

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 15<sup>th</sup> October 2015

The House met at 2.30 p.m.

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

### PRAYERS

### PAPERS LAID

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table of the House today Thursday, 15<sup>th</sup> October 2015:-

The Kenya School of Law (Training Programmes) Regulations, 2015 and the explanatory memorandum.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund for the year ended 30<sup>th</sup> June, 2014 and the Certificates of the Auditor-General therein in respect of the following Constituencies:-

Njoro Constituency;  
Lunga Lunga Constituency;  
Magarini Constituency;  
Lamu East Constituency;  
Galole Constituency;  
Kilifi North Constituency;  
Lamu West Constituency;  
Kinango Constituency;  
Ndia Constituency;  
Kilgoris Constituency;  
Ol-Jorok Constituency;  
Kuresoi South Constituency;  
Kipipiri Constituency; and,  
Belgut Constituency.

**Hon. Speaker:** Well the Kenya School of Law (Training Programmes) Regulations, 2015, are obviously referred to the Committee on Delegated Legislation as expected.  
Next Order.

### NOTICE OF MOTION

#### IMPROVING MANAGEMENT OF CANCER IN THE COUNTRY

**Hon. (Ms.) Nyasuna:** Hon. Speaker, I beg to give notice of the following Motion:-

THAT, aware that cancer is a leading cause of death globally with more than 70 per cent of all cancer deaths occurring in developing countries; further aware that in Kenya, the disease ranks third among the main causes of death after infections and cardiovascular diseases and accounts for up to 18,000 deaths annually, with over 82,000 new cases reported annually; noting that over one-third of cancer patients experience clinical anxiety and depression, profoundly affecting families psychologically and economically; cognizant of the fact that some of the patients travel up to 600 kilometers to the Kenyatta National Hospital (KNH), the only public hospital that hosts most of the oncologists in Kenya; further cognizant of the fact that the remaining small number of oncologists are mainly based in Nairobi; deeply concerned that only a few patients get admission or outpatient treatment due to monetary constraints, this House resolves that the Government mitigates the situation by offering scholarships to at least one medical masters student per county to study oncology and sign contractual agreements with them to serve in designated cancer treatment and management centres, building partnerships with existing medical institutions in local public universities for provision of training opportunities and emphasizing on the use of telemedicine and e-medicine to eliminate distance barriers and improve access to medical services.

**Hon. Speaker:** Very well, next Order.

## STATEMENTS

### BUSINESS FOR THE WEEK COMMENCING 20<sup>TH</sup> TO 22<sup>ND</sup> OCTOBER 2015

**Hon. A.B. Duale:** Hon. Speaker, pursuant to Standing Order No. 44(2)(a), on behalf of the House Business Committee (HBC), I rise to give the Statement regarding the business appearing before the House the week beginning Tuesday, 20<sup>th</sup> October 2015.

As Members are aware, Tuesday, 20<sup>th</sup> October 2015 is Mashujaa Day; therefore, there will be no business for that day and I have not scheduled any Cabinet Secretaries to appear before committees on that material day.

Hon. Speaker, as usual the House Business Committee met on Tuesday, 13<sup>th</sup> October 2015 to give priority to the business of the House. On Wednesday morning, next week, the House will consider the Health Records and Information Managers Bill, 2015, the Access to Information Bill, 2015 and the Senate Amendments to National Drought Management Authority Bill, 2013.

Hon. Speaker, on Wednesday afternoon scheduled for consideration is any pending business from this week. We have the Senates Amendments to the Mining Bill, 2014, the Community Land Bill, 2015, the Landlords Bill, 2015 plus the Physical Planning Bill, 2015. If time allows, the House will start the debate of the Second Reading of the Petroleum (Exploration, Development and Production) Bill, 2015.

Finally, the HBC will reconvene on Wednesday, 21<sup>st</sup> October 2015 at the rise of the House to consider business for the rest of the week. I now wish to lay the Statement on the Table of the House.

Thank you, Hon. Speaker.

**Hon. Speaker:** Allow me to recognize Members of the Kitui County Assembly House Business Committee, led by their Speaker, Hon. George Mutua Ndoto; they are seated in the Speaker's Gallery, and three persons visiting delegation from Switzerland: Madam Barbara Fuhrer – President, Pro-ganze (Swiss) NGO, Ms. Olivia Bosshard and Mr. Peter Fullemann seated in the Speakers' Gallery.

The following institutions, students and pupils are seated in the Public Gallery: Sotik Primary School, Sotik Constituency, Bomet County; A.I.C Missionary Corner Stone Primary School, Ainabkoi Constituency, Uasin Gishu County; P.C.E.A. Ongata Rongai, Kajiado North Constituency, Kajiado Country; Tim and Brooks Academy, Kajiado West Constituency, Kajiado County and Mariane Primary School, Central Imenti Constituency, Meru County. You are all welcome to observe the proceedings of the National Assembly.

**Hon. (Eng.) Gumbo:** On a point of order, Hon. Speaker. I want to thank the Leader of Majority Party for outlining the business that is going to appear here next week, but for almost four years now, the Engineers Act, which was passed by this House is---

**Hon. Speaker:** The Engineers Act?

**Hon. (Eng.) Gumbo:** Yes, I have raised this matter many times. Large parts of that Act are not operable because up to now, almost four years later, we have not been able to bring the regulations to govern that Act in this House. It is really frustrating the practice of engineering in this country. This matter has been pending for a very long time and I would really wish for it to be treated as priority, so that we bring those regulations here to guide the practice of engineering in Kenya. This is because some of the useful areas that law was intended to address can only come to force after we bring the regulations here. Honestly, four years is a very long time to be waiting for regulations.

**Hon. Speaker:** You know, you can petition or even raise a question to the appropriate Cabinet Secretary if the responsibility under the Act is on the Cabinet Secretary or some other body. You can raise the issue seeking to compel them to do what they are required to do under the Act.

**Hon. (Eng.) Gumbo:** Hon. Speaker, I will do exactly that and I have even tried informal contact because some of my colleagues are also in the Ministry. In fact, the Principal Secretary (PS) himself is an engineer but, I am being told that part of the problem is that the Ministry does not have a substantive Minister. But this is now four years. I want to believe that even those who are working there in acting capacity should be able to facilitate this.

**Hon. Speaker:** They cannot do anything, Leader of the Majority Party?

**Hon. A.B. Duale:** Hon. Speaker, we only bring matters that come from the Executive through the Office of the Clerk and your Office to the Chamber. I think the best advice I will give to my good friend the Chairman of the Public Accounts Committee is to frame a question to the Minister for Infrastructure and next week as a matter of priority the Minister will appear before the Transport, Public Works and Housing Committee. The Vice-Chair is seated here. I am saying next week Wednesday or Tuesday of the week after so that the Cabinet Secretary can be questioned by Parliament. The Member will be there to ask what happened to the Engineers Regulations. Why are they keeping it for four years?

Hon. Duale deals with matters when they come to Parliament. I do not do errand work. I do not go to the Executive to ask them what happened to something which was there four years ago. The Member can write and the Vice-Chair can attend the meeting and then that Cabinet

Secretary is put to task on why he is keeping and sleeping on the job in as far as the regulations for Engineers are concerned.

**Hon. Speaker:** Next Order!

## BILLS

### *Third Readings*

#### THE KENYA NATIONAL EXAMINATION COUNCIL (AMENDMENT BILL)

*(Hon. Wangwe on 14.10.2015)*

*(Resumption of Debate interrupted on 14.10.2015)*

*(Hon. Gikaria and Hon. Maweu consulted)*

**Hon. Speaker:** Hon. Members, those of you who are bending like the Member for Nakuru East, just have a copy of the Order Paper so that you know what we are about to do. It makes my work easier, including the Chair of the Committee on Environment and Natural Resources. Member for Kangundo take your seat.

Hon. Members, the debate on this Bill was concluded yesterday. What remains is for me to put the Question which I hereby do.

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed)*

#### THE PARLIAMENTARY POWERS AND PRIVILEGES BILL

**Hon. A.B. Duale:** On a point of order, Hon. Speaker. I rise under Standing Order No.53(3) read together with Standing Order No.139(1) to request for the deferment of the putting of the Question for the Third Reading of the Parliamentary Powers and Privileges Bill (National Assembly Bill No.35 of 2014).

Standing Order No. 53(3) states that:-

“(3) Despite paragraph (2), the Speaker may, on the request of a member, defer the putting of the question to the following day in which case the Speaker shall thereupon nominate a time at which the question shall be put.”

Hon. Speaker, on Wednesday, 14<sup>th</sup> October 2015, during the morning sitting, the House considered the Parliamentary Powers and Privileges Bill, National Assembly Bill No.35 of 2014, in the Committee of the whole House. However, while it is within the mandate of the House to decide on any matter in whichever manner it deems fit, there are emerging issues which require further consideration. That is the basis for which I request for deferment.

What are my justifications? One, this request is informed by the need to allow for further reflection on the contents of the Bill and the provision carried therein. It is undisputable that several provisions contained in the Bill are offensive to the general rights and freedoms as

espoused in the Constitution. Firstly, the Bill does not provide for a clause to prevent courts of law from interfering on matters before Parliament, a key tenant of parliamentary privilege and the spirit of separation of powers.

Secondly, the Bill as considered contains provisions that may be said to offend the freedom of expression, media and access to information as provided for by Articles 33, 34 and 35 and more specifically, refer to as gagging the media. There is, therefore, need for the House to consider the amendments passed.

Thirdly, if this Bill is passed, it will retrogressively in more ways than one, be a great disservice for the nation should it come into effect as it is. On the matter of officers of Parliament having powers of police officers, for example, a Chairperson of a Committee of Parliament meeting in Mombasa could need to call for an assistance of a police officer where the meeting place happens to be intruded by a stranger. So, in the clause that we passed yesterday, we talked of a police officer and not the Serjeant-at-Arms who usually goes with the Members when they go to Mombasa for committee meetings.

Similarly, as a case of a Member of Parliament who enters the Chamber with a firearm and causes disruption, the officers of Parliament would not have the mandate to restrain him or her and the Speaker would have to allow the police officer to access the Chamber and contain the situation. This, in my opinion, could set a new trend in the parliamentary practice.

Fourthly, it is my desire going forward, that the Committee on Powers and Privileges should take leadership in the sponsoring of such Bills. This will allow for inclusion of all stakeholders including key end users as enshrined in Article 118 of the Constitution. Members should be modest enough to accept that due consideration may not have been taken during the passage of the Bill. It is, therefore, prudent that we consider deferring decision on this matter until further consultations have been made.

In the absence of this, I will be requesting my colleagues to consider rejecting this Bill if my request today, as I said now, will not be considered. In the absence of whatever I have said, I will be requesting my colleagues in the House to consider rejecting this Bill to allow for the introduction of a more elaborate and comprehensive Bill that will take care of the interests of all of us and the citizens of our country. However, that is a route I will not wish to take considering that there are other available options at our disposal including deferring, doing more consultation and dealing with the two or three Articles that affect both Parliament and Serjeant-at-Arms and the one that affects the media in Articles 34 and 35. I rest my case.

Thank you.

**Hon. Midiwo:** Thank you, Hon. Speaker, for allowing me to contribute. Hon. Duale has taken many words out of my contribution. Nonetheless, I will say something.

Allow me to send a message of condolence to my party Chairman, Hon. Mbadi, who lost his mother two days ago. All of us as a House, I am sure our hearts are with him. We wish him well. Having said that, I am very happy with the renewed sense of responsibility by the Leader of the Majority Party. I wish that in future, we will be looking at these Bills in this manner.

I was here yesterday and I sat through that debate. There were some very crucial debates in this Bill that we need to consider. I am rising on Standing Order No. 53 which says that:-

“(2) At the conclusion of the debate, the Speaker shall put the question

(3) Despite paragraph (2), the Speaker may, on the request of a member, defer the putting of the question to the following day in which case the Speaker shall thereupon nominate a time at which the question shall be put.”

We want to request you to put it off. I want to plead with the Members to support what the Leader of the Majority Party has requested and what I am going to request. Members could not listen to us. The requirements of Chapter 6 of the Constitution allow us to come up with our own code of ethics. In the absence of that, I know that you have no window but to call Ethics and Anti-Corruption Commission to send a code of ethics here because that is required of us by the Constitution.

What Members did yesterday was not to listen maybe because of lack of information. It is a requirement of us to occasion properly Chapter 6. So, we want to give time to Members to reflect. Do we want to self-regulate or we want regulation imposed on us? Either way, one must happen. I listened to you very carefully. The day there was parliamentary breakfast when we engaged the media, you said as the head of this House that no draconian law that gags the media shall go through this House. I want to plead with you to live by your promise to the media. If there is anything that offends us, we need to engage the Departmental Committee on Energy, Communication and Information headed by Hon. Jamleck Kamau. It must not always be acrimony.

Right now, we have many issues that are noisy. The interest rates are at 25 per cent. There are so many things which we can do for our nation that should occupy the media space to lead this country into the next generation.

I plead with you to defer putting this Question to a later date. We shall consult with Hon. Jamleck's Committee and under your chairmanship of the House Business Committee (HBC) so that we can see and save us noise. If this noise leaves here, tomorrow it will be on the doorsteps of the President. The country has too many problems.

I thank you.

**Hon. Speaker:** Hon. Jamleck Kamau.

**Hon. Kamau:** Thank you, Hon. Speaker. Let me also join my colleagues, under Standing Order No.139 (3), on the same issue. If you look at the Constitution under Article 34, it is very clear that freedom and independence of electronic, print and all other types of media is guaranteed by this Constitution. It goes on to say that the State shall not exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium. Under (b) which is of more reference to this particular issue, it says that the State shall not penalise any person for any opinion or view or the content of any broadcast, publication or dissemination.

Given that the Bill that is before us today is at the Third Reading, I would want to plead and persuade you that we follow Standing Order No. 139(1) which allows you to allow this debate to be taken to another day, of course in conjunction with the HBC and the Member in charge of the Bill.

We do not want to continue fighting. What I know without anticipating debate is that, if we pass this law today the way it is, tomorrow the media will go to court. We cannot keep on going to court back and forth. We have to be seen to be doing the right things which are constitutional.

I, therefore, urge you and request you to allow this Bill back so that we can fix the problem. My Committee is prepared and ready. As soon as it comes to our Committee, we will be able to amend all the relevant areas so that we can make it constitutional.

I thank you.

**Hon. Speaker:** Let me hear two more Members. Hon. Millie Odhiambo.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, Hon. Speaker. I want to join hands with the Leader of the Majority Party and hon. Members who have spoken ahead of me. I would want to urge you that you invoke that section to defer the matter to enable the House deliberate on this matter further.

The reason why I am saying that is because yesterday I was in a different meeting and when I came, I found the matter proceeding. I saw clauses that had already been passed and I was overtaken by events so, I chose to keep quiet. I would want to request and encourage the Leader of the Majority Party with whom we were in the last Parliament, that in future, whenever we have Bills of this nature, it is easier to have a *Kamukunji* so that by the time you are coming to the House, we have already dealt with the thorny issues. I would want to encourage, if the Speaker could kindly defer the matter so that we have further consultations. In future, we do not get to this point but we have a *Kamukunji* on contentious matters. As a House, it also enables us to move forward.

I thank you.

**Hon. Speaker:** Hon. Members, I can see there are very many requests. It is not debate. That is why I would want to encourage you to remain within the rules governing this kind of request. Hon. Chepkong'a.

**Hon. Chepkong'a:** Thank you, Hon. Speaker. I rise pursuant to Standing Order No.83 as read together with Standing Order No.53. I would like to join Hon. Midiwo in conveying my sincere and heartfelt condolences to the family of Hon. Mbadi, the Orange Democratic Movement (ODM) Chairman, who lost his mother.

The passage of the Bill yesterday, indeed, marks a low tide in this House in which we appear to have derogated from the principles of the Constitution. I do not want to repeat what the Chairman of the Departmental Committee on Energy, Communication and Information has stated with regard to Article 34, but I would like to read Article 24 in which it allows Parliament to derogate from a fundamental right. It can only do so within the confines and the principles stated in the Constitution. It reads as follows:-

“24. (1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—”

That law that went through the Committee of the whole House, to say that the media cannot report negative things that have happened in this House, is indeed, a low tide in this House. Article 95 of the Constitution clearly states that we represent the people and we deliberate and resolve the issues concerning the people. Who then is supposed to report those issues? Is it not the media? There is no other mouth that we can use other than the media.

Secondly, if we misbehave, it is part of the report that the media must report to the people, that we have misbehaved. For instance, are we suggesting, God forbid, that if a man here rapes a woman, it should not be reported? That is fair comment. The media should be allowed to report bad things like those ones. He should not be protected from such things. There are others who are suggesting that the vice-versa can also happen but I have not heard.

*(Laughter)*

**Hon. Member:** On a point of order.

**Hon. Chepkong'a:** I am on a point of order. I would like you to invoke Standing Order No.1. This is an extraordinary situation which calls for extraordinary measures on your part. I am appealing to you to recommit this Bill back to the Committee for reconsideration. We have all seen that it is not fair. It is unconstitutional. We do not have to go to court to be told.

Secondly, this Bill will not only end with this House. It is also heading to another House. I am sure you know what will happen. Do we want to look bad? We were told by another House which is lower than ours that we did not know what we were doing. We have eminent people like Hon. Jakoyo Midiwo and the Leader of the Majority Party. Surely, must we be embarrassed when we have serious people like these ones?

I would like to plead with you with a lot of humility that you reconsider this matter invoking Standing Order No.1 to recommit this Bill back to the Committee so that we can reconsider this matter again.

I thank you.

**Hon. Speaker:** Hon. Members, I do want to open it. Let us not go to the substance. It is important for me to state a few issues to put them straight. One, this is a Bill that has to be considered by two Houses, if for no other reason, because it proposes to establish committees of powers and privileges for both Houses. I would want to make that point clear.

Even if we put the Question and pass it, it has to be considered by the other House. That must be made absolutely clear. It is not possible for one House to establish committees for the other House. That must be made clear because I have seen a lot of misunderstanding being bandied around. This is clear. What Hon. Chepkong'a says is true, that this is a Bill that has to be considered by both Houses. Even if you do not agree with recommendations or amendments that may come from the other House, you still have to go the route of mediation provided in Article 112. It is fair for all of us to understand that.

More importantly, the Leader of the Majority Party supported by Hon. Midiwo, Hon. Jamleck Kamau and Hon. Chepkonga'a has brought the issue of Standing Order Nos. 53 and 139.

Hon. Members, if you go through Standing Order 53 - I will have to state the date when the Question will be put. If I were to accommodate the reasons advanced by various hon. Members, it will be fair to proceed under Standing Order 139.

*(Applause)*

That will help us appreciate that Article 34 of the Constitution on freedom of the media, and more specifically to appreciate Article 34(2) of the Constitution which states:-

“The State shall not –

- (a) exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium; or
- (b) penalise any person for any opinion or view or the content of any broadcast, publication or dissemination.”

In all fairness, the issues that have been raised by the hon. Members who have spoken are weighty enough and are of a constitutional nature. These are the matters that it is only fair that this House gives itself sufficient time to consider or reconsider.



Hon. Members, I must make this absolutely clear that even as currently constituted in our current Powers and Privileges Act, the speakers chair the Committees of Powers and Privileges. They may only chair as Article 122 of the Constitution clearly states; that the speakers have no votes. It is true that the report that came before the House and the minutes will show that I fully participated as I am required to.

Indeed, I signed the report that proposed the amendment by way of deletion of various clauses; including, but not limited to Clauses 27 and 34. It is also fair to say that Clause 35 of that Bill is a general penalty clause so that people may not say that it is only targeting a particular group of Kenyans or people. It is a general penalty clause.

In the thinking of the Committee, the offensive clauses were mainly Clauses 27 and 34. I can merely have an opinion. The Constitution has said that I should not vote, however strongly held the opinion may be. I can only sit here and witness those opinions that I hold very dearly, voted against. That is our constitutional architecture. I should not be heard to complain. But I should allow the House to take its decisions in whatever manner, notwithstanding the views that I hold. They are merely my own views.

Therefore, in response to the points raised by the hon. Members, acting not under Standing Order 1, as requested by Hon. Chepkong'a, but acting under Standing Order 139, I would defer the putting of Question in Third Reading of this Bill, and refer this matter to the House Business Committee (HBC), to make a decision after reflecting on all the issues; and make a decision as to when the Question in the Third reading will be put.

Thank you, Hon. Members.

*(Several hon. Members withdrew from the Chamber)*

Do not run away Hon. Members, just freeze where you are. I think we may need to constantly bring the Advanced Oxford English Dictionary.

*(The Parliamentary Powers and Privileges Bill  
was referred to the House Business Committee)*

## **BILLS**

### *Second Reading*

#### THE AGRICULTURE, FISHERIES AND FOOD AUTHORITY (AMENDMENT) BILL

*(Hon. Tiren on 14.10.2015)*

*(Resumption of Debate interrupted on 14.10.2015)*

*(Question put and agreed to)*

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

*Second Reading*

## THE COURT OF APPEAL (ORGANIZATION AND ADMINISTRATION) BILL

**Hon. A. B. Duale:** Hon. Speaker, I beg to move that the Court of Appeal (Organisation and Administration) Bill be now read a Second Time.

Hon. Speaker, this Bill seeks to provide for the organisation and administration of the Court of Appeal.

The Court of Appeal is established under Article 164 of the Constitution. It has jurisdiction to hear appeals from the High Court or any other tribunal as prescribed by an Act of Parliament.

Historically, in 1967, three major laws were enacted in this country which are; The Judicature Act, The Magistrates' Court Act, and the Kadhis Court Act. All of them were enacted to streamline the administration of the justice system in Kenya. These three Acts established the structure of the courts as we have them today.

The Judicature Act Cap 8, for example, governs the administration of the Court of Appeal and the High court together. It sets out among other things, the administration structure, the composition of the Court of Appeal Bench, the maximum number of judges of the court of Appeal which is currently not more than 30 judges. Therefore, currently the Court of Appeal can only have a maximum of 30 judges.

The new Constitution has radically altered the administration of the Judiciary. This has resulted in the decentralisation of the court system in our country, in line with the principle of a devolved system of Government. This Bill is one of the constitutional Bills, in accordance with Article 164(1) of the Constitution, which provides that the Court of Appeal shall consist of a number of judges, being not being fewer than 12, as may be prescribed by an Act of Parliament. This is a bit different from the Judicature Act No. 8, which had a combination of both the Court of Appeal and the High Court to have a maximum of 30 judges. But if you look at the Court of Appeal as provided for in this proposed legislation, it is saying not fewer than 12 as may be prescribed by this House. This Bill talks about the organization and administration of the Court of Appeal.

Hon. Speaker, Article 164(2) of the Constitution provides for the election of the President of the Court of Appeal by the judges of the Court of Appeal, among themselves. That article gives all the judges serving in the Court of Appeal an opportunity to elect one of their own as the president of the court in a free, fair and transparent system.

Hon. Speaker, the objective of this Bill is to assist the officers of the Court of Appeal and other users, more so the litigants, to know how the Court is managed. Kenyans or litigants should know how the Court of Appeal is managed. That would enhance the effectiveness and accountability of that court.

Part I of the Bill deals with preliminary issues which are very common in all Bills in terms of the Act. So, I will not dwell much on Part I of the Bill. Let me go to Part II of the Bill which deals with the organisation of this court. This section provides for the composition and the jurisdiction of the Court of Appeal; the number, how it is composed, its boundaries and how far it can hear particular cases. It also makes provision for the boundary between the Court of

Appeal, the Supreme Court, the High Court and the Magistrates' Court. That is well documented in Part II of the Bill.

Part II of the Bill also deals with the powers given to the Chief Justice in establishing other stations within the country in the spirit of a decentralised judicial system. The Chief Justice is given powers to set up Court of Appeal stations across the country. If you are in Migori, you do not need to travel all the way to Kisumu, Nakuru or Nairobi. The people of Migori, Garissa and Kisii must access justice in an easier, efficient and accountable manner.

This part also enables the court in consultation with the Chief Justice as the Chief Executive Officer (CEO) of the Judiciary to establish a number of divisions within the Court of Appeal. The Court of Appeal has several divisions namely family, criminal and civil. These divisions will enable expeditious disposal of appeals before it because justice delayed is justice denied. This Bill gives powers to the Chief Justice to create a number of divisions and stations across the country for efficiency and easy disposal of cases.

It also deals with the administration of the court stations, the ranking of judges and provides for the election and for the removal of the President of the court. It gives a mechanism of electing and removing the President of the Court of Appeal and the ranking nature of the judges serving the Court of Appeal in terms of age, experience and qualifications. So, that is provided for. It says the President of the Court of Appeal shall be the head of the court and shall oversee the proper management and administration of the court. For now, we have Justice Kihara as the President of the Court of Appeal. So, the buck stops with him in the management and administration.

Part III of the Bill deals with the administration of the court, the establishment of the various committees of the court, the various sittings of the court; when the court can or cannot sit. It sets out the schedule of recess for the litigants or the general public to know the period the Court of Appeal goes on recess and when it sits. All these are documented in this Bill. For example, the Bill provides for the court to be on recess three times a year; the second Thursday before Good Friday to Tuesday after the Easter week, 1<sup>st</sup> August to 15<sup>th</sup> of September every year and 21<sup>st</sup> December to 13<sup>th</sup> January every year. It is the President of the court to make a determination on the conduct of the court during the court recess.

Part III also deals with the court registry, the Office of the Registrar, the Deputy Registrar and the qualifications of the Registrar of the Court of Appeal. It also sets out the functions and duties of the registrar which include the day to day running of the Court of Appeal and the administration of the court, the management of the registry, facilitation and enforcement of the decisions of the Court of Appeal. This part provides for the appointment of the staff of the Court of Appeal and the mechanism to be used in the transfer of the judges serving in the Court of Appeal. All this is in Part III.

Part IV contains, of course, miscellaneous provisions which are common in most of the Bills in terms of keeping the records of the court, performance management schedule, inspection and monitoring of the Court of Appeal. It also deals with ethics and integrity that is required of every judge of the court to sign and ascribe to the Judicial Code of Conduct. It specifies that English and Kiswahili shall be the languages of the Court of Appeal.

Finally, Part IV provides that the court shall ensure reasonable access of its services to all parts of the country. I said last week that one thing out of the many that the Chief Justice, Dr. Willie Mutunga will be remembered for is the decentralisation of the judicial systems in our country. Before him, some of the parts of the country, like where I come from, had District

Commissioners (DCs) as magistrates. Imagine a DC sitting in a court listening to litigants. I remember when I was growing up and going to school, there used to be a notorious DC in Garissa. I do not want to name him because he has retired. Hon. Oyoo will tell you because he was a good friend of the KANU Party. During the KANU times, half of the magistrates in Kenya were DCs. It is only under the reign of one, Dr. Willie Mutunga that places like West Pokot, Tana River and Garissa have duty station judges. Kitui, and I am happy to see the leadership from Kitui County Assembly---Welcome. They are my neighbours. On my way to Garissa, I pass through Kitui. So, I am very close to the people of Kitui. We might be in two different political orientation, but politics aside, Kitui County is a county that neighbours--- Many people in Kitui County and Mwingi sub-county work in Garissa and are my voters. So, I am happy to welcome them here.

Willie Mutunga will be remembered for many things, but I will remember him for taking courts to the most marginalised people in this country. The people of Garissa have a special place for Willie Mutunga in our hearts. Today people can walk from their homes and come to Garisa High Court. We want him to go further after the passage of this Bill and establish a number of Courts of Appeal.

I want to thank the current President of the Court of Appeal, Justice Kihara. Justice Kihara has shown leadership in the administration and management of the Court of Appeal as it is constituted today. He must be recognised. This House is under obligation to recognise men and women who serve with exemplary dedication in other arms of Government whether it is in the Judiciary or the Executive.

Hon. Speaker, Part IV provides that the court shall ensure reasonable access of its services to all parts of Kenya. Dr. Willy Mutunga has done that and I am sure, with the passage of this Bill, he will take the Court of Appeal to Kitui, Garissa, Migori and Turkana. I am sure that this House, in its wisdom through the Budget and Appropriations Committee, will give him the necessary resources.

In consultation with the Chief Justice (CJ) the president of the Court of Appeal shall make regulations. So, after the passage of this Bill, I am sure the president of the Court of Appeal in consultation with the CJ will develop regulations that will be brought to the House for better, more efficient and more accountable administration of the Court of Appeal. This Bill is part of the various reform agenda within the implementation matrix of the Constitution.

I thank you, Hon. Speaker, for rising to the occasion this afternoon to protect the sanctity of Article 34 of the Constitution that guarantees free expression and freedom of the media, by agreeing with us to defer that Bill. This day will be remembered. I am sure the position you took, despite you not having a vote as per the Constitution, is the best. I am sure the citizens, more so members of the Fourth Estate, will agree with you that we as a House need more scrutiny while passing legislation. We do not want Parliament to have absolute powers and authority in making laws for the citizens of this country. The laws that we make for the citizens must be the laws that we make for ourselves. Tomorrow we will not be in this House; we will join the citizens and the same laws will affect us. So, I thank you for your ruling.

With those remarks, I beg to move and ask Hon. Chepkong'a, the Chairperson of the Departmental Committee on Justice and Legal Affairs, to second this Bill.

**Hon. Speaker:** As Hon. Chepkong'a rises to second, let me take this opportunity to recognise the presence in the Public Gallery of pupils from Tarakwa Primary School and

Lainguse Primary School, both in Kesses Constituency of Uasin Gishu County. Welcome to Parliament.

*(Applause)*

Hon. Chepkong'a.

**Hon. Chepkong'a:** Thank you, Hon. Speaker. First and foremost, I take this opportunity to join the indomitable Leader of the Majority Party in thanking you for being a one-man salvation army to this House by making a ruling that represents Solomonic wisdom for purposes of moving forward the debate in this House. I was hoping that you would have ordered that this matter goes back to the Committee of the whole House, but in your wisdom, which we respect, you decided to refer the matter to the House Business Committee (HBC). I am sure that with the Leader of the Majority Party as a member of the HBC, good things will come out of the Committee.

I rise to second the Court of Appeal (Organisation and Administration) Bill, 2015. I must thank the Leader of the Majority Party because he has been moving very many Bills and he does so in a very eloquent manner and with a lot of understanding of various cross-cutting issues.

This is a very important Bill that is anticipated in Article 164 of the Constitution, which sets up the Court of Appeal. The Court of Appeal is not a court of first instance. It is a court that hears cases that have originated from the High Court or a tribunal that has been given the powers by legislation to hear cases that emanate from some institutions. The matters that go before the Court of Appeal are not matters of fact but matters of law. Matters of fact are dealt with by the High Court and the subordinate courts. By the time a matter reaches the Court of Appeal, you will be canvassing issues of conflict with regard to the law and nothing about the facts.

This is a very important court in terms of access to justice as required by the Constitution. Access to justice is a very important principle in the Constitution. The Constitution requires that every Kenyan in every part of this country has access to justice. No one should be denied the right to prosecute their matter before any court of law. Costs should not prevent a person from prosecuting his or her matter because the courts are very far away from where the defendant, respondent or appellant is located.

This legislation ensures that stations of the Court of Appeal are in certain geographical parts of this country. It may not ordinarily be in all the 47 counties, but it is intended that Kenyans access justice at a point closer to where they are living. At the moment, the Court of Appeal has been established in Nakuru, Mombasa, Nyeri and Kisumu. This ensures that you do not need to come to Nairobi to prosecute your appeal. The Judicial Service Commission (JSC) will continue to relook at the appropriateness of the location of these courts from time to time. That is the reason why Clause 4 of the Bill states that:-

“There shall be not less than 12 judges appointed to hear cases at the Court of Appeal.”

A bench of the Court of Appeal normally comprises of at least three judges. At times a bench of five judges is constituted depending on the gravity of the matter. So, this clause gives the JSC power to continue to assess and recommend the appropriate number of judges that may be required to be appointed to the Court of Appeal from time to time.

The Bill is important in the sense that it ensures there is efficient and effective delivery of the mandate of the Court of Appeal by ensuring that there is adequate number of judges. It seeks

to enable a consultative and democratic practice of decision-making with regard to the administrative and organisational matters of the court.

The Bill also ensures that there is a framework for facilitation of just, expeditious, proportionate and affordable resolution of appeals before the Court of Appeal. The Departmental Committee on Justice and Legal Affairs, as required by the Constitution, invited the public to participate by giving comments. We scrutinised this Bill and we found that it meets the threshold envisaged by the Constitution. This is a very important Bill for the organisation and administration of the Court of Appeal. At the moment, we do not have a Court of Appeal (Organisation and Administration) Act in place. So, this Bill is not seeking to repeal any Act. It seeks to put in place legislation which lawyers and litigants can make reference to and know how the Court of Appeal is organised.

This Bill also sets out the process of ensuring that the proceedings of the court are conducted in a manner that is beneficial to the parties that appear before the court. It also ensures that there is a process through which judges can deal with cases of contempt of court in accordance with the law and not their whims. The Constitution is very clear that the courts must administer only the law and not exercise discretion on matters that do not exist in law. It is now very clear that if you are in contempt of the court, you will be convicted and sentenced to pay a fine prescribed in law. As compared to the other times, we do not know what the courts were applying when determining that one was in contempt but, now we know for certainty what contempt is all about, how much you will pay and what the penalty is. This Bill is very important in setting out the procedure of administering contempt law.

Hon. Speaker, this Bill is also important because it sets out the manner and process in which the president of the Court of Appeal shall be appointed and removed. In the past, there has not been any law. There were just rules which were only known in the Court of Appeal. It is now engendering this particular Bill to ensure that there is a process. If the Court of Appeal judges are dissatisfied with the president who is serving at that time, they are able to petition and remove that person. It also provides that the president shall be the presiding judge of the Court of Appeal in terms of ensuring that there is expeditious disposal of cases. As you know, for a long time before the enactment of the new Constitution, we have not had a president of the Court of Appeal. Now we are going to have one as a result of the Constitution. This Bill ensures that we will have one firmly in place who will administer the law in accordance with this Bill. So, this Bill dovetails the other three Bills we have passed; the Magistrates' Courts Bill, the High Court (Organization and Administration) Bill, the Small Claims Court Bill and now the Court of Appeal (Organization and Administration) Bill.

So, this is a very important Bill which we need to pass as soon as possible so that we can ensure that processes and procedures are put in place to administer the Court of Appeal in terms of its organisation.

With those remarks, I second. I thank you, Hon. Speaker.

*(Question proposed)*

**Hon. Speaker:** I give the Floor to Hon. John Waiganjo.

**Hon. Waiganjo:** Thank you very much, Hon. Speaker, for giving me an opportunity to contribute on the Court of Appeal (Organization and Administration) Bill. This Bill recognises the mandate of Article 164 (1)(b) of the Constitution. It is an important Bill coming at a time

when the Judiciary is undergoing tremendous restructuring. The Judiciary is in a campaign mood. One member of the Judicial Service Commission (JSC) will retire this month. Therefore, the JSC needs to get one member. Considering the role that the JSC serves in our Judiciary, it is time that we really have our eyes on it because the Supreme Court of the Republic of Kenya will also be reconstituted after the Chief Justice proceeds for retirement sometime in June next year. The Deputy Chief Justice, Ms. Kaplana Rawal and Justice Tunoi will also proceed for their retirement.

That, therefore, means that the Supreme Court of the Republic of Kenya is going to have changes in that three members, which is almost half of that bench, will proceed for retirement at a time when elections will be held in 2017. This is the court that presides over the petitions for elections of the President of the Republic of Kenya. It, therefore, means that these constitutional Bills that are coming to restructure and give proper administration to the Magistrates' Courts, the High Court and the Court of Appeal, which we are debating now, are crucial in two ways. The guiding principle in Clause 3 of this Bill talks about Articles 10, 159 and 231(1)(e) and (f) of the Constitution.

This specific Bill states that this Court of Appeal will have at least a president and 12 judges. It proceeds in Article 164(3) of the Constitution to give the jurisdiction of the Court of Appeal but, the Chief Justice is the one to determine the stations of this court. This court will be presided over by a judge who shall be in charge of the station but will be assisted by a Deputy Registrar of that court.

The Bill also proposes, as that of the High Court, that the Court of Appeal also does have divisions like the commercial division, family division, criminal division and any other division of that court that will assist in the dispensation of justice.

This Bill also gives the rank and file of the judges of the Court of Appeal all the way from the president and the others depending on their time of appointment. It is an important Bill in that it also provides for the election of the president of the Court of Appeal. Here is an opportunity for the judges of the Court of Appeal to elect one of them to lead the court but, the Chief Justice is the one to make rules on how these elections shall be done.

The only problem of this Bill is that on the removal of the president of the Court of Appeal in Clause 15, we are only given two instances when the judge of the Court of Appeal can be removed. One is generally neglecting his duties as the president of the court and two is failure to satisfactorily discharge responsibilities of the office under Clause 13. It is my view that we need to expand the instances when the president of the Court of Appeal can be removed. We should add to it Chapter 10 of the Constitution and Article 232 on the civil service so that we may have sufficient reasons for the removal of a president of the Court of Appeal.

The procedure set out here for the removal of such a judge is that a vote must be taken to remove that judge and the people to consider this removal are the judges themselves. Therefore, a notice must be issued to the subject judge who is supposed to be removed so that he will have a fair hearing. Such notice will be responded to by the subject judge within 45 days and that judge must serve all the judges of the Court of Appeal. The notice that the judge gets must also be signed by half of the judges of the Court of Appeal. This is important because the judge of the Court of Appeal who may face some sanctions will be given a fair opportunity to be heard and a chance to reply to whatever allegations that may be levelled against him.

The Court of Appeal is important. Considering the matters that lie in the Court of Appeal having come from the High Court, it is an important court because it gives litigants an

opportunity to be heard on a third appeal. The first appeal is the Magistrates' Court. A litigant coming with a judgement from the Magistrates' Court will have an opportunity to be heard in the High Court. If not satisfied with the judgement of the High Court, such a litigant has an opportunity to move to this court. It is, therefore, incumbent upon the presiding judge in consultation with the Chief Justice to make rules and regulations and also to constitute benches that will hear any matter coming before the Court of Appeal. This, therefore, means that the Court of Appeal can make decisions or can constitute a bench of one or at most three judges. The instances under which the bench can be constituted are when such a bench is presiding over a matter concerning Chapter 4 of the Constitution on the Bill of Rights or any other matter that touches on the interpretation of the Constitution.

On matters that emanate or go to the Court of Appeal, the Court considers points of law, but does not look at the facts. It is a court that can create jurisprudence, precedents and that is why it is an important court whose decisions can be used and, therefore, it is a court that makes law. Of course, we know the sources of our laws one of them being customary law but, most importantly case law. So, the Court of Appeal is one of the courts that make law. It is an arm of Government and the Judiciary which also makes law, as we do here, and also interprets law.

The laws that we make here will go to the courts for interpretation. Where there are conflicts of such law, they are considered at that level. Even the laws that we make here and the law that is made in the county assemblies are subject to the High Court. If a county assembly passes a law that the National Assembly is in conflict with, the law that is made in the National Assembly presides over that other law made within the counties. But, if such a conflict is to go to court, then the court of first instance would be the High Court. Then, after the decision of the High Court and the parties are not satisfied with that decision, the other court to move to is the Court of Appeal.

Hon. Speaker, we have instances where the Court of Appeal is final. Litigants from the Magistrates' Court take their matters to the High Court and then the Court of Appeal. That is why sometimes the Court of Appeal becomes the final court because there are matters that the Supreme Court does not have jurisdiction over, for instance, the matter between the Teachers Service Commission (TSC) and the teachers' unions. When the matter went to the Supreme Court, it declined saying that they did not have jurisdiction and therefore returned the matter to the Court of Appeal. That is one of the instances that show you that the Court of Appeal can become a final court.

I support.

**Hon. Speaker:** The Hon. Member for Muhoroni Constituency.

**Hon. Oyoo:** Thank you very much Hon. Speaker for giving me an opportunity to contribute to this very important Bill which provides the way forward in our justice system. This Bill requires us to make some changes to reinvigorate the very active changes that have already been brought into practise by the current Chief Justice and his team.

I want to say that under the current team, this country has been blessed with focused Chief Justice and the Judicial Service Commission (JSC). They have done their best to decentralise the justice system such that people no longer have to travel from Samburu to Nairobi to attend Court of Appeal matters. It should also increase the number of the Court of Appeal judges. That way it will also offer incentives and appointments for our talented boys who have taken serious law courses both locally and abroad. I want to say, without fear of contradiction that upon taking over, the National Rainbow Coalition (NARC) Government tried



to bring prudent changes in the management of our justice system. But, this did not go very far because tribalism took the centre stage as those who were removed from the bench were people who were perceived to be anti-establishment or coming from tribes which were not politically correct. Many of them were people of serious legal resource that Kenyans still needed.

In this Bill we will have the Court of Appeal to be headed by the president, who is Justice Kahara. He has tried his best. He is a very focused young man and seasoned lawyer. The team will also comprise other judges. I have seen that here is a proposal to increase the number of Registrars and Deputy Registrars. This will go a long way to make the cost of justice cheaper. People have had to travel from very far. My only regret is that during NARC Government, we had sweeping changes in the courts but this did not yield much result. Currently, we have a cleanup system under Justice Sharad Rao or Justice Patel; but his efforts are being hampered by constant litigation of corrupt judges who are being replaced with tangible reasons. You will then find them going to court and some coming back to the bench with tainted images.

I have an example where a judge gave judgment in a case far beyond his jurisdiction. It was a case where some people stole the land of Miwani Sugar Company. Miwani Sugar Company was supposed to have been auctioned in an auction that was never to be. A water-tight investigation was done by the then Kenya Anti-Corruption Commission (KACC) headed by PLO Lumumba and people were charged. The same people who were charged got judgement from a lower court. The judge erred by giving judgement beyond powers of his jurisdiction and outside the prayers of the litigants; saying that no other court will have jurisdiction to try this case. Regrettably, I have seen the same judge – I do not want to name the judge at this point – carrying bags as if he or she is still on duty.

While discussing this Bill, we must make water-tight changes such that people who are put aside by the Magistrates and Judges Vetting Board of Justice Rao cannot find their way through the back door. We still find them and they expect people to have confidence in their judgement.

Kenya is in the mood of replacing judges. We are faced with a situation where the Deputy Chief Justice, madam Kalpana Rawal is about to retire and the president of the major court who is the Chief Justice Mutunga is likely to retire next year. There being no likelihood of him renewing his appointment, I am pleading that the powers that be, more so the JSC should rise beyond parochial considerations and make sure that Kenya gets, in the place Kalpana Rawal, somebody worth the position and who can meet the threshold of that office. When the time to replace the able Chief Justice Mutunga comes, we should look for lawyers of capability and not tribes or political parties. Kenya is bleeding with injustices. I want to thank the current Chief Justice because, even in our Parliament, we have sometimes been confused and we have had to make reference to his court to give judgement and he has done very well. We would want somebody who will fit in the Bill.

Otherwise, I support this amendment and I only pray that Hon. Members will approach it with a lot of soberness and let justice and nothing but sense reign.

Thank you very much Hon. Speaker for giving me the opportunity.

**Hon. Speaker:** Hon. Joseph M'ruaki.

**Hon. M'uthari:** Thank you, Hon. Speaker for giving me this opportunity. I rise to support this Bill. This is an important Bill as it creates order in the Court of Appeal. The issues stipulated in this Bill guide how judicial authority is exercised as far as the Court of Appeal is concerned. Judicial officers will be guided by these principles so that matters before the Court of

Appeal can be determined logically by using the available facts. Judicial officers must also respect the justice principles in terms of being reasonable enough to look at all the factors at play. We have had incidents where our judicial system has expanded their mandate and interfered with other arms of the Government. Such a situation is a recipe for disaster.

It is my belief that, as proposed in Clause 3, the Court of Appeal will be guided by the national values and principles as set out in Article 10 of our Constitution. Those values are also guided by the principles of public service as provided in Article 252 (1)(c), (e) and (f) of our Constitution. This calls for consideration of the welfare of the people. Being reasonable means consideration of all the factors at play. We have seen incidents of some cases before our courts where certain determinations by some of our judicial officers have caused chaos in some sectors. That is the case with the education sector where, without considering all the factors affecting the whole country, a judicial officer gave a determination which created chaos.

This Bill provides a clear organizational structure of the Court of Appeal, in terms of its presidency and leadership hierarchy. This again creates order. In terms of administrative processes, powers of the administration and the performance of functions, the Bill is clear. It provides a way for understanding when a matter has to be determined, and that is good.

The Bill provides clear linkages between the president of the Court of Appeal and the Chief Justice in terms of determining matters. The independence of the Court of Appeal is good for us, as a country. It is my hope that the people entrusted with the responsibilities espoused in this Bill will be considering the greater interests of the country and all stakeholders while determining matters before them. The Bill provides for clear periods for recess so that people with matters before the court can know at what time their issues will be determined. This facilitates discharge of justice services to our people.

With those few remarks, I support this Bill.

Thank you.

**Hon. Speaker:** Let us hear Hon. Millie Odhiambo.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, Hon. Speaker, for giving me this opportunity to contribute to this debate. I rise to support the Bill.

I note that the Departmental Committee on Justice and Legal Affairs has, of late, brought us several pieces of legislations that relate to the justice system. From the Bills that we have dealt with, it is clear that the focus is on the issue of access to justice by our people, and better administration of the judicial system. This is a very welcome move, which is envisaged by our Constitution. However, what I hope could be done in restructuring, since we have not given these issues one home in terms of putting them in a single piece of legislation, we make reference to the various Bills so that there can be order even as we administer one segment of the judicial system.

I am especially speaking to the Bill that we passed yesterday on the Small Claims Court. That Bill provides that we will have the judicial system of the Small Claims Courts beginning at the sub-county level. I wish we could establish the Small Claims Court right at the Ward level, the Magistrates' Courts at the sub-county level and the High Court, in respect of which we have already passed the High Court Bill, at the county level. Progressively, we can then have the Court of Appeal at a higher level.

I want to refer to the Constitution, but I would want to encourage the Chairman of the Departmental Committee on Justice and legal Affairs, Hon, Chepkong'a, to just listen to me.

Well, Hon. David is holding a brief for him. The reason why I would have wanted him to listen very specifically is because of an issue of interpretation. I can see that he is now alert.

Article 164 of the Constitution provides for the establishment of the Court of Appeal, which shall consist of not fewer than 12, as may be prescribed by an Act of Parliament. According to this Article, the Court of Appeal shall be organized and administered in a manner to be prescribed by an Act of Parliament. The fact that the Constitution says that this shall be done by an Act of Parliament does not preclude that Act of Parliament from obtaining other objectives. Therefore, there is nothing precluding us from having an omnibus legislation on administration of the court system.

I know that it is too late to have these ideas included, but I would have preferred it that way because the style of legislation that we have been having lately is geared towards consolidation. However, in respect of the justice sub-sector, we are having very tiny pieces of legislations on administration. Some of those legislations are repetitive. There are legislations which are very specific to the Court of Appeal, some of which are specific to the High Court and some of which are specific to the Small Claims Courts.

Therefore, I encourage the Departmental Committee on Justice and Legal Affairs to do something that would require them to withdraw some of the Bills and consolidate them to ensure that we can have something akin to the Judicature Act so that when we go to court, as lawyers, we do not have to refer to a plethora of legislations. It will make the lawyers' work a little easier. I do not know why the Departmental Committee preferred this style of legislation. Article 164 does not say that each of the matters provided for under the various sub-articles must have its own piece of legislation. It only says that they shall be provided for in an Act of Parliament. A lot of the things that are contained herein have been contained in other Bills.

As I conclude, I would like to encourage the Departmental Committee to mainstream gender in this Bill, as it has been done in other Bills. Mainstreaming gender is not about mentioning the words "gender" and "women." There are several ways of doing it. We can sit together and discuss the various ways of mainstreaming gender in this Bill to make access to justice easier for women and vulnerable groups in society.

With those remarks, I beg to support.

**Hon. (Ms.) Wahome:** Thank you, Hon. Speaker. I rise to support this Bill. As I said before, this Bill will go a long way in introducing reforms in the Judiciary.

I am happy with the arrangement of this Court. Two specific issues interest me. The fact that there is a very clear process of electing the president of this Court is very interesting. Previously, we had this role being performed by the Office of the Chief Justice. Now, once the judges of this Court are appointed, they are mandated to come up with the person to sit as the president of that Court. Thereafter, there is a process to come up with the persons to preside in the other courts that will sit elsewhere, taking into account the order of seniority of how judges are appointed. That is good because it discourages people who may want to sit as presiding judges by reason of considerations other than the fact that they are senior. With that consideration of seniority, we expect that there will be experience and competence in terms of management and control of the Court. That is squarely stated in this Bill. This also takes away unnecessary competition among the judges of the court. I am speaking to Clause 8 in relation to seniority of the judges of that court.

One thing that must clearly come out in this Bill is how justice in this Court shall be dispensed. I have practised at the Court of Appeal and at the High Court. One very worrying

factor that continues to dog our courts or to affect the justice system is the fact that in criminal cases, you will find that persons who have been convicted by the High Court or other lower courts stay for very long periods before their cases are heard. You will find that people are serving unnecessary terms of five or 10 years before their cases are mentioned in those courts. We have agreed that justice delayed is justice denied. If one has been convicted and has to wait for more than five years for their case to be dealt with, then we shall not have done anything even if we come up with all these Bills. There must be a way to assist those courts through legislation and provisions to ensure that cases are dispensed with as quickly as possible when they are mentioned before the Court. It is no longer acceptable for an accused person who has been convicted to wait for his appeal to be heard for over 10 years.

That also applies to commercial cases and other cases in terms of legal and civil litigation. Cases take unnecessarily long to be disposed of. One determining factor was that the rules of practice and procedure have been technical. We must encourage this Court to avoid rules that will allow a case to be lost merely because of technicalities. I am aware of Article 159 that discourages a case being lost because of undue regard to technicalities that do not go to the substance of the subject matter that is before the Court. Previously, the courts have been happy to dismiss matters because of those kinds of considerations. I will be very keen to look at the rules because the president of this Court has been mandated to prepare the rules of practice. Clause 13(2) states that without prejudice and in consultation with the Chief Justice, he has been allowed to issue practice directions and conduct of litigation in that Court. I am happy that we have not come up with any rules that restrict advocates who are young so that they can also sharpen their skills in this Court.

With regard to the process of removing the president of the Court, Clause 15 is one that we should encourage very much. I support the fact that if the president of the Court neglects duty, Clause 15 requires he should be removed. He is mandated by this law to ensure that general neglect of duty is not accepted. Failure to satisfactorily discharge their responsibilities shall cause a person who is the president of the Court to be removed. If the president of the Court gives no direction or leadership to this Court, then dispensation of justice shall be affected. That is a provision that was not there before. As I said before, the appointment of presidents of the court in our courts before has been made on the basis of other considerations. The fact that the same judges are then able to remove the president of the court for non-performance is a good thing.

It is obvious that this Court will sit outside Nairobi. The president will be in Nairobi, but we will have other courts in other parts of the country. We must look at the litigation cases that are now pending before our courts. The Court of Appeal has been moving from Nairobi to other areas of the country. They would sit in Nairobi but then move to other courts. In this Bill, we foresee a situation where we shall have the Court of Appeal sitting permanently in some of our regions. The first thing we must look at is how to decongest our registries. The creation of those courts outside Nairobi must be informed by the pending litigations outside Nairobi and the population in those areas so that we can clear such matters.

There is the concern that, up to now, we are litigating the issue of the retirement age of the judges. Because we are discussing this Bill, allow me to speak to that issue. The Constitution of Kenya 2010 has not reserved the retirement age of judges at 70. There is contestation by sitting judges who would like to retire on the basis of the terms of the old Constitution. Kenyans were aware that the previous Constitution set the retirement age at 74 years. However, the new

Constitution does not reserve or save the provisions of the retirement age as contained in the old Constitution. It is impunity. I say this with due respect to most judges. There is a case where the Judiciary is disregarding the Constitution, considering the fact that the provisions on retirement are very clear. The Judicial Service Commission (JSC) must start exercising the mandate that it has been given. It has been lukewarm in the exercise of that mandate and has failed Kenyans in terms of the conduct of some of our judges.

As I support this Bill, I expect proper oversight with respect to the conduct that is coming out as impunity against Kenyans and the Constitution.

**Hon. Mule:** Thank you, Hon. Speaker, for giving me this opportunity to contribute to this Bill. As you know, if this Bill had come in 2013 or 2014, I would not have gone for a by-election. I support this Bill for several reasons, which are very clear.

If you look at Section 3 of this Bill, it gives the guidelines of the national values and principles as stipulated in Article 10 of our Constitution, which is fundamental to the rights of justice. It also gives clear guidelines and principles to the judicial authority set out in Article 159 of the Constitution to make sure that judges give fair trial and fair justice to the people.

It is also looking at the principle of values and principles of the public service, which are clearly stipulated in Article 232 Section(1) (c), (e), and (f) of the Constitution. It also sets aside the divisions of the courts, to give a clear specialty on how to handle matters of different nature.

If you look at the Bill, it clearly stipulates how the president of the court will be elected and how he will exercise his mandate as the president of the court. It is important to note that this Bill gives clear timelines on when the court should go on recess to make sure that the common *mwanaanchi*, that is, the *Wanjiku* of this country, is aware of the timing. He or she will know when there will be court proceedings, if they have cases. That is well taken care of. That is in Article No.26 which states clearly that the second Thursday of every Easter week and 1<sup>st</sup> August to 15th of September will be the holidays of the court.

*[Hon. Speaker (Hon. Muturi) left the Chair]*

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

I would like to pass my sincere condolences to Hon. Mbadi who is mourning his mother. At the same time, I want to take this opportunity to draw the attention of Members to something that is of great concern and which affects most Members of Parliament. I hope Members of Parliament will listen to what I am about to say. It is with great sorrow that I would like to say that our health services in our counties have deteriorated to a level that you cannot believe. In Kangundo District Hospital yesterday, the mortality rate rose. We lost six babies during birth. It is a total shame when we are sitting as leaders politicking, when mothers in this country are losing babies after a nine months period of pregnancy. This is an issue where probably next week I will bring it to the attention of the House. I will move a Motion and discuss what is happening on the ground, especially to our mothers in this country.

This Bill talks of access to courts. Some of the people who are trying to create anarchy in our hospitals need to explain why we should lose five young babies. I am talking with a lot of pain. I want to pass my condolences to those mothers in Kangundo and Matungulu who lost their

babies during delivery under very mischievous circumstances. We are going to request authorities required----

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Mule, try to be relevant.

**Hon. Mule:** I am relevant Hon. Temporary Deputy Speaker. If there is no Court of Appeal, we will go to the normal courts. If there is no justice to those mothers, where shall we go?

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Now there you go.

**Hon. Mule:** I am trying to justify why this Bill is very important. It is important but I stand guided.

I wish to say that it is a well-timed Bill. It is a Bill that, as a House, we need to pass as soon as possible to ensure that justice is not denied or delayed anymore and that we have justice for all.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you for being relevant. Hon. Makali Mulu, Member for Kitui Central.

**Hon. Mulu:** Thank you, Hon. Temporary Deputy Speaker for giving me the chance to add my voice to this important Bill. At the outset, I want to say that I support this Bill. It is discussing the organization and administration of the court. Having read the earlier Bills like the one on the High Court, Magistrates' Court and the Small Claims Court, what is happening in terms of legislation is very important in this country. It is ensuring that the judicial reforms are taken forward.

Looking at this Bill, it makes important provisions for the Court of Appeal which will make sure that appeals which find themselves there will be dealt with within the shortest time possible to enable Kenyans access justice. I will focus more on administrative issues. One of the clauses that is of interest to me and which is important is Clause 24, which talks about how the court will be financed. We know that some of the courts that we have in this country have not been managed effectively or efficiently to attain their optimal level, basically because they are under-funded. When you look at Clause 24, it says that the Registrar of that particular court will be expected, three months to the start of a financial year, to provide estimates of what they require as a court to undertake their functions, to the Chief Registrar. So, as the budget for Judiciary is being finalized, those courts are properly provided for. This is very important because courts will have resources to perform their duties.

The other important point is that when you look at the calendar of the court as stated in Clause 26, it says that every year from 1<sup>st</sup> August to 15<sup>th</sup> September, they will be on recess. They will also be on recess on Friday before the Good Friday to Tuesday after the Easter week. The last one is on 21<sup>st</sup> December to 13<sup>th</sup> January, meaning that the dates when those courts will be on recess are clearly stipulated. This enables people who will be having issues in those courts to plan their time. That is quite good. I have never seen any other Bill where you find specific dates.

I want to talk about Clause 30. It talks of how records in those courts will be kept. It is about the whole issue of record-keeping or registry. Of importance is the issue of uniform record-keeping, meaning that any time you visit a Court of Appeal in this country, you will be able to access records which have been prepared in a uniform manner in terms of the way they have been presented. This will make it easier for anyone to access the information they want. It will also be easier to retrieve in case one needs any information.

What is very important again is Clause 31. The clause discusses the issue of performance management system. We must appreciate and congratulate the Judiciary in this country for accepting that performance management system is the way to go. When we were debating the Bill on the High Court and the Bill on Magistrates' Courts, this issue of performance management systems has been mainstreamed. This means Judiciary as an institution and the third arm of Government has accepted that they can only do better if they adopt a performance management system. In that score, they have mentioned the issue of performance contracting where it will be clear by the start of the year, what targets are set for each of the judges who will serve in those courts. They will have a system where they can follow how the implementation will be taking place.

Hon. Temporary Deputy Speaker, there is also an appraisal and evaluation system to make sure that whatever targets have been set, they can be monitored to see whether Kenyans are getting what is expected from the judges. But the way to do it has not been captured in this Bill. That being more of an administrative matter, there will be a separate document which will talk about how it will be done. It can also be important for the Judiciary to borrow what the police service has done. We have an independent body which deals with how the police force is performing in this country. It is a good practice to borrow. The Judiciary can also establish an internal mechanism to make sure that performance management system is implemented in the best manner so that we have an independent body within the Judiciary which will then assess, appraise and do evaluation of how judges are performing.

The other clause which is important is Clause 32. It says that all the judges serving those courts will sign and ascribe to the Judicial Code of Conduct. It is important that judges serving those different courts must sign that code of conduct so that the way they perform their duties is guided by it.

There is also another clause which is important. It is Clause 36. It says that the court shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so. It says that even if we have the headquarters of the court in Nairobi; it will be important to make sure that all Kenyans are able to access its services in different parts. That is where the Chief Justice has the mandate or that free will to decide where the court can sit to make sure that access to justice is taken nearer to Kenyans wherever they live.

The other clause which is important is Clause 37. It talks about protecting those judges. It says:-

“Subject to the Constitution, no judge or other person acting judicially shall be liable to be sued in a civil court for an act done or ordered by the judge.”

This clause is very good. It makes sure that judges do their work without any interference. It provides security and guarantees that, so long as you are doing your work professionally as a judge in the Court of Appeal, you cannot be taken to court. This is what we were saying and pleading the other day as Members of Parliament. This clause should also be applicable to us that, as we do our work, nobody should interfere with the way we do it. This clause becomes very important to the judges so that as they do their work, they will have no issue.

When you look at some of these clauses, you realise that this Bill, once enacted into law, will help this country in ensuring that the much talked about judicial reforms are now on the right track in terms of being implemented. I must join the Leader of Majority Party to thank the Chief Justice for the reforms he has spearheaded in the justice sector. The current Chief Justice

has done a lot of work in ensuring that judicial reforms take root in this country. As a result of that, then access to justice by Kenyans is now becoming easier every day and so, we need to support the Judiciary.

Hon. Temporary Deputy Speaker, with those remarks, I want to conclude by saying that I urge all hon. Members to support this Bill. Thank you for giving me the chance.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Member for Westlands, Hon Timothy Wanyonyi.

**Hon. Wetangula:** Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to contribute to this very important Bill. Speaking as a lawyer, I know especially what goes on in our courts. One of the courts in our court system that is most efficient is the Court of Appeal. It has a very efficient registry. Before the Supreme Court came up, the records at the Court of Appeal were very neat. The registry was very well organised. The filing of documents was very efficient and I believe that this Bill will even enhance the efficiency in the Court of Appeal. It is a very important part in the judicial system that we must support.

The Memorandum of Objectives and Reasons says that the main objective and purpose of this proposed law is to make further provisions for the organisation, administration and administrative matters to enable the effective and efficient functioning of the Court of Appeal. This Bill is going to make sure that the Court of Appeal still maintains its efficiency and is given more organisational mandate that will enable it to perform better.

I will urge the registrar to go a notch higher in the record system of the court. He can still introduce the electronic record system. It is not mentioned here, but I believe that it will go a long way to address the efficiency of the court. Electronic record keeping will enhance efficiency and enable those who want to use the registry easy access to records of the court. Sometimes, we have heard issues of files disappearing and when somebody keeps the file and he is not around, the file may not be found. But through the electronic system, somebody needs a code and he will access the records of the court. So, I urge that this should be considered so that we can have more efficient record keeping.

Section 36 talks about access to justice. It says:-

“The court shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so.”

When you read the Bill, you will see that most of the functions have been decentralised. The court can sit in various parts of the country with a presiding judge. We have its centre in Nairobi but in other areas, you find that there are judges who sit there as determined by the president of the court and in consultation with the Chief Justice. It has also been given that the person who will preside over the out of station court is the senior-most presiding judge. I must also address this issue of seniority because I believe that even the election of the president of the court should take into consideration the doctrine of seniority. The next senior most judge must be given the chance to head the court. I believe that in the judicial system, seniority is something that is taken very seriously. I know that through an election process, there could still be some issues that may end up not being resolved but, when we go by the senior-most judge, I believe that will address some of the things that might bring contention.

Section 17 talks about establishing of committees for the purpose of efficient management of the affairs of the court and the welfare of judges. This is a very important part because it will address how the court will be managed, the efficient delivery of justice and the welfare of judges. Sometimes, we neglect the welfare of judges and that breeds corruption.



If we go by seniority, and if the president of the Court is inefficient, there is no need for him to be in office. The Court of Appeal can take its prerogative to elect the next president and remove the one who is not efficient. They need the court to perform efficiently because this is an appellate court. An appellate court is supposed to be the most efficient than the other junior courts. People who are not satisfied with the decisions of the lower courts can come to the Court of Appeal knowing very well that they will get justice or something they will be satisfied with. I believe this action is very necessary because we do not want to have a dead-wood or somebody who is not performing sitting in the position of leadership of an important court.

Hon. Temporary Deputy Speaker, there is also the issue of the languages of the court. The official languages shall be English and Kiswahili. In addition, there will be the Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities. It is an important addition and I believe we shall have persons with disabilities accessing justice in our courts. Sometimes, we used to go to court and find that when there is no sign interpreter, the matter cannot proceed. That causes delay. Sometimes, it may take so long to get a sign interpreter because they are very few in the country and, sometimes, the cost is passed on to the litigants. It is important that this matter is addressed so that courts can take care of this and it will be helpful to persons with disabilities. People with visual and hearing impairment can now access justice.

I would also like to address myself to the transfer of judges. It creates efficiency when a judge is not left to serve in a station for too long. When they are transferred regularly to other stations, they will not be very complacent and sit believing that they belong to that station. People get used to them and, sometimes, that creates room for corruption. People know how to access the judge, how he behaves or relates with the people. When there is regular reshuffling of judges, it brings efficiency. It will make sure that a judge who comes to serve in a particular station knows very well that he will come to serve and move on.

Hon. Temporary Deputy Speaker, the other issue is the tenure of the president of the Court of Appeal. The Bill says that he will serve for a five-year non-renewable term. It means that once he has served for five years, then somebody else takes over and presides over the court. This ensures that one is not driven by other interests when he or she is trying to hang on to be the president of the Court of Appeal. This is a very progressive Bill.

I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. (Eng.) Gumbo, Member for Rarieda.

**Hon. (Eng.) Gumbo:** Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to make my contribution to this Bill. The arrangement of this Bill, as it is evident, is more or less the same as that of the High Court (Organization and Administration) Bill, the Magistrates' Court Bill and even the Small Claims Court Bill.

I want to reiterate what my good friend, Hon. Millie Odhiambo had said. Perhaps, that will be a better way of making laws if we could combine these Bills, whose wordings are more or less the same, into an Omnibus Bill.

I am glad that the Court of Appeal (Organization and Administration) Bill is specific. For example, under Clause 4, it limits the size of the Court of Appeal which will consist of the president of the Court, and not less than 12 judges. It also provides for a needs assessment. The provision for a needs assessment is good because of the fluidity of the times that we live in.

What pertains today may not necessarily be what we will want tomorrow. In my view, the fact that we will, from time to time, hold a needs assessment is a good thing.

I am glad that Clause 7 of the Bill provides for the divisions for the court. As I have said before, we are living in a fast changing world. It will be important that, as we create the divisions of the court, we take cognizance of the emerging and contemporary issues of our time. For example, coming from an electrical engineering background, some of the most complex issues that we face today are to be found in the field. There are such emerging issues in the field of Information and Communication Technology (ICT), renewable energy, oil and gas where, sometimes, disputes usually involve a very complex and huge commercial interest.

A time has come when, in addition to getting legal training, those who preside over the cases in courts, whether they are magistrates or judges of the High Court or the Court of Appeal, need specialization to deal with those issues, which we cannot wish away.

Clause 14 of the Bill provides for the office of the president of the Court of Appeal to be in Nairobi. I am concerned by this obsession of having everything in Nairobi. We seem to think that things can only happen when Nairobi becomes the centre of gravity. This is why everything in Nairobi has become so artificial from plot sizes. The other day, I was being told that the cost of a plot in some areas in Nairobi is as high as five to 10 times the cost of a plot you will find in a similar neighbourhood in New York City or London. This obsession of always wanting to put everything in Nairobi is wrong. We should borrow from other jurisdictions. For example, if you go to South Africa today, the administrative capital is in Pretoria, the commercial capital is in Johannesburg, the legislative capital is in Cape Town, and the judicial capital is in Bloemfontein. I do not understand why, in the interest of taking justice to the people, we should insist on housing the president of the Court of Appeal in Nairobi. It does not make sense to me. This is one of the areas we should allow regulations so that, even if we are to define the location of the office of the president of the Court of Appeal, let it be done through regulations.

The fact that this Bill provides for specific programmes for budgetary allocation for the court is important. There is no gainsaying that the Court of Appeal in Kenya, up to now, has been very efficient. That efficiency can only be enhanced if we provide the necessary resources to make the judges do their work properly.

Hon. Temporary Deputy Speaker, the fact that the calendar of the Court is clearly spelt out in this Bill is good. It is ensuring that when people go for determination between those higher level courts, they know at what point they can prepare.

As I conclude, as a country really, we must speak to what, in my view - and I stand to be corrected - appears to me to be a very high level of judicial activism in our country today. I am not a lawyer but I want to think that when judgements are made, they cannot be impervious to the prevailing public issues. I am very concerned with some of the judgements that have been coming out of our courts. For example, when a judge sits in a court somewhere and purports to injunct the institution of Parliament, how is that helpful to this country?

If we are to talk about the principle of separation of powers, I would like to believe that as much as Parliament has a duty to keep off matters that are before courts, courts too must have a duty to keep off matters that are within the purview of Parliament. I find it almost ridiculous that when, for instance, Parliament is planning to impeach a Cabinet Secretary (CS), a provision that is clearly provided for in the Constitution, somebody purports to run to court to injunct Parliament and say: "You cannot go ahead and do it!" Then why is it in the Constitution? We are also told that some judge somehow happens to be giving an injunction. Is that not a futile

exercise? Why would it be? I saw the ping-pong that went on with the teachers strike over their salaries - the back and forth.

Honestly, the realities on the ground should have informed an older judge - and I do not pretend to be one and probably I will never be one - to determine the issues and come up with judgements that are in consonance with the realities on the ground. You give a judgement because somebody has appeared before you and you think that it is the convenience of the time, or you probably think that it is the right thing to do at the time without caring how it impacts on the wider public. Nobody lives in isolation in this country. Some of the judgements we have had in this country are, in my view, too activist and they do not help the country to move forward. The idea of why we have stratified our justice system to have the Magistrates' Courts, the High Court, the Court of Appeal and the Supreme Court which, in my view, has done very dismally, was to make justice accessible to the people of Kenya. But I am not convinced that we are getting value for money with these new arrangements.

A time has also come when we really need some sober debates in this country on some of the structures we have put in place. This debate came up during the Constitution-making process, but we must open it again. How much has the Supreme Court done to this country to increase access to justice? Has this country become a better place because of having a Supreme Court? My view is that in the few instances that the Supreme Court has been called upon to be an independent arbiter and to be a neutral referee, they have chosen to be players in a matter where they are supposed to be. I have, for instance, the issue of the two-thirds gender rule where the Supreme Court has been giving judgements that sound good on paper but, indeed, are far from good. For example, we have been having issues of the date of the next general elections and teachers' salaries. We must have sober debate because some of these institutions we have brought in are supposed to make our country a better place to live in. But when they appear to be pushing us to further deadlocks, as a country, we must come out courageously to say that we do not need them.

With those remarks, I support and I will be proposing some amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Your proposed amendments are welcome. Hon. Johana Kipyegon.

**Hon. Kipyegon:** Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to support this Bill. For a long time, we have been looking at the Court of Appeal as just a part of the court system. The introduction of the Supreme Court makes the Court of Appeal as a gateway to the Supreme Court.

It must also be understood that several cases have ended up in the Court of Appeal. Initially, people used to think that the Court of Appeal is just to deal with matters of law but, as we speak today, the Court of Appeal seems to be one of the most important levels in our judicial system. I would like to thank the Mover of this Bill because the management is being enhanced so that we can have serious accountability and a system that can allow those courts to work properly. That is very important.

The establishment of other stations---

*(Hon. Wandaayi consulted loudly)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Order, Member for Ugunja, Hon. Opiyo Wandayi! Your voice is always very high - not once or twice - but repeatedly. Please, in future, lower your consultations. You are blessed with a voice. Thank you.

**Hon. Kipyegon:** Thank you, Hon. Temporary Deputy Speaker. I also want to say that I support this Bill because it establishes other stations to ensure equitable access to justice. The fact that we have few Courts of Appeal in this country and yet we have so many cases moving away from the High Court makes it difficult for people who want to have their cases heard there. The establishment of several stations will allow Kenyans to have access to the services of the Court of Appeal.

I agree with the Mover that within the Court of Appeal, the establishment of divisions will also help to create more opportunities for people who want to seek justice in them. I wish to say that the Bill allows the election of the president of the Court of Appeal. We all agree that the Judiciary has to be autonomous not only in its functions, but we must also allow the levels of the courts to have their autonomy. We need to allow the High Court and the Court of Appeal to have autonomy just like we have allowed the Supreme Court to have its autonomy. When the judges want to elect their president like in the Court of Appeal, they should have the mandate so that it avoids external interference. The introduction of allowing the judges of the Court of Appeal to elect their own president is a good idea. It will give the court serious autonomy. There will be no manipulation.

This Bill also gives powers to the president of the Court of Appeal to oversee the proper administration of the courts. The idea of having the courts being managed from elsewhere or by the highest authority, like the president of the Supreme Court, is not good enough. The president shall have the mandate to supervise the administrative activities in the Court of Appeal. That is a very good idea.

The Bill is also good in introducing a calendar. Like my colleagues have said, people would want to know when those courts are working or when the judges have gone on leave so that they can note it in their calendars. The clear show of their working days and the days they are resting is good. It is like what we have in Parliament.

I also thought that the way the Judicial Service Commission (JSC) has been running the affairs of the Judiciary has not been right. We must voice our concerns on the way the Judicial Service Commission (JSC) is dealing with judges. We have so many complaints as we speak. There are Supreme Court Judges who are on strike. This is a matter that needs to be looked into. As my colleague Hon. Millie Odhiambo said, we need to comprehensively look at other levels so that we legislate to address the problems faced by the judges who are working in those courts. As we speak, so many judges are complaining about how the JSC is handling their matters. For a long time, the JSC has resisted being overseen by the Departmental Committee on Justice and Legal Affairs of this House. We also need to legislate to ensure that the JSC does not intimidate judges by forcing them to retire against the constitutional provisions.

This Bill also introduces proper management of the registries of the Court of Appeal. Each level of courts must have its own registry where the files of the court can be properly kept. The appointment of a registrar is also important. We have had several complaints on the manner in which files are handled. This Bill will go a long way in curing that.

There is also the question of the management of case backlogs in the courts. The Court of Appeal is where most of the High Court cases end up. This Bill is a cure to the way most of the cases are handled. We were also thinking in our own Committee that most of the election-related

cases should be finalised at the Court of Appeal. Only those cases which are very serious should proceed to the Supreme Court, with the leave of the Court of Appeal. Remember that the Supreme Court has only seven judges. If all the election-related cases were to end up in the Supreme Court, the few judges in the Supreme Court would not be able to manage those cases. Therefore, we need to empower and give more teeth to the Court of Appeal, like this Bill is trying to do.

This Bill also talks about how to manage cases and files. When I was a student in law school, I did my attachment at the Milimani Law Courts. I could not imagine what I saw there, especially on how files are being mishandled and get lost. There are land cases which have been active for as long as we have lived. Some are as old as 60 or 70 years. Remember the Koinange case which had been in the courts for 35 years. This Bill will go a long way in sorting out such cases.

The Judicial Code of Conduct is very important in looking at the time and manner in which the judges---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Your time is up.

Proceed, Hon. Naomi Shaban.

**Hon. (Dr.) Shaban:** Ahsante sana, Mhe. Naibu Spika wa Muda. Mimi pia naunga mkono Mswada huu ambao ukipitishwa, utaimarisha mahakama zetu za rufaa. Wakenya wengi wamekuwa wakilia ili kuhakikisha kuwa wamehudumiwa kwenye korti zetu humu nchini, ili masuala yao yashughulikiwe na hukumu kutolewa wakati unaofaa. Mswada huu ukipita, Mahakama ya Rufaa itazunguka nchi nzima. Itakuwa na majaji wasiopungua 12. Itapewa ruhusa na Jaji Mkuu wa Mahaka ya Juu na kutekeleza majukumu yao ili Wakenya wapate huduma hii, ambayo ni ya muhimu.

Katibu ambaye atasimamia masuala ya Korti ya Rufaa amepatiwa majukumu ambayo yataiwezesha mahakama hiyo kufanya kazi yake vilivyo, kulingana na Kipengele cha 164 cha Katiba yetu. Wakenya wengi hungojea muda mrefu sana ili kesi zao zisikizwe, na hupata uamuzi wa mahakama baada ya muda mrefu. Kesi nyingine zimechukua miaka isiyopungua mitano na kuendelea. Tangu kuwepo kwa Katiba mpya, Jaji Mkuu amehakikisha kwamba wamepunguza kazi ya kesi ambazo zilikuwa mbele yao. Lakini kwa sababu ya uhaba wa majaji, wameshindwa kutekeleza wajibu wao haraka iwezekanavyo.

Mswada huu ukipitishwa, utaiwezesha Mahakama ya Rufaa kuwahudumia Wakenya. Zaidi ya hapo, ni kumrahisishia kazi Jaji Mkuu, ambaye anasimamia upande wa mahakama humu nchini, ili kazi iweze kupunguzwa kwa haraka. Vile vile, majaji wakiwa wengi, wataweza kugawanya kazi kwa urahisi na kusikiza kesi zilizoko ili kuweza kufanya uamuzi kwa muda unaofaa.

Suala la majaji kwenda likizoni pia limeangaziwa. Wananchi watafahamu kuwa ikifikia wakati fulani, majaji wa rufaa hawatakuweco kwa sababu watakuwa wameenda likizoni na watu na mawakili wao watajipanga.

Wakenya wamekuwa wakiumia sana wakilipa pesa kuwafidia mawakili kwa kazi ambayo wanawafanyia. Wanalipa pesa nyingi kwa sababu kesi zao zinakaa kortini kwa muda mrefu. Mswada huu ukipitishwa, utaiwezesha mahakama kutekelza kazi yake kwa muda unaofaa. Kila mtu Kenya ameshajua faida ya sheria tulizonazo. Kwa hivyo, kila mtu anakimbilia kupeleka malalamishi yake kwenye Korti ya Rufaa.

Kwa hayo machache, naunga mkono Mswada huu uwe sheria ili iweze kuwasaidia Wakenya.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Charles Njagagua, Member for Mbeere North.

**Hon. Njagagua:** Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to contribute to this Court of Appeal (Organization and Administration) Bill. Over the last one week, we have looked at the Small Claims Court Bill, the Magistrates' Courts Bill and the High Court (Organization and Administration) Bill. This shows the level at which this arm of Government is proceeding to enhance Articles of the Constitution. Once this Bill is passed, I am sure it is going to enhance the independence of the Judiciary.

As many people may know, the Judiciary is one arm of the Government but, as we have seen, it is structured in various courts. We have the Small Claims Courts, the Magistrates' Courts, and the High Court and now we are looking at the Court of Appeal. There is also the Supreme Court and the Labour Relations Court. All those sections are meant to look at various aspects of our court system. In particular, I must say that when matters begin from the lower court, the court of original jurisdiction, that is the High Court, in the event that parties are dissatisfied with the decisions that emanate from the High Court, they can launch the appeal in matters of law - not of facts - to the Court of Appeal. I am certain that if one again is not satisfied with the decision of the Court of Appeal, they can proceed to the Supreme Court.

Therefore, it goes without saying that once this Bill is passed, it is going to organise how the Court of Appeal is run. There are clauses on the president of that court and on the presiding judges of that court in various stations so that we can have the smooth running of the Court of Appeal.

I must say that most of us who are legal practitioners have had an occasion to practise in some of those courts. I must also add that in my years of practise, the court that I have found to be more efficient and well organised is the Court of Appeal. Their calendar is well run. They send out timely notices to parties. When you go there, more often than not, your matter is likely to be heard. Once this piece of legislation is passed by this Parliament, it will enhance the efficiency of that court. Why do I say so? There is the issue of democratisation of that court. From the rank and file, the president will be elected by the 12 members of that court. There will be fixed stations for the Court of Appeal and the senior-most judge in those stations will become the president of that court. It means that seniority will come to bear on the court and the other members.

There is also the issue of removal of the president of the court once he is unable to discharge his duties or found to be corrupt. God forbid! Half of the members of the court must sign the petition and, at least, two-thirds of them must vote to have such a judge removed. In the spirit of democracy, before a motion to remove the person is passed or a vote is cast to remove the president, he or she is given time to be heard. That enhances natural justice; that you cannot condemn a man or woman unheard. It gives him 45 days to respond to the queries and the issues raised and then a vote is cast to kick him or her out of office. The threshold to get the president out of this court is two-thirds of the membership. It is important to avoid frivolous and trivial issues where people gang against the president.

Hon. Temporary Deputy Speaker, on the issue of modernising and efficiency of the court, there is a small matter of automation of the court. We will have stenographers, tele-conferencing and video-conferencing. It means that you do not have to appear in person. On this side of our jurisdiction, we were pegged to the olden days or the stone age in our legal practise, where a person has to appear in court either by representation of an advocate or in person. But since the

matter of the International Criminal Court (ICC) came in, we have now seen that you can appear in court by tele-conferencing. We have adopted this mode of practise in the Court of Appeal. It means that if a litigant or their counsel is unable to attend a session, say in Nairobi, then we can have a tele-conference where matters can be canvassed without appearing in person in that particular court. What that means is that it is going to cut down on cost and time. That will enhance the efficiency of that court. Automation of the court is in Clause 29.

There is a small matter, again, about the registrar. The judges must ascribe to the Judicial Code of Conduct. When an organisation does not have a code of conduct, it means that people will be operating in a haphazard manner. But when there is a code of conduct that they have to ascribe to, it means that once you digress from it, then you can be said to have misconducted yourself. That can be enough ground for the removal of such a judge of the Court of Appeal or the commencement of proceedings to have such a presiding judge or president of the court removed.

There is also the issue of the president who, in consultation with the Chief Justice, can have various stations of the court. As things stand today, the Court of Appeal is stationed in Nairobi. They only have to move out in circuits to Nyeri, Kisumu, Mombasa and any other stations that the Chief Justice may prescribe. But, this time round, we are going to have permanent stations where the judges will be stationed. This means that litigants will cut down on expenses because they will not have to move, for example, all the way from Mbeere North to come to Nairobi. If a station is established in Embu, which I pray it be done, our matters can be prosecuted and heard. That is going to cut down on costs.

The Bill says that the court can establish itself into various divisions, like the criminal division, commercial division and the family division. Some of the judges who are going to sit in that court have specialised in certain lines of jurisprudence before they became judges - when they were either magistrates or litigating advocates. If somebody had acquired a certain degree of competence in a certain area and the Court of Appeal is split into various divisions, such a member can sit in such a division.

I support this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Let us have the Member for Ugenya, Hon. David Ochieng.

**Hon. Ochieng:** Thank you so much, Hon. Temporary Deputy Speaker.

I rise to support this very important Bill which is not only part of our duty to implement the Constitution, but also part of going forward in this country to ensure that we have an efficient, transparent and well organised system of getting justice. Before I go far, I want to say that the role of a judiciary or judicial system is creating an enabling environment for doing business in the country. It is to create confidence among Kenyans that they have a place to go to in case they have disputes, especially in a country that is as sick as ours, where everyone looks out for himself and God for us all. It is having a judiciary that people can trust. That is a very important thing. What we are doing this afternoon is to ensure that we build a more independent, firmer and a more transparent Judiciary.

In my mind, whereas we have a Supreme Court in this country, the Court of Appeal is the most important of all the courts in this country. If you ask me, the reason is that the Supreme Court has a very limited jurisdiction. Under the circumstances that have been prescribed in the Constitution, matters go to them rarely. But, in most cases, you will find that most appeals

terminate at the Court of Appeal. That is why this court needs to be strengthened to ensure that it works well.

This Bill creates a quasi-independent court of appeal that is able to, within its own structures and cadres, ensure that it is run in a manner that delivers justice. What is really interesting is that the Court of Appeal has had a very chequered history in this country. Before the new Constitution, it was the highest court on the land but you do not see serious jurisprudence coming from this court. You also do not see serious case law coming from this court. This is largely, in my opinion, because of lack of independence.

With the new dispensation and the expanded mandate of this Court; if we allocate them money to hire more judges, I hope that the case law that will come from that court will be such that they are able, with some level of finality, help us settle some matters of law that have been pending for a long time.

Hon. Temporary Deputy Speaker, it is shameful that three judges of the Supreme Court are picketing as we speak. They are picketing because fellow judges of the Supreme Court have refused to obey the law. When we had the new Constitution all the judges, without exception, took a new oath of office knowing they will retire at 70 years of age. I am saying this with a very heavy heart because it is something that is pending in court.

When we vetted the Deputy Chief Justice, she told us that she will retire at 70 years and it is in the public domain. When the time for her to retire comes, she says, “No. I want to retire at 74 years” and then she causes a serious crisis at the Supreme Court. Therefore the seven of you organise and gang up against the whole country and say that you will not listen to cases; that you will engage in a go-slow. So, where do Kenyans go when Supreme Court judges decide that they are going to engage in a go-slow? It is very shameful because they have not done the right thing.

Back to the substance of the Bill, one of the things that I find very interesting in this Bill is the fact that – I heard Hon. (Dr.) Shaban speak in Kiswahili – it allows people to approach that court both in English and Kiswahili. This is important because, for a long time, this court used to be unapproachable. You could go there and get more senior judges. Some of us would not easily go there as young lawyers because you would go there as a lawyer and you would think you are being cross-examined. But now, with the capacity to appear there both in English and Kiswahili, it means what we said here yesterday and Monday, that even where you do not have a lawyer, you can still approach the Court of Appeal in a language you understand or speak. For me, that is a game changer. This will mean that the judges in the Court of Appeal will have to learn Kiswahili. I call upon them to do so, so that they are able to handle cases without engaging interpreters whenever there are cases of this nature coming before them in Kiswahili. They are Kenyans and they should prepare because people who appear before them will speak in Kiswahili.

In this regard, the other thing that is important is that the court is being given some autonomy. We are being told that if you are 20 judges, we are allowing you to elect your president. Once you elect him, we will provide for how he will manage that court. If he does not manage the court well, we provide how you can remove him. Before, it used to be the Chief Justice appointing by saying “so and so will be the president of the Court of Appeal and so and so will be the president of the High Court” and all that. Now, the judges themselves sit and elect their president. If they think they are not being served right, they are able to remove that president and elect a new person. The president of that court has the duty to ensure that the ethos of justice as enshrined in the Constitution, working in conjunction with the Chief Justice, are met



at the level of the Court of Appeal. This person will supervise the whole bureaucracy of the Court of Appeal.

Hon. Temporary Deputy Speaker, you may not know this, but one of the major issues in the Court of Appeal or our Judiciary today, is that we have clerks who have been in some of these courts for as long as 20 or 30 years. When you post a judge to a court, the clerk tells the judge that, “we do not do it this way here.” With this kind of a system, we are hoping that the Judiciary or the Court of Appeal is able to manage its internal transfer of clerks so that no one stays in the same station for more than five years to the level that they get comfort that they are even able to direct the judges on what to do. This happens today and that is why when we recently had mass transfers in the Judiciary, you heard the clerks complaining and saying: “No, we do not want to move.” Some of these are the ones who have ensured that corruption thrive in the Judiciary. With this kind of system, they are able to manage within their ranks how to do this.

One of the major issues is records management. You will hear: “A court file has disappeared, we cannot trace the court file and we cannot do this.” In the Departmental Committee on Justice and Legal Affairs, we have ensured that we give the Judiciary enough money to automate, digitise and ensure that there is no room for someone to claim files have disappeared. This week something very funny happened at the Coast. Some rolls of bhang were kept as exhibits. When they were asked for by the courts, police said that those rolls of bhang had been eaten up by rats. It was in the newspapers all over the place. It was even in the news. Those rats ate 500 rolls of bhang which were exhibits in court and that they could not be found.

With proper provisions like we have made in the Court of Appeal (Organization and Administration) Bill, we are hoping that the courts will put up proper records management systems which will ensure transparency above all. Secondly, Hon. Nyaga has said that everyone gets to know what is happening at every point in time. If you are a litigant in that court or a member of the public and you want to know the status of a case, you are able to click a button and get this. We hope that the managers of that court are listening.

One very important innovation of this Bill is that we now have a substantive Registrar of the Court of Appeal who will report to the Chief Registrar, but will also have some level of independence in running and managing that level of the court at his or her ability, based on what is provided for in the law.

I want to request the managers and judges of this court to start churning out the jurisprudence that all of us will be proud of and that will give direction to this country in matters of law.

Thank you very much. I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Member for Nakuru Town East Constituency, Hon. David Gikaria.

**Hon. Gikaria:** Thank you Hon. Temporary Deputy Speaker, for giving me this opportunity. This is a very opportune time for us to reflect and see what the Bill is intending to do. The Court of Appeal is a very important court. Somebody from the lower courts can go to the Court of Appeal, just in case he or she is not satisfied with the judgement of those other courts. This is important for us.

There is something that has been talked about here as I am trying to look at the Act itself and some other legislation. It is about the much talked about retirement age of the judges. In the Third Reading, it is important that we try and see whether we can do something. You know the Deputy Chief Justice has gone to court to dispute that she is not supposed to retire at the age of

70 and that she has to retire at the age of 74 years. She is saying that she was there before the new Constitution. These are issues that we really need to be specified in law so that we do not have any other issue in future where a Court of Appeal judge might want to come and claim that he or she has not attained the rightful age. Therefore, it is important for us, as we discuss and deliberate about this Bill on the Court of Appeal, to look at the age factor.

The other bit that we need to look at is the clause that talks about the language of the court. Of course, it has specified the languages as Kiswahili and English or any other, using translators. The Judiciary should come up with a mechanism to have a consistent format of translation. We had seen this in the International Criminal Court (ICC) case, where you translate a word from one language to another and it gave a totally different meaning to the person giving evidence. Therefore, it is important for the Judiciary to come up with a policy and a standard format. They normally use dictionaries and *Kamusi* to translate some of these words. However, when it comes to mother tongue where a convict cannot understand English, or a witness cannot understand the two languages, it becomes very difficult. So, it is important for us to have a better way of translating from one language to another in a standard format. That is something we need to look at during the Third Reading.

It has been said severally here that automation of record keeping is important. Hon. Ochieng has just alluded to the fact that automation will address the issues of lost files from court registries. You find that sometimes court files cannot be traced because the manually kept records are difficult to trace. I believe that the money that has been given to the courts for automation purposes will go a long way to addressing this matter. These days, after a case is concluded, it takes months before you can be given the signed proceedings document for purposes of presenting it somewhere. Therefore, it is important for us to automate record keeping in the courts of law.

Clause 26 talks about court recess. This is another area where courts have abused time. I remember in one of the courts in Nakuru, a lawyer was trying to count the days that a High Court judge sits in a court. It was so pathetic. The days were so few because of unnecessary court recesses. In this regard, this clause clearly stipulates the recess dates. It has reduced the number of the recess period in a year to almost less than 80 days. That is acceptable. Eighty days in a year leaves us with nine months within the same year for judges to sit in courtrooms and handle cases.

Even more importantly, the Court Registrar and the president of the court will have programmed the recess period in a way that at no time will you not find a High Court judge in a station. It is stipulated under Section 26 that even during recess periods, there shall be a judge on duty who can address some urgent issues that may come up. This is something which is very important. The Constitution stipulates that we need to speed up the court process to be able to expedite dispensation of justice. This is something which will go a long way in executing that very fundamental aspect of speeding up court cases.

The threshold for removing the President of the Court of Appeal from office has been slated at three-quarters of the number of judges serving in that court as articulated under Article 164 of the Constitution. This Article establishes the Court of Appeal with judges not fewer than 12, as may be prescribed by an Act of Parliament. It is important that the Constitution has specified the minimum number of Court of Appeal judges that we should have. Two-thirds of the judges of the Court of Appeal can vote to remove the president of that Court.

The reasons for removing the president of the Court of Appeal are also provided. This is something we will be discussing with the Departmental Committee on Justice and Legal Affairs so that the provision can be clearer to Hon. Members. I would also like to know if removing a judge of this court from office amounts to him being suspended from his duties as a judge. These are issues we need to look into because the reasons alluded to seem to suggest that such judges would have been found not being capable of discharging the duties that have been assigned to them. Therefore, it is important for us to look at the procedure for the removal of the president of the Court of Appeal from office and see whether we can merge it with the process for the removal of a judge of that court.

Section 7 talks about division of the court so that we can have specialised judges handling cases in specific areas such as land issues, environmental matters and industrial disputes. This will speed up hearing of cases because specialized judges will get a lot of information and experience within their specialised divisions.

Under Clause 2 which talks about court station, it would be important for us to indicate that the station must be a gazetted place that is accessible to anybody who wishes to access the courts---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Your time is up. Let us hear the Member for Butula.

**Hon. Onyura:** Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill because it is something which the Constitution expects us to do. Article 164 of the Constitution provides that Parliament shall do an Act of Parliament to operationalise that Article. What we have been doing in the last two weeks is geared towards strengthening the rule of law and restructuring of judiciary system in this country.

We legislated for the Magistrates' Courts, the High Courts, and the Small Claims Courts. We are now doing the same for the Court of Appeal. The passage of this Bill will ensure that we have a very effective and efficient Court of Appeal. The Bills that we have been discussing are aimed at strengthening our judicial system. This will give confidence to Kenyans with regard to the operations of our courts. Once structures are put in place, it will be clear to everybody how our judicial system runs. Arising from all these reforms, I notice that Kenyans are gaining even more confidence in the ability of our courts. Very many times when I hear Kenyans say that if someone does something undesirable to them they will go to court, I feel very happy because that is how civilised people should sort out their differences. They should be able to submit themselves to the process of the law rather than taking the law into their own hands.

As we set out to pass this Bill, I want to appeal that the three arms of the Government should be independent but interdependent, and should have respect for each other. We should do everything to ensure that these arms of Government are strong, able to work efficiently and deliver their mandate to the Kenyan people as they expect and as is set out in the Constitution.

Going through the Bill, I found that there are certain areas that are fairly comprehensive. I notice that Part IV comprehensively talk about issues relating to case management, records of the court, performance management, inspection and monitoring. That part is fairly comprehensive.

As I mentioned earlier on, a strong Judiciary is a stabilising factor for all sectors, be it political, economic or even social stability. We are doing a good thing by ensuring that our judicial system is strong, properly anchored and able to assist in ensuring that those sectors are

also stable. When somebody is wronged or communities feel aggrieved, instead of revenging or taking the law into their own hands, they are able to submit themselves to the court process.

We have read about the disagreements that are going on about the retirement age. I have not seen anything on retirement in this Bill. Issues of retirement age need not be as controversial as they are now. In my opinion, matters of retirement age should be relaxed. When the Civil Service retirement age moved to 60, perhaps we should have moved the retirement age of judges to 75. More important is whether the person is able to deliver on their mandate. If they are in good health, they can work even up to the age of 80, particularly in some of these areas where the longer the time, the wiser and more knowledgeable a person is. We need not have disagreements on retirement age. Modalities can be worked out so that at a certain age, the terms can be converted into contracts renewable annually. It is something to consider so that we are not just tied to the tradition of saying that you must retire at a certain age. At times we need to think slightly outside the traditions as well.

What is really important about our judicial system and what we should ensure happens is speedy delivery of services. The adage, “justice delayed is justice denied” is quite real. If cases take years before completion, many times it is prejudicial to the parties involved. At some stage, a case is handled by all manner of judges and other times the witnesses and even some of the documents that may be needed may also disappear. One of the guiding principles is to ensure that we have speedy completion of cases and delivery of justice. That can be done.

We saw what happened to the election petitions. Previously, before some guidelines were put in place, election petitions would last forever. From the time it was stipulated that they have to be done within a period of six months, we have seen it being done. As part of the administrative rules and guidelines, all these cases should have certain time limits so that they do not stay in court forever.

I also took note of Clause 35, which talks about contempt of court. I look forward to courts enforcing contempt charges against those who disobey courts or disregard the court rulings or processes, regardless of who they are. Obeying court orders is part of the rule of law.

I noted that human resource issues are also covered, namely; issues of qualifications and transfers. There is a provision for performance management which is a very good thing to ensure that whatever is being done is assessed. That will assist us in ensuring that cases are speeded up.

I support this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Yes the Member for Njoro.

**Hon. J.K. Ngang’a:** Thank you, Hon. Temporary Deputy Speaker. I also rise to support this Bill.

If we pass this Bill as it is, many Kenyans will start having confidence in our judicial system. Many Kenyans had lost hope in our judicial system. That is the reason why after the post-election violence and whatever transpired, all Kenyans agreed that they did not have confidence in our own courts. That is how we ended up going all the way to the International Criminal Court (ICC) at The Hague.

As I support this Bill, let it be noted that those people who will be in charge should be fully qualified and competent. Let there not be any issue of bias or favouritism. This issue is what has made this country and *wananchi* not to have confidence in many organisations or Government institutions. Let the people who will be in charge of management be people who are of high integrity and not just people picked from anywhere. Let them be thoroughly vetted and scrutinised. Let those Kenyans who will be vetting them ask for wisdom from God so that they

can select the right people, especially the Registrar because he is the one who is in charge of everything.

Hon. Temporary Deputy Speaker, we have heard of many cases where files are getting lost in courts. They either disappear or are eaten. Those files contain all the evidence that the poor *mwananchi* who goes to the courts to seek justice depends on. So, I would like to say that we are now heading in the right direction. By the end of the day when this Bill will be implemented fully, Kenya will not be the Kenya we have where people have lost hope. We have heard of cases of rampant corruption but I hope that those fellow Kenyans who will be appointed to various assignments will be people of high integrity.

Thank you, Hon. Temporary Deputy Speaker. I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): You support. Yes, the Hon. Member for Kaloleni.

**Hon. Chea:** Thank you, Hon. Temporary Deputy for this opportunity. I also wish to briefly support this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Let us also appreciate the other side.

**Hon. Chea:** Hon. Temporary Deputy Speaker, Kenyans passed a new Constitution and with the three arms of the Government in place; that is the Judiciary, Legislature and Executive, there are certain constitutional principles that need to be adhered to. So, if you look at this Bill, you will find that one very interesting feature that comes out is the question of consultation. If you read the Bill, you will notice that the Chief Justice under the various clauses of this Bill, and in particular Clauses 6, 7 and 11 of the Bill is required to consult with the president of the Court before taking any decision. The principle of consultation has been enshrined in our Constitution and it is important that an institution like the Judiciary complies.

The most important thing about this Bill as seen under Clause 3 of the Bill is in exercise of the judicial authority. There are three very important aspects that a judicial officer has to observe. The first one is the question of national values and the second one is the issue of leadership and integrity. The other issue is the question of independence of the Judiciary. For this country to move forward, we need to have the interpretation of the Constitution being done in the best manner. The interpretation of this Constitution has been bestowed on the Judiciary. So, in the absence of an independent Judiciary, we are likely to have the institution of the law collapse. So, we want to see a situation where we will have a Judiciary that will interpret our laws without fear or favour and a Judiciary that will apply its mind to the cases that appear before that court.

As has been observed by my fellow colleagues, there was a time when judgement would be passed and one would question whether those judgements are considered as they are supposed to be. I believe with this particular law and the other laws that we have endeavoured to discuss and pass within these Chambers, the question of independence of Judiciary will now not be an issue for anybody to complain.

Hon. Temporary Deputy Speaker, if you look at Clause 3(2) of this Bill, you will find that there is the question of jurisprudence. Jurisprudence is a very important aspect in the development of the law. You will realise that even today, we still have our judges quoting case laws decided long time ago. Occasionally, they refer to Lord Denning and the likes. So, we wonder whether our judges now are really participating in the formulation of the law. Any ordinary student will tell us that one of the sources of law in this country is judgement law. So, we need a situation where our judges will assist in that process so that we can have some cases

decided and out of those cases and the reasoning of these particular judges, some laws come out of that.

The other issue that I wish to address is the question of public policy. In this Bill you will realise that before judgement is passed, it is important that the judge has the realities of political, social and economic way of life of the people of Kenya. As has already been stated here, we want a situation where we shall not have the question of judicial activism. If we have a Judiciary that will not interpret these laws to be in tandem with our economic way of life, then we will not be moving in the best direction.

The other issue that I wish to point out here is the element of devolution in this Bill. Under Clause 6 of this Bill, the Chief Justice for the purposes of accessibility is allowed to put up sessions where this Court of Appeal will be sitting. If, for instance, you have these stations in almost all parts of the country, then accessibility to judicial services of that matter will not be a complicated issue and we will be moving forward.

These are some of the issues that I wanted to speak to but as I conclude, we must also look at Clause 7 of this Bill. Under this clause, the Chief Justice, in consultation with the president of the court is allowed to form specialized divisions of the court. In my honest view, if jurisprudence is to be developed in this country, then there is need for some element of specialization in some of these cases. For instance, down at the Coast, there are very many questions relating to admiralty and succession. For courts to be seen to be coming up with proper jurisprudence, then the element of specialization cannot be overlooked.

Hon. Temporary Deputy Speaker, with those many remarks, I support this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you. Well spoken. Yes, the Member for Budalangi, Hon. Ababu Namwamba.

**Hon. Ababu:** Hon. Temporary Deputy Speaker, in this Session, this House has acquitted itself very well as far as legislation is concerned, especially in improving, enhancing and raising the profile of our Judiciary. We have dealt with the Small Claims Court and the High Court. Now we are seized of the Court of Appeal (Organization and Administration) Bill, 2015 in fulfillment of our responsibility under Article 164 of the Constitution.

Hon. Temporary Deputy Speaker, this is a very progressive Bill but a few issues come to mind. One, one would imagine in terms of neatness, we would have consolidated all these scattered pieces of legislation. It will be neater if we dealt with all these rather than having a multiplicity of legislation. We sort of consolidate because, indeed, if you look at all the pieces of legislation I have mentioned, you will find that the content and the objective is pretty much the same. That is something that the State Law Office might want to give thought to in terms of consolidation.

Hon. Temporary Deputy Speaker, when I look at this Bill, two things come into my mind. One, I applaud the whole Part II of the Bill which is reorganising and improving the organisational and administrative structure of the Court of Appeal which is a key link in the whole judicial chain. I do not see any sense in the very rigid specific requirement in Article 14 together with Article 20 that seems to be saying that the seat of the headquarters or the centre of this court can only be in Nairobi. It would have been sufficient for Article 14 to merely provide that there shall be the office of the president of the Court of Appeal. I see absolutely no rationale to specifically legislate that that office must be in Nairobi. We are now a devolved State. The reality of devolution is that the whole country will at some point rise to levels of development infrastructurally. In other terms, there shall be absolutely no reason why the presidency of the

Court of Appeal, for instance, would not sit in Nyeri or such other place like Nakuru. The same applies to Section 20 where similar terms have been coached to apply to the Office of the Registrar of this Court.

Let me also address my mind to Section 35 of this Bill which addresses the question of contempt of court. The issue of contempt of court is an important sanction that is intended to ensure absolute, unequivocal and unchallenged respect for court orders. Indeed, the respect for court orders is one of the everlasting and enduring pillars of the rule of law. I want to use this as I applaud the specificity of this particular provision to challenge everybody in this country that unless we want to turn this country into a jungle, we have to respect court orders. Scenario which we have witnessed in the past where the Government leads in disobeying court orders is a dangerous precedent. If all of us were to decide that we will have no regard for court orders and we will contemptuously disregard court orders, then that would amount to turning this country into a jungle. There was a time when we said that this country was governed by the rule of man but now we pride ourselves as a nation governed by the rule of law.

As a legislator in this House, one of my greatest dreams has always been that the creed in our national anthem: “May justice be our shield and defender,” shall at some time in our history emerge to be the most important defining public philosophy in this country. That, indeed, all of us will look upon justice as our shield and defender. Justice cannot be our shield and defender if we do not pay the highest fidelity to the rule of law and respect court orders.

I want to conclude by saying that we have come a long way in improving the character and stature of our Judiciary. This is a path which we have to remain faithful to. Today, the most gripping debate in this country is about the ICC. I sat in the 10<sup>th</sup> Parliament as we grappled with this challenge of the ICC. As the 10<sup>th</sup> Parliament, we had the choice of either handling this matter locally here or sending it to the ICC. One of the greatest fears at that time was the inherent weaknesses in our judicial set up. Our very real fears at that time were that if we were to attempt to allow this matter to be handled here, maybe we did not have the judicial capacity.

Even as we politicise this matter, I remember sitting in what is the Senate Chamber today and watching the then Prime Minister, Raila Amolo Odinga, shed tears on the Floor of the House. It was the first time and I believe the last time I have seen tears in the Chamber of this National Assembly. My party leader shed tears trying to convince Parliament to establish a local tribunal. Today, I sit back and marvel at the dishonesty defining this debate. Hon. Raila Odinga is mixed up with the whole discussion of fixing when deep in his heart and also by deed, he did everything humanely possible to ensure that this matter was dealt with locally.

I raise this matter during the debate of this law in my belief and hope that we will remain committed to the agenda of reforming, improving the character and capacity of our Judiciary so that in future we will have the unequivocal confidence to handle matters arising within our jurisdiction ourselves and also to urge the political class that we bear such a heavy responsibility to heal, unite and move this country forward. If there are any prayers that we should all be undertaking as politicians, we should be praying for the unity and the healing of this country but not prayers that can only serve to divide this country further.

I support this law and challenge all of us that we should go the whole hog and ensure that our Judiciary is truly transformed. Let me just in one minute rebuke judges in the Judiciary who believe that they should be immune to retirement.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Your time is over. Yes the Member for Elgeyo Marakwet, Hon. Susan Chebet.

**Hon. (Ms.) Chebet:** Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute. I will support this Bill if it is going to solve some of the problems that we have faced before. We know that our judicial services from Independence up to now have faced a lot of challenges in interpretation, understanding and judicial organisation. So, this Bill that has come at this moment is going to solve some of these problems.

One of the problems is the way the Court of Appeal is stationed in Nairobi. Most of our people find it hard to go to the Court of Appeal. If this Bill is going to allow the opening of stations in the entire country, then it is going to be easy for our people to access justice. Justice is a very important issue for the weak and the mighty and if it is dispensed properly, it is going to satisfy the needs of everybody.

This Bill will harmonise the languages used in our judicial system, whether it is English or Kiswahili; and the interpretation that goes with it, including the sign language. This way, it will be good for us.

The other issue is on the court registry. It should be reorganized and automated so that we do not continue to suffer from the loss of files. When people seek justice in our courts, the first thing they encounter is the loss of files and information. If we can automate the registry services, then it is going to be easy for us to access justice.

Sometimes there are delays in courts especially in land issues. We have land cases which have lasted for several years. I know of cases where people who are seeking justice are the second generation because the first generation waited for justice until they passed on. The second generation is dealing with the issue now and we are not sure whether the case is going to be concluded in their lifetime. It is something crucial and this Bill should address it.

Hon. Temporary Deputy Speaker, we have also had problems in the transfer of judges and when they go on leave and work is left unattended. It is one of the things that deny people justice.

The division of the court is one of the good things in this Bill. This will ensure that we have one division dealing with land issues, the other with environment, and the other one dealing with social issues. Once we have those divisions, then seeking justice will become faster.

I would also like to point out the issue of judges going on retirement. The other day, we witnessed some judges who went to court to seek justice because they felt they were retired prematurely. I hope that even if it is not addressed here, that some policy will be put in place so that when judges reach a certain age, they can either work on contract or have their retirement age extended, as long they are can work.

When Krieglner came here, he was not a very young person, but he did very good work for Kenyans when we were in dilemma during the post-election violence reconciliation process.

Lastly, an Hon. Member has said that in the last Parliament, former Prime Minister, Hon. Odinga shed tears while persuading people to have cases of the post-election violence dealt with in Kenya, but nobody listened to him. Maybe, if he shed sincere tears, we would have listened to him. But I am sure part of his tears were bordering on crocodile tears. It is better if genuine tears were shed.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Yes, the Member for Kiambu.

**Hon. Njomo:** Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill, which will go a long way in fulfilling our requirement in relation to Article 164 of the Constitution. It is the responsibility we have to execute.



Going through the Bill, it is very clear that it provides a medium through which judges will be able to come together, make their decisions together, consult freely and work harmoniously. It is a good Bill. I am saying this because we have had a court system where cases are known to last forever, especially land cases. I know some cases which were filed in the early 1970s and to date they are yet to be mediated upon. With this Bill, our court system will be much faster and many cases will be executed within the required time.

Part II deals with assessment of judicial needs. This is a very important thing to do. Part II requires that these needs have to be assessed from time to time. It is like a self-assessment of the court. The court will ask itself whether it is moving in the right direction or not.

Today when I go to witness a case in court, I wonder whether the court is moving in the same direction that development in our country is taking. You find judges and magistrates are very busy taking notes. You wonder whether they are listening to the case. In other places, like hospitals, when patients are describing their problems, the doctor does not bother to write. He has a device that records what the patient is saying and a second party is going to take notes and record that. I would expect that to happen with our judicial system so that judges will now be operating from a digital medium where they will be able to pay a lot of attention to what the people are saying in court. I hope with this judicial needs assessment, they will move to a digital age where we shall have a better court management system.

Recently, I was sent to Runyenjes on parliamentary duties and we inspected the Runyenjes court. I was totally ashamed to see the kind of court that we have in Runyenjes. It is just a few forms in a store and that is what constitutes it. That is why I welcome this idea of having a judicial needs assessment from time to time so that these things can be taken care of. This Bill also proposes to distribute courts in various parts of the country. This will ease travelling for people who come from remote areas. It will ease their travelling and it will also make it easier for their cases to be expedited. I am sure it will be easier to handle their cases in a language that is easy for them to understand.

This is a good Bill. I would not do the right thing if I do not talk about the management of the court and the reorganisation of the registry. One of the things that have been making cases last for long is the loss of files in the registry. This is one of the areas which need to be looked at great length so that cases of files disappearing--- We know that they do not just disappear by themselves but they are made to disappear for good reasons. We should make sure that even if they are physical files, we have digital files that will be very difficult to disappear so that if the physical files disappear, it will be very easy to create other files from the electronic files that will be saved. Justice will then be expedited easily and musicians will not have areas to copy from. This reminds me of Eric Wainaina in a song where he says that justice is on sale and is available to the highest bidder. We do not want that to happen again in our country. We want justice to be available to everybody at no cost at all.

The last thing I want to talk about is the ranking of judges. There has been a lot of haggling and favouritism as far as appointment and promotion of judges is concerned. This Bill describes the ranking of judges and it will give everybody an opportunity to rise in a logical sequence.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): The Member for Dagoretti South, Hon. Dennis Waweru.

**Hon. Waweru:** Thank you, Hon. Temporary Deputy Speaker. I want to be very brief. From the outset, I support the Bill. What has attracted me most is Clause 31 which talks about performance contracting. This is something we have wanted to have across board, especially for the Civil Service to ensure that we are guaranteed value in service delivery.

Of interest to me also is the provision on ethics and integrity. We have been having some challenges in the Judiciary with regard to ethics and integrity. The reason why we have two Kenyans at The Hague is because of lack of trust in our courts. If we try and bring back public confidence so that any Kenyan in the country can be confident, trust the courts and be guaranteed that there will be justice in our court system, then we would not have a situation where two Kenyans, including our Deputy President, have cases outside Kenyan jurisdiction. So, it is important that we continuously improve and build confidence in our court system, even for the sake of economic prosperity of this country. It is very important for foreign investor attraction. We should assure foreign investors that as and when there is a trade dispute, there is a court that is fair enough and that can expedite the resolution of any matter. It is very important that we continuously improve and restructure our institutions so that they can be world-class institutions.

I am looking forward to a situation where our judicial system is fully automated. It is still stone-age and that explains why we have quite a number of cases pending in our courts. The courts are still operating in the old way. We need to go a step further and ensure that we fully automate operations at the Judiciary so that we can be guaranteed of timely delivery of justice.

I am not sure that I will not be gagged by the Judiciary. We are very busy here creating some institution for the Judiciary. Of late I have noticed there is a tendency by some courts to rush and tell Parliament, especially the National Assembly that there are things we should not discuss. We want to remind them that we represent people who have elected us. There is no way someone can tell us what we should discuss and what we should not discuss. These are institutions which are independent from each other.

I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): The Member for Kilome.

**Hon. (Ms.) Muia:** Thank you, Hon. Temporary Deputy Speaker. I am not going to waste a lot of time. My colleagues have said a lot and I do not think repeating will make any difference.

Judges are vetted for a year or so and then they go and sit in new offices with the old clerks and people who started working in those offices long time ago. They do not bring any change in those offices. Sometimes, the issue of files being lost does not even involve the sitting judges because there is also another cartel involving clerks and other people who are used to that corruption system of being given money to change issues.

If the proceedings of the Court of Appeal would be live just the way people watch Parliament, maybe one time when you have an interest in a certain case, you can follow the proceedings. It is very unfortunate that our county only has two courts which are far apart. The distance from Nunguni to Makindu is far. We have six constituencies and some are very large. Somebody at the border with Tana River County or at the border with the Coast region has to go to Nunguni or Makindu. Those cases are sent there and they take very long. Some of these people do not even have fare to get to those stations.

I have sat in court to listen to cases involving my friends. The language used by lawyers is technical. We have old people who go for their land cases. Lawyers stand before the judges and quote very complicated articles and even use very complicated words. When you get out and

ask the old men how their cases went, they say they did not hear anything and that they are waiting for their lawyer to translate. This is very important. If Kiswahili can also be allowed, more so in areas outside municipalities like our place, I am sure those old men will be able to follow the cases.

It is very disappointing to see some judges being vetted. If you look at the list of the judges who have been vetted, you will find that some of them have question marks. Once they are vetted, I do not know whether they have a committee which looks at the issues that people are complaining about. With this law, things are going to work better than we expected. More so, they have to look at the areas where documents are kept. When they are needed even after 10 years you can go and get them. Sometimes, when a file disappears when a very serious case is going on and you know the technology is not there, you cannot refer anywhere. The file disappears with the case and everything. You may find some documents missing if you start from the beginning. So I support the language issue and the integrity of the registry. I am sure that once that is looked into, things are going to change.

I do not want to repeat what has been. With those few words, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Nelson, the Member for Subukia, you have one minute.

**Hon. Gaichuhie:** Thank you, Hon. Temporary Deputy Speaker, for giving me the chance to contribute to this Bill. From the outset, I support this Bill. I am impressed by the reorganisation of the Court of Appeal. The Bill says that we will have a president of the court and it will consist of not less than 12 judges appointed in accordance with Article 164 of the Constitution. I am also impressed by the part on the ranking of judges. It is now very clear how a judge will be promoted. They say that a judge who was appointed first---If they tie in order of their names, there will be no issue of who is senior than the other. It is a way of making sure people are promoted rightfully, without any underhand dealings.

The Bill also says that the Court will have branches which will be presided over by an Acting President and that we shall also have lower divisions. This reminds me of what we were debating yesterday when we were doing the Small Claims Court Bill. We said that we want people to access legal services nearer to their homes. When we say that we will have lower divisions it is a very good idea and it will mean that the Court of Appeal will be accessible. There will also be a calendar---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): The Member for Subukia Constituency, you will have a balance of nine minutes in the next sitting during the time of debate of the Court of Appeal (Organization and Administration) Bill (National Assembly Bill No.52 of 2015).

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Members, the time being 6.30 p.m., this House stands adjourned until Wednesday, 21<sup>st</sup> October, 2015, at 9.30. a.m.

From the desk of the Hon. Speaker of the National Assembly, we wish you a good Mashujaa Day.

I thank you all.

The House rose at 6.30 p.m.