

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 26<sup>th</sup> July 2018

The House met at 2.30 p.m.

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

### PRAYERS

**Hon. Speaker:** There will be a Communication from the Chair after Order No.7

### PETITION

#### MISTREATMENT OF EMPLOYEES BY MANAGEMENT OF UCHUMI SUPERMARKET LIMITED

**Hon. Simba Arati** (Dagoretti North, ODM): Thank you, Hon. Speaker. I want to set the record straight from the word go that this is a different Petition from yesterday's. This is a Petition by the employees of Uchumi Supermarket Limited regarding non-payment of salaries and intimidation of employees by the management of Uchumi Supermarket Limited.

I, the undersigned, on behalf of the employees of Uchumi Supermarket Limited, draw the attention of the House to the following:

THAT, Article 41 of the Constitution states that every person has the right to fair labour practices;

THAT, fair treatment of workers is a key component of social justice, guided by the principle of non-discrimination stipulated in Article 27 of the Constitution;

THAT, the management of Uchumi Supermarket Limited has allegedly flouted these statutory requirements with regards to non-payment of salaries to employees;

THAT, the management of Uchumi Supermarket Limited has failed to reimburse or remunerate its employees for a period of five months contrary to the law and the Employment Act of 2007;

THAT, in the last two years, the management of Uchumi Supermarket Limited has allegedly failed to remit employees' statutory deductions including Pay-As-You-Earn (PAYE), National Social Security Fund (NSSF) and the National Hospital Insurance Fund (NHIF), despite the same having been periodically deducted;

FURTHER, THAT, loan deductions - that means check-off - from respective employees have not been remitted to the respective financial institutions since November, 2017, hence attracting and accruing huge interest;

THAT, the management has continuously terminated employment contracts without following due process and continues to intimidate employees;

THAT, the issues in respect of which this Petition is made are not pending before any court of law, constitutional or legal body.

THEREFORE, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Labour and Social Welfare:

- (i) intervenes to have this matter resolved on behalf of the employees; and,
- (ii) makes any other further orders deemed fit in the circumstances of the Petitioner.

Your humble Petitioners will ever pray.

**Hon. Speaker:** Member for Kajiado Central, do you want to comment on that? Proceed, Hon. Kanchory.

**Hon. Memusi ole Kanchory** (Kajiado Central, ODM): Thank you very much, Hon. Speaker. The Petition that Hon. Simba Arati has brought to the attention of this House is very important because issues of workers being intimidated are becoming common in this country. Just the other day, Kenyans were up in arms about the Chinese intimidating and exploiting them. It seems to be common that an employer can now do anything they want to an employee. This House should take those issues coming up very seriously. We are the peoples' representatives. If our people are crying to us, we should be seen to take action against those who are intimidating their fellow Kenyans.

The fact that you have employed someone does not give you free reign to intimidate or make that person do whatever you want them to do and disregarding the law. Just because this person is drawing a cheque from you does not mean that he or she is your slave. If we do not watch out, modern slavery is coming back through employment.

I support the Petition and urge this House to take action.

**Hon. Speaker:** Let us have the Member for Kiminini.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Speaker. I thank the Member for Dagoretti for bringing up this Petition, unlike the Petition that was brought yesterday. My humble request is that the Departmental Committee on Labour and Social Welfare moves with speed because this matter has been a big issue. I know of some people who are working in that organisation. They are really suffering.

If the employer does not remit the statutory deductions which are compulsory, it is a criminal offence, particularly when it comes to NHIF which, as per the Government policy of universal healthcare, they must have it paid for them to access healthcare. My humble request is for the relevant Committee to move speedily, expedite this and finish within the shortest time-frame possible to help the suffering workers of Uchumi Supermarket Limited.

**Hon. Speaker:** Let us have the Member for Igembe North.

**Hon. Maoka Maore** (Igembe North, JP): Thank you, Hon. Speaker. I support, but I would not wish it to be a Petition. Petitions take 60 days at the minimum or even 70 or 90 days to be expedited. If there is a recess in between, it will even be longer. Uchumi Supermarket Limited is not a private organisation. It is a Government parastatal. It would be easy and fair to the workers if we can have a process whereby the Cabinet Secretaries of Industry, Trade and Cooperatives or of Labour and Social Protection would intervene and have the workers dues settled as they suffer the consequences of the loot and the ripping off of public sector corporations. The reason why Uchumi Supermarket Limited is going under is not because there was bad weather, a

flood or an earthquake. I wish the Member would pursue it differently because if you go by this route of a Petition, I can foresee a story whereby even next year, it may not have been resolved. We need a quicker mechanism to urgently address the suffering of the workers at Uchumi.

**Hon. Speaker:** The Petition stands committed to the relevant Departmental Committee, which should move within the stipulated timelines to table a report on the Petition.

Let us move on to the next Order.

### PAPERS LAID

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Business transacted by the 4<sup>th</sup> East African Legislative Assembly (EALA) at the 5<sup>th</sup> Meeting of the 1st Session, held in Arusha Tanzania, as follows:

- (a) Report of the Committee on General Purpose on the Supplementary Budgetary proposals of the East African Community for the Financial Year 2017/2018;
- (b) Report of the Committee on General Purpose on the Budgetary proposals of the East African Community for the Financial Year 2018/2019;
- (c) Report of the Committee on Accounts on the East African Community Audited Financial Statements for the Financial Year ended 30<sup>th</sup> June, 2016;
- (d) The East African Community Annual Report of activities for the period 2015/2016;
- (e) The East African Community Supplementary Appropriation Bill, 2018; and,
- (f) The East African Community Appropriation Bill, 2018.

Reports to the National Assembly on the Kenya Defence Forces Deployment to the Solai Dam Disaster and the Gikomba Fire incident.

The Reports of the Auditor-General and Financial Statements in respect of the following Institutions for the year ended 30<sup>th</sup> June, 2017, and the certificates therein:

- (a) Council of Governors Secretariat;
- (b) Consolidated Fund Services - Public Debts;
- (c) Meru University of Science and Technology;
- (d) Chuka University;
- (e) Kenya Trade Network Agency; and,
- (f) Consolidated Fund Services - Salaries, Allowances and Miscellaneous Services.

The Reports of the Auditor-General and Financial Statements in respect of the following constituencies for the year ended 30<sup>th</sup> June, 2017, and the certificates therein:

- (a) Kitui Rural Constituency; and,
- (b) Manyatta Constituency.

The Report of the Auditor-General and Financial Statements of the Webuye East Constituency for the year ended 30<sup>th</sup> June, 2016, and the certificate therein.

### COMMUNICATION FROM THE CHAIR

#### INVESTIGATORY MANDATE OF COMMITTEES AND CONDUCT OF MEMBERS IN COMMITTEES

**Hon. Speaker:** Hon. Members, before we go to Order No.7, I had indicated that I would give Communication No.35 of 2018 on the investigatory mandate of House Committees and conduct of Members in Committees.

Hon. Members, you will recall that on Tuesday, 12<sup>th</sup> June 2018, the Member for Igembe North Constituency, Hon. Maoka Maore, stood on a point of order pursuant to Standing Order No.83, and sought the guidance of the Speaker on the scope of investigatory functions of the committees of the House. In particular, the Hon. Member invited the Speaker to pronounce himself on whether the power to investigate, as enshrined in our Standing Orders, contemplates the Committees of the House undertaking parallel investigations of matters under investigation by investigative agencies of the State such as the Directorate of Criminal Investigation (DCI), the Ethics and Anti-Corruption Commission (EACC) and the Directorate of Public Prosecutions (DPP).

In his submission, the Member for Igembe North was concerned that Committees of this august House are in his words: “of late seemingly engaged in chasing newspaper headlines”. This means that the committees may be reactively basing the subject of their inquiries on media reports rather than proactive work plans or reports of specialised offices such as that of the Auditor-General, the Controller of Budget and other offices established by law, and which submit statutory reports to the National Assembly, especially with regard to cases of alleged misuse of public funds.

Further, Hon. Maoka Maore was concerned that audit Committees were seemingly deviating from their mandates of considering reports by the Auditor-General and instead undertaking preliminary inquiries which fall within the purview of the Office of the Auditor-General. He sought direction from the Speaker on whether the undertaking of parallel investigations by the House committees amount to duplication, noting that the end results of investigations by the committee would be recommendations that the relevant investigatory agencies proceed to investigate the same matters.

Hon. Members, as you may recall, the Leader of the Majority Party, Hon. Aden Duale; Hon. Olago Aluoch, Hon. (Dr.) Eseli Simiyu, Hon. Kimani Ichung’wah and Hon. Opiyo Wandayi ventilated at length in reaction to the matter upon which I undertook to issue a considered ruling. You will also recall that on Wednesday, 4<sup>th</sup> July 2018 during the afternoon Sitting, the Leader of the Majority Party similarly rose on a point of order and sought the Speaker’s guidance on the conduct of Members in committees. In his submission, the Leader of the Majority Party highlighted various instances where, in his opinion, the conduct of Members with regard to commenting on matters which are active before court, attendance and submission in meetings as friends of committees and cosyng with witnesses portray the House in bad light. He concluded by seeking the Speaker’s guidance to the House on how Members should conduct themselves while participating in activities of the House and committees, in accordance with the Constitution and Standing Orders.

Hon. Members, from the ensuing debate, Members, including the Leader of the Minority Party; Hon. John Mbadi, Hon. Olago Aluoch, Hon. Mark Nyamita and Hon. Charles Kilonzo contributed in support of the point of order raised by the Leader of the Majority Party and raised further issues for the guidance of the Speaker, which I summarise as follows:

- (i) the issue raised by Hon. Maore over the apparent reactive nature of House committees basing their work on media reports instead of generating their own business;
- (ii) the manner of interrogating and questioning witnesses appearing before committees;

(iii) the repeated failure by Members to declare their interests in matters under consideration by committees as required by the Parliamentary Powers and Privileges Act and the Standing Orders;

(iv) the apparent failure by Members to relate at arm's length with witnesses who appear before the committees before they enter meetings, during interrogation and in the course of their exit from meetings;

(v) the repeated and unreported failure by Members to attend committee meetings;

(vi) the apparent conflict of interest and alleged compromise of committees where committee activities are partly or wholly funded by State or private entities; and,

(vii) the attendance and indecorous participation by non-committee members in committee meetings as friends of the said committees.

Hon. Members, at the close of debate on the point of order raised by the Leader of the Majority Party, I undertook to give a comprehensive Communication to guide the House on the conduct of Members in committees. I shall proceed to dispose of the points by the Leader of the Majority Party and Hon. Maore in this Communication.

I allow the Hon. Members who are making their way into the Chamber to come in. I have resumed my seat, so that you can walk in. Those Members who are making their way into the Chamber should do so because they may stand for a long time. Please, do so quickly. Otherwise, you will stand at the door for a long time. You can take a seat near you. There is no harm.

Hon. Members, on the question as to whether the investigatory work of the committees of the House may lead to unnecessary duplication and result in futile recommendations, I wish to note that the House has an inherent investigatory mandate given to it. This mandate is discharged through committees which, as Hon. Maore rightly contend, are the turbines which move the House. The manner in which the House and its committees carry out investigations is fundamentally different from the manner in which agencies such as the Directorate of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC) conduct their investigations. Indeed, a probe by the House in the public interest may unearth more information than an investigation by either of the two agencies, in which a witness may be wary of self-incrimination. The House can investigate by seeking primary evidence or rely on secondary evidence through the Special Funds Accounts Committee (SFAC), the Public Investment Committee (PIC) and the Public Accounts Committee (PAC) with regard to audited reports submitted by the Office of the Auditor-General.

The investigatory power of the House is drawn directly from the authority granted by the people who have equivocally entrusted it with the role of appropriating public revenues, approving revenue raising measures and exercising oversight over public expenditure. As a guardian of the public purse, it will be inimical of Parliament to turn a blind eye to the manner in which public monies that it voted are utilised by constitutional commissions, independent offices, and the Executive and its agencies. Indeed, a legislature which assumes the role of a bystander waiting to consume reports from other quotas before taking action will, to say the least, be dancing on brick sand.

Hon. Members, the Standing Orders are clear on the investigatory mandate of the House and its committees. With respect to PAC, Standing Order No. 205(1) and (2) provide the follows:

“The PAC shall be responsible for the examination of the accounts showing the appropriation of sums voted by the House to meet the public expenditure and of such other accounts laid before the House as the Committee may think fit.”

I put emphasis on the words “accounts” and “laid before the House”.

For the newly created SFAC, Standing Order No. 205(A)(2) states as follows:

The Committee shall be responsible for the examination of the accounts of the Equalisation Fund, the Political Parties Fund, the Judiciary Fund, the National Government Constituencies Development Fund (NG-CFD) and other such other Funds established by law as the Speaker may direct.

Finally, Standing Order No. 206(2) relating to the PIC provides as follows:

The PIC shall be responsible for the examination of the working of the public investments on the basis of their audited reports and accounts.

Here, the emphasis is on the expression, “On the basis of their audited reports and accounts.”

Hon. Members, a close reading of the said Standing Orders suggest that the primary source of information for the work of audit is the Office of the Auditor-General. Hence, the three audit-related Committees may only commence an inquiry into alleged misuse of public revenue upon receipt of an audit report on the accounts from the Auditor-General or other specially appointed auditors on the accounts from which funds are alleged to have been misused.

Hon. Members, as you are aware, the Auditor-General submits reports to the House on an annual basis and those reports are always laid before the Table of the House by the Leader of the Majority Party or a person deputed by him in that regard. Nevertheless, audit committees like the SFAC, PAC and PIC are not precluded from requesting the Auditor-General to undertake a special audit when the need arises to examine the accounts of a public entity to ascertain whether or not monies are being managed according to sound financial principles. Indeed, through the PAC, previous Parliaments effectively investigated allegations of misuse of public funds that came to life in the course of their work or examination of issues; and, upon guided preliminary inquiries, the PAC requested the Auditor-General to undertake a special audit. However, it is a special audit that ultimately became the basis of subsequent in-depth investigations. In my considered opinion, there exists no justification for deviating from this established practice.

Hon. Members, in the Standing Orders, the departmental committees have been granted latitude to investigate specified matters concerning State departments and agencies falling within their mandate at any time. Standing Order No. 216 (5) provides that:

The functions of departmental committees shall be:

- a. Investigate, inquire into and report on all matters relating to the mandate, management activities, administration, operations and estimates on the assigned ministries and departments.

This House has, therefore, charged the departmental committees with the duty of conscientiously to inquire into and report on the administration, operations, management activities and, indeed, the estimates to the assigned line ministries and departments and/or agencies. Accordingly, Standing Order No. 216(5) does not contemplate departmental committees inquiring into accounts of line ministries, departments and agencies. But the programmes and policy objectives of the line ministries/departments and agencies and the effectiveness of the implementation as part of their routine oversight function on behalf of Parliament.

Hon. Members, allow me to share with the House the conclusions of a study carried out by two parliamentary scholars, Brazier and Ram in 2006, which are instructive in this matter. The two scholars observed that the Government is accountable to the people through Parliament for raising and using public funds. They also noted that the concept of financial accountability as Parliament and since the 13<sup>th</sup> Century, the raising and use of public funds has been subject to

Parliament. Finally, the two scholars emphasised that, in modern times, one of the important function of Parliament is to hold the Government accountable for its spending of public money.

Indeed, it is a general public expectation that Parliament should keep an eye on the Government expenditure. Consequently, Parliament, through its Committees, is obligated to look for instances of misuse of public money and prescribe the necessary remedies. But that responsibility must be dispensed in accordance with the rules set out in our Standing Orders which assign different responsibilities to the various Committees of the House.

The Parliamentary Service Commission has assigned qualified and competent staff to support committees for effective and efficient running of committee affairs in line with their oversight mandates. Where this is found to be inadequate, the Parliamentary Service Commission is always amenable to suggestions for improvement. This is more so to inquiries. In addition, some committees consume the services of other agencies that are attached to Parliament, including the Office of the Auditor-General, the Controller of Budget and the Inspectorate of State Corporations. For the effective conduct of inquiries, Chairpersons and Members are expected to accord those officers the opportunity to render their advice before the commencement. During committee hearings, committees may hold preparatory meetings in this regard in order to structure their engagement with witnesses and efficiently utilise their time. This is crucial in effective interrogation and questioning of witnesses.

The existence of parallel investigations does not preclude the Committees of the House from discharging their constitutional mandate. Further, Committees have no way of dictating time lines applicable to investigations outside Parliament. This House has had an occasion to conduct various inquiries in the public interest, which culminated in evidence based recommendations and formed the basis for prosecution of cited perpetrators. It rests upon on each Committee to decide and resolve on the urgency of the inquiry they propose to undertake. But where persons who are being investigated are charged in courts of law and prosecution commences on the same matters that are substantially as the same as those before the Committee, I see no use in the particular Committee proceeding with the matter unless there is new information different from those being prosecuted in courts of law.

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

Once again, Hon. Members, those coming in, make your way in quickly. Hon. Members standing, make your way! Otherwise, you will continue standing.

With regard to chasing of headlines, (this is what Hon. Maoka Maore referred to), I note that the mandate of debating and resolving issues of concern to the people is provided for in Article 95 (1) of the Constitution. It ultimately calls upon the House to be both proactive and reactive. As highlighted to Members during the comprehensive induction programme, both the House and individual committee levels, the major issues of the business of the House are transacted before committees. The Standing Orders clearly outline the mandates of each Committee. Members have been sensitised on the need to formulate committee work plans covering their mandate for the optimal use of the time afforded by the calendar of the House. Nevertheless, a work plan cannot predict when an accident, tragedy or emergency will occur or when a whistle blower decides to come forward. Formulation of a proper work plan assists a Committee to discharge its mandate effectively in ordinary times. Since a Committee is also expected to discharge its mandate in extraordinary times, the true test of the discharge of its mandate is how well it adjusts its existing work plan to effectively navigate any matters that may

be of an urgent nature. The administrative mechanisms systems that the House has put in place have rationalised committee operations. Any inquiry that a Committee undertakes is instructed with refined reporting timelines, including requirements for submission of progress reports.

In his contribution on the point raised by the Leader of the Majority Party, Hon. Olago Aluoch touched on the apparent lack of interrogatory skills by some Members during committee meetings. While I may not entirely agree with Hon. Olago Aluoch, I do note that the art of effective interrogation is a skill acquired over time. There is no harm in Members studying how ranking Members of the House, senior legal practitioners, judges of superior courts and, indeed, their colleagues in other parliaments effectively interrogate witnesses. Members have to remember at all times that the aim of an interrogation is to bring out or reveal information relevant to the matter under consideration by the Committee. Coercion, intimidation and embracing of witnesses rarely aids in this objective.

I need not reiterate the rules relating to declaration of interests. As you will recall, upon assuming office by dint of Paragraph 10 of the Fourth Schedule to the Parliamentary Powers and Privileges Act, 2017, each one of you was deemed to have signed the code of conduct for Members contained in that Fourth Schedule of the said Act upon taking oath of office. Indeed, paragraph 6 of the code provides that:

“Members of the House shall:

- (a) Register with the relevant Speaker all financial and non-financial interests that may reasonably influence their parliamentary actions.
- (b) Before contributing to debates in the House or its Committees or communicating with State officers or public servants, declare any relevant interest in the context of parliamentary debate or the matter under discussion.
- (c) Observe any rules agreed of the House in respect of financial support for Members or the facilities of the House.”

Further, Standing Order 90 states, and I quote:

“(1) A Member who wishes to speak on any matter in which the Member has a personal interest shall first declare that interest.

(2) Personal interests include pecuniary interest, proprietary interest, personal relationships and business relationships.”

Hon. Members, these rules are self-explanatory. It is, therefore, incumbent upon every chairperson of a committee to ensure that, prior to the commencement of every meeting, that Members declare their interest in any matter falling with the agenda items of that particular sitting. At no time may you be seen as advancing a personal interest. Failure to disclose an interest creates a presumption that any contribution made to a matter under consideration by the House or a committee, however relevant, advances your personal interest as a Member.

Article 73 of the Constitution outlines the nature and responsibilities of leadership. It states, and I quote:

“(1) Authority assigned to a State officer—

- (a) is a public trust to be exercised in a manner that—
  - (i) is consistent with the purposes and objects of this Constitution;
  - (ii) demonstrates respect for the people;
  - (iii) brings honour to the nation and dignity to the office;
  - (iv) promotes public confidence in the integrity of the office; and,
- (b) vests in the State officer the responsibility to serve the people, rather than the power to rule them.

(2) The guiding principles of leadership and integrity include—



- (a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;
- (b) objectivity and impartiality in decision-making, and in ensuring that decisions are not influenced by nepotism, favoritism, other improper motives or corrupt practices;
- (c) selfless service based solely on the public interest, demonstrated by—
  - (i) honesty in the execution of public duties; and,
  - (ii) the declaration of any personal interest that may conflict with public duties.”

Hon. Members, the authority granted to you by the people of Kenya is a public trust. The manner in which you exercise this authority must reflect the dignity of the office that you hold and the people have called upon you to perform. Consequently, Members must relate with persons appearing as witnesses before the Committees at an “arms-length.” The advent of participation of the public in the processes of the House pursuant to Article 118 of the Constitution has thrust the conduct of Members in the full glare of the public like never before and, more so, when proceedings are streamed live online, or broadcast live by the various TV stations. Members must conduct themselves with utmost respect while interacting with witnesses. In this regard, while appearing before committees, witnesses should be ushered in and escorted out by the secretariat or the Serjeant-at-Arms.

*(Applause)*

Chairpersons are reminded of this responsibility to be observed at all times. Not Members escorting witnesses.

Hon. Members, as you are aware, Committees are an extension of the House whose creation is mandated by Article 124 of the Constitution. Just as failure to attend eight sittings of the House may lead to the vacation of a Member’s seat, the House thought it fit to sanction the discharge of a Member who fails to attend four consecutive sittings of a Committee without permission or sufficient reason. The Clerk of the National Assembly has put in place mechanisms for the recording and reporting of the attendance of Committee Meetings. In this regard, I am in receipt of a current report and shall request the Liaison Committee and the House leadership to review it and take action on any errant members as appropriate. Cases abound of members barely sitting through a public hearing. It is time we confronted this reality and choose to enforce order and decorum in committees.

During the ensuing debate on the point raised by the Leader of the Majority Party, the Hon. Mark Nyamita and the Hon. Charles Kilonzo queried the propriety of State or private entities funding Committee activities and whether such funding may conflict or compromise the inquiry process. As you are aware, the Parliamentary Service Commission is allocated adequate funds to facilitate the two Houses and their organs to discharge their respective mandates as provided for under the Constitution. Each Committee of the House is allocated adequate funds to enable it carry out its programmes. This is meant to insulate Parliament from external direction or control. The Office of the Clerk receives and processes requests for facilitation of Committee activities in line with the adopted work plans and budgets. Any engagement with committees outside their planned activities should be channelled through the Office of the Clerk who will review the nature of the engagement and any details related to the welfare of Members. As a rule, the House caters for all expenses relating to a matter under inquiry by a Committee to dispel

any perception of undue influence, conflict of interest or bias. Nevertheless, you will recall that the work of the House and its Committees is not limited to inquiry. The Executive may, on its own motion, wish to engage the House or its Committees in consultation on matters of policy or review ongoing programmes and activities. In this regard, co-funding such an engagement is permissible as long as the relationship is maintained at “arms length”. My Office and that of the Clerk shall consider any such requests from the Executive and private entities and use our discretion, on a case-by-case basis.

Hon. Members, of late, some Committees seem to have many non-committee Members, commonly referred to as ‘friends of committee’. Indeed, in some instances as alluded to by the Leader of the Majority Party and other Members, these ‘friends’ have adopted the behaviour of the proverbial camel. The camel begged and received permission to insert only its nose into a traveller’s tent, but proceeded to insert its entire body and subsequently evict the traveller from his lodging. There is no bar to non-committee Members attending the proceedings of a Committee. Indeed, Standing Order 195 allows this, only barring non-committee Members from voting. Members would refrain from attending the meetings of other Committees in previous Parliaments despite this permission. The scenes recently witnessed where Committee Members are outnumbered by their ‘friends’ to the extent that they lack sitting space and adequate time allocation to prosecute their mandate are unfortunate and unacceptable. This is an abuse of the spirit of Standing Order 195 and has cast the House in very negative light with regard to the seriousness and decorum of Committee proceedings. Consequently, to remedy this, I, therefore, direct that the Clerk of the National Assembly immediately put in place administrative measures to reserve marked sitting places for each committee member at any meeting properly convened. It shall be upon each chairperson to determine the number of non-committee members to participate in a committee sitting at any given time, taking into account the available sitting space.

*(Applause)*

In light of the fact that all Members have the opportunity to discuss any matter reported to the House by a Committee, Chairpersons of Committees shall give priority to Committee Members in examination of matters before the Committee, including asking questions and a non-committee Member may only speak with the permission of the Chairperson and may be ordered to withdraw from the committee sitting for disorderly conduct. Further, a non-committee Member is not permitted to sit in the Committee during the internal sittings of the Committee, including the pre-inquiry sittings, confirmation of minutes or report writing meetings.

It has come to my attention also that some Committees are insistent on Cabinet Secretaries appearing before them in person to answer queries directed to the ministry.

I am fully cognisant of the provisions of Article 153(3) and (4)(b) of the Constitution which oblige a Cabinet Secretary to attend before a committee of the National Assembly when required by the Committee and, answer any question concerning a matter for which the Cabinet Secretary is responsible and provide Parliament with full and regular reports concerning matters under their control, respectively. Nevertheless, Hon. Members, Committees ought to be alive to the possibility that awaiting the eventual appearance of a Cabinet Secretary to answer all queries in person may prejudice the effective discharge of their mandate. In this regard, I urge Committees, on a case-by-case basis, to consider allowing either the Principal Secretary or any senior officer of a ministry, to attend and answer queries where the personal attendance of the Cabinet Secretary can be excused. Indeed, technical officers are the best placed to respond to

issues of technical nature. However, this is not a blanket excuse to Cabinet Secretary's appearance before Committees when required to appear.

As I conclude, the House is reminded that the Constitution places strict obligations on the conduct of Members in the discharge of their role as leaders. Parliament is under constant scrutiny. Committee meetings are open to the public and proceedings are now streamed live online and on television sets. The actions, comments, body language, gestures and even grooming of Members is under constant evaluation by the people of Kenya. The partial or indecorous conduct of an individual Member or a Committee of the House is deemed, by extension, as the conduct of the House. Let us strive to do better and uphold the dignity of the House.

In summary, I direct the following:

One, it rests upon each Committee to decide and resolve on the urgency of the inquiry they propose to undertake if an investigative agency is conducting a parallel investigation. Where prosecution has preferred charges on individuals of interest to a Committee on matters similar or substantially similar to those before it, the inquiry before the Committee should be suspended, but not stopped. Any further inquiry may only proceed with the leave of the Speaker.

Two, prior to the commencement of every meeting, every Chairperson must require that Members declare their interest in any matter under consideration.

Three, Members should relate with persons appearing as witnesses before Committees at "arms-length". In this regard, while appearing before a Committee, witnesses should be ushered in and escorted out by the secretariat or the Serjeant-at-Arms. Members should also endeavour to avoid making any contacts with witnesses prior to or during hearings.

Four, as a rule, the House shall cater for all expenses relating to a matter under inquiry by a committee. Any proposal by any organisation to co-fund a committee activity should be treated with caution. If such co-funding or funding shall be considered necessary, requests should be directed to the Office of the Clerk for review and approval on a case-by-case basis.

Five, the Clerk of the National Assembly immediately put in place administrative measures to reserve marked sitting places for each committee member at any meeting of a committee.

Six, it shall be upon the Chairperson of a Committee to determine the number of non-Committee members, the so called "friends", to allow to participate in a Committee sitting at any given time, taking into account the available sitting space and convenience of the Committee.

Seven, a Chairperson of a Committee shall give priority to Committee members in the asking of questions in a Committee sitting. In this regard, a non-Committee member may only speak with the permission of the Chairperson. That is after the Chairperson has determined that the members of the Committee may not be desirous of asking further questions.

Eight, a Chairperson shall report to the Speaker any incident where a non-Committee member grossly misconducts him or herself during a Committee sitting for disciplinary action in the House.

Nine, forthwith, contravention of Standing Order No. 86 that prohibits premature reference to proceedings before Committees constitutes an act of gross disorderly conduct pursuant to Standing Order No. 107A(1)(i); attracting suspension or discharge from a Committee.

This includes taking of photographs and posting them on various social media sites through WhatsApp and such like platforms.

Ten, Committees should consider allowing either the Principal Secretary or a senior officer of a ministry to attend and respond to queries where the personal attendance of a Cabinet Secretary can be excused, save for examination of matters before the audit Committees; the Public Accounts Committee, the Public Investments Committee and the Special Funds Accounts Committee where accounting officers must appear in person to respond to audit queries as required by law.

The House is so guided. I thank you.

*(Applause)*

Yes, the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, this is one of the Communications that you will be remembered for. It has brought sanity and order to how we conduct our business. I just want the Office of the Clerk to produce as many copies of that Communication as possible and give it to Chairs of Committees and their Clerks. Every other Member can pick it from the Table Office or the reception so that each and every Member of this House can internalise. We thank you for that Solomonic Communication which you have done many times. I am sure this one took long and, Members, Chairs, even the media and the public should pick a copy and see how things can be done in Parliament.

**Hon. Speaker:** Hon. Maore.

**Hon. Maoka Maore** (Igembe North, JP): I also put forward a very strong statement of gratitude to that ruling. I wish to say that it has nearly rewritten the Speaker's Handbook. When I raised the matter, there was a lot of negative excitement. It dangerously put the House in a bad light by the fact that it was on live television. Members did not discover that I was covering their nakedness. Instead, they want to put it on the face and boast about it. So, I appreciate the fact that you have gone through all details and given the procedures and the traditions of what a Parliament should be. Indeed, for the many of us who have enough experience of visiting many countries in the Commonwealth and know about the conduct of Parliament, it is the conduct that is called "august", not the institution. It is the conduct of a Member. I thank you very much for changing the direction the House had taken. I remember I was there when Members were cosy and jumping on the witnesses. I am glad to notice my conduct. I stared at the space and the negative corner where that scene was happening and moved out. I knew it was inappropriate, immoral and unethical.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Wamalwa, do you also have an intervention?

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Speaker. The Communication you have given is very critical. It will be nice if we can extend some of the issues you have said to the Committee that is in charge of the Standing Orders so that they can be incorporated, particularly when it comes to Members' attendance of Committees. You find some Members never attend committee proceedings. We lack quorum. So, there should be a framework where those people can be discharged from that committee instead of increasing numbers and they are nowhere. This must find itself in the Standing Orders and with the chairs who are the representatives of committees. They should know they have powers to send someone out in case of misbehavior. We have seen some committees whose chairs are so lenient that they cannot control members. Maybe, some of them did not know that they have powers. It is an extension of the Plenary and they have powers like yours when you are seated there.

I thank you.

**Hon. Speaker:** I will encourage chairpersons of committees not to be scared of being impeached by their members and continually report infractions within committee meetings. The issue you have raised is actively being considered during the proposed retreat in about two weeks' time.

Hon. Members, I want to draw your attention to a Report that was tabled by the Leader of the Majority Party, because not many Members may have paid attention. It is the Report to the National Assembly on the Kenya Defence Forces (KDF) Deployment to the Solai Dam Disaster and the Gikomba Fire Incident. I want Members to get a copy of that Report, because this is the first time, following the provisions of Article 241(3) of the Constitution, such a Report has been tabled in the House. That Article allows the KDF to collaborate with other bodies and civil agencies in situations of emergency and disaster. It is important that we should all familiarise ourselves with it. Possibly, the committee responsible will be studying it and bringing a report. But it is fair that all Members have a look at it.

## STATEMENTS

Let us have the Member for Cherangany.

### IMPLEMENTATION OF EGMS TENDER BY KRA

**Hon. Joshua Kutuny** (Cherangany, JP): Thank you, Hon. Speaker. I wish to make the following Statement. From 1<sup>st</sup> August 2018, Kenyans will be forced to pay more money to sustain a Kshs17 billion tender, the Excisable Goods Management System (EGMS), that was awarded to SICPA Security Solutions (SA) Ltd, a Swiss company awarded a tender to affix tax excise stamps on all local manufactured or imported essential goods, that is, bottled water, juices, soda and non-alcoholic beverages and cosmetics. This is meant to curb counterfeits and ease traceability of goods. The same stamps that KRA is trying to implement through EGMS have already been fitted by KEBS: stamps to curb counterfeits and ease traceability. To illustrate that, if you see this bottle of water, down here, there is a KEBS stamp. KRA wants to also affix another stamp on the top of every bottle of water.

The EGMS Tender Number KRA/HQS/DP423/24/2015/EGMS3 was awarded by KRA to SICPA Solutions Ltd through single sourcing. The Kshs17 billion tender was awarded through single sourcing. The company is alleged to be facing a probe related to taxes in Brazil, Albania and Morocco. The EGMS requires manufacturers of excisable goods to pay SICPA Kshs1.50 for every stamp attached to every item. On an average, the bottles that run through the production lines of all manufacturers in a day are 30,000, meaning that SICPA will be collecting Kshs45 million per day. This is money that will be repatriated to Swiss. In a month, SICPA will be making Kshs1.2 billion and a total of Kshs16 billion in a year. With a contract running for five years, SICPA will reap Kshs81 billion in a tender originally negotiated for Kshs17 billion. This is a monumental rip-off.

Hon. Speaker, to prove my assertions and the issue that I am raising, it is important to note that the first tender on the same matter, that is, Tender Number KRA/HQS/060/2010/2011/EGMS1 was issued in 2011 and terminated for lack of funds. The same was re-issued under tender number KRA/HQS/060/ICPE/037/2011/2012/EGMS2 in 2012 at a cost of Kshs4.8 billion, and then terminated again in 2015 on grounds it could not cover the

extended scope of excisable goods. KRA then initiated a Tender Number KRA/HQS/DP/423/2014/2015/EGMS3, a direct procurement involving negotiation with the same tenderer who had bid and was awarded the first two tenders.

It is also important to note that Legal Notice No.164 which was issued by the Commissioner-General on 2<sup>nd</sup> July 2018 will push prices of fruits, juices and vegetable juices from Kenya Shilling per litre to Kshs50 cents starting 1<sup>st</sup> August. This is against Article 43 of the Constitution that guarantees Kenyans access to clean and safe water. KRA has announced the rolling out of this stamp affixing. Surprisingly, on Monday this week, KRA issued a statement excluding Coca-Cola and other multinational companies and conglomerates from this programme, giving them a grace period of three months, but it is being imposed on locally manufactured goods and local companies.

Hon. Speaker, the 11<sup>th</sup> Parliament ordered KRA to stop implementation of EGMS until a forensic report by the Auditor-General is concluded and a final determination made by the House. I have appeared before PIC today, which is still looking into the matter; it is not yet concluded. Finally, I requested the Committed on Delegated Legislation to report to this House if the EGMS Regulations, 2017 have been approved by Parliament as required by the Statutory Instruments Act.

Hon. Speaker, the purpose of this statement is to request, through the Speaker, that PIC, which is investigating this matter, to prevail upon the Treasury to put on hold forthwith the implementation of EGMS until the Committee concludes investigations on the procurement of SICPA to implement EGMS.

I thank you, Hon. Speaker.

**Hon. Speaker:** I think to the best of my knowledge, that matter was transferred at some point in the 11<sup>th</sup> Parliament to PIC and it was advised to seek a special audit, as I have indicated in my earlier communication. The PIC issued what they called “an exit report” at the tail-end of the 11<sup>th</sup> Parliament. It was, therefore, incumbent upon the new Committee to take over the matter and conclude it and bring a report to the House. A matter of this nature does not have to await the full completion of consideration of other reports by other agencies. You are dealing with a special audit report. So, PIC, whose Chairman I can see is in the House – even though the Speaker has no eyes, he is able to see – is requested to move with speed and bring to the House your consideration of that matter. The related matter on the current ones should be considered by the Committee on Delegated Legislation and table a report as would be appropriate.

Hon. Nassir, the Chair of PIC, do you want to say something?

**Hon. Abdullswamad Nassir (Mvita, ODM):** Thank you very much, Hon. Speaker. I wish to confirm that Hon. Kutuny was with us today and he provided a lot of in-depth information. We were together with representatives of the Office of the Auditor-General. The report the Office of the Auditor-General has prepared is more of a skeleton, because the information that Hon. Kutuny has been able to present to the Committee today has more flesh in it. We had planned and we even invited the Commissioner-General to appear before the Committee this coming Tuesday. However, he has written to us and requested that he comes on the 7<sup>th</sup> of August. With your permission, from the 7<sup>th</sup>, if we can be given 10 days where we will insist on the importance so that we can table a proper report, the Committee will sit and interrogate every single person that is involved.

However, we need your guidance on this particular matter. Hon. Kutuny was right on what he stated. I am looking at it from face value based on every single document that we have. There are a lot of flaws in the tendering process of EGMS. Hon. Kutuny’s request was for a

possibility where Parliament could put on hold this system from going on until further on. I have informed him, and I will request the Clerk, that the letter that will be sent to the Commissioner-General is that the Committee's advice is that this be put on hold until that report is adopted by Parliament. We stand guided on the way forward on this particular matter. However, I do stand with Hon. Kutuny; that, on the face value of whatever we have, it is imperative that KRA does not surcharge Kenyans this tax, which is going to be a big shame in this country.

**Hon. Speaker:** The Chair of the Finance Committee is in the House. Ordinarily, a statement of this nature cannot form the subject of debate but, in view of the issues raised by Hon. Kutuny, it would be important if the Chair of Finance is aware of the new legal notice. If it purports to come by way of statutory instruments, which is the only way it can be implemented, then it has to be gazetted and, within seven days of the gazetting, be tabled before this House. Otherwise, it will be offending Article 94 of the Constitution that clearly provides that no body or authority has power to make provisions having the force of law in Kenya except Parliament.

Chair of Finance, are you aware of this new notice? I do not want members of PIC to begin discussing this because I would want the Committee to consider the matter. I am satisfied with what the Chair has explained. Chair of Finance, are you able to shed more light? Hon. Kutuny has raised a weighty matter. It is only fair that all relevant committees that may have interacted with the issues he has raised, particularly the current legal notice... Chair of Finance, are you aware of this particular one?

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Speaker, thank you very much for giving me this chance to comment on this weighty issue. This particular notice is not new to me but it has not been brought to our Committee. We have never seen it. I am just aware just like any other Member of Parliament or member of the public in terms of the normal way Kenyans debate these kinds of issues. Your comment about it is very important. The way so many issues, especially touching on taxation and other charges, have been prosecuted in this country, is not very good. Members of the public have really wondered. Sometimes, they are threatened with charges, not only taxation. It includes so many impending issues which prohibit...

**Hon. Speaker:** Hon. Limo, I do not want a debate. It is good that you have said you have not interacted with the said legal notice. I can see that the Chair of PIC still wants to say something on it.

**Hon. Joseph Limo** (Kipkelion East, JP): Thank you, Hon. Speaker. I stand guided. I just want to say that we have not seen it. This is just one of the issues that prohibit business in the country, like charges which are now being levied by banks without passing through this House. This House is a legislative House and we have to stop the way people operate in this country without passing through this House. This House has to stamp its authority.

**Hon. Speaker:** Absolutely. Indeed, Hon. Members, it is fair that we familiarise ourselves with Article 94. No person, body or authority has power to make provision having the force of law in Kenya except Parliament. So, if something is being done out there which has semblance of being a law and has not passed through this House, it is subject of being declared null and void. It is only fair that the Executive and any other body should familiarise themselves with that constitutional provision. If you are purporting to impose something that appears to be legal, you are telling a person to do something because there is a rule which has been prescribed, it has the force of law, and if you do not do it, certain consequences visit you; that is, something that has force of law. If it has not come through this House, it is null and void.

Those of you who deal with matters of finance and subsidiary legislation must not wait for things to happen. Check and bring things here. If they have been made to have force of law

on Kenyans without being sanctioned by this House, we must take them to where they belong. The House can, on recommendation of our committees, declare them null and void. In fact, under the Statutory Instruments Act, we can void them.

Hon. Nassir, you wanted to say something.

**Hon. Abdullswamad Nassir** (Mvita, ODM): Thank you, Hon. Speaker. I would like to pass some information to my fellow Chair. I was a member of the last PIC of the 11<sup>th</sup> Parliament. When KRA raised this matter and realised that there was a big blunder, they did bring a request for it to go to the Committee on Delegated Legislation. However, the matter was brought at a time when Parliament was dissolved. We did not have Members at that particular moment.

Hon. Speaker, I stand to be corrected but that is the information that I have. I have not even seen the document but today morning, when I was interrogating this matter, the information that I got was that they brought it. However, it has not even reached the desk and I have not seen this document.

Hon. Speaker, this is something that I have raised with you and I am hoping that this House needs to set an example. When we see things are hefty like this and people are breaking laws to this magnitude, please, do allow us to invite part of the rightful friends of the Committee. We would like to set an example by inviting the Director of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC) to sit there. So, that these people who are taking Kenyans for a ride when they leave the corridors of this very Honourable House, they will leave not just with a suit and tie, but with handcuffs as well. This is the right way that this House needs to set an example to every single person that we can and shall ensure that we protect Kenyans.

**Hon. Speaker:** Unfortunately, you may have to go to a neighbouring jurisdiction for you to go that route. People who are appearing before you must still walk out in their ties and *kanzus* and everything else that they will be wearing because the Committee reports must be adopted by the Plenary. So, now, if you go discussing a few things then you start telling people to remove their ties and shoes, you will be adopting a procedure unknown to this House. Unless you change your rules and to some extent some provisions of the Constitution, it may not happen very soon. So, allow them to continue wearing their shoes, ties, suits and all. Until you have made a final finding, it will not be the right way under our rules.

Hon. Wamalwa what did you want to say on this.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): Thank you, Hon. Speaker. This matter, as my Chair has rightly put it; was in the last Parliament. Going back to the Statutory Instrument Act, you have guided us many times that the implementing agency, once the regulation has been gazetted, then it comes into practice. They can continue implementing afterwards when Parliament discusses it, it can be stopped if it is nullified. Today, when Hon. Kutuny was appearing before our Committee - and you know I am a good student - I was guiding the way you have been guiding the Plenary; that it is not a must that that regulation must be discussed from the Floor of the House. The Kenya Revenue Authority (KRA) can exercise discretion and implement. Maybe, it is the responsibility now of the Departmental Committee on Delegated Legislation to know whether this regulation was submitted to Parliament to be looked into. Hon. Kutuny indicated, just like my Chair, that this particular regulation has not been submitted as we speak as at now. The matter that Hon. Kutuny has raised is critical particularly to the consumer. Obviously, this extra cost is being carried forward to the consumer and making the prices to be high due to inflation.



This is something we need to move with speed and resolve so that we can protect the consumers. Thank you.

**Hon. Speaker:** The requirement is that within seven days after gazettelement, the regulations must be tabled before the House. If they have not been tabled, even if they have been gazzetted, then they have no force of law. It is only after tabling in terms of the Statutory Instruments Act; it is only after tabling within the period of seven days that they can assume some force of law until annulled or otherwise dealt with by the House. The Statutory Instruments Act provides that anything done on the authority of such subsidiary legislation that has been tabled is legal until annulled. So, Hon. Gitonga Murugara, you wanted to say something on the same?

**Hon. George Gitonga (Tharaka, DP):** Thank you Hon. Speaker. Those regulations were brought to the attention of the Departmental Committee on Delegated Legislation. Unfortunately, the Chairperson and his Vice-Chair are not here. However, I can speak on their behalf. Last week, these regulations were brought to the attention of the Members of the Committee and we questioned whether this had been brought before Parliament and whether the Committee had approved. Today, we had a meeting and raised that issue again. These regulations that appear to be in force, when were they brought before Parliament? Have they ever been approved? We were informed that part of the eight subsidiary legislations, some of which were tabled last week, could be possibly part of that. However, we did not confirm and we have asked the secretariat to ensure that those regulations are brought before the Committee, looked at speedily and, if procedure was not complied with as per the Statutory Instruments Act, we would definitely annul them because we believe this is somebody who is trying to enforce some illegality through the backdoor. So, we are looking into that. We shall move with speed and possibly a report will be coming to this House annulling those regulations.

Thank you, Hon. Speaker

**Hon. Speaker:** Thank you very much. Member for Mbeere South.

**Hon. Geoffrey Muturi (Mbeere South, JP):** Thank you, Hon. Speaker. I rise to make a Statement on the allocation of Land in the Mwea Settlement Scheme in Mbeere South Constituency in Embu County. This is not to be confused with Mwea Irrigation Scheme which is in Kirinyaga County.

#### ALLOCATION OF LAND IN MWEA SETTLEMENT SCHEME IN MBEERE SOUTH CONSTITUENCY

Hon. Speaker, Pursuant to Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Lands regarding the allocation of land in Mwea Settlement Scheme.

Hon. Speaker, allow me to lay a brief historical background on the issue as follows:

- (i) Mwea Settlement Scheme LR No. 26461 FR No. 317/30 of approximately 17,830.60 hectares as per Kenya Gazette Notice No. 577 under Cap 288 of 30<sup>th</sup> January, 2004 is located in Makima Location, Mbeere South Sub-County, Embu County in Kenya. It is part of the larger Mwea Trust land which comprises of Mwea Game Reserve, Mwea Settlement Scheme, Karaba, Wachoro, Makima and Riakanau.
- (ii) The challenges facing administration of Mwea Land date back to the 1970s. Multiple court cases and orders from Mbeere, Kamba, Embu and Kikuyu

communities served to the Ministry of Lands, National Land Commission (NLC), the County Government and their officers had hindered issuance of title deeds in the area.

- (iii) Various Taskforces and Commissions have been formed over the years to resolve the problem without success. They include:
  - (a) Akello Taskforce of 1990
  - (b) J. Chesoni Commission of 1995; and,
  - (c) Tuang'a Verification Taskforce of 2001.
- (iv) The National Assembly Departmental Committee on Lands also made attempts to address the matter in 2013, and eventually resolved that the adjudication of Mwea Settlement Scheme should be done and all pending court cases be expedited.
- (v) The NLC, County Government of Embu, local leaders and elders representing each community group in the area embarked on an Alternative Dispute Resolution mechanism from 2013 to 2016, in which they resolved to share the land as follows: Mbeere community 40 per cent; Embu community 20 per cent, Kamba community 30 per cent and the Kikuyu community 10 per cent.

Each community subsequently submitted a list of their beneficiaries to the National Lands Commission (NLC). Following those successful negotiations, the then pending court cases were withdrawn and a consent was recorded in court paving the way for the planning, surveying, allocation, registration, issuance of titles, beaconing and those processes were completed peacefully and finally resettlement.

Hon. Speaker, during the resettlement exercise, there was a major disruption from a hostile group of young people who tried to block the title holders from accessing their parcels. This led to a violent confrontation between the youths and the security forces which led to a loss of one life and several injuries and, thereafter, the suspension of the resettlement exercise by the Ministries of Lands, Physical Planning Department and the Ministry of Interior and Coordination of National Government. At present, there has been displacement of beneficiaries and unidentified persons from outside the county are now forcefully taking over the parcels of land in unclear circumstances.

Hon. Speaker, the Statement from the Chairperson should inform on the following:

- (a) When are the Ministries of Lands and Physical Planning and Interior and Coordination of National Government going to resume the resettlement exercise?
- (b) Whether the two ministries are aware that illegitimate groups have hijacked the settlement process with the hope of being included as beneficiaries and have illegally started taking occupation of portions of land by moving in and constructing make-shift structures at the expense of legitimate title holders.
- (c) Whether the two ministries are aware that the legitimate land owners are mobilising themselves to defend their land from infiltration and may forcefully enter the land to resettle themselves to avoid the impending displacement by the infiltrators.
- (d) What measures are being put in place by the Government to forestall any potential violence among the various groups mobilising to either take over or defend the land?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Leader of the Majority Party wants to give a Statement. I have seen there is someone who wants to comment on this. The Member for Kangundo, Hon. Fabian.

**Hon. Fabian Muli** (Kangundo, Muungano): Thank you, Hon. Speaker. On this issue of land regarding Mwea--

**Hon. Speaker:** Sorry, this is not a Petition, and is not subject to comments and clarifications. It is a request for a Statement from the Chair of the Departmental Committee on Lands. Let us have the Chair of Lands. She has already left because she assumed business is over for the week. Then, the Leader of the Majority Party can relay his Statement.

It seems the Member has given a long history. I cannot expect that Statement to be issued in a week's time. This kind of Statement will require the Chairperson and Committee to perhaps look at it. If they will just seek information from other Government agencies, then this can be done within 30 days.

**Hon. Members:** Two weeks.

**Hon. Speaker:** Very well. Two weeks. The Leader of the Majority Party, proceed.

BUSINESS FOR THE WEEK COMMENCING 31<sup>ST</sup> JULY TO 2<sup>ND</sup> AUGUST, 2018

**Hon. Aden Duale** (Garissa Township, JP): Thank you, Hon. Speaker. Pursuant to Standing Order 44(2)(a), I rise to give the following Statement on behalf of the House Business Committee (HBC) that met on Tuesday this week at the rise of the House to plan for business that will be considered today and Tuesday next week.

On Tuesday, the following Bills are scheduled for debate at Second Reading:

- (1) The Statute Law (Miscellaneous Amendments) Bill, National Assembly Bill No. 12 of 2018);
- (2) The Sacco Societies (Amendment) Bill, 2018;
- (3) The Warehouse Receipts System Bill, 2018; and,
- (4) The Health Laws (Amendment) Bill, 2018.

On all these pieces of legislation, the respective Committees have tabled their reports. I urge the Departmental Committee on Administration and National Security to expedite the consideration of the nominee for appointment to the Public Service Commission as Chair and table their Report on or before 1<sup>st</sup> August 2018.

On Questions, before Committees, the following Cabinet Secretaries are scheduled to appear on Tuesday, 31<sup>st</sup> July 2018:

- (a) The Attorney-General of the Republic of Kenya will appear before the Departmental Committee on Justice and Legal Affairs to answer Questions from Hon. Ndindi Nyoro, at the Mini Chamber County Hall at 10.00 a.m.
- (b) The Cabinet Secretary for Public Service, Youth and Gender, Hon. Margaret Kobia, will appear before the Departmental Committee on Labour and Social Protection at the Main Chamber, Parliament Buildings, at 10.00 a.m. to answer Questions from the following Members:
  - (i) Hon. Michael Muchira.
  - (ii) Hon. Naisula Lesuuda.
- (c) The Cabinet Secretary for Agriculture, Hon. Kiunjuri will appear before the Departmental Committee on Agriculture and Livestock to answer Questions from Hon. Benjamin Washiali at the Mini Chamber, County Hall at 11.30 a.m.

Finally, the HBC will reconvene on Tuesday, 31<sup>st</sup> July 2018, at the rise of the House to consider business for the coming week. I wish to lay the Statement on the Table of the House.

Thank you, Hon. Speaker.

**Hon. Speaker:** Next Order!

## MOTION

REPORT ON THE VETTING OF NOMINEES FOR APPOINTMENT AS CHAIRPERSON  
AND MEMBERS OF THE COMMISSION ON ADMINISTRATIVE JUSTICE

THAT, taking into consideration the findings of the Departmental Committee on Justice and Legal Affairs in their Report on the Vetting of the Nominees for approval as Chairperson and Members of the Commission on Administrative Justice, laid on the Table of the House on Wednesday, July 25, 2018, and pursuant to the provisions of Article 250(2)(b) of the Constitution and Section 11(7) of the Commission on Administrative Justice Act, this House approves the appointment of the following persons to the Commission on Administrative Justice:

- (i) The Hon. Florence Kajuju - Chairperson
- (ii) Mr. Washington Opiyo Sati - Member
- (iii) Mrs. Lucy Kamunye Ndung'u - Member

*(Hon. William Cheptumo on 25.7.2018)*

*(Resumption of Debate interrupted on 25.7.2018 – Afternoon Sitting)*

**Hon. Speaker:** Hon. Members, before we proceed, allow me to recognise the presence, in the Speaker's Gallery, of students from the following institutions:

- (i) Malaa Secondary School, Mbooni Constituency, Makueni County; and,
- (ii) Arya Secondary School, Starehe Constituency, Nairobi County.

They are all welcome to observe the proceedings of the National Assembly this afternoon.

**Hon. Benjamin Washiali** (Mumias East, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. Washiali, what is your point of intervention.

**Hon. Benjamin Washiali** (Mumias East, JP): Hon. Speaker. I rise to comment on Order No.8. We followed this debate the entire of yesterday's afternoon Session. By the time the debate ended, Members had started repeating themselves. Therefore, I request the House under Standing Order No.95 that the Mover of this Motion be called upon to reply.

**Hon. Speaker:** Hon. Members, the proposal by the Whip of the Majority Party is that the Mover be called upon to reply. For me to do that, let me put the Question.

*(Question, that the Mover be now called upon to reply, put and agreed to)*

Let us have the Mover.

**Hon. William Cheptumo** (Baringo North, JP): Thank you, Hon. Speaker. I wish to, very sincerely, thank the Members of this House for their contributions in support of this Motion. Yesterday, all Members who contributed supported this Motion and supported the Committee's recommendation for the approval of the three nominees for appointment.

One issue which I noted during the debate was that there is need to establish offices of this Commission in all the 47 counties. As it is now, there are about five counties where this Commission is present. Even as we approve the appointment of the chairperson and the members

of this Commission, I appeal to them that there is need to establish, in every county, offices for the Commission. I would like to call upon my colleagues that even as we interact with our constituents, we request them to understand the position that we have taken as a House.

I really thank Members of this House. Hon. Speaker, I thank your office and that of the Clerk for the support they gave the Committee during the vetting process. May I also thank Members of the Committee in this House for supporting this Motion.

I beg to reply.

**Hon. Speaker:** Hon. Members, having confirmed that the House has quorum, I, therefore, propose to put the Question.

*(Question put and agreed to)*

Hon. Members, this is for the purpose of information. At the request of the Chairperson and membership of the Departmental Committee on Environmental and Natural Resources, which is currently in Lamu County, the business appearing as Order No. 11 is taken out because the members of the committee are not around. They have some engagements in the County of Lamu. So, the business appearing as Order No. 11 is taken out of the Order Paper.

Next Order!

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

### IN THE COMMITTEE

*[The Temporary Deputy Chairman (Hon. Patrick Mariru) took the Chair]*

#### PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL

Hon. Members, we are now in the Committee of the whole House. We are dealing with the Public Private Partnerships (Amendment) Bill 2017. It is not a very lengthy Bill. It has 16 clauses. Just have some little patience and we are done with this particular Bill. We shall start now.

*(Clause 3 agreed to)*

*Clause 4*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have the Chairman of the Departmental Committee on Finance and National Planning. It seems there is an amendment on that one.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 4 of the Bill be amended by deleting the proposed new section 3A and substituting therefor the following new section—

Exemption.

3A. The provisions of the Public Procurement and Asset Disposal Act, 2015 shall, be exercised subject to the relevant provision of this Act and apply to contracts under this Act only in the event where there is no express provision setting out the applicable procurement procedures under this Act.

Hon. Temporary Deputy Chairman, the import of this is that under the PPP projects, the procurement procedures which are in the Public Procurement and Asset Disposal Act shall be exempted from applying to this when there is express procedure relevant to PPP so that it does not become like a blanket for PPP. It is because it is a very special way of procurement and not the normal procurement process.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Limo, I think you have moved the amendment. I had an indication that you actually wanted to drop that particular amendment. However, if that is the case, we shall proceed. Chairman, could you just confirm that?

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, the initial Bill was amended again. That is why it is sending some wrong signals that we intend to withdraw the amendment. Initially in the Report, we had proposed to carry it the way we have proposed it but, after further consultations with the National Treasury, the original intention to amend it was dropped. Therefore, section 3(A) shall read as follows: “The Public Procurement and Asset Disposal Act, 2015 shall not apply to the contracts under this Act.”

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Be clear, Hon. Chair. Can we proceed as you have proposed?

**Hon. Joseph Limo** (Kipkelion East, JP): Yes.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is out of order, Hon. Millie?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman, for giving me this opportunity to contribute. With due respect, it is not important to have an agreement between you and the Chair. Members need to be clear on what is going on. What the Chair of the Committee has read is not in the Order Paper. If he is seeking to amend further what is in the Order Paper, then he needs to do it formally. He cannot move amendments in a *jua kali* manner. It does not matter whom he has consulted with. He has the powers as the Chair. If he is moving further amendments, he can do it here. But he needs to do it in a manner that is procedurally acceptable.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us do this, so that we are clear. The Chair has proposed some amendments. I have to propose that amendment and then he will have the Floor to explain further.

*(Question of the amendment proposed)*

Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, the Chair of the Departmental Committee on Finance and National Planning is not moving a further

amendment. He has moved the new Section 3A which is there in the Order Paper. It says that the provisions of the Public Procurement and Asset Disposal Act, 2015, shall be exercised subject to the relevant provision of this Act and apply to contracts under this Act, only in the event where there is no express provision setting out the applicable procurement procedures under this Act.

The variance between what the Committee had and the National Treasury is that the Public Private Partnerships (PPP) contracts will still be subjected to the Public Procurement and Asset Disposal Act. However, where a provision is not found in the Public Procurement and Asset Disposal Act, 2015, then the National Treasury will have the discretion. That is the only thing. It is what is in the Order Paper. The Chair needs to explain that in a better way to Hon. Millie and the rest of the House.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, what the Chair read is in the original Bill. So, that means that he is withdrawing the amendment. Section 3A in the Bill says that the Public Procurement and Asset Disposal Act, 2015 shall not apply to the contracts under this Act. That is what he read. If that is the case, he is withdrawing the amendment.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Leader of the Majority Party. I am sure the Chair is getting what the Members are explaining.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Nyikal, Clause 4 of the Bill is being amended by the Chair by deleting the proposed new Section 3A and substituting therefor with the new section which he has moved.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): That is clear now. I will now proceed to put the Question.

*(Question, that the words to be left out be left,  
put and agreed to)*

*(Question, the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 4 as amended agreed to)*

*(Clauses 5 and 6 agreed to)*

*Clause 7*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chair, move the amendment and explain its import, so that the Members can understand.

**Hon. Joseph Limo** (Kipkelion East, JP): I withdraw this amendment. After proposing this amendment, there were further consultations between the Departmental Committee on Finance and National Planning and the National Treasury. We proposed that this particular amendment in Clause 7 be withdrawn. There was a proposal to do away with PPP Committee but it was again reversed because that it is very important. Therefore, we are proposing to withdraw this amendment.

*(Proposed amendment to Clause 7 by Hon. Joseph Limo withdrawn)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is it, Leader of the Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): One of the reasons Hon. Millie and Hon. Nyikal are uncomfortable is because the Chair did not internalise these amendments. The import of this amendment is to bring on board the role of county governments. It says that the clause will be amended by inserting the words “in consultation with county governments” immediately after the words “Cabinet Secretary shall”. This proposed separate amendment by the National Treasury says that there must be the element of county government in consultations. For example, if you want to privatise the sugar sector in Kenya, there is no way you can do it and get investors without consulting the current county governments. Chair, am I right?

**Hon. Joseph Limo** (Kipkelion East, JP): Yes.

**Hon. Aden Duale** (Garissa Township, JP): It is as simple as that.

**Hon. Joseph Limo** (Kipkelion East, JP): Initially, the consultation was between the PPP Committee and the county governments. There was a proposal to do away with the PPP Committee. We had to bring an amendment to say that the Cabinet Secretary is the one who will consult county governments.

Now that we are bringing back the PPP Committee, then there will be no need of carrying the initial amendment to bring in the Cabinet Secretary. Right now, we are going back to the PPP Committee. So, we have to delete the clause to remove the role of the CS in consulting county government. That is the import of this amendment.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I shall give a chance to two Members to contribute then we can proceed. Hon. Millie Odhiambo.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I have two major concerns. One, when the Chair moved, he gave the reason why he is withdrawing the amendment. So, if we were to go by that, it means we are not even going to discuss the substance.

On the other hand, Hon. Duale is discussing the substance, meaning in a way, he is opposing what the Chair is doing. He is insisting on the original amendment by the Committee, from my understanding, So, that is my first concern because the Chair said he is withdrawing the amendment. If he is withdrawing it, it means the proposed amendment on the Order Paper is actually withdrawn. So, he needs to clarify what he is saying.

Secondly, my other concern is that the Chair referred to Clause 7. When the Members around me and I look at it, we wonder whether we have the same Order Paper. The Clause 7 I have does not make any reference to what the Chair of the Committee and Hon. Duale are talking about. It is a totally different thing. It is on Page 844. It does not seem to have the same things they are talking about. It is a totally different thing in the clause.

This is a technical level. It is actually the law-making part of Parliament. It is unfortunate that many Members run away at this point. This is the law-making part. Because it is the law-making part, Hon. Temporary Deputy Chairman, you need to be patient with Members and sometimes refer to pages and clauses.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Millie, on that one, it is important you have said that so that we are even clear on the page. It is on Page 846 on the Order Paper. The one you are referring to on Page 844 is a new clause. So, you should refer to Page 846. Please, proceed.



**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I have noticed that it is a new clause, thank you. I stand guided. Having said that, that is why it is important for us to move slowly and sometimes even refer to pages. We are at Page 844 with a New Clause 7 and Page 846 at the bottom, which I have now seen, with Clause 7. Please, let us go slowly.

Finally, my other concern, if I have missed something, you will help me. We have referred to sections of the parent Act that we are amending. If you look at the proposed Bill, some of the sections we are referring to are not here. I have raised this before this House and I want to raise it again. We have Section 4 before and it is not here. If you look at this Bill, we have Sections 3, 15, 24, 30 and 31. I know sometimes the persons who publish this are not fair to us as Members because the systems are not working. I cannot go online to look for an online copy of this. So, sometimes, we float when we do not have the entire sections of the Act. I stand guided unless we are moving too fast. There are some sections that we have referred to here, which I have not seen.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Millie has raised a pertinent point for us to follow and move together.

Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I want to bring to the attention of Hon. Millie that we have Section 4 on Page 2106 of the Bill.

The other confusion was that we are not dealing with new clauses now. We will deal with them, as Hon. Millie knows, at the end. If you have the Bill, then we have on the first page Sections 3 and 4 and we have Section 3A within Section 4.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I am delaying this one because this is very important. Let us have Hon. Millie Odhiambo, then I will come to Hon. Nyikal.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I really appreciate. Hon. Duale does not get what I am saying. But inadvertently, he has enabled me to see where the problem is. When the Chair was moving, instead of referring to the clause, he said section. When he talks about a section, we go to the back of the Bill and there is no Section 4. That is the section that should be lifted from the parent Act. But when we talk of Clause 4, then it means it is the clause we are proposing to amend. The Chair should be very clear. When he says section, he is referring to the Act, which we are seeking to amend. So, I am busy looking for that section at the back and I have not found it. But because Hon Duale has inadvertently made me realise that we are referring to a clause. He is not amending Section 4, but he is seeking to amend Clause 3. Thank you.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I will be giving the Chair some more time. As Hon. Millie Odhiambo has said, the new clauses in the Bill will be amending sections in the parent Act. So, when we are doing the amendment, we will move slowly so that we are all together.

Let us have Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): I also say that we move a little bit more slowly. Clause 7 has (a) and (b), but we have been given an explanation for (b), which I understand. Have we got the import of (a)? There are two amendments.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We are not talking about any amendment now. It has been withdrawn.

**Hon. (Dr.) James Nyikal** (Seme, ODM): But the explanation given is for (b). It does not make sense.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Nyikal, in essence, that part is not amended.

**Hon. (Dr.) James Nyikal** (Seme, ODM): That is true. But in order for us to understand, we need to know what is being withdrawn. We understand why (b) is being withdrawn because there is no need for it. But we did not get the import of withdrawing (a). That is all I am asking for.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(Clause 7 agreed to)*

*(Clauses 8, 9, 10 and 11 agreed to)*

*Clause 12*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): There is an amendment by the Hon. Chair.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, let me explain it so that Members can understand and are not get mixed up. In the Order Paper, most of these amendments were intended to delete from the parent Act the PPP Committee which was carrying our functions in the process of prosecuting issues around PPP projects.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chair, let me guide you. Please, move first and then you explain.

**Hon. Joseph Limo** (Kipkelion East, JP): All right. I propose to drop Clause 12.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): You are on record, Hon. Chairman. Are you dropping the amendment?

**Hon. Joseph Limo** (Kipkelion East, JP): Yes, I am dropping amendment on Clause 12. The import of this is that we are returning the role of the PPP Committee. We are actually reinstating it. In the proposed amendments, we were removing the PPP Committee from operation and giving the functions of that committee to the Cabinet Secretary. The National Treasury came back and convinced us to retain the PPP Committee. Therefore, we are dropping the proposed amendments to Clause 12, so that we can reinstate the initial operation of PPP Committee.

So, I propose to drop the amendment to Clause 12.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): The proposal is to drop, but it is good for Members to get the import of that.

Let us have the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): I agree with Members. The Chair will be dropping so many amendments where previously they removed the PPP Committee in the report. The powers were given to the Cabinet Secretary in the amendment. After being convinced by the National Treasury of the importance of the presence of the PPP Committee, he has left it the way it is in the Bill.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North): Let him just drop.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Millie, even if he is dropping, the procedure is that he must explain to the House why he is dropping the amendment. You are the one who said that he must explain. Please, wait. Every action that a Member or the Chair does must be explained.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): I just want to support. We have now heard a very good explanation. If you go back and find it, then it makes sense. The Chair would help us a lot so that if he makes reference of what is being dropped at the back, we check it. I support.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(Clause 12 agreed to)*

### Clause 13

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, in the same spirit, I also drop the amendment to Clause 13 because we are retaining the PPP Committee.

*(Hon. Joseph Limo withdrew his proposed amendment)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Leader of the Majority Party, you have an amendment.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 13 and substituting therefor the following new clause—

Insertion of 13. The principal Act is amended by inserting the following new sections  
sections in in immediately after section 54 —  
No.15 of of

2013.

Procedure for  
county government  
public private  
partnership  
projects.

54A. (1) A county government may enter into a public private partnership agreement and shall be responsible for the administration of the overall project development cycle in accordance with this section.

(2) Where a county government intends to enter into a public private partnership arrangement, it shall cause its user departments or county corporations, as the case may be, to prepare project proposals for approval at the county government level, detailing the strategic and operational benefits of entering into such an arrangement.

(3) Where the county approves that a project may be undertaken as a public private partnership, it shall cause the project to be subjected to detailed feasibility study assessment in accordance with section 33.

(4) The County Contracting Authority may liaise with

the Unit as necessary in developing the PPP Feasibility Study

(5) A Feasibility Study completed pursuant to sub-section (3) shall be approved by the County Government, prior to initiation of procurement processes for the project, provided that:

- (a) where such studies show that the project will require national government support measures or any other project specific guarantees that cannot be granted by the County Government or
- (b) exceeds the thresholds that have been prescribed by the Cabinet Secretary, the county government contracting authority shall obtain the approval of the National Treasury prior to commencement of the tender processes.

County  
Government  
Contracting  
Authority to seek  
approval.

54B. (1) Subject to sub-section 54(A) (4) (b), a County Government Contracting Authority shall seek and obtain the approval from the county assembly where no national government support measures are required for the project prior to the execution of a project agreement at the county level, the contracting authority.

(2) Where the project requires national government support measures or other project guarantees which cannot be granted at the county level, or exceeds the threshold prescribed by the Cabinet Secretary by way of regulations, the county government shall not execute a project agreement without first seeking and obtaining the approval of the National Treasury.

The involvement of county governments in the PPP framework has already been addressed by Clause 12(b) and (c) above. Therefore, the Departmental Committee on Finance and National Planning amendment maybe dropped. That is what my amendment is trying to do. It is to strengthen the bit that the Chair has dropped in Clause 12(b) and (c).

*(Question of the amendment proposed)*

**Hon. (Dr.) James Nyikal** (Seme, ODM): Let me make a fundamental point, maybe all of us are not in the same page. What we are saying is that county governments were represented in the committee that has been reinstated. That helped.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Nyikal was just confirming the import of what the Leader of the Majority Party has said.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 13 as amended agreed to)*

*Clause 14*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, in the same spirit, I am dropping amendment to Clause 14. This is because of the same PPP Committee.

**Hon. Godfrey Osotsi** (Nominated, ANC): On a point of order, Hon. Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is your point of order, Hon. Osotsi.

**Hon. Godfrey Osotsi** (Nominated, ANC): Hon. Temporary Deputy Chairman, we need adequate explanation on this because what we have in the Order Paper is contrary to what the Chair is dropping all the time. In the Order Paper, there is a proposal that the committee be replaced by the Cabinet Secretary. Also, the so-called PPP unit has been enhanced with more functions. If you look at the membership of the committee, there is no representation of counties yet we are talking about counties here. So, we are being confused. The amendments which were there are now being dropped without sufficient explanation from the Chair.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Before I come to you Chair, Hon. Osotsi, the amendments belong to the Chair and the Committee. When they drop them, there is very little you can do, but the Chair would be gracious enough to explain. That is a fair request that the Chair explains why he is dropping. The Chair did a bit of it, but he can do it further.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, to be fair to Hon. Osotsi, I will explain. In future, we will not allow Members to take us back. I had explained very well. One, in the initial proposal in the Order Paper, we were proposing to remove the PPP Committee and give its functions to the Cabinet Secretary, but further to that, the National Treasury came to the Committee and indicated that they had thought otherwise, that the PPP Committee is important and, therefore, we should reinstate it. The import of the droppings which we are doing is to ensure that the PPP Committee is reinstated so that it operates as it was.

Therefore, all the amendments that were relating to the disbursement of the committee are being reinstated to bring the committee back to operation. As to the issue he has raised on representation of counties, without anticipating debate, we will deal with it later on. It will remove fears of *Mhe*. Osotsi.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chairman, as you explained, Hon. Osotsi was consulting. I am not sure he heard, but I agree with you Hon. Chairman. We shall not go back there again.

Yes, what is the point of order, Leader of the Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): It depends on who he is consulting with. If you are consulting with the honorable woman representatives, you have no attention.

*(Laughter)*

The attention part is zero.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Well, the Temporary Deputy Chairman has no comment on that one.

*(Clause 14 agreed to)*

*Clause 15*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I am told there are two amendments. I will ask that we deal with that of the Leader of the Majority Party then we come to the one by the Chairman.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): On a point of order.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is your point of order?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Chairman, I am coming back to the same issue I raised. This one typifies what I was raising. If you look at the amendment we are raising in Clause 15, it says the Bill be amended by deleting Clause 15 and substituting therefor the following New Clause: "Section 57 of the principal Act is amended by deleting the word "Cabinet" and substituting therefor the word "Cabinet Secretary". Am I at the right place?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Yes, we have that by the Chairman, which is on Page 850. It is the one you are referring to, but we also have another one on Page 854, which is the one for the Leader of the Majority Party. We are starting with the one by the Leader of the Majority Party on Page 854. Thereafter, we come to the one by the Chairman on Page 850. You will see there is a sense in which the one by the Leader of the Majority Party, depending on the decision the House makes, will have implications on the one by the Chairman. That is the one we are starting with.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): I still come to the one by the Leader of the Majority Party. Clause 15, which is on Page 854, says that the Bill be amended by deleting Clause 15 and substituting therefor the following New Clause on the execution of contract:

"After the approval of the project and financial risk assessment report under section 56, the contracting authority shall execute the contract awarded to that bidder."

So, I go to the Bill that we are dealing with now. Members of Parliament are fairly busy people. I want to refer to the parent Act and the section we are amending, for comparison. Can the Chairman point to me the provisions of Clause 56 in this Bill as is provided by our procedure? There is nothing. It becomes very difficult to move an amendment, unless by faith. I am finding that I am moving amendments by faith. I do not think faith will work very well here. I need to have the actual sections, but they are not here. This Bill ends at Clause 51 yet we are amending Section 56. So, somebody was lazy and I do not think it is fair to Members, who are busy. We deal with so many amendments, especially at the Committee stage. That is why we have the Order Paper. That is what I have been raising all along. I am glad the Leader of the

Majority Party is here. It is important he raises it in the House Business Committee (HBC) so that the anomaly is corrected. We are busy and we do not have the time. It is not the supply of the principal Act.

I think the Leader of the Majority Party was actually complaining that the Woman Representatives were confusing Hon. Osotsi, but he is the one being confused by the Woman Representative for Nairobi. He is not listening to what I am saying. I know she is beautiful, but look at me also. I am also beautiful, especially when I am talking. Look at me.

*(Laughter)*

Can I, please, explain to the Leader of the Majority Party so that he gets convinced? If you look at my beauty, you will also understand.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Millie, explain to the House.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Let me explain to the House. What the Leader of the Majority Party is moving to amend is Clause 15 at Page 854, it states as follows:

“After the approval of the project and financial risk assessment report under Section 56, the contracting authority shall execute the contract awarded to that bidder.”

That is Section 56 of the parent Act. So, I want to understand the Section 56 that the Leader of the Majority Party is talking about. Where do I go to? I go to the amendment Bill. With regard to the amendment Bill, please, look at the memorandum.

*(Hon. Amos Kimunya gestured to Hon. (Ms.) Odhiambo-Mabona)*

Hon. Kimunya has been in this House for very long and he is misleading us. Please, listen to me. I am the lawyer in the House. Listen to me. I can train you. Look at the Memorandum of Objects and Reasons.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Kimunya! Hon. Millie Odhiambo has the Floor and she has a point. Please, make your point then we can move on.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): The point is that I want to refer you to the Bill, the one in green. The one we are dealing with. If you look at it on Page 211, it says “Memorandum of Objects and Reasons”. The page after that refers you to the sections that we are amending. I am asking where Section 56 is. It is non-existent and we cannot move by faith. We must move by sight. Can we provide the sight of Section 56?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well, Hon. Millie. I will give a chance to the Leader of the Majority Party, then I will give direction.

**Hon. Aden Duale** (Garissa Township, JP): For the future, Hon. Millie Odhiambo should not sit next to Hon. Passaris. The comparison is far apart.

*(Laughter)*

But Hon. Millie is right. When a Bill is published, the amended sections are at the back of the parent Act. When a Member introduces an amendment, it is for the House or that Member to go and get the principal Act, which is here. The Chair has it. At the time this Bill was being

published, all the sections in the principal Act, which were being amended, were found inside this Bill. There is no way the HBC or myself will anticipate an amendment to this Bill then go back and provide for it. Where I agree with Hon. Millie Odhiambo is that, in future, the office of the Clerk should provide amendments that relate to certain sections of a principal Act as part of the Order Paper so that you can have ease of reference.

*(Applause)*

Please, Hon. Millie, now that I have explained, stay away from where Passaris is sitting. This is because the way I can be distracted by Hon. Musimba is totally different from the way, say, Hon. Passaris, would. I am a human being! I could be distracted by Hon. Cecily Mbarire and Hon. Passaris. Today, the reason you are getting confused is because you are sitting with somebody who makes us not see or hear you when we look at you.

*(Laughter)*

*(Hon. (Dr.) Nyikal stood up in his place)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Nyikal, let us go to the substantive issues. Must you really speak to this? It is an issue that has been raised. You will be the first I will give a chance after. For the Leader of the Majority Party, I think the point is very valid in terms of the provisions of the text. So, let us get to the substance of the amendment and you have the Floor, Hon. Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 15 and substituting therefor the following new Clause

Amendment of section 57 of No.15 of 2013. Execution of contract. 57. After the approval of the project and financial risk assessment report under Section 56, the contracting authority shall execute the contract awarded to that bidder.

This amendment makes the Bill tidy. It says that the execution after the approval of the project and the financial risk assessment report under Section 56, which we are talking about, the contracting authority shall execute the contract awarded to that bidder. If you relate that to what is in the Bill, it makes it strong and powerful in terms of what stage a contract will be executed and awarded. This will be done after a proper financial risk assessment report which is provided under Section 56. It is a bit clear.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Before I give the opportunity to Hon. Nyikal, allow me to propose the amendment.

*(Question of the amendment proposed)*

**Hon. James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, what the Leader of the Majority Party is explaining is reasonable. However, what Hon. Millie Odhiambo said is important. I want to bring the future now. We have technical people here. If it is this one or two lines, they can read them, so that Members can know what they are amending. We have the Act



here. We have clerks here who can pick it. We do not have it here. It is not where it should be. They can read what the Act says. At least, we shall have followed and then support it.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): The point is made very clear. Hon. Nyikal, I am sure the Act is here. I agree with you. Hon. Kimunya.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you. First of all, for avoidance of doubt, let me state that the reason the Order Paper is supplied before the Sitting of the House is so that Members can refer to any content which is referred there.

Section 57 in the principal Act on Page 26 reads that the contracting authority shall, where the Cabinet approves or Parliament ratifies the undertaking of project as a Public Private Partnership (PPP) under this Act, execute the contract awarded to that bidder. The new amendment tidies up the Act and avoids the repetitions that are in the current Act. We do not need to spend a lot of time on this one.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, you remember that there were two amendments, namely, by the Leader of the Majority Party and the Chair. You will notice that the one by the Leader of the Majority Party has been passed. So, the one of the Chair is rendered nugatory. The Chair is consulting with the Leader of the Majority Party. You can consult, so that we can move together. Chair.

**Hon. Joseph Limo** (Kipkelion East, JP): It is always good to listen. In the same spirit that Hon. Millie has expressed, there is a problem in the way our Bills are drafted. I can inform the House that the amendment which we intend to move in Clause 15 is totally different from what the Leader of the Majority Party moved. Our amendment replaces the role of the Cabinet with the Cabinet Secretary to make PPP projects approval fast. We are saying that this amendment has been replaced, but they are completely different. Clause 56 of the principal Act is on approval of projects, which the Leader of the Majority Party was amending. The section which I am amending is referring to Section 57 which is on execution of contracts. The Principal Act says that the contracting authority shall where the Cabinet approves or Parliament ratifies the undertaking of a project as a PPP under this Act, execute the contract awarded to that bidder. The amendment, which I am proposing, is to replace the Cabinet with the CS. The justification for that is to make it move fast. It is only fair that you listen to the two different amendments.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Kimunya, comment on that issue and then I will give direction.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Chairman, the Chair of the Departmental Committee on Finance and National Planning should listen. The amendment which we have just passed, which was brought by the Leader of the Majority Party, changed Section 57 of the principal Act. The effect of that was to delete whatever is in the current Section 57, which includes the reference to the Cabinet, and replaced it with a new simplified one which read 'after approval of the project and financial risk assessment report under Section 56, the contracting authority shall execute the contract awarded to the bidder'. So, with that amendment, it already

removed the ambiguity that was there about the Cabinet. The word 'Cabinet' does not exist anymore because it has already been amended by the Leader of the Majority Party.

The Chair of the Departmental Committee on Finance and National Planning is referring to something that does not exist in the Principal Act. We have already removed that through the amendment which we have just passed.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let me give the opportunity to one Member and then I will give direction because it is becoming clearer. Hon. Makali Mulu.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairman. The point which was made that we need to have the original Act when we are discussing some of these amendments makes a lot of sense.

If the amendment that the Leader of the Majority Party has proposed and the House has passed implies that we are putting all the power of approving a PPP project to an individual, that is very dangerous. He has said that we are replacing the Cabinet with any contracting authority. That will be very dangerous for this country. However, he can explain that. If what we have passed implies what Hon. Kimunya is saying, *hiyo ni hatari sana*.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Makali came late. In fact, we are dealing with an entity called a PPP Committee. That is the entity which we are talking about. What we have removed is the personification of a CS. The PPP Committee will make a financial risk assessment report under Section 56 and then the contracting authority shall execute the contract and award the tender. So, we are back to a PPP Committee. There are a number of amendments which the Chair has withdrawn that were referring to the CS. This entity, which we are talking about, is the PPP Committee that has membership from county governments.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Just a minute, Hon. Musimba. The issue we are discussing is not the amendment by the Leader of the Majority Party, which has passed. I am just being gracious to open it up a bit, but we cannot reopen it. It is already passed. Hon. Musimba, what is it?

**Hon. (Dr.) Patrick Musimba** (Kibwezi West, Independent): Hon. Temporary Deputy Chairman, the import of what has been passed, in terms of substituting Cabinet with a CS, and the further distinction that you will have a committee, is that the committee is fine for the expediency of accelerating PPPs. But in terms of determining what projects are going to lie under PPPs, that is the sole obligation of the Cabinet in terms of how they align priority projects. For instance, we are dealing with the Big Four Agenda and if the Government, through the normal budget-making process, has already provided, say, funds for certain projects and then the committee at the Treasury goes ahead and says what they are going to put under PPP, we are already creating a clash area. I know we have passed it, but we need to look at this again to be able to align to ensure that the probity of what we are doing in terms of PPPs does not escape the prioritisation of what is going to be. We have powers, but through the budget-making process. We should not go through a budget-making process as committees and the House and it gets negated by a committee sitting at the National Treasury, which says what is going to be under PPPs. What happens to those funds?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Angwenyi, you have even stood.

*(Hon. Jimmy Angwenyi spoke off record)*

I have a feeling you will speak for less than a minute.

**Hon. Jimmy Angwenyi** (Kitutu Chache North, JP): Hon. Temporary Deputy Chairman, with all these discussions, are we challenging the decision we made? If that be the case, then 20 people should have stood up to challenge our verdict. Why are we discussing it?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, let me give you direction now. The point is that we had two amendments on Clause 15. I gave direction that we shall start with that of the Leader of the Majority Party and then go to that of the Chair. When the Leader of the Majority Party's amendment passed, by implication, the one of the Chair became nugatory. What we are discussing is the implication of passing the amendment by the Leader of the Majority Party, which should not be because we have moved on.

Hon. Nyikal, why must you insist? Do you want to open the clause?

*(Hon. James Nyikal spoke off record)*

Order Member. Order Members. What is the point of order, Hon. Gikaria?

**Hon. David Gikaria** (Nakuru Town East, JP): Hon. Temporary Deputy Chairman, I want you to give us some guidance. It is not just because I have just walked in, but because I am a ranking Member of the House. During the Committee of the whole House in the last Parliament we used to give the committee, and this was a ruling by the Speaker, the first opportunity to move amendments because they have an opportunity of meeting so many stakeholders and coming up with amendments. But now what you have done, it will be very difficult for us to annul what we have already passed yet the Committee has not been given an opportunity to be heard. I am just saying the Committee should have been given an opportunity first so that if theirs fail...

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Gikaria, I have given direction. We had two amendments, namely, the one of the Chair and the one of the Leader of the Majority Party. The Chair has not withdrawn, but the one by the Leader of the Majority Party has passed. If you take just a minute to read the text of the amendment by the Leader of the Majority Party, it will tell you there is nothing that stands for the Chair. The House does not work in vain. It is a nugatory.

**Hon. Aden Duale** (Garissa Township, JP): The Chair of the Departmental Committee on Energy has just walked in. He is a good friend of mine, but for the House, there is nothing, in terms of amendments, like who has preference over the other. When the legal department and the Order Paper are in agreement, then the amendment that carries weight passes. It happens every day. If it is negating, then yours is dropped. The Chair has no problem. He has understood because the whole concept was about the CS.

*(Clause 15 as amended agreed to)*

#### *Clause 16*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): There are two amendments. Chair, you have the Floor.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 16 and substituting therefor the following new clause—

Amendment  
of section 67  
of No. 15 of  
2013.

16. Section 67 of the principal Act is amended—

- (a) in subsection (2)—
- (i) by inserting the words “appointed by the Cabinet Secretary” immediately after the words “Kenya” appearing in paragraph (a);
- T (ii) by deleting paragraph (b) and substituting therefor the following new paragraph—
- T (b) six other persons with such knowledge and experience as the Cabinet Secretary shall, in consultation with the Unit, consider appropriate;
- (iii) by inserting the following new paragraph immediately after paragraph (b)—
- (ba) two persons of the opposite gender appointed by the Council of Governors.
- (iv) by deleting paragraph (c);
- (c) in subsection (3) by deleting the words “and shall be eligible” and substituting therefor the words “and may be eligible”;
- (d) by deleting subsection (5) and substituting therefor the following new subsection—
- (5) A person aggrieved by the decision of the Committee may appeal to the High Court within seven days from the date of the Committee’s decision.

The import of this is to ensure that the chairperson of the petitions committee is appointed by the CS. This is to give the CS the power to appoint the chairperson of the petitions committee.

*(Question of the amendment proposed)*

**Hon. Members:** Put the question.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

Yes, Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I stand guided. I want to withdraw my amendment. I think there is a problem, so I withdraw it.

*(Hon. Aden Duale withdrew his proposed amendment)*

*(Clause 16 as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, we now get to new clauses. Yes, Chair.

**Hon. Joseph Limo** (Kipkelion East, JP): You know we have just moved an amendment to Section... We have several others on the Order Paper. I only moved the issue of the Cabinet Secretary. Secondly, we have to move to provide for the membership of that committee under (b) because we only moved under (a).

*(Loud consultations)*

Okay, if you have taken all of them, then, it is fine.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chair, we did a block for all the amendments that you proposed and so you are safe. What is it, Hon. Nyikal?

**Hon. Dr. James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, I want to appeal to our colleagues, if there is a part that even one person has not understood... This is for posterity. The Chair is right that he only moved one part and did not move the other. You cannot do what the Mover did not do. He is right that he is talking about membership and it looks okay, but let us get it.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well, Hon. Members, the House has made a decision on Clause 16. Let us proceed on the new clause. Hon. Chair, in the spirit of Hon. (Dr.) Nyikal, it is good to give details and slowly.

**Hon. Joseph Limo** (Kipkelion East, JP): If you allow me on the new clauses, Clause 4A, B, C and D all refer to the same thing of the public private partnership (PPP) committee, which we have reinstated and I am dropping all of them because they will be irrelevant.

*(Loud consultations)*

I have asked the Chair, if he allows me, I drop Clauses 4A, B, C, and D.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): That is fine for purposes of the record so that the Chair drops one clause after the other. The one of 4 is slotted.

*New Clause 4B*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I propose that New Clause 4B is withdrawn because it refers to the PPP, which we are reinstating.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 4B dropped)*

*New Clause 4C*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I propose

that New Clause 4B is withdrawn because it refers again to PPP.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 4C dropped)*

*New Clause 4D*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, in the same way, I am proposing to withdraw New Clause 4D because it refers again to the PPP Committee.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 4D dropped)*

*New Clause 4E*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I propose the New Clause 4E because it refers again to the PPP Committee.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 4E dropped)*

*New Clause 4F*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I propose to withdraw the New Clause 4E because it refers again to the PPP Committee.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 4F is dropped)*

**Hon. Godfrey Osotsi** (Nominated, ANC): On a point of order.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is it, Hon. Osotsi?

**Hon. Godfrey Osotsi** (Nominated, ANC): The Chair is proposing to withdraw Clause 4E. However, if you read through it, it is not related to the committee that he is referring to. This is a clause that is giving the CS the powers to submit reports to Parliament every six months.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Osotsi, as I had indicated earlier, the Mover of the amendments has withdrawn. So, the little he can do is just explain why, but he has dropped and nothing is left.

*New Clause 4G*

**Hon. Joseph Limo** (Kipkelion East, JP): I also plead with the Members especially the Members who have just walked in. We had explained the import of all these withdrawals.

Hon. Temporary Deputy Chairman, I propose the New Clause 4G to be withdrawn because it refers again to the PPP Committee.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 4G dropped)*

*(Hon. David Gikaria spoke off record)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Gikaria, you are not the one who he is referring to as having just come in.

**Hon. Joseph Limo** (Kipkelion East, JP): I did not wish to offend my friend, Hon. Gikaria. I did not say that he has not read. He only missed the explanation that I had given. So, I did not offend anybody.

*New Clause 4H*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I propose the New Clause 4H be withdrawn because it is referring again to the functions of the PPP Committee.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 4H dropped)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is it, Hon. Nyikal?

**Hon. Dr. James Nyikal** (Seme, ODM): These are really far reaching amendments that we are doing. We are deleting whole sections. I must confess that I have not read everything, but at least, we ought to know that the sections we are deleting are dealing with this or that. All these Members that have taken their time to stay here, the hurry to pass this Act in one day cannot be more important than their understanding on behalf of Kenyans. So, in my mind, even if we were to take another day to do this, but the Members understand and follow, it would be a better service for this country. I have just looked at it quickly. I managed to get someone to get me the Act... The main sections, some are dealing with the powers of the committee. As I leave here, let me put it on record that many of us here may not have understood exactly what is being amended. I want it on record and there is a reason why.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. As the Chair is consulting... Is he consulting with the Hon. Leader of the Majority Party or Members?

**Hon. Joseph Limo** (Kipkelion East, JP): No. I am not consulting with anybody.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is it, Hon. Kimunya?

**Hon. Amos Kimunya** (Kipipiri, JP): My attention has been drawn by Hon. (Dr.) Nyikal

that, indeed, the amendments in Clause 4I, which had been proposed by the Chair as much as it is withdrawn, I just want him to confirm that the reasoning is correct. You find that it was enriching the Bill. The amendment that was coming in was removing what is in the Bill at Section 14 and adding from Q. There is an R, S, T, U, V, extra duties for the unit. However, if you are withdrawing all that, you are saying that we just stay with the Bill as it was without those extra functions. I just wanted to make sure that that is the position because we are now talking of the unit and not the committee.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well Chair.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary deputy Chairman, the import of these additional functions to the unit is because we are doing away with the PPP Committee. Some of the functions were given to the CS and others to the PPP unit. We are now returning the PPP Committee and cannot give additional functions to the unit. Similarly, we are leaving all the units which belong to the committee. This is a well thought procedure and is not guesswork.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chair, you are still on the Floor on New Clause 5A. Let him pronounce himself.

#### *New Clause 5A*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, in the same spirit, I am dropping New Clause 5A because it talks about transferring functions of the PPP Committee to the CS. Therefore, we are reversing and I drop this particular amendment.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 5A dropped)*

#### *New Clause 6A*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): The amendment is by Hon. Janet Nangabo.

**Hon. (Ms.) Janet Nangabo** (Trans Nzoia CWR, JP): Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Bill be amended by inserting the following new clause after clause 6—

6A. Section 23 of the principal Act is amended by inserting the following subsection immediately after subsection (2) —

(3) In the preparation of project lists under subsection (1), a contracting authority may reserve certain projects for disadvantaged groups.

I want to bring to the attention of this House the issue of disadvantaged groups which do not have a chance in this Bill. The youth, women and people living with disabilities have not been included. Therefore, I want Members to support this as part of the Bill.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, let me give you some guidance. You are moving the Second Reading because it is a new clause. Move that New Clause 6A to be now read a Second Time and then you proceed.

*(Question of the new clause proposed)*



*(New clause read the First Time)*

*(Question that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

*New Clause 7A*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chair, on New Clause 7A.

**Hon. Joseph Limo** (Kipkelion East, JP): Also, in the same spirit, I propose to drop New Clause 7A because it is talking about the CS and the PPP.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 7A dropped)*

*New Clause 7B*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chair.

**Hon. Joseph Limo** (Kipkelion East, JP): In the same spirit, I am dropping New Clause 7B.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 7B dropped)*

*New Clause 7C*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chair.

**Hon. Joseph Limo** (Kipkelion East, JP): Members are now getting used to what I am doing. They should not because I might support some. I am also dropping New Clause 7C.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 7C dropped)*

*New Clause 7D*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chair.

**Hon. Joseph Limo** (Kipkelion East, JP): In the same spirit, I am also dropping New Clause 7D.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 7D dropped)*

*New Clause 8A*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chair.

**Hon. Joseph Limo** (Kipkelion East, JP): I am happy because there are some sections which I will support. I am also dropping New Clause 8A.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 8A dropped)*

*New Clause 9A*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Janet Nangabo. I am guided that New Clause 9A is by the Chair and 9B by Hon. Janet. Hon. Chair.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Gikaria has become competent and has realised that New Clause 9A is referring to the committee. Therefore, I propose to...

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chair, you can consult. No problem.

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is your point of order, Leader of the Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Chairman. These are new clauses and the first thing the Chair needs to do is to move them for a second time for record purposes.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Yes, if he does not drop, he is doing a Second Reading and needs to come out very clearly. I can see he is still consulting, which is important.

**Hon. Joseph Limo** (Kipkelion East, JP): Not really.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chair, consulting is not a bad thing.

**Hon. Joseph Limo** (Kipkelion East, JP): If you have realised, in most cases, I do not consult. I am only consulting my paper work.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clauses immediately after Clause 9—

Amendment of section  
33 of No. 15 of 2013.

9A. Section 37 of the principal Act is amended in subsection (1) by deleting the words “upon approval by the Committee”.

The import of this amendment is to amend Section 37 of the Principal Act by deleting the words “upon approval by the Committee”. The justification is that the PPP has now being reinstated, therefore, we are giving it additional work of approving.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question that the new clause be added to the Bill, put and agreed to)*

*New Clause 9B*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We are now on New Clause 9B by Hon. Janet.

**Hon. (Ms.) Janet Nangabo** (Trans Nzoia CWR, JP): Hon. Temporary Deputy Chairman, I drop that one.

*(Hon. (Ms.) Janet Nangabo withdrew her proposed amendment)*

*(New Clause 9B dropped)*

*New Clause 9C*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): New Clause 9B by Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, the Clerks-At-The-Table have renumbered them. I think it was a typographical error. So, I will move it as New Clause 9C.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clauses immediately after Clause 9—

Amendment of Section  
45 of No. 15 of 2013.

9C. Section 45 of the Public Private Partnerships Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

(1)A contracting authority may, in consultation with the unit, hold a competitive dialogue with each bidder to define the technical or financial aspects of the project in the manner prescribed under this Act and in consistence with a policy guidance issued by the Committee from time to time.

Hon. Temporary Deputy Chairman, I am just trying to make sure that there is transparency and accountability in decision making when it comes to how units should deal with the PPP contracts. It says it must have consultations with the unit and they should hold competitive dialogue with each bidder to define the technical or financial aspects of the project, of course, as prescribed in the Act, again, in consistence with the policy guidelines. So, we want to make sure that there are no underhand dealings when it comes to the matter of PPP. You know I really wanted to oppose Hon. Janet Nangabo. When we talk about PPP, we are talking about huge projects. This thing of bringing in youth, women and people with disability is good for legal purposes, but we are talking about big projects where investors are involved. So, it is just to make sure that we tighten in law how policy is done and how the technical and financial evaluations are done.

**Hon. David ole Sankok** (Nominated, JP): *off record.*

**Hon. Aden Duale** (Garissa Township, JP): The moment somebody talks about people with disability or youth, you do not jump from your seat, Hon. Sankok. You have not been brought to the House only to represent those people. Even if the investors who will be involved in PPP are not disabled, as a law maker, you are supposed to represent them. If that is the case, then you should only be in this House when we are dealing with laws pertaining to your community.

*(Laughter)*

I beg to move.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

*New Clause 9D*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have the Chair move New Clause 9D. New Clause 9B now becomes New Clause 9D.

**Hon. Joseph Limo** (Kipkelion East, JP): In the Order Paper, it is New Clause 9C and now it is being renamed New Clause 9D. Hon. Temporary Deputy Chairman, I am proposing to drop it because it is referring to the PPP.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 9D dropped)*

*New Clause 11A*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Temporary Deputy Chairman, I am proposing to drop New Clause 11A. It is still referring to the committee and we have already reversed that.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 11A dropped)*

*New Clause 15A*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is it, Hon. Gikaria? Hon. Gikaria, you can cross next to Hon. Cecily Mbarire.

**Hon. David Gikaria** (Nakuru Town East, JP): Hon. Temporary Deputy Chairman, with your guidance, I can see we have just passed the Leader of the Majority Party's amendment and named it as New Clause 9C. We have 9B which is almost a replica of the Leader of the Majority Party's amendment. So, I do not know.

**An Hon. Member:** It was dropped.

**Hon. David Gikaria** (Nakuru Town East, JP): It was dropped. Okay.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chair, you were on the Floor, were you not? We were on New Clause 15A. What is it Hon. Nyikal?

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, I know it is nice to ignore me sometimes, but some of these things may visit themselves on us later. Just to be educated on 9C, which is now 9D, which is Section 48. It says that: "Section 48 of the Public Private Partnerships Act is amended by deleting subsection (4)." Is it not? That is what we have done.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Nyikal, we are on New Clause 15A. That is what the Chair is prosecuting.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, let me take you back as the guy who is slow and coming from behind and seeing how you are moving. I will

not argue, Hon. Angwenyi. I will just make my point and keep quite because I want to make my point.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Address the Chair directly.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, when we were talking about the committee, there was a very broad argument that in some places, we are removing powers particularly with the counties. We had earlier removed the committee. We brought the committee back and I asked: "Are the counties now represented in that new committee?" I am asking a very simple question. If you answer me, I will sit down. As we were going through these amendments, maybe you were too fast for me. I did not see where we got representation of the counties in the committee. Once that is done, Hon. Angwenyi, I will be happy.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Nyikal, please, we shall give you space when we are dealing with that clause, but you know you said we take you slowly. You see, when we have moved on, we are only being gracious to carry you along. However, I am sure when the Chair is dealing with New Clause 15A, he should also be gracious enough to probably give you that point.

**Hon. (Dr.) James Nyikal** (Seme, ODM): I will oblige, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): When you hear Hon. Nyikal asking a question, it is good to bring him up to speed. It is fair enough to ask. Let us get the Chair on New Clause 15A

**Hon. Joseph Limo** (Kipkelion East, JP): I am proposing to drop New Clause 15A because it is referring to the same issue of the committee.

*(Hon. Joseph Limo withdrew his proposed amendment)*

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is it, Leader of the Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, New Clause 15A, as provided in the Order Paper, I think is in Page 850. Are we together? That on Page 850 is talking about a different thing. It is not about the Cabinet Secretary. We have agreed with you on the substituting, but 15A talks about a contracting authority may, at any time, terminate procurement proceedings before execution of the contract. I do not know whether we are together.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Leader of the Majority Party, I think your point is valid. The Chair has dropped, but in his explanation on the import of dropping, he went to the south.

**Hon. Aden Duale** (Garissa Township, JP): Yes, in dropping he used the chorus that we are used to. If he has withdrawn the amendment, let us use the chorus which we are used to. I do not know why he is withdrawing this amendment. It talks about bidders, procurement termination and other processes.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Shall we give him a chance?

**Hon. Aden Duale** (Garissa Township, JP): Let us give him a chance because we might come back to it.

Hon. Temporary Deputy Chairman, for record purposes and information, the Chairman is getting confused because some people do not prepare. If you want to contribute to a Bill at the Committee of the whole House, you should spend quite some time even before you come to the House, so that in every amendment, you have reasons why you are either opposing or supporting. Hon. Nyikal wants to learn during the process of the Committee of the whole House. He wants the Chairman to educate him. The Chairman can only educate him to a certain extent.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Before we move on, let us give the Chairman an opportunity to tell us what he wants us to do with New Clause 15(A) and then we can open it up for debate. The Chairman must tell us what he wants in New Clause 15A and then give us a comprehensive import.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, that is why I have been asking for your protection. Members who are sitting around me have been singing the chorus that you withdraw the amendment, without giving me the opportunity to explain the import of these particular new clauses. I propose that New Clause 15A be read a Second Time.

**Hon. Godfrey Osotsi** (Nominated, ANC): Point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is out of order, Hon. Osotsi.

**Hon. Godfrey Osotsi** (Nominated, ANC): It is a point of information.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): If it is on that clause, I have not proposed the Question yet. You must allow me to first propose the Question and then I open it up for debate. Let us still give the Chairman the latitude, so that he gets absolutely clear on what his position is on this clause. Chairman, we will not tire to give you a chance and space to tell us whether you are withdrawing the amendment or moving it for the Second Reading. Be very clear.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I am withdrawing New Clause 15A because it deals with cancellation of contracts by the Public Private Partnerships (PPP) Committee. We will bring the committee back. So, there is no need of moving the amendment. So, I withdraw the clause.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 15A dropped)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chairman, it is good to be clear because you went on a pendulum on that particular clause.

*New Clause 15B*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chairman, we will still give you time and space.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I ask for your protection. If you remember very well in my own record here, I had withdrawn this clause

but this kind of noise confuses me. I am also a human being. New Clause 15B refers to the same issue. I withdraw it.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 15B dropped)*

*(Loud consultations)*

*New Clause 15C*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chairman, do not listen to the chorus.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, in the same spirit, I withdraw new Clause 15C.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 15C dropped)*

*New Clause 15D*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, in the same way, I withdraw New Clause 15D.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 15D dropped)*

*New Clause 15E*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I also withdraw New Clause 15E for the same reasons.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 15E dropped)*

*New Clause 17*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, this clause is also referring to the committee. I withdraw it.

**Hon. (Dr.) James Nyikal** (Seme, ODM): On a point of order, Hon. Temporary Deputy Chairman.



**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, we are discussing an extremely important Act. Even the Chairman admits that he is withdrawing the amendments sometimes. Do we have enough quorum in this House to discuss such an important Bill?

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Nyikal, what did you say?

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, I have withdrawn my remarks.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): You must go on record.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, that section is on a different matter. It is on public participation. Can you tell Hon. Jimmy to be easy because he is replying to every amendment?

*(Laughter)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): As we said on this particular Bill, we shall give the Chairman space and time to be very clear on each clause. On New Clause 17, Chairman, please, be clear to the House.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I propose New Clause 17 be read a second time.

I beg to move:

THAT, the Bill be amended by inserting the following new clauses immediately after Clause 16—

Insertion of new section in to No. 15 of 2013.

17. The principal Act is amended by inserting the following new section immediately after section 70—

Public participation.

70A. (1) A contracting authority that intends to enter into a public private partnership shall observe the principle of public participation.

(2) The Cabinet Secretary may make regulations for conduct of public participation in public private partnership arrangements.

**Hon. Jimmy Angwenyi** (Kitutu Chache North): Put the Question.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chair, it is good to give the import.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, the justification of this amendment is to provide for the need to carry out public participation and the

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

Cabinet Secretary of the National Treasury to make regulations to guide the process of public participation. That is the import of that amendment.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

#### *New Clause 18*

**Hon. (Dr.) James Nyikal** (Seme, ODM): On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is the point of order, Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairman, I am on a learning streak today. What is the quorum of the Committee of the whole House? If there is, do we have the requisite quorum? I need that guidance.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Nyikal, I am sure you can consult the Standing Order on the requisite quorum of the Committee of the whole House. As you get to that, I will give the Chairman an opportunity to contribute.

*(Hon. Joseph Limo consulted Hon. Aden Duale)*

We are still waiting for the Chairman to consult on New Clause 18.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I confirm that New Clause 18 is referring to the committee. Therefore, I propose to withdraw it.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 18 dropped)*

#### *New Clause 19*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, new Clause 19 is referring to the First Schedule and the First Schedule on the committee. Therefore, I also propose to withdraw it.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(New Clause 19 dropped)*

*Clause 2*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I withdraw the amendment to Clause 2 because it is referring to the definition of the committee and it is now being returned.

*(Hon. Joseph Limo withdrew his proposed amendment)*

*(Hon. (Ms.) Janet Nangabo withdrew her proposed amendment)*

*(Clause 2 agreed to)*

*(Title agreed to)*

*(Clause agreed 1 to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have the Mover.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee reports to the House its consideration of the Public Private Partnership (Amendment) Bill, National Assembly Bill No.52 of 2017 and its approval thereof with amendments.

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker (Hon. Patrick Mariru)  
in the Chair]*

## **REPORT AND CONSIDERATION OF REPORT**

### **PUBLIC PRIVATE PARTNERSHIP (AMENDMENT) BILL**

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us have the Chairperson.

**Hon. Jimmy Angwenyi** (Kitutu Chache North, JP): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Public Private Partnership (Amendment) Bill, National Assembly Bill No.52 of 2017 and approved the same with amendments.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Mover.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report.

I request Hon. Limo, the Chair of the Departmental Committee on Finance and National Planning, to second the Motion for agreement with the report of the Committee of the whole House.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Speaker, I beg to second.

*(Question proposed)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I will defer putting the Question on that particular matter.

*(Putting of the Question deferred)*

Next Order.

## BILL

*Second readings*

THE LAND VALUE INDEX LAWS (AMENDMENT) BILL

*(Hon. A.B. Duale on 4.7.2018)*

*(Resumption of Debate interrupted on 24.7.2018)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, this is basically resumption of debate interrupted on Tuesday, 24<sup>th</sup> July 2018 as indicated in the Order Paper. A few Members had spoken to it. Hon. Kevin Wanyonyi was on the Floor and had a balance of six minutes.

*(Hon. Godfrey Osotsi spoke off record)*

Hon. Osotsi, you cannot speak on his behalf. He must have spoken enough on the Bill. So, we open it up to the other Members. I will be guided by the screen on those who have registered interest to speak to this.

Hon. Osotsi.

**Hon. Godfrey Osotsi** (Nominated, ANC): Hon. Temporary Deputy Speaker, sorry, I had expressed interest to speak on an earlier Motion and not this one.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Musimba Patrick. I am guided by the screen. Hon. Musimba is absent. The last one who has registered interest to speak to this is Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): I had spoken.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): That is why I was consulting with the Clerk-at-the-Table. Thank you very much, Hon. Nyikal for being very honest. I have confirmed that you had spoken.

In that case, because there is clearly no further interest to speak to this Bill, I call upon the Mover to reply.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, before I reply, I agree with Hon. Nyikal that we will do a recommital on Tuesday to create a slot for Council of Governors. Hon. Nyikal, we are not going to babysit you. It is your business to look at the Order Paper and the Bill and bring your amendment. We are not here to babysit you on behalf of the Council of Governors.

Hon. Temporary Deputy Speaker, the Land Value Index (Amendment) Bill is important.

**Hon. (Dr.) James Nyikal** (Seme, ODM): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): What is your intervention, Hon. Nyikal?

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Speaker, my intervention is - and I want the whole world to hear - that I insist quite often that I have done my homework. I did my homework about the representation of the counties in the amendments. That is why I have been moving up and down. It has now turned out that...

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Speaker, let me finish. It has now turned out...

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Nyikal! You are one of the senior Members of this House. You are clearly taking us back to a business we have just dispensed with.

**Hon. (Dr.) James Nyikal**: *Off-record.*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Nyikal! Let us proceed from there. Hon. Nyikal, I request that you do not take us back to the previous business. I am sure even the Leader of the Majority Party is well guided. Hon. Leader of the Majority Party, please, move from there.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, the Land Value Index Laws (Amendment) Bill, 2018 is a very important Bill. I thank Members who contributed. This Bill was dealt with by the 11<sup>th</sup> Parliament, but it died in the Senate just before elections. The Bill proposes to amend the Land Act. When we reached the Committee of the whole House, Hon. Nyikal must carry the Land Act. This Bill is going to amend the Land Registration Act. You must have the principle Act.

Further, this Bill is going to deal with the Land Community Act which this House has passed. What does it do? This Bill wants to bring on board a standard and a harmonised way in which we can value land across the country for the primary purpose of making a determination when it comes to land rent, land rates and Stamp Duty, both on conveyance and compensation of land. This Bill seeks to make the lands rates, land stamp duty and land compensation to be predictable, rational and above all not to be prone to subjective valuation and speculation. I am sure there are over 30 Members who have spoken to it. I thank them.

Like the way we deal with many Bills, by the time we finish on Tuesday, we will send it to the Senate. That will be the tenth Bill that we have sent to the Senate. Some of those Bills have constitutional timelines. In fact, they were to be passed in the 10<sup>th</sup> Parliament. We extended

it by one year in the 11<sup>th</sup> Parliament. The Senate must know that we are contravening the Constitution in terms of the implementation of certain pieces of legislation like the Energy Bill, the Petroleum (Exploration, Development and Production) Bill and the Roads Bill.

With those many remarks, I beg to reply.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): I will pend putting the Question on that particular business to a subsequent time.

*(Putting of the Question deferred)*

Next Order.

#### THE WAREHOUSE RECEIPT SYSTEM BILL

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, I do not know what happened to the other leadership. The person who is supposed to second me is the Chair of Departmental Committee on Agriculture and Livestock, but because he is dealing with mercury in the sugar and many others, let us step it down so that he can second. The Chair of the Committee is supposed to second and speak on the views of the stakeholders.

*(Bill deferred)*

Next Order.

#### THE SACCO SOCIETIES (AMENDMENT) BILL

**Hon. Aden Duale** (Garissa Township, JP): Again, the Chair of Departmental Committee on Trade, Industry and Cooperatives is also dealing with mercury, copper and lead in sugar. He is supposed to second on behalf of the stakeholders. Let us step it down.

*(Bill deferred)*

Next Order.

#### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**Hon. Aden Duale** (Garissa Township, JP): We never thought in the House Business Committee (HBC) that we will reach here. In the HBC, we agreed that because it is a voluminous omnibus piece of legislation, it will come on Tuesday next week. So, we step it down.

*(Bill deferred)*

Next Order.

#### THE HEALTH LAWS (AMENDMENT) BILL

**Hon. Aden Duale** (Garissa Township, JP): Again, the great leader from Murang'a, Hon. (Ms.) Sabina Chege, is supposed to second, but she is not here. We ask you to step it down.

*(Bill deferred)*

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, the time being 6.15 p.m., this House stands adjourned until Tuesday, 31<sup>st</sup> July 2018 at 2.30 p.m.

The House rose at 6.15 p.m.