

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 8<sup>th</sup> July 2015

The House met at 2.30 p.m.

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

### PRAYERS

### PETITION

#### MISMANAGEMENT AT KEMRI

**Hon. Speaker:** Hon. (Dr.) Eseli Simiyu.

**Hon. (Dr.) Simiyu:** Thank you, Hon. Speaker. I want to present a Public Petition.

I, the undersigned, on behalf of Mr. Peter Orowe Nyambok, a resident of Rodi Kopany, Homa Bay County, draw the attention of the House to the following:-

THAT, the Kenya Medical Research Institute (KEMRI) is an institute under the State Department of Health performing a national function as a research institute.

THAT, the Kenya Medical Research Institute has failed in its mandate and does not have a clear human resource policy and manual to guide its human resource practices, resulting in frustration of employees.

THAT, the Kenya Medical Research Institute has severally failed to obey court orders in regard to human resource malpractices and, in particular, failure to adhere to collective bargaining agreements.

THAT, the institution's management has allegedly misappropriated donor funding; which has resulted to withdrawal of funding by development partners and, in particular, the Centre for Disease Control (CDC), thus leading to loss of employment for over 700 employees.

THAT, efforts to resolve this matter with the relevant Government institutions have been futile.

THAT, the matter presented in this Petition is not pending before any tribunal or court of law.

Therefore, you humble Petitioner prays that the National Assembly, through the Departmental Committee of Health:-

(i) Recommends immediate probe into the affairs of Kenya Medical Research Institute, in particular the management structure, human resource management policy and practices and financial management.

(ii) Ensures that the Petitioner's plight is addressed.

(iii) Makes any other order or direction that it deems fit in the circumstances of the case.

Any your Petitioner will ever pray. Thank you, Hon. Speaker.

**Hon. Speaker:** Next Order!

**PAPERS LAID**

The Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House today, Wednesday, 8<sup>th</sup> July 2015:-

The Report of the Auditor-General on the Financial Statements of the Ministry of Devolution and Planning for the year ended 30<sup>th</sup> June 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Kenya Medical Training College for the year ended 30<sup>th</sup> June 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Kenya Agricultural Research Institute for the year ended 30<sup>th</sup> June 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Lake Basin Development Authority for the year ended 30<sup>th</sup> June 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Maseno University for the year ended 30<sup>th</sup> June 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Constituency Development Fund (Kajiado East Constituency) for the year ended 30<sup>th</sup> June 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Constituency Development Fund (Mavoko Constituency) for the year ended 30<sup>th</sup> June 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Constituency Development Fund (Masinga Constituency) for the year ended 30<sup>th</sup> June 2014 and the Certificate of the Auditor-General therein.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Leader of the Majority Party.

**NOTICE OF MOTION****RECONSTITUTION OF CATERING AND HEALTH CLUB COMMITTEE**

**Hon. A.B. Duale:** Thank you, Hon. Speaker. I beg to give notice of the following Motion:-

THAT, aware that the Parliamentary Service Commission, during its 211<sup>th</sup> meeting on 15<sup>th</sup> June 2015, resolved to reconstitute the National Assembly Catering and Health Club Committee---

*(Loud consultations)*

**Hon. Speaker:** Order, Members! The consultations are too loud! This is important. It is fair that you are aware of what is being done.

**Hon. A.B. Duale:** I beg to give notice of the following Motion:-

THAT, aware that the Parliamentary Service Commission, during its 211<sup>th</sup> meeting on 15<sup>th</sup> June 2015, resolved to reconstitute the National Assembly Catering and Health Club Committee into a Joint Committee of Parliament incorporating Members of the Senate; in view of the fact that catering and health services are joint services in a bicameral Parliament; further aware that with the establishment of a Parliamentary Fund the Catering and Health Fund currently under the National Assembly Catering and Health Club Committee ought to be wound up and the sums therein paid into the Parliamentary Fund; this House resolves to dissolve the National Assembly Catering and Health Club Committee and pursuant to Article 124(2) of the Constitution, Standing Order No.213 and Rule No.9 (i)(c) of the House of Parliament Joint Sittings Rules:-

(i) Establishes a Joint Parliamentary Committee on Catering and Health Club Services to look into and advise on catering and health club facilities.

(ii) To appoint the current 29 Members of the National Assembly Catering and Health Club Committee to a Joint Parliamentary Committee on Catering and Health Club Services.

Thank you, Hon. Speaker.

**Hon. Speaker:** I think it is important that Members understand so that those who serve in that Committee do not start grumbling that they are being sent away. You are not being sent packing. You are merely being reconstituted and added other Members from the other House. So, you are not being sent home. Do not panic. You will continue and be joined by other Members from the other House.

Just a minute! What is your point of order, Hon. Muluvi.

**Hon. Muluvi:** Hon. Speaker. Last week, you directed that---

**Hon. Speaker:** Hon. Muluvi, if you are going to raise the same matter that you did about the missing child, I will now rule you out of order. That is because you have formed a habit. You want administrative matters to be dealt with from the Plenary. It is not possible. I personally enquired about that matter yesterday, because I did not see it listed as I had expected and directed. I have already directed that since it was not put on the Order Paper yesterday, it be given priority. There is nothing that you can do, but do not form a habit of raising administrative matters here in the Plenary. You can walk into my office and raise the issue. I personally was concerned that your matter was not there and I asked why it was yesterday and not today. You are even late yourself. You should have actually seen me yesterday when I was pursuing it because I was worried that we had directed that it be listed and it was not. I was expecting you to come and see me about it but I have already given directions that it be given priority.

**Hon. Muluvi:** If you have directed, I am most obliged, Hon. Speaker.

**Hon. Speaker:** Yes, I have done that, if it is about the same matter. I have already taken action.

Next Order!

### PROCEDURAL MOTION

## APPROVAL OF MORNING SITTING

**Hon. Speaker:** Leader of Majority Party.

**Hon. A.B. Duale:** Thank you, Hon. Speaker. I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order No.30 (3)(b), this House resolves to hold a sitting on Thursday, 9<sup>th</sup> July 2015 between 9.30 a.m. and 1.00 p.m.

This is a decision that the House Business Committee reached. Without anticipating debate, the House is scheduled to proceed for a short recess tomorrow in accordance with the Calendar of the House. That has occasioned the need to have a morning sitting tomorrow. The purpose of that sitting is to deal with the following agenda:-

(i) Consider in the Committee of the whole House, the Ethics and Anti-Corruption Commission (Amendment) Bill (National Assembly Bill No.33 of 2015) because the select team which the Executive has formed must deal with vetting and interviewing of those applicants and further send the list to the National Assembly.

(ii) Consider in the Committee of the whole House, the Fisheries Management and Development Bill. This follows a request from the Departmental Committee on Agriculture, Livestock and Co-operatives and the relevant Ministry owing to the fact that this Bill has been pending before the House since 2014. The Ministry is of the opinion that the Bill is holding key Government financing from overseas development assistance. Secondly, the Bill has been delaying the implementation of the policy for development and protection of key deep sea fisheries.

(iii) Commence the Second Reading of the Vetting of Judges and Magistrates (Amendment) Bill which has three clauses only. This Bill will now be for completion of matters which have not been commenced by the board and which are making many magistrates in our country not to be promoted.

Hon. Speaker, those are three matters we need to dispose of. I ask my colleagues to help us approve this Procedural Motion in order to fast-track the Third Reading of the Fisheries Management and Development Bill and Second Readings of the Vetting of Judges and Magistrates (Amendment) Bill, the Company Bill and the Ethics and Anti-Corruption Commission (Amendment) Bill (National Assembly Bill No. 33 of 2015).

I ask the Whip of the Majority Party to second.

**Hon. Speaker:** Hon. Katoo ole Metito.

**Hon. Katoo:** Thank you, Hon. Speaker. In seconding this Procedural Motion, the Calendar of the House is no longer a secret. So, Members know that they may be breaking for a short recess tomorrow and, because of the urgent matter that has been generated by Committees of this House, we request Members that they bear with the House Business Committee (HBC) to sit in the morning to execute those matters, especially from the Departmental Committee on Justice and Legal Affairs and the Departmental Committee on Agriculture, Livestock and Fisheries. Then Members can have their short recess in the afternoon if they so decide.

I beg to second.

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

**Hon. Speaker:** Hon. Members making their way, can you, please, take your seats? Take your seats!

*(Question proposed)*

**Hon. Members:** Put the Question.

*(Question put and agreed to)*

**Hon. Speaker:** That, therefore, means that the House will sit tomorrow at 9.30 a.m. to 1.00 p.m. and again at 2.30 p.m. to 6.30 p.m. Thereafter, I think, you will proceed on what can be described as your “well deserved or short recess”?

**Hon. Members:** Short recess.

**Hon. Speaker:** Well. Some of you say: “A well-deserved short recess”.

**Hon. Members:** Well earned.

**Hon. Speaker:** Well earned? Before we move to the next Order, allow me to introduce students seated in the Speaker’s Gallery from Eldama Ravine Girls High School, Baringo South Constituency, Baringo County. Welcome to the National Assembly.

Next Order.

*(Several Hon. Members walked into the Chamber)*

Hon. Members, including Simba Arati, take your seats! Hon. Momanyi, do not just trot around! If you are caught standing, you will remain standing.

Hon. Angwenyi: Hon. Momanyi is seated.

*(Laughter)*

## COMMUNICATION FROM THE CHAIR

### PROCEDURE FOR REMOVAL OF CABINET SECRETARY

**Hon. Speaker:** Hon. Members, before we go to the next Order, I wish to make the following Communication which is related to the procedure for the removal of a Cabinet Secretary (CS). This Communication relates to Order No.9 appearing on today’s Order Paper, which is the Motion asking the House to resolve that the President dismisses the Cabinet Secretary for Education, Science and Technology.

I have chosen to make this Communication firstly on account of the fact that this is the first time that a Motion of this nature has progressed up to this stage and, secondly, because this process is quasi-judicial.

Hon. Members, for the avoidance of doubt, Clauses 6 to 10 of Article 152 of the Constitution provides as follows, and I quote:-

“(6) A member of the National Assembly, supported by at least one-quarter of all the members of the Assembly, may propose a motion requiring the President to dismiss a Cabinet Secretary-

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

(7) If a motion under Clause (6) is supported by at least one-third of the members of the National Assembly—

- (a) the Assembly shall appoint a select committee comprising eleven of its members to investigate the matter; and,
- (b) the select committee shall, within ten days, report to the Assembly whether it finds the allegations against the Cabinet Secretary to be substantiated.

(8) The Cabinet Secretary has the right to appear and be represented before the select committee during its investigations.

(9) If the select committee reports that it finds the allegations

- (a) unsubstantiated, no further proceedings shall be taken; or,
- (b) substantiated, the National Assembly shall—

- (i) afford the Cabinet Secretary an opportunity to be heard; and,
- (ii) vote whether to approve the resolution requiring the Cabinet Secretary to be dismissed.

(10) If a resolution under Clause (9)(b)(ii) requiring the President to dismiss a Cabinet Secretary is supported by a majority of the members of the National Assembly—

- (a) the Speaker shall promptly deliver the resolution to the President; and,
- (b) the President shall dismiss the Cabinet Secretary.”

Having said this, Hon. Members, Standing Order Nos.61, 64 and 66 come into perspective. My reading of the said provisions of the Constitution and the Standing Orders lays down the following seven steps to be followed during consideration of this Special Motion.

The first step relate to the manner of drafting the Motion and collecting the requisite number of signatures (at least 88), seeking the Speaker’s approval on the Motion, and finally giving Notice of the Motion in the House. Those three steps have already been fulfilled by the hon. Member including collecting the requisite number of signatures in support of the Notice of Motion. However, even though 95 signatures were appended to the Notice of Motion as originally submitted to my office and to the House, that number has reduced by one as the name and signature of the Member for Bungoma County, Hon. Reginalda Wanyonyi, MP, has appeared twice in the list.

Honourable Members, it is important at this point to explain how the various thresholds in this process are arrived at. To begin with, Article 122(4) of the Constitution provides that:-

“In reckoning the number of members of a House of Parliament for any purpose of voting in that House, the Speaker of that House shall not be counted as a member.”

So, happily, I am not to be counted. Consequently, the denominator of the membership of the National Assembly on a question of determining the numbers required during Division is 349 Members as opposed to 350.

Secondly, any decimal points resulting from calculations of thresholds are rounded off to the next whole number, based on the parliamentary parlance that a mathematical fraction of a Member equates to a full whole number of an individual Member, irrespective of the fraction or even the size of the Member.

*(Laughter)*

In this case, therefore, the one-quarter of the total National Assembly membership required for purposes of the Notice of the Motion is 87.8 Members, which is rounded off to 88 Members. In addition, Standing Order No. 66(3) requires that the Order Paper on which such a Motion is listed sets out the name of the Member sponsoring the Motion and the names of the Members supporting the Notice of Motion. It is for this reason, therefore, that today's Order Paper, as published, contains not only those names, but also the particulars upon which the Motion is made.

It is also important to bear in mind that Standing Order No. 68 requires that a Motion for the removal of a person from office takes precedence over all other business on the Order Paper for that day.

This now brings me to the fourth step in this procedure, which is the discussion of the Motion in this House. Since this is a Special Motion, Standing Order No. 61(2)(a) requires that the Motion be discussed by the House within seven days following the giving of the Notice of Motion. It is for this reason that this Motion is appearing in today's Order Paper, being the sixth day following the giving of the Notice.

At this juncture, it is important for you to note that for this Motion to move to the next level, it has to be supported by, at least, one-third of the total voting membership, namely 117 Members, when the Question is finally put. It is equally important to also note that so long as the Motion obtains the support of, at least, 117 Members, it will move to the next stage even if those opposing it number more than 117 Members. If the Motion attains this threshold of 117 Members when I finally put the Question, the following two actions, comprising the fifth step, will take place:-

(i) I will require the Committee on Selection to immediately retreat into a meeting for the purpose of nominating 11 Members to the Select Committee that shall investigate the matter in detail.

(ii) The Chairperson of the Committee on Selection will be expected to move a Motion tomorrow afternoon, namely, Thursday, 9th July 2015, for approval of the nominees to the Select Committee, which requires a simple majority.

The sixth step is where the Select Committee investigates the allegations and particulars contained in the Motion. The Committee will be expected to hear the Cabinet Secretary (CS) either in person, through a representative or both in person and through a representative. I must

offer caution at this earliest opportunity that this process is and must remain *quasi-judicial*, including the requirement of affording witnesses the opportunity to be heard in the examination of all the particulars of the claims. The Committee shall ensure that it submits its report to the House within 10 days of its formation.

If the Committee reports to the House that the allegations against the CS cannot be substantiated, no further proceedings shall be undertaken. If, on the other hand, the Committee concludes that the allegations against the CS are substantiated sufficiently, the Committee shall table its report in the House, together with a Notice of Motion for adoption of the said report, ushering in the next step.

The seventh step is for the National Assembly to prioritise the debate on the report of the Select Committee. It is important for Members to note that the debate will have to be concluded within 14 days of the giving of the Notice of Motion for the adoption of the Committee's report in line with Standing Order No. 61(2)(b). A date on which the CS shall appear before the House to provide further clarifications and/or respond to matters arising from the findings of the Committee shall be set. This avenue shall accord the CS an opportunity to be heard before the House makes its decision on the matter. The Committee's report, together with any other evidence adduced, including notes or papers presented to the Committee, shall be availed to the CS, at least, three days before the day scheduled for his appearance before the House.

If the Motion to adopt the report of the Select Committee obtains the support of the majority of the House membership, which is 50 per cent plus one Member--- It is equal to 174.5 plus one, which is 175.5. The figure required would be 176 Members, when the Question for the adoption of the report is put. If carried by that number, the Motion shall be adopted and I will promptly deliver to the President the resolution requiring the President to dismiss the CS.

As the House dispenses with the Special Motion currently before the House, it is important to adhere to the required timelines and thresholds stipulated in both the Constitution and our Standing Orders, and the general procedure outlined herein above.

Finally, the limitation of time on this Motion will be guided by the resolution of the House made on 11<sup>th</sup> February 2015 regarding the manner of allotting speaking time in a debate on any Motion, including a Special Motion. This is clearly shown as Item No. I on page 635 of today's Order Paper. However, any Member is at liberty now to move a Motion for the reduction of the stated time limits, so long as he or she does so in good time.

I thank you, Hon. Members.

*(Applause)*

I suppose that those who are whispering to me to put the Question must have been asleep when I was reading that Communication. They must not have been in the Chamber.

*(Laughter)*

Hon. Geoffrey Odanga.

*(Applause)*



Hon. Members, since nobody is moving a Motion for the reduction of speaking time, the Motion now---

*(Loud consultations)*

Nobody has moved.

**Hon. Members:** Yes.

**Hon. Speaker:** Hon. Shakeel Shabir, what is your proposal?

**Hon. S.S. Ahmed:** Hon. Speaker, with due respect, given the interest that this issue has generated, may I kindly propose that all presentations be reduced to a period of not more than five minutes.

Thank you.

**Hon. Speaker:** How many minutes?

**Hon. Members:** Five.

**Hon. Speaker:** How many minutes?

**Hon. Members:** Five.

**Hon. S. S. Ahmed:** Three minutes.

**Hon. Speaker:** Do I get a seconder for five minutes?

**Hon. A.B. Duale:** I second.

**Hon. Speaker:** Hon. Duale seconds. Hon. Members, Hon. Shakeel proposes that every Member, except the Mover---

**An hon. Member:** And the seconder.

**Hon. Speaker:** The seconder has never been part of that category. If you do not know, just look at Standing Order No.97. I thought some of you claim to have done some few years here.

Hon. Members, let us understand one another. This is to all other Members speaking, but not to the leadership. Every other Member speaking shall speak for not more than five minutes.

*(Question, that debating time be reduced to five minutes, put and agreed to)*

Hon. (Dr.) Pukose, proceed.

## PROCEDURAL MOTION

### LIMITATION OF DEBATE

**Hon. (Dr.) Pukose:** Hon. Speaker, I beg to move the following Procedural Motion:-

THAT, notwithstanding the provisions of Standing Order No.97 and the Resolution of Wednesday, 11<sup>th</sup> February 2015, this House resolves that debate on Order No.9 be limited as follows:-

A maximum of two hours and as the Members have also moved, the Leader of the Majority Party and the Leader of the Minority Party speak for 10 minutes.

The rest is as it has already been passed. But I am proposing that we debate the Special Motion for two hours.

**Hon. Speaker:** Yes! Do you have a seconder? That is reducing the maximum period from three hours to two hours.

**Hon. Members:** Yes.

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, do you have a seconder?

**Hon. Chepkong'a:** I second.

**Hon. Speaker:** Seconded by Hon. Chepkong'a.

*(Question proposed)*

*(Question put and agreed to)*

### SPECIAL MOTION

#### DISMISSAL OF PROF. KAIMENYI

**Hon. Speaker:** The Motion will be debated in two hours. Hon. Geoffrey Odanga, you have the Floor. You have a maximum of 20 minutes.

**Hon. Odanga:** Hon. Speaker, I beg to move the following Special Motion:-

THAT, pursuant to the provisions of Article 152(5)(c),(6) and (7) of the Constitution and Standing Order No.61 and No.66 of the National Assembly Standing Orders, this House resolves that the President dismisses Prof. Jacob Thuranira Kaimenyi as the Cabinet Secretary for Education, Science and Technology on the following grounds:-

- (a) Gross violation of the provisions of the Constitution of Kenya and other laws; and,
- (b) Gross misconduct.

The particulars upon which this Motion is made are set out as follows:-

A. Gross violation of the provisions of the Constitution of Kenya and other laws:-

(i) THAT, the Cabinet Secretary has failed to embrace public participation in drafting and publication of the Basic Education Regulations 2015, contrary to Article 10(2) as well as disregarding the mandatory procedural requirement of Article 261(4) of the Constitution of Kenya which requires the Cabinet Secretary to subject the Basic Education Regulations 2015 to review by the Commission for Implementation of the Constitution (CIC), the Attorney General and Kenya Law Reform Commission (KLRC) before publication in the Kenya Gazette;

(ii) THAT, the Cabinet Secretary has breached Section 6 of the Education Act No.7 of 2007 by permitting many educational institutions to operate without boards of management;

(iii) THAT, the Cabinet Secretary has breached Article 54(b) of the Constitution and Section 12 of the Children Act No.12 of 2014 by failing to disburse the necessary funds to the registered special education institutions thereby discriminating against children with special needs;

*(Loud consultations)*

Hon. Speaker, the consultations are---

**Hon. Speaker:** Order, Members! Hon. Odanga shall be heard in silence. This is the very first time that the House is dealing with a Motion of this nature. Remember he is bound by the contents of his pleadings. He is trying to explain the grounds. Listen to him so that if you are in agreement or not, you will agree or disagree from a position of knowledge and information.

**Hon. Odanga:** Thank you, Hon. Speaker.

(iv) THAT, the Cabinet Secretary has breached Section 37 of the Public Procurement and Disposal Act No.15 of 2013 by refusing to undertake due diligence and non-adherence to the procurement regulations in the Laptop Programme;

(v) THAT, the Cabinet Secretary has breached Section 28 of the Basic Education Act, No.14 of 2013 which requires the Cabinet Secretary to implement the right of every child to free and compulsory basic education;

(vi) THAT, the Cabinet Secretary has breached Section 29 of the Basic Education Act No.14 of 2013 which provides for free tuition and that no public school shall charge or cause any parent or guardian to pay tuition fees for or on behalf of any pupil in the school;

(vii) THAT, the Cabinet Secretary has breached Section 39(e) of the Basic Education Act No.14 of 2013 which compels the Government to provide infrastructure to schools yet parents and guardians are forced to pay extra fees for infrastructure;

(viii) THAT, the Cabinet Secretary has breached Article 125 of the Constitution and Section 23(a) and (b) of the National Assembly (Powers and Privileges) Act Cap. 6 by failing to honour summonses of the Departmental Committee of Education, Science and Technology; and,

(ix) THAT, in line with Article 129(2) and 152(4)(a) of the Constitution of Kenya, the Office of the Cabinet Secretary, being a public officer, and in accordance with Article 73 and Article 10 of the Constitution, the bearer of the office is supposed to conduct himself with utmost integrity.

B. Gross misconduct:-

(i) THAT, the Cabinet Secretary has breached Article 125 of the Constitution and Section 23(a) and (b) of the National Assembly (Powers and Privileges) Act Cap 6 by failing to honour summonses of the Departmental Committee on Education, Science and Technology;

(ii) THAT, in line with Article 129(2) and 152(4) of the Constitution of Kenya, the office of the Cabinet Secretary, being a public officer, and in

accordance with Article 73 and Article 10 of the Constitution, the bearer of the Office is supposed to conduct himself with utmost integrity;

(iii) THAT, the Cabinet Secretary has failed to consult stakeholders on key issues and also failed to implement the Report of the Task-Force on Secondary Schools' fees; and,

(iv) THAT, the Cabinet Secretary is high-handed and has failed to sufficiently promote education as shown by his refusal to consult stakeholders.

In furtherance to the provisions of Standing Order 66(1) and (3), the names of the Members who appended their signatures in support of the Notice of Motion are as hereunder:-

- (1) The Hon. Malulu Injendi, MP
- (2) The Hon. Ibrahim Sane, MP
- (3) The Hon. Nasra Ibrahim, MP
- (4) The Hon. Halima Ware, MP
- (5) The Hon. Opiyo Wandayi, MP
- (6) The Hon. Dan Wanyama, MP
- (7) The Hon. John Kobado, MP
- (8) The Hon. Peter Kamande Mwangi, MP
- (9) The Hon. Raphael M. Otaalo, MP
- (10) The Hon. Fred Outa, MP
- (11) The Hon. Jacob Macharia, M.P
- (12) The Hon. James L. Mukwe, MP
- (13) The Hon. Johnson M. Naicca, MP
- (14) The Hon. (Dr.) Christine Ombaka, MP
- (15) The Hon. Joash Olum, MP
- (16) The Hon. John Ogutu Omondi, MP
- (17) The Hon. Harrison Kombe, MP
- (18) The Hon. Gunga Mwinga, MP
- (19) The Hon. Aduma Owour, MP
- (20) The Hon. Richard Makenga, MP
- (21) The Hon. Khatib Abdallah Mwashetani, MP
- (22) The Hon. Benjamin Andola Andayi, MP
- (23) The Hon. Gladys Wanga, MP
- (24) The Hon. John Mbadi, MP
- (25) The Hon. Abdikadir Aden, MP
- (26) The Hon. Kenneth O. Okoth, MP
- (27) The Hon. Timothy Bosire, MP
- (28) The Hon. Alfred K. Keter, MP
- (29) The Hon. Irungu Kang'ata, MP
- (30) The Hon. Jones M. Mlolwa, MP
- (31) The Hon. Anthony M. Kimaru, MP
- (32) The Hon. Peter Kaluma, MP
- (33) The Hon. George M. Omondi, MP
- (34) The Hon. Lisamula Anami, MP

- (35) The Hon. Stephen Mule, MP
- (36) The Hon. Ali, Shariff Athman, MP
- (37) The Hon. (Dr.) Susan Chebet, MP
- (38) The Hon. Leonard Sang, MP
- (39) The Hon. Florence Mutua, MP
- (40) The Hon. Michael Onyura, MP
- (41) The Hon. Gedion Ochanda, MP
- (42) The Hon. James Onyango K'oyoo, MP
- (43) The Hon. Ronald Tonui, MP
- (44) The Hon. Johana Ng'eno, MP
- (45) The Hon. Chris Wamalwa Wakhungu, MP
- (46) The Hon. Agoi Alfred, MP
- (47) The Hon. Benard Shinali, MP
- (48) The Hon. Jared Opiyo, MP
- (49) The Hon. Ferdinard K. Wanyonyi, MP
- (50) The Hon. Mohamed Adan, MP
- (51) The Hon. Dorcas Kedogo, MP
- (52) The Hon. George Ogalo Oner, MP
- (53) The Hon. Awiti Bollo, MP
- (54) The Hon. Hassan Mwanyoha, MP
- (55) The Hon. Shukra Gure, MP
- (56) The Hon. Ibrahim Abdi Saney, MP
- (57) The Hon. Racheal Ameso, MP
- (58) The Hon. Mishi Juma, MP
- (59) The Hon. Mustafa Idd, MP
- (60) The Hon. Aisha Jumwa, MP
- (61) The Hon. Shakila Abdalla, MP
- (62) The Hon. Janet Nangabo, MP
- (63) The Hon. Suleiman Dori, MP
- (64) The Hon. Kabando wa Kabando, MP
- (65) The Hon. Emmanuel Wangwe, MP
- (66) The Hon. Tim Wanyonyi, MP
- (67) The Hon. Junet Nuh, MP
- (68) The Hon. Ahmed Abass, MP
- (69) The Hon. Suleiman Murunga, MP
- (70) The Hon. Yusuf Chanzu, MP
- (71) The Hon. Kangogo Bowen, MP
- (72) The Hon. Philip Rotino, MP
- (73) The Hon. Mark Lomunokol, MP
- (74) The Hon. Ayub S. Angatia, MP
- (75) The Hon. Simba Arati, MP
- (76) The Hon. Joseph Magwanga, MP
- (77) The Hon. Patrick Wangamati, MP
- (78) The Hon. Robert Mbui, MP

- (79) The Hon. (Dr.) Enock Kibunguchy, MP
- (80) The Hon. Alice N. Chae, MP
- (81) The Hon. Manson Nyamweya, MP
- (82) The Hon. Zipporah Kering, MP
- (83) The Hon. Reginalda Wanyonyi, MP
- (84) The Hon. Silvanse O. Onyango, MP
- (85) The Hon. Christopher Omulele, MP
- (86) The Hon. Dan Kazungu, MP
- (87) The Hon. Bonface Otsiula, MP
- (88) The Hon. Geoffrey Makokha Odanga, MP
- (89) The Hon. Stephen Kariuki, MP
- (90) The Hon. Amina Abdalla, MP
- (91) The Hon. Samuel Ndiritu, MP
- (92) The Hon. Jackson Rop, MP
- (93) The Hon. Hassan Dukicha, MP
- (94) The Hon. Arthur Odera, MP

Hon. Speaker, I wish to thank these Members for appending their signatures in support of the Motion.

**Hon. Speaker:** Hon. Odanga, there is a Member who is on a point of order. Hon. Irungu Kang'ata, what is your point of order?

**Hon. Kang'ata:** Hon. Speaker, I rise pursuant to Standing Order No.66. It provides that before giving a Notice of Motion in respect to this kind of a matter, one must indicate the grounds and the particulars of the violation of the Constitution. Members must also sign in support of that. Then, it proceeds again to provide that once the matter comes here, almost the same procedure must apply. The question is: What happens in a situation where what was originally provided for when Members were signing changes materially when the matter comes here in the plenary? I call upon you to compare the original Petition that the Mover was circulating with the grounds which are in this Order Paper. They are very different. I will give you one example.

*(Loud consultations)*

**Hon. Speaker:** Order! Order! Nobody is going to be allowed to shout here. I hear that and you will be out for the balance of the day! This is a *quasi-judicial* process. Let us allow everybody the opportunity to say what they must say. Unfortunately, the rules are very clear. You cannot withdraw your signature. That is very clear and we do not want your intervention.

Proceed, Hon. Kang'ata.

**Hon. Kang'ata:** Hon. Speaker, it will be very unfair if, indeed, it is proved that there have been some changes in what the Members had signed for and what is before this House.

One, on the part of the person who is being complained against, it is against rules of natural justice where you accuse me against a certain offence and then, when you come before the court or the so-called *quasi-judicial* organ like this one, you change the grounds.

Two, it is also unfair to the Members. Maybe, the Members were signing in respect to a certain ground then when they come here when the matter is being discussed, they find that the grounds have been changed and the original content has been changed. Most importantly, they find additional grounds which were not there when they were appending their signatures.

I seek your guidance and pray that, if, indeed, it is proved that there have been some changes, then you have this matter declared--- In short, you throw out this Motion.

**Hon. Speaker:** Hon. Members, that point of order addresses an extremely fundamental issue which I can tell you without even looking at the current Standing Orders, particularly Standing Order No. 66 as read together with No.64, is not provided for, unfortunately. The situation which you have described is not provided for. Therefore, the only thing available to you and happens in any *quasi-judicial* or judicial process is to apply your mind in this particular situation when it comes to voting. That is because I am not privy to what was circulated. Those things are circulated in corners where I am not present.

*(Laughter)*

Where you sign them and why you sign them, I have no knowledge. It is very difficult for me to make an adjudication of that point. It, therefore, means that Hon. Kang'ata will be at liberty, if he thinks that there have been material changes, to vote whichever way he wishes. That is because, fortunately, this is a matter where determination is by voting. That is the only available avenue. But we cannot disallow the Member from prosecuting his matter in the manner that he has. You will be perfectly entitled; if you get a chance to speak, to say that there have been material changes. That is the only thing that is available to you. Members, let us allow the Hon. Member to move this Motion. It is a first of its kind and it is unfair that we do not give each other a chance to be heard.

Hon. Odanga.

**Hon. Odanga:** Thank you, hon. Speaker. I believe this is a House of rules and procedures. For an hon. Member to have signed a document, I want to believe that his conscience must have been very clear. At the outset, I must state that 95 hon. Members of this House appended their signatures in support of the Motion for the dismissal of the Cabinet Secretary (CS), Professor Jacob Thuranira Kaimenyi and as such, Article 152 (6) of the Constitution was complied with.

In prosecuting this Motion, I will address two fundamental issues as earlier mentioned:- One is gross violation of a provision of the Constitution or any other law and two is gross misconduct.

Regarding item number one - violation of a provision of the Constitution - I wish to mention that Article 10(2) of the Constitution on the National Values and Principles of Governance and Article 261(4) of the Constitution on involvement of stakeholders or public participation in legislation have grossly been violated in the sense that there was no public participation in the drafting and publication of the Basic Education Regulations 2015. Further, the CS totally disregarded the mandatory procedural requirements of legislation by failing to involve constitutional offices such as the Commission for the Implementation of the Constitution (CIC), the Office of the Attorney-General and the Kenya Law Reform Commission before the

publication of the regulations in the *Kenya Gazette*. As a result, there has been a huge outcry that has had a negative impact on the education sector.

Articles 43(1)(f) and 53(1)(b) of the Constitution provide for the right to education and, in particular, recognise the fact that every child has a right to free and compulsory basic education. That is a question of human rights that has found enormous recognition in the international arena and, more so, the universal declaration of human rights. The violation of those constitutional provisions is found upon breaching the provisions of Section 29 of the Basic Education Act No.14 of 2013, where it is incumbent upon the CS to ensure that tuition is free and that no public school charges or causes any parent or guardian to pay tuition fees for or on behalf of any pupil in the school. The CS has absolutely failed to ensure that the objects of these constitutional provisions are realised and the law is adhered to. Consequently, many children have been kept out of school because of the inability to pay fees. Even in the situation where fees is paid as is the current situation, the CS has demonstrated a lot of incompetence as he has failed to promote education.

Among other shortcomings, is his failure to spearhead the Hon. (Dr.) Kilemi Mwiria-led taskforce on affordable secondary fees education. Consequently, parents and guardians have continued to pay very high school fees since the CS has failed to enforce the recommendations of the taskforce. Even as he went out to issue guidelines on school fees, he has not followed up. Therefore, schools charge the fees that they believe they should charge. As a result, very many children have been kept out of school. The Presidential Secondary School Bursary Scheme, which has been very useful to the parents and children of this country, has been stopped under his watch. This has made very many orphans and vulnerable children to drop out of school.

Hon. Speaker, Article 54(1)(b) of the Constitution as read together with Section 12 of the Children Act of 2014 provides for a disabled child to be treated with dignity and, among other things, be accorded education.

**Hon. Speaker:** There is a point of order, hon. Odanga. Hon. Sakaja, what is your point of order?

**Hon. Sakaja:** Hon. Speaker, this is a House of rules and procedures. I rise under Standing Order No. 80 because I have noticed that the Member is totally reading his speech. Standing Order No.80(1) states that:-

“No Member shall read a speech but a Member may read short extracts from written and printed papers in support of an argument and may refresh memory by reference to notes.”

Standing Order No.80(2) states:-

“The Speaker may allow a Member to read a speech in particular cases where the Speaker is satisfied that this is necessary for precision in statement of facts.”

Hon. Speaker, I would like you to confirm if you have given the Member permission to read his speech for the precision of facts. That is because many of us have speeches. If this is one of those special instances, we want to prepare our speeches. If not, the Member should only briefly refer to his notes as stated in the Standing Orders.

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, none of you has been asked to make a declaration on anything. I do not even know what it is that you are saying yes or no to. Hon. Odanga, in



prosecuting this matter, I am very sympathetic to the fact that you have several items that you have particularised, some of which refer to sections of laws, including repealed ones. However, it is important that you only make reference to the laws. For instance, you made reference to Article 10 of the Constitution on national values and principles of governance and any such sections of the laws that you may wish to rely on. Then the balance of what you say must be informed by knowledge within yourself.

**Hon. Odanga:** Thank you, hon. Speaker. I stand guided. I was saying that Article 54(1)(b) of the Constitution of Kenya gives a right to children living with disabilities to access education. The CS has discriminated against children with disabilities by denying them adequate funding so that they can get educational services that they require on time. The situation has been very grave in most of our schools with special needs. Therefore, the CS has failed in his mandate.

Section 6 of the Education Act 2007 is about boards of management. For quite a long time, some schools and other institutions have failed to have boards of management to run them. Some have stayed without them for even two, three or four years. That means the schools have been running illegally. That has been a breeding ground for corruption and mismanagement. Tendering processes have not been done well. This is of very grave concern in the education system in Kenya.

Apart from that, we have the county education boards which have been formed in this country. Those county education boards were inaugurated early last year. I want to report that those boards have been operating without a single penny. They have no budget. Some of the members are disabled and they have to go to those boards to make important decisions. Hon. Speaker, you can imagine such members of the boards going there and then going back home without facilitation. That means that quite a number of them do not make it to the meetings or are de-motivated. For that matter, I want to say that the CS must go.

*(Laughter)*

**Hon. Speaker:** Proceed!

**Hon. Odanga:** Sections 28 and 29 of the Basic Education Act have also been breached. Why have they been breached? That is because no concrete measures have been put in place to guarantee free and compulsory education for the children of Kenya, as provided for in the Constitution. Public schools are also not supposed to be charging fees according to those sections. However, we know that schools have continued to charge fees. This has barred many children from poor backgrounds access to education.

The CS has failed to exercise due diligence in the laptop project and, thereby, breaching Section 27 of the Public Procurement and Disposal Act. That was a flagship project of the President of this country. That project was supposed to be rolled out in January 2014. To this date, the project has not been rolled out. The CS has been playing hide and seek. He has failed totally on this one. As evidence that the Cabinet Secretary is incompetent, recently, the President himself shifted the running of that project from the Ministry of Education, Science and Technology to the Ministry of Information, Communication and Technology (ICT). What form of incompetence do you want to see if you cannot see that the President wants assistance from

this House? If we were in the old regime, he would have been sent home long time ago. But because the President has no such powers today, the House has to begin the process.

Therefore, I want to move and ask the hon. Member for Bomet Central, Hon. Ronald Tonui, to second.

**Hon. Tonui:** Thank you, Hon. Speaker, for giving me this opportunity to strongly second this impeachment Motion. Coming from a background of teaching, I believe this is the best news which Kenyan teachers are currently listening to. Last night, as I was watching news, I observed a section of the *Njuri Ncheke* making a declaration that, that man must be impeached.

**Hon. Murungi:** On a point of order, Hon. Speaker.

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

**Hon. Murungi:** Thank you, Hon. Speaker. My good friend, Hon. Tonui, is misleading this House. I am a senior member of *Njuri Ncheke*. I am a patron in Imenti South, sub-county of *Njuri Ncheke*. There was no news that *Njuri Ncheke* said Prof. Kaimenyi must be impeached. For the information of this House, all *Njuri Ncheke* elders have said that they support the Cabinet Secretary. He is our child and we have no problem with him whatsoever. So, I wish that Hon. Tonui can apologize to *Njuri Ncheke* elders and then withdraw before he proceeds. Otherwise, we will curse him as *Njuri Ncheke* elders.

*(Laughter)*

**Hon. Speaker:** Hon. Members, remember that even the seconder like all others, except the leadership, has only five minutes. I will just advise you for free: Avoid making things that could make you be interrupted. Five minutes is a very short time and you are a seconder. If you could refrain from dealing with matters of the village and deal with issues at hand--- You are introducing very strange outfits here.

Proceed, Hon. Tonui.

**Hon. Tonui:** Hon. Speaker, I thought that was a very important matter because those are part of the stakeholders of this country and who should not be ignored.

I also want to commend Hon. Odanga for bringing this Special Motion. I want to commend him for not getting compromised halfway. We have seen other impeachment Motions being brought here and we have been told that others are pocketing money out of them. I thank Hon. Odanga for not pocketing anything and ensuring that this Motion reaches the Floor of this House.

I know that the Cabinet Secretary dismissed the ruling that was made in the Industrial Court by Hon. Justice Nduma Nderi on the issues of teachers' salaries which were to be adjusted. I want to commend that judge. I believe that during this year's Jamhuri Day Celebrations, the Head of State will recognize that judge for what he has done for the teachers of this country. Justice Nderi---

*(Loud consultations)*

**Hon. Speaker:** Proceed with the charge.

**Hon. Tonui:** Thank you. Why are we having this impeachment Motion? It is on the character of Prof. Kaimenyi. The Constitution talks about people who are holding public trust---

*(Loud consultations)*

Thank you. I second the Motion.

**Hon. Speaker:** You have finished?

**Hon. Tonui:** No, I have not finished! These people are---

**An hon. Member:** On a point of order, Hon. Speaker.

**Hon. Speaker:** No, his time is over. You must use your time well. Hon. Members, please! I have just said that each one of you has only five minutes. If everybody could try and address the issues which are here--- There are many grave issues which are referred to, apart from judgments and others. If you just look at the ones that are here, these are more important!

*(Question proposed)*

Hon. Members, in the interest of time, I do not have to read those grounds. You all have them. I do not want to go the route taken by the Mover.

**Hon. Chepkong'a:** Thank you, Hon. Speaker. As you know, I have tremendous respect for the distinguished Member of Parliament for Matayos. He traverses Eldoret whenever he goes to his constituency and I normally have an opportunity of having lunch with him once in a while.

Notwithstanding what he has just brought, I totally support his constitutional right to bring matters of such importance. However, I have certain concerns. One, I have concerns on matters of law. With regard to matters that have already been repealed, he is saying that the Cabinet Secretary - which is ground number two in his petition - has breached Section 6 of the Education Act No.7 of 2007 by permitting I do not know what!

The Education Act of 2013, Section 97 specifically repealed that Act and so, there is nothing to breach. It was annulled and repealed. According to the English dictionary, Webster, once a matter is repealed, it is abrogated, deleted and does not exist in the statutes. So, there is nothing for him to breach. So, as a Member of Parliament, once he repeals an Act, he cannot come again and say: "So and so has breached an Act in which he himself participated in ensuring that it was repealed and deleted from the statutes of this country." Today, I was reading the *Daily Nation* Newspaper and I want to quote what was said. We Members have to be careful about what happened yesterday. This is what the members of the public are saying about Members of Parliament.

I would like to quote. I am a lawyer.

*(Loud consultations)*

**Hon. Speaker:** Hon. Chepkong'a, the House rules do not allow us to quote newspapers.

**Hon. Chepkong'a:** I withdraw, Hon. Speaker. Secondly, Hon. Odanga has made reference--- In fact, what Kenyans are saying is that we must be judicious in the manner in which we spend our time. Hon. Odanga has made reference to breach of fundamental freedoms as enshrined in the Constitution. In particular, he has made reference to Articles 52, 55, 56 and so forth. Those are matters that are addressed by the Constitution. It is not incumbent upon this House to determine matters that are in conflict between citizens. Article 23 of the Constitution

has vested that particular power in the High Court. This is what it says with regard to the Bill of Rights. Article 23(1) says:-

“The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.”

What is being alleged here is that a fundamental freedom that is contained in the Constitution has been breached. The Constitution has already provided a way out in terms of where those issues can be resolved. It is not for this House to resolve them.

Let me mention this; The Justice and Legal Affairs Committee has about 19 lawyers. Even if we sat as a bench, this is the biggest bench that you can have anywhere in Kenya. The Supreme Court has only seven members. We have very many lawyers like Hon. Kaluma, Hon. T.J. Kajwang’ and others. Whether we decide to say that what Hon. Odanga has said is true, it will not be arbitration in accordance with Articles 23 and 165 of the Constitution as read together. Those are matters that should be taken to the High Court for arbitration. They are not matters to be brought before Parliament. In that respect, as much as he would like to exercise his right, this is not the place to exercise that right. He should take it to the High Court. On matters that are repealed, we should not be listening to them.

Hon. Odanga, who I have said is a distinguished Member, says in his petition which has been circulated that the Cabinet Secretary “appears”. He has not committed himself. The language is very clear. The appearance is different from what the law states. It says “if the person has grossly mis-conducted himself” and not “appears.” Matters of appearing are matters of opinion. Those are not matters of law.

Secondly, I would like to say that Hon. Odanga is a member of the Education, Research and Technology Committee. Standing Order No. 216 gives the Committee under the able Chairperson of Hon. Sabina Chege powers to investigate or inquire into matters that relate to the Department of Education, Research and Technology. The matters that have been referred by this distinguished Member of Parliament are matters that ought to have been investigated by the Committee on Education, Research and Technology where he sits as a member. On matters that he has referred to, there is no evidence that he has tendered them there. There is no report of the Committee which can persuade the House that this matter has been exhaustively and deliberately investigated upon by the Committee. We are waiting for that report. I should see that report. It will be gross misconduct by a Chairman like me to come to this House to report on matters of the Judiciary without a report.

Secondly, Hon. Odanga---

*(Hon. (Ms.) Nyasuna interjected)*

**Hon. Speaker:** Hon. Wanga, you cannot be debating from where you are seated.

**Hon. Chepkong’a:** Hon. Speaker, I do not know why some Members are shouting from the other side. They will be given an opportunity to speak.

Hon. Odanga cannot usurp the powers of the Education Committee and bring a report in the form of a complaint. He should have, in fact, disclosed that he is a member of that Committee, but he has not stated that here. I expected him to say:-

“As a member of the Education Committee, I summoned Hon. Kaimenyi and he failed to come.”

I am referring to what he has just said. Article 125 of the Constitution---

**Hon. Members:** Time!

**Hon. Chepkong'a:** I am within time. Which time? In Article 125 of the Constitution, the Committee on Education, Research and Technology has the same powers as those of the High Court. You have not summoned---

**Hon. Speaker:** Order, Members! Hon. Abdikadir Omar.

**Hon. Aden:** Thank you very much, Hon. Speaker.

**Hon. Speaker:** Hon. Members, everybody must be given his chance. Whether you agree or you do not agree with what a Member is saying, allow them to contribute!

**Hon. Aden:** Thank you, Hon. Speaker for giving me this opportunity to contribute to this debate. Let me say that I totally support the hon. Member who has made this move. He is doing so rightly. It is very frustrating to see very senior Members of this House, especially lawyers, trying to mislead that Hon. Odanga has no right as a Member of this House to move this Motion. Indeed, he has.

Let me say that Prof. Kaimenyi has failed the people of Kenya. He has failed as a public servant to show simplicity and to offer service to the people of Kenya. Indeed, his inability to manage important stakeholders in the education sector is very evident. Our education sector has grounded to a halt a number of times so much so that the Secretary-General of KNUT, Mr. Sossion, nearly exchanged blows with him in front of a Committee of this House. It is a failure. It is a shame. Indeed, I can say that Prof. Kaimenyi is a liability to the people of Kenya and he does not deserve taxpayers' money---

**An hon. Member:** Substantiate.

**Hon. Aden:** I can substantiate by saying that no wonder he has been cursed by the *Njuri Ncheke*, to which many of you belong.

*(Laughter)*

In North Eastern Kenya---

**Hon. Speaker:** Order, hon. Members! Hon. Members, let us deal with the matters which are listed here. Please, do not drag the House into village matters. What are those ones now you are mentioning? Just deal with the issues here.

**Hon. Aden:** I stand guided. I come from North Eastern region of Kenya---

**Hon. Speaker:** It is because I do not want any Member interrupted. That is why I want you to restrict yourself to the issues because the moment you mention those others in the villages, people from those villages will start rising up.

**Hon. Aden:** Thank you very much for your guidance, Hon. Speaker. The education sector in North Eastern Province of Kenya has failed. Prof. Kaimenyi is not able to offer any viable alternative to make sure that the sector is revived. The children in North Eastern Province of Kenya are not going to school. They have been out of class for the last two terms. We have proposed to him tangible solutions which can work. The private schools in North Eastern Province of Kenya are working. All the teachers in all parts of Kenya are in the classrooms teaching but, all our public institutions in the North Eastern Province of Kenya have failed

completely. He has not been able to offer a single idea. He is a liability to the leadership of this country and His Excellency the President. I agree with Hon. Odanga that we must give the President this opportunity to deal with this inefficiency in our public sector, and in our very important education sector. This matter is very important. There are a number of publically demonstrated habits and issues such as arrogance in front of Members of Parliament in the Departmental Committee on Education, Research and Technology and in a number of committees which we can refer to. Because of time, I urge the hon. Members in this House to put aside any other issue and think about the Kenyan child who is not able to have and enjoy the basic right to education because of the inefficiency of this one person. We must deal with this one person. We must deal with this very inefficient leader in our education sector who does not deserve to sit where he is. I urge the President that upon the passing of this Motion he speeds up the removal of Prof. Kaimenyi, so that we do not lose our education sector in totality; it looks like things are likely to go that way.

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

**Hon. Speaker:** Leader of the Majority Party.

**Hon. A.B. Duale:** Yes, I am the Leader of the Majority Party. Thank you, Hon. Speaker.

I will not go to the *Njuri Ncheke* issue. I will go to the fundamentals of this Motion. I want to thank Hon. Odanga for at least being the first Member of this 11<sup>th</sup> Parliament to operationalise Article 152 (6) on the impeachment of a Cabinet Secretary (CS). He never did good homework. For those of us who served in the 10<sup>th</sup> Parliament, this is a statement which is written and there are number of legal flaws as, Hon. Chepkong'a said. When Hon. Odanga was creating this Motion, in a number of areas, he spoke about the Education Act, 2007 when today we have the Basic Education Act 2013.

I will go to the first matter; the CS appears to have committed a gross violation of Section 8 of the Public Officer Ethics Act, 2003. Hon. Odanga was to provide empirical and factual evidence on how this CS has violated that section. All that he has provided, and I will quote. He says: "The CS appears to have violated the said section of the law." The burden of proof - I am not a lawyer but I am a good lawmaker - lies with Hon. Odanga to tell us that it is not about appearance. In my community, appearance is about the beautiful ladies in the north. There is no appearance in the Constitution. So, he talks about appearance in that section. The Member has not given any evidence in as far as violation of the Constitution is concerned. To make it very clear to him, the CS is under Chapter 6 on Leadership and Integrity. He can only be charged as a State officer but not under Section 8 of the Public Officer Ethics Act, 2003.

I will move very fast. Two, he says that the CS has violated Section 6 of the Education Act, 2007. Number one, you do not violate a law that does not exist. There is no law that is called "Education Act 2007". There is Basic Education Act, 2013 which repealed the sections you are quoting of 2007. It was Education Act Cap.11, 1968. Hon. Odanga is my good friend. I want to confess to the House, and I want to go on record, that the person who denied the people of northern Kenya teachers is Mr. Sossion.

*(Loud consultations)*

You can judge me but last night at 8.45 p.m. after I had left the mosque -Safaricom can confirm this - Mr. Sossion called me and asked me: “Hon. A.B. Duale---” I asked him: “What do you want?” He said: “About Kaimenyi.” He called me and I have the evidence.

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, he has a right to say what he was called for by anybody. You are out of order.

**Hon. A.B. Duale:** Hon. Speaker, I want the country to know and I am ready to provide my phone to Safaricom. He called me at 8.45 p.m. after I had left the mosque. He told me: “I want to talk to you about Mr. Jacob Kaimenyi.” I said: “I am sorry. From the Rift Valley, I only speak to one man called William Samoei Ruto.” That was the end of the story.

*(Loud consultations)*

**Hon. Speaker:** He has a right to say that.

**Hon. A.B. Duale:** Hon. Speaker, we know the owner of the project. We know the people who are behind this.

**Hon. Speaker:** Order, Members! Those of you who are making noise and shouting, Hon. A.B. Duale has a right to say whom he speaks to just as you have a right to say whom you speak to, whom you cry with and all those matters. You will not make noise when somebody says that he cries with another, speaks with another or prays together with another. That is not a reason for anybody to disagree with him. You will have your time also to say whom you do other things with.

**Hon. A.B. Duale:** Hon. Speaker, in 2007 to 2009, the only person I used to speak to was the former Prime Minister, Hon. Raila Amolo Odinga. There are people you speak to in this country, who are very important. If some people do not have others to speak to, they can speak to me. They can call me. I am also a very important citizen.

A quotation was made from Section 6 of the Education Act, 2007. I am sorry that, that Act does not exist. So, you cannot pin the CS down on Article 152 (6) of the Constitution; it says that you must prove beyond reasonable doubt the violation of the said sections. The CS, Mr. Jacob Kaimenyi invoked Section 98 of the Basic Education Act, 2013 on transitional clauses. I participated in the making of that law. Section 8 of the transitional clauses of Basic Education Act, 2013 give the CS the mandate to extend tenure of office of the former board of governors of schools. He has not violated the law. On the treatment of the National Assembly Members with contempt and failure to honour summonses, your office can report when the Executive are not available. They write letters to the Office of the Clerk through you, Hon. Speaker.

I expected Hon. Odanga to provide to Members the dates when Mr. Jacob Kaimenyi was invited by this House and he refused to come. We need to see the letter that was sent to the Office of the Clerk. The Executive communicates to Parliament through the Accounting Officer, who is the Clerk of the National Assembly. That evidence has not been provided. I saw Hon. Odanga talking about the said regulations. The Instruments Act that we passed in this House says regulations from the Executive will come through Cabinet Secretaries to the Office of the Clerk, for me to table and for the Speaker to direct the Committee on Delegated Legislation to deal with

it. There is nowhere in law where regulations will go to the Commission for the Implementation of the Constitution (CIC) and Attorney-General. Do not mislead the country. You can do better than this and you will do better than this in the next impeachment Motion that you will bring.

There is the CS's high-handedness, arrogance and refusal to consult stakeholders. I will pick only one, which is the matter on ranking of schools. It started with former Chairman of Orange Democratic Movement (ODM) and former Minister Henry Kosgey when he was a Minister for Education in 1999; he formed a commission led by David Koech. That Commission rejected ranking of schools. In 2001, a commission was formed led by a lady called Naomi Wangai, who is a Commissioner of the Teachers Service Commission. That Commission rejected it. I was in this House in the 10<sup>th</sup> Parliament. The Departmental Committee on Education, Research and Technology led by Hon. Koech, the then Member for Mosop, did a report and this House in the 10<sup>th</sup> Parliament rejected ranking. The Prof. Odhiambo Commission of 2012 rejected ranking. The latest was Kilemi Mwiria. Who were his members? If you give me an opportunity, I will table evidence. Mr. Sossion was a member of the task force. The Secretary-General of the Kenya Union of Post-Primary Education Teachers (KUPPET) was a member. We must build this country based on honesty and integrity. We cannot cheat people. For example, you cannot be a member of a committee of this House and tomorrow you say that the process was not followed. You cannot accuse Mr. Jacob Kaimenyi on ranking. There were seven commissions that rejected ranking, one of them being a committee of this House.

How do you measure 'refusal'? When we were vetting Mr. Mumo Matemo in the 10<sup>th</sup> Parliament, the late Senator of Homa Bay, a man I admired; took on those people who said that the candidate did not have passion for the job, and that he looked fake and arrogant. The late Hon. Kajwang', may his soul rest in peace, asked: "How do you measure passion? Do you have a "passion metre"? How do you measure arrogance?" Many people say that I am arrogant because I am firm. It is because I tell them the truth to their faces, and I am handsome.

*(Laughter)*

Hon. Speaker, on the issue of discrimination against children, let me speak to the kind of reforms that this person has brought. The first nomadic commission in the history of Kenya for pastoral communities was initiated by Jacob Kaimenyi. The National Irrigation Board and the 47 county boards were initiated under the leadership of Kaimenyi. Education Standards and Quality Assurance was done under Kaimenyi. The establishment of the National Council for Nomadic Education in Kenya to promote education in ASAL and other marginalised areas was an initiative of Prof. Kaimenyi.

Finally, the procurement of laptop computers for Standard One pupils was not under the ambit of the Cabinet Secretary. The process involves the Procurement Department, the Ministerial Tender Committee, independent observers, the negotiating committee, the due-diligence committee, among other entities.

Hon. Speaker, this House's committee responsible for education travelled across the country and around the world to do due diligence. If we accuse Prof. Kaimenyi on the issue of the laptop computers, this House's committee responsible for education also stands accused. Procurement is not a function of a CS. Let us forget about the *Njuri Ncheke*. They are there even in my community. There are many factions of *Njuri Ncheke*.



Finally, as a House, we have seen the kind of threshold that the Constitution has provided for the impeachment of a CS to make sure that the process is not abused. We need 117 Members in the first stage. If it goes through to the Second Stage, we will need 174 Members. Why did the framers of the Constitution set such requirements?

With those remarks, I beg to oppose the Motion with facts and ask Hon. Odanga not to carry the baggage of one Sossion, who denied the children of northern Kenya teachers.

**Hon. Speaker:** Hon. Jared Opiyo.

**Hon. Opiyo:** Hon. Speaker, I thank Hon. Odanga for having the courage to bring this impeachment Motion against the CS for Education to the House.

Many issues have been highlighted by Hon. Odanga but most importantly, our schools are operating without boards of governors. This compromises education in our schools. Listening to Hon. A.B. Duale, I wonder who the buck should stop with. My understanding is that ultimately, the burden in the Ministry of Education lies on the CS for failing to come up with regulations to enable schools have BOGs. It is very difficult for schools to operate without BOGs. For example, the budgeting process in schools involves the BOGs. I wonder how the schools that do not have BOGs are operating.

Somebody can go to court even today to challenge the way any school in this country is operating. If the prayers of that person are granted by the court, operations in our schools will be disrupted. Recently, we had problems with teachers in the north eastern region, but the CS did not come up with any pragmatic solution to help teachers return to that region, so that children in that area could continue with their learning. It is not right that any part of this country is denied education, which is a basic human right.

There was a day when we had a meeting with the CS in this Chamber. Hon. Opiyo Wandayi and another hon. Member asked very pertinent questions, but when the CS rose to speak to them, he confronted them in a manner likely to suggest that he wanted to fight them. I am happy that Hon. Chanzu today told me that the CS went to him and apologised for having confronted him in the manner that he did. However, we cannot take such things for granted. If he could confront hon. Members in a meeting to which he was summoned by Parliament, what happens if you go to his office to be served? Such an incident can scare away any hon. Members as well as members of the public. That is not something that can be taken for granted.

We had another meeting in the Small Dining Hall, where we were discussing the Kilemi Mwiria Task Force Report. There were issues that were raised by the Heads of Secondary Schools Association, who were represented there. There were also issues which were raised by Parents Teachers Association (PTAs) members who were represented by one Musau Ndunda. In that meeting, we agreed that we would have a stakeholders' meeting, involving every one. On that same evening, the CS sent out circulars, giving new school fees guidelines without the proposed consultation materialising. That is why we say that the CS is not interested in consultations whatsoever. If we are interested in saving the education sector, this CS has to be dealt with now rather than later.

With those remarks, I beg to support the Motion.

Thank you.

**Hon. Speaker:** Hon. Priscilla Nyokabi!

**Hon. (Ms.) Kanyua:** Thank you, Hon. Speaker. I am happy to be one of the Members contributing to this Motion. I rise to oppose it and say that Prof. Kaimenyi must stay. However, I

congratulate Hon. Odanga for bringing the Motion here because we are in a new constitutional order, which provides the Legislature with powers to oversee the work of the Executive not necessarily to remove them from office but to---

*(Hon. Mule pointed a finger at the Member on the Floor)*

**Hon. Speaker:** Order. Hon. Mule! You cannot keep on pointing your finger at the speaker. What are you doing that for? You will have to go out, if you continue doing so. For now, you can sit down and refrain from pointing your finger at the speaker.

Proceed, Hon. Kanyua.

**Hon. (Ms.) Kanyua:** Thank you, Hon. Speaker. I hope that you will compensate me for the minute that he has taken away from my time.

Hon. Speaker, we are on the point of the new constitutional order, and on the Legislature having power to oversee the work of the Executive.

Even as I oppose this Motion, I am happy that it has come to this Floor, because Cabinet Secretaries (CSs) have to hear the messages of this Assembly. The messages we are giving CSs are that they have to respect the people's representatives. There is no other way in this country. There can be no other way. Public office is public office. You might be an arrogant man, thank you very much, but public office is public office. You will have to respect public office. Arrogance, unfortunately, is not a ground for removal of a Cabinet Secretary (CS). We all agree that CS Kaimenyi is not a good man. I doubt that he will go to heaven. I do not think he will go to heaven given his conduct. However, this is not about heaven. The National Assembly has no power to judge good and bad men. That is not our work. Our work is to look at the law, the Constitution and check whether a CS has infringed the Constitution. Prof. Kaimenyi has not infringed the Constitution. His arrogance is neither here nor there. We want him to do the right thing. We want him to be humble in public office.

Arrogance is a new law for this country. We have seen people being denied public office because they are arrogant. This National Assembly is setting a new law. If you look at the Constitution, there is no requirement around arrogance. Members of Parliament, in this country, nobody is as arrogant as we are. Nobody is as arrogant in this country as MPs are. I am surprised that people who are so arrogant are now judging other arrogant people. Arrogance is not a ground for removal. We cannot remove a CS on the mere ground that they are arrogant.

If the CS was corrupt and was brought here for touching Free Primary Education (FPE) money, even we in Jubilee would have removed him today. If he was brought here for corruption, nobody would support him. We would have been the first to remove him. But the poor man was not brought here because of corruption. He was brought here because of arrogance. We cannot accept that a CS in this day and age can be removed only on the grounds of arrogance.

As we go on, the National Assembly will have to set parameters on the engagement between the Executive and the Legislature. It is time all the Executive CSs set up parliamentary liaison offices. We are tired of crying. When we go to CSs, we have demands from our constituents that they have to listen to. What they need to do, because it is a new regime and constitutional order, is set up an engagement mechanism between the Legislature and the Executive.

Today, I urge this House and all my colleagues to let CS Kaimenyi be. Let him continue with his work. He has heard our message on the question of public service, humility, laptops and the sanitary towels that women representatives have been asking for. We want to see him deliver on the work that he has been given by this Assembly. Of course, like everybody else, I would also urge that he reduces his arrogance. Arrogance is no ground for removal of a CS. Prof. Kaimenyi must stay, will stay and is going nowhere.

**Hon. Speaker:** Hon. John Munuve.

**Hon. Mati:** Thank you very much, Hon. Speaker. From the outset I would like to oppose the Motion. I oppose from a very strong position of knowledge. Prof. Kaimenyi and I were appointed by former President Kibaki as Vice-Chairman and Chairman respectively of the Water Services Trust Fund (WSTF).

**Hon. Members:** Ooooh!

**Hon. Speaker:** Hon. Munuve will be heard. Let him disclose it to you. You did not know that.

**Hon. Mati:** I had to disclose so that what I say can be judged against that background. I happen to know more about Prof. Kaimenyi than a lot of you do. I was the Chairman of the WSTF and he was my Vice-Chairman for two or three years, from 2005 to 2007.

From the outset, Prof. Kaimenyi is a doer. He is a person who believes in achieving. He may not be very good in terms of pleasing people, but he is a person who sets goals and achieves them. That is why he is a professor and some of us are not.

*(Laughter)*

Prof. Kaimenyi has been accused of arrogance and taking money for infrastructure for schools, when MPs in this House know very well that 60 per cent of our budget in the Constituencies Development Fund (CDF) goes to infrastructure for schools. We pass the Budget in any case. How much money do we pass for infrastructure in terms of building secondary schools, nursery schools and colleges? That cannot be a crime that Prof. Kaimenyi has committed, otherwise every Member of Parliament (MP) would have a lot more money because Kaimenyi would be building all the primary and secondary schools.

As we judge and play our role as the Legislature, we have to be considerate in the things that we say in this House. Using such a phrase as “gross misconduct” about a fellow Kenyan without providing an iota of evidence in the full view of 40 million people is rather harsh. We should also go back to our recent history. Every time I speak here, somebody says “Juma” especially behind me here, because we have done it before. This House has got to look very carefully at how we can help the Executive manage this Republic. If we do not, we will expand our role to include what the Executive should be doing. We have to differentiate between oversight and management. I even heard one person say that we are helping the President because he cannot fire a CS. That person is wrong. The President can actually fire any CS. He has not asked for assistance, neither should we offer it without a request. He will when he will need it.

I seek the indulgence of this House to allow Prof. Kaimenyi a second chance. As I said, I have known him longer than some of the people in this House have. I have even been to Thimangiri where he comes from. I request this House to give him another chance. All the CSs

that we have dealt with have changed, including the first one whom we tried to remove. They have changed from the time we tried one of them. No other CS has come this far in terms of being removed.

We cannot accuse CS Kaimenyi of the problems in north eastern Kenya. We understand the problems in north eastern and empathise with the children there. However, as late as yesterday we lost 15 people in north eastern. Is CS Kaimenyi responsible for all these things? Have you assured CS Kaimenyi of the security of the teachers and not of the 15 people who were murdered in cold blood yesterday? At this rate we are going to attribute the failure of rain to CS Kaimenyi or any other CS; that seems to be where we are going.

*(Laughter)*

**Hon. Speaker:** Hon. Abdul Dawood.

**Hon. Dawood:** Thank you, Hon. Speaker. I would like to oppose this Motion. I would like to state that Prof. Kaimenyi comes from my constituency, and I believe he is the right person for the job. One of the Hon. Members talked about arrogance. She said that because Prof. Kaimenyi is arrogant, he may not go to heaven. I believe nobody can judge anybody on whether they will go to heaven or not.

The other thing one of the Members talked about is the problem of north eastern. He is placing the blame on Prof. Kaimenyi. Prof. Kaimenyi is on record as saying that schools in north eastern should not be closed. I believe that it is Wilson Sossion who has asked teachers not to go to north eastern. Let us be frank about it. We should not beat about the bush, and say that it is Prof Kaimenyi when he is not the cause. Hon. Odanga has brought up a few issues. He may have some issues with Prof. Kaimenyi.

However, we should get away from personal issues. I know that Prof. Kaimenyi talks with a commanding voice, but that is how he has been brought up and he is a professor; he is not anybody else. He is a learned person. That is the way he talks and communicates. That should not be a reason to say that he is arrogant. He is not arrogant at all.

Regarding the *Njuri Ncheke* issue, this is neither here nor there. There is nothing like a curse. If you believe in a curse, you are not God-fearing. Curses do not work anyway.

**An hon. Member:** Curses work!

**Hon. Dawood:** They do not work, *mheshimiwa*. Do not lie to the Members of this House and Kenyans. If curses worked, all of us would be cursed today. We would be dead but we are not because we believe in God. Since we believe in God, we will be going to Heaven. If you do not believe in God, we will leave you for Satan. Therefore, I oppose the Motion because it is not well thought out.

On the laptop project, it is not Prof. Kaimenyi who is delaying it. He wanted to implement it. It was the court which stopped him. You should probably appeal to the court to reverse the ruling in respect of the laptop project, the project will kick off before the end of the Jubilee Coalition's first term, and we will have another term.

Therefore, I request all the Members present to think before voting. I request everybody to vote for Prof. Kaimenyi to stay in his job. As an hon. Member said, maybe he has learnt his lesson, but what lesson are we teaching him? I do not understand. That is the way he is. Let us

talk to the President and the Executive. Maybe, he needs somebody to assist him in that docket, but I think he is the right person for that docket.

With those few remarks, I beg to oppose the Motion and request my colleagues to reject it.

**Hon. Speaker:** Hon. Members, I have been informed that Hon. Thomas Mwadeghu is the one holding forte for the Minority. Therefore, he gets preference in speaking. The rest of you must hold your horses.

**Hon. Mwadeghu:** Asante, mhe. Spika. Nashukuru kwa kupata nafasi hii kutoa mchango wangu kuhusu Hoja hii.

Kwanza, ningependa kumpongeza kakangu kwa kuileta Hoja hii Bungeni ili ipate kujadiliwa. Ninaomba kuwaheshimu Wabunge wote ambao wameweka sahihi za Hoja hii. Inamaanisha kwamba Wabunge hao walikaa chini na kutafakari kwa kina. Ndiyo maana wakaweka sahihi zao kwenye Hoja hii.

Nimesikia mambo mengi ambayo yamesemwa. Nikatulia niyasikie na kuyafahamu. Ninawashukuru wenzangu kwa sababu wamekubali kwamba Prof. Kaimenyi ni mjeuri na hasikii. Ni mtu ambaye anafuata nyayo za mhe Duale za ujeuri na ubabe. Anaishi maisha ya ubabe na kuonyesha kuwa yeye ndiye mambo yote. Watu wa Bonde la Ufa mmeambiwa je na mhe. Duale? Amesema hawezi kuzungumza na mtu yeyote kutoka Bonde la Ufa isipokuwa mhe. Ruto.

**Hon. Speaker:** Mhe. Mwadeghu, kuna jambo la nidhamu.

**Hon. (Ms.) Kajuju:** On a point of order, Hon. Speaker. I just want to know whether it is in order for the Leader of the Minority Party to state that the Leader of the Majority Party is arrogant. Is that parliamentary language?

What Hon. Duale said was that he is handsome. You can never kill a man because he is handsome. You can only accept it. Arrogance cannot be measured by any standards.

Thank you, Hon. Speaker.

**Hon. Mwadeghu:** Mhe. Spika, aisifuye mvua imemnyeshea. Kama huyu shangazi amependezwa na Duale na ubabe wake ni sawa; sina shida naye.

*(Laughter)*

**Hon. Speaker:** Order! Order, hon. Members! You cannot laugh for two minutes! Laugh for 30 seconds and allow him to expound on his argument.

**Hon. Mwadeghu:** Mhe. Spika, ninaomba kumfahamisha mwenzangu kwamba ukizoea wa nazi, wa samli huuwezi.

*(Laughter)*

Mhe. Spika, ninamheshimu sana ndugu yangu Kaimenyi kwa sababu ametimiza majukumu yake, lakini kuna mambo ambayo yamemlema. Hadi sasa shule hazina bodi. Tukiliangazia suala hilo, mutakubaliana nami kwamba huyu bwana amelemewa na majukumu yake. Sina shaka kwamba ndugu yangu Kaimenyi ni msomi. Ana sifa za usomi, lakini tusipotoke kwamba mtu anaweza kutekeleza majukumu kwa sababu ya usomi. La! Majukumu mengine

yanamshinda licha ya kwamba ni majukumu ya elimu. Tukiangalia jinsi nchi hii inavyoendelea, na tukimwacha ndugu yetu Kaimenyi aendelee---

**An hon. Member:** Sikuelewi, mhe. Mwadeghu!

**Hon. Mwadeghu:** Bw. Spika, mheshimiwa anasema hanielewi. Nitamufafanulia jioni tukikutana baada ya futari yake. Kwa sasa, ninaomba aniache niyaseme. Aelewe asielewe, hiyo ni shida yake.

Mhe. Spika, ninawomba Wabunge watafakari iwapo wanataka Prof. Kaimenyi aendelee na kazi ama aondoke. Hoja hii inasema tuangalie kama tunaweza kumptatia nafasi nyingine ama la, lakini tumeambiwa kwamba Bunge hili litateua kamati maalum kuangalia jinsi anavyofanya kazi; na kwamba kwa sasa tuendelee mbele ili tuipatie kamati hiyo nafasi ya kuifanya shughuli hiyo. Maoni yangu ni kwamba sidhani kama Prof. Kaimenyi anaweza kuyatekeleza majukumu kwenye kitengo cha elimu. Matatizo aliyonayo ni mengi. Kama angeliweza kuketi chini na kuzungumza na wenzake katika sekta ya elimu – wakiwemo waalimu, Wabunge na hata wazee wa *Njuri Ncheke* – ili aweze kuridhiana nao, matatizo yake yangekuwa haba. Imebidi alazimishwe ndiyo atoe ng'ombe kwa sababu ya ujeuri na ubambe ninaozungumzia. Yeye ni mpaka asukumwe ndiyo aweze kuitikia mwito.

*(Laughter)*

**Hon. Speaker:** Order, Hon. Mwadeghu! We agreed to leave those village matters in the village.

**Hon. Mwadeghu:** Mhe. Spika, nilitaka kueleza Kaimenyi ni mtu wa aina gani.

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

**Hon. Chepkong'a:** On a point of order, Hon. Speaker. As you know, Hon. Mwadeghu is my very good friend. I have tremendous respect for him. The only problem I have with him is why he thinks that Prof. Kaimenyi should be removed from office because he has offered a cow. I have not understood that aspect. In my community, cows are very sacred. They must not be misused or abused in this House. So, I beg my very good friend to steer away from cattle, lest he invites stock theft in this country and this House. Of course, Hon. Kamama is here.

**Hon. Mwadeghu:** Mhe. Spika, nimeyaelewa mambo ambayo ndugu yangu amesema. Mhe. Chepkong'a ni mtu ambaye ninamheshimu sana, lakini hapa hatuzungumzi kuhusu ng'ombe wa Wakalenjin; tunazungumza kuhusu ng'ombe wa *Njuri Ncheke* kule Meru.

*(Laughter)*

Mhe. Spika, naomba tu nimalize kwa kusema kuwa tukubaliane kuwa Kipengele cha 10 cha Katiba kinasema yeyote anaweza kufasiri Katiba. Nimeisoma. Mtu yeyote anaweza kufasiri Katiba. Vile tumeifasiri, tunaomba Bunge lionyeshe huu uwe ni mfano kwa wenzetu ambao wamepewa nafasi za kuhudumia nchi hii. Kama hawaendi kulingana na matakwa ya wananchi, basi Bunge litoe nafasi ya kumuita Kaimenyi aje aangaliwe. Natumai mnaelewa na yale ninasema. Nasema Bunge litoe nafasi Kaimenyi aitwe aje aeleze upande wake maana lazima apewe nafasi. Ndio tunasema kuwa hiyo kamati ikiundwa impe nafasi ajieleze. Kama atapatikana na makosa, ataadhibiwa. Kwa sasa, naomba tukubaliane, tuipitishe hii Hoja ili Kaimenyi apewe nafasi ya kujisafisha.

Kwa hayo mengi mhe. Spika, naomba kuunga mkono Hoja hii. Asante.

**Hon. Speaker:** Hon. Irungu Kang'ata.

**Hon. Kang'ata:** Thank you, Hon. Speaker. I rise to oppose this Motion. The reason I am opposing is one: when you look at the Constitution and the article that gives a Member the right to bring this kind of Motion, it talks of "gross violation of the Constitution." When you look at the particulars provided by the Member moving this Motion, there is no evidence that, indeed, there has been gross violation of the Constitution by Prof. Kaimenyi.

The issues relating to Budget, in my opinion, cannot be attributed to Prof. Kaimenyi. A good example is the issue concerning the under capitation of various schools, particularly the ones in respect to children with special needs. In my humble opinion, the Hon. Member, being a Member of Parliament, ought to have moved some amendments to the various instruments which are tied to the issue of budgeting. I am not aware of a situation where the Hon. Member came to this House, went to the Budget and Appropriations Committee and moved any amendment to the proposals contained in the Budget. To that extent, it is very unfair to attribute the under capitation of schools with special needs to Prof. Kaimenyi. I would invite my colleague to move with speed and do that which is supposed to be done by Prof. Kaimenyi.

Two is on the issue regarding failure to consult other stakeholders. It is not clear as to which instances the Mover is referring to. Assuming you are referring to the issue about ranking, that issue has been overtaken by events now. We came to this House, there was a Motion that was brought by our colleague, Hon. Wamalwa. We debated on that Motion and passed it. Therefore, I would imagine that we shall revert back to ranking next year. To that extent, I think that ground has been overtaken by events. In any event, Hon. Speaker, a majority of Members I would imagine signed the original petition based on that information that it was going to form the key ground for this matter to be brought before this House. When we came and looked at the Order Paper, we found that, that was not one of the grounds upon which this petition is grounded.

Another issue is the Professor being a person with poor interpersonal skills. I agree that it is good for holders of public office to be people with good rapport with various public leaders. I am of the view that is something that he is going to learn progressively. It is an issue that ought not to be used to kick out a Cabinet Secretary (CS).

Of course, I also believe that the Professor ought to improve on some issues. One of the issues I will call upon the Professor to reconsider very seriously is that of bans. I am aware there is a ban on opening or registration of new schools. In my constituency, I have four schools which have stalled notwithstanding that the Constituencies Development Fund (CDF) had already given money to those schools. One is called Murarandia Day School; another is called Kienderi Day School; another one is a proposed new school in Mjini in Murang'a Town called Kenneth Matiba Day School and the final one is called Gitaru School. I have formally talked with the CS. He has given an undertaking that, indeed, if one can prove that there is a good reason why those schools should be allowed to be registered, he can consider that issue.

I would urge him to reconsider that ban on registration of schools.

**Hon. Speaker:** Dorcas Kedogo.

**Hon. (Ms.) Kedogo:** Thank you, Hon. Speaker. I am supporting Hon. Odanga because Prof. Kaimenyi should be dismissed for bungling the procurement of laptops, which has become a major scandal of the scale of Goldenberg and Anglo-Leasing.

Let me tell the Jubilee group that this is tainted by corruption of an insensitive Government, because up to now we are supposed to have given those children---

**Hon. M'uthari:** On a point of order, hon. Speaker.

**Hon. Speaker:** Yes. What is the point of order? There is a point of order here.

**Hon. M'uthari:** Thank you, Hon. Speaker. Is it in order for a Member of this House to mislead the nation that Prof. Kaimenyi has been involved in impropriety in as far as the laptop procurement is concerned given the fact that the question of procurement of the laptops is a matter that is pending in a court of law?

*(Loud consultation)*

**Hon. (Ms.) Kedogo:** Yes. This is because we should have given children laptops by now. Let me tell you: Today he says he is bringing laptops, tomorrow he says he is bringing tablets, we do not even know when he will bring those tablets or laptops.

Of course, he is unable to control his people in that office. In the Ministry of Education, Science and Technology, there are people who have been there for a long time, even for three or two years without being confirmed. His senior officers have not been confirmed. What is he waiting for? He would have advertised those positions. He is unable to handle that office.

If you look at the pay rise for teachers, he is saying the Government has no money. He did not even consult. He does not know how to consult and work with people. He does not because immediately the courts gave an okay for teachers to get their pay rise, he said there was no money. We are saying Kaimenyi does not know how to consult with stakeholders. That is why we want him to go out of that office.

If you look at Garissa Teachers Training College, there are students who have not yet gone there. I wonder what he is doing to them. They are just at home waiting to go back to the training college. What we are saying is that Kaimenyi has refused to talk to people. He does not want dialogue.

Look at school fees. There are schools that were paying little fees, even less than Kshs20,000 but Kaimenyi said he wanted the minimum to be around Kshs50,000. Was he really helping students, or was he killing them? I think there was a time in Mombasa when he told us about the *Njuri Ncheke*.

**Hon. (Ms.) S.W. Chege:** On a point of order, Hon. Speaker.

**Hon. Speaker:** There is a point of order from the Chairlady of the Departmental Committee on Education, Research and Technology.

**Hon. (Ms.) S.W. Chege:** Thank you, Hon. Speaker.

Is it in order for the hon. Member to mislead this House? When the regulations on school fees were gazetted, the minimum school fees was not to be Kshs50,000; that was the maximum for national schools and there were other amounts for the other categories of schools. The hon. Member has just misled this House by saying that Kaimenyi said that the minimum was Kshs50,000. That is not the truth. She is a Member of my committee, and it is a shame for her to mislead this House.

**Hon. (Ms.) Kedogo:** It is not a shame because I am saying the truth. You know the truth is sometimes bitter.



Looking at sanitary towels, we set aside Kshs300 million and you can imagine there is no student who got a sanitary pad in my county. This year we have set aside Kshs400 million and I am sure they will also not get sanitary towels. We are wondering where he takes those sanitary towels to, because teachers are complaining that students are not getting them.

Lastly, I want to say that we cannot avoid the *Njuri Ncheke* because even in Mombasa, Kaimenyi himself told us about it. In a meeting, and it is on the HANSARD, he said he was a *Njuri Ncheke* member. After saying that, he was disowned by his people.

**Hon. Speaker:** Hon. Members, this is a very serious matter. The issues have been particularised. The reason I was giving guidance was so that we can debate this matter within the confines of what has been stated. There is so much that you can expound on based on what is here instead of discussing non-issues. What people told you about who they are and what churches they go to is not the matter before us.

Let us hear Hon. Johana Ngeno, the Member for Emurua Dikirr.

**Hon. Kipyegon:** Hon. Speaker, thank you very much for this opportunity. I have heard Members talk about the great Kaimenyi as having been with them in school and being a great professor. I am also one of the beneficiaries of Kaimenyi. His initials are on my Master's certificate from the University of Nairobi. However, when it comes to personal and public matters, there is a difference.

Sometimes we feel disappointed by the way Members approach issues. Article 152 of the Constitution states the grounds for removal of a Cabinet Secretary (CS). It is not selective that you can only remove a CS for violating certain Articles of the Constitution. It says a CS can be removed for violating any of the articles of the Constitution. When a Member who is a credible lawyer rises and tells us that we cannot remove a CS for having breached the Bill of Rights, it is a blunder and an abuse of the Constitution.

*(Applause)*

When we are looking at this issue about Prof. Kaimenyi, let us not be partisan. Let us look at Kaimenyi as having performed or failed. I would also wish that Members are not intimidated when they are handling matters, so that people tackle issues the way they are. I am one of the few people who are not happy with the way Prof. Kaimenyi is handling the education docket. I am not happy because this is somebody who is supposed to be consulting. We allocate billions of shillings to the Ministry of Education, Science and Technology and we want to get value for that money. We cannot allow him to mess with taxpayers' money, because he is a darling of the Jubilee Coalition. It is not only members of the Jubilee Coalition, to which I am also a member, who pay taxes. It is all Kenyans across the country.

*(Applause)*

We must be serious on how we handle these matters.

I would also wish that when we are dealing with matters in this House, we avoid mentioning persons we know cannot have an opportunity to defend themselves. I am disappointed when a leader of this House mentions Sossion as the person who closed Garissa

University College. The college was closed because people whom Duale knows killed our daughters and sons.

*(Loud consultations)*

You cannot---

**Hon. A. B. Duale:** On a point of order, Hon. Speaker.

**Hon. Member:** Toboa!

**Hon. Speaker:** Yes, the Leader of the Majority Party. Hon. Ngeno, resume your seat. There is nothing for him to *toboa*. The Hon. Ngeno needs to be educated that if you want to refer to your colleagues, there is some decorum that is expected of you. You are Hon. Johana Ngeno, the Member for Emurua Dikirr. He is the Hon. Aden Duale, the Leader of the Majority Party. Please, follow that.

**Hon. Kipyegon:** Hon. Speaker, I will sober up on that matter. I am making reference to the revelation---

**Hon. A. B. Duale:** On a point of order, Hon. Speaker.

**Hon. Speaker:** Yes, what is your point of order?

*(Loud consultations)*

Give him an opportunity to raise his point of order. He has a right because he has been mentioned.

**Hon. A.B. Duale:** Hon. Speaker, you have heard Hon. Ngeno saying that I know and I am part of the people who killed 147 students of Garissa University College. Unless he provides credible information and substantiates---

**Hon. Wamunyinyi:** *(Inaudible)*

**Hon. Speaker:** Hon. Wamunyinyi, you cannot start responding when you are seated there.

**Hon. A.B. Duale:** Hon. Duale will be there for many years to come; so, you can do anything.

I want him to substantiate. If not, let him withdraw and apologise.

**Hon. Speaker:** Hon. Ngeno, you are saying that Hon. Duale knew. Are you substantiating or withdrawing and apologising?

**Hon. Kipyegon:** Hon. Speaker, I would wish, on a point of information, to tell Hon. Duale that he is the one who stated that: "We know the list of *Al Shabaab* and we are going to provide it."

*(Applause)*

*Al Shabaab* are the people who killed our daughters and sons in Garissa.

**Hon. Speaker:** There is no time, Hon. Members. Hon. Johana Ngeno, it is up to you really. Do you want to substantiate?

**Hon. Kipyegon:** Hon. Speaker, I would not have wished to go into this matter.

**Hon. Speaker:** Are you substantiating?

**Hon. Kipyegon:** I am even remorseful for having---

**Hon. Speaker:** Are you substantiating?

**Hon. Kipyegon:** Hon. Speaker, I am substantiating.

**Hon. Speaker:** When?

**Hon. Kipyegon:** Now.

**Hon. Speaker:** Bring the substantiation.

*(Loud consultations)*

**Hon. Kipyegon:** Hon. Speaker, it is in the public domain that Hon. Duale and Members from north eastern alleged---

**Hon. Speaker:** Hon. Ngeno, I am giving you the last chance to substantiate. If you do not, kindly withdraw from the Chamber.

**Hon. Kipyegon:** Hon. Speaker, I withdraw and apologise. However, I also ask Hon. Duale to withdraw and apologise for mentioning Sossion's name.

*(Loud consultations)*

**Hon. Speaker:** Hon. Nyikal.

**Hon. (Prof.) Nyikal:** Thank you Hon. Speaker, for giving me the opportunity to contribute to this Motion. I have had a very painful consideration of this matter. I am surprised that we are treating a matter of this importance and historical significance in the manner in which we are treating it.

Let me start by congratulating Hon. Odanga and appreciating his courage for giving us the first test of a provision of the new Constitution on impeachment of CSs. I want to look at the issues that have been put before us. One that seems to be everywhere is arrogance. I agree that Prof. Kaimenyi is, probably, a person I would describe as difficult to like due to the way he carries himself and makes his points. However, often he is right in what he says.

We have heard of the issue of integrity. I have not really heard any point put forward touching on a matter of integrity as we know it. We have talked here of the issue of the laptops. On this one I want to say something to both sides of the House, that we must start to distinguish politics from the realities of life. I have said here many times that democracy, or the tyranny of numbers, cannot control science. Even when we passed the laptop issue it was clear to all of us that this was something that could not be implemented. I know Jubilee is now turning round and saying we cannot blame Prof. Kaimenyi. I agree with them, but what about the day we came here and passed it? We passed something that could not be implemented. I, therefore, find it painfully difficulty to blame it on an officer.

We have talked of regulations. For the short time I have been here, I have known that in Acts of Parliament and other issues we have public participation, but with regulations it is an arguable matter. I have looked at those regulations. The process aside, they tend to address some of the issues which we are accusing Prof. Kaimenyi of.

The issue of school fees that are not regulated is in the regulations. The issue of proper appointment of boards is in the regulations. Again, I am at pains to see that we are dealing more with politics than the reality of the education sector in this country. On the issue of teachers in

north eastern, even most of us supported that teachers cannot go up there. It was a situation of security. On the issue of infrastructure, this is an issue which has been going on for a long time. On ranking, there have been four taskforces that have actually said that we should remove ranking.

So, as I agree that Prof. Kaimenyi can be said to be arrogant, we need to give him a chance. I know he is a man who is capable of doing things. He has not conducted himself as we would expect him to, and he should take this as a warning. Therefore, I have painfully considered this by looking at the facts and nothing else. We should give him a chance.

**Hon. Speaker:** Hon. Naomi Shaban.

**Hon. (Dr.) Shaban:** Asante sana, mhe. Spika kwa kunipatia nafasi hii. Kwanza ningetaka kumpongeza mhe. Odanga kwa kuleta kilio hiki. Hoja hii ni kilio kile ambacho Wabunge wengi wamekuwa wakilalamika juu ya Mawaziri ambao wamekua na matatizo.

Nataka kusema kuwa Prof. Kaimenyi alikuwa mwalimu wangu wa shahada ya udaktari wa meno. Bila yeye, leo hii singesimama hapa kama daktari. Kwa vile alikuwa mwalimu wangu nafikiri namwelewa zaidi. Kuna umuhimu wa sisi kuelewa kuwa kila mtu ana maumbile yake. Inachukua muda kwa mtu ambaye amepata shahada hiyo ya uprofesa kufanya kazi kwa urahisi na watu ambao wamechaguliwa. Tatizo lipo. Tunakubali kuwa tatizo lipo. Mimi kama mwanafunzi wake ningechukua nafasi hii kuwaomba wenzangu kwa kuwanyenyekea, tafadhali nawaomba mwalimu wangu mpatieni nafasi aweze kufanya kazi. Sio rahisi kwa Prof. Kaimenyi kuweza kufanya kazi wakati kila kukicha, Sossion amemlelea kwenye koo.

Nilimsikia mhe. Mwandeghu akiongea. Ni kweli kuwa ya mgambo ikilia kuna jambo. Jambo lenyewe ni sasa hivi tuweze kulitatua tuone njia ambayo tutaweza kufanya kazi na Prof. Kaimenyi. Anataka kuwezesha elimu iendelee mbele. Lakini mzigo ambao ameubeba umemkalia kooni na ni mzito. Sisi kama Wabunge wa Bunge hili la Kumi na Moja---

**Hon. Speaker:** Mover. Hon members, you reduced the time to two hours. We started at 3.10 p.m. The Mover must be called at exactly 5.10 p.m. The Mover can decide to donate all his time.

**Hon. Odanga:** Thank you, Hon. Speaker. I wish to donate some time.

*(Loud consultations)*

I want to donate one minute to Hon. Kering, another minute to Hon. Kaluma and another one to Hon. Mwinga Gunga. How many minutes do I have?

**Hon. Speaker:** You have only 10 minutes.

**Hon. Odanga:** Another minute to Hon. Malulu Injendi

**Hon. Speaker:** You now have nine.

**Hon. Odanga:** And to Hon. Gladys Wanga.

**Hon. Speaker:** Very well. Hon. Kering; one minute.

**Hon. (Ms.) Kering:** Thank you, Hon. Speaker. I also want to take this opportunity to congratulate the Mover of this Motion. I stand to support the Motion that it is time for Prof. Kaimenyi to give room for someone else to step in and save the education of children in this country. We know that recently the Cabinet Secretary came up with a regulation that he wanted to be in charge of discipline of head teachers and principals in this country. We know that all teachers are meant to be under the Teachers Service Commission (TSC). There is no teacher who

is trained as a head teacher or as a classroom teacher. We know that they are trained as teachers. So, the issue of dividing teachers and having others under him was a breach of conduct.

We want to say that the circulars that we have always wanted him to write to schools in relation to reduction of school fees and for certificates to be released, he has never done any one of them.

**Hon. Speaker:** Who did we say the other minute is for? Did he say one minute to Hon. Kaluma?

**Hon. Kaluma:** Thank you, Hon. Speaker. Whatever decision Parliament makes today, we want the CS for Education, Science and Technology at any given time to do the following: We want the Report of the taskforce by Kilemi Mwiria on school fees implemented. We are paying so much on it.

We want special needs schools to be properly funded across the country. We want teachers of this country to be paid reasonably. They earn an amount of money that is my one day's lunch. If we reflected on the education sector as a whole, we would make a decision that would---

**Hon. Speaker:** Hon. Kamama, what is your point of order?

**Hon. Abongotum:** On a point of order, hon. Speaker. I have no issue with my friend, Hon. Kaluma. There is something, while debating this Motion on impeachment, Hon. Chepkong'a alluded to or spoke about, namely stock theft; he tried to trivialize and associate it with me. I just want to confirm to him that as the Chairman of the Departmental Committee on Administration and National Security, I am leading a mission to the Northern Rift to ensure that we deal with cattle rustling as matter of urgency. But this matter, I support.

**Hon. Speaker:** But you stood on a point of order, Hon. Kaluma! Hon. Members, these Members have only been given one minute.

**Hon. Kaluma:** Lastly, Hon. Speaker---

**Hon. Speaker:** Hon. Kaluma, your time is over.

Hon. Wanga, you have one minute. The Mover has very few other minutes remaining.

**Hon. (Ms.) Nyasuna:** Thank you, Hon. Speaker. Within this one minute of mine, I just want to make one simple point. The point that has come out clearly over and over again is that there is a weak leadership being provided by Prof. Kaimenyi in the education sector. This weak leadership has been demonstrated. Almost three-quarters of the Members of the Departmental Committee on Education, Research and Technology Committee have signed this petition. Also, 94 Members of this National Assembly have signed this petition. The teaching fraternity is up in arms asking us to talk to Prof. Kaimenyi and send him home. When a matter came up in this House about your conduct we, the stakeholders, were here to say that we support you because you deal with your stakeholders well. If he dealt with his stakeholders well not so many of them would be saying, "Send him home, please."

**Hon. Speaker:** Hon. Odanga, do you want to donate more minutes? Gunga Mwinga and then the Mover will have two minutes to complete.

**Hon. Chea:** Thank you, Hon. Speaker for this opportunity. I wish to support this Motion. The only justice we will do to Prof. Kaimenyi is to provide him with an opportunity to appear before a National Assembly committee and explain himself. I wish to encourage Members of this august House to pass this Motion, so that all these allegations that have been leveled against him-

-- He should have an opportunity to come and clear himself. This is a historic Motion; as a House, we have an opportunity to redefine ourselves.

I support.

**Hon. Speaker:** Mover or you still want to donate more minutes? Hon. Members, he has only two minutes.

**Hon. Odanga:** Hon. Speaker, I still have two minutes remaining. Hon. Malulu Injendi and Hon. Ababu Namwamba, who has just come in. One minute for each one of them.

**Hon. Speaker:** It is okay. Malulu Injendi.

**Hon. Injendi:** Thank you, Hon. Speaker. I rise to support this Motion. I want to summarize all I have in this statement. Prof. Kaimenyi is more of a liability to this country than an asset. Just imagine everyone in the country he is supposed to work with, that is the teachers, the principals, KNUT, KUPPET and so on is up in arms against him. If he continues working there whom will he work with?

I support.

**Hon. Speaker:** Hon. Wamunyinyi, what is your point of order?

**Hon. Wamunyinyi:** Hon. Speaker. I have been sitting here from when the Motion started. Hon. Ababu Namwamba just walked in and he gives him one minute when I am waiting here.

*(Loud consultations)*

**Hon. Speaker:** It is his right!

**Hon. Wamunyinyi:** Hon. Speaker, I want to support this Motion, that is number one.

*(Laughter)*

**Hon. Speaker:** It is his business to choose whom he wishes to donate his minutes to.

Yes, Hon. Ababu Namwamba.

**Hon. Ababu:** Hon. Speaker and hon. colleagues, today this House has a date with destiny to send a very clear message. Let us use Prof. Kaimenyi as an example that this House will not tolerate or stand any Cabinet Secretary, or Government official who brings a cavalier and uncaring attitude to public service. Let us vote with our conscience, send this Kaimenyi to the cooler and also send a very powerful message that we shall not condone any---

*(Loud consultation)*

**Hon. Speaker:** Hon. Members, it is the right of the Mover to donate all the time which he has. This is because he started at 3.10 p.m.; he donated his time when it came to replying. You voted that debate on the Motion takes two hours. I told the Mover he had 10 minutes. Surely, you cannot eat your cake and have it. Those he donated minutes to are the ones replying on his behalf. That is the assumption; maybe he has nothing to say.

**Hon. Odanga:** Hon. Speaker, I beg to reply.

**Hon. Speaker:** Members, I will put the Question but the procedure is this: You do not have to vote. We will ring the Bell for five minutes after the Question has been put. If you recall the Communication which I made, there are certain thresholds that must be met.

I direct that the Division Bell be rung for five minutes. Members, in the meantime you can actually unlock. You can now remove your cards.

*(The Division Bell was rung)*

**Hon. Speaker:** Order, Hon. Members! Order! Serjeant-at-Arms, can you tell the Hon. Members to sit? Hon. Members, take your seats.

The Serjeant-at-Arms officers have locked all the doors and drawn the Bars. Hon. Members, I need to remind the House of the Question. The Question is:

“THAT, pursuant to the provisions of Article 152(5)(c), (6) and (7) of the Constitution and Standing Orders 61 and 66 of the National Assembly Standing Orders, this House resolves that the President does dismiss Prof. Jacob Thuranira Kaimenyi as the Cabinet Secretary for Education, Science and Technology on the following grounds:-

(a) Gross violation of the provisions of the Constitution of Kenya and other laws; and,

(b) Gross misconduct.”

Hon. Members, I can confirm that every one of you has logged out. Many of you had your cards in and now they are out. However, before I give you a chance to log in, I am informed that there are some Hon. Members who do not have cards. May I get a sense from the House?

Hon. Members, there has been a ruling on this matter and it is fair to remain faithful to that ruling. It said that from the date it was made henceforth, voting would be electronic in the National Assembly. Sorry for those that may have forgotten their cards. This is because voting has to be electronic. Hon. Members, I give you 60 seconds within which to log in. Start now.

Serjeant-at-Arms officers, remember that doors must remain locked. Even those who have been taken short may have to remain in the hoping places.

Hon. Members, the 60 seconds are over. Hon. Members, you have 60 seconds to vote. Vote now.

**Hon. Speaker:** Hon. Members, according to the screen, you are 140. Those of you who have voted are a 100 per cent.

*(Loud consultations)*

It is there for all of you to see. You want to make noise about everything, even what you can see? I have no connections with those machines.

Hon. Osele, voting is over. The following are the results: Ayes - 89, Noes - 50 and Abstentions - 1.

The Motion fails for not raising 117 Members required to move to the next stage.

Those are the results and this is the Constitution.

*(Question negated by 89 votes to 50)*

**AYES:** Ms. F.I. Ali, Messrs. F.K. Wanyonyi, Gethenji, Midiwo, Outa, Odanga, Ogalo, Omondi, Mwadime, Ochanda, Ms. Nyasuna, Messrs. Chea, Mwanyoha, Dukicha, Abass, Mustafa, J.O. Omondi, Mukwe, Hon. J.K. Bett, Murgor, Wandayi, Momanyi, Ms. Wanyama, Messrs. Shinali, Opiyo, Ms. Mbalu, Messrs. Kitungi, Olum, Kipyegon, Nakara, Mlolwa, Mohamend Abass, Otsiula, Ms. Ngetich, Messrs. Nuh, Ganya, Mwamkale, Gimose, H.K. Njuguna, Omulele, Mulu, Muluvi, Lomunokol, Dr. Simiyu, Messrs. Anyango, Kazungu, Onyura, Kisoi, Ms. Odhiambo-Mabona, Ms. Khamisi, Messrs. M.D. Duale, Sitati, Sumra, Injendi, Nassir, Bowen, Eng. Gumbo, Dr. Odinga, Dr. Musimba, Messrs. Ababu, Wangamati, Kaluma, Oyugi, Ochieng, Ms. Amolo, Messrs. Otaalo, Bedzimba, Ms. Wanyonyi, Messrs. Were, Tonui, Ms. Kedogo, Ms. Nyamunga, Messrs. Alfred Keter, Lagat, S.S. Ali, Ms. Gure, Messrs. Osele, Anami, Wangwe, Mule, Masadia, Ramadhani, Dr. Kibunguchy, Messrs. Wamunyinyi, Korir, Chanzu, Ms. Chidzuga, Mr. Sambu and Ms. Kering.

**NOES:** Messrs. Elmi, ole Katoo, Baiya, Abdikadir Ore, Dawood, A.B. Duale, Ms. Ng'anga, Messrs. Lentoimaga, Kimaru, Ms. Beatrice Nyaga, Messrs. B.K. Bett, Njagagua, Iringo, Gikaria, Karithi, Kiaraho, Moindi, Eng. J.K. Chege, Mr. Eric Arap Keter, Ms. Kajuju, Messrs. Nderitu, Irea, Macharia, Prof. Nyikal, Ms. Machira, Ms. Teiya, Messrs. Angwenyi, M'uthari, Manje, Melly, Abongotum, Murungi, Ms. Korere, Ms. Mbugua, Ms. Seneta, Messrs. Robi, Huka, Aburi, Dr. Shaban, ole Ntutu, Ms. Kanyua, Ms. Shebesh, Mr. Tong'i, Ms. Mitaru, Messrs. Chepkong'a, Gichigi, Karani, Manoti, Ms. T.G. Ali and Mr. Oporo.

**ABSTENTION:** Mr. Kabando wa Kabando

That is over. Open the doors.

Let us move on to the next Order.

## BILLS

### *Second Readings*

#### THE ETHICS AND ANTI-CORRUPTION COMMISSION (AMENDMENT) BILL

*(Hon. Chepkong'a on 7.7.2015)*

*(Resumption of Debate interrupted on 7.7.2015)*

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

**Hon. Speaker:** Hon. Members, those who are through with today's business you can take your leave quietly. We are resuming normal business.

Hon. Members, the business appearing under Order No.10 has a balance of 50 minutes. That is from yesterday's debate. It means that the Mover will be called upon to reply at about 40 minutes. The following Members have contributed. They are Hon. Chepkong'a, Hon. (Ms.) Kajuju, Hon. Aluoch, Hon. Pricilla Nyokabi, Hon. Nyenze, Hon. Amina Abdalla, Hon. Daniel Maanzo, Hon. Samuel Gichigi, Hon. Jakoyo Midiwo, Hon. Yusuf Chanzu, Hon. Shakeel Shabir,



Hon. Yohana Kipyegon, Hon. Chrisanthus Wamalwa, Hon. Aden Duale, Hon. David Ochieng, Hon. Robert Pukose and Hon. Jessica Mbalu.

Yes, Hon. Peter Kaluma.

**Hon. Kaluma:** Thank you, Hon. Speaker for giving me the opportunity to contribute to the proposed amendments to the Ethics and Anti-Corruption Commission law. Corruption is a big issue in our country. I was just reflecting on this Bill. I remember what the current President of the USA said when he came to the country in 2006, then as a Senator. He said that corruption in our country had reached crisis levels. Under the current system, corruption is not just at a crisis level for our nation, but we are at a level where it calls for emergency measures to be properly dealt with.

Hon. Speaker, our debt burden is now confirmed to have increased very much. In fact, every child born in Kenya is to pay about Kshs71,000 because of that increased debt burden. This is happening largely because we lose a lot of funds to this thing called “corruption”.

In the just ended financial year---

*(Loud consultations)*

Hon. Speaker, the consultations are too loud. In the financial year which has just passed, we permitted the government to use up to 15 per cent of the budget in excess of the monies budgeted. Again, this is largely because we waste a lot of money. Our problem with the fight against corruption is not the law. The biggest problem we also have in the country today is not that we do not have adequate laws. Indeed, the problem is how we anchored this commission. As much as i would be supporting these amendments now that I am a member of the committee---

*(Loud consultations)*

**Hon. Speaker:** Hon. Members at the back there who are consulting loudly--- The Serjeant-at-Arms are just standing there!

**Hon. Kaluma:** Thank you, Hon. Speaker. I was alerting the House that the problem we have around matters ethics and the fight against corruption are bigger than this law. Personally, as a lawyer, in as much as I am supporting these amendments we are making to the ethics law, being a Member of this Committee, I know it is not going to do much in terms of enabling this country fight this menace.

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

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

The biggest problem we have in this fight requires a constitutional amendment. Unlike these other Commissions we established under Chapter 15 of the Constitution, we chose as a people to establish this Commission under an Act of Parliament. If you look at Article 79 of the Constitution, you will realise that it says Parliament will enact a law to establish the Commission. That is the beginning of the problem. You have a constitutional commission

dealing with a matter of ethics and integrity under Chapter 6 being taken to the remit of legislation instead of a constitutional anchorage.

Our other problem is, of course, the issue of culture. A short while ago, we were dealing with the matter of the Chairperson of this Commission, and of course, the Vice-Chairperson. You would see the debate in the House sometimes going in the direction of “is this my tribesman or not.” A short while after that, you saw issues being raised around the Office of the Director of Public Prosecutions (DPP). At that time, you see leaders coming around in terms of the communities they come from to think about corruption. The issues were raised when the debate on this issue started.

The fact of the matter, therefore, is that our tribal thinking feeds into corruption and corruption feeds into these tribal thinking. I was thinking that if we are to fight corruption, then we must have an attitudinal revolution. I am beginning to remember, as a Kenyan, that when there is corruption, it affects all of us. When a state officer or a public officer is corrupt, he does not steal for his community and so, we must deal with this “thing” as a national issue.

The provisions being proffered as amendments are not going to deal with the issue of wrangles in the Commission. The mandate to govern the Commission is still with the commissioners. Philosophically, we did not get it right on this. We want these Commissioners to be part-time because they do not have a lot of work to do. If that is the reason, why do we propose to increase the number merely to eat our money? We are increasing the number yet we have confirmed that there is not too much engaging work for the commissioners to do. It goes against the grain.

We have been debating about reducing the wage bill and those other issues. Look at it also this way. Here we are saying that we want the commissioners to stay out there and yet these are the people known to be heading the fight against corruption. However, we leave the employees inside.

The Swahili people say *paka akiondoka panya hutawala*. I can talk from experience as a leader serving the people of Kenya today, that the problem of corruption within the EACC is not a problem of the commissioners. Indeed, those investigators at the EACC are more corrupt than the people they investigate. That thing you call the “secretariat” is more corrupt than even the Commissioners you are removing. That is why I join the leaders who spoke yesterday saying that having got the impetus from the leadership of the nation to fight corruption, let us recruit new Commissioners but go beyond that and undertake an audit on the Secretariat of the Commission. I do not believe a person can be an investigator or should be allowed to be an investigator at the EACC for more than a year. You have permanent investigators. We are not undertaking lifestyle audits and these people are making a lot of money there.

Personally, I am for a situation where this Parliament looks at the whole law. If possible, we should look at the Constitution later on. Now I would request that we pass this. Let us anchor this particular Commission under Chapter 15 and delineate its functions so that it can enjoy the independence and facilities without unnecessary structures being put on its operations.

Lastly, I wanted to say that this Commission is the killer of careers today for reasons not known to me. I was thinking that we do not need these people called “commissioners”.

Article 79 of the Constitution says that Parliament will enact law to establish the Commission. That law does not say this Commission must have commissioners. Why can we not make a decision as a country? If we believe operating by way of that secretariat is better, we just

forget about these commissioners and empower the secretariat led by the Chief Executive Officer so that we have a single person reporting. This is a person we can report issues to.

This Commission went with one of the best judges this country has ever had - Justice Aaron Ringera. When I thought I would be mourning so much, my own partner PLO Lumumba was made the Director of this Commission. The country remembers the gusto with which Prof. PLO Lumumba went into this fight. I did not know that Prof. PLO Lumumba would fall from the Floor of this House in the middle of the night in the way he did. It is a career killer.

What should we do as a country to truly fight corruption? I am submitting to this Parliament today that if it were laws, there would be no corruption in this country. In fact, the anti-thesis of it is that the more the laws we have, the more the corruption we create.

You increase traffic fines and corruption costs more. We make all these laws and the regulations but they are used to extort people when enforced. In short, I am constrained to support these amendments because I serve in this Committee, but it is a scratch on the back of the real problem. I believe, as a Committee, we will have time to go in depth to see how firmly we can deal with ethics, integrity and corruption in our country.

I thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well. Let us have the Member for Molo.

**Hon. Macharia:** Thank you very much, Hon. Temporary Deputy Speaker. I rise to support this Bill. We, as Kenyans, are aware and know that corruption is real and it is here. It is because of corruption that we have seen the problem of alcohol and drug abuse overwhelm the provincial administrators in parts of central Kenya and also in my constituency.

Corruption is a vice that has to be fought. One of the reasons probably we do not have commissioners committed to fighting corruption is because they feel that they serve in that Commission like they are employed. I support the fact that they should serve on a part-time basis so that we can gauge them on merit. When they do not perform, they will be kicked out because they are there on part-time basis and the long procedures of kicking out those that are not performing will not be lengthy as they have always been.

From history, we know that corruption fights back. We also know, and we are aware that unless Kenyans come together to create a very effective Anti-Corruption Commission and have commissioners who are willing to stand up to be counted, we may not be able to curb this vice.

With those few remarks, I support. Thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): Yes, the Member for Tongaren.

**Hon. (Dr.) Simiyu:** Thank you, Hon. Temporary Deputy Speaker for this chance to contribute to this very important Bill. My view is that we are engaged in an exercise in futility because we are taking corruption in isolation. Corruption is related to impunity and tribalism. The three are the evils we begot at independence. Fighting corruption alone and leaving impunity and tribalism is not going to be successful.

In setting up a body to deal with corruption, all the countries that have done so have never managed to remove corruption. Despite the accolades we got about Nigeria, what happens in Nigeria is that, for you to get a letter from the Commission, it means that you did not give them what they wanted. That is why you get a letter from the Commission.

Every country that has set up a commission dedicated to fighting corruption has never succeeded. Instead, that body has become a gatekeeper of corruption. The reason we ended up

with this kind of body was because during the retired President Daniel arap Moi's time, the donors were on his back about the fight against corruption. So, to reduce the tension from the donors, he set up a body to fight corruption. He did that so that the tension from the donors could go. We made a mistake to put this in the new Constitution and say that we are going to form a body that will continue the fight against corruption. No country with such a body has ever succeeded in fighting corruption effectively.

For purposes of this country, if we really want to fight corruption, let us forget about this body. This body will never succeed. What we need is a good Audit Act with a strong audit office.

We will be halfway fighting corruption if we do that. The other thing that we should do is to re-look into our history. One of the reasons we have rampant corruption in the country is because the Ndegwa Commission allowed public servants to involve themselves in business with their employers. That is when the rain started beating us. It might be too late now to do away with that because it has become a way of life. However, with a strong audit office, we should be able to curb corruption.

People say that you should not move forward looking in the rear view mirror but unless we know our history, then we will not succeed. We are debating this vice and it is giving a sense of *dejavu*.

In the Tenth Parliament, we also toyed with this issue of the EACC. The leadership of the EACC became a game of musical chairs where this one is heading today and then he is pulled down. The next one is heading today and then he is pulled down. This time, we have pulled down Mr. Matemu. This game of musical chairs will continue because we are on the wrong track. We cannot fight corruption using such a commission because we must admit that corruption now has permeated the whole fabric of the nation to the extent that even when you go to a petrol station for somebody to check your tyre pressure, he expects you to give him some money after he has checked although you have fuelled your vehicle in that station.

The way to fight corruption is not through this dedicated Commission. It becomes a rent seeker and something that can even be used for politics in the sense that you can use it to fight your political opponents. It is not the way to fight corruption.

When you look at the countries that have got least indices of corruption, you do not find such a body and yet we keep on insisting on having such a body. So, this exercise in futility must come to an end at some point. We must end it at some point and realise that whether we have 100, one or three commissioners, they are heading the wrong thing. It will not help us.

Just as Hon. Kaluma has said, there have been insinuations that even the investigators of the EACC are more corrupt than the people they are investigating. They do not do lifestyle audits. It has become a gravy train. In fact, some people fall over themselves to get a job at EACC because they think "*nitakuwa nimefukuza umaskini*." This body that we are trying to add or reduce commissioners to is not the way to go.

Hon. Temporary Deputy Speaker, I oppose the whole exercise because it is an exercise in futility. It is not going to help this country in the corruption fight. If you recall, His Excellency the President came here and gave us a list from this body. If you peruse through that list, you will find the case of a former Managing Director of Nzoia Sugar Company who had even been taken to court over some issues.

He took Nzoia Sugar Company to court for wrongful dismissal and he was paid money and yet he was in that list again. It is something that happened in the 1980s because they want to show that they are important and they are doing some work. There is no work that they are doing. These are gatekeepers of corruption. This body should be done away with so that we can look at other different ways and strictly at that Audit Act. That is where we stand. That is what will help us fight corruption. Otherwise, all this is window dressing and I refuse to be part of an exercise in futility.

So, I oppose, Hon. Temporary Deputy Speaker.

Thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): We will have the Member for Gatanga.

**Hon. H.K. Njuguna:** Thank you, Hon. Temporary Deputy Speaker. I am looking at the amendments before us. Hon. Members, the issue of corruption in this country is a very serious issue. If you go down the history line, you will find that in 1956, there was the Anti-Corruption Act.

In 1990, the then President formed a Special Police Squad to fight corruption in this country. Four years down the line, the offices that they were occupying were gutted down by fire. Your guess is as good as mine why their offices were burned. That Special Police Squad was disbanded. Because of the pressure from Kenya's donors and everybody else, the first Anti-Corruption Commission of this country was formed in 1997. Harun Mwau became its first Director. However, towards the end of the year, when he moved ahead to prosecute some National Treasury officials who had embezzled about Kshs800million, the then President sent Hon. Harun Mwau home.

**The Temporary Deputy Speaker** (Hon. Cheboi): Order the Member for Gatanga.

What is it Hon. Mulu?

**Hon. Mulu:** Thank you, Hon. Temporary Deputy Speaker for giving me this chance. I rise on a point of order relating to the relevance of the debate. If you look at the three amendments which Hon. Chepkong'a has just brought to this House, you will find that most of the Members are just debating general things other than focussing on these special amendments. They are only three. Will I be in order to say that let people be relevant to the amendments?

**The Temporary Deputy Speaker** (Hon. Cheboi): I am sure that you have had your say Hon. Mulu. Let us have the Member for Gatanga speaking. However, let us focus on the debate though personally I think that the Members are focussing on them. They may not be focussing to the detail but they are doing it.

**Hon. H. K. Njuguna:** Hon. Temporary Deputy Speaker, you cannot discuss the relevance of the EACC and even the amendments without looking at the history and the performance of the fight against corruption. To that extent, we are quite relevant because we are looking at why the EACC has not delivered in the fight against corruption.

I was saying that one year down the line after Mr. Harun Mwau was shown the door, Mr. Aaron Ringera came in 2000. When he moved to prosecute a Minister, there was a hurried court case and the then Justice Kasanga Mulwa declared the Anti-Corruption Commission unconstitutional.

In 2003, the Economic Crimes Act was enacted. Again, the Kenya Anti-Corruption Commission Authority was formed and Justice Aaron Ringera came in and he promised that he

would fry the small and big fish. By the time he left in 2009, I doubt whether there was any fish that was fried, whether big or small.

Then we had the most rhetoric Director, Prof. Lumumba, who by the time he left, he even promised that he had very high voltage files on issues of corruption. I think that the high voltage files electrocuted him.

There is nothing to show on the fight against corruption in this country in terms of gains. That body is heavily funded in terms of the employees and commissioners. We had a lot of hope. If you look at the yearly reports that the EACC produces, you will find that the EACC is of the opinion that 80 per cent of their cases are on procurement. This is the case and yet we have the Public Procurement and Disposal Act in this country. Is it the absence of laws that is the cause of corruption or what is the problem?

I remind Hon. Members that George Soros, the founder of Open Society Foundation (OSF) at one time remarked that corruption is like inflation. No country can talk about zero tolerance to corruption. Perhaps it is the extent you can keep it within the one digit level.

In this country, even as we talk about the commissioners, I am not sure that increasing their number from three to five is going to enhance the fight against corruption in this country because we have the law. We have had this body and other enabling laws. So, what is the problem? Is it lack of political goodwill that has disabled the fight against corruption in this country? We must address the problem. Otherwise, I am not sure that increasing these commissioners from three to five and making them part-time will make us succeed in this fight. Because of that account, I am sure that Kenyans out there feel very frustrated because scandal after scandal nobody has been prosecuted to the satisfaction of this country.

On that account, I feel that I should oppose this amendment.

Thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): Well, let us have the Hon. Member for Bondo.

**Hon. Ogolla:** Thank you, Hon. Temporary Deputy Speaker. Philosophically, if you look at backgrounds of governments, you will find that there are three arms. Many times, we allow for additional agencies for purposes of specialised skills or independence of those bodies. If you look at what happened behind the formation of commissions or why we have had commissions over a period of time, you will find that it is recognition of failure of some of the very fundamental arms of the Government that we have. If you look at that critically---

**Hon. (Eng.) Gumbo:** On appoint of order.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Ochanda, proceed.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Speaker---

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Gumbo, you are a senior Member of this House. I have not given you that opportunity. Hon. Ochanda, continue.

**Hon. Ogolla:** This idea of commissions is provision of a fourth agency of the Government if you look at them in a group. This is if you look at them in terms of their budgets and allocations. Sometimes their allocations are bigger than those of the main arms of the Government. So, the point of having commissions is slowly getting negated.

When the fourth agencies which are supposed to perform some of these functions, and that attract some of the skills that are not in the main arms of the Government fail, it is serious.

The commissions have failed in many respects. This is the case and yet they are independent and attract specialised skills. If you look at how these commissions are operating--- We might draw lessons from how Secondary Schools are run. Many of these commissions do not separate the role of commissioners and that of the secretariats. If you get into each of these commissions, you will realise that a commissioner is in charge of finance, supervision, education and so on. So, they have the tendency of supervising the secretariat. We have a big problem in distinguishing the role the commissioners are supposed to play and that of their secretariat.

Look at the Ethics and Anti-Corruption Commission. We have a litany of failures in terms of personalities and commissioners who have headed this Commission. The biggest problem is when we have a commissioner heading departments within the commission instead of coming up with policies. Commissioners are not supposed to be involved in day to day running commissions. This is where the biggest problem is. So, there is constant conflict between commissioners and secretariats.

As a country, we have missed out on the specialised attention and skills that we require to fight corruption. I do not think that this Bill will take us anywhere. We should go back to the traditional departments as we knew them, whether they are failing or not rather than creating some of these commissions the way we are doing. It is important, in my view, that we look at numbers.

Definitely, there are areas where numbers help. If you were to influence or corrupt the numbers, sometimes it is better the bigger the numbers. I would have even talked about nine commissioners as stipulated in the Constitution. This is because the more you are even in committees, the easier it is for them to be with some level of independence. You have internal checks and one can easily influence a small group and decisions are just passed. The three commissioners we are talking to me are few. If we must have these commissioners, then the number, in my view, needs to be increased.

The budgets for these commissions are colossal. This is compared to their output. We need to look at this seriously. This is more so now that we have failures in what could be the fourth arm of the Government in the name of commissions.

As a country, we have to re-look at this and come up with ways of improving our lives rather than going the direction of commissions all the time.

Thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us have Hon. Gumbo.

**Hon. (Eng.) Gumbo:** Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to contribute. As I contribute, I am not sure if the problem of fighting corruption in Kenya is to be found in the number of commissioner that we have. I agree with the idea of raising the number to five but I just wonder. We are not enacting laws for nothing.

Some of us may not know that one of the best run electoral commissions in the world is the Indian Electoral Commission which for a long time had only three commissioners. One commissioner was on full time basis while the other two were on part time basis. So, I do not see the justification for increasing the number of commissioner to five as proposed under Clause 2.

The proposal to change the mandate of the commissioners from full time to part time should apply to all Chapter 15 commissions. Kenya has the dubious distinction of having too many constitutional commissions. In fact, I am informed that the number of constitutional commissioners in our country may be more than the number of Senators in this country.

I think we should be bold not to put these people on a part time basis but reduce their number accordingly. It is time that we conducted a detailed audit to confirm if we are, indeed, getting value for money for all the commissioners we have in these commissions. My view is that we could be over populating commissions with people who are badly under worked but over paid.

The idea of introducing Clause 4(10)(1) of filling vacancy may be good to the extent that within 21 days following the occurrence of the event giving rise to the vacancy, the President shall constitute a selection panel. However, as we make laws, we should conform to uniform standards. This is because the idea of selection panels was killed when we brought it in the Public Audit Act.

Under the new Sub-Clause 10(2), I would be proposing an amendment so that the selection panel, as they shortlist the candidate take into account the provisions of Article 232 of the constitution.

Having said all these, I am very concerned as my good friend Hon. Kaluma has said. Is it really laws that we need to fight corruption in Kenya? It has been said before that sometimes having too many laws in a society may be nothing more than a manifestation of perversity of nobility. Some of the least corrupt countries in the world do not even have laws that are dedicated to corruption.

Corruption in Kenya will be fought and won through the reassessment of our value systems as a society, and more importantly through the collective determination of Kenyans to fight the vice.

Yesterday, I heard some suggestions that we should nominate commissioners from the church or religious groups. Which religious groups are we talking about? This is the same country which has the Pastor Kanyari types that we have witnessed before. Are those the kind of people that we are talking about? Are those the kind of people we are talking about? I am also hesitant because it is claimed that Kenya is 80 per cent Christian. If corruption is so pervasive in our country then there is a problem with our churches. When we say that we are going to look into the churches and mosques to get commissioners then I think there is a problem.

Even as we increase the number of these commissioners, let us insulate them from the politics in the fight against corruption. I was very saddened to see a governor saying that the reason he had been hauled to the EACC was because of differences that he had with a senior politician in the country. If we are going to allow politics to interfere with the fight against corruption then we cannot go far.

This is good. Ultimately, we will win the war against corruption if we find it in our hearts to consider corruption to be a very bad thing and agree that by limiting corruption, the benefits will be shared by all the people of Kenya.

To that extent and with the amendments I will propose, I wish to reluctantly support the Bill.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Members, you know it is time for the Mover to respond. However, I see that there are some few Members who have been very patient. I am going to give four Members two minutes each. It is past the time when Hon. Chepkong'a is supposed to respond but I have decided that I am going to give Hon. Junet, Hon. Millie Odhiambo, Hon. Tong'i and Hon. M'eruaki two minutes each as per the list. Let us have



Hon. Junet. Hon. Nakara, there are two from my left side and two from my right side. They are well balanced.

**Hon. Nuh:** Thank you, Hon. Temporary Deputy Speaker for allowing me to speak for two minutes and invoking the power of mercy within Parliament. Otherwise, I do not know which...

**The Temporary Deputy Speaker** (Hon. Cheboi): I am going to deny you the opportunity and give the chance to Hon. Millie Odhiambo because you do not seem to recognise the power that actually gave you an opportunity to speak. Proceed, Hon. Millie Odhiambo. I will give that opportunity to someone else.

**Hon. Nuh:** Hon. Temporary Deputy Speaker, I am thanking you.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I oppose this Bill.

In opposing this Bill, I want to say that corruption hits at the heart of the society in this country but the way we are going about it is wrong. We need political goodwill. I urge the President that instead of us bringing amendments, the amendment that should be done is an amendment to the President's heart so that we are more serious about corruption.

When we were moving the two-thirds gender principle, we were told that we cannot get it because of money. It is not because of money rather it is because of corruption. The reason we have youth unemployment, we cannot add our persons with disabilities and have an increase in sex predators in this country is because of corruption. I want to call on the President to realise that we need to be more serious.

Finally, I want to urge that we must be consistent in our standards and principles. You can never go wrong on principle. We must be clear about how to deal when somebody needs to step aside and how we deal with whistle-blowers. Otherwise, we will not be as sheepish as the case we have just seen of Cabinet Secretary Kaimenyi, where you see Members falling over themselves to try and out do what they have done in the past because they are not consistent on issues of principle. I hope that we look at ranking in future.

**The Temporary Deputy Speaker** (Hon. Cheboi): What ranking are we talking about, Hon. Millie? The ranking of having come to Parliament many times? I do not think we will go by that. We will go by the rank as it is here. Let us have Hon. Tong'i.

**Hon. Tong'i:** Thank you, Hon. Temporary Deputy Speaker for the opportunity to add my voice to this wonderful amendment to the Bill.

Everybody's business is nobody's business in the principles of management. We have a Chief Executive Officer who is a powerful person. The commissioners are also powerful. When both parties are full-time, then we are causing confusion in the management of the EACC. I am glad that our Committee saw it fit to move the amendment so that we can have the commissioners working part-time so that they can be more answerable to the Chief Executive Officer.

Also, I propose that we introduce some training primary and secondary schools and university to inculcate the values of honesty, that honesty and hard work rewards and pays. In the same vein, we had people who were interviewed and one of them was Okong'o Omogeni who came in first. Although he took the first position, he was denied the opportunity to become the Chairman of the anti-corruption body. Maybe that is where the rain started beating us. If he was

given an opportunity as a Senior Counsel of the country, maybe that would not have happened. What befell the outgoing Chairman would never have happened.

Having said all that, we all appreciate that corruption has killed the future generation of Kenya. The future generation is being destroyed because of beer and corruption. Our old people are not being paid the monies they deserve. Because of corruption, many things are not working. The systems are not working. We all have a duty, as leaders, to make a difference. The way to make a difference is to ensure that we are passing laws which are going to mitigate against the vice of corruption in the country so that together we can have a better Kenya.

Thank you for the opportunity. I rise to support the Bill.

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us have Hon. M'eruaki.

**Hon. M'uthari:** Thank you, Hon. Temporary Deputy Speaker for this opportunity. I support this Bill.

As Kenyans, we need to look at our value system and what we prize as people. This thing is not about laws. In as much as we have very many good laws, they are not followed as they should be. Even for citizens, the problem starts at home levels. What can save this country from this scourge of corruption is everybody taking responsibility for who we are as a people. It is for us to take responsibility as a people of this country and train our children on the right values and what is good and right to do. Even if we have very good laws and five commissioners, without a good value system--- People in Kenya just glorify material things at the expense of what is essential in life.

With those remarks, I support the Bill but we need to do more as far as corruption is concerned.

**The Temporary Deputy Speaker** (Hon. Cheboi): Lastly, I come back to you Hon. Junet. I consider that you had not spoken because if I am convinced that you had, then it will be wrong to give you a chance. Proceed with your two minutes without having to get into sideshows.

**Hon. Nuh:** Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute.

This is not going to be the last time that amendments will be made to the EACC Act. Many amendments have been done before just to cure the problems that Kenyans have been facing in fighting corruption. Fighting corruption is not an easy job. That will be said by every Kenyan you speak to. If we are to fight corruption honestly and efficiently, we must have a body that is ready to fight corruption holistically.

Previously, there were commissioners who were sitting in office doing nothing. Some of them talked big and said that they have high voltage files while they deliver zero voltage files. Others have been fighting amongst themselves such as those who were recently removed from office. It is only this time that we have had an anti-corruption body that has prosecuted many people.

The last thing that I want to say before my time is over is that I do not support the idea of giving prosecutorial powers to the EACC. We have the constitutionally independent Office of the Director of Public Prosecutions (DPP). We must have faith in independent offices. If Kenyans lose trust and faith in independent offices, then any other office will ask for prosecutorial powers and everybody is going to say that we do not trust the DPP's Office. That is going to create a lot of problems for other independent offices like the Office of the Auditor-General.

With regard to the issue of panels, when the Public Audit Bill was being discussed here, people said that we must allow the Public Service Commission (PSC) to select a panel. The President returned the Bill and said that the PSC should select and give names of people to the Office of the Auditor-General. Now we are being told that a panel must be formed for the EACC.

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us have Hon. Chepkong'a, the Mover, replying. You can put your card in the intervention slot. It will be quicker. Proceed.

**Hon. Chepkong'a:** Thank you, Hon. Temporary Deputy Speaker. Since I have about 10 minutes and some Members have been here for some time, I would like to donate my minutes to Hon. Munyao in recognition of the fact that his father raised the flag during independence, Hon. Gikaria, Hon. Otsiula and Hon. Baiya. I am donating two minutes for each Member and I will conclude with the balance.

**The Temporary Deputy Speaker** (Hon. Cheboi): You have already done your half minute. Therefore, let us proceed in that order.

Yes, Hon. Kisoi.

**Hon. Kisoi:** Thank you, Hon. Temporary Deputy Speaker and the Departmental Chair for recognizing that fact and, I think I am very happy about it. I want to say these amendments are quite in order but this country is bleeding because of corruption. If you look at the current situation in this country, you will realise that there is a systematic failure in fighting corruption. If you look at the history of when we started this Commission, you will find that this country has a lot to do when it comes to fighting corruption.

When we say we need to give prosecutorial powers to a body that is already entangled with inside fighting, I think it will be a disaster. It is high time we disbanded the Secretariat and this Commission and thought on how this country will fight corruption. Otherwise, corruption is deeply entrenched in our system and it is destroying our fabric economically, politically and socially. We need to find another way of dealing with corruption.

This Commission is not working and it is high time we thought otherwise. I want to agree with my colleagues that we have never seen anything tangible since we started to deal with this Commission which is supposed to fight corruption.

Thank you, Hon. Temporary Deputy Speaker.

I support.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well.

Yes, Hon. Gikaria.

**Hon. Gikaria:** Thank you, Hon. Chepkong'a for giving me the opportunity. I rise to support the amendments and more so, the revision of filling of the vacancies. Now that the commissioners are out and it might take forever, and with a time limit of 21 days for the appointment in case of any vacancy, I think it is going to address vacuums that are there.

Hon. Temporary Deputy Speaker, as a Committee on Implementation, we were asking whether we can take up some of the issues brought up by the independent committee. We were advised by the Clerk you cannot check on the implementation of some of the issues. I am saying this in light that the Commission was given 60 days to conclude investigations but it took forever. Up to today, the fate of innocent Kenyan is still unknown. We wanted to be given some guidance but I will raise that with you tomorrow.

The threshold of peoples name appearing in those lists needs to be looked at. It is not worth mentioning somebody's name and yet we know what happens in the country. That is once your name is mentioned, "cleaning" it becomes a nightmare in future. Therefore, it is important that the Commission is given a bigger secretariat for them to do their investigations in time. This will mean that by the time they put a person on the list, they would have done proper investigation; that once my name is on the list, it will be for the Director of Public Prosecutions (DPP) to take me to court.

With those few remarks, I support the amendments.

**Hon. Otsiula:** Thank you, Hon. Temporary Deputy Speaker. I rise to support the Bill. From the outset, I want to say that the fight against corruption cannot be confined solely to the commissioners and the secretariat. It is a duty for all of us, as leaders of this country, to join forces with all the officers who are trying to end the fight on corruption.

If you look at how most of the corruption cases are being handled, you will realize many politicians in senior positions are selective in their comments on those cases.

In the case of Mumias, we lack political goodwill. And although the law is in place, it is weak. I hope that the proposed amendments will give teeth to the Commission and the Secretariat to move forth and in the right direction to ensure that, at least, there is a leeway in bringing to book those guys busy ruining our culture and our country through theft of public resources.

I support.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Baiya.

**Hon. Baiya:** Thank you, Hon. Temporary Deputy Speaker. I want to thank the Chairman for donating part of his time to me to support this important amendment. In spite of the sentiments expressed by Members about the past struggles with corruption in this country, it is important for Members to appreciate that these amendments are being brought against the background of a new constitutional dispensation; where Kenyans upgraded strategies for combating corruption by making this institution a constitutional commission.

The number of members was reduced substantially from nine to three but immediate experiences since the new Constitution was promulgated and the change of administration demonstrate the need for us to increase the number to a sizeable number which will help in bringing a balance in terms of decision making.

The other most important thing about this amendment is the separation between the decision makers as well as implementers. This is going to be a good experience and we will most likely borrow it for the other independent commissions. These amendments are quite important.

It is good to appreciate that, for the first time, we are seeing a window of opportunity in terms of political good will. This is where the Head of State is demonstrating clearly that there is commitment to fight corruption. Therefore, the most important thing is for the leadership in this country and Members of Parliament to demonstrate a positive attitude towards effort to eliminate corruption in this country. I know it can be done.

I urge that we support those amendments.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Chepkong'a.

**Hon. Chepkong'a:** Thank you, Hon. Temporary Deputy Speaker. First and foremost, I would like to take this opportunity to thank every Member who contributed to this amendment Bill. They have contributed from their hearts. Those who opposed have opposed with reasons

and those who have supported have done so with reasons. In response to a number of comments, I would like to say that the fight against corruption is one of the most serious events that has happened in this country.

First, many people have used a refrain that corruption fights back but corruption has never fought back. Corruption warlords have compromised persons appointed to the positions to fight graft. Therefore, it is not true when people say that they have gone to the EACC and corruption has fought back. It is that those charged to fight the vice have been compromised.

Secondly, we would like to appeal to the Judiciary to support us because it has become an impediment in the fight against corruption. The Judiciary would say that mere suspicion is not sufficient for a person who has been found with over Kshs400 million who earns Kshs85, 000. It goes ahead to release that money to the suspect.

Two years ago, we saw another case of Kshs140 million. This demotivates the members of the EACC. They wonder why they should not be taking that money instead of the Judiciary releasing it to the suspects.

Thirdly, I would like to appreciate what Members have said. Many a times, we have seen people summoned to appear before the EACC, and it appears as if it is a celebration. They take their fans and you would think that somebody has been declared a winner in an election in Nairobi. This should stop because fighting corruption is a very serious business. You should go there in a solemn way to meet those people who suspect that you have stolen money. They are suspects and nobody said they are thieves. They should stop this business of threatening the EACC staff. The EACC staff must be protected. In fact, as the Departmental Committee on Justice and Legal Affairs, we are thinking of making a law. Those who are threatening the EACC staff should be charged with threatening the EACC staff while performing their duties.

**The Temporary Deputy Speaker** (Hon. Cheboi): You have finished your two minutes.

**Hon. Chepkong'a:** Hon. Temporary Deputy Speaker, I would like to move.

Thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well. I will not put the Question because of the obvious reasons. We will move to the Next Order.

#### THE COMPANIES BILL

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Chepkong'a, you will spend about five minutes and then proceed when the House resumes.

Yes, Hon. Gumbo. What is it?

**Hon. (Eng.) Gumbo:** I just wanted to seek a small clarification from you and my good friend who are here. When this Bill first came, those of us who have taken time to go through it felt that it was too long to be confined within the ten minutes that is normally given to Members. I spoke to my good friend, Hon. Chepkong'a, and he said that based on what we have now done and their Report which I have here, it is probably possible. We had allowed time limit of about 45 minutes for every contributing Member and one hour and five minutes for the Mover the first time the Bill was brought to this House. I was just wondering. Would that still apply or it no longer applies, based on what we are now doing.

**The Temporary Deputy Speaker** (Hon. Cheboi): Well, it surprises me because Hon. Chepkong'a did not make that request. Of course, I know that that is a fairly big Bill. That is for

sure. Hon. Chepkong'a, what you will do is to proceed and do your few minutes now. I am sure we will consult with the Speaker and see whether it is prudent and I am sure the Speaker will make a good ruling on that. That depends on what you think because you may be given 45 minutes but you want to spend ten. We will see what to do with that.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Speaker, I would like to request because what some of us have to say on this Bill cannot be said within ten minutes. It is something that we have taken time over.

**The Temporary Deputy Speaker** (Hon. Cheboi): Are you asking about what Hon. Chepkong'a will be using to move or you are asking on behalf of Members who will want to contribute. If you want the Speaker to make a decision on the number of minutes Members will take I suggest that you raise this issue at the point when the Bill would have been brought before the Floor, as he is doing now, and seconded. If you raise that issue at that time, it will be decided by the Membership.

**Hon. (Eng.) Gumbo:** I stand guided Hon Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Cheboi): Proceed, Hon. Chepkong'a.

**Hon. Chepkong'a:** Thank you, Hon. Temporary Deputy Speaker.

I beg to move that The Companies Bill (National Assembly Bill No.22 of 2015) be now read a Second Time.

This Bill is coming to the House for the second time. In fact I am told, it is now coming for a third time. It was brought to the House for the first time during the Tenth Parliament. It came last year as Companies Bill, 2014 and it was referred to the Departmental Committee on Justice and Legal Affairs. We went through it and made 900 amendments. As a result of that, it was decided that it will be prudent and wise to withdraw the Bill in the format it was so that it could be republished taking into account all the amendments that the Committee had made.

Again, it would have been very untidy. It would have meant that I was going to stand up 900 times. It would have taken us a minimum of seven days to move all those amendments because every time you have to give reasons when moving.

That notwithstanding, this Bill has now come and it is in very clean form. An effective framework of company law and corporate governance promotes enterprise and stimulates investment. The reason Kenya is ranked very low in terms of doing business is because of the companies law. The companies law in place is the 1944 United Kingdom Act which was enacted in 1962 as our Companies Act.

**The Temporary Deputy Speaker** (Hon. Cheboi): Order, Hon. Chepkong'a. Time is spent. I would rather give you an opportunity to do it very well when we resume because time is over and you will have sufficient time when we start. I think we can leave that, Hon. Chepkong'a.

**Hon. Chepkong'a:** Agreed, Hon. Temporary Deputy Speaker. Thank you.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Cheboi): Order, Hon. Members! Hon. Members, the time being 6.30 p.m., this House stands adjourned until Thursday, 9<sup>th</sup> July, 2015, at 9.30 a.m. I repeat 9.30 a.m.

The House rose at 6.30 p.m.