

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 9th July 2015

The House met at 9.30 a.m.

*[The Deputy Speaker
(Hon. (Dr.) Laboso) in the Chair]*

PRAYERS

QUORUM

Hon. Deputy Speaker: Can we have the Quorum Bell rung?

(The Quorum Bell was rung)

Let us settle down Hon. Members. We now have quorum. Hon. Members, please resume your seats. We want to start. We may now start business.

PAPERS LAID

Hon. Katoo: Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House today Thursday, 9th July, 2015:-

The Report of the Auditor-General on the Financial Statements of Lands Limited (A subsidiary of Agricultural Development Corporation) for the year ended 31st March, 2014 and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of the Petroleum Training Fund from the Ministry of Energy and Petroleum for the year ended 30th June, 2014 and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of Petroleum Development Levy Fund for the year ended 30th June, 2014 and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of the Kenya Energy Sector Environment and Social responsibility Programme for the year ended 30th June, 2014 and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of the Numerical Machining Complex Limited for the year ended 30th June, 2014 and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of the Kenya Institute of Curriculum Development for the year ended 30th June, 2014 and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of the Centre for Mathematics, Science and Technology Education in Africa for the year ended 30th June, 2014 and the Certificate therein.

The Report of the Auditor-General on the Financial Statements of the United Republican Party for the year 30th June, 2014 and the Certificate therein

Thank you, Hon. Deputy Speaker.

STATEMENTS

RESPONSE TO HON. BOWEN'S BILL ON UWEZO FUND

Hon. Deputy Speaker: Hon. David Kangongo, do you have a Statement?

Hon. Bowen: Thank you, Hon. Deputy Speaker. I want to seek your indulgence on a legislative proposal I did almost a year ago about a Bill I intended to bring to this House on Uwezo Fund. It went to the Departmental Committee on Finance, Planning and Trade and I was called to appear before the Committee. Later I was also told to appear before the Budget and Appropriations Committee almost a year ago.

It has taken too long. I have three legislative proposals. I do not know how long it takes for a Committee to discuss a Member's Bill or proposals because it has taken too long. When I go to the Legal Office, they always tell me that they have not received any report from the Budget and Appropriations Committee and the Departmental Committee on Finance, Planning and Trade and yet it has taken too long.

I seek your indulgence.

Hon. Deputy Speaker: Is the Chair of the Departmental Committee on Finance, Planning and Trade here to shed some light on why it has taken too long? Does anybody have anything to tell the Hon. Member concerning the length of time it has taken to process his Bill?

The earliest opportunity we get the Chair of the Departmental Committee on Finance, Planning and Trade he will give us an indication as to when your proposal will be ready for you to present.

Yes, Hon. Nicholas Gumbo.

CONSIDERED RULING ON CONSTITUTIONAL PROVISION

Hon. (Eng.) Gumbo: Thank you, Hon. Deputy Speaker. If you recall, two weeks ago I had requested for a considered ruling from you regarding the constitutional provision---

Hon. Deputy Speaker: It seems the volume is not right.

Hon. (Eng.) Gumbo: Hon. Deputy Speaker, two weeks ago I had requested for a considered ruling from you regarding what I thought was an apparent legal *lacuna* on the provisions of Article 115 *vis a vis* Article 94 with regard to the power of referral and you said you would consider it and give an indication when we could get the ruling. I just wanted to know if you have pronounced yourself on the matter and when we could probably expect the ruling.

Hon. Deputy Speaker: Okay. If I remember correctly, we said we wanted to give a comprehensive response to that after looking at various documentations not just from here. You will have to allow us a little bit more time to do a good job on that.

Hon. (Eng.) Gumbo: Okay. Thank you, Hon. Deputy Speaker. Let us move on to the next Order.

BILL

*Second Reading*THE ETHICS AND ANTI-CORRUPTION
COMMISSION (AMENDMENT) BILL*(Hon. Chepkong'a on 7.7.2015)**(Resumption of Debate interrupted on
8.7.2015 - Afternoon Sitting)*

Hon. Deputy Speaker: Hon. Members, this Bill had been sufficiently debated. What was left was for the Question to be put.

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

LIMITATION OF DEBATE

Hon. Deputy Speaker: Yes, Hon. Katoo.

Hon. Katoo: Thank you, Hon. Deputy Speaker. I rise pursuant to the provisions of Standing Order No.97. As you call out Order No.9, this House resolves that the debate on the Vetting of Judges and Magistrates (Amendment) Bill, National Assembly Bill No.19 of 2015 be limited as follows: A maximum of 45 minutes with five minutes for each Member and five minutes for the Leader of Majority and the Leader of Minority parties and 10 minutes for the Mover in moving and five minutes in replying.

This is not a very big Bill. Having seen the Order Paper for this afternoon that this House may resolve to go for recess in accordance with the House Calendar, we would like to finish this Bill. If the House so agrees, this Bill will go into the Committee Stage in the afternoon. It is a very small Bill that the Committee has deliberated. Therefore, I request that the House agrees with my Motion on limitation of debate so that we finish it before we go for recess.

*(Question proposed)**(Question put and agreed to)***BILLS***Second Readings*

THE VETTING OF JUDGES AND
MAGISTRATES (AMENDMENT) BILL

Hon. Chepkong'a: Hon. Deputy Speaker, I beg to move that The Vetting of Judges and Magistrates (Amendment) Bill (National Assembly Bill No.19 of 2015) be now read a Second Time.

This is a fairly straightforward Bill. The Committee seeks to amend Section 23(3), which reads as follows:-

“Despite subsection (2), the Board shall conclude the process of vetting all judges, chief magistrates and principal magistrates not later than the 28th March 2013 and any review of a decision of the Board shall be heard and concluded within the above specified period.”

Hon. Deputy Speaker, as you know, we extended the time of the Judges and Magistrates Vetting Board for two years from last year. Therefore, their time will expire on 31st December, 2015. This House has expressed itself very clearly that they must conclude the process within that time. Therefore, the Committee has considered this matter.

There are two reasons why we are seeking the deletion of that sub-section. Firstly, the Tenth Parliament, in their wisdom, decided that all the judges, magistrates and principal magistrates must be vetted by 28th March 2013. That was to allow those magistrates and judges who were going to handle petitions to go through the process. Unfortunately, that did not happen.

There are 29 chief magistrates and principal magistrates who have not been vetted because their time came and passed before they were vetted. This group of magistrates and principal magistrates remains outstanding to date.

The tragedy of this old matter is that the chief magistrates and the principal magistrates cannot apply to be promoted to the position of Judge of the High Court or Judge of the Court of Appeal, the reason being that there is an express provision that requires that if one has been on the bench and is required to have been vetted but has not been vetted, one cannot be promoted. So, they are working under frustration, knowing that they cannot be promoted. That is why we are seeking that this particular sub-section be deleted. What constrained the Board was not indolence.

As you know, the Board is composed of judges from the Commonwealth. The term of those judges expired and they left. The process of recruiting new ones took a little bit of time because they had to come through the National Assembly, and we concluded that process in 2014. So, we got the three judges only last year. That was the only way they could have reconstituted the Board.

The drafters of the Constitution, in their wisdom, said that for purposes of ensuring that there is impartiality, there must be, at least, three foreign judges in the Board. So, the delay was caused in recruiting the three judges from the Commonwealth. They are now in place and their term ends on 31st December, 2015. We have agreed with the Board that they will constitute three panels for purposes of expediting the vetting of the remaining chief magistrates and principal magistrates. We hope that they will be through by 31st December, 2015.

Hon. Deputy Speaker, Hon. Members have been asking me whether by passing sub-section 3, which is being replaced, means that we will be extending the Board's time beyond 31st December, 2015. That is far from it. What this new sub-section provides is that if a matter has begun and the ruling has not been issued, that matter will be concluded. However, this does not

apply to a new matter. It only applies to pending matters. They must conclude all matters by 31st December, 2015. If by that time they would not have issued their ruling, the Board will not be prevented from reading their ruling thereafter. However, they are not supposed to start a new matter after 31st December, 2015.

With those remarks, I would like to request the indomitable Member for Ugenya, Hon. David Ochieng, to second.

Thank you, Hon. Deputy Speaker.

Hon. Ochieng: Thank you, Hon. Deputy Speaker. I would like to thank the indomitable Hon. Chepkong'a. I do not know what the word "indomitable" means but since he has used it with regard to me, it is okay. I wish to second this Bill which is straightforward Bill and does not have many issues.

One thing that has always exercised the minds of Hon. Members since the last Parliament is the timeliness with which we are supposed to go through the vetting process. Timelines were set but they were not met. The D-day for vetting of judges and magistrates was supposed to be 31st March, 2013 but it never happened. From that time to date, their files have not been touched. It is an oversight on the National Assembly and the Board.

We have had very many amendments on this Bill, but this particular provision has kept on eluding us. Now that it is before us today, we request the Board to expedite the process because, as Hon. Chepkong'a has said, the careers and promotions of the magistrates depend on this process which has been put on hold for all this time. That is why I request Members to support this amendment Bill.

Hon. Deputy Speaker, as you know, the operations of this Board have been tampered with by very many court cases, with individuals trying to block its work. So, it is only fair that the Board refrained from doing things that would open it to court cases. That is why they held back and said they would not touch the files until they have a clear go-ahead from Parliament. That is why they decided not to continue with the process until they get a clear go-ahead from the National Assembly.

I am happy that this debate will take only 45 minutes. I hope that it will be disposed of before we go on recess so that the Board can proceed with its work.

One of the reasons why this Board was set up is that it was thought that through an independent Board, there would be due process and that they would conduct themselves in an impartial, transparent and accountable manner. However, as we all know, there have been cases before court. There have been complaints about the way the Board has been conducting itself. Therefore, we request the Board to operate above board to avoid anything that may, again, take its time through court cases.

Finally Hon. Deputy Speaker, it is important on the way forward that we emphasize that this Vetting Board will not have an extra day past 31st of December this year. This is because it has taken too long. We cannot have a temporary Vetting Board taking Six to Seven years. So, we want to ask them to do these things on time.

With those few remarks, I Second.

(Question proposed)

Hon. Deputy Speaker: Hon. Daniel Maanzo is the first one on my list.

Hon. Maanzo: Thank you, Hon. Deputy Speaker for giving me this opportunity to contribute on The Vetting of Judges and Magistrates (Amendment) Bill, 2015. The Vetting of Magistrates and Judges in the country is a very important exercise which was carried as part of the reforms in compliance with the new Constitution.

The Judiciary forms one arm of the three arms of the Government. It is very important because this is where justice is executed and justice has to be seen to be done. One way of seeing justice done is by having people who have been vetted, and people of integrity being in charge of the justice system. The vetting process should give confidence to the country that judges and magistrates who lead the courts from the Magistrates Court to the Supreme Court that have been vetted are people of integrity.

During the vetting process, the country contributes so that any member of the Republic of Kenya within and without who knows why a certain judge or magistrate must not serve should come forward and speak about it so that the matter is sorted out. This will enable the member of the Judiciary to sit there with confidence of the people of Kenya so that justice can be realised.

The amendments are important because they will make sure that this Board completes its work. I also believe that even in future we have to relook at this law because some people will leave and others will be hired so that they can sit on *ad hoc* basis. As you can see, it has financial implication on budgetary allocations of the country. Therefore, this Bill and the amendments are also very important because they were brought by the indomitable people, as they say, from the Departmental Committee on Justice and Legal Affairs. I would like to support this Bill and urge other Members of Parliament to support it so that our country can move forward.

Thank you, Hon. Deputy Speaker

Hon. Gichigi: Thank you, Hon. Deputy Speaker. I rise to support this Bill. It is regrettable that despite the wisdom of the Tenth Parliament which knowing the habits of Kenyans to procrastinate and fail to keep timelines, was very specific that it wanted this job in its assessment to be completed by 28th March, 2013.

Obviously, we are two years and several months down the line and this job has not been completed. I have no hesitation to blame the Vetting Board. Obviously, they did not have proper plans. They took advantage of the situation and have been probably earning income two years beyond what they should have earned.

I feel for the 29 judicial officers who have not been vetted because first, probably they were not promoted. Secondly, they have been living in anxiety for that period because they do not know what will be their fate after they are vetted. That is why the Tenth Parliament had given us these timelines.

If the 29 judicial officers went to court against this Vetting Board, they can probably earn some damages especially on lost opportunity and anxiety. I wish to sanction the Board for their level of productivity. Throughout this period they have been unable to do what they were supposed to do.

I support this Bill, and it is important that the Members who are going to contribute to it know the provisions that are in the original Act which are very specific - limiting the term of the Board to 31st December, this year. There is no provision for any further extension.

Unfortunately, this Committee should have seen this. It does not say what happens if the Vetting Board does not complete its work. So, what happens to the 29 judicial officers if the vetting and determination of their cases is not completed? You need to think about that as we move to the afternoon for the Third Reading of this Bill or the Committee Stage. What are the

sanctions? What will happen, if despite the very clear provisions we have put in law, they do not complete this job? Take care of that provision.

Finally, as we transit these judges from pre-vetting to the post-vetting stage and they become part of the larger Judiciary, I would like to caution the Judiciary that everybody in this country knows that there is no department in this State that is wasting tax payers' money especially on development projects as the Judiciary does.

They inflate the prices, cost of their services and their projects to really crazy levels. We are watching them and one of these days they will end up in a lot of trouble. What has befallen the former Chief Registrar is just a tip of the iceberg. I foresee serious problems for the Judiciary in terms of corruption and public wastage in future.

I support.

Hon. Chea: Thank you, Hon. Deputy Speaker for this opportunity. I wish to support the vetting of Judges and Magistrates (Amendment) Bill. When the process of vetting commenced in this country, it actually instilled confidence to the consumers of justice. What subsequently happened is that we saw very many cases being taken to court by those who had actually been vetted. As a result, it appeared like the process of vetting had actually lost direction. But most importantly, whenever you wish or subject people to vetting, it is important that the process takes place as fast as possible. This is because if there are Magistrates who today deserve to be promoted but cannot get those promotions because of the fact that they have not been vetted then that is quite unfair.

Once a hearing has commenced and a determination has not been made, it is important that the time has to be extended up to the time when that particular determination is made. Many Magistrates have been thrown out as a result of this vetting. There are also stations where there has been a serious shortage of magistrates. The other day, we heard about Mombasa lawyers complaining bitterly about the absence of ---

Hon. Wakhungu: On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Gunga, there is a point of order by Hon. Chris Wamalwa. What is your point of order?

Hon. Wakhungu: Thank you, Hon. Deputy Speaker. With these televised debates which I have been watching keenly, the Hon. Member on the Floor is not Hon. Ochanda. However, what is being shown on Television is that he is Hon. Ochanda, the Member of Parliament for Bondo. Hon. Deputy Speaker, can you confirm because I do not think he is Hon. Ochanda. Something is wrong somewhere.

Thank you.

Hon. Deputy Speaker: The media needs to be given proper information as to which Member is on the Floor. It is noted.

Hon. Chea: Thank you very much, Hon. Wamalwa for raising that matter. This is the Member for Kaloleni. I hope that will now be reflected correctly.

Hon. Deputy Speaker, what I was saying is that as a result of this vetting, there are stations that have been heavily affected in terms of the number of magistrates. The other time we had cases of lawyers in Mombasa complaining bitterly about the shortage of these magistrates. So, it is important that this exercise is completed in good time so that those who are found guilty are shown the door while those who will be cleared can continue discharging their duties to the public.

It is a small Bill and I do not want to belabour the point. Therefore, with those few remarks, I wish to support.

Hon. Deputy Speaker: Hon. David Kangongo.

Hon. Bowen: Thank you, Hon. Deputy Speaker. I rise to support the Chairman of the Departmental Committee on Justice and Legal Affairs on this proposal. This is a very small amendment. It was just meant to align the Act with the amendment which was in this House before, which talked about the Board to finish their work before 31st December, this year. It is very important because if the section remains the way it is, it might bring up some litigation issues. That is why it is good to bring the amendment, which I support.

The Judges and Magistrates Vetting Board has done very good work in the Judiciary. In the Judiciary, cases are now being deliberated very fast because the Board has really worked to make sure that they have streamlined the Judiciary, especially the judges. The corruption allegations which we used to hear in the Judiciary have also reduced now.

I ask the Chair of the Departmental Committee on Justice and Legal Affairs if some members of this Judges and Magistrates Vetting Board can be incorporated in the Judiciary for continuity and sustainability of the core values and principles of dispensing justice in the Judiciary. This is because some of those judges who were vetted before have gone back to their old days of delaying cases. Corruption issues are again emanating from the Judiciary. I do not know how we can make this process continuous so that the Judiciary we have today can be different from the one we had 10 years. Going forward, we also see more services from the Judiciary.

There is also need for this Committee to bring together the issues we have in the Judiciary and the Judicial Service Commission (JSC). There have been issues especially between the JSC and the Judiciary. This is because sometimes we have heard issues of the JSC running the Judiciary on a daily basis, which should not be the case.

I stand to support the amendment and ask the Chair to also considers bringing in some of the members of the Judges and Magistrates Vetting Board into the Judiciary so that we can sustain these service delivery values and principles.

I support.

Hon. Deputy Speaker: Yes, Hon. Chrisantus Wamalwa.

Hon. Wakhungu: Thank you, Hon. Deputy Speaker. I rise to support this amendment. It is a small and straightforward amendment but it has far reaching implications. The 29 officers who have not been vetted must have gone through a lot of stress and anxiety. They have also lost opportunities. How are they going to be compensated? If someone is to work optimally in any work environment, there must be a conducive working environment. So, you can imagine the stress those officers go through. Maybe some of the judgements they made had mistakes. So, the opportunity cost had far reaching implications.

Coming back to the main issue here, it is indeed important that we extend this timeframe so that these people can be vetted accordingly. You can imagine the lost opportunities of promotion. This is because the requirement is you must be vetted before you are promoted. Indeed these officers have really suffered.

However, my message to the Vetting Board is that we also need to know if it was delayed for purposes of continuing to gain income or for purposes of having that job. We need to know that because this thing of coming up with a timeframe did not just come from nowhere. You

must have looked at some issues and realised that this was a realistic timeframe. It raises another question why there was that delay.

Hon. Kaluma: On a point of information, Hon. Deputy Speaker.

Hon. Wakhungu: Do you want to inform me, Hon. Kaluma? Hon. Deputy Speaker, he can inform me.

Hon. Deputy Speaker: Who wants to inform you?

Hon. Wakhungu: Hon. Kaluma wants to inform me.

Hon. Deputy Speaker: I do not see any intervention by Hon. Kaluma

Hon. Kaluma: Hon. Deputy Speaker, I sit in the Departmental Committee on Justice and Legal Affairs under whose charge the Judges and Magistrates Vetting Board falls. The mandate of the Vetting Board ends in December, this year under the Constitution. That Board, through its entire membership, has confirmed to us that they do not desire an extension. They do not desire at all. So, let us leave that worry. The situation we had was that we conscripted time in terms of the period during which magistrates were to be heard. We have had to go back when that period came.

Hon. Deputy Speaker: Hon. Wamalwa, I hope you are now fully informed.

Hon. Wakhungu: Thank you for that information but I want to say that they do not need to desire but they need to work as per what is laid down. I do not want to talk too much on this. We support this Bill and we want to move it with speed to expedite the whole process so that those officers who have issues of lost opportunities can catch up. We request them to do it professionally without any fear or favour, and as Parliament, we are there to support them. I am just trying to imagine some of the delayed cases. We know that justice delayed is justice denied.

Thank you, Hon. Deputy Speaker. I support.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Deputy Speaker. I support with amendments. The reason why we brought the issue of vetting of judges and magistrates was because of judicial reforms. You cannot have judicial reforms in perpetuity; that you are reforming endlessly. We wanted the reforms because there was an outcry from the country that the Judiciary was not serving the country well.

A recent report by Transparency International has indicated that the Judiciary does not have public confidence, especially on issues of corruption. Therefore, for me, when we want to give an extension which is open-ended, then what we are doing is shooting ourselves on the feet. This is because some of the members will decide that this is a permanent career and they will just be vetting people forever.

You could decide that you want to vet one person for six years or vet another for 20 years. So, I will propose an amendment to add at Sub-section (3) that: "But in any event shall not exceed one year from the period of extension." If it goes beyond that period then it has to come back to Parliament.

As the Chair has said, we will see whether there is justification so that if people are creating careers for themselves, then Parliament will determine whether they need any further extension or not.

Hon. Deputy Speaker, I am hoping that this time even as they are looking at vetting, they will be more gender sensitive. Yesterday, a Member spoke to the issue of whether arrogance and character should be taken into account when looking at a person under Chapter 6.

I wish the same courtesies were extended to several women, including Nancy Baraza when she was faced with her case and also Lady Justice Ang'awa. As women, we know that we

have very peculiar interests. Not interests as such but peculiar make-up. There are certain times of the month that we may be moody and there are some certain ages that we are automatically moody. If such things are not considered when looking at women, then you will send enough women who are exceptional judges and magistrates home. I am hoping that they will take that into account when they will be looking at the issue of vetting of judges and magistrates.

I support with amendments.

Hon. Dido: Thank you very much, Hon. Deputy Speaker. I rise to support this Bill. This Bill is not just about a legal matter; rather it is about delivering timely justice for Kenyans. When we have deadlines put in Bills and a body is to sit within a prescribed time, if it does not do its duties within that time, then individuals cannot be penalised because the Board has not sat within that time. There is need to have an automated sort of precedence where we say that so long as individuals are not the ones who are delaying the Board, then if that time lapses, they can be given an automatic way for them to get promotion or for it to be accepted that they have been vetted for that matter.

One of the reasons why this vetting is taking too long---

(Loud consultations)

Hon. Deputy Speaker: Order, Hon. Members! The consultations are too high and there are very many people upstanding, including Hon. Cheboi.

Hon. Dido: Thank you, Hon. Deputy Speaker. The reason why this vetting is taking too long is because it is on television. Because it is on TV, individuals are grilled even on matters they have not been in any way accused.

Hon. Chepkong'a said that there are foreign judges on the Vetting Board. As long as we have those judges, as a House, we need to be reassured that it will also not occasion delay in future action of the Board. It is very important.

One of the reasons why we have this Board vetting Judges, Principal Magistrates and Chief Magistrates is because of lack of appraisal reports within the judicial system on individuals. I do not see the need for individuals to be vetted if there is a continuous assessment of their performance and if there are misdemeanours within their areas of jurisdiction. As a result of this backlog, there are cases of delayed delivery of justice to Kenyans. The Bill has suggested that the deadline that had been set initially be removed. We hope that what the Bill expects to deliver will be achieved.

I beg to support.

Hon. Deputy Speaker: Hon. Members, we gave ourselves a certain time and we are keeping that time. It is almost there. Eng. Gumbo.

Hon. (Eng.) Gumbo: Thank you, Hon. Deputy Speaker for giving me the opportunity to contribute to this Bill. This amendment Bill guarantees continuity. In my view, the existing provisions and the sub-clause which we intend to amend which gave us up to 28th March, 2013, presupposed an ideal world.

As we know, Kenyans are always Kenyans. Apart from having the habit of always loving never to miss an opportunity, we are also a very litigious society. We rush to court even when we feel that someone has described our manner of dressing inappropriately. This provision is a small amendment, but as has been said, as we do the vetting, let us be sensitive to the provisions of Article 232 of our Constitution which requires that appointment into public service must

consider all manner of things including regional balancing, gender, persons with disabilities and all groupings of the Kenyan society.

Otherwise, I wish to support. Thank you.

Hon. Deputy Speaker: It is now 10:27 a.m. It is time for the Mover to respond. If he is magnanimous with his ten minutes, I can suggest from my list There is Hon. Kajuju, Hon. Makali and Hon. Olago. If you are magnanimous, you can donate some time to them.

Hon. Chepkong'a: Thank you, Hon. Deputy Speaker. Since the appeal has come from the Deputy Speaker herself - you know I have a lot of respect for you - the mentioned persons, including the Leader of the Majority Party will benefit from my donation of time. So, that makes a total of about four minutes and I will remain with two minutes to conclude.

Hon. (Ms.) Kajuju: Thank you, Hon. Deputy Speaker and my Chairman for donating this moment. I support this amendment and note that this body was a transitional body that was supposed to assist the Judiciary and Kenyans in general to restore the confidence in the Judiciary that was lacking by the time we passed the Constitution in 2010.

We know that there are very many judges and magistrates who are awaiting promotion upon the successful completion of their vetting. We want to believe that once that is done then they are going to be in their positions. This vetting Board must know that what it will deal with as at now, are only matters that are before it. Therefore, we do not intend at all to extend its life after the 31st December, 2015. It has been stated in this House before that that time cannot be extended.

I, therefore, support.

Hon. Mulu: Thank you, Hon. Deputy Speaker. I also want to join Hon. Members in supporting this amendment, but I would plead with the Chairperson that I am also going to bring further amendments. The amendment which allows matters which have not been determined to just go on without considering any specific time frame is a very dangerous amendment. I would plead that we either fix six months after the end of the extension or one year so that we control this. We are aware that Kenyans can take advantage of this. The more they remain in office, the more we continue paying them. We seriously need to think about value for money.

The other thing I would be asking for if I was a Member of this Committee is the evaluation of past performance. We should have been told whether, the way the board has performed has assisted Kenyans. If not, then we should have no reason to extend their time.

Thank you, Hon. Deputy Speaker for giving me the chance.

Hon. Aluoch: Thank you, Hon. Deputy Speaker and my Chairman, Hon. Chepkong'a. I want to say something different. There is a quiet but very intense hostility by the Judiciary towards the Vetting Board. That is why the Board has been plagued by a lot of applications that delays its work.

I want to tell the Judiciary that they are being watched. Every time judges go to court for orders against the Vetting Board, they get those orders. The orders made by the Vetting Board are stayed. I want the Judiciary to know that they are being watched. We expect that with this extension, the Board will not be plagued down by applications from the Judiciary against the Board.

There is no way a goat can get justice when the lion is presiding over its case. It is important for the Judiciary to know that they should let the Board do its job within the time prescribed. The Board should also understand clearly that this House will not extend its life after 31st December, 2015.

Thank you, Hon. Deputy Speaker.

Hon. A.B. Duale: Thank you, Hon. Deputy Speaker. This is the last time we are giving a lifeline to the Vetting of Judges and Magistrates Board. For about nine months, we have not heard about them since the Chair brought an extension in 2013. We also do not see them. We do not know who they vet and now, they have affected the career progression of very senior Kenyans in the judicial system. My good friend who worked very well with the Moi regime, Mr. Rao, this amendment is your last chance. You better start saving. Pack your bags and go by December. We will find another way. This is because this has now become a permanent job.

Mr. Rao and his team should work between now and December. Hon. Chairman, please do not bring any other extension. As the Leader of the Majority Party, we will use the tyranny of numbers to make sure that your amendment will not go through. We do not care whether you do business with Rao but he should know that he is very lucky that the Chair has given him this lifeline today. He should make use of it.

Thank you. I beg to support.

Hon. Chepkong'a: Hon. Deputy Speaker, I would like to take this opportunity to thank every Member who has contributed and supported the Bill.

Hon. Deputy Speaker, I beg to move that The Vetting of Judges and Magistrates (Amendment) Bill be now read a Second Time.

Hon. Deputy Speaker: Order, Hon. Members! Before I put the Question, I want to welcome Loresho Primary School from Westlands Constituency, Nairobi County who are in the Public Gallery. You are welcome to the National Assembly.

(Question put and agreed to)

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

Hon. Deputy Speaker: Hon. Members, before we read the next Order, I want to call on the Chairman of the Committee on Agriculture and Fisheries.

Hon. Nooru: Thank you, Hon. Deputy Speaker. Having looked at the business appearing as Order No.10, and bearing in mind that there are many amendments proposed by the Committee and one of the Members of the Committee, Hon. Millie Odhiambo, and further having received very many amendments requests by stakeholders, I seek your indulgence to invoke a provision of the Standing Order No.131 for the business appearing under Order No.10 on the Order Paper be stayed until a suitable period after the short Recess to give the Committee time to harmonize and conclude all the amendments in time.

I put that request, Hon. Deputy Speaker.

Hon. Deputy Speaker: Okay. We will allow the Committee to harmonize their amendments with other amendments from the Members and also for the Committee so that we can have this Order at a later date.

Hon. Members, we can then move to the next Order.

(Committee of the Whole House on The Fisheries and Development Bill deferred)

THE COMPANIES BILL

*(Hon. Chepkong'a on 8.7.2015)**(Resumption of Debate interrupted on 8.7.2015)*

Hon. Deputy Speaker: Was the Chairman moving this Bill?

Hon. Chepkong'a: Yes, I was. I thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: You have a balance of 43 minutes.

Hon. Chepkong'a: I thank you, Hon. Deputy Speaker. This is resumption of debate which we commenced yesterday.

As you know, this is a very important Bill to the Government and Kenyans because Kenya has been rated as the poorest country in terms of ease of doing business. This is because of a very archaic and backward legislation that was incorporated in 1962; which was substantially borrowed, word for word, from the 1948 Companies Bill of the United Kingdom.

The UK Bill of 1948 was overhauled and there is a new Bill at the moment. In fact, the Act itself has been subjected to revisions a number of times and yet it still remains in our books.

It has been very difficult to deal with companies which have been committing various atrocities against Kenyans. The passage of this Act will ensure that a number of these anomalies are corrected and a new environment brought into place to ensure that companies that want to do business in this country are able to conduct their business with a lot of ease.

The purpose of this Act is to facilitate commerce, industry and other socio-economic activities by enabling one or more natural persons to incorporate as legal entities with perpetual succession with or without limited liability.

The aim is to develop a modern company's law to support a competitive economy in a coherent and comprehensive form. The Bill seeks to consolidate the law relating to incorporation, registration, operation and management of companies and registration, operation and management of foreign companies that carry out business in this country.

The Bill has taken into account a number of trends and those that are trending in this part of the globe and internationally to ensure that the Bill or Act, when passed, will reflect the present day circumstances of carrying out business across the world including modern patterns of regulation and ownership.

As I stated yesterday, the current Companies Act is written with large companies in mind. In fact, the environment favors big companies. The provisions that apply to private companies are more of exceptions and not the rule making them hard to understand and to apply.

The Bill has endeavored to restructure those parts of the law to make them relevant to small companies including one-person companies. What has been earth-shaking is the fact that for the first time in this country, you can now register a company as an individual. You do not need to look for a partner to register a company. The current law inhibits one person registering a company. For instance, Chepkong'a can incorporate a company as a single director without the need of having two directors as required at the moment.

What has become very trending is that people cheat by looking for other people including their milk men to become directors for purposes of ensuring that they comply with the law. So, when you are looking for the other director, you wonder who it is. When he or she appears before the Criminal Investigation Department (CID) whenever a criminal matter is being investigated, they

are unable to explain how they registered this company. So, we are seeking to do away with that sort of cheating in terms of incorporating companies.

Hon. Deputy Speaker, the language used is also very simple and clear. We have ensured that there is clarity in this law now. You can even do it yourself. You can register a company without having a Memorandum and Articles of Association. The reason this Bill is very bulky is because you can be granted a certificate without the necessity of having a Memorandum and Articles of Association. You only comply with what is contained in the law. You do not need now to go to the companies registry to file a Memorandum and Articles of Association. All of it is contained in this law. As long as you have a certificate and you comply with what is contained in this law, you are good enough to go.

*[The Deputy Speaker
(Hon. (Dr.) Laboso) left the Chair]*

*[The Temporary Deputy Speaker
(Hon. (Ms.) Shebesh) took the Chair]*

Hon. Temporary Deputy Speaker, with regard to the formation of companies, there will be a separate model of Articles of Association for private companies that will contain the minimum key rules on the internal workings of the company. The aim is to make them shorter and clearer.

On the same note, the Bill now makes it possible for one person as I have said to form a company. Thus the concept of a one-person-company is being introduced in Kenya for the first time, and that is contained under Clause 11(1) of this Bill.

Clauses 54, 52 and 53 of the Bill make clear indication of the type of the company, whether it is a public or a private company. A public limited liability company will now go by the initials “PLC” so that it can be different from a limited liability private company.

Private companies will now go by the initials “LTD” as opposed to all companies whether private or public. At the moment, this is contained in Cap.16 (486) of the Companies Act. It does not differentiate between a public company and a private company. What this Bill does is to introduce differences between a private company and a public liability company. This will make it easier for members of the public to know from its name the type of company they are dealing with.

Hon. Temporary Deputy Speaker, this Bill makes it clear on registration or re-registration. Clauses 69 to 91 make it possible for companies to re-register from either a private company to a PLC or vice-versa. That is conversion. You can now convert a company either way. You can have a private company today and then tomorrow you change it to a PLC. That is contained from Clause 69 to 92. This procedure will ensure that the company can re-register to ensure that there is continuity of business in whichever form you would like to continue.

The requirements of the Company Secretary have been very contentious. This is provided for in the current Bill. We went through the first Bill which was withdrawn by the Leader of the Majority Party because we had 900 amendments to 1,076 Clauses. When we went through this Bill, we reduced the Clauses from 1,076 to 1,027. This was as a result of the 900 amendments that were proposed by the Committee which we tabled in this House. So, the importance of company secretaries in the management of companies is very important in this Bill. However,

having considered the nature of private companies that conduct business, the Bill considers that the mandatory requirement for a company secretary ordinarily hinders business.

If you look at Clause 245 of the Bill, you will find that it provides that it is no longer mandatory for a private company with a share capital of less than Kshs5million to have a company secretary. However, this has been opposed seriously by the Institute of Certified Public Accountants of Kenya (ICPAK). They gave us a memorandum in which they stated very clearly that majority of the companies - 80 per cent - share capital is less than Kshs5 million. So, they have persuaded the Committee to recommend amendments to lower the threshold from Kshs5 million to Kshs1 million.

The company that has a share capital of Kshs1 million would not require a company secretary. However, it is mandatory for any company that has a share capital of over Kshs1million to have a company secretary.

The regime for small and private companies is simplified and places greater responsibility on promoters and directors together with other company officials in the management of companies. However, companies best practices and the doing of business indicator show that the requirements of a company secretary for a private company is a hindrance to the doing of business by Small and Medium-Enterprises (SMEs). So, that is the reason why the Bill was providing for a threshold of Kshs5million. However, having considered the views of ICPAK, we came to the conclusion that probably that is a higher threshold. It should be reduced to Ksh1million. So, we will be moving an amendment to that effect.

As part of enhancing good corporate governance, provisions have been introduced to enhance accountability by directors and the companies' officers. Various penalties have been introduced for directors and company officials who fail to comply with the provisions of the Act.

In the current Act, the directors have always escaped responsibility because they have hid under: "We are a limited liability company." The company is a different entity from directors. So, they have run away from responsibilities. This Bill ensures that directors and other officials, including the company secretary, shall be responsible for the actions of a company because a company cannot operate without directors.

The 1948 Act, which is Chapter 486 now in Kenya ensures that the directors are protected from any liability because they hide under the cover that the company is a different legal entity from directors and that if there is any liability, it shall only lie with the company.

Clear reporting arrangements are now required with express procedures on how to deal with conflict of interest situations. It has been very difficult in the current legislation to deal with conflict of interest of directors.

For instance, the borrowing of monies from a bank by the directors is in total conflict of their requirements that they must not participate in borrowing monies to reduce the value of the company. This legislation or Bill ensures that we do away with those bad practices by directors of interfering with the management of companies.

Hon. Temporary Deputy Speaker, banks are also companies. Stiff penalties, including fines and terms of imprisonment, have been introduced other than the fines which are contained in the current Companies Act. We have introduced imprisonment now. We will see directors not only paying fines but also being sent to jail. This provision did not exist before.

These are the provisions that have existed in other developed economies, like in the United States of America (USA). You must have seen many directors being fined and sent to jail

because of poor governance of their companies. This Bill will ensure that the directors operate in such a manner as to protect the interests of the shareholders.

Hon. Temporary Deputy Speaker, in this Bill default fines have been introduced for directors and company officers who do not comply with the Act. If you fail to comply with the Act, you will be fined. We are ensuring that we create greater responsibility for directors and managers of companies. All these provisions are contained in Clauses 122-254 and Clauses 620-703 of the Bill.

With regard to the directors, the general duties that a director owes to the company are currently established in case law rather than in the statute, making it hard for them to be widely understood. That has been very difficult. Many of the gray areas have been contested in court, and the courts have made decisions that can only be found in the archives of the courts.

Unfortunately, many Kenyans are not aware of case law because it is something that is mostly known to lawyers alone. All the best practices contained in case law have been encapsulated in this Bill to ensure that every Kenyan knows the good practice that a company or a director must be engaged in.

As we say, ignorance of the law is no defence. Truly, everybody is expected to read this law so that they can know what good governance is in a company. The Bill has included a statutory statement of directors' general duties to make the law in this area more accessible. It has also changed the law which no longer corresponds to modern business practices. This is dealt with in Clauses 123 to 235. There are over 100 clauses that deal with issues of governance by directors and companies to ensure that shareholders are protected.

Hon. Temporary Deputy Speaker, I know that the Leader of the Majority Party has a lot of work to do. He wants to second this Bill, so that he can attend to other issues elsewhere. However, he is restrained today because he has been under tremendous pressure to ensure that this Bill is passed since it is very important to the Government. I have always stood with him on this matter. I will not be long. I am going to conclude in a few minutes' time.

Private companies will no longer need to hold physical annual meetings, unless they positively opt to do so. This is to take into account modern practices. Most of the companies are now in the cyber space. You can now hold meetings using virtual platform.

You can be in Florida, I can be in Nairobi and other director could be in Johannesburg. We can hold meetings without having a physical contact. The current law requires that all the directors must be present in the meeting. In this Bill, that is no longer a requirement, courtesy of information communication technology. It will be easier for companies to make decisions by written resolution rather than holding meetings. Such resolutions may be passed by a simple majority or 75 per cent of eligible voters, in writing without necessarily being present in meetings. Companies will be able to make greater use of electronic communication with shareholders. These provisions are contained in Clauses 264-276.

With regard to accounting and auditing, there is now a detailed requirement. That has not been the case in the current statute. Clearer provisions are now contained in the Bill to ensure proper accounting and auditing procedures that comply with international financial reporting standards. Small companies have simpler procedures to follow. That is contained in Clauses 632-793.

The Office of the Registrar has been established in Clause 832. We intend to move an amendment to ensure that we affirm the establishment of the Office of the Registrar of

Companies by saying “the Office of the Registrar of Companies is hereby established” to make it very clear that that office has been established in the Bill.

The Bill also proposes to make express provisions on derogative actions. The Bill makes it possible for a shareholder of a company to take action in respect, of a course, of action vested in the company. One can seek relief on behalf of the company, especially where the directors are negligent or are not willing to take action. Shareholders are now being empowered. Directors can no longer sit in a dark corner and make decisions that adversely affect the company without being challenged. Shareholders will have a right to take them to court. These provisions will enhance corporate governance. The provisions are contained in Clauses 241-245.

Aspects of Treasury shares are contained in Clauses 535-545 of the Bill. These provisions make it possible for companies to purchase their own shares through the medium of Treasury shares and stocks. The acquisition is made through a regulated market. However, they must not exceed 10 per cent of the aggregate nominal value of the company. They are usually used for purposes of employee share option schemes. They have no voting rights.

The doctrine of *ultra-vires* has now been ameliorated. Companies can be incorporated to conduct any lawful business. Third parties dealing with a company are not, therefore, required to vet a company’s Memorandum of Association to determine whether the company has power to carry out the transaction that the parties are dealing with. All those provisions are contained in this Bill.

Once this Bill becomes law, one will not need to find out whether a company has the power to borrow or not. If they decide to just register the company and deal with that company in accordance with the proposed law, members of the public and shareholders will be able to deal with the company without necessarily going to seek a resolution.

Similarly, third parties will not be required to enquire whether any necessary resolutions have been passed to enable the company to enter into any particular transaction.

With those remarks, I beg to move and request the Leader of the Majority Party to Second.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, first, I would like to thank the Chairman of the Departmental Committee on Justice and Legal Affairs and his team because the companies and insolvency Bill has been before this House since January 2014.

*(Hon. (Ms.) Millie Odhiambo offered
Hon. A. B. Duale a bottle of water)*

Hon. Millie Odhiambo, I am very sorry. I am fasting. You must respect my faith. You must be aware of the calendar of all the religious leaders in this country. Nevertheless, I am thankful for the water. I will take it at home in the evening.

Hon. Temporary Deputy Speaker, I thank the Committee because this is such a voluminous law that I have ever seen in my eight years as a Member of Parliament. The first Bill that I brought to the Departmental Committee on Justice and Legal affairs is The Companies Law. They said that the amendments were too many that we had to republish it, taking into consideration the amendments that the Committee had brought. What is The Companies Bill (National Assembly Bill No.22 of 2015)? This Bill has a long history. It was part of the reform agenda at the Office of the Attorney General. This process started long time ago.

The process of reforming the Companies Law in Kenya started in 1992 when the then Attorney-General appointed a task force to deal with this matter. That task force presented several reports to all subsequent governments. It encompassed representatives of the private and public sectors as well as the Government in making sure that Kenya gets a Companies Act, and that the Companies Act, Cap. 486 is reviewed.

Why did we ask for this review? This was basically to remove all unethical business practices and the use of commercial entities as a vehicle for exploitation by companies. Fraud was very rampant and it made the public, who were unsuspecting lose a lot of money.

The activities of land buying companies were a serious issue. There was need, as a country, to reform the Companies Law and make Kenya a country where it is very easy to do business. It was good for our country to have a simplified process of registration of companies.

This Bill reduces the administrative burden on the Government. It creates and ensures that business entities are managed by their offices in a very efficient and transparent manner. Finally, this Bill provides a new legal regime for the informal or *Jua Kali* sector in Kenya.

The objective of this Bill is to develop a modern companies law in order to support a very competitive economy in a coherent and very simple form. The reform of this Companies Law, as contained in this Bill, is anchored or thrust on four key objectives. These are:

- (1) Enhancing shareholder engagement and the long-term investment culture – that the shareholders of any company must be engaged, the long-term investment interest of the business community is enhanced and entrenched and a long-term investment culture is created.
- (2) To ensure better regulations and “think small fast” approach - that we must have a regulation that can take less effort and is efficient.
- (3) To make sure that, as a country, in transforming our economy, we make it easier to set up and run a company.
- (4) This Bill is also anchored on flexibility for the future.

This Bill does the following. It seeks to consolidate all laws relating to the incorporation of matters dealing with registration, operation and management of companies and above all, provides a comprehensive code of Companies Law for Kenya.

This makes changes to almost every facet of laws in relation to companies. The key provisions of this Bill are:

- (1) To codify certain existing common law principles. These include the functions and duties of directors.
- (2) To introduce various provisions for both public and private companies. For the first time, it takes care of those two different entities.
- (3) This Bill provides a single company law regime. Unlike before where we had very many different laws existing in different statutes and different Acts of Parliament, this Bill creates a single company law regime.
- (4) It also details how to amend or reinstate all the Companies Acts to various degrees.

I do not want to take a lot of time. This Bill is composed of 41 parts including the one that deals with preliminary matters. It has five schedules. I will just highlight what each part of the Bill deals with.

Part I deals with preliminary matters, terminologies and definitions while Part II deals with the types of companies. Part III deals with the constitution of a company and the articles of association.

Part IV deals with the capacity of a company in relation to contracts and the execution of documents and deeds.

Part V deals with Clauses 48 to 68. It deals with company names, registration and use of names which are offensive. This Part deals with registration of a company and makes sure that you do not name your company using offensive words.

Part VI deals with conversion of companies and alterations while Part VII deals with the membership of a company. It provides for the registration of members and prohibits a subsidiary company from being a member of its holding company. It also deals with how a subsidiary company deals with a parent company.

Part VIII provides for the exercise of rights of members of that company. This Part enables certain persons to have information rights relating to that company in terms of trading.

Part IX deals with the company, its directors, their duties and functions and how they can declare their interest where it is involved.

Part X deals with the disqualification of directors from holding office while Part XII deals with the company secretaries for both public and private companies and what their qualifications, functions and duties are.

Part XIII deals with resolutions of a meeting of a company, how they deal with their Annual General Meeting (AGM) and the resolutions of that company.

Part XIV deals with the share capital of a company, how it is transacted and transferred, how payment of shares is done and how independent valuations take place in a company.

Part XV deals with reorganisation of an existing company while Part XVI deals with the acquisition by a limited company of its own shares. It sets out the general rules in terms of distribution of shares, the justification of the distribution of those shares and the relevant accounting matters and procedures. It sets out general rules against a limited company.

Part XVII of the Bill, that is Clauses 485 to 494, deals with the distribution of a company's assets to its members - how you distribute assets among members and the profits of that company which are available for that purpose. It deals with justification in terms of distribution of profit and shares.

Hon. Temporary Deputy Speaker, Part XVIII deals with certification and transfer of securities or what we call the share certificate.

Part XIX is about public offers of securities by either a private or a public company. This is the part that prohibits public offer by private companies. It provides for the minimum share capital requirement of a public company. Part XX, which encompasses Clauses 520 -525 deals with redeemable shares, the power of a company to issue redeemable shares, the terms and manner of those shares and to finance redeemable shares.

Part XXI deals with Treasury shares and provides for the purchase and acquisition of shares by a company or its members. Part XXII, which encompass Clauses 534 - 569, deals with information about interest in a company share.

If I may jump to the most important parts of this Bill, Part XXV deals with accounting records and financial statements of a company. It provides for the procedures to be followed and how to establish two regimes of accounting procedures for large and small companies. It introduces international accounting standards as a format for accounts and reports. This is very

important for our economy and international investors. It introduces something very unique. It also introduces the use of websites to provide information and financial statements of a company.

Hon. Temporary Deputy Speaker, Part XXVIII, which covers Clauses 709-771, provides for the auditing of a company's financial statement. It provides for how to deal with audited accounts, appointment of auditors and functions of the auditors who are going to audit the company's accounts. It also gives members the right to raise audit concerns at their meetings. It ensures that only persons who are properly supervised and qualified are appointed statutory auditors. This will stop a company that wants to hide its financial capability and evade paying tax. Some companies can pick any auditor from the backstreet.

This section provides that the shareholders and the regulating body must be convinced that the people appointed to do the company's audit have been appointed as statutory auditors. It also provides for the protection of members against oppressive conduct and unfair prejudice. This relates to land-buying companies.

Part XXX, which covers Clauses 830-877, establish the Office of the Registrar of Companies and provides for the function of the Office of Registrar of Companies and the fees payable to the Registrar under this Act. It also outlines the requirements and powers relating to registration of documents.

Part XXXII deals with the powers of the Registrar to strike the name of a company off the Register of Companies and how to restore it. This part elaborates how to restore a company on the Register of Companies and the circumstance under which a company can be deregistered. Part XXXIV deals with the merger and divisions of public companies. It addresses issues to do with how public or private merge, the conditions and how to deal with the procedure of merging.

Hon. Temporary Deputy Speaker, Part XXXVI gives leeway to foreign companies. It provides the procedure of registering a foreign company, the regulations governing the operations of a registered foreign company, how foreign companies can do business and be assured of their investments in our country.

This Bill seeks to reduce the cost of doing business in Kenya. Part XXXVIII provides for how to keep company records. Company records may be kept in both hard and soft copies.

Part XXXIX deals with the service of documents on a company, secretaries and directors. It gives the authorization of how to send a document or information by electronic means. It also shows how to keep safe classified information of a company.

Part XL specifies the valuation requirement that must be used when valuing the property of a company, under the proposed Act. Finally, Part XLI, which covers Clauses 1023-1027, contains miscellaneous provisions, which are common in each and every Bill.

The Bill contains schedules, which give elaborate provisions in the Bill. They give effect to the different provisions contained in this Bill. The First Schedule prescribes the rules that will apply for the purpose of making a determination when a director is connected with a body corporate for the purpose of Part IX of this Bill.

The Second Schedule contains matters for making a determination whether a person is fit to be a director; the parameters that make one suitable for the position of a director of a company, and what disqualifies one from becoming a director.

The Third Schedule provides for distribution of assets of a company. The Fourth and Fifth Schedules, respectively, specify persons and authorized disclosures for the purposes of Clause 831 on prohibition of disclosing information under specific provisions.

Hon. Temporary Deputy Speaker, this is the summary of this very voluminous Bill. My good friend, the Chair of the Public Accounts Committee (PAC), will agree with me.

As a Member of Parliament for the last seven years, I have never seen a Bill as voluminous as this. However, I have seen a Bill as small as one page and one sentence. I would like to thank the legal minds in the Departmental Committee on Justice and Legal Affairs. This is what makes the difference between the National Assembly and the Senate. I am sure that they are watching.

This is the kind of legislation that comes through the National Assembly; it is not something given on a silver platter. It is the Constitution that has given us the mandate, and we have no intention of going on a referendum to seek more powers. The powers we have are enough.

Hon. Temporary Deputy Speaker, let me thank my colleagues and more so the Members of the Departmental Committee on Justice and Legal Affairs Committee, who reduced the many amendments. They coerced me to republish this Bill. When we reach the Committee of the whole House, there will be very minimal amendments because over 900 amendments of the Committee have been catered for in the newly published Bill.

With those many remarks, I beg to second.

(Question proposed)

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

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Before I give Hon. (Eng.) Gumbo an opportunity to raise his point of order, let me recognise Kabianga High School from Kericho County in the Speaker's Gallery. In the Public Gallery is Salama Boarding Primary School from Chuka Constituency in Meru County. You are welcome.

Yes, Hon. (Eng.) Gumbo.

PROCEDURAL MOTION

LIMITATION OF DEBATE

Hon. (Eng.) Gumbo: Thank you, Hon. Temporary Deputy Speaker. I wish to move the following Procedural Motion:-

THAT, notwithstanding the provisions of Standing Order No.97(4) and the resolution of 11th February, 2015, this House resolves that the debate on The Companies Bill (National Assembly Bill No. 22 of 2015), be limited as follows. A maximum of sixty (60) minutes for the Mover, in moving and thirty (30) minutes in replying, and forty-five (45) for each Member speaking, and sixty (60) minutes for the Leader of the Majority Party and the Leader of the Minority Party in that order.

Hon. Temporary Deputy Speaker, the reason for moving this Procedural Motion is because this is not an ordinary Bill. This Bill is voluminous and I can assure you that those of us who took time to look at the earlier Bill which was presented; it means we did not sleep for a few days if we had to look at all the clauses of this Bill.

The Bill has 884 pages, 1024 clauses and it is spread over 42 parts. More importantly, each of those 42 parts has divisions. In fact, Part 25 has 12 divisions. If we are to debate within

the provisions of Standing Order No.97(4), those of us who have really put a lot of effort into this Bill will be hugely disadvantaged.

I know it is not everybody who is going to utilise all that time. I just want to remind you that when this Bill was first brought to this House, I appealed to the House and we had actually been allowed a maximum of 120 minutes for the Mover, in moving and 60 minutes in replying and a maximum of 90 minutes for any Member speaking. The Leader of the Majority Party and the Leader of the Minority Party were given a maximum of 105 minutes each. So, the compression I have come up with now is in realisation of the work, and I want to commend the Departmental Committee on Justice and Legal Affairs under the leadership of my good friend, Hon. Samuel Chepkong'a, and all the Members of the Committee.

I appeal to my colleagues to allow this Procedural Motion to go through so that those of us who have put a lot of effort in this Bill can exhaust all the points we have.

I beg to move and ask Hon. T. J. Kajwang' to second.

Hon. Kajwang: Hon. Temporary Deputy Speaker, I thank my colleague Hon. (Eng.) Gumbo for choosing me to second his Motion. It is true that the Standing Orders would have expected Hon. (Eng.) Gumbo to have brought his Procedural Motion before we began the Bill appearing as Order No.11. However, allow me to remind the House that we had the Order Paper when we came this morning in which we had the item listed as Order No.10.

Most of us did not know that Order No.10 will "collapse" because the Chairperson of the Committee had urged us to skip it because of the amendments that he is proposing. It is because of that that Hon. (Eng.) Gumbo was not prepared and could not have been expected to prepare a Procedural Motion to bring it before the moving of The Companies Bill. That is why we urge and request you to apply your discretion over this matter so that, notwithstanding the fact that we raised it after the Motion has been seconded, we still be allowed to prosecute it.

This is the business of the House. This is the reason the National Assembly is the National Assembly. We may spend a lot of time on Motions, Statements and so on, which are also important according to the functions of an hon. Member of this House, but legislative function is core. That is why we come to this House. When Members have utilized all their time and burnt the midnight oil to make sure that we have come up with something like this, it is only necessary that we are able to spare time and put our anxious moments to understand what it is that it calls for us.

As has been said, not all of us may be able to stand on their feet for 45 minutes, but there are some of us who have spent sleepless nights to do research that can help not only the House but also the listening fraternity so that we are able to break down what we have before us so that we then can come up with a Bill that is understandable to Kenyans and is useful to them.

It is because of this that I urge Members change the debating time that we have for this Bill. Let us debate it anxiously and let us be able to have something that we will be vindicated in the HANSARD as work that is commensurate to our standing as Members of the National Assembly.

I, therefore, second.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, what we have before us is a Procedural Motion on Limitation of Debate.

(Question proposed)

Hon. Baiya: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Is it a point of order, Hon. Njoroge Baiya?

Hon. Baiya: Yes, Hon. Temporary Deputy Speaker. I wish to oppose that Procedural Motion. It is true that The Companies Bill has actually been brought before this House. This is the third time it is being brought before this House. The first time it was brought before this House was during the Tenth Parliament.

At that time, this Bill did not even attract sufficient contributions from Members owing to the technical nature of matters relating to company law. This Bill was being dealt with by the Departmental Committee on Justice and Legal Affairs.

Under the new constitutional dispensation, full ventilation of Bills lies within committees. When we bring a Bill before the House, it is basically to ventilate over the reports of committees. A Member who is not a Member of the Departmental Committee gets an opportunity to contribute to the Bill.

Hon. Temporary Deputy Speaker, over and above that, the Bill will go through the Second Reading so that Members can raise their concerns. We also have the Committee Stage where Members can propose amendments to the Bill.

So, my fear and concern is: If we extend debate on this Bill, we risk failing to enact The Companies Bill once more and yet this is a very important Bill as far as ease of doing business and business reforms in this country are concerned. Bearing in mind the number of Members we have in this House who are over 345, if each Member or even a quarter of that number was to take 40 minutes, you can really see the timeline that will be required.

Therefore, I oppose the Procedural Motion.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): That is okay.

Hon. Baiya: Those Members who have issues to air can do so within their limited time and leave their colleagues to take the other portion. Because of those reasons I oppose the Procedural Motion.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Your point is made.

Hon. Wakhungu: On a point of information, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Chris, what do you want to inform us about and who are you informing? Do you want information, Hon. Baiya?

Hon. Wakhungu: Hon. Temporary Deputy Speaker, it is on semantics so that he can understand. When you say a maximum of 45 minutes, you can take five minutes or even one minute. It does not mean you must take the 45 minutes. This is important for purposes of those who have read to inform others. If Hon. Baiya has not done research because of technicalities he can take one minute.

(Question put and agreed to)

(Applause)

(Resumption of Debate on the Companies Bill)

Hon. Mulu: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): What is out of order, Hon. Member?

Hon. Mulu: Thank you, Hon. Temporary Deputy Speaker. This Bill is very important to this country. It is also a very voluminous Bill. I realise that as we start debate on this Bill, we have not seen the Committee's Report. Would I be in order to request that, because of the importance of this Bill, the Committee's Report be made available to Members to inform debate?

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Member, I am told copies of the Report are available in Room No.8. This is where we normally get reports from. We have a few copies here, but more copies are available in Room No.8.

Yes, Hon. T.J. Kajwang'.

Hon. Kajwang': Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to contribute to the Companies Bill, 2015. I am a Member of the Committee that has burnt the midnight oil to come up with the revised Bill before the House. You remember that the first Bill that was before us was twice the volume of this. We had to sit down and scrutinize clause by clause to understand the policies that were guiding the legislative proposals. After about three months, we have crashed the over 2,000 pages into a mere 1,600 or so pages.

I want to congratulate my colleagues with whom we spent time on this matter. This is the cream of the National Assembly. This is what separates this Parliament from the other parliaments. I have heard discussions that the quality of legislation in this Parliament is lower than it used to be in the other parliaments. However, you can now see the difference.

To those of us who keep on saying "we were in the Tenth Parliament which was better than this Parliament," this is the Parliament that they are in. This is the quality of legislation we are churning out. This is the cream of what we are doing.

My colleague and learned friend, Hon. Baiya, has said that development of this Bill began in the other Parliament. However, it is this Parliament that has been able to sit down to develop all those thousands of reflections into this Bill. Therefore, we should congratulate ourselves for being in a position where we can now push legislative practice in company law to what it is.

The first thing that you see in this Bill is that it ushers in a paradigm shift in our company jurisprudence. Every law, accounts or company business practice student will begin to understand the philosophy of what a company is. What we were used to was a legislative practice that was largely Commonwealth, particularly English practice. However, what we now have is a hybrid of the practice in UK, Australia, Africa and particularly, Kenya.

So, for the first time, students of law in the academia world, even before we begin the trade, will now have a change in curriculum from what the law professors used to teach into a new one which has been championed by the Legislature. This is very good because it is the Legislature that is driving even the agenda of the academia in terms of what it is that students learn. So, there will be a new paradigm shift. It will cause lecturers to go back to school. Professors will again have to start learning what company law is to be able to give instructions to students.

What I like about this Bill is that it is based on creating efficiency and swiftness in doing business in Kenya. Before, someone who wanted to do business would have to go and register a business name and perhaps register a company. You would look for a lawyer or some quacks running around Harambee Avenue and spend a lot of money just to register and have a company.

In this Bill, we are proposing that any Wanjiru, Wanjiku or Adhiambo can simply go to the Registrar, get prepared forms, fill them, deposit them with the Registrar and she will have a business vehicle that she can use for trade. This is *wananchi*-friendly. This is a simple person's Bill. You do not have to have a lot of wealth or to have complicated business systems to have a running company. That way, therefore, we are able to widen the tax bracket. This is because the small business people are able to effectively participate in business, that data is captured by the Kenya Revenue Authority (KRA) and everybody who does some business is able to participate in the growth of the nation by paying taxes.

So, the Bill creates efficiency, swiftness and is friendly to *wananchi* because it is simple to understand. The Registrar has a lot of powers, which are exercised on the counter. You simply go to the counter and find a lot of solutions, which were not there in the recent past.

I want to combine Parts I to Part X of this Bill. Part I begins with what a company is. In The Companies Bill we are going to repeal the definition of a company as has been defined in the Company Act, Cap. 486 as anything which is either limited or unlimited. That is tautology.

In this Bill, we have defined a company. We have defined what can be limited by shares, what a private company is and what a public company is in simple terms which clearly state the intention of the Bill.

You will see, for example, that constitutions of companies or Articles of Association of companies are very complicated issues even to lawyers. I must confess that I am one of those lawyers who would just copy and paste the Memorandum and Articles of Association that we used to have in the Companies Act.

We used to copy and paste but we would charge Kshs50, 000 for doing that. Clients would have to pay because we are the only ones who had that opportunity to do it for them, but right now we have made model articles. Already, there are structured articles which will come as regulations to this Bill and everybody will have them. So, you do not need a lawyer or a company secretary to do it for you. That is in the company's constitution.

Hon. Temporary Deputy Speaker, over the page, Parts VI and V, deal with the powers of the registrar while Part VI talks about alteration of the status of companies; that is flexibility of conversion. This is a new principle; that there is a principle on conversion of companies. You can have a private company which can then turn into a public company. You can also have public company turning into a private company.

When you have privatisation, for example, it becomes very swift to change a private limited company into unlimited company. An example is the NGOs and charitable organisations that were trading or companies which were guaranteed by shares. These companies are allowed to oscillate around some flexible principles to change their status making business become possible.

One of the features you see here is also a challenge to our legislative practice. We have never had a Bill in which we have divisions. It really took us time.

In the Commonwealth practice, we do not have divisions in legislation, but we had to separate the sub-themes and sub-topics. Now, you can see that we have parts which have divisions. This is for the sake of clarity and thematic approach in the understanding of company law.

In Part VI on company members, there is prohibition on subsidiary companies being members of the holding company. This is very important. Before, fraudulent people, and this was a source of corruption, would hide their companies in companies. You would find a holding

company then you find several subsidiary companies which are directors of that other company, for example, Goldenberg. If you traced Goldenberg, you could not find any physical person.

For the first time, we have outlawed the fact that you can have subsidiaries within subsidiaries so that we do not hide directors. We want to unmask directors. Of course, we have put provisions here to the effect that there is some immunity on directors, but then we have to know who these people are so that they do not hide under that to escape scrutiny. That is what you find on Division II on Appointment and Removal of Directors.

You can see that we now have piercing the veil. This is a principle which for a long time frustrated land buying companies. Somebody would fraudulently take your land, you know him as a person but you cannot reach him because you have to sue the directors first and then get fresh proceedings against the person. We have said that now you cannot hide under that principle of the veil of directors.

The other outstanding feature you see in this Bill is that it has created a practice called “bankruptcy practioners”. You remember the Laico or the Grand Regency story. So many people are being called bankruptcy liquidators working under the Office of the Registrar. We now want to codify that practice so that there are some people who must get some technical training and expertise, be registered as such and known to be bankruptcy practioners.

Well, they will be professional undertakers of companies of sorts, but we will now have specific people on whom responsibility has been imposed by law. Therefore, you cannot swindle companies you are supposed to jumpstart. You will keep accounts and there are professional standards you must maintain as a bankruptcy practioners.

Another practice that has emerged which we have buttressed is company secretaries. Company secretaries, like lawyers - and many lawyers are company secretaries - used to earn fees, for lack of a better word. For just stamping a memorandum or an article you are charged Kshs50,000. This was because the law said you must look for somebody called “a company secretary” who is registered, but these guys were taking money for free. The problem was not affecting big businessmen but small people who had to file returns. The latter had to look for these guys, but most often than not they were just clerks running around with stamps of those people called “company secretaries”. Those people paid for that service.

We have said that there are small businessmen and women who do not have to look for these company secretaries. If you are processing turnovers of say Kshs5 million, you do not have to look for a company secretary. You simply fill in those forms and file your returns. But again for bigger companies, because we want to instill good governance in them, if your turnover exceeds Kshs5 million going to Kshs10 million, it is by law compulsory that you must now look for a company secretary to strengthen your governance systems and accounting systems. Therefore, it will strengthen the profession of company secretaries in filing of returns.

Over the page, there are the thresholds on Part XII of the Bill. Part XI deals with derivative actions. Third parties swindled people because they were not related principally to the contracts that happened between persons. If you bought goods, you and the shopkeeper were directly related but the other person who had sourced the goods was a third party. If you tried suing him, you would not have direct relationship with him.

So, we have created derivative actions in which third parties fall almost at the same footing as second parties. You will see that on Part XI on permission to continue derivative actions. Of course, that will be done with the permission of the courts so that the courts will control what is frivolous and what is not.

The last aspect I want to talk about because I know that my friends have equally taken time to read through this Bill has to do with public companies. We want to protect public companies because we want to protect public funds.

We have said in this Bill, for example, that there are thresholds of information that public companies must give as a matter of fact to the Registrar. This way, we are able to protect persons who are trading with public money and even authorities, institutions or agencies that are trading with public money so that there is more accountability and more governance structures.

Hon. Temporary Deputy Speaker, you realize that this is a general premise of legislative proposals. After this, it will be necessary for regulations to follow. We have taken up what is detailed and left this with bones only, so that what is detailed will be in the regulations to support the legislative framework. That way, we are able to separate what is necessary for legislation from what is necessary for administrative action. We have given the registrar an opportunity to work around some of the things which are administrative and not legal. That is why there are transitional provisions, which protect the regulations as we have them but with modifications in terms of the way they will come when this legislation is passed. It has been said before that this Bill has not come from the air, and this is how it should be. A Bill should precede policy. There has been sound policy which has not only been presented to this House but has also been discussed in several fora; discussion has also touched on the Companies Bill that is before us. You find, therefore, that this Bill has followed very closely the proposals that we have in terms of policy.

The other thing that has happened is that it has gone through a lot of stakeholder forums. Professional bodies have discussed this Bill. It has been discussed by the Law Society of Kenya, the Certified Public Secretaries and the Certified Public Accountants of Kenya. Businessmen must be watching to find out what will change their business practices. I want to assure them that this Bill will make business easier, more profitable, simpler and cheaper. Therefore, they should not fear that the National Assembly is repealing the whole system of doing business. Yes, we are repealing a system that is not friendly but in a context that has been cleaned up. When the House is low like this on an issue which is this important, you get worried. You wonder where the priority is in the legislative practice. The most important thing is not just for those of us who are able to attend debate but for those of us who are listening and watching out there, because these are the people who will need this Bill to process what they have.

Hon. Temporary Deputy Speaker, I am concerned about foreign investors. Before, there was no legal framework for controlling them. Yes, we want to attract a lot of investments and returns on our businesses, but we must also control how they interface with our local community. We must also see how to encourage our domestic production and businessmen. In this Bill, you will find very clear terms on how foreign investments will interface with local investments. The Bill addresses things that we used to have problems with in procurement law. A company is registered in India, and has no relationship whatsoever with anything in Nairobi; but you go to tender and find that it is a competitor and maybe a director only has a permit. Yet he is competing with you without necessarily having been registered in Kenya. They call themselves government-to-government or use terms which have no basis in law completely.

Right now, we have regulated them, so that foreign investments will have to be registered in Kenya. We have dedicated a whole chapter to how they will be registered locally, so that the competition in business becomes fair not only for the locals but also for the international community. I urge my colleagues that we should find it possible to approve this Bill. Again, we

have several amendments that have been proposed for the Committee Stage where we will still refine it more to make it much better and swifter.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Jessica Mbalu.

Hon. (Ms.) Mbalu: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to add my voice to the debate on the Companies Bill, which has been introduced to the National Assembly by the Chairperson of the Committee on Justice and Legal Affairs.

This is a Bill which has been waited for long in this House. Hon. Kajwang' spoke on behalf of the legal minds by virtue of the fact that he is a Member of the Committee on Justice and Legal Affairs. He articulated his issues very well. Of course, he gave a good soft landing to the lawyers, although he has said they have been denied Kshs50,000 for stamping the articles of association. With the corruption in this county, I am sure that the lawyers will still have opportunity to work and earn a living. It is a very good admission.

This was a very positive admission to the business people who have been suffering, including Members of Parliament and women of this county; they have been having a lot of problems with Government bureaucracy in the course of trying to access knowledge on issues of memoranda and articles of association. This Bill seeks to address issues of requirement for memoranda and articles of Association in registration of companies. As long as a business person has what he requires, his company will be registered. I must thank the Chairperson of the Committee on Justice and Legal Affairs and his team. This is the only Bill in respect of which I agree with the Chairperson of the Justice and Legal Affairs Committee. He knows where we do not agree. We have decided to disagree or agreed to agree. This is work well-done by the Committee and I must congratulate them.

I am talking on behalf of the lecturers of business units and entrepreneurship, having taught at the university. This is one of the chapters that gave us a lot of sleepless nights. I am happy to be in the 11th Parliament. We will bring some amendments to the Companies Act to favour businesses and entrepreneurs in this country. I concur with the Committee in amending the statute to allow one person to form a company. Business people and entrepreneurs have been having issues whenever they wanted to form companies because of the advantages of a company as compared to a single business.

At least now a single person can form a business. I, Jessica Mbalu, can form a company without using my sons' names. The trend has been for people to include their sons and other persons in their company names. Under the current law, we could have company names like M/s Millie Odhiambo and Sons Limited or M/s Millie Odhiambo & Company Advocates. We have not even agreed on the shares. This Bill has been waited for, for a long time. It is a Bill which will bring a lot of positive change to business in this country, for example, by making it possible for youth and women to access the 30 per cent procurement that we have been talking about. We are making laws to ensure that women and youth of this country get an opportunity to prosper.

This Bill is timely. I must thank the 11th Parliament for making it easier for business people and entrepreneurs to register companies in Kenya. In this Bill, the differences between private limited companies and limited companies as described by the Chairperson of the Committee while moving debate, and further elaborated by the Leader of the Majority Party while seconding, are very clear.

Hon. Temporary Deputy Speaker, clauses 69 to 92 provide for how to convert a registered private company to a public company and vice versa. This one has been very well articulated and I think it is well decided. I also think that the beneficiaries are the business people of this country.

With regard to the reduction of Kshs5 million to Kshs1 million as share capital this is really going to give a lot of positive advantage to the business people of this country. The Companies Bill, 2015 will be an Act of Parliament to consolidate and reform the law relating to incorporation, registration, operation, management and regulation of companies to provide for appointment and functions of auditors to make other provisions relating to companies and to provide for related matters. Business people, however small they are, may have the place, capital, intention, invention and the good idea, but they may not be in a position to even register a company because of bureaucracy. As we propose amendments and come to the Committee Stage let us look at the Registrar of Companies. How easy will it be to register a company in order to make it convenient for business people without a lot of bureaucracy? Business people should be in a position to register companies in order to do business and fit in the 30 per cent procurement regulations. I am happy about women and youth of this country because they now have a leeway to do business. They can now register companies. They can now move from single business permits to companies. Given the work at the counties and in the public service, this is a Bill that is going to give light to business people and anybody who wants to undertake transactions.

This Bill also looks at the different fines that have been introduced for non-compliance by directors and shareholders. We are going to introduce case law. I really think that when we pass this Bill in the Third Reading--- This Bill is so voluminous that many amendments will be brought; I hope business people will be able to understand them. I am talking about things like fines that will be imposed on them if they do not comply with the law. This is because any laws that have been made in this country from this House have to be followed or adhered to, to the letter.

I must appreciate my students wherever they are. This is a day they want to celebrate because we are now able to see light in terms of the new Companies Act. The bureaucracy that has been there has been lessened in terms of registration and performance of a company. Every public company will have a secretary. A private company will not even be required to have a secretary. This is very welcome. It is positive and advantageous to those who are willing to start companies. The SMEs of this country are really going to benefit. If you look at the performance of countries in terms of GDP and improvement of the economy, you will realize that it is through SMEs that we are able to say an economy is growing. Look at the USA, about 70 to 80 per cent of its GDP is attributable to the small businesses. It is those customers who walk in and out of the small business who are able to grow the economy. Kenya, through empowerment by this Bill, should emulate the USA. Digitization has been so involving for the shareholders and directors. Now that digitization has been proposed in the Bill, we will be able to have written resolutions rather than attending meetings through written resolutions. Physical presence may not be required; this is going to ease operations. As we know, now we are moving into an open system. Technology has come into our country. We are going to be in a better position to use technology.

I must say that the office of the Registrar of Companies will need to pull up its socks and align itself to the requirements of this Bill for the sake of business people and entrepreneurs. This

is really a Bill that has taken too long, but since they say God's time is the best time, this is the best time for this Bill to be here. I am sure players are going to take advantage of it.

It has enhanced the shareholders engagement. Better regulations will be prepared under this Bill in terms of registration, management and everything. It is easier now to set up a business. It will be easier for Wanjiku, Mutua, people of Kambu, Kibwezi, Machinery, Mtito-Andei, Ngwata and Masongaleni in Kibwezi East. It is Christmas for them. After we pass the Third Reading of this Bill I can say we can now register companies and do business with the Government and the counties in a less bureaucratic environment.

There is also the issue of flexibility in terms of co-operation and registration and management. Since I know my other Members are as happy as I am, I want to send the message to my students at the university that in this 11th Parliament, our argument concerning this Bill have seen the light of the day.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Benson Mutura of Makadara.

Hon. Kangara: Thank you, Hon. Temporary Deputy Speaker. From the outset, let me say I support this Bill. I am a Member of the Justice and Legal Affairs Committee. I am really grateful that we have really done a great job. Initially, there were two Bills which were brought. In one of them we had to do over 900 amendments. I want to tell members of the public - most of the time they have the notion that Members of National Assembly do not read Bills - that we read this one. We articulated ourselves on the Bill and thrashed out some issues. I am going to be very brief because they are issues that we have already gone through.

The good aspect with this Bill is that we are also trying to demystify the operation and the way companies are being formed. That as an ordinary Kenyan, you can just get forms, fill them and you are good to go; it is nothing new. This is what Kenyans normally do. Even the *mama mboga*, the youth in *Kazi kwa Vijana* and other youth groups do this. They are in business only that there is bureaucracy that used to keep them at bay; they thought that forming a company was a rich man's thing. The journey has been long. I think the first Bill was done in year 2000. The Bill was brought to the 10th Parliament but it lapsed. This time round I hope we are going to get it right. Rwanda came, took the draft and customized it. In business ranking, Rwanda is among the top 30 countries in the world with regard to ease of doing business. Hopefully when we formally pass this Bill--- I think the mood is right for us to approve this Bill. Once we do that we will be ranked favourably in the world as one of the best countries in the world to do business.

The other thing is the issue of directors. This Bill has articulated well how directors should operate. It has been a pity in this country. We have seen directors who are extremely rich when their shareholders are wallowing in poverty and they do not have anything to show for their investment. It has been very sad in so many of the companies we know like Mumias Sugar Company, Kenya Airways and National Bank of Kenya. We know their directors are doing very well. However, this time round they will be answerable. The law will be on them and we will not allow such kind of things to happen.

Kenya is well known for corruption. However, most of it has resulted from the way we used to operate and how we do our registration. There are a lot faceless companies doing business. Others have a lot of property. The most recent ones were the Lamu land companies which owned tracts of hundreds of acres of land. We could not identify the faces behind those

parcels of lands. This time, with the new registration and also because there is that provision of transition, we will have to see who these directors are. We have had foreign companies come here, are registered in a dubious way, they do business with Kenya and once they get money, off they go.

This is the right time to deal with corruption, because we are not going to allow those kinds of things. The good aspect in this Bill is the one-man company. This is what normally happens in Kenya only that because of the bureaucracy that was initially there, you had to go and get some other entities and ask them to sign. In the mega corruption scandals, we have found blue chip companies which have home employees like drivers as their directors. When these employees are questioned, they have no idea that they are directors of some companies.

We have seen mysterious killings day in day out in the land-buying companies. If you look keenly, you will notice that it is because of the way the companies are run. There was a lot of disconnect. Directors were working and maybe the only time they could be questioned was during the annual general meetings (AGMs). On the issue of AGM, this Bill has brought in the digital aspect and even simplified how AGMs should be conducted. It is not necessary that we have to call all the members to come to the AGM at a specific date. They can do it digitally like through skype. That way, they will lower the costs and overheads can translate into benefits to shareholders.

The issue of mergers has also been looked into by this Bill. It has been a pity that at times, even employees just read in the newspapers that their company has been merged with another. Their interests are not well protected. This time round, we have put it clearly that employees are also stakeholders in companies. If there are any buyouts, employees' interests have to be looked into. It has to be done in a way that is civil and with a human face.

We have done a lot of public participation. We got a lot of insight and useful information from most of our experts. It is also worth noting that when this Companies Bill started being drafted in the year 2000, there were people who thought that foreigners could do it better. The job was given to a consultant. Unfortunately, the draft that the consultant brought was even worse. So, we had to revert to our own local experts to modernise and give it a Kenyan face, so that we could easily understand it.

The language is quite good. It is very easy and simple. Everybody can read it. I really want to thank our lawyers in that committee. They did a lot of work which was not compromised. If you go further, you will see other entities which are brought in like lawyers and even the Certified Public Accountants and Certified Public Secretaries. They also have their provisions in this Bill.

In a nutshell, the Government is also going to raise a lot of revenue because now people will do business in a very formal and decent way and will file returns easily.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to hon. Timothy Wanyonyi.

Hon. Wetangula: Thank you, hon. Temporary Deputy Speaker for giving me a chance to also contribute to this Bill. I am very happy. Being from a legal background, I know that this Bill is going to really modernise our legal practice, especially in the business area.

The Companies Bill 2015 is intended to repeal Cap. 486 and modernise Kenya's business laws, making it easier for local and foreign investors to set up shop in Kenya. When you look at the Memorandum of Objects and Reasons of this Bill, the reasons are to facilitate commerce,

industry and socio-economic activities by enabling one or more natural persons to incorporate a company in this country. This Bill aims at developing a modern company law to support a competitive economy in coherence and in simple form, taking into consideration the current trends in the regional integration, with particular reference to the East African Community. It aims at reflecting the present day circumstances of carrying on business, including modern patterns of regulation and ownership.

Previous speakers have talked about a one-man company. This is an area that this Bill has captured very well. It has been very difficult for people to form companies. Now this Bill allows a single person to set up a private limited liability company and a minimum of two people to set up a public company; this is something that is going to help many people to incorporate companies and enter into a business. This is captured in Clauses 11 and 102 of the Bill. This simplifies matters regarding registration and running of companies.

Clauses 128, 129 and 131 require that private companies have at least one director whereas public companies must have at least two directors. It will now be easier and simpler for a person to register and run a company than under the current law which said that at least seven people can form a public company and at least two people can form a private company. The Bill states that the directors must be natural persons and must be over 18 years, raising questions as to whether corporate entities should no longer be directors of companies.

The current law, Cap 486, requires that every company shall have a secretary who is qualified in accordance with Section 20 of the Certified Public Secretaries Act 1988. Under Clause 244, this Bill provides that private companies are not required to have a company secretary unless they have paid up capital of Kshs5 million or more. Instead, an authorised person may fulfil the duties of a company secretary.

Hon. Temporary Deputy Speaker, when you look at Clause 3 of this Bill, it provides that the contract can be entered into on behalf of a company by a person acting under its authority; expressed or implied. In as much as this makes doing business easier, it may also end up binding companies to contracts they have never intended to enter into. This may complicate some of issues because when we talk of lifting a corporate veil, it means you have to identify the owners of companies. This one is exposing the directors of the companies, and we must be very careful when we are doing some businesses.

Clause 35 provides that it is not a must for a company to have a common seal. This is a departure from Cap. 486 of the Laws of Kenya, which required companies to have a common seal. If this clause is adopted, it will not be a must for a company to execute documents using a common seal. The indoor management under clauses 34 and 134 of the Bill codifies common law principles. In particular, the indoor management rule under company law and duties of directors provides that acts of directors are valid even if it is later discovered that the appointment of the director was defective, and that the director had ceased to hold office or was not entitled to a vote on relevant matters.

This Bill also modernises company law by recognising electronic communication. An earlier speaker talked about digital platform and introducing digital platform in the company management, and also the use of website in companies communication. In the current company law, it requires this communication through a registered postal address, publicising in the media and all that. Now, it requires that even through the social media, the company can communicate its mandate. The Bill also comes with a greater sting on penalties and fines for offenses are significantly increased.

This is a progressive Bill that is going to simplify the way we do business and also help people, especially people with disability, the youth and women who normally find it very difficult to form companies, especially now that the Government has given room for them to participate in public tendering. You find that most of the people are using this provision, especially those who are established and have companies, to target vulnerable groups to get business from the Government. I am sure that this is going to help a lot. Previously, you could register a business name before you registered a company. Now, it is going to be very easy, cheap and easier for people to do business in Kenya, whether they are foreigners or locals. Anyone can walk into the Registrar's Office and just fill forms and form a company. It is as easy as that.

Thank you very much for giving me a chance to add my voice to the debate on this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I give the Floor to Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to support this Bill. Indeed, I am glad that this Bill has come. I am even happy that the Departmental Committee on Justice and Legal Affairs has looked at it and has improved it. I had looked at the earlier Bill and for me, as a lawyer, it was extremely intimidating. I do not think the law is made to intimidate. I subscribe to the natural school of thought in jurisprudence where I believe law is made for man and not man for the law. Therefore, whenever we make the law, it should be in such a manner that it reaches people. What we had earlier was not only in very complicated legal jargon, but was also huge. I want to thank the Departmental Committee on Justice and Legal Affairs for the work they have done even though the Bill is still fairly intimidating.

I had several issues with the previous Bill. Unfortunately, because I was not aware that it was coming, I have not been able to relook at this one, but I am hoping that the amendments at the Departmental Committee on Justice and Legal Affairs have taken into account the issues of concern that I had. I have managed to flip through some of the provisions and I will make comments in relation to the same. I would like to indicate, as a public interest lawyer, that whenever we make law in a manner that is friendly to the public, I am very happy. I know not many lawyers subscribe to that theory. I remember a lot of time I had clashes with my legal colleagues because we always make law look very complex and strange. I guess it is a way in which we make our money but I believe we can still make money by making law a little simpler. I know there were days when it was all important when you talked about jargon such as *ejusdem generis* and sound very educated, but basically you mean nothing much. So, I am happy that we are moving away from that era. I want to indicate that I am happy that this law seeks to take into account modern trends in company law. I also want to indicate that from what I have seen so far from reading, as much as we are saying it has revolutionised the sector, I do not think it has overly done that. It has many good amendments. I want to say that what it has done largely is to domesticate the legal framework in company laws. It has also taken into account emerging trends in doing business. One of the greatest beneficiaries will be our small and medium enterprises (SMEs) because it provides that SMEs that play a very significant role in our economy must have a proper legal framework for them to undertake business. Also by providing an easier framework, a lot more people will be able to engage in business.

We passed a law that now makes it easier for young people and women to engage in business even with the Government of Kenya. I have seen many younger people do this; people

in their early twenties, aggressively engage in business. It is important especially for young people who want to do business and do not have lots of money to hire lawyers to incorporate for them companies, that you have a system that will be easier for them to do business. That is why I would want to note this.

It also creates conducive framework for doing business and infuses ethical standards in doing business. However, my challenge and concern as a Kenyan is that many times, and even both in the 10th Parliament and this 11th Parliament that I have served, we have passed very many good pieces of legislation, but unless we have a mental paradigm shift as a country, all these good pieces of legislation will come to nought. The issue of corruption is so entrenched in our psyche that it does not matter what laws we have. A lot of times when you deal with people--- We take corruption to be part of our lives, so that when you are a person who is opposed to corruption, you are the one who looks like the odd one out. Indeed, you will find those who fight corruption are the ones who end up being fought.

So Hon. Temporary Deputy Speaker, the President needs to be committed to fighting corruption. For us to deal with corruption there must be political good will. One of the reasons we do not have a lot of investors having faith in Kenya is first timeframe of doing business which by this law will, hopefully, be reduced significantly. I was hoping that I would find in the law that we provide specific timeframes. I know that in this Parliament we are trying to shy away from providing timeframes but in the last Parliament we did. Even though we are providing modern standards of doing business, I would wish that we provide timeframes even for issuance of certificates for doing business; we should not leave it to performance management for different agencies or Office of the Attorney-General.

What I would also want to say is that we need to provide linkage with the laws that we have passed in this House that enable young people and women to undertake business. I do not see any cross-references to that; also there is our strengthening of that legal framework for women and young people doing business, so that the 30 per cent will be actualized.

One of the things I have said before is that I do not know how we will be dealing with issues in this House. The way the House procedure has run in the past and is meant to run is that at the Second Reading, we were supposed to give our views as Members and the Committee is then meant to take that into account when they are giving their reports and amendments. However, what I have seen of late is that Committees bring their reports and amendments during the Second Reading. That means that those of us who have amendments are forced to do them on their own. On some of these Bills I would personally not want to bring an amendment but I would like to give suggestions on amendments. I have raised this before, and I am hoping as one of the Speaker's Panel you could look into it, so that we do not have a situation where when amendments are being introduced, several Members bring their amendments. Sometimes we are not interested in bringing personal amendments. I would rather the Committee introduces all the amendments.

One of the issues that I wanted to raise--- I am glad that the Chair of the Departmental Committee on Justice and Legal Affairs is coming in when I want to raise it. I have seen that they are celebrating the removal of the lifting of the corporate veil. One of the first things that you learn in law school is the case of Solomon vs Solomon. I am happy that I can still remember it. It is the issue of lifting of the corporate veil. I can hear the Committee saying that they have completely removed a situation where people can hide behind companies and not to pay. If you look at previous cases, including the one I have cited, what they have done is that the corporate

veil is only lifted in limited circumstances. When you completely remove the corporate veil, my concern is that we are completely changing the character of a corporation. That will make some people hesitant about taking risks, because many people get into businesses when they know they are taking risks, but you take risks knowing that the company will bear some of the risks and not you as an individual. But when we completely lift the corporate veil, we make everybody who is in business vulnerable. So, I would want the Chairman of the Departmental Committee on Justice and Legal Affairs in his response to say how, as a Committee, they have looked into it, in view of precedents and emerging jurisprudence on this issue.

I would also want to ask the Departmental Committee on Justice and Legal Affairs, whether, since we have not had the opportunity to look at the Report, they have amended Clause 1(3) and (4) on the coming into effect of the law. I know that there is a growing trend that we give unspecified dates for coming into effect of laws. What happens in a lot of times is that we create a legal crisis, and a lazy Cabinet Secretary (CS) will not bring into effect certain parts of the law and then you will have a crisis in the sector. What I would want to suggest is that the Departmental Committee on Justice and Legal Affairs makes sure that it tightens that part, so that every part of the law can have a very definite date when it comes into effect.

Hon. Temporary Deputy Speaker, I am also happy that this law takes into account e-commerce and new technologies; we are in a fast evolving world where e-commerce is taking over. The people who are analogue are becoming increasingly a minority. I can see that the law is changing very quickly to deal with that.

I would also want the Committee to clarify Clause 9(3)(a) where an associate is defined to include a child. I do not know whether we are now saying that a child, as defined under the Children Act, can have legal capacity to own a company. I would want to hear the thoughts of the Chairman in relation to that. Because we are trying to consolidate the law and also bring some coherence in this sector, one of the challenges that we have seen in the past is a lot of cases going to court over names. Where names are very similar, people go to court because of corporate dishonesty. Big corporations have sometimes had very vicious wars over names. I have read the section that defines what is required but I have not seen a very firm definition that you shall not register a name that is very similar to another of a company so as to avoid that business dishonesty.

The other issue that I would want the Committee to address is on electronic information. I have raised the issue of noting that the law is adopting the electronic age. I would want to see how we will ensure the integrity of electronic information. It is one of the growing concerns internationally. If any of you has been watching Cable News Network (CNN), it is one of the issues that have come up very strongly. I have not read that section. Maybe it is much further ahead in the part I have not reached. I do not know whether there is a penalty for the misuse of electronic information of companies; for us to assure people doing business of integrity, information of their companies must be secure.

Hon. Temporary Deputy Speaker, I want to suggest that the definition of “company records” should include an electronic definition. I would also want to suggest that under the definition of “intellectual property”, we have a cross reference to the Industrial Property Act, because I am sure there is a definition. I do not know whether we are distinguishing it from that definition, or whether we are creating linkages. In proper legislative drafting, there is usually cross referencing. I would want to see that done.

I had indicated earlier that I was glad that the Bill incorporates modern management standards such as performance indicators. However, let me just stress that we need to provide timeframes to ensure that performance indicators are met. I am very happy that one of the things that are added is the definition of “personal injury”. That also includes a mental condition. That is a very good definition. I know that it is legal practice to define a word using the same word. Because we are now revolutionising the ways in which we do things, I would urge the Committee to re-define property, so that you do not say that property means property. I know it is a legal way of doing things but it is one of those things that as a public interest lawyer, I normally find ridiculous. I do not know what you mean when you tell me property means property. I know that it is a way of doing things but you do not have to do things in an awkward manner, because it has always been done that way.

On the definition of “working day”, I want to urge the Committee--- I do not know if at this point they will be able to do this or some of us may be forced to bring amendments. Working day is only indicated to exclude Sunday and public holidays. The Constitution guarantees the worship day for Seventh Day Adventists, which is Saturday. Three quarters of my constituents are Seventh Day Adventists. My husband is an elder of the Seventh Adventist Church and my mother was a very strong Seventh Day Adventist. So, I am here to support very strongly the rights of Seventh Day Adventists. I would want to encourage the Chair of the Committee to make Saturday a non-working day because the Constitution guarantees that right.

Finally, I have heard Members applaud and say that this Bill has done away with the articles of association. That is misleading. When we contribute to debate, we need to be fair in our comments. This Bill does not do away with the articles of association, but it creates model articles of association to make it easier for those who want to do business to do it in an easier manner.

I do not know whether Hon. Kajwang’ has already left. He was challenging those of us who were in the last Parliament by saying that we brought very fat pieces of legislation. You cannot change facts of history. The previous Parliament was a serious one. I am sure that we will get there, but you cannot compare the two.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Musimba!

Hon. Musimba: Thank you, Hon. Temporary Deputy Speaker, for giving this opportunity. I stand in great excitement when it comes to entrepreneurship. This Bill is going to herald a new generation of entrepreneurs. As we know, entrepreneurs contribute more than 60 per cent of the Gross Domestic Product (GDP). In most cases, they remain informal because of recording.

This Bill will ensure that entrepreneurs have a clear path for rising from small and medium enterprises to become multinational corporations, because of the enabling structures contained herein. We must always remember that all companies are formed to give them the legal and ability to enter into contracts. Company law talks about consensus, capacity, consideration, formality, legality and the intention unto which the particular contracts are being engaged.

The objectives of this Bill are very clear that the ultimate goal is to promote the socio-economic growth of this nation in line with the three pillars of Vision 2030. This Bill will grow our national competitiveness because it seeks to give an external window into Kenya for an external investor looking forward to investing in Kenya. We came from a golden age, during

which notable entrepreneurship grew. That was in the early 1950s, 1960s and 1970s. To name just but a few we had the late Njenga Karume, the late Phillip Ndegwa, Duncan Ndegwa and James Mwangi, who developed quite impressive empires. We have seen a lot of companies formed in the past. With this legal backing, we will grow more of them.

The transition from Cap. 486 itself will herald a new kind of corporate governance, as I alluded to earlier on while commending the Chairman of the Departmental Committee on Justice and Legal Affairs for a job-well-done, I said that any company with share capital above Kshs5 million ought to have its directors getting corporate governance training. This will ensure that contracts, especially when it comes to getting procurement from Government entities, go to people who are thinking in the right way and not just thinking about briefcases, how they will get deals, go away and not measure up to the legacy that they leave behind.

When it comes to our lawyers, our brother, Hon. T.J. Kajwang' alluded that their work was only about stamps and making Kshs50,000. This Bill gives a great opportunity to lawyers because we will have more conveyancing agreements. In my experience, a lot of start-ups fail within three years largely because they lack proper advice, especially legally, because one approaches a lawyer and you think he is going to cost a lot, then you go ahead in your own wisdom, enter into a contract and you only know it has blown up when you are holding the wrong side of the carrot stick. When we limit the role of the company secretaries for companies below a certain level, that will reduce the cost burden of this particular cadre of advisors. We encourage strongly, through this Bill that each business adopts proper advice that will ensure that our start-ups succeed and the number of litigations within our courts drastically reduce.

When it comes to take-overs and mergers, this Bill has done a great job in synchronising them with the Capital Markets Authority (CMA) Act. The whole essence of business is capital formation. If I start a particular business and grow it to look good, when I sell it and with ease of selling it, I will make money and transit through.

With the adoption of equivocal international accounting standards within this Bill, you will, for the first time, compare mangoes to mangoes and bananas to bananas as opposed to looking at one set of accounts and wondering whether they are in congruence with accounting standards because everybody is reporting differently. That has been the way people have been hiding losses which could be the case when you look at companies like Mumias Sugar Company, which in a couple of years was making profits, then all of a sudden it went into losses and you wonder what went wrong. You will find it is in the application of standards. I hope this particular Bill will address that.

We will finally have a measurable standard. This is when we talk about top 100 companies growing our knowledge, skills and attitudes among our entrepreneurs and the human capital which gets absorbed into this particular environment. By growing, we have brought ourselves to a world standard.

As we embrace elements of e-commerce, and Hon. Millie Odhiambo alluded to this, the greatest threat worldwide is that of cyber-security. These are things which are very sensitive because your 100-year legacy can disappear overnight. We have global examples like the Barings Bank International, which went into futures trading, and all of a sudden a bank which had been in existence for over 100 years disappeared overnight leaving shareholders in quite a disastrous position. This Bill says that directors will be held liable for the losses which will be canvassed, so that you do not have a situation where directors have happy days and shareholders are really crying out because they are loading a lot more in terms of management expenses and

less profits which are distributable to individual investors. New stories will emerge on how to relate with people like Bill Gates and Mark Zuckerberg, whom markets helped and their companies achieved a lot of capacity and share growth.

I am very happy to have learnt that Rwanda picked from our proposal and was ranked top 30th in the world in terms of business attractiveness. This will take us to a new hilt. The transition will ensure that Kenya becomes a strong pillar not just in the region because we are targeting a market of 120 million people. Probably it will approach 200 million people, if we include Ethiopia. With the sound legal basis that we are setting forth here, we will realize these figures. This will also open up things like futures trading, which I mentioned earlier. Our debt levels are currently astronomical. Our people who are undertaking importation and exportation are really challenged, especially with such a weakening Kenya Shilling. The companies will now be able to chart out their own ways of moving through and measuring up. Looking at the public companies and the new threshold that has been put at around Kshs6.5 million for incorporation, it provides a new window especially within the new constitutional dispensation. It is important that we look at the counties and encourage them to develop county parastatals that will be able to do PPPs with their own locals in terms of mobilizing themselves and mobilising small entrepreneurs, who are there to actualize the socio-economic revolution that we are about to herald. Those rights are enshrined in our Constitution.

The issue of timelines is very important. Talking about registration, we must put timelines so that as soon as someone ascribes to the forms and fills them up, they are bound by the 48 hours timeline. Entrepreneurs see opportunities, marshal the necessary resources and assume the risks and returns because opportunities sort of pass in the air. If you delay in collecting a certificate for registration, a tender will not stay in abeyance waiting for you. The nature of business is dynamic and your partners are always revolving. You will find that your strategic partners for today end up becoming your strategic competitors.

It is important to pick on these timelines and see how to move this great nation forward. I want to thank the Members of the Departmental Committee on Justice and Legal Affairs. I am sure that we will canvass more on this Bill before the Third Reading.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Augustino Neto.

Hon. Oyugi: Thank you, Hon. Temporary Deputy Speaker, for this chance to speak on the Companies Bill. I would like to start by telling my very good sister, Hon. Millie Odhiambo, that the case of Salomon versus Salomon & Company Limited was partly the cause of the uplifting of the Companies Bill. Companies used to operate in some form of mystique. It is good that we do away with it in this particular Bill. This Bill is very radical, starting with Part VIII, which creates unlimited liabilities. It then creates various distinctions on what could be companies. I like the particular distinction of companies limited by guarantee from companies limited by shares. There is a specific distinction in terms of the memorandum of articles. For a company limited by guarantee, you will require a different set of a memorandum of articles whereas for a company limited by guarantee, you just need a statement of guarantee. That is a clear distinction between what we previously had and what this particular regime of laws is bringing. So, it is not possible to just cut and paste the various memoranda of articles as it was previously done whether you wanted to register a company limited by guarantee or a company limited by shares. Therefore, that creates a clear distinction.

Hon. Kajwang' was speaking to the fact that the Cabinet Secretary (CS) now has power to prescribe model articles of association. The model articles of association used to be the big thing in company law business. You paid for things that were already in existence because the model already existed, but this law allows the CS to prescribe those memoranda and articles of association, which will make it easier for purposes of registration of companies. That will save the amount of money that people use to pay for preparation of articles of association.

Hon. Temporary Deputy Speaker, the other thing which this law does is that it makes it possible for a private company to be just a single natural person. Earlier on, if you wanted to be a private company, there was a requirement under the previous law, Cap. 486, that you had to have a partner, but this law allows one natural person to form a company. I think that is really good.

The other clause that is very interesting says that company directors will be allowed to bind the company. That did not exist in the previous regime. Companies could not be bound directly by the directors. Right now, it is not compulsory for companies to have a seal; a seal is required in various circumstances. In the current legislation, Cap. 486, any transaction by any company has to be under the seal of the company. When we say that it is not compulsory for a company to have a seal unless it has specific seals to transact outside Kenya, I think that will be a totally different regime that this law envisages.

Under Clause 49, companies are allowed to change their names by a special resolution of the members. I think that is a specific interesting thing that you can now change the name of a company. One thing that I find very strange is the reference under Clause 35 to names that are offensive. I do not understand what an offensive name will mean; I think it will be very dangerous to have a clause that says you cannot have names that are offensive. That is one of the things that we need to relook at.

The other thing is the ability of the company to convert itself into a private, public or a company limited by shares. This provision gives the companies very good latitude, so that you will not have to make fresh applications if you want to become a private company or a company limited by guarantee, or one which is just limited. Clauses 69 to 91 are very useful in terms of the company's regime and give various companies a lot of latitude in changing the form they want to operate in. That is an important provision.

Clause 93 speaks to lifting the company's veil, which means that a company will be required to have a list of its membership, which will be available to anyone to look at. This is what was called "the veil of a company" under the last regime. Ordinarily, a company may be operating and you might not know who is behind it, or who is the director of the company.

Clause 97 speaks to what is supposed to be made public to you, unless in the opinion of a court your reasons for looking for the membership of the company have ulterior motive, or are not specific and the court can then refuse permission. But, the fact that you can go and find the list of members in terms of who is the director and who are the members from the company's registry is good for business, because then you know who you are dealing with. If someone has been barred from doing business, for example, you will be able to see what sort of persons you are dealing with, because the list of the membership of the companies will be very easily available.

Hon. Temporary Deputy Speaker, Clause 114 of this Bill is very important. It gives rights to members of the companies. Earlier on, you had directors who were autocratic, and who just operated without bothering about membership of the company. In this Bill, if it goes through, members will have certain rights and those rights will be properly enshrined in law. That is

significant because it is possible for members to be taken round in circles by directors. Each member will know what their various rights are, and duties that come with membership in a company. I think that is an interesting provision.

The other thing is the ability of the natural persons; Clause 122 has provisions on directors as natural persons. Ordinarily---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Neto, you will have 38 minutes when this Bill comes back on the Order Paper.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, the time being 1.00 p.m., this House stands adjourned until this afternoon at 2.30 p.m.

House rose at 1.00 p.m.