

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 14<sup>th</sup> March 2017

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

**Hon. Speaker:** We need to ring the Quorum Bell to alert the Members who may be finalising taking their lunch.

*(The Quorum Bell was rung)*

Leader of the Minority Party!

**Hon. Midiwo:** Hon. Speaker, something really bothers me, and it requires your considered pronouncement. We need to revisit the issue of quorum. We waste so much time on every sitting day, waiting for people whose whereabouts we do not know.

*(Laughter)*

The Senate has adopted a good practice on quorum, which we ought to copy. The law stipulates that quorum is 50 Members. My understanding of that requirement is that when you make a decision by voting, you must have at least 50 Members. My concern is buttressed by the fact that when we begin business even this afternoon, half of these Members will walk out. How is it possible that we can transact business when there are three Members in the House, but we cannot begin business when there are three Members in the House? I have thought about it. I have addressed my mind to this issue. The business of this House requires interested Members, except for voting. That way, and going into the future, we will cover a lot of business. I have been here in the recent past, when we would wait for 10 or 20 minutes without quorum. It is not good use of public time and our time as legislators. It is crunch time for most of us. As we move to the next two months, the issue of quorum will be arising a lot. I want to bring to your attention what happened in the last Parliament.

When we were passing the Election Laws (Amendment) Bill, we sat here until midnight, and the number of Members was wanting for about two months. Even when we passed some of the Bills to occasion the Constitution of Kenya, 2010, the numbers were very few, but we were the interested Members. Some Members got so interested until they are no longer here. Examples are Kenya's Ambassador to the United States of America (USA), Hon. Amos Kimunya; Hon. Martin Ogindo and Hon. Koech of Mosop Constituency. There is good fodder for your technical team to look at. The work of this House must mirror the joblessness in the next House. They will

not have enough business to transact. I want you to copy what I think, for once, is good practice by our retired colleagues in the Senate.

I thank you, Hon. Speaker.

**Hon. Speaker:** Leader of Majority Party, do you want to say something?

**Hon. A.B. Duale:** Hon. Speaker, I want to add my voice regarding the spirit of the Constitution and the Standing Orders on quorum. Everywhere in other jurisdictions, quorum is considered when the Question is put. I watched the proceedings of the House of Commons last night. During the debate, there was nobody. There were hardly two or three Members. However, when the question to formalise the official exit of the United Kingdom (UK) from the European Union (Brexit) was put, the Quorum Bell was rung. Thereafter, I saw the Members in the House of Commons standing because the seats were not enough.

You need to guide us such that at the beginning of a sitting of the House, or when we are debating, quorum may not be necessary. That is why we have the HANSARD. If Members want to find out what transpired in the House, they can always refer to the HANSARD. We can only require quorum when we want to make a decision in the Committee of the whole House, and when you want to put the Question. This is something we need to decide. I do not want to talk about the other respectable House, where our colleagues live and do business in the manner the Leader of the Minority Party has described. We are at the end of our sunset days, and we want to leave when we are in good terms. This is an issue you need to look at with our legal experts. As we approach the 7<sup>th</sup> August 2017 deadline, the Quorum Bell will ring, and as Hon. Jakoyo said, we are looking for people whom we do not know where they are. They are kilometres away campaigning and preparing for the nominations.

We need your direction, Hon. Speaker.

**Hon. Speaker:** The Member for Kiminini wants to add his voice to the debate on quorum.

**Hon. Wakhungu:** Thank you, Hon. Speaker. The Minority Party Whip and the Majority Party Whip are suffering at this time.

*(Hon. Katoo stood up and started counting the Members present)*

**Hon. Speaker:** He is the Minority Party Whip. He must be one of those who are suffering.

**Hon. Wakhungu:** Hon. Speaker, the Minority Party Whip and the Majority Party Whip are suffering. When the Quorum Bell was ringing, I was called by a journalist from one of the media houses to comment on a topical issue and then come back. However, I reminded him that I am the Minority Party Whip, and that in case the Bell continues ringing and we do not get enough Members to raise quorum, I would be held accountable. As the Minority Party Whip and the Majority Party Whip, we are having difficulties getting Members to raise quorum. At times, we have been forced to go to the kitchen to tell those people not to serve any hon. Member when the Quorum Bell is ringing, so that Members could come here and help raise quorum. This is the highest time they need to know. We were with the Leader of the Majority Party in London. We saw what happens in the House of Commons and the Congress. When the Quorum Bell rings, nothing continues. They leave everything they are doing to go back to the House to raise quorum. Thereafter, they continue with whatever they were doing. As we approach the general elections, the number of Members in the House dwindles. There is parking space all over Parliament Buildings because Members are at home preparing for the primaries. In order for us

to conduct business – particularly urgent business – you can exercise your discretion in line with Standing Order No.1. You may reduce the quorum from 50 to 30 Members as we wait for the Committee on Procedures to comprehensively look into this matter because I do not see us doing much, particularly in such a time.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Wamalwa, the issue of quorum is provided for in Article 121 of the Constitution. It is 50 Members for the National Assembly and 15 Members for the Senate. The Standing Orders may not help. However, the point you are making is worth exploring. Did I see the Member for Kisumu West, Hon. Olago Aluoch?

**Hon. Aluoch:** Thank you, Hon. Speaker. You are right. The threshold required for business before the House is in the Constitution. I agree with the Leader of the Majority Party that the matter needs to be referred to the Legal Department for them to see how to resolve the issue that Hon. Midiwo has raised; which, in my view, is very serious. This malaise has gone down to the Committees. I travelled from Kisumu this morning for a serious business involving many institutions we oversee, as the Departmental Committee on Justice and Legal Affairs. We had to wait for nearly one-and-a-half hours before we could raise quorum. The issue to be transacted was so serious that we had to stick there and wait.

Failure to raise quorum gives the false impression to Kenyans that the Members of this House are in a panic for re-election. This is something that needs to be addressed. I am sorry to say that many Members of this House stay away from their constituencies until when the general elections are on the horizon. That is when they suddenly wake up and panic. We must find a balance between our responsibilities in the constituencies and in this House. The matter is so serious but I beg you to refer it to a committee of legal experts to look at it so that we find a resolution. Indeed, it is a serious issue.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Makeni, do you want to also add your voice?

**Hon. Maanzo:** Thank you Hon. Speaker, for giving me an opportunity to add my voice to this debate. It is true that there are quorum issues in the committees and the House, especially when business is supposed to start. The particular article of the Constitution needs to be construed so that it can serve the purpose of Kenyans. I agree that the most important moment is when the Question is being put. We also need to amend the Standing Orders to align them with the Constitution and save time when the quorum issue matter arises, or at the beginning of the business of the House.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Tiati.

**Hon. Abongotum:** Thank you, Hon. Speaker. I want to join my colleagues in asking you to give us guidance on this matter because even at the Committee level, we are experiencing the same problem due to the election fever that is creeping in. We have tried to grapple with this issue, but it has not been easy. With your good knowledge of the Standing Orders and the Constitution, you are better placed to give us a way forward. We need to transact the business of this House until we are told to pack up and go. You have heard of a situation where Members filibuster in other jurisdictions. In the Congress and the House of Commons, a Member can filibuster for 10 hours, with three or four Members in the House. You are more qualified to give us guidance on this matter because it is very urgent. It is affecting the proceedings of the committees and the House.

Thank you, Hon. Speaker.

**Hon. Speaker:** As you have suggested, I will give directions. Member for Rongo, do you also want to add your voice to this matter?

**Hon. Anyango:** Honestly, Hon. Speaker, you will remember very well when we were struggling to increase the number of constituencies. We had a hot debate until we settled for 290 elected Members plus the nominated Members to make a total of 349. Despite that effort, we are yet to comply with the one-third gender rule. It would be ridiculous to excuse ourselves from the requirement of raising quorum. The concept of quorum is for commencement of proceedings. During debate, unless somebody raises the issue of quorum, we continue with whatever number we have in the House. That is the best practice, which we accepted. We put the quorum of the National Assembly in the Constitution to depart from the previous practice. Previously, the quorum was 30 Members, which was hardly 10 per cent. We said we must put it in the Constitution because hon. Members were becoming dishonourable and irresponsible.

Therefore, we should admit that if, because of circumstances, we cannot make the quorum, then the logical thing to do is we adjourn and give ourselves enough time to do what we must also do but when we reconvene, we must have a minimum quorum. Otherwise, we will be insulting Kenyans by further derogation of this requirement.

I thank you, Hon. Speaker.

**Hon. Speaker:** Very well. We will look at both sides of the argument. Of course, there was a reason why the numbers were put in the Constitution, as Hon. Dalmas Otieno says. So, we need to interrogate that and also remember that for those numbers to be in the current Constitution, it is a matter that commenced – for those of you who can recall – way back in the Bomas of Kenya constitutional Conference. So, it is a matter that is not to be taken lightly.

Also Hon. Members, it is fair to know that actual business of the House commences after Order No. 7.

Next Order!

## COMMUNICATION FROM THE CHAIR

### DELEGATION OF MAU MAU WAR VETERANS IN THE SPEAKER'S ROW

**Hon. Speaker:** Hon. Members, I wish to recognise a delegation of members of the *Mau Mau* War Veterans Association from across the country seated in the Speaker's Gallery. The delegation is led by the Secretary General of the Association, *Shujaa* Hon. (Dr.) Gitu wa Kahengeri and comprises the following members:

1. Mr. M'Mburugu M'Marete - Meru County
2. Mr. Mungai Kimani - Kiambu County
3. Mr. Francis Mutiso - Machakos County
4. Mr. J. Nkaiwartei Larus - Narok County
5. Ms. Grace Nyambura Ngugi - Kiambu County
6. Mr. A. Rwamba Nyaga - Narok County
7. Mr. Mwaura Muchiri - Murang'a County
8. Ms. Annah Ngichu - Kajiado County
9. Mr. Henry Mundia Kahari - Kiambu County
10. Mr. Simon Ntoruru John - Meru County
11. Mr. Musembi Mutia Kungu - Machakos County

- |                              |   |                    |
|------------------------------|---|--------------------|
| 12. Mr. T. Waweru Kihia      | - | Nyeri County       |
| 13. Mr. Kanyuiro             | - | Kirinyaga County   |
| 14. Ms. Grace Wanjiru Kinyua | - | Laikipia County    |
| 15. Mr. Jared Odera Auko     | - | Siaya County       |
| 16. Mr. Jacob Wamacheche     | - | Bungoma County     |
| 17. Mr. Ndung'u Kariuki      | - | Trans Nzoia County |
| 18. Mr. Samuel Onsare Kobira | - | Kisii County       |
| 19. Ms. Njoki Wachira        | - | Nakuru County      |
| 20. Mr. D. Macharia          | - | Nairobi County     |
| 21. Ms. Lucy Ng'endo Muigai  | - | Turkana County     |
| 22. Mr. Kamotho Kamau        | - | Nyandarua County   |

Hon. Members, you recall that on 24<sup>th</sup> June 2014, I conveyed a Petition from the *Mau Mau* War Veterans Association which sought to have the Government recognise and adequately compensate the country's freedom fighters and/or their dependants. The Justice and Legal Affairs Committee considered the Petition and tabled a report on 13<sup>th</sup> April 2016 which largely recommended the actualisation of the prayers of the Petitioners. The membership of the association wishes to express their gratitude to the Committee and indeed to the House for the recommendations made with regard to their prayers.

Therefore, on my own behalf and that of the House, I wish to welcome them to the National Assembly and accept their gratitude and promise to continue to engage for the betterment of our nation. I thank you.

*(Applause)*

Next Order!

## MESSAGES

### SENATE AMENDMENTS TO THE DIVISION OF REVENUE BILL

*(Hon. Chanzu walked in the gangways)*

**Hon. Speaker:** Hon. Yusuf Chanzu, you are never around. At least, mentally, you do not appear to be in the House.

*(Hon. (Ms) Munene walked into the Chamber)*

The Member for Othaya, you can sit on the next chair. You will go to your usual place.

Hon. Members, I wish to convey these two messages. One is Message No. 3 of 2017 from the Senate. Standing Order No. 41 (4) requires the Speaker to report to the House any message or messages received from the Senate at the first convenient opportunity.

In this regard, I wish to report to the House that on Thursday, 2<sup>nd</sup> March 2017, I received a message regarding the decision of the Senate on the Division of Revenue Bill (National Assembly Bill No. 2 of 2017).

*(Hon. (Ms.) Shebesh and Hon. (Ms.) Nyasuna consulted loudly)*

The Member for Nairobi and the Member for Homa Bay, please consult in lower tones.

Hon. Members, the Message reads in part, and I quote:

“...on Wednesday, 1<sup>st</sup> March 2017, the Senate considered the Division of Revenue Bill (National Assembly Bill No. 2 of 2017) and passed the said Bill with amendments.”

Hon. Members, you may wish to note that in accordance with the requirements of Standing Order No. 145, the Clerk has published the notification on today’s Order Paper showing the Senate amendments and also the Schedule as passed by the National Assembly for your information.

Hon. Members, with that decision of the Senate, the Senate’s amendments to the Bill are referred to the Budget and Appropriations Committee for consideration. Due to the urgency of the passage of this Bill, I hereby direct the Committee to expeditiously consider the amendments proposed by the Senate and report to the House within seven days in order to guide the House further accordingly.

I thank you, Hon. Members.

#### ESTABLISHMENT OF JOINT SELECT COMMITTEE ON ELECTION OF MEMBERS TO EALA

Hon. Members, the next message from the Senate relates to the establishment of a Joint Select Committee on Election of Members to the East African Legislative Assembly (EALA). Pursuant to provisions of Standing Order No. 41, I wish to report to the House that I have received a message from the Senate regarding its decision on the establishment of a Joint Select Committee on Election of Members to the EALA.

Hon. Members, the Message reads in part and I quote:

“... cognizant that the five-year term of the current 3<sup>rd</sup> East African Legislative Assembly (EALA) is due to expire on 4<sup>th</sup> June 2017; in accordance with Rule 9 of the Houses of Parliament (Joint Sittings) Rules and Senate Standing Order 216, the Senate, by a resolution passed on Thursday, 2<sup>nd</sup> March 2017, resolved to establish a Joint Committee comprising of the following seven (7) Senators, to consider certain matters related to the election of Members of EALA in the light of Kenya’s bicameral nature:

1. Sen. Kimani Wamatangi;
2. Sen. Peter Mositet;
3. Sen. Kipchumba Murkomen;
4. Sen. Mshenga Mvita;
5. Sen. Mutula Kilonzo Jnr;
6. Sen. Elizabeth Ongoro; and
7. Sen. Henry ole Ndiema.”

Hon. Members, you will recall that this House by a resolution passed on Wednesday, 1<sup>st</sup> March 2017, the National Assembly, appointed seven members to form part of the Joint Committee on the Election of Members of EALA and related matters.

Following the appointment of Members to the Joint Select Committee by both Houses, the Committee is urged to fast-track consideration of the Election Rules to enable the process of

notifications, nominations and elections to be conducted and concluded within the timelines proposed in the Election Rules. I am informed that the first sitting of the Committee was scheduled to take place today, Tuesday, 14<sup>th</sup> March, 2017. However, there was no quorum. This meeting ought to be prioritised given that the House will be proceeding on a long recess in early April 2017.

I thank you, Hon. Members.

Member for Meru County, the Floor is yours. If you are supposed to present a petition but you do not appear in the Chamber to do so, it is dropped. It is not supposed to be given to another Member. An absent Member does not desire to present a petition. His petition is therefore dropped. That is the way we will be proceeding because we have already raised the issue of quorum. We cannot also punish those who chose to be present in the Chamber.

Member for Turkana North, Hon. Christopher Nakuleu, proceed. The Member is absent and, therefore, not desiring to present his petition. He has chosen to do other things as opposed to presenting the petition, on behalf of the people he represents. Therefore, his petition is also dropped.

Member for Kathiani, I can see that you are present. Please, proceed and present your petition.

#### DELAYED COMPENSATION OF VICTIMS OF KYANGULI SECONDARY SCHOOL FIRE TRAGEDY

**Hon. Mbui:** Thank you, Hon. Speaker for giving me the opportunity to present a public petition on delayed payment of compensation to parents and guardians of the victims and survivors of Kyanguli Secondary School fire tragedy.

I, the undersigned, on behalf of parents and guardians of victims and survivors of the Kyanguli Secondary School fire tragedy, draw the attention of the House to the following:

THAT, the Government and the respective managements of public schools have a responsibility to protect the lives and property of students in all schools;

THAT, many schools in the country have been experiencing students' unrests associated with failure by school administration to address students' grievances;

THAT, in March 2001, Kyanguli Secondary School experienced one of the worst cases of students' unrest in the country when riotous students locked their colleagues in a dormitory, sprayed it with petrol and set it ablaze;

THAT, the resultant inferno gutted down the entire dormitory, caused horrific deaths of 63 young budding lives while scores others were maimed as students' and school property of immense value was decimated;

THAT, investigations into the incident revealed massive negligence on the part of the school management by establishing that whereas glaring signs of impending students strike had been identified, the school administration never took measures to deter the inferno;

THAT, further, whereas the capacity of the ill-fated dormitory was 96 students, the school administration had congested it with 139 students at the time of the inferno, thereby increasing the casualties;

THAT, in 2002, parents and guardians of the victims and survivors sought compensation from the courts and the High Court, in a ruling dated 3<sup>rd</sup> March, 2016, awarded Kshs40,950,000 as compensation to the survivors of the Kyanguli dormitory fire, jointly and severally, and broke it down as follows:

- (a) Pain and suffering, Kshs150,000 x 63;
- (b) Loss of expectation of life Kshs200,000 x 63; and,
- (c) Loss of dependency, Kshs300,000 x 63.

THAT, to date, there is no indication that the affected families who have been living in trauma of the loss of their loved ones, and survivors of the tragedy, will receive the compensation awarded to them by the High Court;

THAT, if the matter is left unresolved, the petitioners risk being victims of justice delayed, which is tantamount to justice denied;

THAT, the issues in respect of which this petition is made are not pending before any court of law, constitutional or statutory body.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Justice and Legal Affairs:

- (a) intervenes through the relevant Government agencies to ensure that the petitioners are paid the compensation rightfully awarded to them by the High Court, including interest accrued thereto as ordered by the High Court; and,
- (b) makes such other order or direction as it deems fit in the circumstances.

Hon. Speaker, your petitioners will ever pray.

**Hon. Speaker:** Hon. Members, because of the ongoing problems of staying in power, I will commit the petition to the relevant Committee of the House to consider it in the usual way in order for them to bring a report to the House.

Hon. Members, before we proceed to the next Order, allow me to recognise students who are seated in the Speaker's Gallery. They are from Tangaza University, within Langata Constituency, Nairobi County; Nonkoopir Girls Secondary School from Kajiado East Constituency, Kajiado County; Oloolaiser Boys High School from Kajiado North Constituency, Kajiado County; and Ithanga Primary School from Gatanga Constituency, Murang'a County; Kenyatta Mahiga Primary School from Othaya Constituency, Nyeri County; and Muti Primary School from Gatanga Constituency, Murang'a County. They are all invited to observe the proceedings of the National Assembly this afternoon.

Next Order!

### PAPER LAID

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table of the House:

The Office of the Controller of Budget First Quarter National Government Budget Implementation Review Report for the Financial Year 2016/2017, pursuant to Article 228(6) of the Constitution.

The Independent Electoral and Boundaries Commission Report on Diaspora Voter Registration.

The Independent Electoral and Boundaries Commission Policy on Voter Registration and Voting for citizens residing outside Kenya.

The Independent Electoral and Boundaries Commission Annual Report for the Financial Year 2014/2015.

The Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June, 2016 and the certificates therein:

- (i) National Police Service Commission;



- (ii) Independent Electoral and Boundaries Commission;
- (iii) Government Clearing Agency Fund;
- (iv) Rivatex East Africa Limited;
- (v) Independent Policing Oversight Authority;
- (vi) Intelligence Service Development Fund;
- (vii) National Authority for the Campaign against Alcohol and Drug Abuse;
- (viii) Government Press Fund;
- (ix) Tourism Fund;
- (x) Kenya Medical Supplies Authority;
- (xi) National AIDS Control Council; and,
- (xii) Machakos University.

The Report of the Auditor-General on the Financial Statements in respect of outstanding obligations guaranteed by the Government of Kenya for the year ended 30<sup>th</sup> June, 2016.

The Report of the Auditor-General on the Financial Statements in respect of outstanding loans for the year ended 30<sup>th</sup> June, 2016.

**Hon. Speaker:** Next Order!

## POINT OF ORDER

### DEMISE OF HON. JOSEPH DANIEL OTIENDE

**Hon. Speaker:** Hon. Chanzu, Member for Vihiga.

**Hon. Chanzu:** Thank you, Hon. Speaker. I take this opportunity to convey a Message to the Members of this august House, and the country at large, on the passing on of Hon. Joseph Daniel Otiende, who served as the first Member of Parliament (MP) for the larger Vihiga Constituency which is now Vihiga and Sabatia constituencies. He also served as a Minister in the Ministries of Education and Health between the years 1963 and 1969, respectively. His death occurred on Wednesday 8<sup>th</sup> March, 2017. His burial is set for Saturday 18<sup>th</sup> March, 2017 at his home, Kegoye Village, Wamuluma Location, Vihiga Constituency in Vihiga County.

The late Hon. J.D. Otiende was a very humble and down-to-earth leader. He was a great patriot and among the leading lights within the western part of Kenya and the country at large. He started his career as a teacher and, indeed, he taught at the prestigious Alliance Boys High School in those early days. After his elective position in 1969, he served in a number of parastatals and boards as Chairman, as well as attending to farming activities in his home area of Kegoye in Vihiga Constituency.

May the Almighty God rest his soul in eternal peace. Thank you, Hon. Speaker. The burial is on Saturday.

Hon. Speaker, I have got permission from your office to circulate the usual list of Members of Parliament who are willing to support. That is because the burial is on Saturday. So, I will be circulating that list for those Members who are willing to assist to offset funeral and hospital expenses.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Member of Kiminini, do you have something to say?

**Hon. Wakhungu:** Thank you, Hon. Speaker, for allowing to me pass a message of condolence to the family of the late Mzee Otiende. About two weeks ago, I visited him in Avenue Hospital in Kisumu. So, when I heard about this, it was a great shock. But Mzee was

very humble. I want to pass my message of condolence to the family and let them know that we are together. It is God who gives and takes. We pray to the Almighty Father, at such a difficult time, to give them strength and comfort.

As Hon. Chanzu has mentioned, I was at the hospital and I realized that the hospital bill was high. Therefore, I humbly request Hon. Members to support and give a hand. Those who can manage should lend a hand. This is not a *Harambee* - I know that the Independent Electoral and Boundaries Commission (IEBC) is looking, especially, for MPs. Presently, if you give out any small contribution, you will find your competitors looking for you to ensure that you are not on the ballot paper. So, please, Hon. Members, let us contribute generously for the family of the late Mzee Otiende.

I thank you.

**Hon. Speaker:** Hon. Patrick Wangamati.

**Hon. Wangamati:** Thank you, Hon. Speaker, for giving me this opportunity also to pass my condolences to the family of the late Hon. Mzee Otiende, who has been with us for a long time. Mzee Otiende was one of our freedom fighters in this country. Mzee Otiende was one of our first Ministers in the Government of the late Mzee Jomo Kenyatta. He has done so much for this country. He has been a patron of the Luhya Elders Forum. He guided us well and we have been doing well under his leadership. The late Otiende comes from Hon. Chanzu's constituency. As elders, we asked Hon. Chanzu to speak to Members of Parliament to assist us in organizing the funeral of the late Otiende.

Hon. Speaker, I wish to take this opportunity to thank you for allowing *Mashujaa - wale wazee waliopigania uhuru wa nchi yetu* - access to Parliament today. They are seated at the Speaker's Gallery. I had lunch, which you gave us with them. We are happy that you have given them a chance to come in here to see the proceedings of the National Assembly. As they sit at the Speaker's Gallery, they are very happy. They are now sitting in this Chamber which used to be called Legislative Council (LEGCO). Indeed, LEGCO was situated here and no African was allowed to come here. Hon. Speaker, you have done a wonderful thing. For most of them, it is the first time to come to Parliament. I thank you on their behalf. Indeed, this is what we want to see happening. Let our people come and see their elected Members in Parliament doing the work they were elected to do; that is, legislation.

I thank you my colleagues, Hon. Members. I thank you, Hon. Speaker for giving me this opportunity.

**Hon. Speaker:** Finally, let us have the Member for Juja.

**Hon. Francis Waititu:** Thank you, Hon. Speaker for giving me this chance to air my condolences on my own behalf and on behalf of the people of Juja. I have known the late J.D. Otiende for a long time when he was a Minister and I was a young man. He used to visit the East African Bag and Cordage Company. I remember he used to come because of the problems that were affecting that industry.

Hon. Speaker, I have heard Hon. Wangamati speak about the late Hon. Otiende. I agree that in this country today, there are two things that can make you poor - court cases and sickness. I ask Hon. Members to help the family of the late Otiende. I remember he once visited us in the company of former Minister Wanjigi. He also visited Gatundu in the company of the late President Mzee Jomo Kenyatta.

I also thank you Hon. Speaker for allowing the *Mau Mau* veterans to access the Speaker's Gallery. They are led by the former MP for Juja, Hon. Gitu Kahengeri. It is good when they come to Parliament to see us debating.

Thank you, Hon. Speaker and may his soul rest in peace.

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

### PROCEDURAL MOTIONS

#### RESOLUTION NOT TO HOLD MORNING SITTING

**Hon. A.B. Duale:** Sorry, Hon. Speaker. I was talking to the incoming Governor of Bomet County, Hon. Deputy Speaker, and also the incoming Governor of Embu County, Hon. Cecily Mbarire. Jubilee is serious about having women governors.

*(Applause)*

Hon. Speaker, I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Order No.30 relating to the hours of meeting, this House resolves not to hold a morning sitting on Wednesday, 15<sup>th</sup> March 2017.

This is a very clear Procedural Motion. Tomorrow, we have the State of the Nation Address by His Excellency the President as per the provisions of the Constitution and the Gazette Notice signed by you and your colleague, the Speaker of the Senate.

Therefore, it will require a lot of preparations for both security and cleaning because our colleagues from the Senate will come here. We felt that we cannot have a morning sitting so that we can give our staff and those people who are preparing this great day enough time to deal with in-house matters. It is a straightforward Procedural Motion and I ask Hon. Chris Wamalwa, the Deputy Minority Whip, to second.

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

**Hon. Wakhungu:** Thank you, Hon. Speaker. I rise to second this Procedural Motion. Of course, tomorrow is going to be a critical day where we will be listening to His Excellency the President. It is provided for in the Constitution, so that we can know the status of the nation pertaining to matters of security, governance and Kenya's international obligations. Therefore, we need to give our staff time so as to organize themselves because it will be a Joint Sitting and we expect the Senators to be here tomorrow.

Thank you, Hon. Speaker. I second.

*(Question proposed)*

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

*(Question put and agreed to)*

**Hon. (Dr.) Simiyu:** On a point of order, Hon. Speaker.

**Hon. Speaker:** Member for Tongaren, what is your point of order?

**Hon. (Dr.) Simiyu:** Hon. Speaker, the Procedural Motion that has just gone through is not in our Order Paper, unless there is a Supplementary Order Paper.

**Hon. Speaker:** I approved it. It is, indeed, an administrative matter which was brought to my attention a few minutes ago because the staff will need time to prepare themselves. As you know, when we have a Joint Sitting, we need to have extra seats in this Chamber to

accommodate our colleagues from the other House. I, therefore, used my powers under Standing Orders No.52 to approve that Motion to be moved even though it is not in the Order Paper.

Next Order! The Chairperson, Departmental Committee on Justice and Legal Affairs, Hon. Chepkong'a.

#### REDUCTION OF PUBLICATION PERIOD OF A BILL

**Hon. Chepkong'a:** Hon. Speaker, I beg to move the following Procedural Motion:

THAT, pursuant to the provisions of Standing Order 120, this House resolves to reduce the publication period of the Elections Laws (Amendment) Bill (National Assembly Bill No. 10 of 2017), from fourteen (14) to twelve (12) days.

Without going into the merits of the Bill, I would like Members to know that the gist of this Bill is to provide for jurisdiction of the petitions to be filed by Members of County Assemblies (MCAs), Members of Parliament (MPs), Senators and Governors. This is as a consequence of a meeting we had with the Judicial Committee on Elections which is headed by the current Chief Justice (CJ), Justice Maranga.

We agreed that it is important and needs to be passed fairly quickly so that we can address the issues which will arise in 2017. As an overview and to let the Members know, we are seeking to provide that the petitions with regard to MCAs will be filed at the Magistrates' Court. That is because sending them to the High Court will just clog it. So, we want to unclog the High Court from the petitioners. You know there are very many people who are vying for MCA seats across the country. In my own county, we have almost 300 aspirants who are vying for various MCA seats across the county. So, we are seeking that those petitions which will arise thereafter from those who are aggrieved, to be filed at the Magistrates Courts.

Secondly, with regard to Senators, MPs and County Women Representatives, their petitions will commence at the High Court and end at the Court of Appeal. Those of MCAs will commence at the Magistrates' Courts level and end at the High Court. Petitions do not raise any new law or ground. We are all aware of the issues which are raised. There is nothing to canvass at the Supreme Court so we shall unclog the High Court, Court of Appeal and Supreme Court from petitions which can be dispensed with.

I know many Members have sought to persuade you to make a ruling with regard to issues which the High Court has just ruled, like the matter which is currently pending before the Departmental Committee on Finance, Planning and Trade. I think it is important that you also consider in your ruling as to whether the court has now suspended the Standing Orders with regard to timelines.

You gave the Departmental Committee on Finance, Planning and Trade timelines within which to consider that petition. Have those timelines been done away with? Article 125 of the Constitution gives us the power to regulate our own business and we do so under the Standing Orders. Are we saying those Standing Orders have been vacated and have no application in this House?

The other thing I would urge you to consider is: Can the High Court, in its conservatory powers, prevent this House from considering that petition without necessarily even sending it to a Committee? We can sit here and consider that petition and pass it. Can Parliament be enjoined? Committees are a subset of this House. It is just the equivalent of this House sitting like for example the Departmental Committee on Justice and Legal Affairs with 29 MPs who represent all of us. Otherwise, we could all sit as Members of the Departmental Committee on Justice and Legal Affairs, the 349 of us.

**Hon. Speaker:** Maybe, you should conclude on this one.

**Hon. Chepkong'a:** I have moved. I was just saying this because I was not given an opportunity and as the Chair of the Departmental Committee on Justice and Legal Affairs, we were meeting the Judiciary this morning and I have expressed our disgust. This is not the first time they have done so. They did this to us the last time when the Departmental Committee on Justice and Legal Affairs brought a report here which led to the appointment of a tribunal to investigate Members of the Judicial Service Commission.

I have told them that if we were to use our supervisory powers to reduce their budget, how would they feel? We can do that. What prevents this Parliament from reducing their Budget from Kshs.17 billion and we only allow them Recurrent Expenditure of Kshs13 billion? We all have been given powers. There is nobody who does not have powers. If we want to misuse power, we can do it like they are doing.

With those remarks, I move and request Hon. Pukose to second.

**Hon. Speaker:** Yes, Hon. Pukose, the Member for Endeless. Do you have a card?

**Hon. (Dr.) Pukose:** Thank you, Hon. Speaker. I move to second this Motion reducing the publication period of the Bill from 14 to 12 days.

In the same breath, this is a very important amendment on the elections especially when we deal with the issues on petitions that will arise out of those cases. As you are aware, there are cases that have lasted for so long and have gone up to the Supreme Court. About two weeks ago, the Supreme Court made a ruling on two Members of Parliament in this House. If the ruling was that we have by-elections in those constituencies, you can imagine how unfair it would be for those who had lodged the complaint. We need to make a way for the Judiciary to expeditiously resolve the issues that will arise out of the petitions for people to get justice quickly because justice delayed is justice denied.

With those few remarks, I beg to second.

**Hon. Speaker:** Order, Members! Order Member for special interests, Oburu Odinga!

*(Question proposed)*

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

**Hon. Speaker:** Is it the desire of the House?

**Hon. Members:** Yes, Hon. Speaker.

*(Question put and agreed to)*

**Hon. Speaker:** Next Order.

## BILLS

### *First Readings*

THE ELECTION LAWS (AMENDMENT) BILL

THE LEGAL METROLOGY BILL

*(Orders for First Readings read – Read the First Time and*

*ordered to be referred to the relevant Departmental Committees)*

**Hon. Speaker:** I see the Member for Ainamoi.

### POINT OF ORDER

#### GUIDANCE SOUGHT ON PETITION TO REMOVE AUDITOR GENERAL FROM OFFICE

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

Pursuant to Standing Order No.83 and notwithstanding the provisions of Standing Order No.86, I rise to ask for your direction and guidance on the matter of consideration of a Petition to remove the Auditor-General from office. As you are aware, the Departmental Committee on Finance, Planning and Trade has been considering the Petition by Mr. Emmanuel Mwagambo Mwagona on the removal of the Auditor-General from office - a Petition which you committed to the Committee on 16<sup>th</sup> February 2017.

The Committee commenced its sittings on 21<sup>st</sup> February 2017 and has since received representation from the following:

The Petitioner himself, Mr. Emmanuel Mwagambo; Mr. Edward Ouko, the Auditor-General; a brief from the Clerk of the National Assembly; a brief from the Chief of Staff and Head of Public Service; the National Integrity Alliance on 1<sup>st</sup> March 2017; the Institute of Certified Public Accountants of Kenya (ICPAK) on 1<sup>st</sup> March 2017; Mr. Benjamin Ndolo; the Ethics and Anti-Corruption Commission (EACC) on 9<sup>th</sup> March 2017 and the Director of Public Prosecutions (DPP) on 9<sup>th</sup> March 2017.

On realising that the matter at hand was weighty and that the Committee only had 14 days to conclude consideration of the Petition, pursuant to Standing Order No.234, the Committee resolved to seek for an extension so that all the parties mentioned could be given a hearing. I did this on 1<sup>st</sup> March 2017 and the House allowed us an extension of 21 days from 2<sup>nd</sup> March 2017.

The Committee was scheduled to receive evidence from the following witnesses in the week commencing 13<sup>th</sup> March:

M/s. Baker Tilly Merali on 14<sup>th</sup> March who is the auditor;  
The Kenya National Commission on Human Rights (KNCHR);  
Mr. James Ochieng Oduol on 14<sup>th</sup> March 2017;  
M/s. Selva Craft Limited;  
M/s. Baywood Holdings Limited;  
Ms. Agnes C. Mita;  
The Deputy Auditor-General;  
Mr. Phillip Owiti - Head of the human resource department in the Office of the Auditor General;  
  
Mr. Stephen Kinuthia;  
The Deputy Auditor-General;  
The Director-General of Public Procurement Oversight Authority (PPOA);  
The Management of JKUAT Enterprises Limited;  
The Chief Finance Officer - Office of the Auditor-General;  
M/s. Open System Integration (OSI) Kenya Limited on 16<sup>th</sup> March 2017;

The petitioner on 16<sup>th</sup> March 2017; and  
Mr. Edward Ouko on 16<sup>th</sup> March 2017.

Just before the commencement of our meeting today, Tuesday, 14<sup>th</sup> March 2017, the Director of Litigation and Compliance informed the Committee that on 13<sup>th</sup> March 2017, the High Court issued conservatory orders restraining the Committee from further proceeding with the Petition pending the hearing and determination of a case filed by Mr. Okiya Omtatah Okoiti against the National Assembly, the Speaker of the National Assembly, the Attorney-General and Mr. Emmanuel Mwagambo, who is the petitioner. Mr. Omtatah argued that the Petition to remove the Auditor-General from office was a mere witch-hunt by individuals who wanted to remove the Auditor-General from office for exposing corruption in Government. He also contends that the matters raised in the Petition had been addressed by competent offices mandated in law to investigate. Therefore, by considering the Petition, the National Assembly would be usurping the powers. Those matters were being considered by the DPP. We called him and he said that the file is not closed. He said that if there is further evidence, the file will still be reopened. The order that was issued by Justice E. Chacha Mwita further bars the respondents - the Speaker of the National Assembly and the Attorney-General - from acting on any recommendations made by the Committee until the Court determines the petition by Mr. Omtatah. The case will come up for hearing on 10<sup>th</sup> April, 2017.

The Director further informed the Committee of another court order that was issued today in the morning by Justice Odunga granting similar conservatory orders. The case was filed by Mr. Edward Ouko and will come for hearing on 15<sup>th</sup> May, 2017.

Upon deliberations on the matter, the Committee resolved that we suspend our scheduled meetings related to the petition pending your decision and two, request directions from the Speaker of the National Assembly on the following:

(i) Whether it was proper for the High Court to issue conservatory orders *suo motu* on 13<sup>th</sup> March 2017 before hearing the counsel appearing for the National Assembly and the Speaker of the National Assembly;

(ii) Whether jurisdiction of the High Court to hear matters under Article 163 of the Constitution extends to injuncting National Assembly from considering whether a petition submitted under Article 251 of the Constitution discloses a ground for the removal of a member of a constitutional Commission or an independent office;

(iii) Whether the High Court has a mandate to impose conditions on Parliament when exercising its mandate under Article 125 of the Constitution to call for information or documents from any person;

(iv) Whether the doctrine of separation of powers requires the Judiciary to restrain itself from unnecessarily interfering in matters within the mandate of the other arms of Government, that is, the Legislature and the Executive;

(v) Whether the Senate should be requested to pass the Constitution of Kenya (Amendment) Bill No. 2 of 2015 sponsored by Hon. George Peter Kaluma, which was passed by the National Assembly in August 2015 and referred to Senate and is still not passed.

**Hon. Speaker:** It is dead!

*(Laughter)*

**Hon. Langat:** Hon. Speaker, (vi), whether the ruling sets a bad precedent and should be appealed against.

Those are the issues which we are faced with and for which we are requesting your direction and guidance so that we proceed well as a Committee. I thank you.

**Hon. Speaker:** I guess that you are seeking directions from the Chair.

**Hon. Langat:** Yes, Hon. Speaker.

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

**Hon. Aluoch:** Thank you, Hon. Speaker. The issues that have been raised are quite grave. I was surprised a little earlier when the Chairman of my Committee, the Departmental Committee on Justice and Legal Affairs, made reference, rather casually---

*(Technical hitch)*

Hon. Speaker, this matter touches on the independence of Parliament and the issue of separation of powers. However, it is not a matter that has not been dealt with before by this Committee. You, Hon. Speaker, has dealt with this matter in detail in this Parliament. It was handled very effectively in the last Parliament. Whereas as at now, I do not wish to indicate that I support or I oppose that Petition, the important thing is that, as Parliament, we need to guard our independence jealously within the law.

*(Applause)*

Whether that Petition has merits or not, that is something else, but as an institution, we need to follow the law and ensure that our supremacy and independence is guarded by ourselves. As you issue directions on this matter, as you have always done, I kindly ask that you address yourself to the relevant laws that are applicable so that what you are going to give us as directions will not just cover this particular Petition and this particular issue raised by Hon. Langat, but would also guide the House in future.

Most importantly, I want to say that the amendment that was sought by Hon. Kaluma, which died, would have cured this problem we are in now. Had that amendment been passed, we would not have been in this mess. Maybe, the time has come for us to consider introducing another similar amendment. I thank you.

**Hon. Speaker:** Member for Kikuyu.

**Hon. Ichung'wah:** Thank you, Hon. Speaker. I cannot agree more with senior counsel, Hon. Olago Aluoch, specifically on the question of separation of powers and the supremacy of this House. There are also constitutional issues, especially those that are contained in Article 145 of the Constitution, that clearly spell out in the Constitution a procedure for the removal of even the President who is elected by millions of Kenyans. Those provisions were put in the Constitution by the framers of this Constitution just the same way they put Article 251 on the removal from office of State officers whether in independent offices like that of the Attorney-General or Auditor-General, or even members of independent constitutional commissions.

Article 251 allows any member of the public to bring a petition to the National Assembly for the removal or even the participation of this Assembly in the appointment of State officers. Part of the work that is given to this House by this Constitution is to oversee public officers and even public institutions. Therefore, the question that Chairman of Committee is seeking guidance on is, indeed, as Hon. Olago Aluoch says, a very grave matter.

There is one issue that I would particularly want you to give guidance on. I think the Chairman of the other Committee, Hon. Chepkong'a, had alluded to it. These particular conservatory orders are directed at a particular Committee of this House, which is the Committee



on Finance, Planning and Trade. Coincidentally, it is the Committee that ought to be overseeing the office of the Attorney-General and even allocating budgets to that office. We would want to know whether---

**Hon. Speaker:** Attorney-General or Auditor-General?

**Hon. Ichung'wah:** Sorry, Auditor-General. You know the acronym for both offices is AG. I am talking about the Office of the Auditor-General. Thank you for that correction. I was saying you should be able to guide this House whether that conservatory order then also gags the entire Assembly; whether we cannot consider that Petition as a House, or even before another Committee, say, the Departmental Committee on Justice and Legal Affairs chaired by Hon. Chepkong'a.

The other question is on our own Standing Orders. The Constitution, again, gives this House powers to draft its own rules and procedures on how to conduct business. Within the same Standing Orders, we have given timeliness on when and how we will consider such petitions by Members of the public. Therefore, we would want to know from your ruling whether we trash and put aside our own Standing Orders, or whether the courts in this country can direct this House on how to conduct its business either as Committees, or even the entire Assembly. That is key in what Hon. Olago Aluoch, spoke about concerning the supremacy of this House and more so concerning the issue of separation of powers. This is because the Constitution gives the three arms of Government independence; there is supposed to be non-interference by one arm of Government on the workings of the other arm of Government. That is why this House and Senate are mandated to consider petitions to impeach the President and the Executive cannot, in any way, interfere with that procedure until the House concludes the process.

I had occasion, later this morning, to look at the conservatory orders that were issued. It is interesting! I realized that those orders were given on a plaint that was not asked by the petitioner in that case. Therefore, it begs the question whether we have a Judiciary that wants to come and conduct business in this House. Maybe, Hon. Speaker, you should consider vacating your seat at some point and allow Justice Odunga, Justice Chacha Mwita and others who want to control other arms of Government from the corridors of justice to come and sit where you sit and conduct the business of this House. Perhaps, they should come and also conduct those Committee sessions.

I want to say that you and this House must jealously guard the powers that have been conferred to this House by nothing else but this Constitution. This is because we are representatives of the people in this House and we must represent our people by even overseeing those independent offices. I was particularly keen because I raised this matter last year on the question of the appointment of M/s. Baker Tilly Merali auditing firm by the Office of the Auditor-General. We have an office. Again, I do not want to go into the merits and demerits of that Petition because I am not even averse with all the issues, but that is a matter that was before this House. You remember Hon. Keynan, on behalf of the Parliamentary Service Commission (PSC), withdrawing the Motion on the appointment of an auditor to audit the Auditor-General's Office. There are questions that need to be answered.

There are other witnesses we were keen to hear in relation to that Petition but like Hon. Olago has said, I want to say that besides whether there is merit or not in the Petition before the Committee, the Judiciary cannot gag this House from considering that Petition. We should conclude the process because even the procedure in the Constitution on the removal of an independent officer does not end with the Report that will be done by the Departmental Committee on Finance, Planning and Trade. It does not even end with the adoption of that

Report here. That Report can recommend the setting up of a tribunal that will again go into further details to interrogate the issues in the Petition. Therefore I wonder what this rush is for. Either powers in the Judiciary want to protect the Office of the Auditor-General or what is this fear that the Auditor-General has to even attempt to stop a process in this House that also allows him an opportunity to be heard? I saw him sometimes back appear before the Committee. I am sure he has been given the opportunity to also defend himself before that Committee on any adverse evidence that would have been given before the Committee. He will not just defend himself before that Committee, but even before the tribunal that will be set up if the Committee so recommends and this House adopts their Report. The Auditor-General or any other person - even the Okiya Omtatahs of this world - will have an opportunity to present whatever they want to present before that tribunal.

Hon. Speaker, I want to close by submitting that you as the Speaker of this House must jealously guard the powers that have been conferred by the Constitution to this House. If we do not do that, we can as well allow Justice Mwita and Justice Odunga to come tomorrow and conduct business in Parliamentary committees and this House.

With that, I beg that you consider those very weighty matters and protect the integrity and powers bestowed to this House by the Constitution by giving direction on the issues that have been raised by the Chair.

**Hon. Speaker:** Of course, you forgot to say that the Committee can actually find that the Petition discloses no grounds for removal and recommend to this House that the matter should end there. That is one of the ways. Indeed, the Committee may recommend anything, but the House can also decide otherwise. Therefore, the processes are too many. I have seen too many people purporting to write about Parliament and you can see so much ignorance apprised all over in the villages and streets. This is the very early stage.

Like Hon. Olago Aluoch said, it is just one step and no decision has been taken by the Committee and even when the Committee takes a decision, this House can also disagree with the Committee. There are so many other steps that need to be followed.

I just wanted to correct that it is not just formation of a tribunal. Even the formation of a tribunal can be stopped. Even if the Committee recommends the formation of that tribunal and the House agrees, the formation of that tribunal can be stopped and has been stopped unless the people have forgotten. That is the correct procedure.

Let us have Hon. Wamalwa.

**Hon. Wakhungu:** Thank you, Hon. Speaker. Indeed, this is a very critical matter. I agree with the other honourable Members that we must guard jealously the independence of this House. I want to remind you that sometimes back we had a leadership retreat in Mombasa where we invited one of the constitutional lawyers to present to us. I remember very well the aspect of checks and balances as far as the Constitution 2010 is concerned. This is to do with the Executive, the Judiciary and the Legislature.

When you look at this issue at hand and you do your ruling, you must be guided by the Constitution, other connected statutes and, of course, even the Standing Orders. In any case when we have any Standing Orders that are contrary to the Constitution, of course the Constitution takes precedence because it is the supreme law. I do not want to be a devil's advocate, but when I look at this matter, I remember that day I seconded Hon. Kaluma's Bill. Hon. Kaluma's Bill was actually coming to heal this problem; that much as the Judiciary is there to interpret the laws, Parliament is there to enact these laws and the Executive is there to implement them. So,

the Bill was meant to tell the Judiciary to wait for the output so that it can declare it unconstitutional and it is referred back to Parliament for any amendment.

However, we have to respect what the courts have done, we have no otherwise. We do know very well that courts have unlimited jurisdiction and, in any case, if somebody is aggrieved, the only place you can turn to is the courts. Therefore, whether it is Omtatah or whoever it is, I think it is totally in order. So, much as I belong to this House, I do not see any problem. We say that Parliament must be independent, but the way the framers of the Constitution did, there must be checks and balances. If I am not very wrong, this is another section of providing checks and balances. Let us wait for the hearing, notwithstanding Article 125 of the Constitution which says that Parliament can summon anybody for purposes of giving evidence or providing information. So, we need to respect the law and the courts. Let us wait and see what happens.

I thank you.

**Hon. Speaker:** Member for Githunguri.

**Hon. Baiya:** Thank you, Hon. Speaker. I have just listened to what Hon. Wamalwa has just stated. He is simply succumbing to the usurpation of the constitutional limits that are clearly set within our Constitution. Our Constitution has actually given all the arms of Government very specific lines of responsibilities and each has that responsibility to safeguard its space from encroachment from any other arm. That is the essence of our Constitution.

When the Judiciary makes an order purporting to direct how this House will conduct its internal affairs, that is clearly where usurpation of power happens and the only thing that can happen is for this House to assert its constitutional mandate by stating categorically to the Judiciary that they have gone beyond their limits. The principle that this House should not be dealing with any matter that is before the court basically applies as a restraint by the National Assembly. But in this particular case, that does not even apply as it is in the Standing Orders. This is because the House was already seized of this matter and then somebody went to court and the court, quite cognisant of the fact that the matter is before the National Assembly, purported to take control and issued a directive interfering and interrupting the conduct of business by the National Assembly. If we were to allow that, then it would be unprecedented and it would really cause havoc as far as the operation of our constitutional system is concerned.

Hon. Speaker, I will be urging you to give direction, bearing in mind the effect of such an order purporting to ask the National Assembly to conduct – or not to conduct – its normal business outside the Constitution and its own Standing Orders. The High Court or any other court has the leeway to allow Parliament to run its full course. At the end of the day, that is the procedural way of making pronouncement as to whether it was constitutional or not. That is what we have heard. Any perceived prejudice does not entitle anybody to use that very well established mechanism of separation of powers or disrespect it.

With those comments, I urge this House not to hesitate to assert itself in the wake of a blatant court order made in disregard of very clear constitutional principles.

Thank you.

**Hon. Speaker:** However, of course remember that the House proceeds through its own resolutions. Even as you urge me to give directions, the House can make a resolution. That is the inanimate aspect. The Speaker is a human being, but he may not have eyes or ears to even see

orders. Remember what the Speaker of the House of Lords in the United Kingdom did in January, 1642 when King James became difficult.

The Leader of the Majority Party, the Floor is yours.

**Hon. A.B. Duale:** Thank you, Hon. Speaker. This matter has again resurfaced in the 11<sup>th</sup> Parliament. As we approach the sunset days of the 11<sup>th</sup> Parliament, you must be remembered as the Speaker of the National Assembly who protected the boundaries of the Legislature. As Hon. Olago, Hon. Chris and many other Members said, the merits and demerits of the petition are not being discussed this afternoon. What is being discussed is the ruling by Justice Chacha Mwita. The ruling, indeed, raised fundamental issues touching on the ability of this House to exercise its oversight and legislative roles as spelt out in Article 95 of the Constitution. We are not talking from the blues. We are quoting the Constitution. As you are aware, the petition before the Departmental Committee on Finance, Planning and Trade relates to alleged violation of the Constitution by the Auditor-General, among other things. It raised serious questions of integrity at the Office of the Auditor-General, which the Committee is mandated to inquire into and advise this House accordingly.

However, Justice Mwita, through his conservatory orders, seeks to bar a Committee of this House – and, certainly, this House – from exercising its oversight role on behalf of the people of Kenya. That is the gist of the matter. Individual public officers in the Executive have previously been discussed in this House. I have in mind the cases of two former chairpersons of the Ethics and Anti-Corruption Commission (EACC), namely, Mr. Mumo Matemo and Mr. Kinisu.

The committees of this House dealt with the petitions regarding the two former chairpersons of the EACC, and the House disposed of those matters. This House also dealt with a matter involving Cabinet Secretary, Joseph Kaimenyi as provided by the Constitution, who survived by 17 votes during his impeachment.

We had the famous lady, Ann Waiguru, whose impeachment process at least disappeared on the corridors of this House on its way to the Chamber. A matter involving the chairperson of the National Gender and Equality Commission, Mrs. Lichuma, came to this House. The nomination and vetting of Ms. Monicah Juma came to this Chamber but was rejected. Therefore, there is nothing special about the Auditor-General.

Hon. Speaker, I also want you to make a ruling. I want to gauge the memory of some members of this House. When the Public Accounts Committee (PAC) was dealing with the matter of former Cabinet Secretary, Ann Waiguru, there were many friends of the Committee from the Jubilee Coalition, who were involved in a lot of side shows. During that time, Hon. Wandayi stood in this House and asked for your direction on why the Members of Parliament from the Jubilee Coalition, who turned out for the proceedings as friends of that Committee, behaved in the manner they did then.

Ten days ago, I was shocked that the same Hon. Wandayi led a team of Members of Parliament, amongst whom were very senior ranking individuals, like Hon. Dalmas Otieno and

prominent lawyers like T.J. Kajwang', who wanted to physically stop the Chairman of the Committee on Finance, Planning and Trade from moving. I also seek your direction.

There are a number of issues in view of the foregoing. I seek your clarification on several issues as you give your directions. In light of the power vested upon Parliament under Article 124 of the Constitution, which says that Parliament will make its own rules of procedure--- In light of the ruling of the Supreme Court, I hope Justice Chacha Mwita is listening to me because he must follow precedents. The ruling of the US Supreme Court in the case of Marshall Field & Company Vs. Clerk is classical as it relates to the issue of separation of powers between the Judiciary and the Legislature. It has been cited in a number of legislative jurisdictions. I want Justice Chacha to read that ruling so that he may understand how far the courts can go in terms of dictating or even questioning the rules of procedure to be followed by the Legislature.

Secondly, does Article 117 of the Constitution qualify the provisions of the Bill of Rights? Can the Judiciary use Article 165 of the Constitution to make orders which have the effect of curtailing the freedom of speech and debate in Parliament? What Justice Chacha Mwita is trying to do is curtailing the freedom of speech and debate by the Committee and the House. He is interfering with this House's powers, privilege and immunities as guaranteed by Article 117 of the Constitution.

Hon. Speaker, we want your direction on the effect of the conservatory orders given by Justice Chacha on the mandate of the Committee to consider the petition relating to the removal of the Auditor-General from office.

Secondly, what is the effect of these conservatory orders in light of the 21 days extension granted to this Committee to consider and conclude the petition relating to the removal of the Auditor-General? Let us not play games or tribal politics. In as far as violation of the Constitution or abuse of office is concerned, let us deal with each public officer regardless of his or her political affiliation, ethnic background or religion. This Constitution has even provided a mechanism through which you can impeach the President, the Deputy President of the Republic of Kenya, Cabinet Secretaries and all holders of independent offices.

One judge talks about 10<sup>th</sup> April while another one talks about 21<sup>st</sup> May. We have gone to school. Let me tell the Judiciary that this Parliament will sit until the midnight of 7<sup>th</sup> August, 2017.

*(Applause)*

And we will deal with whoever, even if it is the Cabinet Secretaries. So, if you think you can buy time until this Parliament goes home then you must prepare yourself. This House, through a Motion, gave the Committee 21 days. What happened to the 21 days?

Hon. Speaker, I also need clarification on whether the Committee can be stopped from exercising its oversight role, which has been conferred to it by the Constitution and the Standing Orders. The basis upon which the Committee is being stopped from doing its work is that

relevant Government agencies had undertaken investigations relating to issues raised in this petition.

In light of Paragraph Four of the Report, where the Committee has considered the petition, does it amount to usurping the functions of other relevant Government agencies? What is the effect of the orders by the court directing this House, the Office of the Speaker and that of the Attorney-General not to act on the recommendation made by the Departmental Committee on Finance, Planning and Trade relating to the petition? That this House cannot act until a constitutional petition is heard and determined? Simply put, can a court of law order the non-implementation of a decision made by this House? If the Judiciary wants to become a squatter in the Legislature, they should come to this House to table their budget and approve it. The Judiciary should also vet its own Chief Justice and Deputy Chief Justice. They cannot have their cake and eat it! You either work for the Judiciary, the Executive or chose to work for the people of Kenya like Hon. Duale and many others seated here. You cannot play two roles.

You will recall that recently, under your leadership, the Judiciary and the National Assembly had a joint retreat in which we mutually agreed that the Judiciary will refrain from considering matters that are before this House. I want the CJ to look at me in the eyes. He said it himself, and the HANSARD will prove me right, that parliamentary processes will continue. It is at the conclusion of that parliamentary process that the Judiciary will pick from. The Judiciary could even say that a whole piece of legislation that has been passed and assented to by the President is unconstitutional. I was elected by the people of Garissa Township to sit here every Tuesday, Wednesday and Thursday to represent them, legislate and oversee.

Hon. Speaker, there was a case where somebody went to court to stop a Special Sitting of this House when we were dealing with the security laws. A judge, in his wisdom, said he could not stop a parliamentary process. Tomorrow, the President is coming here as per the Constitution. He is supposed to come to the House once in a year to give us an address on the state of the nation. He is supposed to talk to us with regard to Article 10 of the Constitution, his Government achievements, international obligations and the status of the national security. Tomorrow morning somebody will go to court to claim that the Speakers of the two Houses cannot gazette that date and that President Uhuru Kenyatta cannot come and address the nation. In light of that, another Chacha Mwita will give conservatory orders.

Hon. Speaker, Hon. Omtatah is a good friend of mine but I think---

**Hon. Member:** Honorable Omtatah!

**Hon. A.B. Duale:** Yes, he is honorable because he represents himself in court; he has no lawyer. He is not allowed. However, he can play any other monkey business. I have read that judgement and seen what Omtatah filed. He, in fact, did not ask for conservatory orders. So, we must know the interest of the said Judge in this matter. Who asked for conservatory orders? You are either a judge or a litigant. There is no way a judge can serve as both the judge and litigant. In this case, we want Judge Mwita to tell us who asked for the conservatory orders. He did not listen to the litigation department of Parliament. He also did not listen to the litigation section of the Attorney-General.

In Mombasa, the Chief Justice came with clean hands. He addressed the top leadership, under your leadership, in good faith. We agreed on many things and that is why Hon. Chepkong'a is moving the Bill he asked us to fast-track. I do not think we are interested anymore with that Bill. I want to tell Hon. Chepkong'a to go and talk to the owners of that Bill to come here and pass that Bill. For us here, it is not--- That ruling is certainly a breach of the agreed position and in this regard I seek your clarification on how this House should move forward. As I conclude, Members of this House will agree with me that there is need for this House to be guided on the issues I have raised. The need to safeguard and promote the oversight role of this House to enquire on the manner in which State officers and State organs exercise their functions is a matter that need not be overemphasized.

My colleagues were demonstrating from morning to evening for the removal of Issack Hassan. When he finally appeared before the Joint Select Committee together with his team, no iota of evidence was provided. However, today, because the Auditor-General comes from your community, you want to blind yourselves even from the proceedings. It is for this House to decide, as the Hon. Speaker said. I want to tell the Auditor-General, a man I respect, that you do not need a lot of roadblocks. You can put roadblocks but the truth shall come out. If there are issues that concern your office, this House will deal with them through the relevant Committee. The Judge is trying to throw away and curtail the process of Parliament. Hon. Speaker, you need to give direction. If you do not do that, a judge will annul the calendar of this House. The calendar of this House is provided for in our laws.

We have come from a long history where Parliament was an appendix of Harambee House and it was controlled from State House. I want to go on record that we are not ready to be a department of the Judiciary. Hon. Keynan, one of the active Members of the Public Investments Committee (PIC), will deal with you based on the evidence provided and if he feels you should go through a certain route, the House will vote.

Hon. Kaimenyi survived by 17 votes and Hon. Monica Juma did not survive. We want you to protect the Chair of the Departmental Committee on Finance, Planning and Trade, Hon. Langat from those who are saying he is behaving in a certain way. Those are sideshows. The Chair is going to deal with evidence as provided. The Committee will provide a report either for rejection or adoption which this House will decide.

In your ruling, you must also remind Members that they cannot mete mob justice on committees to save their next of kin who works for the people of Kenya. They took an oath and must defend it. My next of kin was chased through many demonstrations. Your next of kin is lucky since he is being given an opportunity to go through the due process of law. I wish Ahmed Issack Hassan was given the due process of law when he was hounded out of office.

**Hon. (Ms.) Odhiambo-Mabona:** On a point of order.

**Hon. A.B. Duale:** When I mention ethnic, I am talking about everybody. So relax. You will have your time. We cannot use this House and its committees for mob justice when we want to protect our next of kin. I want to read the Report of the Committee in a free, fair and not unbiased way. I might be the person who stands for Edward Ouko and defends him on this Floor.

But before the food is cooked by the Committee, you cannot tell us it will not be cooked, no salt should be put in it or we should not listen to people. I am one person who is ready. Even as the leader of Jubilee I will not allow this coalition to succumb the due process of the Legislature. This time, you must rise to the occasion and give us direction. I hope and pray that in protecting Parliament, the Chair will continue with his investigation on Thursday.

Thank you, Hon. Speaker.

**Hon. Speaker:** Let us have the Member for South Mugirango.

**Hon. Nyamweya:** Thank you, Hon. Speaker. From the outset, I want to say that it is not the CJ who controls the Judiciary. This innuendo from the Leader of the Majority Party implying that the CJ should control what happens when judges make a decision is not good. I find his comments to be unfair. We should not use our position to attack people who cannot defend themselves here.

**Hon. A.B. Duale:** On a point of order.

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

**Hon. A.B. Duale:** Hon. Speaker, we were discussing a matter which was raised by the Chair of the Departmental Committee on Finance, Planning and Trade when my colleague, Hon. Nyamweya was away. As the Member for Garissa Township, I have raised substantive issues to the Speaker. This is not about the Leader of the Majority Party and the CJ. In fact, to the contrary, I said this to the CJ when we were in a meeting. Hon. Nyamweya is not part of the leadership and that is the problem. He has a long way to go to be a leader. So, is he in order to discuss me and this is the detriment of coming late? Hon. Wamalwa and Hon. Ichung'wah have spoken. It is not about Duale, but about separation of powers between the Legislature and the Judiciary on oversight.

**Hon. Nyamweya:** You won in the last elections but let us see if you will win in this election. Let us be sober as the National Assembly and debate issues as they are raised by Hon. Members. I want us to refer to the Constitution of Kenya. I believe when making your ruling you will be guided by it. Article 165(3)(a) states:

“(3) Subject to clause (5), the High Court shall have-

(a) unlimited original jurisdiction in criminal and civil matters.”

It is very clear that the High Court can listen to any issue raised. I want to save time and go to Article 165(5) of the Constitution which states:

“(5) the High Court shall not have jurisdiction in respect of matters-

(a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or

(b) falling within the jurisdiction of the courts contemplated in Article 162(2).”

From what has happened, I do not agree with the decision of the High Court, but we must respect it. None of us can challenge it because nowhere in this Constitution are we given a chance or excluded. If we want to be excluded as the National Assembly, we can amend the Constitution. There is no jurisdiction which states that the courts cannot discuss any matter including what is



discussed in Parliament. It is not fair for this National Assembly to say that communities are protecting their own.

If an issue is raised against the Auditor-General he will have to answer to it. If he has gone to court and a ruling has been given, through this Constitution we are supposed to accept it. I pray that Members be sober. They may not like the decision that has been made but let us obey what the law states. We are quoting the Standing Orders and the question to be asked is: Between the Constitution and the Standing Orders, which is more superior? Is it the National Assembly Standing Orders or the Constitution of Kenya? Finally, we are going for elections and emotions are high and people want certain decisions to be made---

**Hon. Ichung'wah:** On a point of order.

**Hon. Speaker:** What is your point of order, Hon. Kimani Ichung'wah?

**Hon. Ichung'wah:** Hon. Speaker, you know Hon. Manson Nyamweya came to the Chamber a little late. As the Leader of the Majority Party has alluded, we are now degenerating this very crucial debate about the independence of this House *vis-a-vis* interference by other arms of the Government, and he was very clear on whether it is from the Presidency, Executive or Judiciary. Hon. Nyamweya is now belittling this very crucial debate to become a matter of defending his kin in the Judiciary. Look beyond your kin and look at the substance of the issue which was raised by the Chair of the Departmental Committee on Finance, Planning and Trade.

**Hon. Nyamweya:** Hon. Speaker, my good friend should refer to the section that I have violated or which states what he is saying. We are a House of rules and procedure. Can he refer to it so that we are guided? I am referring to specific sections of the law. He should not just generalise because he wants everybody to listen to what he is saying.

**Hon. Speaker:** Which article of the Constitution is guiding you? Is it Article 165?

**Hon. Nyamweya:** Yes.

**Hon. Speaker:** So, what is the value of Articles 251 and 95(5) of the Constitution?

**Hon. Nyamweya:** Thank you, Hon. Speaker. The articles you have stated will be read concurrently before a decision is made. Let us not raise unnecessary emotions. I am not defending the CJ because he is a Kisii. All I am saying is that you cannot blame the CJ for a decision made by other High Court judges. These are people who make decisions and every judge has freedom to reach a decision.

**Hon. Speaker:** Well spoken. Go to the next point.

**Hon. Nyamweya:** Those are the few remarks I wanted to make. Thank you, Hon. Speaker.

**Hon. Speaker:** Well, with the sympathy of the Speaker, let us have the Member for Mbita. Your card seems to be faulty.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, Hon. Speaker, especially for being sympathetic.

Even though I came in when the discussion was on, I am seized of the facts of this matter. I have even commented about it. Contrary to what the Leader of the Majority Party is inferring, some of us stand as professionals, whether it is a person of our ethnicity or not. One of the things

we must do as Parliament is jealously guard our independence. That is despite and in spite of the Leader of the Majority Party. In fact, it is because of that issue of guarding the independence of Parliament that you sometimes see me reacting in manners that I should not as a Member of Parliament, when I feel the independence of Parliament is under threat or when I feel the Executive is encroaching on the role or the spheres of Parliament.

It is unfortunate for us to infer the actions of a single judicial officer to the Chief Justice. I speak knowing that I am not a Kisii. It is unfortunate that we want to align everything we do in this country to tribes. I look forward to a time when we can have discussions devoid of ethnic leanings so that we can just talk about issues. Because I sit in the Committee, from what I have seen, I do not think the substance of things that were brought really merit much. We leave it to the Committee to table the report before the whole House. Even if he goes through the guillotine, let him do so. After that, the court can be seized of the matter and render our decisions *ultra vires* and unconstitutional. Until then, I do not think the courts can stop Parliament from legislating. That has been said before, time and time again.

I know that Mr. Okiya Omtatah is very eager to protect public interest especially when he sometimes feels that the leadership is not doing that. But on this one, he jumped the gun. He should have let Parliament complete its work. If it is apparent that we have gone beyond our mandate, then the court can come in after we have finished and rule us null and void. The court can do that. That would be the best way to go. I urge that we rise to the occasion as parliamentarians. I know that we have not done very well, especially in this current Parliament, but in the remaining days, let us give it the decorum that it deserves.

**Hon. Speaker:** Finally, let us have the Member for Saku.

**Hon. Dido:** Thank you very much, Hon. Speaker for this opportunity. Clearly, what is under threat is Article 95 of the Constitution on the role of the National Assembly of overseeing and discussing matters of concern to our people.

Further to that, the affront here by the court is towards Article 125 (1) which says:

“Either House of Parliament, and any of its committees, has power to summon any person to appear before it for the purpose of giving evidence or providing information.”

Article 125 (2) says:

“For the purposes of Clause (1), a House of Parliament and any of its committees has the same powers as the High Court.”

For us, when that matter came before this House, it was constitutional. Over the period we have sat in this House in the 11<sup>th</sup> Parliament, on many occasions, you have given Solomonic wisdom to this House, particularly with regard to separation of powers. The major area of concern for me as a legislator, is that even corruption in Kenya has been defeated in courts rather than in this House or if we may say further, within the Executive. For this reason, when the National Assembly deliberates it does so, on matters of critical concern to this nation.

Hon. Members have said that the Chief Justice cannot be mentioned. It is President Eisenhower who said that the buck must stop somewhere. If he is the president of the courts of Kenya, then the buck must stop with him.

With those remarks, thank you for the opportunity.

**Hon. Speaker:** Very well, I think I am sufficiently urged. Hon. Members, the Member for Mbita has spoken about this. Even as we talk about the independence of the three arms of Government, there is a right given to any citizen of Kenya under Article 119 to petition Parliament. You better look at your copies of the Constitution. You will see that.

A person has a right to petition. Once that petition comes before Parliament, there is a procedure that Parliament, acting within the Constitution, has provided. We have dealt with many petitions and special motions. What do you do then to the citizen, who in exercise of his or her right to petition the House brings a petition and then the House does not examine the petition and respond to the petitioner? The House discusses and resolves issues of concern to the people. Those are the people. They have that right.

Let us have the Member for Kiambu, Hon. Jude Njomo.

**Hon. Njomo:** Thank you, Hon. Speaker. I will be very brief because I do not want to belabour points that have already been made. I know they have sufficient information. In making your decision, I would like to consider that this House has always treated the courts as independent institutions. In every petition that comes to this House, we always quote that “these matters are not before any court of law”. We invoke Standing Order No.89. We never interfere with what happens in court. Why are the courts not reciprocating this and also treating us as an independent institution?

The Election Laws (Amendment) Bill that has been read here today emanated from the Chief Justice who is the head of the Judiciary. He expects us to respect his Bill, deliberate on it and make it law, but the same institution does not respect what we do here. He wants to interfere with the work of this House. In any case, I do not see any consistency in what the courts are doing. I remember when the Senate was considering the Petition for the removal of the Deputy Governor of Machakos, there was an injunction that was applied for in the courts of law.

They ruled that they cannot interfere with the workings of Parliament. Why is it that they could not interfere during that time? They did not give an injunction then. How come they gave out orders in this matter so quickly? I do not see consistency at all.

Lastly, the Departmental Committee on Finance, Planning and Trade is considering the budget for the Auditor-General and the law courts. Where is goodwill? How will they work efficiently and appropriate what they want if they are not treating this House with respect?

**Hon. Speaker:** Very well. With the points that have been raised, I obviously appreciate that this is a weighty matter. However, it is not a matter that this House has not ruled on in the past, including my predecessors. It is, therefore, a matter that perhaps we will be reiterating and coming up with other innovative ways of dealing with some of these challenges. Had the other House risen to the occasion and considered the Bill by Hon. Kaluma, which this House had passed, we would not be in this kind of situation.

I agree with Hon. Olago Aluoch that the issue is not so much about personalities. I do not think we should go into personalities. It is a matter of principle: what is good for this country and what promotes comity between the three arms of Government and other independent institutions created by the Constitution. There must not be seen to be wars of turf.

Parliaments the world over in many civilised jurisdictions, have never questioned the authority of the Judiciary to examine laws passed by parliaments or, indeed, examine any other decisions that parliaments may pass. Indeed, because of the respect that the two arms have for each other, that is why there was developed, in our own Standing Orders, the respect for the *sub judice* rule. This means that when a matter is pending before court, as one Member has indicated, in fairness and in deference, we should avoid debating it. This is so as to avoid confusion as to who is determining the matter.

One would have expected, of course, that if a matter is pending before the House and anybody has any issues whether the procedures of the House are the ones to be questioned, you should wait until the House has gone through it. Like I have said, since this is a matter about which the House has expressed itself on, I intend to go back to the precedents and comparable decisions from other jurisdictions and make a quick decision bearing in mind of course that this House had resolved to extend the period within which the petition was to be considered by the Departmental Committee on Finance, Planning and Trade.

Indeed, the issues raised are quite weighty because there has not been any decision made, at least not one that I am aware of, that suspends the period. Therefore, one may wish to know what then becomes of that period that the House had resolved to give to the Committee to consider the petition. It is a matter that we must be sober about and not personalise it. I do not think there is need to personalise the issues; they are clear. We will come up with a considered ruling or direction on the matter most likely by the afternoon of Thursday, this week.

**Hon. Ichung'wah:** On a point of order, Hon. Speaker.

**Hon. Speaker:** Another point of order? Yes, Hon. Ichung'wah.

**Hon. Ichung'wah:** Thank you, Hon. Speaker. I appreciate your consideration of the earlier point of order raised by the Chairman of the Departmental Committee on Finance, Planning and Trade. On a related issue, it is unfortunate Hon. Keynan, my Chairman of the Public Investments Committee (PIC) and also a commissioner, has left the Chamber.

Sometime last year, Hon. Keynan attempted to bring a Motion for the appointment of an audit firm to audit the Office of the Auditor-General in line with Article 226(4) of the Constitution. That Motion was immediately withdrawn amidst reservations some of us had on that particular day. I made it clear during the deliberation of that Motion, before its withdrawal, that Article 226 (4) of the Constitution provides thus:

“The accounts of the office of the Auditor-General shall be audited and reported on by a professionally qualified accountant appointed by the National Assembly.”

What happened last year is that the Commission, which unfortunately you chair, appointed an auditor to audit the Office of the Auditor-General. Despite the reservations, the Constitution does not give that mandate to any other body, not even the Parliamentary Service Commission which has outsiders sitting in it. I think the Parliamentary Service Commission has two or three commissioners who are not Members of the National Assembly. The Constitution specifically gives that mandate to the National Assembly. Since the withdrawal of that Motion, we expected that there would be directions to immediately commence the appointment of an auditor to audit the Office of the Auditor-General by the National Assembly hopefully through one of the committees even if it is the beleaguered Departmental Committee on Finance, Planning and Trade. Hopefully, nobody will go to court again to stop the Chairman of the Departmental Committee on Finance, Planning and Trade from even appointing an auditor. This is part of the oversight responsibilities that have been given, again, by the same Constitution to this House.

Hon. Speaker, I beg that you give directions that this House immediately commences the process of appointing an auditor to audit the Office of the Attorney-General.

**Hon. A.B. Duale:** It is Auditor-General.

**Hon. Ichung'wah:** I am sorry. It is the Auditor-General. It is because I have been reading on the Order Paper a lot of things to do with Bills touching on the Office of the Attorney-General.

I had occasion to be a friend of the Departmental Committee on Finance, Planning and Trade. Some of the issues that are before that Committee, even regarding the petition that is before the courts, are issues that probably would have been arrested much earlier had there been proper audits being done on the Office of the Auditor-General.

The Office of the Auditor-General, as an independent office, has the constitutional mandate to audit any public office in this country, but the Office of the Auditor-General is not also a law unto itself that it shall never be audited. That office has a responsibility to report to Parliament and the only person who can appoint an auditor to the Office of the Auditor-General is this House. I, therefore, wanted to seek your guidance as to when this House will commence that process. It is critical that we appoint an auditor for that office.

**Hon. Speaker:** On this one, my directions, unless they have not been implemented, was that the Clerk of the National Assembly--- The responsibility is on the National Assembly and not Parliament. My instruction was that the Clerk of the National Assembly places advertisements for people who consider themselves qualified in the manner described in the Constitution to apply and try their luck before the Departmental Committee on Finance, Planning and Trade, unfortunately.

Whether people like it or not, that is the modality that we use. Once shortlisting and the rest have been done, the people would have to appear before the Departmental Committee on Finance, Planning and Trade and try their luck. This Committee will bring a report recommending whichever body, person or company they think is qualified.

Hon. Duale, you have the Floor.

**Hon. A. B. Duale:** Hon. Speaker, this is a matter that you must also put your foot down. M/s. Baker Tilly Merali auditing firm was appointed by the PSC in 2013 to audit the Office of the Auditor-General. Until now, there is no report from that audit firm. In fact, that audit firm went and did business with the Office of the Auditor-General. Therefore, it is part of the investigation that the Departmental Committee on Finance, Planning and Trade is dealing with. When they were appointed, as you said, they did not go through the vetting of the Departmental Committee on Finance, Planning and Trade.

Last time, Hon. Keynan brought a motion for the reappointment of that audit firm. I am sure you know he withdrew it. Since then nothing has taken place and I think as you well said, the Clerk of the National Assembly must put the adverts and get qualified and reputable audit firms to audit the Office of the Auditor-General. Now that the Motion of Hon. Keynan has elapsed, we now need to move from there.

**Hon. Speaker:** Hon. Members, there is nothing really to discuss on this. It is good that Hon. Kimani Ichung'wah has reminded me. I had assumed that the process was ongoing for the House because the matter of whoever is appointed the Auditor-General will have to come to the House. Hon. Keynan withdrew his Motion having realised the procedural mistakes previously committed by the Commission. Indeed, we discussed in the Commission that it is not the Commission's duty to appoint. It is the National Assembly. That is why the Clerk of the National

Assembly is the appropriate officer to place the advertisements for purposes of the process to kick-start as soon as possible.

Next Order!

## MOTION

### REPORT OF THE CONSTITUTIONAL IMPLEMENTATION OVERSIGHT COMMITTEE ON IMPLEMENTATION OF DEVOLUTION

*(Hon. Baiya on 28.2.2017)*

*(Resumption of Debate interrupted on 28.2.2017)*

**Hon. Speaker:** The information available is that the Motion was moved and seconded and the Question was proposed. Is there any Member desirous of contributing to the Motion? The person who has placed a request is Hon. Lagat. Your card shows you want to contribute to this one. The next one who wants to contribute is Hon. Kimani Ichung'wah. Nobody has contributed to the Motion. Hon. Member for Mbita, do you want to contribute to this? Have you looked at the Report? Hon. Member for Mbita, you say you have flipped through. Why do you like flipping instead of reading and considering in detail?

Proceed, Hon. Millie Odhiambo.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, Hon. Speaker, for giving me this opportunity. I have indicated that I flipped through because of times. We have a lot of divided attention, even though I have not gone to my constituency. I was attending the Pan-African Parliament. Our reports also tend to move fairly fast within this Parliament and sometimes it becomes difficult. However, this is an issue that I am sure all of us are very familiar with. I want to thank the Constitutional Implementation and Oversight Committee (CIOC). I just want to comment on one issue which is that of poor development, a fact that has been historical in Kenya and has created a lot of conflict. Indeed, some of the conflicts that you see in this country are as a consequence of poor or skewed allocation of resources.

I know that when we were pushing for the passing of the new Constitution, one of the things that persuaded especially my side of the coalition was a strong commitment to devolution. Because I sat in the special committee that passed the Constitution, I know that our side had really wanted a minimum of at least 45 per cent to be devolved to the counties. Because it was give and take situation, eventually we agreed on a minimum of 15 per cent.

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

*[The Deputy Speaker (Hon.  
(Dr.) Laboso) took the Chair]*

Hon. Deputy Speaker, I want to indicate that it has been very unfortunate that there has been a lot of blame game between the national Government and county governments, especially on the issue of allocation of resources. If you compare the amount of work that has been done by the resources that are allocated to the National Government Constituencies Development Fund (NG-CDF) - a devolved fund - with the amount of work that has been done by county

governments, it is actually embarrassing, especially if you look at the astronomical amounts that were given to the governors.

Going forward, I hope Kenyans will be serious this time in electing governors; that they will elect not just politicians but politicians who can deliver to their people.

Let me give an example of Mbita. I can count the number of classrooms we have built through NG-CDF. We can also count the number of maternity centres, roads and special programmes that we have done through NG-CDF. I do not want to pinpoint a specific county but if you go to counties and walk around, it is difficult to pinpoint projects in the same manner. That is why I am hoping this time round Kenyans will be wise enough to consider not just electing politicians but politicians who can also deliver.

It is unfortunate that we have spent so many years fighting for devolution and you can see many people considering backtracking. You have already heard people say: “Perhaps health should have been taken back to the national Government.” Ideally, we should be thinking towards devolving everything when the systems are working. We should eventually devolve education and healthcare. Maybe security and international relations should not be devolved, but if we want to empower our communities, all these services should eventually be devolved. Devolution can only occur if demand comes from Kenyans, and the demand can only come from Kenyans if they see the results of devolution.

Hon. Deputy Speaker, last week the Council of Governors (CoG) completed their Annual Summit on Devolution. I guess it is now a bit too late to put challenge to them. The challenge will be placed to them through their respective constituencies. It is unfortunate that we have had a crisis in the public health sector as a result of the long doctors’ strike. There is no resolution in sight. I would like to encourage the national Government and the doctors to resolve this matter amicably. The hard stance held by either party is not helping us. I know very many people who have lost their lives.

Yesterday, I fell ill and sought medical attention at a private hospital. Not many people out there are as lucky as we are so as to seek medical attention from private hospitals. When I went to the Nairobi Hospital, I immediately noticed the strain we have put on private hospitals following the closure of public hospitals. That is not what I wanted to talk about. I wanted to talk about the prevailing crisis in our health care system and the points that the doctors have made through their Collective Bargaining Agreement (CBA) with the Government as regards the things that need to be done. The conditions under which doctors and nurses work are absolutely pathetic.

I took the opportunity to sit down and discuss this issue with my own Governor when I visited Homa Bay Hospital. All I heard was the blame game about the national Government disbursing resources late and in piece meal, and consequently denying county Governments timely access to funds required for them to deliver services. Without saying too much, I would like to encourage us, if we mean well for this country that, devolution is the way to go. I would like to disagree with those who are calling for return of some devolved functions to the national Government. It is true that devolution in this country has its own challenges but I would like us to consider the first lot of county governments as transitional because this is something we are experimenting for the first time. As we move on with the new dispensation, there has been a lot of learning.

All I can say is that there is room now for perfection. I hope that moving forward we will provide a legislative framework similar to the NG-CDF Act, so that all the projects undertaken within the county governments can go through county project management committees. Such

mechanism will mitigate situations similar to the one I witnessed in Mbita Constituency, where a road that could only have passed above water was documented as having been constructed by the county Government. We have not seen the road that was purported to have been constructed from a place called Kamsama to Tajo in Rusinga Island.

According to records, the road was completed and money paid. The road was handed over but it was a road that could only have passed above water – over tarmac or under tarmac – because there was already an existing road on the road that was supposed to have been under construction.

With those few remarks, I support as a staunch supporter of devolution and thank you for giving me this opportunity.

**Hon. Deputy Speaker:** Hon. Kimani Ichung'wa, the Floor is yours.

**Hon. Ichung'wa:** Thank you, Hon. Deputy Speaker. I rise to support this Motion.

In my support, I want to point out a few issues that have been of concern to Members of the CIOC.

At the outset, let me state that these are not issues to do with devolution. These are issues which relate to the Finance, Trade and Planning Committee. We gave this Committee a very big mandate – a mandate which the Committee is probably unable to execute on its own and cover all the areas it is expected to oversee. The Committee is expected to oversee issues of fiscal management, monetary policy, trade, planning and lately devolution. Maybe, this House failed to recognise that the Committee was overloaded when our Standing Committees were being approved. It is, therefore, important that this House establishes a committee on devolution, like the one in the Senate. The committee will play a critical role in playing its oversight role over the Executive since we already have a Ministry responsible for devolution.

The Intergovernmental Committee that deals with devolution matters has had challenges with certain aspects of devolution. Many people within the Executive feel that they should not be exceeding certain limits in dealing with matters that are already devolved to county governments. It is, therefore, important that we establish a committee to oversee the Intergovernmental Committee within the Ministry of Devolution and Planning to ensure that we midwife the transition process to a fully devolved system. The Transition Authority (TA), headed by Kinuthia Wamwangi, winded up its operations too soon. The TA left very many gaps which if not properly midwived will make us not realise the true fruits of devolution as envisaged by the framers of our Constitution.

I encourage Hon. Members of this House to support this proposal to establish a committee that will provide the necessary oversight over devolution, and also provide a bridge between the Executive and the CoG in dealing with issues that need to be midwived during the transition period towards a fully devolved system.

With those few remarks, I beg to support the Motion.

**Hon. Deputy Speaker:** Hon. Shakeel Shabbir!

**Hon. S.S. Ahmed:** Thank you, Hon. Deputy Speaker, for giving me the Floor. First, I would like to support the Motion.

As my colleagues who spoke before me stated, devolution is a very important issue. We are very happy that we were able to put together an Oversight Committee on Implementation of devolution. The Oversight Committee was very well thought out. The Committee went with the job they were given. However, I found that they were not fully involved in the issue. Of course, they were overseeing. They dealt with the first problem they came across, which was the issue of the TA. At that time, I thought that folding up the TA in the way it was done put a lot of pressure



on the oversight Committee. The oversight Committee tried to look at the issues that the TA was not able to finalise.

Hon. Deputy Speaker, devolution is based on the basic pillars of development of this country – health, education, among others. However, it looks like the transition from the former local authorities to the current county governments was not well implemented. I was the mayor of Kisumu City, and a number of us in this House would be in a mess. The control mechanisms and accounting systems that had been developed for many years, including the period before 1963, made the local governments to work well. However, the architects of devolution just threw the baby with the bath water.

Governments were bringing in fresh people who had no idea about control mechanisms or the services required of them and the requisite infrastructure. As a result, we ended up overstaffing. We had staff that was inherited from the local authorities plus those who had been engaged on contract. I have looked at the report of the oversight committee, but I do not see it expressing concern about this great lacuna. In my view, implementation is the problem.

The Constitutional Implementation Oversight Committee (CIOC) can oversee the implementation of devolution, but it cannot catalyze the implementation. So, the CIOC is handicapped in the sense that it only oversees implementation, whether it is good or bad. It cannot, however, even by its own mandate, catalyze implementation which is required, say, by the Constitution, or the normal practices that are essential for the proper running of the county governments. As such, we have a body that is carrying out the function of oversight, but without direction.

The CIOC also finds itself in a very difficult position. Remember we had in place a committee that was dealing with transition issues. As much as the CIOC has tried very hard to come up with this Report, and I commend it for the good work done, Parliament needs to give it more teeth. As it is now, the CIOC can only bark. It is not even a watchdog; it is an oversight committee. I think that is where the problem lies.

I am a member of the Departmental Committee on Finance, Planning and Trade and I want to humbly object to the comment that was made by my colleague that the Departmental Committee on Finance, Planning and Trade is overburdened. My Chairman is not here but we are very proud as members of that Committee to have worked hard. We are not behind in our schedule of work. Our work is up to date. We have a large mandate and we have worked pretty hard. We have had no problems of integrity but we have had very small problems with regard to attendance. So, I beg to differ with my colleague. We need to know that devolution covers not only the aspect of finance, but also issues that affect other committees of this House.

Hon. Deputy Speaker, with those few remarks I support. We could have done better, but still we have done well.

Thank you very much.

**Hon. Deputy Speaker:** Let us have Hon. Nakara

**Hon. Nakara:** Thank you, Hon. Deputy Speaker. I join my colleagues in recognizing that devolution has created milestones in our country. If there is something we will live to remember and pass to generations to come, then it is devolution. Since Independence, this country has not been equally funded; distribution of resources was not done equitably. However, with the coming of devolution every Kenyan is enjoying its benefits.

Devolution has changed the face of this country. Wherever you go in this country, you will see the impact of devolution. We cannot deny that we have challenges in implementing

devolution. First, we inherited problems from our forefathers that we could not have solved in the short time that we have had devolution.

In my county, the development that we have now is as a result of devolution. The people of Turkana County can attest to the fact that devolution has changed the face of Turkana. We now have a tarmacked road within the town. We also have education facilities all over. We have good Early Childhood and Development Education (ECDE) facilities which were not there before. We can attest to the fact that devolution has changed the face of that county. It is true that we have challenges when it comes to implementing devolution in this country and one of those challenges is corruption.

As we implement devolution, we need to be serious on corruption so that the monies allocated for devolution are used in the right way. We need to give facts to our people each time we talk to them. Sometimes we use politics to spoil devolution. There are cases whereby we incite the locals against county government leaders. We know how much money every county is given annually, but some members go around quoting wrong figures.

As Members of Parliament, we are in charge of allocating these resources and so we know exactly how much money has been allocated for what purpose in this country. The enemies of devolution go to counties and incite the public against the governors and County Executive Committee (CEC) members by saying that they receive too much money from the national Government. They incite the public against the governors and county staff. They do this in order to gain political mileage. We should talk about facts when we are telling our people about monies that have been allocated for devolution. Some people came to Turkana County and said we were given Kshs50 billion. This is the case and yet we are not even in the fifth year of devolution. That thing almost caused chaos in Turkana.

That utterance almost brought chaos in Turkana County. As politicians, let us not break the spirit of devolution which has changed many counties. We may differ politically, but we must recognise the work which devolution has done within a short time. This does not mean that some of the governors are not doing a good job. I am a Member of this Committee and we have gone around and visited several counties.

It is embarrassing and sometimes shocking to see that the little we have given has not even changed the face of some counties. That is why we are challenging the governors to make sure that the money we give to them is used to improve the livelihoods of the poor in their counties. I know security has not been devolved, but there are some semi-arid areas like Baringo, Turkana, West Pokot, Samburu and Marakwet, where there is war. We need to devolve some security functions to the governors of these areas so that they can allocate some resources to security and be getting updates on what is going on.

Governors in these areas do not get intelligence information about their areas because they are not given any by the security organs. In future, we need to see how we can devolve the security function and give governors a role in it. We passed a Bill on the National Police Reservists and challenged the county governments to pay them. Some counties have allocated money every year to employ police reservists, for example, Turkana County where I come from. Since security is a national function, the national Government has not given them the go ahead and the money is just lying there. Every year, the county assembly sets aside money for that role, but because it has no powers to recruit or employ, the money just stays there idle.

We need to give exceptions to counties which are experiencing insecurity so that governors can help. I am very happy that some counties are now working on peace programmes. They are trying to bring peace between them and their neighbours. Some of them have dockets

of peace in their counties. For the protection aspect of the locals, they need arms and well trained security personnel. They cannot enforce peace when they have not been given authority to train personnel on the use of arms to avoid misuse of arms. As much as we go through some difficulties in implementing devolution, we are proud that devolution came during our time. We will live to remember it and it is a story we will pass to generations to come because devolution has done a lot.

Finally, the issue of having a House Committee to oversee devolution is a good idea. Hon. Deputy Speaker, I know very soon, God willing, you may be the Governor of Bomet County because you are an aspirant. It is very heartbreaking to be overseen by somebody who aspires to be a governor. It is difficult because you cannot be fair to that particular person and that is the problem we have between the governors and Senators. Many Senators want to become governors and because of that, sometimes they try to use their authority or positions to fix some governors, so that they can look bad in the face of the public. The National Assembly should be fair and judge well although some Members are interested in becoming governors in future. We should be fair than the Senators because they want to completely destroy the governors.

I support that we need to have an oversight House Committee to check this work. It should not just condemn but should give some advice and directions so that devolution is run well.

With those few remarks, I support. Thank you.

**Hon. Deputy Speaker:** Hon. Gikaria.

**Hon. Gikaria:** Thank you, Hon. Deputy Speaker, for giving me an opportunity to contribute to this very important Motion. I am a Member of the CIOC and I am one of the people who did not support the introduction of a new committee on devolution. I had all the reasons to believe that we cannot be a country where if an agency fails to perform its duty, the only option left is to form another committee to perform functions of that agency.

The CIOC is a constitutional committee which draws its mandate from Schedule 6(4) of the Constitution on Parliamentary Select Committees. It specifically draws its mandate in Schedule 6(4)(a), (b) and (c). It is not fair for us to start thinking that this is the only option for us to tame governors. I know you are also eyeing a gubernatorial seat in Bomet County, but I do not think it will be right for the National Assembly to be overseeing you when the Senate is bestowed with that responsibility. It does not matter whether Senators want to become governors. Whatever they want to do is their business. Article 96 of the Constitution is very specific on the role of the Senate. It expounds on what it is supposed to do and one of its functions is to oversee devolution.

It will be wrong for us in the National Assembly to bestow that responsibility on ourselves. What we need to do is to tell the Senators to wake up if they are sleeping on the job. They should not be seen as if they are also eyeing gubernatorial positions and thus cannot oversee. Today, I could be a Senator and oversight would be my responsibility. The drafters of the Constitution mandated the Senate to oversee devolution. When we were introducing a committee to look into development issues to be chaired by the Senators, the governors did not agree with us.

I totally agree that everybody should be given an opportunity according to the Constitution and we cannot pretend to change it through a committee report.

The Constitution is very clear under the Sixth Schedule on the functions and the mandate of the CIOC. It is totally unacceptable for the Committee to come to Parliament to amend the Constitution using a Committee report.

I have been trying to go through the Standing Orders of this House to see where we draw our mandate as Parliament to form a Committee. We need to change the Standing Orders so that it gives us a mandate as Parliament to form a Committee of any nature like this one on devolution. If you look at the limitation of mandate of a committee under Standing Order No.197, it also speaks about where the Committee draws its mandate from. Where will this Devolution Committee draw its mandate from? It is very specific under the limitations of mandate of a Committee. I do not want to belabour the point by reading because it is very clear under Standing Order No.197 on where the Committee would need to draw its relevant mandate.

Because I am also the Vice-Chairman of the CIOC, how do we as a Committee implement this? Do we say that we have amended the Constitution through a report of a Committee? How will we go about it? Where will the Committee draw its mandate? Who will we call? This is not acceptable. Standing Order No.218 (1) on Committee to be limited to mandate says:

“Except as expressly provided for in these Standing Orders, no matter shall be referred to a select committee except on a Motion approved after notice given.”

This notice has not been given. We are just deliberating on issues that we cannot implement.

Let me draw your attention to the Report itself. The finding of the Committee under part (e) says that the current institution and legal framework was weak thereby hampering effective implementation of devolution. That is not true. We have a Senate. That Senate is supposed to do that work. It is not the work of the National Assembly to do that work. Those observations are unjustified.

The finding under (f) says that the National Assembly has a duty to oversee devolution and ensure that the national Government—Article 96 of the Constitution shows that that is the role of the Senate. The National Assembly has no role at all. We have said this many times, not once. The CIOC has been unable to move anywhere on most of those motions and petitions which have been brought and approved by this House on issues of devolved function. We are at the mercy of each and every governor and what they want to do. I remember one of the petitions which was tabled by Hon. Ochieng, the Member of Parliament for Ugenya, regarding *boda boda* and reduction of the fees charged by the county governments. Some county governments said that they would not listen to us because they need to collect revenue. How can we as Parliament decide for the county how it will run its issues?

The other one was that the resolution of the Council of Governors (CoG) be implemented without fail. There are some things which were brought forth by the CoG which cannot even be---I do not know whether the CoG is a constitutional committee. How do we then follow that?

I will take you back to the Report on page 15, under the status of transfer and audit of assets, liabilities of the defunct local authorities. I had an opportunity to be a mayor of one of those local authorities. Up to date, there was a field which was a primary school. I keep on asking where the register that indicated that that field belonged to a school is. Up to date, we have not---

Look at the Land Registry. We do not have much. People took loans. I remember the Municipal Council of Nakuru had taken loans with Family Bank. When the county governments came into place, they said they would not pay. Those are some of the issues.

Allow me to quickly point out the very last aspect of recommendation on the oversight functions on devolution vested on the Departmental Committee on Finance, Planning and Trade.

We want to remove these functions from that Committee of Parliament and then form a Committee that will---I do not think that is correct. That is not acceptable. We cannot allow that. If the Departmental Committee on Finance, Planning and Trade has failed to fulfil its functions, we cannot circumvent that and forget that there is a Committee. We need as Parliament to request that the Departmental Committee on Finance, Planning and Trade---There is no way that we can form---

**Hon. Deputy Speaker:** Please, conclude. Your time is up.

**Hon. Gikaria:** I am winding up. Hon. Deputy Speaker it is wrong for the Committee to have sat and agreed that we form a Devolution Committee to oversee devolution at the county level when we have a substantive Departmental Committee. If it has failed, it is the responsibility of this House to tell that Committee to wake up and do its work instead of forming other Committees.

With those few remarks, I oppose the Motion.

**Hon. Deputy Speaker:** Let us have Hon. Benson Mutura. Use the Dispatch Box.

**Hon. Kangara:** Thank you, Hon. Deputy Speaker for giving me the opportunity to support this Bill.

From the outset, I am surprised. I really wanted to raise a point of order so that you can rule Hon. Gikaria out of order. He is a Member of the Committee. When we were deliberating on this issue, he never raised those concerns that he is putting across right now. In most cases, he is usually an absent member. He did not understand the gist of the Committee finding.

On the issue of devolution, it is well stipulated that after five years, we are supposed to audit the Constitution as a country. There are issues. Everybody has agreed that there are some fundamental issues that need to be looked into so that we can strengthen and streamline weaknesses in the Constitution. Failure to audit the Constitution has led to some of the emerging issues that have been occurring.

The transition to two governments has been an issue. We very well remember that this House was impeded during the first time that we discussed the issue after we were sworn in. We raised some of the concerns that we are raising on how devolution ought to have worked. This House was branded as being anti-devolution. That is the time that problems started in this House because most Members shied away from some of those issues.

There was the issue of the Transition Authority which was supposed to implement and ensure that there was a smooth transition from the national Government to the county government. It did its work but initially, it used to operate as an independent commission. But at the time it existed, it operated as a department in the Ministry of Devolution and Planning. Those are the issues we are raising to show that if devolution has to work, there are fundamental issues that need to be looked into.

For instance, how will the issue of inter-county conflict be resolved? It is nowhere in the Constitution. There are mechanisms that have been brought into place to sort it out. Do they work? Right now, we are discussing the issue of drought in this country. We have no emergency provision and disaster management. It is not anchored anywhere - not in the national Government or the county government. So that we can give weight to some of those issues, we were proposing that we need a Devolution Committee that can also interrogate those matters.

With regard to the Budget, the Departmental Committee on Finance, Planning and Trade usually advocates for the line Ministries, the KRA and those other entities to be funded. However, they forget that there is devolution. The issue of costing and unbundling of functions were major things that ought to have been done by the Transition Authority. It was not done.

That is why we are having problems in our health sector. The Government devolved functions, but costing was not done. With regard to health, there are some areas in this country where we do not have hospitals. So, the cost element ought to have been done. Who is now going to do the costing? The Intergovernmental Relations Committee, as the word says, is a relation committee. It has no weight. It cannot pursue money because it is more or less like a diplomatic mission. We need to see that there is a committee that looks into some of these issues.

There is the issue of staff. A large number of members of staff are in a lot of problems. There are those who were initially employees of councils. With the establishment of county governments, the pension scheme for most of them is grounded. Those who are retiring do not know where to go as they seek their dues. There is a lacuna in law. In fact, county governments are now coming up with pension schemes. What do we do with the people who used to work in the councils? There has to be a law to streamline that problem because these people worked with the councils.

With regard to devolution, employees in various counties are Kenyans and can be transferred to any county to work. Currently, the way the law is, they have been grounded. There is no provision for transfers and so they cannot move. It is because of these things that we are saying that we need a committee to be formed. The committee will look at those issues. I know many employees have been caged in the areas they are working and yet we are saying that we need cohesion in this country. People need to be allowed to move to various places. The issue of employing 30 per cent of employees from other counties cannot be implemented if things remain the way they are unless we tell county governments to start employing again. Most of them are already overstaffed. They have a problem, but they can get staff from other counties.

There is the issue of assets. It was not factored in. Hon. Gikaria, a former Mayor, is also facing a lot of problems with regard to land. I believe he is fighting a worthy cause. That is the biggest problem we are having currently. The Ndung'u Report exposed that some public utilities were taken up by private hands. I think it is the same thing facing county governments currently, but I have not heard any one governor say that they are in the process of repossessing some of those assets. I have not heard anything from the Governor of Nairobi where I am resident. We are facing many issues as a county, but there is no single allegation by the leadership of the county. There is a strong feeling that county governments are operating in cahoots with the looters. They are now sanctifying the same titles we have been fighting. It is the more reason we need a committee that will interrogate some of these things. For instance, his is a case study. Where does he go? He will be forced to go to the National Land Commission (NLC). If we had a committee in place, some of these issues would be solved speedily.

When the new Constitution was promulgated, the Government did not want to delegate some of its functions. County governments said that the national Government was commanding them. Currently, the county governments and the national Government agree that there are issues they need to work together to resolve. However, who is supposed to bring them on board? In the Constitution, there is nothing about that. The National Assembly deals with money Bills and the Senate usually oversees counties. So, if you were to give more money to counties, especially with regard to the health function, where would that money come from? It has to start from here.

Devolution is a good thing. We all agree with that. There has to be no suspicion. We need to be accountable. We should be able to interrogate the activities under devolution. If you look at the Intergovernmental Relations Committee, it does not report to the National Assembly, but it reports to the Summit and the Council of Governors (CoG). As legislators, we have no role there

and that is a dangerous aspect because we are the ones who are supposed to implement some of these things and see the smooth flow of functions.

We supported the formation of county boards. The issue was challenged and was dismissed because governors thought we were encroaching into their mandate. This Bill has to do with smooth flow of operations.

**Hon. Deputy Speaker:** Silvester Anami.

**Hon. Anami:** Thank you, Hon. Deputy Speaker, for giving me an opportunity to contribute to this Motion. The greatest benefit that our Constitution brings to Kenyans is devolution. For a long time, Kenyans have toyed with the vice of marginalisation, exclusion and general underdevelopment. Devolution is what would mitigate these extreme vices like marginalisation. It is a pity that as we implement devolution, we have a lot of teething challenges. It is these challenges that make devolution a monster in some areas. Devolution now appears to contradict its own positive attributes. The idea of having a committee on devolution is long overdue. It is a management strategy that we should embrace.

I know there was an attempt to create a co-ordination committee chaired by Senators, but this was defeated because of the obsession by Kenyans to take it all when you win a position. I am talking about the winner-take-it-all philosophy. The idea of having a committee within this establishment will be good because there are a lot of things that need to be done.

One of the things is facilitating county governments with budgetary provisions. We all know that the spirit of the Constitution is that devolution be progressively undertaken so that every time a county government is ready to undertake certain functions that are devolved, it should apply for those functions and systematically they would be handed over to them. However, what we did, on the spur of the moment, was that all county governments took everything into the mouth and swallowing is now difficult, leave alone chewing. To that extent, in the first term in office, county governments have been unable to implement some activities. In some counties, no attempt has been made at all.

We have the idea of county, sub-county and community administrators and the Council of Elders. It is not easy to have them budgeted for. Therefore, there is need to review all these provisions. It needs to be done interdependently and through consultation between the county governments and the national Government and on a case-by-case basis. Not all county governments are at the same level. That is the why we need to have this Committee not just to oversee, but even to coordinate smooth transition and transfer of services.

The crisis we have in the healthcare sector is as a result of the uncoordinated services that are provided by the national Government on one side and county governments on the other side. So, we need quick and urgent interventions where we can consult between the national Government and the county governments on a case-by-case basis, so that we can deal with these very essential services.

However, we cannot say all has been lost. We have had some gains. In my constituency, we are experiencing the first kilometre of tarmac. For the first time, we are going to see tarmac because the main road that runs from Kisumu to Webuye just passes by and we cannot say it serves us. The first one that cuts across the constituency is happening courtesy of devolution, but it also has its challenges. When that is happening, on the other side, there is duplication of services among assistant chiefs, chiefs and Assistant County Commissioners *vis-à-vis* county administrators. The services which are provided by these people are not properly outlined and we need a process where all of this can be carefully coordinated within the arrangement of interdependence between the national Government and county governments.

As we review the progress that we have made, it is important to even revisit legislation. We should not be afraid of revisiting the legislation that provides for this, even if it means a referendum. We need to understand, from the outset, the worth of such an undertaking because some of these undertakings can be very costly. However, they cannot be as costly as corruption. One of the functions that have been devolved is corruption. People have changed their private lives courtesy of corruption and it enhances impunity in this country. We have small gods and goddesses around because of devolution. We do not have a lot of control structures. We need to have control systems, so that people who are given responsibility can account fully for the steps they take. A lot of money has been given to county governments and a lot of projects, some of which have no feasibility studies, cultural impact assessment studies and environmental impact assessment studies, have become failed projects; white horses and source of corruption and impunity.

I support the establishment of this Committee that will help us interact directly, urgently and in a timely manner in the process of devolution. Otherwise, devolution is a good thing for this country. We need to just make sure that it is properly fixed and there is coordination. I am happy that more competent people are now taking up places. When I see development-conscious people and professionals contesting for positions of Member of County Assembly (MCA), I am excited about this because we need to take this professionalism out there.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** I now give the Floor to Hon. Ali Rasso. Just to let Members know, the systems are now working. So, you can log in if you want to contribute.

**Hon. Dido:** Thank you, Hon. Deputy Speaker, for this opportunity. I wish to thank the Committee for this Report. For those of us who come from marginalised areas or areas that were considered not to be in the central developing part of Kenya, devolution was like a second independence and our people really celebrated it.

However, four years down the line, we are shocked and in disbelief wondering what devolution is all about and why it has not worked for us. What we have observed is that devolution is just a cash cow for a few. It is harbinger for corruption. It is an employment bureau. It is a vessel of tribalism and nepotism. We really have very little to celebrate in devolution and yet there has always been a good intention. I thank the national Government for allocating close to Kshs18 billion to Marsabit County since 2013. This is a lot of money, but if you go on the ground and ask where it went, I think it is the elephant in the room.

Hon. Deputy Speaker, you will be the governor of Bomet, *inshallah*, on 9<sup>th</sup> August this year. This House must be empowered to oversee and have a bigger say than what has happened in the 11<sup>th</sup> Parliament on how the counties function and how resources are used. We allocate resources and we are told not to ask how they are used. The good thing we have seen in the recent months is that all governors are forming their parties and flying in choppers. Suddenly, they have become very rich that we are moving resources from Nairobi to individual pockets. I think it is the sad story of our times.

I like the Committee's indulgence in terms of attempting to say how the issue of devolution can be addressed by having a Standing Committee like a Departmental Committee to oversee devolution. Currently, the impulse that we are experiencing of having the Senate oversee devolution and at the same time telling the National Assembly to give us more resources is a contentious issue because many of us in this House want accountability and lifestyle audit of governors and people working in counties.



It is a very contentious issue because many of us sitting in this House want accountability. We want lifestyle audits to be carried on the governors and people working in county governments. As Hon. Millie Odhiambo said, why is it that all of a sudden, the National Government Constituencies Development Fund (NG-CDF) is being seen to be a more efficient, effective and accessible, with its projects benefiting our people more as compared with the billions of shilling being poured to the counties annually? That is the big question that we must ask each other. In some regions, devolution has created small kingpins who unnecessarily engage the President and the Deputy President in acrimonious verbal exchanges in public.

This is a sad development because the Treasury has already observed that county governments are not generating enough revenues, unlike when they were city councils, municipal councils, urban councils and county councils in the previous political dispensation. A lot of resources are being disbursed to county governments from the national Government and very little is being ploughed back. That tells us that county governments must do more even in terms of generating revenue. However, the citizenry will find it difficult to give more from their pockets because they can see the legacy the counties are wallowing in. For that reason, the Report is informative. It will be useful to the next Parliament as well as to the Executive in terms of how national resources should be used at both the centre and the periphery.

Hon. Deputy Speaker, we do not have good hospitals under devolution. County governments are putting up additional buildings because people in authority want to give contracts to their brothers, sisters and cousins, so that they too, can align their pockets. With devolution, we do not have better roads. We still cry to the national Government to do something. We do not have any better educational infrastructure. Governors feel that they cannot plough back the money in terms of 10 or 20 per cent.

Whereas we can put a lot of blame on the governors, we must appreciate that this is a good idea which has been implemented in a rush. Governors continue to demand resources for health, education and security among other services and yet the little resources they were given in the first and second years of devolution did not do a good job. That is why today we have a serious crisis in the health sector.

Secondly, there must be a very elaborate structure at the national level to oversee the operations of county governments without necessarily the former entity undermining the later entities. At the end, these are public resources meant for the public good.

With those remarks, I beg to support.

**Hon. Deputy Speaker:** Hon. Ferdinand Wanyonyi.

**Hon. F.K. Wanyonyi:** Thank you, Hon. Deputy Speaker. From the outset, I want to support the Report of the Committee. We should be able to approve it.

Looking at the Committee's findings and the time we have had devolution, they are quite interesting. We should implement what they have recommended. As mentioned, there are a lot of weaknesses in the current dispensation, hence the need for us to establish a committee that will be doing various things for this House.

I have been very frustrated because there are no linkages between us and the national Government on one hand, and between us and county governments on the other. For example, in the last financial year, I had a vision for my people. I wanted to have modern kiosks. I have worked in various Government institutions before and I am a former Managing Director of the Tana and Athi River Development Authority (TARDA) and the Lake Basin Development Authority (LBDA). With that background, I thought my people would benefit from what I wanted to do. I wanted to have modern kiosks for them. I requested if the Ministry of Water and

Irrigation could walk with me and the county government to provide that very vital facility. Up to now, we cannot make headway because there are no linkages amongst the three organs of the government.

Therefore, as recommended here, we should have a competent institution to oversee devolution such that various Government institutions can interrelate with county governments in a harmonious way. At the moment, there is nothing. We can talk endlessly and approve a motion after another, as the able Vice-Chairman of the Implementation Committee mentioned, but you will find that you cannot implement any of them. If we do what is necessary, as the National Assembly, and establish the proposed committee, things will work very well.

The other thing I would like to talk about are the gaps that exist, which we have noticed. We need to fill the gaps so that the legislative framework weaknesses that have been witnessed can be a thing of the past.

I know we had the Commission on Implementation of the Constitution (CIC) headed by Mr. Charles Nyachae, but again, there were things which were left hanging. We should not be afraid of it. Our brothers and sisters in the Senate may want to do one or two things, but you cannot have your cake and eat it. We cannot trust the Senators in what they would want to do. What the previous Committee did is good for this country. Of course, we cannot run away from the fact that, as the National Assembly, we oversee everything right from State House at the national Government level to the county executives at the county government level, as well as the chiefs, assistant chiefs and village elders.

So, we have a duty, as the National Assembly, to come up with that kind of a committee, which would fill the gaps that were left by the Commission for the Implementation of the Constitution (CIC). It is our duty. We should not run away from it, or leave it hanging lest people start blaming us.

Something about assets out there was mentioned. We do not know who owns what. When the oversight committee is established in this House, we will be in a position to know who does what. Lawyers may suggest we go to court, but how many cases will be taken to court and on what basis are they going to be determined? I am not a Member of this Committee, but looking at things today and the frustrations some of us are facing, we need to have it. As Hon. Millie Odhiambo said, we are doing quite a bit out there in terms of oversight. Take the example of overseeing CDF projects. Look at what we have given the counties. As somebody said, it is just one way of making money. Look at some governors. Oh boy! I do not know where we are getting to.

So, let this Committee be established so that it can deal with the issues that we have talked about. It will also serve as an interlink between the national Government and the county governments. That way, the two will work in a harmonious way. As it is today, we are just groping in the dark. We want to have things done properly. It does not really matter because, as somebody said, we could even have a referendum on the same. However, given what we have today, we can do it in this House and our brothers in the Senate could agree with us so that we can move forward.

With those few remarks, I support this Report. I also urge Members to support it so that we can move forward. So much is expected of us and we should not run away from our responsibilities, duties and mandate as Members of the National Assembly.

**Hon. Deputy Speaker:** Let us have Hon. Chebet.

**Hon. (Ms.) Chebet:** Thank you, Hon. Deputy Speaker for this opportunity. From the outset, I support this Report. Devolution is a creation of our Constitution. When the Constitution

created devolution, everybody in Kenya celebrated because we knew the national cake of Kenya would be divided and sent to the grassroots. In the process of embracing devolution, it seems we missed something on the way. We needed a structure to oversee the distribution of the resources and the sharing of the national cake. We left most of the things to governors. Later on, on second thought, we created the offices of County Commissioners, which are, indeed, parallel to the offices of county governments. As a result, there has been competition between the two institutions and sometimes it is so negative and confusing that we do not know who is overseeing what.

If we look at the case of transfer of assets as a Member said, we do not know who owns what. On the case of our doctors, we believed they were under the county governments, but when the issue of salaries arose, we saw everything blamed on the national Government which left the doctors and their issues in the middle. We did not understand who was supposed to handle those issues.

One part of education is devolved and another is not. This gives us a big challenge in terms of standardisation of the curriculum. There are staff who were left out and others were inherited by county governments after devolution. Today, some staff do not know where they belong. When county governments settled down and implemented their plans, the members of staff they inherited were left out and the county governments employed new ones resulting to overstaffing in most departments. This has led to a huge wage bill. A lot of money which is generated by the county governments goes into servicing this huge wage bill.

A huge percentage of the budgetary allocation to the county governments is used for miscellaneous expenditure and does not serve the needs of those at the grassroots. Hence, if somebody comes up with a formula of increasing the money allocated to the counties, the public will look forward to seeing a higher percentage allocated to the counties not knowing that things will remain the same. There will be duplication of roles and duties in the counties and the competition between governors and the national Government staff will continue.

A committee should be formed to oversee and streamline some of these activities where there is duplication. We inherited them from the CIC and the Transition Authority which were designed to oversee the transfer of assets and staff in the counties.

On the issue of the 30 per cent staff who are supposed to be employed by the counties, I do not see any of them at work because counties employed the local people. This means there will be monopoly of employment in the counties given the fact that outsiders might not have opportunity to work and enjoy the national cake outside their counties.

I, therefore, support the creation of a Committee to streamline all these issues. If established, Parliament's work will become easier in terms of overseeing county governments.

I hope the Senate will also play its role in terms of oversight because I do not see much of that apart from inviting governors for grilling in the Senate. Otherwise, on the ground, we really need Senators to play a very strong role and complement the work that this committee will play.

**Hon. Deputy Speaker:** Let us have Hon. Maanzo.

**Hon. Maanzo:** Thank you, Hon. Deputy Speaker for giving me an opportunity to comment on this very important Motion on the CIOC and the issues relating to counties.

I sit on the Departmental Committee on Agriculture, Livestock and Cooperatives and there have been a lot of issues because agriculture is devolved and there is still also a national role, among other things. In many other areas where devolution has taken place, you find that there have also been pending issues like in the health sector. We needed something such as a

team or a commission which cuts across what is happening at the county level and what is happening at the national level. Therefore, oversight has become a challenge generally and that is why this Report was very important to make sure some of the things are streamlined to make devolution a reality in this country now that Kenyans have put it in the Constitution.

It is clear there are resources all over the counties which were generated even in the old county councils. If you check, very few county governments have retained those resources. Some of the money is lost. Some of it cannot be accounted for and some is in private accounts. Some counties have fewer resources than what the former county councils had. That has led to inadequate or insufficient funds to fully run all the county activities.

There is also inadequate human resource. Although a lot of people have been hired in the counties, it has been a façade. Some of them were retained from the old councils and there are new members of staff. By the time you balance that, most of the money of the counties has gone into hiring. Then, there was lack of regulation to operationalise the particular Act dealing with this. Some county governments have not made serious regulations in recent days as it was expected, even when the Senate gave templates just to fill in like in nursery school. Some of the counties never made that law and you found that regulation was lacking in so many areas which are peculiar to certain counties. For example, in counties in Ukambani, sand is an issue. You could not find regulation to deal with that.

With regard to civic education, some counties have tried very much to educate the people. A lot of Kenyans do not know what devolution is. At times, they blame the Member of Parliament or the governor for everything. If they get in touch with the MP, they assume they have communicated to the governor. This is because of lack of civic education.

There has been limited appreciation of the concept of intergovernmental relations. That has played out a lot of times. We have even seen it with what is currently happening politically. The role of the President is different from the role of the governor. There is interaction at some point. I believe other than the political heat, there should be a good relationship between the county government and the national Government, so that there can be consultation on a lot of matters.

There has also been inadequate capacity in developing legislation which I have already talked about. There have also been cases where the CoG and county governments have hired lawyers who have been paid huge fees on matters which would have probably been settled. Therefore, I support the recommendations and the findings of the Committee, so that we can have better devolution in the country.

I support the Motion.

**Hon. Deputy Speaker:** Since I see no further interest, I will ask Hon. Nakara to reply.

**Hon. Nakara:** Thank you so much, Hon. Deputy Speaker. I beg to reply.

First of all, I want to thank all the Members for their contribution. They have stated the reason why we should have this Committee in place. We have taken into consideration their proposals and their pieces of advice. As a Committee, I promise that we will go through those proposals and make necessary amendments.

As the Members have stated, devolution is the heart of development and equal distribution of resources in this country. All of us will live to remember the Constitution that we enacted recently, which is progressive. All over the world, people say that Kenya has a progressive Constitution because of devolution. Our resources are limited, but as we distribute equally to all the counties, this country will have rapid development. Soon, we will have more expectations from the people demanding more and more, but it is my prayer that we will contain

that and those who are in charge of devolution will make sure that it has succeeded. We have a spirit to make sure that devolution takes roots for generations to come.

With those few remarks, I want to thank all the Members for their contribution. On behalf of the Chairman, thank you.

**Hon. Deputy Speaker:** Hon. Members, for the convenience of the House, we have some three minutes remaining and it is in order for us to adjourn. The Question to that Report will be put when it is appropriate.

### ADJOURNMENT

Hon. Members, the House stands adjourned until tomorrow, Wednesday 15<sup>th</sup> March 2017 at 2.30 p.m.

The House rose at 6.27 p.m.