



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – FOURTH SESSION

NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

WEDNESDAY, MAY 04, 2016

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Speaker
4. **COMMUNICATIONS FROM THE CHAIR**

The Speaker conveyed the following Communications –

(i) **The National Prayer Breakfast**

"Honourable Members, the Kenya National Assembly Prayer Fellowship Group shall host the Annual National Prayer Breakfast on Thursday, May 26, 2016 at the Safari Park Hotel, Nairobi. It is expected that over 2,000 guests shall be in attendance.

This Prayer Breakfast shall be an inter-denominational Prayer Meeting sponsored by Members of Parliament. All Members of Parliament shall soon be receiving invitations to this event and are requested to confirm attendance in order to facilitate seating arrangements.

Honourable Members are therefore requested to confirm attendance with the Office of the Clerk at least by May 15, 2016. You are kindly requested to make contribution towards the cause.

You may contact the Chairman of the Prayer Breakfast Group, Hon. Captain Clement Muchiri Wambugu, who is also the Member of Parliament for Mathioya constituency, for any further clarification.

I thank you".

(ii) **The Question of Examination of Audited Reports of Political Parties**

"Honourable Members, You may recall that, on Thursday, April 21, 2016, the Leader of the Majority Party, Hon. Aden Duale rose on a Point of Order seeking guidance from the Speaker on the manner of consideration and examination of audited reports of political

parties. This was after an observation that the Auditor-General has been submitting reports of political parties to the National Assembly but no examination has been done so far. This was noted as being of great concern as majority of Members are indeed affiliated to political parties. A number of Members contributed to the ensuing debate including the Hon. Jakoyo Midiwo, the Hon. Ababu Namwamba, the Hon. Samuel Chepkong'a, the Hon. Wesley Korir and the Hon. James Nyikal amongst others.

Hon. Members, in most jurisdictions, the need for increased accountability and openness among political parties has grown in the recent past. This has been as a result of, among other things, increased public awareness as well as legal requirement on account of allocation of public monies to these institutions. Indeed, many countries, including Kenya, have well established laws and practices that guide the funding of and accounting by political parties.

Honourable Members, Most countries have signed or ratified the 2005 United Nations Convention against Corruption (UNCAC), which states that all countries should 'consider taking appropriate legislative and administrative measures ... *to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties*'. In the African context, the overarching guidance comes from the African Union Convention on Preventing and Combating Corruption, which states in Article 10 that 'each State Party shall adopt legislative and other measures to: (a) Proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and (b) Incorporate the principle of transparency into funding of political parties'. More and more countries in Africa offer funding to political parties from the State.

Hon. Members, in the Federal Republic of Germany, political parties derive their existence through the *Grundgesetz* or the Basic Law. Article 21 of the Basic Law provides for the freedom to form political parties to participate in the formation of free will of the people. As a general rule, the political parties so formed are expected to function on the basis of democratic principles and publicly account for their assets and sources and use of their funds. However, a comprehensive legislation, the Law on Political Parties, 1967 (and amended in 1994), governs the structure, constitution and financial matters of the political parties. Of interest in this case would be the financial provisions of the law which include;

(i) Political parties are entitled for state funding to the tune of 0.70 Euros for each vote cast in the preceding *Bundestag (House of Representatives)* election subject to an annual limit of 133 Million Euros (Article 18);

(ii) The political parties have to submit an annual account to the President of the Bundestag giving details of the income, expenditure, assets and liabilities. The Annual accounts are to be audited and certified by a registered Chartered Accountant (Article 23);

(iii) If the President is not satisfied by the accounts submitted by a political party, he can get the accounts audited by an auditor nominated by him; and

(iv) The President of the Bundestag shall report to the Bundestag regarding his finding on the accounts of political parties and the report shall be published as Bundestag's published paper for public scrutiny.

From the foregoing, it is observed that in the Federal Republic of Germany, the President of the *Bundestag* is required to receive the reports of political parties and convey the same to the *Bundestag*. Organizations that fail to conclusively account for their fund risk losing their legal status as political parties.

Honourable Members, In the United Kingdom, the Political Parties Election and Referendum Act, 2000 governs political parties, their conduct and other related matters. There exists an independent body, the Electoral Commission, which oversees all the electoral processes. All political parties are required to register with the Electoral Commission with set financial structures which should be approved by the Commission. The Treasurer of the party is required to keep up-to-date accounting records showing the daily financial transactions. At the end of each financial year, the party is required to submit the annual accounts to the Commission. These accounts are then open for public inspection and scrutiny.

In Denmark, there is no specific authority entrusted with monitoring the adherence to political financing rules by political parties, related entities or election of candidates. Further, there is no public authority established to check the relevant accounting records of such entities and persons. However, the General Audit Office (*Rigsrevisionen*), which is an independent institution under Parliament, examines the soundness of all state accounts, that is, checks that they are without significant errors and deficiencies and this Office is in accordance with the Public Funding Act. The Office is empowered to demand accounting records from the beneficiary parties that have received public funding in order to examine how such funding has been spent and, in this context, may check the accounts of political parties.

Hon. Members, France has an elaborate legislation, the Electoral Code, which governs affairs of political parties particularly their finances. The Code works on three basic principles namely; (1) that money should not decide the outcome of the ballot nor favor the richest candidate; (2) that a candidate must not be dependent on a generous donor; and (3) that the State should reimburse the electoral expenses to offset the obligations put on the candidates. The Code allows for state funding of political parties as '*key contributors to public suffrage*'.

The control and verification of books of accounts of Political parties is done by the Electoral Commission which verifies that political parties respect their accounting and financial obligations, ensures that the parties accounts are published in the Official Journal of France and brings any matter presenting possible penal violations before the Public Prosecutor.

Hon. Members, looking at closer home in South Africa, political parties receive funding from the taxpayer according to the proportion of votes that they receive. This funding is regulated by the Public Funding of Represented Political Parties Act 103 of 1997 and the amounts allocated to each party are publicly available through the Electoral Commission. Every political party to which moneys are allocated from the Fund, must keep, with a bank registered in the Republic, a separate banking account into which all moneys so allocated to the party must be deposited; and appoint an office-bearer or official of that party as its accounting officer with regard to all moneys from time to time allocated to that party from the Fund. As soon as possible after the end of each financial year, the Electoral Commission prepares a report regarding its management and administration of the Fund during that financial year; the allocations made from the Fund to the respective political parties during that year; the amounts spent during that year by each political party in connection with prescribed purposes; and the balance of

the Fund and any amounts owing to or by the Fund as at the end of that year. This report is also submitted to Auditor-General for auditing. Within 30 days after receipt of the Auditor-General's report, the Commission must submit that report to Parliament together with the audited financial statements of the Fund and the audited Commission's report.

Honourable Members, Our case is no different from those cited above. To begin with, public funding of political parties is provided for under the Political Parties Act, 2011. Specifically, section 31 requires political parties to keep proper books and records of account of the income, expenditure, assets and liabilities related to their operations. Further, political parties shall, within three months after the end of each financial year, submit to the Auditor-General their accounts in respect of that year for audited and onward submission to the Registrar of Political Parties and tabling in the National Assembly. Notably, the Registrar may at any time request the Auditor-General to carry out an audit of the accounts of a political party. Generally, all audited accounts of public funds are examined in National Assembly by the Public Accounts Committee (PAC). However, as stated by some of the Members who spoke, it is evident that the Committee is currently overwhelmed by the examination of all the other funds.

Hon. Members, during the Tenth Parliament, a similar predicament was experienced. At the time, the examination of audited reports for all public funds appropriated was noted to be immense for the Public Accounts Committee. This was so considering that there were other entities among them local authorities and other devolved funds such as the Constituency Development Fund, the Roads Maintenance Levy Fund, the Tourist Trust Fund, the Small and Micro Enterprise Fund and the Community Development Trust Fund that needed to be examined. This saw the establishment, by way of amendment of the Standing Orders, of the Local Authorities and Funds Accounts Committee (LAFAC) during the Second Session of the Tenth Parliament. The Committee was mandated to examine accounts of expenditure in local authorities and all other funds laid on the table of the House. This went a great way in easing the PAC of workload and helped to fast-track examination of the audited accounts.

Hon. Members, the matter of the consideration and examination of the audited accounts of political parties is an important issue for this House and indeed the democratic principles of this nation. It is therefore imperative that we approach issues raised clearly with a view of finding a working formula, aware that the current PAC is undoubtedly overwhelmed. As the Member for Seme observed during the short debate on the matter, we need as a House to look for 'what is practical in our case' in dealing with the said reports. Indeed, several options have been fronted. Key among these are –

- (i) That the House establishes a Committee to exclusively deal with the audited reports of political parties. The Committee would likely be composed of equal Members from either coalition in the House with representation from independent Members. Notably, the Committee would likely be chaired by an Independent Member; or
- (ii) That the PAC realigns its operations and establishes subcommittees to deal with designated sectors. To this end, there would be a subcommittee to specifically look into the audited accounts of political parties.

Hon. Members, Article 124 of the Constitution empowers a House of Parliament to establish committees and Standing Orders for the orderly conduct of its proceedings. It is therefore upon the House to determine which way the matter will go as it reflects on this issue.

This is a matter that I will more willingly encourage consultation and co-operation rather than issue direction on the way forward. In the meantime, Public Accounts Committee has fiduciary duty to the House to see to it that the Political Parties' audited accounts are examined and reports thereof tabled in the Assembly for consideration. Should there be need for declaration of interest when certain political parties' audited accounts are being examined; a concerned Member(s) must first declare interest and the chair will determine whether continued participation in the proceedings is tenable.

I thank you."

5. **MESSAGE**

The Speaker conveyed the following Message –

Approval by the Senate of the Division of Revenue Bill and the Mediated Version of the Political Parties Bill

Honourable Members, pursuant to the provisions of Standing Order 41(4), I wish to report to the House that I have received two Messages from the Senate regarding the approval, by the Senate, of the following Bills:

- (i) The Division of Revenue Bill (National Assembly Bill No. 4 of 2016; and
- (ii) The Mediated Version of the Political Parties (Amendment) Bill (Senate Bill No. 3 of 2014).

The first Message reads in part, and I quote, "That the Division of Revenue Bill, (National Assembly Bill No. 4 of 2016) was passed by the Senate on Thursday, 28th April, 2016, without amendments."

The second Message states, and I quote, "That the Senate, by way of a resolution passed on Thursday 28th April, 2016, approved the Mediated Version of the Political Parties (Amendment) Bill (Senate Bill No.3 of 2014)."

Honourable Members, you may recall that the National Assembly passed the Division of Revenue Bill, (National Assembly Bill No. 4 of 2016) on 30th March, 2016.

You may also recall that the House considered the Report of the Mediation Committee and approved the Mediated Version of the Political Parties (Amendment) Bill (Senate Bill No. 3 of 2014) on 21st April, 2016. In this regard, I will now proceed to present the two Bills for Assent to His Excellency the President in accordance with the provisions of Article 110(5) and 113(3) of the Constitution respectively.

I thank you.

6. **PETITION**

The Member for Maragua (Hon. Peter Kamande) presented a Petition on behalf of Macadamia Farmers on the Review of the Agriculture, Livestock, Cooperatives and Fisheries (AFFA) Act 2013 to allow for the sale or export of raw produce such as Macadamia;

Petition referred to the relevant Departmental Committee pursuant to Standing Order 227(2).

7. PAPERS LAID

The following Papers were laid on the Table –

- (i) The Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June, 2015 and the certificates therein:-
 - (a) Kenya Civil Aviation Authority;
 - (b) Public Complaints Committee on Environment;
 - (c) Technical University of Mombasa; and
 - (d) Taita Taveta University College.

(The Leader of the Majority Party)

- (ii) Reports of the Select Committee on Regional Integration on its consideration of:

- (a) East African Legislative Assembly Reports and Bills; and
- (b) East African Legislative Assembly Reports and Resolutions.

(Chairperson, Select Committee on Regional Integration)

- (iii) The Reports of the Departmental Committee on Lands on:
 - (a) The Petition regarding ceding of 1,800 acres of Chebororwa Agricultural Training Centre Chebororwa Community; and
 - (b) The Petition by residents of Mavoko Constituency regarding the alleged compulsory acquisition of land LR No. 10028/2 in Mavoko.

(Chairperson, Departmental Committee on Lands)

- (i) Report of the Departmental Committee on Environment and Natural Resources on Its Consideration of Senate Amendments to the Water Bill (National Assembly Bill No.7 of 2014).

(Chairperson, Committee on Environment & Natural Resources)

8. PERSONAL STATEMENT

Rising pursuant to Standing Order 84, the Leader of the Majority Party made a personal statement on allegations made by the Member for Sirisia (Hon. John Waluke) in one of the print media. The Member alleged that the Jubilee Coalition was funding the Leader of the Minority Party in the Senate (Hon. Senator Moses Wetangula)

The Leader of Majority Party stated that, Hon. Waluke had alleged that Senator Watengula was seen in the company of the Leader of the Majority Party within Parliament where the Senator was presented with funds ahead of his weekend rallies in Western Kenya. He clarified that apart from he and Senator Wetangula being colleagues, they were friends long before the Leader of Majority joined Parliament. He added that he was at liberty to mingle and converse with any Member of Parliament.

He stated that as the Member representing the Jubilee Coalition in the National Assembly, the coalition had not appropriated any budget for Senator Wetangula, any other Member of CORD coalition or even Members of Jubilee Coalition who attend various functions during the weekends.

He called on Hon. Waluke to desist from maligning others due to his political differences with Senator Wetangula.

9. **THE WITNESS PROTECTION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2016)**

(The Leader of the Majority Party)

Order for First Reading read;

Bill read a First Time and referred to the relevant Departmental Committee pursuant to Standing Order 127(1)

10. **THE CIVIL AVIATION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 14 OF 2016)**

(The Leader of the Majority Party)

Order for First Reading read;

Bill read a First Time and referred to the relevant Departmental Committee pursuant to Standing Order 127(1)

11. **THE SEEDS AND PLANT VARIETIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 43 OF 2015)**

Order for Second Reading read;

Motion made and Question proposed –

THAT, the Seeds and Plant Varieties (Amendment) Bill (National Assembly Bill No. 43 of 2015) be now read a Second Time

(The Leader of the Majority Party – 27.04.2016)

Debate on the Second Reading having been concluded on Wednesday, May 04, 2016 (Morning Sitting);

Question put and agreed to;

Bill read a Second Time and committed to the Committee of the whole House tomorrow.

12. **THE MISCELLANEOUS FEES AND LEVIES BILL (NATIONAL ASSEMBLY BILL NO. 30 OF 2015)**

Order for Second Reading read;

Motion made and Question proposed –

THAT, the Miscellaneous Fees and Levies Bill (National Assembly Bill No. 30 of 2015) be now read a Second Time

(The Leader of the Majority Party – 04.05.2016)

Debate on the Second Reading having been concluded on Wednesday, May 04, 2016 (Morning Sitting);

Question put and agreed to;

Bill read a Second Time and committed to the Committee of the whole House tomorrow.

13. **MOTION – ADOPTION OF REPORT ON CONSTITUENCY COMMITTEES OF THE NATIONAL GOVERNMENT CONSTITUENCY DEVELOPMENT FUND**

Motion made and Question proposed –

THAT, this House adopts the report of the Select Committee on National Government Constituency Development Fund on its consideration of one hundred and eight two (182) Constituency Committees of the National Government Constituency Development Fund laid on the Table of the House on Wednesday, May 04, 2016. (Morning Sitting).

*(Chairperson, Select Committee on the National Government
Constituency Development Fund)*

There being no debate arising;

Question put and agreed to;

14. **SPECIAL MOTION – FORMULA FOR EQUITABLE SHARING OF NATIONAL REVENUE ALLOCATED TO COUNTIES**

THAT, pursuant to the provisions of Article 217 of the Constitution, as read together with Section 16 of the Sixth Schedule to the Constitution, this House **concurs** with the Senate and **approves** the following Second Basis for Equitable Sharing of National Revenue allocated to Counties:

No.	Parameter	Current Formula (First Basis)	Proposed Formula (Second Basis)
1.	Population	45%	45%
2.	Basic Equal Share	25%	26%
3.	Poverty	20%	18%
4.	Land Area	8%	8%
5.	Fiscal Responsibility	2%	2%
6.	Development Factor	-	1%
	TOTAL	100%	100%

Motion withdrawn by the Mover.

15. COMMITTEE OF THE WHOLE HOUSE

Order for Committee read;

IN THE COMMITTEE

The Second Chairperson in the Chair

The Land Laws (Amendment) Bill (National Assembly Bill No. 55 of 2015)

Clause 13 - amendment proposed –

THAT, clause 13 of the Bill be deleted.

(Chairperson, Departmental Committee on Lands)

Question for the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment Proposed –

THAT, clause 13 of the Bill be amended in paragraph (d) of the proposed new subsection (3) by deleting the words “six months” and substituting therefor the words “twelve months”

(Hon. William Kisang’)

Further amendment withdrawn;

Clause 13 - deleted

Clause 14 - amendment proposed –

THAT, clause 14 of the Bill be deleted.

(Chairperson, Departmental Committee on Lands)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 14 - deleted

Clause 15 - amendment proposed –

THAT, clause 15 of the Bill be deleted.

(Chairperson, Departmental Committee on Lands)

Question for the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 15 - deleted

Clause 16 - amendment proposed –

THAT, clause 16 of the Bill be deleted;

(Hon. Jones Mlolwa)

Proposed amendment dropped;

Further amendment proposed –

THAT, clause 16 of the Bill be amended—

- (a) by deleting paragraph (b);
- (b) in paragraph (c), by deleting the words “and substituting therefor the following”;
- (c) by deleting paragraph (d); and
- (d) by deleting paragraph (e).

(Chairperson, Departmental Committee on Lands)

Question for the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 16 - as amended agreed to

Clause 17 - amendment proposed –

THAT, clause 17 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) in subsection (1) by deleting the words “or a lease” and substituting therefor the words “whose name appears in the register or a lease”

(Chairperson, Departmental Committee on Lands)

Question for the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 17 - as amended agreed to

Clause 18 - amendment proposed –

THAT, clause 18 of the Bill be amended by deleting paragraph (c).

(Chairperson, Departmental Committee on Lands)

Question for the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 18 - as amended agreed to

Clause 19 - amendment proposed –

THAT, clause 19 of the Bill be deleted.

(Chairperson, Departmental Committee on Lands)

Question for the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 19 - deleted

Clause 20 - amendment proposed –

THAT, clause 20 of the Bill be deleted.;

(Hon. Jones Mlolwa)

Debate arising;

Question put and negatived;

Further amendment proposed –

THAT, clause 20 of the Bill be amended—

(a) in paragraph (a)–

(i) by deleting the expression “(3)” and substituting therefore the expression “(4)”;

(ii) by deleting proviso (ii);

(b) in paragraph (b)–

(i) by deleting the proposed new subsection (5);

(ii) by deleting the proposed new subsection (6);

(iii) by deleting the proposed new subsection (7);

(iv) by deleting the proposed new subsection (10) and substituting therefor the following new subsection–

“(10) Where more than one instrument or application are presented on the same day such that in the opinion of the Registrar there is doubt as to their order of priority, the Registrar shall reject the registration and shall inform the applicants of such rejection.”

(v) in the proposed new subsection (12), by inserting the following proviso–

“Provided that upon commencement of the Act, any instrument that shall not have been registered will be required to be so registered within three months”; and

(vi) by deleting the proposed new subsection (13).

(Chairperson, Departmental Committee on Lands)

Question for the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed –

THAT, Clause 20 of the Bill be amended in paragraph (a) of the proposed new subsection (3) by deleting the words “five times” and substituting therefor the words “two times” appearing in proviso (i).

(Hon. William Kisang)

Debate arising;

Question put and agreed to;

Further amendment proposed –

THAT, clause 20 of the Bill be amended in the proposed amendment to section 36 of the Land Registration Act by inserting the following new subsections immediately after the proposed subsection 14 –

“(15) Any person who intends to purchase or acquire any interest in land shall, file with the Registrar, a declaration under oath of the sources of the funds used to purchase the property in the prescribed form.”

“(16) The Registrar shall not register an instrument to transfer or create an interest in land, unless the requirements of sub-section (15) have been complied with.”

(Hon. Priscilla Nyokabi)

Proposed amendment dropped;

Clause 20 - as amended agreed to.

Clause 21 - amendment proposed –

THAT, clause 21 of the Bill be amended in paragraph (b) by deleting the expression “(a)” and substituting therefor the expression “(b)”.

(Chairperson, Departmental Committee on Lands)

Question for the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 21 - as amended agreed to

Clauses 22, 23, 24, 25 and 26 - agreed to

Clause 27 - amendment proposed –

THAT, clause 27 of the Bill be deleted;

(Hon. Jones Mlolwa)

Debate arising;

Question put and negatived;

Further amendment proposed –

THAT, clause 27 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) by deleting subsection (4) and substituting therefor the following new subsection –

“(4) The Registrar shall not register a charge, unless a land rent clearance certificate, certifying that no rent is owing in respect of the land, and the consent to charge has been presented, or unless the land is freehold.”

(Chairperson, Departmental Committee on Lands)

Question for the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 27 - as amended agreed to

Clauses 28, 29, 30 and 31 - agreed to

Clause 32 - amendment proposed –

THAT, clause 32 of the Bill be deleted;

(Hon. Jones Mlolwa)

Debate arising;

Question put and negatived;

Further amendment proposed –

THAT, clause 32 of the Bill be amended–

(a) in paragraph (b), by inserting the following proviso at the end of the proposed new subsection (2)(b)

“Provided that a written notice of ninety days shall be given to the proprietor of such intention to make the alteration”;

(b) in paragraph (c), by deleting the words “deleting subsection (3) and substituting therefor the following subsection” appearing in the introductory statement and substituting therefor the words “inserting the following new subsection immediately after subsection (3)”;

(c) by deleting paragraph (d) and substituting therefor the following new paragraph–

“(d) by deleting the introductory statement in subsection (4) and substituting therefor the following new introductory statement–

"(4) The Cabinet Secretary may by regulations prescribe the guidelines that the Registrar shall follow before rectifying or directing rectification under this section and without prejudice to the generality of the foregoing, the regulations may provide for– "

(Chairperson, Departmental Committee on Lands)

Question for the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 32 - as amended agreed to;

Clauses 33 and 34 - agreed to;

Clause 35 - amendment proposed –

THAT, clause 35 of the Bill be deleted;

(Hon. Jones Mlolwa)

Proposed amendment withdrawn;

Further amendment proposed –

THAT, clause 35 of the Bill be amended in paragraph (d) by deleting the proposed new subsection (8) and substituting therefor the following new subsection–

"(8) The Registrar may upon receipt of adequate proof dispense with the consent under subsection (6) if the Registrar considers that the consent cannot be obtained or is being withheld unreasonably and the Registrar shall note on the register and on the instrument the reasons for dispensing with the consent"

(Chairperson, Departmental Committee on Lands)

Question for the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 35 - as amended agreed to

Clause 36 - amendment proposed –

THAT, clause 36 of the Bill be deleted and replaced by the following new clause–

Amendment of
section 92 of No. 3
of 2012.

36. Section 92 of the Land Registration Act is amended by inserting the words "provided that a designated co-tenant shall be provided with the original title to the land.

(Chairperson, Departmental Committee on Lands)

Question for the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 36 - as amended agreed to

Clause 37 - amendment proposed –

THAT, clause 37 of the Bill be deleted;

(Hon. Mishi Juma)

Debate arising;

Question put and negatived;

Further amendment proposed –

THAT, clause 37 of the Bill be deleted and replaced by the following new clause–

Amendment of
section 93 of No. 3 of
2012.

37. Section 93 of the Land Registration Act is deleted and replaced by the following new section 93–

“Subject to any written law to the contrary, if a spouse obtains an interest in land during the subsistence of a marriage for the co-ownership and use of spouses or all spouses, such property shall be deemed to be matrimonial property and shall be dealt with under the Matrimonial Property Act.”

(Chairperson, Departmental Committee on Lands)

Question for the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 37 - as amended agreed to

Clause 38 - amendment proposed –

THAT, clause 38 of the Bill be deleted and replaced by the following new clause–

Amendment of
section 94 of No.
3 of 2012.

38. Section 94 of the Land Registration Act is amended–

- (a) in subsection (1), by deleting the words “certificate of land” and substituting therefor the words “certificate of title or certificate of lease”;
- (b) by inserting the following new subsection immediately after subsection (4)–

“(5) Any co-tenant aggrieved by the decision of the Registrar may apply to the Court for a review of that decision.”

(Chairperson, Departmental Committee on Lands)

Question for the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 38 - as amended agreed to

Clause 39 - amendment proposed –

THAT, clause 39 of the Bill be deleted.

(Chairperson, Departmental Committee on Lands)

Proposed amendment withdrawn;

Clause 39 - agreed to;

Clause 40 - amendment proposed –

THAT, clause 40 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph–

“(b) in subsection (2) by deleting the word “public” appearing immediately after the word “unlawfully occupies”.

(Chairperson, Departmental Committee on Lands)

Question for the amendment proposed –

Debate arising;

Question put and agreed to;

Clause 40 - as amended agreed to

Clauses 41 - agreed to

Clause 42 - amendment proposed –

THAT, clause 42 of the Bill be deleted;

(Hon. Mishi Juma)

Debate arising;

Question put and negatived;

Clauses 42 - agreed to

Clause 43 - amendment proposed –

THAT, clause 43 of the Bill be deleted;

(Hon. Kamoti Mwamkale)

Debate arising;

Question put and negatived;

Further amendment proposed –

THAT, clause 43 of the Bill be amended in paragraph (a) by deleting sub-paragraph (i) and substituting therefor the following new sub-paragraph–

“(i) deleting the words “and for future generations”

(Chairperson, Departmental Committee on Lands)

Proposed amendment withdrawn;

Clause 43 - agreed to

Clause 44 - amendment proposed –

THAT, clause 44 of the Bill be deleted;

(Hon. Kamoti Mwamkale)

Debate arising;

(Change of Chair from the Second Chairperson to the Fourth Chairperson)

Question put and agreed to;

Further amendment proposed –

THAT, clause 44 of the Bill be deleted and replaced by the following new clause–

Amendme
nt of
section 15
of No. 5 of
2012.

44. Section 15 of the National Land Commission Act is deleted and replaced by the following new section–

Historical
land
injustices.

15. (1) Pursuant to Article 67(3) of the Constitution, the Commission shall receive, admit and investigate all historical land injustice complaints and recommend appropriate redress.

(2) For the purposes of this section, a historical land injustice means a grievance which–

- (a) was occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement;
- (b) resulted in displacement from their habitual place of residence;
- (c) occurred between 15th June 1895 when Kenya became a protectorate under the British East African Protectorate and 27th August, 2010 when the Constitution of Kenya was promulgated;

- (d) has not been sufficiently resolved and subsists up to the period specified under paragraph (c); and
- (e) meets the criteria set out under subsection 3 of this section.

(3) A historical land claim may only be admitted, registered and processed by the Commission if it meets the following criteria—

- (a) it is verifiable that the act complained of resulted in displacement of the claimant or other form of historical land injustice;
- (b) the claim has not or is not capable of being addressed through the ordinary court system on the basis that—
 - (i) the claim contradicts a law that was in force at the time when the injustice began; or
 - (ii) the claim is debarred under section 7 of the Limitation of Actions Act or any other law;
- (c) the claimant was either a proprietor or occupant of the land upon which the claim is based;
- (d) no action or omission on the part of the claimant amounts to surrender or renouncement of the right to the land in question; and
- (e) it is brought within five years from the date of commencement of this Act.

(4) A claim alleging historical land injustice shall be permissible if it was occasioned by—

- (a) colonial occupation;
- (b) independence struggle;
- (c) pre-independence treaty or agreement between a community and the government;
- (d) development-induced displacement for which no adequate compensation or other form of remedy was provided, including conversion of non-public land into public land;
- (e) inequitable land adjudication process or resettlement scheme;
- (f) politically motivated or conflict based eviction;
- (g) corruption or other form of illegality;
- (h) natural disaster; or
- (i) other cause approved by the Commission.

(5) When conducting investigations under subsection (1) into historical land injustices the Commission may—

- (a) request from any person including any government department such particulars, documents and information regarding any investigation, as may be necessary; or

(b) by notice in writing, addressed and delivered by a staff of the Commission to any person, direct such person, in relation to any investigation, to appear before the Commission at such time and place as may be specified in the notice, and to produce such documents or objects in the possession, custody or under the control of such person and which are relevant to that investigation.

(6) Where a complainant is unable to provide all the information necessary for the adequate submission or investigation of a complaint, the Commission shall take reasonable steps to have this information made available.

(7) If at any stage during the course of an investigation, the Commission is of the opinion that the resources of the Commission may be more effectively utilized if all claims within a given area or township were to be investigated at the same time, the Commission shall cause to be published in the Gazette or in such other manner as the Commission may deem appropriate, a notice advising potential complainants of the decision and inviting them to lodge claims within a period specified in such notice.

(8) A claim in respect of a matter contemplated in subsection (7) shall not be lodged after the expiry of the period specified in the said notice.

(9) The Commission, after investigating any case of historical land injustice referred to it, shall recommend any of the following remedies—

- (a) restitution;
- (b) compensation, if it is impossible to restore the land;
- (c) resettlement on an alternative land;
- (d) rehabilitation through provision of social infrastructure;
- (e) affirmative action programmes for marginalized groups and communities;
- (f) creation of wayleaves and easements;
- (g) order for revocation and reallocation of the land;
- (h) order for revocation of an official declaration in respect of any public land and reallocation;
- (i) sale and sharing of the proceeds;
- (j) refund to *bona fide* third party purchasers after valuation; or
- (k) declaratory and preservation orders including injunctions.

(10) Upon determination of a historical land injustice claim by the Commission, any authority mandated to act under the redress recommended shall be required to do so within three years.

(11) The provisions of this section shall stand repealed within ten years.

(Chairperson, Departmental Committee on Lands)

Proposed amendment withdrawn;

Clause 44 - deleted;

16. **QUORUM OF THE HOUSE**

Rising in his place on a Point of Order, the Member for Laikipia East (Hon. Anthony Kimaru) drew to the attention of the Second Chairperson to the fact that there was no quorum in the House;

And the Chairperson, having confirmed that there was no quorum, caused the Division Bell be rung;

And there being NO quorum after expiry of ten minutes;

House resumed.

17. **HOUSE RESUMED** - The Second Chairperson in the Chair

Pursuant to Standing Order 35(2)(b), the Fourth Chairperson reported to the Speaker the failure to raise quorum while in the Committee of the Whole House;

And the time being fifty-five minutes past five O'clock, the Second Chairperson adjourned the House without Question put pursuant to the Standing Order 35(2)(b).

18. **HOUSE ROSE** - at fifty-five minutes past five past five O'clock

M E M O R A N D U M

The Speaker will take the Chair on
Thursday, May 05, 2016 at 9.30 a.m.

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