

PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

THE HANSARD

Tuesday, 19th November 2019

The House met at 2.30 p.m.

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

PRAYERS

Hon. Speaker: We will commence business.

ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following Member:
Mr. Okoth Bernard Otieno.

(Applause)

COMMUNICATION FROM THE CHAIR

Hon. Speaker: Hon. Members, I shall make a Communication later, as we proceed with the business.

PAPERS LAID

Hon. Speaker: Leader of the Majority Party.

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

Quarterly Economic and Budgetary Review Report for the period ending 30th September 2019 (First Quarter, 2019/2020 Financial Year) from the National Treasury and Planning;

The Multilateral Convention on Mutual Administrative Assistance in Tax Matters and the Explanatory Memorandum from the Ministry of Foreign Affairs;

The 2nd Quarter Report by the Ethics and Anti-Corruption Commission for the period from 1st April to 30th June 2019.

(Loud consultations)

Hon. Speaker: Order, hon. Members. Consult in low tones. The Multilateral Convention on Mutual Administrative Assistance in Tax Matters and the Explanatory Memorandum from the

Ministry of Foreign Affairs is referred to the Departmental Committee on Defence and Foreign Relations.

Next Order.

ORDINARY QUESTIONS

Hon. Speaker: The first Question by the Member for Lamu County, Hon. Captain Ruweida Obo.

Question No.496/ 2019

REPORT ON SURVEY/SUBDIVISION DONE IN VUMBE AREA

Hon. (Ms.) Ruweida Obo (Lamu CWR, JP): Thank you, Hon. Speaker. I rise to ask the Cabinet Secretary for Lands the following Question:

Could the Cabinet Secretary provide a report on the subdivision exercise and survey carried out in January 2019, and reviewed on 20th August 2019, in Vumbe Area of Lamu East Constituency, Lamu County and the number of plots arrived after the exercise?

Hon. Speaker: The Question to be replied to before the Departmental Committee on Lands.

The next Question is by the Member for Kikuyu.

Question No.497/2019

MEASURES TO CREATE AWARENESS ON AUTISM

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Speaker, I beg to ask the Cabinet Secretary for Health the following Question.

(i) Could the Cabinet Secretary state whether a policy exists to deal with matters of autism, which is said to be one of the fastest growing developmental disorders in the world?

(ii) What measures has the Ministry put in place to create awareness of and manage this disorder, and further provide support to those affected?

(iii) Could the Cabinet Secretary state how much of the Ministry's budget is allocated for early treatment and management of autism and related matters?

Hon. Speaker: The Question to be replied to before the Departmental Committee on Health.

The next Question is by the Member for Kilome, Eng. Thuddeus Nzambia.

Question No.498/2019

PAYMENT OF ALLOWANCES TO VILLAGE ELDERS IN KILOME

Hon. Thuddeus Nzambia (Kilome, WDM-K): Hon. Speaker, I rise to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

(i) When will the Ministry start paying monthly stipend or allowances to village elders in Kilome Constituency who have been assisting the chiefs and assistant chiefs in discharging their duties?

(ii) What measures is the Ministry putting in place to ensure that the village elders' allowances are budgeted and paid regularly, including uniforms and badges for ease of recognition?

Hon. Speaker: The Question is to be replied to before the Departmental Committee on Administration and National Security.

The last Question is by the nominated Member 001, Hon. ole Sankok.

Question No.499/2019

MISAPPROPRIATION OF FUNDS AT MAASAI MARA UNIVERSITY

Hon. David ole Sankok (Nominated, JP): Hon. Speaker, in light of the much publicised Maasai Mara *Ng'ombe Kubwa*, I would like to ask the Cabinet Secretary for Education the following Question:

(i) Could the Cabinet Secretary provide a list of all employees including top management of the Maasai Mara University and their respective counties of origin?

(ii) What is the status of investigations into the recent misappropriation of funds at the university and action being taken to address the vice in public universities in the country?

(iii) Could the Cabinet Secretary provide details and the process on how the acting Vice-Chancellor of the Maasai Mara University was appointed, including his/her qualifications? Congratulations to Imran Okoth.

Hon. Speaker: The Question will be replied to before the Departmental Committee on Education and Research.

Before we proceed, allow me to recognise residents from Kibra Constituency in the Speaker's Gallery, who came to witness the swearing-in of their new Member of Parliament. I am informed that they are led by Senator Cleophas Malala.

The next Order is on responses to statement requests.

STATEMENTS

Hon. Speaker: The first one is by the Chair of the Departmental Committee on Transport, Public Works and Housing in response to a request for a statement by Hon. Christopher Nakuleu, Member for Turkana North.

Proceed, Hon. Pkosing.

Hon. David Pkosing (Pokot South, JP): Thank you, Hon. Speaker. I responded to this one last week.

Hon. Speaker: I recall, Hon. Pkosing. You tabled the Statement last week. The Member can go and look at it. He chose not to be present.

Hon. David Pkosing (Pokot South, JP): It is up to him.

Hon. Speaker: Perfect. You have discharged your obligation. The next one is by the Chairperson of the Departmental Committee on Administration and National Security, in response to a statement request by Hon. Sarah Korere, Member for Laikipia North. Hon.

Members, if you make a request for a statement and you do not appear in the House, you cannot come to complain that it was responded to in your absence.

Hon. Kimani Ichung'wah (Kikuyu, JP): On a point of order, Hon. Speaker.

Hon. Speaker: What is your point of order?

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Speaker, we seem to be doing very well with digitisation and working in a paperless Parliament, but the gadgets that we have in front of us today seem not to be working. We cannot access the Order Paper.

Hon. Aden Duale (Garissa Township, JP): Mine is working.

Hon. Speaker: Hon. Ichung'wah, even mine is working. I can confirm.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Speaker, do I assume that there is a deliberate sabotage on this particular row? Mine, Hon. Caleb Kositany's, and the next one, are not working.

Hon. Speaker: You can find out. Hon. Koinange, are you ready to make a response?

Hon. Paul Koinange (Kiambaa, JP): Yes, Hon. Speaker. I do not know whether the hon. Member is in.

Hon. Speaker: Is it long? Just read the response.

INSECURITY IN LAIKIPIA NORTH

Hon. Paul Koinange (Kiambaa, JP): Thank you, Hon. Speaker. The Member for Laikipia North Constituency, Hon. Sarah Korere, requested for a statement on the alleged persistent insecurity in Laikipia North Constituency. She particularly sought to be informed on:

(i) The measures the Government is undertaking to protect life and property of the residents of Milango and Wagwachi areas of Laikipia North and West constituencies respectively.

(ii) How soon the stolen livestock will be recovered and the perpetrators of the heinous act apprehended.

(iii) What is the mechanism in place to ensure urgent action in terms of response thereby ending this menace, including the possibility of urgently re-arming the NPRs in the said areas?

Between January and October 2019, several incidents of stock theft were reported within Laikipia, mainly in Ng'arua targeting livestock farmers bordering Baringo and 411 head of cattle, 119 goats, 205 sheep and 26 donkeys were stolen. So far, there are many animals which have not been recovered, that is, 215 head of cattle, 250 goats, 120 sheep, 19 camels and 6 donkeys.

During the operation, six suspects were arrested and charged before court; vide Criminal No. 757/25/2019. The suspects pleaded "not guilty" and were released on a bond of Kshs5 million which they were unable to raise hence remanded in prison custody.

The following measures have been put in place to ensure the remaining animals are recovered and security is enhanced in the said area:

- (a) Patrols and surveillances have been enhanced in areas known to be used as hideouts by the raiders. The National Police Service (NPS) has deployed patrol teams in the area;
- (b) constant engagement with the local communities in *barazas*;
- (c) elders from the respective communities have been engaged to persuade the raiders to voluntarily surrender the stolen livestock so as to hand them over;

- (d) as a long-term measure, the county government has been engaged to open and maintain security roads within Mukogodo;
- (e) the concept of community policing has been reactivated to enhance intelligence gathering;
- (f) the police have stationed a platoon of NPRs at Kieni in Nyahururu. This is meant to make them available for deployment within Laikipia County;
- (g) Finally, peace committees have been activated to preach peaceful co-existence and the sharing of resources.

The National Police Service Reserve has been undergoing restructuring. Several measures have been put in place to make it more responsive and professional. A directorate was created to oversee retirement, vetting, training and kitting. In Laikipia County, a total of 40 NPRs have been recruited, trained and are currently in a camp within the county awaiting further instruction. Consideration will be made to increase the numbers based on need and availability.

Thank you, Hon. Speaker.

Hon. Speaker: It suffices that the Statement has been read out. I doubt that any other person would wish to seek any further clarification.

Before we proceed, allow me to also recognise the presence of some visitors in the Public Gallery. The first group is the National *Bunge la Mwananchi* Ambassador Chapter from Starehe Constituency, Nairobi County. The second group is the Shining Hope for Communities, a Kenyan based NGO headquartered in Kibra which operates in nine informal settlements in three cities in Kenya – Nairobi, Kisumu and Mombasa. It operates programmes in education, health and community development. They are welcome to observe the proceedings in the National Assembly this afternoon.

(Applause)

Yes, Leader of the Majority Party.

POINT OF ORDER

DIRECTION ON SENATE BILLS COMMITTED TO MEDIATION COMMITTEE

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I rise to seek your direction on two Senate Bills that were committed to a mediation committee.

In 23rd July 2019, you appointed two mediation committees to consider the following Bills: The County Governments (Amendment) Bill (Senate Bill No. 7 of 2017), sponsored by Sen. Mutula Kilonzo Jr., MP; and, the County Governments (Amendment) Bill (Senate Bill No. 11 of 2017), sponsored by Sen. Kipchumba Murkomen.

The second Bill by the Leader of the Majority in the Senate was proposing amendments relating to the filling of vacancy in the position of Deputy Governor, recognising the Deputy Speakers of the county assemblies, removal of members of County Assembly Service Boards (CASBs) and filling of vacancies in the County Public Service Boards, among others. The Co-Chair on the National Assembly's side is the Vice-Chairperson of the Departmental Committee on Education and Research, Hon. Amos Kimunya.

Nothing has taken place since July. I stand to petition you to require the National Assembly's representation, that is, the team that you appointed, to brief the House on the

progress of the Committee because from the grapevine and the corridors of Parliament, we are informed that the Senate does not seem to be interested in those two Bills which originated from them. I do not fault Hon. Kimunya, knowing that he is an active Member of the House Business Committee and another one.

I make this request because there is deliberate misinformation that the two Bills are pending before the National Assembly. I beseech you to require the Members of the National Assembly, whom you nominated on 23rd July 2019, to brief the House on the progress of the Mediation Committee and inform us whether the Committee has ever held a sitting. So, it is a serious matter. Our side of the Mediation Committee has been appointed and none has been appointed from the other side since July up to November. Those are four months and people out there, even the media, are saying the Bills are before the National Assembly. So, maybe, you will ask Hon. Kimunya, the Vice-Chairman from our side, to table a report before the House. That is so that people can know it is our colleagues, who are also in leadership, who own the Bills. They sit in the House Business Committee of the Senate, yet up to now they have not nominated anybody through their Speaker. That way, the country will know it is not the National Assembly. It is the Senate that has not nominated Members to this Committee, four months down the line.

Hon. Speaker: Certainly, Hon. Kimunya is not at his usual place. Who are the other Members of that Mediation Committee from the National Assembly?

Hon. Aden Duale (Garissa Township, JP): The other Members are: Hon. George Peter Kaluma, Hon. Didmus Barasa... It is very unusual that the two are in the same Committee of Mediation.

(Laughter)

The others are Hon. Edward Oku Kaunya and Hon. Halima Mucheke. It looks like all these Members are from the Departmental Committee on Administration and National Security. The Bills are also from the same Committee. So, if any one of them is here: Hon. Kaluma, Hon. Didmus, Hon. Kaunya and Hon. Halima Mucheke – the Vice-Chairman, Hon. Kimunya is not here – can tell us whether they have had a meeting and whether the Senate has a team. Hon. Kaunya is around.

Hon. Speaker: Hon. Kaunya, are you aware of that membership?

Hon. Oku Kaunya (Teso North, ANC): Thank you, Hon. Speaker. I am aware of that membership. I am very well aware. We have not had a single meeting convened on that issue. We have even been discussing with some of the Members and wondering why we are not making progress. It is particularly because we have not got that nomination from the side of the Senate. We have not had a meeting even within. Your direction on the basis of what the Leader of the Majority Party has just raised will be important for this House and the Committee.

Hon. Speaker: They are not on recess. That is a serious indictment because the communication from this House went to the Senate on the appointment of the five Members from this House to sit in the Mediation Committee. Those Bills emanated from the Senate. It is sad that they are the ones who appear to be sleeping on the job.

*(Hon. Didmus Barasa and Hon. Simba Arati
walked into the Chamber)*

Hon. T. J. Kajwang' has noticed another Member who has made his way into the Chamber. You are attracted to the fact that Hon. Didmus Barasa and Hon. Simba Arati appear to be cordially engaging each other.

(Laughter)

That is as it should be. The two of them appear to be in a jovial mood, but of course they were in the company of the Member for Kiambu who appeared to have been injecting some mediation effort.

The Clerk of the National Assembly is directed to issue a reminder to the Senate so that by Thursday this week we should get a response, failure to which, we will take other actions within the Constitution.

There was another request by the Member for Mandera North. He also made a request for a Statement which was directed to the Chairperson of the Departmental Committee on Finance and National Planning, Hon. Limo.

THE 2019 KENYA POPULATION AND HOUSING CENSUS RESULTS

Hon Joseph Limo (Kipkelion East, JP): Thank you, Hon. Speaker. As I promised on Thursday, we are in receipt of a signed Statement from the Kenya National Bureau of Statistics concerning the Question raised by the Hon. (Rtd.) Bashir S. Abdullaih, Member for Mandera North Constituency.

I now proceed to read the Statement from the Kenya National Bureau of Statistics. It is on the 2019 Kenya population and housing census results.

Since 1969, Kenya conducts essential population and housing census on *de facto* basis with the midnight of 24th and 25th August as the reference point. The census has been implemented in accordance to the United Nations (UN) principles and recommendations for conducting population and housing census. The 2019 Kenya population and housing census was conducted under the provisions of the following laws:

- a) The Constitution of Kenya 2010 Fourth Schedule, part 1, item 11.
- b) The Statistics Act No. 4 of 2006.
- c) The Statistics (Census of Population Order) 2018, Legal Notice No. 205 and
- d) The Statistics Amendment Act, 2019.

The following are the responses to the concerns raised by the Member of Parliament from Mandera North Constituency, Hon. (Rtd.) Bashir S. Abdullaih on the 2019 census results:

1. On the request to provide raw data as enumerated, the Statistics (Census of Population Order) 2018, Legal Notice No. 205, Section 15 states that the information to be obtained during the pilot census, the national census or post census enumeration survey shall be confidential and no report, abstract or document shall be published or shown to any unauthorised person. It provides for confidentiality of information generated from individuals in both census and sub-surveys. The raw census data being requested is census information collected. It includes names and personal identification details among other characteristics; it will go against the Statistics Act and the fundamental principles of official statistics as contained in the Fourth Schedule of the Act to provide raw data.

2. When releasing the census results, the Director-General stated that the data underwent validation checks as guided by the UN fundamental principles of official statistics and the UN

handbook on census data. These principles are part of the Statistics Act and are duly domesticated under the Fourth Schedule of the said Act. This includes application of professional consideration including scientific principles and professional procedures on methods and procedures for collection, processing and analysing statistic data. The completeness of census coverage and inconsistency checks on the basic variables such as sex and age are also carried out.

3. The demographic composition of the population in Mandera County by sex was observed to have more males than females even in the 2009 Census. The same trend was noted in the 2019 Census. There is a comparison of the composition of population by sex in 2009 and 2019 Census. I will give the numbers in general in Kenya, to compare the composition of adjusted population in 2009 with the 2019 enumerated population.

In the 2009 Population Census, males in Kenya were 18,674,184 compared to females who were 19,050,666. Obviously, the females were more giving a total population of 37,724,850. In the 2019 enumeration, males were counted as 23,548,056 while females were 24,014,716 giving a difference of almost 800,000.

In Mandera County, in 2009, males were counted as 322,912 while females were counted as 296,053 giving a difference of close to 25,000. In 2019, males were counted as 434,976 and females as 432,444 giving a small difference of close to 2,000. It should be noted that the 37,618,000 given in Table 1 above for Kenya and Mandera County respectively are as a result of adjustments of the 2009 Census data, based on the demographic evaluation process and published in the Analytical Report on Population Projection for 2009.

4. At the national level, the population grew by around 9.9 million, from 37.7 million in 2009 to 47.6 million in 2019; while in Mandera County, it grew by 248,000, from 618,000 to 867,000. A similar observation was made between 1999 and 2009 censuses, where the national population grew by about 9 million, from 28.7 million to 37.7 million, hence no disparity.

In conclusion, the KNBS is guided by the following principles of official statistics that are found in the Fourth Schedule of the Statistics Act:

1. Official statistics provide for indispensable elements in the information system of a democratic society, serving the Government and the economy and the public with data about the economy's democratic, social and environmental situation. To this end, official statistics that meet the test of practical utility should be compiled and made available on an impartial basis by the KNBS to harbour citizens' entitlement to public information.
2. To retain trust in official statistics, the KNBS shall apply strictly the provisional considerations, including scientific principles and professional ethics on the methods and procedures for the collection, processing, storage and presentation of statistics data.
3. To facilitate correct interpretation of data, the KNBS shall present information according to scientific standards on the sources, methods and procedures of statistics.
4. The KNBS is entitled to comment on erroneous interpretation and misuse of statistics.
5. Data for official purposes may be drawn from all types of sources, be they statistical surveys or administrative records. The KNBS shall choose the source with regard to quality, timeliness, cost and burden of respondents.

The Statement is signed by the Director-General, Mr. Zachary Mwangi. Thank you. Hon. Speaker.

Hon. Speaker: Hon. Members, my attention has been drawn to the appointment of Members to the Mediation Committee on the two Bills emanating from the Senate, one being No. 7 of 2017 and the other one being No. 11 of 2017. Indeed, there had been appointed Members of the Senate, being Senator Mutula Kilonzo Jnr, Judith Pareno, Prof. Margaret Kamar, Mary Yane Seneta and John Kinyua Nderitu. On the other one, there had been appointed Senator Kipchumba Murkomen, Mary Yane, John Kinyua Nderitu, Mutula Kilonzo Jnr. and Judith Pareno.

Therefore, Hon. Kaunya, who appears to be the much more active member of the Committee, because Hon. Didmus Barasa was not in the Chamber at the time this matter was raised and Hon. Kaluma who made his way into the Chamber has since completed his sitting and I have seen him walk out, please take note. Try to find out from the Clerk whether he has appointed some officers of the National Assembly side to clerk those two mediation committees. You are the one who appears to be much more versed with these two Bills. You can inform Messrs. Didmus Barasa, Kimunya, Halima Mucheke and Kaluma when you next propose to have a sitting and get somebody to inform these Senators that they are on the Mediation Committee.

Hon. Kaunya, is that alright?

Hon. Oku Kaunya (Teso North, ANC): Obligated, Hon. Speaker. I will do that.

Hon. Speaker: So, just get in touch with the Clerk of the National Assembly so that he can coordinate for you to see if you can have the first meeting.

Hon. Oku Kaunya (Teso North, ANC): It will be done, Hon. Speaker. Thank you.

Hon. Speaker: Very well. Hon. Bashir.

Hon. Major (Rtd) Bashir S. Abdullahi (Mandera North, JP): Thank you, Hon. Speaker. I have just heard the statement as read by the Chairman of the Departmental Committee on Finance and National Planning. First and foremost, I will request that, that statement be tabled so that I can have a look at it in detail.

Two, from the explanation he has given, it looks like the statement has not addressed whatever I requested. It has talked about generalities. It is as if the statement read by the Chairman was the one he used when he was launching the census results. I asked for raw data from the ground as captured by enumerators. That has not been taken forth. So, with your guidance, I will get a copy of the statement to analyse and see if it has really captured what we had asked. From my analysis, he has not addressed whatever I asked for in the statement.

Thank you, Hon. Speaker.

Hon. Speaker: That is the challenge of a statement, because the Chairman is not the author. So, he may not address issues of the details as you would perhaps require or that which would satisfy your needs. The statement will be made available to you. The Chairman will table it before the House. After scrutinising it, if you think there is need for further inquiries, then you can seek assistance from the staff and they will advise you how best to progress.

(Several Members spoke off record)

What is it? I see several of you walking in and going for water and yet you are complaining that you are freezing.

Let us move to the next Order.

MOTIONS

APPROVAL OF VALUE ADDED TAX (AMENDMENT) REGULATIONS, 2019

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Value Added Tax (Amendment) Regulations, 2019 (Legal Notice No. 86 of 2019), laid on the Table of the House on Wednesday, 6th November 2019, and pursuant to the provisions of section 67(2) of the Value Added Tax Act, 2013, approves the Value Added Tax (Amendment) Regulations, 2019.

(Hon. (Ms.) Fatuma Gedi on 14.11.2019)

(Debate concluded on 14.11.2019)

Hon. Speaker: Hon. Members, debate on this Motion was concluded. What remained was for the Question to be put, which I hereby do.

(Question put and agreed to)

ANNULMENT OF THE PRIVATE SECURITY (GENERAL) REGULATIONS, 2019

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Private Security (General) Regulations, 2019 (Legal Notice No. 108 of 2019), laid on the Table of the House on Wednesday, November 06, 2019, and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013 and Standing Order 210(4)(b) annuls in entirety the said Regulations.

(Hon. George Gitonga on 14.11.2019)

(Debate concluded on 14.11.2019)

Hon. Speaker: Again, Hon. Members... Try to be in the House. I can see you are very active. I put the Question.

(Question put and agreed to)

ANNULMENT OF THE PUBLIC SERVICE COMMISSION REGULATIONS, 2019

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Service Commission Regulations, 2019 (Legal Notice No 65 of 2019), laid on the Table of the House on Wednesday, 6th November 2019, and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013 and Standing Order 210(4)(b) annuls in entirety the said Regulations.

(Hon. (Ms.) Shamalla Jennifer on 14.11. 2019)

(Debate concluded on 14.11.2019)

Hon. Speaker: Hon. Members, we are still doing business. Some of you are so mobile. Hon. Member for Busia, Busia is in the newspapers.

(Question put and agreed to)

ANNULMENT OF PART OF POLITICAL PARTIES
(FUNDING) REGULATIONS, 2019

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Political Parties (Funding) Regulations, 2019 (Legal Notice No.143 of 2019), laid on the Table of the House on Wednesday, 6th November 2019, and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013 and Standing Order 210(4)(b), annuls Regulation 18 of the said Regulations.

(Hon. (Dr.) Wilberforce Oundo on 14.11.2019)

(Debate concluded on 14.11.2019)

(Question put and agreed to)

Yes, Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Speaker. I rise on a point of order regarding the Next Order. There is an amendment proposed by Hon. Antony Tom Oluoch on Clause 30 of the Bill. In my view, the amendment touches on elements to do with a money Bill. As the Chair of the Budget and Appropriations Committee (BAC), I would like to inform the House that we have not seen this particular amendment come before the Committee. I, therefore, seek your guidance on whether this amendment is properly before the House.

Hon. Speaker: What proposed amendment?

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Speaker, the proposed amendment by Hon. Tom. Oluoch on Clause 30 of the Public Finance Management (Amendment) Bill of 2017 has elements of a money Bill. As a Committee, we have not had an opportunity to interrogate that particular amendment.

Hon. Speaker: Hon. Ichung'wah, you are, indeed, right. This is a strange proposal. Where is Hon. Anthony Oluoch?

(Some Members spoke off record)

Those referring to themselves as colleagues, the two colleagues can proceed to do...

(Loud consultations)

Serjeant-at-Arms, make sure that those who are yelling out there are thrown away.

Hon. Members, before we move to the Committee of the whole House, I must express myself on this one. The proposal by Hon. Anthony Oluoch to the Public Finance Management (Amendment) Bill 2017 is a very strange one.

This is how it reads:

THAT, the Bill be amended in Clause 30 by —

(a) inserting the following new paragraphs immediately before paragraph (a) —

(a) deleting paragraph (b) and substituting therefore the following paragraph-

(b) in every financial year not less than seventy per cent of a county government's approved budget shall be allocated to the development expenditure;

(b) by inserting the following new paragraph immediately after paragraph (b)-

(ba) subject to paragraph (b), the development expenditure shall be distributed equitably to all the wards in the county...

Hon. Members, even without going to the rest of what he says, it is obvious that this is a matter that requires greater inspection and consideration. Obviously, this has serious implications on how a county government may function and it requires that it be taken before the Budget and Appropriations Committee, which should in turn seek the views of the Cabinet Secretary for National Treasury and Planning. That having not happened as stated, I direct that the proposed amendment by Hon. Tom Oluoch shall not be considered by the Committee of the whole House when the House resolves into Committee.

(Proposed amendment by Hon. Anthony Oluoch dropped)

Those Hon. Members who want to make their way in, please, move in quickly and take your seats. Stop shaking hands, the House is in session.

Hon. Member for Kwanza, please, take your seat.

NOMINATION OF REPRESENTATIVES TO PSC AND SRC

Hon. Speaker: Hon. Members, I wish to issue two messages. Pursuant to the provisions of Standing Order No. 42, I wish to convey the following Message from His Excellency the President relating to nomination of a representative of the Parliamentary Service Commission to the Salaries and Remuneration Commission:

In the Message, His Excellency the President conveys that, in exercise of powers conferred by Article 230(2)(b)(i) of the Constitution and section 7(10) of the Salaries and Remuneration Commission, 2011, he nominates Hon. Amina Abdalla as the representative of the Parliamentary Service Commission to the Salaries and Remuneration Commission. His Excellency the President therefore, seeks the approval of this House on the nominee for appointment to the aforementioned position.

Hon. Members, Standing Order 45 requires that, upon receipt of notification of nomination for appointment, such nomination shall stand committed to the relevant Departmental Committee of the House for consideration. Pursuant to the provisions of the said Standing Order therefore, and paragraph (3) of Standing Order 42 (Messages from the President), I hereby refer the Message from His Excellency the President on the representative of the Parliamentary Service Commission to the Salaries and Remuneration Commission to the

Departmental Committee on Finance and National Planning to undertake the necessary approval hearings.

Hon. Members, section 7(11) of the Salaries and Remuneration Commission Act, 2011, requires the National Assembly to either approve or reject the nominee to the respective position within fourteen (14) days.

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

(i) The Committee should notify the nominee and the general public of the time and place for holding the approval hearing, in good time. The notification should therefore be made on Wednesday, 20th November 2019; and,

(ii) The Committee may thereafter commence the necessary approval hearing and submit its report to this House on or before Tuesday, 3rd December 2019 in respect of the nominee of the Parliamentary Service Commission to the Salaries and Remuneration Commission.

I thank you, Hon. Members.

NOMINEE FOR APPROVAL AS THE CONTROLLER OF BUDGET

Hon. Speaker: Hon. Members, pursuant to the provisions of Standing Order No. 42(1) of the National Assembly Standing Orders, I wish to report to the House that I have received a Message from His Excellency the President seeking the approval of the National Assembly of Dr. Margaret Nyang'ate Nyakang'o for appointment as the Controller of Budget, in exercise of powers vested in him under Article 228(1) of the Constitution and Section 4(9) of the Controller of Budget Act, 2016.

Hon. Members, Section 8 of the Public Appointments (Parliamentary Approval) Act provides that the relevant Committee of the House will consider the suitability or otherwise of the nominee and table its report for consideration by the House within fourteen (14) days from the date the notification of nomination, which is conveyed to the House. Further, the Act requires that the public be given seven (7) days notification to submit their views regarding the suitability or otherwise of the nominee proposed for appointment to an office requiring Parliamentary approval.

In this regard, and in accordance with the provisions of Article 259 (5) (a) of the Constitution as read together with section 5 of the said Act, the seven (7) days' notification to the public shall start running on the day following the day when the notice is published in the dailies.

Hon. Members, it is advisable that the Departmental Committee on Finance and National Planning expeditiously proceeds to notify the nominee and the public, commences the approval hearing after the seven-day notification period, and table a Report on or before Tuesday, 3rd December 2019 to enable the House to consider the matter within the statutory timelines. This Message, together with the curriculum vitae of the nominee therefore, stands committed to the Departmental Committee on Finance and National Planning for consideration.

I thank you, Hon. Members.

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, we are now in Committee of the whole House to consider the Public Finance Management (Amendment) Bill (National Assembly Bill No.51 of 2017).

(Clauses 3, 4, 5, 6 and 7 agreed to)

Clause 8

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Mover. Chair Departmental Committee on Finance and National Planning Hon. Limo, you have a proposal to amend this.

Hon. Joseph Limo (Kipkelion East, JP): Thank you, Hon. Temporary Deputy Chairman. This Bill is a very old. So, I was catching up with what has been proposed here. I was consulting on Clause 8 because it looks like the version in the Bill is much better than my proposed amendments. If we carry this amendment the way it is, it will confuse funding of projects in county governments. So, I am proposing to drop this amendment and retain what is proposed in the Bill.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Limo there are two bits to it. There is (a) and (b). Are you dropping both?

Hon. Joseph Limo (Kipkelion East, JP): Yes, Hon. Temporary Deputy Chairman. I am dropping all the amendments to Clause 8.

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

(Proposed amendments by Hon. Joseph Limo dropped)

(Clause 8 agreed to)

Clause 9

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

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

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

Hon. Temporary Deputy Chairman, the justification for this is to provide for accounting procedures on Parliamentary Service Commission in case of a parliamentary fund. The Committee observed that the existing provision is sufficient for that purpose and, therefore, there

is no need of providing for a further amendment. So, the Committee recommended for its deletion because it is already provided for.

(Question of the amendment proposed)

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): On a point of order, Hon. Temporary Deputy Chairman.

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

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Temporary Deputy Chairman. Hon. Limo, when you look at Clause 9, it seems to have two amendments, that is, 9A and 9B.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chris Wamalwa, there is Clause 9 and then there is the new clause which we will come to later. He is okay. Hon. Chris is an astute Member of the House. He always keeps an eye on things.

*(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 Chairman, I beg to move:

THAT, the Bill be amended by deleting clause 10.

Hon. Temporary Deputy Chairman, the justification for this is that the proposed amendment on this Clause looks like it is ambiguous and the provision, which already exists, is clearer. It is also recommended that the National Treasury should also continue reporting the budgeted revenue and expenditures quarterly as it is currently. We propose that this clause be deleted.

(Question of the amendment proposed)

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

(Clause 10 deleted)

(Clauses 11, 12, 13, 14, 15, 16 and 17 agreed to)

Clause 18

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

THAT, the Bill be amended by deleting Clause 18 and substituting therefor the following New Clause—

Amendment of
section 78 of No. 18
of 2012.

18. Section 78 of the principal Act is amended by—

(a) renumbering the existing provision as subsection(1);

(b) inserting the following new subsection immediately after the renumbered subsection (1)—

(2)Notwithstanding subsection (1), the Kenya Revenue Authority may delegate its revenue collection responsibility to other agents.

Hon. Temporary Deputy Chairman, the justification for this is to provide that KRA may delegate its authority to other agents when it comes to discharging its mandate. Therefore, it is only an improvement of what was in the Bill.

(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 18 as amended agreed to)

*(Clauses 19, 20, 21, 22, 23, 24, 25,
26, 27, 28 and 29 agreed to)*

(Clause 30 agreed to)

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

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, that amendment was dropped following the Communication from the Speaker. I have been around here for some time. Whoever has the mandate to draft amendments must not wait for the Speaker to come. This also applies to Motions. When we are in the House Business Committee, we see Motions that do not even make sense. Some amendments are of a money nature. The Member was not here. He has disappeared. It has been printed. The legal department must be very thorough to make sure that it is not the Speaker who will always nullify these things. Members are taught and it becomes part of the learning as we go forward.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Leader of the Majority Party, you are absolutely right. The kind of amendments that we have seen our brother, Hon. Oluoch, proposing would have far wide reaching effect, if they were to be effected by this House. They are the kind of amendments that require wider consultations than just passing them here. So, I agree with you, Leader of the Majority Party.

We will proceed.

Clause 31

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

Amendment of
section 109 of
No. 18 of 2012.

31. Section 109 of the principal Act be amended—

(a) in subsection (4)(a) by deleting the words “or a bank approved by the County Executive Committee member responsible for finance and shall be kept”; and

(b) by inserting the following new subsections immediately after subsection (6)—

(6A) The County Treasury shall submit all requisitions to the controller of Budget as soon as is practically possible, but no later than forty-eight hours upon receiving the request from respective entities.

(6B) An accounting officer when requisitioning for exchequer releases for a county assembly shall submit a copy of the requisition to the Controller of Budget and the Controller of Budget shall only release the funds upon verifying that the requisition submitted by the County Treasury and that by the County Assembly are in conformity.

(6C) A County Executive Committee member for finance shall not withhold or refuse to submit a requisition for a County Assembly to the Controller of Budget.

(6D) A County Executive Committee member commits an offence under this Act for withholding or refusing to the submit requisition on behalf of the County Assembly to the Controller of Budget

Hon. Temporary Deputy Chairman, the justification for this is that there have been a lot of issues in the past where the county executives sometimes arm-twist the county assemblies by even refusing to forward their requisition to the Controller of Budget. So, the amendments which we did here will provide that within 48 hours of receiving the requests by county assemblies, the County Executive Committee member responsible for finance shall submit them to the Controller of Budget promptly without delay. In fact, it provides for sanctions on the county assembly member who fails to do that. This will enhance the independence of county assemblies not to be arm-twisted by the executive to go against the wishes of the residents of the various counties. That is the reason, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

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

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, this amendment is very important. I am sure as we go further to deal with the other amendments, we must make sure that the county assemblies are independent in terms of resources of the county executive. Currently, county assembly clerks are just victims of the chief finance officers of the counties. If they do not sign their requisitions and send them to the Controller of Budget, they will not get money. This House is independent of the National Treasury. As we go forward in entrenching devolution, county assemblies must also have independence in terms of their resources and budget.

I support the amendment.

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

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD – K): Thank you very much, Hon. Temporary Deputy Chairman. This is very important because we have seen in many counties governors want to take control of the county assemblies. They cannot perform their oversight mandate. How I wish the Senate is listening to us and will come up with legislation that will help bring some independence of the county assemblies from the county governments.

I support the amendment.

*(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 31 as amended agreed to)

(Clauses 32 and 33 agreed to)

Clause 34

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, Clause 34 of the Bill be amended in paragraph (b) by deleting the word “thirty” and substituting therefor the word “twenty”

The justification for this is that any amendment to one budgetary calendar date affects the entire budgetary process. Therefore, changing the date from 15th every year will create a conflict between two documents. Therefore, we propose to delete that and replace it with what we are now proposing so that it avoids conflict in terms of the calendar dates in the budget process.

(Question of the amendment proposed)

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD – K): Thank you very much, Hon. Temporary Deputy Chairman. This is a very important amendment. I listened carefully to Hon. Limo. He has spoken of 15th, but when you look at the amendment, it talks about deleting the word “thirty” and substituting therefor with the word “twenty”. In his justification, reference should be made to those specific changes of 30 and 20. He mentioned 15th and when I went through the amendment, I did not see 15th anywhere. Maybe we need more clarity on that.

The Temporary Deputy Chairman (Hon. Christopher Omulele): It is true. Hon. Limo, what is on the Order Paper is what Hon. Chris Wamalwa alludes to. You need to clarify.

Hon. Joseph Limo (Kipkelion East, JP): Yes, I am grateful that he is hawk-eyed. I was referring to 15th February every year. We are reducing the days which are required from 30 to 20 because if we go by 20, it will require a lot of time for approval of the documents by the county assemblies. Therefore, we are reducing from 30 to 20 days.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Do you agree with Hon. Wamalwa that the Order Paper is as it should be?

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

*(Question, that the word 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 34 as amended agreed to)

Clause 35

The Temporary Deputy Chairman (Hon. Christopher Omulele): There are two amendments to this. One had been proposed by the Chair of the Budget and Appropriations Committee and the other one by the Chair of the Departmental Committee on Finance and National Planning.

Hon. Leader of the Majority Party, will you move it? Proceed.

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

THAT, Clause 35 of the Bill be amended by inserting the following paragraph immediately before paragraph (a) —

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

- (1) The County Treasury is responsible for authorising the opening, operating and closing of bank accounts for the county government and its entities, except those of the County Assembly or as otherwise provided by other legislation and in accordance with regulations made under this Act.

If Members can read, it is just the same thing I was talking about. The county treasury is responsible for authorising the opening, operating and closing of bank accounts for the county governments and its entities, except those of county assemblies or, as otherwise provided by other legislation, in accordance with the regulations made under this Act.

We want to give the county assemblies independence. That is why we have a problem with oversight. As long as they are part and parcel of the executive and their salaries, mileage, per diems and committee sitting allowances go through the county executives, we will never have independent county assemblies. This is an opportunity to give them that independence in terms of how to manage their resources.

I beg to move.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Makali, do you have an interest in this?

Hon. Makali Mulu (Kitui Central, WDM – K): Thank you, Hon. Temporary Deputy Chairman. I support this amendment. We have said many times that this idea of a single treasury account will be very good for this country. Any attempt to have it at the county level is very commendable.

I support the amendment.

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

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): We will now move to the next amendment to the same clause by the Chair of the Departmental Committee on Finance and National Planning, Hon. Limo.

What is out of order, Hon. Chris Wamalwa?

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD – K): Before that, Hon. Temporary Deputy Chairman, if Hon. Duale's amendment has been carried, what will be the implication to the amendment by the Chair of Departmental Committee on Finance and National Planning which talks of a single account system? It will be nice when he is moving and giving justification if he could clarify in reference to what Hon. Duale proposed which we passed and I support.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well. You are well within your rights. It is good for the House to know how those two amendments will relate to each other. Let us have Hon. Limo.

Hon. Joseph Limo (Kipkelion East, JP): Given what the Leader of the Majority Party has moved has been carried and it is amending the same section, it will be very difficult to start amalgamating the two. Once we have supported the amendment by Leader of the Majority Party, the amendment by our Committee dies.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Limo and the Leader of the Majority Party, could you put your heads together on this and make sure that the amendments have the same effect?

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Limo, you have the microphone.

Hon. Joseph Limo (Kipkelion East): Hon. Temporary Deputy Chairman, we have clarified that the amendment which was moved by the Leader of the Majority Party is separate from what we are amending in Clause 35. Our amendment provides details for the establishment of County Treasury Accounts and the management of the same. It is so detailed that it is not in conflict with what the Leader of the Majority Party has proposed.

Therefore, I beg to move: -

THAT, Clause 35 of the Bill be amended—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) by deleting subsection (2) and substituting therefor the following subsection—

(2) Each County Treasury shall establish a Treasury Single Account system at the Central Bank of Kenya through which payments of money to and by the various county government entities are to be made.

(b) inserting the following new paragraphs immediately after paragraph (a)—

(aa) by inserting the following new sub section immediately after subsection (2)—

(2A) The County Treasury Single Account system shall include the County Revenue Fund accounts referred to in Section 109 (2), county department accounts and any other account designated by the County Treasury.

(ab) by deleting subsection (3) and substituting therefor the following subsection—

(3) The Treasury Single Account system shall not be operated in any manner that prejudices any entity to which funds have been disbursed.

The amendment provides for establishment of the County Treasury Accounts and the management of the same.

The Temporary Deputy Chairman (Hon. Christopher Omulele): I have looked at those two amendments and they are complementary. They can go together.

(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 35 as amended agreed to)

Clause 36

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

Hon. Joseph Limo (Kipkelion East): Hon. Temporary Deputy Chairman, I beg to move: THAT, the Bill be amended by deleting Clause 36 and substituting therefor the following

new clause—

Insertion of new section in No.18 of 2018

36. The principal Act is amended by inserting the following new clause immediately after Section 119—

Criteria for Approval to open bank account

119A. (1) Subject to the provisions of Section 119, a County Treasury

may authorise a county government entity, including a county assembly to open and operate bank accounts only at the Central Bank of Kenya except—

(a) an imprest bank account which may be opened in a commercial bank account to facilitate the day to day operation of offices, provided the balance for the account shall not exceed a limit set by the Cabinet Secretary;

(b) a revenue collection account to facilitate receipt and transfer of revenue to the relevant County Revenue Fund;

(c) a bank account relating to a county public fund established pursuant to Section 116 to facilitate administration of the fund; and,

(d) any other bank account authorised by the Cabinet Secretary to be opened in a commercial bank.

(2) Any bank account opened under subsection (1), for the primary purpose of collecting money raised or received by or on behalf of the county government shall be designated as a County Revenue Collection Account and shall be used only for the purposes of collecting money raised or received by or on behalf of the county government.

(3) Money paid into a bank account designated as a County Revenue Collection Account shall be promptly credited into the County Exchequer Account and shall be used and accounted for in accordance with Article 207 of the Constitution and Section 109.

(4) No expenditure shall be paid out of a bank account designated as County Revenue Collection Account except as otherwise authorised by law.

(5) The County Treasury may prescribe the banking rules and the maximum balance which may be held in any official County Treasury Single Account sub-account or other bank accounts, and if at any time this balance seems likely to be exceeded, the officer operating the accounts shall consult the County Treasury on the action to be taken.

(6) No official county government bank account shall be overdrawn, nor shall any advance or loan be obtained from a bank account for official purposes beyond the limit authorised by the County Treasury in line with Section 119(4) and the authority shall be conveyed in writing.

(7) An accounting officer of a county shall, for each quarter of a financial year, prepare and submit to the County Treasury a record of all bank accounts operated by the entity during the year, with a copy to the Controller of Budget, the Auditor General, and the National Treasury.

Hon. Temporary Deputy Chairman, this amendment will restrict the current practice where county governments collect revenue and use it without depositing it into the County Exchequer accounts. This amendment will provide strict procedure on how they will collect the money and deposit it before they start using it through an authorisation processes.

Thank you.

(Question of the amendment proposed)

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

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairman. I thank Hon. Limo for bringing this amendment, more so, on the part of opening revenue collection accounts. Many county governments misuse their revenue. The proposed account will streamline things. That is very critical because all the other accounts will be at the Central Bank of Kenya (CBK). The only account which is allowed not to be at the CBK is the Imprest Bank Account, which is good for accountability.

I support the amendment.

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

Hon. Tim Wanyonyi (Westlands, ODM): Hon. Temporary Deputy Chairman, are you talking about me?

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

Hon. Tim Wanyonyi (Westlands, ODM): Hon. Temporary Deputy Chairman, I support the amendment. Having this account is good for accountability.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well, Hon. Wanyonyi. Hon. Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Allow me to say something on this particular amendment, Hon. Temporary Deputy Chairman. You realise that revenue collection in many counties has always been going down. When Homa Bay County appeared before the Senate recently, they said that times were hard. The county executives have been spending this money without depositing it into any accounts or accounting for it. This clause will bring

accountability and curtail the short-cuts they have been going through. It is a very good amendment. I wish it had come earlier because this is where the big problem is.

I support the amendment.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Tindi Mwale.

Hon. Nicholas Mwale (Butere, ANC): Thank you, Hon. Temporary Deputy Chairman. I had the same view as my colleague, Hon. Wamalwa. For accountability and to make sure that public funds are well used, I support the amendment.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Mboni, Member for Kitui Rural.

Hon. David Mboni (Kitui Rural, CCU): Hon. Temporary Deputy Chairman, I support the amendment. The decline in the revenue being collected by county governments is not because of lack of accountability, but rather corruption and laxity.

Thank you very much.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Kevin, Member for Kwanza.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Hon. Temporary Deputy Chairman, I agree that county governments should open bank accounts for accountability purposes. I feel a bit cheated in this amendment. We should have a particular bank like the Kenya Commercial Bank, where county government treasuries should open bank accounts. Corruption can creep in when money goes to any bank and accountability will become a problem. We should name the bank. I do not know whether that is possible. We may have cases where some county executives may have interest in particular banks.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Member for Kwanza, will you not be over-legislating if you prescribe the brands of banks that counties might open their accounts in? Allow me to put the Question.

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

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

(Clause 36 as amended agreed to)

(Clauses 37, 38, 39 and 40 agreed)

Clause 41

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

THAT, the Bill be amended by deleting Clause 41 and substituting therefor the following new clause—

*Amendment of section
129 of No. 18 of 2012*

41. Section 129 of the principal Act is amended in subsection (3) by inserting the words “by 30th April each year” immediately after the words “member for finance.”

Hon. Temporary Deputy Chairman, the justification for this amendment is to provide for a timeline of 30th April in which the county assembly clerk should submit the budget estimates for the county. The amendment provides for specific timelines for the budget process.

(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 41 as amended agreed to)

Clause 42

Hon. Joseph Limo (Kipkelion East): Hon. Temporary Deputy Chairman, I beg to move: THAT, Clause 42(c) of the Bill be amended in the proposed new subsection (7) by inserting the words “the Controller of Budget and the Senate” immediately after the words “National Treasury.”

This amendment includes the Controller of Budget and the Senate as institutions which will be receiving a copy of the budget estimates.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, I had not seen your interventions, but I have seen them now. Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, this is a very good amendment. County governments, in collusion with county assemblies, doctor county budgets midway. The moment the Clerk tables the budgets for the counties, it is mandatory that the same copy is given to the Controller of Budget and the Senate. The Senate Committee on County Public Accounts and Investments should have a memory when they want to investigate the original budget tabled. This is a very good amendment that will bring accountability and transparency in the budget-making process of county assemblies and governments.

I support.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Mwirigi Paul.

Hon. John Paul Mwirigi (Igembe South, Independent): Thank you, Hon. Temporary Deputy Chairman. I support the amendment because it will provide transparency within the county where the revenue is collected.

Thank you.

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

(Clause 42 as amended agreed to)

(Clauses 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63 and 64 agreed to)

Clause 65

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

THAT, the Bill be amended by deleting Clause 65 and substituting therefor the following new clause—

Amendment of section 187 of No. 18 of 2012.	65. Section 187 of the principal Act is amended—
	(a) in subsection (1) by inserting the following new paragraph immediately after paragraph (h)—
	(i) chairpersons of the committees of the Council of Governors; and
	(b) by deleting subsection (3).

The justification is that we are proposing to include chairpersons of committees of the Council of Governors as members of the Intergovernmental Budget and Economic Council (IBEC). This is in line with the resolution of the IBEC meeting of 11th August 2015.

(Question of the amendment proposed)

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

Hon. Makali Mulu (Kitui Central, WDM-K): Hon. Temporary Deputy Chairman, I support this amendment. We need to note, as a House, that IBEC has become very important in terms of determining how much goes to the counties and how much remains at the national level in terms of the division of revenue. Their inclusion will be very critical in resolving some of the challenges we are facing when it comes to the Division of Revenue Bill.

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 65 as amended agreed to)

(Clauses 66, 67 and 68 agreed to)

New Clauses 9A and 9B

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

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

Amendment
of section 25
of No. 18 of
2012.

9A. Section 25 of the principal Act is amended—

(a) in subsection (2) by deleting the expression “15th” and substituting therefor the expression “1st”; and;

(b) in subsection (7) by deleting the words “fourteen days” and substituting therefor the words “thirty days”.

Amendment
of section 28
of No. 18 of
2012.

9B. Section 28 of the principal Act is amended by inserting— (a) the following new subsections immediately after subsection (1)—

“(1A) Any bank account opened under subsection (1), for the primary purpose of collecting money raised or received by or on behalf of the national government shall be designated as a Revenue Collection Account and shall be used only for purposes of collecting money raised or received by or on behalf of the national government.

(1B) Money paid into a bank account designated as Revenue Collection Account shall be promptly credited into a National Exchequer Account and shall be withdrawn in accordance with Article 206 of the Constitution and section 17 of the Act.

(1C) For avoidance of doubt, no expenditure shall be paid out of a bank account designated as a Revenue Collection Account except as otherwise authorised by law.

(1D) Each financial year, an accounting officer of a national government entity shall prepare and submit to the National Treasury a record of all bank accounts operated by that entity during the year, with a copy to the Controller of Budget and the Auditor General.”

(b) the word “system” immediately after the words “Treasury Single Account” appearing in subsection (2);

(c) the word “system” immediately after the words “Treasury Single Account” appearing in subsection (3); and

(d) inserting the following new subsection immediately after subsection (2)— (2A) The Treasury Single Account system shall include the Consolidated Fund Accounts under section 17(2), including accounts of State Departments.

This amendment is intended to change the date of submission of the BPS from the current 15th February to 1st February. It is also intended to increase time for consideration of the BPS from the current 15 to 30 days. It has been very difficult to concentrate on the BPS. We are proposing to increase the days for consideration from 15 to 30 days.

(Question of the new clauses proposed)

(New clauses read the First Time)

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chair, before you take the seat, I propose that you move 9B, so that we can consider them together.

Hon. Joseph Limo (Kipkelion East, JP): Clause 9B makes the provision for opening of revenue collection accounts and crediting the funds therein on the national Exchequer accounts. It also prohibits making any expenditure out of the revenue collected. The other issue is to

harmonise the definition of Treasury Single Account made earlier under Clause 2. Those are the reasons.

Hon. Aden Duale (Garissa Township, JP): This is one of the committees that I am proud of as the Leader of the Majority Party. On the first amendment, when the Cabinet Secretary tables the BPS on 15th February, the House committees have a short period to consider it yet the BPS is the principal document that sets out the fiscal framework for that financial year. Moving it from 15 days to 30 days is very important, so that the National Assembly can take its role of the budget-making process seriously.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Makali?

Hon. Makali Mulu (Kitui Central, WDM-K): Let me join the Leader of the Majority Party in supporting New Clause 9A. When you look at the whole budget-making process, the process kicks off around August. That process is done by the National Treasury all the way up to January. They submit the document to us by 15th February, which means they have about four full months to look at the budget and then push the budget to us by 15th February. We have only about two weeks to give them feedback with recommendations. The whole exercise of increasing the period to 30 days is going to help the departmental committees a lot in terms of looking at the BPS keenly and making a critical analysis of it.

When it comes to the New Clause 9B, it is on the issue of the revenue collection account for the national Government. It is now coming out clearly that any money which will be received by the national Government should go to this account. Once the money is in the account, before you use it, the law must apply that it must be very clear what the money is going to be used for and the process of using that money.

The last bit of it talks about a system of accounts rather than just an account. I support that because even though we are talking about “Treasury Single Account”, which might appear like it is just one account, it is actually a system of accounts under one title “Treasury Single Account”.

I support.

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

The Hon. Member for Mbooni.

Hon. Erastus Nzioka (Mbooni, Independent): I support New Clause 9A because the period which has been given to scrutinise the budget is quite very short. This will give us ample time to look at the budget and see where the wastage is. We can remove non-essential services and have a reasonable budget.

When it comes to the New Clause 9B, especially the Treasury Single Account, we need to push the Government to implement the Treasury Single Account. Parastatals have a lot of idle money and this money is deposited in commercial banks. This is the same money which the Government is going to borrow and pay interest on. Even the parastatals should deposit their excess money into the Treasury Single Account, so that the Government can use that money without paying interest.

I support. Thank you.

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

(The new clauses were read a Second Time)

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

New Clause 12A

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 12-

Amendment of section 39A of No. 18 of 2012. 12A. Section 39A is amended by inserting the following new paragraph immediately after paragraph 4—

(5) The recommendation of the Cabinet Secretary in subsection (4) (f) shall be included in the report and tabled in the National Assembly.

These clauses were to support the change of procedure for bringing the Finance Bill to the Floor after there was a change of the procedure during the enactment of the Statute Law (Miscellaneous) Amendment Bill (National Assembly Bill No.12 of 2019). The court had ruled that the Finance Bill should be done before the House adopts the Estimates. So, during the process of changing those timelines, this New Clause 12A was omitted. The timelines were in the PFM Act. Because of the time taken to bring amendments to the PFM Act, we removed the clauses and moved them to a Statute Law (Miscellaneous) Amendment Bill, which was already passed and assented to by the President. So, there are certain sections of that particular law which remained here. Therefore, we are moving this to support the timelines which were already passed by the House.

That is the justification for the New Clause 12A.

(Question of the new clause proposed)

(New clause read the First Time)

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

Hon. Aden Duale (Garissa Township, JP): This is a very good amendment. The Chair is trying to do what we already did in the Statute Law (Miscellaneous) Amendment Bill. This is very important for the country. The Cabinet Secretary comes here, reads the Budget Estimates for both the recurrent and development, then tells the House how he wants to finance the budget. Now, we are saying that we must pass the Finance Bill before a Cabinet Secretary comes here to read the budget. Based on that, the Cabinet Secretary will tell us that the budget he is giving to

the House is already financed, so that we can reduce on the huge deficits. What happens under the current law is that the Cabinet Secretary comes and reads the budget, tells us that there is a deficit of, say, Kshs690 billion, and then the House will deal with the Finance Bill. So, what happens in case the House disagrees with his tax measures? That means the deficit or gap will increase. I hope the Senate will deal with this Bill before we go for the long recess or the other budget. The Cabinet Secretary should bring the Finance Bill before he comes to read the Budget Estimates to the House. It is a very neat and decent way of dealing with the budget-making process.

I support.

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

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairman. I also want to support this amendment.

We must note that we are very late in getting this in place. A country like Uganda, which is our young brother, has already done it. What is happening is that any time we pass a budget, we do so before we have passed what we call the revenue-raising strategies. So, we are bound to have a shortfall in the budget in case the House fails to approve the revenue-raising strategies. That is why you see the Finance Bill, at times, becomes such an important document when we are debating and the Government must defend it. We have already passed the expenditure. By doing this, we will now be more relaxed. We will also improve the credibility of the budget-making process.

So, I support this.

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

Hon. Daniel Tuitoek (Mogotio, JP): Thank you, Hon. Temporary Deputy Chairman. I also rise to support this amendment. We have had a problem with the Finance Bill coming later before we know the taxation and revenue-raising mechanisms of the Government. In this case, I really support the amendment.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Member for Emuhaya.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Temporary Deputy Chairman. I rise to support this.

We have, for a long time, seen Parliament being blackmailed or even just being agitated to “unless you pass this Finance Bill, the Estimates which you passed earlier will not suffice or be raised. Therefore, the Government shall not work”. I had a chance of sitting in the House Business Committee where I was with the Leader of the Majority Party who, a few minutes ago, indicated that I may only be able to speak on education matters. I am a teacher of History, Government and Economics. Now, let me indicate that we, together with the Leader of the Majority Party and Makali Mulu, would several times get ourselves in this awkward situation in that House Business Committee. This amendment will streamline this kind of arrangement, so that we are not in a situation where we are prone to blackmail or even coerced to pass the Finance Bill.

The Temporary Deputy Chairman (Hon. Christopher Omulele): The Hon. Member for Mbooni.

Hon. Erastus Nzioka (Mbooni, Independent): I support this amendment. It is long overdue because you cannot talk about spending when you do not even know where you are going to get your resources to spend. You know very well that this country is fighting a huge debt. This is because of situations where you propose your Budget Estimates and you do not even know where you are going to get the resources to finance the budget. If you can remember,

last year the increase on VAT was rejected in the Finance Bill. We had to go back and re-do the budget and come up with a supplementary budget. So, this is a very good way of doing the budget.

Thank you.

*(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 12B

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 12-

Amendment

12B. The principal Act is amended in section 40 by deleting subsection (3), (4), (5) and (6).

of section
40 of No.
18 of 201

(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 36A

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chairperson, move the Second Reading for the New Clause 36A. It is on Page 2345 of the Order Paper. If you look at

Page 2345, you will see Clause 124A, on top of it is the New Clause 36A. I understand there was a failure to type in New Clause 36A. It is Page 2345 where you see Clause 125A. Above it, you will see New Clause.

Hon. Joseph Limo (Kipkelion East, JP): Actually, it is on Page 2346 in some Order Papers, Hon. Temporary Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well, but can you see it, Chair?

Hon. Joseph Limo (Kipkelion East, JP): Yes, I have seen it, Hon. Temporary Chairman. It is only that the numbering was not done well.

Hon. Temporary Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause after Clause 36.

The Principal Act is amended by inserting the following new section immediately after section 124—

County Assembly

Fiscal Bureau

124A. (1) There is established in every county county assembly, a county assembly fiscal bureau which shall be an office in the county assembly service.

(2) A County Assembly Fiscal Bureau shall consist of persons appointed on merit by virtue of their experience in public finance economics or public policy.

(3) The County Assembly Fiscal Bureau shall-

(a) provide non-partisan information, analysis, and reports with respect to budget, budget proposals, and finance to the relevant committees of the county assembly;

(b) prepare reports on county budgets and economic trends;

(c) and make sure proposals to the committees of the county assembly responsible for budgetary matters;

(d) analyse any Bill submitted to the county assembly with reference to the fiscal responsibility principles and fiscal objectives set out in the relevant County Fiscal Strategy Paper;

(e) establish and foster relationships with the National Treasury, Parliamentary Budget Office, county treasury, and other country treasuries for the efficient and effective performance of its functions; and,

(f) ensure that all reports produced by the bureau are published and publicised not later than fourteen days after production.

The rationale is to establish what County Assembly Fiscal Bureau which is similar to our Budget Office. The purpose of this office is to support county assemblies in analysing and advising on budget issues. In fact, most of the time our Budget Office has been supporting county assemblies. We have now realised that it is important to, in a small way, set up a County Assembly Fiscal Bureau, which will be assisted by the Budget Office to build capacity to ensure that our county assemblies are up to speed in matters concerning budget. That is the reasoning behind this New Clause 36A

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): We will have the Leader of the Majority Party followed by Hon. Tindi Mwale.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Chairman, this is an important aspect of the county assemblies. We have created devolution and county assemblies. County assemblies, unless they create three important organs that will be synonymous with the National Assembly, the members of county assemblies (MCAs) will never interrogate anything. They do not have a directorate of legislative and procedural services. Nobody is teaching them how to draft Motions and Bills. County assemblies have no capacity in terms of institutional framework of interrogating the county governments' budgets.

Some of us are proud of the Parliamentary Budget Office. In a minute, they can do better work than the men and women at the National Treasury. So, we need to cascade that and establish the County Assembly Fiscal Bureau, so that when the county executive brings its budgets, the technical team will look at it and advise the county assembly the way our Budget and Appropriations Committee and the Departmental Committee on Finance and National Planning have fiscal analysts who advise them. Without this, devolution will be a waste. That is why there is a lot of wastage and corruption in the counties. There is a lot of theft. The MCAs - with due respect to them - just check in to get their sitting allowances, then guillotine Bills and budgets of county governments.

There must be a replication of what happens at the National Assembly. Just in the same way we have a Budget Office, this amendment will ensure that MCAs at the county assemblies interrogate every Bill that comes from the county executives in the county governments and every finance related legislation. So, I support it. I am sure resources will be allocated by the Controller of Budget for the establishment of this bureau. I want to ask the speakers, who are the chairpersons of the county service boards and their clerks, not to recruit their relatives. If you look at the county Attorneys, some of them are not well known lawyers. We want fiscal analysts to be recruited competitively across the country regardless of whether they come from the recruiting county or not. If you give these jobs to your brothers or sisters who scored D+ or C- and went through some fishy universities to get a Bachelors in Commerce (BCOM) because we assume they can be fiscal analysts, we will lose it. This is an important clause.

I support the amendment.

(Hon. Moses Kuria walked into the Chamber)

I can see one of the presidential candidates coming in.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Tindi Mwale.

Hon. Nicholas Mwale (Butere, ANC): Thank you, Hon. Temporary Chairman. I rise to support the amendment. For us to get good results from devolution, we need to have county assemblies that are well equipped in matters budgeting. We have seen in the recent past governors appearing before the Senate Sessional Committee on County Public Accounts and Investments being asked audit queries that show clearly that the county assemblies were not able to interrogate

their budgets well. Therefore, I support this clause and the Majority Leader. County assemblies need to vet competitively fiscal analysts.

Thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Mwadime, Member for Mwatate.

Hon. Andrew Mwadime (Mwatate, ODM): Thank you, Hon. Temporary Chairman. I rise to support this amendment and the Leader of the Majority Party. As we talk, there is a problem in my county. We had problems with the budget and the county government was almost dissolved. If we had fiscal planners and a County Assembly Fiscal Bureau, the county government would have been advised. The main problem was MCAs lacking capacity to understand issues. If we had officers who had been recruited competitively, I am sure this problem would not have risen.

Thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Denittah Ghati.

Hon. (Ms.) Denittah Ghati (Nominated, ODM): Thank you very much, Hon. Temporary Chairman for the opportunity to support the amendment to establish the County Assembly Fiscal Bureau. This is a critical amendment. You have seen how counties are wasting resources because there is no capacity to handle finances. We have seen damning reports from the Auditor-General in our various counties. I imagine if we had competent personnel to handle county finances, we would not be having damning reports from the Auditor-General.

As the Leader of the Majority Party has said, this bureau is more of what we have in Parliament. If we had the real interest of devolution, then what happens at the national level must also happen at the county level. So, the establishment of this bureau at the county level is very good.

Our counties are doing badly. They are not doing well when it comes to finances. I would suggest a situation where even the recruitment of people to manage this bureau, as the Leader of the Majority Party has said, should not be based on where they come from. They do not have to come from the county. We can look at competent people who basically can run the bureaus. That is in the best interest of devolution. It is in the best interest of ensuring that our counties are sustainable. So, I support the establishment of the bureau.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. (Dr.) Makali.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairman. This is a very important amendment to the Bill and I want to support it. When you look at the county executives, some of the CECs in charge of finance are PhD holders and others have Master's degrees. The same budget prepared at that level is subjected to MCAs who, in some of the counties, might not have the same level of qualifications. So, this amendment is going to ensure that county assemblies have technical people who can look at the budget keenly and analyse it and then advise the MCAs, so that the input of the MCAs is at par with what we are doing.

By design, county assemblies are a replica of the National Assembly. So, in a situation where the National Assembly is supported by the PBO and county assemblies do not have such an outfit to support them, then there is a disadvantage to county assemblies. Once this amendment passes, I can assure you the whole budget-making process at the county assembly level is going to improve for the betterment of devolution and in terms of the public accessing services as they should be delivered.

I support, Hon. Temporary Deputy Chairman.

*(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 42A

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chair, move for Second Reading of New Clause 42A.

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 42—

Insertion of new
section in No 18
of 2012

42A. The principal Act is amended by inserting the following new section immediately after section 131—

Responsibilities of

County Assemblies
Budget Committee
in county public
finance.

131A. The Committee of a County Assembly established to deal with county budgetary matters has responsibility for the following matters, in addition to the functions set out in the respective County's Standing Orders—

- (a) discuss and review the County budget Policy Statement and county budget estimates and make recommendations to the county assembly;
- (b) provide general direction on county budgetary matters;
- (c) monitor all county budgetary matters falling within the competence of the County assembly under this Act and report on those matters to the County assembly; and
- (d) review and scrutiny of relevant planning and budget documents before the county Assemblies.

The justification for this is that it makes provision for the responsibilities of the county assembly budget committee. Having a budget committee without responsibilities was seen to be a problem. So, this particular section will give the budget committees of the county assemblies some clear responsibilities.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. (Dr.) Makali.

Hon. Makali Mulu (Kitui Central, WDM-K): I want to raise a point of order, Hon. Temporary Deputy Chairman, before I support. Maybe the Chair could clarify. I know in other documents, we do not call it county budget policy statement. It is called the county fiscal paper. So, do we want to retain that consistency or do we want to change the name? It might cause confusion. I think it is called county fiscal paper.

Generally, I think what is happening is that just as we do as the BAC, the Chair wants the same thing, so that county assemblies will have a committee like ours to look at that paper and make the kind of recommendations we make before budgets are finalised.

I support.

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

Hon. Aden Duale (Garissa Township, JP): I want to agree with Hon. (Dr.) Makali that for consistency purposes, because at the national level we call it the BPS, let us leave it for the counties as fiscal policy statement, so that we do not create any confusion.

I totally agree. People ask why county assemblies are misbehaving and fighting in the county chambers. It is because we established assemblies with no capacity. So, I think going forward, a replica of the National Assembly of Kenya must be built at the county assemblies, in terms of legislative department, legal department and the budget office, so that the young men and women and old men and women in the county assemblies must debate and do their functions from a point of knowledge and not from a point of what they have been told in their corridors. Then they rubber stamp serious policy issues that have come with devolution.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Bunyasi, are you interested in this?

Hon. Sakwa Bunyasi (Nambale, ANC): Not on this.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Yes, Hon. Makali, you are right.

Hon. Makali Mulu (Kitui Central, WDM-K): Hon. Temporary Deputy Chairman, the Chairman might have to make some amendment. It is called the County Fiscal Strategy Paper.

The Temporary Deputy Chairman (Hon. Christopher Omulele): I think we are all in agreement on that. We can clean it up. Chair, do you want to do that?

Hon. Joseph Limo (Kipkelion East, JP): I am somehow getting confused.

I beg to move:

THAT, new Clause 42A be further amended by replacing “the county budget policy statement” with “the county fiscal strategy paper”.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, this is a new one, but I think we are up to the task. We shall handle the amendment that the Chair has proposed now, so that we can move forward on the amendment in an amended form.

(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)

(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(A)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Chair, move the Second Reading of the Clause.

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

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

Amendment
of section
164 of No.
18 of 2012.

54A. Section 164(4) of the principal Act is amended by inserting the words “the National Treasury” immediately after the words “County Treasury” appearing in paragraph (b).

The amendment makes further provision for giving a copy of financial statement of a county entity to the National Treasury so that the National Treasury is in the loop. Currently they do not get a copy. So, it will provide that the National Treasury must get a copy.

(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)

Clause 2

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

THAT, Clause 2 of the Bill be amended by—

(a) inserting the following new paragraphs immediately after paragraph (a)—

(aa) deleting the definition of “National Exchequer Account” and substituting therefor the following new definition—

“National Exchequer Account” means the National Exchequer Account or Accounts referred to in section 17;

(ab) deleting the definition of “public money” and substituting therefor the following new definition—

“public money” includes—

(a) all money that comes into possession of, or is distributed by, a national or county government entity and money raised by a private body where it is doing so under statutory authority; and

(b) money held by national or county government entities in trust for third parties and any money that can generate liability for the Government;

(b) inserting the following new paragraph immediately after paragraph (c)—

(d) by inserting the following new definitions in their proper alphabetical sequence—

“Consolidated Fund” means the Fund established under Article 206(1) of the Constitution; and

“County Revenue Fund” means the Fund established under Article 207(1) of the Constitution in respect of each County.

The justification for this is to clarify several accounts which are defined in this Bill and at the same time to recognise that money held or raised by the county governments is public money.

Lastly, it is to define “Consolidated Fund” as well as the “County Revenue Fund” which were not defined in the previous Public Finance Management Act. I thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Chairman, you have done well.

(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)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Christopher Omulele): We have completed this task. I will now call upon the Mover to report.

Hon. Aden Duale (Garissa Township, JP): Hon. Chairperson, I beg to move that the Committee does report to the House its considerations of the Public Finance Management (Amendment) Bill, No.51 of 2017 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Deputy Speaker (Hon. Christopher Omulele) in the Chair]

REPORT AND THIRD READING

PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL

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

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Public Finance Management (Amendment) Bill, No.51 of 2017 and approved the same with amendments.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Mover.

Hon. Aden Duale (Garissa Township, 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. Limo, the Chair of the Departmental Committee on Finance and National Planning, to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Joseph Limo (Kipkelion East, JP) seconded.

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Chair, do you have something to say to this? Proceed.

RECOMMITTAL OF CLAUSES 8 AND 36

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Speaker, I beg to move that the Motion for agreement with the Report of the Committee of the whole House be amended by inserting the words “subject to re-committal of Clauses 8 and 36”.

(Question proposed)

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

Hon. Aden Duale (Garissa Township, JP): I have no problem with the recommittal, but the Chair should state clearly. I had an amendment on Clause 8. He should state which section of Clause 8 he is recommitting. He cannot re-commit everything. Maybe, he wants to recommit my section. So, let him be clear on the Hansard which section of Clause 8 he wants to recommit.

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Leader of the Majority Party is on point. Hon. Chairman, you need to be clear.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Speaker, initially we had agreed to drop Clause 8 for the purpose of saving the amendment by the Leader of the Majority Party which provided that about three months before an election, no county government will be allowed to commit the national Government in any spending, so that it reduces the number of pending bills. That one we do not have any issue with. However, we want to retain the rest of that Clause 8 because its subsection (a) contains significant issues concerning the National Treasury accounts such as the Consolidated Fund accounts. It also specifies the various accounts maintained by the National Treasury. We are of the view that that particular part of the amendment should be saved. So, we are only allowing the part of the Bill that prohibits the county governments from committing the Government three months to an election.

The Temporary Deputy Speaker (Hon. Christopher Omulele): I see interest from Hon. Mwale Tindi. Hon. Duale

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Temporary Deputy Speaker. I think what the Chair is recommitting should be Clause 8(a). Mine states that both county and national governments cannot procure goods and services three months to the general elections without the concurrence of the National Treasury. That is why we have huge pending bills because when governors were going to elections, they issued letters of award left, right and centre. When they lost, those who came in said they were not going to pay those bills.

That is why many Kenyans are suffering. They worked and with the change of guard at the governors' level, they did not get their money. I agree with the Chair that there is another aspect which we need to move in terms of the fiscal framework, only if he does not touch mine on Clause 8(b). It is good to be specific.

Hon. Omboko Milemba (Emuhaya, ANC): On a point of order, Hon. Temporary Deputy Speaker.

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

Hon. Omboko Milemba (Emuhaya, ANC): On a point of order, Hon. Temporary Deputy Speaker. Though I am limited I thought I should add my voice on this. The amendment brought by the Leader of the Majority Party is very key. Yesterday, I was in my constituency and a man who is owed by the county government Kshs12 million looked so poor and can die. So, the amendment is very good for our businesspeople who are now getting out of business because of pending bills.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): I associate myself with your sentiments Hon. Omboko because the county where you and I come from, we face problems similar to the ones the Leader of the Majority Party is speaking about on pending bills. I think we need to tidy up the way we do our things in the counties. Hon. Mwadime.

Hon. Andrew Mwadime (Mwatate, ODM): Thank you, Hon. Temporary Deputy Speaker. The youth are suffering because of the pending bills. Governors refused to pay them

and this has really affected them. In fact, a young lady suffered a stroke because of this. So, this is a key amendment.

I support.

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

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Leader of the Majority Party, what is out of order?

Hon. Aden Duale (Garissa Township, JP): His county is in the process of dissolution and there is no government there. The Independent Electoral and Boundaries Commission (IEBC) has submitted signatures to the President who under the law is supposed to form a commission any time. So, there is nothing to agree on once the signatures are verified and presented.

So, Hon. Mwadime, you have to wait until the commission brings its report and you go for a by election or not. So, do not pollute those of us who have governors who have refused to pay. Your problem is more serious. It is like we are suffering from Tuberculosis and yours is cancer. So, do not pollute ours because you have a bigger problem.

Hon. Temporary Deputy Speaker, just like what you and Hon. Omboko have said, ours is about governors who do not want to pay pending bills. That is why this amendment is very important even to the national Government. Nobody should issue letters of award as a campaign tool three months to elections. In fact, we should have stated six months because there are those Members who want to become governors and they might issue letters of award and employment three or six months to the general election.

So, this law is very important and it will help Kenyans. Today, there is no money in the pockets of many Kenyans because of pending bills. If county governments and the national Government can pay the pending bills, there will be a lot of money with the Kenyan families. People who were rich and doing good as Hon. Omboko said cannot have food on their table or take their children to school, yet they had Kshs60 or Kshs70 million before the advent of devolution. Today, they are paupers just because county governments do not want to pay them.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Mwadime, you feel you have something to add.

Hon. Andrew Mwadime (Mwatate, ODM): Yes, Hon. Temporary Deputy Speaker. Despite our county government being about to be dissolved, it is still working. Also, our county will not remain dissolved forever. It is good to support something which is done objectively. If it is done subjectively, then we should refuse. So, for prosperity of the entire country, we should support this. The Leader of the Majority Party always applauds when a Member raises good points like me.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well spoken, Hon. Mwadime. It is good you have hope because it is eternal. We must remain hopeful that the people of Taita Taveta County will have a good government in place that will deliver on their hopes and aspirations. Hon. Bunyasi, you have an interest on this? Proceed.

Hon. Sakwa Bunyasi (Nambale, ANC): Thank you, Hon. Temporary Deputy Speaker. I just want to add my voice that, indeed, the amendment is good, but we should not think paying of pending bills will fix everything. We are saying a small percentage of bills have not been paid.

I think pending bills is a big issue in this economy especially at the national level. It has also affected businesses at the local level because they are quite small. I think we should frown against the idea of people slowing down and also sometimes corruption delaying payment. If

you do not part with some money, your money is not released. Money buys money and this is the problem. So, we should frown against all these things.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Baya Yaa.

Hon. Owen Baya (Kilifi North, ODM): Thank you, Hon. Temporary Deputy Speaker. I want to concur with my colleagues on the same. But we should not blankly give powers to the National Treasury to make this decision alone without giving timelines. I hope there will be regulations to help them. The National Treasury can decide whether a governor is unfriendly to Government and they frustrate him. If the governor had an important project, it has to be forwarded to the National Treasury and somebody with political interests can use this to frustrate the governor.

So, it might be a good clause to put in the law. I think we need regulations to tighten it and make it more practical for execution of business since it applies to both the county governments and the national Government. We could have a friendly Cabinet Secretary at the National Treasury to facilitate ministries or one who frustrates them. So, giving a lot of powers to the National Treasury on this might be counterproductive. As we go along, I hope there will be regulations to enable us to deliver this clause.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Your concerns are varied Hon. Baya Yaa.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Kevin Wanyonyi.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Thank you, Hon. Temporary Deputy Speaker. I have been seated here listening and I think this amendment is very timely. However, I wish the Leader of the Majority Party could have made it six months. The three months is too soon and I think they will get away with it. It should be six months because I know some outgoing governors will misuse this. The Leader of the Majority Party, if you could make a further amendment to Clause 8 and change it to six months, I will be very happy and comfortable.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Dennitah Ghati.

Hon. (Ms.) Dennitah Ghati (Nominated, ODM): Hon. Temporary Deputy Speaker, I disagree with Hon. Wanyonyi because six months is too long. This Bill has interests. I am talking about our counties. Our counties are run by suppliers. It takes forever for a governor to pay the suppliers. I am in agreement with the suggestion of the Leader of the Majority Party of three months. Three months is already too long. We have seen so many suppliers and contractors in the counties who are not paid by the county governments for even over a year. They are languishing in poverty and their money is held at the county level.

Allow me to suggest that this Bill saves and rescues the various suppliers and contractors at the county level. I support a duration of three months as it is proposed there. Allow me to support an amendment of three months within this period.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Tuitoek.

Hon. Daniel Tuitoek (Mogotio, JP): I rise to support the Leader of the Majority Party's amendment. The only thing is that you cannot go for six months. What we should actually say is that there should be no initiation of procurement in a period of three months to elections, but payments or continuation of projects can go on. Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker. These amendments are extremely timely. Just before elections, some of our

governors realise that they will not have another term. Some of them may have realised the ground is just too unfriendly to them and so, they may decide to use this as a campaign tool.

So, I really support the amendment that there should be no initiation of procurement three months to an election. I think we should also think in the line of six months. I know we are supposed to resign six months before an election. We can tie them together, so that you cannot initiate projects six months to elections because they will leave the incoming governors or CEOs of the counties with huge pending bills that they may not be able to pay. It may also be used as an instrument of campaigns that if you will support me, I will give you this particular tender leading to tenders being dished out like hot cakes just a few months to elections.

I support the amendments.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Sankok, if Kenyans knew where those hot cakes were being dished out, they would be very happy. However, your point is made.

Next is Hon. Tindi Mwale.

Hon. Nicholas Mwale (Butere, ANC): Hon. Temporary Deputy Speaker, I rise to support the amendment. Looking at the private sector in comparison to how Government does business, we normally do agreements for sixty days in the private sector. Those are two months. Therefore, if we say that we put it as six months, we are going to humiliate the Kenyan businessmen and overall, you are going to humiliate the economy. Therefore, we should not worry about the elections that are coming, how many will be given jobs, corruption and such things when we are setting up rules that are going to govern how business is going to be done between the Kenyan citizens and county governments.

I differ with Hon. Sankok. He is a nominated Member of Parliament and he might not know the pain of being elected.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Tindi Mwale, you will withdraw that part about Hon. Sankok not knowing the pain of being elected. Withdraw that one. When Members are in this House, they are all equal. Just withdraw it and then we proceed.

Hon. Nicholas Mwale (Butere, ANC): Hon. Temporary Deputy Speaker, I withdraw the statement.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Tindi Mwale, have you withdrawn it?

Hon. Nicholas Mwale (Butere, ANC): Yes, I have withdrawn.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Then you can proceed.

(Hon. David ole Sankok spoke off record)

Hon. Nicholas Mwale (Butere, ANC): I follow the Speaker's ruling and not your ruling, my brother.

The Temporary Deputy Speaker (Hon. Christopher Omulele): He has withdrawn it. It is in order. Order, Hon. Members! Hon. Sankok, I have already directed him to withdraw. I have already communicated that Hon. Members in this House are all equal. The Constitution provides for different ways that Members will find their way here and once you reach here, you are all equal without exception. Order, Hon. Members! Hon. Tindi Mwale, proceed.

Hon. Nicholas Mwale (Butere, ANC): Hon. Temporary Deputy Speaker, my point is that I support the amendment.

(Hon. Aden Duale spoke off record)

Hon. Nicholas Mwale (Butere, ANC): Hon. Temporary Deputy Speaker, try and protect me. The Leader of the Majority Party is shouting at me.

The Temporary Deputy Speaker (Hon. Christopher Omulele): You are protected.

Hon. Nicholas Mwale (Butere, ANC): Thank you, Hon. Temporary Deputy Speaker. I rise to support the amendment. Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Do I see Hon. Okuome Adipo?

Hon. Adipo Okuome (Karachuonyo, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity. Let me say from the start that I support the amendment of three months. However, first, I would like to emphasise that the ball is also in the court of the Treasury. They should release funds to the counties early enough, so that the counties can do what is necessary within the time they remain with especially during the election period. If governors are given only those three months, then they will be squeezed to pay the bills instead of leaving them for the person coming after them. The year 2022 is a very critical one because almost all governors are not going to contest, in which case, if they are not taken care of properly, they will leave the incoming governors with huge pending bills, which should be reduced as much as possible before they leave office.

Thank you, Hon. Temporary Deputy Speaker, for giving me the time.

The Temporary Deputy Speaker (Hon. Christopher Omulele): I direct that the next necessary steps on this particular be undertaken when it will be set down on the Order Paper next time.

(Putting of the Question deferred)

We shall move to the next business.

BILL

Second Reading

THE COMPETITION (AMENDMENT) BILL

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

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Speaker, I beg to move that the Competition (Amendment) Bill be now read a Second Time.

This is another very important amendment Bill. As Members are aware, over the last few years, the Small Medium Enterprises (SMEs) in our country have been experiencing challenges occasioned by delayed or non-payment of their goods and services by buyers and mainly retailers. I am talking about Kenyans who supply their goods and services to Nakumatt, Carrefour, Tuskys and many other big enterprises and what they go through in terms of pending bills. The unfortunate scenario is due to the superiority bargaining power of these buyers and contractors. This must be very clear. The moment you have a superiority bargaining power, you will dictate the terms of trade to that SME.

I will give you a good example. If a Kenyan SME is supplying vegetables to these big retail chains, they will tell him: “My friend, our terms is that we will pay you after 120 days. Secondly, you should do this.” Because of that big bargaining power, the SMEs become victims of this power given to the big retail contractors. So, what have these buyers done? This has led to even terminations. The moment they ask for their money after 90 or 120 days as per the contractual obligations, the big buyer will tell them that if they pester him, he will terminate their contract. The law is very clear that they are supposed to complain to the Competition Authority of Kenya (CAK). Unless you complain, the CAK cannot take action. This amendment is now giving the CAK powers to investigate. Even SMEs cannot complain because they are scared of the repercussions they will face as businesses. These events have exposed our SMEs to huge debt portfolios due to late payments to the extent of occasioning closure of businesses. There are Kenyans who supply big companies and retail shops. Because the buyer has a powerful bargaining tool, an SME ends up closing shop because he buys in cash from the market, but when he takes the commodities to the big buyers, he is given terms ranging between 120 days and 190 days. He cannot complain if his payment is delayed. He is threatened with termination of the contract.

I want to go on record, and this must be very clear to Kenyans, that according to the reports by the Kenya Bureau of Statistics (KBS) and the National Treasury, collapsed retail chains like Nakumatt and others which are in business today owe SMEs over Kshs40 billion. There is a problem in our country. Banks are under the supervision of the Central Bank of Kenya (CBK). They have the Kenya Deposit Insurance Corporation (KDIC). A bank goes under because they mismanaged depositors’ cash amounting to Kshs20 billion or Kshs30 billion. Nakumatt has gone under with over Kshs40 billion it owes to SMEs in Kenya. This is a very serious matter. Currently, Nakumatt has been put under receivership, just like Mumias Sugar Company. Who is suffering? The small-scale farmer who was planting less than two acres to feed his family, pay school fees and does not know what a receivership is. His life has collapsed just like the way county governments do not want to pay pending bills. I want this House to take a very proactive measure to save SMEs, which supply commodities to retail chain supermarkets and other contractors. When these companies go under, the victims are the small traders. Nakumatt owes SMEs close to Kshs40 billion. That is close to a bank going under. There is nobody speaking for them. It is very sad for Kenyans who supply electronics.

It is very immoral. When you walk to a supermarket, you do not get credit. You pay cash. Because of the bargaining power that big supermarkets have over retailers and suppliers, they tell Kenyans who supply them that they will pay them after 120 days. That is illegal. It is worse than interest rates. You sell my goods in cash and you want to pay me on your terms. That is the issue this Bill is trying to resolve. It states that the CAK must investigate those kinds of institutions and companies which use their powerful bargaining power to kill SMEs.

There must be insurance in law to protect Kenyan depositors. I have never banked with Chase Bank or Imperial Bank. You have Kshs50 million then a receiver manager tells you, “We will pay you in the next 10 or 20 years.” It does not happen in developed countries. We must pass a law that will ensure that when a bank goes under, the recovery and return of depositors’ money is guaranteed and they are either paid by the Government or through insurance the following day. Depositors do not play a role in bringing down a bank. It happens in other countries. As we deal with this Bill, we must propose an amendment to the Central Bank of Kenya Act to address the fate of Kenyan depositors if a bank goes down. Those are hard-earned deposits. Kenyans save their money. God forbid, I save a little money today then tomorrow

morning I am told that the bank has gone under. I am speaking from experience. There are families which had all their savings in Chase Bank and Imperial Bank. Today, they cannot pay school fees for their children. This House must play a role.

This bargaining power has slowed down the economy and resulted in forced lay-offs. Kenyans are just being told to go home. In addition, the delayed payment or non-payment of suppliers has led to increased non-performance of loans. A Kenyan has gone to a bank, borrowed money and you tell him that you will pay him after 120 days. The next day, you close Nakumatt Supermarket. What happens? He defaults on his loan with the bank, his assets are seized and his house is sold. That is why I have a feeling that there are too many incidents where a father kills his wife and children. You switch on the television and the first four items are about killings in this country. Murder. Homicide. There must be a problem. The owners of Nakumatt must be living in their big mansions in Muthaiga, Runda and Karen, but properties of people who supplied commodities to that supermarket chain are being auctioned.

The non-performing loans portfolio is increasing in the banking sector. Commercial banks cannot collect their money. The current provision under the Competition Act - and that is why we are proposing an amendment - is not effective in managing this problem. Enforcement has revealed challenges. Key among them is the reluctance of suppliers to present their complaints to the CAK for fear of being blacklisted. I will give you a good example. It is good that the Chairman is here. Last year, when we were dealing with the Insurance Bill, the big underwriting companies could not come and tell the Departmental Committee on Finance and National Planning their problems. What do insurance brokers do? I am told they are not happy with my statement. A broker insures your vehicle, but he does not remit the money to the underwriter. You drive your car while the broker uses your money for other business. We brought a law that provided that you should send the cheque or pay the underwriter directly, so that the broker can get his commission from the underwriter. You save Kenyans who get insurance policies. Hon. Mbadi was a victim. The late Hon. Ojode was a victim when he was in the 10th Parliament.

The Chairman is here. We asked the underwriters why they cannot come and explain this. They said that they cannot do that because the brokers are the ones who create business for them. Every underwriter was scared of the brokers. They could not come to explain the problems that they face. It is the same with those Kenyan suppliers. They cannot complain against Nakumatt and big companies because they have the power of bargaining and they are scared that they will lose business. They are scared of being blacklisted by the errant suppliers, contractors or all the other buyers. They have to get a market. What happens? They do not want to go to the Competition Authority of Kenya. So, this amendment is making it mandatory for the Competition Authority of Kenya to investigate those suppliers who use the power of bargaining not to pay Kenyan suppliers. This experience has shown the very unfortunate reality of abuse of buyer power that has permeated across all the sectors of the Kenyan economy. In the end, it might even affect the achievement of the Big Four Agenda of President Uhuru Kenyatta.

Hon. Temporary Deputy Speaker, the proposed amendments in the Bill aim at deepening the Authority's capacity or capability to deal with all forms of restrictive trade practices. You supply goods to somebody and he tells you that he would pay you after 120 days, 160 days or 290 days. Tell me which supermarket you can walk into and you are given goods on credit. The goods you buy are supplied by Kenyan citizens who are told that they would be paid after 160 days or 190 days. If they complain and ask for their money, those companies or contractors abuse the buyer power bargaining. This House must rise to the occasion and save Kenyans from

any form of restrictive trade practices. In the long run, we must protect Kenyans and have a mechanism of consumer protection. The consumer must be protected. If you are buying in cash, the person whose goods you are buying must also be paid in time. It is about consumer protection. In addition, the amendments in the Bill will also make it possible for the Authority to take action on the basis of its investigations. They should not wait for anybody to complain. Those are the highlights.

Clause 3 of the Bill proposes to delink the buyer power provisions from those of abuse of dominance by deleting Section 24(2)(A) (B) (C) and (D). The other day, I was not given a chance to contribute. The Members were talking about interest rates which are charged by banks. There is another 50 per cent of Kenyans who are victims of shylocks and digital interest rates. I will give you a good example. There is *Fuliza* money lending service by Safaricom. Do you know how much interest rate you pay? You just keep on *fulizar*ing. Ask yourself the amount of interest rate you pay. There are also the shylocks. There is man who was a bishop. His case is with the Director of Criminal Investigations (DCI). He collected money from Kenyans and he disappeared. I was told that he is in real estate business. As we talk about the interest rates, we must deal with the informal interest rates that Kenyans are victims of. I am a victim of *Fuliza*. When somebody tells me to send him some money at 11 a.m. because there is an emergency and I do not have money, I *fuliza*. The more you *fuliza*, the more they increase the amount that you can borrow. If you *fuliza* a lot and you use Mpesa properly, you qualify for more money. I can *fuliza* up to Kshs30,000. Hon. Sankok can *fuliza* up to Kshs5,000. His credit rating is Kshs5,000 because he does not use a lot of money. I *fuliza*. I asked the other day how much extra money I pay. Kenyans have become victims of those money lenders. We must save the Small and Medium-Sized Enterprises (SMEs) who are the drivers of the economy.

I remember after the post-election violence, I asked the Cabinet Secretary (CS) for the National Treasury, Mr. Henry Rotich, why our economy was resilient. The shilling had not moved. He told me that it is because of the informal sector. The SMEs are the drivers of the Kenyan economy. The Member for Nambale worked for the World Bank and he is an expert in this area. When he stands to contribute, he will even do better than me.

Clause 4 proposes to introduce Section 24A to provide for action to be taken when a person abuses the buyer power which is the bargaining power. This includes abuse of buyer power which is an offence with respective penalties. Section 24A further gives power to the Competition Authority of Kenya to monitor the activities of sectors or undertakings that experience or are likely to experience incidences of abuse of power. Two, ensure there is compliance with the law. The Authority will also impose both reporting and prudential requirements. This proactivity will facilitate action in good time to prevent situations such as experience by the retail sector in 2014/2015 Financial Year. Under the same section, the Authority is also empowered to require industries and the retail sector to develop enforceable codes of conduct with the support of relevant Government agencies and the Office of the Attorney-General.

Section 29 of the Competition (Amendment) Bill creates an obligation of professional associations whose rules are restrictive and likely to prevent, distort or lessen competition to apply to the Competition Authority of Kenya for an exemption. If you know that the professional body in which you are in is likely to prevent, distort or lessen competition, they you are under obligation to apply to the Authority for an exemption. However, it does not create a penalty for infringements. This Bill is small but very important. The Chair will talk about what the stakeholders said. I urge this House to support this Bill for the benefit of the economy, posterity

and our SMEs. A vibrant economy depends on a very competitive market. Where there is competition, there should be law enforcement. Even those big retail chains should not be established in the villages. One time at the National Prayer Day, the Deputy President said that you must grow from a hawker in the streets to a shop owner, to a mini supermarket and then to a supermarket. For example, in Luanda or in those small sub-counties, we should encourage the mini markets which are owned by the local community. You see Naivas Supermarket, Tuskys Supermarket and now there are foreign entities called Carrefour and Shoprite supermarkets everywhere. When will we build our supermarkets? We must have a law that says that the big or giant retail chains can only be in the big towns. They should not go to our villages. It is like seeing a Chinese hawker in Bumula Constituency. You ask yourself where the village hawker will go. We must have laws that protect bad trade practices. That is what this Bill is all about. The Competition Authority should not sleep in the office. They must enforce laws and take the significant steps that will make our economy grow.

Finally, effective regulatory framework will not only support the realisation of the Big Four Agenda of the President, but will also ensure that the prosperity of our economy is upheld.

I beg to move and ask the Vice-Chair, the Member for Roysambu Constituency, to second.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Waihenya.

Hon. Isaac Ndirangu (Roysambu, JP): Thank you, Hon. Temporary Deputy Speaker. May I congratulate the Leader of the Majority Party for expressly explaining to Members the gist and importance of this Bill. I wish to second this Bill by saying that the Competition (Amendment) Bill, 2019 proposes to amend various sections of the Competition Act No.12 of 2010, that is, sections 18, 24, 29, 31 and 70A of the Act. In particular, the proposals for amendment are in respect to:

(1) The inclusion of abuse of buyer power as an area of inquiry under Section 18 of the Act which provides for market inquiries;

(2) Delinking the abuse of buyer power provisions from Section 24 to ease interpretation and enforcement;

(3) Provide for the express power for investigation by the Competition Authority into the abuse of buyer power complaints; and,

(4) Provide for penalties arising under Section 29 of the Act and to enable the Competition Authority to effectively initiate and investigate consumer complaints.

As has been ably demonstrated by the Leader of the Majority Party, this Bill comes in handy to protect companies and particularly the ones under Access to Government Procurement Services (AGPO), the youth, gender and persons with disabilities, many of whom are on record as having provided goods on credit to county governments, supermarkets and many other enterprises.

Most of them have gone under because of delayed payments. Imagine of a situation where the suppliers of Tuskys, Naivas, and Nakumatt, Quickmatt and sugar companies like Mumias deliver their products to the supermarkets. Even after the supermarkets have completely sold out their products, and they can physically see and check on the shelves that the products they supplied have been sold out, they are still told to go for payments after three or four months. That is unfair. This Bill provides for ways and means of protecting suppliers so that we will have in place programmes where the supermarkets and the abusers of buyer power can enter into payment agreements.

You also know that in the recent past, several supermarkets have gone under. They include Uchumi and Nakumatt. Mumias Sugar Company has also gone under. All of them have gone under with not less than Kshs40 billion owed to Kenyan suppliers. When Kenyans are crying that there is no money in *mashinani*, one of the contributing factors to that is the fact that, companies have gone under without paying the suppliers. There are many companies I can mention that wound up without paying suppliers. Some of them are Uplands Bacon Factory, Chase Bank, Trade Bank and Imperial Bank. Other organisations have gone under with so much money belonging to Kenyans who have no recourse except to wait for the mercy of Government, which has not been very useful or forthcoming. This Bill is supposed to address those problems and the dictatorship of organisations which abuse buyer power.

In addition to delayed payments, suppliers have faced unilateral termination of their supply contracts by powerful buyers when they demand for payments owed to them for goods supplied. Of course, the suppliers, especially the Small and Medium Enterprises (SMEs) have been exposed to huge debt portfolio due to late payment or non-payment. In some instances, the combination of non-payment and huge debts has led to the termination of the contracts and even closure of the SMEs. Further, the conduct by buyers that has made the operational environment more difficult for suppliers includes the transfer of costs and risks that should otherwise be borne by the buyers or suppliers. Demands for preferential terms unfavourable to suppliers are reducing prices below competitive levels.

According to the available data and statistics, not less than Kshs40 billion is owed by the collapsing banks and supermarkets. Those proposed amendments thus seek to empower the Competition Authority to take action on the basis of its own investigations into abuse of buyer power contract without having to rely entirely on presented claims like has been the case before. The new law will empower the Competition Authority, even on its own Motion, to do investigations. This further buttresses the abuse of buyer power provisions under the Act thereby increasing enforcement in this area in order to tackle the challenges that SMEs face.

I wish now briefly mention, clause-by-clause, some of the amendments we have proposed to make in this Bill. In Clause 2, the Bill proposes an amendment to introduce the words “abuse of buyer power” into sub-section 4 of the Section 18 of the Act. In its current state, Section 19(4) provides power for the Authority to conduct market inquiries into matters affecting competition or consumer welfare. However, it does not provide for market inquiries focusing on the buyer power issues. This amendment aims to provide for that in order to inform continuous development of buyer power related policies.

Clause 4 proposes the creation of an exclusive Section 2A to provide for abuse of buyer power. The new section will incorporate the present Section 24(2)(a) to Section 24(2)(d) of the Act which provides for creation of the offences of abuse of buyer power, assessment of buyer power, granting of power to the Competition Authority (CA) to make rules and definition of buyer power.

In Clause 24 which proposes to create a new sub-section which makes the Authority be able to monitor the activities of sectors or undertakings that are experiencing or are likely to experience incidents of abuse of buyer power to ensure compliance. The CA will be able to impose reporting and prudential requirements. So, this Clause 24 is giving the CA power to proactively investigate and impose reporting and prudential requirements and monetary capacity.

Clause 4 sets out a clear list of acts which may qualify as abuse of power. This will provide clarity and efficacy in enforcement. The proposed sub-section will further set out minimum requirements for the supply contracts. The intention is to protect weaker suppliers like

the ones we have mentioned, the small SMEs who are often taken advantage of in the business relationships that are not based on recorded agreement. In addition, this clause provides for penalties for breach of buyer power provisions.

Most important is Clause 6 which amends Section 31 of the Act by introducing subsection (c) which requires the extension. It gives power to extend the authoritative investigatory powers with respect to abuse of buyer power. Currently, Section 31 of the Act does not expressly include buyer power. It is open to interpretation in a manner that precludes the Authority from enforcing its mandate on abuse of buyer power. Such an interpretation would negate the very purpose of the provisions of buyer power, hence, the need for an express provision. Among companies and organisations that are bound by this Act, of which these guides are to be made obligatory, are professional associations. It includes lawyers, valuers, barristers, bankers and many others.

In short, this Bill will protect Kenyans who have, for a long time, been taken advantage of by the companies and organisations which have dominant power and monopoly. Even in the communication industry where we have the leading lights like Airtel, Safaricom and Liquid Telkom, consumers will get relief from this law because it will take care of them.

While Section 29 of the Act creates an obligation, it does not provide for the consequences for failure to comply. Towards solving this problem, Clause 5 of the Bill seeks to add New Clause 29, introducing a penalty for failure to submit professional rules that fall under Section 29 and an undertaking to abide by the decision of the Authority on the application. The proposed amendments will address challenges of non-compliance that the Authority has previously grappled with. It is expected that, that inclusion of a penalty for breach will enhance adherence.

On consumer protection, the CA is empowered by the proposed Section 70(a)(i)(ii) of the Act to initiate investigations, either on its own motion or upon receipt of a complaint from consumers. The proposed amendment in Clause 7 of the Bill amends Section 70(a)(i) and (ii) of the Competition Act to remove the anomaly indicated above by substituting “consumer complaint” with “any conduct or proposed conduct which is alleged to constitute an infringement on this Act.” So, the Authority will not only wait for complains. It will proactively investigate those huge companies and institutions that are known to abuse buyer power.

With those few remarks, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Waihenya, your Committee agrees that you want to create a monopoly and hand over power to that Authority to wake up and investigate anything that is under the sun in this country.

Hon. Baya, do you have something to say to this?

Hon. Owen Baya (Kilifi North, ODM): Yes, Hon. Temporary Deputy Speaker. I thank you for giving me this opportunity.

Yes, Nakumatt has gone under. It has gone under with a lot of money from small scale traders. Yes, banks have gone under. They have gone under with money from people who have supplied them with many things. This has happened and this has continued to happen in this country. However, the remedy does not lie in creating a behemoth to which we will give all absolute power to investigate anything under the sun. We are saying that there is abuse of bargain power because a transaction took place between a big person and a small person. No!

We cannot do that. That is not the remedy for the problems we have when banks go under or Nakumatt goes under. Nakumatt went under with billions of people because somebody did not do his job. Nakumatt should have been told it should be a listed public company when it got to a certain amount of investment, instead of allowing it to be in the hands of only one family. That is what led to the collapse of Nakumatt. Yes, it went down with people's investments and money. Suppliers and small scale suppliers have suffered. In my constituency, there are many hotels that come up and set shop. Italians come in and set shop with big hotels. People supply tomatoes and other commodities, but they are never paid. Then, they close shop and run away with peoples' money. Yes, that happens.

However, is the solution to give absolute power to the CA? They can, on their own accord and volition, just wake up one day and go and investigate a company and all that. What we are creating in the Kenyan culture is a place to eat. We are giving those officers and many people just an opportunity to come and say: "You have not paid this guy for this! You have not paid this guy for this!" Therefore, it will open up all kinds of doors for people to come in and want to take away even the small investment we have. I do not think this is a good law for this country. I do not think we should cede the powers of other organisations. If it is a lawyer, there is the Law Society of Kenya (LSK). They should go there and lodge complaints. If there are many professional associations in this country, whose job is it to check on the practices of the people or organisations which fall within the purview, let the professional associations in this country do that. It is not okay for us to, today, say that we want to put a law on abuse of bargain power. Do you know what that means? If I have a small shop and I have taken something on credit from a farmer, the Competition Authority will come and say: "You have not paid that person." Probably, I have an agreement. This idea of giving the Competition Authority absolute power to investigate anything under the sun cannot happen and will not be a remedy.

While there are good intentions in this law, I am compelled by the circumstances under which the law is being passed to say I oppose it. It is not a good law. We shall bring amendments to ensure that we protect business people. We cannot just expose business people to all types of authorities. There are too many authorities and bodies looking after only one person - the business person. We cannot do that. There is the Counterfeit Authority of Kenya. There is KEBS. They are looking at the same person. Now, we want to give the same absolute powers to the Competition Authority. I think this Parliament needs to consolidate those bodies. There are too many bodies looking at the same person and eating from the same person and collapsing businesses. That is why there is no money. There are too many organisations stifling the business environment in this country. I am afraid but I have to oppose this Bill.

Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well spoken. One of the things that make me wonder how this committee can suggest this kind of thing is the title itself of this Act - Competition. You are creating a monster under the Act to *suo moto* investigate contracts between parties to which it is not a party. This is very interesting.

Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Speaker, thank you very much for giving me this opportunity. You can now contribute because I see you are now debating. You may end up tilting the views of the House. When it comes to this particular Bill, I do support 100 per cent. It is not a monster to kill businesses. It is a monster to make sure that it assists the small businesses to grow. It protects the small businesses from being swallowed by the big ones.

You can imagine Nakumatt going under while owing small-scale business people a total of Kshs40 billion. That is not chicken change. That money in the pockets of Kenyans and circulating in our economy is big money. It will buy 26 million sacks of maize. But Nakumatt simply went under because a big business is swallowing small businesses - just like the proverbial biblical snake of Moses swallowing other small snakes from those wizards. A government is not judged on how it holds the hands of the stronger members of the society, but how it holds the hands of the weaker members of the society. The weaker members of the society in terms of business are SMEs, the small and medium enterprises, who are being swallowed by big retail shops.

Somebody can come from out of this country and decide to rent shops across all our towns, the 47 county headquarters, and pay rent for six months, ask for supply of goods to be a supermarket. They are supplied and agreements are written to be paid after 120 days. They can be supplied with goods worth Kshs50 billion and after selling the goods, they disappear from the country. If we do not protect our small-scale traders, that money will disappear to a foreign land without us knowing. That is why we have to protect our SME enterprises.

You supply goods to a supermarket, Naivas or Nakumatt or Shoprite for example. They sell those goods. If there is any Kenyan who has ever entered a supermarket and come out with a bottle of water on credit, let him stand up and be counted. They sell everything they have on a cash basis. What is wrong with us demanding that even if they have to have credit, then they pay their creditors within a certain timeframe; and that if they do not pay, there will be an authority to investigate and make sure that those small and medium enterprises are protected? We will protect them. We are in a man-eat-man society. That is for a fact.

We are saying there is an economic meltdown in our country. Why is it not an economic meltdown when we are all pointing our fingers to the Government and saying that there is corruption? Even within ourselves and within the private sector, there is a lot of corruption. This is a Bill that is trying to fight corruption not only from the Government side, but also fight corruption between business people and business people. I do support the Bill 100 per cent, Hon. Temporary Deputy Speaker, that we protect our small and medium enterprises who are suffering. Banks have gone under. Access to Government Procurement Opportunities (AGPO) was a good initiative of the Government. Some very big retail shops have taken advantage of it. They have asked PWDs to supply goods. The PWDs take loans from banks but they are not paid. When they are not paid, they are auctioned. That is worse than shylocks.

The Leader of the Majority Party did mention the issue of shylocks and the issue of *Fuliza*. We have to protect the big business enterprises from swallowing the small-scale enterprises. We can only protect them by having an authority that is mandated to investigate. Sometimes, the buyer bargaining power rests in the big retail enterprises. Sometimes they use their buyer bargaining power to trash the small business enterprises.

I thank you, Hon. Temporary Deputy Speaker, for protecting me from Hon. Nicholas Scott Tindi Mwale, when he said that I am a nominated Member. We are equal. When Uhuru Kenyatta came to this House the first time, he was nominated. I am even better nominated because I came directly as a nominated Member. For him, he had to wait for Mark Too to resign for him to be nominated for the position of Mark Too. Uhuru Kenyatta is now the President of this country. Nominee 001 is heading to being the President just like Uhuru Muigai Kenyatta. So, we should not be looked down upon simply because we are nominated. We have legends like Mark Too, Kamotho and others who were nominated. Even Wetang'ula was also nominated at one time. Allow me to tell my friend, in absentia, that I represent 6.5 million Kenyans with

disabilities and he represents only 40,000 and he won with a margin of 500 votes. I was once elected the SONU chairman; the SONU President at the University of Nairobi, the cream of this nation. So, we should not be looked down upon.

Lastly, let us deal with big people eating small people, big businesses eating small businesses. You remember the pyramid schemes. Hon. Temporary Deputy Speaker, I remember the Pay Bill No. 672672, where our big politicians raised funds to pay teachers who were striking at that time. Where did that money go? We know that the Pay Bill No. was 672672.

The same people used Pay Bill No. 991444 to raise funds to go for a repeat election. That was a pyramid scheme which was worse than what we are witnessing now. We must have these authorities which can investigate this man eat man society so that big people with their businesses do not swallow the small ones.

I thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Sankok, big people eating small people! That is interesting. Let us have the Hon. Okuome.

Hon. Adipo Okuome (Karachuonyo, ODM): Thank you, Hon. Temporary Deputy Speaker. I am very much concerned about the manner in which our small businesses are treated and yet, they are in hard economic situations. They borrow money so as to survive in the competitive market.

However, I support the Bill because I want those Small and Medium Enterprises (SMEs) to be protected. If that does not happen, they will soon be out of the business market. Remember that they are employing thousands of Kenyans. If they go under because of those who have refused to pay them, I do not know who will be working for this country. Kenya is suffering from unemployment. The big businesses are closing down leaving many jobless. The SMEs are suffering because of the losses of the big businesses which ran away with their money. They too are leaving many people without employment.

Hon. Temporary Deputy Speaker, I will start by mentioning that those SMEs do not control the prices that they sell their products at. To a large extent, the big businesses dictate the prices. After such dictation, they again dictate the terms under which they are to pay. They may suggest 90 days or 160 days as I normally hear from the Floor of the House. If they do not pay you within that 160 days and extend it to 210 days and then in the end they do not pay you at all, what happens? We need to take action to protect the SMEs. One of my colleagues mentioned that we have so many authorities. Yes, that may be so. However, if those authorities assist Kenyans, I do not have a quarrel with them. If they are there and do nothing or duplicate what others are doing, then those are different issues that we need to sort out separately in order to bring them to line. However, if Kenyans are benefitting from their services, then why should we complain of their numbers?

We need a Bill to protect those people. We need a Government that can take action to protect its people. It is the Government's duty to protect Kenyans and this Bill is working towards that. So, there is need to support the Bill. If there is any other area where somebody may amend, that is a different issue. But the purpose of the Bill is protection for the large number of our business people.

With those few remarks, I beg to support this Bill. Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us have Hon. Bunyasi.

Hon. Sakwa Bunyasi (Nambale, ANC): Thank you, Hon. Temporary Deputy Speaker. I rise to add my voice to this discussion. First, I wonder why this is really under the Competition

Authority. It sounds in many respects as a natural part of the company law. It sounds as if it should be under a regulatory arrangement for wholesaling and retailing. It covers many things. I am still not clear despite the Mover moving it and the eloquent secondment from Hon. Waihenya. Why is it under the Competition Authority?

First of all, in respect of where the Competition Authority is located... There are many important things that are going on in this country. Banks are merging, but we do not see even a single attempt to debate why the Commercial Bank of Africa (CBA) should merge with the NIC and what the implications will be. You see the Standard Gauge Railway (SGR) rudely edging out the truckers and killing competition. I do not see the Competition Authority playing its core role and so when we come with this Bill, I worry that we are in a sense derailing its capacity to do what it should be doing. It may be asleep, but there are things it ought to be looking into right now.

The relationship between the weak and the powerful; small suppliers versus big buyers with buyer authority must be tackled. Some of those might be tackled under the contract law so that laws are made that balance off this power. Remember that when you decide to sell to somebody with a possibility of recall or return with a specific period, you take a risk. In business, you must take risks. There are institutional ways of solving the weakling component of this contract. In the classic case that has been mentioned of Nakumatt, the outcome is very sad. But the solution even with the law like this in place will not have helped because this is a private contract agreement between the buyers and the suppliers.

Suppliers could have power, but they cannot have the power individually. They can have power if they are organised into an institution such as a co-operative and deal with those big corporates. I hope they now realise that Nakumatt was a domestic company and, unfortunately, it was a family company that was very badly run as a matter of fact. People knew there were a lot of problems within it and that is why they brought down an otherwise very successful company in terms of its operations. In the region, they were expanding aggressively. But they were not managing it in terms of modern corporate and financial reporting standards among themselves.

There were issues there and so, probably, one way of curing things like this is that you pick up elements of it. One of the elements that I have picked up is that companies exceeding a certain size must be forced to list or have an element of transparency that the law can penetrate and shine light through them

Secondly, it will get worse because as we liberalise the economy and internationalise it, we are getting the Carrefours and other foreign companies coming in. As they do, they bring improvements as they come. However, if they were to retreat, you can wake up one morning and find the companies no longer exist and yet you have been supplying them. That can be a real problem. I do not think this law can cure that because once they are out of our borders; there is nothing one can do. I think when negotiating terms that border on the interests of the small sellers, they must work together and create economies of scale. With the economy of scale in supply, they can negotiate with the buying company because they know if they do not behave well, they will be denied supplies. When a small buyer does not have this option, he thinks if he raises his voice, he might not be paid although he can quietly retreat, get paid and fail to supply anymore. I think this is a real issue.

Also, there are other options. The financial markets can come in to support as they do in many countries through insurance. You supply but ensure the supplies are insured. If the company defaults with the force of insurance companies seeking payments, they are likely to comply. That is because you can chase them down to their den whether they are in your country

or outside the county. The chances of recovery may be less than 100 per cent but you will have an additional force behind you. I think it is important that in our company law, we shine a torch that will look into this. Companies may be registered and when you go the registry, you do not get the beneficial owners or records on them and suddenly they disappear.

On many occasions, we have talked to the Registrar of Companies when this happens. You were supplying a company which you thought was sound, but when you go to the registry, there is nothing and they cannot get the file. Who in this day and age still keeps records in a file which can simply be misfiled a meter from where it should be and you will never get it for 100 years unless somebody does an overhaul of the filing system?

We have very many little aspects which, when brought together, will help those small buyers. There is some helplessness. For example, we had small exporters who were selling French beans to companies in Europe. Sometimes, when those companies had cash flow problems, they declared the produce was not worthy. You are in Kenya and this happens somewhere in France and you cannot follow-up. Upon ringing the embassy, they would say they do not know what you are talking about and have no idea. So, the contracting side is very important. I see the law of contract in respect to things of this nature should be dealt with.

In the presentation, a clear problem has been defined but in the solution I am not sure we have the right instruments to fix this. Whereas this is very important, I think it is important for the Movers to see which way we can gear this proposal to focus on the right institution. I do not believe it should be the Competition Authority of Kenya (CAK). We should also see if we can use other instruments like the law of contract, insurance and probably banking.

As I conclude, just like we do with banks, disclosure is extremely important. If we have certain standards or model contracts, they should contain minimum disclosure that is essential to lay bare all that needs to be done - The risks it anticipates to be incurred by the small supplier and big buyers. But the small supplier ought to know their rights and what to expect.

In banking, for example, they have to declare the various charges, rates and the effective annual rate. So, as you sign your statement, it declares that your effective annual rate will not be what was quoted as 5 or 6 per cent, but there are other charges which are annualised so that you can have some idea. Similarly, suppliers can be helped to get model contracts that will protect them more. I do not know whether this will be domesticated in the CAK or somewhere along the line under the company law.

With those few remarks, I do not support it in its current form and so, I oppose. Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well spoken, Hon. Bunyasi. Hon. Shamalla.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Competition (Amendment) Bill. This Bill attempts to cure the abuse of buyer power which falls within the mandate of CAK. Indeed, it is standard practice around the world and not just in Kenya that competition authorities are equipped with investigative powers. Of course, there are concerns in a country like ours that CAK might go to bed with the one who is abusing the buyer power.

It is for this reason we would like to see sounder amendments to this Bill. Also, they should come out extremely clear. If you look at Section 24A(4) it states:

“(4) The Authority may require industries and sectors, in which instances of abuse of buyer power are likely to occur, to develop a binding code of practice.”

We should not have the word “may” because I think this should be mandatory. It is extremely important when they use words like “imposing, reporting and credential requirements” in their regulations. The amendments to the parent Act and various sections should state as much and it will be mandatory and not to use words like “may”.

I must reiterate the fact that this is an international best practice and I support those amendments because those laws ultimately are meant for when buyer power is abused. They fall within the mandate of CAK and not within the mandate of contracts. Ultimately, it will be more about the regulations which will come from those amendments.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Osotsi.

Hon. Godfrey Osotsi (Nominated, ANC): Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to contribute to this Bill. The key objective of the amendments to the Competition Act is to deal with some ambiguities in the parent Act. For instance, to define what buyer power is in relation to abuse of dominance. But there is a lot of inconsistency in this amendment Bill.

You are well aware that, recently, we had the Speaker’s Round Table with Kenya Private Sector Alliance (KEPSA) in Mombasa. One thing which came out of this meeting was the concern by the private sector that we need to help them by harmonising the provisions of the Competition Act with the various laws dealing with the regulatory bodies. This is because there are a lot of inconsistencies around there. I want to agree with this because even in the telecommunications sector, it is regulated by CAK under the Kenya Information and Communications Act (KICA). We have many inconsistencies as to what CAK and Communication Authority of Kenya should do. For, example, at the moment, we have a big dilemma on the issue of determination of dominance in the telecommunication sector on who is supposed to handle it. Is it the Communication Authority of Kenya or CAK? So, we have a lot of inconsistencies. So, my reading of this Bill is that it will not solve the problems that we have. In fact, it is going to introduce more inconsistencies to the existing laws and to the operations of various industry regulators. Of concern is that this Bill is even inconsistent with the Law of Contract Act and even the Companies Act, especially Clause 28 (8), where it attempts to define how parties should do their contracts. It even attempts to define the terms to be included in contracts. This is against the freedom of contracting, which is protected by law. So, as much as it is trying to address the issue of abuse of buyer power, it is introducing inconsistencies that will not help in addressing the real problem.

The other issue is increased investigative powers that have been given to the Competition Authority. Whereas some colleagues have said that in other jurisdictions, Competition Authorities are given these powers, I disagree. Look at a sector like telecommunication where the Communications Authority is given similar powers to handle all issues around telecommunication. Now, you want to introduce another person to also do the same. We are going to introduce so many inconsistencies and I agree with those who are saying we are going to create a monster.

There is also the provision on reporting and prudential requirements being mandatory. In my view, this is unnecessary. This is because some organisations, depending on the sector they are in, submit returns to the relevant regulators in that sector. So, why do you want to ask them again to submit returns to the Competition Authority? I think this will be punitive and it will introduce more inconsistencies in the sector. It is going to deal with issues of restrictions even on professional associations to prevent, distort and lessen competition. The reason we have

professional associations is to maintain standards and provide quality services. However, if we are going to allow the Competition Authority to even interfere with the operation of professional associations, we will not be promoting quality outcomes from those professional associations. I think this Bill is not going to cure the problem. In fact, it is going to enhance the inconsistencies that businesses have complained about; that is, how the Competition Act is inconsistent with various other laws governing other sectors.

There is the issue of price reduction which is in Clause 24A(6)(g) where they are saying that price reduction should not be below competition levels. Which criteria are they going to use to determine this as the Competition Authority? It is so difficult for you to determine a price that is below competition levels. It is only the industry that will do that. I am also concerned that during public participation, various organisations, including Safaricom, made presentations on the proposals they wanted included in this Bill but the Committee, in its own wisdom, rejected all those proposals.

With those brief comments, I say that I will not support this Bill. Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Next is Hon. Ngugi Nduati, Member for Gatanga.

Hon. Joseph Nduati (Gatanga, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to make my contribution. At the outset, I say that I support this Bill. It is very important that we protect the small players from the big players. You know the way supermarkets operate is very unique. You will find a supplier has brought goods worth a lot of money and he has nowhere to take them. When the buyer realises that, of course, he will take advantage. We have seen it happen within supermarkets. When it comes to payments, they are usually delayed. Most suppliers in this country are not paid within the stipulated time, maybe, of 30 days. Most are paid within 90 to 150 days, which is a very long time. Sometimes, those payments are really delayed.

The big players and the supermarkets have come up with new forms of frustrating the small players. When it comes to promotions, they do not pay for it. That one is paid by the small players. Even today when you walk to a supermarket, those shelves you see used to be given by the big players for free but today you rent them. You still have to pay a worker to stock that particular shelf. If the supermarket is operating for a long time, maybe 24 hours, you have four or five workers, which is very expensive considering the profit margins. So, we need to come up with a way of how we can protect those people.

When it comes to professionals, it is important to also protect the consumer. If you look at what happens within many professional associations, they are very protective. The fees are guided by those particular professional organisations. A good example is the Board of Registrations of Architects and Quantity Surveyors, where they stipulate the fees you are supposed to pay the architect, the engineer or even the quantity surveyor. However, when you introduce competition because of the technology we have, those fees can come from 10 per cent because of technology even to 3 per cent. It is happening. So, we need to allow competition when it comes to the price and also to the ideas. Why would you pick one person especially when we talk about government projects? You can pick a particular architect and he gives you poor service. What will be your remedy? Let us allow competition.

A good example which I wanted to point out and which has really frustrated our people in the construction industry is the categorisation of contractors in this country by the National Construction Authority. They are categorised from NCA1 to NCA8, where in NCA1, you are

allowed to do works from Kshs1.5 billion and beyond. In NCA8, where the majority of our locals are, you are allowed to do works worth KShs5 million. You find there is no fair competition. It takes a local person a very long time before you are able to do those big contracts. Again, because of unfair trade practices, you find that the Chinese will come here and cheat the Government that they are going to partner with locals. We have no way of controlling this. Maybe now with this authority, they should be able to monitor what is happening in the industry. In the 70s, we used to have very many local contractors who were even able to do big jobs. Today, most of the African contractors are only doing small toilets or classrooms, which is very unfair.

The other thing I wanted to talk about is when it comes to the locals, you find that they are given small jobs worth less than Kshs5 million. The youth, Nominee 001 and his friends, are given small jobs which they are not paid for. That is why you find Nominee 001 in the same suit. It is not that he likes it, he cannot afford to buy another one.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Nduati, I thought for Hon. Sankok it is just his style. He has many of these suits. He does not have only one.

Hon. Joseph Nduati (Gatanga, JP): It is not style. It is wash and wear.

(Laughter)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Proceed.

Hon. Joseph Nduati (Gatanga, JP): Hon. Temporary Deputy Speaker, let me finish by saying that I support this Bill. It will go a long way in helping our local suppliers who have been frustrated by the Nakumatts of this country and various other organisations.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us have Hon. Mboni.

Hon. David Mboni (Kitui Rural, CCU): Thank you very much, Hon. Temporary Deputy Speaker. I support this Bill.

First, we should not shy away from creating institutions which will help the people of this country. Countries like Italy, where there are very strong institutions, change governments three times in a year, but the country is still moving. We should not shy away from creating an institution which will help Kenyans.

This amendment Bill tries to check the powers of buyers. Those powers emanate from delays in payments. Hon. Temporary Deputy Speaker, this is very serious and you know it. Many small and medium enterprises (SMEs) have closed down. People have died from stress after supplying goods and they are never paid. The buyer power does not only belong to the private sector. It also belongs to the Government. The Government alone is the biggest abuser of buyer power. County governments, the national Government and even Members of Parliament (MPs) have pending bills with the Government. This Bill tries to check that. We have cases whereby contracts have been terminated. You are threatened that your contract will be terminated simply because that person or institution has monopoly over the product you are supplying. This Bill tries to address that.

I do not know why people fear giving authority to the Competition Authority of Kenya. Initially, it used to be called the Monopoly Department in the National Treasury. We should give power to this authority to monitor the activities and ensure compliance by imposing reporting and prudent requirements between the buyer and the seller so that, that person cannot just wake up and terminate somebody's contract. That person cannot just decide not to pay and delay

payment. That is why we are saying this country has no money simply because the buyers have refused to pay pending bills. It is a very serious thing. I support this Bill.

The authority may require sectors where there is abuse of power to develop a code of conduct for doing business. What is wrong with having a code of conduct to do business? We should not fear that. People fear conducting investigations. We are not giving them power to operate like the police. They can conduct investigations in situations whereby a contract has been terminated unfairly. From there, they can give the report to other authorities to take over. I do not see why we should fear this. If we are to help the SMEs, we need to support this Bill. We may amend it later to make it a bit more comfortable for other people.

With those few remarks, I support the Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): That is the contribution from the expert and inside man who has worked with the Treasury from the origins of CAK.

Hon. Obara, you seem to be anxious to contribute. Proceed.

Hon. (Ms.) Eve Obara (Kabondo Kasipul, ODM): Thank you very much, Hon. Temporary Deputy Speaker. I have been here for quite a while. Thank you for giving me the opportunity to speak. I support the amendment to the Bill to give it teeth as opposed to what was there before.

We have heard stories of many SMEs closing shop because of circumstances that we have been listening to from the other speakers, such as frustration by the buyer. We have seen the abuse of buyer power. I am not just talking about the supermarkets that have been highlighted. We have also seen institutions like the National Youth Service (NYS) being highlighted. When they came up with a list of all the people who had not been paid, some of them were the *mama mbogas* and all those small-time businesspeople and yet, everybody else was paid. Those are the kind of people that will be protected.

This country has opened up space for women, youth and persons with disabilities to do business. We welcome that. Everybody welcomed it. But what has happened after that? We have sad stories of those companies collapsing. The proprietors of those companies have died because of stress and frustration. They have borrowed money that they cannot pay. This has been going on in our country. It is a good thing for us to come up with an institution and give it teeth so that it has investigatory powers and can even institute sanctions against some of the big companies that have put our citizens into those kinds of situations.

Those who have been given those powers - the CAK - should operate beyond reproach. That is critical. It will not be another avenue for other people to start making money from the same people that we are trying to defend.

Finally, let it not be that the special interest groups that this country has worked so hard to protect and to open space for does not again become counter-productive in the sense that it does exactly the opposite of what it is supposed to do.

I support the Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well spoken. Let us have Hon. Dennitah Ghati.

Hon. (Ms.) Dennitah Ghati (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to also support the Competition (Amendment) Bill.

Ideally, as much as we support this Bill, we seem to also have many parastatals in this country. There are so many authorities and bodies; CAK is one of the bodies. It is new. I do not think it is well-known. So many Kenyans still do not know about this body. I have a feeling that

this is a body that is yet to pick up and develop teeth as we say. That is the reason why it is seeking the teeth to bite and do this work.

This is a Bill that seeks to protect majority of our people who are generally SMEs in this country.

Our economy is largely driven by SMEs. Therefore, I strongly feel that they must be protected in this country. About 90 per cent of persons who form the SMEs that this Bill seeks to protect are majorly the persons or small companies that are protected by what we call marginalised groups in the Constitution. That is where persons with disabilities, young people and women fall. Those are usually the owners of small businesses. They are small-scale suppliers who supply our markets and build our economy. I am happy because the Competition Authority of Kenya seeks to have teeth to bite to identify when the rights of suppliers are not taken into account.

This Bill also seeks to investigate some of the companies that use their powers. We see them. Most of the counties take a year to pay suppliers. We have contractors who stay for a year without being paid by the county governments. They supply their services to the county governments but they stay for a year without being paid. Some even die and they leave their families with the burden of finding out what happened to their work. We have a body that seeks to regulate and look into the affairs of the suppliers. So, this is a very good Bill.

I support this Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Tuitoek.

Hon. Daniel Tuitoek (Mogotio, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to contribute to the Competition (Amendment) Bill. The ground of the business environment right now in Kenya is not even. I will give an example of contracts which are given to the youth and women in the construction industry. The law says that we should set aside 30 per cent of the jobs for the youth, women and people living with disability. People circumvent that particular rule by creating companies whose parent companies are big companies. However, they put the directors of the companies as youths, their children, wives or girlfriends. When they bid for those projects, they win. If you look at the many projects which we say that the youths have won, very few of them are done by them.

People circumvent the rules by creating strong companies which push others out of the market. Therefore, buyer power needs to be looked into very carefully. I know that we do not want to suppress the free market economy or free exchange and buying of goods. However, we do not want unfair practices where others use the powers they have to remove others. I know we are crying a lot about companies which are from outside Kenya. Many of us have said that many of our local companies do not get jobs to construct major roads or projects. Companies from outside the country are given those projects in preference to the local contractors. However, there is an element of quality of work. Some of the roads which are constructed by our local contractors are of low quality. Therefore, we sometimes unfairly cry that they are being pushed out while they do not perform very well. I know some of the roads which were constructed by contractors from China. They do a better job and within the contract time. Our local contractors take many months and sometimes they are unable to complete projects until we again sub-contract the same jobs. When we are looking at this particular competition, we should also examine the performance of our contractors or those who play in the market.

In the supply business, many a times, certain individuals get preferences through long-term connections with their suppliers and the new suppliers may be forced out of the market unfairly. The authority should look into this to find a way in which it protects even the young

businesspeople, the young entrepreneurs who are entering the market so that they are not pushed out by the bigger companies which are well established. We should also allow small companies to grow. The upcoming SMEs are the cornerstone of the economy of this country. We need to enable them to participate in the market.

With that, I beg to support. Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us have Hon. Mose.

Hon. Shadrack Mose (Kitutu Masaba, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to support this very crucial amendment Bill. If competition in this country is left unmanaged, you would, at the end of the day, find a lot of unfairness in it.

First of all, if you look at the influx of various multinational companies that have come to this country, you will realise that without control, the local contractors will be phased out. For example, in the construction industry, many local contractors do not have certain capacities. Therefore, if you do not handle the competition, at the end of the day, the Kenyan economy will be working for other foreign countries. The coming into play of the amendments that we are seeking to do has a lot of significance. They are ensuring that there is fairness and proper moderation. At the end of the day, the economy will grow by way of ensuring that the local contractors are not phased out.

We have small contractors who are struggling to survive in this very competitive market. While we appreciate that we should not rule out competition, there is what we call fair competition. That is ensuring that every other party in the industry is given an opportunity to apply their skills so as to grow. This buyer power is something that we need to control because if we do not, at the end of the day, the big players in the industry will take over.

Look, for example, at the supermarkets. Because of the support they enjoy, in most cases, they are able to control the suppliers and the goods that they receive. That is likely to phase out the middle level businesspeople. Nakumatt, which was a big player, was allowed to literally control the entire economy in terms of its operations and it enjoyed excess leverage over others. However, when it ran into problems, it collapsed leaving many Kenyans jobless and it owed debts to suppliers. The same thing applied to a company like Uchumi, which enjoyed a lot of leverage and support for a long time. When it faced challenges....

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Mose, you have been caught up by time. I know you have a lot to say on this, having been a practitioner in the field and knowing how dominant power and abuse of superiority in purchasing power or buyer power operates out there. So, you will have a balance of five minutes when this Order is again set down for consideration.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, the time being 7.00 p.m., this House stands adjourned until Wednesday, 20th November 2019, at 9.30 a.m.

The House rose at 7.00 p.m.