

**PARLIAMENT OF KENYA****THE NATIONAL ASSEMBLY****THE HANSARD****Tuesday, 15<sup>th</sup> February 2022**

The House met at 2.30 p.m.

*[The Speaker (Hon. Justin Muturi) in the Chair]***PRAYERS****COMMUNICATION FROM THE CHAIR****Hon. Speaker:** Hon. Members, I have three Communications.**RECALL OF CERTIFIED AUDITED ACCOUNTS AND FINANCIAL  
STATEMENTS OF TUM ENTERPRISES LIMITED**

Article 229 of the Constitution requires the Auditor-General to audit and report to Parliament, on the accounts of all public entities within six months after the end of each financial year.

The respective reports once submitted are considered by Parliament and appropriate action recommended. In this regard, the Certified Audited Accounts and Financial Statements of the Technical University of Mombasa Enterprises Limited for the year ended 30<sup>th</sup> June 2020 were submitted to the National Assembly and laid on the Table of the House on Tuesday, 6<sup>th</sup> October 2021. They were subsequently committed to the Public Accounts Committee (PAC) for consideration and reporting.

However, Hon. Members, my office is in receipt of a letter dated 9<sup>th</sup> November 2021 from the Auditor-General recalling the report due to an inadvertent error. Having considered the request of the Auditor-General, and in order to ensure that only correct statements are reflected in the report, I hereby direct that the Public Accounts Committee ceases consideration of the financial statements for the Technical University of Mombasa Enterprises Limited for the year ended 30<sup>th</sup> June 2020, if the process has commenced, pending correction of errors by the Auditor-General. Further, any publicisation undertaken by the Clerk in accordance with the requirements of section 32 of the Public Audit Act, 201 is revoked.

The Committee, and indeed the House, is accordingly guided.

I thank you, Hon. Members.

**DELEGATION FROM THE REPUBLIC OF ZAMBIA**

The second communication is that I wish to introduce to you a delegation from the National Assembly of the Republic of Zambia, who are seated in the Speaker's Gallery.

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*(Applause)*

The delegation comprises the following:

1. The Hon. Stafford Mulusa, Member of Parliament – Government Chief Whip/Leader of the Delegation;
2. Mr. Tenneson Nyangu – Principal Clerk in charge of Journals;
3. Mr. Lombe Musonda – Protocol Officer.

Hon. Members, the delegation is the country on a benchmarking visit to undertake a peer exchange of views and counsel on the management of various parliamentary affairs. On own behalf and that of the National Assembly, I welcome them to Parliament and wish them fruitful engagements during the course of their stay in the country.

I thank you, Hon. Members.

I will resume my seat to allow those Members at the door to make their way in.

*(Several Members walked into the Chamber)*

Member for Malava, you appear to be sprinting around.

#### PRIORITISATION OF INDIVIDUAL MEMBERS' BILLS

The third communication relates to prioritization of individual Members' Bills. As you are aware, pursuant to the Calendar adopted by the National Assembly last week, the House is scheduled to hold a total of 55 sittings during the current Sixth Session before the *sine die* recess which will commence on 10<sup>th</sup> June 2022.

In accordance with the provisions of Standing Order No. 40(3), Individual Members' business is largely considered on Wednesday Mornings. A simple calculation of the remaining days indicates that between today and the date of the *sine die* recess, there are about 17 Sitting Days reserved for consideration of Individual Members' business. Further, as at today, there are over 40 Individual Members' Bills that are awaiting consideration at various stages in the House. In this regard, the House Business Committee has resolved that all Individual Members' Bills shall be forthwith listed in the Order Paper in order of their respective publication dates. This will accord each of this category of business a fair opportunity of being considered by the House during this Session.

Hon. Members, it has been noted with concern that in the recent past, a number of Members have been absent whenever their Bills are called for consideration at either Second Reading or the Committee of the whole House stage. Consequently, the House Business Committee has resolved that, in the event that a Member is not present when his or her Bill is called out on Wednesday Morning, consideration of the particular Bill will stand deferred in that Sitting and shall not be accorded priority in the subsequent sittings. Moreover, the particular Bill shall be placed at the bottom of the list of Individual Members' Bills scheduled for consideration in subsequent sittings.

For purposes of Tomorrow Morning's Sitting, the Bills that have been prioritised for consideration include the National Disaster Management Authority Bill sponsored by Hon. Kimani Ichung'wah, MP; the Public Service Commission (Amendment) Bill sponsored by Hon. Benjamin Mwangi, MP; the Alcoholic Drinks Control (Amendment) Bill sponsored by Hon. Silvanus Osoro, MP which are scheduled for Committee of the whole House stage. Twenty-one other Individual

Members' Bills are also scheduled for Second Reading. In this regard, I call upon Members to pay special attention to the Notice Paper annexed to the Order Paper of this particular sitting, which contains the notification of the business scheduled to be considered tomorrow Morning. I do hope that all Members are duly notified and guided and will adhere to the set regulation.

I thank you, Hon. Members.

## PETITION

### ISSUANCE OF CERTIFICATES OF TITLES TO MEMBERS OF THE RIVERBANK RESIDENTS HOUSING WELFARE GROUP

**Hon. Speaker:** Order, Members.

Standing Order No. 225(2)(b) requires the Speaker to report to the House any Petition, other than those presented by a Member. Further, Article 119 of the Constitution provides for the right of any person to petition Parliament to consider any matter within its authority, including petitioning the House to enact, amend or repeal any legislation. In this regard, I wish to report to the House that my office has received a Petition from various members of the Riverbank Residents Housing Welfare Group of P.O. Box 72236, Nairobi, calling for the urgent issuance of certificates of titles and leases to members of the group living on land registered as LR No. 11150 in Embakasi Sub-county of Nairobi County.

In their Petition, the petitioners aver that they were settled on the aforementioned land in Embakasi in 1997 following political skirmishes that had engulfed the area at the time. The said 70-acre parcel of land now belongs to over 500 families. For over two decades, the petitioners have attempted in vain to secure allotment letters to the land as prove of ownership with a view to facilitate subdivisions among the residents.

Following a survey in 2014, the land occupied by the residents was classified as a settlement scheme comprising of three phases. The residents later received funding for a water supply project, street lighting and sanitation facilities supported by the Nairobi City County Government and the World Bank. This was followed by a publication of a notice for issuance of titles and leases by the Ministry of Lands and Physical Planning in conjunction with the Nairobi City County Government in 2018. That was never implemented.

The petitioners are thus now vulnerable to risks of being displaced yet again from their land from unscrupulous land grabbers and being rendered squatters. The petitioners thus seek the intervention of this House in establishing the ownership status of the parcels of land registered as LR No. 11150, LR No. 18111 and Block 10 in Embakasi Sub-county and revoking any irregular subdivision and allocation of the land and to secure urgent issuance of certificates of titles and leases to the residents.

Hon. Members, having determined that the matters raised by the petitioners are well within the authority of this House, I order that, pursuant to the provisions of Standing Order No. 227(1), this Petition is committed to the Departmental Committee on Lands. The Committee is required to consider the Petition and report its findings to the House and to the petitioners in accordance with Standing Order No. 227(2).

I thank you, Hon. Members.

Looking at the Intervention Box, the following have indicated that they want to say something on this. I will start with the Member for Suna West. The Member for Endebess.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker. I would want to support that Petition, especially when it comes to residents of Embakasi in as far as their ownership of the land is concerned.

What we have seen in many places, especially within Nairobi, is families being evicted at night and even during the Coronavirus time. It is in very unfair ways. So, I think it would be important that the Committee intervenes in this matter and tries to look even further, especially when it comes to Nairobi. It has been very sad. You will hear of people being evicted in a very inhumane way, by the police coming at night and demolishing people's houses. So, I think the Departmental Committee on Lands should give a human face when it comes to ownership so that the rightful owners, especially within Nairobi, are identified and their properties are protected.

**Hon. Speaker:** Member for Nyando.

**Hon. Jared Okelo** (Nyando, ODM): I thank you very much, Hon. Speaker. It is good to see you during this last Session. I thank God for healing your broken arm.

I also support this Petition. This has become a common thing within Nairobi and other urban centres where people are duped into buying property whose legal standings are questionable. This is just one such of those requests that I believe we will continue to get in this House. As the Committee retreats to look into this matter in depth, it will also be important that those who would want to purchase property at least carry out due diligence. It may be that people have sold the same property to different buyers and at the end of it all people are caught in a situation where documentation cannot be authenticated or the Ministry of Lands and Physical Planning cannot verify with specificity the origins of these parcels of land.

On a different note, because I had pressed my intervention button a little earlier, if you indulge me, there is a matter on which you have always come to the rescue of this House. This relates to inordinate delays of the National Government Constituencies Development Fund. There was an undertaking by the National Treasury and the National Government Constituencies Development Fund Committee that, by January, all the accounts would have received Kshs100 million across the nation. That has not happened even though I reckon that there is the passage of the Supplementary Budget that is underway. Since you have directed this before, you can direct now that as we come to...

**Hon. Speaker:** As you know, under Standing Order No. 225 – I am sure Hon. Jared Okelo is aware – the matter is not relevant to the comments and clarifications on Petitions. Maybe you may have to raise it later. It is misplaced.

Next, Member for Kabuchai.

**Hon. Majimbo Kalasinga** (Kabuchai, FORD – K): Thank you, Hon. Speaker. This Petition is rightly placed before us and I support it. Without land title deed certificates, people cannot do business and acquire loans using this asset they have. If that will not be the case, members who sit on such lands will be abused in future, corruption will increase and plots will be grabbed. To protect their future and their siblings, it will be in order if we do what the Petition demands of us. That will be the best for these Nairobians. As we talk today, a group in Webuye at Nabuyole Falls fall in the same category as these petitioners. The Government should take steps to make sure they are settled by giving them title deeds.

**Hon. Speaker:** You must advise them to bring a Petition. That cannot be the Petition.

*(Laughter)*

Please, Hon. Members, remember Standing Order No.1 provides that the Speaker is to give direction and determination of any matter that has no specific provision. The Speaker has since determined that, for the purpose of comments and seeking clarifications on petitions, each person speaking shall be limited to a maximum of two minutes. So, use your two minutes in a relevant way. Member for North Imenti.

**Hon. Rahim Dawood** (North Imenti, JP): Thank you, Hon. Speaker. I join in supporting the Petition. People from Embakasi need title deeds. I have a similar case in North Imenti. In 2017, His Excellency the President and the Deputy President gave us title deeds for Majengo, Mjini and Salama but one of my villages, Shauri Yako, never received title deeds. That has become a concern; I brought it before the Committee. Many people want to take people's land. They should be given title deeds. It is high time the Government decentralised issuing of title deeds and hopefully we will get title deeds for Shauri Yako and Gakoromone which has the biggest market in east and central Kenya.

**Hon. Speaker:** Please, bring us an appropriate Petition for Gakoromone. This one is about Embakasi and even *shauri yetu*.

*(Laughter)*

Member for Makueni.

**Hon. Daniel Maanzo** (Makueni, WDM-K): Thank you, Hon. Speaker. A prove of ownership of any land is a title deed. Unless acquired fraudulently, those people who have it have an entitlement. On this Petition, the petitioners qualify for adverse possession. It is true – as they have alleged – that there are people who have a habit of grabbing land and processing their title deeds while people are settled on that land. Unless a title deed is made for the people of Embakasi in this Petition, there is every likelihood – the fear is real – that they may lose their land. From their history, they were resettled there following election skirmishes. It is only fair that Parliament assists them. I support the Petition and believe a positive response will come before the House goes on recess so that it can serve the people of Embakasi.

Thank you.

**Hon. Speaker:** Member for Ugunja.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Hon. Speaker, this Petition is critical. If left to their own devices, these city dwellers are likely to be left homeless. There is a tendency – my Committee dealt with a similar case yesterday – of people who are well connected going round scavenging for open spaces and not so open spaces. They move with speed to process ownership documents. The fact that these innocent Nairobian have stayed on this land for more than 20 years is an indictment to the leadership. They should have been enabled to acquire ownership documents long time ago. That Petition needs to be processed as quickly as possible for these Kenyans to be protected.

Thank you.

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

**Hon. John Kiarie** (Dagoretti South, JP): Thank you, Hon. Speaker. I stand in solidarity with the petitioners. Cases of grabbing land with title deeds is rife in Nairobi. Beyond grabbing, there is dispossession of people who rightfully own these titles deeds. My plea goes to the Committee. As they attend to this Petition, the offenders are the people who are supposed to be the protectors of the owners of title deed. The offenders are in the lands office. At the registry in the Ministry of Lands corruption is rife. Your title deed can be sold to a second or a third party

while you have your own title deed under lock and key in a safe. When the Committee attends to this Petition, they should also establish the status of digitisation of title deeds of land in Kenya. That will not only be important to the people of Embakasi but to the entire country. As we speak, there is a case in Dagoretti South of a piece of land that is public and we cannot trace its title deed in the Ministry of Lands. I hope that the Committee will do a diligent job on this particular Petition.

Thank you.

**Hon. Speaker:** Member for Suna West, for the second time.

**Hon. Peter Masara** (Suna West, Independent): Thank you, Hon. Speaker for giving me this opportunity. I support the Petition. Land is an emotive issue because its demand is high and you cannot increase land size. When you do not have a land title deed... Most of the land grabbers are rich people. When they get a big land where poor people are living without documentation, chances are high that at one given time they will grab it and the poor will lose their land. On the same note, I did a research last year on the effects of demolition of urban areas in selected areas in Nairobi County. It was published at the beginning of this month in a global scientific journal. If you go through the document, it will show you the effects of such things. Many people have died because of losing land that they have been staying for long. Others have lost property. I am happy because there are students of Nyangubo Primary School from my constituency who come from a slum area without a title deed. They are here today when this Petition is being discussed in this House. When they go back, the people of Suna West will appreciate that those who do not have title deeds will have an opportunity to get their title deeds through this Petition.

Thank you.

**Hon. Speaker:** Very well. Member for Lamu County.

**Hon. (Ms.) Ruweida Obo** (Lamu CWR, JP): Mhe. Spika, Ardhi hii ya Embakasi ni donda sugu. Inafaa ifuatwe kwa kina. Tatizo la Embakasi linagusa Kenya nzima. Pangukuwa na mikakati kuwa ikitajwa Ardhi hii moja kama hii, patatuliwe matatizo kama haya Kenya nzima. Itakuwa ni kazi nyingi pakiwa na *Petitions* nyingi. Tunatoa *Petitions* lakini hazifikwi. Zinaenda kwa maswali. Kwangu Lamu, kuna matataizo ya ardhi yanayosababisha watu kuuana. Widho, kama mliona, watu waliuawa kwa sababu ilisemekana shida ni ardhi. Mpaka sasa hatujajua ukweli na Serikali haijatuambia ukweli ni nini. Je, ni ardhi, *Al Shaabab*, uchumi au siasa? Mimi naomba watakapokuwa wakitatua shida ya Embakasi, nami pia nitaenda kwa hiyo Kamati kuuliza ukweli uko wapi. Kama ni ardhi, kwanini watu wanauana na ardhi ziko tele? *Title deeds* zipo nyingi Ardhi House. Zile ambazo ziko tayari zipewe wenyewe; zimekaa hapo sana.

Ahsante.

**Hon. Speaker:** Member for Kilifi North.

**Hon. Owen Baya** (Kilifi North, ODM): Hon. Speaker, thank you very much. I support this Petition. In this country, someone can steal your television set and he is prosecuted as a thief, but when someone steals land you will be told that is a civil case. The matter will go to court and eventually the person whose land was stolen loses the case and the land goes to the possession of the thief and he is celebrated. That is the agony that we have in this country. We have seen people stealing land at the Coast and they are celebrated because taking someone's land is not seen as a criminal offence. We see such cases in Malindi and Mombasa courts. Our people lose land every day to fraudulent activities which are actually known. The best thief in this country is a land thief. If you are a land thief nobody bothers about you. You are actually celebrated. You sell the land, make money and become a politician at the end of the day. We elect you into Parliament.

This problem can only stop if this country moves very fast and ensures that every piece of land in this country has a genuine title deed. Because the Ministry of Lands keeps all titles, someone can forge a land title and claim a piece of land. The person who owns such piece of land is then forced to go to court to claim what has been stolen. We need to look at this issue critically, otherwise we shall continue to celebrate people who steal land in this country. That must stop. And this problem is a major problem at the Coast and especially in Kilifi.

**Hon. Speaker:** Member for Gilgil.

**Hon. (Ms.) Martha Wangari** (Gilgil, JP): Thank you, Hon. Speaker. I rise to also support the petitioners on this issue. As many Members have said, it is a very emotive issue. I think the petitioners have come to Parliament after taking the case to the Judiciary, where it takes years to be dealt with. My point is about the time consideration the Petition will take. I know the Standing Orders talk of 60 days. But given that we are at the sunset of this Parliament, I wish the Committee can expedite its consideration and conclude as soon as possible so that the petitioners can get answers and a way forward on their land.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Nambale.

**Hon. Sakwa Bunyasi** (Nambale, ANC): Thank you, Hon. Speaker. I have two comments. One relates to the earlier Order, if you allow me. I like the House Business Committee's decision on Individual Members' Bills. At least it shows that the HBC now has some regard for new legislation and policy changes that can result from Member-initiated Bills. I wish we had this kind of position much earlier, focusing on the productivity of this House based on the contributions of Private Members' Bills.

On the land petition, unfortunately we sympathise and empathise. That will not help. As we continue to tighten the law against land grabbers, we should also think about financial sector support mechanisms. Even countries like the United States of America that are advanced but which had a history of land grabbing have incorporated compulsory insurance of titles by lenders, so that at the worst case scenario you do have recourse. Poor people are always the ones thrown out in the cold. I do support the Petition and look forward to discussing it when it is presented before the Committee.

**Hon. Speaker:** Member for Luanda.

**Hon. Christopher Omulele** (Luanda, ODM): Thank you, Hon. Speaker. I support this Petition. But I think the question of land in this country needs a little more serious thought. Land does not increase. From the time God created this earth, the land is finite but our population keeps increasing. In Luanda, I know only of five people who have got one acre each. If we continue subdividing land to such small portions, land will become unproductive. We need to seriously address ourselves to land use regime in this country. That is what we need to do. I support the Petition. It is true this is the regime that we have and the people of Embakasi need their titles. But we need to seriously think about the whole issue of land ownership and land use in the country as we go forward.

**Hon. Speaker:** Member for Nyaribari Chache.

**Hon. Richard Tong'i** (Nyaribari Chache, JP): Hon. Speaker, thank you for the opportunity to speak to this Petition. I support it. Issues of land are very emotive in all parts of the country. In Kisii, land is a very serious factor considering the population of the community against the size of land. I remember when I flew with you to Kisii, you were able to clearly tell from the skies that you had already got into Kisii by the number of homesteads you could see. That is a very dangerous

thing. We need to come up with policies which can make it possible for people to live in the same compound and leave some land for development. If all of us are going to be given our small shares and we are going to divide it further to our children, we will not have enough space to build anything or to grow crops to enhance our economy. In my constituency, which covers Kisii Town, there is grabbed land and we have raised the matter with the National Land Commission (NLC). We hope that NLC will be able to address the issue so that the land can go back to the public for their use so that we make Kenya better than we found it.

I support.

**Hon. Speaker:** Member for Kwanza.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): Thank you, Hon. Speaker, for giving me this opportunity. Issues of land are very emotive. Apart from meeting the petitioners, I want to suggest that the Departmental Committee on Lands should have time to go to Embakasi and see for themselves what the situation is. We may consider the Petition here without having the facts on the ground. Therefore, much as we support the Petition, I request that this House allows the Committee to go to the ground and see exactly what is happening.

Thank you so much.

**Hon. Speaker:** Member for Narok North.

**Hon. Richard ole Kenta** (Narok North, ODM): Thank you, Hon. Speaker. I would like to join my colleagues in saying that land grabbing has become rampant. It is actually spreading to all parts of the country. It is not just restricted to towns. In fact, we have seen people with duplicate title deeds on farmlands that are in the interior of the country. It is a problem. I call on the Committee to expedite consideration of this Petition and ensure that the petitioners are saved. I also plead with the courts of law to ensure that cases of this nature before them are considered and people involved punished severely. If there is no deterrence measure taken by the courts, then such people become emboldened. The other day I heard the former Chief Justice talking about old women in Kajiado who have been deprived of their livelihoods and land by crooks. The Committee should look into this matter across other parts of the country because it is becoming a terrible trend. We now have professional land grabbers. They should be stopped in their tracks.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Kitutu Chache North.

**Hon. Jimmy Angweny** (Kitutu Chache North, JP): Thank you, Hon. Speaker, for giving me a chance to contribute to this important Petition.

Land is the greatest issue in this country. We keep talking about it without setting timelines. Why can Parliament not ensure there are timelines on when people who have settled in various areas should get their titles? It should not take years for somebody to get a title to his or her land where he or she has been living for the last 20, 30, 40 or 50 years. I urge the Departmental Committee on Lands to come up with a framework on timelines so that we can give them to the NLC to adhere. We should have some penalty laid down for them if they do not achieve the said timelines.

Thank you, I support.

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

## PAPERS LAID

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

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Tuesday, 15<sup>th</sup> February 2022:

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

1. Kenya National Commission on Human Rights Car and Mortgage Loan Scheme;
2. Kenya National Commission on Human Rights;
3. State Department for Wildlife;
4. State Department for Information, Communication Technology and Innovation;
5. Ministry of Environment and Forestry;
6. Ministry of Water, Sanitation and Irrigation;
7. Anti-Counterfeit Agency;
8. State Department for East African Community;
9. State Department for Regional and Northern Corridor Development;
10. State Department for Sports;
11. State Department for Tourism;
12. State Department for Social Protection; and
13. State Department Trade and Enterprise Development.

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

1. Garissa University;
2. National Social Security Fund;
3. University of Embu;
4. Ewaso Ng'iro North Development Authority; and
5. Kaimosi Friends University College.

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:

1. Navakhalo;
2. Nambale;
3. Kwanza;
4. Molo;
5. Kuresoi North;
6. Makadara;
7. Kirinyaga Central;
8. Kibra; and
9. South Imenti.

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:

1. Baringo North;
2. Manyatta;
3. Matayos;
4. Igembe North;
5. Kapenguria;
6. Nyando;
7. Soy;
8. Luanda;

9. Mwatate;
10. Mvita
11. Turbo; and
12. Keiyo South.

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

1. Matili Technical Training Institute;
2. Moi Teaching and Referral Hospital;
3. Anti-Female Genital Mutilation Board; and
4. Media Council of Kenya.

Thank you.

**Hon. Speaker:** Before Notices of Motions, there is the Chair, Departmental Committee on Finance and National Planning, or the Vice-Chair. Hon. Mwalika.

**Hon. David Mboni** (Kitui Rural, CCU): Hon. Speaker, I beg to move the following Motion:

THAT, taking into consideration the recommendations of the Departmental Committee on Finance and National Planning in its Report on the Recruitment of the National Assembly's Nominee to the Equalisation Fund Advisory Board, and pursuant to the provisions of Section 8 of the Public Appointments (Parliamentary Approval) Act, 2011 and Paragraph 4(1)(d) of the Public Finance Management (Equalisation Fund Administration) Regulations, 2021, this House approves the appointment of Mr. Abdullahi Adan Khalif to the Equalisation Fund Advisory Board.

*(Loud consultations)*

**Hon. Speaker:** Hon. Mwalika, we are at the stage of tabling Papers. When that is over, we go to Order No.6 which is Notices of Motion which appear to be what you have been doing. From my records, you are supposed to be tabling a report of your Committee's consideration of His Excellency the President's Memorandum on the Kenya Deposit Insurance (Amendment) Bill.

**Hon. David Mboni** (Kitui Rural, CCU): I do not have that one.

*(Loud consultations)*

**Hon. Speaker:** Well, that then means it has not been transmitted to your Committee. Next Order.

## NOTICES OF MOTIONS

*(Loud consultations)*

**Hon. Speaker:** Hon. Mboni, Member for Mbooni, is that so? Hon. Mboni, Member for Kitui Rural, this is dangerous! You appear to have been moving the Motion which appears as Order No.12. We have not reached there, yet. We will get there.

Next Order.

**QUESTIONS AND STATEMENTS**

**Hon. Speaker:** The first Question is by the Member for Tharaka. He has, however, requested for deferment which I accede to.

*Question No.006/2022*

**DISBURSEMENT OF PENSION TO FORMER COUNCILLORS**

*(Question deferred)*

In the courts, they would say, it has been stood over. Next is by the Member for North Imenti.

*Question No.019/2022*

**NON-PAYMENT OF PENSION TO FAMILY OF JAPHET KAUMBUTHU**

**Hon. Rahim Dawood** (North Imenti, JP): Hon. Speaker, I rise to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

- (i) Could the Cabinet Secretary explain why the beneficiaries of the late PC Japhet Kaumbuthu of Force No. 47163 and Personnel No.198411120, who hailed from Gitugu Sub-location, Ngonyi Location in North Imenti Constituency and passed away on 21<sup>st</sup> July 2019 have not been paid his pension and other dues?
- (ii) What measures is the Ministry putting in place to ensure that the dues are paid to the beneficiaries without any further delays?

I refer this Question to be replied before the Departmental Committee on Administration and National Security. It is a pity that somebody who served this country, and died in line of duty has not been paid up to date. It is now three years down the line. I hope the Leader of the Majority Party or Chair can sort this issue out as soon as possible.

**Hon. Speaker:** So as to address us at length, the Question will be replied to before the Committee on Administration and National Security.

The next Question is by the Member for Nyandarua County, Hon. Faith Wairimu Gitau.

*Question No.036/2022*

**EFFICIENCY AND ACCOUNTABILITY IN USE OF HEALTH INSURANCE**

**Hon. (Ms.) Faith Gitau** (Nyandarua CWR, JP): Hon. Speaker, I wish to ask the Cabinet Secretary (CS) for Health the following Question:

- (i) Could the CS explain the nature of the recent contractual disagreements between the Kenya Association of Private Hospitals (KAPH) and the National Health Insurance Fund (NHIF) which were reported to affect private and public hospitals considering that this has adversely affected healthcare service delivery across the country since December 2021?

- (ii) What steps has the Government taken to resolve the dispute, so as to ensure that delivery of healthcare services is not interrupted?
- (iii) What measures, if any, is the Government putting in place to ensure improved efficiency, transparency and accountability on use of healthcare insurance covers and expenditure of related funds, since the success of Universal Health Coverage (UHC) will largely depend on reforms in the health sector?

Thank you, Hon. Speaker.

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

The next Question is by the Member for Kibwezi East, Hon. Jessica Mbalu, who has written to request for deferment to 17<sup>th</sup> this month. Her request has been acceded to. Therefore, the Question is deferred to 17<sup>th</sup> February 2022.

*Question No. 037/2022*

IMPLEMENTATION OF ELECTRICITY PROJECTS IN KIBWEZI EAST

*(Question deferred)*

**Hon. Speaker:** The last Question is by the Member for Marsabit County, Hon. Safia Sheikh.

*Question No. 038/2022*

IMPLEMENTATION OF UNIVERSAL HEALTH COVERAGE IN MARSABIT

**Hon. (Ms.) Safia Sheikh** (Marsabit CWR, JP): Thank you, Hon. Speaker for giving me this opportunity to ask a question.

I rise to ask the Cabinet Secretary for Health the following Question:

- (i) What is the implementation status of the UHC Programme in Marsabit County?
- (ii) What measures have been put in place to ensure availability of adequate healthcare services, including maternal health services to women residing in informal settlements and rural areas in the county?
- (iii) What steps has the Ministry taken to guarantee the health and safety of mothers and children during birth, in order to reduce maternal mortality rates as a result of childbirths occurring in homes?
- (iv) What steps is the Ministry taking to ensure that women are not forced by circumstances to give birth at home, given the long journey they have to endure to access health facilities which are located in far-flung areas?

Thank you, Hon. Speaker.

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

Next Order!

**BILL***Second Reading*

## THE HEALTH LAWS (AMENDMENT) BILL

*(Hon. Amos Kimunya on 8.2.2022)**(Debate concluded on 9.2.2022)*

**Hon. Speaker:** Hon. Otiende Amollo, do you have something that you want to say?

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Yes, Hon. Speaker. I can see that we have come to the stage of putting the Question in this Bill. I am acutely aware of your very detailed guidance that was issued on 21<sup>st</sup> October 2021 in 19 pages after intervention by 12 Members. You gave guidance in a very clear manner from page 17 that the Committee will basically restart the process of undertaking public consultation. They must demonstrate that they have undertaken it. They must invite the public and consider their representation. Ultimately, they must resolve the issues raised.

*(Hon. Peter Masara consulted loudly with other Members)*

**Hon. Speaker:** Order for a minute, Hon. Otiende. Hon. Masara and six Members appear to be in a *baraza*. Please, just withdraw. Go and do it out there or go to Suna West Constituency. This is serious business. There is this lady Member who is dotting all over like an injured buffalo. What has happened to the gracious lady? Whatever the calls for excitement are, let us listen to the Member for Rarieda. Proceed, Hon. Otiende.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Speaker. My understanding and indeed the very clear stipulation in your guidance is that the four preconditions must be satisfied before the Report is resubmitted for consideration at the Second Reading. It is my understanding that the Committee submitted a Report last Thursday subject to guidance by the *Hansard*. However, it is not my understanding that they demonstrated compliance with each of the four preconditions.

Given the nature of the guidance, the resubmission of the Report then would require fresh start of the Second Reading of the Bill. What had been dealt with in part was invalidated by your guidance. It essentially means that once the Report is resubmitted, we restart the process and complete it, ensuring compliance with the guidance in the four points before we can put the Question.

I seek your guidance whether you and this House are satisfied that the four preconditions were complied with and that the Report was resubmitted for purposes of restarting the second Reading of the Bill.

Thank you, Hon. Speaker.

**Hon. Speaker:** Who remembers what happened because I was not on the Chair that day? Let us hear from the Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, indeed, you ruled that the Committee should go back to the public, resolve all the issues that had been raised and asked them to bring in

an addendum to the Report. The Committee held extra public participation meetings with the facilitation from Parliament. They produced an addendum to the Report which you authorised to be tabled in the House. That Report was tabled on Thursday.

On the assurance that the Committee had complied with the preconditions and you had approved the Report for tabling, we commenced debate for the Second Reading of the Bill on Wednesday. The debate ended because of lack of interest by Members to contribute but not through the Standing Order No. 95. The Members who had an interest were not keen to contribute to the Bill for some reasons. Once the Second Reading was completed, we decided that we would not put the Question until the Report was submitted. It was tabled on Thursday.

Even at that point, I requested the Deputy Speaker to postpone putting the Question, so that Members would have the weekend—and I believe that is what he advised the Members to do—to look through the tabled Report. By the time they come to make a decision today, they will have the benefit of the proceedings during the Second Reading and the Report of the Committee, and then they will make an informed choice on whether to support the Bill or not. Remember that we are only talking of Second Reading of the Bill. When the Members read the Report, they will still have an opportunity to bring their amendments in the Committee of the whole House. It appears that the Members did not get that Communication last week.

As of today, I was still getting inquiries from Members asking for the Committee Report to be tabled. So, my plea to you is that you give Members the full opportunity first of all to read their Report, the Addendum to the Report and to go through the Hansard to see the contributions during the Second Reading. Perhaps you need to guide and appoint another date for the Second Reading during which point nobody will come and claim that they have not read the Report because it is available; it is in the House. Then we can have the Question put with Members feeling they have at least looked at all the issues and are satisfied.

Even after that Question is put after the Second Reading, there will be the real detailed sitting during the Committee of the whole House, where each of the Members will have the opportunity to bring amendments to whatever clauses they are uncomfortable with and convince the rest of the House. So, I think that might be the fairest thing. As we step it down, you can guide on when, probably, even after a week. It has taken a year so far. So, another one week will not necessarily be of major consequence.

I would hate to see a very progressive Bill like this one suffering because of Members voting based on emotions rather than facts. If we can do one more week, until next week, we could at least do justice to the healthcare reforms and have the Members vote from a point of internalising what the Committee has done.

I thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Duale, I have been given the Hansard. You appear to be the one who caused this hiatus.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I am, in fact, the one who raised this matter on Tuesday, 5<sup>th</sup> October. Hon. Otiende Amollo, Hon. Nyikal, Hon. Kaluma, Hon. Eseli and many others who were Members of the Committee raised their objections. The whole issue was about the proposed amendments on various statutory and regulatory bodies. What Hon. Otiende is raising is what I raised last Thursday. You gave a 19-page Communication. In your Communication, the last paragraph of the key areas on page 19 of 19, on procedure, you said that the Second Reading of the Bill should not come to the House until when the Addendum is tabled first. That did not happen. I agree with Hon. Otiende; that, that is where we have a problem.

The Second Reading started without the Addendum. When it was on the Order Paper on Thursday last week for the Question to be put, the Vice-Chair of the Departmental Committee on Health tabled the Addendum. I raised this same matter with the Deputy Speaker, who was on the Chair. I asked whether he was aware of the Communication of the Speaker that says the Committee should re-submit its Report to the House after complying with your guidance before resuming with its consideration at Second Reading. That is the last bit of your ruling.

From what the Leader of the Majority Party has said, it is like he is giving us the way forward. However, the way forward will be given by you, the Speaker. This is a very emotive matter. It is why you gave a 19-page Communication. I am sure Members will agree with me that clinical officers, nurses, pharmacists and doctors are texting us, their representatives. They are telling us that the Cabinet Secretary wants to take over the powers of the statutory regulatory bodies by appointing himself to various bodies like KMPDU and the Nursing Council of Kenya. This is a very serious matter. I think you will give us guidance but on procedure, I agree with Hon. Otiende Amollo that your Communication must be complied with. Among other things, your Communication was saying that the Second Reading of this Bill cannot begin without the Departmental Committee on Health submitting the Addendum so that the debate can be part of what they have done with public participation. You are our able Speaker. You will give us direction. This is a very important Bill to every Member. By the way, it is not progressive as the Leader of the Majority Party has said. It is a very retrogressive Bill, which is against the Bill of Rights. The powers of the statutory and Regulatory health institutions run by doctors, nurses, clinical officers and pharmacists are being given to the Cabinet Secretary. So, we are creating an imperial Cabinet Secretary in the Ministry of Health. We must reject it. In fact, we should put the Question and finish this matter. I do not know why we are bothered.

*(Hon. Clement Kigano walked along the gangways)*

**Hon. Speaker:** I wish the Member for Kangema could take his seat. Hon. Patrick Mariru, you are the one without hair on the head. These five years have been gruelling, have they not?

*(Laughter)*

Hon. Members, I think the issue being raised is one to do with procedure and of trying to comply with directions given in my ruling of 21<sup>st</sup> October, 2021. There are a number of issues that are to be noted. I have listened carefully to what the Leader of the Majority Party has said, one of which is debate on the Bill concluded at the stage of contributions when there was no other Member contributing. Therefore, the natural thing was for the Mover to be called upon to reply without the Question being put on that date.

It is important that I go back to my Communication of 21<sup>st</sup> of October. Among other things, in the main body of my Communication, I did indicate that from a perusal of the Report tabled before the House, it was evident that the Committee laudably applied itself to the tasks it was given by the House. It failed slightly short of the Standards required. The Committee did invite the public to participate in its consideration of the Bill. The Committee gave notice for the public to submit memoranda and thereafter invited the key stakeholders they had identified to a virtual meeting and other meetings. The Committee did receive submissions from key stakeholders affected by the proposals in the Bill as well as other interested members of the public.

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Reading through Part III of the Report, Members will note that the Committee took great lengths to record the submission received from the public and concluded its Report by recommending amendments to various provisions of the Bill. The only major gap that is apparent from the body of the Report is a commentary or a record noting how the Committee considered the submissions it received; the views on those submissions, and the reasons for either agreeing or disagreeing with the submissions.

Unless this omission is remedied, the assumptions by members of the public and Members of the Committee shall remain that the public participation conducted by the Committee was a mere perfunctory exercise without any bearing on the final outcome of the Bill. Hon. Members, the obligation to facilitate public participation in legislative processes can only be fully discharged if the public who take their time to either submit memoranda or make oral submission receive adequate feedback from this House on such submissions.

Hon. Members, I agree that not all submissions may be relevant. A submission may be outlandish: It may not even relate to the subject matter under consideration; it may propose expansion of a Bill in a manner that is prohibited under our Standing Orders; it may be untenable by the fact that it may impact current or future Budgets in a manner that cannot be supported in the short-term or medium-term. Nevertheless, Parliament, as a House of records, must ensure that all submissions or such submissions are received, recorded and afforded clear and proper feedback in the legislative process. The Committee must reason on the position it has taken. It is the duty of each Committee to meticulously sniff the cocktail of submissions it receives and note the manner in which the exercise informs the recommendations it makes to the House. This House makes laws that directly affect the people – hence the participatory approach to law making required by the Constitution. We cannot expect the public to look favourably at laws made by the House when their input is disregarded without them being given the courtesy of a proper reason. The Report of the Departmental Committee on Health on its consideration of the Health Laws (Amendment) Bill, 2021 does not expressly indicate the manner in which it considered the submissions it received from the public or provide any reasons either in agreement or in disagreement with the submissions. Consequently, it is my view that the conduct of public participation on the Bill is incomplete and wanting to that extent.

Before concluding, Hon. Members, I recall that the debate on the matter that gave rise to the guidance thereof raised issues of whether a minority Report maybe be appended to a Committee Report on a Bill. That has been alluded to by the Hon. (Dr.) Simiyu Eseli. I do not expect the Member for Tongaren, who is serving his third term in this House, to be misled on this matter. For avoidance of doubt, I quoted Standing Order No.199 (5), which provides that a report having been adopted by a majority of Members, a minority or dissenting report may be appended to the report by any Member or Members of the Committee.

The following is the summary of the guidance I gave then:

- (i) The role of the Speaker in the responding and defending and upholding the Constitution is limited to the procedural aspects of the exercise of the mandate granted to the House by Article 95 of the Constitution. The form, substance and manner in which the Health Laws (Amendment) Bill, 2021 was introduced in the House in accordance with the provisions of the Constitution and Standing Orders of the House. The House remains at liberty to effect any changes it deems fit to the Bill in the exercise of its legislative mandate, the Constitution. However it reserves the powers to determine the constitutionality or otherwise of a resolution made by the House to the High Court.

- (ii) The Health Laws (Amendment) Bill, 2021, which seeks to amend various health related statutes and is presented in an omnibus format, is in order so as to the form and style of the House.
- (iii) In order to discharge the requirement to facilitate public participation under Article 118 of the Constitution and Standing Order No.127, the Committee of the House to which a Bill is committed must undertake and demonstrate the discharge of two distinct acts in its Report to the House being as follows –
  - a) The Committee must invite the public to participate in the consideration of the Bill and prescribe an adequate period of time within which submissions are to be made. The period may be determined with reference to the substance of the Bill and the urgency of the matter under its consideration.
  - b) The Committee must consider any representations it receives from the public on a Bill by deliberating on each submission received, recording its view or views on the submissions and provide reasons for either agreeing or disagreeing with the representations in its Report.
- (iv) To the extent that a Report of the Committee on the Bill does not expressly indicate the manner in which it considered the submissions it received from the public or provide any reasons either in agreement or disagreement with the submissions, the conduct of public participation on the Bill does not meet the threshold required by Article 118 of the Constitution and Standing Order No.127.
- (v) That, the Report on the Departmental Committee on Health on consideration of the Bill is hereby referred back to the Committee for regularisation along the terms of this guidance. The Committee is at liberty to seek further engagement with the public on the Bill if need be.
- (vi) That, the Committee should also address and attempt to resolve the concerns raised by part of its membership in the House with respect to the approach, value and actualisation of the output of the stakeholder engagement exercise.

I concluded thus: “Having given this guidance and conscious that this Bill is one that concerns the county governments in terms of Articles 110 and 112 of the Constitution, the House will now await the Committee to re-submit its Report to the House after complying with this guidance before resuming with its consideration at the Second Reading. However, the final decision on the Bill and the form in which it will be passed ultimately lies with the House.”

Hon. Members, it is, therefore, very clear that the Committee was supposed to re-submit its Report before commencement of Second Reading. That was the first day. That appears to have been ignored or, at least, the Committee went to sleep.

On 10<sup>th</sup> February, the *Hansard* record shows that Hon. Duale rose in his place and raised the issue of a Report. It says, “upon request by Hon. Duale, the acceptance by Hon. Kutuny and generally our Standing Orders, we will not put the Question to the Health Laws (Amendment) Bill. The Departmental Committee on Health tabled its Report today”. If this is correct, debate had already been concluded the day before. The Deputy Speaker said then, “I will proceed on the basis of Standing Order No.53 (3). Under normal circumstances, if a Report has already been tabled, you fix a date of putting the Question. It will be done on Tuesday next week. If the Report was not there, we would have put it off indefinitely to allow the Committee to table it. We then go on to the next Order.” That is what the *Hansard* record reads.

Hon. Members, for avoidance of doubt, because the Speaker only invokes Standing Order No.1, just as I indicated earlier, on matters that are not expressly provided for in the Standing Orders. Standing Order No.53 reads as follows:

“53 (1) When a Motion has been moved and if necessary seconded, the Speaker shall propose the Question thereon in the same terms as the Motion, a debate may then take place upon that Question.”

(2) At the conclusion of the debate, the Speaker shall put the Question.

(3) Despite paragraph (2) the Speaker may on the request of a Member defer putting of the Question to the following day in which case the Speaker shall thereupon nominate a time at which the Question shall be put.”

The record shows that the Deputy Speaker nominated today as the date when the Question is going to be put.

Hon. Members, it looks like the Speaker has no latitude on this matter. So, we just proceed by our rules.

*(Several Hon. Members stood at the entrance)*

Let me resume my seat to allow those Members standing out there to make their way in.

There are the two ladies who appear to be tussling with some gentleman there; Hon. Jaldesa and company.

Hon. Members, I want to first of all ask the lead Clerk-at-the Table to confirm whether the House quorates.

*(Loud consultations)*

Order, Hon. Members! I have been informed by the clerk-at-the Table that we have more than the requisite quorum. I will, therefore, proceed to put the Question.

*(Question put and agreed to)*

*(Several Members stood up in their places claiming a Division)*

**Hon. Speaker:** Order, Hon. Members! You do not have the numbers. Those who are standing to claim for a Division do not have the numbers. You are only 12. You need 30 Members. Order, Hon. Sankok!

Hon. Members that Question is dispensed with.

*(Loud consultations)*

## MOTIONS

### ANNULMENT OF THE PUBLIC FINANCE MANAGEMENT (SINKING FUND) GUIDELINES, 2021

*(Hon. (Dr.) Wilberforce Oundo on 10.2.2022)*

*(Debate concluded on 10.2.2022)*

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

**Hon. Speaker:** Hon. Millie, you do not have to shout.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): I am sorry, Hon. Speaker. I thank you for indulging me. When I take chocolate, I get a sugar rush and so you will just excuse me a little.

Hon. Speaker, I just want to seek your guidance and direction in relation to a number of Bills that we are dealing with in the National Assembly. I will give an example of my Bill, the Assisted Reproduction Technology Bill that was passed by this House and forwarded to the Senate. When I followed the Bill in the Senate, I was told that it was caught up with the court ruling – that, between the Senate and the National Assembly, it has not been agreed on the Bills that will be dealt with and my Bill is unfortunately one of those Bills that will not even be introduced in the Senate. My only concern is, as our own Bills are getting stuck in the Senate, in the National Assembly, we are dealing with the Bills that are emanating from Senate. My only concern is that we are making ourselves look like we are a junior House to the Senate yet we are not constitutionally. I am just wondering whether our actions in this House will be vain. Why would we go through an entire process of First Reading, Second Reading, Committee of the whole House, and Third Reading only for the Bill to be stopped in the Senate? Can we find out which of those Bills are not going to be considered by the Senate so that we do not act in vain as the National Assembly? That was very disturbing because even in today's Order Paper, we are considering Bills emanating from Senate, and there are those that I support; like the Mental Health Bill. However, it is unfortunate that our Bills that go to Senate are not being considered. Please, give us direction and guidance because in reaction, we might also decide to defeat the Bills emanating from the Senate in retaliation even when they are good even though I think we are beyond such action. Can the two Houses, through you, help us?

**Hon Speaker:** Just conclude, Hon Millie. There are a few others matters which require the decision of the House. As you can see, the Members who cannot sit here beyond 4.00 p.m. are already taking off. So, before I comment on this, let me just put the Question on Order No.9.

*(Question put and agreed to)*

ADOPTION OF REPORT ON ENVIRONMENTAL MANAGEMENT AND  
COORDINATION (IMPACT ASSESSMENT AND AUDIT) REGULATIONS

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Environmental Management and Coordination (Impact Assessment and Audit) (Amendment) Regulations, 2016, laid on the Table of the House on Wednesday, November 10, 2021, and pursuant to the provisions of section 18 of the Statutory Instruments Act, 2013 and Standing Order 210 (4) (b), annuls in entirety the Environmental Management and Coordination (Impact Assessment and Audit) (Amendment) Regulations, 2016, published as Legal Notice No. 149 of 2016.

*(Hon. Charles Njagagua on 10.2.2022)*

*(Debate concluded on 10.2.2022)*

**Hon Speaker:** Again Hon. Members, including the Member for Nyandarua, who I urge to take his seat, I want you to participate in this one.

*(Question put and agreed to)*

Hon. Members, I wish to make an observation. The two businesses appearing under Order Nos.9 and 10 relate to the work of the Committee on Delegated Legislation. I am sure the Chair, the Vice-Chair and the Members of the Committee must have seen the Order Paper. Surely, what does it say when they are all absent? Suppose the House voted against them? Surely, Members, you have travelled all over the world benchmarking but you have not learnt these simple things. If business is in your name, you should be in the House. I commend the Member for Mvita, the Chair of Public Investments Committee (PIC) and several other Chairs of Committees who are always here when they have business in their name. Also, the Chair of the Departmental Committee on Justice and Legal Affairs does the same.

When business is in your name, it is only fair that you should be in the House. Maybe, the Member for Suba North should engage you at the Centre for Parliamentary Studies and Training (CPST) to do some refresher training. It does not reflect well on you as a Chair of a Committee when your business is coming up for decision and you are absent. No wonder Hon. Sankok was spiritedly trying to negate.

Hon. Members, on the issue raised by Hon. Millie Odhiambo, I find myself completely lost for words. The Senate says that the Bill was caught up by a court ruling but that is not correct. In fact, the entire of the High Court decisions, save for three – one of which the House considered last week, namely, the Sacco Societies (Amendment) Bill, as well as amendments to the National Health Insurance Fund (NHIF) (Amendment) Bill and a few sections of another law where the Court of Appeal affirmed the findings of the High Court; all the others were set aside. You should go and read that very lucid judgement by the Court of Appeal judges. I do not know who interprets these things.

In any event, if the quarrel was that the Senate was not involved, the mere fact that we referred that Bill to the Senate is explanation enough that we appreciate that the Bill is one that concerns the counties. That is the only contention. It is just misapprehension of the provisions of Article 110 (3) of the Constitution. If we have referred the Bill to them, they should just say that there should have been some letters between the two Speakers. Should the letters supersede the fact of the Bill being referred to that House for them to deal with in appreciation of the fact that the Bill concerns the counties? It is a matter of functions. That is the argument. I do not understand what is happening in that House. There is a big disconnect.

As you know, many of our Committees were busy conducting public participation and considering some of the Bills that they referred to us. The Senate went and republished them afresh. They have caused total confusion yet there was an agreement that moving forward, they will get the Bills. I have even said that if they want Bills to do with the Supplementary Estimates, they should get them. We are not legislating for ourselves; we are doing so for Kenyans. It is a big challenge. It is work in progress. We are still doing consultations. Hon. Millie, do you still have something you want to say on it?

**Hon (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Speaker for your indulgence. I was just wondering whether you could write a letter to the Speaker of the Senate just to make that clear. I told them that we could also reciprocate and stop dealing with their Bills but

we need to be the more mature House. Let us deal with the Bills that come here. In the meantime, please, write to them and clear the air on that matter.

**Hon. Speaker:** I have written thrice on this matter without receiving any replies. Maybe, there is some truth to the old saying about Mohammed going to the mountain. Maybe, I should get Hon. Kimunya, Hon. John Mbadi, Hon. Junet, Hon. Wangwe, Hon. Angwenyi and Hon. Mbui to accompany me to that mountain.

**An Hon. Member:** And Hon. Sankok.

**Hon. Speaker:** No, if you bring Hon. Sankok things will not work.

*(Laughter)*

Hon. Duale is fully aware of the challenges we have experienced. We will continue discussing. We can only resolve these matters through discussions because they do not respond to letters.

Hon. Eseli, I see your hand is up.

**Hon. (Dr). Eseli Simiyu (Tongaren, FORD-K):** Hon. Speaker, what you are saying is causing a lot of concern not just for us in the House but also for our constituents out there. They are deeply concerned because we passed a very important Bill in this House which touches on the livelihoods of the people in the sugar belt. That Bill is, again, stuck in the Senate. I am very surprised because the Speaker of the Senate comes from the sugar belt. With the Bill stuck there, his own people are suffering. The Speaker of the Senate does not seem to see the suffering of his people.

It is true that if the mountain cannot come to Mohammed then Mohammed should go to the mountain. Perhaps the solution you come up with might be the best way to resolve this matter once and for all, so that the nation does not continue to suffer at the hands of the Senate.

**Hon. Speaker:** Hon. Members, maybe, we need to pursue the negotiations route because I expected that a response would come saying that they will not read those Bills even for the First Time. The Bills have not been read for the First Time. Several of them are just lying there and there is no formal communication as to their fate. So, we just hang in the balance. It is true that we are considering quite a number of Bills emanating from the Senate, majority of which are Private Members' Bills given that over 96 per cent of all national legislation is considered by this House. It is the design of the Constitution and there is nothing much one can do. We will try to put that pressure. The list is long. The Bill by Hon. Millie Odhiambo is at No.23 and it had been forwarded to the Senate on 20<sup>th</sup> December 2021. There are several other Bills, including those ones of 2019. There is even one which was submitted in 2018 and a few others in 2021. It is a pity but let us not debate this issue.

**Hon Dr. Robert Pukose (Endebess, JP):** On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. Pukose, what is your point of order?

**Hon Dr. Robert Pukose (Endebess, JP):** Thank you, Hon. Speaker. Having gone through the list, following your Communication on the 14 Bills that are scheduled by the House Business Committee for every Tuesday for the 55 sittings, you have only scheduled three Bills for Committee of the whole House. The rest of the Bills are for Second Reading. However, I am not seeing my Bill – the Kenya Food and Drugs Authority Bill – among the 40 that have been scheduled yet it is supposed to be among the three given that it is a 2019 Bill. What is happening to that Bill? The Departmental Committee on Health tabled their Report and everything went well

in terms of progressive movement in relation to that Bill. Therefore, I expected it to be among the three scheduled for consideration at the Committee of the whole House stage.

**Hon Speaker:** It is awaiting consideration by the Committee of the whole House. Let us move to the next Order!

## BILL

### *First Reading*

#### THE ELECTIONS (AMENDMENT) BILL

*(Order for First Reading read - Read the First Time and referred to the relevant Departmental Committee)*

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

**Hon Speaker:** Hon Aden Duale, what is your point of order?

**Hon Aden Duale** (Garissa Township, JP): Hon. Speaker, I rise under Standing Order No.127 (2) regarding this Bill.

Hon. Speaker, you will remember what transpired when we were considering the Political Parties (Amendment) Bill, 2021. I do not want to refresh the minds of Members on what happened. You will recall that there were very many amendments that were proposed by Members to that Bill, which was an indication that a proper public participation was not conducted. You will also remember that after your direction, the winnowing process was not done well. It was bungled and there was no proper harmonisation of the amendments that actually took place and hence the chaotic scenes that we saw during the Committee of the whole House. I would go on and on to say what was clear. I do not want to cast aspersions on the Departmental Committee on Justice and Legal Affairs (JLAC) but in my honest opinion, they never conducted an effective public participation with the reading of the Standing Orders and the Constitution.

In this regard, allow me to go on record that this raised the issue of whether we have faith in the Departmental Committee on Justice and Legal Affairs, particularly on this Bill. From precedence in this House in 2016 and at the closure of the 11<sup>th</sup> Parliament to pave way for the 2017 general elections, the Elections (Amendment) Bill was brought by the Independent Electoral and Boundaries Commission (IEBC). It was in the wisdom of the people of Kenya, all stakeholders both within Parliament and outside, to form a Joint Committee of both Houses, led by Hon. Senior Council, James Orendo and Governor of Meru, Hon. Kiraitu Murungi to deal with the matter so that the people of Kenya could get a free, fair and peaceful election based on the laws that were passed. I think that set precedence and nobody challenged that piece of legislation. I was in the House then.

Let me also go on record that I have nothing against the Chair of the Departmental Committee on Justice and Legal Affairs Committee, Hon. Muturi Kigano. I have a lot of respect for him. Neither do I lack faith in the current Membership of that Committee. Also, there was the removal of many key Members of the Committee who were not just Members but seasoned lawyers. An example is Hon. Otiende Amollo, who most of us would consider the voice of balance and reason, but he is no longer a Member of the Committee.

Hon. Speaker, what do I want you to do and what is the way forward? I propose that the Bill, having been read the First Time, should not be committed to the Departmental Committee on Justice and Legal Affairs. Instead, allow us some time, preferably the next 48 hours; to consult the leadership across the political divide and beyond across politico- religious ideology and across professions and then, maybe, we appoint a Special Committee to consider this Bill, undertake very extensive public participation and thereafter report to the House.

As you are aware, Standing Order 127 (2) provides that, this House may resolve to commit a Bill to a Select Committee established for that purpose. Indeed, this will not be the first time this House will be resolving to form a Special Committee within the reading of that Standing Order, to consider a Bill. You will agree with me that for all contentious constitutional issues, appointing a Special Committee is the way to go so as to allow for proper consultation and extensive public participation. Elections in our country are very emotive issues and the more reason why we need a Special Committee of a bipartisan nature with Members from the legal fraternity, very seasoned Members from both sides of the political divides and the Independent Members so that we build a thorough consensus process that will be right for this Bill.

Dealing with this Bill in the ordinary way may spell doom to the legislative process. We do not want to go the route we went with the Political Parties (Amendment) Bill, in respect of which more than five key organisations have gone to court to challenge its legality. We do not want everything we pass in this House to be challenged in court. We want proper consultations to take place because the Elections Laws are very emotive. Finally, if we choose to go through the route we took last year with the Political Parties (Amendment) Bill, through the Departmental Committee on Justice and Legal Affairs, then three things may happen. We may witness the same case, if not worse. We may witness a million and one amendments on the Floor of the House. We may witness a failed winnowing process. We may witness a failed Committee of the whole House. All Members who have issues with the Bill may decide to attend the meeting of the Departmental Committee on Justice and Legal Affairs and cause more chaos. Now that many Members have been removed from Committees, the only option left is for them to write to you asking to attend as many Committee meetings as possible.

Those of us who were in the 11<sup>th</sup> Parliament remember when we were dealing with the reports of the purported impeachment of the Auditor-General, the issues of the National Youth Service (NYS) and the current Governor of Kirinyaga. The Committee meetings were chaotic because non-Members were attending in big numbers. We do not want to take that route. The Bill might end up in the corridors of the courts of law. The timeframe left before the elections is six months. We do not want an issue. Do not allow this.

In this regard, I propose that you do not refer this Bill to the Departmental Committee on Justice and Legal Affairs for now to allow for consultations. I heard the Leader of the Minority Party and many other Members raising concerns. We have heard the different political parties represented in this House raising their concerns. Immediately after the First Reading, you should allow us to consult for not more than 48 hours and propose a Motion to the House to constitute a special Committee for the Bill, pursuant to Standing Order No. 172 (2). I am not looking for a job. I am a ranking Member who is busy in the Public Accounts Committee and other works. Any Member of this House can chair and be a Member of that Committee. I am not saying that it should be me.

Finally, having constituted the special Committee, the House and its leadership should allow it to conduct a very extensive public participation exercise and have a report tabled in the House for consideration, in accordance with the Standing Orders.

I seek your indulgence and beg you to give us direction.

*(Several hon. Members stood in their places)*

**Hon. Speaker:** I see the Chair of the Departmental Committee on Justice and Legal Affairs. Let me hear him first.

**Hon. Clement Kigano** (Kangema, JP): Thank you, Hon. Speaker. I have always had a lot of respect for the ranking Member. However, his statements this afternoon appear to impute some improper motive by making a claim of incapacity or incompetence on a Committee which has been constituted and approved by this House. The ranking Member had every right to remove my name or any Member's name or oppose any change. This legislation must be viewed like any other. The fact that elections are about to ensue does not make it a special Bill.

With a lot of respect, there is a tendency in this House for Members not to consider themselves as citizens with national responsibilities. They view everything in terms of the polarised views held by different parties. It becomes impossible for us to legislate smoothly. If yours truly said that the sun rises in the East and sets in the West, they will say the opposite is true just for the sake of opposing. I emphasise that there are no special circumstances that remove this Bill from the normal procedures as envisaged by the Standing Orders. There is no single aspect of the Bill that cannot be duly considered in a normal way. The ranking Member has every right to debate during Second Reading and propose amendments, or oppose. There is even public participation! I am not addressing you but the Speaker. You will hear it through the Speaker. I do not want any other interruptions. Nominee 001, do not be seen to be impeding normal debate at all times.

Hon. Speaker, I rest my case by saying that this Bill should be considered in the national interest and not partisan interest.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon Angwenyi.

**Hon. Jimmy Angwenyi** (Kitutu Chache North, JP): Thank you, Hon. Speaker. The matters raised by my former leader are very important, but I want to seek clarification from you. Can we dissolve a House Committee, say, a Departmental Committee without a Special Motion being brought here for us to discuss and disband it? If the Committee is incompetent, then we should disband it! How do you disband a Committee without a proper Motion being brought to the Floor for us to decide whether or not we want it disbanded?

Hon. Speaker, with all due respect, let us, please, not cast aspersions on the ability of any Member of this Parliament.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon Otiende Amollo.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Speaker. I am wading into this debate rather reluctantly except to say something on the proposed amendment. I have looked at them and I think most of them are positive, but there are about four or five distinct areas that require fairly robust engagement. At an appropriate time, we could perhaps get into that. It is important to note that elections in this country are always very emotive, especially during the pre-

election period. There are always questions of amendment to the laws controlling elections so much so that I am made to think it is now a practice in this country. In the previous election, a special joint committee had even been established. In my view, as we exercise caution in amending the election laws, I think it is important to develop consensus where possible. This is because for the short time that I have been in this House, I have come to learn that in most cases, the usual procedures, namely, First Reading, Second Reading, Third Reading and Committee of the whole House are never really arenas for developing consensus. They are more of voting and consensus would usually appear to require to be built outside the House.

Hon. Speaker, the processes that we go through and amendments that we deal with, inevitably, go to the Senate and it unfortunately reopens the same thing. To the extent possible and cognisant of the periods that we are talking about, I think it is in everybody's interest that our elections are not just free and fair but that they are seen to be free and fair because that leads to acceptability. It is unfortunate that after we have dealt with a Bill as the National Assembly and it goes to the Senate, they at times do their thing and something good that should have passed fails to pass. This is because there are some parts that are really good and helpful but there are some parts that require consideration. I would have wished that there was a way in which even outside of the Houses, consensus and understanding is built both between the Senate and the National Assembly. When it comes to the various stages in this House, it should not ignite personal differences between the various factions or even sibling rivalry that sometimes arises between the National Assembly and the Senate.

I thank you.

**Hon. Speaker:** I wish everybody can make it as brief as Hon. Otiende Amollo. Hon. Kimunya.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Speaker. I can remember we brought a Motion to shorten the publication period of this Bill so that we can have more time for actual deliberations on it. We had a faction of this House which wanted to frustrate this Bill. They opposed it and brought all manner of filibustering. Unfortunately, 14 days are over and the First Reading has been done. I can see Hon. Duale continues with that filibustering. It is so clear in the Standing Orders that once a Bill is read a First Time, it shall be committed to the relevant Departmental Committee.

A few minutes ago, there was a feeling in some quarters that, perhaps, the Health Laws (Amendment) Bill would not be carried and there was pressure to put the Question. Hon. Speaker, you guided the House accordingly that we would go by the Standing Orders. If the Standing Orders tell us that upon the First Reading, the Bill shall be committed to the relevant Committee, we should go by that. Every Member is at liberty to go and canvass their issues in that Committee. This is a very small Bill and the issues can be clustered into four groups.

As Dr. Otiende Amollo has said, because of misinformation, the four issues seem to have generated a lot of debate in the media. Once the Independent Electoral and Boundaries Commission (IEBC) clarified the matter, the media kept quiet. Even those who were asking me, kept quiet and said they saw the clarification and were happy. It was mischievous reporting by the media that through this Bill, for example, we would stop live transmission. This was stopped by the courts. We are carrying sections of this law in the principal Act which were outlawed by the courts. So, they have no effect and this Bill is removing them from the statute books. It is not removing them for the sake of it, but because the courts outlawed them. When you remove the four which were outlawed by the courts, the few others are about re-organisation of some things

to accord nomenclature and other things. It is a straight forward Bill and I expected it to be the least controversial. But, there are Members who have sworn that anything they do not like must fail. They have also realised they do not have numbers hence they know it will pass anyway.

So, trying to create all manner of things and impute some ill motives on a Committee and say it was not competent enough to bring a Report, is so unfortunate. This is because nobody here should stand and cast aspersions on another Member. Even when we were appointing the Committee on Powers and Privileges, we were very careful not to impute competence motives on a Member. In fact, we went back to reconstitute that Committee on account of gender and not competence of Members. It is so unfortunate that the Departmental Committee on Justice and Legal Affairs, which works so hard, should suffer this definition on the Floor. That, they are incompetent to handle a simple Bill like the Elections (Amendment) Bill. They have handled bigger Bills!

Hon. Speaker, I think we need to remove politics from the reality and treat all Bills as the same because there is no special Bill. Every Bill that is published is given 14 days for public participation. Members are at liberty to give their views for or against it on the Floor of this House. Unfortunately, like I said regarding the Health Laws (Amendment) Bill, Members made all manner of noises and contributions in funerals, but when it came for debate in this House, there was no debate because nobody was here to contribute. If people are passionate about this Bill, on the appointed day, let them come here and give all their views. Indeed, that will form the basis for even developing a consensus. If Members do not even come to the House to contribute and share their issues, where do we even start building a consensus without knowing the extreme issues?

Hon. Speaker, I encourage that we use the Standing Orders to allow the Committee to do its work. We should also allow Members to come and do their work in the House. Between the Second and Third Readings, we can look at all the issues that have been raised on the Floor and decide whether there are some that are so dichotomous that we now need to bridge them. Short of that, everything else is speculation.

**Hon. Speaker:** Hon. Members, maybe we could do without any further debate on this one. Fortunately, it is so straightforward that I do not even know whether there is anything... If you look at the back of the Bill, it states that it concerns counties in terms of Article 110 of the Constitution. Therefore, it will go to the Senate. It does not matter what the Senate does with the Bill. If they amend what you would have passed as the National Assembly, Articles 112 and 113 of the Constitution are clear. You will go into mediation. The process is very well-catered for. Unless there are other extenuating circumstances, I do not see anything to worry about.

You are at liberty to attend any Committee sittings. Hon. Duale will recall that when the Member for Gem appeared before our Committee, we had to tell him that we do not like hearing village stories. If you go before a Committee to advance some parochial village stuff, the Chairperson of the Committee has all the powers to throw you out so that you go to the village and do those things there.

Standing Order No.127 is very clear that once a Bill is read a First Time, it is referred to the relevant Departmental Committee without Question put. Standing Order No.127(2), on which Hon Duale is relying, presupposes that a Motion has already been moved and this House has formed a Committee to which a particular Bill could be referred. At this point, if we were to allow what Hon Duale is saying, we would be hijacking the Bill because it has already been referred to the Departmental Committee on Justice and Legal Affairs without Question put. That has already happened. We would have to come later, consult as he suggests, and bring a Motion here. However,

remember that you will be taking the Bill away from a Committee to which it has already been committed. That would cause confusion.

Besides, we have always encouraged a winnowing process. If Members have many proposals to amend a Bill, it is only fair that they be allowed sufficient time before the relevant Committee to go and canvas their viewpoints. In the event that those viewpoints are not taken by the Committee, a Member will still have another opportunity during the Committee of the whole House to come and appeal to a larger audience. All these mechanisms are provided so that no Member feels disadvantaged.

Even if it is a matter to do with elections, let us not make it a matter of life and death. I was very surprised by some of you who accompanied me to the Commonwealth Parliamentary Association (CPA) meeting in Gaborone, Botswana in 2018. The delegation included Members of this House and the other one.

The way you were discussing the elections of 2022 in Gaborone, and that was in August, they started asking whether we were going into elections in December 2018. All those other countries have since held their elections; Botswana, Namibia, Tanzania, Uganda, Zambia, Ghana and many others. I mean since the day when Kenyans were discussing about their 2022 elections, those countries have held their elections and nobody heard them talk about it.

I think in Kenya, we need to ask ourselves what kind of human beings we are that elections are the only thing we debate for five years continuously. Actually, our neighbours and particularly within the continent, think we are funny. I do not know what kind of human beings we are.

*(Loud consultations)*

Surely, let us not make elections a matter of life and death. There will be life after the elections and I believe there will be Kenya beyond all of us. So, the elections should never really excite us so much. If this Bill has anything that the majority of you feel is not good for the holding of elections, please, as many as you are able to assemble, just group yourselves then come and shoot those things down. That is the way it happens in any democracy in a legislative process. For the time being the train has left the station.

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

Hon. Sankok, the train has left the station now that the Bill is already committed to Departmental Committee on Justice and Legal Affairs. I think in fairness, let us have confidence in what this Committee is going to do. When they advertise for public participation, whatever views you have... Let us consult many bodies because there are very many of them out there with a lot of expertise on elections. It is only fair that many of you should consult them. Ask them how a clause impacts on the electoral process so that they can give you their views.

I know the Committee will invite all manner of relevant stakeholders and even those who have no views. All of them are invited to go before the Committee but like I said earlier, let the views collected be analysed by this Committee. Whether it agrees or disagrees with whatever views that are presented, please, let us have a record of it so that every Kenyan who presents their views feels they were considered but rejected for reasons a, b, and c.

I think it is only fair we do this because it happens this way in many other jurisdictions I know of. People appear before Committees and advance whatever positions on any matter, but the

Committee finally makes a decision to either agree with a presenter or disagree for whatever reasons, which in fairness must be stated. That is why this is a House of records. So, if you are rejecting a particular view point, let it be recorded so that history will judge you. People will see this person or expert appeared before you, preferred this particular position, but the Committee disagreed. When you brought your Report, did the House also agree with you or did it overturn your reasoning? This is the way it happens in most functioning democracies and I want to imagine ours as one of them. Those are some of the tenets I think we must inculcate in ourselves.

So, let the matter go there, but I have not in any way stopped Hon. Duale from proposing that Motion, which, if done, will go through the normal process.

Hon. Sankok, it is not on this, is it?

*(Loud consultations)*

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Speaker. I rise under Standing Order No.83 to seek your guidance on the constitutionality of the Elections (Amendment) Bill, 2022. Even as we say that elections are not a matter of life and death, they are an emotive issue.

Article 137 of the Constitution provides for qualifications for election as President. It states that a person qualifies for nomination as a presidential candidate if the person is a citizen of Kenya and qualifies to stand for election as a Member of Parliament. The Bill seeks to amend Section 23...

**Hon. Speaker:** Which Bill?

**Hon. David ole Sankok** (Nominated, JP): Yes, Hon. Speaker. I am seeking your guidance on the constitutionality of this Bill. I seek your indulgence.

**Hon. Speaker:** I did not even get what he was... Hon. Sankok, is it possible for you to withhold that point until we commence the Second Reading? The Bill has been referred to a Committee of this House. If they find that any proposed provisions in the Bill are unconstitutional, they can report to the House accordingly. It is your Committee.

**Hon. David ole Sankok** (Nominated, JP): Well guided, Hon. Speaker. I always seek your indulgence because you are a mobile encyclopaedia when it comes to the Constitution of Kenya. When I am speaking, always protect me from the likes of Kimunya and Kanini Kega. I should not be interrupted by them. I am seeking your indulgence. I do not need them to advise or guide me. What are they guiding me for? My friends, shut up and let me prosecute my points.

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, let us use temperate language. It is almost a quarter to Five O'clock and Hon. Sankok has been here since before 2.30 p.m. Maybe he might need more sugar in the body. Please, let us use temperate language and allow for...

*(Loud consultations)*

They have heard. They will not interrupt you, Hon. Sankok. Except that Hon. Sankok also interrupts people a lot. Member for Dagoretti South, what is your point of order? I hope it is not on the same.

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**Hon. John Kiarie** (Dagoretti South, JP): Hon. Speaker, some of us who are first-time Members of Parliament benefit greatly from your wisdom, institutional memory and guidance. That is why I rise to ask if I am in order to raise a constitutional issue as is provided. We are guided that a constitutional issue can be raised at whatever point. That is why I rise under Standing Order No.83 seeking your guidance and direction on the constitutionality of the Elections (Amendment) Bill, 2022.

I stand on a preliminary rostrum of constitutionality because Article 38(3) of the Constitution provides for political rights of every citizen without unreasonable restrictions so that they can be registered as a voter. As it is, even before it goes to the Committee, we are seeing provisions in these amendments that limit this freedom and right of Kenyans, especially for voters in Nairobi where the borders are so fluid. The moment we start talking about restrictive requirements on a voter like the need for one to be a resident – it is not very well-defined - or conduct businesses in places they want to be registered, or to possess residential buildings or land, I have to rise and ask: is it constitutional for this Bill to be on the Floor of the House when it goes against the tenets of the Constitution?

Hon. Speaker, reading this Amendment Bill and seeing it in light of Article 38(3) of the Constitution, I wish to seek your guidance on whether this Bill is properly before the House even before we proceed to have it on the Floor.

**Hon. Speaker:** Which particular clause?

**Hon. John Kiarie** (Dagoretti South, JP): Clause 5 of the Bill provides that a voter may not transfer his or her registration unless, on the date of the application to transfer the registration, the voter has been;

- a) ordinarily resident;
- b) carrying on business;
- c) employed; or
- d) possessed land or residential building in a constituency that he or she intends to transfer his or her registration for at least six months immediately preceding the date of the application for transfer of registration.

Hon. Speaker, this will be a huge hindrance to Kenyans, especially voters in Nairobi who will be willing to transfer their votes or register in other constituencies. For example, when there is demolition of houses along the railway line in Kibra, there is always an overflow of residents coming into Dagoretti South Constituency. In my view, having such a provision in law is actually going against the tenets of Article 38(3) of the Constitution. I want to seek your indulgence because as first-time Members of Parliament, we benefit a lot from such engagements. We are still learning. At what point would I be in order to raise a constitutional matter on a Bill like this particular one that is appearing before us?

Hon. Speaker, it should also be understood, more so by the Leader of the Majority Party, that there are no people who come here with ill intent. In fact, it is not the business of any Member of the House to shoot down anything. This is a House of engagement and debate. Everyone has a right to raise an issue at whatever point as long as it is provided for by our Standing Orders and it is in line with the Constitution of this country.

Thank you very much, Hon. Speaker, for your indulgence. I want to seek your guidance and direction concerning Clause 5 of the Bill.

*(Loud consultations)*

**Hon. (Dr.) Robert Pukose** (Endebess, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. Pukose, what is your point of order? Let us be fair.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker. You have always guided this House that when it comes to constitutional matters, questions can be raised at any stage. So, pursuant to Standing Order No. 83, I rise on a point of order to seek that you give your guidance on Clauses 15 and 16 which amend Sections 27 and 28 of the Act by deleting reference to the nomination rules and membership lists and substitute therefor with, “a copy of the political party’s nomination rules certified by the Registrar of Political Parties and a copy of the membership list certified by the Registrar of Political Parties”, respectively.

Hon. Speaker, this means that parties will have to rely on nomination rules and membership lists issued by the Registrar of Political Parties. This negates the freedom of the political parties to determine their own nomination rules and have their own membership lists which may contravene a free and fair nomination process. In essence, the Bill seeks to transplant what was in the Political Parties (Amendment) Bill, 2021, that this House passed in a chaotic manner, to the Elections (Amendment) Bill, 2022. If we are not careful, we may witness a replica of the Political Parties (Amendment) Bill chaos once again.

Hon. Speaker, I further note that Article 88 (4) (d) of the Constitution bestows upon the Independent Electoral and Boundaries Commission the exclusive role of regulating the nomination process of political parties. However, clauses 15 and 16 which amend sections 27 and 28, seek to take this power from the IEBC and vest it in the Registrar of Political Parties. The Registrar will have power to regulate the nomination process through issuance of nomination rules and membership lists for political parties.

In my view, these clauses offend Article 88 (4) (d) of the Constitution and cannot stand. In this regard, I seek your guidance on the constitutionality of the Elections (Amendment) Bill No. 3 of 2022.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, there is just some small administrative matter, which you can only blame the Chairperson of the Budget and Appropriation Committee.

*(Hon. Speaker consulted with the Clerks-at-the-Table)*

Sorry, it looks like I may have no option but to allow Hon. Sankok to complete what he was prosecuting. Put all the issues together and I will make a ruling. In the meantime, the Bill stands committed to the Justice and Legal Affairs Committee (JLAC). Nevertheless, I will make a determination on the issues you have raised. Was your issue also on Article 38?

**Hon. David ole Sankok** (Nominated, JP): Hon. Speaker, I am on Article 137 of the Constitution that provides for the qualifications of the President. It provides that a person qualifies for nomination as a presidential candidate if the person is citizen of Kenya and qualifies to be elected as a Member of Parliament (MP), among other qualifications.

The Bill seeks to amend Section 23, which is a replica of Article 137 of the Constitution. In Clause 12, it proposes to do away with the concept of nomination of presidential candidates. This is not just the case of presidential candidates. Articles 99 and 193 of the Constitution have been replicated in Sections 24 and 25 of the Election Act, which provide for the nomination of MPs and Members of the County Assemblies (MCAs). The Bill completely does away with

nomination and introduces a new strange concept called, ‘Registration of candidates.’ If you want to confirm this, read clauses 2 (b) and (d), 11, 12, 13 and 14 of the Bill. The concept of registration of candidates with the IEBC instead of nominations is strange and unknown to the Constitution of Kenya. It is a complete departure from the Constitution.

Hon. Speaker, in this regard, I seek your guidance on the constitutionality of the Election (Amendment) Bill of 2022.

**An Hon. Member:** On a point of order.

**Hon. David ole Sankok** (Nominated, JP): As he rises on a point of order, I will finish by saying that the issue of elections is very emotive in Kenya. All through, Kenyans are friendly: they share sugar, they form businesses together but only fight and kill each other during elections. We shed a lot of blood every electioneering period. Therefore, we have to discuss this issue soberly and make sure that it is in line with our Constitution. I seek your indulgence because as Hon. Kiarie has said, we have always benefited from your guidance every single day, especially us new Members.

Hon. Speaker, how I wish to see you as the CEO of this Republic for you to guide us even further. I do seek your guidance on the matters that I have raised.

**Hon. Speaker:** How is it that the Member for Seme does not chose to deal with... Do you have a card?

*(Hon. (Dr.) James Nyikal spoke off record)*

How is it that it does not show? Hon. (Dr.) Nyikal, you always...

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Speaker. I want to seek your guidance and, perhaps, you will rule on it. If a point has been raised and you have given your guidance, for example, in this case, you said that one can raise a constitutional matter at any time, I think it is better done at the start of the Second Reading. You see, this is a deliberate attempt to raise exactly the same issues. I do not think it matters whether the constitutional issue is in clauses 1, 2, 3 or any other. The ruling you had made should apply to all. It is not that it was lost. It is just that my colleagues are making a deliberate attempt. Is it in order to ignore the advice which they trace and find useful and then proceed as they have done?

**Hon. Speaker:** Very well. Thank you, Hon. (Dr.) Nyikal. This is a matter you may refer to as fairness. When Hon. Sankok was raising his issue, I was engrossed in other administrative matters here and I did not hear him. However, that does not matter as we will be able to address all those issues. We must also know that it is in the Constitution that the Speaker has no vote. Look at Article 122 – the Speaker has no vote. Nonetheless, I will address the issues raised as they are fairly straightforward matters which I can address. However, where there are matters that normal legislative processes can deal with, obviously, we will allow the legislative process to deal with them.

Meanwhile, the Bill remains committed to JLAC but I will be addressing the issues that have been raised. Hon. Sankok began with Article 99 *vis-à-vis* 137. Do you want the entire Article 137 or 137 (2) specifically?

**Hon. David ole Sankok** (Nominated, JP): The entire Article 137.

**Hon. Speaker:** In Article 99, do you want the entire, 99 (1) or 99 (2)?

Hon. Kiarie raised the issue of Article 38 (3) which deals with political rights in the Bill of Rights, Chapter 4.

Hon. (Dr.) Pukose, did you raise an issue on Article 175 and 193?

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Yes. Article 193.

**Hon. Speaker:** Hon. (Dr.) Pukose, also raised an issue on Article 88 which establishes the IEBC. It gives it functions in general form, some of which are better elaborated in the IEBC Act, which was passed in this House. And not least, of course, the Article gives the IEBC power to be responsible for the conduct of party nominations—the place by which political parties conduct nominations, and even the resolution of disputes. It is very clear, if you go to Article 88(4)(e)(d) and (e). But, we will deal with that, including continuous voter registration so that those who are evicted from Kibra are still entitled. They can continue to register. So, of course, continuous voter education and all of that is captured in Article 88(4). All of them are listed down there. We will deal with that.

Hon. Kimunya, do you want to weigh in on this?

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, it is just additional information. As you consider the pleas by the three Members who have raised those constitutional issues, including interference with the work of the Independent Electoral and Boundaries Commission, I just want for the record to confirm that the contents of that Bill were actually handed over to the Attorney-General's office and to my office, from the IEBC. So, the actual principal drafter of the Bill is the IEBC. Hence, it will be important to just note that the IEBC was actually doing it to harmonise the law with the Constitution and to avoid the duplication that has hitherto been there between the IEBC and the Office the Registrar of Political Parties. So, it is just to have that in mind—that the IEBC has been the principal actor in the development of this law and has brought those amendments because it is in the best interest of a free and fair election in this country.

Most importantly, it is also to adhere to, and put into effect, the pronouncements by the courts arising from the challenge of the 2017 election. All the pronouncements that were made by the courts on the IEBC have now been brought in to this House so that we amend the law to make sure that the electoral process is better for the 2022 election. I just wanted to also have that on record.

**Hon. Speaker:** The Chair of the Departmental Committee on Justice and Legal Affairs, do you also want to weigh in or we can proceed?

**Hon. Clement Kigano** (Kangema, JP): Are these matters going to be considered in the Second Reading or are you going to give a ruling?

**Hon. Speaker:** Whatever it is that I am going to do does not in any way impede your work.

**Hon. Clement Kigano** (Kangema, JP): I was just trying to request that, in considering KJ's presentations, you note he is a Member of my Committee and he can do it. KJ is a Member of the Departmental Committee on Justice and Legal Affairs. You also, perhaps, may consider the import of the phrase, "Undue restrictions". There is a sub-article 38(3) which says that every adult citizen has the right to vote and get registered to vote, without unreasonable restrictions—whether what KJ was talking about is reasonable or unreasonable, there is an operative clause. I am just saying that there is a rider there, 'unreasonable restrictions', to consider whether what is proposed by the Bill in terms of the constitutionality is unreasonable or reasonable restriction.

Thank you.

**Hon. Speaker:** Well. We will consider all that. In the meantime, the Hon. Member for Dagoretti South will, obviously, also, as a Member of your Committee, be at liberty to engage in the Committee and discuss better than on the Floor.

Hon. Members, for the convenience of the House, this is a matter that was discussed by the House Business Committee. With great input from Hon. (Dr.) Makali Mulu, we agreed, as the

House Business Committee, that at whatever time, in today's proceedings, if the Budget and Appropriations Committee (BAC) is ready with its Report on the Budget Policy Statement (BPS) and various other related matters, it would be permitted by whoever would be on the Chair to table whatever documents. So, for the convenience of the House, I revert to Order No. 5 and Order No. 6.

Hon. Kanini Kega.

### PAPERS LAID

**Hon. Kanini Kega** (Kieni, JP): Thank you, Hon. Speaker. Thank you so much for your indulgence. I beg to lay the following Papers on the Table of the House:

Reports of the Budget and Appropriations Committee on its consideration of:

- (i) The Budget Policy Statement for the Financial Year 2022/2023 and the Medium-Term Framework.
- (ii) The Medium-Term Debt Management Strategy for the Financial Year 2022/2023.

### NOTICES OF MOTIONS

#### REPORT ON THE BUDGET POLICY STATEMENT FOR THE FINANCIAL YEAR 2022/2023

**Hon. Kanini Kega** (Kieni, JP): Thank you, Hon. Speaker. I beg to give notice of the following Motion:

THAT,, this House adopts the Report of the Budget and Appropriations Committee on the Budget Policy Statement for the Financial Year 2022/2023, laid on the Table of the House on Tuesday, 15<sup>th</sup> 2022 and:

- (a) Approves the Budget Policy Statement for the Financial Year 2022/2023;
- (b) Makes the policy resolutions as contained in the Report;
- (c) Approves the Budget ceilings for the Financial Year 2022/2023 as set out in the financial resolutions contained in the Report; and
- (d) Further, resolves that the Budget Policy Statement, so approved, forms the basis for the introduction of the Division of Revenue Bill, 2022.

#### ADOPTION OF REPORT ON THE MEDIUM-TERM DEBT MANAGEMENT STRATEGY

**Hon. Kanini Kega** (Kieni, JP): I also beg to give notice of the following Motion:

THAT, the House adopts the Report of the Budget and Appropriations Committee on the Medium-Term Debt Management Strategy for the Financial Year 2022/2023, laid on the Table of the House on Tuesday, 15<sup>th</sup> February 2022 and:

- (a) Approves the Medium-Term Debt Management Strategy for the Financial Year 2022/2023; and
- (b) Further makes the policy resolutions as contained in the Report.

I thank you, Hon. Speaker.

**Hon. Speaker:** The other decision which had been taken by the House Business Committee is that should you lay your two Reports and give notice today, we would give Members a chance to go through those two Reports. Debate on the two businesses commences tomorrow

afternoon. Therefore, I direct that the business on the two Reports be included in the Order Paper for tomorrow afternoon, Wednesday 16<sup>th</sup> February 2022.

I see the Member for Mwea has an issue.

**Hon. Josphat Kabinga** (Mwea, JP): Hon. Speaker, I do not have any issue. I do not know how the two buttons went on. But, thank you, Hon. Speaker. I think one of the things is just to congratulate you for what is going on. I think that is what nature wanted me to do.

*(Laughter)*

**Hon. Speaker:** Thank you, Hon. Kabinga.

**Hon. Speaker:** Order No. 12 is the Special Motion that Hon. Mboni Mwalika is to move.

### SPECIAL MOTION

#### APPROVAL OF NOMINEE TO THE EQUALISATION FUND ADVISORY BOARD

**Hon. David Mboni** (Kitui Rural, CCU): Hon. Speaker, I beg to move the following Special Motion:

THAT, taking into consideration the recommendations of the Departmental Committee on Finance and National Planning in its Report on the recruitment of the National Assembly's nominee to the Equalisation Fund Advisory Board, laid on the Table of the House on Wednesday, 9<sup>th</sup> February 2022 and pursuant to the provisions of Section 8 of the Public Appointments (Parliamentary Approval) Act, 2011 and paragraph 4(1)(d) of the Public Finance Management (Equalisation Fund Administration) Regulations, 2021, this House approves the appointment of Mr. Abdullahi Adan Khalif to the Equalisation Fund Advisory Board.

As you are all aware, on Tuesday 9<sup>th</sup> November, 2021 the Departmental Committee on Finance and National Planning started the responsibility of recruiting a nominee of the National Assembly in the Equalisation Fund Advisory Board and for subsequent appointments in accordance with Regulations 4(1) (d) and 4(2) of the Public Finance Management (Equalisation Fund Administration) Regulations, 2021. These Regulations were published by the Cabinet Secretary of the National Treasury and Planning on 29<sup>th</sup> April, 2021 vide legal Notice No. 54 of 2021, pursuant to Section 205 (1) of the Public Finance Management Act, 2012. The Regulations were approved by Parliament on 12<sup>th</sup> October 2021. The Regulations provide a framework for the administration and management of the Equalisation Fund.

Paragraph four of the Regulations provide for the establishment of the Equalisation Fund Advisory Board whose membership, among others, as per paragraph 4(1), comprises of one person from the pastoral community nominated by the National Assembly. Through a letter dated 25<sup>th</sup> October 2021, the Cabinet Secretary for National Treasury and Planning requested the National Assembly to nominate a member to serve in the Equalisation Fund Advisory Board for subsequent appointment, in accordance with Regulations 4(1) (d) and 4(2) of the Public Finance Management (Equalisation Fund Administration) Regulations, 2021. Upon conveying the message from the Cabinet Secretary; the hon. Speaker directed the Departmental Committee on Finance and National Planning to undertake the nomination process competitively and report to the House within set

timelines for final determination and successful appointment of the nominee by the national Treasury Cabinet Secretary.

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

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

Further to this, the Committee was required to constitute a selection panel to undertake the nomination process. In order to kick start the recruitment process, the office of the Clerk of the National assembly placed and advertisement in the print media on Thursday 16<sup>th</sup> November, 2021. The applications were to be received on or before Wednesday 1<sup>st</sup> December, 2021 at 5.00 p.m. East African time. At the close of the application period, the Committee received applications from the following nine names:

- a) Ms. Sophia Yusuf Gure;
- b) Mr. Boniface Otieno;
- c) Mr. Jarso Guyo Mokku;
- d) Mr. Mohamed Ali Farah;
- e) Ms. Nancy Oundo Dalla;
- f) Mr. Mohamed Juma Abdi;
- g) Mr. Abdullahi Adan Khalif;
- h) Ms. Fowzia Ibrahim Sheikh; and
- i) Mr. Victor Poghismo Mengich.

After long listing of the applicants, the Committee undertook shortlisting, where it took into account the following qualifications for application as set out in the advertisement.

- (i) One must be from a pastoralist community;
- (ii) be a Kenyan citizen;
- (iii) hold a degree from a recognised university in Kenya;
- (iv) have at least five years' professional experience in a relevant field; and
- (v) meet the requirements of Chapter Six of the Constitution.

When shortlisting, the Committee scrutinised application documents and established that all the applicants submitted their applications within the set timelines and met the above requirements, except Mr. Boniface Otieno and Ms. Nancy Oundo Dalla who did not meet the requirement within the meaning of pastoralist community.

Based on the criteria provided by the Public Finance Management (Equalisation Fund Administration) Regulations, 2021, the following applicants were shortlisted for nomination for appointment to the position:

- a) Ms. Sophia Yusuf Gure;
- b) Mr. Jarso Guyo Mokku;
- c) Mr. Mohamed Ali Farah;
- d) Mr. Mohamed Juma Abdi;
- e) Mr. Abdullahi Adan Khalif;
- f) Ms. Fowzia Ibrahim Sheikh; and
- g) Mr. Victor Poghismo Mengich.

The names of the shortlisted applicants were published in the print media on Monday 17<sup>th</sup> January 2022. Through the advertisement, members of the public were invited to submit in writing by memorandum on oath, any information on suitability or otherwise of any of the shortlisted applicants to serve as a member of the Equalisation Fund Advisory Board.

The Committee also wrote to the Kenya Revenue Authority (KRA), the Ethics and Anti-Corruption Commission (EACC), the Director of Criminal Investigations (DCI), the Higher Education Loan Board (HELB) and the Office of the Registrar of Political Parties seeking references and background checks relevant to the suitability of the shortlisted candidates. Thereafter, the Committee developed an interview tool for the nomination of applicants for appointment to the position that was adopted as a guide to assess applicants during the interview process.

The candidates were interviewed on 26<sup>th</sup> January, 2022. Each Member of the Committee gave scores to the candidates based on how they performed. The results were analysed by averaging the scores awarded by each Member of the Committee. Upon consideration and determination of the interview, the Committee recommended that the House nominates Mr. Abdullahi Adan Khalif who scored the highest marks of 75.5 per cent for appointment by the National Treasury Cabinet Secretary to serve in the Equalisation Fund Advisory Board, in accordance with Regulations 4(1) (d) and 4(2) of the Public Finance Management (Equalisation Fund Administration) Regulations, 2021. The Report of the Committee contains the details of how the rest of the candidates performed.

Mr. Abdullahi Adan Khalif is a Kenyan from Mandera County born in 1992 and holds a Bachelor's Degree in Economics, second class upper division from the University of Nairobi. He has a cumulative eight years work experience where he has worked in various capacities including consultancy services. Based on how Mr. Abdullahi Adan Khalif responded to questions posed by the panellists, and having met the minimum requirements, the Committee recommended him for the position. He is Kenyan pastoralist from Mandera County holding a Bachelor's Degree in Economics from a recognised University. He has at least five professional experiences in relevant fields and eight years' work experience. He met the requirements of Chapter Six of the Constitution.

Beside the minimum qualification, the committee also paid due regard to the other constitutional requirement principles such as regional and gender balance. It is worth notifying the House that the current Equalisation Fund Advisory Board membership comprises of five persons drawn from Garissa, Isiolo, Marsabit, Samburu and Nairobi counties. It is for this reason that the Committee had to make a delicate balance and in turn held the view that the appointment of a new Member to the board from counties with members already serving in the board will disadvantage other counties. With the new board in place, the incomplete projects that had been started will now be completed and they will achieve their intended purposes.

The Committee would like to register its utmost appreciation to the office of the Speaker, the Clerk of the National Assembly and its secretariat for the logistical and technical support accorded to it during the recruitment process.

With those remarks, I urge this House to approve Mr. Adan Khalif to be appointed as a member of the Equalisation Fund Advisory Board. I invite Hon. Jimmy Angwenyi to second the Motion.

Thank you, Hon. Temporary Deputy Speaker.

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

**Hon. Jimmy Angwenyi** (Kitutu Chache North, JP): Hon. Temporary Deputy Speaker, I rise to second the recommendation of the Departmental Committee on Finance and National Planning. This Kenyan scored the highest marks in the interviews. His appointment also helps us to achieve regional balance. Before his nomination, the Advisory Board had members from Garissa, Wajir, Marsabit and Samburu. There was nobody from Mandera. So, if our recommendation is approved by the House, we will in a sense balance regional representation on the Board.

Hon. Temporary Deputy Speaker, I beg to second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): There are quite a number of Members who have registered interest to speak to this Motion. We shall start with Hon. Keter Gideon.

**Hon. Gideon Keter** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Motion. First, I would like to thank this Committee for approving a very young professional. The nomination of Abdullahi Adan Khalif inspires many young men and women to dream big. Mr. Khalif is a youth. Rarely do young people get the courage to go through such processes. We come from a tradition where young people are marginalised when it comes to government jobs, especially if someone comes from a marginalised group. Article 56 of the Constitution requires the State to put in place affirmative action programmes designed to ensure that minority and marginalised groups participate in governance and other spheres of life.

The youth of this country are extremely marginalised in government jobs. The nomination of Mr. Khalif will reinstate the faith of young men and women. The youth of this country will know that when they appear before this House, they will be given equal opportunity. I understand Mr. Khalif has backgrounds in economics and law, which will greatly help him to effectively represent the House on the Board.

I wish Mr. Khalif all the best as he undertakes this task in serving this nation on this Board and other leadership positions he may hold in the future.

With those many remarks, I beg to support this Motion. Thank you, Hon. Temporary Deputy Speaker.

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

**Hon. (Ms.) Sophia Noor** (Ijara, PDR): Thank you, Hon. Temporary Deputy Speaker, for giving me this chance. At the outset, I want to thank the Departmental Committee on Finance and National Planning. They have done a lot of work in identifying and nominating Abdullahi Adan Khalif.

As you know, the Equalisation Fund is provided for in the Constitution. It is supposed to address issues marginalised communities in this country. The Fund has had a lot of challenges for a while. When the resources were released to the Fund, there were a lot of challenges and nothing was going on for a while. To operationalise the Fund, it was necessary that regulations be put in place. Regulations are now in place and this House passed the same. The Regulations demand that among people who will sit on the Board is a person from the pastoralist communities with certain qualifications. Mr. Abdullahi Adan Khalif has all the qualifications. I support his nomination 100 per cent.

The Fund needs to be operationalised immediately. Without a Board, we will not benefit as a country. This country looks forward to benefitting from the Fund. It is unfortunate that this

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Fund has not benefitted the intended beneficiaries. There are many people who are supposed to benefit from the Fund. Now that the Advisory Board and Regulations are in place, I stand here to support the nomination of Mr. Abdullahi Adan Khalif. Once again I want to thank the Committee for doing a thorough work and identifying a person qualified to sit on the Board. I wish Mr. Abdullahi Adan Khalif and other members of the Board the best in undertaking their mandate of operationalising the Fund.

Thank you so much.

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

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Hon. Temporary Deputy Speaker, I rise under Standing Order 95. Seeing that everyone rising on their feet supports the Motion, I move that the mover be called upon to reply and we pass the nominee. Those saying no, you risk having some Members opposing the Motion and then you will restart this process.

Thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Well, Hon. Members, I need to establish the mood that Hon. Otiende says he can see.

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

Mover.

**Hon. David Mboni** (Kitui Rural, CCU): Thank you, Hon. Temporary Deputy Speaker.

The nomination of this young man is not only important to the pastoralists, but also to the young people to enable them take position, leadership and move the country forward.

Many parts of this country are underdeveloped: The Equalisation Fund therefore, needs to be enhanced so that many parts of the country can be covered. The National Treasury however, need to disperse money which has remained undisbursed so that it can be utilised for the purpose it was intended.

With those few remarks, I reply.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, we shall not put the Question to that particular item until such a time when the House Business Committee shall allocate.

Next Order.

*(Putting of the Question deferred)*

## SPECIAL MOTION

### APPROVAL OF NOMINEES FOR APPOINTMENT AS CHAIRPERSON AND MEMBERS OF KNCHR

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): The Chairperson, Departmental Committee on Justice and Legal Affairs. The Chair should read the whole Motion. You should read the whole Motion: You must move.

*(Loud consultations)*

**Hon. Clement Kigano** (Kangema, JP): Thank you, Hon. Temporary Deputy Speaker for your direction.

I beg to move:

THAT, taking into consideration the findings of the Departmental Committee on Justice and Legal Affairs in its Report on the Vetting of Nominees for appointment as Chairperson and Members of the Kenya National Commission on Human Rights, laid on the Table of the House on Thursday, 10<sup>th</sup> February 2022, and pursuant to the provisions of Article 250(2)(b) of the Constitution, Section 11(7) of the Kenya National Commission on Human Rights Act, 2011 and Section 8(1) of the Public Appointments (Parliamentary Approval Act, 2011, this House approves the appointment of the following persons to the Kenya National Commission on Human Rights:

- (i) Ms. Roseline Doreen Adhiambo Odhiambo - Odede - Chairperson;
- (ii) Prof. Marion Wanjiku Mutugi - Member;
- (iii) Dr. Raymond Sangsang Nyeris - Member;
- (iv) Ms. Sara Talaso Bonaya - Member; and
- (v) Dr. Dennis Nyongesa Wamalwa - Member.

Following His Excellency's letter for consideration of approval of the notification of nomination of the five Members for appointment as Members of the Kenya National Commission on Human Rights, the said Nominees were forwarded to this House, and in return, the Speaker, pursuant to Standing Order No.42, referred their names and CVs to the Departmental Committee on Justice and Legal Affairs for vetting and Reporting to the House.

On 17<sup>th</sup> January 2022, the Clerk of this House duly, advertised in the print media informing the public of the intention of the Committee to conduct approval hearings and invited the public to submit Memoranda thereof.

The deadline of the advert was 31<sup>st</sup> January 2022 and by that time, my Committee had not received any memoranda or protest contesting the suitability of any of those Nominees. My Committee complied with all the mandatory requirements on requisite statutory bodies for clearances. We received positive reports for all the Nominees.

The Committee held various Sittings to consider the Nominees and it considered various issues during the approval hearings. All the Members complied with the consideration for gender as maybe gleaned from the list. Their education qualification is also impeccable. They show, demonstrate and reflect the faces of Kenya.

If I may go through the list again, for easy reference in order to give a brief summary of their resume:

Ms. Roseline Doreen Adhiambo Odhiambo Odede – Chairperson, holds a Master's Degree in law, is an advocate of repute, was the Vice-Chair of the now defunct Judges and Magistrates Vetting Board. She is a prominent eminent legal practitioner.

Prof. Marion Wanjiku Mutugi –Member, holds a PHD and is a widow. She has done extensive research on Biomedical and Forensic Science. She is a renowned author. Has co-authored a book with Justice Lenaola on Bioethics, medical advances and genetic manipulations.

For interest of Members, and which emerged in the interview, she has come up with a new innovation and has built a new character in the room of human rights by trying to introduce the rights of a child born by a surrogate mother but sired by a couple who could not in the ordinary way bear one. The rights of that child appear to be in jeopardy presently, because there is always

contestation between the surrogate and the mother whose egg give rise to the kid. She also requested that perhaps, we bring due registration to cater for this.

Dr. Raymond Sangsang Nyeris – Member holds a PHD in education, and comes from West Pokot.

Ms. Sara Talaso Bonaya –Member, holds a Master’s Degree in health studies, and comes from Marsabit.

Lastly, is Dr. Dennis Nyongesa Wamalwa – Member? He holds a PHD in Peace and Conflict Studies.

The following Members comes from different parts of the country respectively:

Ms. Roseline Doreen Adhiambo Odhiambo Odede, Kisumu; Prof. Marion Wanjiku Mutugi, Nyeri; Dr. Raymond Sangsang Nyeris, West Pokot; Ms. Sara Talaso Bonaya, Marsabit; and Dr. Dennis Nyongesa Wamalwa, Bungoma.

Without much ado, the said Members are dully, eminently qualified, and my Committee in its conclusion of the Report, pass all the said Nominees as suitable.

In conclusion, I urge the Members to read the comprehensive Report of the Departmental Committee on Justice and Legal Affairs, in order to appreciate and enrich the debate. I thank my Committee for putting in work and intensely getting those candidates.

I beg to move the Special Motion and request Hon. Shamalla to second.

Thank you.

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

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to second the Motion by the Chairperson of the Departmental Committee on Justice and Legal Affairs. I will not repeat what has been stated adequately and comprehensively by the Chair, Hon. Muturi.

When we interviewed the nominees, what stood out was that two of these candidates, Ms. Sara Bonaya who is the wife of the late Dr. Bonaya Godana and Prof. Marion Wanjiku, were widows. They highlighted the plight of the widows. There is something that is very interesting which was raised by Ms. Catherine Nyamato, who is the member of the Federation of Women Groups. She noted that a lot of elderly women were killed in Gusii area in October, 2021. It was highlighted by the Federation of Women Groups that it was about disinheritance of land. Shortly after the husband dies, the children are disinherited by the husband’s family. That stood out. As legislators, it is something that we must highlight.

Everything else has been said about all the nominees. They are the face of Kenya. They are highly qualified.

With those few remarks, I second the Special Motion.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Shall we start from the left side with Hon. (Dr.) Otiende Amollo?

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Special Motion. As required by Standing Order No. 90, I make the full disclosure that the person who is nominated as the Chairperson, Ms. Roseline Doreen Adhiambo Odhiambo – Odede, is from my constituency as a part resident. The further disclosure is that my better half also applied to get to this position. She was shortlisted among the less than

10 people. However, on account of regional and ethnic diversity, she did not make it. I congratulate her and those who made it to the shortlist.

I support this list. First, it respects the regional and ethnic diversity. To find five Kenyans who represent different ethnicities, regions and interests is something that we have not always succeeded in doing. I will go back to the nominee for the Chair of the Kenya National Commission on Human Rights (KNCHR). I confirm that Ms. Roseline Odede is a distinguished legal personality who benefits both from being a learned and educated person. There are many lawyers who sometimes might be learned without being educated. The extent of her education was demonstrated by the Chair of the Committee. She merges those two confluences.

As it has been enumerated by the Chair of the Committee, Ms. Roseline Odede has an outstanding legal career, including being in Federation of Women Lawyers (FIDA) and Kenya Magistrates Vetting Board. I had the opportunity to serve with her as a counsel member of the Law Society of Kenya (LSK) and the East Africa Law Society. In both instances, she distinguished herself as a person of integrity and ability. As the Committee notes in its Report, I confirm that Ms. Roseline Odede's integrity is beyond reproach. She was elected to be in the Council of the LSK in recent times. When it appeared to be rogue, she took the singular decision to resign. She was the only person who resigned from that Council. Needless to say, shortly thereafter the courts found that it was rogue and dissolved it.

It is noteworthy that all the submissions that were received from eight bodies supported her appointment as the Chair. There was none that was adverse to her. This appointment of both the Chair and the commissioners of the KNCHR is timely. We had a two-year hiatus where there were commissioners. As you recall, the High Court pronounced itself on this matter. It said that where there are no commissioners in any constitutional commission, that commission is not well constituted. It means that we had two years absence of the KNHR Commission. I believe that Ms. Roseline Odede is singularly suited to be the Chair of the KNHR, given the unique work that the Commission does. I had the distinct advantage of being the ombudsman. We worked with the Commission for some time. I know the kind of person it needs. The kind of person nominated for Chair and the persons who have been nominated to serve as its Members are all well suited. I believe that not only is Ms. Roseline Odede well suited, but also the other four, whom I have not had the advantage of knowing, but I have thoroughly perused their curricula vitae and notes made by the Committee during the interview, are suited.

I single out Dr. Dennis Nyongesa. In addition to being learned and well suited, he also represents a minority who, in this context sometimes, needs not only to be protected by the Commission, but also to have a voice within it.

Hon. Temporary Deputy Speaker, I support the Special Motion. I wish all the nominees well.

Thank you.

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

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker, for giving me this opportunity to support this particular Motion. We rarely agree with Hon. Muturi Kigano. However, his Committee did a thorough job in this Special Motion.

In fact, if you heard the explanation, he seems to have all the information on his fingertips. This is because they did a thorough scrutiny of the nominees.

The Chair also knows the level of education for each of the nominees. He also knows their contributions in terms of authoring books and other contributions that they have made across the

board in this country and beyond. It was a job thoroughly done. If you see the names of the nominees from Ms. Roseline Doreen Odhiambo Odede, Prof. Marion Wanjiku Mutugi, Dr. Raymond Nyeris, Ms. Sara Talaso Bonaya from Marsabit and Mr. Dennis Nyongesa Wamalwa from Bungoma, you automatically see the face of Kenya. This is what we want and it is the spirit of our Constitution. Although we keep having issues with Hon. Muturi Kigano, on this one, he was thorough in his job.

Therefore, I congratulate him together with the Members of the Committee. Hon. Muturi, I think you should have read out the names of the Members of your committee, led by Hon. Kaluma so that Kenyans and their constituents can know people who have the country in their hearts, so that in the next general election, they can make sure they are here again so that they can make this progressive Motions that ensure that the face of Kenya is in every appointment.

I would also like to raise some issues on constitutionality of Elections Act, but seeing what Hon. Muturi and his team have done, I think we are in safe hands. The substantive Speaker did a good job to refer it to that committee. The only issue that I have and we have to be very careful as a House is, in Article 54 (2) (a) demands for five per cent representation of persons with disability. For the last three years, I have not seen names of persons with disability coming to this House. Hon. Muturi Kigano will make me change my mind on this because he is whispering to me that persons with disabilities did not apply. I know of Hon. Tororey Samuel who is visually impaired and Mr. Nixon Kakiri who has hearing impairment applied. There is a whole list that I can talk of. It seems we are being marginalized not on this human rights issue, but generally in this House. Persons with disabilities are not being vetted in this House. It is high time we demand from the appointing authority that we also want to see persons with disabilities being considered.

The Kenya National Commission on Human Rights (KNCHR) was the best commission because it had more than two representatives of people living with disabilities. If there are people whose rights have been infringed traditionally, culturally and even during elections, are persons with disabilities. Persons with disabilities are sometimes hidden in sheep pens. I once rescued a 16-year old boy, Ben Mbusya who was hidden for ten years in a sheep pen in 2014. The language of that boy was the language of the goats. He could only say 'mee' like a goat. For ten years he was on a sheep pen. I rescued him. So, if there are people whose rights are being infringed, it is those of persons living with disabilities. The KNCHR was the best commission having representatives of persons living with disabilities so that they can take care of their colleagues.

If you walk through these streets, you will see persons with disabilities being used as begging tools. The people whose rights are being infringed are persons living with disabilities. I therefore, request you Hon. Temporary Deputy Speaker and the whole of this House to demand from the appointing authority that at times when we have very important commission like this, where the voice of the voiceless is really needed, persons with disabilities should be included.

As we look at the face Kenya, the issue of gender has been considered. So, when we see three honorable ladies in a composition of five members, then you can tell the two-thirds gender threshold has been achieved. It was a job well done by the committee. We congratulate them, but I will never get tired in reminding this House that persons with disabilities need representation, not for cosmetic purposes, but because our rights are being infringed politically and even culturally.

In some communities, birth attendants are given specific instructions to kill a child born with disabilities at birth. How can we fight for the rights of those ones if the whole Human Rights Commission does not have a representative of persons with disabilities? The United Nations

Conventions on the Rights of Persons with Disabilities (UNCHRPD), which Kenya ratified in 2008, states clearly nothing about us. When it comes to human rights, the best representation would include persons with disabilities and other groups.

Otherwise, congratulations to the Departmental Committee on Justice and Legal Affairs. We honour you for bringing out the face of Kenya and for considering women and even the pastoralists in the name of Ms. Sarah Talaso Bonaya. In fact, there were three ladies out of the five nominees. It appears that the boy child is an endangered species.

Nonetheless, we support 100 per cent.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): We can have Hon. Nyikal, Member for Seme.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this. I rise to support this Motion of the appointment of the Members of Kenya Human Rights Commission. I do so because:

One, this is an extremely important commission going by our Constitution.

Two, it is one of the few times I have seen the appointment that meets the requirement of our Constitution, one, in regional distributions, as you can see these people come from the various areas including Kisumu, West Pokot, Marsabit, Bungoma and Nyeri. So, we are really giving a true picture of the Kenyan nation.

Secondly, it has met the gender parity even if there are more women in this. Quite often we have the gender problem because the women are not represented. In this case, that is met and even surpassed.

If you look at all the persons that are appointed here, their educational background, they all fit the Bill. They are people of fairly sound educational background, some of academic background. Look at somebody like Odede, this is a well-known lawyer with very sound academic and professional qualifications. She has actually held very serious public positions in the legal field. She has worked in FIDA; the Kenya Judges and Magistrates Vetting Board, Member of the Law Society of Kenya; what else would we ask of somebody? Prof. Mutugi is a very good academician. He has done a lot of work in the biomedical research area. Again, he is somebody who is very sound.

The other issue is that it brings in two widows in. This is an important point. Widows have peculiar problems and their plight is not often known, particularly in relation to the property that their spouses leave behind and the management of that property and even the handling of the family is quite often by relatives. So, to bring them into the Kenya National Commission on Human Rights, a lot that has been hidden and does not come out in light of these people will come out.

With those remarks, Hon. Temporary Deputy Speaker, I support the appointment of all these people. They meet the requirements we have set out in the Constitution, the educational requirement and gender parity.

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

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Thank you, Hon. Temporary Deputy Speaker. I stand to support the appointment of the nominees here presented for the Kenya National Commission on Human Rights.

I served in the Departmental Committee on Justice and Legal Affairs in the last Parliament and I had an outstanding privilege of having the Judges and Magistrate Vetting Board under the charge of the Committee at the time. The vice chairperson of that Board was Madam Roseline Odede, now nominated to be the chairperson of Kenya National Commission on Human Rights.

This is a person of impeccable competence, impeccable integrity and a lady with the spine to chair a commission engaging in work of this kind of magnitude. Without any reservations, Hon. Members, I join the Committee in recommending her appointment.

The persons presented before the Departmental Committee on Justice and Legal Affairs for nomination for vetting, were people of impeccable integrity and capacities. People from all regions across the country, people who have different competences and people who represent very varied interests.

It has not been said, but administratively, I serve in the Departmental Committee on Administration and National Security. It is now identified that we now have a third gender called intersex. Bro. Dennis Wamalwa here nominated bravely and very courageously confirmed that to the Committee and to the nation in the live vetting that he represents that category of persons. These are not people who choose to be the way they are. They are born that way. I believe this will be the first person from among their cadre joining a commission or a government agency of this magnitude. He showed a lot of passion and competence to represent people with those human rights issues. I commend his nomination and encourage Members of Parliament to think about it.

Hon. Sara Bonaya was elected by this Parliament before to represent the nation in the East African Legislative Assembly, as a Member of Parliament. This is the wife of our former colleague, the late Bonaya Godana. What I found interesting about her is not just the region she comes from, but also her history and passion; her background and what she is taking to the Commission. This is a lady who lost a parent due to the conflicts we have in Marsabit. Remember we also lost our brother, the late Hon. Bonaya Godana when he was going on a mission to settle peace. We encouraged her to take that matter afoot as and when she is appointed upon the approval of this House and have the issues in Marsabit and the Northern Side of the country dealt with. This is a lady of great passion, great spine, great encouragement, great competence and a lady I believe will serve.

Hon. Members, you will see the papers of Prof. Marion. You cannot imagine that for the first time we had a very difficult vetting process because the people who were brought in were diverse, in terms of competence, in terms of what they will take into this Commission. They are people you will not even take long thinking about. This is a lady who has written a lot and a lady who is very astute. In fact, I remember the only question I asked her when she came for vetting is who was going to fill her gap in the academia.

These are very good people, Hon. Members. I thank the body that nominated these persons for a job well done. I encourage other bodies that will be nominating. When they bring such Kenyans for approval by Parliament, they make our work very easy.

In terms of diversity, competence and passion, this one was a very good mix,

Without much ado, I support and urge fellow Members seated here and those watching on this one to join us as a Committee in our recommendation, and that their nomination be approved by Parliament. They would then proceed to be appointed to serve in the Kenya National Commission on Human Rights, a Commission, which has lacked commissioners for nearly two years not.

Thank you, Hon. Temporary Deputy Speaker, and I wish them well and in God's hands.

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

**Hon. John Kiarie** (Dagoretti South, JP): Thank you, Hon. Temporary Deputy Speaker. I am highly delighted to get the opportunity to contribute to this very special Motion on approval of nominees for appointment to the Kenya National Commission on Human Rights.

The Committee considered quite a number of people, but the names that have been presented to this House, I dare say without any fear of contradiction are the finest of the finest who could sit in this Commission at a time such as this. These are individuals who are being called upon to be like the Esther of the Bible, people who have been designated a job for a time such as this. I will get back to that in a minute.

Even as I celebrate the nomination of all the other nominees, I single out one Dr. Dennis Nyongesa Wamalwa. What the House will be doing today in approval of these appointments is going to be historic. There is a growing clamour for the recognition of a third gender in the name of the intersex. I know the intersex gender is normally a very emotive issue when brought up because there are people who can never distinguish between lesbians, gays and the intersex people. The intersex are people out of a fault that is not their own are born in a certain condition. At some point a decision has to be made. When it is made, at times it is even made by parents who end up severing or mutilating individuals because they do not have the knowledge that is required on how to deal with the intersex issue. I have said that today is going to be historic because for the first time in the historic of this country a self-confessed intersex individual will be approved to a national independent Commission.

I single out Dr. Dennis Nyongesa Wamalwa and congratulate him profusely. I report to this House that on the day Dr. Dennis Nyongesa Wamalwa was appearing before our Committee, his family stopped all business, some of whom do not reside in this country, people travelled all the way from the United States of America to come and witness the historic interview of this amazing Kenyan and this amazing gentleman, Dr. Dennis Nyongesa Wamalwa, who even reported to the Committee that the process of whatever he lives with is never quite complete. Up to date, this individual constantly takes medication, takes hormone therapy so that he is able to suppress some hormones of a certain gender and be able to bring out the hormones of another gender.

Even as I have singled out Dr. Dennis Nyongesa, I believe that all the other nominees are up to the task. They are like the Esther of the Bible. They have been commissioned to do a job at a time such as this. This is the Kenya National Commission on Human Rights. They are coming into an office with a full in-tray at a time when in a city like Nairobi, we have to contend with unending demolitions of structures. There are Kenyans who are sleeping out in the cold today because the Government thinks they are offenders. They are being evicted as it rains in very inhuman demolitions. These commissioners are coming in when bodies are being retrieved from River Yala; bodies that no one can identify or tell where they came from. The Commission has its in-tray full because it is at a time like this when we are witnessing extrajudicial killings, some of which are perpetrated by organs which should be protecting the very citizens they are killing extrajudicially.

Therefore, as these commissioners report to office, they will be having a full in-tray. As they attend to matters of human rights violations that I have listed, they will have to show the independence of the Commission. As I said, the State is one of the biggest offenders of human rights. The State, as we speak, is one of the perpetrators of human rights violations. I, therefore, call upon these nominees to step to the plate as they take up their new roles.

Finally, Hon. Temporary Deputy Speaker, I would like to commend the Committee, under the able leadership of *Wakili*, the one and only, Hon. Muturi Kigano, for the good work they have done in processing the nominations and beyond that, including the able manner in which he moved this Motion and how it was seconded by Hon. (Ms.) Shamalla. This is a hardworking Committee.

Even as the tabs will be taken at the end of this Session, I am sure this committee will be one of the best performing committees of this House.

Thank you very much, Hon. Temporary Deputy Speaker.

**Hon. Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Adipo Okuome.

**Hon. Adipo Okuome** (Karachuonyo, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity. I want to start by congratulating Hon. Kigano's Committee for doing a good job. The recommended nominees are those with fertile ability and good experience. I was particularly interested when one Committee Member narrated the situation one of the candidates was in, and how they managed to get through it and won their recommendation. My congratulation is to that nominee because of their situation.

I also congratulate the chairlady who has been recommended to take over the Commission and all others who have been recommended for the positions they applied for. What interested me more is the approach the Committee gave to the appointment of the nominees. They made sure that the spread was regional and it covered various areas of our country, and that was great.

In addition, gender parity was well considered by the Committee, although it was the opposite of what people know. When we talk of gender, people think of more men than ladies in an appointment. However, we have the opposite here. I hope if that trend is followed almost all the time, men will be an endangered species, which might be another problem of its kind. The kind of situation we have seen in this appointment is attractive to those who want to see good balancing in the way we appoint our civil servants and even commissioners in various commissions. I feel I have to give my total support to the Committee on what they recommended as I congratulate the people they recommended.

Thank you so much, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Noor, what is out of order?

#### POINT OF ORDER UNDER STANDING ORDER NO. 95

**Hon. (Ms.) Sophia Noor** (Ijara, PDR): Hon. Temporary Deputy Speaker, I stand under Standing Order No.95, that the Mover be called to reply since everybody is in agreement, including myself. We know that the people who have been nominated are excellent 100 per cent.

Thank you, Hon. Temporary Deputy Speaker.

*(Hon. Gideon Ochanda spoke off record)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Ochanda, you know that my hands are tied when a Member raises and seeks under that Standing Order. I have to establish whether the House wants us to move that way. Order, Hon. Ochanda. We are not going to break our rules here.

Hon. Members, Hon. Noor rose under Standing Order No.95, that the Mover be called to reply. I will put that Question.

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

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

Yes, Mover? Hon. Sankok, you shouted loudest though you had contributed.

**Hon. Clement Kigano** (Kangema, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to reply. Since no Member was in disagreement and no Member opposed the Motion, I really have nothing useful to add to the sentiments of the Members. I thank all of them for supporting the nominees. I wish to congratulate all the nominees.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, we shall also pend the putting of the Question on that item until a subsequent time.

*(Putting of the Question deferred)*

Next Order.

## BILLS

### *Second Readings*

#### THE MENTAL HEALTH (AMENDMENT) BILL

*(Hon. Joshua Kutuny on 10.2.2022)*

*(Resumption of Debate interrupted on 10.2.2022)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, since this is resumption of debate, I am told that Hon. Kutuny was moving; right? You have a balance of 32 minutes. That is not to say that you must finish all the 32 minutes. But if you wish to, they are all yours. Hon. Kutuny, you have been completely patient this afternoon, which is very encouraging.

**Hon. Joshua Kutuny** (Cherangany, JP): Thank you, Hon. Temporary Deputy Speaker. But I am always patient. It is only that you have not known me.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Indeed. I have noted you many times, you have been patient.

**Hon. Joshua Kutuny** (Cherangany, JP): But when it comes to serious business, of course, we have to put the right foot forward. Again, thank you for this opportunity.

Hon. Temporary Deputy Speaker, I beg to move the Mental Health (Amendment) Bill (Senate Bill No.28 of 2020). The Bill was published on 30<sup>th</sup> November 2021. It underwent First Reading on 13<sup>th</sup> October 2021 in the National Assembly and thereafter, was committed to the Departmental Committee on Health for consideration and reporting to the House. Following the placement of adverts in the Print Media on 5<sup>th</sup> November 2021 requesting comments on the Bill from members of the public and the relevant stakeholders pursuant to the provisions of Article 118(1)(b) of the Constitution of Kenya and Standing Order No.127(3), the Committee received memoranda from stakeholders. It, thereafter, held meetings both in the House and with different stakeholders in consideration of the Mental Health (Amendment) Bill (Senate Bill No. 28 of 2020).

Hon. Temporary Deputy Speaker, the Bill seeks to amend the Mental Health Act in order to provide for the prevention of mental illness and to provide for care, treatment and rehabilitation of persons with mental illness.

The objective of this Bill is to amend the Mental Act Cap 248 of the laws of Kenya so as to:

- a) Promote the mental health and wellbeing of all persons including reducing the incidences of mental illness.
- b) To coordinate the prevention of mental illness, access to mental health care, treatment and rehabilitation services of persons with mental illness.
- c) To reduce the impact of mental illness including the effect of stigma on individuals' families and the community.
- d) To promote recovery from mental illness and enhance rehabilitation and integration of persons with mental illness into the community.

To ensure the rights of persons with mental illness are protected and safeguarded.

In particular, Clause 2 of the Bill contains the Long Title of the Act. An amendment of the Long Title provides for the prevention of mental illness, and the provision of care, treatment and rehabilitation of persons with mental illness. It also provides for procedures of admission, treatment and general management of persons with mental illness.

Clause 3 of the Bill seeks to make various amendments to the definitions in the Act to harmonise it with the Constitution of Kenya, 2010 and the Health Act, 2017. It has proposed to include the definition of the word "health care provider" to mean a person who provides health care services and includes a mental health practitioner.

New Part 1A outlines the obligations of the national and county governments in relation to mental health. Mental health is a shared function between the national and county governments. The Bill proposes the establishment of a county mental health council in each county providing for its composition and how members of the council will cease to hold office.

New Part 2 of the Bill outlines the rights of persons with mental illness including the right to the highest attainable standard of mental health services to every person. It provides that a person with mental illness has the right of access to medical insurance for the treatment of mental illness from public or private health insurance providers. It provides for various rights of a person with mental illness which includes the right of mental health services, the right to consent to treatment, the right to participate in treatment planning, the right to civil, political and economic rights, the right to access information, the right to confidentiality, and the right to appoint a supporter.

Clause 7 of the Bill constitutes the board for mental health and provides for qualification, eligibility and criteria for appointing the members of the board.

Part 4 of the Bill is amended in the heading by replacing it with a new heading "Part IV - management of mental health units and facilities, admission and treatment of persons with mental illness." This is in order to make provision for the management and treatment. This part makes provision for a person who wishes to establish a private mental health facility, the requirements for such a person and the process for such an establishment. The penalty for fraudulent establishment is equally provided.

New Section 15A provides for conditions for emergency admission and treatment if there is immediate and imminent danger to the health and safety of the person with mental illness.

New Part XII of the Bill establishes care and administration of property of persons with mental illness. It provides that an application to administer the property of such a person to be made to court. It provides the duties of a manager appointed by a court to administer such a property.

The schedule of the Bill contains provisions of the conduct of business and affairs of the board. It provides for the tenure of persons, chairpersons and members of the board to be three

years and how they may cease to hold office. It provides for the quorum of the board to be five voting members.

Issues arising from the perusal of the content of the Bill reveal the following for consideration by the Committee.

Clause 5 in the proposed New Section 2A provides for the establishment of a county mental health council in each county, but does not set out specific functions of the council. There is need to provide the functions of the council. Clause 15 proposes a New Section 9F(1) to provide for informed consent to be obtained from a person with mental illness. This provision may not be effective since in most instances, a person with mental illness will lack the legal capacity to issue consent. It should be substituted with the supporter of the person with mental illness. Further, the proposed New Section 9E(1) provides for seclusion and restraint. This section may be enhanced to provide for restraint, where necessary, to be reasonable. Clause 37 proposes a New Section 27(4) to require an aggrieved person to raise an objection to the court within 14 days of a decision. This denies an aggrieved person recourse because of the limited timeline for raising an objection.

Clause 38 proposes a New Section 41, which provides for communication by a patient through letters, telephone calls and emails to the recipient. Consideration should be given to persons with disabilities (PWDs) who have mental illness and who may require to communicate through other modes of communication such as orally, braille and sign language. The new section proposed in Clause 39 provides that a person in charge may refuse to admit a person with mental illness into a mental facility or unit if accommodation within the facility is insufficient or unsuitable. This provision may, however, be subject to abuse as it may be subject to various interpretations as to what qualifies as 'unsuitable'. Further, the provision contradicts the provisions of Article 43 of the Constitution, which provides that every person has a right to the highest attainable standards of health, and that a person shall not be denied emergency medical treatment.

As I conclude my remarks, I would like to urge Members to support the Bill with amendments as proposed by the Committee. The amendments are intended to provide for prevention of mental illness, to provide for care, treatment and rehabilitation of persons with mental illness, and to provide for procedures of admission, treatment and general management of persons with mental illness.

I thank you, Hon. Temporary Deputy Speaker. I beg to move. I request Dr. Nyikal to second.

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

**Hon. James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to second this Bill. It has come at the right time. The country has noted mental health as a crisis which, to a large extent, has come to our notice through cases of drugs and substance abuse amongst the youth and the problem that we have had in our security forces, where there have been a lot of suicide and murder cases. We have also realised that sometimes people who find themselves on the wrong side of the law may exhibit mental illness. It is good that we have noted this and are reacting to it, hence the Bill. The Bill also seeks to align the Mental Health Act to Article 43 of the Constitution, which provides that all of us are entitled to the highest level of healthcare. This is much more needed among people with mental illness, which sometimes is not even recognised, or is dismissed as a behavioural problem or some form of delinquency.

The Bill also seeks to align the Act with devolution. Health services are largely devolved. Roles of the national and county governments are clearly stated in the Bill. Further, it tends to align with the Health Act, 2017. It should be in place to provide patients suffering from mental illness with the treatment they deserve in a broadened and integrated manner.

The obligations that the amendments assign to the national Government starts with the provision of mental health services at national referral facilities. This is an area that has been neglected in this country. To a large extent, it has been one facility in Mathare and a small one in Gilgil, which at times we do not know whether it was under the county government or the national Government. We also do not know whether it was a mental health institution or one turned into another county facility. This provides that the national Government put proper referral facilities in place and have units within them that provide for mentally ill patients.

It also provides that there has to be collaboration with county governments in provision of physical and technological infrastructure. This is an area where most county governments actually lack capacity. It is, therefore, the role of the national Government to work in collaboration with them to put in place infrastructure, equipment and all the facilities they need, because they need that support. They also need to put in place policies and strategies that will guide mental care, particularly in the community and family surroundings. That is extremely important because quite often, it requires a huge family support system around the person who is unwell and in the community. This is actually provided at the county level, but the policies and strategies needed for that must be developed by the national Government. It also provides for the standards or care in both facilities, and the human resource required.

It also clearly states the obligations of the county government, that they are actually obliged to provide the actual services even as they get support and guidance from the national Government. They should provide these at all levels, from Level II health facilities all the way to Level V. That means that Level II or III should have units that will deal with this, and have people who have experience to deal with it. At Level V, you should have facilities or part of it that provide for this, and have the said clinics and units dedicated. At community level – and this is particularly very important when dealing with primary health care and the community health workers – they need to be trained and given the capacity to, at least, recognise mental illness at the very early stages and the social circumstances that lead to mental illness at that level. Also, the aftercare when people with mental illness have had their treatment, they need a lot of support at the community level. The county governments, therefore, have to formulate programs for that rehabilitation, and these amendments provide that.

It again, provides for the rights of persons with mental illness, which is extremely, important, starting with the right to care. If you go around, you see a lot of people who have mental illnesses roaming around and nobody cares. It looks like it is all right, but it is not. They have a right to mental health care. This Bill provides on who should ensure that those rights are achieved.

There is the right to access social activities and public participation. Once you have a mental illness, people tend to exclude you. These amendments provide that you should be included to the limits that one is capable of. It also seeks to protect people with mental illness from harm. This is a very important point because like I have said many times before, it is not recognised that they are ill. Even if they are ill and they do certain things, people may think that it is okay. They can be harmed, which should not happen. They have the sick role. When your leg is broken and you limp, nobody blames you for it. When you have a mental problem, your mental health is not

okay. You behave in a way that is not okay. That should be treated the same way as somebody who is limping because his leg is broken and given that protection.

People with mental illnesses are also entitled to dignity. When they are getting treatment sometimes, they do not get the dignity they deserve. They are tied and pushed around. This Bill brings order into that. Sometimes, they are denied other services like medical insurance. This Bill makes it mandatory that people with mental illnesses are entitled to public or private medical insurance. They need it more than other people in order to access outpatient services. Many times after recovery, they have long illnesses. They need outpatient services, so that those needs can be taken care of.

There is the big issue of informed consent, which I want to give one minute. When you have a mental illness, the first symptom is the loss of insight. You do not know that you are sick. Therefore, when people ask you for consent, you say that you are okay. It is a delicate issue of how to get that informed consent from somebody who has lost insight. There are issues like involuntary...

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): I will give you one minute, so that you can pronounce yourself on the seconding of the Bill.

**Hon. (Dr.) James Nyikal** (Seme, ODM): There are issues like involuntary admission. This is when you are admitted, but you are not aware that you are sick.

With all these remarks, I second the Bill.

*(Question proposed)*

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

**Hon. Gideon Ochanda** (Bondo, ODM): Thank you, Hon. Temporary Deputy Speaker. Issues of mental health have now reached a crescendo in this country. It is important that we take this in the direction where the President has taken it. He came up with a task force which brought out a lot of findings. For sure, what we see is a case of concern.

We thank the media at this particular time because a lot of issues are up and running through the media, showing that, we, as a country, are experiencing many problems which are related to mental issues. This Bill has gone through a process. I interacted with a number of different people. In the process, I learnt that nearly all of us are in some kind of mental levels. All of us are ill in the country, it is only that the levels are different. If everybody is checked, we can realise that in one way or the way, each one of us is in a shape that qualifies us to be ill.

So, if you look at this against the background where this has been handled over a period of time, in terms of what has been existing including medical facilities on issues of mental health, nationally, we have the Mathari National Teaching and Referral Hospital (MNTRH). The MNTRH has been an institution of interaction between the Judiciary and the prisons. Many times, what we see are references in terms of checks that the judiciary or the courts haul people to MNTRH for purposes of checking whether they are mentally right or wrong. On the other hand, there are those that are running to Mathari every single day from the prisons.

When you look at it critically, you will only be seeing one institution that has been in the centre of all these things. However, it has been in the centre of issues mental health not for all clear intent and purposes, but for purposes of only managing those who are already in a mind that is out of hand. If you look at others in terms of any other attempts, the Government, over all this period

of time, has not done anything. You look at what we even call rehabilitation centres for cases that are related to substance abuse or related to things and issues that are mental. For example, there has only been Asumbi as an institution in the entire western Kenya. It is the only clearly known rehab centre, which is not owned by the Government. It is a church thing. So, the entire region does not have a rehabilitation centre all this period of time. So, we are saying that we have reached a level where we have to recheck or rethink it as a nation. All this is happening against the direction that we are seeing in the country.

The Bill is coming with a lot of proposals in terms of integrating county governments in all this. If you look at what I have mentioned, Mathari was a national referral health facility. Meaning that there was completely nothing happening in all our levels from Level 1 to VI. So, what that means is that there must be a proper process including policy, management and everything else that must permeate and go down from the national all the way to the community in Level 1 hospitals. There are some of these things that can be managed at Level I, including public education on how to handle these kinds of issues. So, I think this is what the Bill is bringing that is so critical at this moment.

The Bill is bringing in an authority that is supposed to look at issues of mental health, and I want to believe that this is so critical. The way we have left this for a long period of time has made it... Even the medical directorate was not very clear cut in terms of the direction we were taking through all these issues of mental illness. So, I think the Bill is coming at a point that is critical. As a nation, we need it and a lot of policy and restructuring arrangement are required for purposes of making sure that the mental health sector is thoroughly looked at.

Of more fundamental essence is the issue of funding. Mathari has been rotting to date. It has been going down immensely. However, from last year to this year, it has become clear that Mathari has some budget. It almost has its own legislation and space for purposes of being a proper mental referral health facility in the country. This is a plus that we must look at as we are coming with this legislation at this moment. So, we are in a right direction, but we are fairly slow. This needs to be upped.

Thank you, Hon. Temporary Deputy Speaker.

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

**Hon. (Ms.) Sophia Noor** (Ijara, PDR): I support, but I am waiting for the next Order.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Ole Sankok David.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker, for giving me this opportunity. Mental health is a real problem in this country. We only have one referral hospital, that is the MNTRH.

On the issue of mental health, if you check on our suicide and homicides rates, it all boils down to mental health. Recently, there were statistics to the effect that 10 per cent of our police officers suffer from mental health issues. When we talk about 10 per cent of our police officers, armed to the teeth, and suffering from mental health, then as a country, we have all reasons to be worried about mental health and the need to invest more in mental health. We have seen cases of fathers raping their daughters who are as young as two years. At that rate, we have to highly consider issues of mental health. This House must pronounce itself. I thank the Committee for coming up with this progressive Bill to handle issues of mental health and having an authority to deal with mental health.

The approach that we have on mental health is that statistics only tell us about the common policemen; that 10 per cent of them are suffering from mental health issues. However, they do not go ahead and tell us about the administrators in the police service, starting from the Cabinet Secretary for Interior and Coordination of National Government. What is the status of their mental health? I heard from other quarters that the Cabinet Secretary for Interior and Coordination of National Government was sacked from lecturing in a university. The reason that Prof. Magoha gave us did not indicate if it was something to do with mental health. It is good to know that apart from only those policemen in the lower cadre, what is the mental status of the administrators at the top of the Ministry of Interior and Coordination of National Government.

I support this Bill 100 per cent so that we can address in a more informed manner our mental health status. What is happening is not normal. The homicides we are seeing are not normal. The rape cases we are seeing are out of the normal according to the statistics that have been given on the mental health status of all our police officers.

I support, 100 per cent.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, there seems to be no further interest to contribute to this particular item. I, therefore, call upon the Mover to reply.

**Hon. Joshua Kutuny** (Cherangany, JP): Thank you, Hon. Temporary Deputy Speaker.

I thank all the Members for enriching the Bill. There is no other better time of having this legislation because COVID-19 came with its challenges, including mental stress. So, we need this legislation like yesterday. It is unfortunate that there was a board that was not functional just because of a small legislation to ensure the effectiveness of its operations and to get more money. In the last four years, they have been allocated money, but they could not spend it because they were not properly constituted. So, the Cabinet Secretary could not make appointments.

I bring to the attention of the Members that the Government has allocated over Kshs1 billion to establish a new psychiatrist hospital in Kajiado. Mathari is going to be moved. The Government has provided over 200 acres of land and has put in more money. The Committee has allocated Kshs1 billion this year. In the next financial year, we will allocate more money to ensure that we have one of the best facilities to handle challenges of mental health. There is also going to be a training institution on issues related to psycho challenges, which many people face.

Thank you, Hon. Temporary Deputy Speaker.

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

*(Putting of the Question deferred)*

Next Order.

THE WILDLIFE CONSERVATION AND  
MANAGEMENT (AMENDMENT) BILL

Chairperson of the Departmental Committee on Environment and Natural Resources, Hon. (Ms.) Noor Sophia, for the Chairperson. Or are you the Chairperson?

**Hon. (Ms.) Sophia Noor** (Ijara, PDR): Yes, I am.

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**Hon. Temporary Deputy Speaker** (Hon. Patrick Mariru): Please, proceed.

**Hon. (Ms.) Sophia Noor** (Ijara, PDR): Thank you, Hon. Temporary Deputy Speaker. I beg to move the Wildlife Conservation and Management (Amendment) Bill (Senate Bill No.30 of 2020). This Bill was sponsored by the Senator for Taita Taveta and it seeks to amend the Wildlife Conservation and Management Act No.47 of 2013 to make further provisions for allocation of adequate facilities to the County Wildlife Conservation and Compensation Committees established under the Act, and to provide for timelines for compensation for human death, human injuries or crops and property damage caused by wildlife.

Pursuant to Standing Order No.41, the Speaker received a message from the Senate seeking concurrence of the National Assembly on the Wildlife Conservation and Management (Amendment) Bill (Senate Bill No.30 of 2020). The Bill was read the First Time on Thursday, 30<sup>th</sup> September 2021 and committed to the Departmental Committee on Environment and Natural Resources for consideration.

Hon. Temporary Deputy Speaker, allow me to highlight the Bill as structured. Clause 2 of the Bill proposes to introduce a New Section 21A in the principal Act to provide for the funds for community wildlife conservation committees. The provision also set timelines for payment of compensation and provides for provision of adequate funds.

Clause 3 of the Bill proposes to amend Section 23 of the principal Act to provide for nominees of the Council of Governors (CoG) into the wildlife body and to provide support to the local communities negatively affected by activity undertaken with respect to wildlife.

Clause 4 of the Bill proposes to amend Section 24 of the principal Act to provide for clarity on who is responsible for establishment of the scheme and to provide for the funds of the scheme to be the money appropriated by the National Assembly.

Clause 5 of the Bill proposes to amend Section 25 of the principal Act to provide for clarity in the process of provision of compensation and set time frames for payment of the compensation.

Clause 6 of the Bill proposes to amend Section 47 of the principal Act to provide for guidelines to include the benefits not only for local communities neighbouring, but also negatively affected by activities undertaken by preservation of the national parks; set the criteria for determination of maximum benefits which shall be based on gross total revenue and fees collected with respect to the protected areas.

Hon. Temporary Deputy Speaker, while communicating the Message which forwarded the Bill to the National Assembly from the Senate, the Speaker urged the Committee to, among other things, apply itself to the provisions of Articles 109(5) and 114 of the Constitution related to orientation and definition of money Bills and make appropriate recommendations.

The Committee sought advice from the Parliamentary Budget Office (PBO) on the status of the Wildlife Conservation and Management (Amendment) Bill (Senate Bill No.30 of 2020) in regards to Articles 109(5) and 114 of the Constitution. The Committee made the following observation in regard to the two Articles of the Constitution related to the Bill. The Bill seeks to introduce a new purpose of the provision of funds to the Wildlife Conservation Trust Fund, which intends to provide support to local communities negatively affected by activities undertaken with respect to wildlife conservation and management. This provision is an imposition of new charges to the Fund, which is in line with Article 114(3)(b) of the Constitution.

Again, the Bill proposes to extend the benefit-sharing of resources collected from wildlife protected areas to cover local communities neighbouring national reserves, as well as communities not neighbouring national parks, but have been negatively affected by activities undertaken by national parks. This provision, again, introduces new resources that charge the public Fund in line with Article 114(3)(b) of the Constitution.

The Committee also took note of the Report by the Senate's Standing Committee on Lands, Environment and Natural Resources in which it observed that it had received views in accordance with Article 118 of the Constitution. They had seen the Kenya National Commission on Human Rights. The Committee also invited the Ministry of Tourism and Wildlife vide a letter dated 5<sup>th</sup> October 2021 for a meeting on the Bill, which was held on Tuesday, 19<sup>th</sup> October 2021. The ministry made submissions that the Bill seeks to amend the Wildlife Conservation and Management Act No.47 of 2013 in order to make further provision for allocation of adequate facilities to County Wildlife Conservation and Compensation Committees established under the Act. The ministry also submitted that the Bill provides for timelines of 12 months for compensation for human deaths, human injuries, and crop and property damage caused by wildlife, in accordance with the Act.

The Act makes further provision for payment of compensation and other entitlements due to local communities affected by wildlife. The ministry requested the withdrawal of the Bill as there already was an ongoing comprehensive review of the Wildlife Conservation and Management Act No.47 of 2013. This comprehensive review is being done in the interest of the public with a view of repealing the current Act and coming up with new laws that will effectively address many currently ongoing issues so as to avoid piecemeal amendments. The ministry undertook a comprehensive look at the proposed amendments and harmonised them with other submissions from various stakeholders so as to develop comprehensive instruments that will enable a unified approach in the management of wildlife.

In considering the Bill and views from the Senate Committee on Lands, Environment and Natural Resources and the Parliamentary Budget Office, the Committee observed the following: That the Bill meets the criteria required to define a money Bill pursuant to Article 114(3)(b) and (c) of the Constitution. As such, the National Assembly is required to take into consideration the recommendations of the Budget and Appropriations Committee, which is debating the Bill. Further, a money Bill can only be introduced to the National Assembly pursuant to Article 109(5) of the Constitution.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Noor Sophia. You do not need to be under pressure because it is 7.00 p.m., and the House must rise. You had an allocation of 45 minutes and you have spent 10 minutes. So, when this is scheduled next, you will have your 35 minutes to finish moving this Motion.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, the time being 7.00 p.m., this House stands adjourned until tomorrow, Wednesday, 16<sup>th</sup> February 2022, at 9.30 a.m.

The House rose at 7.00 p.m.