

PARLIAMENT OF KENYA**THE NATIONAL ASSEMBLY****THE HANSARD****Wednesday, 20th November 2019**

The House met at 2.30 p.m.

*[The Speaker (Hon. Justin Muturi) in the Chair]***PRAYERS****Hon. Speaker:** Proceed.**PAPERS LAID****Hon. Speaker:** The Chairperson of the Committee on Delegated Legislation.**Hon. (Ms.) Fatuma Gedi** (Wajir CWR, PDR): Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House:

The Report of the Committee on Delegated Legislation on its consideration of the following 27 Civil Aviation Regulations:

- 1) The Civil Aviation (Aircraft Accident and Incident Investigations) Regulations, 2018 (Legal Notice No. 89 of 2018).
- 2) The Civil Aviation (Air Worthiness) Regulations, 2018 (Legal Notice No. 90 of 2018).
- 3) The Civil Aviation (Safety Management) Regulations, 2018 (Legal Notice No. 91 of 2018).
- 4) The Civil Aviation (Air Operator Certification and Administration) Regulations, 2018 (Legal Notice No. 92 of 2018).
- 5) The Civil Aviation (Approved Training Organisations) Regulations, 2018 (Legal Notice No. 93 of 2018).
- 6) The Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2018 (Legal Notice No. 94 of 2018).
- 7) The Civil Aviation (Approved Personnel Licensing) Regulations, 2018 (Legal Notice No. 95 of 2018).
- 8) The Civil Aviation (Approved Maintenance Organisations) Regulations, 2018 (Legal Notice No. 96 of 2018).
- 9) The Civil Aviation (Operation of Aircraft-Helicopter) Regulations, 2018 (Legal Notice No. 97 of 2018).
- 10) The Civil Aviation (Aeronautical Search and Rescue) Regulations, 2018 (Legal Notice No. 119 of 2018).
- 11) The Civil Aviation (Units of Measurement to be used in Air and Ground Operations) Regulations, 2018 (Legal Notice No. 120 of 2018).

12) The “Civic” Aviation (Rules of the Air) Regulations, 2018 (Legal Notice No. 124 of 2018).

Hon. Speaker: Just a minute. Are you reading “civic regulations” or “civil”?

Hon. (Ms.) Fatuma Gedi (Wajir CWR, PDR): I am reading “civil”.

Hon. Speaker: It should be “Civil” Aviation and not “civic”. Yes.

Hon. (Ms.) Fatuma Gedi (Wajir CWR, PDR): Thank you, Hon. Speaker.

(Laughter)

13) The Civil Aviation (Certification of Air Navigation Service Providers) Regulations, 2018 (Legal Notice No. 125 of 2018).

14) The Civil Aviation (Operation of Aircraft for Commercial Air Transport) Regulations, 2018 (Legal Notice No. 126 of 2018).

15) The Civil Aviation (Certification, Licensing and Registration of Aerodromes) Regulations, 2018 (Legal Notice No. 129 of 2018).

16) The Civil Aviation (Instruments and Equipment) Regulations, 2018 (Legal Notice No. 131 of 2018).

17) The Civil Aviation (Aeronautical Information Services) Regulations, 2018 (Legal Notice No. 132 of 2018).

18) The Civil Aviation (Surveillance and Collision Avoidance Systems) Regulations, 2018 (Legal Notice No. 133 of 2018).

19) The Civil Aviation (Aeronautical Charts) Regulations, 2018 (Legal Notice No. 134 of 2018).

20) The Civil Aviation (Communication Procedures) Regulations, 2018 (Legal Notice No. 135 of 2018).

21) The Civil Aviation (Aeronautical Radio Frequency Spectrum Utilisation) Regulations, 2018 (Legal Notice No. 136 of 2018).

22) The Civil Aviation (Air Traffic Services) Regulations, 2018 (Legal Notice No. 137 of 2018).

23) The Civil Aviation (Radio Navigation Aids) Regulations, 2018 (Legal Notice No. 145 of 2018).

24) The Civil Aviation (Communications Systems) Regulations, 2018 (Legal Notice No. 146 of 2018).

25) The Civil Aviation (Operation of Aircraft-General Aviation-Aeroplanes) Regulations, 2018 (Legal Notice No. 165 of 2018).

26) The Civil Aviation (Meteorology Services for Air Navigation) Regulations, 2018 (Legal Notice No.166 of 2018), and

27) The Civil Aviation (Licensing of Air Services) Regulations, 2018 (Legal Notice No.167 of 2018).

Thank you.

Hon. Speaker: The Chair of the Transport Committee has placed an intervention. What is the issue, Hon. Pkosing?

Hon. David Pkosing (Pokot South, JP): Thank you, Hon. Speaker, for giving me this opportunity. Anybody listening to this annulling... I want to trust the Committee and I want ...

Hon. Speaker: Just a minute. She has talked about the paper she is going to lay. So, you may be jumping the gun.

Hon. David Pkosing (Pokot South, JP): I hope she is not going there. Thank you, Hon. Speaker. Let me wait.

Hon. Speaker: Next is Hon. Gideon Keter.

Hon. Gideon Keter: Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

Report of the 2018 International Youth Day held in the National Assembly Chamber on 12th August 2019.

Hon. Speaker: Chairperson of Public Investments Committee.

Hon. Abdullswamad Nassir (Mvita, ODM): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

Report of the Public Investments Committee on the extension of time limit to submit and publish the Central Bank of Kenya Annual Report for Financial Year 2018/19.

Hon. Speaker: Hon. Peter Mwathi, Vice-Chairperson of the Powers and Privileges Committee.

Hon. Peter Mwathi (Limuru, JP): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

Report of the Committee of Powers and Privileges on the inquiry into alleged leakage and misuse of official information, contrary to the Leadership and Integrity Act, 2012.

Thank you.

Hon. Speaker: Next Order!

NOTICES OF MOTION

Hon. Speaker: The Chair, Committee on Delegated Legislation. The Vice-Chair.

ADOPTION OF REPORT ON CIVIL AVIATION REGULATIONS

Hon. Fatuma Gedi (Wajir CWR, PDR): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Civil Aviation Regulations, laid on the Table of the House on Wednesday, November 20, 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 following twenty seven (27) Regulations:

(1) The Civil Aviation (Aircraft Accident and Incident Investigations) Regulations, 2018 (Legal Notice No.89 of 2018);

(2) The Civil Aviation (Air Worthiness) Regulations, 2018 (Legal Notice No.90 of 2018);

(3) The Civil Aviation (Safety Management) Regulations, 2018 (Legal Notice No.91 of 2018);

(4) The Civil Aviation (Air Operator Certification and Administration) Regulations, 2018 (Legal Notice No.92 of 2018);

(5) The Civil Aviation (Approved Training Organisations) Regulations, 2018 (Legal Notice No.93 of 2018);

(6) The Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2018 (Legal Notice No.94 of 2018);

(7) The Civil Aviation (Approved Personnel Licensing) Regulations, 2018 (Legal Notice No.95 of 2018);

(8) The Civil Aviation (Approved Maintenance Organisations) Regulations, 2018 (Legal Notice No.96 of 2018);

(9) The Civil Aviation (Operation of Aircraft - Helicopter) Regulations, 2018 (Legal Notice No.97 of 2018);

(10) The Civil Aviation (Aeronautical Search and Rescue) Regulations, 2018 (Legal Notice No.119 of 2018);

(11) The Civil Aviation (Units of Measurement to be used in Air and Ground Operations) Regulations, 2018 (Legal Notice No.120 of 2018);

(12) The Civil Aviation (Rules of the Air) Regulations, 2018 (Legal Notice No.124 of 2018);

(13) The Civil Aviation (Certification of Air Navigation Service Providers) Regulations, 2018 (Legal Notice No.125 of 2018);

(14) The Civil Aviation (Operation of Aircraft for Commercial Air Transport) Regulations, 2018 (Legal Notice No.126 of 2018);

(15) The Civil Aviation (Certification, Licensing and Registration of Aerodromes) Regulations, 2018 (Legal Notice No.129 of 2018);

(16) The Civil Aviation (Instruments and Equipment) Regulations, 2018 (Legal Notice No.131 of 2018);

(17) The Civil Aviation (Aeronautical Information Services) Regulations, 2018 (Legal Notice No.132 of 2018);

(18) The Civil Aviation (Surveillance and Collision Avoidance Systems) Regulations, 2018 (Legal Notice No.133 of 2018);

(19) The Civil Aviation (Aeronautical Charts) Regulations, 2018 (Legal Notice No.134 of 2018);

(20) The Civil Aviation (Communication Procedures) Regulations, 2018 (Legal Notice No.135 of 2018);

(21) The Civil Aviation (Aeronautical Radio Frequency Spectrum Utilisation) Regulations, 2018 (Legal Notice No.136 of 2018);

(22) The Civil Aviation (Air Traffic Services) Regulations, 2018 (Legal Notice No.137 of 2018);

(23) The Civil Aviation (Radio Navigation Aids) Regulations, 2018 (Legal Notice No.145 of 2018);

(24) The Civil Aviation (Communications Systems) Regulations, 2018 (Legal Notice No.146 of 2018);

(25) The Civil Aviation (Operation of Aircraft - General Aviation -Aeroplanes) Regulations, 2018 (Legal Notice No.165 of 2018);

(26) The Civil Aviation (Meteorology Services for Air Navigation) Regulations, 2018 (Legal Notice No.166 of 2018); and,

(27) The Civil Aviation (Licensing of Air Services) Regulations, 2018 (Legal Notice No.167 of 2018).

Hon. Speaker: Are they the same ones that you read out?

Hon. Fatuma Gedi (Wajir CWR, PDR): Yes, Hon. Speaker.

Hon. Speaker: Very well. That suffices.

Hon. (Ms.) Fatuma Gedi (Wajir CWR, PDR): Thank you.

Hon. Speaker: Hon. Pkosing, there is no debate at this time. This is just a notice.

Hon. David Pkosing (Pokot South, JP): Thank you, Hon. Speaker. I also want to give them notice, with your permission. Anybody listening can tell that we are crumbling and crushing entire institutions. Institutions work in form of regulations, policies and laws. Work has been done on those Regulations and resources have been spent on them. The institutions have worked on them. We need to look at it, going forward, so that we do not allow institutions to invest public funds on things that will be annulled. It will be a loss to this country.

The Committee that is doing that, having seen that, they should provide a stop-gap measure for the institutions to continue working. Parliament is supposed to facilitate the national Government to function. It is not supposed to stifle it. That is where I am coming from.

Hon. Speaker: Very well, Hon. Pkosing. The same Parliament, in its wisdom, enacted the Statutory Instruments Act in 2012 and gave provisions regarding how any regulation-making body should go about it. To argue at this point before we hear the reasons that the Committee will be advancing to support their recommendation for annulment is premature.

Hon. Fatuma Gedi, there is nothing. There is no need of raising your hand. Hon. Pkosing will be at liberty when the Motion will be before the House for debate to rise in his place as the Chair of the Departmental Committee on Transport, Public Works and Housing and advance whatever arguments under the sun that he hopes, through them, he can convince the majority of the Members of this House not to agree with the decision of the Committee to annul. So, at this point, the notice of the Motion has just been given. If it will be possible, we will have the debate commence tomorrow or anytime next week. Also, remember, under the same Statutory Instruments Act, the law provides that until any regulation-making body is required to come up with regulations, there are certain basic standards about participation by the public, which is something that we have in our Constitution. After that, it is gazetted. The requirement is that after gazette, those regulations or any form of subsidiary legislation must be laid before the House within seven days. Until such time as the regulations or such subsidiary legislation has been annulled by a resolution of the House, the regulations continue to operate. So, you wait until the House resolves one way or the other on the Motion. Those are the clear provisions.

Go and read that Act. As we speak, until the House agrees with the Committee to annul, the Regulations are deemed to be in force or, indeed, they are actually in force. But if the House resolves to annul them – remember this House makes laws – the same House will decide how to deal with those Regulations. As Regulations, they have the force of law only to the extent that they are permitted by the provisions of the Statutory Instruments Act and the parent legislation under which they have been made. That is the position. For now, let us wait. I am sure that Hon. Pkosing and some Members of his Committee may wish to convince the House tomorrow or next week not to agree with the Committee on Delegated Legislation. But, remember, you will still be required to give reasons.

If the Committee, for instance, says that the regulation-making body has violated any provision of the law in coming up with whatever proposed legislation, even if the House does not annul, it is open to any other Kenyans to approach the courts of law and cite the violation by the regulation-making body and the courts are likely to do what the House should have done, which the House already gave itself authority and power to deal with. The power to make regulations is donated within the parent law and to the extent of compliance with the Statutory Instruments Act. So, let us wait until the Motion is on the Floor and then we can hear what arguments, if any,

the Committee is going to advance. Hon. Pkosing, I am sure you may be concerned since you oversight the various organisations. Let us hear whether they have been following the law or not.

I can see several other Members have placed intervention. I hope it is not about this matter. I see Hon. Kathuri Murungi. Is it a different matter you want to intervene on?

Hon. Kathuri Murungi (South Imenti, Independent): No, Hon. Speaker, it is on the same matter because I did not want to...

Hon. Speaker: No, not on that. I expected by now you know the rules. Hon. Peter Mwathi, Vice-Chair of the Powers and Privileges Committee. Let us allow Hon. Peter Mwathi to also give his notice of Motion.

ADOPTION OF REPORT ON INQUIRY INTO ALLEGED LEAKAGE AND MISUSE OF OFFICIAL INFORMATION

Hon. Peter Mwathi (Limuru, JP): Thank you, Hon. Speaker. I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Committee on Powers and Privileges on the inquiry into alleged leakage and misuse of official information, contrary to the Leadership and Integrity Act, 2012, laid on the Table of the House on Wednesday, 20th November 2019, and pursuant to the provisions of Section 17(3)(b) of the Parliamentary Powers and Privileges Act, 2017 resolves to reprimand Hon. Fatuma Gedi for conducting herself in a manner that—

- (i) Reflected adversely on the dignity and integrity of the National Assembly and its members; and,
- (ii) Is contrary to the best interest of the National Assembly and its members, in contravention of Section 16(e) of the Parliamentary Powers and Privileges Act, 2017.

I thank you.

Hon. Speaker: The Chair of PIC.

ADOPTION OF REPORT ON EXTENSION OF TIME TO PUBLISH CBK ANNUAL REPORT

Hon. Abdullswamad Nassir (Mvita, ODM): Thank you very much, Hon. Speaker. I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Public Investments Committee on the extension of time limit to submit and publish the Central Bank of Kenya Annual Report for the Financial Year 2018/2019.

Hon. Speaker: Next Order.

ORDINARY QUESTIONS

Hon. Speaker: First Question by the Member for Embakasi East. Member for Embakasi East. Next question is by the Member for Starehe. Hon. Charles Njagua, place your card.

Question No.503/2019

OWNERSHIP STATUS OF LEARNING INSTITUTIONS IN STAREHE CONSTITUENCY

Hon. Charles Njagua (Starehe, JP): Thank you, Hon. Speaker. I rise to ask Question No.503 of 2019, directed to the CS for Education:

- (i) Could the Cabinet Secretary confirm the ownership status of the following learning institutions in Starehe Constituency, that is, whether private or public schools; namely, SSD Primary and Secondary School; Arya Primary and Secondary School; Muslim Girls Secondary School and Islamia Primary School?
- (ii) Could the Cabinet Secretary provide details on the criteria used in privatising St. Peter's Clavers Primary School in Starehe Constituency?
- (iii) Could the Cabinet Secretary further explain the circumstances under which Cutchi Guru Hindu Union (CGHU) Primary and Secondary School in Starehe Constituency has been issued with a notice of change of user from a public utility facility to a private enterprise?
- (iv) What measures is the Ministry taking to restore the ownership of parcels of land meant for public utilities and specifically for CGHU Primary and Secondary School, noting that students have been directed not to report to the school in January 2020?

Thank you, Hon. Speaker.

Hon. Speaker: The question will be replied before the Departmental Committee on Education and Research. Next question is by Nominated Member, Hon. Nasri Sabha Sahal. Sorry, the Member has written to me requesting that the Question be deferred and I have accepted the request. The question will be asked another time. So, it is deferred. The request by the Member is acceded to.

Question No.504/2019

STATUS OF CONSTRUCTION OF STALLED GARISSA-NUNO-MODOGASHE-WAJIR ROAD

(Question deferred)

Hon. Speaker: The last Question is by the Member for Samburu East, Hon. Jackson Lekumontare.

Question No.505/2019

RECLASSIFICATION AND UPGRADING OF LERATA-WAMBA ROAD

Hon. Jackson Lekumontare (Samburu East, KANU): Thank you, Hon. Speaker. I rise to ask Question No.505 of 2019 to the CS for Transport, Infrastructure, Housing and Urban Development:

- (i) Could the Cabinet Secretary state why Lerata-Wamba road was reclassified from class "C" to "rural roads" status?
- (ii) What urgent plans are there to upgrade the road to bitumen standards?

Thank you, Hon. Speaker.

Hon. Speaker: Question referred for response before the Departmental Committee on Transport, Public Works and Housing.

Hon. Mwambu.

Hon. Mwambu Mabongah (Bumula, Independent): Hon. Speaker, about four months ago, I asked a Question to the CS for Interior and, when I raised it three weeks ago, you directed the Vice-Chair of the Committee and he confirmed that in two weeks, he would provide a response. Up to date, I have not received any response on the same.

Hon. Speaker: Sorry, Hon. Mwambu. Is it the Committee on Administration and National Security?

Hon. Mwambu Mabongah (Bumula, Independent): Yes.

Hon. Speaker: Chaired by Hon. Koinange and deputised by Hon. Waluke. I see none of the two.

Hon. Mwambu Mabongah (Bumula, Independent): They have a tendency of delegating to the Members. If they are in, they can respond.

Hon. Speaker: You are waiting for minutes, Hon. Kabinga?

Hon. Josphat Kabinga (Mwea, JP): I was elected the Vice-Chair of one of the sub-committees and so, I am waiting for the minutes.

(Laughter)

Hon. Speaker: I think what appears to be happening in that Committee must be of interest now. Hon. Mwambu Mabongah.

Hon. Mwambu Mabongah (Bumula, Independent): Hon. Speaker, it is a serious concern because it is a security issue. Today, I am sure you have been watching news. Many people in my constituency are being butchered right now because of the robbery that is going on and because we do not have security personnel in some of the gazetted sub-counties and divisions. That was my question. Up to now, when I receive such a response, what do you expect me to say?

Hon. Speaker: I think you should have done it by way of private notice, Hon. Mwambu, so that they can take it seriously.

Hon. Kabinga, do you want to respond?

Hon. Josphat Kabinga (Mwea, JP): Hon. Speaker, I want to confirm to the Hon. Member that we take our work seriously. That is why we have sub-divided our team into sub-committees so as to attend to some of the questions much more promptly. I want to confirm to the Member that the issue of operationalisation of the gazetted administrative units is a major issue that we are discussing with the parent ministry and soon, people will start seeing changes.

I thank you.

Hon. Speaker: He sought a specific answer. Hon. Mabongah, were you asking about administrative units being gazetted?

Hon. Mwambu Mabongah (Bumula, Independent): Hon. Speaker, that was part of the Question. Some officers had been transferred and had not been replaced. You gave a directive which I was waiting to be responded to. A specific answer was to be given to the House.

Hon. Speaker: Let the matter be handed over to the Hon. Leader of the Majority Party to intervene. You can see the Chairman and his Deputy have chosen to do other things as opposed to respond. Maybe, the Hon. Leader of the Majority Party should take up the matter.

Hon. Aden Duale (Garissa Township, JP): First, Hon. Kabinga has to tell us how he was elected because we do not want to go back to the story of Hon. Didmus and Hon. Kaluma. I will pick it up with the Chair since he was very busy. This Committee has answered all the pending

questions. So, the only thing pending was the Supplementary Budget but next Tuesday, the Chair will bring an answer on the statement he sought.

Hon. Speaker: Very well. On Tuesday, Hon. Mwambu. I can see an intervention from the Member for Gem.

Hon. Elisha Odhiambo (Gem, ODM): Hon. Speaker, I rise on a point of order. It would appear that the ICT Department is sleeping because the screens are dark. As one of our mandates of representation, the people of Gem want to see their MP deliberate on issues of national importance. I thank you.

Hon. Speaker: I appreciate your concern, but I am aware of the slight inconvenience which is tied to the construction works happening across the road. Indeed, I think the Majority Whip and a few other officers in one of the offices up this way at the corner may have to be relocated because the contractor requires a way of ensuring that when you come from the office block, you can emerge like ants somewhere within the building. So, there is work that is happening. It is just that they interfered inadvertently with some of the cables. But the matter is being addressed Hon. Odhiambo. I can also see the Hon. Members for Endebess. You have another intervention?

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. On 7th May, I asked a Question about three schools in my constituency where students attending Form I are without any teacher from the Teachers Service Commission (TSC). The Question was forwarded to the Departmental Committee on Education and Research. Apparently, they have never called me to date. I, however, got a letter from the TSC which indicated that they were going to post the principals for the three schools in November. I became patient but, up to date, those principals have not been posted and the Committee has not followed up on this matter.

Now we are going to have Form IIs in the same schools being taught by the locals and expecting to get equal education like the rest of Kenyans within the Republic.

Hon. Speaker, this is a matter of a grave nature that I seek your guidance on. I thank you

Hon. Speaker: You had not sought for a written answer?

Hon. (Dr.) Robert Pukose (Endebess, JP): No. It was not a written answer but the TSC CEO wrote to me through one of the officers.

Hon. Speaker: That may be the reason why the Committee slowed down on the matter.

Hon. (Dr.) Robert Pukose (Endebess, JP): But I had asked for the CS for the Ministry of Education to respond to it.

Hon. Speaker: So, when you have not sought for an answer, those letters may not mean much. But anyhow, the Question still remains un-answered. It is a Question that required to be responded to orally. Where are Hon. Melly and Hon. Kimunya? Hon. Omboko Milemba, can stand in for them?

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Speaker. The Departmental Committee on Education and Research under Hon. Melly and Hon. Kimunya have had a long day meeting that is looking at the Supplementary Budget of which I believe they are still going on with.

The fact that the Hon. Member got a written document from the TSC is also good enough. The Chair must have communicated with the TSC. However, in the event that he needs to appear before the Committee and also face the TSC, it could just be because of the examinations and mostly the CEO of the TSC has been in the field. I, however, will be reporting the matter to the Chair so that we can expedite with that. I thank you Hon. Speaker.

Hon. Speaker: Good answer. Hon. Members, I thank the Member for Emuhaya. It is true some of the departmental committees have written to me seeking permission to sit as the House conducts other businesses. So, I know there are some committees which are sitting even now. Even during the morning Sitting when the House was transacting other business, there were some departmental committees which were still sitting with various cabinet secretaries and other officials from ministries going through the Supplementary Estimates.

So, it is true, indeed, that I am aware and have given permission that some of those committees that have sought permission, sit to consider the Supplementary Estimates. So, I thank the Hon. Member for Emuhaya because it is true. But he has undertaken to convey the message to the Chair of the Committee so that a response can be provided in the course of next week if possible, or any time soon.

Hon. Sankok, do you also have an intervention?

Hon. David ole Sankok (Nominated, JP): Hon. Chairman, it is as if the Hon. Member...

Hon. Speaker: Which Chair?

Hon. David ole Sankok (Nominated, JP): Hon. Speaker, I am sorry for that.

Thank you, Hon. Speaker. I just wanted to inform the House that most committees were sitting, but it is as if the Hon. Member for Emuhaya has stolen words from my mouth. We were also sitting this morning because of the Supplementary Budget. I also wanted to inform the House that the Departmental Committee on Administration and National Security answered most of its Questions, including mine.

Hon. Speaker: Is this for *bonga* points or what? In Kiswahili they say: Mazungumzo baada ya habari.

Hon. David ole Sankok (Nominated, JP): Lakini nimekupatia habari.

Thank you, Hon. Speaker.

(Laughter)

Hon. Speaker: Hujapasha Jumba hili habari yeyote kwa sababu umesema Mheshmiwa Omboko Milemba ametoa maneno kwa kinywa chako. Hicho kinywa ndicho ametoa hapo maneno.

Very well! The Hon. Leader of the Majority Party had already addressed the issue of the Departmental Committee on Administration and National Security relating to the Hon. Member for Bumula. It will be handled. For the second time, the Member for Embakasi East, Hon. Babu Owino Isaac Ongili. The Member has forgotten that when you file a Question, you need to come to the House. It cannot be asked any other way other than him coming to ask it here. He has not given leave to any other Member to ask on his behalf.

The Member for Embakasi East alongside several other Members was in a meeting with me up to a quarter past 1.00 p.m. So, I know he has been around and should be here because the others who were in that meeting with me are here in the Chamber. Well, the Member for Embakasi East not being present his Question is dropped.

Question No.466/2019

EXCESSIVE DEDUCTIONS AND CHARGES FROM SALARIES OF POLICE OFFICERS

(Question dropped)

Hon. Speaker: I wish to bring the attention of the House to the existence of a Supplementary Order Paper.

Next Order!

PROCEDURAL MOTION

REDUCTION OF PUBLICATION PERIOD FOR A SPECIFIED BILL

Hon. Speaker: The Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to move:

THAT, notwithstanding the provisions of Standing Order 120, this House resolves to reduce the publication period of the Kenya Roads Board (Amendment) Bill (National Assembly Bill No. 77 of 2019) from 14 days to 2 days.

It is good for the Members to know that in the 11th and 12th Parliaments, we passed the Kenya Roads Bill. But when it went to mediation in the other House our colleagues, based on one clause, decided they must be part and parcel of the Constituency Roads Committee. We told them in the budget allocation Kshs8.9 billion was going to the county. So, because they are senators, they would be part of the committee. That brought the stalemate and we said fine, we are ready to live with the current law. This was a very important section for the stalling of the major roads

We felt since the Bill had collapsed, the Chair and the Executive should bring this important bit of the Kenya Road Board (Amendment) Bill. It is good for the House to know this. I do not want to use harsh words but our neighbours are not good people. This is because the Kenya Roads Bill has a lot of good things and they disagreed on one clause that they want to have two members in the Constituency Roads Committee. That is the only matter that made this Bill to collapse.

Unfortunately, I do not come from Kiambu, but we choose the Senator out of goodwill as the Chair of the mediation. If we need to republish that Bill, we first need to get their concurrence. That is because Kshs8.9 billion was going to the counties and we expected the Senators to oversight that money. I want us to reduce the publication period so that the Committee starts engaging with stakeholders and before we leave, we can do the Second and Third Reading by 5th December. That is the gist of the reason.

I beg to move and ask Hon. Chris Wamalwa to second. Chairman, you know I have the discretion to choose who to second my Bills. He is the only one in leadership seated on the other side and is your senior. So, I ask Hon. Wamalwa to second.

Hon. Speaker: Hon. Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Speaker. I rise to second this Procedural Motion. It is true we burnt the midnight oil when we were debating and discussing the issue of the Kenya Roads Bill. It is unfortunate and very selfish that the Hon. Members from the other House, instead of adding value, only had selfish interests. As we move forward, we should look at the bigger picture of *wananchi* as opposed to selfish interests.

I second.

(Question proposed)

Hon. Members: Put the Question.

Hon. Speaker: Is it the mood of the House that I should put the Question?

Hon. Members: Yes.

(Question put and agreed to)

BILLS

First Readings

THE KENYA ROADS BOARD (AMENDMENT) BILL

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

(Orders for First Readings read - Read the First Time and ordered to be referred to the relevant Departmental Committees)

Hon. Speaker: Next Order!

MOTION

CONSIDERATION OF REPORT OF THE COMMITTEE OF THE WHOLE HOUSE
ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.51 OF
2017

THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Public Finance Management (Amendment) Bill (National Assembly Bill No.51 of 2017).

Amendment proposed-

THAT, the motion for agreement with the Report of the Committee of the whole House be amended by inserting the words “subject to recommittal of Clauses 8 and 36.”

Hon. Speaker: Hon. Members, this Motion is for agreement with the Report of the Committee of the whole House. So, I put the Question.

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Order, Hon. Members! Hon. Members, we are in the Committee of the whole House to consider the Public Finance Management (Amendment) Bill (National Assembly Bill No. 51 of 2017) on the re-committal of Clauses 8 and 36.

Clause 8

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have an amendment by the Chair. Chair, move your amendment.

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

THAT, clause 8 of the Bill be amended by inserting the following new paragraphs immediately before paragraph (a) —

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

(2) The National Treasury shall maintain the Consolidated Fund in Kenya Shilling or foreign denominated currency accounts to be known as the Consolidated Fund Accounts, kept at the Central Bank of Kenya and shall, subject to Article 206(1) of the Constitution—

(a) include the National Exchequer Accounts, Revenue Collection Accounts, Receipts into Domestic Debt Accounts, Overdraft Account, Special Project Deposit Accounts and any other accounts designated by the Cabinet Secretary;

(b) facilitate payment into that account or accounts all money raised or received by or on behalf of the national government; and

(c) pay from that National Exchequer Account or National Exchequer Accounts without undue delay all amounts that are payable for public services.

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

(3) The National Treasury shall ensure that no National Exchequer Account is overdrawn at any time.

(ac) by deleting subsection (4) and substituting therefor the following new subsection—

(4) Where a withdrawal from the Consolidated Fund is authorised under the Constitution or an Act of Parliament for the appropriation of money, the National Treasury shall make a requisition for the withdrawal and submit it to the Controller of Budget for approval, which request shall be made manually or electronically through a designated form prescribed by the Cabinet Secretary, provided that inter-account transfers within the Consolidated Fund Accounts shall require the Controller of Budget's approval.

(ad) by deleting subsection (5) and substituting therefor the following new subsection—

(5) The approval of a withdrawal from the Consolidated Fund by the Controller of Budget, together with written instructions from the National Treasury requesting for the withdrawal, shall be sufficient authority for the Central Bank of Kenya to pay amounts from a National Exchequer Account in accordance with the approval and instructions provided, which

approval or written instructions may be manual or electronic in a form prescribed by the Cabinet Secretary.

The reason for that is that when the amendment was done initially, there was an error in referring to the whole of sub-clause (b) in terms of deletion. So, what we are doing now is to redraft it so that we retain what is in the Bill and introduce the amendment which was done by the Committee. That is the reason.

(Question of the amendment proposed)

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

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairlady, I think what the Member has re-committed is only Section (a) because we have agreed on Section (b). It was to make sure that every three months before a general election, no procurement at the national Government and county governments can take place without the concurrence of the National Treasury. So now, what the Chairman has done is that he has now included Section (a) that talks about the various accounts and he has defined them properly.

I beg to support.

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

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairlady. I also rise to support this amendment. Of interest to me is the fact that there will be very close consultations between the National Treasury and the Controller of Budget in terms of the approval process so that for any money to be withdrawn from the exchequer accounts, the National Treasury has to consult the Controller of Budget to get the approval. This is very important and I support this amendment. Thank you.

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

(Clause 8 as amended agreed to)

Clause 36

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let us have the Chair, Hon. Limo to move his proposed amendment.

Hon. Joseph Limo (Kipekelion East, JP): Hon. Temporary Deputy Chairlady, 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 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 Chairlady, the purpose for this is to exclude the county assemblies from the requirement for approval by the National Treasury when they are opening the accounts. So, we are only introducing the words “except the county assemblies”.

(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 36 as amended agreed to)

THE OFFICE OF THE COUNTY ATTORNEY BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, we are through with the Public Finance Management (Amendment) Bill. We will do the reporting later together with the others. Now we are moving to the Office of the County Attorney Bill (Senate Bill No. 3 of 2018)

(Clauses 3 and 4 agreed to)

Clause 5

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have a proposed amendment by the Chair of the Justice and Legal Affairs Committee, Hon. William Cheptumo. Give him the microphone. He is officially on record that he is moving for the Chair.

Hon. George Gitonga (Tharaka, DP): Hon. Temporary Deputy Chairlady, I beg to move: THAT, Clause 5 of the Bill be amended in sub-clause (2) by deleting paragraph (b).

The justification is that the Committee observed that Clause 2(b) as passed by the Senate would allow people who are not advocates to be appointed as county attorneys. The problem we have with that is that county attorneys are actually very important offices that would be akin to the Office of the honourable Attorney-General. Therefore, there has to be a minimum qualification of being a lawyer. That is why we have proposed the amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Member for Kiminini, Hon. Chris, do you want to speak to this?

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Temporary Deputy Chairlady. Sir George, I remember we debated this Bill when it came from the Senate. The Senate had proposed seven years. We had Members who proposed 10 years. I listened carefully. I did not hear you mention the number of years.

Hon. Temporary Deputy Chairlady, if you do not mind, I wanted to clarify further. We were keen with the number of years and that was the bone of contention. I remember last time Members thought we should have minimum qualifications like the judge of the high court, but we opposed it. We said we want seven years because we have so many young lawyers who have

suffered and who have not had opportunities. This is what we had agreed. So, can you clarify because if it is 10 years, we will oppose. We want to retain at seven years.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Can we have Hon. Murugara clarifying?

Hon. George Gitonga (Tharaka, DP): Thank you. The amendment we have effected is to the effect that other persons, apart from lawyers, do not qualify to sit as county attorneys. We have made a consideration that the number of years will be a consideration while recruiting. So, we have opened up the position to all qualified young advocates and senior advocates, but a determination will be made by the recruiting panel as to how many years they will require.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Thank you for the clarification. I can see Hon. Chris Wamalwa nodding. Next is the Member for Emuhaya.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Temporary Deputy Chairlady. On that particular amendment, I was also here and I thought we wanted a minimum that was not too low below the threshold that would make somebody not do that work with a little bit of experience. That is why we were sticking on seven. However, from what the honourable Member is saying, he has opened the field too wide. Is that the case? May he can clarify.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): After the clarification, Hon. Chris Wamalwa wanted to pronounce himself. Let me have the member for Endebess before I get back to the Member for Kiminini.

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Temporary Deputy Chairlady, I oppose that amendment because it will be prone to abuse. The issue of people putting a minimum is because we do not want it to be abused. We want it to; at least, have a minimum of seven years so that you have experience. In most of these institutions, it also goes with seniority. In the legal profession, education profession or even in health education, it goes with seniority. We must have a minimum basic requirement. They are just opening it for abuse.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. Even with that, allow me to guide you. The Hon. Chair proposes to delete (b) which states that the county attorney should have experience as a legal practitioner, including experience in the legal academic field. We have (a) and (c). In the event that we negate (b), it will remain as it is on the Order Paper. Hon. Chair, clarify and then I give it to you to decide.

Hon. George Gitonga (Tharaka, DP): The clarification is that we have deleted (b) and have retained (a), which talks about the county attorney being an advocate of the High Court for at least five years. It is not seven years. It is now for at least five years. We have removed (b) on the experience in the legal academic field. It is now a minimum of five years experience.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, that is why I have the whole Bill with me here.

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

(Clause 5 as amended agreed to)

Clause 6

Hon. George Gitonga (Tharaka, DP): Hon. Temporary Deputy Chairlady, I beg to move:
THAT, Clause 6 of the Bill be amended -

- (a) by renumbering the existing provision as sub-clause (1);
- (b) by inserting the word “renewable” immediately before the word “term” in the renumbered sub-clause (1);
- (c) by inserting the following new sub-clause immediately after the renumbered sub-clause (1)-
 - (2) The County Attorney shall have the status and rank of a member of the county executive committee.

This is purely to renew the term of the county attorney for an extra term. We are adding the word “renewable” immediately before the words “term of six years”. The justification is that it intends to enhance the security of tenure to persons serving as county attorneys as it enables a new governor and the new Government coming in to have some form of continuity while legislating. We noted that the term of office of the county attorney is six years and that the county attorney has one year for transition and handover procedures should the new governor not want to renew his or her term for that appointment. It is renewable, but the new governor coming in has the option of whether to renew or not.

(Question of the amendment proposed)

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

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairlady, I am not so sure about the necessity of that amendment because we are creating a crisis that might be difficult to solve.

Let us develop a very typical scenario. The county attorney-general is reappointed midway or in the last year of the outgoing governor. It means that the new governor is stuck with the existing attorney-general for a period that he does not intend. Let us give latitude to the governor to hire whenever it is necessary. A governor can be mischievous and renew the term of the county attorney-general towards his last year in office. It means that the incoming governor is stuck with that attorney for the next five years.

I need your guidance. There is a second part of the amendment. I do not know whether it is part of the discussion we can have now. The amendment has several provisions. I also wanted to make a contribution to the second provision that introduces sub-clause 2. Is it in order to do so or do we first of all dispense with the first part of the amendment?

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We are dealing with the whole of it. That is okay. Let me hear the Member for Emuhaya.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): I have a second comment on the same.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): You have a comment on the second part the amendment. Please, just make your comment.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairlady, I oppose (c) because in the understanding of the drafters, the county attorney is more or less like the Attorney-General at the national level. Article 156 of the Constitution states that the Attorney-General is not a member of the Executive so to speak. Purporting to indicate that the county attorney shall have the status and rank of a Member of the County Executive Committee is literally to contravene the supreme law of the Constitution. The Committee needs to enlighten us on their thinking behind that particular provision because it would be seen from the word go

to be in contravention of the Constitution. The county attorney needs to be independent and not beholden to his colleagues in the County Executive Committee.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. Let us have the Member for Emuhaya, Hon. Milemba Omboko.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Temporary Deputy Chairlady. When discussing this Bill, we thought it fine to have the county attorney at that level to work for six years. The idea was that in the last year, the governor would leave earlier than the county attorney. Whatever happens, during the sixth year, a transition can occur. We need to give the new governor a chance to make his own undertakings within the county. Could you clarify which timeline you have for this renewal period? That is also what the previous honourable Member talked about.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Chairman, as you consult, let us have Hon. Makali. Hon. Milemba is talking about the renewal period.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairlady. I agree with my colleagues that we need to reject this amendment.

After serving for six years in a position, I do not see why we should allow for renewal. Look at all the other commissions where people serve for six years. It is only a one-term appointment and then you exit for somebody else to come in. In line with that best practice that one should only serve for one term of six years, we should reject this amendment.

On the issue of the county attorney having the status of a County Executive Committee Member, we need to be clear. Is this implying that he will be sitting in the cabinet at the county level or is it only an equivalent rank and he will not be sitting in the cabinet? If he is expected to sit in the cabinet, that will not be in line with what happens at the national level. On that note, I will reject the amendment. If it is just a matter of rank in terms of getting salaries and allowances at that level, I have no objection.

Generally, I oppose this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let us have Hon. Sankok as the last one.

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Chairlady, I concur with Hon. Makali. We should reject this amendment. Best practice is that you serve for either a renewable term of three years or a non-renewable term of six years. We cannot have an individual who serves longer than any other person in this country, including the Head of State and the governor who he will be overseeing. A governor only serves for two terms of five years each. We should reject this amendment and make it one term.

Lastly, it should be in tandem with the term of the county governments after the election so that the governor is given leeway to have his own people. The governor must have his own attorney to work with.

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Let me give the Chair the opportunity to give a clarification before I put it to a vote.

Hon. George Gitonga (Tharaka, DP): Hon. Temporary Deputy Chairlady, let me clarify. One, the introduction of the word “renewable” does not make it mandatory. It only makes it optional. If a county attorney is working well and the incoming governor or whichever governor who is in the office feels that the tenure of that person should be renewed, the law allows him to do so. Otherwise, he may not renew it and proceed to appoint a new person. It is optional.

What we are trying to introduce in sub-clause 2 is purely to state the status and rank for purposes of pecking order in the county government. The county attorney will not sit in the County Executive Committee (CEC) as a Member. It is purely to introduce the fact that he will rank amongst the Members of the CECs. That is the justification.

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): I had said that Hon. Sankok would be the last Member to contribute. Hon. Chris, since you are the Minority Leader here, I will give you an opportunity to contribute.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): I want to thank the Chair for that clarity. For purposes of independence, it is important that this county attorney should not sit in that CEC. The ranking here is for purposes of pecking order in the organisational structure. This is important. Even the Attorney-General we have currently enjoys that pecking order of a Cabinet Secretary (CS). When we go for functions, he sits with the other CSs. To bring order, I agree with the Chair. It is just for purposes of ranking, but he will not sit in the CEC. This is what we agreed on with Hon. Oundo. Those are the issues which were raised. He has clarified that the county attorney will not be sitting in the CEC at the county level. The purpose of independence here is not compromised. It is for purposes of pecking order in the organisational structure, which we support.

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Very well. With that Hon. Members, you recall that we passed a law in the House that equated the status and ranking of the Attorney-General to the CS. With that informed debate, I move to put the Question.

(Loud consultations)

(Several Hon. Members interjected)

Order Members! I can see some Members making some signs. Allow me to put the Question.

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

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Yes, Hon. Chris.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): We need to vote differently because some of us agree with the first amendment that the term of the county attorney should not be renewable. From what the Chair explained on the second part of the amendment, the voting should be separated.

(Loud consultations)

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Order, Members. Order, Hon. Chris. We will put the Question to Clause 6 (1) and then we move to Clause 6 (2).

*(Question, that the word to be inserted be inserted,
put and negatived)*

*(Hon. Makali Mulu, Hon. (Dr.) Wilberforce Oundo
and Hon. David ole Sankok made some signs)*

Hon. Makali, Member for Funyula and Hon. Sankok, I can see that you are making some signs. I do not know what you are trying to do. Are you mobilising the Members to vote in a certain way?

(Clause 6 as amended agreed to)

(Clauses 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 agreed to)

Clause 20

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Chair, please move your proposed amendment.

Hon. George Gitonga (Tharaka, DP): Hon. Temporary Deputy Chairlady, I beg to move: THAT, Clause 20 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause-

(2) The Attorney-General may, from time to time by notice in the Gazette, amend the Second Schedule.

The justification is that this amendment proposes to give further effect to the amendment to Clause 2 of the Bill which we will deal with. The Attorney-General replaces the respective CS as the implementing agency of the Act. The Bill from the Senate states the CS as the implementing agency. Unfortunately, we do not have any CS who is in charge of legal matters today. We have the Attorney-General. This is why we have made a proposal to replace the CS with the Attorney-General. We will also amend the next clause plus the definition of who should be in charge. I move that we effect that amendment.

(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 20 as amended agreed to)

(Clauses 21, 22, 23, 24, 25, 26, 27 and 28 agreed to)

Clause 29

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Move your amendment, Chair.

Hon. George Gitonga (Tharaka, DP): Hon. Temporary Deputy Chairlady, I beg to move: THAT, Clause 29 of the Bill be amended by deleting the expression “Cabinet Secretary” and substituting therefor the expression “Attorney-General”

The justification is that, again, we are removing the term “Cabinet Secretary” and we are replacing it with the Attorney-General. This is purely to bring order into the Bill. Where the CS is supposed to make regulations, that duty will be done by the Attorney-General.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): I see no interest to speak to this amendment. The Member for Funyula, do you want to speak to this proposed amendment?

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): No.

*(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 29 as amended agreed to)

(Clauses 30 and 31 agreed to)

(First and Second Schedules agreed to)

Clause 2

Hon. George Gitonga (Tharaka, JP): Hon. Temporary Deputy Chairlady, I beg to move: THAT, Clause 2 of the Bill be amended by deleting the definition of the term “Cabinet Secretary” and substituting therefor the following new definition-

“Attorney-General” means the Attorney-General appointed under Article 156 of the Constitution;”

This is a proposal to delete the term “Cabinet Secretary” and substitute it with “Attorney-General” as the person to be appointed under Article 156 of the Constitution. Again, it is to bring order to the Act so that when it comes to the person liable to act under that particular law, we know it is the Attorney General and not a Cabinet Secretary because we do not have one who is dealing with matters of justice.

I beg to move.

(Question of the amendment proposed)

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Hon. Temporary Deputy Chairlady, for purposes of consistency and removing ambiguity, I agree with what Hon. Sir George has proposed. In the absence of a substantive Cabinet Secretary in charge of constitutional matters, to remove ambiguity and bring order, it must be specified that the Hon. Attorney General will be the one responsible for that particular matter.

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 2 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, we are through with the Committee of the whole House on the Office of the County Attorney Bill (Senate Bill No.3 of 2018). As I had said, we will do reporting together with other Bills.

Let us now consider the Petition to County Assemblies (Procedure) Bill (Senate Bill No.22 of 2018).

THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL

(Clauses 3 and 4 agreed to)

Clause 5

Hon. George Gitonga (Tharaka, JP): Thank you, Hon. Temporary Deputy Chairlady. I stand in for Hon. Cheptumo.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 5 of the Bill be amended-

(a) by deleting sub-clause (3) and substituting therefor the following new sub-clause-

(3) The relevant county assembly committee may, when considering the petition-

(a) invite the petitioner to clarify or submit such further information as the committee may consider necessary; and,

(b) make a site visit if it is deemed necessary to do so.

(b) by deleting sub-clause (4) and substituting therefor the following new sub-clause-

(4) The relevant county assembly committee shall respond to the petitioner by way of a report addressed to the petitioner and tabled in the county assembly and no debate on or in relation to the report shall be allowed except on the recommendation of the chairperson of the committee and with the approval of the speaker.

(c) in sub-clause (5) by inserting the words “relevant committee or the” immediately after the words “decision of the” when they first appear.

Hon. Temporary Deputy Chairlady, as regards Clause 5(3), the Bill makes it mandatory to hold public hearings whenever a petition is taken to the county assembly. It is that mandatory

nature of the Bill that we intend to change so that we give the committee discretion as to whether the petitioner is to be invited to make a submission or not.

As it happens in this House, not all petitions that are brought here have to be considered when the petitioner is present. Sometimes, petitions are straightforward matters. In some instances, they are outrightly frivolous, vexatious and are dismissed. The discretion that we have here is a discretion we are taking to the county assemblies.

We have an amendment to clause 5(4). It is after observing that the provision in the Bill as passed by the Senate allows county assemblies to debate committee reports on a petition and approve, vary or reject the findings and recommendations of the committee. This is in stark contrast with the current procedure of consideration of petitions in the National Assembly, where a debate on a committee's report can only be done in exceptional circumstances as may be allowed by the Speaker under Standing Order 227(2). The Committee observed that matters of debate should be restricted to Motions, Bills and other matters where decisions of the House are binding as per the established parliamentary practice in democratic societies. Under the Bill, they are saying that every report, be it a rejection, an amendment, a variation or any other recommendation, must come to the House and be debated upon.

The standard practice even in this House - from which they have borrowed this Bill - is that it is only what the Speaker allows for debate that comes here. Otherwise, you have to debate Motions, Bills and other matters. To save the county assemblies' time, let them debate what the Speaker rules to be necessary for debate.

Clause 5(5) is a consequential amendment after effecting amendment to clause 5(4), which empowers the relevant committee of the county assembly to make a final decision in a petition – which is what we do. Once a committee of this House makes a decision, its report is tabled and the Speaker rules whether it is to be debated or not. That decision is most times final. We want to export this practice to the county assemblies, where a committee sits, considers a petition and the decision thereon is final.

Those are the proposed amendments to Clause 5.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): I see the Member for Kiminini.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Temporary Deputy Chairlady. I rise to support the amendments as per the Order Paper. Whatever is done in the National Assembly is cascaded down to the county assemblies. Article 119 of the Constitution says that every Kenyan has a right to petition Parliament. Sub-Article (2) dictates that Parliament shall legislate a procedure. Hon. Sir George is trying to put across that procedure.

So, I support.

In addition, not all Petitions should come to the Floor of the House. You can imagine the number of Petitions that come here going to the House Business Committee to be considered on the Floor of the House. This House will be overworked. So, we leave it at the discretion of the Speaker to see which ones are important. We cannot allow every petition...

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order! Hon. Member for Igembe Central, is it a point of order on Hon. Chris Wamalwa? Let me hear it.

Hon. Kubai Iringo (Igembe Central, JP): Yes, please. Is the Hon. Member in order to refer to somebody who is not known to us here? I do not know any Member of Parliament (MP) called Sir George. We need to use the official names so that we know who is being referred to.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): I agree with you. If he is a Sir, you should tell us who Sir George is. Hon. Chris Wamalwa, who is Sir George? I also need to know him.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): You know... Anyway, his name is George. He is an honourable Member aka Sir George.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You said, 'aka Sir George.' That is Hon. Murugara. Very well. Carry on.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you.

When it comes to petitions, we have seen some people bring petitions which are frivolous, just for the sake of busybodies coming to waste time. When a petition comes before the relevant committee, that committee has to examine it. Indeed, if it cannot meet the threshold, there is that aspect of it being frivolous. The petition can be dismissed, even at the committee level. This is what happens at the National Assembly and it is cascaded down to the county assemblies. Again, they may visit the site.

A petition may be concerning environmental issues most of the time. It may be about a certain factory polluting rivers or it could be about dumping sites. The relevant committee may decide to visit that site. It might be of importance. We have seen this even in courts. Magistrates and judges visit sites. Though he never talked about that, I thought it is something very important to consider when they are looking at the nature of a petition. The Committee is free to decide whether or not to go and visit the site for purposes of collecting evidence.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let me have the Member of Kitui South.

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Thank you, Hon. Temporary Deputy Chairlady.

I support this amendment by the Chair that it should not be mandatory for the petitioner to be invited. The Committee can make a decision without having to invite.

Two, on visitation of the site, I believe we can also allow a committee to make a decision whether it is important or not.

In terms of debate, we even have some reports that are brought here just for noting. I believe they are also picking from the National Assembly. I support that. For the committee to make a final decision on this, it is important for the committee that has interacted with the matter to be given authority to make a decision.

The Temporary Deputy Chairman (Hon. Christopher Omulele): It says "may".

The last one is the Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): In principle, I support the amendments brought by Sir George.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Order! You are out of order! Hon. Members, you may call yourselves those names when you are out there looking for votes. For purpose of record of the Parliament, we have no Sir George. We have Hon. George Murugara aka Sir George. You know the media can start referring to him "Sir George". You will never know who that is.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you Hon. Temporary Deputy Chairlady for that clarification.

I support the amendment, but I request him to make some minor amendments on 5(b) (4) such that that discretion is not left to the Chair of the relevant committee rather it should be by resolution of the relevant committee. That is because, the way it is framed, the Chair can unilaterally, on his or her own volition or accord purport to make a determination without the resolution of the relevant committee. The report belongs to the relevant committee; it is generally in order just like we do here in the House. It is an adoption list. A report cannot be tabled unless a certain number of Members of that Committee have sat and approved a resolution to table the same.

I am requesting him, now that he has vast experience in law and a close association with the British people - that is where he got his aka - to reconsider amending so that it is by the resolution of the relevant committee instead of the chairperson of the committee.

Thank you, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let me give it to the Chair, if he is convinced.

Hon. George Gitonga (Tharaka, DP): May I kindly know exactly what is being referred to.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): It is sub-clause (4) which reads:

“The relevant county assembly committee shall respond to the petitioner by way of a report addressed to the petitioner and tabled in the county assembly and no debate on or in relation to the report shall be allowed except on the recommendation of the chairperson of the committee and with the approval of the speaker.

What I am saying is, instead of the recommendation of the chairperson, it should be a resolution of the relevant committee which is, of course, conveyed by the Chair on the Floor of the county assembly.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): As he replies to that, I thought these provisions already exist in the Standing Orders of the county assemblies. I am sure the chairperson does not work alone.

Hon. George Gitonga (Tharaka, DP): I do not have any problem with the proposed clarification made to this. To me, it does not really make a difference because the Chair does not take the decision on its own, it is collective. It is the Committee which does it. The Chair simply does the communication. So, this is a communication by the Chair.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Who do you want to inform, Hon. Chris Wamalwa?

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): I want to inform “Sir G” and also my brother here, Hon. Member for Funyula.

In the Standing Orders, the concerns of Hon. Oundo are genuine. It is true. You can have a rogue Chair. We had this issue in the Departmental Committee on Defence and Foreign Relations in the last Parliament. He can just come and impose. When you look at our Standing Orders, it is specified that the Chair can only communicate the resolutions of the Committee. So, even the Standing Orders, which I am sure, are in the county assemblies, it shows clearly that whatever the chairperson says then that is the resolution of the committee. I agree with those concerns because it has happened before.

When you look at our Standing Orders, it is stated clearly that whatever the Chair communicates, that must be the resolution of the Committee and not his own.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We also have the means of removing rogue Chairs. I want to put this to a vote. Do you want us to put the Question to 5(b (3), (4) and (5)?

Yes, Hon. Member for Emuhaya.

Hon. Omboko Milemba (Emuhaya, ANC): I want to support the Chair and Hon. Chris Wamalwa that, when making laws, there are categories under which you can make laws. At the level where we are making this law, there will be no need of going into the fine details of how the Chair will be operating because that can be taken over by the Standing Orders of those assemblies. I would really plead with Hon. Oundo and the Chair, who is also a lawyer, that doing that will be engaging in nitty-gritties and we should not go to that level.

Thank you, Hon. Temporary Deputy Chairlady.

*(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 5 as amended agreed to)

(Clauses 6 and 7 agreed to)

(Schedule agreed to)

(Clause 2 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, we are through with the Committee of the whole House on the Petition to County Assemblies (Procedure) Bill (Senate Bill No.22 of 2018) awaiting reporting. So, we are moving to the next Bill in the Committee of the whole House, which is the Early Childhood Education Bill (Senate Bill No. 26 of 2018).

THE EARLY CHILDHOOD EDUCATION BILL
(SENATE BILL NO. 26 OF 2018)

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

Clause 8

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have a proposed amendment from the Chairperson, Hon Sabina Chege. She is officially represented by Hon... I am sorry. It is the able Chair.

Hon. Melly, please move the amendment.

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I am the Chairman of the Departmental Committee on Education and Research and not Departmental Committee on Health.

I beg to move:

THAT, Clause 8 of the Bill be deleted and substituted with the following new clause:

- Duty of head teacher.
8. (1) Where a learner admitted in an education centre fails to attend the education centre, the head teacher shall, in collaboration with the village administrator, cause an investigation of the circumstances of the learner's absence from school.
- (2) Where the head teacher finds that there are no reasonable grounds for the learner's failure to attend school, the head teacher shall—
- issue a written notice to the parent of the learner requiring that parent to comply with the provisions of this Act; and
 - submit a report on the learner to the County Education Board.
- (3) A parent who without reasonable cause and after a written notice from the head teacher, fails to comply with a notice under subsection (2) commits an offence and shall be liable, on conviction, to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding one year, or to both.

The reason is that the amendment seeks to conform to the term “learner” as used in the various legislations in the education sector. The amendment also serves to ensure similar penalty to a parent or guardian in respect to the offences or failure to take a child to school as well as failure to comply with notice from the teacher to ensure the attendance of a child in school. All the offences are similar and, therefore, they should attract the same penalty. I am moving this to ensure that the terms used in the Bill cut across, not changing from learner to pupil and later on penalties change, yet the offence is the same.

(Question of the amendment proposed)

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

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairlady, while the intention to enforce attendance in school is clear, I find Clause 8(1) to be onerous and cumbersome on the head teacher. Requiring the head teacher to go into people's homes to find out why kids have not gone to school is redefining the job description of the head teacher to become a social worker and a child welfare officer combined in one person. That is onerous, cumbersome and difficult to enforce. You can imagine in a village administrative unit where we have got tens of thousands of homesteads, asking the head teacher to go to each and every one of them or for those who have been absent is, honestly speaking, not reasonable; we are not being realistic. It is unfortunate and a waste of resources to legislate that which you cannot enforce. The Committee, through the Chair, needs to relook at it and come up with statements that are achievable and doable instead of putting in what cannot be done.

Thank you.

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

Hon. Tim Wanyonyi (Westlands, ODM): Hon. Temporary Deputy Chairlady, I agree with Hon. Oundo's sentiments on the same. We will be over burdening the head teacher with this kind of provision. The Chair can look into it and find a way of recrafting it.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Are you through Hon. Member for Westlands?

Hon. Tim Wanyonyi (Westlands, ODM): Yes, Hon. Temporary Deputy Chairlady,

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Member for Kitui South, you have the microphone.

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Thank you, Hon. Temporary Deputy Chairlady. I would like to support the position of the Chair. Since this is not just a school, but an education center, the head can take the responsibility to make sure that children go to school. That is not too much. It is something that the head teacher can do. As a responsible member of the community, to ensure that all children attend school, it will not be too much to ask from our head teachers.

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

Hon. Nicholas Mwale (Butere, ANC): Thank you, Hon. Temporary Deputy Chairlady. I tend to agree with my brother Hon. Oundo that, even if we are referring to the head of an institutional center, it will be tricky for a person who does not possess power to try and command parents or families to take their kids to school.

In Butere, where I come from, I have had meetings with chiefs and assistant chiefs and we are reinforcing that using them. If we find out that your kids are not going to school, the assistant chief or chief will come to your home and ask for reasons why they did not attend school. Therefore, I propose an amendment we use the presidential administration to do that rather than the head teacher.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): I will give the last opportunity to the Member for Emuhaya. On the Order Paper the proposed amendment reads:

“...in collaboration with the village administrator ---”

Hon. Omboko Milemba (Emuhaya, ANC): Hon. Temporary Deputy Chairlady, whereas the fears of the Members – including Hon. Oundo's – seem to be sentimental in terms of the burden that is given to the head teacher, in the education system, the head teacher, especially of an ECD center, is an instrumental person. He should have direct connection with the community around. These are young kids. So, the head teacher will initiate the process of finding out where a student is and then collaborate with the leadership – the way Hon. Tindi has put it – to bring back these learners to school.

Hon. Nicholas Mwale (Butere, ANC): On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): There is nothing out of order Hon. Member for Butere. What is it?

Hon. Nicholas Mwale (Butere, ANC): Hon. Temporary Deputy Chairlady, I just want to correct my brother, Hon. Omboko. Nowadays we have a delocalisation policy and, therefore, you

cannot say that the headteacher is someone who is connected to the community. We have teachers who come from the Coast region and they are posted in Busia.

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Hon. Mishi and then I will hear you, Hon. Omboko. This is a House of debate.

Hon. Omboko Milemba (Emuhaya, ANC): Hon. Temporary Deputy Chairlady, I would like to clarify. This is ECD; it is not primary or secondary education.

Thank you.

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): You are making the Member for Emuhaya look like he is the chairman to whom the clarification is directed. He has already clarified.

Hon. Mishi, just your comment.

Hon. (Ms.) Mishi Mboko (Likoni, ODM): Thank you, Hon. Temporary Deputy Chairlady. I want to support the amendment by the Chair. You remember just the other we said that we need 100 per cent transition of children in schools. If we need that, then we need to ensure that those who are in ECD must attend to those schools. I want to tell my colleagues who are not supporting this amendment that it is very easy to ensure that the children who come to centres like these ones can be counted, the structures and their caretakers can be known and they can have some prefects. They should have so many structures to ensure that the children attend school; and if they do not attend, there is a mechanism to know why they have not attended. For us to ensure transition of children in school up to secondary, we need to start from ECD.

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Members, this is a long Bill. I am sure you will all have some point to speak to it. Let me put the Question on Clause 8.

*(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 8 as amended agreed to)

Clause 9

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move: THAT, clause 9 of the Bill be deleted and substituted with the following new clause—

Children
with
special
needs.

9. (1) The county executive committee member shall put in place such infrastructure as may be necessary to ensure that children with special needs have access to, and are provided with early childhood education.

(2) In performing the functions under subsection (1), the county executive committee member shall—

(a) ensure that screening tools for early identification of children with special needs and disabilities are developed and distributed for use;

(b) ensure early identification, assessment and interventions of children with

- special needs and disabilities;
- (c) ensure training of personnel working with children with special needs and disabilities on use of screening tools for early interventions;
 - (d) facilitate development of programmes for training and professional development for all pre-primary education providers and personnel in special needs education;
 - (e) ensure that children with special needs and disabilities have equal access to recreational sporting facilities within and outside pre-primary school programmes to nurture talents;
 - (f) ensure that teachers and other staff in integrated pre-primary schools plan and implement an integrated individualised education programme for the purpose of monitoring the progress of an individual child with special needs and disabilities;
 - (g) liaise with other professionals and stakeholders to provide psychosocial support to children with special needs and disabilities;
 - (h) facilitate provision of teacher aids to pre-primary schools to support teachers handling children with special needs and disabilities; and
 - (i) ensure that children with special needs and disabilities are provided with any other necessary support.

Hon. Temporary Deputy Chairlady, the amendment seeks to ensure that the Bill is aligned with the provisions of the Basic Education Act (No.14 of 2013) that makes reference to children with special needs. Further, the amendment seeks to provide for the specific measures that shall be taken by the MCEC to ensure that children with special needs have access to ECD education. As indicated in Clause 9 (1), the MCEM shall put in place such infrastructure as may be necessary to ensure that children with special needs have access to, and are provided with, ECD education. In some counties, this has not been provided. The Bill seeks to ensure that special needs, as an entity in the Ministry of Education, is aligned from secondary all the way to ECD education.

Thank you.

(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 9 as amended agreed to)

(Clauses 10, 11, 12, 13 and 14 agreed to)

Clause 15

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Chair, move your proposed amendment.

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 15 of the Bill be amended—

(a) in sub-clause (1), by deleting the expression “or is likely to meet”; and,

(b) in sub-clause (3), by deleting paragraph (b).

The amendment seeks to eliminate any ambiguity that may arise in the interpretation of what amounts to the term ‘is likely to meet’. There is an ambiguity on that issue. We have to be certain on issues of law.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): The Member for Sirisia, do you want to speak to this proposed amendment?

Hon. John Waluke (Sirisia, JP): Hon. Temporary Deputy Chairlady, I rise on a point of order under Standing Order 35.

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): Order! Order! I can see. Just a moment. The Leader of the Majority Party. Hon. Waluke, I cannot even hear you. Let us continue. He was not ready to speak to the proposed amendment.

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

(Clause 15 as amended agreed to)

Clause 16

The Temporary Deputy Chairlady (Hon. Jessica Mbalu): I see a proposed amendment by the Chair.

Hon. Julius Melly (Tinderet, JP): I thank you, Hon. Temporary Deputy Chairlady. I beg to move:

THAT, clause 16 of the Bill be deleted and substituted with the following new clause—

Review of

registration. 16. (1) As soon as practicable after provisionally registering an education centre under section 15, the County Education Board shall inform the County Executive Committee member of the provisional registration.

(2) The County Executive Committee member shall cause the county early childhood quality assurance committee to review any education centre that is provisionally registered under section 15 either—

(a) between six and twelve months after the provisional registration of the education centre or proposed education centre; or

(b) a period earlier than that specified in paragraph (a) if in the opinion of the County Executive Committee member, a shorter time is necessary.

(3) The County Executive Committee member shall cause a further review of an education centre to be conducted upon the request of the County Education Board.

(4) The County Executive Committee member shall submit the findings of a review under this section to the County Education Board and to the head teacher of the education centre for implementation.

(5) The findings submitted under subsection (4) shall include—

(a) information on whether the education centre meets the criteria for registration as an education centre; and

(b) information on the areas where improvement is required, if it does not meet the criteria.

This concerns a review of the ECD centres. This is actually a very comprehensive review. The amendment seeks to ensure that the review of provisional registration is done by the county early childhood and quality assurance committee instead of having the review conducted by the MCEC acting alone. This is necessary for purposes of accountability. We have brought in the quality assurance committee, not the MCEC, which has been indicated in the Bill. So, we want the committee to have a comprehensive report and table as per registration of schools, which is in order.

I thank you.

(Question of the amendment proposed)

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

Hon. Nicholas Mwale (Butere, ANC): Thank you, Hon. Temporary Deputy Chairlady. I rise to support the amendment. You will find that registration of ECD centres mostly affects the local communities. Therefore, if you leave it at the county executive level, it becomes very tricky for the county executive committee to know the exact locations and needs of that community. If we take it back to the committee the chairman has proposed, it will be easier for the committee to know the real needs of that area. Therefore, I support the amendment.

Thank you.

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

Hon. Tim Wanyonyi (Westlands, ODM): Hon. Temporary Deputy Chairlady, I support the amendment especially on the issue of the county executive committee that shall cause the quality assurance committee to review registration. This is quite critical to check the quality and ensure there are sufficient prerequisite requirements to manage the center.

Hon. Temporary Deputy Speaker sometimes we have people doing business coming up with things. So this is quite important.

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

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

(Clause 16 as amended agreed to)

(Clauses 17, 18 and 19 agreed to)

Clause 20

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Chair, move your proposed amendment.

Hon. Julius Melly (Tinderet, JP): Thank you, Hon. Temporary Deputy Chairlady. I beg to move:

THAT, clause 20 of the Bill be amended—

(a) by deleting sub-clause (1) and substituting therefor the following new sub-clause—

“(1) The board of management shall not change the location of the center nor acquire additional premises for the purpose of running the education center unless it has applied to, and obtained the approval, of the County Education Board.”

(b) in sub-clause (3) by deleting the words “head teacher” and substituting therefor the expression “board of management”

The import of this is that the amendment seeks to ensure that the board of management of an educational center shall be vested with the mandate of notifying the county education board of any change or acquisition of premises in line with the functions of the board of management as provided in Clause 31 of the Bill. This is to stop nomadic kind of ECDEs. As it is currently, an ECDE center can wind up in one corner and move to the next. This Bill seeks to stop that. An ECDE centre should be easily located and also granted certification based on the premises where it is operating from.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Member for Funyula, you know we have to propose the Question.

(Question of the amendment proposed)

Woman County Member of Parliament for Baringo.

Hon. (Ms.) Gladwell Cheruiyot (Baringo CWR, KANU): Thank you Hon. Temporary Deputy Chairlady. I support the Chair on the amendment. On the ground, when people change the premises for their ECDE schools some are so bad that you cannot even think that anybody’s child can stay there. So, if there is going to be notification and then the schools are checked, that will be very good. I support the amendment and I know it is going to work for our schools.

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

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): I support the amendment, but I am just wondering how do we enforce and support the learning of ECDEs in pastoralist communities, if we implement this provision?

Secondly, there could have been a neater way to do it. Since you have to notify and seek approval of the County Education Board. Is it not fair to require that the County Education Board should have a timeline in which to respond to applications otherwise it will drag on forever, and if there is any business rivalry the County Education Board can just decline or not give approval forever? It is just a matter of tidying it up. Otherwise it is a good idea except for those two issues, that is, of pastoralist communities and the undue delay by the County Education Board to make a decision. I thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. It is a House of Debate. Hon. Members for Lugari.

Hon. Ayub Angatia (Lugari, ANC): Thank you. I just wanted to correct my brother from Funyula. Currently even in the nomadic areas we have mobile primary schools. They can even create mobile ECDE centres. The Bill is correct in establishing the board which will have the mandate to create mobile learning centres.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): So, you support the amendment apart from correcting your brother?

Hon. Ayub Angatia (Lugari, ANC): Yes

*(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 20 as amended agreed to)

(Clauses 21 and 22 agreed to)

Clause 23

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Chair, move your proposed amendment.

Hon. Julius Melly (Tinderet, JP): Thank you, Hon. Temporary Deputy Chairlady. I beg to move:

THAT, clause 23 of the Bill be amended—

(a) in sub-clause (1) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) the head teacher of the education centre has breached or is breaching his or her statutory duties in relation to the education centre under this Act or any other written law;”

(b) in sub-clause (2) by deleting the word “pupil” appearing in paragraph (b) and substituting therefor the word “learner”.

The amendment is necessary for the purpose of correcting a grammatical error. The amendment also seeks to conform to the term “learner” as used in the various legislations within the education sector. This is, therefore, to correct issues of grammar and align the Bill on the use of the learner alone and not of the people.

(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 inserted, put and agreed to)*

(Clause 23 as amended agreed to)

Clause 24

Hon. Julius Melly (Tinderet, JP): Thank you, Hon. Temporary Deputy Chairlady. I beg to move:

THAT, clause 24 of the Bill be amended—

- (a) in sub-clause (1) by deleting the word “pupils” appearing in the opening sentence and substituting therefor the word “learners”; and
- (b) in sub-clause (3) by deleting the word “pupils” appearing in paragraph (a) and substituting therefor the word “learners”.

The amendment seeks to conform to the term ‘learner’ as used in various legislations within the education sector. It is trying to ensure that the word ‘learner’ is used at the ECDE level to the secondary school level.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Member for Westlands. You want to comment on this?

Hon. Tim Wanyonyi (Westlands, ODM): Hon. Temporary Deputy Chairlady, I had wanted to speak to the earlier one but I still support the amendment. Just clean it up.

(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 24 as amended agreed to)

Clause 25

Hon. Julius Melly (Tinderet, JP): Thank you, Hon. Temporary Deputy Chairlady. I beg to move:

THAT, clause 25 of the Bill be amended—

- (a) in sub-clause (1) by deleting the word “are” appearing in paragraph (b) after the word “centre” and substituting therefor the word “is”;
- (b) in sub-clause (2)—

- (i) by deleting the words “head teacher” appearing in paragraph (b) and substituting therefor the expression “board of management”; and
- (ii) by deleting the words “head teacher” appearing in paragraph (c) and substituting therefor the expression “board of management”;

The amendment is necessary for purposes of correcting a grammatical error. It also seeks to ensure that the board of management of an education centre, and not the head teacher, shall be responsible to the County Education Board for ensuring that the education sector is maintained. This is in line with the functions of the County Education Board as provided in the Basic Education Act

No. 14 of 2013 to collaborate with the Board of Management in the management of basic education schools.

Actually they had indicated that the head teacher is the one to answer issues on boards of management, but in this case we have replaced the head teacher with the board of management.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): I see no interest in this and therefore, I move 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 25 as amended agreed to)

(Clause 26 agreed to)

Clause 27

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Chair, please move your amendment.

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 27 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause—

“(2) A public education centre shall not be converted to a private education centre or to any other private status without consultation with the County Education Board and approval by the County Executive Committee member.”

This amendment seeks to allow the conversion of early childhood education centres from public status to private status; but only after consultation with the County Education Board, and the approval by the County Executive Committee Member.

This seeks to align the Bill with the provision of Section 43(2) of the Basic Education Act No.14 of 2013 which provides that a public basic education institution shall not be converted to private basic education institution or to any other private status without consultation with the National Education Board and approval by the Cabinet Secretary. This is to align it with other clauses in the education sector.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Member for Funyula, do you wish to comment.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairlady, I support. I want to draw the attention of the Chair and the Committee on the following. That it

presupposes that public education centres sits on public land. Conversion of public land to private land is governed by section 9 of the Land Act No.6 of 2012 and that is a mandate given to the National Land Commission (NLC). I do not know how they will abrogate that authority to the county assembly or County Executive Member and the County Education Board by-passing a constitutional body known as the NLC. Probably, this is a matter they need to tidy-up because again we see a serious challenge in law.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): The last one Member for Likoni, just a comment.

Hon. (Ms.) Mishi Mboko (Likoni, ODM): Thank you, Hon. Temporary Deputy Chairlady. I just want to support the Chair on this issue. We have seen very many public education centres changing to private education centres without proper consultations or guidance in law. This is in order because we are putting some measures so that this can be done according to the law and in consultation with the relevant authority.

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)*

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Order Chair! You seem to be distracted by Hon. Members. I am putting the Question to Clause 27.

(Clause 27 as amended agreed to)

Clause 28

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Chair, move your proposed amendment.

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 28 of the Bill be amended by deleting sub-clause (4) and substituting therefor the following new sub-clause—

“(4) notwithstanding the generality of subsection (2), the role of the sponsor under subsection (1) shall be to—

- (a) participate and make proposals for the review of syllabus, curriculum, books and other teaching aids; and
- (b) offer financial, infrastructural and spiritual support to the education centre.

The amendment seeks to ensure that the role of the sponsor of an educational centre shall not be to make recommendations for curriculum review.

Actually, this is very good.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): I see no interest to speak to this.

*(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 28 as amended agreed to)

Clause 29

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Chair, please move your proposed amendments.

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, clause 29 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2) –

“(3) In the performance of its functions under subsection (2) (b) and (c), the board of management shall first seek the approval of the County Education Board.

The amendment seeks to ensure that the Board of Management will be required to seek the approval of the County Education Board before acquiring or charging assets of the education centres as well as borrowing money on their behalf. This is for purposes of securing the parents and owners of the institution.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): I see no interest to speak to this.

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

(Clause 29 as amended agree to)

Clause 30

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Chair, please move your proposed amendment.

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 30 of the Bill be amended in sub-clause (1) by deleting paragraph (a) and substituting therefor the following new paragraph–

“(a) one person elected by the parents from each level within the education centre to represent parents of learners in the education centre;”

The amendment seeks to conform to the term “learner” as used in the various legislations within the education sector. Actually, this is to realign it and remove the word “pupil”.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): I see no interest to speak to this.

*(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 30 as amended agreed to)

(Clauses 31 and 32 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Yes, Hon. Chair.

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I had an amendment in Clause 30.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): You had already moved your amendment in Clause 30 and it was prosecuted and carried. We have already done Clauses 31 and 32. We are now moving to the next clause that will be called out by the Clerk.

Clause 33

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Chair, please move your proposed amendment.

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move: THAT, Clause 33 of the Bill be deleted.

Hon. (Ms.) Mishi Mboko (Likoni, ODM): On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Order! Let me hear what Hon. Mishi Mboko is raising.

Hon. (Ms.) Mishi Mboko (Likoni, ODM): On a point of order, Hon. Temporary Deputy Chairlady. I want to agree with the Chair that when he was moving amendments to Clause 30 he read the amendment in Clause 35. The amendment in Clause 30 talks about one person elected by the parents from each level within the education centre to represent parents of learners in the education centre. The amendment he talked about is about deleting the word “pupil” and substituting with “learner”. I think we need to make corrections to the amendment under Clause 30.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Order, Hon. Mishi! The Member moved as per the Order Paper. Again, we are already over with Clause 30 and in the event as a matter of procedure any Member is not satisfied with a clause that has already been passed, we have what we call recomittal.

So, Hon. Mishi, you can consult with the Chair and re-commit the clause. Hon. Melly, you were moving.

Hon. Julius Melly (Tinderet, JP): The import of this is that it is necessary to ensure that there is no duplication of duties between the Parents Teachers Association and the board of management. Further, at the early childhood education level, the period is too short to warrant

too many governance structures which will result to unnecessary cost implications. Actually, we are trying to make the two meet and become one. It is not necessary.

(Question of the amendment proposed)

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

Hon. Nicholas Mwale (Butere, ANC): Hon. Temporary Deputy Chairlady, I rise to support the amendment. As the Chair has stated, some of us have been members of the two bodies and sometimes we get a lot of conflict especially when it comes to management and deciding what is supposed to be done in learning institutions. Therefore, I support the amendment that we define the clear roles of each of the boards.

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

(Clause 33 deleted)

(Clause 34 agreed to)

Clause 35

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Melly, please move your proposed amendment.

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 35 of the Bill be amended by deleting the word “pupil” wherever it appears and substituting therefor the word “learner”.

The amendment seeks to conform the term “learner” as used in the various legislation within the education sector.

(Question of the amendment proposed)

*(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 35 as amended agreed to)

Clause 36

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Melly, please move your proposed amendment.

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 36 of the Bill be amended in sub-clause (1) by—

(a) deleting paragraph (a); and

(b) deleting paragraph (c).

The amendment will ensure that it shall be the responsibility of the Teachers' Service Commission (TSC) to set the requirements for a person to qualify for employment as an early childhood education teacher. This is in line with the provisions of Article 237(3) of the Constitution which provides that the TSC shall review the standards of education and training of persons entering the teaching service.

(Question of the amendment proposed)

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

(Clause 36 as amended agreed to)

Clause 37

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): We have an amendment by the Chair. Please move it.

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 37 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2) –

“(3) In the performance of the functions under this section, the County Education Board shall establish a County Early Childhood Education Committee, as a committee of the County Education Board, to oversee the implementation of early childhood education in each county.”

The import of the amendment is that it seeks to establish the early childhood education committee as a committee within the county education board which shall be responsible for overseeing the implementation of early childhood education in each county. The early childhood education committee within the county education board will guard against establishment of too many governance structures whose mandates may overlap. This is actually to stop the creation of the early childhood county education board, but we make it within the county education board.

I thank you.

(Question of the amendment proposed)

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

(Clause 37 as amended agreed to)

(Clauses 38, 39 and 40 agreed to)

Clause 41

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Chair, you have a proposed amendment. Please move it.

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 41 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3) –

“(4) A child shall not be denied admission in an early childhood education centre for lack of proof of age.”

The import of this is that the amendment seeks to ensure that where a parent lacks the document required to determine a child’s age for purposes of admission into an early educational centre, the child shall not be denied admission into the education centre. This is in keeping with the constitutional right of every child to compulsory education.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members that is a very straightforward import. I give the Floor to the Member for Likoni.

Hon. (Ms.) Mishi Mboko (Likoni, ODM): Hon. Temporary Deputy Chairlady, as much as I want to support this amendment, I am just thinking. Our laws require us to have a birth certificate for a child after birth. So, when we say that a child is allowed to access education even if there is no document to show the age, does it mean he or she can just go to the early education centres without having the birth certificates? I just need some clarity from the Chair on that perspective. This is important. An adult can also go to the early childhood education centre. I do not know how we are going to implement this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Chair, as you get ready to reply, let me hear the Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairlady, we seem to be so eager to pass very good progressive laws so to speak, but I can see here the amount of inconvenience this particular amendment is going to bring to the education sector. One, it is practically impossible to tell me that a parent can have a child without proof of age. How? There is the immunisation card, the birth notification and even a statement by the hospital where the child was born. I say so because the county governments and the national Government are supposed to keep a record of all children in school for purposes of capitation, financial support and ensuring that the curriculum is followed. If a child has got no proof of age, how do we even know that that child deserves to be in ECD or not to avoid cases of overage children in ECDs that are really going to inconvenience and disorganise the learning system? Probably this is something that the Chair needs to relook at.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Chair, can you please respond to that?

Hon. Julius Melly (Tinderet, JP): I thank you and I hear the reservations of my colleagues. The reason we have indicated this is not actually to bring in overage children. It is actually to look at areas where parents who are not able... In nomadic areas, they are not able to get birth certificates, birth notifications and all the requisite documents. So, an educational institution cannot purport to deny a child education due to lack of a document. However, this does not negate the law and allow them to admit an overage child. This is meant to allow every child his constitutional right to education.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members that is the import of the amendment. Let us hear the Member for Central Imenti before I put the Clause to vote.

Hon. Kirima Nguchine, use the next microphone.

Hon. Moses Kirima (Central Imenti, JP): Hon. Temporary Deputy Chairlady, I support the amendment. A number of my colleagues who are opposed to this amendment do not understand Kenya's background. We are reasoning as if we just live in the urban areas and not in other areas in the Republic of Kenya. There are those areas where children are even born at home and they take years before they come across administrative stations. I am referring to the hardship areas. This amendment should be as it is so that a child can be admitted at any learning institution. A child cannot be denied that basic right, which is enshrined in the Constitution. At the end of the day, that child must bring the document. That child is supposed to be admitted. If you go to areas where we have immigrants or moving pastoralists, they take time before they go back to the areas where there are established institutions to acquire birth certificates.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let us hear the Member for Likoni. You seem to be agitated.

Hon. (Ms.) Mishi Mboko (Likoni, ODM): Hon. Temporary Deputy Chairlady, I just want to inform my colleague. This issue of notification and registration of our children has been streamlined. Nowadays you can even get a birth notification from the village elder, sub-chief, chief and even the traditional birth attendants, who have already been mainstreamed through the Provincial Administration. There is no way you can tell us that still, in this century, people cannot get birth notifications. We should not be retrogressive. We are progressing as a country. We have ensured that birth notifications are mandatory documents which a child needs to have. This amendment is not in order.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): The last one is the nominated Member. You can then take a vote on this one. Let us hear comments from Hon. (Prof.) Oduol.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Thank you, Hon. Temporary Deputy Chairlady. The spirit of the amendment needs to incorporate the fact that we have different systems of determining age. We are talking about early childhood education. I would like to invite the Chair of the Departmental Committee on Education and Research to consider the fact that we will have a situation where it could be the birth certificate or an alternative way that determines the age. This is where we would have the birth attendant or some other means of verification. As the amendment is so open-ended, it would be abusive and go against the idea of early childhood and systematic order.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Very well. This is a House of debate. I, therefore, want the House to take a vote on the proposed amendment to Clause 41.

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

(Clause 41 as amended agreed to)

(Clause 42 agreed to)

Clause 43

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move:
 THAT, Clause 43 of the Bill be deleted and substituted with the following new
 clause—

Prohibition
 from holding
 back and
 expulsion

43. A learner admitted in an education centre shall not be held back in any class or expelled from the centre without the approval of the County Education Board.

The import of the amendment is that it seeks to conform to the term “learner” as used in the various legislations within the education sector. It is also necessary to ensure that wherever there is a recommendation to have a child held back in a class or to expel a child, the school must seek the approval of the county education board before such action is taken.

(Question of the amendment proposed)

*(Hon. Aden Duale consulted loudly
 with Hon. Ahmed Kolosh)*

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Leader of the Majority Party, allow the Chair to listen to the Members as I 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 43 as amended agreed to)

Clause 44

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move:
 THAT, Clause 44 of the Bill be deleted and substituted with the following new
 clause—

Standards of
 education in a private
 education centre

44. A private education centre shall comply with and follow the curriculum approved by the Kenya Institute of Curriculum Development (KICD).

The import of this is that the amendment seeks to ensure standards of education are adhered to in private education centres. The amendment aligns the provisions on standards of education in basic education institutions as contained in the Basic Education Act No.14 of 2013, which provides that a private institution shall comply and follow the curriculum as approved by the KICD.

(Question of the amendment proposed)

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

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairlady, I support the amendment because I have looked at the Kenya Institute of Curriculum Development Bill which seems to approve. Being a Catholic, we normally have instances where we run the Montessori system of education and training. Since that is already provided for in the Act, I support the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let us hear the Member for Wajir South.

Hon. Mohamed Mohamud (Wajir South, JP): I am sorry, Hon. Temporary Deputy Chairlady. I was not calling for it. I wanted to contribute to the earlier one.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): You wanted to contribute to the earlier one.

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

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

(Clause 44 as amended agreed to)

(Clause 45 agreed to)

Clause 46

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move: THAT, Clause 46 of the Bill be amended—

(a) in sub-clause (1) by deleting the word “pupil” and substituting therefor the word “learner”; and,

(b) by deleting sub-clause (3) and substituting therefor the following new sub-clause—

“(3) A head teacher or a member of the board of management of a public education centre who imposes a charge or causes any parent or guardian to pay tuition fees commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months, or to both.”

The import of this amendment is that the Bill seeks to conform the term “learner” as it is used in various legislations in the education sector. The amendment also seeks to ensure that the head-teacher and the entire board of management shall bear the responsibility in the event of the unlawful imposition of tuition fees in respect of early childhood education.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Member for Funyula, do you want to speak to this amendment?

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): No.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): I see no interest to contribute to this 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)*

(Clause 46 as amended agreed to)

Clause 47

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move:
THAT, Clause 47 of the Bill be amended in paragraph (c) by deleting the expression
“need for the”.

The amendment seeks to ensure specificity. An ECD Centre has the responsibility to provide a child-centred learning approach.

(Question of the amendment proposed)

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

(Clause 47 as amended agreed to)

Clause 48

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 48 of the Bill be deleted.

The deletion of Clause 48 is necessary as it is not a practical provision. It is highly unlikely that an ECD Centre may offer holiday tuition. Further, this provision may be restrictive in the event that an education centre organises trips for children during the public holidays or where the parents would want to take their children to play in an education centre during public holidays.

(Question of the amendment proposed)

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

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairlady, I want my colleagues to side with me in this amendment. The education policy is very clear. Children should not go to school during the holiday. There should not be any activities related to learning during the holiday. Asking a kid who is, say, one, two or three years old to go for tuition is unacceptable. I ask the Chair of the Committee to simply withdraw that particular provision because it goes against policy and it is generally harmful to the kids. Kids need to be kids. They need to be allowed to play during school holiday.

I oppose the proposed amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): I hope that you have noted that it is a deletion. Member for Tinderet, can you, please, bring out the import of this so that Members can understand it?

Hon. Julius Melly (Tinderet, JP): The Member for Funyula has not read the amendment well. We are deleting Clause 48. This is against what he has just said. Tuition programmes and any other activity should not be offered during the holiday. We are removing that in this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): It is a deletion. Let me hear the Member for Butere.

Hon. Nicholas Mwale (Butere, ANC): Thank you, Hon. Temporary Deputy Chairlady. I agree with the Chairman. The Member for Funyula is misinterpreting the statements.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Melly, we are in Clause 48. We are deleting the clause. An education centre shall not undertake early child education services nor offer tuition during school holidays, weekends or a day declared to be a public holiday under the Constitution or the Public Holidays Act. If we negate that, it means that we will allow that. Chair, can you be on record? Thank you, Member for Funyula.

Hon. Julius Melly (Tinderet, JP): I withdraw the amendment.

(Proposed amendment by Hon. Julius Melly withdrawn)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Member, please, also look at your import. It is official that the proposed amendment to Clause 48 has been withdrawn by the Chair.

(Clause 48 agreed to)

Chair, you should know the Members. This is a House of debate. The Members are vigilant on every statement.

Next clauses.

(Clauses 49, 50, 51, 52, 53, 54 and 55 agreed to)

Clause 56

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Chair, you have a proposed amendment in Clause 56. Please, move your amendment.

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 56 of the Bill be amended in sub-clause (1) by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) reject the application and give written reasons for the rejection.”

This amendment seeks to align the provisions in the Bill to the constitutional requirement in Article 47. It requires giving of written reasons as an aspect of fair administrative action.

(Question of the amendment proposed)

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

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairlady, I fully support the amendment. However, as it has been the practice throughout, there is no timeline which is given to the authorities to make a decision. They can take a year or ignore a matter all the same. I do not know how we can do it procedurally. Whenever authorities are given discretion to make a decision, there must be a timeline within which to make that decision. Giving them an open cheque means that they are bound to abuse the discretion. It really is not a fair administrative practice to do that. We need guidance on how to tighten it up. It runs through the entire of the amendments that the Committee has moved.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): The Member for Trans Nzoia, Hon. Nangabo Janet.

Hon. (Ms.) Janet Nangabo (Trans Nzoia CWR, JP): Thank you, Hon. Temporary Deputy Chairlady. I want to support the Chair. As my colleague has said, we need to tighten it up.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Your comment, Chair.

Hon. Julius Melly (Tinderet, JP): I agree with the Member for Funyula but all this shall be provided in the regulations.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Chair, you are too tall.

Hon. Julius Melly (Tinderet, JP): I agree with the misgivings by the Member for Funyula. The timeline will be given in the regulations which will govern the whole sub-sector.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): I said that you are tall for the microphone. The Member for Funyula needed to hear you. So, you needed to bend a bit. With that explanation and clarification by the Chair, I 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 56 as amended agreed to)

Hon. Members, before we go to the next clauses, please, if you want to contribute, press the intervention button so that I can see the Members who want to contribute in each clause.

(Clauses 57, 58, 59, 60, 61 and 62 agreed to)

Clause 63

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, clause 63 of the Bill be amended—

(a) in sub-clause (1) by—

(i) deleting the word “fifteen” appearing in paragraph (a) and substituting therefor the word “ten”; and

(ii) deleting the expression “Education Standards and Quality Assurance Council” appearing in paragraph (d) and substituting therefor the words “quality assurance body established under the Basic Education Act”;

iii) inserting the following new paragraph immediately after paragraph (e) –

“(f) one person representing persons with disabilities nominated by the National Council for Persons with Disabilities.”

(b) in sub-clause (5) by–

(i) inserting the expression “make proposals for” immediately after the expression “and where appropriate” appearing in paragraph (c); and

(ii) deleting paragraph (d).

The amendment seeks to lower the number of years of experience required for one to be appointed as a Member of the Early Childhood Quality Assurance Committee. This is due to the preliminary nature of early childhood education which will not require very many years of experience. They had put around 15 years.

On sub-clause (2), the amendment seeks to give effect to the provision of Article 54(2) of the Constitution which provides that the State shall ensure the progressive implementation of the principle that at least 5 per cent of the members of the public in elective and appointive bodies are persons with disabilities. That is to align it with the Constitution. Further to that, the amendment seeks to ensure that there is continuity and no conflict of terms used in the Bill as well as in the Basic Education Act No. 14 of 2013. The Ministry has made a proposal to the Committee to have the names of the body changed from Education Standards and Quality Assurance Council to the Directorate of Quality Assurance. This is also to ensure that it is in line with what is in the law.

(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 words to be inserted, be inserted, put and agreed to)

(Clause 63 as amended agreed to)

Clause 64

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move: THAT, clause 64 of the Bill be amended–

(a) in sub-clause (1) by deleting the word “pupils” appearing in paragraph (b) and substituting therefor the word “learners”; and

(b) in sub-clause (4) by deleting the word “pupils” and substituting therefor the word “learners”.

The import of this is to conform to the term “learner” as used in various legislations within the education sector. It seeks to delete “pupil” and bring in the term “learner”.

(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 64 as amended agreed to)

(Clause 65 agreed to)

Clause 66

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, clause 66 of the Bill be amended in sub-clause (2) by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) if the service provider makes an application within the required period, the centre continues to be registered under subsection (1) until that application is determined.”

The import of this is that the amendment is necessary for correction of grammatical errors.

(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 66 as amended agreed to)

(Clause 67 agreed to)

Clause 68

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 68 of the Bill be amended in sub-clause (3) —

- (a) in paragraph (c) by inserting the word “one” immediately after the expression “registration certificates of”; and
- (b) by deleting paragraph (h).

In sub-clause (a), the amendment is necessary to correct grammatical errors. It is an issue of omission. In (b), the deletion of paragraph (h) is necessary to ensure that there is no conflict of

mandate between the Cabinet Secretary and the Teachers Service Commission since the regulation of the teaching profession is a constitutional mandate of the Teachers Service Commission.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Member for Likoni, Hon. Mboko Mishi.

Hon. (Ms.) Mishi Mboko (Likoni, ODM): I support the Chairman. This will streamline the roles and functions of the two entities.

I support.

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

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

(Clause 68 as amended agreed to)

Clause 69

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move: THAT, Clause 69 of the Bill be deleted and substituted therefor with the following new clause—

General penalty. 69. A person who contravenes any provision of this Act for which no penalty is specifically provided commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding one year, or to both.

The amendment seeks to ensure that the general penalty is not heavier than the specific penalties prescribed in the Bill.

Thank you.

(Question of the amendment proposed)

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairlady, I support but I am just wondering whether the spirit is to criminalise simple administrative mistakes that might happen all along like forgetting to enter the records of the child and other small things. The punishment seems to be too punitive. It is okay if it is to prevent any administrative mistakes but we should not punish administrative mistakes punitively.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): I will invite the Chair to comment on that but before he does that, the Member for Trans Nzoia, do you want to speak to this?

Hon. (Ms.) Janet Nangabo (Trans Nzoia CWR, JP): Hon. Temporary Deputy Chairlady, I support the Chair because we cannot just leave it open without something in place. I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Member for Butere, Hon. Mwale.

Hon. Nicholas Mwale (Butere, ANC): Thank you, Hon. Temporary Deputy Chairlady. I agree with the Chair. If you leave it open, people might abuse it. We need to have some laws that govern it.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Melly, can you clear the fears of the Member for Funyula before I put it to vote?

Hon. Julius Melly (Tinderet, JP): Thank you, Hon. Temporary Deputy Chairlady. I want to allay the fears of the Member for Funyula. I want to be very specific on this one. There are certain mistakes that I corrected administratively through words of advice and guidance. However, issues concerning breakage of the law have a way in which they are supposed to be handled. We have been very specific that it is penalty concerning a particular issue over which an offence has taken place. So, we are not going to go overboard.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): With that debate having arisen and clarification received from the Chair, I will 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 69 as amended agreed to)

(Clause 70 agreed to)

(First Schedule agreed to)

Second Schedule

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Chair, you have proposed amendments to the Second Schedule.

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Second Schedule to the Bill be amended in Paragraph 1 by—

- (a) deleting the word “two” appearing in sub-paragraph (1) and substituting therefor the word “three”; and,
- (b) deleting the word “vice-chairman” appearing in sub-paragraph (4) and substituting therefor the word “vice-chairperson”.

This amendment seeks to ensure that the meetings of the Board of Management of Early Childhood Education Centres conform to the general practices as regards the frequency of meetings of boards. It also seeks to ensure uniformity in the use of the term “vice-chairperson” as used in the Second Schedule of 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)*

(Second Schedule as amended agreed to)

Clause 2

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Chair, you have a proposed amendment to Clause 2.

Hon. Julius Melly (Tinderet, JP): Yes. I beg to move:

THAT, Clause 2 of the Bill be amended by—

(a) in the definition of the term “Education Appeals Tribunal” by deleting the expression “section 92 and substituting therefor the expression “section 93”;

(b) deleting the definition of the term “pupil”; and,

(c) inserting the following new definition in their proper alphabetical sequence—

“children with special needs” means children in need of special needs education;

“learner” has the meaning assigned to it in the Teachers Service Commission Act;

“special needs education” has the meaning assigned to it in the Basic Education Act;

“village administrator” means the office of a village administrator established in Section 52 of the County Governments Act.”

The import of this amendment is that it is important to align the use of the terms in the Bill to those of general definitions applied within the education sector as well as within the various legislations within the education sector. The amendment, therefore, seeks to align the terms “learner” and “special needs education” to the Basic Education Act No.14 of 2013. The amendment also serves the purpose of correcting a referencing error.

I thank you.

(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 words to be inserted
be inserted, put and agreed to)*

(Clause 2 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Hon. Members, this brings us to the closure of the Early Childhood Education Bill (Senate Bill No.26 of 2018) in the Committee of the whole House. We now go to reporting of the Bills considered in the Committee of the whole House as we prosecuted them. We will start with the Public Finance Management (Amendment) Bill (National Assembly Bill No.51 of 2017). I call the Mover to report before I put the Question.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Public Finance Management (Amendment) Bill (National Assembly Bill No.51 of 2017) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let us have reporting on the Office of the County Attorney Bill (Senate Bill No.3 of 2018).

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Office of the County Attorney Bill (Senate Bill No.3 of 2018) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Let us have reporting on the Petition to County Assemblies (Procedure) Bill (Senate Bill No.22 of 2018).

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Petition to County Assemblies (Procedure) Bill (Senate Bill No.22 of 2018) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): The next Bill for reporting is the Early Childhood Education Bill (Senate Bill No.26 of 2018).

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Early Childhood Education Bill (Senate Bill No.26 of 2018) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORTS

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL

Hon. (Ms.) Jessica Mbalu (Kibwezi East, WDM-K): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Public Finance Management (Amendment) Bill (National Assembly Bill No.51 of 2017) and approved the same with amendments.

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

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report. I request Hon. Limo to second.

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

(Question proposed)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Members, we shall pend putting the Question on that particular one. Shall we get to the next one?

(Putting of the Question deferred)

THE OFFICE OF THE COUNTY ATTORNEY BILL

Hon. (Ms.) Jessica Mbalu (Kibwezi East, WDM-K): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Office of the County Attorney Bill (Senate Bill No.3 of 2018) and approved the same with amendments.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report. I request Hon. Limo to second.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Limo.

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

(Question proposed)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Again, we shall put in abeyance putting of the Question on that particular one. Shall we get to the next one?

(Putting of the Question deferred)

THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL

Hon. (Ms.) Jessica Mbalu (Kibwezi East, WDM-K): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Petition to County Assemblies (Procedure) Bill (Senate Bill No.22 of 2018) and approved the same with amendments.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I request Hon. Limo to second.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Limo.

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

(Question proposed)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Again, Hon. Members, we shall pend putting the Question until subsequent time. Next we shall have the Early Childhood Education Bill. Chairperson.

(Putting of the Question deferred)

THE EARLY CHILDHOOD EDUCATION BILL

Hon. (Ms.) Jessica Mbalu (Kibwezi East, WDM-K): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Early Childhood Education Bill (Senate Bill No.26 of 2018) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Mover of the Bill, Hon. Melly.

Hon. Julius Melly (Tinderet, JP): I propose the Question that the Early Childhood Education Bill...

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order! Hon. Melly, you cannot be the Speaker. You cannot propose the Question. I guess you want to move.

Hon. Julius Melly (Tinderet, JP): Sorry. I have confirmed. I propose the Question, which is that...

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Melly. You may consult the Table. It is okay to consult. It is absolutely fine and it is allowed.

Hon. Julius Melly (Tinderet, JP): Thank you. Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report. I request Hon. K'Oyoo to second.

Hon. Onyango Oyoo (Muhoroni, ODM): Hon. Temporary Deputy Speaker, I second.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Members, let me do what Hon. Melly had attempted to do.

(Question proposed)

Again, Hon. Members, we shall pend putting the Question on that until another time.
Next Order.

(Putting of the Question deferred)

BILLS

Second Readings

THE COMPETITION (AMENDMENT) BILL

(Hon. Aden Duale on 19.11.2019)

(Resumption of Debate interrupted on 19.11.2019)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Members, this is resumption of debate that was interrupted on Tuesday, 19th November 2019. Fourteen Members spoke to this. If you spoke to it, you will not speak again. The one who was on the Floor is Hon. John Mose. He had a remainder of five minutes. He is not here and so he loses the five minutes. Hon. Mwale Tindi, you had not spoken to it, so you have the Floor.

Hon. Nicholas Mwale (Butere, ANC): Thank you, Hon. Temporary Deputy Speaker. I rise to contribute to the Bill. When you look at the way business is done in this country, especially with regard to business connected to telecommunication, you find that we have scenarios or business deals which might knock other business players from the market. Therefore, we need to have a law or regulation that is very clear on how competition is supposed to be practised amongst businesses. Also, we need competitors to agree on how to merge companies or how to buy shares in other jurisdictions. If we want to attain a good economic score and encourage investors and other people to come to this country and practise free and fair business, we need to have a law that is very strict and that gives room to proper and negotiated agreements that entail win-win situations.

This Bill is going to address such scenarios. Being an entrepreneur, I am very sure we are going to attain a good score in terms of rating with regard to which places to do business on this continent. Therefore, I support the Bill.

Thank you very much.

The Temporary Deputy Speaker (Hon. Patrick Mariru): We shall have Hon. Limo.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Speaker, I stand here to support the Bill. It is has come timeously. For the benefit of Members who are here, I did not second. My Vice-Chair seconded.

Hon. Temporary Deputy Speaker, the Bill is designed for purposes of ensuring there are fair practices in terms of the relationship between the customer and the client especially now when there is change in the retail market.

Currently in Kenya, if you are not operating a supermarket, it is very difficult to get customers to sell to when you have a retail shop. When we were young, we used to have many retail shops. In Nairobi you would find many shops in places like Lang'ata Shopping Centre and Umoja. Currently, those shops have gone down because of the emergence of supermarkets. What has happened is that some supermarkets have been practising abuse of buyer power.

Buyer power means that if you are operating a big business and you command a very large customer-base, you can determine the terms of trade between yourself and your suppliers. For instance, the supermarket can determine who will supply vegetables, terms which apply and

even the terms of payment. They will tell you: “Supply green vegetables, but we will pay you after six months”. So, this will discourage businesspeople especially small business entrepreneurs like the youth, women and people living with disabilities (PLWDs), who benefit from what the Government is trying to encourage in terms of affirmative action. If, for instance, you are producing groundnuts or popcorns and you want to supply to supermarkets, they will tell you to supply, but they will pay after six months. No small businessperson will sustain that. So, that is what is being defined by the amendment Bill as abuse of buyer power.

You determine alone and not by consent that you will pay after six months. Look at it this way: Most of the vegetables are sold the same day. That means supermarket will collect all the cash the same day and they will not pay you until after six months. That is abuse of power. Most of the time you will find that the supplier will not talk because if they talk or complain, the supermarket will pay them, but they will not be given the contract to supply again. So, this Bill is designed to ensure that the Competition Authority is able to rein in on those players in the market who are abusing buyer power.

Having buyer power is not illegal. It is legal and a good practice. If you are able to invest heavily and you become a very strong player in the market, that is not illegal because that is your investment. However, the fact that you are strong and most of the people depend on you, you are not allowed to abuse that power. This Bill has given certain procedures in which the Competition Authority will use to rein in on those players who will abuse the buyer power.

You will find that whoever enjoys that situation of a buyer power can choose not to cover certain terms in the contract. They can decide to just ask the supplier to supply them with groceries at 8.00 a.m. and they will pay or even keep quiet and the supplier will not say anything. So, this Bill has listed critical items to be covered by the contract including the payment date and the conditions in which the contract will be operated, so that when there is a complaint by anybody or when the authority realises that there is likelihood that the player is abusing power, it will be easy to determine because they stated that they will pay within one month and have decided not to pay. So, it is important that we support that.

Several Members, when contributing, said that we could not go to the extent of determining the terms of payments because they thought it was not necessary. However, it is necessary. That is the only measure which the Competition Authority will use to determine whether someone has abused power or not. If you do not determine and indicate clearly the terms of engagement, it will be hard to implement. We should not be making a law in this House in futility. The law must be very clear. It has to have certain items which are not debatable. We want this country to have a favourable environment for businesses to thrive. This is a country which of late has been rated very well in terms of ease of doing business. However, we also want to ensure that as much as we are encouraging direct foreign investment, we also encourage our local entrepreneurs to operate within Kenya. We cannot allow our small manufacturing entities to fall off because of unfavourable conditions.

One of the biggest culprits of this buyer power has been the dairy industry. Small farmers have been coming together as cooperative societies, but when they decide to pack milk, they cannot supply it through the supply chain which is favourable like supermarkets. Supermarkets will tell them to supply milk, but they will pay after six months. That is what is happening even in big industries. You will find that even through the Kenya Co-operatives Creameries (KCC), Githunguri Dairy Company, Brookside and Daima, supply milk to supermarkets every morning with trucks and lorries, they are paid after six months. That is serious abuse of buyer power especially when the big supply outlets such as Uchumi and

Nakumatt have fallen off. The few who are remaining have to be given notice that upon the enactment of this law, the Competition Authority will be watching and it is going to help the small factories to come up.

I encourage the House to support this Bill because it is going in the right direction. If we do not do that, we will be talking about Small and Medium Enterprises (SMEs) and small factories operated by the youth, but we are not making the market available for them.

Hon. Members, let us support this important Bill. I thank you

The Temporary Deputy Speaker (Hon. Patrick Mariru): Let us have Hon. Cecily Mbarire.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I also support this Bill. It comes at a time when the talk in the country as we face tough economic times is on how to keep SMEs afloat. Looking at the public sector, there is a lot of talk and push by the Government. Yesterday, the Acting Cabinet Secretary for the National Treasury, Ukur Yattani, said that both the national Government and county governments have been given notice to clear pending bills, so that we can keep our SMEs afloat.

I hope they are not saying this for the sake of it. I hope it will happen pretty soon. We should see the Government paying its suppliers. We need to keep our people in business to avoid a situation where they have to sell their propriety or get auctioned because of failure to repay loans taken against Local Purchase Orders (LPOs) and Limited Service Offering (LSOs). More importantly, we are now moving beyond the public sector to the private sector to protect the same SMEs from buyer power abuse. We know many SMEs have gone under because of dealing with big buyers like supermarket chains who do not pay suppliers on time. They decide when to pay and there is nothing the small buyer can do to push for payment.

As has been ably articulated by the Chair of the Departmental Committee on Finance and National Planning, it is about time we reined in on the big buyers to protect SMEs and ensure that they stay in business. Therefore, it is important for us to support this amendment Bill so that we can arm the Competition Authority of Kenya with some teeth to bite, so that when the big buyers abuse their buying power, the CAK can take action. There should be penalties for abuse of power. I support this so that suppliers or SMEs are paid within specific timelines. This will enable the banking sector to use LPOs and LSOs as collateral and SMEs can get loans to provide the necessary supplies.

Today, it is a sad affair that most small value addition industries have gone under because of this, not just in the public sector, but also in the private sector. I think it is our business as the National Assembly to protect SMEs. They are the future of this nation in terms of industrialisation and creation of the much-needed employment in the country. We have seen each county trying to come up with their own value addition supply chains like dairy factories or fruit processing industries at their level. If we protect them, they will get the required market, get paid on time and grow as time moves on.

With those few remarks, I beg to support. I urge this House to support this very important amendment.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Let us have Hon. Paul Mwirigi.

Hon. John Paul Mwirigi (Igembe South, Independent): Thank you, Hon. Temporary Deputy Speaker. I support this amendment Bill, which has come at the right time for this country to realise that we have potential in the small business holders.

The SMEs are started by young people to cater for their needs. While the Government encourages young people to become self-employed, it is difficult for them to start businesses. When one supplies commodities, they are not paid in good time. Also, when they supply to supermarkets, it is usually on credit. We should pass this Bill, so that it can help us to control the big buyers who are supplied with commodities.

For this Government to empower the young generation to start businesses, we have to pass this legislation. When the young people supply their goods, they are guaranteed payment. It is good when one supplies, they are paid immediately. When suppliers supply to supermarkets, they are told to wait for about 120 days, yet what was supplied is sold within one, two or three weeks. They have to wait for 120 days to get paid. This Bill will help suppliers not to live in fear and follow-up payment without being threatened. It will also help the small business holders to claim for payment with confidence and not fear being threatened.

I urge the House to support this Bill, so that the young innovators in this country can be in a good position to invest. We are encouraging foreigners to invest in this country. Whereas our people have potential, are educated and have capacity to invest in this country, there is lack of legislation that binds and gives them confidence to invest. Through this Bill, the upcoming businesspeople will be in a position to start their investments. They will have confidence in the legislation that we pass in this House.

Hon. Temporary Deputy Speaker, with that, I beg to support. Thank you.

The Temporary Deputy Speaker (Hon. Patrick Mariru): We shall now have Hon. Janet Nangabo.

Hon. (Ms.) Janet Nangabo (Trans Nzoia CWR, JP): Asante sana, Mhe. Naibu Spika wa Muda kwa kunipatia nafasi hii kuunga mkono Mswada huu. Nataka kukubaliana na wenzangu ambao wamesema tuwe na sheria ya kuhakikisha kwamba wanaopewa kandarasi katika nchi yetu ya Kenya wanapata haki yao na wasinyanyaswe. Tulikuwa na shida sana na vijana wa National Youth Service kwa sababu hatukuwa na mikakati mwafaka wakati hao walikuwa wamechukua kandarasi ya kusema kwamba wanapeana bidhaa katika shirika hilo la Huduma kwa Vijana. Itakuwa vizuri iwapo tutakuwa na mikakati ya kuhakikisha kwamba iwapo unafanya biashara iwe ndogo au kubwa na uko na nafasi kwamba unalindwa vyema ukifanya biashara yako litakuwa jambo nzuri sana. Tukirudi mashinani, tunaona Serikali ya mashinani inawapatia watu kandarasi na huenda ikawa hawajafuata mikakati ya kujua kwamba mtu huyu anaweza kulima barabara hii au kufanya jambo hili. Inakuja kuonekana kwamba yule anapewa ni jamaa wa mtu fulani. Iwapo tutakuwa na sheria hii ya kuzuia na kuweka mikakati ya kusema kwamba kama umepewa nafasi ya kutengeneza kitu fulani, ni lazima mikakati fulani ifuatwe itakuwa vyema.

Tumekuwa na watu ambao wamefanya biashara katika nchi za ng'ambo na hata hapa kwetu. Kwa mfano, wakati sukari ilikuwa inatolewa huko nje ikiletwa nchini Kenya, hakukuwa na mikakati. Ndiposa uliona sukari isiyozuri imekuwa ikiletwa na inanunuliwa na watu wetu. Sisi, kama viongozi, ni lazima tuuunge mkono Mswada huu kwa sababu utawasaidia watu kule nje. Mimi natoka Trans Nzoia. Unaona saa hii watu wamevuna mahindi lakini kwa sababu hatujakuwa na mikakati mwafaka, utapata watu ambao wanakuja hapa katikati, ambao tunawaita *middlemen*, wananunua mahindi kwa bei ya rejareja na wanawaacha wakulima ambao wanatakikana wapate haki yao bila mafanikio. Inaonekana kwamba wengine kazi yao ni kunyanyasa wengine katika nchi yetu ya Kenya.

Nitaongea kuhusu uufisadi katika sehemu kadhaa nchini mwetu. Juzi, niliona uufisadi katika kitengo cha polisi. Tunatakikana tufuatilie na tuone ni nini kinaendelea kwa sababu imefika mahali ni kama mamlaka inatoka kwa askari wetu. Watu wameachiliwa hivyo hivyo na

wanafika mahali wanafanya watakavyo na polisi wanaonekana hawana kazi ya kufanya. Ukiajiriwa kama mfanyakazi, unafanya kazi yako kulingana na mkataba ambao umetengenezwa na mwajiri wako. Hii inalingana na sheria hii ambayo tunabuni katika Bunge hili. Ninajua wenzangu wataiunga mkono. Naunga mkono yale Mhe. Cecily Mbarire na pia Mwenyekiti wa Kamati ya Fedha na Mipango ya Kitaifa wameongea. Ni lazima tuwe na mikakati kama hii ili isaidie nchi yetu.

Kwa hayo machache, ninashukuru na kuunga mkono Mswada hii.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Sasa tutakuwa na Mhe. Oduol Adhiambo. Nafasi hii ni yako.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker, for the opportunity. From the outset, I support the Competition (Amendment) Bill. It is clear from the Bill that the Competition Authority has recognised an emerging trend where buyers are abusing their power. Today, for me, marks a very important opportunity because this amendment Bill provides us, as legislators, opportunity to combine the kinds of amendments that we are bringing with the three major roles that we have for the citizenry. I am thinking of women groups that started as social welfare groups which used to be called merry-go-round, which have since emerged as economically viable groups that have evolved into savings and credit cooperative societies. In Siaya County, we have many different women groups which have continually sought to ensure that their numerical strength and the time during which they meet together can be put into use in a manner that would allow them to get some economic returns.

Sometimes, as you think of women in the rural areas, in a village or a constituency like Alego-Usonga - I am specifically thinking of Ombwede, which is a local market in my area - you find women and some youth groups in the deep interior, seeking to ensure that they can not only contribute to the economy, but can also make some meaningful gain out of their efforts. They can decide to come up with some local vegetables or some farm produce. In some cases, they come up with beads and other artefacts that they would supply to buyers. As we can see very clearly indicated in the amendment Bill, there are buyers who would then use their purchasing power to obtain terms, that in terms of the supplies, would be more favourable to them. We know there is a tendency for those who are in the rural areas or those who might not have been informed to assume that whatever they are told when they seek to supply their produce is the law. So, it is a very important and timely intervention. We really need to ensure that the proposed amendments are actualised. Buyers would always want to ensure that the terms of their engagement with suppliers are always more favourable to them. They not only demand preferential terms, but there are cases where buyers have even demanded that suppliers do not provide produce to their competitors. These trends have, indeed, been recognised by the Competition Authority.

In this country, we continually have so many cases of unemployment. Fundamentally, the family unit suffers from frustration experienced by many duty bearers and caregivers. We have had occasions where the main caregivers of families have ended up taking away their lives and the lives of their children. We really want to see that there is a very clear connection between the sense of hopelessness and the lack of confidence that those who seek to organise and get into entrepreneurial activities have when they feel they can be intimidated by buyers when they abuse their power.

So, as we support this Bill, let us do so in a way that truly enables us, as legislators, to not only look at the way we come up with laws that will solve problems and address the hopes and

aspirations of the youth, women and persons living with disabilities, and in particular those who are in the rural areas, but also ensure that it directly helps us to ensure that the law that we pass helps us to represent those that are out there. Much more importantly, the amendment will enable the Competition Authority to monitor the behaviour of the entities that buy commodities from suppliers. It will also enable us to ensure that there is no way the hard work of Kenyans who would like to contribute to our economy is abused.

I support this amendment Bill. It is one way of beginning to help ourselves, as a country, to strengthen our resolve and desire to ensure that entrepreneurial activities and engagements, particularly by the youth, women, persons with disabilities and, indeed, by persons who want to start up businesses so that they can earn their own livelihoods and contribute to the economic growth of the country, are supported.

With those remarks, I support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Mose Shadrack, you cannot speak to this one. You have spoken. Did you not speak to this one?

Hon. Shadrack Mose (Kitutu Masaba, JP): (*Off-record*)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Yes, that is true. You spoke for five minutes. You had a remainder of five minutes. Let me advise you that the next time you have a balance of time, when that item next gets on the Order Paper, you will be the first one to contribute. I called you because you were the first one. When you were absent, that chance was lost.

Hon. Njomo, I was to give you the next opportunity, but you seem to be going off tangent. He was not wherever you are saying he was. He was busy serving his people. Hon. Mose, you cannot speak to this because we must stick to our rules. The next time you have a balance of time, you should come first. When you are not there and you are called, that opportunity is lost. It is good that you had at least spoken for five minutes. Let us have Hon. Njomo Kang'ethe.

Hon. Jude Njomo (Kiambu, JP): Thank you, Hon. Temporary Deputy Speaker. I stand to support this amendment Bill.

I support it because it will give power to the Competition Authority of Kenya to pinpoint and identify the businesspeople who are doing unfair business. Unfair business practices are killing the people who are trying to grow their businesses. It is killing our SMEs. I will be very happy when we give the CAK teeth to bite and make sure that they are biting. Some practices that are happening in Kenya should not be happening.

When they get teeth to bite, I will first tell them what I learnt in school. When I was learning Business and Commerce, I was taught that there are three sectors of business, namely, manufacturers, wholesalers and retailers. Those systems are now very old-fashioned. You will find that the manufacturer has become the wholesaler and retailer thus killing that line of business. All those other people do not get any job. That is unfair practice. We should get back to the old-fashioned way where the manufacturer concentrates on manufacturing and leaves the trading to others. That is the only way we can create employment. That is the only way our youth can get employment.

Next, I will tell them to look at some of our big businesses in the country and the way our technocrats craft contracts. Currently, the biggest contract in the country apart from the Standard Gauge Railway (SGR) is the Last Mile Connectivity of electricity. Previously, those works were done by Kenyans who formed their own small power companies and would go out there in a small lorry with three or four poles and connect power. Our technocrats drafted a contract based

on the old provinces that we had. One of the requirements in the tender is that you must have done similar projects for you to qualify. There is no Kenyan company that has that experience. So, what happens? We have foreign companies flooding into our country to do the jobs. They have no capacity or manpower. The same contractors who used to work on the contracts are employed and paid peanuts. Some of the companies are even going away without paying the contractors. That is unfair practice. I will tell the CAK to ask who drafted that contract or shaped it in such a way that it disadvantages Kenyans.

Contracts should always be set. If you go to other countries, you will not be allowed to work there unless you team up with contractors from that country. In Kenya, we block Kenyans from working and invite foreigners to take up our jobs. Then Kenyans are employed and paid peanuts.

I will tell the CAK to look at some of our manufacturers, farmers and exporters who have similar companies out there. They create invoices to show that they are selling their products to their sister companies at a very low price. They do not make profits here, but their sister companies outside the country do. What are we stealing from ourselves? They will not pay any taxes because they have made losses yet they are making profits in the countries where they are exporting their products. That is unfair competition and business practice which we will ask the CAK to investigate and make sure that it is corrected.

There are some oil companies in this country. Like I said, in the old days, we would have importers and other people doing retailing. Oil companies are importing oil and running their own petrol stations. They even engage in unfair practices with agents and dealers that they have employed. Others are even telling our youth that they are teaching them how to run stations, so that they can empower them to get stations, but at the end of the day, the people are being misused and mistreated. They never attain their goals. I will ask the CAK to act on that.

These amendments are very timely. They will help our country to create employment for our people. Our economy will only be stable if it is supported by stable Kenyans who are making money and are happy to pay their taxes. That will also go well with the KRA's saying that goes: "*Kulipa ushuru ni kujitegemea*". We can only *jitegemea* if we are happy to pay our taxes. We can only pay our taxes if we are engaging in fair business practices.

This is very timely. I hope it will support our economy in a way that our people will make money thus pay taxes.

I support the Bill.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Let us have Hon. Maritim Sylvanus.

Hon. Sylvanus Maritim (Ainamoi, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Competition (Amendment) Bill in the sense that it will ensure that medium, small and micro enterprises are protected.

Even as I support the Bill, it is important to highlight that I know of several farmers and businesspeople who have supplied their goods and services, but a year elapses before they receive their payments. I know of farmers from my constituency who supplied maize over two years ago, but are yet to receive their payments from the National Cereals and Produce Board. I know of small business people who have supplied goods and services, invoiced, paid KRA, but are yet to receive their payments.

On the receiving end are small businesspeople and small-scale farmers who are at the mercy of giant companies, particularly those who enjoy a monopoly. I come from a region where tea farmers are always on the receiving end of the Kenya Tea Development Agency (KTDA).

Farmers supply tea without knowing what their prices will be, how much they expect to be paid and the KTDA determines the duration they will take before they make payments. This Bill will address serious issues and enhance revenue collection because suppliers and sellers will be in a position to pay taxes on time.

I support the Bill.

The Temporary Deputy Speaker (Hon. Patrick Mariru): There seems to be no further interest to speak on this. Therefore, it is time to call the Mover to reply. Let us have the Leader of the Majority Party. Hon. Cecily Mbarire will step in for the Leader of the Majority Party.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Temporary Deputy Speaker, let me take this opportunity to very deeply thank all the Members who supported this very important Bill. We have no doubt in our minds that the time must come for this House to fight for SMEs in this country. That is where the real economic development of this country begins. I want to thank all the Members who contributed and supported this important Bill.

I have heard great ideas from most of the Members who have supported the Bill, starting with Hon. Jude Njomo. He should bring them and then we can look at them and ensure that he brings the necessary amendments that will make the Bill even better. Hopefully, we will rescue our SMEs from unfair business practices that are meted against them. This will make them grow and make this nation great.

With those few remarks, I beg to reply, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Members, we shall not put the Question on that Bill for now. That shall be done at another time.

Next Order.

(Putting of the Question deferred)

THE INSURANCE (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. Patrick Mariru): The Leader of the Majority Party. Hon. Cecily Mbarire.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Temporary Deputy Speaker, I beg to move that the Insurance (Amendment) Bill 2019 be now read a Second Time.

It is my hope that Members have taken time to read this Bill. I will now give brief highlights of the proposed amendments.

The Bill proposes to amend the Insurance Act to introduce the new definition of the term “Long term insurance business” to incorporate the new clauses of the long-term insurance business as was introduced by Legal Notice No.108 of 2016. The Bill further proposes to delete the definitions of the terms “Board investment business” and “Industrial life insurance business”. These amendments are meant to align the provisions of the Act with the new classes of long-term insurance business as introduced by the Legal Notice No.108 of 2016. The proposed deletions are for the classes of long-term businesses that were repealed by the said Legal Notice.

Clause 3 of the Bill proposes to repeal Section 43A of the Insurance Act in order to harmonise the provisions of the Act with the requirement of capital adequacy as introduced by the Insurance (Amendment) Act No.50 of 2016. The concept of capital adequacy replaced the application of the concept of admitted assets and liabilities in determination of the capital of an insurer. Clause 4 seeks to introduce a penalty for the insurers and intermediaries for failure to

comply with the requirements of submission of financial returns, premium levy returns and claims payment returns to the Insurance Regulatory Authority. The proposed amendment is meant to enhance the ability of the Authority to assess the insurers and intermediary's financial soundness and the ability to meet the interest of the policy holders.

Currently, under the Insurance Act, a statutory manager who is appointed is expected to preserve the assets of the insurer that have been placed under statutory management. However, the Act does not define what amounts to preservation of assets. This has caused the statutory managers to rely on directions given by the courts resulting into wasting of such assets and incurring an economical cost in maintaining such assets. Therefore, the proposed amendment clarifies the preservation of assets to include realisation of such assets upon approval by the Authority.

Further, under the Insurance Act, the power of the statutory manager to declare moratorium does not extend to the protection of the policy holders from attachment, when an insurer is placed under statutory management. This has caused untold suffering to policy holders whose properties are always attached once a company is placed under statutory management. Therefore, the proposed amendment is meant to protect the policy holders from attachment by claimants when an insurer is put under statutory management. The Bill proposes to enable the Policy Holders Compensation Fund pay promptly the claimants once an insurer is put under statutory management or when the registration of the insurer is cancelled under the Insurance Act. The proposed amendment is meant to change the trigger for compensation by Policy Holders Compensation Fund from insolvency of the insurer. This is interpreted to mean when a liquidation order is made to place the company under statutory management or cancellation of registration. This proposed amendment is prompted by the fact that waiting for insolvency of an insurer to be declared by the court as a trigger has not been effective as no compensation has been made by the Fund since its establishment in 2004. Four insurers have been placed under statutory management.

The Bill proposes to amend the Insurance Act to align the composition of the Policy Holders Compensation Fund Board with the requirement of the Public Finance Management (PFM) Act and the State Corporations Act, and guidelines made under it. The new board brings the representation of the Attorney-General and the Cabinet Secretary, and defines the qualifications of the board members.

With those few remarks, Hon. Temporary Deputy Speaker, I beg to move and request Hon. Limo, the Chair of the Departmental Committee on Finance and National Planning, to second.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Limo.

Hon. Joseph Limo (Kipkelion East): Thank you, Hon. Temporary Deputy Speaker. I rise to second this Bill. It was published on 1st July 2019 and subsequently tabled in the House on 23rd July 2019.

The Constitution requires that there should be public participation in any Bill. It was advertised in the print media on 26th July 2019. By the end of the period, we did not receive any memorandum from the public. Subsequently, we invited the Insurance Regulatory Authority, which is in charge of insurance issues to appear before our Committee on 8th November 2019. They appeared before us and supported the Bill.

As it has been properly moved by Hon. Cecily Mbarire, this Bill was brought to clean up and ensure that certain issues which cause problems in the insurance industry are addressed. I want to categorically state that certain amendments have been made, which are very good, to

enable the Authority to assess the insurance companies and the intermediary financial soundness. Most of them are certain reports in form of returns which must be filed. This Bill has introduced penalties which will be meted on any insurer who will not file financial returns, premium levy returns and the claims payment returns on time.

This Bill has also come up with a very good way of protecting policy holders. Currently, if you have taken a policy and it happens that the company which gave you the cover is under statutory management, the claimants will come for you instead of them waiting for the statutory manager to give the way forward. The current law opens up a Pandora's box where the claimants, if you are involved in an accident, will come for your property if the insurer is placed under statutory management. This law is coming in handy to protect the policy holder. Their property will never be attached if the insurer is placed under statutory management. At the same time, when the insurer is placed under statutory management, the law requires that the policy holders are compensated by way of charging Policy Holders Compensation Fund, but there is a stringent long process which goes through the courts for you to access that Fund. In fact, it takes ages for anyone to get compensation from the Policy Holders Compensation Fund. This Bill now requires that as soon as the insurer goes under statutory management, any policy holder who has a claim or is awaiting compensation will be compensated immediately and that compensation is charged to the Policy Holders Compensation Fund.

This Bill also provides for greater participation by the Government by introducing the Attorney-General's and the Cabinet Secretary's representatives into the board. It also brings in the qualifications of anyone who will be appointed to serve as a board member of the Policy Holders Compensation Fund.

I want to end by saying that these particular amendments are good. There is no one who has given contrary opinion other than in support of the Bill. Therefore, as I second, I urge the Members of this House to support it. The Bill is in the right direction.

I beg to second.

(Question proposed)

Hon. (Ms.) Cecily Mbarire (Nominated, JP): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): What is the intervention for, Hon. Cecily Mbarire?

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Temporary Deputy Speaker, I rise under Standing Order 96(1). I wish to request that we postpone debate on the Motion before the House in view of the fact that there has not been any interest so far from the Members present. That will give Members time to participate meaningfully during the next allotted time.

The Temporary Deputy Speaker (Hon. Patrick Mariru): You need a seconder.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): I request Hon. Jude Njomo to second.

Hon. Jude Njomo (Kiambu, JP) seconded.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Cecily Mbarire is asking that we adjourn debate, not of the House, but on this particular Order No.14 to another time as shall be slotted by the House Business Committee (HBC). I am convinced.

Hon. Njomo, why are you pointing at whoever you are pointing at?

Hon. Jude Njomo (Kiambu, JP): Bluetooth method.

The Temporary Deputy Speaker (Hon. Patrick Mariru): You are talking by Bluetooth method? You are perplexing Hon. Limo because he does not understand what Bluetooth method is about.

(Question, that Debate be adjourned, put and agreed to)

(Debate adjourned)

Order No.14 is adjourned until another time that shall be slotted by the HBC.
Next Order.

THE GAMING BILL

The Temporary Deputy Speaker (Hon. Patrick Mariru): Chairperson, Departmental Committee on Sports, Culture and Tourism, you have the Floor.

Hon. (Dr.) Vincent Munyaka (Machakos Town, JP): Thank you, Hon. Temporary Deputy Speaker. I am supposed to move the Gaming Bill, 2019, but due to its importance, I would wish to have enough time while moving it before the House breaks. I would also want to have as many Members in the House as possible. I ask that we postpone it to tomorrow, so that we can address it adequately.

The Temporary Deputy Speaker (Hon. Patrick Mariru): That request coming from the Chairperson, I agree with you. I direct that Order No.15 be stepped down.

(Bill deferred)

Next Order.

THE TEA BILL

The Temporary Deputy Speaker (Hon. Patrick Mariru): The Chairperson, Departmental Committee on Agriculture and Livestock. Yes, Hon. Cecily Mbarire.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Temporary Deputy Speaker, the Chairperson, Departmental Committee on Agriculture and Livestock, is not present. Therefore, I request that this particular Order be stepped down until the next available time.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order No.16 is stepped down. Tell the Chair to be present next time it is slotted.

(Bill deferred)

Next Order.

THE IMPEACHMENT PROCEDURE BILL

The Temporary Deputy Speaker (Hon. Patrick Mariru): Chairperson, Departmental Committee on Justice and Legal Affairs? Hon. Cecily Mbarire.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Temporary Deputy Speaker, the Chair of the Committee is also absent. I request that the matter be stepped down.

The Temporary Deputy Speaker (Hon. Patrick Mariru): If the Chair is absent, there is little we can do. I direct that it be stepped down as well.

(Bill deferred)

THE COUNTY GOVERNMENTS (REVENUE RAISING PROCESS) BILL

The Temporary Deputy Speaker (Hon. Patrick Mariru): Leader of the Majority Party, Hon. Cecily Mbarire.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): The Leader of the Majority Party is not ready to move this Bill. I request that it be stepped down.

The Temporary Deputy Speaker (Hon. Patrick Mariru): I direct that it be stepped down.

(Bill deferred)

Hon. Jude Njomo (Kiambu, JP): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): What is out of order, Hon. Njomo?

Hon. Jude Njomo (Kiambu, JP): Hon. Temporary Deputy Speaker, with all due respect to the chairpersons of the different committees, it is embarrassing when they have responsibility in the House and they do not turn up to exercise that responsibility.

So, I urge you to urge the committee chairpersons to take their work seriously. If we have three items on the Order Paper concerning committee chairpersons, they ought to have checked the Order Paper to know that they have business to transact. So, they are supposed to prosecute that business. Unfortunately, they are not here. I think they are not taking their work seriously. They need to take their work seriously and do what they are supposed to do.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Njomo, you are clearly on point. Maybe the next chairperson will be available in the next Order that we are getting into. You are completely on point that chairpersons or whoever has an item on the Order Paper must be present. I realise that chairpersons, when the Order is far back on the Order Paper, probably they suspect that the House will not get to the Orders concerning them. More often than not, from my experience now, the House is able to move fast and get even to the last Order on the Order Paper. So, you are on point. The good thing is that the one seated next to you is Hon. (Ms.) Cecily Mbarire. I am sure she has taken what you have said and will find ways and means of communicating to all the chairpersons. Indeed, any Member who has an Order or an item on the Order Paper needs to be present. This has been said many times.

Next Order.

THE PARLIAMENTARY PENSIONS (AMENDMENT) (NO.3) BILL

The Temporary Deputy Speaker (Hon. Patrick Mariru): This Chairperson must be present, namely, the Chairperson of the Parliamentary Pensions Management Committee.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Temporary Deputy Speaker, the Chairperson is absent. I have heard what Hon. Jude Njomo has said. Sometimes, when chairpersons of committees look at where the Orders are placed, they decide that it is not going to get to them because it takes a whole two or three hours to deal with one Bill. So, you will have, sometimes, to understand when they are not present. I will, definitely, communicate the same to them because it is important that they be not too far away from the Chamber at any one given time.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Yes. I agree with you. Please, let that be known. We shall step down Order No.19 as well.

(Bill deferred)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Members, the time being 6.53 p.m., this House stands adjourned until Thursday, 21st November 2019, at 2.30 p.m.

The House rose at 6.53 p.m.