

**PARLIAMENT OF KENYA****THE NATIONAL ASSEMBLY****THE HANSARD****Wednesday, 23<sup>rd</sup> March 2022**

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

**Hon. Speaker:** Do we have numbers? Sergeant-at-Arms, ring the Quorum Bell.*(The Quorum Bell was rung)***COMMUNICATION FROM THE CHAIR**

## DEMISE OF SPEAKER OF THE PARLIAMENT OF UGANDA

**Hon. Speaker:** Very well. We now quorate and we may continue.

Hon. Members, as you are already aware, the week started off on a very sad note for the East African region, the great people of the Republic of Uganda and the Parliament of the Republic of Uganda, following the demise of Hon. Jacob Oulanyah, MP, Speaker of the Parliament of the Republic of Uganda. The Honourable Speaker passed on Sunday, 20<sup>th</sup> March 2022, while undergoing treatment in Seattle, United States of America.

Hon. Members, Hon. z was born on 23<sup>rd</sup> March 1965 in Omoro County in Gulu District of Northern Uganda. He was elected Member of Parliament in 2001 and in the same year, he was appointed to the Parliamentary Committee on Legal and Parliamentary Affairs, responsible for budgets and administration of all constitutional bodies, the Ministry of Justice and the Judiciary. In 2004, he was elected unopposed to be the Chairman of the said Committee and in the two years that followed, he handled the most delicate period of the political history of Uganda, being the constitutional review and political transition, which was under his guardianship as Chairman of the Committee in which capacity he was responsible for the whole process. The political transition involved steering the referendum legislation and a Constitutional Referendum Motion that paved the way for the 2005 Referendum for Changing the Political System in Uganda.

In 2011, Hon. Oulanyah was re-elected as a Member of Parliament for Omoro County, and in the same year, he was elected Deputy Speaker of the Parliament of the Republic of Uganda and appointed Head of the Uganda Delegation to the ACP-EU Joint Parliamentary Assembly (JPA). He also served as a member of the Executive Committee of the Commonwealth Parliamentary

Association in 2001. In 2016, Hon. Oulanyah was re-elected as a Member of Parliament for Omoro County, and also re-elected as Deputy Speaker.

Hon. Members, on 24<sup>th</sup> May 2021, the late Honourable Jacob Oulanyah was voted Speaker of Parliament of the Republic of Uganda. He served in that capacity until his demise.

Without a doubt, Hon. Members, the great people of Uganda, the entire Parliament of Uganda, the nation and the East African Community at large, have lost a vibrant, pragmatic and dedicated leader. May God rest his soul in peace.

Hon. Members, in tribute and honour to our departed brother and colleague, the Honourable Jacob Oulanyah, I request that we all stand to observe a moment of silence.

*(Hon. Members observed a moment of silence)*

May his soul rest in eternal peace.

I have indication that some Members want to pay tribute. Hon. Pukose.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker. I want to join you and the people of Kenya in sending our condolences to the people of the Republic of Uganda. Endebess borders Uganda and they are my neighbours. So, in the spirit of good neighbourliness, I want to join our brothers in the Republic of Uganda by saying *pole* to the people of Acholi in the north, for the loss of their great son.

May the Almighty God rest his soul in eternal peace.

*(Hon. Speaker spoke off-record)*

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Thank you, Hon. Speaker. I wish to join you in conveying our condolences to the family of Right Hon. Jacob Oulanyah. As you will recall, I knew him when I was the Co-chair of the East African Community (EAC) activities for legislative assemblies. He was one of the Members of Parliament who we worked with in promoting integration of the EAC. As you will recall, he is one of the Members who were fighting to see that EAC Members lived together in harmony, regarding each other as brothers and sisters. He fully participated in fast-tracking the process. As you will recall, the widening and deepening of our relationship was an issue then and Hon. Jacob made major contributions towards this.

May the good Lord rest his soul in eternal peace.

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

**Hon. David Sankok** (Nominated, JP): Thank you, Hon. Speaker. May I join you and my colleagues in condoling the great people of Uganda and the family of the late Right Hon. Jacob Oulanyah. I interacted with him in my capacity as the Chairman, East African Council for Persons with Disability when I visited their Parliament sometime late last year.

On my own behalf and on behalf of the 6.5 million Kenyans with disability I represent in this House, I send my sincere condolences to the people of Uganda and the family of the late Right Hon. Jacob Oulanyah. Also, on behalf of Kenyans although we are in an electioneering period, we whole heartedly release our professional mourners to go and represent us in the burial of the late Right Hon. Jacob Oulanyah.

May his soul rest in eternal peace.

**Hon. Speaker:** Hon. Makali Mulu.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Speaker. I want to join my colleagues and the Speaker of the National Assembly of Kenya who at the same time is the

Chairperson of the Commonwealth Parliamentary Association (CPA), Africa Region, where I am the regional representative of East Africa, in conveying my sincere condolences to the people of Uganda and more specifically their Parliament.

As you are aware, we have been working very closely with our brothers and sisters from Uganda, more so on matters CPA. This is a big loss to the region.

Hon. Speaker, we say *pole* to our brothers. On my own behalf and that of the people of Kitui Central, I would like to tell them that we will stand with them during this time of mourning and we pray that God consoles them.

**Hon. Speaker:** Let us have the Majority Whip.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Speaker. On behalf of my constituents in Navakholo, my family and myself, allow me to pass my sincere condolences to the family of the late Hon. Jacob, the immediate former Speaker of the People's Republic of Uganda.

I was privileged to share a table for a meal and a discussion with this great man, courtesy of your office when you sent me to Uganda to represent the National Assembly at the National Prayer Breakfast during the celebration of Uganda's Independence Day. I had a three-day interaction with the late Jacob.

He was such a great man with vision. He advised us on how you related with him as his colleague from Kenya. He assured us that he would emulate how you lead the Parliament of Kenya and do the same for the people of Uganda.

We have lost a friend and a great mind. May God rest his soul in eternity.

**Hon. Speaker:** Let us have the Member for Kabuchai.

**Hon. Majimbo Kalasinga** (Kabuchai, FORD-K): Thank you, Hon. Speaker, for allowing me to pass my condolences on behalf of the people of Kabuchai and on my own behalf.

This man came from a country that we originate from. We come from the *Inzu ya Bamasaba* who run from Uganda to Kenya. We are deeply saddened by his death because he was one of the people whom we could consult a lot in terms of all that we need to have. I wish that if you constitute a team to go to Uganda, allow my name to be among them.

**Hon. Speaker:** Let us have the Member for Funyula.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Speaker. On my own behalf and that of the people of Funyula, I send my condolences to the Parliament of Uganda and to the family of the departed Speaker.

For records purposes, my constituency borders Uganda. Three-quarters of the people known as the Samia reside in Uganda. In Uganda, my people have five constituencies. Therefore, I send my condolences on behalf of the Samia people, both in Kenya and Uganda, for the untimely demise of the Speaker of the Parliament of Uganda.

I believe that the good working relationship within the East African region will continue to foster. I hope the work the Speaker did to foster that good working relationship will continue for years to come.

May his soul rest in eternal peace.

**Hon. Speaker:** Let us have the Member for Bondo.

**Hon. Gideon Ochanda** (Bondo, ODM): Thank you, Hon. Speaker. Let me take this opportunity to join you and the entire nation in sending our condolences to the great people of Uganda.

Many people make pilgrimages. Some go on religious pilgrimages. I go on a pilgrimage to Uganda to the place where I was born at Kitgum Hospital. Kitgum Hospital is very close to Jacob's

place and we shared a lot on many occasions. The Speaker is wondering. Like I just said, we share a lot with Uganda apart from the borders and Lake Victoria. Many of us were born in those places.

Hon. Speaker, I want to join you in sending my condolences. May the good Lord rest the late Speaker's soul in eternal peace.

**Hon. Speaker:** Let us have Hon. Sossion.

**Hon. Wilson Sossion** (Nominated, ODM): Hon. Speaker, let me join my colleagues in conveying my condolences to the fallen Speaker of the National Assembly of Uganda.

I note that the Ugandan Parliament is one of the most progressive parliaments in the region. No doubt the late Hon. Speaker contributed immensely to the current state of the Ugandan Parliament. I note that the Ugandan Parliament has adapted a lot in terms of affirmative action with an almost 50/50 gender representation and a strong electoral college for workers' representation. It is sad that we have lost such a great son and leader of East Africa.

May God rest his soul in eternal peace.

**Hon. Speaker:** Let us have the Member for Tiaty.

**Hon. Kassait Kamket** (Tiaty, KANU): Thank you, Hon. Speaker. Let me join my colleagues in condoling with the Parliament of Uganda and the family of the late Hon. Jacob Oulanyah. As a former student of Makerere University and as a representative of the Pokot nation in Kenya all the way up to Uganda, I came to know the late Speaker as a great man. I interacted closely with him.

May his soul rest in eternal peace.

**Hon. Speaker:** Let us have the Member for Kitui West.

**Hon. (Ms.) Edith Nyenze** (Kitui West, WDM-K): Thank you, Hon. Speaker. Let me take this opportunity to send my condolences on my own behalf and that of the people of Kitui West to the family of the late Speaker of Uganda, and also to the people and Parliament of Uganda, on the passing of a very successful economist. He was also a lawyer and a politician. I join the others in saying sorry for the passing on of this successful Speaker. He took over from a friend of mine, Speaker Rebecca, who was also a very successful Speaker.

I join the rest in passing my condolences.

**Hon. Speaker:** Let us have the Member for Ugenya.

**Hon. David Ochieng'** (Ugenya, MDG): Thank you so much, Hon. Speaker. It is very sad that Hon. Jacob L'Okori Oulanyah passed on barely a year after assuming the speakership of the Parliament of Uganda. I knew Hon. Oulanyah personally. I visited his home in north Uganda. He was a man of class. He did his best to serve his country so well as a lawyer and a politician.

Sometimes in life, you chase things so hard, but when you get them, God takes you away. It is a very sad moment for the Ugandan Parliament and for the people of Omoro County. We pray with them and condole with them and with the Parliament of Uganda.

May the Lord rest the soul of Hon. Oulanyah in peace. May He give the people of Omoro a good leader like Oulanyah was.

**Hon. Speaker:** Let us have the Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Speaker. I join my colleagues and yourself, on behalf of my family, the people of Kipipiri and all who believe in Parliament, to convey our heartfelt condolences to the family of the late Jacob Oulanyah for the sudden demise. We put them and his soul in our prayers. I hope that the good Lord will rest his soul in eternal peace, guided by eternal light.

I can only wish the people of Uganda God's grace as they go through this difficult time and through the election of another Speaker. I hope they will handle it in a way that will not defeat the good work that was done by the late Hon. Jacob Oulanyah.

My heartfelt condolences.

**Hon. Speaker:** Hon. Members, I wish to thank you for your glowing tributes in honour of the late Hon. Jacob Olanya, Speaker of the Parliament of the Republic of Uganda. I wish to inform the House that I have already conveyed our thoughts and prayers to the Deputy Speaker of the Parliament of Uganda, Hon. Anita Annet Among, MP, following the loss of this true Statesman who was immensely dedicated and committed to the cause of his people. I wish to thank you most sincerely. Thank you.

Next Order!

### PAPERS LAID

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

Reports of the Auditor-General and financial statements in respect of the following technical training institutes for the year ended 30<sup>th</sup> June, 2020 and the certificates therein:

- a) Kisiwa;
- b) Bushiangala;
- c) Wote;
- d) Kaiboi;
- e) Bumbe;
- f) Bureti;
- g) Sot;
- h) Musakasa; and,
- i) Nkabune

Report of the Auditor-General and financial statements in respect of the Sangálo Institute for the year ended 30<sup>th</sup> June, 2020 and the certificates therein.

Reports of the Auditor-General and financial statements in respect of the following constituencies for the year ended 30<sup>th</sup> June, 2020 and the certificates therein:

- a) Kipipiri;
- b) Wajir West;
- c) Kipkelion West;
- d) Marakwet West;
- e) Loima;
- f) Chagamwe;
- g) Kiambu;
- h) Garissa Township;
- i) Fafi;
- j) Ijara;
- k) Lagdera;
- l) Balambala;
- m) Saboti;
- n) Lamu East;
- o) Funyula;

- p) Mandera West;
- q) Wajir South;
- r) Dadaab;
- s) Eldas;
- t) Tarbaj;
- u) Lamu West;
- v) Lurambi;
- w) Wajir North;
- x) Moyale;
- y) Bonchari;
- z) Kajiado Central;
- aa) Kajiado West;
- bb) Baringo North;
- cc) Langata;
- dd) Kuria East;
- ee) Uriri;
- ff) Nyaribari Masaba; and,
- gg) Suna West.

Report of the Auditor-General and financial statements in respect of Bureti Technical Training Institutes for the year ended 30<sup>th</sup> June, 2019 and the certificate therein.

Reports of the Auditor-General and financial statements in respect of the following constituencies for the year ended 30<sup>th</sup> June, 2019 and the certificates therein:

- a) Ainamoi;
- b) Kipkelion West;
- c) Kajiado Central;
- d) Kipkelion East;
- e) Kajiado Central; and,
- f) Embakasi South.

**Hon. Speaker:** The Chairman of the Select Committee on National Government Constituencies Development Fund.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Reports of the Select Committee on National Government Constituencies Development Fund on its consideration of:

1. The National Government Constituencies Development Fund Amendment Bill, National Assembly Bill No.48 of 2021 by Hon. David Gikaria, MP.
2. Status of project proposals, approvals, disbursement and restrictions imposed on constituencies' accounts for the second quarter of the Financial Year 2021/2022 from 1<sup>st</sup> October 2021 to 31<sup>st</sup> December 2021.

**Hon. Speaker:** The Chairperson of the Departmental Committee on Lands.

**Hon. Racheal Nyamai** (Kitui South, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Lands on its consideration of a Public Petition by residents of Kerimon in Samburu and Laikipia counties, regarding restoration of Kerimon Community land for the Members of Kerimon Community.

Thank you, Hon. Speaker.

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

**Hon. Kanini Kega** (Kieni, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

An addendum to the Report of the Budget and Appropriations Committee on its Consideration of the First Supplementary Estimates for the Financial Year 2021/2022 Comprising of Compendium of the Reports of Departmental Committees on their Consideration of the Supplementary Estimates No.1 for the Financial Year 2021/2022.

Thank you, Hon. Speaker.

**Hon. Speaker:** Next Order!

## QUESTIONS AND STATEMENTS

### ORDINARY QUESTIONS

**Hon. Speaker:** The first Question is by Nominated Member, Hon. Wilson Sossion.

*Question No.078/2022*

#### NON-PAYMENT OF GRATUITY TO FAMILY OF CHRISTOPHER KIPKEMOI CHERUIYOT

**Hon. Wilson Sossion** (Nominated, ODM): Hon. Speaker, I rise to ask the Cabinet Secretary for the National Treasury and Planning the following Question:

- (i) Could the Cabinet Secretary explain why the Ministry has failed to remit death gratuity for late Christopher Kipkemoi Cheruiyot of ID No.8602188 (Employment No.1997013109 and Pension No.APN/PC363954) who served as a nurse in the Ministry of Health and died on 17<sup>th</sup> March 2019, to his next of kin Ms. Alice Chepngetich Cheruiyot, despite the fact that she has provided all requisite documentation?
- (ii) Could the Cabinet Secretary state when the Ministry intends to remit the gratuity?

**Hon. Speaker:** The Question will be replied to before the Departmental Committee on Finance and National Planning. The next Question is by the Member for Nyatike, Hon. Tom Odege. Do you have a card?

*Question No.084/2022*

#### DELAYED CONSTRUCTION OF MASARA-SORI-AGOLOMUOK ROAD IN NYATIKE

**Hon. Tom Odege** (Nyatike, ODM): Hon. Speaker, I rise to ask the Cabinet Secretary Ministry for Transport, Infrastructure, Housing, Urban Development and Public Works the following Question:

- (i) Could the Cabinet Secretary explain the delays in the construction of Masara-Sori-Agolomuok Road in Nyatike Constituency?
- (ii) Could the Cabinet Secretary also explain the circumstances under which the

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contractor, namely M/s Ceabud Engineering Services Limited abandoned the works midway nine months ago, subjecting motorists and other road users to untold suffering as the road remains impassable at Lwanda-Konyango area and culverts remain exposed?

- (iii) Could the Cabinet Secretary state the expected completion timelines for the road and also state when the installation of culverts along the road will be completed?

**Hon. Speaker:** The Question will be replied to before the Departmental Committee on Transport, Public Works and Housing. Next segment is request for Statements, Hon. Momanyi Ben, Member for Borabu.

### REQUEST FOR STATEMENT

#### ACCIDENT INVOLVING EMPLOYEES OF TRANSMARA SUGAR COMPANY

**Hon. Ben Momanyi** (Borabu, WDM-K): Thank you, Hon. Speaker for giving me this opportunity to issue my Statement. However, I had a discussion with the Cabinet Secretary for Interior and Coordination of National Government this morning and we agreed that the Statement be deferred to Tuesday, by which time he should have taken action on the issues I have raised.

**Hon. Speaker:** Do not ask how the Cabinet Secretary knew. Hon. Ben Momanyi is his Member of Parliament.

**Hon. Ben Momanyi** (Borabu, WDM-K): Hon. Speaker, I was going to issue a Statement regarding one of the victims, who comes from my constituency, which is where the CS for Interior and Coordination of National Government comes from. Therefore, we have agreed that we will sort it out before that time. Do you have another issue?

*(Laughter)*

**Hon. Speaker:** Hon. Momanyi, I think it is okay. You see, as a representative of the people of Borabu, Ben Momanyi has various avenues through which to do so, including having a *tete-a-tete* with the CS for Interior and Coordination of National Government or crossing over and having a *tete-a-tete* with Hon. Sankok, if he can be of assistance. The CS is a constituent of Hon. Momanyi. The people of Borabu are very lucky that they have the indomitable Ben Momanyi.

Hon. Momanyi had approached the Chair and I had acceded to his request that the Request for a Statement be deferred to next week on Tuesday. What is most important is that the people of Borabu are served.

Well, let it not be a village matter. We are through with that segment in Order No.7. I see an intervention. Hon. Baya, what is your intervention?

#### RESTORATION OF CASHEW NUTS IN KILIFI

**Hon. Owen Baya** (Kilifi North, ODM): Hon. Speaker, thank you for giving me this opportunity. Some time ago in this Parliament, I tabled a Petition on the restoration of the cashew nuts factory in Kilifi. That Petition has taken the entire course and life of this Parliament. It has dragged on and on, but eventually, the Committee came to Kilifi and met with the farmers. We had a wonderful meeting and I have been promised the report many times. Up to date, that report



has not been tabled in the House. We have kept on extending the period for consideration of this Petition four times now. It is time

**Hon. Speaker:** Which Committee?

**Hon. Owen Baya** (Kilifi North, ODM): The Departmental Committee on Agriculture and Livestock.

**Hon. Speaker:** I see the Chairman of the Departmental Committee on Agriculture and Livestock is here. Can he respond?

**Hon. Owen Baya**, (Kilifi North, ODM): Before he responds, we also passed an amendment Bill in this House on the Crops Act to put cashew nuts and coconuts in Schedule I of the Crops Act. We finished the work and it went to the Senate. I have not seen anything from the Senate during the lifetime of this Parliament. We are coming to the end of the term of this Parliament and the people of the Coast would like to unlock these two crops for their prosperity, but Parliament is standing in their way.

Hon. Speaker, please, intervene on the two matters.

**Hon. Speaker:** Just yesterday, we cleared the Coffee Bill which emanated from the Senate. I hope the other House also notices how we have been pushing through many of the Bills that come from them yet many of them are Private Members' Bills. We cannot push them. Why not approach your Senator to raise the matter there? We have written to them, but they have their own system of dealing with these matters. They vote as delegations. Maybe the delegations have not been able to sit. Let us use whatever avenue available to talk to our colleagues on the other side. They have a House Business Committee which should prioritise business. It is not good that we keep passing Bills that come from the Senate and we do not hear anything corresponding. Let us combine our efforts, Hon. Owen Baya.

Hon. Tiren, what do you have to say about the Petition on cashew nuts?

**Hon. Silas Tiren** (Moiben, JP): Thank you, Hon. Speaker.

There was some delay because we were waiting for some reports from the Attorney-General that we have just received. We also had some delay from the Ministry as we were supposed to meet the CS on Tuesday, but he did not also turn up. We have written a letter to request him to come tomorrow, but we received a letter that he will not be available. So, we are having a lot of challenges from the Ministry as well.

**Hon. Speaker:** So, when can we expect the report?

**Hon. Silas Tiren** (Moiben, JP): Next week.

**Hon. Speaker:** Hon. Tiren, what we need is a report. The tabling of a report on a petition is not necessarily for purposes of the House resolving in one way or the other, but for information purposes. It is only in exceptional circumstances that I do allow for the House to express itself when I see reservation interest on a matter. Otherwise, the report of the committee on a petition should suffice and that is why it is addressed to the petitioner and if whatever action proposed is to some Government agency or body, then that body is addressed. However, the report remains here so that our Committee on Implementation can also make a follow up on behalf of the petitioners. Please, just action it because you know we are at a time as you noticed this morning when very few of you are able to attend sittings. I am informed that you were attending various press conferences and other processes leading to your possibility of coming back. For those that desire to come back, please, remember that you still have the duty to serve the Kenyan people until when I will the declare the House adjourned *sine die* on the 9<sup>th</sup> of June because the taxpayer is paying you up to that date. Please, remember to also come here and do what you must do in the

House. It does not augur well that the House is not able to sit a whole morning because we do not have quorum.

Hon. Tiren, I know you have had a lot on your hands, but, please, prioritise the issue by Hon. Owen Baya.

**Hon. Silas Tiren** (Moiben, JP): Thank you, Hon. Speaker. We will do that as we have already received the report from the Attorney-General.

**Hon. Speaker:** Very well. I see another intervention by the Member for Kikuyu.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. I have two interventions: The first one is on something that I have seen the Cabinet Secretary for the National Treasury allude to or state.

**Hon. Speaker:** Is it something on the Order Paper?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): No, but the second one is on the Order Paper.

**Hon. Speaker:** We have just finished Order No.7 and you saw people that raised interventions.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, the second one that is on the Order Paper is on Order No. 9 on the Report of the First Supplementary Estimates for...

**Hon. Speaker:** Why do we not wait until we get there?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Okay, Hon. Speaker. Much obliged.

**Hon. Speaker:** There is another intervention by the Member for Tiaty, Hon. Kamket.

## POINTS OF ORDER

### ALIGNMENT OF MEMBERS TO VARIOUS POLITICAL FACTIONS

**Hon. Kassait Kamket** (Tiaty, KANU): Thank you, Hon. Speaker. I rise under Standing Order No.83 to seek your guidance on a matter of public knowledge relating to the alignment of Members to various political factions following the requirement of resignation of candidates for nominations by various political parties which are coming up next month. As we speak, it is a matter of public knowledge that most Members in this House have indeed changed their political parties as they look forward to the April nominations and the general elections in August.

With this in mind, I beg your guidance in terms of Article 103 (1) (e) of the Constitution which provides for resignation of Members from political parties and the deeming provisions on the resignations: Article 105 of the Constitution provides that it is the High Court that has the jurisdiction to determine the question of whether the seat of a Member of Parliament has become vacant.

Section 14 of the Political Parties Act, 2011 provides for resignation of Members from a political party and particularly (4) provides that a person shall not be a Member of more than one political party at the same time. Similarly, the section provides for the deeming provisions on resignation which includes, that a Member shall not be deemed to have resigned if the Member among other things joins in the formation of another political party or joins another political party.

Hon. Speaker, I, therefore, seek your guidance and indulgence on what is the effect of Members of this House joining other political parties in terms of the composition of committees and their leadership slots as well. Further, I also seek your indulgence on how this reflects on the manner in which committees are currently constituted noting that their composition is reflective of parliamentary parties' strengths. Additionally, I need your indulgence and guidance on how this

reflects on leadership of committees noting that some of them are reserved for certain political shades.

Hon. Speaker, we seem to be in a situation of flex. Do the Standing Orders anticipate the situation we are in now? What is the way forward? I understand this is a very interesting time. So, in making determination if you choose to go that direction, I would also like you to help this House on the following issues:

- (i) Whether there are any Members of this House who have written to you resigning from their respective political parties. If yes, I also request you to disclose to the House a list of those Members who have resigned from their political parties.
- (ii) What is the effect of these resignations on the committees of the House and whether it will be prudent for the Committee on Selection to reconstitute the committees based on the new reality?

Hon. Speaker, please, protect me from some Members here. May I also request you to ask the Registrar of Political Parties to avail to this House information relating to resignation of Members of this House from political parties. Also, information on coalitions so that it can assist you in arriving at an informed decision akin to the 2017 decision you made relating to the reconstitution of the Parliamentary Service Commission. Also, to assist the House to know the true Members of each political party as well as the actual political shades represented in the House today.

This is a fairly important matter in terms of the situation we are in. Depending on the decision you come up with and the guidance you give to this House, it will guide this Parliament and the next one moving forward concerning the situation of the transition period in the two Houses of Parliament.

Hon. Speaker, I seek your indulgence.

**Hon. Speaker:** I just want to allow the Member for Seme to take his seat. I can see there are a number of interventions. We could very easily get carried away by this kind of request and the directions sought by Hon. Kamket. Given the business that is before the House, I would like to state a few things.

One, provisions of Article 103(1), on how a seat of a Member of Parliament becomes vacant, are very clear including provisions as deemed to be provided for in legislation, which is, as you have rightly pointed out, the Political Parties Act, specifically, Sections 14 in the original Act and the provisions of the new Section 14A. You made reference to both. The issue of who declares a vacancy in Article 105 is clear, but the situation we are in is not new. If we took our mind back to 2017, and the situation I find is that a number of political parties which have been working together have decided to flex their muscles within the same houses they have been operating in. You can go and check whatever that is with the Registrar of Political Parties. There was the NASA Coalition, you cannot say that the Coalition having decided to dissolve, any Member can be accused of having left. Nothing has happened.

On the other hand, to my right, there has been the Jubilee Party. Jubilee had some affiliation with quite a number of other political parties, including PDR, EFP and KANU, where Hon. Kamket belongs. If any of those parties decided, like snakes often do, to shed off the outer skin, they still remain the same snake. So, nothing should be said to have changed. If you change your colour or if you decide to apply to the Registrar of Political Parties to change a colour, and if you look at the latest Kenya Gazette, it will show you that the Jubilee Party has applied to change its colour and even the logo. If I am to interfere with that, do I say that the House is dissolved? If you ask Hon. Gitonga Murugara, the Member elected on the Democratic Party ticket, he has not left

his party and nobody has written. Hon. Kamket asked me whether anybody has written to say that they have left. Nobody has written to say they have left. So, to the extent that nobody has written, why would I begin to assume the role of an investigator?

*(Applause)*

But more importantly, which we must, as a House, because we are a House of records, another arm of Government, is to take judicial notice of an interim court order issued last week by Justice Prof. Joel Ngugi in Nakuru High Court, where he ruled that nobody should be, even those who are contemplating expelling others... I hear a few of you making that kind of noise out in the streets that you are going to expel some people. There is already a court order. Why do you not just hold your horses, relax and compete with others like you normally do in elections? So, do not bother getting excited about the possibility of you having powers to expel because of assumed new office. The court has already ruled that no party should do anything like that in a suit filed by Members of the County Assembly of Nakuru. That order, as you all know, runs across all the parties.

In fact, it was to be served on the Independent Electoral and Boundaries Commission (IEBC) and the Registrar of Political Parties. Let us just relax with that. If you are afraid of facing your competitor, the only recourse available is to your maker in heaven. Here on earth, you will face your competitor as surely the 9<sup>th</sup> of August shall come. For the time being, Hon. Kamket, there is no need of even thinking of reconstituting committees. If this morning you could not raise quorum, you only raised 41 Members at the entire plenary, even if you reconstitute... Today, I am told there are some people who have assumed the role of chairmen, but I do not even know them. Their names were read, but I do not see them here. So, you might reconstitute, give people positions of Chair, but they are busy. I understand that in some parts of this country, the nomination exercise is so important that that is why we see many empty seats. This is a reality. We should not even get excited about it. Let us allow our colleagues who have to sort out the issue of nominations now, because when they sort it out, they will be here. Hon. T.J. Kajwang', Hon. David Ochieng', Hon. Dr. Nyikal and Hon. Okello are comfortable here. Let us just appreciate our colleagues who must be very busy out there. They are going to come back. They will be here very soon. So, Hon. Kamket, nobody is under threat. For the time being, let us just sit as the National Assembly.

Thank you very much.

*(Hon. David ole Sanko spoke off record)*

Please, let us not debate this, Hon. Sankok. Hon. Duale, what is your intervention?

#### CONSIDERATION OF THE BUDGET ESTIMATES FOR 2022/2023

**Hon. Aden Duale** (Garissa Township, JP): My point of order, Hon. Speaker, is on a different matter.

This House is aware that the Cabinet Secretary for the National Treasury has publicised a notice indicating that he will be delivering the Budget Statement for the Financial Year 2022/2023 to this House on 7<sup>th</sup> April 2022, which is two weeks from now.

The budget making process is well documented in the Constitution, in the Public Finance Management Act and in the Standing Orders. That process is very clear.

*(Loud consultations)*

These Members are speaking in vernacular. This is an august House. There are places provided where they can even speak in tongues; forget about vernacular. They can go there. They are very serious Members of my party and I am proud of them. Hon. Speaker, at least, they are not in your party.

Once this House has approved the Budget Policy Statement with or without amendment, which we did, the next step for this House was the preparation, the tabling and the approval of the Division of Revenue Bill and the County Allocation of Revenue Bill. The Budget Estimates can be tabled, considered and approved in this House via a resolution through a Committee of Supply. This is the only time the House can allow the Cabinet Secretary for National Treasury to make policy pronouncements and revenue raising measures in the form of the Budget Statement, with your permission Hon. Speaker.

Hon. Speaker, it is important for you and this House to note that subject to the High Court ruling on constitutional Petitions Nos.277 and 232 of 2019, the Division of Revenue Bill must be approved and enacted by Parliament before the tabling of the Budget Estimates. That is what the court said. The National Assembly, which you are privileged to lead, has already considered and approved the Division of Revenue Bill that is now before the Senate. I have seen the Senate's amendments on the equitable share. Given the likely variation in the proposed share of the devolved government, there is a likelihood that the Division of Revenue Bill for this year will head to the mediation process. This means that the tabling of the Budget Estimates will equally delay based on that process and the court ruling.

As this House may recall, the public debt monster was a fundamental concern during the adoption of the Budget Policy Statement (BPS). In approving the BPS, we resolved – and the records will bear me out – that “a legislative instrument of the debt ceiling be presented to this House for consideration and approval before the tabling of the Budget Estimates for the financial year 2022/2023.” To my knowledge, until this afternoon, no such instrument has been tabled by the National Treasury. That was in cognisance of the hole in the Budget that will lead to the budget ceiling of Ksh9 trillion that this House has passed not being achieved until that instrument is produced.

Overall, as it is now, the Division of Revenue Bill has not been approved. The debt ceiling legislative proposal has not been tabled. The Budget Estimates have not been tabled for consideration of the House. All these need to happen before the Cabinet Secretary for the National Treasury can imagine of being called upon to deliver the Budget Statement.

The National Assembly and the Legislature is independent in accordance with the readings of the Constitution. This House's business for any day is decided upon by the House Business Committee (HBC) and not a Cabinet Secretary or the Executive. They cannot decide for us.

**Hon. Speaker:** Hon. Duale, I have a ready answer for you, because what you are raising are matters that the HBC has already discussed.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I am not privy to the HBC minutes. Based on the three items that are missing: the Budget Estimates, the Division of Revenue Act and the approval of the Committees of this House; and the indication by the Cabinet Secretary to present the Budget Statement, I seek your guidance and ruling on the following –

1. Whether the Cabinet Secretary for the National Treasury has violated the Constitution by publishing a public date for the Budget Statement.

2. Does the Cabinet Secretary have the authority to determine the date for making the Budget Statement, in view of all the pending issues?

Hon. Speaker, you have protected this House before on a number of occasions. Before we censor the Cabinet Secretary – and I am ready to lead that censor – do not allow him the gracious opportunity that you always do until he complies with these fundamental constitutional functions.

I rest my case.

**Hon. Speaker:** Well, that matter was discussed by the HBC yesterday. The Cabinet Secretary had not determined the date. He merely wrote a request that he may be allowed to come and present the Budget Highlights on the 7<sup>th</sup> of April. At the time he wrote before we went on recess, the date appeared reasonable given that the National Assembly had already completed the consideration of the Division of Revenue Bill and referred it to the Senate. Indeed, your fears have been presented before the HBC, and it is quite clear that unless something happens, anything else being proposed would be in violation of the High Court ruling in the two petitions; that is Petitions Nos. 277 and 232. We can, therefore, not allow the Cabinet Secretary to come and give us Budget Highlights or even table the Budget Estimates before we have seen what will become of the Division of the Revenue Bill for this financial year. Therefore, we agreed that the Cabinet Secretary should be notified accordingly.

It is up to them and whatever other mechanism available to them to approach the Senate and see how they best navigate the issue of the passage of the Division of Revenue Bill as passed by this House. Failure to this, it will now be subject to the vagaries of mediation and all the other attendant problems. Even if there is a stalemate, bear in mind that the Supreme Court still gives guidance on what should happen with regard to the funds going to the devolved units. So, let us wait and see what becomes of the Division of Revenue Bill, because it is most critical. Without the Division of Revenue Bill, those other issues you have said will amount to a violation of the High Court, which has not been challenged and it therefore remains binding. We cannot proceed with that process until we have resolved the issue of the Division of Revenue Bill. The County Allocation of Revenue Act (CARA) is not so much of an issue, but the Division of Revenue Bill is the most critical.

Of course, the Constitution and the Public Finance Management (PFM) Act provide that the resolution of the House upon the adoption of the BPS, will inform the Cabinet Secretary for National Treasury in formulating the Budget Estimates. If whatever is brought here is not in compliance with that resolution, the House is at liberty to return it to the sender. It is still within the power of the House to return to the sender that which is not in compliance with its resolution on the adoption of the BPS. We should wait since it is the right of the other House to tinker with the Division of Revenue Bill as they please. We are waiting for them to bring it back. Meanwhile, we agreed that the Cabinet Secretary should be notified that there is that looming danger of him not being allowed to set his two feet here.

Yes. Let us remain with that for the time being. But, we are cognisant of the challenges that are almost certain.

Hon. Sankok?

**Hon. David ole Sankok** (Nominated, JP): Hon. Speaker, let it not escape our minds that we, as a House – the 12<sup>th</sup> Parliament – are lucky to have you as our Speaker. On the Ruling you have just given earlier on the Petition from Hon. Kamket within the blink of an eye, it is as if you had the information on your fingertips. Your wisdom is unmatched. It is only second to the Biblical Solomon's wisdom. I think Obama comes third. You have given a Ruling as if all the laws and the Constitution were on your fingertips. No wonder, at times without number, I have referred to you

as a constitutional mobile encyclopedia. You have put the chasers who are just there in this House, trying to look at who they will chase and de-whip, where they belong. They have no other function. You have put them in the right place, where they belong. I was among those who have been targeted. It is shameful that our Jubilee Party, which was a very big party, is the one that only sits to consider who they will chase. They chase women and persons with disabilities. *Hawaogopi Mungu; hawaogopi dhambi*. Thank you for that Ruling. The wisdom is totally unmatched. We have to acknowledge that most of us are lucky to have been in the 12<sup>th</sup> Parliament in which you are the Speaker. Many people may not be as lucky. You will know what I mean, and I am saying so if you go to the Senate. If you were there in the other Parliaments, the 8<sup>th</sup> and the 9<sup>th</sup> Parliament, you would really know that what I am saying is from my heart. I am speaking on behalf of the hearts of very many Members of this House. No wonder you are presidential material.

Thank you for that unmatched wisdom which is second only to that wisdom of Biblical Solomon. Probably, Obama now comes third. You are the second.

*(Laughter)*

**Hon. Speaker:** Can we go to the next Order?

## BILL

### *Second Reading*

#### THE ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL

*(Several Members walked into the Chamber)*

**Hon. Speaker:** Is that Member standing, walking or sitting? What about this one? Is he standing or sitting?

Very well. Hon. Members, as you are aware, debate on this Motion was concluded yesterday. What remained was for the question to be put, which I hereby do, having confirmed that we are still quorate.

*(Question put and agreed to)*

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

## MOTION

#### REPORT ON THE FIRST SUPPLEMENTARY ESTIMATES FOR THE FINANCIAL YEAR 2021/2022

That, this 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, March 22, 2022, and pursuant to the provisions of Article 223 of the Constitution and Standing Order 243:

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- (i) approves an increment of the total recurrent expenditure for Financial Year 2021/2022 by Kshs125,070,384,778.00 in respect of the Votes contained in the FIRST SCHEDULE;
- (ii) approves an increment of the total capital expenditure for 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 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:** Yes, your point of order now.

### POINT OF ORDER

#### DEFERMENT OF DEBATE

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker, for your guidance. Fortunately, for the first Point of Order I sought, it is exactly what Hon. Duale has raised. I also benefitted from your guidance on what you discussed in the HBC. It is appropriate that the CS is guided appropriately.

On Order No. 9, I seek your indulgence to see if under Standing Order 1, you can consider deferring this debate. As you are aware, the Chairman tabled the Reports only last evening, late yesterday afternoon. He has further tabled an addendum to the Supplementary Estimates, which is a very heavy compendium. The Clerks-at-the-Table can show you that compendium of Reports. It is a very heavy document.

I have had opportunity to converse with a number of Members on certain recommendations by the Committee. You are aware that we have precedents in the House where recommendations of a Committee can be amended without being subjected to Article 114 of the Constitution. There are recommendations by the Committee that Members have to consider. I have seen at least two Members that have done amendments. I am also considering a number of amendments on the Committee's recommendations. There is nothing I intend to amend in what the National Treasury has brought. On these Reports, having been tabled yesterday, there is another addendum that has been tabled this afternoon. It is only fair that we give Members an opportunity to consume the contents of these Reports and the addendum that has been tabled this afternoon. That is so that by the time we are debating whatever the Departmental Committees have in their compendia and what was tabled yesterday as the Budget and Appropriations Committee's Report, we are able to reconcile the two and make decisions on what recommendations to support and which not to.

Two, and as you are aware under Article 114, there are certain fundamental changes that you can make to the Budget Estimates as brought to us by the National Treasury that need the concurrence of the National Treasury. I have seen a number of recommendations from the Budget and Appropriations Committee which, from experience and as Chair emeritus of the Budget and Appropriations Committee, do not enjoy the support of the National Treasury. In particular is a provision that has been proposed by the Committee on defunding private universities at the



expense of public universities. I know the National Treasury had indeed objected to that recommendation. I see it in the Report.

As a second question to you, Hon. Speaker, I beg your indulgence to direct the Office of the Clerk to write to the National Treasury seeking their views to guide us on a number of those recommendations, even as we seek to amend or approve this Report. Most especially are those that relate to the funding of private universities at the expense of our public universities, which are in a dire situation. They are even at the expense of funding our students who are not benefitting from the Higher Education Loans Board (HELB) because there is no money going to the HELB, particularly because some of the amendments may touch on those areas. I do not want to delve into all of them but seek your indulgence – if the Chair, yourself and the House agree – that you allow us to consume the contents of these Reports tabled yesterday and what has just been tabled today. That is so that if there are further amendments that we would want to seek and do not touch on Article 114, we may have time to do that tomorrow or Tuesday.

With that, I beg to move.

**Hon. Speaker:** Except that if you look at the provisions of Article 114. You know that most Members know Article 114 is on Money Bills. You know that you need to just read through the entire Article so that you look at Clause 1, which talks about what Money Bills are and those which are not referred to in Article 218. More important is what is provided for in Article 114(2). That Money Bills which are defined in Clause 3 below Clause 2 are those dealing with taxation, appropriations and expenditure, and incurring of debts, and all others. Those are all defined very well in Article 114(3). If you carefully read Article 114(2), it is clear that the bar to the House... The bar to the House is until a recommendation of the relevant committee of this House having taken into consideration the recommendations from the National Treasury. So, therein lies the tricky bit. Is the Committee bound to agree with the National Treasury? The answer is no. As a House...

You hear the public out there complaining that it is you, the House, who are subjecting them to hardships. Anybody who has a copy of the Constitution should look at Article 114(2). You may not proceed with the consideration of a Money Bill except on the recommendations of the relevant Committee, after having considered the recommendations of the National Treasury. So, because they are recommendations, the House is not bound; it is not tied. They can recommend ABC, and the House says it does not like C. You are the peoples' representatives. Let us not allow other institutions to run this House. Hon. Ichung'wah, it is not just a particular segment.

As a House, we need to ask ourselves... It is true that the National Treasury can recommend a particular way, and the Committee can come with its recommendations to the House. But remember that the Committee is also a Committee of this House. Actually, you, as a House, can refuse to agree with the Committee and make appropriate amendments or corrections. The Committee is also at liberty to disagree with the National Treasury. You, as a House, have the residual authority to correct. Whatever happens between the Committee and the National Treasury, it is the House sitting in plenary that has the overall residual authority to clean up whatever mess that could have been created.

**Hon. Speaker:** Hon. T.J. Kajwang'?

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Thank you, Hon. Speaker. I want to appreciate you for guiding us correctly. It is a short sentence, but therein lies everything just as much as there is in these statements: "In concurrence" and "In consultation between the Speaker of this House and the Senate." Nothing in that section talks about concurrence. It talks about two gentlemen, or a gentleman and a lady or two ladies sitting together to discuss certain things. Whether they concur

or not, it is another matter. Of course, when a gentleman and a lady sit together, it will lead to other concurrences which must arise as a result of that discussion.

The Member for Kikuyu has a valid issue in requisitioning you to allow Members to have more time to reflect upon the heavy documents that have been tabled. As you have correctly said, when we sit in plenary, we are the ultimate committee that supervises all the committees of this House. So, if documents were presented to this House yesterday and today, it will be fair if we are given enough time to consult and put our minds to it. The only small issue that I differ with the Member for Kikuyu is that I have my amendments on the Floor, they are on the Order Paper and I have expressed them well; but the Member for Kikuyu seems to be prosecuting my amendments. He should write his own amendments so that he gives a colour that him and I have some concurrence on some discussions in a way. Nothing is further from the truth. The Member for Ruaraka is exercising his mandate. He has looked at the Report and he is exercising his constitutional mandate. We want to be free, as a House. We do not want to be shielded by sheds of political opinion or biases, because very soon it will gather the moth that there are political considerations or sheds of opinions around this issue. This is about Kenya and we want to discuss this issue soberly with freedom. I want to urge the Member for Kikuyu to also make his amendments, if he chooses. I have proposed amendments in some issues that he has expressed himself on. If he wants to join me, let me see how far he will join me. He should not prosecute my issues.

It is a good thing to give us even up to tomorrow, if possible. This Supplementary Bill has been with us for some time. Giving us more time to be able to reflect on it is not entirely a bad thing.

Thank you.

**Hon. Speaker:** I can see more points of orders. Let me just follow the order as it is. Hon. Baya. You had placed for general intervention. The next one is Hon. Duale.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, as I asked you in line with what Hon. T.J. has asked, allow us to get more time. The National Treasury in this Supplementary Estimates Bill has approved an expenditure amounting to Ksh75 billion according to Article 223 of the Constitution. It comprises Ksh24 billion for petroleum levy and 10 billion for development partners programme. You have been a Chair of the Public Investments Committee (PIC), and you know the budget making process and the use of Article 223 of the Constitution. This Article is applicable only if the amounts appropriated for any purpose under the Appropriation Act are insufficient or when an emergency need has arisen for expenditure and for which no amount has been approved for.

Article 223 of the Constitution is applicable when a withdrawal has been made from the contingency fund. The justification by the National Treasury – I really looked at the Supplementary Budget Estimates Report that was tabled yesterday – fails to meet this express provision of the Constitution. If you further look into the document that you approved, the proposed adjustments on the votes and programmes have exceeded the 10 per cent threshold prescribed in Section 44 of the PFM Act as read together with Regulation 40 of the PFM National Government Regulations, 2015. The request by the National Treasury on this matter to the National Assembly to approve votes and programmes with changes beyond the prescribed 10 per cent is irregular. This House needs to put its foot down. In my opinion, the Minister is using Article 223 of the Constitution as a blanket outside the provisions of the Constitution, the PFM Act and PFM Regulations.

**Hon. Speaker:** Hon. Duale, the only problem is that the argument you are making would be good if you were arguing against these Supplementary Estimates. For the time being, the Hon.

Ichung'wah has brought what would be referred to as a dilatory Motion of seeking that we defer the consideration of the estimates for the reasons that he advanced among them, the fact of the very late tabling of the Report of the Committee yesterday. The argument you have goes to address the substance of the entire Supplementary Budget.

**Hon. Aden Duale** (Garissa Township, JP): No, Hon. Speaker. If the House agrees with me, I want to raise constitutionality. The whole Report is unconstitutional and illegal. We have competent men and women in the Parliamentary Budget Office (PBO), and they shall even advise the Speaker and the Committee on the threshold of 10 per cent. As you said earlier, this Committee is not an appendix of the National Treasury. The Committee must also act within the threshold of the PFM Act, Articles 2 to 3 of the Constitution on when it can be used, for what purpose and its threshold. That has already been violated in this Report. That is why if you give us time, I will raise those constitutionality issues and you, guide so that...

Hon. Speaker, you remember the Lake Turkana Wind Power. If we allow the Minister for Finance, particularly the current one – he was a District Commissioner (DC), and is the most incompetent Minister and he should be censured...

*(An Hon. Member spoke off-record)*

Do not talk to me. We are not in an *Azimio* rally. We are in the House. No! We should, therefore, defer so that Hon. T.J. Kajwang' and others can deal with it. I am going to raise constitutional issues. We cannot allow Article 223, the PFM Act and the PFM Regulations to be violated by the Minister for Finance and the Committee just agrees with it. I ask for deferment so that I can convince the House at the appropriate time that the Committee allowed the Minister; and this Report can be used to impeach the Minister. It can be used by the EACC to charge him even when he leaves office. It can also be used by any Kenyan to go to court and petition the High Court because my good friend, the Leader of the Majority Party, was the Minister for Finance. The 10 per cent threshold and even the changes when you use Article 223 must be within the framework of the Appropriation Act that this House has passed.

I am sure that the Director of the PBO is listening to me and I can see one of the technical staff here. They should not allow this; that is why when we present a Motion to the Table Office, and it goes through the legal process, at times we are told this Motion is unconstitutional.

Hon. Speaker, please defer this Report to Tuesday next week, as I convince the House we disagree with the Minister in as far as the use of Article 223 is concerned. People will steal money in the National Treasury as we sit here, then use the House as a clearance or a conveyor belt using Article 223. We are under duty to defend and protect every Article and legislation this House has passed.

**Hon. Speaker:** Hon. Duale, you have raised fundamental issues. However, as you say, you may need some time to go and put all of them within the context of Article 223. You will be looking at the Budget that was passed so that you can then establish the violation of Article 223, in that context.

I can see the Member for Alego Usonga. Is he in the House?

**Hon. Samuel Atandi** (Alego Usonga, ODM): Yes, Hon. Speaker. I agree with you that this plenary is the ultimate budget-making body. Whatever various Committees have presented to us, it is this Committee that takes that decision. However, the Member for Kikuyu has requested you to consider deferring this conversation until next time because of what has been presented today by the Chair of the Budget and Appropriations Committee.

Hon. Speaker, if I heard the Chair very well, the contents of the items presented today do not in any way change the contents of the Supplementary Budget as presented yesterday. In my view, therefore, what has been presented are basically reports of the various departmental Committees that were used by the Budget and Appropriations Committee to take a decision on this Budget. I, therefore, urge you not to take more of this House's time in looking at things that Members have already given to the Budget and Appropriations Committee through their Departmental Committees. We need not take more time because we have the details; Members discuss those Reports in their committees. I urge you that this House needs to continue discussing this Supplementary Budget because, as you are aware, it is overdue.

Secondly, on the question of Article 223, as raised by Hon. Duale, this House has already set a precedent. He knows well that this is not the first time that a matter of this nature is being presented. When he was the Leader of the Majority Party, a precedent was set, and this House went beyond the 10 per cent threshold that he is talking about. If he wants to be honest and take up his role as an Opposition leader seriously, we will listen to him. This House had, however, set precedence where this matter had been canvassed before.

Thank you.

**Hon. Speaker:** Are you saying that this House has set a precedent where Article 223 has been breached?

**Hon. Samuel Atandi** (Alego Usonga, ODM): I think so.

**Hon. Speaker:** Where is the evidence and when was it and with regard to which Supplementary Budgets?

**Hon. Samuel Atandi** (Alego Usonga, ODM): Hon. Speaker, if you give me time to go through the previous Budgets, I will prove that this is not the first time a matter of this nature has come before this House.

**Hon. Speaker:** It is not about a Supplementary Budget being brought, it is what would be understood to be saying that Article 223 has not been used correctly, so that you have a proof in excess of the 10 per cent. Is that what you are saying?

**Hon. Samuel Atandi** (Alego Usonga, ODM): I am aware that Article 223 has been breached before.

**Hon. Speaker:** When do you want to give evidence?

**Hon. Samuel Atandi** (Alego Usonga, ODM): Give me time to make some consultations.

**Hon. Speaker:** Consult yourself on whether what you are saying is right. It is an extremely, dangerous admission from your part.

**Hon. Samuel Atandi** (Alego Usonga, ODM): Thank you, Hon. Speaker.

**Hon. Speaker:** Please, consult yourself.

*(Loud consultations)*

Let me also hear from the Chair of the Budget and Appropriations Committee.

**Hon. Kanini Kega** (Kieni, JP): Thank you, Hon. Speaker. Today, you have given a lot of guidance.

The first is as to when the Cabinet Secretary for the National Treasury will come to read the Budget estimates. We totally agree with you, because going by the timelines, the Division of Revenue Bill is not yet dispensed of. That one was a concern to us even in the Committee, and is already handled.

I have heard the concerns of Members. Yesterday in the afternoon Session, we tabled the Report, but there was another compendium of the Committee Report which I tabled today. I have heard that the Members would want to go through them. I would not be the person to stand in between them and the Report; and I humbly accede to that, that they can go through the Reports so that when we would be debating the Supplementary Budget, which can be tomorrow afternoon, there is sufficient time for them to go through the Report and we would then debate the Report tomorrow.

I am magnanimous and I accede to that so that we give Members an opportunity to go through the Report.

I humbly submit.

**Hon. Speaker:** Some hands are still up? Hon. Nyamita?

**Hon. Mark Nyamita** (Uriri, ODM): Thank you, Hon Speaker. Probably before you give us guidance – and I agree with the points that have been raised by Hon Duale – we look forward to him presenting maybe tomorrow afternoon or later as you may guide, the facts of the breach of Article 223 in excess of 10 per cent. I agree with Hon Atandi that this House, under the chairmanship of Hon. Kimani Ichung’wah, exceeded the 10 per cent by program, but not of the overall budget. That is why I still obtain in this particular budget...

Hon Speaker, Hon Kutuny is distracting you.

Hon Speaker, I was saying that as we wait for your guidance as to whether we will proceed today, tomorrow or any other day, we look forward to the former Hon. Leader of the Majority Party’s presentation, especially on the constitutional issues that he wants to raise. What Hon. Atandi may have been referring to is that indeed, it is true that this House has presided over Supplementary Estimates Budget before whereby we have exceeded the 10 per cent by program but not the overall budget.

So, you will find that we had varied a particular program by more than 10 per cent previously under Hon. Kimani Ichung’wah and Hon. Duale in this House. However, the 10 per cent threshold of the overall budget has never been exceeded. That is what is obtaining in this budget. So, as Hon. Duale will be preparing his documentation, I just want to invite him to also look at the precedence of the previous budgets. We will also come up with those facts; not of the overall budget, but by programs we have exceeded. I also ask Hon. Kimani Ichung’wah to visit the *Hansard* on what he said when such issues were raised on this particular Floor.

I submit Hon. Speaker.

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

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Speaker. I rise to support the proposal made by Hon. Duale that you give us sufficient time to look at the Supplementary Papers that were tabled yesterday, this morning and this afternoon, as these are very important Papers. We must go through them with a tooth comb so that we confirm they have complied with the various constitutional requirements, and the requirements of the statutes and the regulations made under the statute as far as budget making process is concerned. Tomorrow may not be sufficient, because we need to assemble the various research papers that we are to present to the House. We have also to work even more on proposed amendments, because I also have an amendment to the Report in view of the fact that in my own opinion, we are spending public money for private entities while this is money that is supposed to go to the public entities. I am, therefore, moving an amendment and may consider moving yet another amendment so that what we give to Kenyans is in line with their own expectations.

So, kindly guide us that we come back on Tuesday to deal with the matters raised.

Thank you very much.

**Hon Speaker:** Hon. Members, the Chair of Budget and Appropriations Committee himself has conceded.

*(Loud consultations)*

As to when to come, leave it to me. However, even as you make your intervention now, bear in mind that the Chair of the Committee has acceded. If you use pleadings...

Proceed, Hon. Ochieng Odhiambo.

**Hon. Elisha Odhiambo** (Gem, ODM): Thank you, Hon. Speaker. I rise to support the sentiments by Hon. Kajwang. I think it is good hygiene that the recommendations of the committees are taken in cognisance when the Budget and Appropriations Committee is making changes. It is inappropriate that the Budget and Appropriations Committee can go into the report of the Departmental Committee on Energy Committee and fail to take even one recommendation. Why was there need for the Departmental Committee on Energy to meet if, in their wisdom, they already knew what they wanted? I think it is important that we have good hygiene when the Budget and Appropriations Committee sits back to look at the recommendations by various committees.

**Hon. Speaker:** I do not want you to debate on the report. It is the issue of the request to step down this business, and the Chair has acceded to that. When you go to the details of the report, it is the same thing which I have told Hon Duale, if he intends to raise it he will raise it maybe before debate commences. However, if you go into the details, then there will be no point for us coming to debate again, yet it has not been moved.

Proceed, Hon Elisha.

**Hon. Elisha Odhiambo** (Gem, ODM): Noted Hon. Speaker. I am properly guided.

**Hon Speaker:** I see the Chairman Departmental Committee of Agriculture and Livestock, Hon. Tiren.

**Hon. Silas Tiren** (Moiben, JP): Thank you, Hon. Speaker and I want to be on record, because the Chair of the Budget and Appropriations Committee has clearly stated that they took recommendations from the committees. I want to talk about the Departmental Committee on Agriculture, which we gave our recommendation and it was not picked.

**Hon. Speaker:** Hon Tiren, please...

**Hon. Silas Tiren** (Moiben, JP): Hon. Speaker, just allow me...

**Hon. Speaker:** Hon. Tiren, I will not allow you, have you listened to what I have said? What you are saying is if you listened to the presentations by the committees that will be going to debate this, the request is to defer this debate today to some other date, which I will give.

**Hon. Silas Tiren** (Moiben, JP): Hon. Speaker, can I just add something that is burning?

**Hon. Speaker:** You started by saying that what you presented was not considered, you were going into the debate.

**Hon. Silas Tiren** (Moiben, JP): Thank you I am not going to the debate. I want to talk about the Supplementary Estimates and the addendum. My interest is that when we were given, as the committee, to do the Supplementary Estimates, an addendum was brought later. So, what would be the role of us meeting as a Committee, give out our recommendations, and then an addendum comes from the National Treasury, where they change and pick up everything that we have done?

Hon. Speaker, I want you to protect us by clarifying the law. What is the role of committees? What is the role of Parliament? If everything about the budget is supposed to be done by the National Treasury, then we should not be allowed, as committees to discuss anything to do

with the budget. We want to be given an opportunity because we also talked about issues of fertiliser, which is a security issue in this country. We are not going to be a rubber stamp of another committee. No!

Thank you, Hon speaker.

**Hon. Speaker:** I know this is time for *bonga* points; but of course Hon Tiren's issue about fertiliser is very close to his heart. I know but you say that...Just be cool.

**Hon. Silas Tiren** (Moiben, JP): No. It is hard now to be cool.

**Hon. Speaker:** I will give you an opportunity to say it in a cooler manner.

**Hon. Silas Tiren** (Moiben, JP): Farmers are on my case, and they want to kill me. So, they rather kill the right people who are denying them money and not me. The people who are denying them money should come out on record and state that they do not care about farmers in this country. That is what is disturbing me, Hon. Speaker.

**Hon. Speaker:** Hon. Tiren from the Chair, I plead with the people of Moiben not to kill you.

**Hon. Silas Tiren** (Moiben, JP): Thank you.

**Hon. Speaker:** You are not the one responsible. Hon. Members, I thought we have already agreed...

Let us have Hon. Makali.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Speaker. I am sorry because my intervention button is not working. I want to make one observation. I like your proposal that we move the debate to tomorrow. However, I really urge the Members to take time and read the Report. As they do it, they must realise that there are Reports from committees and the Report of the Budget and Appropriations Committee. Those are totally two different Reports. I see a situation where we will come here tomorrow and start discussing the committees' Reports rather than the Report of the Budget and Appropriations Committee.

I have a second point. I wish that Hon. Duale will listen to me, because this is a serious matter. The Constitution, the PFM Act and the PFM Regulations talk about not more than 10 per cent amendment to any of the... As the Members push their agenda, there is a question that I want them to answer tomorrow. Is it 10 per cent of the total Budget which is approved by the House, 10 per cent per programme or project? Once you get that interpretation right, you will find that this House always operates within the law. That is a serious interpretation which our PBO and technical experts on legal matters should give interpretation, so long as they are discussing public finance. That will be important.

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well. Hon. Nzengu. He is in an unusual place today.

*(Laughter)*

**Hon. Paul Nzengu** (Mwingi North, WDM-K): Thank you, Hon. Speaker for giving me this opportunity to contribute. I want to seek some clarifications. I speak as the Vice-Chairman of the Departmental Committee on Environment and Natural Resources. I presented before the Budget and Appropriations Committee. I do not want to go into that discussion. However, I seek your guidance. When we make a presentation before the Budget and Appropriations Committee, is it supposed to be changed? Are they allowed to change it? Members are wondering whether it is a waste of time for us to use energy discussing that matter.

There is a second thing that I want to bring to your attention. If this deferment will be approved, will you allow those who had not brought any amendments to bring them?

Thank you, Hon. Speaker.

**Hon. T. J. Kajwang'** (Ruaraka, ODM): That is why we are asking for adjournment.

**Hon. Speaker:** Hon. Members, for avoidance of doubt and in case somebody thought that what I paraphrased was not correct, this is Article 114(2) of the Constitution. It has a bearing on what Hon. Nzengu is raising. It says that if, in the opinion of the Speaker of the National Assembly, a Motion makes provision for a matter listed in the definition of a money Bill, the National Assembly may proceed only in accordance with the recommendation of the relevant Committee of the Assembly after taking into account the views of the Cabinet Secretary responsible for finance.

Taking into account does not mean that they have to take lock, stock and barrel whatever comes from there. This happens the way you do public participation. Everybody will tell you that they need bridges all over Kerio Valley. Will you construct them? You take into account those views and then consider the resource envelope, size and what is prudent in the circumstances. Similarly, the Budget and Appropriations Committee which has been determined by this House to be the relevant Committee which is referred to in the Constitution will make recommendations to the House after taking into account the views of the Cabinet Secretary for the National Treasury. Remember that the House will proceed to consider the matter on the basis of recommendations.

Hon. Nzengu, if for whatever reason you think that what you presented to the Budget and Appropriations Committee has not been captured properly, you can disagree with that recommendation. You will be required to raise numbers. You must persuade a majority of Members to agree with you to override the recommendation of the Committee.

Hon. Members, it is very clear. Given the views that are coming through, it is only fair that the request by Hon. Ichung'wah with the concurrence of the Chair of the Budget and Appropriations Committee be granted, so that we stand down this business.

I saw some compendium of documents. It is only fair for Members to pay attention to what has been said by Dr. Makali Mulu. In the compendium of documents that were tabled today, some of them are reports of various Departmental Committees. You may read yours and see what it says relative to the recommendation made by the Budget and Appropriations Committee. You are all aware of what the people are saying out there. So that everybody gets a chance to contribute, including the Member for Kabuchai, I defer debate on this Motion to Tuesday, next week.

*(Applause)*

*(Motion deferred)*

Hon. Members, you have enough time to go through all the Reports, including those from the Budget and Appropriations Committee. It helps when the Chair is moving the Motion, being seconded and when all these other amendments are moved. I have approved them. Remember again that Article 114(2) of the Constitution says that if, in the opinion of the Speaker of the National Assembly, a Motion makes provision for a matter listed in the definition of a money Bill... This is subjective. However, my opinion will be exercised very sparingly.

*(Laughter)*



Bear in mind that at the end of the day, a decision in the House is made by a majority but not to impose my views. This is what I want Hon. Tiren, who is threatened with murder to know.

*(Laughter)*

I have seen your amendments; but surely your amendments would require that you go back to the Committee and the Cabinet Secretary of the National Treasury. They are different from the others that I have seen. I have seen seven or six other amendments which are almost in the realm of averments. They say that you move a certain amount of money from a vote to another one. Those do not require the involvement of the National Treasury. Because there is ample time, Hon. Tiren, have a sitting with the Chair of the Budget and Appropriations Committee and look through them. Indeed, any other Member who cares to follow Budget matters should do that. I imagine that most of the Members who are here are the ones who understand and follow appropriations matters: funds being expended and how they are expended.

I know even those who are not here are in the village telling them: “We are dealing with this matter”. Those of you who are present represent everybody. Let us defer this matter to Tuesday next week.

*(Hon. Kimani Ichung’wah stood up on a point of order)*

What has happened to the Member for Kikuyu? He has too many points of order!

**Hon. Kimani Ichung’wah** (Kikuyu, JP): Thank you Hon. Speaker for your indulgence. It is not that I have many points of order, but you know that I am stickler to the rule of law and procedures. I served under your chairmanship in the Powers and Privileges Committee. I am very keen especially on those issues that protect the dignity of this House.

I rise under Standing Order No. 91 on the responsibility for statement of fact in view of what Hon. Samuel Atandi has said, that this House has set a precedence of going against the provisions of Article 223. It would be very unfair to this House, if we let what Hon. Atandi has said escape without him either bearing responsibility or tabling the facts as you have properly guided him, or he may think that this is an engagement on a Whatsapp group that he is fond of.

However, he must know that when we come to transact business on the Floor of the House, it is serious business. He cannot in anyway allude that the House has acted *ultra vires* to the Constitution. He should therefore stand guided by what Hon. Nyamita, a very well-schooled Member of Parliament who has said, indeed, if within a particular department or a ministry you go beyond 10 per cent, so long as you do not exceed the 10 per cent overall in the Budget, then that could be a case that you can cite.

However, in relation to what Hon. Duale has raised, he cannot say that the House has set precedence. It is very dangerous. If it goes on record that the House has set such a precedence, tomorrow, another Cabinet Secretary will table estimates that go beyond the 10 per cent provision that is provided for in the Constitution and cite what Hon. Atandi has said, that there is a precedence that has been set. That is if that remains in the record. I want to beg that either Hon. Atandi withdraws that particular statement and apologises to the House, or we take the necessary action.

**Hon. Speaker:** Hon. Atandi, you know you are responsible for the accuracy of statements that you utter on the Floor of the House.

**Hon. Samuel Atandi** (Alego-Usonga, ODM): Hon. Speaker, thank you very much. Indeed, what I said – and which I would like to repeat - is that there is a precedence in this House where the House has breached the 10 per cent threshold on programmes. That is what I said and I was going to seek clarification.

**Hon. Speaker:** No, Hon. Atandi! Do not try to be clever! You never talked about programmes. You have just picked that from Hon. Mark Nyamita. Do not borrow things which were not in your head. Now you have borrowed what is not... Say you have been educated by Hon. Mark Nyamita. It is not good to plagiarise.

*(Laughter)*

**Hon. Samuel Atandi** (Alego-Usonga, ODM): Hon. Speaker, as I said, I was going to look for proof, and I would like you to give me more time.

**Hon. Speaker:** How much time?

**Hon. Samuel Atandi** (Alego-Usonga, ODM): Give me more time so that I can give more clarifications on it.

**Hon. Speaker:** Hon. Atandi, remember the *Hansard* will bear you out. You have said that this House has set a precedence by approving in excess of 10 per cent of the Budget and, therefore, violating Article 223 of the Constitution.

**Hon. Samuel Atandi** (Alego-Usonga, ODM): Hon. Speaker, I would like to respond to this issue tomorrow. The Standing Order allows me to respond tomorrow.

**Hon. Speaker:** No! Hon. Atandi, you are now saying that the Standing Orders allow you. Actually, they do not. The Standing Orders do not. You do not rise in your place and claim something and start saying that Standing Orders allow you to go and sleep over the matter. Is it something that you know?

**Hon. Samuel Atandi** (Alego-Usonga, ODM): Hon. Speaker, I have asked you for permission to get more clarifications on it. My intention was to say that the House has breached the 10 per cent threshold on programmes. I have explained myself.

**Hon. Speaker:** Hon. Atandi, do you want to revise your statement to mean that the House has approved expenditure in excess of 10 per cent on programmes?

**Hon. Samuel Atandi** (Alego-Usonga, ODM): That is what I meant.

**Hon. Speaker:** Then you must withdraw the earlier one.

**Hon. Samuel Atandi** (Alego-Usonga, ODM): Thank you Hon. Speaker. What I meant is that the House has breached the 10 per cent threshold on programmes and not on the overall Budget. Therefore, I withdraw the other one.

**Hon. Speaker:** Very well. I thought we could do business. Why is the House in the mood of general debate about nothing these days?

**Hon. Members:** It is the season.

**Hon. Speaker:** It is the season! Member for Nyando, you appear to be in that mood also.

**Hon. Jared Okelo** (Nyando, ODM): Yes, Hon. Speaker. Thank you very much. You have given a directive on what needs to follow as pertains to this subject that was before us. I want to thank you. You know as well as I do and – together with our colleagues here - the importance of unlocking this Supplementary Budget. Most Government departments together with this Parliament - both the Senate and the National Assembly - have had to suspend so many programmes awaiting this Supplementary Budget.

Each time I visit any Government Office, the staff are so quick to ask me the status of the Supplementary Budget. On that breath, I would urge this House that we should not use our political leanings and persuasions to filibuster with such an important subject.

We have seen how we invite our own political interest in matters that also affect the lives of the Kenyan people. As much as I appreciate what Hon. Duale has come up with as an intervention, we also have to juxtapose it with the interests of the Kenyan people as regards the gridlock that the Government departments are in.

Therefore, going forward, I want to believe that our political interest will not override the interests of the Kenyan people. Without your intervention, some of my colleagues had intended to push this to a much later date than Tuesday, which you have ably proposed. So, let us move forward as one unitary society that is looking at the interest of the Kenyan people as opposed to the political interest that will come and go.

I thank you.

**Hon. Speaker:** Hon. Members, I believe these other interventions are now overtaken by events. Let us move to the next Order.

### COMMITTEE OF THE WHOLE HOUSE

*(Order for the Committee read)*

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

### IN THE COMMITTEE

*[The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuyu) took the Chair]*

### THE MENTAL HEALTH (AMENDMENT) BILL (SENATE BILL NO.28 OF 2020)

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuyu): Order Hon. Members. We are now in Committee of the whole House to consider the Mental Health (Amendment) Bill (Senate Bill No.28 of 2020).

Hon. Members, we are now ready to proceed. Let us have some order.

#### *Clause 4*

The Mover, the Chairperson.

**Hon. Joshua Kutuny** (Cherangany, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 4 of the Bill be amended in the proposed new Section 2A by inserting the following new paragraphs immediately after paragraph (e) —  
“(f) adopt a holistic approach to community-based mental health services;  
and,  
(g) promote the provision of mental health services in primary health facilities.”

The justification is that the amendment seeks to provide additional purpose of the Act which includes the promotion of community based mental health services and to promote the provision of mental services in primary health facilities.

*(Question of the amendment proposed)*

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

*(Clause 4 as amended agreed to)*

*Clause 5*

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

**Hon. Joshua Kutuny** (Cherangany, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 5 of the Bill be amended in the proposed new Section 2C—

(a) by inserting the following new sub-paragraph immediately after sub-paragraph (b)(ii)—

“(iii) expanding and strengthening community and family-based care and support systems for vulnerable persons;”

(b) by inserting the words “including mechanisms for outpatient comprehensive cover for mental health care and continued care for mental illness” immediately after the word “realized” appearing in paragraph (c);

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

“(f) develop community-based programmes for the continued care and rehabilitation of persons with mental illness;”

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): You have to expound a bit for Members to know what exactly it is.

**Hon. Joshua Kutuny** (Cherangany, JP): The justification is that the amendment seeks to make emphasis on the need to promote community based programmes in the provision of mental health services. It also seeks to ensure that the national Government shall be tasked with the responsibility of setting up mechanisms for the provision of comprehensive outpatient medical cover in regard to mental illness.

*(Question of the amendment proposed)*

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

**Hon. David ole Sankok** (Nominated, JP): I have heard the Chair say that the national Government will make provision for comprehensive mental care. What does it have to do with county governments? Are we in line with the Fourth Schedule of our Constitution?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Chair, do you need time to consult?

**Hon. Joshua Kutuny** (Cherangany, JP): No, Hon. Chairlady. For clarification, this is one of the specific functions of the national Government. When we talk about comprehensive health

cover, it is again the function of the national Government because we are borrowing from Universal Health Care. That is the justification. It does not affect the functions of the counties on health. Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Sankok, is the clarification enough?

**Hon. David ole Sankok** (Nominated, JP): Of course, it is not! He has said that comprehensive health care is with the national Government. We are talking about mental health. There are drugs that will be used in mental health. Who will be in the custody of those drugs? I believe it is the county governments because county referral hospitals and other health centres are within the purview of county governments. Does it mean that the national Government will have to transport drugs specifically for comprehensive healthcare because I have been informed by Hon. Kimunya who is the Leader of the Majority Party? There is confusion here. We have to give county governments their functions and the resources for the functions that should go them. We should not mix them.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Dr. Nyikal, you are a Member of the Committee. You can assist the Chair.

**Hon. (Dr.) James Nyikal** (Seme, ODM): The comprehensive care referred to here is about insurance cover. Insurance cover as we know now, particularly the National Hospital Insurance Fund (NHIF), is under the national Government. What has been realised is that many of the people with mental illness are not covered. So, we are expanding the policy to ensure that insurance cover now includes people with mental illness. That is the content. Therefore, we as a Committee support these amendments.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Chair, do you want to add something?

**Hon. Joshua Kutuny** (Cherangany, JP): When we are discussing, I think it is also very important for Members to read the whole document. There was a time we tabled the Report. They should have gone through the whole Report to understand exactly what it is. The section is on collaboration of the national Government and the county governments, if you read the whole of it. This is enriching, just the way Hon. (Dr.) Nyikal has just put it. The county governments, in collaboration with the national Government, will still play the role.

Thank you.

**Hon. David ole Sankok** (Nominated, JP): What Hon. (Dr.) Nyikal who is my senior has said really makes a lot of sense. But what Hon. Kutuny is saying is making us even more confused. When you talk about comprehensive healthcare, it may not mean that what was meant was health insurance cover. What is so difficult in putting it as comprehensive health insurance cover rather than saying it is comprehensive cover? That is so that we know it is insurance and not about a comprehensive cover. When you say it is comprehensive cover on mental health, it means mental health must be covered comprehensively in terms of counseling and medication. So, let us just be specific on comprehensive health cover. I think the Chair can agree with me.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Are you supporting?

**Hon. David ole Sankok** (Nominated, JP): Now I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Good. Let us move on.

*(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)*

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

*(Clause 5 as amended agreed to)*

*(Clause 6 agreed to)*

*Clause 7*

**Hon. Joshua Kutuny** (Cherangany, JP): I beg to move:

THAT, Clause 7 of the Bill be amended by deleting the proposed new subsection (2) and inserting the following new subsection—

“(2) The Board shall consist of—

(a) a chairperson appointed by the President who shall—

- (i) hold a Masters’ degree in psychiatry or its equivalent from a university recognised in Kenya; and,
- (ii) have at least ten years' experience, five of which shall be in a managerial position;

(b) the Principal Secretary in the ministry for the time being responsible for matters relating to health or a representative appointed in writing;

(c) the Principal Secretary in the Ministry for the time being responsible for matters relating to finance or a representative appointed in writing;

(d) four persons, not being public officers, appointed by the Cabinet Secretary by virtue of gender, disability and regional balance, with knowledge and experience in mental health care of whom—

- (i) one shall be a psychiatrist nominated by the Medical Practitioners and Dentists Board;
- (ii) one shall be a counselor or psychologist nominated by the Counselors and Psychologists Board;
- (iii) one shall be a nurse nominated by the Nursing Council of Kenya; and,
- (iv) one shall be a clinical officer nominated by the Clinical Officers Council;

(e) one person nominated by the Kenya National Commission on Human Rights with knowledge and experience in matters related to mental health;

(f) two persons, not being governors, and having knowledge and experience in matters related to mental health, nominated by the Council of County Governors;

(g) one county director of health nominated from amongst the forty-seven county directors of health by the Council of County Governors; and,

(h) the Director of Mental Health, who shall be the secretary to the Board and an *ex officio* member of the Board.”

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Do I hear somebody's phone playing a clip? Order, Hon. Members! Please remember you are in Chamber. Hon. Kutuny, go on.

**Hon. Joshua Kutuny** (Cherangany, JP): I want to give the justification. The amendment seeks to provide qualifications for the persons of the board as well as propose that the four persons nominated by the CS shall not be public officers. The amendment also seeks to include the principal secretaries (PSs) responsible for health and finance in the membership of the board. They are the necessary members of the board for provision of sector-specific technical knowledge and expertise.

*(Question of the amendment proposed)*

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

**Hon. David ole Sankok** (Nominated, JP): I support this one, especially on the point that the chairperson of the board should not be a public servant. In having these boards, the state corporations and parastatals - we are trying to bring expertise from the private world into Government mainstream management. So, this is one of the best amendments.

*(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 7 as amended agreed to)*

*(Clauses 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34 agreed to)*

Clause 35

**Hon. Joshua Kutuny** (Cherangany, JP): I beg to move:

That, Clause 35 of the Bill be amended in paragraph (a) by—

- (a) deleting the words “by order of the Director or the respective county executive committee member” appearing in the proposed new subsection (1) and substituting therefor the words “with the approval of the person in charge”;
- (b) deleting the words “The Director or the county executive committee member, as the case may be, shall” appearing in the proposed new subsection (1A) and substituting therefor the words “The person in charge shall”.

The amendment seeks to ensure that transfer of patients will be done in accordance with the Referral Strategy Guidelines, with the approval of the person in charge. This will be more practical as opposed to requiring that approval be done by the Director or the County Executive Committee Member (CECM).

*(Question of the amendment proposed)*

*(Question, that the words to be left*

*out be left out, put and agreed to)*

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

*(Clause 35 as amended agreed to)*

*(Clauses 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 and 52 agreed to)*

*(Schedule agreed to)*

*Clause 3*

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

**Hon. Joshua Kutuny** (Cherangany, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 3 of the Bill be amended in paragraph (b)—

(a) in the proposed definition of “mental health practitioner” by inserting the following new paragraph immediately after paragraph (a)—

“(aa) medical practitioner under the Medical Practitioners and Dentists Act;”

(b) by deleting the proposed definition of “mental health unit” and substituting therefor the following new definition—

“mental health unit” means a place or a section within a health facility designated to provide mental health services;”

(c) by deleting the proposed definition of “person with mental illness” and substituting therefor the following new definition—

“person with mental illness” means a person diagnosed by a qualified mental health practitioner to be suffering from mental illness, and includes—

(a) a person diagnosed with alcohol or substance use disorder; and,

(b) a person with suicidal ideation or behavior;”

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

“mental health facility” means a facility registered and licensed by the relevant medical regulatory body to provide mental health services;

“mental health services” means the promotion of mental well being, prevention, management or alleviation of disease, illness, injury and other physical and social determinants affecting mental health in individuals;

“rehabilitation” means the multidisciplinary approach aimed at supporting persons with psycho-social, intellectual and cognitive disabilities, access to services geared towards their treatment and recovery process;”

The justification is that the amendment seeks to provide for the definition of terms that are used in the Act. In the definition of the term “mental health practitioner” the amendment seeks to include medical practitioners noting that the definition provides for the inclusion of other cadres within the health profession as mental health practitioners, but leaves out medical practitioners.



The amendment seeks to ensure that a mental health unit shall be a section within a health facility designated for mental health services without requiring rigours of gazettelement by a section of the board or by a County Executive Committee member. The amendment also seeks to ensure that the diagnosis of mental illness shall only be done by a qualified dental health practitioner.

Thank you.

*(Question of the amendment proposed)*

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

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

*(Clause 3 as amended agreed to)*

*(Clause 2 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

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

**Hon. Joshua Kutuny** (Cherangany, JP): Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Mental Health (Amendment) Bill (Senate Bill No. 28 of 2020) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## **REPORT**

### **THE MENTAL HEALTH (AMENDMENT) BILL**

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

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to Report that Committee of the Whole House has considered the Mental Health (Amendment) Bill (Senate Bill No. 28 of 2020) and its approval thereof with amendments.

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

**Hon. Joshua Kutuny** (Cherangany, JP): Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report, and I request Hon. Nyikal to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. (Dr.) Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Speaker, I second.

**Hon. Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order Members! Is that Hon. T.J.?

*(Question proposed)*

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

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. I am presuming that this is the point that I can comment.

**Hon. Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Yes, go ahead.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. Let me take this opportunity to thank the Mover of this Bill. Mental health is a big problem in this country for a variety of factors. People are struggling and some of the young people are addicted to drugs and that creates a lot of issues on mental health. I want to congratulate the Hon. Senator who has brought this Bill and for beefing up what we already had.

Thank you.

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

**Hon. George Gitonga**, (Tharaka, DP): Thank you, Temporary Deputy Speaker. Let me join other Members in thanking everyone, including our House, for passing this Bill that has come from the Senate. Mental health is extremely important in the country, especially in view of the fact that those who suffer from mental health are referred to in derogatory terms like being deranged, being mad or whatever other terms that are used. We want to see those services brought down to the counties. That is why Hon. Sankok was asked what the roles of the county governments were. We want to see people who have mental health problems, including those in Tharaka Constituency, being taken to cheap hospitals where they are attended to and they are discharged after being cured. This Bill is important and it is good for the country.

Thank you, Senate and the National Assembly.

**Hon. Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Is that Member for Ndhiwa? These are just brief comments.

**Hon. Martin Owino** (Ndhiwa, ODM): Thank you, Hon. Temporary Deputy Speaker. I also want to thank our Departmental Committee on Health for considering this Bill and for removing bureaucracies so that when people are suffering from mental health, they can be easily diagnosed and referred. There is a lot that goes on in mental health. We want to integrate it in the community primary health system so that they are picked up early and addressed.

Thank you.

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

**Hon. David Sankok** (Nominated, JP): Thank you, Hon. Deputy Speaker. I stand to also support the Bill and thank the Committee and the Senate for bringing it to this House. Let me congratulate, Hon. Sen. Kasanga, who is a Nominated Member of the Senate and a very beautiful lady from Machakos for bringing this Bill that will solve many issues that we are facing as a country. This is due to the high cost of living as a result of increase in food prices and some youth using drugs in our country. We have drug peddlers and traffickers who at times are leaders in our country. This has increased the mental health illnesses in our country.

This Bill has, therefore, come at the right time to try and sort out this issue. Recently, we were treated with shocking news that 10 per cent of our disciplinary forces and especially, the police officers, are suffering from mental health. When we think of 10 per cent of the police officers armed to the teeth with ammunition and guns suffering from mental health, then, we have all the reasons to worry as a country.

I support and thank the Senate and the National Assembly for passing this Bill without very much ado.

Thank you.

**The Temporary Deputy Speaker** (Hon.(Ms.) Soipan Tuya): Thank you very much.

I think we can stop there. Member for Kabondo Kasipul.

**Hon. Eve Obara** (Kabondo Kasipul, ODM): Thank you very much, Hon. Temporary Deputy Speaker.

May I also appreciate the Committee for bringing this Bill, and support it at the outset, as it is timely. As a country, it is time we confronted the matter of mental health. We have consistently seen suicide cases on issues that we, as a society, get shocked. These are people who are considered successful and children whom you did not even imagine had problems within our houses.

I support this Bill and look forward to a situation whereby, going forward, issues of suicide and depressions that we have seen will reduce in this country.

Thank you and I support.

**The Temporary Deputy Speaker** (Hon.(Ms.) Soipan Tuya): We shall defer the putting of the Question until when we are properly constituted.

Let us move to the next Order.

*(Putting of the Question deferred)*

## **BILL**

### *Second Reading*

#### THE ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon.(Ms.) Soipan Tuya): Order, Hon. Sankok. You are talking off-record. You have to do things properly.

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. Protect me from T.J. Kajwang' also known as "*CJ Bonoko*." I will, however, seek your services because I might contest for a presidential election; and if I lose, you will swear me in at Uhuru Park!

Looking at the House, we do not have enough quorum to transact any business.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon.(Ms.) Soipan Tuya): He has put it plain and clear. I, therefore, order that the Quorum Bell be rung for ten minutes

*(The Quorum Bell was rung)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order Members. Hon. Angwenyi, are you counting seats?

Order Members, we have not met the threshold. So, we have to adjourn.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, the time now being 5:27 p.m., this House stands adjourned until Thursday, 24<sup>th</sup> March at 2:30 p.m.

The House rose at 5:27p.m.