

**PARLIAMENT OF KENYA**  
**THE NATIONAL ASSEMBLY**

**THE HANSARD**

**Wednesday, 29<sup>th</sup> September 2021**

The House met at 2.30 p.m.

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

**PRAYERS**

**Hon. Speaker:** Hon. Members, we do not have the requisite quorum. Therefore, I order the Quorum Bell to be rung for 10 minutes.

*(The Quorum Bell was rung)*

Order, Members. We now have a quorum.

**PETITIONS**

**REPEAL OF SECTIONS OF THE UNIVERSITIES ACT  
TO SCRAP ELECTORAL COLLEGE VOTING SYSTEM**

**Hon. Speaker:** Hon. Members, Standing Order 225(2)(b) requires me to report to the House any petitions other than those presented by a Member. Further, Article 119 of the Constitution provides for the right of any person to petition Parliament to consider any matter within its authority, including petitioning the House to enact, amend or repeal any legislation. In this regard, I wish to report to the House that my office has received a Petition from one, Amos Ndung'u Kamotho of P.O. Box 24814, Nairobi, calling for a repeal of Sections 41(1C), (1D) and (1E) of the Universities Act, 2012.

The petitioner bases his concerns on Article 81 of the Constitution, which provides for freedom of citizens to exercise their political rights, universal suffrage, fair representation and equality of vote, free and fair elections through secret ballot and ensuring that the vote is free from improper influence, conducted by an independent body and administered in a transparent and impartial, neutral, efficient, accurate and accountable manner.

The petitioner decries the introduction of the electoral college system, leading to interference in student council elections by the university administration and entrenching corruption in student council elections.

The petitioner seeks the intervention of this House to consider repealing Sections 41 (1C), (1D) and (1E) of the Universities Act, 2012 in order to replace the electoral college system with direct voting based on universal suffrage.

Hon. Members, having determined that the matters raised by the petitioner are well within the authority of this House, I order that pursuant to the provisions of Standing Order 227(1), this petition is committed to the Departmental Committee on Education and Research. The Committee is required to consider the Petition and report its findings to the House and to the petitioner, in accordance with Standing Order 227(2).

We shall have limited comments not lasting more than two minutes for each Member speaking.

Let us start with Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Speaker. In 2000, I was the Student Organisation of Nairobi University (SONU) President. During our time, we used to have direct voting. Sovereignty laid with the students who directly elected their representatives.

I agree and sympathise with the petitioner because when Prof. Magoha became the Vice-Chancellor, he wanted to curtail the leadership of the university and, therefore, introduced an electoral system with electoral colleges. In an electoral college, you are able to manipulate a few characters who are representatives of the rest to elect you. The reason we fought so hard against the Building Bridges Initiative (BBI) was for us to put leadership in the hands of a Prime Minister who would, probably, be elected by Members of Parliament. It is the same thing that is happening in universities. I support this Petition. We need to affirm it. At one time, most Members here were leaders in their respective universities and that is where they started growing their leadership skills. If universities are not democratic enough, then that culture will develop and bloom fully during campaigns. In the general election, we will have the same characters coming with such influence.

I support the petitioner that we need to ensure elections of student leaders are democratic. The likes of James Orenge, William Ruto, Gladys Wanga and so many other leaders were students' leaders at one time in various universities. It is courtesy of a democratic election that one is elected. In university, I was elected yet I am from a minority tribe. I support the Petition.

**Hon. Speaker:** Hon. Wamalwa.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): Thank you, Hon. Speaker. This Petition has come at the right time. World over, say, in Boston, where we have leading universities like Massachusetts Institute of Technology (MIT) and Harvard – and I have visited these institutions - when it comes to students' leadership and welfare, universal suffrage is considered. The issue of electoral college is tantamount to dictatorship. We call upon the Committee to move with speed and in line with the requirement of public participation to call upon students to give their views.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Murugara.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Speaker. I also support this Petition. May it go on record that today, even in primary schools, students elect their leaders. They do it through the universal suffrage, namely, direct election in a democratic manner. So, despite their tender age, they have students they want to lead in various areas. If there is any provision in the Universities Act providing for a collegiate mode of electing students' leaders, then, that is not well placed. Even during our time in the University of Nairobi (UON), School of Law, we did direct elections which were universal and not collegiate. Therefore, room for collegiate has to be removed today.

I support.

**Hon. Speaker:** Hon. Sossion.

**Hon. Wilson Sossion** (Nominated, ODM): Thank you, Hon. Speaker. This is a very important Petition that needs to be given the right treatment. If we want to implement Vision 2030 of developing politics of this country based on issues, we must allow students in our school systems and universities to be responsible and practise democracy through universal suffrage. It was wrong to withdraw the right to exercise the right of one man, one vote, in universities by the university authorities ostensibly to control the political freedom of students.

So, we should nurture a strong democratic society based on freedom of self-expression. You cannot express yourself unless you practise to vote. Our students in universities and school system should be allowed to vote. So, this Petition is timely.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Pukose.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker. This Petition by Amos Ndung'u Kamotho on the rights of students, freedom of expression and freedom of elections is guaranteed in our Constitution under Article 81 and is timely. In 1992, before the repeal of Section 2A of the Constitution, some of us were still students in the University of Nairobi. We participated in the re-introduction of SONU in 92 together with T.J. Kajwang', the people's Chief Justice, Hon. Kabando wa Kabando, Moses Kuria and others. Hon. Sankok, you came later after we had done the good work. The gains we made should not be lost. In the universities statutes, there is provision for congressmen for the various campuses and halls to be elected. Even at the level of officials like the SONU President and others, they should also be elected directly by the people. This is not expensive and there is no reason for the University of Nairobi to form electoral colleges.

Hon. Speaker, with those few remarks, I support.

**Hon. Speaker:** Member for Kagundo.

**Hon. Fabian Mule** (Kangundo, Muungano): Thank you, Hon. Speaker, for giving me the opportunity to add my voice to this Petition. The way we train our children is the way they will do their things in future. You need to give people the meaning and purpose for elections. Ideally, it is to bring people of different ideologies to a neutral ground. In our country, every time there are elections, there is a lot of chaos and threats to human life and the economy.

We need to train our children from kindergarten, primary school, secondary school and university to have fair elections. We also need to train them on how to do elections, for example, by showing them that losing or winning is not a major thing. Whether a person wins or loses, we all go home. We need to have our children grow knowing that elections bring people to a neutral ground. I support the petitioner. Concerning our universities, it is very important to train students on the meaning and purpose of elections, so that when they come out, they will be knowing why people vote. Remember, this country is soon going to elections. Many people do not vote because they do not know why they should support a certain leader. You need to know the reasons for supporting a leader. It all starts at childhood.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Kabuchai.

**Hon. Majimbo Kalasinga** (Kabuchai, FORD-K): Thank you, Hon. Speaker. I also want to add that the best way to have democracy is to allow students to be elected democratically. During the time I was at Egerton University, democracy was at play and that is why we elected people who are now senior Members of Parliament, like Hon. Cecily Mbarire and others.

As we talk today, the democratic space in universities has reduced to serve only students who have paid fees. Students who have not cleared fees cannot run for certain positions. Indeed,

that is curtailing democracy. For us to promote democracy in Kenya, we must allow leaders to be elected properly. It makes sense because when you go to our universities, students who conduct the best campaigns end up learning how to be democratic.

Thank you, Hon. Speaker. I support this Petition.

**Hon. Speaker:** Member for Bondo.

**Hon. Gideon Ochanda** (Bondo, ODM): Thank you, Hon. Speaker. What we call the breeding grounds of political socialisation normally starts somewhere, and it is mostly in universities. We know of trade unions, but universities are also very important when it comes to issues of political socialisation. Presently, elections are conducted in primary and secondary schools in order to have representation of students in the leadership of boards of institutions.

If they happen well at the primary and secondary schools level, why do we want to miss it at the university level? I want to believe that this is the time to review some of these things, so that we can give students good space to nurture themselves as leaders. We do not want to lose it given what has been happening. Shortcuts to elections are the breeding grounds for chaos, a lot of mischief and some of the things we are now seeing. It is exactly why we are commercialising politics.

**Hon. Speaker:** Member for Migori County.

**Hon. (Ms.) Pamela Ochieng** (Migori CWR, ODM): Thank you, Hon. Speaker, for this opportunity. As a Member of the Departmental Committee on Education and Research, I wish the petitioner well. I just want to reiterate that we will give this Petition a fair hearing and due diligence. Why? In our education system, we teach children that we are a democratic republic. So, it is important that when they are doing anything, especially electing their leaders, we should encourage them to do it in the most democratic way. We know it is at universities that our children develop critical thinking, the ability to present themselves and issues, and the ability to analyse and synthesise issues. Therefore, it is important that we encourage them to do so in the most open way. It will help them to choose leaders who will not take them to the roads when they strike, and leaders who can address their issues.

I think it is a good and timely Petition. We will look at it with due diligence. Thank you.

**Hon. Speaker:** Member for Tigania West.

**Hon. John Mutunga** (Tigania West, JP): Thank you, Hon. Speaker, for the opportunity to add my voice to this particular Petition. As a country, we train our children from a very young age that we are democratic. Being democratic is in practice and not in theory. Only when democratic practice is exercised across the ranks will they learn how to also conduct democracy. When students are curtailed from participating in an electioneering process for any reason, we are curtailing democracy and that is not in line with our Constitution. In order to practise and implement our Constitution, we need to offer democratic space.

I support this Petition.

**Hon. Speaker:** Member for Makueni.

**Hon. Daniel Maanzo** (Makueni, WDM-K): Thank you, Hon. Speaker. What happens in students' elections is very much a replica of what happens in national elections. The Ministry has given guidelines that in primary and secondary schools, students engage in democratic processes. However, when they get to university, they find that the system is different. It does not conform to the current law. What happens in any process must conform to the Constitution and to good practice. So, what is most important is to make sure that students at university practise free and fair elections.

You will also notice that quite a number of university students influence national elections and even quite a number of them are in county assemblies and county governments, the National Assembly and the Senate. We train all university leaders in a certain manner. All this must conform. I support the Petition. We need to grow our young people because they are the leaders of tomorrow. They should know of good ideals, avoid shortcuts, and also accept outcome of elections.

I thank you, Hon. Speaker.

**Hon. Speaker:** Member for Kitutu Masaba.

**Hon. Shadrack Mose** (Kitutu Masaba, JP): Hon. Speaker, I also stand to support this Petition on account that universities form the base upon which we develop serious leaders. If you look at many of the leaders that we have, they emanated from our various universities. They held various responsibilities. I recollect that one of my leaders when I was in the University of Nairobi was Hon. ole Kenta. During that time, we were participating in electing leaders. Therefore, we should open up the democratic space in our universities. As one of the speakers has said, it is imprudent and unreasonable to restrict elections to those who have cleared paying school fees. Those are some of the issues that should be discarded. They should not be allowed. We should have all students participating in the election of their leaders.

Hon. Speaker, even in primary and secondary schools, just like in the national elections, we have increased democratic space. The same should not be stifled when it comes to elections in higher institutions of learning like universities.

I support the Petition.

**Hon. Speaker:** Member for Dagoretti South.

**Hon. John Kiarie** (Dagoretti South, JP): Thank you very much, Hon. Speaker. A lot has been said on this issue. What I need to add here is that a week ago, my 11-year-old daughter was elected president of her primary school. This is a primary school that conducted an election that was overseen by the IEBC. A simple primary school conducts a very good election that is overseen by the IEBC. If primary schools conduct good, fair and free elections, I do not see the reason why a university would be unable to conduct a free and fair election. It is at the university where we have the cream of the society, namely, the best brains of the country. We are developing critical thinkers at universities. So, if we want to lord over young minds, then we are actually eating into our future. So, my point is this: if a primary school is able to conduct a good election, I do not see why a university should fail on a task as important as electing their own leaders.

Thank you very much, Hon. Speaker.

**Hon. Speaker:** Member for Kitui South.

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Thank you, Hon. Speaker, for giving me an opportunity. I also would like to support this Petition by Mr. Amos Kamotho. It is at the university that people recognise what they are and identify what they would like to do in life. As other Hon. Members have said, these days, in primary schools, children are given very good information and they fully understand the importance of representation. By the time they go through secondary school and get to university, they are fully aware of how an election should be conducted. Therefore, the Departmental Committee on Education and Research needs to take this matter seriously and ensure that they come up with a clear formula. They must ensure that elections are not interfered with before, during or after.

They also need to go further and check on other possibilities of how students should vote now that there are students who do not appear physically in school; most of them are online. All of them should be catered for.

Hon. Speaker, thank you for giving me the chance.

**Hon. Speaker:** Hon. Onunga Atandi, Member for Alego-Usonga.

**Hon. Samuel Atandi** (Alego-Usonga, ODM): Thank you, Hon. Speaker, for this opportunity. This Petition is very important and timely. When we were in university, we elected our representatives through universal suffrage and we had some of the most democratic elections. My fear, nowadays, is that during elections, there is a tendency by university students to group themselves in their ethnic formations. This is affecting the quality of representation that we have in universities. We no longer have university students who are capable of pursuing issues that touch on their members. We have university student leaders who are appointed by university administrations. I think as the Committee goes through this Petition, it is important for it to find a way of creating a system within universities where we will have student leaders who are capable of nationalising politics and pursuing issues that touch on the students beyond ethnicity and matters of that nature.

Thank you, Hon. Speaker

**Hon. Speaker:** Very well, the Petition as indicated is referred to the Departmental Committee on Education and Research. Next Order.

### PAPERS LAID

**Hon. Speaker:** The Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June 2019 and the certificates therein:

- i. RIVATEX East African Limited;
- ii. The University of Kabianga;
- iii. Wiper Democratic Movement; and
- iv. Kenya Maritime Authority.

Thank you, Hon. Speaker.

**Hon. Speaker:** Chairperson, Departmental Committee on Health.

**Hon. Joshua Kutuny** (Cherangany, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Report of the Departmental Committee on Health on its consideration of the Kenya Food and Drugs Bill, National Assembly Bill No.31 of 2019.

I thank you.

**Hon. Speaker:** The Chairperson, Committee on Delegated Legislation. Hon. Murugara.

**Hon. George Gitonga** (Tharaka, DP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Reports of the Committee on Delegated Legislation on its consideration of the following statutory instruments:

- (i) The Petroleum Development Levy (Amendment) Order, 2021 being Legal Notice No.77 of 2021; and,
- (ii) Income Tax Exemption on the send-off package payable to employees of the Kenya Airways PLC 2021, being Legal Notice No.115 of 2021.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Chairperson, Select Committee on Implementation, Hon. ole Kenta.

**Hon. Richard ole Kenta** (Narok North, ODM): Thank you, Hon. Speaker. I have two Papers that I am supposed to table. Unfortunately, on perusal, I found that the clerks had mixed the Papers. I apologise for that and request that I be given more time to put the Papers in order before tabling. I can work on them and table them tomorrow.

**Hon. Speaker:** Very well. So you will not be giving Notice of Motion.

**Hon. Richard ole Kenta** (Narok North, ODM): Thank you.

**Hon. Speaker:** Okay, Hon. ole Kenta. Are you withdrawing both?

**Hon. Richard ole Kenta** (Narok North, ODM): Yes, Hon. Speaker.

**Hon. Speaker:** Very well. Next Order.

### NOTICES OF MOTIONS

**Hon. Speaker:** Hon. Murugara, do you have a Notice to give?

**Hon. George Gitonga** (Tharaka, DP): Yes, I do. Thank you, Hon. Speaker.

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 Petroleum Development Levy (Amendment) Order 2021, laid on the Table of the House on Wednesday, 29<sup>th</sup> September 2021 and pursuant to the provisions of Section 18 of the Statutory Instruments Act 2013 and Standing Order No. 210(4) (b) annuls in its entirety the Petroleum Development Levy (Amendment) Order 2021 published as Legal Notice No.77 of 2021.

Secondly, allow me to give notice of the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Income Tax Exemption on the send-off package payable to employees of the Kenya Airways PLC 2021, Legal Notice 115 of 2021 and pursuant to the relevant provisions, adopts the Report.

**Hon. Speaker:** Very well, next Order.

### ORDINARY QUESTIONS

**Hon. Speaker:** First Question by the Member for Jomvu, Hon. Bady Twalib.

*Question No.356/2021*

#### CONSTRUCTION OF MADAFUNI- JITONI- RABAI ROAD IN JOMVU CONSTITUENCY

**Hon. Bady Twalib** (Jomvu, ODM): Thank you, Hon. Speaker, I rise to ask Question No.356 of 2021 to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works:

- (i) What is the status of the construction of the Madafuni-Jitoni-Rabai Road in Jomvu Constituency, Mombasa County?
- (ii) Could the Cabinet Secretary provide a progress report regarding compensation of the persons who were either affected or displaced to pave way for the construction of the said road?
- (iii) Could the Ministry consider including inflation as a factor in calculating compensation rate, taking into account the date of displacement to date?

(iv) What steps is the Ministry taking to ensure that the contractor keeps construction dust under control during the construction period?

**Hon. Speaker:** Question will be responded to before the Departmental Committee on Transport, Public Works and Housing.

The next Question is by the Member for Bobasi, Hon. Innocent Momanyi.

*Question No.366/2021*

CONSTRUCTION OF KEBUKO-NYANGUSU-NYAMACHE-NYANCHEKI  
ROAD IN BOBASI CONSTITUENCY

**Hon. Innocent Obiri** (Bobasi, PDP): Thank you, Hon. Speaker, I rise to ask Question No. 366 of 2021 to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works:

- (i) Could the Cabinet Secretary state the progress of construction of the 25-kilometre Kebuko-Nyangusu-Nyamache-Nyancheke Road in Bobasi Constituency indicating when construction is expected to be completed?
- (ii) Could the Cabinet Secretary provide the details of the contractor of the said project and explain why they have abandoned works at the project?
- (iii) Could the Cabinet Secretary state the amount of funds paid for the construction of project to date?
- (iv) Could the Cabinet Secretary also explain why the funds allocated for the maintenance of the said road during the construction process have not been utilised and undertake to ensure that the road is motorable during the construction period especially during rainy seasons?

**Hon. Speaker:** The Question will be responded to before the Departmental Committee on Transport, Public Works and Housing.

The next Question is by the Member for Teso North, Hon. Kaunya.

*Question No. 381/2021*

CONSTRUCTION OF BUSIA-MALABA ROAD

**Hon. Oku Kaunya** (Teso North, ANC): Thank you, Hon. Speaker. I rise to ask Question No.381 of 2021 to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works:

- (i) Could the Cabinet Secretary explain whether construction of the Busia-Malaba Road has been carried out as per the set standards and explain why it has already developed potholes before the contractor hands over the project to the Ministry?
- (ii) What action is the Ministry taking to address the substandard works already done on the project and ensure that set standards and specifications are adhered to?
- (iii) Could the Cabinet Secretary explain delays in the completion of the said road and state whether the contractor has already been paid all the contract monies for the project?

**Hon. Speaker:** Once again, this Question will be replied to before the Departmental Committee on Transport, Public Works and Housing.



*Question No.383/2021*

## ROYALTIES COLLECTED BY THE GOVERNMENT

The next Question is by the Member for Msambweni, Hon. Feisal Bader. I thought that Member came recently. Does he not know what time the House sits?

*(Hon. Bady Twalib spoke off-record)*

Hon. Bady Twalib, you cannot ask the Question on his behalf. Where is he? Do you hold brief for him?

*(Hon. Bady Twalib spoke off-record)*

What would he be doing around? Hon. Bady Twalib, if a Member is in one way or another unable to be present, he should notify the Speaker through the Office of the Clerk or directly to the Speaker. So, the only thing I can help you to do is just go and tell him what time the House starts.

*(Laughter)*

I hope he is not the one who is making his way in. There is another one making his way in, but this one looks very lanky, so he cannot be the one. Is he the one?

Very well. Member for Msambweni not desiring to be present, his Question is dropped. He will learn through this.

*(Question dropped)*

Next Order.

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

## IN THE COMMITTEE

*(The Temporary Deputy Chairlady  
(Hon. (Ms.) Soipan Tuya) took the Chair)*

## THE NATIONAL HOSPITAL INSURANCE FUND (AMENDMENT) BILL

*(Resumption of consideration  
interrupted in Committee)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Order! Hon. Members. We are resuming Committee of the whole House on the National Hospital Insurance Fund (Amendment) Bill (National Assembly Bill No.21 of 2021).

*New Clause 4A*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): The Mover to move the Second Reading of the New Clause. Chairlady.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Thank you, Hon. Temporary Deputy Chairlady.

I beg to move that the Bill be amended by inserting the following New Clause immediately after the Clause...

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): You are moving for it to be read a Second Time.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 4—

Amendment of section 6 of No.9 of 1998.	4A. Section 6 of the principal Act is amended in paragraph (a) by deleting the word “Minister” appearing in the proviso and substituting therefore the words “Cabinet Secretary”.
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That is just for cleaning up. I beg to move.

*(Question of new clause proposed)*

*(New clause read the First Time)*

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Can I proceed to put the Question? Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Chairlady, I have no problem in terms of it being read a Second Time. I believe, from the Order Paper, that New Clause 4A is to determine the contributions to be made by the contributors to the Fund, or are we looking at different Order Papers? So, just in case we have two different Order Papers, let us tidy up so that we can know the correct one.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Leader of the Majority Party, do you have the Order Paper? It is on Page 1161.

**Hon. Amos Kimunya** (Kipipiri, JP): I can see it now. There are two New Clauses 4A and that is where the confusion is. We need to know that it is the New Clause 4A by the Chairlady distinct from the New Clause 4A by the other Member.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Leader of the Majority Party, you are right. We have three New Clauses 4A, namely, by the Chairlady, Hon. John Mbadi, and Hon. Rahim Dawood. We will move in that sequence. So, Chairlady, you can go on with yours.

We proceed with the one of the Chairlady and then we will get to the others.

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**Hon. Makali Mulu** (Kitui Central, WDM-K): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Makali Mulu, what is out order?

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairlady. This being a New Clause 4A, I thought it is very important that the Chairlady tells this House its import. You were very brief in explaining. You just read it out and left it at that. You need to tell the House the import of that amendment, so that we are able to participate.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Chairlady, maybe you should just say something.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Hon. John Mbadi, you are not the Temporary Deputy Chairlady. You cannot be the Temporary Deputy Chairlady. Let her speak...

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Okay, Hon. Makali Mulu.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Thank you, Hon. Temporary Deputy Chairlady. It is also good to be attentive in the House because I already said that it is for deleting the word "Minister" and replacing it with "Cabinet Secretary" so as to align it with the Constitution.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Makali Mulu, I believe you now understand that.

It is very simple. I think she said it. Now she has said it.

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

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

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

As the Leader of the Majority Party pointed out, we have another New Clause 4A by Hon. Mbadi. If it passes, the next one by Hon. Dawood automatically collapses. So, let us have the Leader of the Minority Party to prosecute his new clause.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Millie, what is out of order?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Chairlady, could I, please, just encourage those who are moving the amendments to indicate the pages, so that we can move faster?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): That is in order. Hon. Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 4—

Amendment of section  
6 of No. 9 of 1998

4A. Section 6 of the principal Act is amended by inserting the following new paragraph immediately after paragraph (a) —

(aa) to determine the contributions to be made by contributors to the Fund.

Simply, it intends to give powers to the Board to determine the contributions to be made by contributors to the Fund. I want to point out that this amendment is necessary for clarity. The powers of the Board shall include determining the contributions to be made by contributors to the Fund, which is currently the case. The Board is exercising that power. So, we are just bringing practice into law.

I beg to move for Second Reading.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

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

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

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuyu): So, Hon. Dawood's amendment automatically goes to rest.

*New Clause 9A*

**Hon. John Mbadi** (Suba South, ODM): Hon. Temporary Deputy Chairlady, I beg to move:

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

Insertion of a new  
section 9A into No.9  
of 1998

9A. The principal Act is amended by inserting the following new section immediately before Section 15 under Part III—

Registration as  
a member of  
the Fund

14A. (1) A person who has attained the age of eighteen years and is not a beneficiary shall register as a member of the Fund.

(2) The Cabinet Secretary may, in consultation with the Board, make regulations for the better carrying out of subsection (1).

Hon. Temporary Deputy Chairlady, Hon. Members should remember that it is currently sitting under Clause 11, but I am moving it to the right place. It is for cleaning up purposes. This is not a new thing. It is being moved from one clause of the Bill to the other, so that we have good sequencing.

I beg to move for Second Reading.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

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

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

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

#### *New Clause 16A*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): It was to be the Chair of the Departmental Committee on Finance and National Planning. In her absence, take over, Hon. Millie.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): I am sorry, Hon. Temporary Deputy Chairlady, I am lost. That is why I asked for the page numbers. I was requested by Hon. Wanga to move on her behalf. I can see Hon. Ichung'wah is unnecessarily excited because Hon. Wanga requested me and Hon. Mbadi to move. We play mature politics in our county.

Hon. Temporary Deputy Chairlady, I beg to move:

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

Insertion of new section in No.9 of 1998.

16A. The principal Act is amended by inserting the following new section immediately after section 21—

Establishment of a centralized healthcare provider management system.

21A. (1) The Board shall cause to be developed a centralised healthcare provider management system.

(2) The centralised healthcare provider management system shall be installed and used by all empanelled providers for the purpose of management of claims, payments and data collection.

(3) The Board may publish guidelines on the use of the centralised healthcare provider management system by empanelled and contracted health care providers.

This amendment seeks to provide a new section immediately after Section 21. It basically seeks the establishment of a centralised healthcare provider management system which reduces wastage and misuse of funds. The reason thereof was given yesterday for those who were in the House. We already passed an amendment that is linked to this one. So, I am just following up with that because it was unanimously passed yesterday.

I beg to move.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Ichung'wah.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): I was not able to contribute on the particular amendment yesterday. This is a good opportunity. I just want to mention that this is, indeed, a very good amendment, and I thank Hon. Gladys Wanga for it. The bills that are sent to NHIF by some healthcare providers are astounding. You may find paracetamol being sold at Kshs30 at the Nairobi Hospital, Kshs70 at another hospital and at Kshs10 at yet another hospital. With such a centralised healthcare management system, it will be possible for the NHIF to standardise the cost of pharmaceuticals and certain procedures at either private or public hospital. That way, no hospital will overcharge the Fund on the basis of the billings they do.

I encourage the NHIF Board and its management to immediately procure a system that will ensure that they have such a centralised system and operationalise it in all empanelled hospitals across the country because it will help in saving funds for the Fund and deliver quality healthcare to Kenyans.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. David Ochieng'.

**Hon. David Ochieng'** (Ugenya, MDG): Thank you so much, Hon. Temporary Deputy Chairlady. I also support this amendment very much and hope that the NHIF Board will not provide exemptions from the system that will be established. The bigger issue is not even quality systems, but picking from what Hon. Ichung'wah has said, the bigger issue is establishing a centralised system of billing that will serve every service provider. Currently, there are so many exemptions based on status of hospitals and their location as well as other considerations depending on who-knows-who in which hospital.

Let this be the only reference document once it is established, so that it does not matter where someone goes and no one is given a chance to be exempted from that system.

Thank you.

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

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

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

*New Clause 17A*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Chairperson, indicate the page you are reading from.

**Hon. (Ms.) Sabina Chege** (Murang'a, JP): Thank you, Hon. Temporary Deputy Chairlady. It is Page 1163, but I want to indicate that I seek to withdraw this new clause. This is after consultation with the NHIF team and following the amendment we made to Clause 10. Those amendments will help in the attainment of universal health care (UHC) for the benefit of all, so the scheme being proposed in the New Clause 17A will be unnecessary.

So I withdraw the new clause.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): The New Clause 17A stands withdrawn by the Chair.

*(Proposed New Clause 17A withdrawn)*

*New Clauses 21A and 21B*

**Hon. (Ms.) Sabina Chege** (Murang'a, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by inserting the following new clauses immediately after Clause 21—

Amendment of Section

27 of No. 9 of 1998.

21A. Section 27 of the principal Act is amended by deleting the word "Minister" appearing in the opening sentence and substituting therefor the words "Cabinet Secretary".

Amendment of section

29 of No. 9 of 1998.

21B. Section 29 of the principal Act is amended in subsection ((1) by deleting the word "Minister" appearing in the opening sentence and substituting therefor the words "Cabinet Secretary".

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Chairperson.

**Hon. (Ms.) Sabina Chege** (Murang'a, JP): Hon. Temporary Deputy Chairlady, again, this is about cleaning up the Act. We are deleting the word 'Minister' and replacing it with the words 'Cabinet Secretary' in both clauses.

I move, Hon. Temporary Deputy Chairlady.

*(Question of the new clauses proposed)*

*(New clauses read the First Time)*

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Ochieng’.

**Hon. David Ochieng’** (Ugenya, MDG): You know I am never trivial, Hon. Ichung’wah. This issue of “Cabinet Secretary” and “Minister”, because the Leader of the Majority Party is here, there are so many laws in this country where every time we sit at the Committee of the whole House, we correct this word. There should be a way, in my opinion, through which the Leader of the Majority Party can work with the Office of the Attorney-General and the Legal Directorate in this House to ensure that all the laws, not just this one, are cleaned up. We do not have to sit here every now and then to be correcting this. This is not an amendment. It is a correction which can be done in all the laws at one fell swoop.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): The Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): Actually, Hon. Temporary Deputy Chairlady, what Hon. Ochieng’ has stated was the essence of the Statute Law (Miscellaneous Amendments). By now, we would be having the Statute Law (Miscellaneous Amendments) Bill collapsing all statutes to have “Minister” changed to “Cabinet Secretary”, but the Bill has ceased to be for miscellaneous amendments. I am speaking to the Leader of the Majority Party. We have substantive amendments coming to the House in the name of miscellaneous amendments. The Leader of the Majority Party could take cue from what Hon. Ochieng’ has said and bring these amendments in the form of an omnibus law.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Well said. Leader of the Majority Party, do you want to do a rebuttal?

**Hon. Amos Kimunya** (Kipipiri, JP): I want to appreciate the comments by Hon. Ochieng’ and, indeed, the Leader of the Minority Party. Perhaps, if we remind ourselves, we used to have the Interpretation of Statutes Act (Cap. 2), which basically had all these definitions. But after the new Constitution, I do recall a lot of discussion proposing that any new law coming up should adopt the new nomenclature. Because we are at a point where we are reviewing a specific Act, we must clean it up. Because some Acts talk of Minister and they have not been amended, it does not mean that people do not know that Minister is now Cabinet Secretary. I believe there is a way the laws should be tidied up. We will take up the issue with the Attorney-General on the neater way to do it, given the little time we have.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): As we support what Hon. Ochieng’ and Hon. Mbadi have said, let us not run the risk of being taken to court, because this is the only way you can amend the law currently. We should consult with the Attorney-General and our legal officers to find a way in which all the laws that have “Minister” can be changed to “Cabinet Secretary” in a manner that will not attract the Omtatah type taking us to court.

*(Question, that the new clauses be read*



*a Second Time, put and agreed to)*

*(New clauses read the Second Time)*

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

**Hon. Kimani Ichung’wah** (Kikuyu, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 21—

Amendment of section  
29 of No. 9 of 1998.

21A. Section 29 of the principal Act is amended by inserting the following new sub-sections immediately after subsection (2) —

(3) For the purposes of Article 94 (6) of the Constitution—

(b) the purpose and objective of the delegation under this Act is to enable the Board to make regulations for better carrying into effect the provisions of this Act;

(c) the authority of the Board to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section.

No. 23 of 2013. Cap 2.

(4) The principles and standards applicable to the delegated power referred to under this Act are those found in—

(i) the Statutory Instruments Act, 2013;

(ii) the Interpretation and General Provisions Act,

(iii) the general rules of international law as specified under Article 2(5) of the Constitution; and

(iv) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

(5) Subsections (3) and (4) shall apply to any other provision of this Act on the making of regulations by the Board or the Cabinet Secretary.

**Hon. Kimani Ichung’wah** (Kikuyu, JP): Hon. Temporary Deputy Chairlady, I beg to move that the New Clause 21A be read a Second Time. It is on Page 1141 in yesterday’s Order Paper. Look for it in today’s Order Paper.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Ichung’wah, we are using today’s Order Paper.

**Hon. Kimani Ichung’wah** (Kikuyu, JP): So, do you want me to take time and look for it or Members can peruse?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): It is on Page 1179.

**Hon. Kimani Ichung’wah** (Kikuyu, JP): It is on Page 1179. The Chair has perused for you. The amendment is to align the NHIF Act with Article 94(6) of the Constitution on delegated legislation that requires that we state expressly the limitations, purposes and objects for which

delegated powers are being given to a body corporate like the NHIF Board to make regulations. The amendment is rather self-explanatory.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

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

*(New clause read the Second Time)*

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Automatically, the one by Hon. Duale suffers natural death.

Let us have the Chairperson.

*(Loud consultations)*

*New Clause 22A*

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Thank you, Hon. Temporary Deputy Chairlady.

Hon. Temporary Deputy Chairlady, I beg to move:

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

22 –

Amendment of  
Section 31 of No.9  
of 1998

22A. Section 31 of the principal Act is amended in subsection (1) by deleting the word “Minister” and substituting therefor the word “Cabinet Secretary”.

Again, it is what the Hon. Members had raised. It is just the issue about the terms “Cabinet Secretary” and “Minister”.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Let us have Hon. Millie.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Chairlady, I rise on a very different issue. Is the Hon. Chair of the Committee in order to be wearing that sort of protection? It is not actually sufficient protection against COVID-19? As the Chair of the Departmental Committee on Health, she is sending the wrong message to the public. Would I be in order to offer her a proper mask?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Chair, can you clarify. Is that a certified protective device?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): It is not, unless it is covered twice. You are sending the wrong message to the public.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): I do not think so.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Chair, that is a serious issue. You are the face of the anti-COVID-19 campaign. Tell us.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): I just want to confirm that it is sufficient. However, for the comfort of Hon. Millie, I have a mask and will still wear it so that I have two. However, this is very sufficient. Just for your security.

*(Loud consultations)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): No! We cannot debate about Hon. Sabina's mask. She cares about her life more than you do.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Can I contribute, Hon. Temporary Deputy Chairlady?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Yes, Hon. Pukose, but not on the mask.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Hon. Temporary Deputy Chairlady, you should not gag us.

I support the New Clause 22A. We are changing from the word "Minister" to the term "Cabinet Secretary". There was a move by some quarters through the Building Bridges Initiative initially... It died, but I think it was put in an envelope.

*(Laughter)*

The owner has put it in an envelope. It is at half-time. When it resurrects in future, we will again have to convert from the term "Cabinet Secretary" to the word "Minister". Has it been called off? Okay. It has been confirmed. When it resumes, then we will rename it.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Sankok, are you contributing to New Clause 22A?

**Hon. David ole Sankok** (Nominated, JP): Yes, Hon. Temporary Deputy Chairlady. That is what I am talking about. We cannot amend in anticipation. Whether BBI resurrects or not, we amend as per the laws we have in the country.

Meanwhile, I think the Chair of the Departmental Committee on Health, Hon. Sabina Chege, just saw me coming and started wearing all these things. In fact, I started doubting myself and did not know whether I was healthy enough. I think she fears me.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Now you have gone overboard. Can I go on to put the Question?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Aye!

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): You are out of order, Hon. Ichung'wah. You have to hear what I am putting the Question on. You cannot say “aye” or “nay” before I finish.

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

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

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

*New Clauses 24A, 24B and 24C*

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by inserting the following new clauses immediately after Clause 24:

Amendment of Section 36 of No.9 of 1998	24A. Section 36 of the principal Act is amended by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.
Amendment of Section 36 of No.9 of 1998	24B. The principal Act is amended by deleting Section 37 and inserting the following new Section—
Accounts and audit  No.18 of 2012.  No.34 of 2015	37. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Fund.  (2) The accounts of the Board shall be audited and reported upon in accordance with the Public Finance Management Act, 2012 and the Public Audit Act, 2015.
Amendment of Section 38 of No.9 of 1998	24C. Section 38 of the principal Act is amended by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Hon. Temporary Deputy Chairlady, I beg to move that the New Clauses 24A, 24B and 24C be now read a Second Time.

We are replacing the word “Minister” with the term “Cabinet Secretary”. There is also the amendment where we seek to align the provisions relating to accounts and audit to the Public Finance Management Act No.18 of 2012.

*(Question of the new clauses proposed)*

*(New clauses read the First Time)*

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Let us have Hon. Millie.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Chairlady, I support the amendment because it enhances accountability. However, I also request that whenever we have amendments as weighty as these, we change the format of recording the amendments so that we have the general amendments as the first part. New clauses should go under different Members' names towards the end so that we do not have this confusion of going back and forth.

Thank you, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Let us have Hon. Ichung'wah.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Temporary Deputy Chairlady, I support the New Clauses 24A, 24B and 24C. As has been mentioned, it is important to align the National Hospital Insurance Fund Act with the Constitution and also the Public Audit Act of 2015. This provision is also standard procedure for all State corporations.

I also wanted your confirmation that since I had a New Clause 24, if we pass the Chair's amendment, mine falls because it is similar. Hon. Mbadi's amendment will fall as well.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Let us have the Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): Not really. If you look at my amendment, it has clearly spelt out what needs to be done. However, Sabina's amendment is talking about the accounts being prepared in accordance with the Public Finance Management Act and the Public Audit Act of 2015. My amendment spelt out what needs to be done, which is basically the same thing. This is just uplifting the PFM Act and the Public Audit Act. Therefore, once we pass this, even my amendment will fall.

I support the amendment because it is in line with the provisions of our Constitution and the Public Audit Act, 2015.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): That is in order. Can I go on to put the Question?

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

*(The new clauses were read a Second Time)*

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): The New Clause 24C by Hon. Rahim Dawood suffers a natural death.

*New Clause 25A*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Let us have the Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): Hon. Temporary Deputy Chairlady, I beg to move: THAT, the Bill be amended by inserting the following new clause immediately

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after Clause 25—

Amendment of  
Section 42 of No.9  
of 1998

25A. Section 42 of the principal Act is amended by inserting the following new subsection immediately after subsection (4) —

(5) Despite any other written law, the assets of the Fund shall not be liable to attachment under any process of law.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

Hon. Temporary Deputy Chairlady, this is to say that despite any other written law, the assets of the fund shall not be liable to attachment under any process of law. This amendment seeks to cushion the access of the fund from attachment as it is public property and the public stands to lose their assets if the same are attached. I also want to point out that comparative State organ such as the National Social Security Fund (NSSF) has a similar provision to protect its assets.

May I add, for the benefit of this House, that healthcare infrastructure in this country is heavily dependent on the NHIF. If NHIF collapses today, the healthcare system in this country would collapse. So, we need to try as much as possible to protect the NHIF from any possible loss of property.

I beg to move Second Reading.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Millie.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairlady. I support, although I am wondering whether the same issues are not covered under the Government Proceedings Act. I do not know if the provision in the Government proceedings is different for corporations. However, for clarity and to be very sure about it, I do not think there is any danger. That is because you are not supposed to attach any properties of the Government.

I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Ichung'wah.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Temporary Deputy Chairlady, I also rise to support. Indeed, if you read the NSSF Act, it has the provision moved by Hon. John Mbadi. I also had a similar one exactly from the NSSF Act protecting the corporation's assets. You can imagine when members of the public are waiting to have their claims processed to release their relatives or patients from hospitals and you are told NSSF assets in your local branch office have been attached by somebody and, therefore, no service can be offered.

That is why it is very important to protect the corporation's assets from attachment.

I thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Ochieng'.

**Hon. David Ochieng'** (Ugenya, MDG): Thank you, Hon. Temporary Deputy Chairlady. This amendment is all good and I support it. However, the issue is the practicability of it. What about where the Fund decides to offer its assets as security in a matter they are dealing with? Such things have happened. The NSSF has had that provision in the Act, but we know what has

happened to its property. There are times when through corruption, people have gone to court and sold its property.

So, what is important here is that even if this law is written, the officers of the Fund must know that they will be personally liable if they go round this particular provision and offer the properties of the Fund for any such liabilities that may open the Fund up to auction or attachment.

I thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Hon. Temporary Deputy Chairlady, Hon. Ochieng' has a pertinent issue. I do not know if we can have a further amendment to this so that the officers at NHIF should be personally held liable in case they deposit the property of NHIF as collateral in any event. That is because we have had that at the NSSF.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Kutuny.

**Hon. Joshua Kutuny** (Cherangany, JP): Hon. Temporary Deputy Chairlady, let me inform the Committee at the preliminary stages that even during the public participation, in the Bill there was a section where they had introduced a clause where the NHIF was going to lend money to some hospitals. However, we deleted that section because it was prone to abuse. I know Hon. Ochieng' to be a very honest person all the way from the university. Such an attempt of introducing a framework where NHIF is going to have anything that they are going to use as collateral is going to be misused.

We should, therefore, not open any window where anybody is going to use the NHIF to source for money. So, I support the amendment that has been introduced by the Chairman of the Orange Democratic Movement (ODM).

I thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): He should be doing it in his capacity as the Member of Parliament and Hon. Leader of the Minority Party and not the other way round.

Let us have Hon. Bunyasi, the Member for Nambale.

**Hon. Sakwa Bunyasi** (Nambale, ANC): Thank you, Hon. Temporary Deputy Chairlady. Just a little bit on that amendment by the Hon. Leader of the Minority Party.

I was just wondering whether we are protecting the institution from being sued in the event of any losses that lenders may have incurred. Supposing the institution goes rogue, as many of our institutions do? By going rogue, I mean suppose they loot the institution to a point where it cannot perform its functions effectively so that you are causing losses among institutions? How do we get our counter protection as well? We wish for the very best, but our institutions have become collection centres for looters many times. I do not think this will be a great exception. There is no history to it and I do not see any future. I was just wondering how we are looking at it. I know Hon. Mbadi looks at all these dimensions, because we must.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Tonui.

**Hon. Ronald Tonui** (Bomet Central, JP): Thank you, Hon. Temporary Deputy Chairlady, please be looking towards this side also. Concentration has been more around the front.

This amendment is assuming that NHIF will not be having creditors. I believe creditors are also entitled to recover their money in one way or the other. I do not know if we are trying to prevent the assets from being liquidated. Are we giving the creditors access to their bank accounts? This is because if there are suppliers who have supplied various items and have not been paid, they are surely entitled to look for their money either through the court or any other institution. How well thought through is this amendment?

I tend to think it is not well refined. It simply sounds good but it is not the right one to be brought here.

I thank you.

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

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

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

#### *New Clause 27A*

**The Temporary Deputy Chairlady** (Hon.) (Ms.) Soipan Tuya): I believe, Hon. Ichung’wah, you know that your amendment dies a natural death.

So, we will go to Clause 27A by the Chairperson.

**Hon. (Ms.) Sabina Chege** (Murang’a CWR, JP): Thank you, Hon. Deputy Chairlady. I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 27—

Amendment of the  
First Schedule to No. 9 of 1998.

27A. The First Schedule to the principal Act is amended in paragraph 6 by deleting the word “Minister” and substituting therefor the word “Cabinet Secretary”.

This is just an issue about “Cabinet Secretary” (CS) and “Minister”.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

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

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

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): Hon. Temporary Deputy Chairlady, I beg to move:



THAT, the Bill be amended by inserting the following new clause immediately after clause 27—

Insertion of 27A. The principal Act is amended by inserting the following new section a new immediately after Section 45—

section 45A  
into No. 9  
of 1998.

Exemption 45A. The Insurance Act shall not apply to the Fund.  
from  
*Cap. 487.*

This is to exempt...

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): You are moving for it to be read a Second Time.

**Hon. John Mbadi** (Suba South, ODM): What did I say? I cannot remember. Let me start again.

Hon. Temporary Deputy Chairlady, I beg to move that New Clause 27A be read a Second Time. This is simply to exempt the Fund from the requirements of the Insurance Act.

*(Loud consultations)*

*Ngoja!* You are shouting and I have not even moved. The amendment seeks to exempt NHIF from the purview of the Insurance Act. We all know the operation of this Fund. Although we are making it more of insurance, it is a public health social insurance scheme. It is not insurance in the strict meaning of it. We should not compare it to private insurance.

The institutional design of NHIF is completely different and will not fit in the purview of the Insurance Act. We all know that families in the insurance fund are attached to some out-patient health facilities. There are so many things that I may not go into the details. I am sure Members of this House will appreciate that the operation of this Fund, unlike any other ordinary private insurance, is completely different. So, we need to clearly remove it from the strict requirements of the Insurance Act.

Hon. Temporary Deputy Chairlady, I beg to move.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Tonui.

**Hon. Ronald Tonui** (Bomet Central, JP): This amendment is major and I hope it is not meant to shield that Fund from competition. Now that we have made a law which will ensure it gets proper funding, why not allow it to compete with others? Already, we have given it two advantages, and then we are adding exemptions. I think there should be an element of competition. Look at Kenya Power, it is not having any competition and that is why it is very inefficient. There should be something to bring a bit of competition in this industry. I believe allowing a little bit of

the private sector to compete with them is a good thing. Let them also taste what the private sector can do.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Point made, Hon. Tonui. Members, let us remember we are not debating. We are not in the Second Reading. Just make your point and then we move on. Chair, you may need to do some clarification.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Hon. Temporary Deputy Chairlady, I just want to support the amendment by the Leader of the Minority Party. I want Hon. Tonui to know that this is social insurance and not a commercial one. So, when you talk about competition, the NHIF is not meant for commercial services. It is supposed to offer some cushion to Kenyans, especially the vulnerable, to access good health care. So, the issue of competition does not come in and I support that amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Ochieng'.

**Hon. David Ochieng'** (Ugenya, MDG): Thank you, so much, Hon. Temporary Deputy Chairlady. I want to thank Hon. Mbadi for bringing this amendment. How I wish he had spoken to me, because I would have told him to add something more. Why do you want Kenyans to use NHIF when in Parliament we are using Jubilee Insurance and others? Let us ensure that all public servants, including Members of Parliament and everybody in Government services, are wholly and fully insured by the NHIF, if we are serious about this issue. You would have added an amendment that says that no public servant shall opt out and have their own private arrangements. Then, it will make sense to me. Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Pukose.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Temporary Deputy Chairlady. You know unfortunately we are seated on your back and so, "catching your eye" becomes a problem...

**Hon. Members:** We are seated on her back!

**Hon. (Dr.) Robert Pukose** (Endebess, JP): No! Not on her back, but behind her.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Order, Members!

**Hon. (Dr.) Robert Pukose** (Endebess, JP): I withdraw that.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Pukose, you need to be very clear that you are not seated on my back.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Yes, I withdraw that.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Temporary Deputy Chairlady, he cannot say we but I.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Proceed Hon. Pukose.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Temporary Deputy Chairlady, this is a good amendment. You know the NHIF being a social protection fund should not be subjected to the Insurance Regulatory Authority (IRA) regulations. This will make its operations very difficult and yet, we have provided in the Act that it can be audited under the Audit Act, 2015. So, it should stick under the PFM Act, 2012. I think it is well covered to operate well. I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Millie.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairlady. I support but I suspect what Hon. Mbadi is proposing has something to do with the fact that sometimes when you are insured by one insurance agency, it limits your insurance in another area. Therefore, when you are insured by the NHIF, it should not then, in itself, impact or affect the other insurance. My only concern is sometimes it is good for us to harmonise. I am just

wondering how this sits with an amendment brought by Hon. Wanga in clause 3. It defines risks spreading to mean the transfer, sharing or the distribution of the risk insurance between one or more insurance companies or other providers. I do not want to go through all of that. This is something that the Chair of the Committee needs to think about, whether the amendment by Hon. Wanga is still applicable if the one by Hon. Mbadi passes. If it is not applicable, we then perhaps need to recommit.

Thank you. I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Ichung'wah.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairlady. I rise to support and would like to pick up from where Hon. Millie has stopped, on risks spreading. I had sought an opportunity yesterday to speak on risks spreading, which I did not get.

I wanted to ask the NHIF Board and its management that, in as much as we are opening the leeway for risks spreading, this would move towards reinsurance. Hon. Millie is indeed right, that part of the requirements of IRA is regulation on reinsurance and how to share costs. I truly support what Hon. John Mbadi is seeking to do with his amendment. This is because there are very many stringent regulations over commercial insurance companies which may not ideally work in a social insurance scheme like the NHIF.

Indeed, things like provisions on reinsurance, like Millie has said; provisions on liquidity ratios, how to collect premiums and commissions paid out to people who bring business. Therefore, there are very many things that would not suffice for the NHIF as a social insurance scheme, but are very important. I just want to allay fears of Hon. Tonui of Kenya Union of Post Primary Education Teachers (KUPPET) and Member for Bomet Central, that there is no competition between the NHIF and other commercial insurance companies. If anything, the operationalisation of this Act will enable NHIF to do its work as is intended by this Amendment Bill.

The cost of medical insurance in this country and consequently the cost of medical care will come down. It will only encourage more commercial insurers to get into this business because it will be more competitive since there will be an industry regulator that will be offering a social security scheme. However, as a word of caution to the management of the NHIF, we know that previously, the Fund had been grossly misused. I pray that the opening of Section 3 by Hon. Gladys Wanga yesterday on risk spreading will not open an avenue by the management of NHIF or anybody within the Board of the NHIF to get into deals to reinsure public money with commercial interests. We must guard the public funds that are in this Fund to remain as a social security for Kenyans and not as an opportunity for individuals to solicit for commissions with reinsurance companies in the country and around the world. This is because there is that risk and, indeed, that is what I wanted to mention yesterday as we moved that amendment.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Member for Tharaka.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Temporary Deputy Chairlady. I think we need to make a distinction here. What we are dealing with is the NHIF, which has been created by an Act of Parliament that is separate from the Insurance Act, which governs other insurance companies and the industry. The Insurance Regulatory Authority is under the Insurance Act, while the Fund we are establishing is actually under its own regime of laws. Therefore, the proposed amendment is timely. The Regulations of IRA should not actually apply to this Fund because it is independent as a social protection Fund and is totally different from commercial insurance.

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

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

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Ichung’wah, your amendment on Clause 27A collapses.

*New Clause 28A*

**Hon. Kimani Ichung’wah** (Kikuyu, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by deleting clause 28 and substituting therefor the following—

Amendment of  
the Second  
Schedule to  
No. 9 of 1998.

28. The Second Schedule to the principal Act is amended—

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

2. The office of a member of the Board, other than an *ex officio* member, shall become vacant if the member—

- (a) at any time resigns from office by notice in writing to the Cabinet Secretary;
- (b) has been absent from three consecutive meetings of the Board without the permission from the Chairperson;
- (c) is adjudged bankrupt or enters into a composition scheme or arrangement with creditors;
- (d) is convicted of an offence involving dishonesty or fraud;
- (e) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or
- (f) is incapacitated by prolonged physical or mental illness.

Vacation of  
Office

(b) in paragraph 3—

- (i) by deleting the words “and an honorary treasurer” appearing in sub-paragraph (2) and substituting therefor the words “from among members of the Board except *ex-officio* members of the Board”.
- (ii) by deleting sub-paragraph (3);
- (iii) by deleting the word “nine” appearing in sub-paragraph (4) and substituting therefor the word “five”;

(iv) by deleting the word “standing orders” appearing in sub-paragraph (8) and substituting therefor the word “guidelines”;

(c) by deleting paragraph 5.

Hon. Temporary Deputy Chairlady, this is just a transitional clause to ensure that those who are serving in the current NHIF Board... You will remember the part of the amendment that Hon. John Mbadi did and the further amendment by the Chair reconstituted the NHIF Board. We, at least, want to protect those who are within the Board today so that they can serve until the end of their terms. They will continue to serve for the remainder of their unexpired term.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Only the Board and not the staff?

**Hon. Kimani Ichung’wah** (Kikuyu, JP): Yes, of course, the Board carries the management and there is nothing that we have done with this Bill that touches on the management of the Fund. It is just the transition of the Board, because we changed it. It is important to protect the members of the Board who are currently serving. You will remember that if we do not create a transition mechanism, the people who are in the Board will have to go home upon commencement of the Act. So, this is just to create a smooth transition of allowing the sitting members of the Board to continue serving for the remainder of their terms and then after that, the new Board will take effect.

Thank you, Hon. Temporary Deputy Chairlady.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Ochieng’.

**Hon. David Ochieng’** (Ugenya, MDG): Hon. Temporary Deputy Chairlady, you know we are making very far reaching changes to the NHIF framework. I would wish that we give the appointing authority a clean sheet to get a Board that will help him or her to implement this Act. Why are we saving people? I oppose this amendment by Hon. Ichung’wah because of what we have just talked about here. There are things we are trying to clean up and we are not talking about a very clean institution. This is an institution that has had so many problems. I would imagine that if it were me deciding, I would want a clean slate. I would have a new Board with a new CEO who then can come in and start implementing new things. We do not want people with hangovers of the past trying to tell us: “Ooh, here we do things this way. This is the way it is done.” No! The NHIF needs a new Board to take on the new roles.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): Hon. Temporary Deputy Chairlady, I get what Hon. Ochieng’ has said, and probably it looks nice. But we also need to be careful because institutions sometimes generate reforms and bring legislation to reform itself. If we go by the suggestion by Hon. Ochieng, we will be discouraging those who are already in positions in institutions from generating reforms because any time reforms are made, people are going home.

I remember this is something we did with the Ethics and Anti-Corruption Commission (EACC), and at that time, we deliberately did so. We brought an amendment that took home the EACC because we did not like Ringera. Parliament did that. There is nothing that stops the dissolution of any Board if you feel that it is not functioning. However, I am just asking that we need to be careful. I do not know how we are going to balance this, but we need to be careful lest we discourage institutions from generating reforms. Most of the legislations that come to the House are generated from those institutions after studying the system and seeing how best the system should work. So, I understood the amendment of Hon. Ichung'wah in that strict sense of trying to give comfort to other institutions which may want to reform themselves, going forward.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Hon. Mbadi has spoken very well on this one, and he stole my mind. No wonder we have the same background in the University of Nairobi. He is a very intelligent and progressive leader.

*(Laughter)*

The Board only stays for three years. By the time we are probably passing this particular Bill, it will have remained with one year. What is the problem of allowing them to finish their terms so that we can encourage other State Corporations to develop programmes that will assist more? We will be discouraging them and they will all fear that they will be dissolved and go home once they generate some good ideas. I, therefore, support what Hon. Ichung'wah has said. However, we need to know that if we are protecting the CEO, we shall also be protecting the staff, which would normally be the case.

I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Wangwe.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you. Hon. Temporary Deputy Chairlady. Board members are not all inaugurated at once. They come in at various times. I support the amendment by Hon. Ichung'wah because historical memory of an institution is very important. We must not tamper with the entire Board for all members to go home. We are not starting the NHIF from zero. We have some history about NHIF. Therefore, we cannot just say that the entire Board should go home and then we are left without history.

I support the amendment by Hon. Ichung'wah.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. (Dr.) Pukose.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Temporary Deputy Chairlady. When a Board is constituted, it is gazetted. If we do not allow its members to serve their full terms, we might be running into litigation matters. Therefore, it is important that we allow a transition period for both the Board and the CEO. What I know is that the CEO for the NHIF is new and he has not even finished one year in office.

Therefore, I think it is important that we have the *status quo* retained to serve the completion of their term and then, once that term ends, we can have a new board. I support this amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Shamalla.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you, Hon. Temporary Deputy Chair. I too rise to support this amendment. It is extremely important and I want to echo the sentiments of our Majority Whip that there must be continuity. We must have the historical

background on issues and we cannot have an entire board being dissolved and simply sending people home. That way, it causes a lot of damage and we can use a lot of examples that we have had within our own country during the changes of administrations.

I also want to say that this is an affordable healthcare for all people. It is a lasting legacy on Universal Health Care for the Uhuru administration.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Member for Kiambu County.

**Hon. (Ms.) Gathoni Wamuchomba** (Kiambu CWR, JP): Thank you, Hon. Temporary Deputy Chair. I rise to support the amendment by Hon. Kimani Ichung'wah basically because a majority of the inefficiencies that we have in most of the Government-oriented institutions and parastatals are always given as an excuse that the board has not met or the board has not been gazetted. This is what is happening now with the National Government Affirmative Action Fund (NGAAF). When the board is interrupted in the manner that we have to have others coming in and others going out, the vetting process always takes a lot of time.

The reason we are debating issues concerning NHIF is because of the pressure we have on the ground. Our people are suffering; our low earning caliber of people have no money to even support own basic medication. Therefore, if we create a window for delays and inefficiencies, we might not be achieving what we want to achieve. Therefore, I do support the amendment 100 per cent.

Thank you, Hon. Temporary Deputy Chair.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Keter Alfred. Members, please, be brief. Do not debate.

**Hon. Alfred Keter** (Nandi Hills, JP): Thank you, Hon. Temporary Deputy Chair. I rise to support the amendment by Hon. Ichung'wah. Having said that, I want to support all the Members who have spoken to this. It is good for us not to set very dangerous precedents because we will be reviewing many other institutions in terms of operations. We will mess up institutions by creating laws that are going to force those who are in office to be leaving office just for the sake of it. I think the NHIF is not a dysfunctional institution; it is actually functioning. Most of the challenges that are faced by NHIF are not matters of law. Some are policies; some are external factors which are not even directly touching the NHIF. I think we should support and give them the necessary legislation so that in the future, for any other organisation which is failing, we do not blame the board. The board is constituted by many members who are meant to contribute positively to an organisation.

Thank you, Hon. Temporary Deputy Chair.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Member for Cherangany.

**Hon. Joshua Kutuny** (Cherangany, JP): Thank you, Temporary Deputy Chair. I can read the mood of the House, however, I want to give a caution. What is the intention of introducing a transitional clause to the board? People have talked about institutional memory and all that, but assuming you have a board that is not effective; assuming there will be issues in the board, will the transitional clause protect those people? That is the question that we should discuss and find answers for as we discuss the issue of transitional clause. So, there is a standard practice where the Cabinet Secretary or, perhaps, the President appoints members of the board. It is not going to be Parliament that is going to legislate. It appears that we are legislating here on how those people can be retained in the board. So, I think it is not proper for us to introduce the transitional clause. Assuming we are going to introduce the transitional clause, it might even be misused in the future,

that any other organisation or government agency during the time of crisis, might introduce or use this kind of legislation.

So, I oppose, Hon. Temporary Deputy Chair.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuyu): I see a number of Members. Hon. Kilonzo.

**Hon. Charles Kilonzo** (Yatta, Independent): Thank you, Hon. Temporary Deputy Chair. I need to support the amendment by Hon. Ichung'wah. For the purposes of the memory of this House, when we dissolved the Electoral Commission of Kenya (ECK), it was purely because the public had lost confidence in the Commissioners of ECK. Now with the NHIF, it is a matter of law. Parliament thought the law needs to be changed for the NHIF to serve the public better. It has nothing to do with the board. Therefore, we should not criminalise the members of the board. It is important that we do not discourage other institutions from bringing reforms from within because they will be scared that if they bring reforms, then Parliament will also kick them out. It is a good idea that we support the amendment by Hon. Ichung'wah.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuyu): Hon. Tonui.

**Hon. Ronald Tonui** (Bomet Central, JP): Thank you, Hon. Temporary Deputy Chair. I want to support the amendment because of late, NHIF board has been performing. We have not heard of any scandals of late. If there was any scandal, we could get rid of it through this law. Currently, things are stable and it appears to be okay. So it is better to have them be part of the transition.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuyu): Hon. Serem.

**Hon. Cornelly Serem** (Aldai, JP): Thank you, Hon. Temporary Deputy Chair. I am of the same opinion that it is very important for Parliament to realise that those who serve in those boards are also Kenyans of some background. So, waking up and kicking them out might not be very fair, because you must have a reason for kicking them out. I support the amendment by Hon. Ichung'wah.

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

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

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

## Clause 2

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Thank you, Hon. Temporary Deputy Chair. I beg to move:

THAT, the Bill be amended by deleting clause 2 and inserting the following new clause—

Amendment of the  
long title to No. 9  
of 1998.

2. The National Hospital Insurance Fund Act, in this Act referred to as the “principal Act” is amended by deleting the long title and inserting the following new long title—



“An Act of Parliament to provide for the establishment of the National Health Insurance Fund; to establish the National Health Insurance Fund Management Board; to establish the National Health Scheme; to provide for mechanisms of contributions to and the payment of benefits out of the Fund and for connected purposes”

Hon. Temporary Deputy Chairlady, I have just deleted the current national health scheme because now, with universal health coverage, we will just have the National Health Insurance Fund.

I beg to move.

*(Question of the amendment proposed)*

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

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

*(Clause 2 as amended agreed to)*

*(Title agreed to)*

*Clause 1*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): I call upon the Leader of the Majority to move.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Chairlady, I beg to move: THAT, Clause 1 be amended by replacing the word “Hospital” with the word “Health”. This is so that it is called the National Health Insurance Fund (Amendment) Act of 2021.

*(Question of 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 1 as amended agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): I now call upon the Mover to move reporting.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the National Hospital Insurance Fund (Amendment) Bill (National Assembly Bill No. 21 of 2021) and its approval thereof with amendments.

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*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Soipan Tuya) in the Chair]*

## CONSIDERATION OF REPORT AND THIRD READING

### THE NATIONAL HOSPITAL INSURANCE FUND (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): I now call upon the Chairperson to report to the House.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the National Hospital Insurance Fund (Amendment) Bill, (National Assembly Bill No. 21 of 2021), and approved the same with amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): I call upon the Mover to move agreement with the Report.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. John Mbadi to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. John Mbadi** (Suba South, ODM): Hon. Temporary Deputy Speaker, I second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order! Members, take your seats.

*(Question proposed)*

Should I proceed to put the Question?

*(Question put and agreed to)*

I now call upon the Mover to move the Third Reading.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move that the National Hospital Insurance Fund (Amendment) Bill, (National Assembly Bill No. 21 of 2021), be now read the Third Time.

I take this opportunity to thank the Members who have been working on this Bill from the time it was introduced in the House for the First Reading, through the Committee, the public participation, in the Second Reading through the vibrant contributions that were made on the Floor of the House and the enrichment of the Bill that we have witnessed through the various amendments that we have considered in the Committee of the whole House from yesterday till today, all geared towards making the National Health Insurance Fund better to achieve the bigger dream of universal healthcare for our people, which is one of the Big Four Agenda items.

I really wish that now that Kenyans will be covered, we can all participate and help in the rollout of the Bill.

I would wish to appeal to our colleagues in the Senate, now that the National Assembly has done its bit and proved to the Kenyan people that we are not the hindrance to them achieving their health, to process this Bill in as fast a time as possible. That is so that, as we get into the new year we can have a Christmas gift of better health to the Kenyan people and nobody needs to sell their land and mortgage their life just because they have fallen sick. We have seen a lot of that happening, especially with this COVID-19 situation where families are not just losing a dear one, but are losing even all the property they have as they try to pay the bills. With this Bill that this National Assembly has passed and with the cooperation of the Senate, we hope that we will see the end of that misery that we are seeing occasioned by illness.

With those remarks, I beg to move and request the Hon. Kimani Ichung'wah to second.

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

I wish to also take this opportunity to thank the Leader of the Majority Party who was the Mover of this Bill and Members who contributed in the Second Reading and persevered since yesterday by sitting here for the long hours that we sat yesterday afternoon up to evening, of course, including the very able Chair and the Vice-Chair of the Departmental Committee on Health for their diligence in this Bill. I thank Members for their patience. If you look around the House, you will notice that very many of us, especially those of us who speak for and on behalf of the hustling Kenyans, agree with the Leader of the Majority Party that, indeed, to many of us that are representatives of the people, we bear the pain of our people.

This Bill is so important to the people of Kenya. It is not about what the media reported last night that the House is making it compulsory for everybody. It is important to note that we have made provisos, especially for unemployed youth who have no source of income, to work with the NHIF Board to voluntarily offer contributions to the Board and benefit from healthcare. Let me also be quick to mention that, under Article 43 of the Constitution, healthcare and its provision is a social right that is guaranteed to each and every Kenyan.

This Bill, therefore, is very important not just to us as representatives of the people, but also as citizens and Kenyans. It is indeed true what the Leader of the Majority Party has said, that millions of Kenyans pre and post the COVID-19 pandemic have lost property and their livelihoods as they sought to settle hospital bills. This Bill, if actualised and operationalised, will serve our people better. I join the Leader of the Majority Party in appealing to the other House, the Senate, to quickly pass this Bill and allow it to become operational to enable Kenyans access a social insurance scheme that will help them get affordable and universal health coverage.

Lastly, even as I thank the Leader of the Majority Party, I think being the Mover of this Bill he now knows he has true friends in this House. If you look across, you can see you have true friends in ODM. If you look behind you, you will see you have true and real friends who will stand with you any time you have business in this House that is pro-people. Leader of the Majority Party, I want to tell you that, indeed, we were lobbied. We were lobbied to have this Bill defeated. The Leader of the Majority Party, you have to hear this. We were lobbied to have this Bill defeated in your hands. But there is no way we would have allowed such an important Bill to die in your hands to punish you.

*(Applause)*

We are not like that because we are here to represent the people. Even as you look around, Leader of the Majority Party, I want you to look around yourself, especially around the Front Bench where you are seated. Look around and ask yourself where the people who were supposed to be seated with you there are today when they are supposed to be here speaking and pushing a Bill that is for the benefit of the people of Kenya. Hon. Leader of the Majority Party, I thank you and I tell you that every time.

*(Loud consultations)*

If the Members who are consulting in loud tones could give me a chance to complete, I was telling the Leader of the Majority Party that he can count on those of us who believe in standing for the people of Kenya and those who will never use political expediency to punish people every time they have a Bill or a Motion that is pro-people.

Thank you. I beg to second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order, Members.

*(Loud consultations)*

Order! Order, Members. You can shout as much as you want but nothing is being recorded of what he was saying. Yet, you still have a chance to speak after I propose the Question. So, let us have order. You are out of order, Members. I will go on to propose the Question.

*(Question proposed)*

*(Loud consultations)*

Should I go on to put the Question? Order, Members. Go on, the Leader of the Minority Party.

**Hon. John Mbadia** (Suba South, ODM): Thank you, Hon. Temporary Deputy Speaker. Allow me to take this opportunity to thank this House most sincerely for doing a job that I think is in the interest of this country.

I want to thank the Leader of the Majority Party. I thank the Committee for burning the midnight oil to ensure that this very important Bill is processed, transacted and dealt with in this House. Many people have been talking about universal health coverage without thinking of the processes that are leading to that. You remember - and this House will recall - that the Government even attempted to pilot a system where they were doing kind of input financing for universal healthcare. That did not work. This is the most important and the most progressive piece of legislation that is going to ensure that Kenyans who cannot afford medicare in this country are able to afford medicare. Let us remove politics from the debate on this matter and understand what this House has done. We have lived to the expectation of the people of Kenya in ensuring that we have provided a system that will ensure that those vulnerable Kenyans are cushioned and also receive healthcare provision just like any other.

Here we are together. If there was any Member whether from Jubilee, the Majority or from the Minority who wanted to frustrate this Bill, I would only say "shame on such a Member". Really, we cannot play politics with such an important piece of legislation.

As I sit, I want to say that I chair the ODM Party which is a social democratic party that is concerned about the welfare of the downtrodden and Kenyans who are not able to stand on their

feet economically to afford medicare. All of us in this House have been contributing towards medication of our constituents. With this Bill, if it is assented to, that burden will be reduced. Let us not cheat ourselves that it will be eliminated. It will not. But the burden will be significantly reduced.

With those many remarks, I want to plead with the House that we have done very well so far. Let us reduce unnecessary emotions and pass this Bill and have it assented to by the President.

I support.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Sabina.

**Hon. Members:** Put the Question.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, we are at Third Reading, which is not the same as Second Reading, so you must be very brief and to the point. We are not revisiting debate at Second Reading.

**Hon. (Ms.) Sabina Chege** (Murang'a, JP): Thank you, Hon. Temporary Deputy Speaker. Mine is to thank the entire House, especially the Members who are here and those who were here until late last night. My Committee has had several meetings and sometimes we had to give in. The doctors in my Committee were very passionate about this Bill. I know Dr. Nyikal was here yesterday; I cannot see him today. Dr. Eseli and the Vice-Chair were also instrumental. I just want to say thank you very much. You have not done this for yourself but for the entire nation, especially for proper healthcare in the Republic of Kenya. Let us not politick. Let us continue with the same spirit.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Millie.

**Hon. David ole Sankok** (Nominated, JP): On a point of order.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Sankok, what is out of order?

**Hon. David ole Sankok** (Nominated, JP): I rise under Standing Order 95. Reading the mood of the House, we are all saying the same thing. So I request you to put the Question so that we can make a determination as a House.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): You are out of order, Hon. Sankok. We are at Third Reading.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. I just wanted to raise a concern. At this stage it is not a debate. I was just concerned that there are Members who do not seem to be aware of that.

I want to thank the Members for the excellent work. I want to thank the Chair, Hon. Sabina Chege, for bringing this Bill that takes care of the poor and the downtrodden in the community. I want to thank the other Members who brought amendments, including Hon. John Mbadi; Hon. Gladys Wanga; Hon. Ichung'wah; Hon. Kosgey, who had come with a new hairstyle; and Hon. KJ, my good friend. You notice on this Bill I did not bring my amendments. I had my amendments, but when I saw other Members had submitted theirs, I did not submit mine. The amendments are very good. If Members can continue in this spirit—that even when we are divided politically, we can push a common agenda. You saw I even moved amendments by my own County Woman Representative, even though we have different political leanings.

Thank you, Hon. Temporary Deputy Speaker.

**Hon. Members:** Put the Question.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, can I put the Question?

**Hon. Members:** Yes.

*(Question put and agreed to)*

*(The Bill was read a Third Time and passed)*

*(Applause)*

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): What is out of order, Hon. Ichung'wah?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Temporary Deputy Speaker, it might have escaped you in the heat of the engagements. When Hon. Sankok stood on a point of order, he said he was standing under Standing Order 95 and he said that he orders you to put the Question. It might have escaped you, but because it is on record, it is important he withdraws that statement. He cannot order the Speaker to put the Question.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): But also in the heat of the moment, I ruled him out of order. So it cancels out.

**Hon. David ole Sankok** (Nominated, JP): Let me withdraw.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): I already ruled you out of order, Hon. Sankok. You were already out of order, so it does not hold anymore.

Let us move to the next Order.

## BILL

### *Second Reading*

#### THE LANDLORD AND TENANT BILL

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move that the Landlord and Tenant Bill (National Assembly Bill No. 3 of 2021) be read a Second Time. This Bill seeks to consolidate several laws that relate to renting of premises for both business and residential use. It is driven by the need to balance interests of landlords and tenants. Members will know that currently there are three pieces of legislation that regulate the relationship between landlords and tenants: the Rent Restriction Act (Cap. 296), the Distress for Rent Act (Cap. 293) and the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap. 301). Each of these targets different segments of society. You have business premises being regulated from one end while the Rent Restriction Act takes care of people at the lower levels and the Distress for Rent Act covers what happens when you do not pay rent.

This Bill now seeks to cover various interests. Landlords obviously have invested their money. They have taken mortgages to provide houses and they are driven by the need to have decent returns on their investments. Tenants, on the other hand, will obviously be looking for the best housing that they can afford. So long as they pay their rent, they do not want to be disrupted in the course of their occupying the premises. Hence you end up with a dichotomy of interests. One

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party wants the best facilities at the lowest cost, the other one wants the best rent irrespective, and will obviously want to invest the least amount of money. If they invest heavily, they want to get fair return on their investment. When you get these two extremes, unless the law comes in to mediate, you will continue having the same problems where landlords who feel that tenants have refused to pay for a certain period choose to break doors or remove the roof to frustrate the tenants to move out so they can admit a new tenant.

The protection within the law has not been helpful. One of the complaints by landlords is that when tenants fail to pay, they go to the Rent Restriction Tribunal and they are told to stop paying until the matter is heard. The landlord has a mortgage to pay and other costs but then they do not receive any income, hence the frustration that you see being executed through extra-judicial methods.

Similarly, you also find tenants who suffer the indecency of landlords who want to continuously increase the rent beyond, especially where they are not covered through a lease. The law is, therefore, required to harness all these interests between a genuine rent-paying tenant and a genuine landlord who wants to just make a decent return and protect their interest.

This Bill will apply to all residential premises, other than excepted residential premises. The residential premises leased on service tenancies; the premises let to an employer who provides the premises to an employee in connection with their employment, and residential premises whose monthly rent does not exceed such an amount as the Cabinet Secretary may prescribe. Members will have an opportunity to look at the details as we get into the Bill.

The Bill will also apply to the tenancy of a business premises which is not reduced in writing and also one that is reduced in writing, but for a period not exceeding five years and contains provision for termination other than for breach of a covenant within five years of the commencement of the tenancy term.

However, there are some exceptions where it is already covered through a mutually agreed tenancy agreement. People will not need to go to the law because the law of contract will prevail in those situations.

Hon. Temporary Deputy Speaker, this Bill seeks to introduce very far reaching provisions that address the interests of both the tenants and landlords. For instance, it allows the rent to be determined by mutual agreement. This is difficult and I am sure the Committee will have some views on this. Where there is no agreement, then a tribunal, on application by either party, will determine the rent based on comparable premises within an area. In a normal course of business, the landlord will sit with the tenant and agree on the terms. However, for a cadre of people we are looking at protecting, it is unlikely that there will be that opportunity for them to sit and negotiate with their landlords and agree and even do subsequent reviews. There is need to then get this protection into law and provision for a tribunal.

Some of the salient features of this Bill include Section 18 which lays out the procedure the landlord must follow to increase rent payable by a tenant. It also sets out the justifications for rent increases which include the fact that the landlord must have incurred a capital expenditure which has improved the facility. This will ensure that the landlord does not just wake up and say; "I want to increase the rent from this month." There must be proof of evidence that he has done something to add value to the tenancy. It also includes the fact that increases could come on account of inflation because we obviously know that the value of money is not static. The landlords could increase the rent, if additional services are provided at the premises and where the land rates payable have increased.

One of the provisions that is coming in this Bill is that landlords are required to give a written notice of at least 90 days prior to the intention to increase rent which would then render the rent increase invalid. At the same time, if the tenant does not object to this written 90 days' notice, within 30 days of receipt of that notice, then they are deemed to have accepted the increase. This again shields the predictability and surprises that may be sprung on the tenant by the landlord or also the feeling that a tenant who receives notice keeps quiet and is hoping that after 90 days he would then start challenging that rent. Therefore, it gives a window of at least 60 days for them to negotiate.

One of the other features of this Bill is that the landlord may increase the rent once every 12 months in case of residential premises and for the business premises every 24 months. This gives a certain predictability in terms of the cost of housing.

In a bid to protect the tenants, the Bill also compels landlords to keep their signed records of all the rent payments and to share a copy of that record with the tenants. For any landlord who does not keep those records or does not give a copy of the records in terms of the receipts and the payments that have been made, there could well be a fine not exceeding one month's rent which will be imposed on the landlord.

Hon. Temporary Deputy Speaker, where a tenant dies or walks out of the premises when they have the rent arrears, for the protection of the tenant, the landlord will not just walk in and grab the property of the departed. They will have to apply to a proposed tribunal to be given the power to dispose of the belongings of the departed tenant. This will also not just be granted before a verification of the inventory of the items has been taken by an officer of the tribunal.

The Bill mandates the landlord to provide the receipts of all the repairs done to the premises upon vacating before deducting any security deposits. As you know, traditionally you would be expected to pay a certain number of months' deposit, which would be expected to cover the cost of making good the premise upon the expiry of the lease. However, usually, landlords may just come and say, "I have used all your money to renovate or do the paintings." Under this law, the tenants would be entitled to see that the landlord has actually used with evidence on how much of their money has been used to make good or restore the house before allowing them to go.

For the landlords, there is also certain protection that the Bill is bringing which are not expressly provided for in the Residential Landlord -Tenant Agreement and the Rent Restriction Act. For instance, there is a right for a tenant to recover security deposit. The right for a tenant to recover security deposit is attached to the tenant having restored the premises to the condition it was in time. Like I said earlier, the landlord will have that right to hold the money until that premise is restored. The flip side of that is obviously that the tenant will have the right to verify the documentation that pertains to that restoration.

I will be considering the possibility of perhaps, adding some riders to this so that we look at fair wear and tear, and whether it could be incorporated into this as part of further insulating the tenant. Therefore, it is not just the restoration. You know there are some other things that may not be restored and we need to see how they are captured.

As further protection to the landlord, the Bill lays out the grounds which a landlord may be entitled to terminate the tenancy without reference to a tribunal. That is provided if the landlord complies with the provisions of the Act by giving sufficient notice and several other provisions.

I will only be highlighting a few. I have seen the Committee's Report and I am sure they will be highlighting many more and any other issue that came through the public participation. There are few Members in this House who are tenants, and most of them are landlords. So, I expect



that we will get some vibrant debate on this matter because we owe it to both tenants and landlord to protect them.

I did mention that this notice can be given in the period that has been proposed for terminating a tenancy in good faith, when a landlord requires possession of the premises for personal use. It has now been reduced from 12 months to 60 days. Obviously, it is one thing for a landlord to rent out his premises and another to repossess them for personal use. When a tenant needs to move into his premises for personal use, he is told he has to wait for 12 months. So, this period has been reduced to 60 days.

Similarly, additional obligation to obtain the consent of a tribunal, if the landlord wishes to rent the premises within 18 months after the date when possession was actualised, it has also been removed. So, there are so many good things that are contained in this Amendment Bill. Several people have raised concerns perhaps out of listening to a lot to social media or misunderstanding of the intentions of the Bill. If you look at the broader intention of the Bill, you will appreciate that it seeks to balance those interests and consolidate the legislations on issues to do with business premises and residential premises. Therefore, there is only one reference point for matters to do with landlord/tenancy relationships. I believe there is a big improvement of the law that is currently in place.

It seeks to balance the interest of both parties. In that balance, obviously, there will be areas that perhaps may require some adjustments in this House to fine tune the law. I believe from my own perspective that it goes a long way in addressing the current problems that we have between landlords and tenants. The Bill also underscores the need to continuously review our legislation to align it with current realities.

You can deduce when these laws were enacted by looking at their Titles. Any law that keeps on talking about “Chapter... Laws of Kenya” tells you that it is very old. We started talking about Bills of particular year. So, these laws are quite historical and aligning them to the current constitutional dispensation and realities is a timely thing.

Hon. Temporary Deputy Speaker, I could go on and on because this is an area I am passionate about, not necessarily because I am an investor. I may have invested my money from the Parliamentary Mortgage Scheme to enable a few Kenyans secure some accommodation and pay me some rent. I wish they could pay me more. I am passionate because I believe that every human being deserves good accommodation at rent. This will also help more landlords to get into affordable housing and get into offering business as well as residential buildings for others knowing there is protection from the law.

Indeed, when you look at the amount of money that has been spent by our county governments and even by the national Government in putting up premises, which could as well have been done by the private sector, it is a lot. The Government receives money on a monthly basis. The county governments receive money from the National Treasury on a monthly basis hence gobbling up billions of shillings in putting up office buildings so that they can have some county lands office or some other county offices. The county administrations could have given the responsibility of putting up such buildings to private developers, so that they synchronise the amounts they receive with the rents they pay without having to worry about the long-term effect of that building.

That aspect of leasing is the concept that I find lacking in this country. So, we end up using all the money we have on putting up buildings rather than providing services. I would imagine a situation where the Government does not need to put up even hospital buildings. You just decide this is the kind of hospital we want and let the private sector come in, they build it and the

Government leases it and provides services so that all the money goes towards paying doctors, rent, providing medicines and we make progress.

Right now we end up using a lot of money and hence we end up borrowing heavily to meet our capital expenditure, which should have been provided by people whose core business is to provide premises.

We have seen a shift in roads. I am very happy with what is happening with the expressway on Mombasa Road and many other Public Private Partnerships (PPP) projects that will come. I hope this Bill will encourage landlords in the future to seize the opportunity to put up premises not just for corporate tenants or individual tenants, but also for the county governments and the national Government. We thought by the time the Government started leasing out premises owned by the National Hospital Insurance Fund (NHIF) and the National Social Security Fund (NSSF), there would be a shift towards that direction, but even in this House we are occasionally being asked to provide money for Government Ministries and agencies to put up their own office blocks, which end up consuming billions of shillings.

That is a mind-set we will hopefully address in the future. By and large, I believe we will pass this Bill. I do not want to repeat myself but I am happy that the Committee has put a lot of time in reviewing it. They have prepared their Report, which was tabled in this House one-and-a-half months ago. So, I expect Members to have had opportunity to look through the Report of the Committee so that as they participate in the debate, they take that Report into account. Also, looking through the amendments, we will be doing as we did with the NHIF. We will be guided by the need to do what is in the best interest of our country by providing for a balance between the interests of tenants and those of landlords and facilitating investments in that area.

With those remarks, I beg to move and request Hon. Pkosing as the Chair of the Departmental Committee on Housing, Public Works and Transport, but more specifically to focus on the housing component, to second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us have Hon. Pkosing.

**Hon. David Pkosing** (Pokot South, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I am very fortunate to second the debate moved by the Leader of the Majority on this Bill while you are on the Chair. Of course, you know why I say so.

As I second, I want to thank the Leader of the Majority Party for summarising the entire Bill. Our practice is that the Chair then gives a reflection or mirror of what happened or transpired during public participation so that the House can debate and make informed decisions as we address this Bill. I would like to summarise this Bill.

The Bill aims to repeal the Distress for Rent Act (Cap 293). This is a very critical and important Bill because in this country and particularly in this House, you are either a landlord, tenant or most likely both. So, it is very critical because it is providing for how to resolve conflicts that might arise between a landlord and tenant. It will be very critical to understand what the Bill has done. It also attempts to repeal Rents Restriction Act (Cap 296) and Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap 301). This Bill is very fundamental because it is proposing to repeal three Acts of Parliament. It is a very critical and important Bill for the House and people of Kenya.

The Bill is putting together two tribunals existing at the moment. We have a separate tribunal that deals with residential houses, resolving issues of conflict that arise from residential houses and another tribunal that deals with rents of business premises. This Bill is trying to consolidate by putting the residential and business premises together. In most houses we see nowadays, ground floor is a business premise and second floor or third floor is residential. So, how

do you have a tribunal dealing with first floor and another dealing with third floor and so on? So, this is for a good reason and was the thought or spirit of this Bill.

If you move to Part I of the Bill, it provides for preliminary matters like any other Bill. More importantly, Part II provides for the establishment, composition, jurisdiction of the landlord and tenant tribunals. The part specifically gives power to the tribunal and provides for the staff. If you go to Part III of the Bill, it gives you the mandate on how these people will resolve issues. Further, Part III, provides for administration of the tribunal which I have just said is putting them together.

Part IV provides for general matters relating to tenancies including fair rents. This question has been elaborated in the Bill, what is a fair rent. If you go to the Report of the Committee, we have analysed this very clearly for ease of understanding by the House. The Leader of the Majority Party has explained what fair rent is and what a permissible increase is. What determines it? Can you just increase your rent anytime without reasons? No. The Bill attempts to give the conditions upon which you can increase your rent including things like inflation or improvement of the house. If you look at the Bill and our Report, we have details on those specific issues. It is very important for landlords to get this Bill and our Report so that they can understand it. It is not business as usual in this Bill.

It provides for predictability, both for the landlords and tenants. You cannot be living in a house and tomorrow upon waking up, someone tells you they have increased the rent by 100 per cent. This will not happen when this critical Bill comes to effect. If you proceed further in Part IV of the Bill, it provides how eviction orders come into effect. This is because there might be some rogue tenants who do not want to pay rent and this is provided for here and on page 7 of our Report.

This part further provides for the powers of the tribunal on matters relating to eviction. This has been detailed in terms of powers of the tribunal. If you proceed further in Part IV of the Bill, it contains miscellaneous provisions which of course include, how to serve documents, enforcement of orders, prosecution of offences, distress for rent, disposal of property by the landlord upon death or abandonment of the premises by a tenant and the power to make rules and regulations. I would like to mention as I second this Bill which is very critical that the Bill delegates powers to two people, one is the Cabinet Secretary responsible for Housing and the Chief Justice. The entire Bill and our Report have delved into these issues.

So, did we do public participation as required by the Constitution? Yes, we did. For the record a number of people made presentation and came before the Committee for us to synergise and we came up with a number of concerns which I will present in a short while. Who are they, I will just mention a few for purposes of record and understanding? Apart from individuals, the following organisations appeared before the Committee: License Auctioneers of Kenya. Of course, you would expect auctioneers to come because they would like to hear what is in this Bill and where they come in because auctioneers are very critical in auctioning people's houses and this Bill addresses how they should do this.

Further, Civil Society Reference Group, National Gender and Equality Commission (NGEC), Institute of Surveyors of Kenya (ISK), the Financial Sector Deeping (FSD) Kenya, Kenya Private Sector Alliance (KEPSA), Institute of Certified Public Accountants of Kenya (ICPAK) and among Government organisations; the State Department for Housing, State

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Department for Trade, the Rent Restriction Tribunal, the Business Premises Restriction Tribunal and the Office of the Attorney-General appeared before the Committee.

Various concerns were raised and we went through them. I would like to highlight just a few because of time. Of course, at the end we would have consolidated and provided solutions for the issues raised by the public and that is on page 23 of our Report. During the Committee of the whole House, there will be amendments. What were the critical issues that came from the hearings and how were they solved? In the proposed the Bill, the tribunal is insufficient. What tribunal has been proposed? They proposed the chair and four other members, making them five. Of course, they gave qualifications, but this was not the issue. When all these people came before the Committee, we did a round table and discussed. We even sent the Attorney-General, the Department for Housing and our legal team to go and relook at it because the question then would be; if you have a tribunal of only five people with chair, vice-chair and three or four other people, how do you resolve issues across the country? That became a challenge. So, what happened? We synchronised and even tried to model it with the Office of the Attorney-General and the State Department for Housing. What we are proposing, which you will now see during the Committee of the whole House, is that the Chief Justice appoints one chair and a number of deputies. We did not give a limit. Of course after consultation, we agreed with the participants and members of the public that the Chief Justice shall appoint the deputies depending on the number of issues to be resolved in the country.

So, if it is Kisumu, it will be appointed for Kisumu. In fact, there is even a debate that says do we appoint five people to sit in Kisumu as a panel? It became very expensive and we are proposing that if, for example, one judge in Kisumu can sit and resolve issues, what about tribunal issues? So, we proposed that one person can actually handle those issues and if the Chief Justice finds it fit that she needs three people to sit in Kisumu, then the chair of the tribunal can form a panel. We did not give a limit. We said, let it be determined by need. This is because there might be issues in Eldoret like rental issues, business houses and residential houses. The Chief Justice can then have somebody in Eldoret, Kisumu and any other town in this country where issues arise from.

So, that was the biggest limitation in the Bill that the five people that were provided cannot resolve all these tribunal or rental issues that will emanate in the entire country. That became insufficient and that is why we sent the participants back for about a week and after that, they came back to the Committee and brought that proposal. The proposal was taken to the Office of the Attorney-General and the Department for Housing. We found that that was very good because we were also limited, looking at who will fund, where they will get the resources, whether they will be fulltime and so on.

So, during the Committee of the whole House, we will propose an amendment to rework that five-member tribunal to an indefinite-number tribunal, but decided by the Chief Justice depending on issues and amount or quantity of complaints that emanate from every region in this country. That was a very emotive issue that was presented before the Committee during the public participation. I am very happy to report that my Committee did very critical work in terms of resolving that issue.

Number two and very important issue that also came was that the Bill is insufficient in addressing the procedures on how you raise a complaint and resolve an issue. For example, if you are a landlord and there is a problem and you raise a problem, if you look at the Bill as it is, very carefully, they might do what we call ping pong. You take a case to a tribunal, it might not resolve it in good time and there will be a problem. There was a big concern from both the landlords and

tenants that the Bill was insufficient in providing for a fair and open procedure for resolving those issues or complaints that emanate from rental of business or residential premises. We are through and we agreed with the Committee that there was actually insufficiency particularly in the Bill as it is.

There were a lot of gaps. We asked ourselves, so what do we do? We went through all the Acts of Parliament that are being proposed to be deleted and we found one that provides for a fair way of resolving these issues. That was Distress for Rent Act. We agreed as a Committee and also the public that appeared before us that we need to retain that Act. We will propose that we delete the provision that is proposing the repealing of that Act so that we can retain it. Therefore, even in our proposals or recommendations in our Report, we have provided how referencing can be done from the Bill, if the House agrees with us that we retain and do not repeal the Distress for Rent Act.

Hon. Temporary Deputy Speaker, I will really persuade the House, and you as well, to agree with my Committee. As the Leader of the Majority Party said, he gave us this work some time back. We spent a lot of time because this is life of people. This Bill is not a normal Bill. It affects our daily life and it almost affects everybody in this country. It is not a small Bill. It is a very serious Bill that affects people's welfare and relationships. That is why we took a bit of some time to do due diligence as a Committee and, Hon. Temporary Deputy Speaker, we will be persuading this House and you that you agree with us that we do not repeal that Act. If we repeal that Act, we will bring confusion. Somebody might end up spending the rest of their life between the tribunal... You know if you finish with the tribunal and you are not satisfied, you can also proceed to court but on matters of law. You can go to the High Court and if you finish that, you go to the Court of Appeal. You will be there forever. So, we are suggesting and proposing, particularly to the Mover of the Bill, to agree with us that then we need to retain that Act. That came from the public.

Those are critical issues. Therefore, we made several proposals in terms of way forward. These proposals are on page 83 of our Report. What are our proposals? We are proposing a number of amendments. We will propose to amend Clauses 3, 4, 7, 10, 12, 13, 17, 18, 19, 23, 25, 26, 27, 29, 36, 44, 46, 50, 59, 60, 63, 64 and 65. If we amend those clauses in the manner that has been proposed by the Committee, then it will resolve the issues that were raised during public participation by the public. This is a very critical Bill in this country. It came at the right time. Why? Because the Government was coming up with the provision of housing. Therefore, it was also good then to have a clear law to provide for relationship between the tenants and landlords. In that case, if the Government is the landlord, then there is also a law that then guides us. It is a very critical Bill. My Committee really enjoyed this process. I want to assure the House and give it comfort. It is a properly thought-out Bill by the Executive. This is one of the Bills that were properly thought and we really enjoyed ourselves going through it, particularly for us who like making laws and to contribute to laws. It was really well done. I thank the people who did this Bill up to the level where it is.

We hope that the House will agree with us during the Committee of the whole House so that we can synchronise. This is because the proposal of the Committee is not our proposal as the Committee but it is consolidation of what came from the public. Actually, the Committee is a conveyor belt from the public to the House and to the leadership of the House so that then we can make a decision.

Hon. Temporary Deputy Speaker, with those few remarks, I thank you. I thank the Leader of the Majority Party. I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): The Member for Bomet Central. Hon. Members, you have 10 minutes each.

**Hon. Ronald Tonui** (Bomet Central, JP): Thank you, Hon. Temporary Deputy Speaker, for this opportunity to make comments on this very important Bill. I do support this Bill. It is clarifying many issues in the business of renting and letting. I believe it is important.

Though I have not seen the Report by the relevant committee, I hope it is going to be available. I have checked, it is not available at the moment. I hope proper public participation was done on this Bill so that we have the input of the public on the same.

Issues of accommodation are very important. The landlord and the tenant have a strong symbiotic relationship. One has invested in houses and the other one is looking for comfortable accommodation. So, this Bill is very important. We need to have a very refined Bill which can take care of these interests that can be conflicting but is of interest to the two parties.

I know we have created a tribunal. It is also in the existing Act. It is very good so that we can sort out the issues of dispute, which can arise in the business of renting and letting. So, this tribunal will sort out the issues of distress of rent for the landlords and the issues of fair rent for the tenants. This is well provided for in this Bill, so that tenants are not exploited in terms of high rents. It will be sorted out by the tribunal. If you read through, the Bill provides for an agreement between the landlord and the tenant in terms of rent. That is fair. So, I think this needs to be encouraged and this provision in the law must be allowed to go through, so that we have fairness in this business.

I am not sure of the issue of giving the records. I know it is always good to give records, but I know some are having very small rooms. Some have small bedsitters somewhere. I do not know whether they have the right skills to be giving proper records. These are issues which need to be refined. To what level should we have book keepers? Do these people require to have people who can keep books so that they meet the requirement of this law? I hope this is not complicating the issue of the struggling... Currently we have so many technical training institutes (TTIs) in many constituencies and people are trying to put up one-roomed houses to accommodate students. I do not know how they will be required to be keeping books. Will they need to involve some professionals in book keeping? Those are some of the issues which we need to take care of.

The idea that the landlord will require justification for rent increase is captured in this law and we appreciate it. You should not just wake up in the morning and adjust rent simply because you have run short of money or you are pressed financially. This one must be justified by improvement in the state of the houses and the issue of inflation. I think the basis for justification for the rent is well provided for in this law and it is agreeable to me.

There is also notice for any rent increase; the 90 days' notice. This is so clear in this law. It is provided because the tenant must know in advance that there is going to be an adjustment in the rent and therefore, they will be able to ask for justification for the increase in rent. I think 90 days is good enough so that tenants are not surprised with increase in rent.

Determination of cases which are registered or filed in the tribunal is provided within this Bill. It is going to be three months. Within three months, it should be concluded. I think this is good because we do not want to have prolonged cases in these tribunals. Cases which take years to be concluded when possibly the issue is a rent of Kshs 10,000 and you take long in the courts

should not happen. This one should be concluded within the shortest time possible. I believe three months as provided for, is good enough.

People with disabilities are also mentioned in this Bill. All these buildings are public buildings. Even though they are built by private owners, what is required of all public buildings is that they need to be accessible by people with disabilities and anything which is required to make them accessible needs to be done, so that people with disabilities are taken care of and are not inconvenienced in any way. I support that.

I also support that we are providing the source of funding. That people who work in the tribunal will be paid through the Judiciary. I believe that will bring more transparency. This country trusts the Judiciary. There will therefore be no need for them to source for funds from anywhere else. So having the Judiciary to pay them is a good idea.

There are penalties also if someone disobeys tribunal orders. They can be fined up to Kshs 100,000. I think this is good so that the tribunal can be respected and work in an efficient manner.

With those few remarks, I support this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Makali Mulu.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Speaker for this opportunity. I want to start by thanking the Mover and the Seconder of this Bill. They have done justice to the idea of explaining to us what this Bill is all about. Looking at all the clauses, this Bill will be a very important for providing a legal framework for this important sector.

This sector has two key stakeholders. It has the landlords and the tenants. What this Bill attempts to do is to ensure that there is order in this sector by ensuring that the interest of the landlord and the interest of the tenant are to some extent balanced. I want to look at this Bill from two perspectives. The issue of the landlord and the issue of the tenants. From the landlord's side, the landlord is an investor. Being an investor, the driving force is maximisation of the returns in terms of rent. For the landlord to maximise rent, there are things the landlord needs to be sure that will happen in an orderly manner. I think the first thing is to make sure that the contracts they are going to get into with the tenants are very clear and they stipulate the dos and the don'ts. We need to apply this to what is happening currently in the country. This is one messy sector.

Landlords have put a lot of money to construct houses and in most cases these are loans or mortgage. Meaning they are being charged interest and at the end of the day they will pay. The expectation is, you will always get tenants who are responsible enough to pay in good time so that at the end of the day, you can actually repay your loans. In a situation where the tenants are not paying rent, the landlords are put in a very awkward position. Some have even gone to an extent of getting these houses auctioned because of non-payment of loans. That is why to me the issue of auctioneers participating in the public participation becomes very important. You realise, at times the landlord is disadvantaged in that you might have tenants whom you do not know personally, in a case where you are using an agent to collect the rent for you. Some of these tenants even take off. They can come to your house and before the end of the month, they take off. You do not know where to find them. In my view, the landlords need to be protected so that at the end of the day, we do not have landlords who invest in this area and their facilities are auctioned and you end up discouraging more investments. It does not mean that we forget about the tenants.

Hon. Temporary Deputy Speaker, if you look at the statistics in this country, very few people own houses which means that a majority of the population are tenants. The issue of minimising cost is very important to the tenants. Those people who advise on financial matters will tell you that if you spend more than 30 per cent of your income on rent, then you are not a good financial manager. The rent must not be more than 30 per cent.

As we think about the tenants, the rent being charged in the market must be reasonable so that we do not also exploit the tenant. That is why the whole issue of having the tribunal that will be discussing the rent levels at times becomes very important. I also request that the Chair of the Committee looks at the market forces, that is the demand and supply. Even as we control the amount, we cannot forget that the market forces must to some extent be able to play.

This Bill becomes very important for the tenants because they have been protected and we are told that if you want to eject your tenant, you must provide 90 days' notice. If you want to increase rent, you must provide time for them to adjust so that you tell them in a given time you will be increasing your rent. They can make a choice whether they want to continue being there or if they want to move out.

The other thing is also to ensure that there is an orderly way of getting out of a house, if you wish. We have seen a situation where tenants are being kicked out of houses, thrown out in the night and the doors being removed by the landlords and they have no choice but to move out and a tenant has a family, possibly young kids. This is mishandling of the tenants. This is also against their human rights. As we debate this Bill, it is important that at the end of the day, the underlying principle will be to ensure that the human rights of the tenants are also protected: That we do not expose tenants to those rogue landlords who will do anything so long as they know that they can get round the system and they cannot be taken anywhere.

Hon. Temporary Deputy Speaker, on the issue of the tribunal, merging is very important because they have at times also become a money minting exercise, where they do rent seeking. You find that in most cases because the landlord is the person who has money, the tenants hardly get any justice. It is important that we merge them.

Even as we think about decentralisation so that people do not have to travel all the way to Nairobi or to Mombasa to get this service, what is critical is to make sure that the people who are going to be in these tribunals are people of high integrity, people who will ensure that justice is not only seen to be done, but it is actually done. That will be very important for this Bill and for this country.

I want to comment on the issue of public participation. It is very good when we hear that key stakeholders in this sector did give their input into this Bill. The old say that it is the wearer of the shoe who knows where it pinches most. When we bring stakeholders on board, we are able to get those grey areas that need to be improved. I was very happy when the Chairman of the Committee was saying which grey areas have been identified by the stakeholders and which will need to be factored in through amending this important Bill. As we move to the Third Reading, it will be very important that then these amendments are factored in so that we come up with the best law for this land.

Hon. Temporary Deputy Speaker, I look forward to a situation where this is going to be fast-tracked as it is likely to be debated both by this House and our brothers in the next House so that we get this law before this 12<sup>th</sup> Parliament becomes past tense, as we get to the 13<sup>th</sup> Parliament.

With those remarks, I support this Bill and I look forward to the proposed amendments being factored into the Bill so that at the end of the day, both the landlords and the tenants are in a sector which is well regulated. At the same time, the forces of demand and supply will be at play so that we encourage the landlords to do more investments and encourage the tenants to get to the houses and make sure that they also protect the houses.

In conclusion, the other thing is, I have also realised that at times the tenants also become very careless. They go around destroying these houses and they leave them in a very bad state. That is why I am very happy because it has been indicated that for the tenant to get back the deposit



then they must make good any defects to the structures. That is a very important proposal that should be supported by this House.

With those many remarks, I do support.

I thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Is Hon. Thuku Kwenya here? He is not in the House. Hon. Joseph Nduati.

**Hon. Joseph Nduati** (Gatanga, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to also make my contributions to the Bill. From the onset, I support the Bill.

I have looked at the establishment and powers of the tribunal and I have seen who the tribunal will be composed of. I have also seen the qualifications of the three members, one shall have expert knowledge of matters relating to valuation of premises. We need to change this one to expert in estate management.

The powers being given to the tribunal are enormous. They are good because they will be able to manage any dispute between any landlord and the tenant. I am happy that when it comes to rent chargeable in respect of premises where there are some shared facilities like water, light, sweeper, watchman and other services, the tribunal will be able to fix the service charge. This is a very good clause because we have seen some facilities where people are sharing facilities and some people do not want to pay. It has been a challenge especially with office buildings where people are enjoying water, electricity, maintenance of lift and they do not want to pay. It is good that it has been captured.

Hon. Temporary Deputy Speaker, I am happy that it has also captured that the tribunal will have powers to enable the landlord to make additional facilities to the building. However, the only sad thing about it is that it has been provided that the landlord will have powers to evict tenants especially when he wants to renovate the building or make any additional facilities. This one can be abused. We have seen it where a landlord wants to increase rent and he will come up with funny things that he wants to demolish the building. It is important that we protect the tenant.

The powers of the landlord are also enormous. The powers given to the landlord to increase rent and to determine new rent within 12 months especially for rental buildings is a short time. I would propose that we make it about two years.

Again, the provision to increase rent based on inflation is not a good proposal because we have seen that, sometimes, the Central Bank of Kenya (CBK) announces a rate which does not affect everything. It does not mean that rent should go up because inflation has gone up. This has been demonstrated very well in the construction industry. The Kenya National Bureau of Statistics (KNBS) has said that some things have gone up but, when you check the prices of some of materials, you find that they have gone down. A good example is cement. For the last 10 years, the price of cement and prices of a few other construction materials have been coming down but, as a country, we have not been able to enjoy that benefit. Inflation should not be a good guide to increase rent.

Again, Clause 17 says:

“For the purpose of this section, a landlord may increase rent if the capital expenditure carried out is necessary to protect and restore the physical integrity of the rented premises.”

Such a provision can be abused because we know many people in this country construct buildings without seeking approval from professionals. So, it does not mean that it will lead to an increment in rent when you improve the integrity of your building. Again, the idea of increasing rent because you have improved or structurally altered the premises, decorated or improved the drainage is not a good case for increasing rent. This is something we need to review. Regarding

improvement of drainage, what if a landlord had not initially done his job well? Why would it lead to an increment in rent? What if the sewerage system was not properly done? Why should it lead to an increment in rent?

There are some things which have been mentioned here, like electrical, ventilation or air conditioning system. These have not been defined. What is making these three things increase rent? We need to look at this again. On installation of plumbing, electrical ventilation and air conditioning system, it will be unfair to the tenant. The Mover of the Bill needs to define clearly what installing of plumbing, electrical ventilation or air conditioning system is.

Why will providing access to persons with disabilities lead to an increase in rent? On maintaining or improving security, why would you increase rent just for maintaining the same security? These are some of the things which we will need to amend during the Committee of the whole House.

Clause 20 says a landlord who is lawfully entitled to increase the rent charged to a tenant for premises may do so, at least, 12 months in case of residential facilities and 24 months for business facilities. We will be unfair to people who live in rented residential premises if we approve this Bill as it is. A 24-month period would also be good for tenants.

Clause 21 says that a landlord shall decrease the rent charged to a tenant if the landlord ceases to provide any prescribed service with respect to a tenant's occupancy of the rental premises. This one, which is in Part II of the Bill, says the decrease will be proportional, but it has not been said how it will be one. We need to cover this aspect as well. I will be moving amendments to deal with these matters.

Clause 22 says if a tenant does not oppose a notice to increase rent after receiving the notice, the rent will be deemed to have been increased. Again, we need to define how that notice will be given so that it is not unfairly given and then we treat our tenants unfairly.

Clause 25 says a landlord can terminate a tenant's agreement if the tenant defaults payment of rent for three consecutive months following the last date such rent becomes due. This provision can be abused. What if I do not pay rent for two months and I pay in the third month? We need to move an amendment on this one as well so that...

*[The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya) left the Chair]*

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Now that I have just gotten into the seat, you will have one more minute, Hon. Nduati. Give him the microphone.

**Hon. Joseph Nduati** (Gatanga, JP): Thank you very much, Hon. Temporary Deputy Speaker.

In conclusion, I want to say that I support the Bill but, looking at most of its clauses, it is creating a legal framework that can be used to treat tenants unfairly. The lawyers in this House will have to address it in a better way.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let me have the Member of Makueni, Hon. Maanzo Kitonga.

**Hon. Daniel Maanzo** (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Speaker. This is an improvement of previous Bills. It is going to repeal the Distress for Rent Act (Cap 293), the Rent Registration Act (Cap 296) and the Landlord and Tenants (Shops, Hotels and Catering Establishment) Act (Cap 303). I want to concern myself with the judicature part of this Bill, especially the establishment of the Rent Tribunal and its powers.

*(Hon. (Ms.) Odhiambo-Mabona interjected)*

My time is being consumed. I wish it was a point of order.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, press the intervention button if you wish to raise a point of order. Let me listen to you now that I could hear something. Give her the microphone on the Dispatch Box.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. I did not intend to interrupt my good brother but he should not be worried because he has 10 minutes. I am just concerned. I am seeing Members who were not even here when this House started and, some who have just come in, getting an opportunity to speak. I have just realised that the system is not working well. At my end, the gadget shows that the system is working but apparently, it is not working on your side. So, this is just to let you know.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Thank you, Hon. Millie. I could see you confirmed it with the Clerks-at-the-Table. I can confirm that your card is not reflected on my screen. So, I could not catch your eye. Therefore, I order the relevant department to look into the issue of the system not working. Thank you for the notification, Hon. Millie Odhiambo. Your card is now reflected on my screen. Could you be the one who inserted it in the wrong way?

Hon. Maanzo, carry on.

**Hon. Daniel Maanzo** (Makueni, WDM-K): I apologise to my senior, Millie Odhiambo, for that inconvenience. I want to state that this is a very tricky area in the practice of law because it is a relationship issue between landlords and tenants and their rights therein.

The problem that has been at the rent tribunal in dealing with premises like shops and hotels is that there used to be a limitation as to the amount of money that can be taken up by the tribunal. There will always be disputes of small nature. In fact, it also conflicts with the idea of the Small Claims Court and the idea of alternative dispute resolution mechanisms, which can also be applied in this case. If you look at the judicature process, the chairperson of the tribunal will now be at the level of a High Court Judge. You know High Court Judges go with jurisdiction, depending on the amount of money involved in a case. This used to fall under a magistrate previously. Many times, there will be complications. People who find their houses locked by landlords always find themselves in trouble and they have to go to court. It has been a serious concern. When you pay the rent, the house is unlocked. During this COVID-19 time, people's shops are being closed. Others have been closed for a long time and even when they are closed, landlords continue to charge rent and yet, they have closed down people's businesses and livelihoods. The matter ends up in court and the tenant's goods are auctioned. It creates a lot of problems.

This court will have a deputy registrar and experts to guide it. It will also have a deputy chairperson whose role is not very clear. It means that, at the Committee of the whole House stage, we will need to fine-tune the Bill so that we can distinguish many matters. If you have the jurisdiction of a High Court and then you say the appeal will lie with the High Court, then there is a conflict. There is no way a judge can sit on appeal of another judge of equivalent jurisdiction. I

believe the lawyers who help us with drafting and lawyer Members will make some input to address that matter. It proposes something totally new, which is not in practice and which does not happen under normal circumstances. I will suggest that we have the chairperson at the level of a chief magistrate.

They have also suggested chief justice rules to guide the administration of the processes. If for three months the tribunal or the chairperson is unable to operate, then they write a report to the Chief Justice. It is not clear who fixes a hearing date. Is it the Chief Justice or the magistrate who has written a report why a matter has not proceeded for hearing in three months? That is very important especially where somebody's goods are locked up in a shop or residential house. One of the cases that I heard about was somebody who was locked up in a house and he could not go to work or access the outside. These are some of the mischiefs we are trying to make sure are covered in law. I like what Hon. Nduati has said. The rights of the tenants in this particular law are not sharp. We have more of a bourgeoisie law. It is more about landlords. It depends on who moved it and what they were thinking. You need to balance so that the landlord does not lose and the tenant does not lose. Tenant rights should not be breached. Sometimes, you find someone has children who go to school.

During this COVID-19 time, things have been very bad for landlords. In fact, if you have a vacated house and you have not reduced the rent, it may stay vacant even for a year. People have left Nairobi after losing jobs to look for cheaper areas to stay. If you do not reduce the rent or your house becomes vacant, it can stay for a very long time. We have not even gone further to deal with the issue of agency. Many premises are run by ruthless agents. If rent has not been paid, it is a big problem. That is where we get to the question of deposits, whether for three or two months, or the issue of quarterly or yearly payments. The whole matter should be balanced, so that deposit is sufficient or equivalent to the three months by which time a court case should have been concluded. You can still live on your deposit while your case is ongoing. Many times you are evicted and then they use all your deposit to paint or to renovate the house, of which there is no determination as to how much it costs or who should do the renovation. The practice has been that when you leave, you renovate and then claim the deposit. So, I agree with Hon. Nduati that we must relook at this Bill because it seeks to repeal quite a number of statutes, some of them colonial, on the relationship between landlords and tenants. It has been an area of a lot of friction especially for a person who does not have the means or does not own property or not likely to buy his own property for a long time.

At the same time, those premises have become a pain and a loss to their owners. You find that out of the rent, which probably should be fixed by market forces, you are not able to make profits and yet you have a huge investment. You probably took out a very large loan to build commercial or residential premises. If the law does not balance the interests, then the landlord is going to lose in big time. You have been there for years, you pay taxes and mortgage. There needs to be a balance. The reason taxes are paid is because some of the tenants pay taxes and so, they have to show they have paid you. It has to always be mathematical at all material times. Sometimes you can be over-taxed. The law must synchronise so that we are able to regulate the sector. The most important aspect of this law is the human rights aspect. Is it constitutional? If we make a law that does not conform to constitutional standards, the Omtatahs of this land will go to court and the law will be nullified. My challenge is that at the Committee of the whole House stage, we should bring amendments like the one I have suggested about moving the chairperson from a High Court Judge level to a chief magistrate level.

I thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Suba North.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I stand to support this Bill but with proposed amendments. I know many Members in this House are both tenants and landlords; some are only landlords while others are only tenants. So, we have a mix in this House. The most important thing is to make sure there is a balance so that those who invest are encouraged to invest more, and those who rent are protected because that is a right under the Constitution. It is part of the social and economic rights.

Hon. Temporary Deputy Speaker, I just want to briefly comment on some of the positive provisions of this law and some of the areas in which I will be proposing amendments.

First, I am happy that the definition of the word “to let” includes sub-lets. There are many people who are struggling. Our current reality is that many people are sub-letting both business and residential premises. Therefore, it is important that we recognise that a person who sub-lets is also considered as letting.

In Clause 7(1), the three months for the conclusion of matters before the tribunal is positive. I know other Members have spoken to it. This is so that we do not have cases going on forever before the Rent Tribunal. It is also people-friendly because it provides that the tribunal shall not give undue regard to technicalities. That, therefore, means that when you go before the tribunal, you do not need to have a lawyer or be an expert. That is very positive especially if you are dealing with people who pay little rent.

One other thing that I find positive is that the tribunal is able to undertake matters *suo moto* or on its own initiative. Many times - especially now with social media - there are many negative cases that are highlighted on social media. In such cases, the tribunal can take action without either of the parties necessarily raising the issue, which is a good thing.

The three months’ notice before increase of rent is good for both parties, namely, the landlord and the tenant, so that we do not have unscrupulous ways in which landlords sometimes visit upon tenants.

The termination of tenancy for defaulting for three consecutive months is also a good one. There are also grounds which are very good. However, I notice that Clause 27(1)(b) clashes with Clause 25(1)(c). I will be proposing amendments.

Clause 44(3) protects those who are sub-letting because it provides that if the main tenant terminates the tenancy, the person that has been sub-let is presumed to automatically be a landlord of whoever takes over. That is a good thing because like I said, many Kenyans are struggling and so, many people are in sub-tenancies.

Clause 58 provides that there will be no eviction without a court order. However, I wish that we could also add that there should be no removal of doors, evicting people at night or throwing out people with children. Those are very terrible practices that many landlords follow. We know times are hard but we are still human beings and need to behave in a humane manner.

One of my proposed amendments is to Clause 3(1) on what excepted premises are. We need to be clear about that.

We also seem to be giving the Cabinet Secretary a lot of powers without regulations. Wherever we give the CS powers, we need to say that it is by regulation.

The tribunal also needs to have regional and gender representation as well as representation of the youth and persons with disabilities. If we leave it open even though the Constitution provides for that, many times women are left out.

The Seconder took note of the concern that the tribunal has very few people and cases might take long. It might even take longer when there are no lawyers. I suggest that the majority be lawyers but not exclusively. I will be proposing an amendment that two of the other three members of the tribunal should be lawyers or at least one extra member should be a lawyer. That would also help us deal with the issue of referring the matter to the High Court on issues of law. When you have a majority of lawyers, you do not need to go back and forth, except if you are going on appeal. That would reduce time wastage.

We have not provided for the qualifications of the secretary to the tribunal. That needs to be provided.

I agree with my brother that we need to be clear on who has responsibilities upon the termination of tenancy. Almost all the time, you find that landlords usually put very onerous provisions for tenants. I remember a time when I was a tenant somewhere and had stayed there for many years. When I finally moved, the landlord brought me a bill of Kshs70,000, which was a lot of money then. I was lucky that I was very meticulous in my record-keeping. I became too busy when I became a politician. After we went through the records, it emerged that she owed me Kshs30,000. Can you imagine what would have happened if I had not been keeping those records over a period of 10 years? They presume that you do not know. After she discovered that she was the one who owed me money, the issue became: Who should do the repairs and to what extent. I let go of that.

That is the same issue regarding deposits. Landlords presume that whenever you make a deposit, it is permanent and becomes part of the rent. A deposit is just that - a deposit. It is not rent. When someone leaves, you need to return that deposit unless there is a problem. You need to leave the house in the same state you found it and if it is, the landlord should return the deposit.

The deposits are also too hefty. As much as we want to rely on market forces, when the economy is doing well and the houses are all occupied, we still need to regulate. You cannot make someone pay a deposit as though they are buying your house. They are merely renting it. You cannot ask for three or four months' deposit. For what reason? This is especially where someone is paying a lot of money for rent. We need to cushion Kenyans.

The other issue is the misuse of goodwill, especially in business premises. You want to get into a business premise and someone tells you to first pay a goodwill of Kshs2 million. Do we even understand what goodwill is? In law, goodwill means that the person is handing over their customers and all that to you. You find someone who is selling a butchery wanting you to pay goodwill when you want to convert the premise into a salon. What goodwill are you giving me? I am not engaging in the same business as you are; neither are you handing over your customers to me. We need to protect tenants on the issue of goodwill.

Clause 17(3) provides that fair rents should be based on rents paid on similar houses. I do not think it should just be based on the same house. It should also be based on whether the houses are in the same area and are of the same design and size. If I increase rent, it should not just be because we are in the same locality. We should factor in many other things as well.

I also suggest we increase the fine from Kshs20,000 to Kshs100,000 in Clause 23. We are being too kind to landlords. I know we must balance. We have landlords and tenants here and, maybe, I am both. However, we need to be fair in both instances.

I am also being kind to landlords. In Clause 25(2), the provision that for landlords to terminate a tenancy, they must first file a notice with the tribunal is too onerous on them.

Clause 40(3) is poorly drafted.

Because I can see my time is up, in Clause 58, we must add that there should be no locking of doors or throwing people out at night, especially those with babies without the intervention of the tribunal.

My time is up. I support the Bill with amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Well spoken. Let us have the Member for Matungu, Hon. Oscar Nabalindo.

**Hon. Oscar Nabalindo** (Matungu, ANC): Thank you, Hon. Temporary Deputy Speaker for giving me a chance to contribute to this Bill. I take this opportunity to thank the Mover, the Leader of the Majority Party.

At the outset, I support the Bill. First, it is important that, as a country and as a House, we make laws to protect both the landlord and the tenant. It is important that we come up with a legal framework on how to regulate this important industry. Kenyans aspire to be landlords. That is because of the allure of the benefits that come with being a landlord.

Actually, very many people invest millions of shillings in real estates; houses and business premises for them to be called landlords. Therefore, it is prudent enough that after such heavy investments, there must be some legal framework on how the landlord will recover or benefit from the heavy investment.

Hon. Temporary Deputy Speaker, we equally need to protect the tenants. In this country, almost 95 per cent of the people are tenants, especially those living in big cities and big towns such as Nairobi, Mombasa, Kisumu, Eldoret, Nakuru or Nyeri. In fact, it is even more than 95 per cent. Landlords are very few but tenants are very many. Therefore, there is need to balance the law so that both groups are not disadvantaged in their interaction.

Hon. Temporary Deputy Speaker, I am happy that there is a proposal to come up with a tribunal that will regulate the interaction between the landlords and tenants. However, there are some loopholes. Some things have been left out. The rent in this country and especially in the big cities of Nairobi, Mombasa and Kisumu must be regulated. For whatever reasons, landlords have this sense of entitlement that they can wake up one morning and increase the rent or double the figure.

There is always need to protect the tenants against some rogue landlords who might want to increase the rent haphazardly. Maybe, they need to pay their loans very fast or solve a personal or business problem. Therefore, they put their load on their tenants. In some instances, we have had landlords who increase rent even three times a year, and because there is no law to regulate that industry, the tenant is left with no choice but to pay the increment.

Therefore, I hope that this tribunal shall give a law that will protect tenants against haphazard increase of rent by landlords. In this country, we regulate so many other sectors. The fuel industry, for example, is regulated by the Government. Therefore, this rent issue has to be regulated. Otherwise, the tenants who live mostly in big cities are under siege from the landlords. For instance, we have certain areas where it is so unregulated that it has led to serious clashes between landlords and tenants. I remember some years back tenants refused to pay rent in Mathare North. They refused to pay rent because the landlord had doubled the rent of the next month. The landlord decided to bring goons to evict those tenants from his house, but they fought back and resisted to move. This resulted in the death of more than 10 people. Therefore, there is always need to regulate this industry so that tenants can know they are protected by the Government and landlords can know their investment is protected. At the end of the day, there will be results or benefits from their heavy investments.

In some instance, tenants go overboard in terms of how they handle the property in which they live in. We have instances whereby someone will rent a house as an individual but, at the end of the day, you will find the house hosting over 100 people. This means there was no agreement about how many families will be living in that house. At the end of the day, when those people leave the house, it is in shambles and everything is broken. The deposit they gave is not enough to cover for the damages that have been caused to the house. The landlord can do nothing even if it means retaining the whole deposit because it cannot cover the damages that have been caused to the house.

Finally, as Members have said, there is need to protect the tenants from harassment by the landlords because of non-payment or late payment. We have had instances where landlords hire goons to beat up families in the middle of the night in the name of evicting them. Sometimes, they have locked people in the houses. You wake up one morning and find three padlocks on the door and you cannot go out or do anything. As I support this Bill, I hope in the Third Reading we will bring amendments and refine it so that it can be of benefit to both the tenants and landlords.

Hon. Temporary Deputy Speaker, with those few remarks, I beg to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You beg to support. The Member for Lari is next on my request list, Gen. Mwangi Mburu.

**Hon. Jonah Mwangi** (Lari, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to support this Bill. As a landlord now and a tenant before, I think I am coherent with the Bill because it is bringing a good balance between the landlords and tenants. There are only a few areas of concern as Madam Millie has said, like the issue of goodwill for business premises. This has been very chaotic in this city whereby a person builds a house and before any tenant enters, they ask for Kshs2 or 3 million as goodwill. I think this is not fair to the tenants because goodwill is a value you gain from a house. For example, if you are selling spare parts and you have some customers you will leave to the tenant, then that is goodwill.

I wish this Bill could elaborate more on the issue of goodwill. I believe in the Third Reading, an amendment will be brought so that the issue of goodwill can be captured by the tribunal. I am also happy about the tribunal's three months' time period to resolve disputes. This is because some of those tenant-landlord disputes can take way too long. You may have items left in a premise and resolving the rent dispute takes too long and maybe the tenant wants to use the same items in another premise where he has no dispute, but the landlord has locked the building awaiting the resolution of the dispute. So, I support the three months that have been given for the resolution of disputes.

The other part that my good friend has also spoken about is the issue of distress. We have found that many landlords have used very uncouth means or ways of distressing tenants. You will find that maybe they lock you inside or they lock the house when you are at work. You will come in the middle of the night and find your house locked with five padlocks and you have no access to it. Maybe, you had a small delay in paying rent, which will cost you a lot because you have to look for the landlord. You might have to borrow some money so that the distress can be reduced. So, this Bill has also to address how we can solve the issue of distress. Other landlords can even block the water or switch off the power mostly in apartments or flats like in Pipeline where there are so many flats. A landlord will come and switch off the water meter or electricity and maybe you need to use the AC. So, the Bill should be clear on how we should address issues of distress.

Another issue that we need to consider here is that there are landlords who have created their own laws. They say your rent is payable by 10<sup>th</sup> or 5<sup>th</sup> of the month and any late payment attracts a penalty of 10 or 20 per cent. Without evidence of any loss of money, they have put



percentages that will always press the tenants. I will bring amendments during the Committee of the whole House stage on how late payments should be handled. This is because the Bill clearly says you can give notice of termination of the contract or agreement three months before the tenancy has expired, but issues of late payment and percentages of interest are very worrying. This is because most of the landlords have a lot of power over their tenants and they will always press you. In Kenya, we are sure that there is no standard date when people are paid their salaries. Maybe in your contract, you have been told that you will receive your salary on the 1<sup>st</sup> day of the preceding month but even in Government institutions, salaries will delay. Maybe your salary will hit the account by 10<sup>th</sup> and, because of the prevailing economic situation; others may hit the accounts even by 15<sup>th</sup>. However, because you have an agreement that has said 5<sup>th</sup>, then there is a very huge rent interest that is put by the tenant. I think the tribunal should come up with regulations on how late payments should be handled or after how long. Is it a month, 15 days or 20 days? It should come up with a timeframe on when the interest should be put into effect. Generally, I support this Bill but we need to look at some amendments here and there.

There is one more thing that I need to say. From the Bill, each tenant should have an annual agreement with the landlord for the period of time they intend to stay in a house. As you enter into an agreement, you will specify the rent increments rather than getting a three months' rent increment in the middle of your stay in a landlord's house. If I have a business premise and I have an intention of staying in that premise for five years, then it is within the five years where it is clearly stipulated how my rent will be increased by the landlord. The agreement could specify that after the first year, the landlord will increase the rent by a certain percentage, after the second year by a certain percentage and after the third year by a certain percentage. However, we should also look at the Bill again so that we cap those percentages. It will be detrimental to the tenant when he is told to increase the rent by 50 per cent in the next year when the business is not growing at that rate. A landlord who wants to push you out of his premises will most likely increase the rent after two years.

The Bill should be clear on what percentage the rents should be increased. Generally, it is a good Bill. The tribunal is good but, some few polishing through amendments at the Committee of the whole House will be required, so that both the landlord and the tenant can feel as comfortable as they can. We can live harmoniously and encourage more investors to build rental houses. This Bill should be guided by market value. If most of the housing was to be done by the Government, I am sure many problems in this country would reduce. The landlord would be the Government or the private sector would reduce ownership from 95 per cent to about 70 per cent.

Generally, the Bill is good and I support it with the hope that there will be amendments that will be brought to ensure it is better.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well, Member of Lari. Let me have Hon. Wamunyinyi Wafula representing the people of Kanduyi.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Thank you very much, Hon. Temporary Deputy Speaker for giving me the opportunity to speak on this Bill relating to landlords and tenants in 2021. This is a very important Act of Parliament, which seeks to amalgamate the laws relating to the renting of premises and residential premises; regulate the relationship between the landlord and tenant in order to promote stability in the rental sector and to establish tribunals to provide adjudication of disputes and for connected purposes. I must say this Bill ought to have been brought before this House many years ago. Therefore, I thank the Leader of the Majority Party, for having brought this Bill to the House at this time.

Colleagues have mentioned a number of areas which should be considered as we appreciate that this Bill is going to bring order within the sector. It is going to introduce amendments which are geared to ensuring fair play. That both the landlords and tenants have a fair treatment of each other and that each of them is benefiting from the relationship. While the landlord has invested and is providing premises for use, either for residential or for business; the tenant is also benefitting from that investment. Therefore, it should be a two-way relationship that while the tenant benefits, the landlord should also benefit.

There is something about VAT. I do not know how this can be calculated in relation to the law that we are deliberating on. This is the question of VAT on rent, where landlords are required to charge VAT on rent that is paid by tenants. There are cases where it is normal and good for taxation to take place and for people to pay taxes so that they are provided with services. However, many of the landlords and sometimes even tenants are on mortgage. If it is owner-occupier, you are paying rent but you are on mortgage. Sometimes, even landlords themselves are servicing a mortgage. Under such circumstances, you do not expect to be making a profit because of the loan obligation and the expectation to service loans which you borrow from commercial banks. Heavy interest rates are applicable and the tenant or landlord has no choice but to comply with this requirement for taxation. So, I think we need to reconsider, perhaps in another forum, because I appreciate that, that is a different Act.

As we address this issue of the relationship between tenants and landlords, we must also look at the aspect of fair play to everybody like charging the Value Added Tax in this respect. It is evident that when you are servicing a mortgage, there is no investment unless you are a thief or have been in a place where you can steal money. You can then make money and build without a loan. There is nobody who invests without borrowing. That makes it very difficult for one to start earning immediately after investment. It takes time. Such loans are long-term and it takes time to settle them. I will be talking to colleagues so that we can consider how best to deal with the issue of VAT in this respect where a mortgage is running.

The other issue which I thought is important and has been mentioned by colleagues is the determination of disputes. Our courts in Kenya are so disturbing. There are cases that have lasted for 10 years regarding land, property, family disputes, shootings because of land or whatever causes. Some cases have taken so long. Unless cases such as those before the tribunal are determined without delay, they cause suffering to both parties, namely, the tenant and the landlord. It is pleasant to see that a timeline of three months has been provided within which the tribunal must determine the disputes.

The other clause which is also important is clarification on issues of goodwill. Goodwill has been paid by people who are taking on a certain property. When you pay for goodwill, it means that there is an existing goodwill. If you take on a property, you compensate whoever has been there for goods, clientele, maintaining the premises and so on. However, where it is a newly-constructed property along Moi Avenue or whatever street, before any tenant gets in, they must pay goodwill. It is an unfair practice which must be checked.

I looked at Clause 13 regarding the removal of a member of the tribunal. One of the conditions which were given for removal under (b) is if one is convicted of a criminal offence and sentenced to a term of imprisonment. However, I ask myself - and I will be seeking clarification - suppose you are charged in court with a serious criminal offence and are convicted, not to imprisonment, but to a fine of Ksh5 million and you pay? Does it now make you clean because you paid a fine and, therefore, you continue working? What does it imply? I also invite colleagues to look at this. If for any reason you are charged with a criminal offence in court, you are found

guilty and convicted but the conviction is not custodial, you are fined Ksh5 million, you pay, go home and continue working, you cannot be removed. That is what this law is saying. It is important that, that is revisited. We should look at this in the Committee of the whole House and improve this part of this Bill.

The other part I looked at is Clause 25 which I found also to be wanting a bit. It requires that a landlord shall be entitled to terminate tenancy without reference to the tribunal upon the following grounds: One of the grounds they are saying is that the landlord has given prior notice of not less than 24 months.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You have half a minute.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Thank you, Hon. Temporary Deputy Speaker, for reminding me. I stand guided.

If you have to give notice of 24 months, if you wanted to renovate or to do something else for yourself, 24 months is a long period. It should be reconsidered also. For both the tenant and landlord to have a fair deal, this needs to be looked into.

Otherwise, this Bill is good...

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Because you are a very senior Member, I give you a minute to finish.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Thank you very much for that one minute, Hon. Temporary Deputy Speaker.

As I was saying, it is important that this Bill is enacted. There has been a gap. We have not had good laws governing tenant-landlord relationship. This comes at a time when we seriously need to have that harmonised. Therefore, I support this Bill and we will be preparing to bring some amendments during the Committee of the whole House.

With those remarks, once again, thank you very much, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Thank you. The Member for Kitutu Masaba Constituency, the Hon. Shadrack Mose, you have the Floor.

**Hon. Shadrack Mose** (Kitutu Masaba, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to also add my voice. I want to state from the outset that I support this Bill, notwithstanding the position that some amendments would even make this Bill a better one for us.

This Bill seeks to consolidate all the laws with regard to residential and commercial tenancies to ensure regulation of the rental sector in Kenya. Right from the beginning, I am very emphatic that the Bill that we seek to have is one that extremely improves the relationship between the landlord and tenant. It strikes a good balance that will ensure that the landlords' rights, the tenants' rights, their responsibilities and their obligations in respect to the attendant obligations are followed or adhered to.

Having also had an opportunity to practise in the respective courts that were there then, there were a lot of imbalances and a lot of injustices that were being committed by both parties - the landlords on their part, with certain excesses; the tenants also on their part, not wanting to meet their obligations. So, this Bill takes us to a level where we are striking a balance for purposes of ensuring that proper business in that sector is thriving.

One of the things that have impressed me is the fact that, one, this Bill takes into account the position that the Chief Justice can establish tribunals across the country. More particularly, we will be moving amendments to the effect that those tribunals are established across the 47 counties, so that the cases that arise are addressed once and for all. Areas that will be dealt with include resolution of disputes.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Kitutu Masaba, I wish to interrupt your contribution. During the next debate on the same Bill, you will have a balance of seven minutes and you will have priority to speak. So, you should be the first person in the House.

**Hon. Shadrack Mose** (Kitutu Masaba, JP): Thank you.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, the time being 7.00 p.m., this House stands adjourned until Thursday, 30th September 2021 at 2.30 p.m.

The House adjourned at 7.00 p.m.