

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 25th September 2019

The House met at 2.30 p.m.

[The Deputy Speaker (Hon. Moses Cheboi) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

CORRECTION OF TALLYING ERROR ON DIVISION

Hon. Deputy Speaker: This is a Communication on correction of the tallying error on Division yesterday.

Hon. Members, Standing Order No. 75 requires that the Speaker reports to the House any error that may occur during a roll call vote in the House. In this regard, I wish to make the following guidance and correction with regard to the roll call conducted yesterday afternoon on the Report of the Committee of the whole House on the Independent Electoral and Boundaries Commission (Amendment) (No.3) Bill of 2019.

Hon. Members, as you may recall, yesterday, Tuesday, 24th September 2019, during the Question of agreement to the Report of the Committee of the whole House on the Independent Electoral and Boundaries Commission (Amendment) (No.3) Bill of 2019, the Speaker declared the results of the vote having collected the voice of “Ayes” and “Nays”, pursuant to Standing Order No.69(2). However, pursuant to Standing Order No. 72(1)(b), more than 30 Members rose in their places to claim a division. Consequently, the House proceeded on electronic voting pursuant to Standing Order 70. During the process, it was reported to me that the electronic voting system was encountering a technical failure and, therefore, could not proceed.

For that reason, I ordered the House to proceed to a roll call vote pursuant to the provisions of Standing Order No.71 which requires the Speaker to order the House to proceed to a roll call vote in event of a technical failure in the electronic system.

The tellers for “Ayes” and “Noes” were Hon. (Dr.) Robert Pukose and Hon. Abdullswamad Nassir, respectively. Upon presentation of the results of the roll call voting, which they later handed over to me, I announced the results to the House as follows:

Ayes	-	69
Noes	-	56
Abstentions	-	1
Total Votes	-	126

Hon. Members, it has since been brought to my attention after scrutiny that the results as presented and announced had a tallying error on the “Ayes” vote. The correct tallying after confirmation ought to have been as follows:

Ayes	–	59 (and not 69)
Noes	–	56
Abstentions	–	1
Total Votes	-	116

Hon. Members, as the Speaker, it is my duty to ensure that the records of the House are correctly and accurately captured and reported at all times. You will note that the error of the teller which was unintentional does not affect the ultimate results of the Division as the House indeed, passed the Motion for agreement to the Committee of the whole House, and thereafter passed the Motion for Third Reading of the Bill. As a result of that fact, the HANSARD record of the House and Votes and Proceedings always contain the list of Members voting “Ayes” and “Noes” and abstentions in any division.

I have directed the Clerk of the National Assembly to circulate the excerpts of the HANSARD record indicating how Members voted. Being a Bill concerning the county governments, it will be forwarded to the Senate for consideration.

In conclusion, and pursuant to Standing Order No.75, I wish to report the above matter to the House and direct that the necessary corrections be made to the records of the House. The House is thus accordingly informed.

I thank you, hon. Members.

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

Hon. Deputy Speaker: What is your point of order, Hon. Leader of the Majority Party?

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, first I want to thank you for opening the servers and confirming the right results. Just before we went on long recess, these systems were upgraded. According to the information I have, Kshs50 million was used to upgrade the system. It is very unfortunate that it is getting even worse. This must be heard loud and clear. The ICT Department and the Office of the Clerk must give us an answer. We cannot have spent Kshs50 million three weeks ago and yet yesterday we could not vote electronically. You remember what we went through by calling out the names of 349 Members! We wasted a lot of time that we could have used to do other business. We cannot be the ones overseeing other agencies in Government, yet we cannot oversee our own ICT. The ICT Director in this House must be indicted. You need to pick it and say that never again will we vote manually when we have these systems in place.

Hon. Deputy Speaker: Hon. Otiende Amollo.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Deputy Speaker.

I acknowledge and thank you for the correction as communicated. However, I rise under Standing Order No. 74. If there is confusion or an error occurring in the course of a roll call voting....

Hon. Deputy Speaker: Hon. Otiende, please start again because I must follow you.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): I had started by thanking you for that correction. I rise under Standing Order No. 74 which states that if there is confusion or an error occurring in the course of a roll call voting, concerning the numbers which cannot otherwise be corrected, the Speaker shall direct the House to proceed to another roll call vote.

Now that it has been acknowledged that there was a mistake and it was a fundamental mistake of 10 votes, 10 votes of non-existent Members, is it not in order to follow Standing Order No. 74 and proceed to another roll call vote, rather than entertain such grave errors?

Hon. Deputy Speaker: Very well. I want to agree with you absolutely. First, let me agree with the Leader of the Majority Party that an upgraded system is supposed to make it

easier for Parliament to transact its business. We took a lot of time, yesterday, for reasons that were a result of faulty systems. I am told they have rectified it to an extent. We want to ask that, that kind of error should not occur again.

Secondly, I agree with Hon. Otiende Amollo. I agree with you totally. I have read this Standing Order and I understand it fully. Before I even make that final decision, it is important for you to note that it is the Speaker, on his Motion, who corrected it. We could as well have kept quiet about it. Remember you had your tellers here. You appointed Hon. Abdullswamad Nassir for the “Noes” and the “Ayes” appointed Hon. (Dr.) Robert Pukose. They were the first stop shop to make sure the results were counted properly. Of course, we are all human. When this did not happen, we have found it fit to inform the House so that the records are clear and correct.

I agree with you that it would have been the best thing to call a roll call vote again, if there was complete confusion and error. However, this is one that is covered by the same Standing Order No. 74, “that can otherwise be corrected”. Indeed, it has been corrected. The confirmation of votes is 59 and 56. It has been corrected. If there was confusion in such a way that we could not correct, for sure, Hon. (Dr.) Otiende Amollo, I would have asked you to go back to the roll call voting. Again, the difficulty I find myself in is that there are Members who are here today and were not here yesterday. The decision was supposed to have been made at that point in time. Systems can change. In fact, the vote can change and it would be very unfair if I went back to roll call voting.

Take it in good faith that we announced it. If I had, for example, discovered that the votes were different and that the voters who voted “nay” were 59 and the ones who voted “ayes” 56, I would have overturned the ruling. Now, having corrected this, I think there should be no major issue. It is just in good faith. Members should notice that we are able to pick some of the errors we do. Let us not take unnecessary time on this. It is a matter that I have ruled. The position will remain the same. You know I have a lot of respect for Hon. (Dr.) Otiende Amollo. I know whenever he raises issues, they touch on legal matters. He is a very good Member at that. I am sure he will discover that we have already corrected the mistake, if he looks at that Standing Order. It is perfect and fine. So, let us not take too much time on it; it was just a matter of information. The verdict remains as you made it yourselves. Remember there is a Member who abstained. He still confirms that he actually abstained. Let us proceed and do the business of today.

By the way, we have a very long afternoon. We need to really work and move fast.

Let us go to the next Order. There was another Communication I should have made. I will proceed to make it should it come. To save the time of the House, let us proceed to the next Order.

PAPERS LAID

Hon. Deputy Speaker: Let us have a Leader of the Majority Party, in this case, the Whip of the Majority Party.

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Deputy Speaker. On behalf of the Leader of the Majority Party, I beg to lay the following Papers on the Table of the House:

The Reports of the Auditor-General on the Financial Statements of Kisumu National Polytechnic for the year ended 30th June 2017 and the certificate therein.

The Reports of the Auditor-General on the Financial Statements in respect of the following Institutions for the year ended 30th June 2018 and the certificates therein:

Kenya National Highways Authority.

Kenya Civil Aviation Authority.

Numerical Machining Complex Limited.

Brand Kenya Board.

Kenya Industrial Research and Development Institute, and

Kenya Rural Roads Authority.

The Reports of the Auditor-General on the Financial Statements in respect of the following constituencies for the year ended 30th June 2018 and the certificates therein:

Homabay Town.

Ndhiwa.

Suba North, and

Kisumu West.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Very well. We will go to Hon. Ngirici. Yes, I think you have a document to lay.

Hon. (Ms.) Purity Ngirici (Kirinyaga CWR, JP): Thank you, Hon. Deputy Speaker. I beg to lay the following Paper on the Table of the House:

Report of Kenya's Participation in the 63rd Session of the Commission on the Status of Women (CSW63) held at the United Nations Headquarters, New York from 11th to 22nd March 2019.

Hon. Deputy Speaker: Very well.

Before we go to the next Order, let me recognise, in the Public Gallery, students from St. Teresa Secondary School, Gatanga Constituency of Murang'a County. They are in the House with us to follow proceedings.

(Applause)

Next Order.

We also have the Chair of the Departmental Committee on Defence and Foreign Relations with a Statement.

Chair of the Committee on Implementation, do you have a document to lay? I think you do. Let us do the one by the Departmental Committee on Defence and Foreign Relations and the Committee on Implementation.

Hon. Richard Tong'i (Nyaribari Chache, JP): Thank you, Hon. Deputy Speaker. I beg to lay the following Paper on the Table of the House:

Report of the Committee on the Capstone Course on National Security and Strategy conducted by the National Defence College and Center for Parliamentary Studies and Training in the National Defence College, Karen, Nairobi on 26th to 30th August 2019.

Thank you.

Hon. Deputy Speaker: Very well. The Chairperson, Select Committee on Implementation, Hon. Kenta.

Hon. Richard ole Kenta (Narok North, ODM): Thank you, Hon. Deputy Speaker. I beg to lay the following Paper on the Table of the House:

Report of the Select Committee on Implementation on the Status of the Resolution of the House made on 6th June 2019 regarding the Approval of Ms. Mwendu Mwinzi for Appointment as the Kenyan Ambassador to Seoul, South Korea.

Thank you.

Hon. Deputy Speaker: Very well.

Next Order!

ORDINARY QUESTIONS

Hon. Deputy Speaker: On that particular order on Ordinary Questions, we will start with Hon. Brighton Yegon, Member for Konoin Constituency.

Question No. 416/2019

STATUS OF CLOSED-CIRCUIT TELEVISION SECURITY CAMERAS

Hon. Leonard Yegon (Konoin, JP): Thank you very much, Hon. Deputy Speaker. I would like to ask Question No. 416/2019 and pursuant to the provisions of Standing Order No. 42A(5), my Question goes to the Cabinet Secretary for Interior and Coordination of National Government:

(i) What is the status of the closed-circuit television (CCTVs) cameras that were installed in the country, and in particular Nairobi City and other towns, at a cost of over Kshs15 billion to curb insecurity?

(ii) Could the Cabinet Secretary explain the effectiveness of the said CCTV cameras in curbing insecurity in the country?

Hon. Deputy Speaker: Very well. That one will be replied before the Departmental Committee on Administration and National Security.

Next is the Member for Mathioya, Hon. Hon. Peter Kimaru Kihara.

Question No. 417 /2019

CONSTRUCTION OF KANJAMA-KAGUMOINI ROAD

Hon. Peter Kimaru (Mathioya, JP): Thank you very much, Hon. Deputy Speaker. I would like to ask Question No. 417 /2019. Pursuant to the provisions of Standing Order No. 42A(5), my Question goes to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works:

(i) Why is the construction of Kanjama-Kagumoini Road in Mathioya Constituency yet to commence despite having been allocated funds during the Financial Years 2017/2018, 2018/2019 and 2019/2020?

(ii) What steps is the Ministry taking to ensure that the said road is constructed and completed on time to serve thousands of motorists, farmers, traders and other users in accessing Kamagogo Coffee Factory, Ndiara Coffee Factory, Kiria-ini Market and Gakira Market?

Hon. Deputy Speaker: That one will be replied before the Departmental Committee on Transport, Public Works and Housing.

Next is the Member for Lagdera, Hon. Garane Mohamed Hire.

Question No. 418/2019

MEASURES TO ADDRESS POWER OUTAGES IN MADOGASHE TOWN

Hon. Mohamed Hire (Lagdera, KANU): Thank you, Hon. Deputy Speaker. That name is pronounced as “Hire” and not “Hire”.

Thank you very much, Hon. Deputy Speaker. I would like to ask Question No. 418/2019. Pursuant to the provisions of Standing Order No. 42A(5), my Question goes to the Cabinet Secretary for Energy:

(i) What measures is the Ministry taking to solve the recurring power outages in Madogashe Town, Lagdera Constituency?

(ii) Are there plans to compensate the Madogashe business community for the losses suffered as a result of the said power outages?

(iii) Are there plans to connect the entire Lagdera Constituency to the national grid?

Hon. Deputy Speaker: That Question will be replied to before the Departmental Committee on Energy. You said “Hire” Okay.

The Member for Baringo Central, Hon. Joshua Chepyegon Kandie.

Question No. 419/2019

MANAGEMENT OF PARKING AT ELDORET AIRPORT

Hon. Joshua Kandie (Baringo Central, MCCP): Thank you, Hon. Deputy Speaker. I would like to ask Question No. 419/2019. Pursuant to the provisions of Standing Order No. 42A(5), my Question goes to Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development:

(i) What factors are taken into consideration in determining parking fees to be charged at the Eldoret Airport?

(ii) Could the Cabinet Secretary provide details of the company/agency charged with the management of parking at the said airport including its directorship?

(iii) Would the Ministry consider putting in place measures to ensure that parking fees charged at airports in the country are standardised and regulated accordingly?

Thank you.

Hon. Deputy Speaker: That Question will be replied before the Departmental Committee on Transport, Public Works and Housing.

I will give an opportunity to Hon. Kenta to move a Notice of Motion which he did not do earlier on. But first, let me hear what the Majority Whip has to say because it is in this particular Order.

POINT OF ORDER

MATTER OF NUCLEUS LAND LEASED TO MUMIAS SUGAR COMPANY

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Deputy Speaker. If my memory serves me right, the reason why we introduced Question Time was to reduce the time taken by Ministers to...

*(The Deputy Speaker consulted with
Hon. (Ms.) Rachael Nyamai)*

Hon. Deputy Speaker: What is it that you are saying, Hon. Washiali? I want to give you maximum concentration. Let us hear what you have to say.

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Deputy Speaker. What I was saying is that, the reason why we introduced Question Time---

(Consultations)

Hon. Deputy Speaker, there is a lot of consultation. Please help me to deal with that. The Leader of the Majority Party, I am on the Floor. Consultation is a bit too high.

Hon. Deputy Speaker: Hon. Washiali, that is not your business. You know, you are a Whip but once you are here there is a person in charge. So, if there is an issue, you will ask me then I will order Members to give you attention.

Proceed.

Hon. Benjamin Washiali (Mumias East, JP): My apologies, Hon. Deputy Speaker. I rise on a point of order. As I said, the reason why we introduced Question Time in the Standing Orders is because we wanted to receive immediate responses from Cabinet Secretaries. Members will agree with me that this system is not working.

On 4th July 2019 I rose to ask the Cabinet Secretary for Agriculture to respond to the issue of ownership of the nucleus land that is purportedly owned by Mumias Sugar Company. If you followed the news yesterday, it was reported that the Kenya Commercial Bank (KCB) has now put Mumias Sugar Company under receivership. I am wondering what will happen. According to the land owners of Mumias, where I am an MP, we know that the land that Mumias Sugar Company was farming was leased by farm owners.

Hon. Deputy Speaker: The only problem I have with you, Hon. Washiali, is that you seem to be asking the Question for a second time. I would be happy if it is a complaint that you have...

One, you have said that the system is not working. I disagree with you. It is working. If you have a specific issue that you want to resolve, for example, that it has not been answered, you should just put it in that manner, so that I can direct that it be expedited.

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Deputy Speaker. I was just bringing you up to speed. There is some background information that you need to know. The reason I was asking this Question was because I expected immediate response from the Cabinet Secretary in charge of Agriculture so that when receivers like the Kenya Commercial Bank step in, we should know what they are coming to receive.

Hon. Deputy Speaker: Okay. Let me get another clarification from you. Did you ask a Question by Private Notice or did you ask an Ordinary Question?

Hon. Benjamin Washiali (Mumias East, JP): It was an Ordinary Question, Hon. Deputy Speaker.

Hon. Deputy Speaker: If it was an Ordinary Question, then that should be a good answer for you. If it was extremely urgent, you should have proceeded accordingly. You are a seasoned Member. Maybe what we can do to help your case, if it is still possible to do that, is to ask the Committee to expedite the process. It will probably solve the issue you have, if you do not mind, Hon. Washiali. That is the easiest way for us to resolve this matter. Since it was an Ordinary Question, it will probably take a little more time and you know there is backlog, but the system is working. Questions are being answered but not all of them in good time. So, I am trying to see how we can help. Since yours looks like a matter that needs to be given some priority, we can help. I will ask the Committee responsible to kindly move fast and facilitate an answer to the satisfaction of Hon. Washiali, the Member who asked the Question.

What is it, Hon. Omulele?

Hon. Christopher Omulele (Luanda, ODM): Hon. Deputy Speaker, I feel the pain that my brother, Hon. Washiali, is experiencing now because of the Mumias matter that has been alive for a long time. I think what has happened and what might help him is the fact that new facts have arisen by the recent appointment of receivers by KCB. So probably what he might want to do is to bring a fresh Question in light of these new factors, so that it can be responded to as a separate Question from what he had earlier asked. Probably that would assist.

Hon. Deputy Speaker: Well, you say you feel the pain of Hon. Washiali. Probably yes, but then you need to take the same medication. You know Hon. Washiali is the owner of this Question and if he feels that the best way to handle this matter is to expedite it that would be fine. By the way, he can still have that Question answered and then he can ask another one in a different way to accommodate the specific issues that you are raising, otherwise Hon. Washiali is satisfied.

Hon. Deputy Speaker: What is it again, Leader of the Majority Party? We do not want to take much time on this matter.

Hon. Aden Duale (Garissa Township, JP): I am not sharing the pain with Hon. Washiali because I do not grow sugarcane; I farm camels. Hon. Washiali and Hon. Omulele – a lawyer – are introducing new evidence to a matter which is already before the House. The best thing they need to do is to go back to the registry and file that they want to introduce a new matter. I want to ask Hon. Washiali to now use the Question by Private Notice option so that he can file a Question today and then next Tuesday we will make sure that it is in the Order Paper and that the matter of receivership is also part of the land that belongs to the people of Mumias will be considered. It is a serious matter. So, I think we can list it next week Tuesday and then you can direct that the Cabinet Secretary appears on Wednesday.

Hon. Deputy Speaker: That is okay but still the principle is that there should always be a response in reasonably good time. I believe that is what Hon. Washiali is saying and that is what I want to pursue. Let us deal with these two things separately. If Hon. Washiali wants to ask a different Question, he will do it, but if he is satisfied that we can finalise this one, the best thing is for us to expedite. It should be the general rule that whenever Questions are asked they are answered in good time. That would be good.

NOTICE OF MOTION

ADOPTION OF REPORT ON IMPLEMENTATION OF HOUSE RESOLUTION

Hon. Deputy Speaker: Next time please, let us know in good time. I am allowing you to belatedly move your Notice of Motion. Let it be quick, Hon. Kenta.

Hon. Richard ole Kenta (Narok North, ODM): Thank you, Hon. Deputy Speaker. In fact, the Notice of Motion is already with the Clerks-at-the-Table.

I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Select Committee on Implementation on the Status of the Resolution of the House made on 6th June 2019 regarding the Approval of Ms. Mwendu Mwinzi for Appointment as the Kenyan Ambassador to Seoul, South Korea, laid on the Table of the House on Wednesday, 25th September 2019.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Members, we will now move to the next Order. After that, before we go to the Committee of the whole House, I will have a communication to make. Can we please move to the next Order?

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

Hon. Deputy Speaker: Who is the Mover of that particular Motion? Is it the Leader of the Majority Party? Let us have you move it.

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, I beg to move the following Procedural Motion:

THAT, pursuant to the provision of Standing Order 30(3)(a), this House orders that should the regular time for adjournment of the House be reached before conclusion of business appearing under Order No.9 in today's Order Paper, the sitting of the House shall stand extended until the conclusion of the said business.

That business is the Finance Bill, which has a timeline. We must pass it before 30th September. We are starting it straight away after this Procedural Motion, if it is approved, so that if we might need some 30 minutes then we can finish it by 7.30 p.m. or 8.00 O'clock so that tomorrow we can get time for the Question to be put in the afternoon. The date of 30th is Monday according to the calendar and we will not have met the deadline. So, I want the House to agree with me. We rarely use this provision. We use it where we feel we have a Bill that has a timeline.

I beg to move and ask Hon. Chris Wamalwa to second.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Deputy Speaker. I rise to second. As the Leader of the Majority Party has put it, the Finance Bill plays a critical role because it sets out measures of raising revenue that will fund the Budget. So, it is indeed important that we do this for purposes of living within the timeframe.

Thank you. I second.

(Question proposed)

Hon. Members: Put the Question.

(Question put and agreed to)

COMMUNICATION FROM THE CHAIR

NON-COMPLIANCE OF PROPOSED AMENDMENTS TO THE FINANCE BILL WITH PROVISIONS OF CONSTITUTION AND STANDING ORDERS

Hon. Deputy Speaker: Hon. Members, before we go to the next Order, I would like to give a communication on guidance on non-compliance of certain proposed amendments to the Finance Bill 2019, with provisions of Article 114 of the Constitution and Standing Order No.133.

This communication relates to business appearing as Order No.9 in today's Order Paper, being Committee of the whole House on the Finance Bill (National Assembly Bill No.51 of 2019).

As you may have observed, the Notices annexed to today's Order Paper contain several amendments that have been proposed to the said Bill both by the Departmental Committee on Finance and National Planning, which has sponsored the Bill and individual Members. Before the House proceeds to the Committee of the whole House, I wish to provide guidance relating to consideration of the proposed amendments by the Committee of the whole House.

As you are aware, it is now an established practice under the Constitution that considering any matter that may occasion financial implication on public funds, the House is bound by provisions of Article 114(2) of the Constitution. For clarity, the Article provides as follows:

“If, in the opinion of the Speaker of the National Assembly, a Motion makes provisions for a matter listed in definition of ‘a money Bill’, the Assembly may proceed only in accordance with the recommendation of the relevant Committee after taking into account the views of the Cabinet Secretary responsible for Finance.

Hon. Members, you will agree with me that the intention of this provision was to ensure that, in as much as this House reserves the power to determine revenue raising measures, it does not commit the Government without taking cognizance of the fiscal policy and considerations of the national Government.

In this regard, I have applied my mind to the amendments proposed by the Members to the Finance Bill, 2019, some of which is intended to make provisions touching on matters listed in the definition of a ‘Money Bill’ pursuant to the provisions of Article 114(2) of the Constitution.

Additionally, Hon. Members, Standing Order 133(5) provides that:

“No amendment shall be permitted to be moved if the amendment deals with a different subject or proposes to unreasonably or unduly expand the subject of the Bill, or is not appropriate or is not in logical sequence with the subject matter of the Bill.”

In this regard, Hon. Members, my office has received several proposed amendments to the Finance Bill, 2019 from the Chairperson of the Departmental Committee on Finance and National Planning, the Hon. Leader of the Majority Party and five other individual Members. Some of the amendments make provisions for matters listed in the definition of a ‘Money Bill’ pursuant to the provisions of Article 114. Others propose to deal with a new subject, or propose to unreasonably or unduly expand the subject of the said Bill within the provisions of Standing Order No.133(5).

I weighed the proposed amendments against the provisions of Article 114(2) of the Constitution and Standing Order Nos. 114(3)(b) and 13 (5) relating to admissibility or otherwise of amendments proposed to a Bill on account of their Money Bill effect and their scope.

As you may have clearly noticed in the Order Paper, I directed the Clerk to publish those amendments with a disclaimer:

“Subject to provision of Article 114 of the Constitution” or “subject to the provisions of Standing Order 133 (5)” be placed under each of the affected amendments.

Hon. Members, before I guide the House on the specific amendments, let me put it on record that the proposed amendments by the Leader of the Majority Party are not part of those I isolated for guidance. The Leader of the Majority Party did submit his proposals to the Departmental Committee on Finance and National Planning which considered them in terms of the provisions of Article 114 (2) of the Constitution and recommended that the House may consider those amendments in the Committee of the whole House.

I, therefore, wish to guide the House as follows with regard the other amendments:

(i) The Member for Alego Usonga, Hon. Samuel Atandi, is proposing to amend the Bill in Clause 2 on definitions by including a new definition of “winnings” in the Betting, Lotteries and Gaming Act. He is also seeking to insert a New Clause 3A to the Income Tax Act. He is also seeking to insert a New Clause 40A and New Clause 41A to the Capital Markets Act.

I have applied my mind on the said proposed amendments and formed an opinion that the proposed amendment to Clause 2 and insertion of New Clause 3A fall within the meaning of ‘Money Bill’. The recommendations by the Departmental Committee on Finance and National Planning, having consulted the National Treasury, are that this House does not consider the amendments, which surprisingly, are by a Member of the same Committee. I, therefore, direct that the Committee of the whole House does not consider the proposed amendments to Clause 2 and the proposed insertion of New Clause 3A.

Regarding the proposal to insert New Clauses 40A and New Clause 41A to the Capital Markets Act, I am of the opinion that the import of those amendments deals with a different subject and, unreasonably and unduly, expands the subject matter of the Bill with regard to administrative matters handled by the Capital Markets Authority.

In this regard, the said amendments are beyond the scope of the Bill. May I also add that new provisions have not been subjected to public participation as per the requirement of the Constitution. Therefore, the Committee of the whole House should not consider the proposed amendments to New Clauses 40A and 41A to the Capital Markets Act.

However, the Member is at liberty to introduce a separate Bill in the manner contemplated in Standing Order 114 asking the House to legislate on the matters whereby the proposal would go through among other processes of public participation.

(ii) The Member for Dagoretti South, Hon. John Kiarie, has proposed to amend Clause 19 of the Bill which seeks to amend the Second Schedule to the Value Added Tax Act, 2013 by inserting a new paragraph (d) which introduces a new paragraph 65A to include taxable goods locally purchased or imported by manufacturers or importers of artisanal tools approved by the Cabinet Secretary upon recommendation by the CS for the time being responsible for industrialisation.

I have determined that the proposed amendment is subject to the provisions of Article 114 of the Constitution. Therefore, the Committee of the whole House shall not consider the proposed amendment to Clauses 19 as proposed by the Member for Dagoretti South since the Member has not complied with the provisions of Article 114 of the Constitution.

The Member is also at liberty to introduce a separate Bill on the matter in the manner contemplated in Standing Order 114, whereby the proposal would go through, among other processes of public participation.

(Several Members stood at the Bar)

Hon. Members who are standing there, please, come in so that I proceed with my communication. Order Hon. Members, please, take your seats. I gave you an opportunity to take your seats and I can see some Members engrossed in discussions.

(iii) The Hon. Member for Kiambu, Hon. Jude Njomo, proposes to amend Clause (18)(a) of the Bill by inserting a new paragraph (111) to make provisions on sports equipment imported or purchased by educational institutions. I am of the considered opinion that the said proposed amendment makes provisions to a matter listed in the definition of ‘a money Bill’ and is, therefore, subject to the provisions of Article 114 of the Constitution and Standing Order No.114, which may be considered upon recommendations of the relevant Committee.

Therefore, the proposal to amend Clause (18)(a) of the Bill shall not be considered by the Committee of the whole House. The Member is also at liberty to introduce a separate Bill on the matter in the manner contemplated in Standing Order 114, whereby the proposal would go through among other processes, public participation.

(iv) The Member for Gatundu South, Hon. Moses Kuria, has proposed to insert a New Clause 8A immediately after Clause 8 of the Bill relating to the Income Tax Act to provide for the manner of investing deposits in a registered home ownership investment plan and the definition of ‘approved institution’.

He intimates that the Home Ownership Saving Plan (HOSP) guidelines only recognize investment guidelines as per the Central Bank of Kenya (CBK) specifications. Therefore, he seeks to include investment guidelines provided by the Capital Markets Authority, in addition to the prudential guidelines issued by CBK to regulate investment of deposits under a registered HOSP so that the investor has a choice to either save through a bank or an investment savings product.

I am of the opinion that that the import of the amendment proposed by the Member for Gatundu South to insert a New Clause 8A makes provisions that do not expand the scope of the Bill beyond its subject as per the provisions of Standing Order 133(5). Accordingly, the Committee of the whole House shall proceed to consider that particular amendment.

(v) Finally, the Member for Molo, Hon. Kimani Kuria, has proposed to delete Clauses 21 and paragraph (b) of Clause 23 regarding the Excise Duty Act, 2015 relating to the time supply in a betting transaction, and the provision proposing that Excise Duty on betting shall be ten percent of the amount wagered or staked. It is my considered opinion that the proposed amendments have implications to the matters listed in the definition of ‘a money Bill’ under Article 114 of the Constitution.

In this regard, the Committee of the whole House shall not consider the same since the manner in which it has been processed does not accord with the provisions of Article 114 (2) of the Constitution. The Member is also at liberty to introduce a separate Bill on the matters in the manner contemplated in Standing Order 114, whereby the proposal would go through, among other processes, public participation.

Hon. Members, even as I provide this guidance, I am particularly perturbed by the fact that, among the sponsors of amendments whose fate I have since determined, are two Members

of the Departmental Committee on Finance and National Planning. These are; the Hon. Samuel Atandi and the Hon. Kimani Kuria. My concern emanates from the fact that, unlike the non-members of the Committee, the two Members had a primary opportunity to interact with the Bill during the Committee's intense consideration of the Bill. Ordinarily, anyone would expect that the Members would have proposed their amendments in the Committee, rather than doing so outside the Committee, in the manner they have done.

I have scrutinised the Report of the Committee on the Finance Bill, 2019 and did confirm that indeed, Hon. Samuel Atandi and Hon. Kimani Kuria were part of the sittings of the Committee in which the Bill was considered on a clause by clause basis. I have further confirmed that Hon. Atandi did append his signature to signify his consent for the adoption of the Committee's Report on the Bill while Hon. Kimani Kuria, though absent on the day the Report was adopted had attended all meetings in which the Committee considered the Bill. The fact that there is no record in the Report of the Committee to the effect that the two Members raised divergent views or made a case for a minority report as contemplated under Standing Order 199(6) implies that they were in agreement with the Committee's position on the Bill and the amendments proposed thereof.

As your Speaker, I am particularly concerned that Members can sit in meetings of their Committee on a Bill, adopt a Report thereof and then later on propose amendments, part of which seems to be reversing the position of the Committee, which they were part of. This is quite unusual.

In conclusion, Hon. Members, the Committee of the whole House shall proceed on the specified amendments in accordance with the guidance I have provided.

The House is accordingly guided.

I thank you. So, we move to the next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

*[The Deputy Speaker
(Hon. Moses Cheboi) left the Chair]*

IN THE COMMITTEE

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

THE FINANCE BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Order Members! Hon. Members, we are in Committee of the whole House to consider the Finance Bill (National Assembly Bill No.51 of 2019).

(Loud consultations)

Order! Order! Those Hon. Members who are consulting, we have a consultation room. Hon. Members, who are leaving the Chamber, please do so quickly because we must get into business.

Clause 2

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have an amendment by the Chair Departmental Committee on Finance and National Planning, please move it.

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

THAT, Clause 2 of the Bill be amended in paragraph (b) by deleting the proposed definition of “investee company” and substituting therefor the following new definition- “investee company” has the meaning assigned to it under the Capital Markets Act and the regulations made thereunder:

This amendment is meant to take the standard style of cross-referencing definition. So, there is no major amendment or substantive change, but ensuring it is drafted in the proper manner.

(Question of the amendment proposed)

*(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 2 as amended agreed to)

Clause 3

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, we have an amendment by Hon. Limo, please move it.

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

THAT, Clause 3 of the Bill be amended-

- (a) in paragraph (a) in the proposed paragraph (d) by deleting the words “income chargeable to tax includes”;
- (b) by inserting the following new paragraph immediately after paragraph (a)-
- (aa) by inserting the following new subsection immediately after Subsection (2) -

(3) The Cabinet Secretary shall make regulations to provide for the mechanisms of implementing the provisions of Subsection (2)(d).

This is a clean-up of the words “income chargeable to tax includes”. So, we are proposing to delete it to make it clearer and cleaner.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Limo have you moved the two paragraphs so that I can propose them together? You have (a) and (b) did you move both for purposes of record?

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairlady, I moved (a) and (b) to allow the Cabinet Secretary (CS) to come up with guidelines on how the new market, which has been introduced in the Bill by the name “digital market” can be implemented because it is a new term. So (b) will allow the CS to come up with guidelines on how this digital market will be operated in Kenya given that the stakeholders quoted South Africa where it is working very well. The CS will issue guidelines to make it clearer to the stakeholders and Kenyans in general.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Having moved (a) and (b), I propose the Question.

(Question of the amendment proposed)

The Member for Garissa Township and the Leader of the Majority Party, you want to speak to this?

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Temporary Deputy Chairlady. I think this is important and I do not want to go into (a) but (b). This is a new terminology that will touch taxation on digital platforms. Currently, we do not have regulations. So, I want to thank the Chair and Committee for introducing (b) to say that the CS must bring regulations on how the digital platform, in terms of taxation, will be handled going forward.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. Hon. Member for Marakwet, West Hon. Kisang Kipkemoi.

Hon. William Kisang (Marakwet West, JP): Thank you, Hon. Temporary Deputy Chairlady. I also stand to support the amendment because in the past, we have been doing a lot of digital business but Kenya Revenue Authority (KRA) did not have opportunity to tax because there were no policies and regulations in place to allow them to tax. So, this is the right way to go so that we can enhance our revenue collection.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let us hear Hon. Musimba, Member for Kibwezi West.

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): I also stand to add my voice to the same. I commend the Committee for having addressed this. The digital marketplace has ended up being an ocean that you cannot navigate because the entire economy is moving towards that direction. As such, proper regulations need to be put into place so that then you do not have hits and misses towards the wrong direction.

Thank you, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let me have the last one. Hon. Osotsi.

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Temporary Deputy Chairlady, I support that, but going forward, I think we need a substantive piece of legislation on the digital market. I know at the moment the Departmental Committee on Communication, Information and Innovation is looking at the Data Protection Bill. Some aspects of the Data Protection Bill have to take into cognisance management of data around digital market. The digital market is such an important issue and cannot in the long term be handled through regulations. We need a substantive law moving forward.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Tong’i, you should not raise your hand. You know the procedure. Let me give you the Floor, but you do not raise hands.

Hon. Richard Tong’i (Nyaribari Chache, JP): Hon. Temporary Deputy Chairlady, I rise to support. Even as I do that, digital market is an extension of the stock market and we all know how the stock market works. If we do not put measures in place and the laws which will protect the investor, we will leave him exposed. I am grateful that we have started. At least, we have started in the right direction, but we have to be sure that we are putting the laws in place to ensure that the poor investors from upcountry, who have no capacity to understand the intricacies involved in the stock market are protected so that they do not lose their hard-earned income. Thank you.

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

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

(Clause 3 as amended agreed to)

(Clauses 4 and 5 agreed to)

Clause 6

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): There is an amendment by the Chair. Please move the amendment.

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

THAT, Clause 6 of the Bill be amended by deleting paragraph (c).

The purpose of this deletion is that the Bill is proposing to introduce taxes on small businesses, including cleaning and fumigation, catering services, security and others which, in our opinion, are very small start-up businesses. We considered what this Bill was attempting to raise. We were of the opinion that it is not significant and we could take it into account in another amendment, which we will move later, without anticipating debate. So, we propose to delete because these are small businesses which are majorly done by youth, women and people with disabilities in our villages and in our country. Therefore, I propose that this clause be deleted.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let us have the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairlady, I do not agree with the reason given by the Chairman because women, the youth and disabled people must pay tax. If we go that route then there are many people who will become disabled so that they evade paying taxes. Where I agree with the Chair is that this withholding tax particularly on

cleaning, security and fumigation services... These are the SMEs which are coming up. I agree with the Committee because we must balance the Finance Bill. The budget we have passed is with a hole. The Chair has convinced me that there is another place where he will increase taxation so that it balances. So, I agree with him and I support.

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

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairlady, I remember when we nominated 001 and we got an opportunity for medication, he said: "I want to stay like this because this is how I got to become Member of Parliament." He pays taxes.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Leader, address the amendment.

Hon. Aden Duale (Garissa Township, JP): Please, next time tell him not to bring Akothee to Parliament in that kind of dress. Parliament is a decent place. Some of us have daughters and sons. We do not want the Akothee type in this House. So, 001 must stop.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Temporary Deputy Chairlady. I rise to support the Chair of Departmental Committee on Finance and National Planning but the key objective of this is not necessarily start-up business because we have some people who have been in this business whether it is fumigation or catering for years. Start-up business is a business which has one, two or three years. I think the objective here is in terms of the principle of materiality since the amount of money that you are likely to realise from this is going to be a little bit insignificant. Also, when you look in terms of value, these are small things that are easily taken over by the people who have just cleared college for purposes of employment and sustainability.

I support. Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Next is the Chair of the Budget and Appropriations Committee.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairman. I support the amendment by the Chair of the Departmental Committee on Finance and National Planning. As I mentioned during the Second Reading, many of these service – If you read the import of that amendment, there was even taxing transportation of goods excluding air transport services. That means even the *mkokoteni* and donkey people who ferry goods in town using donkey carts, *mkokoteni*, wheelbarrows and goods carts will be taxed.

However, I am happy that the Chair and the Departmental Committee on Finance and National Planning, besides doing away with this tax as the Leader of the Majority Party has mentioned, will be introducing other amendments that are compensating what he has taken away from here. That is the spirit we want to encourage; that if you do away with a tax element that was to bring revenue, propose an element that will also bring in revenue. I thank the Chair of Departmental Committee on Finance and National Planning for that very good initiative.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let me have Hon. Rasso Ali, Member for Saku.

Hon. Ali Rasso (Saku, JP): Thank you very much, Hon. Temporary Deputy Chairlady. I oppose this amendment because we are making a Finance Bill. When you go through this Bill, there are many loopholes that are likely to come about. What the Chair has given us is not compelling enough as to why he has removed it.

In the growing of the tax bracket, the base must grow so that those of us who believe that we are the middle or towards the top can have the taxation come down. So, I believe I am

opposed to it because these are the growing areas in the economy where there is a lot of money that actually goes into those services. That is why what the Chair has given is not compelling and I am opposed to it.

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

(Clause 6 as amended agreed to)

(Clauses 7 and 8 agreed to)

Clause 9

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

THAT, Clause 9 of the Bill be amended by deleting paragraph (a).

This is on the Capital Gains Tax. The Capital Gains Tax was introduced not long ago and the proposal to drastically increase it from 5 per cent to 12.5 per cent will work negatively in terms of the Big Four Agenda proposal to build and construct affordable housing. Therefore, we propose to delete it and move another amendment to compensate for the tax which was being raised here. I propose that this Clause be deleted.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let us have the Member for Kajiado North.

Hon. Joseph Manje (Kajiado North, JP): Hon. Temporary Deputy Chairlady, I support that amendment. This was a very high increase. They were increasing it from 5 per cent to 12.5 per cent which would have discouraged investors.

I support that amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let us have the Member for Kimilili, Hon. Mutua Barasa.

Hon. Didmus Barasa (Kimilili, JP): Hon. Temporary Deputy Chairlady, I support this amendment by the Chair of the Departmental Committee on Finance and National Planning. It is a good amendment that will help this country move forward economically. This country is developed by investors.

I support the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let us have the Member for Garissa Township.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairlady, I stand to oppose. I am shocked that the Chairman of the Departmental Committee on Finance and National Planning is talking of the Big Four Agenda. It was the National Treasury, the centre of the Big Four Agenda, which proposed this increment.

This is about the differences in legal fees, brokerage and commission agents. This House must raise revenue to help us decrease the national debt. This will affect the big land owners. I

want the Chairman to agree with the National Treasury to increase the Capital Gains Tax from 5 per cent to 12.5 per cent.

(Hon. Joseph Limo consulted loudly)

The Chairman of the Departmental Committee on Finance and National Planning is amorphous. He is speaking while I am on the Floor.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Ignore anybody else. Just prosecute your business.

Hon. Aden Duale (Garissa Township, JP): It should be removed. As we continue, he should convince us on how he will fill that gap in revenue if we reject that increment from 5 per cent to 12.5 per cent. This Finance Bill must balance.

You remember that last year when we removed the fuel levy tax, it affected our National Government Constituencies Development Fund (NG-CDF). Members have to be very careful. He can deny the Government revenue and then when it cannot balance, we will be told to reduce our NG-CDF. Today, we are very careful. It will not be taken from our constituencies but others which are very important. We do not want to have a gap that will affect us. The Chair must tell the House where he will get money to cover that difference from 5 per cent to 12.5 per cent.

I oppose the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Thank you, you are on record. Let us have the Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Chairlady. I stand to support the proposed amendment by the Chair of the Departmental Committee on Finance and National Planning. I say so on two accounts. While it might be desirable to increase the Capital Gains Tax from 5 per cent to 12 per cent, this is at the wrong time. The real estate market, especially the housing market, is doing so badly such that increasing taxes will reduce housing absorption and purchase.

Secondly, in a country where we do not account for the inflation index, by increasing the rate of Capital Gains Tax from 5 per cent to 12 per cent and including 8 per cent inflation, you are essentially taxing at 20 per cent Capital Gains Tax. There could be a better way of raising revenue rather than driving the real estate market into the ground.

I support the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let me hear from the father of the House, Hon. Angwenyi. He is the longest serving Member.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Thank you, Hon. Temporary Deputy Chairlady. I rise to support the amendment proposed by the Chairman of the Departmental Committee on Finance and National Planning. The proposal being made by the Treasury contradicts the Big Four Agenda of the Government. We want to encourage people to buy property and houses yet we want to increase the taxes for people to buy properties.

As you know, we live in this country. My boss has said that we must raise money to pay debts. This House has failed in not establishing a threshold as to how much tax and debt this country should incur. We cannot do that by taking money from the people we represent in this House so that we can pay for debts some of which we do not know how they have been used. Maybe they have been used at Kimwarer and others.

Let us support this amendment by the Chairman.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let us have the last contribution from the Member for Kilifi North before I put the Question. Hon. Member for Kilifi North, Hon. Baya Yaa.

Use the next microphone.

Hon. Owen Baya (Kilifi North, ODM): Thank you very much. I would like to support the reduction. As it has been said, if the Capital Gains Tax is very high, the property market comes down. If we bring it down, we have a bigger expansion. There are more people who will go into the real estate business; therefore, we will have more people paying the Capital Gains Tax. If we raise it, it means that there will be fewer people; therefore, you are reducing the basket and the bracket. You will, therefore, have less people paying tax. It is important that we expand the bracket for taxation by lowering it and getting more people to pay the tax.

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

(Clause 9 as amended agreed to)

Clause 10

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

THAT, Clause 10 of the Bill be amended –

- (a) in paragraph (a) by deleting sub-paragraph (iii);
- (b) by deleting paragraph (b).

This amendment is similar to what I had moved earlier. It is touching on taxation of small businesses including cleaning, fumigation, catering and others which I had moved.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Chris Wamalwa, what is out of order?

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD – K): Hon. Temporary Deputy Chairlady, when you look at the Order Paper and the way we are considering the clauses, we have jumped from Clause 7 and we have gone to Clause 9 and there is Clause 8.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD – K): Those are new clauses.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Chris Wamalwa, we considered Clauses 7 and 8. We are on record that we did not have amendments to those Clauses. So, there is nothing out of order. Hon. Tong'i.

Hon. Richard Tong'i (Nyaribari Chache, JP): Hon. Temporary Deputy Chairlady, I support the amendment, but I want to put a caution. It is not enough to say that security services, cleaning, fumigation and catering services are for Small and Medium-Sized Enterprises (SMEs). We have big companies which do these kinds of businesses. I will be more comfortable if we put an amount or threshold and then we say that beyond it, we will tax. When we leave it open, then we will encourage underworld market where everybody else can register his business in the

name of these SMEs and then run away with the taxes. I will be comfortable if that can be amended in future.

However, I support the amendment.

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

(Clause 10 as amended agreed to)

(Clause 11 agreed to)

Clause 12

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have an amendment by Hon. Limo.

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

THAT, Clause 12 of the Bill be amended in the proposed amendment to Part I of the First Schedule to the Income Tax Act by inserting the following new items immediately after item 58—

59. The amount withdrawn from the National Housing Development Fund to purchase a house by a contributor who is a first-time home-owner.

60. Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure, projects and assets defined under Green Bonds Standards and Guidelines, and other social services:

Provided that such bonds, notes or securities shall have a maturity of at least three years.

The justification for this amendment is that Clause 12(59) allows the contributors to the affordable housing scheme who are first-time home-owners to be excluded from paying income tax. It encourages people to enroll in this scheme. Under Clause 12(60), the intention is to separate the exemption which has already been provided on bonds to show Green Bonds separately. This is to encourage investments on Green Bonds which will be used in green projects which are friendly to the environment.

(Question of the amendment proposed)

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

(Clause 12 as amended agreed to)

Clause 13

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Chair of the Committee, Hon. Limo, you have an amendment in this clause. Please move it.

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

THAT, the Bill be amended in clause 13(b) by –

(a) deleting sub-paragraph (iii);

(b) deleting sub-paragraph (iv).

This Clause also touches on the same services which we had already moved to exclude services such as cleaning, fumigation and catering from paying tax. The services are the same but they touch on different aspects of the same business.

(Question of the amendment proposed)

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

(Clause 13 as amended agreed to)

(Clauses 14 and 15 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, as you are aware, the Finance Bill is a statute law Bill. We are moving from the Income Tax Act. Before we go to the Value Added Tax (VAT) Act, we will deal with the new clauses of the Income Tax Act.

New Clause 7A

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Limo, you are moving the New Clause 7A.

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 7 –

Amendment of
section 16 of
Cap. 470.

7A. Section 16 of the Income Tax Act is amended in subsection (2) by deleting the proviso to paragraph (j) and substituting therefor the following new proviso—

Provided that this paragraph—

- (i) shall apply to loans advanced to the company by a non-resident associate of the non-resident company controlling the resident company; and
- (ii) shall not apply to a company implementing a project

under an affordable housing scheme upon recommendation by the Cabinet Secretary responsible for housing.

This amendment is on affordable housing scheme which intends to allow investors under the affordable housing scheme to be exempted from provisions of paragraph (j) which restricts the amount of borrowing against revenue reserves which is popularly known as thin capitalisation. It means that when investors are allowed to invest in this affordable housing scheme, they will be excluded from the restriction of borrowing beyond a certain limit on their capital because of the heavy investment which is expected under this scheme.

(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 8A

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, we have proposed amendments to New Clause 8A by Hon. Moses Kuria and Hon. Joseph Limo. We will start with the proposed amendment by Hon. Moses Kuria. His amendment incorporates Hon. Limo's amendment. It will have an effect on Hon. Limo's amendment.

Hon. Moses Kuria (Gatundu South, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 8-

Amendment of
Section 22C of

Cap. 470

8A. Section 22C of the Income Tax Act is amended-

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

“(4) Deposits in a registered home ownership savings plan shall be invested in accordance with prudential guidelines issued by the Central Bank or investment guidelines or regulations issued by the Capital Markets Authority”;

(b) in subsection (8), by deleting the definition of “approved institution” and substituting therefor the following new definition-

“approved institution” means a bank or financial institution registered under the Banking Act (Cap.488), an insurance company licensed under the Insurance Act (Cap. 487), a building society registered under the Building Societies Act (Cap.489), or a fund manager or investment bank registered under the Capital Markets Act (Cap. 485A).

The import of the amendment is to ensure that the benefits that this House gave to home owners under the Home Owners Savings Plan (HOSP), and which was restricted to banks only, can now be expanded to include other investments like those primarily licensed under the Capital Markets Act. The Act has other instruments for savings which are becoming very popular like corrective investment scheme and money market scheme. Savings in those schemes ought to be included for the benefits just like savings in bank instruments. The return on savings from banks is very low and investors are looking for returns in other capital instruments. So, it is only right and fair that those instruments be accorded the same advantages.

(Question of the new clause proposed)

(New clause read the First Time)

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

Hon. Joseph Limo (Kipkelion East, JP): On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let me hear from the Hon. Limo.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairlady, I rise under Standing Order No.133(5) which the Speaker ruled on. The Speaker had ruled that the only amendments to be allowed are those by the Chair of the Departmental Committee on Finance and National Planning and those by the Leader of the Majority Party. That is what is indicated here very clearly.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Order, Hon. Limo. We have a record of the Speaker’s ruling. It is to the effect that the only amendment from Members, apart from the Leader of the Majority Party that was allowed, was that one of Hon. Moses Kuria. So, he is in order in moving his amendment. Hon. Members, the House stands advised by the Communication from the Deputy Speaker.

I welcome debate on the proposed amendment by Hon. Moses Kuria. Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): I support Hon. Moses Kuria because his proposed amendment is creating an opening for other players in the housing scheme. And because he is a fake presidential candidate, he does not have the power of veto under Article 115 of the Constitution. It is only President Uhuru Kenyatta who can exercise that power. In any case, Hon. Kuria is rarely seen here. But he has brought a very good amendment. It is not like Hon. Atandi’s and the rest.

I beg to support. This is good for those who want to do housing.

(An Hon. Member spoke off record)

They were not in tandem with the law; that is, Article 114 of the Constitution. Read the way Hon. Moses Kuria does. He researches. He is also a member of the Budget and Appropriations Committee. I support the amendment. Maybe one day, say, in 50 years to come, he might become the president and exercise that power.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): The Member for Kajiado North.

Hon. Joseph Manje (Kajiado North, JP): Thank you, Hon. Temporary Deputy Chairlady. While I support Moses Kuria's proposed amendment, I thought it should have gone through the Departmental Committee on Finance and National Planning so that it can be exposed to citizens' participation because it is a key amendment.

(An Hon. Member spoke off record)

I am not a member of the Committee.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let us avoid arguments, Hon. Manje. Please, debate the proposed amendment by Hon. Moses Kuria.

The Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): I stand to support the proposed amendment. Those of us in the housing sector know that one of the greatest impediments to house ownership and increased velocity of the housing market is lack of affordable finance. If we get any avenue that provides finance at affordable terms, we should encourage it.

I support and I believe that this is a progressive approach. We hope the Central Bank of Kenya, the Insurance Regulatory Authority and related authorities will come up with progressive regulations and rules to enable effective implementation of the amendment.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Member for Kikuyu.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Chairlady, I support the proposed amendment by Hon. Moses Kuria. It is important to note that, as much as we are in the Committee of the whole House, people never participate in the Second Reading and do not read committee reports. The Chair of the Departmental Committee on Finance and National Planning is seated here and Hon. Manje is not a member of the Departmental Committee on Finance and National Planning. He clearly never read the Report because if he had, he would know that some of these things were subjected to public participation.

I only beg, Hon. Temporary Deputy Chairlady, that you protect those of us who spend time to read and sit in this House. Please, protect us from those Members who are wasting our time here.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Order, Hon. Ichung'wah. You cannot purport that Hon. Manje has not read the Report. This is a House of debate and you are not Hon. Manje. I will not give a chance to Hon. Manje because I have protected him.

Hon. Members, now that Hon. Ichung'wah is on record saying that Hon. Manje did not read the Report and yet he is not Hon. Manje, let us hear from Hon. Manje. I see you are agitated. Is it because you have been mentioned?

Hon. Joseph Manje (Kajiado North, JP): Hon. Temporary Deputy Chairlady, I can confirm that I have the Report and I have read it. I even participated in the public participation at

the Kenyatta International Convention Centre (KICC). I do know why Hon. Ichung'wah is so agitated.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): It is on record that Hon. Manje has read the Report.

*(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)*

Hon. Members, with Hon. Kuria's proposed amendment having been carried, the proposed amendment by Hon. Limo falls.

(Proposed amendment by Hon. Joseph Limo withdrawn)

Hon. Members, we are now on the Value Added Tax. We have no amendments to this clause.

Clause 16

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let the Chair move his proposed amendment to Clause 16.

Hon. Joseph Limo (Kipkelion East, JP): Before I move the amendment, I want to be on record that when the Speaker made a Communication, most of the Members were engaged in loud consultations and so the ruling on Hon. Moses Kuria's proposed amendment skipped my ear. So, I have confirmed that it was allowed.

Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by deleting Clause 16 and substituting therefor the following new clause-
Amendment of s.5
of No. 35 of 2013

16. Section 5 of the Value Added Tax Act, 2013 is amended-

(a) in sub-section (6) by deleting the words "a registered person" and substituting therefor the words "any person";

(b) by inserting the following new sub-sections immediately after subsection (6)-

(7) The provisions of subsection (1) shall be applicable to supplies made through a digital market place.

(8) The Cabinet Secretary shall make regulations to provide the mechanisms for implementing the provisions of subsection (7).

(9) For the purpose of this section, "digital market place" means a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means.

Under paragraph (a) the amendment is meant to replace the words "a registered person" with any "other person" as already done in Clause 15. It is a redrafting issue. Under paragraph

(b), the amendment seeks to allow the Cabinet Secretary to make it clear on how taxation on digital marketplace will be implemented.

It is almost the same as what I had moved earlier because this digital marketplace will be occurring severally in the Bill.

*(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 16 as amended agreed to)

(Clause 17 agreed to)

Clause 18

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

THAT, clause 18 be amended in paragraph (a) (iii) by –

(a) deleting—

(i) the proposed new paragraph 105; and,

(ii) the proposed new paragraph 106.

(b) inserting the following new items immediately after item 110—

111. Goods imported or purchased locally for the direct and exclusive use in the construction of houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing.

112. Musical instruments and other musical equipment imported or purchased locally, for exclusive use by educational institutions, upon recommendation by the Cabinet Secretary responsible for Education.

Under (a), we are concerned that some of the items which are being moved from zero-rated to exempt had been covered under the Finance Act, 2018. To maintain certainty and consistency in our taxation measures, we are proposing to delete and take it back to zero-rating for those two items under paragraphs 105 and 106. Under items 111 and 112, it is to bring in the goods and materials which are exclusively for the use of construction of affordable housing to be brought into zero-rating together musical instruments and other musical equipment imported for the purpose of being used by educational institutions.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let me have the Deputy Speaker, Hon. Cheboi.

Hon. Moses Cheboi (Kuresoi North, JP): Hon. Temporary Deputy Chairlady, this one is the Member for Kuresoi North. I am a musician. I sang bass. I know the importance particularly on the second one on musical instruments for schools. That is my major concern. We are moving

to development of talents, particularly in our schools. If we can have goods imported for our students so that they are able to nurture their talents... I am only interested in students and not others who have the capacity to do it. It would be very good for us. I have attended musical competitions particularly the last one in Nakuru recently and the major concern of the teachers and parents is that the items that are used in those musical festivals are very expensive. So, I support the Chair of the Committee that it should be zero-rated.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Pukose.

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Temporary Deputy Chairlady, I support this amendment. I thank the Committee because when you zero-rate both importation and purchase of musical instruments and related... This has to be approved by the Cabinet Secretary. I would urge that the approval be fast. At times when it goes to the National Treasury for approval, it takes ages. This should have even gone to a further amendment that the period for approval should be within a certain period of time so that it can be fast-tracked. What we have seen is that when people are following those approvals, it takes ages. That is very challenging.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Pukose, for record purposes, the proposed amendment does not require approval from the Cabinet Secretary. It is upon recommendation by the Cabinet Secretary. Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): I support this even though I am not a music person. This year, there was a national music festival and the talent which was shown made the Government make those items tax-exempt with the recommendation of the Cabinet Secretary, so that other busy-bodies do not abuse it. One thing that the Deputy Speaker did not say is that he attended that function courtesy of my intervention. Many people have not done it here. He rode in the Presidential Air Force One to Nakuru and back. Those of you who want to know how it feels can consult the Deputy Speaker so that you can look for another opportunity.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): I take this opportunity to thank the Committee Chair for bringing this up and, particularly the reduction of taxation on imported materials for building and musical equipment. This way, we will be able to improve the talent that this country is having. Eventually, it will create employment for the youth.

I support.

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

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

(Clause 18 as amended agreed to)

Clause 19

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

THAT, the Bill be amended in clause 19 –

(a) by inserting the following new paragraph immediately after paragraph (a) –

(aa) in paragraph 13 by inserting the words “including propane” immediately after the words “liquefied petroleum gas”;

(b) by deleting paragraph (b);
(c) in paragraph (c) by inserting the following new item immediately after item 19 —

20. Agricultural pest control products.

The purpose of this amendment, if you recall what I said in Clause 18, is that given that two items under 105 and 106 have been reinstated to Clause 18, we are only deleting just to make it more appropriate. We are also making it clearer in the Bill and the Act. Additionally, we are also introducing agricultural pest control products which are meant to support farmers especially now that we are focusing on the Big Four Agenda on food security. We are bringing products under zero-rating to make them cheaper. Currently, they are under standard rates. The Bill had taken them to tax-exempt. Exemption is traditionally expensive because the suppliers will not be able to claim. Therefore, they will move that cost to the farmer. We are taking it to the right place, which is zero-rating.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let me hear what you have, Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairlady.

I am really in support of the amendments as proposed by the Chair and the Committee. It is not that I do not want the amendments but, I am rather uncomfortable with Clause 19 (c) as it is on the Bill. It is the one that proposes to include the supply of denatured ethanol in the Second Schedule of the VAT Act. With your guidance, I propose that, once we subject the vote to the proposals done by the Chair, we do it separately for Clause 19 (c).

My objection to this one is that the denatured ethanol that is being proposed to be included in the Schedule....

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Ichung'wah, are you debating Clause 19? I just wanted to hear what you had.

Hon. Kimani Ichung'wah (Kikuyu, JP): I propose that we pass those ones without Clause 19 (c).

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. Let us prosecute the Chair's proposed amendment.

Hon. Kimani Ichung'wah (Kikuyu, JP): I have said I am very much in support of the Chair's amendment, save for what is in the Bill on that which I have reservations on.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Leader of Majority Party, we are prosecuting the one by the Chair.

Hon. Aden Duale (Garissa Township, JP): I understand what Hon. Ichung'wah is saying. I agree with him in whatever he wants to do. However, let us be very careful how we put the Question. That is my main issue.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): With that, I guide that we are going to put the Question on Clause 19 (a) and (b) as proposed by the Chair. Then, I will put the Question on 19 (c) separately.

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

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

For purposes of the record, the one we have taken a vote on includes paragraph 20. Hon. Limo, I know you are consulting on that one. That is why I said yours is safe and it includes paragraph 20. It is for purposes of record.

Now, we will prosecute paragraph 19. Member for Garissa Township.

Hon. Aden Duale (Garissa Township, JP): Procedurally, he has no amendment. The only thing you can do is to put the Question to that paragraph. He cannot contribute.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): I have already proposed the Question of Clause 19 to be part of the Bill. I just wanted to hear comments. He has no amendment. Yes, the proposed Question is that “Paragraph 19 be part of Clause 19”. What are your comments?

Hon. Kimani Ichung’wah (Kikuyu, JP): The Leader of the Majority Party is quite right that I have no amendment. I must thank you because I am sure you wanted to give me an opportunity to convince Members why we should vote in the negative. This proposal in the Finance Bill speaks to denatured ethanol. The good surgeon here will tell you that it, at times, contains methanol. You remember I came with an amendment in 2015. It was on alcoholic drinks because they use methanol to make illicit brews. By zero-rating it, it means that you will be making industrial ethanol much cheaper for people to use to make adulterated alcoholic drinks. Therefore, I beg Members to vote in the negative on this one.

*(Question, that the words to be inserted
be inserted, put and negated)*

(Clause 19 as amended agreed to)

New Clause 16A

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): As we did in the previous one, we are on new clauses under the Value Added Tax Act.

Hon. Joseph Limo (Kipkelion East, JP): I beg to move:

THAT, Clause 23 be part of the Bill by being amended as per the Order Paper....

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We are under New Clause 16A.

Hon. Joseph Limo (Kipkelion East, JP): New Clause? Sorry. I think it is that new clause.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let the Chair get ready for New Clause 16A. It is on page 2186 of the Order Paper.

Hon. Joseph Limo (Kipkelion East, JP): Yes, it almost escaped my eyes but I have seen it. Therefore, I beg to move:

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

Amendment of section 10 of No.35 of 2013 **16A.** Section 10 of the Value Added Tax Act, 2013 is amended—

(a) in subsection(1) by deleting the expression “a registered person” and substituting therefor the expression “any person”;

(b) in sub-section (3) by deleting the expression “a registered person” and substituting therefor the expression “any person”.

This is a clean-up exercise.

(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)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We are on the Excise Duty Act.

(Clauses 20, 21 and 22 agreed to)

Clause 23

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

THAT, the Bill be amended in clause 23 –

(a) in paragraph (a) by-

(i) by deleting subparagraph (i) and substituting therefor the following new subparagraph-

“(i) by deleting the rate of excise duty in respect of the description set out in the first column hereunder and substituting therefor the new rates respectively in the second column-

Description

Rate of Excise

Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	Shs. 12,624 per kg
Electronic cigarettes	Shs. 3,787 per unit
Cartridge for use in electronic cigarettes	Shs. 2,525 per unit
Cigarette with filters (Hinge lid and soft cap)	Shs. 3,157 per mille
Cigarettes without filters (plain cigarettes)	Shs. 2,272 per mille
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	Shs. 8,837 per kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	Shs.189 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10%	Shs. 253 per litre

- (ii) inserting the following sub-paragraphs immediately after sub-paragraph (iii)-
“(iv) by deleting the description relating to sugar confectionary (including white chocolate) together with the corresponding rates of excise duty, and substituting therefor the following—

Description	Rate of Excise
Imported sugar confectionary of tariff heading 17.04;	Shs. 20 per kg
Imported white chocolate, chocolate in blocs, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00,1806.90.00	Shs 200 per kg.

- “(v) by inserting the following new item—

Description	Rate of Excise
Imported gas cylinders	35%

- (b) in paragraph (b) in the proposed new paragraph 5 by deleting the word “ten” and substituting therefor the word “twenty”.
- (c) in paragraph (c) by deleting subparagraph (ii) and substituting therefor the following new sub-paragraph –
- (ii) by deleting the expression “or an insurance premium or premium based or related commissions” the definition of the term “other fees” and substituting therefor the expression “or fees or commissions earned in respect of a loan or any share of profit or an insurance premium or premium based or related commissions specified in the Insurance Act or regulations made thereunder”.

This Clause under paragraphs (a) and (b) is meant to raise additional revenue. This additional revenue will go into compensating what we had moved earlier. This is clearly what I had said earlier without anticipating debate. In (c), it is only dealing with definitions. It makes it clear that other fees popularly used by financial institutions are being made clear. There has been ambiguity on what other fees are all about.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, let us have the Member for Kiambu, Hon. Kang’ethe.

Hon. Jude Njomo (Kiambu, JP): Hon. Temporary Deputy Chairlady, I was not contributing to this. I was contributing to the other one.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): The Leader of Majority Party.

Hon Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairlady, the Member for Kiambu is an interested party in this matter.

(Laughter)

He is a consumer. He does not want his clients and friends to see. This is why I like the Chairperson of the Finance Committee. We must reduce drunkards and smokers in this country. To do that, we must increase taxation. Chairperson, for the budget to balance, we must find a way. As we build mosques and churches, our competitors, most of the time, go to the bars. So, now that we have increased taxation, they will not go to the bars; they will join us in church and the mosque. So, I support.

Hon. Christopher Omulele (Luanda, ODM): On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): There is an intervention by Hon. Omulele. What is your point of order?

Hon. Christopher Omulele (Luanda, ODM): Who are the competitors of the venerable Leader of the Majority Party? The ones who compete with him and go to bars while he goes to the mosque and church?

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Omulele, you want substantiation? The Leader of the Majority Party.

Hon Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairlady, I neither go to the bar nor drink. I am a Muslim. So, anybody who goes to the bar is my competitor – anybody in Kenya, but our political competitors are known. So, because I believe in charity, Chairperson, you have done well. People must leave bars; they must stop smoking. When you go to town, you will see a cage with people who do not know each other. They will sit there and their business is always to smoke. They do not belong to the same company. They do not know each other. So, for us to stop that and for people to go to church, we must fight alcohol and betting to protect our children and the future of Kenya. I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let me hear the Member for Alego-Usonga.

Hon. Samuel Atandi (Alego-Usonga, ODM): Thank you, Hon. Temporary Deputy Chairlady. I want to support the amendments, but not for the reasons advanced by the Leader of the Majority Party. For the record, it is known that members of the leadership, to which the Leader of the Majority Party subscribes to, are great consumers of alcohol. I also consume alcohol. So, we consume it together. Even those who go to church and the mosque like the people he is referring to, also consume alcohol. My argument for supporting this is because...

Hon. Aden Duale (Garissa Township): On a point of order, Hon. Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, let us be relevant. Leader of the Majority Party, you are on intervention.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairlady, I want to do a correction. There are people who drink and go to church, but for Muslims, if you go to the bar, you have left us.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. That is for the Muslims. Hon. Atandi may be speaking for the non-Muslims.

Hon. Samuel Atandi (Alego-Usonga, ODM): Hon. Temporary Deputy Chairlady, if you look at the rate of taxation across Africa for alcohol and cigarettes, Kenya is still ranking low. In the next Finance Bill, we need to increase these rates. So, we need to increase them. I have said if you compare the rates of taxation between Kenya and other African countries, and Europe where alcohol and cigarettes are consumed more, the taxation rates are high and yet, the people still consume them.

(Hon. (Dr.) Pukose spoke off record)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Atandi, address the Chair. Hon. Pukose is trying to distract you.

Hon. Samuel Atandi (Alego-Usonga, ODM): So, I support the amendment and urge the House to continue to increase these tax rates upwards in future.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): The Member for Mavoko.

Hon. Patrick Makau (Mavoko, WDM-K): Thank you, Hon. Temporary Deputy Chairlady. With a lot of respect for the Leader of the Majority Party, we do not go to church because of alcohol. But members of the Muslim community do not go to the mosque because they are chewing *Miraa* and *Muguka*. So, if we are talking...

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Order, Members! Hon. Makau, just contribute to the proposed amendment.

Hon. Patrick Makau (Mavoko, WDM-K): Hon. Temporary Deputy Chairlady, I agree with the amendments of the Chairperson of the Finance Committee.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): Thank you, Hon. Temporary Deputy Chairlady. I support this amendment. I request that in the subsequent budget, we increase taxation on alcohol. Our bars are more than our schools. Our bars are more than our shops. So, I suggest that the Finance Committee finds a way of increasing taxation on alcohol and reducing or zero-rating food products like *ugali* and the rest.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. Let us have Hon. Mabongah Mwambu, Member for Bumula.

Hon. Mwambu Mabongah (Bumula, Independent): Thank you, Hon. Temporary Deputy Chairlady. I support the amendments for two reasons. One, some of the places are reserved. They are like a club. When you talk of a bar, we need to raise the taxes to ensure that people who go there are able to make the payments. One time, we were happy when the Minister released a regulation and a directive that a bar should not be close to a school. So, the amendments that the Chairperson has brought are important.

Secondly, it is important because it will assist our children. Children at times access little money from the change they get from buying basic things. They are likely to find themselves in bars drinking. So, if we raise these kinds of taxes, we will be saving the next generation.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let us have Hon. Didmus.

Hon. Didmus Barasa (Kimilili, JP): Thank you, Hon. Temporary Deputy Chairlady. I support, but I want to tell the Chairperson that next time, apart from paying taxes while smoking, we should also pay a further tax when we smoke in public.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Chairlady, I also support the amendment and, especially, what Hon. Atandi has said. Indeed, in Kenya, we are still at a very low level of taxation on the "sin taxes". I want to encourage the Chairperson of the Finance Committee and Hon. Atandi, who sits in that Committee, in the next Finance Bill, to increase those taxes. I do not know if this was also in the same amendment on the Excise Duty on betting and gaming.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): It was part of it. He moved everything.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Chairlady, let me commend the Committee for proposing increment from 10 per cent to 20 per cent and also thank the Speaker for his guidance in line with Article 114 in declining the proposed amendments by the two Members. As the Speaker said, it was queer for Members of the Committee to propose amendments that were counter to the proposals by the Committee. The Speaker mentioned it. It is not just a fact that the Members were sitting in the Committee, but their proposals were negating what the Committee had proposed. I think, as members of committees, we should be honest with ourselves to support what has been agreed by the majority of Members in the

Committee. If you have a different opinion, as the Speaker advised, you have every right to present your minority report. Therefore, I support the amendment by the Committee.

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): All you are saying is true and it was already communicated by the Deputy Speaker. Let me have the last speaker, Hon. Gikaria.

Hon. David Gikaria (Nakuru Town East, JP): Just to confirm, yes, I drink. The best thing that we also need to ask ourselves is: Do we increase taxes on cigarettes and alcohol to stop people from drinking or to raise revenue? I am saying this because in urban areas, if you continue increasing taxes on the known alcohol, then people will revert to the illicit ones. At the end of the day, you end up encouraging people to take more of the illicit brews. So, it is important for us to also start looking at it from that angle. Even though, I support.

*(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 23 as amended agreed to)

The Member behind the Leader of the Majority Party is consulting loudly. We will move on to the Tax Procedures Act.

(Clause 24 agreed to)

Clause 25

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Chairperson, please, move the amendment.

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

THAT, the Bill be amended in clause 25 in the proposed new section 37C (1) by deleting the expression “assessing or” immediately after the words “shall refrain from”.

The import of this amendment is that we are deleting the word ‘assessing’ which was being proposed in the Bill. We were of the opinion that prohibiting the Commissioner from assessing for purposes of penalties is a proposal not in good taste. Therefore, we deleted the word “assessing” so that the Commissioner can still assess records when he or she is trying to find out the penalties that have accrued.

Hon. (Dr.) Robert Pukose (Endebess, JP): On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): He was just moving his amendment. I will allow a point of order on matters of decorum. Let us hear Hon Pukose.

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Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Temporary Deputy Chairlady, it is on matters of decorum. Hon. ole Sankok, who is also referred to as “Akothee”, has just been swinging here and interfering with our sitting. So, I want you to rule him out of order.

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Hon. Pukose, you have raised a very important decorum matter. Hon. Sankok, I did not know you are referred to as “Akothee”. But those are not your official names. From where I sit, I want to read to Hon. 001 Standing Order No.104, and I quote:

“Except when passing to and from his or her seat or when speaking, every Member when in the Chamber shall be seated, and shall not at any time stand in any of the passages and gangways.”

You were actually swinging. If you really have to be out and need some assistance, you know what to do. With that, Hon. Members, let us observe Standing Order No.104.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Hon. Ichung’wah, you have the Floor.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Chairlady, let me thank the Chair and the Committee again for that amendment. Let me also take this opportunity to speak to the Office of the Attorney-General (AG) and those who sit at the national Treasury. The import of some of the proposals that are brought to this House is very suspect. You would wonder why a Government officer would be proposing that the Commissioner-General of KRA be refrained from assessing or recovering penalties on taxes from a segment of business. We must tell public officers when they have business interests in some of those segments. There is a particular segment they are calling the growth segment in the security exchange. Why would you stop the Commissioner-General from assessing taxes and penalties from just one segment unless there are particular interests? I want to thank the Chair and the Committee for being vigilant. We must ensure that we do not protect particular industries or people.

In line with the Constitution, everybody must pay taxes. Nobody should be exempted. We must support KRA to be able to raise revenue from all segments, be it in the CMA or the small and medium businesses. There are small businesses – and I say this as a small trader – that would warrant being in the growth sector, but are not listed in the securities exchange. Therefore, if you stop the Commissioner from assessing those that are listed in the securities exchange and you allow the Commissioner to assess those others out here, then you will be disadvantaging those that are not in the exchange market. You will actually be making the trading platform very unfair to those that are not listed. Therefore, I want to support the Committee.

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Let us now hear the Member for Alego-Usonga.

Hon. Samuel Atandi (Alego-Usonga, ODM): Thank you, Hon. Temporary Deputy Chairlady. This amendment is very important. You need to look at it in the way cartels operate in

the Government. When we were amending this proposal, we were keen to understand why the CS was proposing that this assessment be done by himself and not the Commissioner-General. Therefore, I am happy that, once and for all, we are going to kill those cartels that have been operating at the Treasury since 2013, when Jubilee Government took over power. Now we have the leeway to give the right people the opportunity to do their work.

I support, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): The Leader of the Majority Party, you have the Floor.

Hon. Aden Duale (Garissa Township, JP): I do not see why people should harass Hon. Atandi. He has free thought and free speech. I think the Commissioner is being refrained from assessing or recovering penalties for a particular sector, and this time companies that are listed in the growth segment. This is animal farm-like in terms of taxation. In fact, we should be told who those companies are. Are they foreign? Are they local? Who are the shareholders? The Commissioner-General of KRA or the Commissioner of Customs or the Commissioner of Domestic Taxes or the Commissioner of Large Taxpayers have powers given to them by this House to collect taxes, except where this House has not expressly stated so.

So, I agree with the Chair that if it is about paying taxes, there should be no sacred cows. So, I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): With that debate Hon. Members, I will put the question.

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

(Clause 25 as amended agreed to)

(Clauses 26, 27 and 28 agreed to)

Clause 29

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

THAT, the Bill be amended in clause 29 in the new subsection 11 by inserting the word “deemed to be” immediately after the expression “objection shall be”.

The intention is to provide for clarity that the inaction by the Commissioner shall lead to an automatic conclusion that the objection is allowed. This clause is about objections by taxpayers. The Commissioner is required to reply within 60 days. If he does not reply, it will be assumed that he has accepted.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): With that import, I propose the question.

(Question of the amendment proposed)

Let us have Hon. Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Temporary Deputy Chairlady. These things are unique on a case to case basis. This is something that happens depending on the complication of the aspect at hand. The 60 days in some cases... I know it has been there for timeliness but, in some cases, it has worked to the contrary. It is good to assess and not assume that within 60 days, if there is no reply, it is deemed that he has accepted. This is because it is on a case to case basis. How I wish that you would have left that to their discretion, but this has been the practice. We can have it but it is good to put into consideration that, at times, it depends on how complicated a matter is.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. Let me have Hon. Jude Njomo. You do not want to speak to this. Let me put the question.

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

(Clause 29 as amended agreed to)

(Clauses 30, 31, 32 and 33 agreed to)

Clause 34

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

THAT, the Bill be amended by deleting clause 34 and substituting therefor the following new clause-

Amendment of 7 of
No. 29 of 2016. 34. Section 7 of the Miscellaneous Fees and Levies Act, 2016 is amended –

- (a) in subsection (2) by deleting the word “two” appearing immediately after the words “rates of” and substituting therefor the words “three point five”;
- (b) by inserting the following new subsection immediately after subsection (2) –
 - (2A) Without prejudice to the provisions of subsection (2), the fee at a rate of one point five per cent shall be charged on the custom value of-

- (a) raw materials and intermediate products imported by approved manufacturers;
- (b) raw materials and intermediate products imported by manufacturers approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to industry;

- (c) input for the construction of houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing.

The justification for this is that in order to actualise the affordable housing projects, the Import Declaration Form (IDF) fee be charged at 1.5 per cent for the housing projects to support the Big Four Agenda.

*[The Temporary Deputy Chairlady
(Hon. (Ms.) Jessica Mbalu) left the Chair]*

*[The Temporary Deputy Chairman
(Hon. Christopher Omulele) took the Chair]*

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us hear the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): These amendments came from the Government and, more so, from the National Treasury and the Ministry of Housing. They are specifically for those who want to invest in the 500,000 housing units of the President and not for any other Big Four Agenda. So, we should be very careful as it might be abused. If you are building houses for your mother or girlfriend, you do not enjoy this tax bit, including the likes of Akothee.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us have Hon. Barasa.

Hon. Didmus Barasa (Kimilili, JP): Thank you. As much as I was almost supporting these amendments, we should know that the problem this country is facing is because of people taking advantage of these very laws we are passing here to steal from this Government and forcing it to dig deeper. So, unless the amendment is clear that this is only for housing, Hon. Chair, I oppose. This House is not going to give leeway to unscrupulous business people to take advantage and start siphoning money from this country.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well. Yes, Hon. Chepkut.

Hon. William Chepkut (Ainabkoi, Independent): Hon. Temporary Deputy Chairman, my apology...

First, His Excellency the President Uhuru Kenyatta, who is also the Head of State and Government, and Commander-in-Chief of the Kenya Defence Forces, according to Article 131(E), is a Five Star General. Therefore, his decision is between him and God. Therefore, I support the amendment fully and in totality.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Which amendment are you supporting?

Hon. William Chepkut (Ainabkoi, Independent): The one on housing. Hon. Limo is a second term Member of Parliament and Chairman of the Departmental Committee on Finance and National Planning.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chepkut, just hold on.

Hon. William Chepkut (Ainabkoi, Independent): I am supporting Clause 34.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chepkut, you have clarified because I had not seen any amendment by His Excellency, the President of Kenya. Now that you are supporting the one by the Chairman of the Departmental Committee on Finance and National Planning, you are very well within your rights.

So, we will have Hon. Atandi then Hon. Njomo from this side. Be brief.

(Loud consultations)

Hon. Samuel Atandi (Alego-Usonga, ODM): Thank you very much Hon. Temporary Deputy Chairman. I want Hon. Members to listen.

It is inconceivable that in this era, there are some construction materials which must be imported from other countries. So, as a Member of the Committee, I have to support this amendment. As a House, we must agree that we may open a Pandoras Box for unscrupulous people to import stuff. Also, when they appeared before us, they said there are certain things that are used in construction which are not found in Africa and have to be brought from some countries.

I was concerned that if we are building houses and enhancing the construction sector as an economy, can we not manufacture everything locally? So, whereas I support this amendment, I plead with the House that in future, we must ensure there is some vigilance around the stuff we are importing. I am not persuaded that we must import certain materials to build a house in this country. I do not know what those materials would be. They were not very clear but for now, I plead with the House to approve and then we can look at it later.

Thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well. Hon. Jude Njomo, you have the Floor.

Hon. Jude Njomo (Kiambu, JP): Thank you, Hon. Temporary Deputy Chairman. I rise to support this amendment by the Chair of the Committee. But we must look at affordable housing from a... Hon. Chair, please protect me from this distraction.

(Hon. (Dr.) Robert Pukose consulted loudly)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Pukose, allow Hon. Jude to make his contribution.

Hon. Jude Njomo (Kiambu, JP): As I support this, we must look at it from a wider point of view. Most of those affordable houses are being developed in urban areas. We will have a situation where people in urban areas can afford houses, while those in rural areas are unable to build. What will happen is that we will have rural-urban migration and our rural areas will lag behind.

Secondly, we are exempting developers from paying taxes when they import some of those products. As we do this, we must also have incentives for the local manufacturers who make local materials to be used for low cost housing. This will improve the economy of the

country and create employment. So, as we reduce taxes on imported materials, we must also give incentives to the local manufactures so that we can build our country as we build our housing.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well spoken, Hon. Jude. Let us hear Hon. Gikaria.

Hon. David Gikaria (Nakuru Town East, JP): Thank you, Hon. Temporary Deputy Chairman. I am a bit lost.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Why are you lost? You are in the National Assembly!

Hon. David Gikaria (Nakuru Town East, JP): I plead with the Chair while moving his amendment to explain a bit. As I read the amendment, it states he is deleting the word “two” and substituting with the words “three point five” which means he is increasing according to the Order Paper.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well, Hon. Gikaria. Hon. Limo, I hope you have taken note of Hon. Gikaria’s concern.

Hon. David Gikaria (Nakuru Town East, JP): They should be decreasing so as to help the Big Four Agenda of housing. If we increase taxes, it means the houses will be expensive.

The Temporary Deputy Chairman (Hon. Christopher Omulele): You have made your point Hon. Gikaria. Hon. Makau, the Member for Mavoko, you have the Floor.

Hon. Patrick Makau (Mavoko, WDM-K): Thank you, Hon. Temporary Deputy Chairman. I want some advice from you in as much as I support this tax exemption. I do not know where to start because affordable housing was brought to Mavoko and they took 4,000 acres. I am wondering how we will exempt developers from building on land that has been taken away for free without compensating the owners.

I think, sometimes, we have to be realistic. As Members, we represent Kenyans in this House. In as much as we want to say we are building houses for citizens, we cannot demolish houses, exempt materials and give land for free; the owners of that land do not benefit in any way. It is my humble request to the President of this country to realise that land belongs to the people of Mavoko. Before it is given for affordable housing, they should also be considered in building of affordable houses and enjoy tax exemption of materials coming from wherever.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): So, the Hon. Member for Mavoko, you oppose. Chair of Departmental Committee on Finance and National Planning, do you have something to say before we put the Question? Hon. Members, you have to make a decision one way or another. Hon. Limo, do you have a clarification?

Hon. Joseph Limo (Kipkelion East, JP): For avoidance of doubt, the 1.5 per cent is an exemption. IDF is moving from 2 per cent to 3.5 per cent exempt imports which are for the purpose of affordable housing projects that have been proposed by the President. So, look at subsection (a) and (b) to understand better. The drafting is okay.

*(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 34 as amended agreed to)

Clause 35

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chair, you have an amendment to this?

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

THAT, the Bill be amended by deleting clause 35 and substituting therefor the following new clause

- | | |
|---------------------------------------|---|
| Amendment of
8 of No.29 of
2016 | 35. Section 8 of the Miscellaneous Fees and Levies Act, 2016 is amended by- |
| | (a) deleting the expression “one point five” appearing immediately after words “rate of” and substituting therefor the word “two” |
| | (b) inserting the following new subsection immediately after subsection (2) – |
| | (2A) Without prejudice to the provisions of subsection (2), the levy at a rate of one point five per cent shall be charged on the customs value of- |
| | (a) raw materials and intermediate products imported by manufacturers approved by the Cabinet Secretary, on the recommendation of the Cabinet Secretary responsible for matters relating to industry; and, |
| | (b) inputs for the construction of houses under an affordable housing scheme approved by the Cabinet Secretary, on the recommendation of the Cabinet Secretary responsible for matters relating to housing. |

This amount is almost the same as that in Clause 34, but it is concerning the Railway Development Levy (RDL) which is being proposed for the purpose of actualising the affordable housing projects of the Big Four Agenda. The RDL will be at 1.5 per cent. This is similar to IDF. So, we are providing that RDL will be charged at 1.5 per cent for the purpose of affordable housing projects.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): The Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): I think the Chair needs to make it very clear. The RDL is 1.5 per cent and in my reading, you are exempting it from anybody who is involved in importation of materials for the construction of the housing units under the Big Four Agenda. But Members are asking: Are you increasing the levy or exempting? From where I sit, I think you are exempting. You need to come out very clearly.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Just hold on. We will move systematically. From what I can see, you are proposing to increase the rates to 2 per cent, but providing exemptions. Is that what we are intending to do?

Hon. Joseph Limo (Kipkelion East, JP): The Bill itself is proposing to move RDL from 1.5 per cent to 2 per cent. But for the purpose of housing projects under the Big Four Agenda, they will be retained at 1.5 per cent. That is the intention.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, that is what you will have to deal with. The Chair is proposing to increase the general rates to 2 per cent. But those components that will be imported to be used in the housing segment will be retained at 1.5 per cent. That is the explanation the Chair has given. Hon. Wathigo, do you have something to say?

Hon. Joseph Manje (Kajiado North, JP): Hon. Temporary Deputy Speaker, I oppose this amendment because IDF and IDL are normally charged at the point of entry in this country. The amendment is making it very expensive to import. For example, if you import a vehicle that is worth Kshs300,000, you will end up paying Duty Tax of about Kshs400,000 because of these small items we are increasing without considering its impact on common Kenyans.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Pukose, you have the Floor.

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Temporary Deputy Speaker, I am a layman when it comes to taxation matters. From a common man's point of view, what it means is that we are raising taxation on other commodities to fund the housing project. This is because you are increasing it from 1.5 to 2 per cent. On housing materials, it does not affect but on other commodities which Kenyans are importing, the price is going to rise. You see the Railway Development Fund affects almost every other material that is being imported. So, what the Chairman should tell Kenyans is that you are increasing tax on these other issues. So, we want that to be very straightforward.

The Temporary Deputy Chairman (Hon. Christopher Omulele): You are clear, Hon. Pukose. We shall have Hon. Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Temporary Deputy Chairman. Ordinarily, when it comes to the Committee of the whole House, and here we have so many (a), (b) and (c)... I want you to direct our Chair that as we move on, he needs to justify clause by clause. This is because he is confusing. Indeed, what Hon. Pukose has said is true. I also agree with the Leader of the Majority Party because the issue initially was 1.5 per cent to 2 per cent. He has brought up other issues which have actually confused us even more. So, for the remaining ones, let us be systematic. You come to a clause, you justify it, and we dispose of it and move to the next one. That has been the procedure and tradition.

Thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well Hon. Wamalwa. Let us have the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, the Bill is mine. The Railway Development Levy was introduced to supplement the building of the Standard Gauge Railway (SGR). The SGR is still going to Kisumu. So, the moment we finish the stretch of the Kenya SGR, the Railway Development Levy will be stopped. Previously, it was 1.5 per cent but because we want to reduce borrowing, they said let us increase it to 2 per cent for others. However, for the housing scheme, it will remain at 1.5 per cent. That is the gist of the matter. The Railway Development Levy is not something that is going to stay for long. For now, you will be taxed if you bring a car or whatever. I think you should put the Question.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, I think it is clear that the general rate is being increased to 2 per cent except for those materials that will be used under the housing pillar of the Big Four Agenda.

The Member for Bumula, what do you have to add to this one?

Hon. Mwambu Mabongah (Bumula, Independent): Hon. Temporary Deputy Chairman, when it comes to these things, clarity is very important. You talk about the Railway Development Levy subsidising the building of the SGR railway line without telling us the amount of money that has been realised and used so far. It becomes very difficult because they are only giving us a percentage. At times, when we sit here, we like getting exact figures of how much they intend to collect and how much is expected to do this kind of job.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, you need to make a decision on this amendment. We need to make progress.

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

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

(Clause 35 as amended agreed to)

(Clause 36 agreed to)

Clause 37

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chair, you have an amendment to this one.

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

THAT, the Bill be amended by deleting clause 37.

Hon. Temporary Deputy Chairman, this clause is about taxation on hides and skins, which is majorly produced by the ASAL areas where there are animals. The intention here was that most of the skin which is produced in Kenya currently is not being consumed all of it. It is estimated that only 5 per cent is consumed locally. That is why the Government is increasing the Technical Training Institutes (TTIs) to train our young people so that they can produce shoes and

bags in Kenya. However, the TTIs have just been launched and have not trained enough technicians. So, the proposal here is to delete the taxation which was being put on exports in order to encourage exportation of what is being produced. If exportation is hindered, it will affect farmers who will be throwing away their hides and skins instead of selling them to the factories that are currently established in Kenya.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Manje, do you have something to say on this one?

Hon. Joseph Manje (Kajiado North, JP): Thank you, Hon. Temporary Deputy Chairman. I also support the deletion because it will discourage Kenyans who are able to turn hides and skins into wet blue for export. The prices of hides and skins will even reduce in this country.

I support.

The Temporary Deputy Chairman (Hon. Christopher Omulele): I am sure the Leader of the Majority Party has something to say on this one.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I do not know why the Chair is deleting the whole of Clause 37 and 10 per cent...

The Temporary Deputy Chairman (Hon. Christopher Omulele): Leader of Majority Party, let me just help you. What he is doing...

Hon. Aden Duale (Garissa Township, JP): No! I know what he has done because there was 10 per cent Export Levy, to which he is saying "No".

The Temporary Deputy Chairman (Hon. Christopher Omulele): Correct. Proceed.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, raw skins are still exported out of the country and KRA must make sure that they seal those loopholes. People cross the border to Uganda and stamp the documents to show that raw hides come from Uganda and they are taken to the Port of Mombasa. This has been a serious issue. Next time, it is better we get the 10 per cent revenue because you still cannot stop raw hides. Anyway, I support because the Chair has confirmed to me that for him to balance the Finance Bill, he has increased the tax for cigarettes and beer. So, the gap is still being sealed but, in future, do not be cheated. You know, Hon. Manje did not declare his interest. From the day I published this Bill, he kept on asking where it was. We did our due diligence. If you see him, he must be representing...

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Manje will stand protected. As a Member of Parliament, he has every right to participate in these proceedings. He is well within his rights. So, Hon. Manje, sit comfortably and contribute.

Next is Hon. Jude Njomo.

Hon. Jude Njomo (Kiambu, JP): Hon. Temporary Deputy Chairman, our economy is supported by paying taxes. Every sector of the economy pays taxes so that we get money for the Government to use. I find this amendment discriminatory. One sector of our economy is not paying taxes, while all the other sectors are doing so. I would like every sector of our economy to play its role by paying taxes to support our economy. If coffee farmers are paying taxes to export coffee and when tea farmers are exporting tea...

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Jude, you have made your point. Hon. Members, we need to be brief on this one. If you are opposed to it, we should move on. Let us have Hon. Barasa.

Hon. Didmus Barasa (Kimilili, JP): Hon. Temporary Deputy Chairman, I am also surprised that the Chair is proposing deletion of this very important clause. I am even beginning to think that the justification he is giving is not genuine. Maybe, after publishing this particular Bill, some cartels or some people with certain interests tried to approach him. This is a very good Clause...

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Barasa, you are out of order! You cannot impute improper motives on the Chair without laying a foundation. Finally, let us have Hon. Washiali and then I will put the Question.

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Temporary Deputy Chairman. I support the Chair of the Departmental Committee on Finance and National Planning. The reasons are that this will act as a motivation for more exports so that there will be more taxation and income. It will even avoid what Hon. Duale was saying that one will take documents to Uganda, stamp them and then bring them here as if they originated from Uganda. If you allowed exporters to take off from Kenya, we would still get income from the taxation of the money that comes from outside as opposed to reducing motivation by taxing the source.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us have the Member for Roysambu.

Hon. Isaac Ndirangu (Roysambu, JP): Thank you, Hon. Temporary Deputy Chairman. Members are losing the argument. We are deleting this Clause to encourage Kenyan farmers to export skins and hides so that we can get foreign exchange. The argument here is that presently in Kenya, we do not have sufficient human resources to add value. It is around this time that we are growing TVET institutions, where our young men can be trained in making hides, shoes and leather products. In the meantime, as we grow capacity, let us encourage Kenyans to export skins and hides so that we can get value and foreign exchange.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well. Hon. Vice-Chair, you have explained yourself.

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

(Clause 37 deleted)

(Clauses 38, 39, 40, 41 and 42 agreed to)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Member for Kikuyu, you have to wait to be prompted to say "Aye" or "Nay". You cannot say it before the Chair prompts you. Do not be in a hurry. We will proceed.

Clause 43

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

THAT, the Bill be amended by deleting clause 43 and substituting therefor the following new clause-

43. Section 33B of the Banking Act is amended by—

(a) deleting subsection (1) and substituting therefor the following new subsection —

Amendment
of Section
33B of Cap
488

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“(1) A bank or financial institution shall set the maximum annual interest rate chargeable for a loan in Kenya at no more than four percentage points above the Central Bank Rate set and published by the Central Bank of Kenya under section 36(4) of the Central Bank Act.”

(b) deleting subsection (3) and substituting therefor the following new subsection

(3) Any person who contravenes the provisions of subsection (2) commits an offence and shall, on conviction, be liable to a fine of not less than one million shillings or to imprisonment for a term not less than one year.

(c) inserting the following new subsection immediately after subsection (3) —

(4) In this section, the term “loan” has the meaning assigned to it under section 44A (5).

This Clause is on capping of interest rates. We are proposing to delete that amendment which proposed to remove interest capping so that it remains. However, we are proposing certain amendments to make it compliant with the law. The Court had ruled that there was a constitutionality issue in Section 33B of the Banking Act. We have amended that Section in line with what was also proposed by one of the honourable Members, Jude Njomo. He also proposed the same. We have incorporated the same issues into this amendment. That is the import of this amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, let us start with Hon. Chris Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you very much, Hon. Temporary Deputy Chairman. Hon. Limo, I thank you because when we were debating this, we were opposed to it. I am happy to learn that you are a listening Chairman. He has removed that amendment which proposed to remove capping which some of us had really supported. We had already discussed this in the previous Bill by Hon. Jude Njomo. What I have learnt is that it has just been borrowed as per the court judgement. There are things like credit facilities and loans. I thank you for that. At least you listened.

In this country, the banking industry plays a very critical role. There are a few players in the banking industry who have been making super abnormal profits. I am happy the Chair listened. The banks conspired to blackmail us to remove the capping so that they can continue to make abnormal profits. As the representatives of the people, we said no. I thank him for that. In that context, do we need to continue with your Bill?

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chris Wamalwa, you have made your point. Let us have Hon. Gikaria, the Member for Nakuru Town East.

Hon. David Gikaria (Nakuru Town East, JP): Thank you, Hon. Temporary Deputy Chairman. I agree with the Chair and thank Hon. Jude Njomo for being very loyal to his mission. It is true. The banking industry has always misinformed us, particularly on matters of Small and Medium-sized Enterprises (SMEs). They claim not to lend to SMEs because they are high risk. They continue making those super abnormal profits. I totally agree with the Committee that we should continue trying to improve for those SMEs to continue borrowing at that low rate.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us have the Member for Kikuyu.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairman. I could not agree more with the Committee and, more so, first, in disagreeing with the National Treasury in terms of the proposals in the Finance Bill. They have listened to the people of Kenya.

Secondly, it is a fallacy that banks are not lending to SMEs and individuals because of the interest rate capping. The interest rate capping is just an excuse. The principal reason why the banks are not lending to SMEs and the private sector is Government dependency on borrowing from the domestic market. If we want to fix the problem, let us first fix the problem of domestic borrowing. I spoke about it during the Second Reading. I thank the Chair, especially for taking the proposals to constitutionalise what was said by the court to have been unconstitutional in the provisions of the "Jude Njomo Act" on interest capping. I ask the National Treasury to listen to the people and the people's representative and act to check on our level of domestic borrowing. Once we do that, we shall not need to even deal with this issue of capping.

Thirdly, is the issue of Government management of its own cash flows. Almost 70 per cent of the money that the Government borrows from the domestic market belongs to the Government. The Head of the Public Service, Joseph Kinyua, has come up with a circular that is in a way trying to check on that problem, especially with our parastatals, but it is not enough. I have an amendment to the Public Finance Management Act that speaks to that particular issue of cash flow management in Government because that is where the problem is. I wanted to use the word "devil". The problem is in cash flow management and our domestic borrowing, and not interest rates capping.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well spoken. The Leader of the Majority Party, Hon. Duale.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, as a country and House, we should not be very populist. We need to have a discussion on whether the interest rates capping is working. This House must have an open mind. We must listen to the Central Bank of Kenya (CBK), the private sector and the National Treasury on whether the interest rates capping is working. They are saying that SMEs are not borrowing. Figures have been provided on that. It is not a fallacy. This leader of *tangatanga* is talking of a fallacy. There is no fallacy. If you read the Report of the Committee on the presentation by the National Treasury, there is a problem with the capping of interest rates. As a House and lawmakers, we need to re-look at it. We are elected to offer solutions. We are not supposed to be populist and look at the profits which are made by banks. Kenyan banks are not the only ones which make profit. They make profit from the administration of your accounts. From where I come from, we do not borrow. We do not believe in interest because it is *haramu*. Interest is one of the worst crimes in Islam.

The Temporary Deputy Chairman (Hon. Christopher Omulele): The Leader of the Majority Party, we need to be brief on this one. We need to make progress.

Hon. David Gikaria (Nakuru Town East, JP): On a point of order, Hon. Temporary Deputy Chairman.

Hon. Aden Duale (Garissa Township, JP): We cannot turn the House into a *tangatanga* corner.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Gikaria, what is out of order?

Hon. David Gikaria (Nakuru Town East, JP): Hon. Temporary Deputy Chairman, it surprises me. My very able Leader of the Majority Party, Jubilee, is referring to other teams as *tangatanga* and yet he is our leader. He should tell us who the Members of the *tangatanga* team are. We are strong believers of Jubilee under his leadership.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Gikaria, there is no *tangatanga* team or anything else in the House. This is a House of Members of Parliament. The Leader of the Majority Party, finish your contribution.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, we have the Jubilee Party which has over 170 Members of Parliament. The Orange Democratic Movement (ODM) is second and then we have the Wiper Democratic Movement, which is just at the brink of not becoming a parliamentary party. We have the Kenya African National Union (KANU) and a few others. The Forum for the Restoration of Democracy (FORD) Kenya is a serious party with about 15 Members and then the African National Congress (ANC) with 12 Members. The KANU is another party which has five or two Members. There are formations outside my leadership. I am the leader of the Jubilee Party in the House. However, there is *kieleweke* team and *tangatanga* team. There are quite a number of Members who belong to both teams. We will not deny that.

As I agree with the Chair, my point is that we should have a discussion on whether the capping of interest rates is of benefit. Are our people accessing credit? If the figures are to the contrary, why is it happening? We should not blind ourselves. It is good to discuss the interest rates capping. We need to engage and listen to the CBK, the National Treasury, the private sector and the Kenya Bankers Association (KBA). Parliament has the powers to amend legislation. Hon. Jude Njomo said that he has a mission, but it is crashing. It is not of any benefit. Hon. Gikaria thanked Hon. Jude Njomo because of his mission. Even the Americans had a mission to crush Iran, but they realised that it was too powerful. Their mission has collapsed. Let us have a discussion on the interest rates capping. Let us open the dialogue.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Leader of the Majority Party, if you look at the Report of that Committee, you will see that all those stakeholders had a public participation session with the Departmental Committee on Finance and National Planning. They were invited to discuss this. The Report of the Committee is clear. We shall have Hon. Mabongah and then Hon. Onunga.

(Hon. Aden Duale spoke off record)

Hon. Mwambu Mabongah (Bumula, Independent): Protect me from the Leader of the Majority Party. Hon. Temporary Deputy Chairman, the Leader of the Majority Party is advocating for something that he does not even believe in, which is unfortunate. He said that where he comes from, they do not believe in borrowing money that comes with interest.

The Chair of the Departmental Committee on Finance and National Planning has listened to the voice of the majority. We are here and we represent the people. If you go to the village today, auctioning of property has gone down because there is capping of interest rates. We have seen the Report of the Committee. They listened to the stakeholders. There was a meeting between the Committee, the National Treasury and other stakeholders. They have given us the position of the majority and this House. The Leader of the Majority Party is debating and acting on something that he does not believe in, which is unfortunate.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well. Hon. Atandi.

(Hon. Aden Duale spoke off record)

The Leader of the Majority Party had his say. Let Hon. Atandi speak.

Hon. Samuel Atandi (Alego-Usonga, ODM): Thank you, Hon. Temporary Deputy Chairman. I want the Members to listen to me because I am the only practising banker in this House. I want you to benefit from my contribution.

Hon. (Dr.) Robert Pukose (Endebess, JP): On a point of order, Hon. Temporary Deputy Chairman.

Hon. Samuel Atandi (Alego-Usonga, ODM): The Chair of the Budget and Appropriations Committee has said something which is very important. He said that there is over domestic borrowing.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Pukose, what is out of order?

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Temporary Deputy Chairman, I do not know whether you heard what Hon. Atandi said. He said that he is the only practising banker in the House. I thought he is the Member for Alego-Usonga. When he says that he is the only practising banker in the House, I do not know whether he is a shylock. We do not have banking services in the House.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Atandi, proceed.

Hon. Samuel Atandi (Alego-Usonga, ODM): Thank you, Hon. Temporary Deputy Chairman. I want the House to benefit from two things. The Chair of the Budget and Appropriations Committee has said that there is over-domestic borrowing in this economy. I agree with him. He has the solution. Why is the Government over-borrowing in the domestic market? It is because we continue to have a large fiscal deficit. He is the Chairman of the Budget and Appropriations Committee and I want him, next time, to present a budget which is balanced. That way, the Government will not need to go to the market to borrow.

Ultimately, and this needs to go on the records, I support the amendment that we do not repeal the interest cap law. That is very fundamental. In future, we need to have a financial market which is self-regulating. That will only happen if we have a balanced budget in place. We need to cut the fiscal deficit with up to five fiscal points. If we do that, then we will not need this law. For now, banks have failed to convince us that if we repeal the interest cap law, they will give credit to SMEs. They have not given a justification. They are not telling us how they will do it.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Thank you, Hon. Atandi. Finally, Hon. Jude Njomo and then we shall put the Question.

Hon. Jude Njomo (Kiambu, JP): Thank you, Hon. Temporary Deputy Chairman. This is the first time we have one matter that is being discussed in two Bills. This matter of interest rate capping was discussed in the Banking (Amendment) Bill, which we concluded the Second Reading this morning, and in the Finance Bill. I would like to thank the Chair of the Departmental Committee on Finance and National Planning and his Committee Members because they have taken into consideration all the matters that were discussed in the Banking (Amendment) Bill and they have brought them in this Bill. This will give us an opportunity to

sanitise the faults that were found by the courts in this Bill. This will be done within the required time of 12 months.

It is worth noting that the National Treasury had recommended the removal of interest rate caps. I do not know whether they are in touch with the public. If you go out there, everybody wants the interest rate cap to remain because of what they have gone through with the banks. If banks were charging us an interest rate of 24 per cent when our economy was a bit stable, can you imagine what they would be charging today when we have a shaky economy? If we are not protected by this law, I am sure by now interest rates would be going to over 50 per cent. I support what the Departmental Committee on Finance and National Planning has done. I hope the Bill will become law within the required time.

Thank you.

*(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 43 as amended agreed to)

Clause 44

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

THAT, Clause 44 of the Bill be amended in the proposed definition of the term “consolidation” by inserting the expression “at the country of supply” immediately after the word “consignment”.

This amendment is about consolidation in terms of importation of goods. What happens is that most businessmen are small and are not able to fill a container. So, there are business players who consolidate for them to fill a container and then export on their behalf. So, this amendment is only meant to clarify. It is already provided for, but we want to clarify that they do it at the country of supply, so that it is very clear that everything they do out there, by the time they come to Kenya, it has already been done at the source.

(Question of the amendment proposed)

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

(Clause 44 as amended agreed to)

Clause 45

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

THAT, Clause 45 of the Bill be amended in subsection (2)(d) of the proposed new Section 14C by deleting the expression “in the last three years”.

The Bill was proposing to apply the law retrospectively, which is not the practice. So, we are amending by removing the retrospective effect of three years.

(Question of the amendment proposed)

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

(Clause 45 as amended agreed to)

(Clauses 46, 47 and 48 agreed to)

Clause 49

The Temporary Deputy Chairman (Hon. Christopher Omulele): The Hon. Leader of the Majority Party has a proposed amendment. There are two proposed amendments. One is by the Leader of the Majority Party and another by the Chair of the Committee. If the proposed amendment by Hon. Duale succeeds, then the one by the Committee will fall by the way. Proceed, Hon. Duale.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I have withdrawn my amendment.

(Proposed amendment by Hon. Aden Duale withdrawn)

The Temporary Deputy Chairman (Hon. Christopher Omulele): We shall proceed with the one by Hon. Limo.

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

THAT, the Bill be amended by deleting Clause 49 and substituting therefor the following new clause:

Amendment of
Section 17 of
No. 15 of 2008.

49. Section 17 of the Accountants Act, 2008 is amended by deleting sub-section (2A) and substituting therefor the following new subsection-

(2A) The Examination Board jointly with the Institute shall require a trainee accountant to be registered as a member of the Institute, before undertaking an examination.

This amendment is to replace what was being proposed. In the last Finance Bill, we had proposed and it was adopted that all students doing accounting examination will be required to register with Institute of Certified Public Accountants of Kenya (ICPAK), the institute in charge of accountancy but free of charge. The purpose of this is for the institute to get involved from the word go in giving experience and support to students as well as ensuring that, because particular students while doing exams get engaged in working, are governed by professional ethics. This is going to ensure that the accounting profession is well regulated and self-regulating. It is not going to be moved by anybody.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us start with the Leader of the Majority Party. I know the Member for Kikuyu is very interested in this one.

Hon. Aden Duale (Garissa Township, JP): He is interested in it because he is an accountant, but I think, a quack. I did not say you are a quack.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Leader of the Majority Party, withdraw that comment.

Hon. Aden Duale (Garissa Township, JP): I withdraw and apologise.

Hon. Temporary Deputy Chairman, one of the reasons I withdrew my amendment was because of what it entails. I am a father of an accountant at the university who is about to finish. The amendment says that all accountants be members of the professional body. That is being very unfair. That for them to get a job, they must present a certificate. A professional body is like a club for one to join. It is voluntary. Dr. Pukose can be a member of Kenya Medical Association (KMA) or not. So, if you say that no persons or a public or private entity shall employ a person to practice accountancy unless the person is a member of an institute, how do you want young Kenyans in our constituencies who are accounts to get jobs?

I ask the Chairman to withdraw his proposed amendment before we subject him to a very brutal voting.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let us have Hon. Ichungwah, Member for Kikuyu.

Hon. Kimani Ichung'wah (Kikuyu, JP): It is Ichung'wah and not Ichung'wah. Ichung'wah sounds like an orange and I have no relation with oranges other than eating them the same way we will eat these oranges when the time comes.

Let me raise my reservation also with the proposed amendments. First, the amendments came through the miscellaneous statutes law last year. I remember myself and Hon. John Mbadi, the Leader of the Minority Party, as accountants, raised our reservations on the same amendment

coming in through such miscellaneous ways. As you know, the Finance Bill is also a sort of miscellaneous amendment Bill.

Therefore, I have had consultations with members of ICPAK, and I urge them and whoever has brought these amendments to bring us a substantive amendment Bill on the Accountants Act. Otherwise, these piecemeal amendments will get things being sneaked in that are counterproductive not just to the young people, but even to people like myself. They are saying that despite my over 20 years of experience, I cannot practice accountancy. Since I became a certified public accountant in 1999 - 20 years ago - I have never joined the institute and I have never seen the benefits of joining it. Nobody forces lawyers to join the Law Society of Kenya (LSK). It is when you join the Bar and you automatically become a member of the Bar upon qualification. I would rather we have these things at an appropriate time through a Bill we can subject to public participation, so that we do not disadvantage the young people in school pursuing accountancy and those still doing their professional qualifications and are already working by bringing in piecemeal amendments.

I urge the Chair to withdraw these amendments.

(Hon. Kimani Ichung'wah pointed at Hon. Joseph Limo)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Member for Kikuyu, you do not need to point at the Chair. This is not for the Chair. This is a proposal for the House.

Member for Molo.

Hon. Kuria Kimani (Molo, JP): Thank you very much, Hon. Temporary Deputy Chairman. I speak not just as an accountant, but also as a member of the institute. The importance of these amendments will be to help accounting students with apprenticeship, so that by the time they sit for their CPA or ACCA exams, they are exposed to experiences in the market. I have been interviewing accountants and in some cases, when you ask them to prepare financial statements, they cannot make head and tail of that.

About the fees the Leader of the Majority Party is worried about, the amendment says that the accounting students will not be required to pay any fees when joining the institute. It is already in the Act. Therefore, I urge the Hon. Members to support.

Also, there are accountants who have worked for years in the Government, but do not have any single certification as accountants. These are some of the accountants that you find doing dubious things in the Government because they do not have any professional body that can discipline them. We have had engineers being denied licences to work as engineers because, for example, they have messed up in their professional work. Doctors have had their licences withdrawn because of negligence. The same thing should be said of accountants.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Kuria, you have made your point. As we continue with discussions on this matter, the Chair of the Departmental Committee on Finance and National Planning, you might want to consider...

We shall have Hon. Osotsi.

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Temporary Deputy Chairman, I am in agreement with the Committee that a trainee can become a member of a professional body. That is the global best practice. Even with engineers in Kenya, it is now a requirement that student engineers belong to the Institute of Engineers of Kenya. That is the practice. I am aware that even the association of professionals in East Africa has issued a requirement that every professional should belong to some professional body. This is quite in order.

(Hon. Samuel Atandi spoke off record)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hold on, Hon. Atandi. You cannot overrun the Chair. When the Chair wants to communicate, he will communicate. Chair of the Departmental Committee on Finance and National Planning, I hope you have looked at the provisions of Article 36 of the Constitution on freedom of association. Specifically, Sub-Article (2) says that a person shall not be compelled to join an association of any kind. I hope you were advised on this particular provision and also on the requirement that you seem to be placing on employers, namely, the offence that you seem to be creating on those who will employ people who might not be members of this association. I hope you have taken that into consideration.

Hon. Atandi, what was so burning?

Hon. Samuel Atandi (Alego-Usonga, ODM): Hon. Temporary Deputy Chairman, I wanted to weigh in on this matter. This is one of the most progressive draft laws that we want to pass. You know very well that in this country right now, the number of accountants who have been arraigned in court for corruption is very high. That is why, as a House, we must insist that professionals must belong to professional bodies. I belong to a professional body. So, let us not allow people who have not had serious professions like my friends here...

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Atandi, you have made your point. Hon. Gikaria.

Hon. David Gikaria (Nakuru Town East, JP): Thank you, Hon. Temporary Deputy Chairman. First, you have made it very clear that it is unconstitutional for someone to force anyone to join any association. Second is what you said on the matter of telling employers not to employ accountants unless they are registered with a professional body. How many accountants do we have now who are not registered? We will make them to be sacked. We are going to put this country into a very difficult situation if we pass this proposal. I oppose the amendment.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Barasa, what is so burning?

Hon. Didmus Barasa (Kimilili, JP): Hon. Temporary Deputy Chairman, let the institute tell Kenyans the importance of an accountant being a member, so that employers can choose whether to employ from them or from somewhere else.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Leader of Majority Party, what is to be clarified?

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, you made a serious statement based on the Constitution. That alone will make this amendment unconstitutional. In fact, our Director of Legal Services is sitting here. We do not want to pass something which is unconstitutional. It will be challenged in court. Two, there are a number of accountants working in the Parliamentary Service Commission who are not members of ICPAK. If this law is assented to and they do not join ICPAK, the law will be saying that they must be sacked: The same with the Government. There are many accountants working in the Government. On the flip side, you have raised a constitutional provision. On the basis of that constitutional provision alone, the Chairman needs to accept the fact that this proposed amendment is null and void. You cannot force me to join a professional body unless I was born with it, like my religion.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chairman of the Committee on Finance and National Planning, I have looked at this proposed amendment. I have also apprised myself with the provisions of the Constitution. I believe this is not one of those issues that can be put to the House to decide one way or another because this provision is clearly against the Constitution.

I, therefore, exercise the...

(Loud consultations)

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Proceed, Chair. What do you have to say?

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, ensure that you protect me. There is a lot of noise. It affects the clarity on this matter. I am a Member who is well experienced, and I always listen. There is one thing which is serious and that is the only thing which we missed. This is the issue of stating clearly that it affects the rights of an individual in terms of the Constitution. These amendments were good for the profession. We will, of course, comply. If you refer to what we did under the Banking Act, we listened to the public and to the courts and ensured that we brought an amendment which complied. I am taking the responsibility of the Chair of the Departmental Committee on Finance and National Planning and I withdraw this amendment, so that it gives us a chance to consult again and refer to the Constitution to ensure that it is compliant. I withdraw it on the basis of its constitutionality to give more time for consultation.

What it means is that all the clauses that relate to accountancy are withdrawn. We will make further consultations and ensure that, if need be, it will come back. I have also to state clearly that there are certain issues which have been mentioned, which are not proposed in these amendments. The issue of sacking individuals is not there. Let us not impute improper motive on a good law that is going to regulate a profession.

I thank you for giving me this chance.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Let me protect you, Hon. Limo. You have done superbly well. You have made the wisest decision in the circumstances. You will still need these Members to walk with you through the rest of the Bill. You have withdrawn these proposed amendments. Therefore, they stand dropped.

*(Proposed amendment by Hon.
Joseph Limo withdrawn)*

(Clause 49 agreed to)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, we are moving to Clauses 50 and 51, but you will remember that in the Speaker's Communication of 19th of this month, those two clauses were expunged from the Bill. Therefore, they will not be available for consideration.

(Clauses 50 and 51 expunged from the Bill)

New Clause 45A

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Limo, this has a new clause. You might want to move it. It is on the Standards Act (Cap.496), Page 2190.

Hon. Joseph Limo (Kipkelion East, JP): I stand guided. I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 45—

Insertion of 45A. The Standards Act is amended by inserting the
new s. 22 in following new section immediately after section 21-
Cap. 496

Transitional 22. The provisions of section 14C (2)
provision. (d) shall not apply to any company,
which was in the business of
consolidation before the
commencement of this Act.

The import of this is to ensure that what we had passed earlier under Clause 45 which was working retrospectively will apply properly by stating very clearly that any companies which were in existence before will not be affected by this new provision of the law.

(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)*

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chair of the Departmental Committee on Finance and National Planning, looking at the fate of the earlier proposed amendments to the accounts institute issue, you might want to reconsider your proposed amendments to the New Clause 48A and the New Clause 49A, all the way to the New Clause 49B, the New Clause 49C and the New Clause 49D. What do you wish to do?

Hon. Joseph Limo (Kipkelion East, JP): As earlier stated, I made very clear that I am withdrawing all the clauses related to accountancy, so that it allows more consultation which will allow it to come in a very good and organised manner having taken care of views from other stakeholders and the law.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Thank you, Hon. Chair.

*(Proposed amendments by Hon. Joseph Limo in New Clauses 48A,
49A, 49B, 49C and 49D dropped)*

The Temporary Deputy Chairman (Hon. Christopher Omulele): The Leader of the Majority Party, you had a proposal to bring in New Clause 48A. What do you wish to do with it?

Hon. Aden Duale (Garissa Township, JP): I was confused by the Office of the Attorney General. So, I am also dropping my amendments. They just brought it yesterday.

*(Proposed amendment by Hon. Aden Duale's
to New Clause 48A dropped)*

New Clause 51

Hon. Joseph Limo (Kipkelion East, JP): I beg to move:

THAT, Part VII of the Bill be amended by inserting the following new clause immediately after Clause 50 —

Amendment of the
long title to Cap.
117.

51. The long title to the Housing Act is amended by deleting the words “a Housing Fund” and substituting therefor the words “the National Housing Development Fund”.

This clause is only deleting the phrase “Housing Fund” and replacing with “National Housing Development Fund” to ensure this is orderly. You remember that this housing project will be handed to the National Housing Development Fund which will then transfer them to the

beneficiaries. So, this amendment is just to ensure it is going in that direction. In fact, I will seek your guidance on most of the other clauses because several of them are talking about this.

The Temporary Deputy Chairman (Hon. Christopher Omulele): You have done well, Hon. Joseph Limo.

(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 52

Hon. Joseph Limo (Kipkelion East, JP): I beg to move:

THAT, Part VII of the Bill be amended by inserting the following new clause immediately after New Clause 51 —

Amendment of section 2 of Cap. 117. **52.** Section 2 of the Housing Act is amended—

in the definition of “grant” by deleting the words “Housing Fund” and substituting therefor the words “the National Housing Development Fund”; and

by deleting the definition of “Housing Fund”;

by inserting the following new definition in its proper alphabetical sequence—

“National Housing Development Fund” means the Fund established under section 6 of this Act.

The import of this what I had said earlier, to delete the phrase “Housing Fund” and replace with “National Housing Development Fund”.

(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 53

Hon. Joseph Limo (Kipkelion East, JP): I seek your direction on how to move on New Clause 53 all the way to finishing all related new clauses. Let me just say what I wanted to say.

I beg to move that New Clause 53 be Read a Second Time subject to an amendment on the section which is being referred. The current amendment is referring to Section 6 while the actual bit we are amending is Section 7. So, it is a drafting issue which we need to amend as we make this amendment.

I beg to move:

THAT, Part VII of the Bill be amended by inserting the following new clause immediately after New Clause 52 —

Amendment of marginal note to section 6 of Cap. 117. **53.** The marginal note to Section 6 of the Housing Act is amended by deleting the words “Housing Fund” and substituting therefor the words “the National Housing Development Fund”.

The import of this what I had said earlier, to delete the phrase “Housing Fund” and replace with “National Housing Development

(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 54

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

THAT, Part VII of the Bill be amended by inserting the following new clause immediately after Clause 53 —

Amendment of
section 6 of Cap. 117.

54. Section 6 of the Housing Act is amended—

(a) by deleting the words “Housing Fund” appearing in subsection (1) and substituting therefor the words “National Housing Development Fund”;

(b) by deleting the words “Housing Fund” wherever they appear in subsection (2) and substituting therefor the words “National Housing Development Fund”; and

(c) by deleting the words “Housing Fund” wherever they appear in subsection (3) and substituting therefor the words “National Housing Development Fund”.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Limo.

(Question of the new clause proposed)

(New clause read the First Time)

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move that the New Clause 54 be read a Second Time, subject to the correction of the sub-section which is referred to.

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Limo, let me assist you. I think Members are clear on what you want to do. You should just move that the new clauses be as per the Order Paper, so that we can move.

If we are in agreement that the legal team will correct the sections which we are amending, because they are clearly typo errors, then I will only move as per the Order Paper, if you have allowed.

(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 55

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

THAT, Part VII of the Bill be amended by inserting the following new clause immediately after Clause 54 —

Amendment of
section 7 of Cap. 117.

55. Section 7 of the Housing Act is amended by deleting the words “Housing Fund” appearing in the opening words of subsection (1) and substituting therefor the words “National Housing Development Fund”.

(Question of the new clause proposed)

(New clause read the First Time)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Limo, when you move, just indicate that there is a further amendment in the section, so that the section is 6 without further explanation.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move that the New Clause 55 be read a Second Time, subject to the correction of the referred section from 7 to 8.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Limo, what you need to do is to read that the new Clause 55 be approved as set out in the Order Paper with a further amendment in that section, not subject. You are making a further amendment.

Hon. Joseph Limo (Kipkelion East, JP): Alright, Hon. Temporary Deputy Chairman. I stand guided. I propose that the new Clause 55 be now read a Second Time with a further amendment by having Section 7 reading Section 8.

*(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 56

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

THAT, Part VII of the Bill be amended by inserting the following new clause immediately after Clause 55—

Amendment of
Section 7A of Cap. 117.

56. Section 7A of the Housing Act is amended by deleting the words “Housing Fund” appearing in subsection (3) and substituting therefor the words “National Housing Development Fund”.

(Question of the new clause proposed)

(New clause read the First Time)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Limo.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move that the New Clause 56 be now read a Second Time with a further amendment to make Section 7 read Section 9.

(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 57

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

THAT, Part VII of the Bill be amended by inserting the following new clause immediately after Clause 56—

Amendment of
section 1 of Cap. 117.

57. Section 11 of the Housing Act is amended by deleting the words “Housing Fund” appearing in the opening words of paragraph (a) and substituting therefor the words “National Housing Development Fund”.

(Question of the new clause proposed)

(New clause read the First Time)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Limo.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move that the new Clause 57 be now read a Second Time with an amendment to Section 11 to read Section 14.

(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 58

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

THAT, Part VII of the Bill be amended by inserting the following new clause immediately after Clause 57—

Amendment of
Section 12 of Cap. 117.

58. Section 12 of the Housing Act is amended by deleting the words “Housing Fund” and substituting therefor the words “National Housing Development Fund”.

(Question of the new clause proposed)

(New clause read the First Time)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Limo.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move the New Clause 58 be now read a Second Time with an amendment to Section 12 to read Section 15.

(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 59

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

THAT, Part VII of the Bill be amended by inserting the following new clause immediately after Clause 58—

Amendment of
section 24 of Cap. 117.

59. Section 24 of the Housing Act is amended—

(a) by deleting subsection (2) and replacing it with the following new subsection—

(2) A person convicted of an offence under this Act shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or both.

(b) by inserting the following new subsection immediately after subsection (2)—

(2A) If an act or commission of a person results in the loss of money from the National Housing Development Fund, that person shall be liable to a penalty equivalent to twice the amount lost.

(Question of the new clause proposed)

(New clause read the First Time)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Limo.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move the new Clause 59 be now read a Second Time. This will cover penalties which will be paid by people who will be found guilty during the implementation of the housing projects under the Big 4 Agenda. The penalty is currently at Kshs10,000. It is being increased to Kshs1 million.

(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 60

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

THAT, Part VII of the Bill be amended by inserting the following new clause immediately after Clause 59—

Amendment of
section 12 of Cap. 117.

60. Section 26 of the Housing Act is amended in subsection (4) by deleting the words “Housing Fund” and substituting therefor the words “National Housing Development Fund”.

(Question of the new clause proposed)

(New clause read the First Time)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chair.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move that the new Clause 60 be now read a Second Time with an amendment to Section 26 to read Section 29.

(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 61

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

THAT, Part VII of the Bill be amended by inserting the following new clauses immediately after Clause 60 —

Amendment of
section 117 of Cap. 480.

61. Section 117 of the Stamp Duty Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (n)—

(o) the transfer of a house constructed under an affordable housing scheme from the developer to the National Housing Corporation.

(Question of the new clause proposed)

(New clause read the First Time)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chair.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move that the new Clause 61 be now read a Second Time. This is about stamp duty, which will exempt developers of housing schemes from paying stamp duty when transferring from themselves to the NHC. Stamp duty will then apply to person who is going to get the House.

(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)

Hon. Daniel Maanzo (Makueni, WDM-K): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): What is out of order, Hon. Kitonga?

Hon. Daniel Maanzo (Makueni, WDM-K): Before Hon. Limo finishes this; he had stated that part of the correction would be made by the lawyers. We need to clarify that.

The Temporary Deputy Chairman (Hon. Christopher Omulele): We walked together with him and he has done very well.

(Title agreed to)

Clause 1

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chair, kindly approach, so that we can tidy it up. Hon. Members, we are just doing a House cleaning exercise. Thank you for being patient. I had proposed that Clause 1 be part of the Bill and the Chair has a proposal on this.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I propose that Clause 1 of the Bill be amended in Paragraph (a) by inserting the words “New Clause 7A and New Clause 8A” immediately after 7.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Washiali.

Hon. Benjamin Washiali (Mumias East, JP): Chair, as much as those clauses had not been indicated in the current Clause 1, we need to tighten it. The word “and” should come in between the new clauses that we are currently adding, so that the additional should be after the No.46.

The Temporary Deputy Chairman (Hon. Christopher Omulele): You are correct, but it will be tied up. I understand what you are saying, but our technical people will take it in.

Hon. Members, allow me put the Question.

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

(Clause 1 as amended agreed to)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Mover to move reporting.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee does report to the House its consideration of the Finance Bill (National Assembly Bill) No.51of 2019 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Deputy Speaker (Hon. Patrick Mariru)

in the Chair]

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order Members. It has been a long afternoon. Chairperson.

REPORT AND THIRD READING

THE FINANCE BILL

Hon. Christopher Omulele (Luanda, ODM): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Finance Bill (National Assembly Bill) No. 51 of 2019 and approved the same with amendments.

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

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Speaker, I beg to move that the House does agree with the Committee in the said Report.

I also request Hon. Vice Chair, Hon. Ndirangu, to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Isaac Ndirangu (Roysambu, JP) seconded.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Very well.

(Question proposed)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Members, we pend putting the Question to that particular one.

(Putting of Question deferred)

Next Order.

MOTION

REVISED SESSIONAL PAPER NO.1 OF 2019 FOR REFORMING EDUCATION AND TRAINING FOR SUSTAINABLE DEVELOPMENT IN KENYA

THAT, this House notes the Report of the Departmental Committee on Education and Research on its consideration of the Revised Sessional Paper No.1 of 2019 on the Policy Framework for Reforming Education and Training for Sustainable Development in Kenya, laid on the Table of the House on Tuesday, September 17, 2019 and adopts the Revised Sessional Paper No.1 of 2019 on the Policy Framework for Reforming Education and Training for Sustainable Development in Kenya.

(Hon. Melly on 24.9.2019)

(Resumption of Debate interrupted on 24.9.2019)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Members, this is a continuation. Hon. Sophia Noor had a remainder of one minute.

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

The Temporary Deputy Speaker (Hon. Patrick Mariru): What is out of order, Hon. Leader of the Majority Party?

Hon. Aden Duale (Garissa Township, JP): I misled Hon. Sophia. I told her the Finance Bill might take long. So, we can take it to the next sitting of the House, maybe tomorrow.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Well, this is a continuation of debate. Her one minute will drop because she is not here. You may have another arrangement to apologise to her.

Hon. Members, 14 Members had spoken to this. So, if you had spoken to this one, you will not get another chance. So, Hon. Members, I will be guided by those who have registered interest to speak to this.

Top on the list is Hon. Baya Yaa. In his absence, let us have Hon. Babu. He is not around. Let us have Hon. Osotsi. I suppose you had not spoken to this.

Hon. Geoffrey Osotsi (Nominated, ANC): Thank you, Hon. Temporary Deputy Speaker for the opportunity to also raise my voice on this Sessional Paper. From the outset, I want to support it because it clearly identifies the challenges we are facing in the education sector. But I have some reservations because some of the solutions suggested in this Sessional Paper are not adequate to address the challenges identified. They are not very practical and it is not clear how the Government intends to implement the solutions to those challenges.

The Paper has clearly identified that there has been improvement in enrolment at all levels from pre-primary, university and technical and vocational education and training (TVET) centres. But there are challenges of capacity, access, quality, sustainability and provision of infrastructure. I am not convinced by the proposed solutions the Government has given in the Sessional Paper. I expected to see practical solutions to the education issues.

Education in this country has many challenges which we must look into and especially quality. We see people leaving school and they are unable to write an application letter, yet they have a degree. This issue concerns the quality of education. We have also seen reports by organisations like Uwezo Kenya, which has questioned the ability of primary school children to do simple arithmetic or speak simple English. This Sessional Paper should have given practical and implementable solutions to quality issues.

This Policy Paper also talks about university education which in this country is failing. We went to university when education there was quality. Nowadays, you meet someone you were schooling with and scored a D in Form Four, after sometime, you hear he is a Doctor of Philosophy (PhD) holder. He is called Dr. So and So. How is this possible? Something went wrong somewhere.

I am among the people who are saying maybe it is important for us to relook at the university Module II evening programs, which people take. On one hand, it has enhanced access to university education, but on the other, it has diverted it from the primary core which is quality university education and research. Nowadays, universities are focused on doing business and are enrolling many students. They do not care about quality as long as they get money. It is not

possible to have a Master's class with 200 or 300 students sitting in one lecture room and expect to get the best quality. I think we need to look at this issue.

Also on university education, we must look at the requirement for university education for one to do some things. For example, one has to have university education to become a governor or Member of Parliament. These are the requirements which are making people to fake papers and the quality of university education to go down. We would rather remove it, so that people can focus on promoting quality education.

Also, the issue of integration of Information and Communication Technologies (ICT) in education is clearly outlined in this Policy Paper. But I expected to hear more about its integration in education. The issue of promoting innovation in ICT from primary school all the way to university is not clearly specified in this Paper, yet if this country has to innovate, one of the things we need to invest in is ICT research, training, accreditation and development.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Very well, you support. Shall we have Hon. Thuku Kwenya, Member for Kinangop?

Hon. Zachary Thuku (Kinangop, JP): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to speak on this Sessional Paper No.1 of 2019. Indeed, it is a Paper whose time has come. It is well thought out and tends to answer the many challenges we are facing in the education sector in the Republic of Kenya.

Nelson Mandela once said that education is the only equaliser. This is the only way a child from a humble background can dine on the same table with a child born and raised in palace. This being the case, we need to give education the weight it deserves. The Government has attempted to do this through budgetary allocation, where almost a third of our budget goes to education. But I do not think we are doing enough in matters education. If we are going to achieve what this beautiful Sessional Paper is attempting to do, then, we have to be deliberate in our resolve and actions. Indeed, we have to build capacity. As we roll out a beautiful education system that is complete and spaced, there are fundamental issues that we have to first deal with especially infrastructure.

The other day, we witnessed a shocker to the whole nation that in a ward in the Republic of Kenya, there is no public primary school. Therefore, any shanty that was available, the parents were happy to take their children there. They did not have an option. This is telling in terms of our commitment towards education. You can imagine a ward like Ngando, which our colleague Hon. K.J. represents, has no public school and we are talking of winning in matters education.

There must be deliberate action where the Government invests heavily and gives priority to this area, so that everybody can access education. There are many reports of what needs to be done, but implementation has always been a challenge. Really, if we have to get there, we have to change our attitude and approach to things that we aspire to do.

Infrastructure is a big challenge in this country. As much as the Executive would want to believe that they are giving the National Government Constituencies Development Fund (NGCDF) enough funds to develop, that is a fallacy. I will give my own example of Kinangop Constituency, where I have about 160 schools. I have an allocation that is equivalent to that of a

constituency in Nairobi that has about three schools. I am expected to develop all my schools from the same kitty and be at par or with a constituency in Nairobi that has only three schools. So, we have so many condemned structures in schools yet we are still talking of 100 per cent transition of pupils from primary to secondary school. It beats logic. We are talking of equity and equality in this country, but when it comes to resource allocation, it is not seen to be done. So, we disadvantage some areas. If we continue that way, we will never achieve equity. We have many schools that are a disaster waiting to happen. We have reports that have been given by the Ministry of Public Works that those schools are not good for our children, but then we still continue doing business as usual.

Finally, there is the issue of staffing. The ratio of pupils to teachers is something that is worrying us yet we are talking of actualising such a beautiful Paper. We must be true to ourselves. The Executive must do what they are supposed to do in terms of staffing. Instead of preaching the gospel of free primary and secondary education, they must fund it adequately, so that we can have enough teachers in our schools. As much as I support, I have my reservations. There is much more than needs to be done now because I think this Paper is for the future.

With those remarks, I support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Maanzo Kitonga.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to comment on this very important Sessional Paper No.1 of 2019 on the Policy Framework for Reforming Education and Training for Sustainable Development in Kenya.

First and foremost, although it has been presented, you will realise that this Sessional Paper is what will inform the policy on education in this country. The Chair is my good friend. When he was the Vice-Chair of the Departmental Committee on Education and Research, I really engaged him in the other Parliament on this matter because I felt that things were not going right. I felt that there was no sufficient public participation on the education matter. I have a child in Level Three. This policy has already been implemented even before we have completed debating it. Therefore, the new policy is already implemented. Books have been printed and it is already being implemented even before we have approved the Sessional Paper. It is only a sessional paper which informs the policy and the policy informs the law. There are quite a number of statutes which are supposed to be amended to give direction within the law as to what is going to happen with the new curriculum.

On my part, I find that the Government has been very high handed on this one. The Ministry of Education decided to come up with the policies and implement them even before they have been debated and passed by this House. So, that happened and a lot of people have got into trouble because of this policy. Some 288 teachers have been interdicted. There were some proceedings within the Teachers Service Commission (TSC). Some were sacked and upon being sacked, there were court orders which were not obeyed. Some teachers were reinstated while others do not know their fate to date. In fact, they have appealed. They are from Makueni and particularly Kibwezi West, where Hon. Musimba represents. They are in court. We have hearings coming up in November. Therefore, people have got into trouble while trying to ask questions on this policy. These are people in the teaching profession, *wananchi* and representatives of KNUT. People have got into trouble for trying to straighten things. Everyone wants a new curriculum. The new curriculum is a good thing. We need to keep on improving our education. We need to fit into the standards. Although we departed from the British system, there are very many schools teaching the British system today.

The British have not changed their system, but we keep on copying and changing. The 8-4-4 system has done very well. I am a product of the 8-4-4 system and we do very well in American, Canadian and Australian universities and all over the world. Our students have done very well which means we were prepared very well. The high school I went to was first in Kenya in 1992. Most of my classmates became very successful surgeons and pilots. I meet them all over the world as very successful people having scored very well in the 8-4-4 system, which means that it was a success.

What seems to have gone wrong was the overloading of students. In those days, I could even score 99 per cent in history, geography and mathematics. Today, I wonder why students do not get As. Something definitely needs to be done so that we can have better education. It cannot be done upside down. In this Sessional Paper, things have been done upside down. The education system has already been implemented illegally. It is only that no one has gone to court to stop it. We are thinking of it. It has been implemented illegally. It is a good thing, but it should be rectified through this House once this Sessional Paper goes through. Public participation should be done, so that every Kenyan has an opportunity to participate in this event which will prepare Kenyans for the future.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Let us have Hon. Angatia Savula.

Hon. Ayub Angatia (Lugari, ANC): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this Sessional Paper in regard to the education system in this country.

From the outset, I would like to suggest that we amend the Constitution of this country with regards to the appointment of cabinet secretaries (CS). You cannot put measures or parameters where county executive committee members (CECs) are required to have degrees while there is no provision for standards in terms of education for cabinet secretaries. Even a D-fellow can become a cabinet secretary because the Constitution is open in terms of education. How does it reflect on a society where you have a cabinet secretary who is a Class Eight drop-out? When discussing this Sessional Paper, let us begin by amending the Constitution, so that we cover that loophole.

Secondly, when you talk about education, the mother of education is primary school. When you do not build good structures at primary school level, you are not developing education in this country. The NG-CDF build primary schools. With the disaster that happened recently, I suggest that the infrastructure funds under the Ministry of Education be transferred to the NG-CDF, so that we can utilise that money to build good infrastructure in our schools to promote the quality of education in this country.

I am only allocated Kshs100 million by the NG-CDF, but I have 140 primary schools in my constituency that are mud-walled. I do not know what to do with those structures. This kind of reactive measure that the Minister is showing us - a professor going to Kibera to inspect schools because of the disaster - is total nonsense. Give us the infrastructure funds under the NG-CDF and let us build the schools. Do not give us stories that because there is a disaster, you now run around the country closing schools. Where were you before the disaster happened? Give us the infrastructure funds. The infrastructure funds are lying with the Ministry of Education. We go begging for Kshs5 million or Kshs6 million. Why can the money not be transferred to the NG-CDF, so that we do quality work? There are systems to audit the work. We are the ones to do it. We need to bring a Motion to Parliament to amend the NG-CDF Act so that all the infrastructure

funds from the Ministry of Education must go to Members of Parliament to build primary and secondary schools. That is the basis of quality education in this country.

I would like to contradict my brother, Hon. Osotsi, who said that a fellow who scores a D is condemned in life. We have institutions like village polytechnics where you can get a certificate course if you scored a D in high school. You will go to teachers college to get a Diploma Certificate, progress to get a first degree, then a Master's Degree and finally, a Doctor of Philosophy (PhD). When you get a D, it does not mean you are condemned.

Hon. Moses Lessonet (Eldama Ravine, JP): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Angatia. What is it Hon. Lessonet?

Hon. Moses Lessonet (Eldama Ravine, JP): Hon. Temporary Deputy Speaker, I stand on a point of order because Hon. Savula is misleading the House that the NG-CDF can be used to fund infrastructure development in private schools, including the school that collapsed this week. It is a private school. Whether it is the money at Jogoo House or the NG-CDF, there is no way infrastructure money can go to a private school.

Hon. Savula is equally misleading the House that there are infrastructure funds at the Ministry of Education. I am a very serious Member of the Budget and Appropriations Committee and there are no such funds other than money in the Ministry of Education for national schools which these Members of Parliament chose, deliberately, to give to them. That is why you find such money at the Ministry of Education, but not the NG-CDF.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Very well, Hon. Lessonet. Although what you have said is important, it does not look like a point of order. It is a point of information to Hon. Angatia. You used the point of order route to inform him. Hon. Angatia, do you feel sufficiently informed?

Hon. Ayub Angatia (Lugari, ANC): Hon. Temporary Deputy Speaker, I do not need to respond to that. Currently, I am a PhD student. I know very well that Government money cannot fund a private school. I meant that we should build public schools using infrastructure funds from the Ministry of Education, so that we do not have private structures being built in those areas.

Secondly, I requested the Ministry of Education to allocate me money for three secondary schools and I was given the money. There is money there. That money must be transferred to the NG-CDF. That is what we want. We want that money to build quality schools in the country. I know what happens at the Ministry of Education. In the 11th Parliament, I was in the Departmental Committee on Education and Research and I know what happens there. The Chair of the NG-CDF should not mislead us. We want money to build quality schools. We do not want fake structures being built by individuals. We want to have sustainable education in this country and we can only have it when it is backed by Government funding, but not individuals.

(Hon. Ayub Angatia spoke off record)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Angatia, you will not get more minutes. It looks like your presentation has made quite a number of Members uncomfortable. I can tell that Hon. Melly was shaking in his seat. That is gone. Shall we have Hon. Musimba Patrick?

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): Thank you, Hon. Temporary Deputy Speaker for according me this opportunity to contribute. I have points about the Sessional Paper on taking a study about where we have come from with our education systems since Independence. We started with the 7-6-3 System, which acknowledged that there is failure when we do not have technical schools. We used to have technical colleges which are now being re-addressed through the re-introduction of technical training institutes. What is important in an education arena is to inculcate into our students and citizenship skills, knowledge and attitudes towards education. It is a life-long journey. It does not end at certification. One can be educated in terms of acquisition of wisdom and skills to make one a better citizen, so that one can continually contribute towards the betterment of this great nation.

When it comes to training facilities, and, indeed, this is well covered in the Sessional Paper, there are gaps which were ably noted. They are mainly ICT gaps. They are upcoming knowledge gaps in the 21st Century which need to be addressed. I worry about our competitiveness in the global realm. We have a mismatch between our system and what is being internationally used. The British still have the common entrance exams and the A Level system. When it comes to matching, especially when trying to internationalise our students when they go abroad, there is a very big mismatch in terms of how they are placed. What is the equivalent of our Form Four with their system? That is why we have a lot of bridging courses, which come at a very great expense to our citizens. This has a bigger effect when they are being assessed for international opportunities. Today, we have able people sitting in international bodies courtesy of matching their education experience with that of other countries.

What needs to come out in the Sessional Paper is that our top students have to be benchmarked to carry out exams which are undertaken in other countries. For instance, if we have common entrance exams administered to 13 year old students, then we should have the same Cambridge exams being administered to a certain quartile of our nation to know that we have been benchmarked properly. At secondary level, the same has to happen, so that we know that we have tuition for people who are going to international universities to compete. The University of Nairobi is ranked as one of the top universities in Africa, but when it is benchmarked globally, there are gaps that exist and need to be covered.

We need to go further than that. Infrastructure is not the only thing going on in education. We have had infrastructural challenges in past. People from rural areas have excelled in university in science courses yet they were disadvantaged by not having science laboratories. Now that we have ICT, we have the benefit of conducting experiments through ICT as an intervention. This will lead us to places that ensure the skill set that is here for our job market ends up being competitive and relevant.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Let us have Hon. Kilonzo Mutavi.

Hon. Charles Kilonzo (Yatta, Independent): Thank you, Hon. Temporary Deputy Speaker. I wish to support Sessional Paper No.1 of 2019 on the policy framework for reforming education and training for sustainable development in Kenya. Initially, most teachers and the Kenya National Union of Teachers (KNUT) opposed the Competency Based Curriculum. One of the recommendations of the Report was to develop a new education structure based on a

reformed curriculum. In this country, you cannot say that there is a child who is stupid. Every child has a talent. Our exams have been used to condemn very bright people. An exam is a very interesting thing. It is like taking four animals, namely, an elephant, a monkey, a crocodile and a rabbit and tell them to climb a tree. The monkey will pass that exam. Add a fish and tell them to cross a river. Of course, the fish will win, but that does not mean that all the other animals are stupid. It is time this is reviewed.

Another recommendation is to enhance access to education among vulnerable, disadvantaged and other groups. Another recommendation is to expand access to education and training by reducing the cost on households. Members of Parliament, I recall from the 8th Parliament, saw the need of putting up more secondary schools and polytechnics. I recall that when I got elected, we had only 16 secondary schools in my constituency. Today, my constituency has 70 secondary schools. This is something Members of Parliament saw. Across the country, we have more secondary schools and transition from primary to secondary school, as we talk, is on average 91 per cent. This is an initiative of Members of Parliament from various Parliaments. But subsequent Governments, Government after another, have failed in looking at issues of education.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Kilonzo. It is 7.00 p.m. I am afraid we will have to cut short your presentation, but the good news is that when this comes back again, you will have your three minutes to prosecute your case.

Hon. Members, the time being 7.00 p.m., the House stands adjourned until Thursday, 26th September 2019, at 2.30 p.m.

The House rose at 7.00 p.m.