

**PARLIAMENT OF KENYA****THE NATIONAL ASSEMBLY****THE HANSARD****Tuesday, 29<sup>th</sup> March 2022**

The House met at 2.40 p.m.

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

**Hon. Speaker:** Hon. Members, my Communication today is a non-usual one. Given the very peculiar circumstances or times that we are in, I have decided to rearrange the Order of business so that we can clear with those that require Questions to be put because as you all have realised, there is quite a number of us these days who do not have capacity to sit for more than 10 minutes.

*(Laughter)*

This will ensure that when we put the Question, even if it is a Bill, it would have been passed when there is a requisite quorum.

Hon. Members, I have, therefore, rearranged that we do not move to Order No.3, but we go to Order Nos.8, 9, 10 and 11. The rest do not require quorum and you will transact as you will decide.

**BILLS***Second Readings***THE NATIONAL GOVERNMENT CONSTITUENCIES  
DEVELOPMENT FUND (AMENDMENT) BILL***(Hon. Wafula Wamunyinyi on 17.2.2022)**(Debate concluded on 24.3.2022)*

Hon. Members, the debate on this Bill was concluded and what remained was for the Question to be put for Second Reading, which I hereby do.

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)*

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) (NO.3) BILL

*(Hon. David Mboni on 24.3.2022)*

*(Debate concluded on 24.3.2022)*

*(Hon. (Ms.) Gladwell Cheruiyot walked into the Chamber)*

Do you want to continue walking that way? You are walking so leisurely, Member for Baringo County.

Again, Hon. Members, debate on this Bill was concluded and what remained is for the Question to be put, which I hereby proceed to do.

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed to the Committee of the whole House tomorrow)*

**MOTIONS**

ADOPTION OF REPORT ON PFM  
(NATIONAL ROADS TOLL FUND) REGULATIONS

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (National Roads Toll Fund) Regulations, 2021, laid on the Table of the House on Thursday, 17<sup>th</sup> February 2022, and pursuant to the provisions of Section 24(4) of the Public Finance Management Act, 2012 and Section 6A of the Public Roads Toll Act, approves the Public Finance Management (National Roads Toll Fund) Regulations, 2021 published as Legal Notice No.222 of 2021.

*(Hon. David Mboni on 24.3.2022)*

*(Debate concluded on 24.3.2022)*

**Hon. Speaker:** Again, Hon. Members, I put the Question.

*(Question put and agreed to)*

ADOPTION OF REPORT ON IRRIGATION (GENERAL) REGULATIONS

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Irrigation (General) Regulations, 2021, laid on

the Table of the House on Wednesday, 23<sup>rd</sup> February 2022, and pursuant to the provisions of Section 34(2) of the Irrigation Act, 2019, approves the Irrigation (General) Regulations, 2021 published as Legal Notice No.199 of 2021.

*(Hon. (Dr.) Wilberforce Oundo on 24.3.2022)*

*(Debate concluded on 24.3.2022)*

Hon. Speaker: Again, Hon. Members, I put the Question.

*(Question put and agreed to)*

### PAPERS LAID

**Hon. Speaker:** Leader of Majority.

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

Legal Notice No.46 relating to the Central Bank of Kenya (Digital Credit Providers) Regulations, 2022 and the Explanatory Memorandum from the Central Bank of Kenya.

Report on the Status of the Kenyan Economy for the period March, 2022 from the National Treasury.

Report of the Auditor-General and Financial Statements in respect of the following Institutions for the year ended 30<sup>th</sup> June 2021 and the certificates therein:

- a) The Land Settlement Fund;
- b) The Asiatic Widows and Orphans Pension Fund;
- c) The Strategic Food Reserve Trust; and,
- d) Revenue Statement of the Pensions Department, the National Treasury.

Reports of the Auditor-General and Financial Statements in respect of the following Institutions for the year ended 30<sup>th</sup> June 2020 and the certificates therein:

- a) Special Economic Zones Authority;
- b) National Council for Law Reporting;
- c) Western Kenya Rice Mills Limited;
- d) Rift Valley Technical Institute;
- e) Mwea Rice Mills Limited; and,
- f) Siaya Institute of Technology.

Report of the Auditor-General and Financial Statements in respect of Nyatike Constituency for the year ended 30<sup>th</sup> June 2020 and the certificate therein.

**Hon. Speaker:** Let us have the Chairperson of the Departmental Committee on Finance and National Planning, Member for Kitui Rural.

**Hon. David Mboni** (Kitui Rural, CCU): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Finance and National Planning on its consideration of the Salaries and Remuneration Commission (Amendment) Bill (Senate Bill No.31 of 2020).

**Hon. Speaker:** Very well. Next is the Chairman of the Departmental Committee on Justice and Legal Affairs. Hon Olago Aluoch, are you the one tabling?

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**Hon Olago Aluoch** (Kisumu West, FORD–K): Hon. Speaker, on behalf of the Chairperson of the Departmental Committee on Justice and Legal Affairs, I beg to lay the following Paper on the Table of the House.

Report of the Departmental Committee on Justice and Legal Affairs on its consideration of the Elections (Amendment) Bill (National Assembly Bill No.3 of 2022).

Thank you, Hon. Speaker.

### QUESTIONS AND STATEMENTS

**Hon. Speaker:** The first segment will be Questions.

### ORDINARY QUESTIONS

The first Question is by the Member for Ndhiwa.

*Question No.072/2022*

#### OWNERSHIP STATUS OF LAND DONATED TO ICIPE BY KANYADOTO RESIDENTS

**Hon. Martin Owino** (Ndhiwa, ODM): Thank you, Hon. Speaker. I rise to ask the Cabinet Secretary for Lands and Physical Planning the following Question:

- (i) Could the Cabinet Secretary state the current ownership status of a parcel of land measuring 116 hectares in Kanyadoto Ward in Ndhiwa Constituency which was donated by the community to the Government for development in 1980, but is alleged to have been transferred to the International Centre of Insect Physiology and Ecology (ICIPE)?
- (ii) Could the Cabinet Secretary explain why no development has been initiated on the said piece of land as agreed between the community and the Government?
- (iii) Considering that no Government development has been undertaken on the said land as intended for the last 40 years, could the Government undertake to either compensate the families which donated the land or revert it to the rightful owners?

**Hon. Speaker:** The Question will be replied to before the Departmental Committee on Lands. The next Question is by the Member for Matuga.

*Question No.082/2022*

#### DELAYED PAYMENT OF PENSION TO FAMILY OF JUMA MDIGO

**Hon. Kassim Tandaza** (Matuga, ANC): Thank you, Hon Speaker. I rise to ask Question No.082 of 2022 to the Teachers Service Commission:

- (i) Could the Teachers Service Commission (TSC) explain the status of remittance of pension to the Pension Department with respect to the late Juma Abdalla Mdigo, TSC No.195069, who served as a teacher under the Commission from 5<sup>th</sup> May 1983 to 1<sup>st</sup> July 2009?

(ii) When will the Commission remit the said dues considering that all the requisite documents for processing of the payments were submitted in 2016 and re-submitted in January 2022?

(iii) What action is the Commission taking to streamline processing and remittance of retired teachers' pensions in order to stop inordinate delays in payment and cut down on attendant costs incurred by pensioners or their beneficiaries in pursuit of the remittances?

**Hon. Speaker:** You will get a written reply from the Teachers Service Commission.

The next Question is by the Member for Kajiado Central, Hon. Memusi.

*Question No.086/2022*

STALLED CONSTRUCTION OF ILBISIL-ILMOTIOK ROAD  
AND MAPARASHA BRIDGE

**Hon. Memusi ole Kanchory** (Kajiado Central, ODM): Thank you, Hon. Speaker. I rise to ask Question No.086/2022 to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works:

- (i) Could the Cabinet Secretary explain why the construction of Ilibisil-Ilmotiok Road and Maparasha Bridge in Kajiado Central Constituency stalled for three (3) and seven (7) years ago, respectively?
- (ii) Could the Cabinet Secretary provide a report on the two projects since their inception indicating the funds allocated in each financial year, funds already paid to the contractors and the pending allocations, if any?
- (iii) What measures has the Ministry put in place to ensure speedy completion of the projects and that payment of contractors is done promptly?
- (iv) What is the status of the funds that had initially been allocated for construction of the Piliwa Bridge Project in Kajiado Central Constituency but have remained unutilised for seven (7) years after the completion of the bridge?

Thank you, Hon. Speaker.

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

The last Question is by the Member for Kwanza, Hon. Wanyonyi Ferdinand Kevin.

*Question No.087/2022*

EXPANSION AND REHABILITATION OF KITALE AIRSTRIP

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): Thank you, Hon. Speaker. I rise to ask Question No.087/2022 to the Cabinet secretary for Transport, Infrastructure, Housing, Urban Development and Public Works:

- (i) What is the status of the expansion and rehabilitation of the Kitale Airstrip?
- (ii) Could the Cabinet Secretary indicate when the airstrip will be completed and made operational in order to serve the many users from the North Rift and western regions?

Thank you, Hon. Speaker.

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

**Hon. Speaker:** The next segment is on Requests for Statements. The first Request is by the Member for Marakwet West, Hon. Kisang.

### REQUEST FOR STATEMENT

#### KILLINGS AND CATTLE RUSTLING IN MARAKWET WEST

**Hon. William Kisang** (Marakwet West, JP): Thank you, Hon. Speaker.

Pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the recent killings and perennial cattle rustling in Marakwet West Constituency.

Hon. Speaker, on 20<sup>th</sup> March 2022, three (3) persons, namely, Jackson Kipkorir Komen of ID No.33809816, Edwin Kipruto Chelimo of ID No.24950770 and Boniface Kibet Kemboi of ID No.29649880 were killed while four others (4) were injured during a raid by armed cattle rustlers in Koitilial Centre, Niwai Sub Location, and Marakwet West Constituency.

During the raid, over 195 herds of cattle and goats were stolen. It is of great concern that cattle rustling and banditry have continued every week within Kerio Valley in Elgeyo-Marakwet County, resulting to loss of lives and property with no or little intervention by the national Government.

In addition, over 100 lives have been lost and thousands of livestock have been stolen and driven away by heavily armed cattle rustlers, impoverishing the livelihoods of the communities and threatening peace among communities.

Hon. Speaker, it is against this background that I seek a Statement from the Chairperson of the Departmental Committee on Administration and National Security on the following:

- (i) Could the Chairperson explain when the National Police Reservists Programme (NPR) will be reinstated to ensure restoration of security in the county to avert further loss of lives and property?
- (ii) Could the Chairperson explain measures the Government has put in place to enhance security in the region and in particular, considerations of recruiting more NPR among the local residents who are familiar with the local languages and the terrain of the area?
- (iii) Could the Chairperson explain what challenges the security agencies are facing in providing information to facilitate identification and arrest of culprits as well as addressing the security problems in the area?
- (iv) What plans has the Ministry put in place to ensure long-term and sustainable peace in the area that includes disarmament operations and engaging communities on matters of security?
- (v) What measures have been put in place by Government agencies to recover the stolen livestock and/or compensate the victims who have been rendered poor by this illegal activity?

**Hon. Speaker:** Let us have the Chairman of the Departmental Committee on Administration and National Security, Hon. Peter Mwathi. Hon. Kaunya, are you stepping in as an agent of necessity?

**Hon. Oku Kaunya** (Teso North, ANC): Yes, Hon. Speaker. Thank you very much. I am stepping in for the Chairman of the Departmental Committee on Administration and National Security, who is engaged in another national duty. He will give a response to the Request for a Statement by Hon. Kisang in two weeks.

**Hon. Speaker:** Very well. Hon. Kisang, are two weeks okay?

**Hon. William Kisang** (Marakwet West, JP): Two weeks are okay, Hon. Speaker, because of the usual seven days' notice. It looks like security agencies are sleeping on the job because this matter has been ongoing. We have had several meetings, but it looks like they are not interested in restoring peace in that region. They need to do something before even replying by ensuring that NPR are deployed as soon as possible so that we do not lose more lives.

**Hon. Speaker:** Very well. The next Request is by the Member for Borabu.

#### ACCIDENT INVOLVING EMPLOYEES OF TRANSMARA SUGAR COMPANY

**Hon. Ben Momanyi** (Borabu, WDM-K): Thank you, Hon. Speaker. I meant to seek this Statement last week on Wednesday, but the Cabinet Secretary for Interior and Coordination of National Government indicated that he would do something in two days. Therefore, I requested that the matter be stood down for two days, so that I could seek this Statement today. Unfortunately, I have not received any response or had any serious engagement with the Ministry of Interior and Coordination of National Government. Therefore, I now wish to seek the Statement.

Hon. Speaker, pursuant to the provisions of Standing Order No.44(2)(c), I rise to seek a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding an accident involving two employees of Transmara Sugar Company Ltd located in Narok County.

On 22<sup>nd</sup> February 2022, two employees of the said Transmara Sugar Company Ltd, Mr. Patrick Adipo, aged 23 years, and Duke Nyambane, aged 35 years, were putting off a fire at the bagasse yard at the company's premises when suddenly a heap of bagasse caved in and the two men were covered by the falling bagasse. To date, they have not been accounted for. The matter was reported at Ensoosaen Police Station in Narok County and the OB Number is 37/22/02/2022.

Hon. Speaker, appallingly, the families of the two victims have since been denied access to the site by the management of the sugar company and it is alleged that the site has since been cleared and there is no account given of the two missing persons.

Hon. Speaker, it is against this background that I seek for a Statement from the Chairperson of the Departmental Committee on Administration and National Security. In the Statement, the Chairperson should address the following concerns:

- (i) Could the Chairperson explain the status of the investigation into the disappearance of two employees, namely, Duke Nyambimba Mong'are aged 35 years, who comes from my constituency, and Patrick Adipo aged 32 years, both employees of Transmara Sugar Company, who were covered by falling bagasse while putting up a fire at the bagasse yard and have not been traced to date?
- (ii) What steps have been taken to trace the two missing employees of Transmara Sugar Company?
- (iii) What action has Transmara Sugar Company taken to trace, retrieve or recover the bodies of the two missing employees following their disappearance while working at the bagasse yard?
- (iv) What action has the relevant Government agencies such as the Director of Criminal Investigations taken, including instituting investigations and making arrests for possible criminal negligence by the management of Transmara Sugar Company, which led to the disappearance of the two employees following the unfortunate incident at the bagasse yard?

- (v) Could the Chairperson confirm if the company has been operating in strict conformity to the provisions of the Occupational Safety and Health Act, 2007?
- (vi) Could the Chairperson do an undertaking to ensure that comprehensive investigations are carried out into the circumstances surrounding the accident and action is taken against anyone found culpable of any form of negligence?

**Hon. Speaker:** Hon. Kaunya.

**Hon. Oku Kaunya** (Teso North, ANC): Thank you, Hon. Speaker. The response to the Statement on the disappearance of the two will be available in two weeks.

**Hon. Speaker:** Hon. Momanyi, I understand that you wanted to raise the issue last week.

**Hon. Ben Momanyi** (Borabu, WDM-K): Yes, Hon. Speaker. I was meant to raise this issue last week and the Cabinet Secretary for Interior and Coordination of National Government requested for only two days. That means that the Ministry is able to sort out this issue even in a day. The families of the two missing persons are really agonising. I find 14 days a very long time and I think one week is sufficient for the Chairman to bring the report to this House.

**Hon. Speaker:** Hon. Kaunya, as you have heard, the request should have been raised last week. Hon. Momanyi has indicated on the Floor of the House that he had been requested by the Cabinet Secretary to hold on for two days. However, according to Hon. Momanyi, the Cabinet Secretary has disappeared into thin air, but I think he can make it faster.

**Hon. Oku Kaunya** (Teso North, ANC): Thank you, Hon. Speaker. With your guidance and also considering the fact that the Member had been given that promise, I believe the Cabinet Secretary should have answers. Therefore, we will endeavour to give it in one week's time, as per your guidance.

**Hon. Speaker:** Very well. In one week, bring the Statement here and that concludes that aspect. Let us move on to the next Order.

Sorry, I see a number of Members having placed interventions. I do not know why? Is there anything or the usual one of the early birds? There is an early bird who wanted to catch the worm. Very well. Let us proceed.

## MOTION

### ADOPTION OF REPORT ON FIRST SUPPLEMENTARY ESTIMATES FOR FY 2021/2022

**Hon. Speaker:** Chair of the Budget and Appropriations Committee.

**Hon. Kanini Kega** (Kieni, JP): Thank you, Hon. Speaker. At the outset, I seek your indulgence because I am waiting for the First and Second Schedule which as I move, I want to indicate I will be replacing.

Hon. Speaker, I beg to move...

**Hon. Speaker:** You will be moving this Motion in an amended form by way of replacing the First and Second Schedule?

**Hon. Kanini Kega** (Kieni, JP): Yes, I have the details and copies will be circulated in a few minutes.

Hon Speaker, I beg to move:

THAT, the House adopts the Report of the Budget and Appropriations Committee on the First Supplementary Estimates for the Financial Year 2021/2022, laid on the Table of the House on Tuesday, 22<sup>nd</sup> March 2022 and pursuant to provisions of Article 223 of the Constitution and the Standing Order 243 -



- (i) Approves an increment of the total recurrent expenditure for the Financial Year 2021/2022 by Kshs125,070,384,778.00 in respect of the Votes contained in the FIRST SCHEDULE; and,  
Hon. Speaker, as I said, I will be replacing this Schedule.
- (ii) Approves an increment of the total capital expenditure for the Financial Year 2021/2022 by Kshs13,790,551,509.00 in respect of the Votes contained in the FIRST SCHEDULE;
- (iii) Approves an overall increment in the total budget for the Financial Year 2021/2022 by Kshs138,860,936,287.00 in respect of the Votes contained in the FIRST SCHEDULE;
- (iv) Resolves that the FIRST SCHEDULE forms the basis for the introduction of the First Supplementary Appropriation Bill, 2022; and,
- (v) Further makes the policy resolutions contained in the SECOND SCHEDULE to the Order Paper.

Hon. Speaker, it is my honour, duty and privilege to present to this House, the Report of the Budget and Appropriations Committee on the Supplementary Estimates 1 for the Financial Year 2021/2022, on behalf of Members of my Committee.

Hon. Speaker, at the outset, I want thank your good Office and the Office of the Clerk for the support extended in fulfilling our mandate as well as the departmental committees for their well-thought-out recommendations which have formed the backbone of this Report. Our sincere gratitude is extended to all the ministries, departments and agencies as well as the National Treasury for honouring the invitation by the National Assembly to be part of this crucial process in reviewing the Supplementary Budget for the Financial Year 2021/2022.

In addition, the Committee would like to thank the Parliamentary Budget Office, the Directorate of Audit, Appropriations and other select committees and the Directorate of Departmental Committees for the extensive work undertaken in reviewing and processing of the Supplementary Estimates I.

It is on this account and on behalf of the Budget and Appropriations Committee that I recommend that this House adopts this Report.

The first Supplementary Budget for the Financial Year 2021/2022 has been prepared by the National Treasury at a time when the economy is experiencing a rebound in growth with revenue estimated to have performed above the target by Kshs16 billion during the period between June and December. The Supplementary Budget seeks to adjust the expenditure upwards by Kshs126.3 billion mainly to provide additional funding for drought-related interventions, security, COVID-19, pending bills, salary shortfalls, the 2022 elections and expansion of the Competency-Based Curriculum (CBC) infrastructure.

The upward adjustments of the Budget are mostly on account of recurrent rather than development expenditure. The recurrent budget has increased by Kshs113 billion, which is about 8.9 per cent, whereas the development budget has only increased by Kshs13 billion, which is roughly 1.9 per cent. The Committee is concerned that if this trend continues, it could eventually crowd out the growth-enhancing expenditures under the development budget.

Indeed, there are reports of under-absorption of the development budget, most of which are attributed to foreign-financed projects. Many donor-funded projects are facing implementation challenges mainly related to low absorption capacity by recipient ministries, departments and agencies (MDAs) or lack of Government of Kenya counterpart funding. The Committee notes that

many donor-funded projects are not aligned to the budget cycle and, therefore, face challenges being assimilated by the recipient MDAs.

Article 223 of the Constitution provides leeway for the national Government to spend money that has not been appropriated by Parliament, if the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Act, or the money has been withdrawn from the Contingencies Fund - so far, the National Treasury has granted approvals under Article 223 of the Constitution amounting to Kshs75.366 billion of which Kshs40 billion is recurrent and Kshs35 billion is development. Of this amount, only Kshs29.15 billion has been disbursed to the spending agencies. The Committee is of the opinion that failure to disburse the funds already approved under Article 223 of the Constitution implies that the expenditure items were probably not emergency in nature and should, therefore, not constitute expenditure under Article 223 of the Constitution.

The Committee notes with concern that failure to submit the full amount approved under Article 223 of the Constitution raises questions on whether the disbursed expenditures were indeed emergency in nature. The Committee observed that some of the Article 223 expenditures do not appear to meet the spirit of the Constitution. There are allocations cutting across various MDAs towards enhancing operations and maintenance as well as salary shortfalls, which could have reasonably been provided for within the prevailing budget constraints during the annual budget process and should ideally not constitute a supplementary budget.

The legal provisions underpinning the Supplementary Budget are contained in Article 223 of the Constitution, Section 44 of the Public Finance Management Act (PFM), 2012, Section 40 of the PFM Regulations, 2015 and the National Assembly Standing Order No.243. This includes information with regard to the basis, content and procedure of processing supplementary estimates.

The fiscal framework underpinning the 2021/2022 Budget is grounded on fiscal consolidation with the aim of reducing the overall fiscal deficit over the medium term. This is also in line with the International Monetary Fund (IMF) performance benchmark for the fiscal deficit under the 38-month IMF facility programme which the country entered into in 2021.

The Committee observed that due to the significant increase in spending, the overall fiscal deficit level inclusive of grants is projected to increase from 7.5 per cent to 8.1 per cent of GDP contrary to the fiscal consolidation path. Additional borrowing will, therefore, be required to plug the deficit. This is a concern given the constrained fiscal space with our debt ceiling nearing Kshs9 trillion.

Hon. Speaker, the policy direction of the approved Budget was anchored on the Big Four Agenda and the post-COVID-19 Economic Recovery Strategy (ERS). There is concern, however, that some of the deductions could potentially alter the policy direction of the Budget. For instance, there are deductions on expenditures relating to Economic Recovery Strategy as well as to Big Four interventions under housing, livestock management and coordination, and the development and coordination of the Blue Economy.

Hon. Speaker, the Committee further observed that the Budget implementation appears to be skewed towards the national Government and, indeed, towards specific MDAs within the national Government. As at December 2021, only 39.2 per cent of the County Equitable Share (Kshs144.98 billion) had been disbursed to counties against the total amount of Kshs370 billion. Further, within the national Government, approximately 50 MDAs had received less than 50% of their total budget, with nine MDAs receiving less than 30% of their total budget. This is a concern as it hinders effective budget implementation for these entities.

The Committee is concerned that despite major adjustments in the Supplementary Budget, an assessment of the fiscal impact of the proposed reductions and/or increases to various programmes has not been provided for. Further, it is noted that some expenditure adjustments are not consistent with the targets which have remained the same despite the changes in budgetary allocation. For instance, in the Ministry of Defence, there are some budget cuts, but no changes in the targets of the affected programmes. Similarly, in the Ministry of Sports and the Ministry of Finance and Planning, there are budget cuts under some programmes, but the overall targets for the affected areas have remained the same.

Hon. Speaker, as I conclude, the Supplementary Budget for FY 2021/22 has been prepared at a time when the economy is experiencing a rebound in growth following a period of economic underperformance brought about by the COVID-19 Pandemic. The average growth for the first three quarters of 2021 is estimated at 7.9 per cent. However, it is worth noting that the base effect is a significant factor in the recorded growth. Most sectors were coming from negative growth rates experienced in 2020 and the full reopening of the economy led to the unusual spike in growth. Therefore, as much as the economy is in recovery, the recorded growth for 2021 is more of a statistical than the real growth.

Going forward, there are still some inherent risks to the economic outlook which, if they materialise, could affect the outcome of Budget implementation. These include the ongoing drought in some parts of the country, lingering COVID-19 Pandemic effects, increasing public expenditure pressures and the impact of a heightened election mood on investment decisions. These risks have a potentially adverse effect on the economic growth outlook. Therefore, revenue collection could have negative impact on budgetary spending in 2022.

Pending bills continue to present a challenge. Despite the national Government policy on pending bills to constitute a first charge (Treasury Circular No.7/2019), it appears that this has not been followed. Latest statistics indicate that as at 30<sup>th</sup> September 2021, pending bills amounted to Kshs423.2 billion. Of this amount, State corporations account for 87.8 per cent, that is Kshs371.5 billion and MDAs account for 12.2 per cent that is Kshs51.6 billion. This does not include the debts in the county governments which are equally high. The Committee is concerned that some reductions in the development budget could potentially lead to further pending bills accumulation especially where commitments have already been undertaken or there are contractual obligations.

The Committee also notes that some donor funded projects appear to be facing implementation challenges. The Committee noted that the low absorption of the development budget is due to disruptions in donor funded projects. There appears to be a challenge in how donor funded projects are conceived, structured and implemented which leads to poor outcome.

A framework is being developed and already we are in a situation where we have a case with the Senate. We are hoping that through mediation, we will fast-track this process and ensure that we have a framework that is agreeable.

Hon. Speaker, we have noted that there are several drought mitigation interventions scattered across various MDAs. These include interventions with the said Department for Social Protection and Senior Citizens Affairs, State Department for Livestock, State Department for Devolution, Ministry of Water, Sanitation and Irrigation as well Regional Development Authorities in the Ministry of Defence. This fragmented approach may lead to duplication of efforts as well as possible pilferage of resources and failure to take responsibility. There is need for a centralised approach in order to effectively handle drought mitigation.

During the processing of the submitted Supplementary Estimates 1, the National Treasury submitted an addendum to the Supplementary Budget proposing further changes to the 2021/2022

Budget Estimates. The addendum proposed to increase the Supplementary Budget by a further Kshs3.7 billion. The recurrent budget was adjusted upwards by Kshs9.4 billion whereas the development was reduced by Kshs5.7 billion.

This is a huge issue because departmental committees had already processed the Supplementary Budget 1 and presented to us having made various recommendations. The National Treasury brought an addendum which adversely affected the recommendations presented by the committees. So, they accused us of not taking their recommendations into consideration. It was not our failure to take into account their considerations but because of the addendum brought by the National Treasury.

The Committee notes with concern that a further reduction of the development budget could disrupt policy implementation and lead to further accumulation of pending bills, as I earlier said. Additionally, the deduction of the development budget by Kshs5.7 billion has slightly reduced the share of development estimates in the total revised budget from 32.9 per cent to 32.6 per cent. Given the risk of under-absorption of the development budget, the cumulative expenditure at the end of the financial year could fall below the 30 per cent threshold.

The Committee observed that the introduction of an addendum to the Supplementary Budget simply is not good budget policy practice. Firstly, it presents a risk of abuse as it is typically brought at the tail end of the review process and, therefore, is not subjected to adequate scrutiny. Secondly, the submission of two separate documents adjusting the same budget could mask the real impact of the proposed expenditure adjustment. Thirdly, the practice suggests a certain level of unpreparedness on the part of the National Treasury with regard to the Supplementary Budget.

The total revenue and grants projected have increased by 3.95 per cent from Kshs2.101 trillion to Kshs2.184 trillion. This is mainly due to an increased revision in Appropriations-in Aid collection by 20 per cent, that is Kshs53 billion. There are notable increases in Appropriations-in-Aid (A-in-A) estimation across a number of agencies including universities, the Road Maintenance Levy Fund, the Kenya Accreditation Service and many others.

The ordinary revenue collection is projected to increase by 1.4 per cent, that is Kshs25 billion from Kshs1.7 trillion to Kshs1.8 trillion. This is attributed to an increase in Excise Duty and other taxes.

As I had said earlier, the fiscal deficit is estimated to increase from 7.5 per cent to 8.1 per cent of the Gross Domestic Product (GDP). Despite the downward revision of the public debt service, it still constitutes the largest component of the Consolidated Fund Services (CFS), accounting for 88 per cent, which is Kshs1.5 trillion of total CFS expenditures. Of this amount, the domestic debt service constitutes the largest expenditure item amounting to Kshs823 billion or 71 per cent.

The supplementary CFS budget proposes an increase of allowances for constitutional offices by Kshs136 million. These are allowances for various commissions and constitutional office-holders. Major increases were related to the Teachers Service Commission, which increased from Kshs630,000 to Kshs34 million, the Commission on Administrative Justice and the Salaries and Remuneration Commission among others.

Hon. Speaker, as I conclude, we process this Supplementary Budget under very tight conditions. I would like to thank the Members of the Budget and Appropriations Committee. I would also like to thank the Chairs of the various committees. We had extensive consultations, even today. When we were here last week, the Chairman emeritus requested that we also consult the National Treasury. We have consulted a lot with the National Treasury and have brought a harmonised Schedule that will be circulated in a few minutes. 0

With those very many remarks, I request Dr. Makali Mulu to second.

**Hon. Speaker:** Let us have Dr. Makali Mulu.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Speaker. I take this opportunity to second this important Supplementary Budget Report. I appreciate the work done by all Members of Parliament, more so the departmental committees' chairpersons. It was not easy preparing the Supplementary Budget this year. As a Member of the Budget and Appropriations Committee, I have been doing this for many years, but this year was quite unique. At one point, I almost imagined that we would not have a supplementary budget because I empathised with the chairpersons of departmental committees.

Looking at the process before you get to the product, departmental committees got the first submission of the Supplementary Budget and discussed it. Just as they were about to conclude, we got an addendum to the revised Budget. As a result of the addendum, many things came up. There was a kind of misunderstanding between the departmental committees, the Budget and Appropriations Committee and the National Treasury. The National Treasury ended up nullifying the changes which had been proposed by the departmental committee chairpersons because they said that the money which the departmental committees had proposed to be pushed to different activities had already been used. As a result of that, the Budget and Appropriations Committee was accused of changing what some of the departmental committees had recommended. That is far from the truth. So, as we look at this revised budget today, it is important that the process is streamlined in terms of how supplementary budgets are tabled in this House and how they are referred to committees. That is why I agree with my Chair who said that in future, Parliament should resist the idea of getting addendums when it has received a Supplementary Budget from the Treasury. It causes confusion and a lot of misunderstanding which makes us appear as though we are not doing our work as it should be.

My second observation is on the issue of prioritising budget programmes and projects. If you look at what is happening in this country today, you will easily single out four priority areas. One of them is that we are in an election year. That means, as we do our revised budget, we should focus more on activities that will ensure this country conducts free, fair and credible elections. Two is security. As we conduct elections, we must make sure that Kenyans are secure and we do not have any problem in the country so that we can maintain peace. Three, is the price of fertiliser and agricultural inputs, which are increasing at a high rate. What that means is that as we look at the Supplementary Budget, there must be a proper analysis of it to see how Kenyans can be cushioned against these rising prices.

Four, is the fuel stabilisation fund. This will ensure that increasing fuel prices do not do more harm to Kenyans than what they have been experiencing. Therefore, we need to analyse the revised budget against these four important national priorities. There has been a lot of push and pull, more so on fertiliser. The Departmental Committee on Agriculture and Livestock has been saying that we need to provide more resources to agriculture, but because of the challenges of the budget making, we have had challenges to fulfill it. For me, we need to align the revised budget with the national priorities.

The last point is input of MDAs. The issue is the source of primary data when it comes to budget making. We all get this information from MDAs. The National Treasury consults MDAs to get information. Departmental committees consult MDAs to get information. For me, it looks like we are not getting the same information from the same MDAs. There is need to harmonise the information that comes from the departmental committees and from the National Treasury. There is confusion if you look at what happens in the two, namely, the National Treasury and the

departmental committees. I wish I had more time. I would have commented on Article 223 of the Constitution, but my Chair commented on it.

**Hon. Speaker:** Hon. (Dr.) Makali Mulu, I want to give you an extra three minutes.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Speaker. With those three minutes, let me elaborate on the primary source of data. I wish the departmental committee chairpersons listen to me. What happens when we get the supplementary budget is that we send its report to the departmental committees. The committees request the MDAs to appear before them so that they can discuss the budget together. When they discuss, they give information that indicates areas where there could be savings and areas that have been exhausted. What happened is that in areas where departmental committees' got information from MDAs that there were savings, the committees thought it was important to reallocate that money to other priority areas.

However, later, the National Treasury came and said that that money had already been used. So, we ask them, who is telling the truth? Is it the departmental committees or the National Treasury? It is on that basis that most departmental committee chairs got frustrated. Yesterday, we had a meeting with the Cabinet Secretary for the National Treasury and T.J. Kajwang' said that he thinks the Budget and Appropriations Committee does not know its work. That was because of the frustrations departmental committee chairpersons were having.

It is important for primary source information, MDAs, to give the same information they give to the National Treasury to the departmental committees. If you take, for example, the Departmental Committee on Administration and National Security, we had a long session with the Nairobi Metropolitan Services (NMS) and they indicated to us that they were not able to use some money because they had not processed the procurement request. As a result of that, the Committee reallocated that money. However, we were told by the National Treasury that that money had already been paid out. So, one wonders, if the Committee said that NMS had not used the money and the National Treasury says the money has been used, where is the data coming from? As Parliament, we need to be firm on what we do. I raised an important issue - it will be applicable in the 13<sup>th</sup> Parliament - that as Parliament, we need a serious national conversation on whether Parliament has a role in budget making and if it has, that role must be stated clearly. If we do not have a role, we should allow the National Treasury to make the budget, so that we just come in and use whatever part is there for Parliament. But if we have a clear role in budget making, the input of Parliament cannot be ignored. So, these are important observations. If we have to do our work as a budget making House, and this must be addressed as we move into the future.

On Article 223 of the Constitution. If you look at it, it says that you can only apply it when you have unplanned expenditure or if there is an emergency. The Chair has come out clear. When you analyse the budget that we get from the National Treasury, especially the revised budget, some expenditure items do not qualify to be funded under Article 223 of the Constitution. As a House, we need to be firm. Whatever does not qualify, we need to say no to it unless someone explains what happened to that expenditure.

The other important point is the Contingency Fund. The law demands that when you use money from the Contingency Fund, you must justify why you are using that money and ask Parliament to give you approval so that you can replenish the Contingency Fund. What is happening is that money is being drawn from that Fund and much is not being said as to why it has been used. The justification is not provided in good time and when it is provided, it is not clear. So, there are important issues which, for those who will be in the 13<sup>th</sup> Parliament, hoping I will be there, should seriously take up so that we stamp our authority on matters budget making.

I beg to second.

**Hon. Speaker:** Hon. Members, the Chair of the Budget and Appropriations Committee in moving this Motion, indicated that he was moving it in an amended form and we permitted him to do so under the Standing Order No.48. He was then to replace the First and the Second Schedules, but up to now, he has not tabled the two Schedules. That complicate matters. I will propose the Question, but I will not propose it purportedly as amended when I have not seen the purported amendment. It may well be that if those Schedules had been tabled, then perhaps some of the proposed amendments could have been addressed. Now, without that, we will have to proceed and then I allow Members who have amendments to prosecute them. It is not possible for the House to sit and assume something is going to happen. It is important. I am saying this because the issues raised by Hon. Makali Mulu in seconding are important. I have no way of knowing that they are printing. There are two ways we could have delayed this. However, if you say you will move it in an amended form, and I have not seen the amendments, how would I know?

*(Loud consultations)*

What shall we be doing in those two minutes? Honestly, you are putting the House in a situation which is untenable. Hon. Members, this is what I have in the Order Paper. I will propose the Question as it is in the Order Paper.

*(Question proposed)*

*(Hon. Aden Duale rose on a point of order)*

Hon. Duale, what is your point of order?

## POINT OF ORDER

### ILLEGALITY OF FIRST SUPPLEMENTARY ESTIMATES

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, thank you for proposing the Question. We are now on the Old Schedule.

I rise to interrogate the constitutionality of this process. Article 223 of the Constitution provides the leeway of the National Government to spend monies that have been appropriated by Parliament. If the amount appropriated for any purpose under the Appropriations Act is insufficient or a need has arisen for expenditure, for a purpose for which no amount has been appropriated by that Act or money has been withdrawn from the Contingency Fund.

Article 223(2) of the Constitution requires that any spending, under this Article be sought within two months after the first withdrawal of the money. If this cannot be actualised within two months, if for one reason or the other, if Parliament is not sitting, then the approval should be sought within two weeks of the sitting. That is the law. It must be done within two months but if the House is not sitting, the next sitting, two weeks from then, that must be sought.

The documents submitted to this House, and the *Hansard* will prove me right that the following sums of money were disbursed under Article 223 of the Constitution to the Ministry of Defence: Kshs2 billion disbursed on 10<sup>th</sup> September 2021 on security operations; a further, Kshs2 billion on 25<sup>th</sup> November 2021 on security operations; Kshs362 million for Covid-19 Vaccines disbursed on 30<sup>th</sup> August 2021 under the Ministry of Health; Kshs280 million for LCIE Arbitration

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to No.122222 Channel 2 Group Corporation Versus KBC disbursed on 27<sup>th</sup> August 2021. I am raising the matter between Channel 2 Corporation Versus KBC as a matter before the Public Accounts Committee, and the Committee has not concluded; and finally, among others, Kshs620 million for digging of boreholes and informal settlement disbursed on 29<sup>th</sup> September 2022 under the Ministry of Water and Sanitation. This is where a group of Members of Parliament were given Kshs20 million per constituency.

**Hon. Speaker:** Sorry, did you say September 2022?

**Hon. Aden Duale** (Garissa Township, JP): I had said September 2021.

**Hon. Speaker:** Let me correct the *Hansard*: Kshs620 million for drilling of boreholes in informal settlements disbursed on 29<sup>th</sup> September 2021 under the Ministry of Water and Sanitations.

As I have mentioned, the approval for this withdrawal was to be sought according to the law two months or two weeks immediately the House was reconvened. I am seeking a ruling from where you sit, on the constitutionality of The National Treasury seeking approval for withdrawals which were made as far as last, August.

Article 223(4) of the Constitution provides that when the House is done with this Report before us, the Appropriations Bill is to be introduced for money spent under this Article. As you can see in the Report, some allocations proposed will be for money yet to be spent. Will it be in order, for the Appropriations Bill to be introduced covering both money spent, and the rest to be spent in contravention of Article 223(4) which requires such appropriations to be strictly for money spent?

An accounting officer for the National Government entity other than State corporations may reallocate funds between programs or sub votes in the Budget for the Financial Year if there are provisions which are not likely to be utilised as long as the total sum of all reallocations made to, or from approved for the program or sub vote for that Financial Year. Indeed, this is the content under which Article 223 have been operationalised by the PFM Act which is Section 43 and 44 of that Act. Section 43(2)(c) presupposes that a Supplementary should comprised of reallocations which either lead to increase or reductions across various items and programs, and the law requires that reallocations made from, to a program or sub vote should not exceed 10 per cent.

Hon. Speaker, I have scanned through this Supplementary Report and Budget as tabled in this House. It took me a lot of time, and I have observed broadly that some expenditure adjustments to programs have bluntly, exceeded 10 per cent. These include programmes in State House affairs under Executive Office of the President that has been adjusted by 47 per cent. I challenge the Chairperson of the Budget and Appropriations Committee to prove me wrong. The increase is not just above 10 per cent. It is 47 per cent.

The next one is the Department for Immigration and Citizen Services in the Office of the President. Its budget has been increased by 15 per cent. The budget for Road Safety has been increased by 13 per cent. That of the Ministry of Defence has been adjusted by 15 per cent and that of the Ministry of Interior by 13 per cent. The list is endless. I can continue.

What is the legality of the Supplementary Estimates submitted to this House, given that they do not adhere to the provision of the PFM Act that was operationalised under Article 223 of the Constitution? It is noted that some of the expenditures under Article 223 of the Constitution do not appear to meet the spirit of the Constitution. There are allocations that cut across various MDAs towards enhancing operation and maintenance as well as salary shortfalls which could have been reasonably provided for within prevailing Budget constraints during the annual Budget process. They should ideally not constitute a supplementary budget. Indeed, Regulation 40(4)(a)



of the PFM Regulations clarifies that the purpose for which approval is sought for a supplementary budget does not include expenditure that, although known when finalising the original Budget Estimates, could not be accommodated within the current allocations.

Hon. Speaker, I seek your ruling on the legality of the submission which does not adhere to the above regulation. Additionally, the list submitted by the National Treasury to this House does not meet the threshold of unforeseen and unavoidable expenditures. For example, Ksh620 million has been set aside for drilling boreholes in an informal sector, Ksh1 billion towards establishment of a modern neuro psychiatric national teaching and referral hospital for Kenya Defence Forces (KDF) and Ksh1.5 billion for rehabilitation of Naivasha-Malaba metre gauge railway. The framers of the Constitution were very explicit. Article 223 of the Constitution did not anticipate such expenditures. It talks about unforeseen emergencies. There is an emergency in the north. There is serious drought. Livestock and people have died. Article 223 of the Constitution has not been applied to allocate money to the emergency, but money has been allocated to other expenditures. That is shameful.

Finally, many new projects have been introduced in this Supplementary Budget contrary to Regulation 40(8) of the PFM Regulations. The provision requires that any new policy initiative, including capital projects, can only be introduced in the annual Estimates, which is supposed to come. Why should this Supplementary Budget include new projects? What is the intention? It has never happened, Hon. Speaker, and you need to save us. For avoidance of doubt, there are 16 new projects in the State Department for Transport. There are 50 new projects in the health sector, where 50 new Level 3 hospitals are proposed to be constructed. Other new projects are in the State Department for Correctional Services, Department of Crop Development, Ministry of Energy, among others. These new projects should be in the new annual Estimates. Which are these projects being sneaked in the Supplementary Estimates outside provisions of the law? This House should not be a rubberstamp.

I raise these issues so that you can give direction. I am not against the report on the Supplementary Estimates, but all of us sitting here swore to defend the Constitution and relevant laws. We should not continue this way. The Schedules have been changed. How can the House discuss the Motion when the Chair moved it based on Schedules which are not there? Now that you have put the Question based on the old Motion, do not allow the shenanigans by some of the staff of the Parliamentary Budget Office (PBO) and the Chairman of the Budget and Appropriations Committee. I could see the Chairman, my good friend Hon. Kanini, telling you to sit down because the gentleman from PBO is here. This man is an employee of the Parliamentary Service Commission, chaired by the Speaker. Do not listen to this person; you will lose your job. When the Speaker is on his feet, nobody—not even the President—can speak.

This House cannot pass an illegality. I seek your direction. New projects have been introduced. KDF is being allocated money under the pretext of financing through Article 223 of the Constitution. I remember this House rejected a number of expenditures under Article 223 of the Constitution. The Chairman of the Public Accounts Committee (PAC) is here. One of the payments that have been made—the Ksh280 million LCIT arbitration between Channel 2 Corporation and Kenya Broadcasting Corporation (KBC) is an audit query before us. It has not been concluded. So we cannot allow one Ukur Yatani, the Cabinet Secretary for the National Treasury, to use this House as a rubberstamp. In the sunset days of the 12<sup>th</sup> Parliament, let us be remembered for standing with the law and the Constitution.

Hon. Speaker, give us guidance. Let this be one of the Solomonic rulings you make. We cannot continue like this. I am talking about the report now. You have allowed the Chairman to move the Motion in an amended form subject to attached Schedules being available in the House.

**Hon. Amos Kimunya** (Kipipiri, JP): They can be brought.

**Hon. Aden Duale** (Garissa Township, JP): They cannot be brought when the Speaker has proposed the Question. The train has left the station. Leader of the Majority Party, you are the most experienced Member here. You have been Minister for Finance. You have been Deputy Leader of Government Business in the House. You are the Leader of the Majority Party. You are the anchor of procedure in this House. Do not allow this Chairman to misuse you. And do not allow yourself to be used by one Ukur Yatani.

Hon. Speaker, I seek your direction.

**Hon. Speaker:** Now, Hon. Members, Hon. Duale has raised some weighty matters. Procedurally, let me rule on the matter upfront. The Chairman of the Budget and Appropriations Committee had indicated that what he was going to move in an amended form was trotting to the Chamber. It was therefore upon him to make sure that before he finished moving, whatever it was should have landed here. Now that he has not landed... It does not matter. You know I cannot see that document. Refer to 4<sup>th</sup> January 1642. I cannot see that document now. The two options available to the Chairman are to reply or comment on the interventions, but not to table that document. I think you can use your good offices now that you are just next to the Hon. Leader of the Majority Party to request him to move that amendment on your behalf, just like the other Members have their amendments. This is because, the Motion has been moved, seconded and the Question has been proposed. In keeping with our rules and practice, we cannot revisit the Question of your moving.

So, perhaps you would have to request the Hon. Leader of Majority Party to do it on your behalf. Thereafter, he has to do the amendments and bring to me for approval. In our rules, you as the owner of the Motion, you are the one who has authority and permission by the Standing Orders to move it in an amended form even without notice. However, for him he would have to draft it and bring it for approval and see whether I will be reminded to approve. It is not automatic also, I could easily shut my eyes forever about approving it, but that will not be helpful to the House. It is good for everybody to come and see what it is that you are saying, which now you have to request him to do it on your behalf. So, they must go and prepare the Amendments Motion because even a very casual look reveals that the figures are different from what has been proposed and what the document that I have seen the clerks budding around here. So, I will allow you make a comment with regard to what the Hon. Duale has raised.

**Hon. Kanini Kega** (Kieni, JP): Thank you, Hon. Speaker for your indulgence. Hon. Speaker, the former Hon. Leader of Majority Party has raised a raft of issues and of course we are seeking for your guidance but it is also good to set some record straight. Hon. Speaker some of the issues that Hon. Duale raised about when the issues were reported to us when Article 223 was invoked, I can confirm Hon. Speaker that we received a letter within two months after the disbursements of the said funds. So, it is not true what Hon. Duale said that the funds were disbursed and we were informed within two months. We were informed within two months.

Secondly, it is true that the Supplementary Budget should not exceed by 10 per cent. However, it is this same House which approved a budget of Ksh3 trillion. 10 per cent is Ksh300 billion. The Supplementary Budget we are talking about is Ksh140 billion which is less than 10 per cent. Hon. Speaker, I stand guided by your ruling. I am consulting the Hon. Leader of the Majority Party to make sure that we adhere to what you have guided.

I thank your Hon. Speaker.

**Hon. Speaker:** So, you address the issue of 10 per cent. However, there is a more fundamental one on seeking authority of the House within two months. If the House is in recess within two weeks after the House resumes. That is actually in Article 223 of the Constitution. It is not in the Public Finance Management Act (PFM). That is something which I thought we need to address. The Hon. Duale did give instances of expenditures that happened in September all the way up to November which is way back from now and authority was ever sought. If I got him correct, the Constitution therefore has been breached if you look at those expenditures and dates or you have not seen them?

**Hon. Kanini Kega** (Kieni, JP Hon. Speaker, we will be going back to the records. We got a letter from the National Treasury confirming that they have expended that money which was tabled. So, Hon. Speaker we have a letter to that effect and I think I can also check on that.

**Hon. Speaker:** A letter.

**Hon. Kanini Kega** (Kieni, JP Yes, a letter notifying that certain amounts have been spent.

**Hon. Speaker:** The Constitution does not say that the National Treasury shall spend and notify. It says it shall seek approval.

**Hon. Speaker:** Yes, Hon. Duale.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, if my very good friend goes that route, I am going to name him. All what I am giving I got it from the documents within Parliament and even the report. The Ksh2 billion went to the Ministry of Defence, disbursed on 10<sup>th</sup> September for Security operations, Ksh2 billion again went to the Ministry of Defence disbursed on 25<sup>th</sup> November 2021. All these are from his own report and from the *Hansard* of the Budget and Appropriations Committee (BAC). Hon. Speaker, it is very naïve for the Chairman to say that he needs to go, consult and read. I have raised four issues; the illegality committed in the application of Article 223 both in terms of any expenditure which has not been budgeted for or in the case of an emergency. These projects do not fall within those budgeted for.

Secondly, I also raised a very important question which you have asked on the two months or the two weeks that the House approval must be sought. Thirdly, I have raised the issue of introducing new projects. We are not being told where 50 new hospitals will be built and the 16 new projects in the state Department of Transport. Hon. Speaker, the sunset days of this Government is four months, how do you bring 16 new projects in the transport sector? When will they be built? I have asked how a new project in the Interior and Coordination of National Government, Ministry of Energy, in the Crop Production Development and the Ministry of Health. All these new projects which the Departmental Committees have not been engaged are being introduced. So, I have got four sets of issues. Hon. Speaker, the best thing for the Chairman was to say, he is not competent to answer, it is the Hon. Speaker to give direction.

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

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Speaker. I thank Hon. Duale for raising the issues which are within his right as a Member for Garissa in this House. However, in raising the issues, even in asking you to give guidance, it will not be proper to misguide the rest of the House on the issues that he has raised which could be taken out of context. I want to start with the simplest. If you look at the Motion that is before us, the overall increment in the budget is Kshs139 billion. This House did pass the budget for 2021/2022 in the order of upwards of Kshs3 trillion and 10 per cent of 3 trillion is Kshs300 billion. That is simple mathematics: Ksh139 billion is less than Ksh300 billion.

One of the things that we need to avoid is sensationalising things. Some Members are saying that money was overspent well beyond the Constitution. The framers of the Constitution did not say that you cannot spend more than 10 per cent of the budget on each line item. I want to give an example where Members will relate. When Covid-19 disease struck this country, we could not travel. We, as Parliament, yielded our travel budget. We gave up over 50 per cent of the budget. We gave up overseas travel budget of Parliament. According to the argument by the Member for Garissa Township, that is illegal because you cannot give up more than 10 per cent of the budget. You look at the totality of the entire Budget. A new project can come in—and I will raise that issue—or a project that is being funded a donor can fall off because his priority can change. It can be 100 per cent or 90 per cent of the ministry's development budget. The fact that it has fallen off, it cannot be sustained and you have to remove it from the budget does not mean that you say that our law does not allow us to change the budget by more than 10 per cent for this line item. So, we will not remove it from the budget, even if we know that it will not be implemented.

Hon. Speaker, similarly, a new project can come in. This happens because negotiations are in different stages of actualisation within the Budget cycle. New projects can come in because they now have a financier or a new need has arisen and the quantum does not matter. All it says is that before it gets spent on, that money must come to Parliament for approval. The first thing that we want to demystify is that this myth of 10 per cent applies only to the overall Budget but not to a line item. This is very simple. I have just given a very quick example of what happened with Covid-19 disease. We surrendered all the money for overseas travel because it was not possible to travel. This money was then used for other purposes.

In terms of the new Budget, the Constitution is very clear in Article 223. I know that it always causes confusion. Article 223 of the Constitution is brought in when the amount is insufficient. This happens when what was budgeted was not sufficient, unforeseen expenses come or money has been drawn from the Contingency Fund. For your information, Hon. Members, the Contingency Fund has an upper limit of Ksh10 billion. It is limited to specific things that can only be done, for instance, civil war as a sole contingency. That money is not actually held in the National Treasury but in the Central Bank of Kenya (CBK) in a Fund. Any withdrawal from that must be replenished at the earliest opportunity. That Fund must always remain at a certain amount. I believe that it has Ksh5 billion right now because it has never been used. Kenya has not been at war or with catastrophes that require withdrawal from the civil Contingency Fund. If the money in the budget is not sufficient to pay the staff salaries, including the new staff who has been hired, the National Treasury can come here through Article 223 of the Constitution to look for extra money. The Judiciary can come here to look for extra money through Article 223 of the Constitution.

Parliamentary Service Commission can come here to look for extra money through Article 223 of the Constitution because something was not covered sufficiently. The budget is only an estimate. It is only when you pay that you discover what you had was not enough. We have the same things within our National Government-Constituencies Development Fund (NG-CDF). We talk constantly to the Board. For instance, we fund a classroom with Ksh1.2 million. The bill of quantities comes up and says that it will cost Ksh1.3 million. You ask the Board to re-allocate more money to finance the NG-CDF project. That is your Article 223 of the Constitution which is not illegal because it is allowed. You can go ahead and do it. This goes on for new projects.

I know that some of us are uncomfortable with helping people who live in informal settlements. We would like them to continue living in squalid conditions. However, President

Uhuru made a commitment to lift those people from the indignity of poverty that they have by giving them boreholes, so that they can have clean water, better sanitation and they can live like the rest of Kenyans. Because it is a popular programme, we now want to show that it was done unconstitutionally. Those people were liberated by sinking 600 boreholes. What more emergency would be better averted than giving the people in the slums, informal settlements or those at the bottom in the ladder water, so that they can live like the rest of Kenyans and then come and seek ratification? Initially, that was not foreseen.

The hospitals for our Defence Forces and so many other things that have been cited as new projects have come out because they were deemed to be emergencies. Look at all the people who shoot themselves. The soldiers kill one another. There is mental health escalation and other issues. These are major issues that needed intervention. That is why this money had to be spent much as they were not in the original Budget. It is not illegal to spend money on a new project or abandon a project that is in the Budget that you believe that it should not continue. The law says that when that happens, you must come to Parliament to seek approval. You must bring in a Budget to add to the original one that was approved because you have to ratify what you spent, if it was not sufficient. If it is a new project, you now bring it in to ratify, so that we can go on. There is no limit. It does not stop the Government of the day from spending before or after so long as it is ratified within a certain period. The Chair of the Budget and Appropriations Committee explained about the time issue.

I have brought this issue into account, so that we do not leave here or the people who are out there.... We talk to the people who are out there. They might think that the Jubilee Government does illegalities and seeks their ratification in this House or that this House acts as a rubber stamp. Some Members may not interpret the Constitution as envisaged. It does not necessarily mean that the rest of us should be swapped into that situation. Hon. Speaker, even as you respond to some of these things, some of them are clear-cut. The 10 per cent of the budget is non-issue. The new projects are non-issues. There is no restriction in the Constitution or Public Finance Management (PFM) Act that you cannot bring a new project. If the money was insufficient and the expenditure was unforeseen.... Any new project qualifies to be unforeseen. That is why it is coming in now. It was not foreseen. It is now new. It has been realised that it is required. If you withdraw from the Contingency Fund which is a very rare situation that is never encouraged....

Hon. Speaker, with those remarks, you will guide the House. I also hope that my predecessor is well-guided. I will be happy to give him a sit-down and we have discussion on these matters from my experience in the House, finance and this being my speciality. I beg to submit, Hon. Speaker.

*(Applause)*

**Hon. Speaker:** Member for Tongaren to contribute on this issue.

**Hon. (Dr.) Eseli Simiyu** (Tongaren, FORD -K): Thank you, Hon. Speaker. I have been sitting here. Listening to the contributions of Hon. Duale, one thing that struck me and perhaps he also took advantage of the fact that you were busy consulting your clerks is when he threatened an employee of the Parliamentary Service Commission (PSC) that you will sack him and you missed it. I was listening to him and I realised that most of his submissions are based on what I would call trying to vilify the Jubilee administration and Parliament. One of his statements was why they are putting money on the Nakuru-Malaba Railway yet there is famine in the North. He failed to tell us that there is money that has been allocated to alleviate famine problems in the North. That is

not completely honest. So, I think we need to remove the political divides that are prevailing now as we run to the elections. Let us look at this Supplementary Budget at least more objectively and see what is useful and what is not. I also want to add to what the Leader of the Majority Party has already said, that we are not exceeding the ten per cent increment given that the previous Budget was Kshs3 trillion. That needs to be emphasised so that we do not mislead the Kenyans in that kind of thinking. Most importantly, I would like you to assure the employee of the PSC that you are not going to sack him because Hon. Duale said so.

**Hon. Speaker:** I think he is secure since I did not hear. Hon. Duale has no capacity to sack him. So he is secure. Some of this is contestation and a number of issues, such as percentage. That does not appear to be complex. It is just to restate what is in the Constitution.

Article 223 (1) Subject to clauses (2) to (4), the national government may spend money that has not been appropriated if –

(a) the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act; or

(b) money has been withdrawn from the Contingencies Fund.

(2) The approval of Parliament for any spending under this Article shall be sought within two months after the first withdrawal of the money, subject to clause (3).

(3) If Parliament is not sitting during the time contemplated in clause (2), or is sitting but adjourns before the approval has been sought, the approval shall be sought within two weeks after it next sits.

(4) When the National Assembly has approved spending under clause (2), an appropriation Bill shall be introduced for the appropriation of the money spent.

So, it is for the money spent. I think it is good that if anyone wants to address this, address us on this issue.

Hon. Ndindi Nyoro.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you very much, Hon. Speaker for the opportunity. I think we are belabouring the point by digressing and going into the merits of the projects that have been spent on Article 223. The point from Hon. Duale was not about the merit and demerits of the projects as is being belaboured by the other Members. It is the constitutionality and going by the book. As we talk about Article 223, it must be read alongside the PFM Act, Section 43 (2) (c) that presupposes, that Supplementary is comprised of reallocation within either the need to increase or deductions across various items and programmes. The law therefore requires that we look at these issues in terms of the specific programmes and not broadly on the ten per cent. Also as you have correctly guided by reading, these reallocations and spending on Article 223 cannot be blank. They have to be on items that are unforeseen. Otherwise if we leave it bare, then we give the national Government a blanket cheque to spend over Kshs300 billion, referencing on the current Budget and we cannot to give the national Government a blanket cheque of Kshs300 billion to spend. Therefore, I am just drawing the attention of Members not to go on the merits of Malaba road or whichever other project. They are all good projects but we are a House of rules and the Government must always be guided by the Constitution and the other relevant rules.

**Hon. Speaker:** Member for Emuhaya.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Speaker for this opportunity. Having keenly followed the submissions of Hon. Duale, I think the Chair of Budget and Appropriations Committee and the Leader of the Majority Party should have concentrated. We need to deal with this. When you retire possibly to make a ruling you should look at Article 223

in terms of the time lines that is expected to be followed when Parliament is on, which has been stated very clearly vis-à-vis what the submissions of Hon. Duale are and if Parliament is in recess in accordance with what Hon. Duale stated. That is where the rubber will meet the road. That is what we need to address. If that is addressed, you should be able to make a very good ruling that will actually move us forward in the correct way.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Tharaka.

**Hon. George Gitonga** (Tharaka, DP): Thank you very much, Hon. Speaker. Article 223 of the Constitution is very clear the circumstances under which Treasury or the Executive can spend an appropriated sums of money. The specific areas are set therein. Unfortunately, what is being brought to the attention of the House is that some of the programmes on which this money was spent were not envisaged by the Article 223. That specifically is an illegality. This is why we are seeking guidance from the Chair to confirm that what the Treasury has done is an illegality and we are not going to stamp it. We actually declare it so because what is easy is to declare what is illegal as legal that trying to legalise what is illegal.

This money that was spent in the projects that have been enumerated is money which we have been seeking from the Government and we have been told there is no money. We have to wait for Supplementary Budget. I have actually been going to the Government Ministries to try and fund some of the projects in Tharaka, but I have been told to wait. Some of these programmes include boreholes which I am told some of the Members of Parliament were given up to 20. For the five that been allocated to me, I have been told, there is no money, I have to wait. Absolutely because what is being done is not lawful. If it were lawful, we would have all debated to know whether these monies are available, where we can go and get the money for purposes of our own development. What we kindly ask you to do, is to declare what is illegal, illegal so that we can move on from there instead of trying to sanitise and illegality clothed in the arguments raised by the Leader of the Majority Party in whichever manner. Kindly guide us so that we can move on.

Thank you very much.

**Hon. Speaker:** Member for Uriri.

**Hon. Mark Nyamita** (Uriri, ODM): Thank you Hon. Speaker for giving me this opportunity to also weigh in on this very serious matter that Hon. Duale brought to the attention of the House last week, I think, and he has raised it again today. Whereas I completely associate myself with what the Leader of the Majority Party, Hon. Amos Kimunya said, it is important that Hon. Duale must learn to speak with one voice and not speak from both sides.

I have had the privilege to be in this Committee for the last five years. Some of the issues that he has raised are not new and were ferociously defended by former Leader of the Majority Party, Hon. Aden Duale. It is not the first time that we have added programmes in excess of 10 per cent. It has actually happened and as you retreat to look into it, we will equally dig into the archives including what the *Hansard* has said on what Hon. Duale submitted in this particular House.

Whenever there is expenditure under Article 223 of the Constitution, and I remember this issue came up in the Committee, we asked the National Treasury to provide certain documentation, evidence of disbursement, because it only then you know that the money has left the coffers to wherever it is being expended. I speak to this because at some point we almost passed in a Supplementary Budget when we got an indication that certain monies had been expended under Article 223 of the Constitution but when the Departmental Committees went to interrogate the Ministry, and I remember that time it was about Ksh530 million in a Committee I sit in, they said the actual money had not left. So, what I would urge my Chair of the Budget and Appropriations

Committee is in accompanying the documentation that has been tabled on the Floor of the House to give supporting documentation then we will be able to look at the timelines and look at the time Parliament resumed and we will make that decision.

Having said that, we must also appreciate that over the last two to three years things have been very difficult not only in this House but in the country. Certain interventions probably were unforeseen in whichever way and the law allows it, including the overall expenditure that he is talking about. Hon. Speaker what we are seeing and what Hon. Duale is trying to do is just delay the process. The whole Government is at a standstill including this House. I am sure, Hon. Speaker, from where you sit, you and your experience you do not need to retreat, you can actually make a Ruling so that we can make progress and begin discussing substantive issues.

I submit, Hon. Speaker.

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

**Hon. Speaker:** He just made an allegation. He just said that maybe you want to delay.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I raised serious issues. Hon. Nyamita, unfortunately his people are watching him. He is too pedestrian. His argument is pedestrian and village talk.

*(Loud consultations)*

The issues must be replied to.

**Hon Mark Nyamita** (Uriri, ODM): On a point of order, Hon. Speaker.

**Hon Speaker:** Go on.

**Hon. Mark Nyamita** (Uriri, ODM): Hon. Speaker, it is uncalled for and unparliamentary for Duale to utter such words in this House when he has been a leader in the House. I call on you to ask him to withdraw and profusely apologise to me because I speak from a very great point of information. For the information of Hon. Duale, I am a fairly very well-schooled individual and I talk from a point of information. So, I ask you direct that he withdraws and profusely apologises to me and he knows why. Shame on you Duale.

**Hon. Speaker:** Now, Member, you are making it worse. If everybody gets a chance and throws a ....

*(Loud consultations)*

Nobody should be ashamed but the House should feel that it is reducing itself to very low levels. It is only fair that at all times when we are in the House we remember that we are obligations under Article 73 of the Constitution to uphold dignity of the office that we are elected to.

*(Applause)*

So, by making certain utterances and behaving in a certain ways including doing some funny jigs, you could be lowering the office that you have been elected to. I am saying this because it has become very fashionable these days for people to do all manner of acrobatics and some of it is not very good. There are very young children who watch what you do. This morning I was asked in a discussion I was having whether Members are aware that they are watched by small children and some of them grow up thinking that some of the things they hear you say or do, which you know are really not what you are elected to do or to be, are what they should aspire to grow to be. Let us

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just be respectful to one another. Sometimes you may not like what I may say but just allow me to say it then you can controvert. There is no harm in giving some other figures different from the ones that the Hon. Jared Okelo may give and Hon. Sankok, who is next on the line, if you say something that someone does not agree to, please do not be personal to anybody. Just address the issue.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Speaker. Before I go to the issues that have been raised by “His Excellency, Aden Duale” Hon. Nyamita has insinuated that this House had broken rules before and that if somebody murdered somebody last year, he is in line to murder this year. I want whatever Hon. Nyamita said to be expunged from the *Hansard* because under your leadership, there is no one single time that this House has broken our Standing Orders and the Constitution. So, I am 100 per cent that under your leadership we did not under one given time break the law. So, whatever he said is not good and will not anchor well to the public.

Apart from Article 223 of the Constitution in terms of timelines, there is also the important issue of whatever the 10 per cent will be used on projects that are of emergency nature. From what Hon. Duale said there is money that had been used that exceeds the 10 per cent in the metre gauge railway which to me is not an emergency. What would have been an emergency was the drought in the North or the 20 victims of Kitui floods.

I have also heard that they exceeded the budget of State House by 47 per cent instead of the 10 per cent. State House allocation cannot be an emergency when the money is used to host elders and backbite others that they wanted to impeach him. That can never be an emergency.

Hon. Speaker, apart from when you will be ruling, give us your guidance on the importance of these projects being emergency like the 47 per cent that was exceeded for State House which is not an emergency. The money that was exceeded for the metre gauge railway a project that cannot be an emergency because we require to be in Article 223 of the Constitution.

**Hon. Kanini Kega** (Kieni, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. Kanini Kega has an intervention.

**Hon. Kanini Kega** (Kieni, JP): Hon. Speaker, when you go for justice your hands should also be clean. The Former Majority Leader who has presided over 20 or 30 Supplementary Budgets together with my predecessor, Hon. Kimani Ichung’wah, cannot be the same people complaining that certain things have not been followed, whereas they have been there the longest. Other than that, the Executive Office of the President also handles the Nairobi Metropolitan Service (NMS) area. When we talk about the Executive Budget, it is not only about State House, it also encompasses the NMS. Let people not mislead the nation. For example, the allegations made by the Nominated Member of Parliament – who was nominated by the same President he is accusing of misusing money – are not proper. It is not right to allege that monies are being used to host people. That is not true. The Executive Office of the President handles so many other issues.

**Hon. Speaker:** Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): First of all, just to put the record straight, I was nominated by Jubilee Party and not by an individual. Ever since we had a Chairperson put in place for being politically correct, we have had problems. That is why we end up having such issues because we have very incompetent characters here.

Before he interrupted me, I was saying that in Article 223, there is also an element of something being an emergency for us to exceed the 10 per cent limit. Money for the Executive Office of the President cannot be an emergency. The meter gauge railway can also not be an emergency. If we were told that money was used to cushion Kenyans who are dying of hunger

from North Eastern and from the pastoralist's regions, then we would understand that that is an emergency. Therefore, apart from ruling on the timelines that we required for them to seek approval within two months and if the House is not sitting, it is two weeks after we resume, we also have to note that Article 223 talks of an emergency for that money to exceed 10 per cent. However, 47 per cent is way above 10 per cent. 10 per cent to 11 per cent is at least negotiable; 47 per cent is outright stealing.

**Hon. Speaker:** Hon. Members, I have been sufficiently addressed on the critical issues.

*(An Hon. Member spoke off record)*

He will always accuse you. The Member for Yatta had placed his intervention a little earlier. Take two minutes.

**Hon. Charles Kilonzo** (Yatta, WDM-K): I will actually take a minute and a half.

Thank you, Hon. Speaker. I think we are in a catch-22 situation. One is because we have the country desperately waiting for us to pass the Supplementary Budget. At the same time, although Hon. Duale is from the other political wing, we cannot just sweep issues that he has raised under the carpet. I suggest that this House goes ahead to discuss the Supplementary Budget and pass it. Again, this House, should investigate, especially on the issue of the National Treasury spending money and not coming to seek the approval of the House within the given timeframe. We should then look at that report of the investigation and see what actions should be taken.

It is unfortunate because, at one time we had thought of bringing censure on the Cabinet Secretary for National Treasury. Hon. Duale lobbied against that. Most of us had been frustrated a lot in committees as money was being awarded wrongly yet the blame was never on the National Treasury but on the Budget and Appropriation Committee where Hon. Kimani Ichung'wah was the Chair. The recommendations done by the committees would be rubbished by the Committee on Budget. It is unfortunate that years later, now that Hon. Duale is on the other side of the political wing comes here to make noise while when we wanted to bring censure to the CS National Treasury, he argued that he came from the pastoralist community and he could not be censured.

I wish to give the direction that we debate but not to sweep those issues under the carpet. They should be investigated and action taken.

**Hon. Speaker:** Hon. Ichung'wah, you have been mentioned severally. Say something.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. I can hear the Hon. Kimunya shouting that I have one minute to speak yet he has never been a Speaker. Nonetheless, he has sat in the National Treasury and he knows the provisions of Article 223 and the Public Finance Management (PFM) Act. Hon. Duale has raised quite substantial issues, especially on the question of Article 223. I remember that last year, the House sat to the second last day before Christmas and there is no reason why the CS for the National Treasury would not have brought those expenditures for approval before the House then.

I have been the Chair of this Committee and indeed what has been said is true to some extent. As I challenged the Hon. Samuel Atandi, last week, I will challenge the Hon. Kanini and the Member for Yatta, that I was very keen on the 10 per cent threshold, especially when we were moving from one Vote to another. Those who sat with me in the Budget and Appropriations Committee will bare me witness. I will not be ashamed to tell the country that my de-whipping from the Budget and Appropriation Committee was a culmination of the firm stand I took on issues to do with going against the Constitution, the PFM Act and other statutes.

Hon. Speaker, what you are being asked to give your views on is something that either will tell the world that this House is now a lame-duck Parliament or it is a House that has teeth to bite. If we pride ourselves as a budget-making House yet a CS has the audacity to do whatever he wants to do with impunity and we rubberstamp it here, tomorrow, no one should complain that we are indeed a lame-duck House. We must protect the sanctity of this House and the constitutional mandate that has been given to us by the people of Kenya and not donated to us by anybody in the Executive.

I have heard the Chairperson of the Budget and Appropriation Committee correctly say that the Executive Office of the President houses other institutions like the NMS. How I wish that it was State House spending this money and not the NMS. Look at the expenditure that this country has had to incur over NMS. Just walk on Aga Khan walk from Kenya Cinema all the way to the Bomb Blast, you will see pavements even here on Parliament Road – pavements that were okay being repaired when children are going hungry in our schools yet this Supplementary Budget is proposing to remove money from the Schools Feeding Program. We are removing pavements that are okay to replace them with cabro blocks. If you dig dip into the NMS activities, you will understand the state capture is a living thing in this country.

The other thing that has been mentioned in that document is the construction of clinics by NMS. If you look at how those clinics were procured, who the contractors are and how the clinics are being done, then those who are shouting in rallies about fighting corruption are just singing choruses to the corrupt. As a House, we must not join in singing choruses about corruption while we sanitise that corruption through the budget here. It is budgeted corruption when we allow the Executive Office of the President to exceed its allocation by 47 per cent in expenditure that is vague and ambiguous. Expenditure that is going into to contractors that are veiled in state capture and conflict of interest. You just need to look at who the suppliers of the cabro blocks that are paving our streets in Nairobi. Look at all the phantom projects that we have gotten into.

We live in a country where we do not have medicine in our hospitals and no food for people yet we are sprucing up our parks with cabro. I am not saying that there is something bad with sprucing up our parks and streets, but we must ask ourselves, as a budget-making House... Budgeting is about prioritising our expenditure in a measured way against our revenues. If you look at the estimates here, there is no element of prioritisation. If we did it, then we will not be talking about building spruced up parks and cabro paving some pavements that do not have a problem.

Hon. Speaker, as you make your wise interpretation of all these issues, protect the dignity of this House, as a House of representatives representing taxpayers who pay the taxes we are spending. People are telling us this could have been done in the past, therefore, it is okay. It is not okay to allow what is wrong, unconstitutional and against the statutes. That is my take.

Thank you.

**Hon. Speaker:** The Chair of the Budget and Appropriations Committee.

**Hon. Kanini Kega** (Kieni, JP): Hon. Speaker, it is an unfortunate day. Some of my colleagues here who are now shouting from the tree-tops claiming to be saints and doing the right things, undertook a trip to the United States of America (USA) and United Kingdom (UK) funded by Kenyan tax money. The same office, the Office of the President that they are accusing, funds the Office of the Deputy President. The Office of the Deputy President was funded to a tune of Ksh150 million that was used in America to disgrace our country. It is unfortunate for the former Leader of the Majority Party here and... It is true that Hon. Ichung'wah and Hon. Duale accompanied the Deputy President when he undertook that trip. They used taxpayers' money and

they are claiming here that Kenyans are dying of hunger. That is mischief. They should apologise to the Kenyan people. You cannot claim to be holier than others, whereas you are the ones spending Kenyan taxpayers' money.

*(Loud consultations)*

**Hon. Speaker:** Order, Hon. Members! Hon. Sankok, Order! It is now becoming cacophonous.

*(Laughter)*

When you create that kind of cacophony, it is no longer a House. You are now shouting at each other. So, it looks like the more you continue with this debate, the more it may not end, yet we have business before us.

Has the Member for Yatta left? The Member for Yatta, Hon. Charles Kilonzo in his contribution – I do not know if many of you listened – made some passionate plea that, yes, it is indeed true that Hon. Duale has raised a weighty constitutional matter which would require that we make some decision. However, the decision has to be guided. The issue he has spoken about on the time at which certain expenditures happened, and whether the House was ignored or not is a serious issue. If, indeed, we are people who believe in constitutionalism, what should the House do in the event that it is faced with such a situation where the Constitution has granted it the power to do certain things within certain timelines, but those timelines have been ignored by certain State offices and State officers?

Remember, when you look at Article 10 of the Constitution, it enjoins you as a State officer and all State offices, whether making the law or interpreting the Constitution, to always be guided by the national values and principles of governance. So, even those implementing public policies, whether at the national level or at county level, are bound to obey the national values enshrined in Article 10. So, this is not a light matter. So that I also apply my mind to some of those issues, I will strike a balance between you making a decision on the Supplementary Estimates, and us interpreting what has happened in light of the Constitution, the relevant Act, the Public Finance Management Act and the regulations thereunder.

This is my decision. I will allow Hon. Kimunya, who has now submitted his proposed amendment to move the amendment. That is important because after he moves the amendment, you will make a decision whether to carry it or not. If you carry it, you will proceed with debate on the Motion as amended. If the amendment is not carried, we will go back to the Motion in the form in which it was moved by the Chair of the Budget and Appropriations Committee. There are several other amendments that have been proposed by you. It may well be that if Hon. Kimunya's amendment is carried, some of the amendments that are on the Order Paper may fall by the wayside or you, as the sponsors of the amendments, may decide to take whatever decision with regard to what you are proposing.

So that we can make progress, I am fully seized of the constitutional issues raised by Hon. Duale and to which a number of you have contributed. I thank all of you because you remained focused on the issues, except for those light moments when you decided to call each other some other names. For the time being, let us proceed this way. I will be addressing the constitutional issue in the course of the day tomorrow.

Thank you.

Hon. Kimunya.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I beg to move:

THAT, the Motion be amended as follows:

- (i) by deleting the figure “Kshs125,070,384,778.00” in paragraph (i) and substituting therefor with the figure “Kshs125,262,384,778.00”;
- (ii) by deleting the figure “Kshs13,790,551,509.00” in Paragraph (ii) and substituting therefor the figure “Kshs14,490,551,509.00”;
- (iii) by deleting the figure of Kshs138,860,936,287 in Paragraph (iii) and substituting therefore the figure “Kshs139,752,936,287.00”;
- (iv) by deleting the First Schedule in the Order Paper and substituting therefor with the new First Schedule;
- (v) by deleting the Third Schedule in the Order Paper;
- (vi) by inserting the word “new” after the words “resolves that the” appearing in Paragraph (iv); and,
- (vii) that, consequential amendments be effected in the Report thereof.

Members would have noted that my amendments seek to delete the First Schedule and not the Second Schedule. The Second Schedule contains policy proposals that are not affected by these figures. Members would also note that in the Order Paper, there is a Third Schedule that is included, even though it is not referenced in a Motion. That was provided just for additional information of Members.

The New Schedule I contains nine columns with figures in addition to the explanatory columns – the first two columns. The increases or decreases over and above the budgeted amount is now covered within the New Schedule under Paragraphs 4, 5 and 6, which was what was provided for as additional information in Schedule III. So, Schedule III now becomes redundant, and hence we are now deleting it from the Order Paper so that it does not confuse you, even though it was not even referenced within the Motion.

As Members would be aware, these Supplementary Estimates have been subject of debate over a protracted period of time. It was only last week, because of the submission of the Schedules, that you ruled that Members be given sufficient time to go and look at them, and also allow for more consultations with the departmental committees, the National Treasury and the Budget and Appropriations Committee. Having followed this debate and the discussions that have been taking place over weekend and yesterday in this Chamber, we had the Budget and Appropriations Committee meeting with the National Treasury, and several Chairs of the Committees coming in to discuss and understand some of the amendments they had made, their implications or why they could not be sustained.

Some of those amendments, if just by way of highlighting without necessarily naming the Ministry, as we said earlier, Supplementary Estimates come either because you are ratifying what had already been spent and asking for *post facto* approval of Parliament, or where you knew issues had arisen and want approval upfront. In some of the issues, the National Treasury had already spent the money but the Committees, in their review, assumed it is new money being added to the Budget. They looked at it and said: “There is only one month to go and hence, we need to remove some of that money and allocate other issues within the department”. The confusion was worsened by the presentations that were made by the departments. What we looked at eventually was, if money had been sent, it is not available for reallocation. Some of that has gone off because it had already been spent, and is only coming in for ratification, and is not available for reallocation to another programme.

In others, Committees may have been convinced by the departments that “yes, we need money here” but again, when the same ministries appeared before the National Treasury, they told a different story. And because we do not want to be the ones arbitrating on behalf of the National Treasury and ministries, let them sort out their issues at the National Treasury. Unless there are other issues that Members have raised, within Schedule I, you will find that the only increase or decrease that Committees felt we can allow are those varying between departments. Basically, the New Schedule has a net increase of slightly over Kshs860 million to Kshs139,750 million, slightly under Kshs1 billion is the net effect of negotiations that have taken place as late as yesterday and this morning between the Budget and Appropriations Committee, the National Treasury and the respective departmental committees which were affected by the changes. So, it would never be satisfactory that everyone gets everything that they want; it is a give and take.

We basically have another three to four months to go, and people need to start preparing. Even at Parliament level, Committees are constrained in terms of their own meetings because we do not have funds to meet because we are waiting for the Supplementary Budget to be approved. We are not the only ones affected. Tomorrow is end month, and people will be waiting to be paid their salaries and are all waiting anxiously for the Supplementary Budget to be passed. There are suppliers who supplied goods to the Government and are waiting to be paid so that they can meet their month-end obligations to their staff, and are all waiting for us. There are a lot of expectation by people out there in terms of what we need to do as a House. Over and above the issues we have raised as a House, is that we first of all recognise that our Budget and Appropriations Committee has done a splendid job in terms of negotiating with the National Treasury.

I was party to the feedback and discussions that have been taking place; and I know that we cannot underrate the work that has gone on in looking at some of those things. The passage of the Supplementary Budget is not the end of accountability. This is the beginning. We are only approving so that they can spend the money or ratify what has been spent, but there is still an audit on the actual expenditure and outputs that were planned in the programme-based budgets. I am hoping that the departmental committees will go a step further and say, “Having done this, what was achieved so far, not in terms of the money being spent but by the planned outputs achieved?” Our Controller of Budget is supposed to be giving us a report on a quarterly basis. There have been delays on that and we will be urging the Controller to come and give us some of these things so that we can interrogate them and ask why we gave Kshs2.6 billion. That would be answered best within the framework of the Public Accounts Committee, Public Investments Committee and the Special Funds Accounts Committee. These are the people who will help us in terms of going for the numbers to say what these monies have been for. Anything else that we decide to spend here and say whether pavements were done, whether they were desirous or not, are other issues. We believe that whatever the Government is doing is doing so in good faith, with the best interest of the people.

I also want to highlight that one of the things of interest to Members is that we have a historical debt for our NG-CDF that arose because last year’s money was actually spent to pay for arrears that go back to 2012, 2013 and 2014, when none of us was even responsible for NG-CDF. What we agreed as we negotiated with the Treasury was that, that money amounting to Ksh4.9 billion, belongs to NG-CDF accounts of Members of this 12<sup>th</sup> Parliament and needs to be reinstated. That amount is now contained in page 2 of this Schedule under the State Department for Planning. I wanted to clarify that, because I have been following the debate. As a result of this reinstatement, Members will be able to complete projects they had anticipated last year when each of us received a Ksh12 million shortfall. So, as we approve the Supplementary Estimates, we know

that we will be sorting out projects which have stalled because our money was reallocated to other projects.

Hon. Speaker, I do not want to belabour the point. I beg to move the amendment and ask the Whip of the Majority Party to second.

**Hon. Speaker:** The Whip of the Majority Party has been called upon to second.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Speaker. Due to the happiness of Hon. T.J. Kajwang', who is anxious to contribute to this Motion, I do second.

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

*(Hon. (Ms.) Sabina Chege walked in the alleys  
while the Speaker was on his feet)*

**Hon. Speaker:** The Member for Murang'a, just stay where you are. You know you are known for saying some things and explaining them with the movement of your hands. Please be in the House. I am sure you are in the mood to now contribute.

Hon. Members, I believe that most of you have listened to the amendment proposed by the Leader of the Majority Party, so I propose the Question.

*(Question of the first part of the amendment, that the words  
to be left out be left out, proposed)*

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

**Hon. Speaker:** Let me allow Members arriving from their villages now to take their seats. Please take your seats so that we can conclude this particular amendment.

*(Question of the first part of the amendment, that the words  
to be left out be left out, put and agreed to)*

*(Question of the second part of the amendment, that the words  
to be inserted in place thereof be inserted, proposed)*

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

Hon. Members, I have always said that when the House votes in a particular way, the Motion is carried. Debate on the Motion, as amended by Hon. Amos Kimunya's proposal, will proceed. As you know, in keeping with our practice and customs, where Members have proposed amendments, it is good that we first of all dispose of the amendments before we continue with the main debate. May I get indication whether the Member for Ruaraka, Hon. T.J. Kajwang', wishes to prosecute his proposed amendment.

There is a point of order by Hon. Kanini Kega.

**Hon. Kanini Kega** (Kieni, JP): Thank you so much, Hon. Speaker, for this opportunity. I seek your direction. I have consulted with three Members with proposed amendments – Hon. Kajwang', Hon. Ichung'wah and Hon. Murugara – and we have agreed that the requests they have

put forward will be considered in the annual Estimates. So they have agreed to withdraw their amendments.

**Hon. Speaker:** Hon. Kajwang', can I get your confirmation?

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Speaker, it is true that I have been discussing this matter with the Chairman of the Budget and Appropriations Committee. We have been agonising over the issue. As you can see, I proposed to allocate money to different sections, and I was keen about Bondo University and the Higher Education Loans Board because all these students that we are talking about would benefit from HELB in a structured way and in a manner that the Auditor General is able to cross-check. However, after careful considerations, we have understood that these appropriations as they are will be reflected in the next estimates.

Hon. Speaker, the only thing is that I am trying to keep up with the amendments and you probably need to just let us know which clauses have been affected by the amendments. This is because the Third Schedule has gone, but I thought the Second Schedule has not. I am asking this after consulting the Member for Ndhiwa who seems to be still somewhere trying to come from Ndhiwa to the City. She is unable to tell which amendments have been taken care of by the amendments. So, maybe that can come out clearly from the clerks which amendments have actually been taken away. I have discussed this with the Chair and agreed that it will be taken care of in the next Budget Estimates.

**Hon. Speaker:** So you withdraw this one?

**Hon. T.J. Kajwang'** (Ruaraka, ODM): I withdraw and thank you, Hon. Speaker.

*(Proposed amendment by Hon. T.J. Kajwang' withdrawn)*

**Hon. Speaker:** Very well. Let us have Hon. Murugara

**Hon. George Gitonga** (Tharaka, DP): Thank you very much, Hon. Speaker.

I intended among other things to reallocate some of the funds to Chuka University so that it would attend to a constituent college; Tharaka University College and a campus at Chogoria. We have discussed with the Chairman of the Budget and Appropriations Committee. However, I was corrected that Tharaka University College receives funding directly. It is not through Chuka University. Therefore, I have been assured by the Chairman of BAC that in the next Appropriations Bill and Budget, we will make a line for Tharaka University College and some money will be allocated to it. I am grateful for that and therefore drop my proposed amendment.

*(Proposed amendments by Hon. George Gitonga withdrawn)*

**Hon. Speaker:** Very well. Thank you very much, Hon. Murugara.

Let us have Hon. Ichung'wah

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. It is indeed true we have consulted with the Hon. Chair and agreed some of the reallocations that we had wanted to do, he will be unanimous enough together with the department committees to cater for them during the annual estimates which is about a month's time.

Hon. Speaker, this is because some of them touch on issues to do with our children and HELB. Some have to do with pending bills, especially the Government Advertising Agency that has long pending bills and other State corporations like the Kenya Broadcasting Corporation (KBC).

With that Hon. Speaker, I concur with the Chair that after consultations, I withdraw.



*(Proposed amendments by Hon. Kimani Ichung'wah withdrawn)*

**Hon. Speaker:** Very well. So, the proposed amendments by Hon T.J. Kajwang', Hon. Gitonga Murugara and Hon. Ichung'wah have been withdrawn. However, the records still show that there is a proposed amendment by Hon. Nixon Korir, Member for Langata. Very well, when the Member is not present, the amendment is automatically dropped. However, Hon. Sankok and Hon. Ichung'wah are saying that they knew he was going to drop. So, it ends up being dropped.

*(Proposed amendment by Hon. Nixon Korir dropped)*

Very well. Can we get an indication as to the position in regard to the proposed amendment by Hon. Jennifer Shamalla

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you Hon. Speaker, I too have consulted with the Hon. Leader of the Majority Party and the Chair. In view of the developments a few minutes ago, I have also withdrawn what is a very important amendment because I am certain that the Committee and the Hon. Leader of the majority Party will take into consideration the next step: The Children's Feeding Programme for the younger children for the country and for our entire nation. So, I withdraw.

*(Proposed amendment by Hon. (Ms.) Jennifer Shamalla withdrawn)*

**Hon. Speaker:** Very well, so you withdraw.

The other proposed amendments if I go sequentially, the way they are in the Order Paper, there is a notice given to the Chairperson of the Departmental Committee on Health.

Let us have the Vice Chair, Hon. Joshua Kutuny

**Hon. Joshua Kutuny** (Cherangany, JP): Asante Mhe. Spika. Baada ya mazungumzo ya kina na Mwenyekiti wa Kamati ya Bajeti ya Bunge, ninasimama hapa kushukuru kwa majadiliano ya kina na upana na mazungumzo ambayo yameleta suluhu kwa hiyo dukuduku iliyo kwa ripoti iliyoletwa hapa Bungeni. Hivyo, naondoa marekebisho ambayo nilikuwa nimeleta. Asante.

*(Proposed amendment by Hon. Joshua Kutuny withdrawn)*

**Hon. Speaker:** Asante sana. Kulikuwa na dukuduku?

*(Laughter)*

Now if I go to the next page I see there is a proposed amendment by the Chair of the Departmental Committee on Transport, Public Works and Housing, Hon. Pkosing. They are still consulting.

Let us have the Chair of the Departmental Committee on Agriculture and Livestock. Hon. Tiren.

**Hon. Silas Tiren** (Moiben, JP): Hon. Speaker, ours stands because it touches on very sensitive issues. Were you asking me to withdraw it?

**Hon. Speaker:** No. If you are not dropping it you are at liberty to move it. So, are you moving it?

**Hon. Silas Tiren** (Moiben, JP): Yes

**Hon. Speaker:** Proceed

**Hon. Silas Tiren** (Moiben, JP): Thank you, Hon. Speaker, I beg to move:

THAT, the Motion be amended by inserting the following after the words “Order Paper” in sub-paragraph (v):

“Subject to –

a) deletion of the words “Reduce Ksh. 1 billion (Development) from Livestock Export Zone-Lamu” appearing on Page 3 of Schedule II of the Report under Vote 1162: State Department for Livestock: Programme 0112000 Livestock Resources Management and Development in the column relating to Comments and substitution thereof with the following new words-

“Reduce Kshs. 1,259 million (Development) from Livestock Export Zone-Lamu (provided for Fertiliser subsidy); Kshs. 40 million from Kenya Livestock Insurance Scheme; Kshs. 10 million from Construction and equipping of Bio Safety Level 3 Laboratory-Kabete; Kshs. 15 million for Construction of learning facilities at AHITI Nyahururu; Kshs. 20 million for Construction and Refurbishment-Leather Science Institute; Kshs. 30 million from the Construction of Dairy Veterinary Board (KVB) Headquarters offices; Kshs. 60 million from the Livestock Production ‘Big Four’ Interventions; Kshs. 41 million from the Development of Leather Industrial Park – Kenanie; Ksh. 10 million from the allocation for Construction and Refurbishment of Infrastructure at AHITI-Kabete; Ksh. 10 million from the allocation for Construction and Refurbishment of Infrastructure at AHITI – Ndomba; and increase Ksh. 40 million (Recurrent) for Livestock Policy Research and Regulations towards the development of a Livestock Master Plan.”

b) deletion of the words “Reduce Ksh. 400 million (Development) from Lamu Fish Processing Plant” appearing on Page 3 of Schedule II of the Report under Vote 1166: State Department for Fisheries, Aquaculture and Blue Economy: Programme 0118000 Development and Coordination of the Blue Economy in the column relating to Comments and substitution thereof with the following new words-

“Reduce Kshs500 million (Development) from Lamu Fish Processing Plant (Ksh. 400 million provided for Fertiliser subsidy); and Kshs. 100 million from the allocation for Liwatoni Ultra-Modern Fish Hub; and increase Ksh. 400 million to Blue Economy Capacity Building.”

c) deletion of the words, “Increase Ksh200 million (Development) for Sugar Reforms Project; and increase Ksh50 million (Recurrent) for the Coffee Directorate” appearing on Page 3 of Schedule II of the Report under Vote 1169: Crops Development and Agricultural Research: Programme 0107000 General Administration, Planning and Support Services in the column relating to comments and substitution thereof with the following new words-

“Increase Ksh1,430 million (Development) to Agriculture and Food Authority for provision of subsidised fertilisers to maize farmers; Ksh40 million counterpart Government of Kenya funding for Irish Potato Production Revitalisation Project; and Ksh400 million for sugar reforms.”

(d) insertion of the following words on Page 3 of Schedule II of the Report under Vote 1169: Crops Development and Agricultural Research: Programme 0108000 Crop Development and Management in the column relating to Comments-

“Reduce Ksh85 million from Crop Insurance; Ksh150 million from Food Security and Crop Diversification Project-Other Crops; Kshs230 million from National Value Chain

Support provision for: Training Expenses; Fuel Oil and Lubricants; Other Operating Expenses; Routine Maintenance-Vehicles and Other Transport Equipment; Purchase of Office Furniture and General Equipment; Purchase of Specialised Plant, Equipment and Machinery; and Research, Feasibility Studies, Project Preparation and Design; and Increase Ksh50 million to Fall Army Worm Mitigation; Kshs30 million to Aflatoxin Management; Kshs170 million to Development of Agriculture Technology Innovation Centers.”

I beg to move the amendments.

Thank you.

**Hon. Speaker:** Is there anybody who is seconding the amendments?

**Hon. Silas Tiren** (Moiben, JP): Yes.

**Hon. Speaker:** Member for Kabuchai, Hon. Kalasinga, are you seconding the amendments?

**Hon. Majimbo Kalasinga** (Kabuchai, FORD-K): Hon. Speaker, I humbly second the amendments.

*(Question, that the words to be inserted be inserted, proposed)*

**Hon. Speaker:** Can we hear the Chair of the Budget and Appropriations Committee?

**Hon. Kanini Kega** (Kieni, JP): Thank you, Hon. Speaker. I rise to oppose these amendments. We had sessions with the Chair of the Departmental Committee on Agriculture and Livestock.

I did something that is not normally done by Chairs of Committees or Chair of the Budget and Appropriations Committee yesterday. I invited all the Chairs of Committees yesterday. We had a session together with my Committee and the Cabinet Secretary for the National Treasury. We went through all these amendments. Where funds were available, it was clear. In this particular case, no funds were available, and we told the Chair that. I had a session with him today, and we promised that these are things that will be factored in the Budget Estimates that will come. So, I request my good friend, Hon. Tiren... I know that farmers are suffering. However, it cannot be sorted out in this Supplementary Budget. We want to undertake that it will be sorted out in the estimates that are coming. So, as I oppose, I beseech you, under Article 114, to give your guidance. We have had a lengthy discussion with my good friend, the Chair of the Departmental Committee on Agriculture and Livestock.

I beg to oppose.

**Hon. Speaker:** Hon. Duale.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, the Chairman of Agriculture and Livestock is in charge of Livestock and Fisheries. He is also in charge of Agriculture, including maize and rice. He decided to be very unfair to livestock keepers, take their money to veterinary departments and training institutions; take the money from Kenya Meat Commission to fertiliser just because he is approaching the election, and he is a Chairman.

This is the reason I opposed the Building Bridges Initiative; that you deny some people and you want to feed others. There must be equity. What the Chairman is raising is very good, but it should come at the estimates, which will be tabled in two weeks' time. If that will not happen, Hon. Tiren, I want to confirm to you that under the leadership of William Ruto, we will reduce the price of fertiliser from Kshs6500 to Kshs2500. But for today, I oppose.

**Hon. Speaker:** Member for Ndhiwa.

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**Hon. Martin Owino** (Ndhiwa, ODM): Hon. Speaker, I sit in this Committee and Hon. Duale has just confirmed that there is money that we are taking from the livestock people. That means that there is money. This amendment has, therefore, cleared line items so that we can get some money which is enough for farmers to get fertiliser. What is being addressed is very critical. We talk of food security, but we cannot have enough food security without fertiliser, without aflatoxin being addressed and without aqua business. So, we have done all this. We are just not taking all the money, as Duale says. We are just taking Kshs100 million here, and Kshs30 million there to address the items which were left out. If not funded, farmers will be suffering.

What are we saying if we are not addressing food security, which is one of the Big Four Agenda items? I urge Members, even if you retreat to your constituencies, farmers will be crying because there is nothing. If crops cannot be productive because there is no fertiliser, we will continue to have food shortage. This is a clear thing; we are not robbing anybody a lot of money. It is just a bit here to meet what we are trying to fund. I, therefore, urge you, please, this is non-political, just fund these items so that farmers can have relief.

**Hon. Speaker:** The Leader of the Majority Party has indicated his desire to contribute.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, whereas I would be sympathetic to the reasoning of the Committee, it is for the same reason that most of these other amendments have fallen. Unfortunately, I will have to oppose my Chairman of the Departmental Committee on Agriculture and Livestock.

First of all, on the numbers – and it is important that we appreciate this – the Schedule that I just replaced had already reduced Vote 1162 by Kshs1 billion. What the Chair is trying to do is to say, “do not reduce by Kshs1 billion, reduce by Kshs1.259 billion”. So, there is an extra reduction of Kshs259 million. The sum total of all these other reductions works out roughly to Kshs296 million plus the Kshs259. If you then add the extra reduction in the Lamu Fish Processing Plant from Kshs400 million, to a reduction of Kshs500 million, it is a net reduction of Kshs1 billion. So, in effect, we are reducing by Kshs286 million plus Kshs359 million, which is under Kshs600 million. Unfortunately, with only Kshs600 million available to reallocate, the Chairman, then goes on to allocate Kshs200 million to sugar reforms. We are left with Kshs400 million. He then goes ahead and allocates another Kshs50 million to Coffee Directorate. We are then left with Kshs350 million. He then goes ahead to reallocate another Kshs1.4 billion out of Kshs350 million, which is unheard of. We cannot allocate money that we do not have. If you are moving monies, you needed to have moved it in a way that where you are moving is also fully funded. What you have is basically creating a financing gap in this Budget to the tune of Kshs1 billion, which will not be funded.

Ideally this should not have come here, because under Article 114, we are having additional expenditure without showing where that additional expenditure will come from. We are operating within a very tight fiscal framework. By doing this amendment in a convoluted manner without even looking at where we will cut and move these figures from; politically it may sound good, but it throws off the entire Budget by Kshs1 billion. By doing so, we will not be doing ourselves justice, as a House, because whatever we do, we are obligated by the Public Finance Management Act that if you add in some amount, you must show where that amount is coming from.

On this one, unfortunately, we have a deficit just within these amendments of close to Kshs1 billion. I oppose.

*(Hon. Ferdinand Wanyonyi consulted loudly)*

**Hon. Speaker:** Hon. Members, these are amendments. Hon. Wanyonyi, take time to understand what is done during amendments. Do not pretend that you are the only one who represents farmers. Unfortunately, if we have to say that everybody must contribute to an amendment proposal, then we will not even go to the main Motion. This is a proposed amendment.

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

There are quite a number of proposed amendments. The next amendment is by the Chair of the Departmental Committee on Transport, Public Works and Housing, Hon. Pkosing.

**Hon. David Pkosing** (Pokot South, JP): I thank you, Hon. Speaker for giving me this opportunity.

I beg to move:

THAT, the Motion be amended by inserting the following after the words "Order Paper" in sub-paragraph (v):

"Subject to –

deletion of the words "Increase Kshs.1.6 billion (Development) for Low Volume Seal Roads to finance ongoing contracts under the project and cushion them from the effect of the Kshs.4.5 billion that was cut in the proposed supplementary" appearing on Page 9 of Schedule II of the Report under Vote 1091: State Department of Infrastructure: 0202000 Road Transport relating to the column on Comments and substitution thereof with the following new words-

"Increase Kshs.1.3 billion (Development) for Low Volume Seal Roads to finance ongoing contracts under the project and cushion them from the effect of the Kshs.4.5 billion that was cut in the proposed supplementary and increase Kshs.300 million (Development) for Critical Roads infrastructure."

In the spirit of what other Chairs said, we were summoned yesterday by the Chair of the Budget and Appropriations Committee, and we had a lot of negotiations to give and take.

Therefore, I withdraw my amendment. He summoned me because we are one Government, and the Government must talk in equal sense. I am also the Government.

**Hon. Speaker:** Very well. The proposed amendment by Hon. Pkosing, the Chair of Departmental Committee of Transport, Public Works and Housing is withdrawn.

*(Proposed amendment by Hon. David Pkosing withdrawn)*

There is a proposed amendment by the Chairperson of the Departmental Committee on Education, Hon. Florence Mutua. Have you done consultations? I see a lot of male colleagues desirous to represent her. She is absent, so the proposed amendment is dropped.

*(Proposed amendment by Hon. (Ms.) Florence Mutua dropped)*

The next is by the Member for Gem, the Hon. Elisha Odhiambo.

**Hon. Elisha Odhiambo** (Gem, ODM): Hon. Speaker, we have had consultations with the Chair of the Budget and Appropriations Committee, and he has agreed that he does appropriation accordingly in the next estimates. Also, my colleagues from North Eastern had requested that we do not do the amendment.

On that basis, I withdraw the amendment.

**Hon. Speaker:** Hon. Elisha Odhiambo's proposed amendment is withdrawn.

*(Proposed amendment by Hon. Elisha Odhiambo withdrawn)*

Member for Lagdera, the Hon. Hire.

**Hon. Mohamed Hire** (Lagdera, KANU): Hon. Speaker, I have consulted the Chair of the Budget and Appropriations Committee, and having taken care of the issue I wanted to amend, I withdraw my amendment.

Thank you.

**Hon. Speaker:** His amendment is withdrawn.

*(Proposed amendment by Hon. Mohamed Hire withdrawn)*

There is an amendment proposed by Hon. Ndindi Nyoro, subject to Article 114 of the Constitution.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you, Hon. Speaker. I wish to move my amendment. I will explain because I think there was a problem there. There is no money I am increasing or reducing. It is just re-arrangement. Can I go ahead, Hon. Speaker?

Hon. Speaker, I beg to move:

THAT, the Motion be amended by inserting the following after the words "Order Paper" in sub-paragraph (v):

"Subject to -

a) deletion of the words "increase Ksh1.2 billion (Recurrent) for security operations during election" appearing on Page 6 of Schedule II of the Report under Vote 1281: National Intelligence Service: Programme 0804000 National Security Intelligence and substitution thereof with the following new words- "Increase Ksh1.2 billion (Development) to the State Department for Crop Development and Agricultural Research under the Programme 0108000 Crop Development and Management for provision of subsidised fertilisers to maize farmers."

b) deletion of the words "Increase Ksh100 million (Recurrent) for National Cohesion Commission; increase Ksh200 million (Recurrent) for Multiagency security operations; increase Ksh500 million (Development) for Huduma Card" appearing on Page 14 of Schedule II of the Report under Vote 1021: State Department for Interior: Programme 0629000 General Administration and Support Services and substitution thereof with the following new words- "Increase Ksh800 million (Development) to the State Department for Crop Development and Agricultural Research under Programme 0108000 Crop Development and Management for provision of subsidised fertilisers to maize farmers."

I besiege this House that agriculture is the backbone of our economy accounting for around 33 per cent of our Gross Domestic Product. Also, 72 per cent of Kenyans live in rural areas. Predominantly what we do in rural areas is farming, which is a segment of agriculture. Agriculture accounts for 53.8 per cent of the entire employment in this country. Over 80 per cent of the people that I represent and the majority of the Members here represent who live in rural areas, agriculture accounts for over 75 per cent of all the jobs created in our rural areas.

What I seek to do with my amendment is to focus money or to focus food where the mouth is. The long suffering farmers of Kenya are now in the planting season, because a majority of the agriculture, especially farming that happens in this country, is rain fed and we are now in the rainy season. Even as we talk about the rainy season and the planting season, we are in dire need of food in this country, and we are in dire need of output to serve and to feed out country.

What I seek to do, Hon. Speaker, if we go back to the Budget that we read, we have continually been increasing funding to the National Intelligence Service (NIS). We have also been increasing funding to our security agencies. All I am trying to do is to besiege the Members of this House to focus on where the real issues and problems in our economy and in our country are. We are not in any security crisis and we are not at war, therefore, the NIS funding we have done in the past is enough. The Ksh1.2 billion we are seeking to allocate to NIS predominantly is because we are in an election period. And also the rainy season is the same period of elections, which is the most important period that our farmers rely on, the planting season. In the input of our agriculture, fertiliser accounts for the big proportion of the inputs of our farmers in terms of the budget. The current prices of fertiliser in the country are unprecedented. A bag of 50 kilogrammes now costs in excess of Ksh5,500 even going to Ksh6,000. That is not sustainable. There is no way we can conduct farming and agriculture sustainably when our farmers are buying fertiliser at between Ksh5,500 and Ksh6,000.

What I seek to do is to offer our farmers a soft landing in a way of subsidy, so that we can encourage them that even as they labour in this planting season, they will be able and will have an opportunity to purchase fertiliser at a lower price.

I beg to move and request Hon. Sankok to second.

**Hon. Speaker:** Do not bother. Hon. Members, we cannot spend time on this. The Hon. Ndindi Nyoro has got his *bonga* points, and that is good.

*(Laughter)*

That suffices. This falls under Article 114 of the Constitution on money Bill. The House may only proceed upon recommendation from the relevant Committee, which is the Budget and Appropriations, which has not recommended, upon consideration of views from the Cabinet Secretary for National Treasury. It does not appear to have achieved any of those.

Besides, the amendment that was moved by Hon. Kimunya earlier changed the figures from what he is trying to reallocate now. So, it falls flat on its face. So, there is no need of it being seconded. It is ruled out of order.

We proceed with other business. It was clearly indicated that it was to be subject to Article 114 of the Constitution.

There is another proposed amendment by Hon. John Kiarie, Member for Dagoretti South.

**Hon. John Kiarie** (Dagoretti South, JP): Thank you, Hon. Speaker. I had...

**Hon. Speaker:** Just a minute, Hon. Kiarie. Hon. Duale has an amendment.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, my amendment is anchored on the issues I have raised, which you have said you will rule on. On that basis, I drop it and wait for your ruling.

**Hon. Speaker:** Very well. The Hon. Chair of Budget and Appropriations Committee in moving, made reference to this figure of Kshs75 billion. I will capture all these in the ruling.

Hon. Kiarie.

**Hon. John Kiarie** (Dagoretti South, JP): Thank you, Hon. Speaker. My intention this afternoon was to move two amendments. On my first amendment, in the interest of time, I will drop it. My second amendment is that the Motion be amended by inserting the following after the words “Order Papers” in sub paragraph four subject to the deletion of the words “reduce Kshs1 billion development from the Lenana-Riruta-Ngong railway line” that is appearing on page 7 of schedule II of the Report under Vote 1071 the national Treasury 0203000 rail transport, relating to the column on comments. By removing the Kshs1 billion, we shall be dropping a development that was well rationalised by the Committee. It is necessary for not only the people it will serve in Lenana, Riruta and Ngong, but also the City of Nairobi. Nairobi City is very congested. This development was going to go a long way in decongesting our roads, especially Ngong Road, which is currently having a lot of problems because of the new design which is not working and has led to many accidents. This would also have given work to young people who will have been involved in the construction of the railway line. From the trend this afternoon, this may pass as a money Bill under Article 144 of the Constitution. I will be keen to prosecute it during the main estimates. Therefore, at the moment, I am persuaded by the Leader of the Majority Party to drop this amendment and prosecute it at the right time. I am happy for the time that you have accorded me.

Thank you.

**Hon. Speaker:** Very well. The proposed amendment by Hon. Kiarie is dropped. I believe we do not have any other. So, we refer to the Motion as amended.

*(Resumption of Debate on the Motion as amended)*

The Hon. Charles Kilonzo, member for Yatta.

**Hon. Charles Kilonzo** (Yatta, Independent): Thank you, Hon. Speaker, for “catching your eye” although I had not requested. I will be brief as I support the Supplementary Budget. It is fortunate that I have heard some Members proposing cuts to be done in the Ministry of Defence under National Intelligence Service. Those of us who come from Eastern Province and Central Province may not understand the importance of security. There are parts of this country where people have migrated because of insecurity. For example...

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

**Hon. Speaker:** What is your point of order, Hon. Sankok?

**Hon. David ole Sankok** (Nominated, JP): Hon. Speaker, reading the mood of the House, we are in concurrence. I, therefore, request that the Mover be called upon to reply according to Standing Order No. 95.

**Hon. Charles Kilonzo** (Yatta, Independent): I believe I still have the Floor.

**Hon. Speaker:** Yes, you still have the floor.

**Hon. Charles Kilonzo** (Yatta, Independent): Thank you, Hon. Speaker. I will make one comment. Every time people outside the insecurity areas see money being allocated to the National Intelligence Service (NIS) or to the Ministry of Defence, they do not see the point of that allocation. If you go to Boni Forest, it is an area that has been neglected by the previous regimes. Most of the money allocated is to offer security in such areas so that people who moved out can come back. Look at a case like Laikipia. It is the same thing. So, as I support this Supplementary Budget, there are things which we cannot divulge in this House in terms of what that money will do. Those Members who feel they are so pressed, when the Departmental Committee on Defence and Foreign Relations is sitting, they should be free to be friends of the Committee so that they can understand what we are doing. Nobody in this country understands why people in Laikipia are chased away

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from their homes by cattle rustlers and why *Al-Shabaab* has taken over areas in Coast Province or northern Kenya.

With those few remarks I support.

**Hon. Speaker:** Hon. Members, Nominee 001 rose in his place claiming that the Mover be called upon to reply. Let me establish whether that is the mood of the House.

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

Mover.

**Hon. Kanini Kega** (Kieni, JP): Thank you, Hon. Speaker. I want to thank all the Members who have contributed to this important Motion. I want to assure Members that through this Motion, we will stabilize the fuel prices and get NG-CDF arrears. A question was asked about the 50 Level 3 hospitals. I want to confirm to this House that the 50 Level 3 hospitals will be constructed in all the 47 counties. I repeat, the 50 level three hospitals will be constructed in all the 47 counties. They will be built after the model Level 3 hospitals that were built in the informal sectors in Nairobi. Kenyatta National Hospital is no longer congested because the hospitals in Kibra, Mukuru kwa Njenga and other informal settlements in Nairobi have helped to decongest it. That has worked and we want to replicate it in all the counties.

The issues that have been raised by the Members who had proposed amendments will be considered in the estimates. I want to beseech Members that, as they do their campaigns, they should remember that we have estimates for the Financial Year 2022/2023 that will be coming in the next few days. I want to thank your good Office, Hon. Speaker, the Office of the Clerk and everybody who participated in this exercise. I hope that tomorrow, Members will be around so that we can do the Appropriations Bill and conclude this matter.

Thank you.

**Hon. Speaker:** Hon. Kanini Kega, I believe you added a sweetener. Members should appreciate that finance related Bills, unlike other Bills where one Member opposing a Bill can stall the Bill; you can move all the three stages in one Sitting. Because of the sweetener – I do not want to repeat – it should be the reason why you should be more here tomorrow to deal with the Appropriations Bill. I have been seeing you writing on some wall complaining about some issues about your constituencies. Anyway, that is for the Chair of the Budget and Appropriations Committee, the Leader of the Majority Party and the Majority Whip to handle tomorrow. Nevertheless, we now quorate with 55 Members in the Chamber.

*(Question proposed)*

*(Question put and agreed)*

Next Order.

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

## IN THE COMMITTEE

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

## THE RADIOGRAPHERS BILL

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Members. Order! We are now in the Committee of the whole House to consider the Radiographers Bill (National Assembly Bill No.47 of 2019). We have an amendment by the Chairperson of the Departmental Committee on Health, Member for Murang'a County.

*Clause 3*

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

THAT, Clause 3 of the Bill be amended—

- (a) in sub-clause (2) by deleting the word “accounts” appearing in paragraph (d) and substituting therefor the word “contracts”; and,
- (b) by inserting the following new sub-clause immediately after sub-clause (2) —
- (3) The headquarters of the Board shall be in Nairobi or such other place as the Board may, by resolution, determine.

The amendment seeks to correct a grammatical error and also provide that the headquarters of the Board shall be in Nairobi.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Did you move the amendments?

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Yes, Hon. Temporary Deputy Chairman.

*(Question of the amendment proposed)*

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

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

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

*(Clause 3 as amended agreed to)*

*Clause 4*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chair, do you have an amendment?

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

THAT, Clause 4 of the Bill be amended in sub-clause (2)—

- (a) by inserting the words “and licensed to practice” immediately after the word “registered” appearing in paragraph (c);
- (b) by deleting paragraph (d); and
- (c) by deleting paragraph (e).

*(Question of the amendment proposed)*

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

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

*(Clause 4 as amended agreed to)*

*(Clause 5 agreed to)*

*Clause 6*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chair, you have an amendment.

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

THAT, the Bill be amended by deleting Clause 6 and substituting therefore the following new clause—

Composition (1) The Board shall consist of—  
of the  
Board.

- (a) a chairperson appointed by the Cabinet Secretary from amongst the persons nominated under paragraph (g);
- (b) the Principal Secretary responsible for health or a designated representative dealing with radiography not below the level of Chief Radiographer;
- (c) the Director of the Kenya Medical Training College or a designated representative not below the level of a Deputy Director;
- (d) the Director-General of the Kenya Nuclear Regulatory Authority or a designated representative;
- (e) one person nominated by the Kenya Medical Practitioners and Dentist Council;
- (f) the Chairperson of the Society of Radiography in Kenya;
- (g) three radiographers competitively and transparently nominated by the Society of Radiography in Kenya, who shall include—
  - (i) one radiographer working in the private sectors;
  - (ii) one radiographer working in the county governments; and,
  - (iii) one radiographer working in the national government.
- (h) the Registrar who shall be the secretary to the Board.

(2) A person shall not be appointed as chairperson of the Board unless such person is—

- (a) registered under this Act as a radiographer;
- (b) a radiographer of not less than ten years standing; and,
- (c) meets the requirements of Chapter Six of the Constitution.

This amendment seeks to reconstitute the Board to ensure that persons with background in radiography are represented in the Board, both from the national and county governments.

It also seeks to include the Director-General of the Kenya Nuclear Regulatory Authority as a Member of the Board as this Authority is responsible for matters pertaining radiation. It further, seeks to ensure that a person appointed as a Chairperson of the Board must meet the requirements of Chapter VI of the Constitution.

*(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 6 as amended agreed to)*

*(Clauses 7, 8 and 9 agreed to)*

#### *Clause 10*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chair, you have an amendment.

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

THAT, Clause 10 of the Bill be amended in—

- (a) sub clause (1) by deleting the word “Registrar” and substituting therefor the word “Registrar”; and,
- (b) sub-clause (2) by inserting the following new paragraph immediately after paragraph (b)—

“(c) is qualified to be registered under this Act as a radiographer.”

The amendment corrects a grammatical error and also seeks to ensure that a person appointed as a Registrar must be qualified to be registered as a radiographer.

*(Question of the amendment proposed)*

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

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

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

*(Clause 10 as amended agreed to)*

*Clause 11*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chair, you have an amendment.

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

THAT, the Bill be amended by deleting clause 11 and substituting therefor the following new clause—

Staff of the Board. The Board may—

- (a) appoint such officers and other staff as may be necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as the Board may determine upon the advice of the Salaries and Remuneration Commission; and,
- (b) engage experts and resource persons whenever necessary for the discharge of its functions under this Act.

This amendment seeks to ensure that the Board shall have the power to appoint staff and organise the Board administratively, as may be necessary.

*(Question of the amendment proposed)*

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

**Hon. David ole Sankok** (Nominated, JP): Hon. Temporary Deputy Chair, there is a problem in Clause 11(b) - “Engage experts and resource persons whenever necessary for the discharge of its functions under this Act.”

This is where corruption happens in State corporations. I have been a Chair of a Board. It is an open cheque that you can import experts to come and give advice and the consultation fee is normally very high. We must be very careful with this amendment. It will open a Pandora's Box for corruption.

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

**Hon. Martin Owino** (Ndhiwa, ODM): Hon. Temporary Deputy Chairman, what Hon. Sankok is saying would be true if there were no policies. We are dealing with an Act of Parliament and each organization has policies and limits on engaging experts. So, that is not true.

*(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 11 as amended agreed to)*

*Clause 12*

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

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

THAT, Clause 12 of the Bill be amended in sub-clause (1) by deleting the words "of the done by a member".

This is to delete a repetition. I move.

*(Question of the amendment proposed)*

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

*(Clause 12 as amended agreed to)*

*Clause 13*

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

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

THAT, Clause 13 of the Bill be amended—

(a) in sub-clause (1) by deleting the words "or is approved and accredited by the Board for that purpose in accordance with this Act."

(b) deleting sub-clause (3); and

(c) in sub-clause (4) by deleting the words "under this Act" and substituting therefor the words "under the Universities Act, 2012 and the Technical and Vocational Education and Training Act, 2013."

This amendment seeks to ensure that training institutions offering radiography training shall only be the ones established under the Universities Act, 2012 or the Technical and Vocation Education and Training Act, 2013. I move.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Sankok, you want to speak to this?

**Hon. David ole Sankok** (Nominated, JP): Hon. Temporary Deputy Chairman, I support this amendment. It is closely related to clause 4. A university cannot train and, at the same time, licence radiographers. We have seen some professional organisations that train and license at the same time. So, I support the Chairlady on this amendment.

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

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

*(Clause 13 as amended agreed to)*

*(Clause 14 agreed to)*

*Clause 15*

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

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

THAT, Clause 15 of the Bill be amended—

(a) in sub-clause (2) by deleting the word “county” appearing in paragraph (c) and substituting therefor the word “country”; and,

(b) deleting sub-clause (5) and substituting therefor the following new sub-clause—

(5) Every person registered under subsection (4) shall be issued with a certificate of registration.

This amendment seeks to correct grammatical errors. 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 15 as amended agreed to)*

*(Clauses 16, 17, 18, 19, 20, 21 and 22 agreed to)*

*Clause 23*

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

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

THAT, Clause 23 of the Bill be amended in the opening statement by deleting the word “bee” and substituting therefor the word “been.”

Again, this amendment seeks to correct a grammatical error. I move.

*(Question of the amendment proposed)*

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

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

*(Clause 23 as amended agreed to)*

*(Clause 24 agreed to)*

*Clause 25*

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

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

THAT, clause 25(1) of the Bill be amended by deleting the word “hears” and substituting therefor the word “heard.”

Again, this amendment seeks to correct a grammatical error. I move.

*(Question of the amendment proposed)*

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

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

*(Clause 25 as amended agreed to)*

*(Clauses 26, 27 and 28 agreed to)*

*Clause 29*

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

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

THAT, Clause 29 of the Bill be amended—

(a) in sub-clause (1), by inserting the following new paragraph immediately after paragraph (a)—

(aa) monies appropriated by the National Assembly; and,

(b) by deleting sub-clause (3).

This amendment seeks to ensure that the Board shall receive such funds as shall be appropriated by the National Assembly. I move.

*(Question of the amendment proposed)*

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

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

*(Clause 29 as amended agreed to)*



*(Clauses 30 and 31 agreed to)*

*Clause 32*

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

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

THAT, Clause 32 of the Bill be amended —

(a) by deleting sub-clause (2) and substituting therefor the following new sub-clause—

(2) Within a period of four months before the end of a financial year, the Board shall submit to the Auditor-General or to an auditor appointed under this section, the accounts of the Board together with—

(a) a statement of income and expenditure of the Board during that year; and,

(b) a balance sheet of the Board on the last day of that year.

(b) In sub-clause (3) by deleting the words “by the” and substituting therefor the word “and.”

This amendment seeks to correct grammatical errors, especially the ones appearing in sub-clauses (2) and (3). I 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 32 as amended agreed to)*

*(Clause 33 agreed to)*

*Clause 34*

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

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

THAT, Clause 34 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause—

(2) The Cabinet Secretary shall, upon receiving the annual report, cause the annual report to be laid before the National Assembly within three months of the National Assembly next sitting.

This is to give the clause proper grammatical flow. I 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 34 as amended agreed to)*

*(Clauses 35, 36, 37 and 38 agreed to)*

*Clause 39*

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

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

THAT, Clause 39 of the Bill be amended in sub-clause (2) by—

- (a) deleting paragraph (c);
- (b) deleting paragraph (d);
- (c) deleting paragraph (e); and,
- (d) deleting paragraph (f);

This amendment seeks to remove the aspect of regulations relating to radiography training institutions as the institutions will be regulated under the Universities Act, 2012 or the Technical and Vocational Education and Training Act, 2013. This amendment also seeks to eliminate the possibility of an overlap of functions. I move.

*(Question of the amendment proposed)*

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

**Hon. David ole Sankok** (Nominated, JP): I perfectly support this one. Hon. Chairman, you did thorough research because clause 39 is in line with clause 4, so that we do not have an overlap of duties and the regulator cannot be at the same time the examiner. So, support and ask the House to support.

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

*(Clause 39 deleted)*

*First Schedule*

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

THAT, the First Schedule to the Bill be amended in paragraph 2—

(i) by deleting the words “of the person” appearing in sub-paragraph (4) and substituting therefor the words “or the person”;

(ii) by deleting sub-paragraph (8) and substituting therefor the following new sub-paragraph—

‘(8) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meeting and make standing orders in respect thereof.’

This amendment seeks to correct the grammatical errors. I move.

*(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)*

*(First Schedule as amended agreed to)*

*(Second Schedule agreed to)*

#### Clause 2

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

THAT, clause 2 of the Bill be amended by inserting the following new definition in the proper alphabetical sequence—

"radiation" includes both ionizing and non-ionizing radiation; and,

“radiography” means the use of radiant energy, ionizing or non-ionizing radiation for medical, forensic, veterinary, industrial and research purposes;

This amendment seeks to introduce the definition of terms used in the Bill, but which were not defined in the interpretation clause.

*(Question of the amendment proposed)*

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

*(Clause 2 as amended agreed to)*

*(Title agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is it Hon. Kwenya Thuku from Nyandarua?

**Hon. Zachary Thuku** (Kinangop, JP): Hon. Deputy Chairman, there is something I have noticed. I do not know if it is deliberate or it is an error whereby the categories of practice on the Second Schedule which reads thus:

“An advanced practitioner should be a holder of higher diploma or/and degree.”

So, I am wondering whether an advanced practitioner should hold both. This is because ‘and’ is a conjunction that joins the two.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Okay. At the clerical level, there is always a room to do corrections where it is not going to the depth of the Bill. That can be corrected at an administrative level, but that was important for record.

What is it Hon. Sankok?

**Hon. David ole Sankok** (Nominated, JP): Hon. Temporary Deputy Chairman, he has raised a very pertinent issue. It can mean you have both or you have one, which I disagree. Here, it is on record on the *Hansard* that we are correcting commas and grammatical errors. So, let us just say that it needs to be corrected and that is how it is so that it goes to the *Hansard* and that it is us who are doing the process of legislation.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Yes, as I said earlier, Hon. Sankok, at the clerical level, there is room to make corrections. But you do not get to the depth of the Bill. If it is the depth of the Bill, that should be done on the Floor of the House. That is provided for in the Standing Orders.

### *Clause 1*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chairperson, have you disappeared?

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Hon. Temporary Deputy Chairman, I was just consulting.

I beg to move:

THAT, clause 1 of the Bill be amended by deleting the words “on the fourteenth day after publication in the Gazette” and substituting therefor the words “twelve months after publication in the Gazette.”

The amendment seeks to give the Cabinet Secretary (CS) an allowance of time within which this Act shall be operationalised.

*(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 1 agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon Members, we are done with the Radiographers Bill, National Assembly Bill No. 47 of 2019. We shall proceed to reporting. Mover of the Bill!

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Hon. Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Radiographers Bill, (National Assembly Bill No 47 of 2019) and its approval thereof with amendments

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Shall we have the Chairperson.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Radiographers Bill, (National Assembly Bill No. 47 of 2019) and approved the same with amendments.

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

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Hon. Temporary Deputy Speaker, I beg to move that the house doth agree with the Committees in the said Report, and also request Hon. Owino to second the Motion for agreement with the report of the Committee of the whole House.

**Hon. Martin Owino** (Ndhiwa, ODM): Thank you, Hon. Temporary Deputy Speaker. Radiographers play a very integral part in the disease management especially in diagnosis and right treatment. I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): What is the mood of the House? Yes, Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. It should go on record that we were in the Third Reading and that, while we were in the Third Reading, we thanked all the Members who brought amendments. This is a very important Bill because there is no profession that is not regulated. Any profession that is not regulated, and especially that deals with human lives, would be so risky. However, with such a Bill, we will regulate this very important profession that deals with our health.

*(An Hon. Member interjected)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): What is it Hon. Member?

**Hon. David ole Sankok** (Nominated, JP): I am also wondering. Thank you very much Hon. Temporary Deputy Speaker. I do support this one and urge the House to support. Radiography, especially in this era where we have an upsurge of cancer, is a very important profession. We have regulated all the other professions. It should go on record that this House has ensured one more profession is well regulated for the safety of Kenyans.

This Bill will also enable us to have a channel to communicate with radiographers. Sometimes it becomes very difficult to deal with professionals because you may not know how to deal with them in terms of the law. However, we can communicate with them with this law. They can join trade unions and channel their grievances there.

Hon. Temporary Deputy Speaker, I support this Bill. I urge the House to support it.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, let us do it this way because this is just reporting. The House needs to agree with the Report of the Committee of the whole House. We are going to the Third Reading. I will give a few of you an opportunity to speak in the Third Reading that is coming immediately after this. We want the House to agree that we have retreated from the Committee of the whole House. We are not in the Third Reading yet.

**An Hon. Member:** We may not get there.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): We will get there. I will propose the Question of the Third Reading, but I will not put the Question. I will give a few Members a chance to speak.

*(Question proposed)*

*(Question put and agreed to)*

Mover of the Bill.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Hon. Temporary Deputy Speaker, I beg to move that the Radiographers Bill (National Assembly Bill No. 47 of 2019), be now read the Third Time. I also request Hon. Kutuny to second.

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

**Hon. Joshua Kutuny** (Cherangany, JP): Naunga mkono. Ahsante.

*(Laughter)*

*(Question proposed)*

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

**Hon. Zachary Thuku** (Kinangop, JP): Thank you, Hon. Temporary Deputy Speaker. I wish to add my voice on the passage of this very important Bill. Radiographers are very important in this current age of technology. Therefore, regulating this profession is of utmost importance because you are dealing with sophisticated equipment and very difficult diseases to identify the cause. Radiographers come in handy in terms of identification. Therefore, regulating this practice has come just in time when the Government is trying hard to actualise universal healthcare and coverage.

Therefore, I wish to congratulate the Chair and members of the Departmental Committee on Health for coming up with this very important Bill. They have put the various categories of practice, so that we then try and avoid a situation whereby quacks will infiltrate this very noble profession of medicine. I support the Bill and congratulate the Departmental Committee on Health for a job well done.

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

**Hon. Robert Mbui** (Kathiani, WDM-K): Thank you, Hon. Temporary Deputy Speaker. The Departmental Committee on Health has made us proud. They have really done a good job. Medical care is not an easy thing. All of us have to ensure that our health is taken care of. Here, we are balancing between our health and technical and very sophisticated equipment. This is a Bill that will go a long way to ensure that this profession is catered for properly. Kenyans who suffer from medical conditions that require their assistance will be well taken care of.

This is a worthwhile venture. I congratulate the Committee for a very good job. Well done. Thank you, Hon. Temporary Deputy Speaker.

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

**Hon. Joseph Nduati** (Gatanga, JP): Thank you very much, Hon. Temporary Deputy Speaker. I want to confirm that I made my contribution earlier on. The Departmental Committee

on Health has done a good job. I am really proud of Hon. Sabina Chege because we come from the same county.

As the Chair of this Committee, she has done a very wonderful job. I also want to appreciate her today. She looks very nice and beautiful in red and white.

*(Laughter)*

Hon. Temporary Deputy Speaker, it is always good to regulate these professional bodies. I am happy that even the radiographers are being regulated once more. It is important that they are categorised in various levels because the Bill does not say what the qualifications of being a radiographer are. We cannot just take everybody; we need to categorise them. I also want to thank the Ministry of Health; they have deployed very many radiographers in Murang'a County. We are really proud of that Ministry through the leadership of Hon. (Ms.) Sabina Chege. I want to say she has been fair and has done her job professionally.

*(Hon. Zachary Thuku consulted loudly)*

No! She cannot be! We are not here to campaign for anybody. Hon. Kwenya is interrupting me by saying that Hon. Sabina Chege should be a Deputy Governor. Hon. Sabina has not told me such. We come from the same county and she has not told me which seat she is interested in.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): She may have told Hon. Kwenya! Why are you denying?

**Hon. Joseph Nduati** (Gatanga, JP): She should have told me as the first person because she needs my vote. We have agreed with Hon. Sabina that instead of going for a county seat, she should contest at the national level. That is where we need her.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): You seem to have spoken and agreed on many things.

**Hon. Joseph Nduati** (Gatanga, JP): She has done very well as the Chair of the Departmental Committee on Education and Research. She has also done very well as the Chair of the Departmental Committee on Health. We want her to be a cabinet secretary for either health or education.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): You seem to have spoken more about her than... Hon. Martin Owino.

**Hon. Martin Owino** (Ndhiwa, ODM): Hon. Temporary Deputy Speaker, I just want to say that, one of the driving factors of cost of care is mis-diagnosis of diseases. Sometimes, we treat diseases with wrong medicine because we did not get the right diagnosis. That is why this Bill is not only addressing radiographers as such, but it is also addressing the training, the standards and disciplines, so that when they are out of tune, they can be brought back to the tune. I also want to thank our Chair because she has been so consistent that we get as many as possible to be regulated. One of them which is down the line, and which we should concentrate on, is Ophthalmologist. Most of those eye care clinics are still operating without regulations and that is very unfortunate. It is only that the time is running out but, I hope we are coming back here to take those which have not been regulated to be regulated.

Lastly, I just want to say that respiratory diseases and orthopaedics, especially with the *boda boda* operators, are now the high ranking conditions that really bring ill health to Kenyans.

We need radiographers. So, with these regulations, we will be able to train more and more to man those machines which are still lying there without personnel. I support this. I want to thank my Chair and Vice-Chair and the Departmental Committee on Health. We have worked so hard to make this a reality.

Thank you Hon. Temporary Deputy Speaker.

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

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Temporary Deputy Speaker. I just want to join my colleagues in saying that this is a great day for the radiographers of this country. I have been following this Bill since 2019 and, as you can see, there has been some anxiety. As we were approaching the end of the 12<sup>th</sup> Parliament after waiting since 2019, a number of radiologists were asking whether their Bill was going to see the light of day. So, I am glad that this Parliament has expedited this process. We have been able to finish.

There is need to get all those bodies to operate within legal frameworks and to remove people who should not be in this profession who have mis-diagnosed diseases and exploited the public. We team up together as we celebrate the coming of the universal health coverage as we look at the intervention we need that will ensure proper diagnosis is buttressed with the right people and the right profession.

I am glad we have got there after almost the third year since the introduction of this Bill. The anxiety can now disappear. I am very happy that the National Assembly has risen to the challenge. Thanks to the Departmental Committee on Health for persevering and keeping on knocking and asking when the Radiographers Bill would get to the Floor of the House. It is here and the House has done justice. I thank the Members for giving the radiographers in Kenya their regulatory mechanism.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, we shall not put the Question on that particular item until at a subsequent time.

*(Putting of the Question deferred)*

Hon. Member, it is 6.57 p.m. For the convenience of the House, we do not need to proceed to the next item.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Member, the time being 6.57 p.m. the House stands adjourned until Wednesday, 30<sup>th</sup> March 2022 at 9.30 a.m.

The House rose at 6.57 p.m.