

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 30th April, 2013

The House met at 2.30 p.m.

[Hon. Speaker in the Chair]

PRAYERS

COMMUNICATIONS FROM THE CHAIR

PRESENCE OF MR. AFAREM WANI FROM
SOUTH SUDAN IN THE SPEAKER'S ROW

Hon. Speaker: Hon. Members, I wish to introduce to you Mr. Afarem Wani Peter who is seated at the Speaker's Row. Mr. Wani is the Director General of Governance at the Ministry of Parliamentary Affairs of the Republic of South Sudan.

The officer along with other senior officials from South Sudan is currently attending a leaders training at the Kenya School of Government. As part of the attachment, Mr. Wani is on a one week attachment programme here at the Kenya Parliament.

On behalf of myself and that of hon. Members, let me welcome the officer to the Parliament and wish him well during his study visit.

(Applause)

DEMISE OF SENATOR MUTULA KILONZO

Hon. Members, it is with a lot of sorrow that we have learnt of the sad news of the sudden demise of the late Senator for Makueni County and immediate former Minister for Education, the late Hon. Mutula Kilonzo. The late Mutula Kilonzo passed on last Saturday, 26th April, 2013, at his ranch in Maanzoni, Machakos County. The late Senator Mutula Kilonzo was born in 1948 to the late Wilson Kilonzo and Rhoda Koki Kilonzo. He was educated at Mbooni Primary School and Machakos High School before joining the University of Dar es Salaam in 1969, graduating with First Class Honours Degree in Law, the first in the East African region. He was later admitted to the Bar in 1976.

Hon. Member, upon graduation from the School of Law, he went into private legal practice and opened a law firm which thrust him to limelight because of the manner in which the firm handled clients' cases. The late Mutula Kilonzo also served as Chairman of the Law Society of Kenya between 1983 and 1985. He was also a former Member of the International Bar Association as well as the African Bar Association.

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Because of his sterling performance in the legal profession, the late Mutula was decorated as Elder of the Order of the Burning Spear (EBS) of Kenya in 1994. Later in 2003, he was appointed Senior Counsel of Kenya under the Advocates Act. He was an astute lawyer and a legal practitioner of distinction who recorded significant successes in his long career.

Hon. Members, the late Mutula Kilonzo made his political debut in 2003 when he was nominated by KANU as a Member of Parliament. In 2007 he was elected Member of Parliament for Mbooni Constituency. Hon. Members will also remember that he served as one of the mediators in the Panel of the Kenya National Dialogue and Reconciliation Process in early 2008, helping to steer the country back to the path of peace. In April 2008, the late Mutula Kilonzo was appointed Minister for Nairobi Metropolitan Development. In December the same year he was decorated as Elder of the Order of the Golden Heart of Kenya (EGH). The late Member also served between May 2009 and March 27th, 2012 as Minister for Justice, National Cohesion and Constitutional Affairs and thereafter as the Minister for Education on 28th March, 2012 till his election as Senator for Makueni County.

In his contribution in the House, the late Mutula was an avid debater and stickler to detail. He will also be remembered for his role in the Constitutional process as the Minister in charge. His colleagues in the Senate and Parliament in general shall miss his contribution and counsel particularly when dealing with the remaining legislation relating to the implementation of the Constitution and more so on devolution.

Hon. Members, allow me on my own behalf and on behalf of hon. Members of this House and the Senate and staff of both Houses to pass our heartfelt condolence to the family, the people of Makueni and all his friends for the loss of such a great patriot, a citizen worth emulating and a great family man.

I now wish to ask all hon. Members to stand and observe a minute's silence in honour of the departed colleague.

(Members observed a minute of silence)

At this moment I will allow 30 minutes for any hon. Member who may wish to make his statement of condolence to the late colleague.

Hon. A.B. Duale: Thank you, hon. Speaker, Sir. *(Technical hitch)* We will all remember the late Mutula Kilonzo as a man who was a very good debater with sound legal mind. Most of us who were young in the Tenth Parliament emulated him in terms of debating in the House. Hon. Mutula Kilonzo was a principled man. He stood his ground. Above all, he was the Minister for Justice, National Cohesion and Constitutional Affairs. It was because of him by virtue of his office and the former President Kibaki also by virtue of his office, that we can say that the new Constitution was attained. There were many Ministers in charge of justice. We have had many Presidents before Kibaki---*(Technical hitch)*.

I want to join this House and you, hon. Speaker, Sir, in sending our condolences. May he rest in peace.

Hon. Nyenze: Thank you, hon. Speaker, Sir, for giving me this chance to send my condolences. *(Technical hitch)* Hon. Mutula Kilonzo was a family friend and also a

personal friend. We have lost an icon. He was bright. He was straight talking and forthright. He was a very successful and accomplished lawyer. The record speaks for itself.

My condolences go to the people of Mbooni. I want to appeal to the Government that as we wait for the results of the postmortem, no stone should be left unturned. We do not want to speculate, but we feel we have lost a true Kamba son. The region of Ukambani is now mourning because Mutula meant a lot of things to the Kamba Community and I believe to the country too. He was the Minister in charge of justice and he ushered in the new Constitution. There are politicians who have died before. I am talking of people like Pio Gama Pinto, J.M. Kariuki, Prof. Saitoti and others. All these politicians, including Tom Mboya, whenever it is thought it is political assassination reports do not come out – they die midway. We want the Government to go to every detail and make sure that Kenyans know the truth about this particular death. It should not go like the others.

It is very surprising that some programmes in the media, for example, *Jicho Pevu* can try to do more in investigative journalism and give Kenyans more facts about corruption and deaths of persons yet the people who are charged with the responsibility of investigating matters, somewhere along the way disappear. So, for Mutula Kilonzo, we could say that the death was suspect. He suffered no ill health yet he died. We want to appeal to the Government to make sure that the truth comes out and the truth shall set us free.

With those few remarks, I rest my case.

Hon. Speaker: Hon. Members, just for the guidance of the House because, perhaps, Members may not have followed why I picked on the Leader of the Majority Party and the Leader of the Minority Party in that order, it is in compliance with Article 108 (4) of our Constitution. It states:- “The following order of precedence shall be observed in the National Assembly - (a) The Speaker of the National Assembly; (b) the Leader of the Majority Party; (c) the Leader of the Minority Party. That is just for the avoidance of doubt.

Hon. Ng’ongo: Thank you, hon. Speaker, Sir. I also want to take this opportunity on behalf of the people of Suba Constituency, my family and my own behalf to send my heartfelt condolences to the family and relatives of the late Mutula Kilonzo and also the people of Mbooni Constituency whom he represented in this House for five years. I also want to send condolences to the people of Makueni whom he had just started representing and of course the people of Kenya because we have lost a very sharp mind in terms of legal matters. We have lost a sharp mind in terms of parliamentary procedures. This country will greatly miss hon. Mutula Kilonzo.

For those of us who had an opportunity to work with Mutula in the last Parliament, he was actually a role model to many of us. He had a great understanding of procedures and a great mind in law. He was principled, but at the same accommodative. He was a pleasant man. For some of us who did not know him before, really the Mutula we saw in this Parliament was totally different from what we thought. Initially some of us thought that Mutula was such a rigid fellow. I can tell you that this was one Minister who would have his Bills moved and passed in this House without many problems because he really knew how to whip and mobilize Members.

The Tenth Parliament prides itself of passing a record 266 Bills. Those Bills are attributable to Mutula because when he was in charge of the Ministry of Justice, National Cohesion and Constitutional Affairs he spearheaded and championed the passage of those Bills. At this time when we see grandstanding and chest thumping coming back --- When I watched the Leader of the Majority Party and the Leader of the Minority Party talking at each other about formation of committees, I asked myself, “What went wrong with our spirit of sitting together and reasoning?”

It has been a very difficult time since 2007. However, we were able to sit together with the guidance of eminent and prominent Kenyans like Mutula Kilonzo. I urge that we accommodate each other the way Mutula helped to accommodate us.

Hon. Katoo: Hon. Speaker, Sir, I take this opportunity on behalf of the people of Kajiado South Constituency and my own behalf to pass my condolences to the family of the late Mutula Kilonzo, the people of Makueni and Kenyans at large.

I had the privilege of being with the late Mutula Kilonzo two times. At one time, he was the Shadow Minister for Justice. He is a man I really admired while I sat on this side of the House. I always wished that one day he would become the Minister in charge of justice. Indeed, that came to pass in the last Parliament. He was true to his words and spirit of ushering in a new Constitution.

The late Mutula Kilonzo is a guy I admired especially at the time when we got a new Constitution which creates a bicameral Parliament. I was focused that I was going for the seat of the National Assembly and I wished that he would vie for the same so that we would be in the same House. I know this House would have made great use of his legal expertise in ushering in the remaining pieces of legislation.

I also had an opportunity to serve in the Cabinet together with the late Mutula Kilonzo.

He was a bright person and this was very evident when we had the Serena Eight that negotiated for the Grand Coalition Government. He made Kenya proud. This country has lost a very great mind. May God rest his soul in eternal peace.

The Member for Matuga (Hon. Mwanyoha): Asante sana, Mhe. Spika. Nilikuwa nimevunjika moyo nikifikiria labda Mhe. Spika anafikiria mimi ni marembo ya Bunge hili kwa sababu kila nikiinuka, nanao. Kwa hivyo, ninakushukuru sana kwa kunipatia nafasi hii kuzungumza machache kuhusu Marehemu Mutula Kilonzo. Mutula hawezi kusahaulika kwa sababu ya shughuli ambazo alikuwa akifanya.

Mimi binafsi, ningetaka kupeleka rambirambi zangu kwa sehemu yake ya uwakilishi Bungeni na pia kwa familia yake. Mhe. Mutula alikuwa rafiki yangu na hata aliwahi kuwa wakili wangu nilipokuwa nime dhulumiwa katika uchaguzi kule Matuga. Ni matumaini yangu kwamba watu watakuwa wastahimilivu na wanyenyekevu kwa sababu Mungu amesema wazi wazi katika Koran na Bibilia kwamba vyovyote vilivyo, siku moja mtu atakufa. Mara nyingi, sisi wanadamu, hasa mtu anapokufa, tunasahau kabisa kwamba amri ya Mungu inasema hivyo. Ni matumaini yangu kwamba familia yake, marafiki zake na watu waliofanya kazi naye, watamuomba ili aweze kuenda mahali pema peponi. Lakini mbali na hayo, ninaunga mkono kwamba Serikali ihakikishe kwamba imejitoa wazi wazi na wale waliowekwa kuchunguza watatoa ushahidi wa kisawasawa na wayaleta maneno vile yalivyo. Mara kwa mara tume zimeundwa, lakini tume hizi zote, huangukia pa tupu. Ni matumaini yangu kwamba kutokana na hali hiyo,

Serikali tuliyonayo, kulingana na Katiba, itatoa maneno vile yalivyo ili kuondoa wasiwasi kwa kila mtu na kuleta watu wote pamoja.

Mambo kama haya mara nyingi hugawanya watu lakini ninawaomba watu wasigawanywe na mambo kama haya kwani kwa vyovyote vile, hata angaliishi miaka mingine zaidi ya mia, bado siku moja Mutula angekufa. Ninawaomba wote walio hapa tusigawanyishwe na kifo cha Marehemu Mutula. Kazi yetu kubwa hivi sasa ni kuhakikisha kwamba sote tunamuomba Mungu kama ndugu na tusiwe watu wa kuenda hivi na vile kwa sababu huyu alikuwa huku na yule alikuwa kule. Hili ni jambo ambalo ni lazima tuliondoe katika fikira zetu. Sana sana, sisi waheshimiwa, tukiwa mahali pamoja bila kujali vyama wala chochote, wale ambao tunawaongoza kule nyumbani, bila shaka, watafuata nyayo zetu kwa sababu Serikali hii iko chini ya Wabunge. Wao ndio wanatengeneza sheria. Kwa hivyo, tukiwa kitu kimoja kama Wabunge na tukiamua kupendana bila kujali misingi ya dini wala ya vyama, nina imani kwamba Serikali hii itakuwa safi na tutaishi vizuri kama watoto wa baba na mama mmoja.

Kwa hayo machache, ninaomba familia ya Mutula iwe stahimilivu na sisi marafiki tungojee vile hali itakavyokuwa.

Hon. (Ms.) Wahome: Hon. Speaker, Sir, I was hoping that coming nearer you, I could catch your eye quickly. I am happy that you did. I want to take this opportunity, on behalf of the people of Kandara, to give my condolences to the family of the late Hon. Mutula Kilonzo, Senator, Makueni.

I also want to give my condolences and those of the people of the Kandara to the CORD family because they have lost, like all Kenyans, a great Senator and Parliamentarian. I had the opportunity to watch Mr. Mutula in courts. He was a great legal practitioner, a professional lawyer, extremely skilled and committed to his work. Those who wanted to know his secret would ask him and he would say: "Work hard. Wake up early". If you wanted to get Mr. Mutula in his office, you would get him by 5.50 a.m. seated behind his desk. I also had several occasions to meet him when he was Minister for Justice, National Cohesion and Constitutional Affairs. I belong to the National Steering Women Committee and when we were campaigning and lobbying for the two-thirds gender principle legal framework, we visited his office on several occasions. He would easily give you a meeting and avail a cup of tea at very short notice and engage you personally, not leaving you with his technocrats.

I was also surprised by his approach to the civil society. Whenever the civil society sought meetings with him in his office and most people would like to visit the Minister for Justice in his office, Mr. Mutula would in reverse give an appointment and visit the civil society at their offices. He was an extremely great legal mind. As a professional colleague, the legal fraternity has lost a very skilled excellent sharp mind. I send my condolences to this family and the entire nation.

The Member for Mwingi North (Hon. Mati): Hon. Speaker, Sir, with a very heavy heart, I would like to convey my condolences and those of the people of Mwingi North for losing such a brilliant and gallant son of this nation. I had occasion to work with Mutula at different times of my professional life. The first one was when I was the Chief Executive Officer of the NGO Council in 1996, 1997 and 1998. This was at a time when the Government of the day and the civil society did not see eye to eye. Although Mutula was on the other side, he always had time and ear for the civil society. I vividly

remember one time when we managed to get fracas in this House - I will not do that now because I am an hon. Member. This was about the new Constitution. While everybody else wanted to lynch us; Rev. Njoya and myself, hon. Mutula was the only Member of the House who saw that we should have the honour of having some tea in the distinguished House.

I would like to implore all those involved in investigating the mysterious death of hon. Mutula to do everything possible to give the facts to this nation. I would also like to go further and say that for us in this House, because I have seen other institutions like the Law Society of Kenya making efforts to be enjoined, if it is possible, we should also be enjoined in these efforts.

The Wiper Democratic Party, to which I belong, has lost a very sober-minded person, who in times of conflict would give a very balanced and honest opinion. I would like, on behalf of Mwingi North Constituency, my own behalf and that of my party, to say that we have lost a great person and may the Lord keep his soul in eternal peace.

Thank you, hon. Speaker.

Hon. Speaker: The hon. Member for Mbooni, it is your time.

Hon. Kisoi: Thank you, hon. Speaker. My name is Michael Kisoi Munyao, the hon. Member for Mbooni Constituency, Makueni County.

If the mysterious death of the late Senator Mutula Kilonzo can be compared to any painful experience any Kenyan has experienced, then the people of Mbooni would have a lot of pain. I personally have known the late Senator. He was a friend of mine. I remember we campaigned together very seriously in my constituency and he was a great man who stood his grounds even against the majority, if he needed to make his point clear.

Hon. Speaker, Sir, the late Senator was a great mind in his country. I am sure the legal fraternity in this country will miss him quite a lot. I know the late Senator came from a very noble background. He was a very hard working man; a man who had vast experience above all others.

Hon. Speaker, the people of Mbooni and by extension Makueni County are mourning. The feeling that we have lost one great man, our son, is no doubt quite remarkable. We do not know how to fill the gap. On behalf of the people of Mbooni Constituency, I want to say this: This is a litmus test for this Government under the leadership of His Excellency President Uhuru Kenyatta. This time round, no stone will be left unturned because the people of Mbooni are not taking it lying low. We demand, thorough, comprehensive and proper investigation into the mysterious circumstances under which Mutula Kilonzo died.

Hon. Speaker, Sir, I want to urge the Inspector-General to take this matter seriously. I know that, as Kenyans, we have lost a great person, but we want to know the truth about the matter. The sooner the Inspector-General gets down to work and lets us know what exactly happened, the better because this country will heal.

I wish to pass my heartfelt condolence to the people of Mbooni Constituency, the family of the late Senator Mutula Kilonzo and all Kenyans because of the loss.

Thank you, hon. Speaker. May the Lord rest his soul in eternal peace.

Hon. Speaker: The hon. Florence Kajuju.

Hon. (Ms.) Kajuju: Thank you, hon. Speaker. I take this opportunity to first pass my condolences to the family of my senior counsel, Senator Mutula Kilonzo and the people of Mbooni Constituency and Makueni County for the loss of their loved one. The loss that the people of Makueni County feel is the loss that LSK feels. That is because Senator Mutula was one of the greatest minds that LSK has ever had in the history of Kenya. He was our chairman and during my term as the vice-chair of LSK, when we were fighting to have the Constitution passed, we teamed up with Senator Mutula Kilonzo so that we could ensure the successful passage of the Constitution.

He opened his doors for the LSK, he assisted us as we did the civic education programmes and we feel that to most people in LSK, he was a mentor and a role model. I would like to say that the senior counsel was given the roll of honour of a senior counsel because of the service to humanity and to the legal profession that he gave us. We have lost a son that we dearly loved. I do believe that he did not die because he did what he did; he served the people of Kenya. We are hoping that, as LSK, we will get to know the cause of our senior colleague's death.

May the Lord rest his soul in eternal peace.

Hon. Speaker: One more hon. Member to contribute. Hon. Chris Wamalwa!

Hon. Wakhungu: Thank you, hon. Speaker, Sir. May I join the rest of the hon. Members in sending my condolences to the family of the late Senator Mutula Kilonzo. We have lost a great mind. Personally, I worked with him for a short period under CORD. For those of us who do not know, it is actually Mutula Kilonzo who coined the word "CORD". This was at Senator Orengo's law firm. So, we have lost a great mind, somebody who was never a sycophant but straightforward. My humble request to Parliamentarians here is: We should learn from that great mind by not being sycophants, but by contributing for the sake of the welfare of this great country. May his soul rest in eternal peace.

Thank you.

Hon. Speaker: Finally, it is the chance now for hon. Jamleck Kamau.

Hon. Kamau: Thank you very much, hon. Speaker. Let me also take this opportunity on my own behalf, my family and the people that I represent in this House, Kigumo Constituency, to send my heartfelt condolences to the family, friends and people of Makueni County for the death of Mutula Kilonzo.

The late Senator Mutula Kilonzo was a unique person. I had an opportunity to be with him in the Tenth Parliament. I also had the opportunity to be with him in the Cabinet. In fact, he was my predecessor in the Ministry of Nairobi Metropolitan. He single-handedly started that Ministry. It was a new Ministry and he took it very far. In actual fact, by the time I went there, what we were doing was to implement the policies that he actually put there.

Hon. Speaker, it is normally said that, if you want to judge a man, do not look at how much money he has made, but the kind of family he has brought up. Indeed, if you look at the family that the late Mutula Kilonzo has brought up, without any question, anybody would be very proud of that family.

I know in Cabinet, hon. Mutula Kilonzo was very forthright. I do recollect one instance where he was very keen on the issue of the teachers' strike sometime last year.

Indeed, he presented his case very well and with a lot of emotions. Finally, that strike was actually averted.

I would like to tell his family to stay together and make sure they move on, as this great leader of this country would have wanted them to do. May our Lord rest his soul in eternal peace.

Hon. Speaker: Very well. Hon. Members that must end there! We intended to have it for only thirty minutes. We will now have occasion to participate in other events.

Next Order!

MESSAGE

NOMINEES FOR CABINET SECRETARIES

Hon. Speaker: Hon. Members, there is a Message from the President. Standing Order No.42(1) relating to Messages from the President provides:-

“The Speaker shall read to the House any message from the President delivered to the Speaker for communication to the House.”

In this regard, hon. Members, I wish to convey the following Message from His Excellency the President. The Message whose subject is “Nominees for Cabinet Secretaries” was submitted by way of a letter dated 29th April, 2013 addressed to my office for submission to the House. It reads:-

“I, hon. Uhuru Kenyatta, President and Commander-in-Chief of the Defence Forces of the Republic of Kenya, in exercise of the powers vested in me by Article 152 of the Constitution of Kenya, do hereby submit my nominees for the Office of the Cabinet Secretaries in respective Ministries for approval by the National Assembly.

Ministry

Nominee

1. Devolution and Planning	Ms. Anne Waiguru
2. Defence	Ambassador Raychelle Omamo
3. Foreign Affairs	Ambassador Amina Mohamed
4. Education, Science and Technology	Prof. Jacob Kaimenyi
5. The National Treasury	Mr. Henry K. Rotich
6. Health	Mr. James Wainaina Macharia
7. Transport and Infrastructure	Eng. M.S.Kamau
8. Environment, Water and Mineral Resources	Prof. Judy Wangalwa Wakhungu
9. Land, Housing and Urban Development	Hon. Charity Ngilu
10. Information, Communication and Technology (ICT)	Dr. Fred Okengo Matiang'i
11. Sport, Culture and Arts	Dr. Hassan Wario Arero
12. Energy and Petroleum	Mr. Davis Chirchir
13. Agriculture, Livestock and Fisheries	Mr. Felix Kiptarus Kosgei

14. Industrialization and
Enterprise Development

Mr. Adan Abdulla Mohamed

15. East African Affairs,
Commerce and Tourism

Mrs. Phyllis Jepkosgei Kipking'or

16. Mining

Hon. Najib Balala

Hon. Members, Article 152(2) of the Constitution provides:-

“The President shall nominate and with the approval of the National Assembly, appoint Cabinet Secretaries.” Section 3 of the Public Appointments (Parliamentary Approval Act No.33 of 2011) provides for the exercise of the powers of appointment under the Constitution.

Under the said law, and Part 11 of our Standing Orders, the National Assembly is required to conclude the process of approval or rejection of the nominees within 14 days of the date of the notification.

Hon. Members, Standing Order No.204(4) provides as follows:-

“The Committee on Appointments shall consider, for approval by the House, appointments under Article (152(2) of the Constitution (Cabinet Secretaries).”

In this regard, I wish to guide the Committee and the House as follows:-

1. The Committee on Appointments should notify the nominees and the general public of the time and place for holding the approval hearings, at least, seven days prior to the hearings. In order to manage our time optimally, the notification should, therefore, be made tomorrow, Wednesday, 1st May, 2013.

2. The Committee may, therefore, commence the approval hearings on 8th May, 2013. The hearings shall be open to the public unless the Committee decides to hold any part of the proceedings in camera.

3. Thereafter, the Committee should table the Report before this House on or before Tuesday, 14th May, 2013 for consideration.

Hon. Members, pursuant to the provisions of Paragraph 3 of Standing Order No.42 which deals with Messages from the President, I hereby refer the Message from His Excellency the President containing the names of the 16 nominees together with their Curriculum Vitae to the Committee on Appointments to undertake the necessary approval hearings.

Hon. Members, I also direct that the Committee on Appointments do meet today at 4.30 p.m. in Room No.7, Main Parliament Buildings to chart the way forward and commence the process.

Thank you.

Hon. Kaluma: On a point of order, hon. Speaker, Sir. Following your directive, I just want to seek some clarification or guidance. In my understanding, the Committee on Appointments will simply look at the suitability of the nominees of the Presidents. However, if you look at Article 152 of the Constitution which talks about the Cabinet, it says that the President shall nominate the Cabinet Secretaries.

Hon. Speaker, Sir, from your Communication, it appears as if the President is now through with this nomination. Before you subject these nominees to the Committee on Appointments, will it be in order for you to give guidance as to the constitutionality of these nominations in view of the provisions of Article 10 of the Constitution which talk

about the values and principles of governance, which *inter lia* requires inclusivity, equity and equality. Could you, therefore, provide guidance as to whether this nomination from the President meets the requirement of Article 10 of the Constitution before the Committee on Appoints can be seized of the matter.

Thank you, hon. Speaker, Sir.

Hon. Speaker: Hon. Member, I may not quite remember your name but be guided this way. The Constitution puts a minimum of 14 and a maximum of 22. You will have your opportunity to critic the names as presented when the Committee on Appointments makes its Report for consideration by the Plenary.

(Applause)

These are basic things. You cannot begin anticipating debate. You will have a chance to say anything and everything you want to say regarding the issues you want to raise about Article 10 on National Values. I do not need to refer to the Constitution because all us took part in enacting this Constitution. Therefore, the issues you are now attempting to seek the Chair to rule on will obviously at this stage be premature. So, let the Committee do its work. The names stand committed to the Committee. Remember that during those public hearings even hon. Members of Parliament are permitted to appear and make their presentations. I encourage you to begin writing a presentation now based on your understanding of Article 10 to the Committee.

Thank you.

Hon. Ng'ongo: On a point of order, hon. Speaker, Sir. Today is 30th April, 2013. If you go through our Constitution Article 221(1) and read it together with the Public Finance Management Act, Section 37, the law is very clear that today this House is supposed to receive Estimates of revenue and expenditure from the Cabinet Secretary responsible for finance. I seek your guidance because of two fundamental issues. first, there is the constitutional deadline of 30th April which must be met and secondly, there is difficulty in meeting that because the Constitution talks of none other than the Cabinet Secretary responsible for finance to submit these Estimates. We are all aware that, that is not practical to have the Cabinet Secretary in place before midnight today. I would also want to highlight that in the same Public Finance Management Act, it is very clear that before those Estimates are brought to this House, they must be taken to the Cabinet for approval. This is for obvious reasons that the Cabinet must own the Estimates. A Budget must be a Government Budget and, therefore, the Cabinet is required by law first to endorse these Estimates. Given this crisis that we are facing at the moment, I would urge the Chair to give direction to this country on how we are likely to proceed. In so doing, I consider those constitutional provisions and how then do we go around them to make sure that this country does not stall in terms of operations and in terms of service delivery and also that we do not violate the express provisions of the Constitution. I want to conclude by saying the same is captured in Standing Order 232 all the way to Standing Order No.235.

My concluding remark would be that the Cabinet that is envisaged in law is a Cabinet comprising of the President, Deputy President, the Attorney-General and, at

least, 14 Cabinet Secretaries. In the absence of Cabinet Secretaries, we do not have a Cabinet. It is my plea that the Speaker rules on this matter.

Thank you!

Hon. Kajwang: On a point of order, hon. Speaker, Sir. First of all, I want to thank you for the Message that you have given us from the Chair. I also want to reinforce what my friend and colleague, Hon. Ng'ong'o has brought before us. This Message that you have brought to us is welcome but it is overdue. It is a Message that we, as legislators, were expecting that it would be in the possession of the Speaker but that was not to be until today. I want to say that the Jubilee Government went into an election and it was determined one way or the other. They have been firmly in office since the time they took reins of leadership and since the time they swore to defend the Constitution. But we all know that outside this House, the leadership has made comments to the fact that it is this House that has not constituted the Committees to deal with the appointments. First of all, that has been preemptive but secondly the truth is that we have done our part---(*Technical hitch*) It is the Jubilee Government that took more than one month to compose a Cabinet so that the issues Hon. Ng'ong'o is addressing have arisen. So, given the situation and I describe it as a constitutional crisis---

Hon. Angwenyi: On a point of order, hon. Speaker, Sir.

Hon. Speaker: He is on a point of order!

Hon. Angwenyi: Is it a point of order or a discussion?

Hon. Speaker: It is a point of order!

Hon. Kajwang: Hon. Speaker, Sir, thank you for protecting me. I just want to keep it short that given the dalliance that the Government has shown--- (*Technical hitch*) But everyone can guess what has been happening---(*Technical hitch*) The Jubilee Government to agree on these names all this time. That is why these names have delayed and that is why we are being given a dead baby and being asked to resurrect it. Just to reinforce, therefore, what Hon. Ng'ong'o has said, could we have directions on how we can clean up this constitutional mess that we find ourselves in because of the fight--- (*Technical hitch*)

Hon. Speaker: Hon. Members, can I give guidance to the House? Hon. Angwenyi appears to be agitated and wants to say something.

Hon. Angwenyi: On a point of order, hon. Speaker, Sir. Is the hon. Member in order to allege that the Jubilee Government is late in submitting its names when they know, in fact, that they took away--- (*Technical hitch*) of our time during their Petition? If you add those two weeks---(*Technical hitch*)

(*Applause*)

Hon. Cheboi: Hon. Speaker, Sir, as you rule on what my colleagues have already brought before you, I believe there is also something which you can rule on as well. In the last few days---(*Technical hitch*) hon. Members to comment---(*Technical hitch*) made by the President one way or the other, some adversely others positively. As Members of Parliament, we have the privilege---(*Technical hitch*) I really feel that it would be totally out of order for Members of Parliament particularly those---(*Technical hitch*) To be commenting on these persons brought before the House today because in other

democracies, if you comment on that particular person, you should be hit by something in law which I know my good friend, hon. Kajwang' knows very well. We were in the same class--- You will be stopped from participating in---(*Technical hitch*) It will be deemed that you have given your thoughts and it will be taken into consideration and you should be excluded. I say that particularly because---(*Technical hitch*) The Deputy Leader of the Minority Party, my good friend, Hon. Midiwo, from Gem, the land of professors, has continuously brought his views in public and probably---(*Technical hitch*) for us to keep on discussing these particular people and---(*Technical hitch*) as happened in detail.

Hon. Midiwo: On a point of order, hon. Speaker, Sir.

Hon. Speaker: Is it because your name has been mentioned?

Hon. Midiwo: Yes, hon. Speaker, Sir. I have been mentioned, I do not think adversely because I think he is doing it out of ignorance. But the names that you have presented before Parliament this afternoon are now rightly property of Parliament. The President cannot give us questionable people and nothing is stopping us to comment unless you do not know how to play your politics. We have that right as Members of Parliament that you make your noise at the tea place and I do not mind talking to Kenyans politically. That is just the difference between me and him but we will look through these names with a toothcomb. We are setting a precedence in this country and we shall do our duty---(*Technical hitch*) because there were positions in the Leader of the Minority Party or otherwise but it is our position as legislators. The Constitution calls for it! So, I want to plead with my friend to relax. I have been here long enough; I know when to---(*Technical hitch*) and otherwise. So I will give you that right. The Speaker has---(*Technical hitch*) called a meeting---(*Technical hitch*) but within the Committee.

Thank you.

Hon. Wario: Mheshimiwa Spika, Kipengele 86 cha Kanuni za Bunge kinamkataza Mbunge yeyote kuzungumza juu ya suala lililopangwa kuwa mbele ya Kamati. Kipengele hiki kinawazuia Wabunge kuzungumzia kile ambacho kitajadiliwa na wanakamati. Tunayo kamati iliyochaguliwa nayo itazungumza juu ya Mawaziri wateule. Haya tunayozungumza hapa ni mazungumzo ya hiyo Kamati. Naomba kipengele hicho kiongoze ushauri wetu.

Hon. Speaker: Hon. Mbadi--- (*Technical hitch*) It is not debate time. (*Technical hitch*) ---Therefore, you have nothing to worry about until the Speaker tells you that the Speaker's Office has not received--- (*Technical hitch*) ---on the Executive. It is under Chapter Nine. It states that the National Executive of the Republic comprises the President, the Deputy President--- (*Technical hitch*) --- the rest of the Cabinet.

With regard to how the documents to be presented to Parliament will find their way here--- (*Technical hitch*) ---Article 132(4) of the Constitution entitles the President in the following manner: The President may perform any other executive function provided for in this Constitution or in national legislation and except as otherwise provided for in this Constitution, may establish an office in the Public Service.

More importantly, having understood that the National Executive comprises the President, the Deputy President and the rest, and the President being permitted by the same Constitution to perform any other function provided for in this Constitution chooses that he himself or his Deputy or any other member of the Executive is the one to communicate to the Assembly, that will still be within the law. It is good for us to be

accordingly guided. I can see hon. Mbadi--- (*Technical hitch*) --- distinction between submission of the Budget Estimates and laying of the same on the Table of the House, those two are distinct exercises. The laying of the documents on the Table of the House--- (*Technical hitch*) --- therefore, let us wait. If anybody, at the time when anything is being done thinks that it is not being done within the Constitution, then one will be at liberty to raise his concerns.

Hon. Ng'ongo: Hon. Speaker, Sir, I want to thank you for your guidance and well explained reasons. Actually the reason--- (*Technical hitch*) --- stage is because this Constitution asks Parliament to uphold and defend it. That is why given the timelines I felt it was necessary to bring it--- (*Technical hitch*) --- has no leeway--- (*Technical hitch*) --- which I just drew your attention to - It is very explicit. It states that at least two months before the end of each financial year, the Cabinet Secretary responsible for Finance shall submit to the National Assembly--- I agree with you, hon. Speaker, Sir. The word here is "submit". He could submit it through a letter because he cannot even table the document here. However, that submission is express in the Constitution. It has to be done by the Cabinet Secretary. I want to plead with you that because of the timings and the issues outside the province of this House, we are where we are now.

However, we have a duty. Even if we are going to correct this mistake let us do so but observe that it is a mistake already committed. I urge that you do not allow the Executive to use Article 132 to submit the Estimates in this House because there is an exception. The President cannot do a function that is expressly given to another office through this Constitution.

Finally, if you look at Article 130 of the Constitution, it talks about the President, the Deputy President and the rest of the Cabinet. Where do you get the rest of the Cabinet? You go to Article 152. It is very clear. It states that the Cabinet is the President, the Deputy President and at least 14 members. Therefore, you cannot treat the President and Deputy President as constituting the Cabinet. That is because in that case that will be--

Hon. Speaker: Hon. Mbadi, could you, please, resume your seat? You are engaging in an argument with the Chair. This matter has received the Chair's very considered view on it; in fact, extensively. You are talking about the President constituting the Cabinet. We are talking about the National Executive. Anyway, the matter has been ruled on and it does not matter how much more you stand on points of order. The ruling has been made. Wait until the documents are brought here. See who has signed them and then you will propose that we reject them or whatever other entreaty you may wish the Chair to rule on. As of now, the Chair has ruled and we must move on.

Next Order!

PAPER LAID

Mr. Keynan: Hon. Speaker, Sir, I beg to lay the following Paper on the Table of the House today 30th April, 2013. The Estimates of Recurrent---

Hon. Speaker: Just a minute! There is no notice of that from the Clerk's Department.

(Hon. Speaker consulted with the Clerks-at-the-Table)

Hon. Keynan, this is an issue we have been addressing--- *(Technical hitch)* --- this is something different. The reason being that it has not even been approved--- *(Technical hitch)* --- Perhaps, you may have to wait a bit.

Next Order!

POINT OF ORDER

Hon. Wamunyinyi: Hon. Speaker, Sir, I rise on a point of order under Standing Order No.33 and I wish to notify you of my intention to bring a Motion--- *(Technical hitch)* --- that there have been continuous attacks in many parts of the country in Garissa, Mombasa, Baringo, and most recently the rampant attacks in--- *(Technical hitch)* --- many people have been maimed and others killed by the attackers. I, therefore, wish to ask that you allocate time, so that---*(technical hitch)*.

I beg to move.

Hon. Speaker: Do you have the requisite support?

Hon. Wamunyinyi: Yes, hon. Speaker, Sir.

Hon. Speaker: Can we see whether they are 20?

(Some hon. Members stood up in the places)

Yes, you have the support and sympathy of more than the 20 hon. Members required.

Hon. Wamunyinyi: Hon. Speaker, Sir, they are about 100.

Hon. Speaker: Very well; hon. Wamunyinyi had brought--- *(technical hitch)*--- to the Speaker within the requisite timeframe---*(technical hitch)*

Next Order!

PROCEDURAL MOTION

REDUCTION OF PUBLICATION PERIOD FOR THE DIVISION OF REVENUE BILL

Mr. A.B. Duale: Hon. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to the provisions of the Standing Order No.120, this House directs that the publication period of The Division of Revenue Bill, Bill No.1 of 2013, be reduced from 14 days to 1 day.

(Technical hitch)

This is an important Bill. The provisions of Articles 218 and 219 of the Constitution state that this Bill should have come to the House 60 days to the end of the financial year. The Standing Order No.233 also provides that this Bill should have come to the House not later than 10th March of every year. Considering that 10th March was not

feasible because of the elections, I urge the House that this is a very important Bill in terms of the county governments. It stipulates how revenue will be divided between the national Government and the county governments. We also have a memorandum which is attached, that explains the allocation between the two levels of government. As per the constitutional provisions and the Standing Orders, the Bill also has a memorandum that complies with the Article 203 of the Constitution in terms of the evaluation as to whether this Bill conforms to the formula given by the Commission on Revenue Allocation. From this House, the Bill will go to the Senate that will have ten days as per the provisions of Article 111 of the Constitution.

This Bill came very late because we had to wait for the county governments to be in place. The county governments are going through a very tough time in putting in place both their human and infrastructure capital in terms of offices. So, I ask the House, through this Procedural Motion, that for us to make sure that county governments take off fast (*technical hitch*), to pass this Motion, so that Kenyans, as early as possible, can see the importance of a devolved system of government.

(Technical hitch)

I want to confirm to the House that in terms of the today's deadline of midnight, the Government will submit the Estimates. Standing Order No.235(2) provides that once the Estimates are submitted to Parliament, we will have a three- day window. I want to assure the House, as the Leader of the Majority, that by Thursday afternoon, the Estimates will be tabled. I want to allay the fears that we could get into a constitutional crisis. We will not. The Budget-making process is on course and we will abide by all the timelines of that process. I ask my humble friend, hon. Ng'ongo, the Member for Gwassi, to second the Procedural Motion.

Hon. Ng'ongo: Hon. Speaker, Sir, I used to be the Member for Gwassi, but I am currently the Member for Suba. We changed the name for some good reasons.

I rise to second this Motion. For those who may not know what the Division of Revenue Bill is all about, this is the Bill that sets how much will be left at the national level and how much will be spent at the counties. It is the Bill that divides revenue between the two levels of Government. The law is very clear. The Standing Order No.233 requires that this Bill should be introduced in the National Assembly latest by 10th March. We are all aware that this was the time when we had just concluded our elections and there was no Parliament then. That is why this Bill delayed in arriving here. This House has basically ten days from the time when this Bill is introduced for it to be debated and passed in this House, so that we can refer it to the Senate; that is the requirement.

You will also realize that we have just concluded debate on the Estimates of Revenue and Expenditure, which are supposed to come to this House today; within three days they will be tabled. There is no way this House can transact business on Estimates of Revenue and Expenditure without first considering the Division of Revenue Bill. The Estimates of Revenue and Expenditure are based on the Division of Revenue Bill. So, this is a very critical Bill. It will explain to this country what reasons the Executive has for leaving so much at the national level and devolving so much to the counties. It is

required by law that this Bill should be accompanied by explanation as to whether Article 203 of the Constitution is met. This is basically taking care of the national interest, the public debt and ensuring that counties are given sufficient funds to run their affairs.

We should not even be talking about the percentages. We should not even be saying that we give counties 20 per cent. We would like to see what informed the suggestion by the Commission on Revenue Allocation in deciding how much revenue we should give the national Government or the county governments. This should be based purely on functions that are devolved to the counties. Otherwise, this House would starve counties of revenue. When you talk of billions, they sound big, but when you go down to dividing those billions among the 47 counties, you will realize that to meet the recurrent expenditure of a county you require no less than Kshs3 billion. So, this is an eye opener. We have literally ten days and I would urge this House to have the Budget and Appropriations Committee in place. Without that Committee, this Bill will not find its way to this House in form of a report.

Hon. Speaker, Sir, while we are debating this Bill, I would urge this House to look at the requirements of our counties and make sure that the amount that is going to the counties is sufficient to run them. Otherwise, we are setting up the governors for failure, and we will be blamed in future for setting a system that Kenyans had a lot of faith in to fail. This House has things in its hands. We have it in our hands to give the counties enough resources to perform their functions.

With those many remarks, I would like to second.

(Question proposed)

Hon. Midiwo: Thank you hon. Speaker, Sir. I rise to support this Motion. This is a very important Motion. The media has, for the last couple of days, reported that because of lack of this Bill, the Treasury mandarins are already meddling in the finances of the counties. The Kshs4.6 billion we passed has already been reduced by Kshs1.6 billion.

We want to support this Motion. We want all Members of Parliament to understand that this country voted for devolution. The only way that the devolved governments will survive is if we put a formula in place that is acceptable to our people. We said that the formula, if used properly---

(Technical hitch)

We shall close the gap between the “have county governments” and the have---

Hon. Speaker, Sir, I want to plead that this House becomes alive to the conservatives in the Treasury because they have this money in one pot. The only way our people shall excuse us is if this Parliament begins its work with a Bill of this importance. Therefore, let me say that it is not even for the Revenue Allocation Commission to do that because the Constitution has provided for the Legislature. So, our wish may be up to 50 per cent. I am happy that the Jubilee Government, which is setting up the offices promised in its manifesto and in their campaigns--- In its first Budget, 40 per cent will go to devolved governments. We want to see that next week. We will hold it up against your necks!

Lastly, hon. Speaker, even though this is a good Bill, as far as the management--- It is not rightly before the House. We have not seen it in the House Business Committee. I know its importance and we shall accept it. But it is good for us to agree procedurally because we are here, and some of us happen to know the procedure. But we shall allow this slide for the sake of---

Hon. Katoo: Thank you hon. Speaker, Sir. Just for the record, we are giving the reason for shortening the publication period of the Bill and not the contents of the Bill. The Bill is not yet before the House.

Hon. Speaker, I support this Procedural Motion, which is to shorten the publication period of this Bill from 14 days to one day.

In terms of money for the county governments and other institutions, surely there is need that we should not delay further--- We should fast-track that exercise to enable our--

As the mover of the Motion has already said, in terms of fiscal and human resources, to establish a fully operating county government--- I would agree with my friend, hon. Ng'ongo, that we should not set up our county governments---. We should fast-track the necessary procedures that will give the county governments the money that is required. This Bill was supposed to go through the publication and---

(Technical hitch)

We should get this Bill as soon as even tomorrow, if possible. I know tomorrow is a holiday. But it should be on the Order Paper after this House reduces the publication period to one day; we can have it on the Floor of the House on Thursday. I am not anticipating debate, but I know if this Procedural Motion goes through, and then the Bill is read the first time, the next stage is that most probably it will go to the relevant Departmental Committee. I know we do not have Departmental Committees in place. So, since we are talking about reducing the publication time, we should also fast-track the establishment of the Departmental Committees, so that when this House approves the Procedural Motion, the Bill can go to the relevant Departmental Committee. That will also assist in the setting up of the county governments.

If this Procedural Motion goes through and the Bill comes up for the first reading when we do not have a Departmental Committee to look into it, then this House will really be engaged in an exercise in futility. We are talking of fast-tracking Bills, yet we do not have Departmental Committees. Those committees cannot be skipped in the procedure of passing this Bill.

For those reasons, I support that the publication time be reduced from 14 days to one day.

Thank you, hon. Speaker, Sir. I beg to support.

Hon. Speaker: It is now the chance for hon. Nyamweya. I think it is also good to stick to what hon. Katoo ole Metito has said. The Procedural Motion is purely seeking the leave of the House to reduce the publication period from the normal 14 days to one day. We can avoid debating the merits and demerits of the Bill. We will save the time of the House. Thank you.

Hon. Nyamweya, it is your time.

Hon. Nyamweya: The Motion is about reducing the publication period from 14 days to one day. We all know where we are coming from. We have come from elections and that time could have been used to do what we are talking about. But what is important for us, as we sit here today, is to enable the Jubilee Government to come up with the Budget and fulfill its promises. We are waiting for the Budget to come. What is very important for us as we do this is that we have all come from counties. None of us has come from outside the counties. It is very critical that as we look at the Bills we also look at the allocation of funds. But the people in the Treasury have already reduced the amount. We hope we are not going to do this and they repeat same mistakes.

With those few remarks, hon. Members, let us support this Motion. We can move on and get the Estimates, discuss them, scrutinize them and make sure that, since we come from the counties, our counties get money.

Thank you, hon. Speaker. I support.

Hon. Chanzu: Thank you, hon. Speaker, Sir. I also rise to support the Procedural Motion. We want the time for publication to be reduced, so that we can clear the air about what has been going. The President should convene a meeting with the Governors to explain to them that he means it when he talks about county governments.

I would like to support that we fast-track the publishing of this Bill.

(Question put and agreed to)

BILL

First Reading

THE DIVISION OF REVENUE BILL

*(Order for First Reading read – read the First Time
and ordered to be referred to relevant Departmental Committee)*

(Technical hitch)

MOTION

REDUCTION OF NHIF PENALTY CHARGES TO DEFAULTERS

THAT, aware that the National Hospital Insurance Fund (NHIF) defaulters continue to be charged a penalty of 500 per cent of the outstanding amount; further aware that the penalty is barely affordable to majority of Kenyans, this House urges the Government to consider reducing the NHIF penalty surcharge to defaulters from the current 500 per cent to 25 per cent.

(Hon. Gitari on 25.4.2013)

(Resumption of Debate interrupted on 25.4.2013)

(Technical hitch)

Hon. Naicca: Thank you, hon. Speaker, Sir. First, I also want to join my colleagues in sending condolences to the family of hon. Mutula Kilonzo. I also want to thank you for having been elected the Speaker of this House. I also want to thank my constituents---

(Technical hitch)

I want to promise that I will do my best to---

(Technical hitch)

---defaulters are surcharged a penalty of 500 per cent. I wish to support this Motion. In fact, I feel that 500 per cent---

(Technical hitch)

Maybe they have not received their payment on time. This Motion says that even if you default by a day--- If the date of submitting your returns to the National Hospital Insurance Fund (NHIF) is today and you submit them tomorrow, you are surcharged 500 per cent. That is five times. This has hurt very many business people.

I support the Motion that this percentage should be reduced not even to 25 per cent but to five per cent, which is quite reasonable; you can imagine the amount of money you will pay if you owe the NHIF Kshs500,000 and you are surcharged 500 per cent.

Hon. Speaker, Sir, with those few remarks, I wish to support the Motion. Thank you very much.

Hon. Kinyua: Thank you, hon. Speaker, Sir. I would like to take this opportunity to join the rest of Kenyans in mourning our beloved late Senator Mutula Kilonzo. I also send my condolences to the family.

I want to support the Motion. It is punitive and against the laws of credit to talk about 500 per cent as a surcharge, or as a penalty for any default.

(Technical hitch)

It is important to note that for most of the defaulters, it---

(Technical hitch)

---to default and at the same time make the payment when NHIF services are required. It defeats the logic of the principles of insurance. It is pooling of resources and being able to use---

(Technical hitch)

---of the affected persons to ensure that those who benefit from the insurance do so on the basis of that probability.

As I support this Motion, it is important to also establish a law which will deter any defaulter from benefiting from NHIF---

(Technical hitch)

---is made so as to benefit immediately from the same Fund.

At the moment, the current commercial banks interest rates range between 13 and 18.5 per cent. This means that whatever is supposed to benefit Kenyans should not again be punitive to the extent of making the NHIF a source of punishment as opposed to the benefits Kenyans are supposed to derive from it.

Hon. Speaker, Sir, with those few remarks, I support the Motion.

An hon. Member: Hon. Speaker, Sir, I would like to take this opportunity, on behalf of the people of Homa Bay County, to send our condolences to the family of the late Senator Mutula Kilonzo and the people of Makueni County. For Apart from all the things that have been said about the late Senator in this House---(*Technical hitch*). In the recent petition, I also realized that in addition to everything else that was said, he was an accomplished parent, judging from the performance of his daughter.

I would like to thank the hon. Member for bringing this Motion to the House. I beg to oppose this Motion. Currently the priority of this country is to attain universal health financing programme for the entire country in the form of a national social health insurance. Piecemeal legislation is not a measure that will take us there. We must---(*Technical hitch*). If we agree to this Motion--- What we are saying is that we are looking basically at this 25 per cent without looking keenly at how we can get all Kenyans to access healthcare. Currently, we are facing very low levels of public spending on healthcare. We have not yet met the 15 per cent Abuja Declaration requirement. While Government spending on healthcare has been reducing, or constant, donor funding for healthcare has been---(*Technical hitch*) to 35 per cent currently. The Government must look at ways of increasing funding to healthcare.

The most important priority is to give ourselves a comprehensive healthcare system for all, particularly those who are poor and those who are not currently covered under the National Hospital Insurance Fund (NHIF). This is my basis for opposing this Motion and I am advising the hon. Member to look at bringing a more---(*Technical hitch*) issue that drives us more to a universal access.

With those many remarks, I beg to oppose.

Hon. Speaker: Hon. Members, it is very unfortunate that hon. Members are contributing and sometimes what they are saying is not being captured. There is a problem with the audio visual equipment. The technicians have been called---(*Technical hitch*) They cannot begin to rectify the problem when the House is in session. (*Technical hitch*)

ADJOURNMENT

Hon. Speaker: Hon. Members, with that, therefore, this House stands adjourned until Thursday, 2nd May, 2013 at 2.30 p.m.

The House rose at 4.15 p.m.