takes responsibility for financial payments. The person who appoints accounting officers is the---

(Loud consultations)

This is an area I have authority. Just like Hon. Chepkong'a is a lawyer, this is an area I have authority. The Principal Secretary, National Treasury appoints accounting officers. After the Chief Registrar has been appointed by the Principal Secretary, National Treasury, he or she will go ahead to appoint Authority to Incur Expenditure (AIE) holders. Demanding that the CJ takes responsibility for financial matters is being unfair to him.

Hon. Speaker: There is a point of order from Hon. Nyamweya.

Hon. Nyamweya: Hon. Speaker, is the Member in order because what happens is that the Chief Justice recommends who is going to be the accounting officer? The National Treasury then appoints---

An Hon. Member: That is not true.

Hon. Nyamweya: That is what it is. The National Treasury appoints. Let us get it clear here. Is the Hon. Member in order?

Hon. Speaker: Hon. Members, I am surprised that some of you are Members of that Committee and I am sure you have read--- The Chairman, in moving, read the functions of the Chief Registrar and the functions of the Chief Justice. In one of them, a person is specifically designated as the accounting officer so that the other former appointment is merely what comes with the provisions of the Acts.

Proceed, Hon. Makali.

Hon. Mulu: Hon. Speaker, that is why I am saying that this is an area I have a bit of authority. I do not know why people are not reading. We have the Public Finance Management Act (PFMA) which is very clear.

Recommendation No.5 says that for disregarding the Treasury written advisory on the management of public funds, the Chief Justice must take personal responsibility for all payments irregularly. If you have been appointed as an accounting authority normally what would happen is that you have the mandate to pay or not to pay. For me, this recommendation does not make sense from a public financial management perspective.

Hon. Chepkong'a: On a point of order, Hon. Speaker.

Hon. Speaker: What is your point of order?

Hon. Chepkong'a: Hon. Speaker, I rise under Standing Order No.107 with respect to the accuracy of the reporting by Hon. Makali Mulu. Item five is very clear. He is reading in a manner that fits into the way he wishes to second this part. He should second it in the format it is clearly stated: "The Chief Justice must take personal responsibility for all payments irregularly made on his instructions". It is on his instructions and not any payment that was irregularly made by someone else. If he never made any irregular payment, then he is not culpable. That is the point being made in this Report.

Hon. Speaker: The issue is "on his instructions".

Hon. Mulu: Hon. Speaker, I am not a Member of that Committee but I am asking: "Are we saying that if you are an accounting officer and you are given wrong instructions, you go and act on those wrong instructions, when you know the Constitution is very clear that that should not be done?" Is that what we are saying? We have a very clear Act of Parliament which we call the PFMA. This Act stipulates very clearly how public funds should be managed. The person who implements those wrong instructions is the one to take responsibility. Why is the Chief Registrar not in this recommendation?

I second this amendment by saying that the recommendation should be deleted for the reasons I have explained. It is very clear that the Chief Registrar is the accounting officer of the Judiciary.

Hon. Speaker: Next to you there is Hon. John Mbadi who I believe is a Member of the Committee. I am Sorry. I will propose the Question before you speak, Hon. Mbadi.

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

Hon. Ng'ongo: Thank you, Hon. Speaker. I want to support these amendments. Being a Member of the Committee, I know it could cause some concerns why I am doing so. I am going to explain shortly and briefly. It should be observed that the PAC was reconstituted. I appreciate the work that has been done by the Committee, especially the leadership of the Committee. The Chair and the Vice-Chair who were not present when a lot of debate on this matter went on have done a commendable job in moving and seconding the Report.

The reason I want to support these amendments is as follows: I had some difficulties with sections of the Report. I agree that members of the JSC under part (ii) should take personal responsibility for allowances paid to them. Actually, they can only share that with the accounting officer. For example, if today, I decide to attend a meeting that is not procedurally convened, we will not come to the Speaker to ask you to take personal responsibility. It is the member who has benefited from the irregular payments who is supposed to pay and/or the accounting officer. The accounting officer, who is the Clerk of the National Assembly now has that responsibility. You cannot put it on the door step of the Speaker; the same as the Chief Justice.

I want to read this recommendation which I am very uncomfortable with. Part (iii) says:-

“For disregarding the Treasury’s written advisory on the management of public funds, the Chief Justice must take personal responsibility for all payment irregularly made on his instructions”.

When you are making a recommendation for personal responsibility on payment, you mention those payments. That is not here. In fact, the impression it gives is that the Chief Justice made instructions for payment. I sat in almost all meetings of interrogating this matter. There is not even a single case where the Chief Justice instructed for payments to be made. Not any that I am aware of. What happened is that a sub-committee, the finance committee, was formed. It looked at payments that were above a certain amount. This came about because of the problems-- - Actually, that never used to happen previously. I wish all Members of Parliament would have witnessed the witnesses who came before us. What happened is that the JSC had initially left the entire management of the Judiciary fund to the Chief Registrar of the Judiciary. By the way, when the Chief Registrar of the Judiciary appeared before us, initially, she was bragging and saying that she was only answerable to Parliament, the National Treasury and the Public Procurement Oversight Authority (PPOA). She said that at no time would she allow anyone to instruct her to pay. That is one of the problems she had with the Judiciary.

So what happened to the JSC is that when they realised there was public outcry and that there was mismanagement of resources, they formed a sub-committee which looked at payments beyond, I think, Kshs50 million. By asking the Chief Justice to take responsibility for payments irregularly made on his instructions, I want to say that there is no evidence that he instructed the Chief Registrar of the Judiciary to make any payment. For that reason, those who will read this recommendation in future may think that the Chief Justice, Willy Mutunga sat somewhere and issued instructions to the Chief Registrar of Judiciary to pay Kshs1million or Kshs10 million. There is no evidence to that effect and, therefore, I urge this House that this recommendation is misplaced in this Report.

Thank you, Hon. Speaker. I support.

Hon. Speaker: Hon. Members, before we dispose of this matter because I intend to put the Question on both proposals--- If I could benefit from one or two Members of the Committee because there is a very interesting point that Hon. John Mbadi has raised and I think it is fair that

those of you who have sat in that Committee since September--- I can see two Members namely Hon. Bunyasi and Hon. Manje. That recommendation talks about “on instructions”. If you could just address that point, you could enlighten the House, so that as you vote happily, you have the information. You know I do not have a vote.

We can start with Hon. Manje and then Hon. Sakwa Bunyasi.

Hon. Manje: Thank you, Hon. Speaker. We know very well the Chief Registrar of the Judiciary was the accounting officer. She was the one who was supposed to authorise any payment. However, there were also structural problems at the Judiciary and at times the Chief Justice would give orders and instructions. There was a problem in managing finances in the Judiciary and since there was a lot of money, the Chief Justice created a committee for finance which also gave instructions.

I remember that Committee was headed by lawyer Ahmednassir and he was giving instructions. The instructions would be given by a committee, vouchers could be processed and payments made. Therefore, in the wisdom of the Committee, if instructions came from the Chief Justice who was not an accounting officer, then he should be held responsible. This is because by virtue of being the Chairman of the Judiciary, he gave some instructions that the Chief Executive Officer (CEO) obeyed.

On bullet five under the second recommendation, I think he should be held responsible if he gave instructions. If he did not give instructions and there is no voucher he signed, then he is free. He will not be held responsible. So, let it be open the way it is. If it is found that there is a voucher he instructed to be prepared, he signed and it went through and yet he was not the accounting officer, he should be held responsible.

Hon. Speaker: I am surprised. You are the Members of the Committee. The Auditor-General obviously must have given you indications that this one was done on so and so's instructions. It is unfair for you, as Members of the Committee, to talk about “If”. It is unfair to the House if you are telling us about “If” and you are the people that we are supposed to rely on.

Unfortunately, Hon. Mbadi put the matter in proper context that the Chairman and the Vice-Chair, who were not at that time involved in the Committee, have done their bit quite well.

Let us hear from Hon. Sakwa Bunyasi.

Hon. Bunyasi: Thank you, Hon. Speaker. I want to contribute to these amendments without prejudice to the possibility of contributing to several other things that are going to come up.

Hon. Speaker: No please. This is just to the amendments.

Hon. Bunyasi: Hon. Speaker, part of the contestation within the Judiciary was a strong position of the Chief Registrar of the Judiciary being in charge of the resources of the Judiciary and other aspects as outlined in this Report. From the evidence adduced to us, it was more of the absence of instruction from the Chief Justice that was a problem.

This clause, as it stands here, would have a blanket cover for an occurrence that was not adduced before the Committee. I agree with Hon. Mbadi that there was no case of the CJ instructing the Chief Registrar of the Judiciary to pay. If the Chief Registrar of the Judiciary got instructions from the sub-committee on finance, if it existed within Judiciary, then they are the ones who were giving instructions. I do not recall that there was any evidence adduced by the Chief Justice. So, I think the amendment by the Chairman, in my view, stands in respect to paragraph two.

Hon. Speaker: Hon. Members, we have listened to the people who have served in the Committee. So that we move with clarity, Hon. David Ochieng, I take it that your proposal to amend Recommendation No.2 by way of deletion should also be put to Question. This is because the Chairperson indicated that it should not have been there.

So, in fairness, we should put the Question also with regard to that proposal to delete recommendation number two and Hon. Ochieng's proposal to amend recommendation number four and five. I will put the Questions with respect to each of the three.

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

*(Question of the second part of the amendment, that the words
to be inserted in place thereof be inserted, proposed)*

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

Hon. Speaker: Hon. Members, again for guidance, the Motion proceeds with the amendments proposed by Hon. David Ochieng having been carried. So, we move to the amendments proposed by Hon. Benjamin Washiali.

The Member is not present. Hon. Washiali came to see me here alongside the Chairman of the Departmental Committee for Agriculture, Livestock and Cooperatives. He did not indicate to me that he is appointing somebody to move his amendments on his behalf. This is a House and there must be something in writing.

Sorry, Hon. Members. I think there is confusion even though Hon. Chepkong'a says we must take responsibility. What I have been given is wrong. Let me go by what is in the Order Paper.

The next amendment is by the Deputy Leader of the Majority Party, Hon. Naomi Shabaan.

Hon. (Dr.) Shaban: Thank you, Hon. Speaker. I wish to start by congratulating the Committee for the job it has done despite the fact that it has left out some very salient issues that were mentioned in the report.

Hon. Speaker, I beg to move that the Motion be amended as follows:-

By inserting the following words "immediately after the words "Tuesday,
7th July, 2015"-

"Subject to the insertion of the following:-

(i) New Recommendation 6(v) on page 137 of the Report as follows:-

"v. Mrs. Lydia Achode for her role in the irregular procurement of offices
at Mayfair Court Centre when she was the Registrar of Judiciary."

I will proceed to explain why I have moved that amendment with recommendation. In the Report, there is a lot that has been mentioned about Lady Justice Lydia Achode. Starting from page 69, Mrs. Gladys Shollei submitted as follows - I will go on to explain everybody as they have mentioned her in different places and yet in the recommendation her name is actually missing. She submitted that the building was leased before she joined the Judiciary. That is the Mayfair Court Centre. Mrs. Lydia Achode was at the time the Registrar of the High Court. She

was aware that building was leased on the recommendations of Commissioners Ahmednassir and Ominde who were actively involved in the procurement process.

If you proceed to page 70 of the same Report, you will find that Ms. Anne Amadi who is now the Chief Registrar mentioned that due to the short notice issued, the JSC approved the leasing of offices for its operations and instructed the Chief Registrar to identify its suitable office space for lease, for approval by the JSC. Although she did not mention who the Registrar was at that time, it was Lady Justice Lydia Achode. The current Chief Registrar also said that the Chief Registrar was under obligation to follow due process of law when leasing premises as an accounting officer.

On the same page 70, Ms. Emily Ominde who is a Commissioner submitted that the JSC was involved in the process of identifying the building. The Commission tasked the then Registrar of the High Court, Mrs. Lydia Achode, to identify office space for commissioners to move in. This was after the JSC had been given notice to move out of Anniversary Towers. She then goes on to say that Mrs. Achode identified three buildings namely Reinsurance Plaza, National Hospital Insurance Fund (NHIF) and Mayfair Centre. The JSC instructed her and Commissioner Ahmednassir to inspect the three buildings and advise on which one to lease. Based on their advice, the JSC settled on Mayfair Centre because it had more space compared to the others. The Commission then instructed the Registrar of the High Court, Mrs. Lydia Achode, to finalise the lease process.

On page 71, Gimco Limited who were the leasing agents, specifically said in paragraph three of their submissions that the company did not have an idea how the Judiciary identified the building for lease. They said they were approached by the Judiciary that was seeking to lease space on the 5th Floor measuring 3,600 Sq ft and parking space. A JSC officer by the name of Mr. Momanyi visited Gimco offices in this regard.

On page 71, Lady Justice Lydia Achode who submitted said she had written to the Ministry of Housing for valuation purposes. She thereafter tasked Mr. Ojuki to look for more premises so that the JSC could have a variety to pick from. Mr. Ojuki is, therefore, reported to have identified two more premises at NHIF Building and Mayfair Court. Lady Justice Lydia Achode submitted that she then wrote to the JSC giving them these new options and her role ended there. She did not visit the two new premises.

It is very weird that a person who was involved in an unlawful procurement and was supposed to have been the accounting officer, purports to have done this without having checked the premises and yet everybody else has pointed a finger at Lady Justice Lydia Achode for having been involved in the procurement of this office space.

Without taking too much time, I would like to point out that procurement law is there and has to be followed to the letter. In the event that an accounting officer is being given instructions from somewhere which they know is outside the law, then they should not proceed with such a process. By the time Ms. Gladys Shollei came to office, the leasing had already been done. I am surprised that there is nowhere in the recommendation where Lydia Achode has been mentioned.

On the second amendment, I would like---

Hon. (Eng.) Gumbo: On a point of order, Hon. Speaker.

Hon. Speaker: What is your point of order Hon. (Eng.) Gumbo?

Hon. (Eng.) Gumbo: Hon. Speaker, with greatest respect to my good friend, Hon. (Dr.) Naomi Shaban, I think this matter was actually canvassed. I am surprised that the Hon. (Dr.) Shaban, while reading those parts has opted not to read page 130 of the Report which says that

the Committee takes great exception to the former Chief Registrar for deliberately misleading it on the matter of acquisition of Mayfair Court Centre and strongly reprimands her. The irrefutable evidence is available as Annex 7. Irrefutable evidence shows that she personally accepted the offer by signing the letter of offer from the landlord's agency and executed the lease on 16th September, 2011. Those premises went unoccupied for two years after payments were made. Merely identifying a property for people to consider does not constitute procurement. With all humility, I submit that it is not correct. The person who signs the letter of acceptance takes the responsibility.

Hon. Speaker, I wish Hon. Shaban could take her argument in that direction.

I thank you.

Hon. Speaker: Proceed, Dr. Shaban.

Hon. (Dr.) Shaban: Hon. Speaker, I thought as they were going through this, proper investigation should have been done where Ms. Lydia Achode was concerned. This is the case and yet we chose to be silent on it because everybody, including the Commissioners mentioned how the process of procurement was done. At this point, we want to sort of say---

(Several Hon. Members stood up in their places)

Hon. Speaker: Hon. Shaban is trying to respond to the point of order that has been raised by Hon. Gumbo but, even before she has said anything worth considering as having been a response, you are rising on point of order. Let us allow her to make her response.

Hon. (Dr.) Shaban: Hon. Speaker, the least I had expected was for them to ask for proper investigation to be done by investigative bodies. In this particular case, the Committee chose to be silent. The identification and all the processes were done except at the point when Gladys Shollei came over and a few weeks later, she was told that they had already made a decision, which she was supposed to have taken charge of.

Hon. Onyonka: On a point of order, Hon. Speaker. With all due respect to a highly respected Member of this House, is Hon. Shaban in order to raise the threshold in terms of who should bear maximum responsibility when it comes to procurement process? The person who signs any legal document takes maximum responsibility. Junior officers or any other individual who may have participated in the process is literally inconsequential. The highest threshold falls directly on the person who signs the document. The person who signed the document is Mrs. Shollei. It does not require us to seek a High Court interpretation to know who exactly holds maximum responsibility on the matter.

Hon. Ng'ongo: On a point of order, Hon. Speaker.

Hon. Speaker: Hon. John Mbadi, Hon. Onyonka was on a point of order. I thought those of you who have a few more years than others know this. Now it appears like Hon. John Mbadi has forgotten this and yet he was an expert a while ago. Three years ago, he was an expert in these matters.

Yes, Hon. Naomi Shaban.

Hon. (Dr.) Shaban: Hon. Speaker, on the second issue, I beg to move that the Motion be further amended as follows:-

- (i) By inserting the following words immediately after the words "Tuesday, 7th July, 2015"-

"Subject to the insertion of the following:-

(ii) New recommendation number 23 on page 140 of the Report as follows:-

“23. That the Judicial Service Commission forthwith desists from interfering with the financial administrative and operational functions of the Judiciary; and further that National Assembly through the Departmental Committee on Justice and Legal Affairs, undertakes an urgent review of the Judicial Service Act 2011 to address through statute, the unlawful encroachment of the Judicial Service Commission into the administration of the Judiciary which falls outside of its mandate under Article 172 of the Constitution of Kenya”.

Indeed, even the Chairman who moved the Report alluded to the fact that we need to take urgent review of the Judicial Service Act so that the JSC Commissioners can work within their constitutional mandate.

With those remarks, I ask Hon. Beatrice Nyaga to second.

Hon. Speaker: I will give guidance on how voting will be done on these two amendments because you move from six to 23. In between, if there are other proposed amendments, then it may cause some confusion.

Yes, Hon. Beatrice Nyaga.

Hon. (Ms.) B. N. Nyaga: Thank you, Hon. Speaker. I rise to support the amendments by the Deputy Leader of the Majority Party, Hon. Shaban.

If you read the Report, it clearly indicates that Madam Lydia Achode was responsible for procuring the offices. Without going deep, because Hon. Shaban has already indicated exactly why she is amending the Report, Ms. Achode did not particularly consult the company leasing Mayfair Centre. It was her responsibility to do exactly that. In procurement procedures, you are supposed to consult and bring everyone on board so that you can know exactly what you are procuring.

Madam Lydia Achode did not even visit the building to verify what the Commission was interested in occupying. She was given the responsibility to check the three buildings namely the National Hospital Insurance Fund Building, Mayfair Centre and Reinsurance Plaza. She did not check the buildings, and yet she recommended that Mayfair Centre was the building that the Commission was supposed to rent.

It is indicated on page 70 that she was given the responsibility of finalising the process. That means that she was supposed to do everything after other officers had done their part. So, she has a responsibility to bear. She is supposed to be part of the process.

I also support the second amendment. The Commission is supposed to desist from interfering with the financial and administrative operations and functions of the Judiciary together with the National Assembly through the Departmental Committee on Justice and Legal Affairs.

I support the amendment.

(Question, that the words to be added be added, proposed)

Hon. Speaker: Hon. Members, these matters are straight forward. Let me just put the Question. I will make sure that we put a Question on each of the two.

(Question, that the words to be added be added,

put and negatived)

Hon. Members, I put the second Question relating to the second amendment.

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

Hon. Speaker: I hope the Clerks are taking note of the amendments that are carried and the ones that are rejected so that finally, when we are putting the Question with regard to the Motion we will include the amendments.

I now call upon Hon. Amina Abdalla to move her amendment.

Hon. (Ms.) Abdalla: Thank you, Hon. Speaker.

I beg to move that the Motion be further amended as follows:-

By inserting the following words immediately after the words “Tuesday, 7th July, 2015”-

“Subject to the deletion of recommendation number 19 on page 139 of the report, and substitution thereof with the following:-

“The security upgrades implemented by Mr. Simiyu Werunga, a security consultant and contractor, should be subjected to detailed audit by an independent Security Consultant, working jointly with relevant departments of the Government, and any sums paid over and above fair market value be claimed from the consultant/contractor.”

Essentially, this is deleting a recommendation by the Committee that asks the Chief Registrar of the Judiciary to charge the beneficiaries of this project to pay for the cost of those security upgrades. It is the JSC’s decision to give the Supreme Court judges extra security. So, if the procurement is wrong, the fault is upon the JSC and not the beneficiaries.

Secondly, the Committee says these security upgrades are in private residences and yet the Judiciary does not provide residences for the judges. So, where does the Committee expect those security instruments to be put rather than in the private residences of the judges? This is tantamount to, for example, if the procurement department of Parliament procures irregularly the water that we drink here then we are told that although you are entitled to drinking water while you are in the Chambers, you are going to be surcharged for the same if it was procured wrongly.

Based on those reasons, I beg to move the amendment. I ask Hon. David Ochieng to second.

Hon. Ochieng’: Hon. Speaker, I second. Thank you.

Hon. Members: Put the Question!

Hon. Speaker: Obviously, I need to propose the Question but, if the mood of the House is that I propose and put the Question at the same time, then I will accordingly do so. I will obediently do that.

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

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

(Question of the second part of the amendment, that the words to be inserted in place thereof be inserted, proposed)

(Question of the second part of the amendment, that the words to be inserted in place thereof be inserted, put and agreed to)

Hon. Speaker: I now call upon Hon. Samuel Chepkong'a to move his amendment.

Hon. Chepkong'a: Thank you, Hon. Speaker.

I beg to move that the Motion be further amended as follows:-

By inserting the following words immediately after the words "Tuesday, 7th July 2015"-

"Subject to the insertion of the following words immediately after the words "Administration Committee of the JSC" appearing in the recommendation number 20 on page 139 of the Report:

"Commissioners Smokin Wanjala, Mohammed Warsame, Ahmednassir Abdullahi, Rev. Samuel Kobia, Christine Mango and Emily Ominde".

This is to make it clear because members of the Finance and Administration Committee of the JSC have been changing from time to time. I am saying this out of the information I have as the Chairperson of the Departmental Committee on Justice and Legal Affairs. It will be unfair to subject the new entrants to the committee to investigations on matters that they never participated in.

Secondly, this Report is time-specific. We are talking about events that happened when certain individuals were in office during the time the investigation was being undertaken by the PAC.

I move the amendment as the Member for Ainabkoi Constituency, but aware that I am the Chairperson of the Departmental Committee on Justice and Legal Affairs. We want members of the JSC to take responsibility for monies which we appropriate to their care. This country gives the Judiciary Kshs18 billion. This is not little money. I am looking for about Kshs2.4 billion to tarmac a road in my constituency which is about 53 kilometres. This will completely change the face of that constituency and the life of the people wallowing in poverty in my constituency. When you are appointed to a position of responsibility, you should be able to take responsibility for matters that take place.

Thirdly, culpability is not on the basis of a committee but on an individual basis. Responsibility is per person. That is what the law recognises. It recognises individual responsibility as opposed to corporate responsibility. I would like to request Hon. Ochieng to second.

I thank you.

(Laughter)

Hon. Ochieng: Hon. Speaker, I do not know whether to second or not. This contradiction tells you - I hope Hon. Chepkong'a learns from what we were talking about earlier on - that all these things that we do in Parliament, especially when we talk about corruption, we talk about individuals and not corporates or generalities. That is why I second this amendment. We need to

look at who we are talking about here. We are talking about persons that we know but above all the recommendation does not say these people are culpable. It says that they should be investigated to see if they had any role to play. I hope the bodies concerned will take the action being proposed by the Committee. The Ethics and Anti-Corruption Commission (EACC) should investigate if, in their role, the persons have had any dealings that would lead to loss of money.

Hon. Speaker, I second.

Hon. Speaker: I am just allowing Hon. Mbadi an opportunity to take his seat.

(Question, that the words to be added be added, proposed)

Hon. Speaker: The Member for Seme has not spoken this afternoon and I can see he is agitated. Let me give him an opportunity.

Hon. (Prof.) Nyikal: Hon. Speaker, I have really been trying to catch your eye. Even in other amendments that have passed, there are areas that I did not agree with. For example, if somebody---

Hon. Speaker: Are you contributing to this amendment?

Hon. (Prof.) Nyikal: I am supporting this amendment, Hon. Speaker. However, since you have given me---

Hon. Speaker: Hon. Nyikal, the reason we are trying to dispose of these amendments quickly is so that we can allow Members to debate the Motion as amended.

Hon. (Prof.) Nyikal: Hon. Speaker, please assure me that I will get an opportunity to debate the Motion as amended. I do not support the amendment as it is because I would like to move a further amendment, if the Mover agrees. I have seen throughout the debate that there was confusion within the Judiciary and the establishment of this committee threw further problems and marred the distinct functions between the CJ and the Chief Registrar of the Judiciary. This committee was working and the members were commissioners. If we remove this as suggested by the amendment then they go scot-free.

I agree with Hon. Chepkong'a's statement that the investigation should be limited to the period covered by this Report, but we should investigate what happened with this committee. In my view, it caused more problems than any other issue that has been raised in this Report. It blurred the distinction of roles. Many instructions would have come from this committee that the Chief Registrar of the Judiciary acted on. If they go scot-free then nobody takes responsibility. The members of the committee will not take responsibility, the CJ will not take responsibility and the Chief Registrar of the Judiciary will not take responsibility. So, if the House agrees, we should retain it but further amend it as it is under Recommendation No.20 to be limited to the period covered by the Report. That way, those who have worked outside that period are safe.

Hon. Speaker: Before I give you a chance, Hon. John Mbadi, do you have the Report with you? I know you are a Member of the Committee. Kindly, for clarity and benefit of every Member, read for us Recommendation No.20 before you contribute.

Hon. Ng'ongo: Thank you, Hon. Speaker. Recommendation No.20 reads as follows:-

“Members of the Finance and Administration Committee of the Judicial Service Commission should be individually investigated by the Ethics and Anti-Corruption Commission for their roles in some of the financial improprieties and irregularities at the Judicial Service Commission.”

Hon. Speaker: The point I wanted to understand is: Is Hon. Chepkong'a's proposal naming the persons who were members of that committee?

Hon. Chepkong'a: Yes, Hon. Speaker.

Hon. Speaker: So, rather than just saying individually, the amendment names them specifically?

Hon. Chepkong'a: Yes, Hon. Speaker.

Hon. Speaker: I see. Hon. John Mbadi, you can make your contribution.

Hon. Ng'ongo: Hon. Speaker, consider this amendment critically. By the way, you have gone ahead even to lead us the way I wanted to argue my point. There is no variation apart from attaching the names. Therefore, it makes no difference. I only have one problem. Allow me to say it and then I sit down. I started by saying that I had problems with some specific recommendations because this is a committee decision. When you make recommendations of investigations to an institution like the EACC, you need to be specific. You need to say exactly which areas you want the EACC to investigate with regard to the functions of this sub-committee. It was not illegal because the JSC formed it.

So, the members of the committee did not just cause themselves to be in that committee. They were given specific tasks of approving payments beyond Kshs50 million because of what had transpired. If you are going to hold them responsible individually for doing that notwithstanding the fact that they did that which they had been tasked to do by the JSC, you are being unfair to them. This is especially if you leave the rest of the membership of the JSC without taking responsibility. This is unless, in the process of doing what they were tasked to do, they made a mistake. That now calls for personal culpability. I can tell you for a fact that although I sat in that committee, I have no evidence that was adduced that they went beyond what they were told to do unless I lie, which is unparliamentary.

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

Hon. (Eng.) Gumbo: Hon. Speaker, with all due respect to my good friend, Hon. Mbadi, I want to state that I fully support Hon. Chepkong'a's proposed amendment. A committee sitting involves calling witnesses who speak on the HANSARD. Some of the witnesses we called, including Mrs. Shollei told us that some of the decisions they took were on account of the work of the Finance Committee. We are simply saying that they have been mentioned. As Parliament, we do not have the capacity to investigate them individually. We are not saying that they are culpable but members of the finance committee should be individually investigated. We are only recommending investigation. Their names were mentioned as having interfered with some processes. If you read even in the observation section of this report, you will find that members of this committee were mentioned many times by the witnesses we called. Because Parliament does not have the capacity to go deep into the individual actions, we said that we would give the body charged with that mandate to do it. So, I persuade my good friend, Hon. Mbadi, to allow this proposed amendment to go through.

Hon. Ng'ongo: Let me wind up, Hon. Speaker. I do not want to argue with the Chairman of my Committee. When you talk of investigations and calling of the EACC, I started by saying that you need to mention those instances. I know that there were very many allegations made by Mrs. Shollei when she appeared before us. That was not supported by any other witness. So, if you just go by the presentation of Mrs. Shollei, you will lose it.

Finally, we are contradicting ourselves in this Report. Why do I say that?

Hon. Speaker: What is your point of order, Hon. Chepkong'a?

Hon. Chepkong'a: Hon. Speaker, Hon. Mbadi is my very good friend but he must be careful when he makes certain assumptions. I would have expected him, as a member of the PAC, to state very clearly the documentation that we were provided with. As you know, our Committee investigated this matter. I feel very pained because documents were presented to us on instances that the members of Finance Committee approved the leasing of Elgon Court and the purchase of the Chief Justice's house. We have documentation and minutes to prove that. I speak as the Chairman of the Departmental Committee on Justice and Legal Affairs. We should not mislead the House because we have documentation. I can provide that. I do not want us to misstate facts that have already been presented to a Committee. I am making this proposal with a lot of courage, as Hon. Amina knows. She asked me: "Are you sure that you are going to be safe?" I told her that I was going to be very safe because this is money that belongs to Kenyans. It does not belong to those fellows who were given to administer. So, you must be responsible when you administer that money. Let me say this as the Chairman of the Departmental Committee on Justice and Legal Affairs.

If the Report will be taken to the EACC, we must take it with names. We do not want Mr. Halakhe to go and look for other names. We want to be very clear with names which will be taken to the EACC. These are the issues that we blame the EACC for, which is looking for everybody all over the place. We must be clear, as Parliament, so that the EACC is not being blamed every time. I feel pained here when we do not want to be clear.

The CEO, together with the new commissioners need to be very clear on what Parliament wants to be achieved.

Hon. Ng'ongo: Hon. Speaker, the point of order by Hon. Chepkong'a is reinforcing what I am saying. On the issue of Mayfair Court or the Chief Justice's house, he should mention it. He claims to have evidence, but I am also saying that on the Chief Justice's house, it is Mrs. Shollei who decided on her own to pay Kshs310 million. There is no evidence to the effect that the JSC approved the amount.

Hon. Nyamweya: On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Manson Nyamweya what is your point of order?

Hon. Ng'ongo: Hon. Speaker, if you allow me, because I know he is going to say what I want to say---

Hon. Speaker: No! No! He is also a Member of that Committee.

Hon. Nyamweya: On a point of order, Hon. Speaker. It is not fair for a Member of this Committee to mislead the House. It was the JSC which sanctioned the payment. They held a special meeting. It is in the Report. Therefore, it is not fair for a Member to mislead the House. For one reason or the other, he has either forgotten or he did not attend the meeting. He is coming up with his own ideas. It was very clear that initially they rejected, but finally they approved and called the entire Commission to approve the payment.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Mbadi, just conclude your submission.

Hon. Ng'ongo: Hon. Speaker, you know when Hon. Nyamweya speaks, you think he is telling the truth in all aspects.

(Laughter)

Let me leave it that way. The point is that when you come to the CJ, the JSC---

Hon. Speaker: Hon. Mbadi!

Hon. Ng'ongo: Let me withdraw that.

Hon. Speaker: Hon. Mbadi, you know we are dealing with the issue of these names and not the CJ.

Hon. Ng'ongo: The Chief Justice's house has come up and I want to avoid it.

Hon. Speaker: Why do you not express your opinion by being explicit?

Hon. Ng'ongo: Hon. Speaker, if you look at Recommendation No.20 and our earlier recommendation, you will find that we are contradicting ourselves. We are blaming the CJ.

Hon. Speaker: So you oppose?

Hon. Ng'ongo: Yes, the CJ together---

Hon. Speaker: No! No! So that we can conclude and Members debate the Motion---

Hon. Ng'ongo: Hon. Speaker, please just allow me to finish. We are the ones who have said that the CJ and the JSC allowed the Chief Registrar to do things the way she wanted. At the same time, when they intervene now through a committee, we again say that they should not have done anything.

Thank you, Hon. Speaker.

(Hon. Shimbwa walked in the Chamber)

Hon. Speaker: Hon. Members, including the Member for Changamwe, you must freeze. Hon. Omar Mwinyi, you cannot just walk as though you are in Changamwe. I know you are the king in Changamwe, but surely, we also have our own rules here.

Hon. Members, everybody is now clear about the proposed amendments. I am sure you can now vote.

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

Having disposed of the amendment by Hon. Chepkong'a, the proposed amendment by Hon. Irungu Kang'ata becomes superfluous, is it not? This is because it is in the same tenor.

(Proposed amendment by Hon. Kang'ata withdrawn)

(Question of the Motion as amended proposed)

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

Resolved accordingly:

That this House adopts the Report of the Public Accounts Committee on the Special Audit Report of the Judicial Service Commission and the Judiciary of May 2014, laid on the Table of the on Tuesday, 7th July, 2015, subject to-

(i) deletion of recommendation number 2 appearing on page 136 of the Report;

(ii) deletion of recommendation number 4 appearing on page 136 of the Report, and substituting therefor with the following –

“The various Commissioners of the Judicial Service Commission must take personal responsibility for allowances paid to them for attending meetings that were convened without the knowledge and approval of the Chief Justice. An audit of all such meetings should be undertaken and the responsible Commissioners surcharged;”

(iii) deletion of recommendation number 5 appearing on page 136 of the Report;

(iv) insertion of new recommendation number 23 on page 140 of the Report as follows:-

“That the Judicial Service Commission forthwith desists from interfering with the financial administrative and operational functions of the Judiciary; and further that the National Assembly through the Departmental Committee on Justice and Legal Affairs undertakes an urgent review of the Judicial Service Act, 2011 to address, through statute, the unlawful encroachment of the Judicial Service Commission into the administration of the Judiciary which falls outside of the mandate under Article 172 of the Constitution of Kenya”.

(v) deletion of recommendation number 19 on page 139 of the Report, and substitution thereof with the following:-

“The security upgrades implemented by Mr. Simiyu Werunga, a security consultant and contractor, should be subjected to detailed audit by an independent security consultant, working jointly with the relevant departments of the Government, and any sums paid over and above fair market value be claimed from the consultant/contractor”.

(vi) insertion of the following words immediately after the words “Administration Committee of the JSC” appearing in the recommendation number 20 on page 139 of the Report:-

“Commissioners Smokin Wanjala, Mohammed Warsame, Ahmednassir Abdullahi, Rev. Samuel Kobia, Christine Mango and Emily Ominde”.

Hon. Speaker: Hon. Members, now we can go back to the amended Motion. This now means that the Member for Seme is at liberty to make his contribution. I hope he is ready. Is he ready?

Let me recognise the Member for Seme.

Hon. (Prof.) Nyikal: Thank you, Hon. Speaker. Let me start by appreciating the work done by the Chair and his Committee on this. The Report has revealed a severe dysfunction in the department. There is a severe weakness of management and lack of good records. I do not see how you can run an organisation if records are not kept. That is a fiasco. There is poor adherence to procurement procedures and this is done haphazardly. There is also poor human resource management. In summary, you cannot have an organisation if all that is not done.

Having made the recommendations which are fairly broad, there is need to further look into the functioning of the whole judicial system in the country.

Hon. Speaker, the Report further indicates how nearly all the senior officers from the CJ, the Chief Registrar, the Director of Procurement to the Director of Finance showed severe dereliction of duty. I do not know whether it was deliberate. If the procurement and finance departments are not properly run, there will be severe loss of money. There is wastage; that has come out from this Report. We seem to appreciate having the committee in place, although I

doubt whether it is provided for in law. But administratively, a head of an institution can put in place structures that help him in management.

In the case of the Finance Committee, there was confusion because it brought the whole responsibility of the Chief Registrar to all the commissioners sitting in that committee. As Hon. Mbadi said, you cannot blame the committee without blaming the institution that put it in place.

[Hon. Speaker left the Chair]

*[The Temporary Deputy Speaker
(Hon. Kajwang') took the Chair]*

If there was clear distinction of responsibilities, I doubt if the institution would have required that committee. As to who is responsible, an accounting officer will always have a letter that states that he has responsibility. You can get advice from your junior officers but at the end, you hold the final responsibility. That is the work of accounting officers.

If all the recommendations are implemented, they will go a long way in curbing corruption. However, we need to look further so that this department works efficiently. Looking at the losses coming out of this, and having noted that at one point this department appeared before the Budget and Appropriations Committee requesting to buy an aeroplane to help them perform their duties, I am more worried about what other things they can do.

I appreciate the recommendations put in place, particularly the one which says that where money has been lost, we should look for the people responsible so that it can be recovered. The biggest problem with this country is that whenever issues of corruption are unearthed, it does not matter what action is taken; the culprits eventually go home with the loot. Sometimes the loot is so big that losing the job becomes a good option, if you can safely go home with the money. The recommendations from the Committee should be implemented, and a follow up on the same done.

The Temporary Deputy Speaker (Hon. Kajwang'): Let us have the Member for Kikuyu.

An Hon. Member: She is not in!

The Temporary Deputy Speaker (Hon. Kajwang'): Yes, the Member for Luanda.

Hon. Omulele: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to speak on this well done Report. It is my desire to congratulate this Committee for a job well done. This is a well-put together Report. It is a sad manifestation of the state of our nation today. This Report is a litany of lamentations of corruption carried out on a large scale in our country although in this case it happened in the amphitheatre of the Judiciary. If you look at this Report, you will wonder whether the Judiciary, being the arbitrator in matters where people are at cross purposes, looks at the law that it uses in this process. The law that is supposed to be followed by the Judiciary in the cases reported here is well stated. If an epic institution such as the JSC in this country cannot obey simple regulations of procurement, then we are in trouble.

Hon. Temporary Deputy Speaker, I have looked at this and we all know what is happening in that amphitheatre of the Judiciary specifically, in the JSC. We know today for a fact that one of the judges who sits in one of the highest courts in this country - the Supreme Court - will go on trial when the President constitutes a tribunal on allegations of corruption. If

you look at the way the JSC is constituted today taking into consideration what the Chairman of the PAC, Hon. (Eng.) Gumbo has stated here today, you will find that the JSC is on trial.

You will be worried if you look at the composition of the JSC. If you also look at the members of the JSC, you will find that some members who appeared in the case and are imbued in these allegations of corruption have been sitting in that Commission. This is the case and yet they stand there today to arbitrate and make decisions regarding their employees. These judges are employees of the JSC. If one of the members of this Commission also appears before this tribunal, courts and the Supreme Court and represents a client and then crosses to sit in the JSC to arbitrate where allegations of corruption have been made with regard to one of the judges, I submit that that is manifestation of conflict of interest. I am surprised that when these matters were being arbitrated before that JSC nobody really told themselves “by my position, the way I have acted in the past, by my appearances for some of the people who may be adversely mentioned as witnesses even before the JSC and the tribunal that might be put in place, then it is proper for me to step aside.” They did not. They appeared on television and pretended to have a saintly mien, that they are good arbitrators of matters in our country. I am worried.

If you are keen, you will find that practising advocates before these courts also purport to act for institutions in which some people who have been mentioned adversely in matters that are appearing before that JSC, an institution they head, are alleged to be key players in this game of corruption. You will also find that they are acting for these institutions.

For a fact, I am not afraid of mentioning that some people who sit in the JSC act for the Nairobi City County. They have acted in such mundane or simple matters but today I am not afraid to report in this House that they have bills in the Judiciary to be arbitrated upon by registrars and magistrates who have been employed by the JSC. These members sit in the JSC and they are employers of these registrars, magistrates and judges whom they appear before. They appear before these magistrates today and pretend saying “your honour I am here and I bow my head”. These magistrates then appear before them the following day and ask them: “Please, can you promote us? Can you look at my case favourably?” Is this not an incestuous situation we are facing? We are faced with monumental problems. We must be very angry as a country at this situation. This is a terrible situation and this Report vindicates my position.

We must act as one nation. We must say no! There must be a point where we must say “Let us stop here. Corruption is going to destroy this country.” The Pope was here and he told us that corruption is a cancer that is going to destroy this country. We sit here, look at this Report and the letters and say that because a certain name looks like it is from my place, it should not be there. That should not be the case in this situation. We must start with this Report by registering our indignation against corruption in this country.

I thank my brother, Hon. Gumbo and his Committee for a superb job. They have clearly set the ball rolling for this House and set the record straight this year. We must put the blame exactly where it belongs. The blame must go where it belongs. The people, who orchestrated and performed this corruption in the highest institution that arbitrates between Kenyans when they disagree, must be held responsible. We must clean the JSC. This is an indictment of the JSC.

I stand here to support this Report in its entirety. One must come out clean, if he is to sit on the JSC. If you are an advocate in this country, then do not practise before those courts. It is not correct and you cannot pretend to appear before somebody over whose head you hold the proverbial Damocles Sword. You can cut this person any time, and yet you pretend and call him

“My Lordship”. Please, if you find that I am improperly before you, you may arbitrate my matter. It is not right.

With those few remarks, I support this Report.

The Temporary Deputy Speaker (Hon. Kajwang’): Well spoken from the people of Luanda. You deserved every minute that you got. Let us have the Hon. Member for Kitui Central.

Hon. Mulu: Thank you, Hon. Temporary Deputy Speaker. I must start by appreciating the work of the PAC of this House. If you read this Report and have heard the way it has been presented by the Chairman of the Committee, this House has a responsibility to thank that Committee for the work well done. Hon. Gumbo’s presentation was excellent. He gave us a lot of details and, therefore, I will not focus on the details.

This Report is dated May, 2014. To some extent that worries me because we are in 2016. This was a Special Audit Report initiated by this House. It will be important in future that we slot this as a House Business matter so that such reports are discussed immediately and if there are recommendations, action is taken immediately.

From the Report, it is clear that at that time, the Judiciary did not have any system in place. There was a lot of confusion in the way things were done. With such confusion, any intelligent person who has an intention of engaging in corruption will take advantage of such a scenario.

As representatives of the people, one of the lessons we must learn is that from today onwards, before we allocate any resources to any Government institution, it is important we demand a proper assessment of the systems. This Report clearly states that we allocated the Judiciary Kshs16 billion up from Kshs3 billion. This is almost five times more than we had allocated to them the previous year. It is normal for us as human beings to engage in funny deals when we get a lot of money which we have not worked or planned for. What was happening this time was that the people in charge of the Judiciary were trying to create reasons why they had to spend this money and as a result pocket some. As a way forward, time has come that, as a House, we must demand proper monitoring and evaluation of all Government programmes before we give more money so that at the end of the day we are sure that we are giving money to institutions which have the capacity to implement and utilize all those funds.

The reports by the Controller of Budget - we have said this many times - instead of telling us the financial aspect of it could actually go an extra mile and tell us the outputs of the expenditure. This will enable us compare the outputs and financial expenditure to see whether there is correlation between the two.

In my opinion, we are not going to help Kenyans if we do not do that. It is time the Budget and Appropriation Committee took the area of monitoring and evaluation seriously. I propose that this House should carry the responsibility of ensuring that the directorate that is in charge of monitoring and evaluation in the Executive is properly resourced so that it can give us information that can enable us make the right decisions. This will also ensure that when other Members--- I sit in the budget making Committee, we have data which supports what we are discussing.

The other area that I think is important, and we must take seriously is looking at this Report and the entire procurement process. It worries me, and I must say that the people who sit in the PAC have great hearts. If it were me, I would have collapsed out of stress. If you look at what has happened and the way people are “eating” money left, right and centre, it is like we are

beating a dead donkey, it is very disappointing. Kenyans must be very disappointed when they hear that this House is discussing reports like this.

As we move forward, this Report has captured the issue of irregular payment of allowances. You are paid an allowance, and yet you are not entitled to that allowance. That is why I like the recommendation that states that in such a case, people must take individual responsibility. If it is written that it is Hon. Makali Mulu who was paid that irregular allowance, the Government has no choice but to make sure that the money is refunded. All the three arms of Government must recover that money so that people get value for their money.

Hon. Speaker, any report by the PAC that I have read talks about irregular imprest every year. This is the case and yet there are clear regulations on how imprest should be taken and surrendered. I always wonder, in a situation where people get irregular imprest, what stops the accounting authority from recovering it. People earn salaries and other allowances that can be used to recover that. This is an area, as a House, we need to tighten even if it means changing some regulations. There are loose ends and we need to tighten them so that public money can be safeguarded in future. This means that you can withdraw money from this account, the money is transferred to another account and you withdraw money from another account. This is one of the easiest ways of making sure that money is taken from Government system through corrupt means. It is also not very clear how the Controller and Auditor-General could not pick some of these things that this Report has picked. We are aware that the Controller and Auditor-General had backlog in terms of preparing audit reports in the past. I am happy that we are now discussing this Report and these are timely reports. If they are in arrears, it may be in a year or two. The idea of making sure that audits are done at the end of the financial year and within six or seven months is to help this country. We should stop looking into issues that took place five years ago. We will not achieve much in cases where people retired five years ago and yet their names are appearing in these reports. Even if we recommend that the money be recovered, you will find that the officers have already been paid their terminal benefits in lump sum and are on pension.

I saw an officer who had misappropriated about Kshs106 million. If the report recommends that we recover the money and the officer has retired, that person will die within the next one year and a dead person cannot repay debts. This country will keep on losing money. It is important that immediately it is found that these officers have misappropriated funds, they are kicked out of public offices and we can recover the money from their assets or whatever money they have in banks. That way, we will be helping this country.

Just to emphasise my point, we need to give special reports first priority so that they are discussed and the country benefits from the recommendations.

With those remarks, thank you very much for giving me the chance.

The Temporary Deputy Speaker (Hon. Kajwang'): The Member for Nambale, it seems like you will be the last one on this.

Hon. Bunyasi: Thank you, Hon. Temporary Deputy Speaker. I rise to contribute and support this Special Report on the Judicial Service Commission (JSC). I am a Member of the PAC and so, I speak from the fact that I sat through most of the sessions.

The depth and vigour of the Report shows how one arm of the Government that is given the responsibility of oversight can do its work. I am sure that there are very many cases of this nature that do not normally see the light of day or do not get the openness that is implicit in the Report we have before us. This should hold true, whether we are looking at the Parliamentary

Service Commission (PSC) or the Executive. If we do that, Kenyans will progressively gain confidence in the governance system that is before them.

In respect of the Judiciary, it was right and proper for resources for the JSC to be increased. It turned out to be a factor of 500 per cent with the net increase of 400 per cent. That was the right thing to do. That is what the Constitution required. It is the best thing that Kenya ever saw at the time. However, as it turns out, and now this is with the wisdom of hindsight, there was tremendous spending exuberance. There is sort of happiness around spending this money in ways that are touched on, but did not look at the procurement law, for instance.

It may well have been okay had it not been for the fact that in some cases you get the sense that there was personal gain in the decisions that were being made. It was simply a question of getting these structures quickly and perhaps forgetting a step here and a step there. We may still have condemned it, but not with the same weight as we have done in this case. It seems that in the spending decisions, there was an element of potential gain. That is what must be fought vigorously in the Judiciary and in all the three arms of the Government.

It would have been wonderful if this debate was being held in August, 2014, one or two months after the Report was prepared. It is now more than a year-and-a-half. We commented earlier this week about the need for the House Business Committee (HBC) to prioritise urgent reports that have been brought before the House. That is before they are outdated. We make recommendations here that are two or three years old because these things had happened before the Special Report. As much as it is less of history, I know it can still be an input in any follow-up action that might arise in any other institution. It is one year-and-a-half since the Report was presented to the House, and two to three years since the acts were committed.

There are interesting findings in this Report on the Judiciary. JKUATES Ltd. would be one worth mentioning. I mention it for two reasons. One, the JKUATES Ltd. produced a valuer for the Judiciary that looked at the house that was meant for the CJ. Although it was JKUATES Ltd. sending, it was sending somebody affiliated to it and who was not certified to do the valuation. It took the Architectural Association of Kenya (AAK) to say the person sent was not a member in good standing as she did not have the right qualifications. The JKUATES Ltd. had the embarrassing situation of backtracking and saying: "Actually, she was not doing evaluation; we simply asked her to give us an indication of the neighbourhood of price." That was a very lame excuse. Negotiations then proceeded around the indication she gave in the neighbourhood of price, which is what valuers do. They give you a neighbourhood of price that you can either accept or reject. That was a major mistake on the part of JKUATES Ltd.

Two, the same JKUATES Ltd. acted as if they had a firm that could bid. Actually, it is simply lecturers who have organised themselves and are using the university name. However, it is not being taken up by line architects who are all members of staff of the JKUATES Ltd. Again, JKUATES Ltd. was fronting itself to help the lecturers, under a line architect, to avoid competition in bidding so that it is considered a government to government transaction when it is just a bunch of perhaps well qualified people who do not want to go through the procurement procedure specified in law.

These occurrences have shaken the very foundation of the Judiciary in many ways. You do not get a sense of responsible action. However, my prayer is this: It must not be a situation where sharks see the blood in water. This must also be an occasion when we want to involve everybody we may have wanted but we had no way of doing it. In all fairness, everybody must get his or her share of consideration; that is from the top to the bottom. There may have been

other areas that we have reason to disagree with one of the officers in the Judiciary, but this cannot be the occasion. It is time for us to deal with the issues that have been raised. The issues are many and heavy. However, it must only be within the issues that have been raised. We have other occasions in which we shall pick up other aspects that are related to the Judiciary. We have an opportunity to do these things.

I hope that the anger that has been expressed by various speakers is not just about the issues that have been exposed. They should spare some anger for the future. In the event no action is taken, they should be very angry. Otherwise, they will only be angry about what has passed and time is a healer. After some time, naturally you heal and you are no longer angry. I am talking about anger for the future so that actions like these are not taken to help fix the Judiciary and alert others that, that is not the way to go because it can fundamentally affect their position and life.

I am glad with the amendments that have been proposed. They are all decent. I could see the bipartisan spirit in the House, the spirit of give and take. Members have considered the amendments that hit one side or the other. That is depending on the support systems in the House, but they have gallantly gone through them and cleaned them.

The Report speaks a lot for itself and it can stand on its own. It is a job well done by the people who spent all the time putting it together. I strongly support the Report.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang'): The Member for Kajiado North and the Member for Kimilili, it has been a very live and vibrant debate this afternoon, but I think you will have an opportunity on Tuesday when we resume. That is when you will be fresh and your points will be heard in a more sober manner.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Kajwang'): Order Members! The time being 6.30 p.m., this House stands adjourned until Tuesday, 16th February, 2016, at 2.30 p.m.

It is so ordered!

The House rose at 6.30 p.m.