

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 1st March, 2017

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Speaker: May the Quorum Bell be rung

(Quorum Bell was rung)

We may now commence proceedings.

(Hon. Members walked into the Chamber)

Hon. Members, take your seat.

MESSAGES

DECISION OF THE SENATE ON THE CONSTITUTION OF KENYA (AMENDMENT) (NO.2) BILLS

Hon. Members, this Message relates to the decision of the Senate regarding the Constitution of Kenya (Amendment) (No.2) Bill (National Assembly Bill No. 26 of 2013) and the Constitution of Kenya (Amendment) (No.2) Bill (National Assembly Bill No.2 of 2015). Pursuant to the provisions of Standing Order No.41, I wish to report to the House that I have received a Message from the Senate regarding the decision of the Senate on the Constitution of Kenya (Amendment) (No.2) Bill (National Assembly Bill No.26 of 2013) and the Constitution of Kenya (Amendment) (No.2) Bill (National Assembly Bill No.2 of 2015).

The Message reads in part, and I quote, “The Constitution of Kenya (Amendment) (No.2) Bill (National Assembly Bill No.2 of 2015) and the Constitution of Kenya (Amendment) (No.2) Bill (National Assembly Bill No.26 of 2013) were rejected at Second Reading on Wednesday, 22nd February, 2017.”

Hon. Members, the Constitution of Kenya (Amendment) (No.2) Bill (National Assembly Bill No.26 of 2013) was sponsored by Hon. Lati Lelelit, MP, and sought to amend the Constitution of Kenya (Article 204) to transfer the disbursement of the Equalisation Fund from the purview of the national Government to constituencies in which marginalised areas fall. On the other hand, the Constitution of Kenya (Amendment) (No.2) Bill (National Assembly Bill No.

2 of 2015), which was sponsored by Hon. Peter Kaluma, MP, sought to amend the Constitution of Kenya to prohibit courts from interfering with matters which are active before Parliament, county assemblies and/or their committees. The two Bills were passed by the National Assembly on 1st October 2015 and 27th April 2016 respectively.

Article 256(1) of the Constitution provides that –

“A Bill to amend the Constitution-

(d) shall have been passed by Parliament when each House of Parliament has passed the Bill, in both its second and third readings, by not less than two-thirds of all the members of that House.”

My reading of this Article is that the Constitution does not envisage a mediation process in respect of a Bill to amend the Constitution. This decision of the Senate therefore brings to an end the life of these two Bills, as it implies that Parliament has declined to pass the Bills as required by Article 256 of the Constitution. The House and, indeed, the public is accordingly notified.

I thank you.

PAPERS LAID

Hon. Speaker: I appoint the Leader of the Majority Party to table the Estimates of the Parliamentary Service Commission (PSC).

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

Estimates of Recurrent and Development Expenditure of The Parliamentary Service Commission for the year ending 30th June 2018 and projections for 2018/2019/2020.

Hon. Speaker: Very well, Chairperson, Committee on Administration and National Security, Hon. Kamama.

Hon. Abongotum: I read it yesterday. I do not have it now.

Hon. Speaker: You are popular. Chair of the Departmental Committee on Education, Research and Technology.

Hon. (Ms.) S. W. Chege: Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Reports of the Departmental Committee on Education, Research and Technology on its consideration of:

1. The Basic Education (Amendment) Bill, 2016; and,
2. The Kenya National Examinations Council (Amendment) Bill, 2016.

Hon. Speaker: Hon. Were

Hon. Were: Hon speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Labour and Social Welfare on its consideration of the Betting, Lotteries and Gaming (Amendment) Bill, 2016.

NOTICES OF MOTIONS

Hon. Speaker: Hon. Otuoma.

Hon. (Dr.) Nyongesa: Hon. Speaker, I beg to give notices of the following Motions:

ADOPTION OF REPORT ON OWNERSHIP OF MOMBASA CEMENT LIMITED

THAT, this House adopts the Report of the Departmental Committee on Lands on the ownership of Mombasa Cement Limited Land in Kilifi County, laid on the Table of the House on Tuesday, 24th November 2015.

DEGAZETTEMET OF GOVERNMENT LAND
BELONGING TO CHORLIM COOPERATIVE SOCIETY

THAT, this House adopts the Report of the Departmental Committee on Lands on Degazettement of Government land belonging to Chorlim Cooperative Society, laid on the Table of the House on Tuesday, 2nd December 2014.

Thank you.

Hon. Speaker: Next Order!

PERSONAL STATEMENT

EMERGING TREND WITHIN THE
POLITICAL SCENE IN THE COUNTRY

Hon. Speaker: Member for Kiambaa.

Hon. Koinange: Thank you, Hon. Speaker. I wish to make a Statement regarding an emerging trend within the political scene in the country.

Political activities in the country are usually very emotive and have in several instances escalated to violence leading to loss of life and property. It is, therefore, very disturbing to note that some political party players are using former and retired military officers in their political activities. Specifically, these political entities have been holding strategy meetings involving the military personnel for reasons best known to them. Some of these meetings have been held in secret raising concerns over their agenda and end intentions.

Hon. Speaker, it beats logic as to why a political entity preparing for elections will be holding meetings with trained military officers as though politics and general electioneering were a military process. This creates fear and if not dealt with may be calamitous to peaceful coexistence in the country. While not wishing to raise this matter as an urgent matter of national importance, I would request that the relevant authority as well as the House Departmental Committee on Administration and National Security and Departmental Committee on Defence and Foreign Relations look into these activities. This will go a long way in averting despondency and lawlessness that is likely to emerge.

Thank you.

Hon. Speaker: Very well. Next Order! But before we move to the next Motion, allow me to recognise the presence in the Speaker's and Public Galleries students and pupils from the following institutions: In the Speaker's Gallery, students from Butere Girls High School, Butere Constituency, Kakamega County. In the Public Gallery, Githambia Primary School, Gatanga Constituency, Murang'a County and Kamunyaka Kiumu Primary School, Gatanga Constituency, Murang'a County. They are all welcome to observe the proceedings in the House.

Hon. Members, I hope everybody is in possession of a Supplementary Order Paper which I request the Serjeant-at-Arms officers to distribute. Hon. Langat.

PROCEDURAL MOTION

EXTENSION OF TIME FOR CONSIDERATION OF A PETITION

Hon. Langat: Hon. Speaker, on behalf of my Committee, I wish to move the following Procedural Motion:

THAT, notwithstanding the provisions of the Standing Order No.230(4), this House resolves to extend the period prescribed for consideration of the Petition for Removal from office of Mr. Edward Ouko as Auditor-General of the Republic of Kenya by the Departmental Committee on Finance, Planning and Trade by a period of 21 days from 2nd March 2017.

This House may appreciate the fact that this is a very weighty matter and the first case in the Constitution. We have been sitting for the last three days and the kind of interest from the public, civil society groups and the membership of this House has been very high. With the kind of information we are receiving, we require more time so that we do a fair job.

This House should appreciate that seven days to consider a Petition for removal of a constitutional office holder is not enough. Going forward, we need to formally amend our Standing Orders to a month. A case of removing somebody from an office is so serious that it cannot be considered within a week and for the House to appreciate issues which come up. I request the House to give my Committee more time, so that we can give a worthy verdict.

With those few remarks, I move and request the Leader of the Majority Party to second.

Hon. A.B. Duale: Hon. Speaker, I second.

(Question proposed)

Hon. Members: Put the Question.

Hon. Speaker: Hon. Members, this is a Procedural Motion and I want to alert the Chair of the Committee that, indeed, this is not the first Petition for removal from office. This House will recall that it considered a similar Petition for removal from office of the Chairperson of the National Gender and Equality Commission (NGEC) and the members of the Ethics and Anti-Corruption Commission (EACC). As the Member has explained, we have always as a House brought these kinds of Procedural Motions.

(Question put and agreed to)

Hon. Langat, the House is at liberty to extend the time. What you have said is correct. The Standing Orders only provide for 14 days. That period is obviously not enough depending on the subject matter.

Let us move on to the next Order.

MOTIONESTABLISHMENT OF A JOINT PARLIAMENTARY SELECT
COMMITTEE ON ELECTION OF MEMBERS TO EALA

Hon. A.B. Duale: Hon. Speaker, I beg to move the following Motion:

THAT, acknowledging that the East African Legislative Assembly (EALA) is established under Article 9 of the Treaty for the Establishment of the East African Community as one of the key organs and institutions of the Community responsible for the Community's legislative matters; recognising that Article 50 of the Treaty provides for the election of Members of EALA by respective partner States' Legislatures in accordance with their parliamentary procedures for a term of five years; aware that the five-year term of the current 3rd East African Legislative Assembly is due to expire on June 04, 2017; further aware that the East African Legislative Assembly Elections Act, 2011 contemplates conclusion of the election of Members of a new Assembly to be within ninety (90) days before the expiry of the term of the subsisting Assembly; noting that the current Election Rules were adopted by the National Assembly in April, 2012 and, therefore, do not take cognisance of the bicameral nature of the Kenyan Parliament; cognisant of the need to urgently conclude the election process within the statutory timelines; now, therefore, in accordance with the provisions of Rule 9 of the Houses of Parliament (Joint Sittings) Rules, the House resolves to establish a Joint Select Committee consisting of seven (7) Members from each of the Houses of Parliament and that-

- (i) the mandate of the said Joint Select Committee shall be to:
 - (a) review the procedure and rules for election of Members of EALA contained in the Treaty for the Establishment of the East African Community (Election of Members of the Assembly) Rules, 2012 in light of Kenya's bicameral nature;
 - (b) on the basis of the review in (a) above, propose appropriate procedures and rules for election of persons to represent the Republic of Kenya at EALA;
 - (c) within fourteen (14) days, submit a report to the Houses of Parliament containing the revised rules of procedure;
 - (d) suggest appropriate timelines for purposes of notifications, nominations and elections; and,
 - (e) consider the nominees, oversee the election process and report to the House within the timelines stipulated in the Elections Rules.
- (ii) the Committee shall formulate its own rules of procedure;
- (iii) the offices of the clerks of both Houses shall provide secretariat services in accordance with the Standing Orders; and,
- (iv) the following Members shall represent the National Assembly in the Joint Select Committee:
 1. The Hon. Katoo Ole Metito, EGH, MP - Co-Chairperson
 2. The Hon. Samuel Chepkong'a, MP;
 3. The Hon. Wanjiku Muhia, MP;
 4. The Hon. Ali Wario, MP;
 5. The Hon. Florence Mutua, MP;
 6. The Hon. Daniel Maanzo, MP; and,
 7. The Hon. Wafula Wamunyinyi, MP.

Hon. Speaker, the Motion itself is self explanatory. Because of the bicameral nature of our Parliament under the new Constitution, the rules of procedure must be amended. As was the case in the 10th Parliament where the National Assembly would elect nine members to EALA, we now have a bicameral nature. This Committee will deal with the rules of procedure and nominations. Will we vote separately or will we have a joint sitting where the election will take place?

The EALA is an organ of the East African Community (EAC) which we belong to. Being the legislative arm of the Community, the members are sworn in every five years. The current rules state that 90 days to the expiry of their term, the new members for Kenya, Uganda and Tanzania must be in place. This morning, I was watching the Parliament of Uganda electing its members. I saw something on TV. Because of the nature of our two Houses, this Committee has the mandate to look at the procedure and rules of the elections of those members. How will we conduct elections? How will they apply? Ultimately, those nine members will represent the coalitions and parties in the House. The leadership of the parties in consultation with their leadership outside this House will submit the names to the House. Ultimately, the rules may be that we have a joint sitting. If we have a joint sitting, we will have you, Hon. Speaker, as the returning officer and may be the Speaker of the Senate.

It was proposed that this Joint Committee will comprise of equal number of Members from each House to be appointed by way of a Motion. When I was given this Motion, I was a bit disturbed. Why equal numbers? We must look at the numerical strength of each House. Why are we having seven Members from both the Senate and the National Assembly? Any agenda that is between the two Houses - the way we do here in terms of the Committees - this is a parliamentary democracy procedure. Why do we have seven Members from the Senate? How do you share a cake equally between a House of 349 Members and a House of 67 or 68 Members? I do not even know the numbers. This is a Motion. It is for the Members. We need to amend the Motion, so that we can have more Members from this House.

Ultimately, if the Committee is approved today, it will sit and table a report before the House for adoption, amendment or rejection. The secretariat of this Committee will be provided by the Parliamentary Service Commission (PSC). The procedure within the EAC in countries where bicameral systems exist, for example, Rwanda, the Parliament of Rwanda has been conducting the election of its members to EALA jointly. They have one sitting, one returning officer and one election. That is why I hope the Committee will propose a joint sitting. When we conduct elections separately in the nature of Kenyans, we do not want ballot papers to be transported from the Senate to the National Assembly then our Speaker has to read the names and results and the same results are read in the Senate because the results can be doctored in between the movement. So, we expect the Committee to do a joint sitting.

Hon. Speaker, the option of a joint sitting gives us more prompt tallying and a prompt way of breaking a tie. I remember in the last Parliament, Hon. Martha Karua, who was in the National Rainbow Coalition (NARC) Kenya - and still is - Hon. Kamama and Hon. Mungatana were also Members of the party and they used to walk around with flowers. Their party symbol was green. When we voted in the morning, two of their candidates tied. So, we had to repeat the elections at 4.00 p.m. Tying is very likely and is coming at a time when the House will have serious quorum problems. If we do a joint sitting, and I am not anticipating what the Committee will do, we will save time. The result will be known and if there will be a tie, we will repeat the election. But imagine in our normal way, results are announced, handed to our Speaker and he

sends them to the Senate and in between results can disappear and names and figures can change. So, we want to show a good example that proper elections can be done by the Legislature. There is the element of dispute resolution. In a joint approach, they can resolve that because the fact is that there is no room for varied interpretation on application of the rules of procedure. So, the two Speakers will be very close to each other in the joint sitting and in case objections are raised by Members, they can consult and give an answer.

The election is expected to take into account the relative majority of the coalitions in Parliament and representation of youth, women and persons living with disabilities. Let me make it very clear because I am a serious stakeholder in this process as the Leader of the Majority Party, that this procedure will apply to political parties represented in Parliament and not coalitions. Jubilee Party, Orange Democratic Movement (ODM), Forum for Restoration of Democracy FORD (K) and the Wiper Democratic Movement will know their slots. Independents have no slots because they are not political parties. As we go out, we know what we are dealing with. The representation is based on parliamentary practice more so in coalitions. It must take into account the representation of youth, women and persons living with disabilities.

In the last Parliament, when this election was taking place, I was just hanging. I had no party because the ODM, by then, had chased me. So, those of us who were in the United Republican Party (URP) made formations with Hon. Musalia Mudavadi who had also left ODM. Some of us formed coalitions, but what counts is the vote not the party leaders out there. The nine members are elected and their voters are the 349 Members of this House. So, if you are a leader out there, you cannot influence the election. The election and lobbying take place here. So, if you are waiting, and I am talking to the prospective candidates, to be endorsed by people from outside this House, you are in for a rude shock. You have to lobby for each and every vote of the 349 Members here. If the Member for Othaya does not give you her vote and you were only looking for one vote, then you will fail. Listen to me. If you are a sitting Member of Parliament, you cannot apply for this job because your term has not ended. You can only apply if you resign before the deadline. So, if you are sitting here and waiting to apply to be a Member of the East African Legislative Assembly (EALA), then you have a few days to resign.

Finally, this matter is timebound and that is why we brought the Motion. We are already behind schedule. Previously, Kenya has delayed the sittings of EALA because of late elections of its Members. We are the only country that filed a case in the East African Court of Justice to challenge our own Members who were elected. It happened during the NARC Government. So, the time for processing is timebound and is not a luxury we can enjoy. This time we want the process to be open, participatory and lawful.

I have spoken to my counterpart in the Senate to fast-track the process and I request the Leader of Minority Party, my colleague, Hon. Nyenze, and the Chief Whip, to help me so that we can approve these seven names. If you look at the seven names, they represent gender and the face of Kenya. We have Hon. Kato and great women like Hon. Florence Mutua and Hon. Wanjiku Muhia. We have a pastoralist, Daniel Maanzo and great minds like Hon. Wamunyinyi who is a ranking Member. This Motion is in order. Let us ask Members to approve it, so that this Committee can join the one from the Senate and get the 14 Members. Today should be the last day that we will have an equal number. In terms of numbers, we are not equal to the Senate. If there is a Committee of 14, they will have three or four Members and we will have 10. That is how we should go. The only time we broke the law was for the sake of Kenya when we formed the Joint Committee of the Senate and the National Assembly on the Elections Law led by Hon. Kiraitu Murungi and Hon. James Orengo. Our numbers are a resource. When you distribute

resources, you must distribute them equally. We cannot convince our Members, but for now, we will agree.

I ask the Member for Kiminini, Hon. Chris Wamalwa and the Deputy Whip of the Minority Party to second because he is a Member of the House Business Committee (HBC).

Hon. Speaker: Hon. Wamalwa.

Hon. Wakhungu: Thank you, Hon. Speaker. I rise to second this Motion. I request Hon. Members that we move with speed because this is a very critical Motion and unfortunately, we are behind schedule. It is stipulated that this was supposed to have been done 90 days before expiry. The expiry date being June, when you work backwards, the work should have been done by March.

I hope the great Members here are going to do great work. When you look at the selection of the Members of this Committee, it is a proper mix. Political parties are represented. Jubilee, ODM, Wiper Democratic Movement and FORD (K) are represented.

I also want to mention that in terms of proportionate representation, when you do the ratio between the National Assembly and the Senate, it comes to 5:1. So, it would have been nice to have given the Senate one or two slots, but unfortunately the way the Standing Orders are, if it is a Joint Committee, representation is supposed to be equal.

As they move on, this is going to be the electoral college. But the challenge is that initially when this was done, we had a unicameral House, with Parliament as the National Assembly. Now we have the Senate. As we move on, this is the critical challenge the Committee would look into whether it should have just been only the National Assembly as opposed to the Senate because Articles 95 and 96 are very clear that the Senate is responsible for matters to do with the counties. This is a national matter and it should have just been handled by the National Assembly. However, we want to move together as brothers and sisters with speed.

My only worry as we move on, and I am sure this committee will come up with a solution, is how the two Speakers will preside over a joint sitting. The only joint sitting we have been having is when His Excellency the President comes to address the State of the Nation where Members are not allowed to contribute. But in this case where we will go into voting, it is important to note the Standing Orders that will guide the joint sitting. We can see difficulties ahead, but I have no doubt this Committee is up to the task. I know it is going to come up with procedures and rules of engagement so that this can be done amicably. In the East African region, Kenya should not be viewed as a country that likes doing things at the last minute. Of course, we lead from the front. Even during the voter registration exercise, we saw Kenyans going to register the last minute. On an important matter like this one, we are also coming in at the last minute. We wish them well. We have no doubt they have what it takes.

I second.

Hon. Speaker: Hon. Members, before I propose the Question, it is good to explain that the Communication from EALA about the need for the member country legislatures to elect their representatives also came late to our Parliament. The Clerk's Department moved with the greatest of speed to ensure that we get this Motion on the Order Paper. More importantly, the provision for joint sittings of Parliament is to be found in Article 107(1). If you look at Article 124, it permits each House of Parliament to establish its own committees and also joint committees, but it does not guide on how joint committees will be done except in Article 113 where it talks about the mediation committee, which has equal membership. It, therefore, means that since that one is specified, any other joint committee, the two Houses, or whichever method

being used, can resolve on the question of proportionate representation to reflect the sizes of each House.

It is a legitimate matter, but for purposes of this, EALA is guided by the practice obtaining in the Republic of Rwanda where they also have two Houses. So, they assumed that Kenya should also go the same way. They do not know the specific provisions of our Constitution regarding the roles of each House. For the convenience of the country and of both Houses, there is no harm in us proceeding with this Motion in a manner that has been proposed. Hon. Members, this Motion is fairly lengthy. The Mover, that is, the Leader of the Majority Party and the Seconder, Hon. Chris Wamalwa, have explained. Allow me not to read the entire Motion.

(Question proposed)

Hon. Members: Put the Question!

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

*[The Temporary Deputy Chairlady
(Hon. (Ms.) Shebesh) took the Chair]*

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, we are now in the Committee of the whole House to consider the Statute Law (Miscellaneous Amendments) Bill of 2016.

*(Provisions relating to the Judicature Act (Cap 8)
agreed to)*

Provisions relating to the Advocates Act (Cap.16)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We have two proposed amendments, namely, one from the Chairman of the Departmental Committee on Justice and Legal Affairs and another one from Leader of the Majority Party. Hon. Members, if we carry that of the Chairman of the Committee, we will drop the one of the Leader of the Majority Party. We are starting with that from the Chairman of the Committee.

Hon. A.B. Duale: We have agreed.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, if you have agreed, then we need to hear the consensus. You have to drop your amendment, Hon. Chepkong'a. You are proposing a deletion. When your proposal is a deletion, we have to start with it.

Hon. Chepkong'a: Thank you, Hon. Temporary Deputy Chairlady. The consensus position was to be moved by the Leader of the Majority Party, but since you are speaking from the Chair on authority, I have no choice but to withdraw. I hereby withdraw the proposed deletion.

(Proposed amendment by Hon. Chepkong'a withdrawn)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Now that the Chairman of the Committee has dropped his deletion, we can move to the proposed amendment by the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended in the Schedule –

- (a) in the provisions in the Bill relating to the Advocates Act (Cap 16) -
- (i) by deleting the proposed subsection 23(2A) and substituting therefor the following new subsection- (2A) The Society shall issue to every advocate registered with it a stamp or seal bearing the advocate's name, admission number and the year of practice in such form as may be approved by the Council of the Society and prescribed in regulations, and such stamp or seal shall be affixed on every document drawn by such advocate and lodged for registration in any registry in Kenya or issued for any other professional purpose.
- (ii) by deleting the proposed section 34A and substituting therefor the following new section-
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| Additional endorsement. | 34A. Subject to section 10, an advocate who holds a current practising certificate shall not file any legal documents in any registry under any law which requires filing of such document by an advocate, or issue such document for any other professional purpose, unless there is affixed on each such document the stamp or seal issued by the Society under section 23(2A). |
|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
- (iii) by inserting the following subsections immediately after subsection (1) in the proposed section 34B-
- (1A). An advocate who is not exempt under section 10 shall, where he does not intend to practise in any year, apply to the Council of the Society at least three months before the commencement of that year for exemption from the requirement of taking out a practising certificate in respect of that year.
- (1B). Any advocate who, being required to do so, fails to apply for exemption under subsection (1A) commits an act of professional misconduct.

I want to give the justification. I want to thank the Chairman of the Departmental Committee on Justice and Legal Affairs because he wrote to the Attorney-General (AG) seeking

to withdraw the proposed amendments to the Act. The Attorney General insisted, but I think we have agreed on the position of the AG that the scope of the proposed amendment is to mandate the Law Society of Kenya (LSK) to issue every advocate registered with them a stamp and seal bearing the advocates name, the admission number, and the year of practice to be affixed on every document drawn from such advocates. The intent of the amendment is to allow for independent verification at any given time of persons entitled to practise law in Kenya. We have so many quacks. Even in our constituencies, there are those who refer to themselves as Members of Parliament. Once one looks like Jakoyo Midiwo, they call themselves Hon. Jakoyo, and there are even those who use my name in every office they go to. This is to make sure that Kenyans are not conned and when they get a service of a lawyer, the seal, the stamp and the admission number is on his letter head.

I beg to move.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Wamalwa.

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Chairlady. This is an important amendment because Kenyans have been conned several times. The proposed amendment will streamline and bring order in the practice. If there is any misbehaviour by the advocates, the LSK can withdraw their services. It is important to have control measures. Recently in the medical field, the Cabinet Secretary (CS) and the Principal Secretary (PS) failed to end the doctors' strike and the association came up with measures to bring sanity. It is important to have this within professional bodies. We have had qualified advocates conning people in the villages when it comes to matters of transactions. Money is paid, but the lawyers disappear with it. The LSK will now help when people raise such complaints.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, remember we are in the Committee of the whole House. We already did the Second Reading and so, here you just agree or disagree with a few remarks. Let us have Hon. Chepkong'a.

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, as much as I support the Leader of the Majority Party, we had a subsequent discussion with regard to this proposed amendment and we agreed that this will provide uniformity in terms of numbering and the things that will be used by the advocates. It will also bring ease of recognition. We support this amendment because it will be easy for clients who are looking for advocates to know those that are registered by the LSK.

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

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

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

(Provisions relating to the Advocates Act)

(Cap.16) as amended agreed to)

Provisions Relating to the Bills of Exchange Act (Cap.27)

Hon. Chepkong'a: The Temporary Deputy Chairlady, I beg to move:

THAT, the Schedule to the Bill be amended by—

(a) deleting the words “Rwanda, Burundi” in the proposed amendments to section 4(3) of the Bills of Exchange Act (Cap.27);

It does not make sense to have those two countries because the proposed amendment has nothing to do with Rwanda and Burundi.

(Question of the amendment proposed)

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

*(Provisions relating to the Bills of Exchange Act (Cap.27)
as amended agreed to)*

*(Provisions relating to the Probation of Offenders
Act (Cap.64) agreed to)*

Provisions relating to the Prisons Act (Cap.90)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We have an amendment by the Chairman of the Departmental Committee on National Security and Administration.

Hon. Member: He is not in the House.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Do we have the Vice-Chairman of the Committee? Hon. Members, let us be patient as the Leader of the Majority Party sorts out things.

(Hon. Abongotum walked in)

Hon. Abongotum: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended in the Schedule in the proposed amendments to the Prisons Act, Cap.90, by deleting the proposed amendment to Section 9.

The proposed amendment gives prison officers all the powers, protection and privileges of a police officer in the performance of any function assigned to them. This will be subject to abuse because it means that prison officers may act as police officers at all times. When the Government was dealing with the issue of *Al Shabaab* at the Coast and some parts of North Eastern, prison officers were given full powers of traffic and regular police officers so that they could deal with terrorism like other police officers, but they may abuse this. We want to maintain the *status quo* such that when we need prison officers to act as police officers or provide security during elections, they can do that and revert back to their normal duties.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. Wafula Wamunyinyi.

Hon. Wamunyinyi: Hon. Temporary Deputy Chairlady, I support this proposed amendment because if it were to happen the way it was proposed earlier, it is likely to cause confusion. Prison officers carrying out police duties continuously when they have their specific mandate for rehabilitation and preservation of convicts will cause unnecessary confusion. So, I support this amendment on that account.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Makali.

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairlady. I also support this amendment because prison officers and police officers have different training. While they can do the work of the police under special circumstances, I do not think we should have a law which allows them just to act like police officers. Therefore, I support.

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

(Provisions relating to the Prisons Act (Cap.90) as amended agreed to)

(Provisions relating to the Explosives Act (Cap.115) agreed to)

Provisions relating to the Income Tax (Cap. 470)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We have amendments by the Leader of the Majority Party, the Member for Kikuyu, Hon. Ichung'wah and Hon. Gaichuhie. Let us start with the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended in the Schedule-

(b) in the items relating to the Income Tax Act (Cap.470) by inserting the following new rows in proper alphabetical sequence -

First Schedule Insert the following new paragraph immediately after paragraph 45 —

44A. The income of the National Hospital Insurance Fund established under the National Hospital Insurance Fund Act,1998 consisting of-

(a) all contributions and other payments into and out of the Fund; and

(b) monies invested under section 34 of the Act.

Section 15(3) Delete the word “four” appearing in paragraph (c) and substituting therefor the word “five”.

Third Schedule Delete the word “four” appearing in paragraph 2(i) of Head B and substituting therefor the word “one”.

Hon. Temporary Deputy Chairlady, this amendment deals with individuals who borrow from cooperative societies. First, let me declare that this is an amendment from the National Treasury. It is not mine. It allows individuals who borrow from cooperative societies registered

under the Cooperative Society Act to deduct interest on loans used for the development of residential properties. What does it do? It is meant to extend tax incentives to owners of residential properties who are funded by cooperative societies. For example, if you borrow from Harambee Cooperative and you want to build a property, there is a certain tax incentive you will get under the Income Tax, if you really follow the Schedule. Basically, that is what it talks about.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The Leader of the Majority Party, you have given us the justification for your amendments for Section 15(3) and the Third Schedule. Please, give us the First Schedule, New Paragraph 44A, where you mention the National Hospital Insurance Fund (NHIF). This is because of the amendment by Hon. Kimani Ichung'wah.

Hon. A.B. Duale: Do you want me to read the whole of it?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We want the justification for the New Paragraph 44A where you talk about the income of the NHIF, so that we are able to see the difference between your reasoning and that of Hon. Kimani Ichung'wah.

Hon. A.B. Duale: I have done the one on the cooperative. You want me to go to the one on the income of the NHIF established under the National Hospital Insurance Fund Act, 1998 consisting of-

- (a) all contributions and other payments into and out of the Fund; and
- (b) monies invested under section 34 of the Act?

The first amendment was just seeking to spur residential housing units and address Kenya's housing gaps. But I think the one of the NHIF is just aligning it with the new Constitution. There is not much. It is just harmonisation of the Act.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let me propose the Question and then we hear the amendment from the Member for Kikuyu.

(Question of the amendment proposed)

Hon. Mulu: On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, Hon. Makali Mulu.

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairlady. I was just wondering. From what the Leader of the Majority Party said, even though he says this amendment is from the National Treasury, it is not clear why they are amending the NHIF Act. He needs to make it clear so that we can know what we are supporting or not supporting.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, let us listen to Hon. Kimani Ichung'wah because he has an amendment on the same.

Hon. Ichung'wah: Thank you, Hon. Temporary Deputy Chairlady. If the Leader of the Majority Party and Hon. Wamunyinyi can be quiet for a minute, I will give the clarity that the Member is asking for on the NHIF. He says he did not hear the justification clearly from the Leader of the Majority Party. The Leader of the Majority Party was talking about spurring development especially of residential housing units. What had happened is that under the Income Tax Act, the National Social Security Fund (NSSF) as a social security Fund has been included in the Schedule. Therefore, the income that they derive from the investment activities is not taxed.

However, the income of the NHIF, which is equally an important health security Fund, derived from such investments is taxed. Therefore, we just want to align that to make sure that both NSSF and NHIF are on the same tax regime. It helps because the NHIF invests in housing.

For instance, in their headquarters at Upper Hill, they have not occupied the whole building. They have rented out space to tenants and they are taxed on that income.

In this country, we have been speaking about giving global healthcare to Kenyans and now NHIF is even giving healthcare facilities to our elderly people that are benefiting from the cash transfer programme. We just want to encourage them to continue with these investments without necessarily taxing them. I hope it is clear to Hon. Makali.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Thank you, Hon. Ichung'wah. It is a bit clearer now. Hon. Nyikal.

Hon. (Dr.) Nyikal: Hon. Temporary Deputy Chairlady, I stand to support this amendment because the NHIF pays for healthcare for the people. All the money that accrues from that goes to pay for the sick people. We do not see why that should be subjected to tax. Therefore, I support.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kimani Ichung'wah, we have, therefore, dropped your amendment because it has been taken care of by that of the Leader of the Majority Party. Let me ask Hon. Gaichuhie to move his amendment.

(Proposed amendment by Hon. Ichung'wah dropped)

Hon. Gaichuhie: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended in the Schedule in the items relating to the Income Tax Act (Cap 470) by inserting the following new row in its proper alphabetical sequence—

Second
Schedule
(Part V)

Insert the following new paragraph immediately after section 24B —
Capital expenditure on construction of liquefied petroleum gas storage facilities.

24C. (1) Where capital expenditure is incurred on the construction of liquefied petroleum gas storage facilities with a minimum capital investment of four billion shillings and a minimum storage capacity of a total value of fifteen thousand metric tonnes, there shall be deducted in computing the gains or profits of the person incurring that expenditure for the year of income in which the liquefied petroleum gas storage facilities were first used for storage of liquefied petroleum gas, a deduction referred to as an investment deduction.

(2) The amount of the investment deduction under paragraph (1) shall be equal to one hundred and fifty per centum of the capital expenditure.

I want to go straight to the justification. In 2013, LPG was zero-rated, but it is for sure that LPG is today still expensive. It is the reason why everybody is using charcoal and firewood. What I seek to do is to exempt those people who are able to build storage facilities for LPG from tax so that they can invest in LPG storage facilities. But we are putting a cap. We do not want anybody building a small LPG storage facility. You should invest about Kshs4 billion. Therefore, we are not just taking care of anybody, but those people who are able to do facilities

with a minimum storage capacity of 15,000 metric tonnes. They also have to get an approval from the National Treasury and the CS in charge of energy.

Thank you, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Jakoyo and Hon. Ichung'wah, you would know where we are if you paid attention. We are on Hon. Gaichuhie's amendment on the Income Tax Act. It is on page 247.

Hon. Gaichuhie: It is on page 247.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I think, Hon. Gaichuhie, we have heard your justification and so, I will propose the Question.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Duale.

Hon. A.B. Duale: I think what the Vice-Chair is trying to say is that, if you want to invest in LPG storage facility, you will get some waivers when you buy the material for that investment. But because KPC wants to build, there is a waiver on that. The intent is to make sure that when we have a local LPG facility in our country, the price will then go down as opposed to importing and keeping the ship in the high seas.

In this amendment, the Vice-Chair is saying that we encourage investors who want to invest in LPG, including KPC.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Jakoyo.

Hon. Midiwo: I thank you, Hon. Temporary Deputy Chairlady. I rise to support. I wish this could have been further devolved so that smaller people can also participate. You can get somebody in Migori Town with a warehouse. That way, transportation will be bulked across the country. But I understand. Jubilee thinks big. You know when you spend Kshs600 billion on SGR – and we think it is much more---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): You think small?

Hon. Midiwo: We do not think small. We think micro. We like the people. We are social economists. But I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Thank you, Hon. Jakoyo. Hon. Wamunyinyi.

Hon. Wamunyinyi: Hon. Temporary Deputy Chairlady, it was not clear earlier and I had intended to withhold my support for this proposed amendment. But in view of the explanation, I wish to support the proposed amendment. I would like to stress this fact: Let the market be broadened; but not for a few investors. Let the other Kenyans also benefit from this.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, I think we have heard from both sides. Hon. Gichigi will be the last one on this.

Hon. Gichigi: Thank you, Hon. Temporary Deputy Chairlady. I also rise to support. My concern is that every time we reduce taxation to traders, it does not trickle down to the consumers. We need to come up with a system of monitoring. If we give tax rebates and the traders do not cascade that to the consumers, we must raise it again.

Thank you.

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

(Provisions relating to the Income Tax Act (Cap. 470) as amended agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, because of that amendment to the Income Tax Act, then we have consequential amendments to the Miscellaneous Fees and Levies Act, 2016 by the Leader of the Majority Party and Value Added Tax Act, 2013 by Hon. Gaichuhie.

Provisions relating to the Miscellaneous Fees and Levies Act, 2016 (No.29 of 2016)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The Leader of the Majority Party has an amendment at the bottom of page 239.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended in the Schedule—

(d)by inserting the following new item in its proper alphabetical sequence-

<p>Miscellaneous Fees and Levies Act, 2016 (No. 29 of 2016)</p>	<p>Part A of Second Schedule</p>	<p>Insert the following new item immediately after item (xxi)— (xxii) any other goods as the Cabinet Secretary may determine are in public interest, or to promote investments which value shall not be less than two hundred million shillings.</p>
	<p>Part B of Second Schedule</p>	<p>Insert the following new item immediately after item (v)— (vi) any other goods as the Cabinet Secretary may determine are in public interest, or to promote investments which value shall not be less than two hundred million shillings.</p>

This amendment to Part A of the Second Schedule seeks to empower the CS for National Treasury to grant remissions of Import Declaration Fees (IDF) in public interest and promote investments of more than Kshs2 million, while the amendment to Part B of the Second Schedule seeks to empower the same CS to grant remissions of the railway development levy in public interest and to promote investments of more than Kshs200 million.

Now, we have the new car making plants - the one in Thika and many others. Today, we also heard Boeing wants to open new offices in Nairobi and Johannesburg. So, for those who want to do serious investments, the CS can have some powers to vary their IDF declarations only. This is only where public interest comes in; where the public will gain more than any other person.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Wafula Wamunyinyi, do you want to speak to this.

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Chairlady. On some of these amendments which are brought to do with investors, the Leader of the Majority Party should explain how this is going to benefit other Kenyans. Is it just for people building vehicles? How are the ordinary Kenyans going to benefit from this amendment?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The Leader of the Majority Party, just expound on that, although I thought I heard you say it.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, the Member for Kanduyi has a very good question. It is more expensive when we import a German-made car from Germany than when we have the plant here and the car is assembled here in Kenya. Number one, it will create employment to our people. Secondly, the price will come down. So, this is only where the public interest comes in. If an investor wants to relocate and create--- This is basically the most important aspect. Before you even go to the consumers, it is to create employment for Kenyans.

If you go to the Thika Plant, you will find thousands of Kenyans who are working there. So, employment is very key. These amendments are from the National Treasury and I am moving them on behalf of the Ministry.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Wamunyinyi. I think it is now clear.

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

*(Provisions relating to the Miscellaneous Fees and Levies Act, 2016
(No.29 of 2016) as amended agreed to)*

Provisions relating to the Value Added Tax Act, 2013

Hon. Gaichuhie: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended in the Schedule by inserting the following new item in its proper alphabetical sequence-

The Value Added Tax Act,2013 (No of 2013)	First Schedule (Part I-Goods)	Insert the following new paragraph immediately after paragraph 30 — 30A. Taxable supplies, procured locally or imported for the construction of liquefied petroleum gas storage facilities with a minimum capital investment of four billion shillings and a minimum storage capacity of fifteen thousand metric tonnes as approved by Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for liquefied petroleum gas.
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First Schedule
(Part II-
Services)

Insert the following new paragraph immediately after paragraph 27 —
28. Taxable services, procured locally or imported for the construction of liquefied petroleum gas storage facilities with a minimum capital investment of four billion shillings and a minimum storage capacity of fifteen thousand metric tonnes as approved by Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for liquefied petroleum gas.

(Question of the amendment proposed)

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

(Provisions relating to the Value Added Tax Act, 2013 as amended agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members we have two amendments. One is from the Member for Subukia and the other by the Member for Gem. I will start with that of the Member for Subukia, Hon. Gaichuhie.

Provisions relating to the Insurance Act (Cap.487)

Hon. Gaichuhie: Thank you, Hon. Temporary Deputy Chairlady. I beg to move:

THAT, the Bill be amended in the Schedule in the items relating to the Insurance Act (Cap 470) by inserting the following new rows in their proper alphabetical sequence-

s.3A	Insert a new subsection as follows- (3) The Authority shall publish the standards formulated under sub-section (1)(b) and may provide for the punishment of a person who contravenes any of the standards by a fine not exceeding five million shillings or to imprisonment not exceeding five years or to both such fine and imprisonment.
s.20(4)	Delete the words “ten thousand shillings or to imprisonment not exceeding one year” and substitute with “five million shillings or to imprisonment not exceeding five years”
Second Schedule	Delete the expression “30th June, 2018” appearing in paragraph 3 and substitute therefor the expression “30th of June, 2020.

The first justification is to seek to provide the standards for insurance underwriters and enhance punishment for defaulters. The industry has not been complying with the policies because the punishment has been too lenient. When an insurance company is fined, say, Kshs10,000 only, they can always not follow regulations and that is why we have decided that we need to enhance the fine for them to comply. That is why we are deleting the Kshs10,000 and substituting it with Kshs5 million.

The other justification is that the amendment of the schedule is the minimum capital requirement by extending the target compliance date from 20th June 2018 to 30th June 2020. You realize that since they have increased the minimum capital requirement, if you tell them to increase the capital requirement by 2018, it is too short a period. So, we have decided to increase that to year 2020 so that the insurance companies can build their capital base. We need to give them time just like what we did with the banks. If you increase the minimum capital requirement, you need to give the companies time to build up their capital.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. Makali.

Hon. Mulu: Thank you. I support this amendment. What the Vice-Chairman is saying makes a lot of sense and, more so, with regard to the penalties where he proposes that we increase the fine from Kshs10,000 to Kshs5 million. This is going to be good for the economy. We will make sure that people comply with the law. So, I support.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have the amendments by Hon. Jakoyo.

Hon. Midiwo: Thank you, Hon. Temporary Deputy Chairlady. I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Insurance Act (Cap.487) by inserting the following new item immediately after the proposed amendments to section 43 (2) (c)—

New Insert the following new section immediately after section 71—

Choice of
insurer for
loans.

71A. (1) A bank shall—

- (a) inform a loanee, in writing, that the loanee has a right to select an underwriter or broker from a list of underwriters or brokers licensed by the Authority;
- (b) inform a loanee, in writing, that the loanee has an option to forfeit the right to select an underwriter or broker;
- (c) not prescribe or assign an underwriter or broker to a loanee, unless the loanee forfeits in writing the right to select an underwriter or broker; and,
- (d) update the list of licensed brokers or underwriters availed to loanees regularly and ensure that underwriters or brokers under statutory management are excluded from the list.

(2) A bank that contravenes the provisions of subsection (1) commits an offence and shall, upon

conviction, be liable to a fine not exceeding five million shillings.

When you buy a property from a bank whose core business is banking--- The bank could give you a loan to buy a car, then they force you to insure that car with them. They could also force you to insure the loan with them. So, we are saying here that they can force us to insure the loan with them, but we have the choice to insure our property where we want. That is because the rates are different. Why do they force customers to insure the loan? What you do with the loan since it is insured should be your problem. Banks cannot make money whichever way they want.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh: Let us have Hon. Gichigi.

Hon. Gichigi: Thank you, Hon. Temporary Deputy Chairlady. I support that amendment. People who borrow from banks are made to go through a lot of documents, many of which are in small print. With the banks now venturing into insurance and insurance agencies, it is only safe that this small person called the borrower be secured from that monster called the big bank.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh: Hon. Leader of the Majority Party, I do not see your intervention. Go ahead now.

Hon. A.B. Duale: I want to go on record, for the first time, as having disagreed with the Cabinet Secretary (CS) for the National Treasury. He wrote to me about this amendment. I did soul-searching last night between the people of Garissa Township and the National Treasury. But because the elections are around the corner, I decided to go with the people. This amendment is very clear because it is about the customers. When you go to the bank, you are given a list of law firms to chose from, even the serious lawyer Hon. Millie is here. We have a problem in this country whereby the banking and insurance businesses are inter-mingling. You are given a loan facility and then you are dictated to go to a specific insurance company because the bank is a shareholder there. So, they want to reap from you in the whole process. Hon. Jakoyo, of late, has been bringing pro-people Bills and amendments - starting from the Betting, Lotteries and Gaming (Amendment) Bill and this one. We ask the people of Gem to look into him as they look into Hon. Gumbo's pursuit for a gubernatorial seat.

I support and can provide evidence of the letter from the National Treasury.

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

(Provisions relating to the Insurance Act (Cap 487) as amended agreed to)

(Provisions relating to the Auctioneers Act (Cap 526) agreed to)

*(Provisions relating to the Clinical Officers, Training, Registration
and Licensing Act No.9 of 1988 agreed to)*

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We have a proposed amendment from Hon. Gaichuhie and then that of Hon. Jakoyo. If Hon. Gaichuhie's amendment

is carried, that of Hon. Jakoyo will be dropped. Hon. Gaichuhie is asking for a deletion and so, if it is deleted, then Hon. Jakoyo cannot continue with his amendment. Hon. Gaichuhie.

Provisions relating to the Kenya Information and Communications Act, 1998 (No.2 of 1998)

Hon. Gaichuhie: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended in the Schedule by deleting the items relating to the Kenya Information and Communications Act, 1998 (No 2 of 1998).

That is because there are ways of dealing with transparency in the provision of premium rate services. The best of which would be promulgation of specific regulations in relation to Content Service Providers (CSPs) who are also licensed providers of premium rate services in Kenya, and their engagement with mobile network operators. For the CSPs, somebody should decide their premium rates and that is why it should be deleted and we put regulations in place.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Gaichuhie, are you through?

Hon. Gaichuhie: Yes, I am through.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): You have moved?

Hon. Gaichuhie: Yes.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): You have given your justification?

Hon. Gaichuhie: Yes, I have given my justification and said it is because there are other ways of dealing with transparency in the provision of premium rate services. The best of which would be promulgation of specific regulations in relation to CSPs.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, I think Hon. Gaichuhie has finished his justification. You are confusing him because he is moving. Then I will propose the Question and you debate. What is out of order, Leader of the Majority Party?

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, we want to know whether Hon. Gaichuhie is deleting the provision in the Bill or dealing with the amendment by Hon. Jakoyo. If he is deleting, I oppose.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Then, you should wait until time for debate has commenced. He is on the Bill.

(Question of the amendment proposed)

The Leader of the Majority Party, are you ready?

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I oppose because this amendment is very simple. It says: "A telecommunication operator shall, before levying or allowing to be levied any specific charge relating to a premium rate service provided to a subscriber, disclose the fact, amount and frequency of the charge to the subscriber."

Everyday, I am subscribed to some things which I am not aware of. For example, the breaking news 411, you find yourself subscribed to it and many other things. The telecommunication operator must notify you because you are losing money. You are being charged for something you do not know. On this one, I oppose.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Jakoyo and then Hon. Wafula Wamunyinyi.

Hon. Midiwo: Thank you, Hon. Temporary Deputy Chairlady. I rise to oppose very strongly. You are aware of what I went through to occasion the Consumer Protection Act which we use and the Government also accepted to implement Article 46 of the Constitution. Sometimes, this House does things we do not even understand. Nelson, I beg you to, please, withdraw.

We are saying for example, those tunes which phone companies put in your phone and charge you, they may cost two cents or one shilling, but it is your money. All we are saying is, please, tell us how much it is going to cost us. How can that be bad? I really oppose because that would mean this House is anti-Kenyans. We cannot have a House that is only pro-telecommunication companies or banks. We cannot do that *Mheshimiwa*. I beg you! Your people are watching you. You must withdraw that amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We will have Hon. Wafula Wamunyinyi.

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Chairlady. I also rise to oppose this proposed amendment. First, it amounts to a substantive amendment that will affect all Kenyans through a miscellaneous amendments Bill. This should have been brought as a substantive amendment through some Bill. Let me explain. The Leader of the Majority seems to be excited, I do not know why. I oppose this amendment on that particular ground that the citizens will lose. You cannot say it is the opposite, Jakoyo. It is not. It affects Kenyans and you have told this Member very well. Withdraw this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have the Chair of the Departmental Committee on Justice and Legal Affairs.

Hon. Chepkong'a: Thank you very much, Hon. Temporary Deputy Chairlady. First and foremost, this was a very good proposal. That is why it came through the miscellaneous amendment Bill.

Secondly, Hon. Gaichuhie has not told us. Is it the proposal of the Communications Authority of Kenya (CAK) to have it deleted or is it the proposal of his Committee? If it is the proposal of his Committee, Members have no competence. He should take it from me. In fact, he should withdraw his amendment after I finish speaking. I am a former regulator. These are the sort of things we call hidden costs. You make a call and it is never disclosed. Telecommunication operators like Safaricom are making billions of shillings. This year, Safaricom will declare a profit of Kshs52 billion: Kshs52 billion comes from those hidden charges. When you call, you do not know how much you have spent. We want them to make a full disclosure so that when I make calls, I am informed.

I oppose the deletion of those provisions.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I think you are clear now. Hon. Gaichuhie, have you been convinced to drop the amendment or should we put the Question?

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We will now move on to the amendment by Hon. Jakoyo Midiwo.

Hon. Midiwo: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Kenya Information and Communications Act, 1998 by inserting the following new item immediately before the proposed amendments to section 27A—

New Insert the following new section immediately after section 25—
 Licensee 25A. (1) In addition to operating a telecommunication system
 may operate or providing a telecommunication service as may specified in
 other the licence granted under section 25, a person may engage in
 businesses. any other business provided that such person shall—
 (a) obtain the relevant licences from the respective
 regulators of any industry or sector ventured into;
 (b) legally split or separate the telecommunication
 business from such other business; and
 (c) provide separate accounts and reports in respect of all
 businesses carried out.

(2) A person who provides any service without the relevant licence under this section commits an offence.

(3) A person convicted of an offence under this section shall, on conviction be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding two years, or to both.

(4) A person who, at the commencement date of this section, was operating a business that does not comply with the requirements of this section shall ensure that the business is compliant within six months of the coming into force of this section.

(5) The Commission, shall, within six months of the coming into force of this section and thereafter annually, report to Parliament on the extent to which this section has been implemented.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Give us just a bit of justification.

Hon. Midiwo: I am coming to that. It is a big amendment. This amendment is with regard to the argument out there between the Competition Authority, phone companies and the Executive.

(Hon. Kang'ata stood on the gangway)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Member for Kiharu, you are confusing me.

Hon. Midiwo: This amendment is to tell those telecommunications companies, be it Orange, Airtel or Safaricom, which is the biggest culprit, if they are interested in doing any other business other than telephony, they must incorporate a local company which engages in that work even though they may have a mother company. The appalling case is the one of Safaricom. It is an unfair player and that has been said by the Competition Authority. It is largely owned by

foreigners. Our people only own 30 per cent. This is not a very small thing. This House has a responsibility. I have heard arguments out there, but the biggest responsibility is that Safaricom, as it were, cannot employ further than it does because it is a very good innovative company. Technology does not need many employees but, if we incorporate a 100 per cent fully owned Kenyan company, imagine how many Kenyans will be employed and how much tax we will get from that company.

The other thing which I am stopping them from doing is that Safaricom is even now getting into the taxi business with a telephony licence. Safaricom has this product where you make deposits and check in. Hon. Temporary Deputy Chairlady, if you could just indulge me for one more minute, in the last eight months of last year, our economy lost 135,000 jobs in the formal sector. But half of them – and the country may wish to know - were in the banking sector. We cannot have a company owned by foreigners collapsing our Equity Bank and our Co-operative Bank. We cannot do the same and watch our Kenya Commercial Bank go down. It is the duty of this House under Article 95 to do the right thing. I have heard arguments and we need to argue this amendment because it is substantive. Hon. Ichung'wah will have his time, but this is a fact that this country is living with. We have lost 135,000 jobs. Parliament has a duty because we have to consider how many people in the formal sector who have lost their jobs.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, I will start with the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I have listened very carefully to my colleague, the Deputy Leader of the Minority Party. I have a lot of respect for him. He has convinced us but, the amendment before us is very substantive. It is very heavy. We are the same Members of Parliament who could not allow the Statute Law (Miscellaneous Amendments) Bill carry substantive amendments. Those amendments must be subjected to the stakeholders - CAK, Safaricom, Airtel and the Cabinet Secretary for Information and Communication Technology. They must all be heard. I plead with Hon. Jakoyo that the issues he has raised are very clear and substantive. I urge my colleagues to ask Hon. Jakoyo to withdraw that amendment.

On my table is the Statute Law (Miscellaneous Amendments) Bill, 2017 which has just come from the Office of the Attorney-General (A-G). I want to confirm that I will put his amendment there so that all stakeholders can be called to argue their case. We will be accused as a House. Someone will go to court. We will be accused of having brought in a substantive matter to a Bill regarding minor changes. I want to beg Hon. Jakoyo. I have just campaigned for him to the people of Gem. Please, Hon. Jakoyo, I am sure you will pray because you are a man of God. Please, withdraw. We can even ask the Departmental Committee on Energy, Communication and Information to publish an Amendment Bill or even incorporate it in the Statute Law Bill, but let us give the stakeholders a chance. Let us hear Safaricom, the Cabinet Secretary and other stakeholders.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Your point has been heard. Let us have Hon. Ichung'wah.

Hon. Ichung'wah: Thank you, Hon. Temporary Deputy Chairlady. I want to join the Leader of the Majority Party in pleading with Hon. Jakoyo. I have heard the Leader of the Majority Party even entertaining this amendment in the Miscellaneous Statute Law for 2017. I encourage Jakoyo to propose it as a substantive Amendment Bill by itself.

The second thing is the contradiction in the amendment. We are just talking about Safaricom and *Mpesa*, while forgetting that even Equity now has Equitel in the same service of money transfer.

Hon. Jakoyo, this is something that needs a lot of deliberation and we need to listen to all the stakeholders. Hon. Jakoyo, we are talking about loss of jobs in the banking sector. We are also not looking at the loss of jobs that will be occasioned by the many agents who operate *Mpesa* and all the other agencies.

Hon. Temporary Deputy Chairlady, lastly - and I appreciate what Hon. Jakoyo has said about Vodafone and local ownership - we forget that Vodafone owns a platform on which *Mpesa* is riding. Therefore, if we were to delink the two companies, basically, we will be looking at the collapse of *Mpesa* as a local innovation. Therefore, I plead with Hon. Jakoyo to withdraw this amendment and look at it more substantively. Let him allow Members of the House to look at it more substantively, besides the other stakeholders.

Thank you, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, you know that there is a direction that can come from the Chair. That is why we are seated here. Hon. Jakoyo, you have heard, especially from the Leader of the Majority Party, and you are a seasoned Member of this House, in fact, a senior ranking Member. Hon. Members, I know even as I look at them on the Order Paper, I can tell you that these are substantive amendments. I will give other Members a chance. It does not stop me from what I am saying because directions can also be given from here. We can also not surprise the industry with a substantive amendment that the players have not been asked to give their opinion.

Hon. Jakoyo, even as I give a chance to another two Members, I appeal to you to consider how substantive your amendment is. You are the one who pushes for the rights of everybody to be heard. I am sure that you will also make the right decision. So, I will give two Members on this side. Hon. Gumbo.

Hon. Gichigi: On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Sorry. What was your point of order, Hon. Gichigi?

Hon. Gichigi: Thank you very much Hon. Temporary Deputy Chairlady. I rise under Standing Order No.133(5) which reads:

“No amendment shall be permitted to be moved if the amendment deals with a different subject or proposes to unreasonably or unduly, expand the subject of the Bill, or is not appropriate or is not in logical sequence to the subject matter of the Bill.”

So, the truth of the matter is that the issue brought out in this Bill is fundamentally different from the new proposal by my senior. I urge him to withdraw it.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Gichigi, you have just said what the Temporary Deputy Chairlady has said. When I pronounced myself from the Chair, I am aware of that Standing Order. Hon. Gumbo.

Hon. (Eng.) Gumbo: Thank you, Hon. Temporary Deputy Chairlady, for giving me the opportunity. Allow me to, first of all, start by thanking Hon. Jakoyo Midiwo for proposing this amendment. Even as he does, maybe, he should talk to Hon. Duale. I am not sure whether Hon. Duale campaigning for him adds or denies him votes in Gem. But anyway, that is just my thought.

(Laughter)

This amendment should have happened 10 years ago. It is not a question of whether it will happen, but it is a question of when. If you look at the licence Safaricom holds, it is a telecommunication licence. I am talking in particular about Safaricom. Today, as Hon. Jakoyo says, they are in the taxi business and literally conducting banking business. Who knows? Tomorrow, they will be running restaurants or cleaning services on the same licence. This House has a duty to make sure--- In fact, if you looked at the terms on the licensing of Safaricom and telecoms companies, they have actually violated the terms of their licences. Some people might look at this amendment simplistically, but Safaricom is a foreign-owned company which is holding the data for all Kenyans who are subscribers to its network. That data is being held by foreigners and we are exposing millions of Kenyans to cyber terrorism. So, this is a very serious amendment, but I want Hon. Jakoyo, as the proposer, to have the final word. This amendment is not a question of if, but a question of when it will happen because it has to protect the people of Kenya and also create jobs for our country. We should transfer all ownership of all those conglomerates within Safaricom to the people of Kenya - away from the hands of foreigners.

Thank you Hon. Temporary Deputy Chairlady. I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Chair of Departmental Committee on Justice and Legal Affairs.

Hon. Chepkong'a: Thank you, Hon. Temporary Deputy Chairlady. I would like to humbly request Hon. Midiwo, who is my very good friend, to withdraw this amendment and allow for public participation as required by the Constitution. Safaricom is operating under a licence that I signed and issued.

(Loud consultations)

I am saying this--- Just wait a minute! I must tell him so that he knows that he is going to fundamentally affect the licence and the terms and conditions under which they are operating in this country.

Secondly, even if we are going to approve this amendment, our law requires that if you intend to affect negatively the rights of a person, you must have them heard.

Hon. Midiwo: Trump.

Hon. Chepkong'a: Let me explain! You know we attended a prayer breakfast with Hon. Midiwo in which the President of the United States, Donald Trump, was present and he was happy with him.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chair, you are just repeating what has been said. You are emphasizing what has already been said. Since we are in Committee of the whole House, we are going to put the Question.

Hon. Chepkong'a: A final one, Hon. Temporary Deputy Chairlady. What I am saying is that we should allow those parties to participate so that we can hear them and make a final decision with regard to this issue.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, we have heard from both sides.

(Hon. Kang'ata raised his hand)

Hon. Kang'ata, that is not the way to catch my eye at all. Hon. Jakoyo, are you convinced to withdraw the amendment or do we put the Question?

Hon. Midiwo: I am not withdrawing, but changing tact. You know that I have been here for a long time. I am convinced with the issue of looking at the larger picture. It is also good to correct the Chair of the Departmental Committee on Justice and Legal Affairs that when he issued that licence, there were no mobile phones. Telecommunication companies had those big ones. He did not license them to do taxi and banking business, and collapse Equity Bank and Co-operative Bank. Therefore, I accept the request by all and sundry that I withdraw the amendment. I am also going to instruct the legal team to do a substantive Bill. We must help the Government to collect taxes.

I withdraw the amendment.

(Proposed amendment by Hon. Midiwo withdrawn)

(Provisions relating to the Kenya Information and Communications Act, 1998 No.2 of 1998 agreed to)

(Provisions relating to the Community Service Orders Act, (Act No.10 of 1998) agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, there are no amendments to this and, therefore, I put the Question.

(Provisions relating to the Industrial Property Act, (Act No.3 of 2001) agreed to)

Provisions relating to the Children Act, 2001

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, we have two amendments: one by the Leader of the Majority Party and the other by the Chairman of the Departmental Committee on Labour and Social Welfare, Hon. Were. I will start with the one by the Leader of the Majority Party on the Children Act.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, after receiving Communication from the Cabinet Secretary for Labour and Social Services on this amendment, I drop my amendment and support the amendment by Hon. Gichigi.

(Proposed amendment by Hon. A.B. Duale withdrawn)

Hon. Gichigi: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Schedule to the Bill be amended—

- (a) by deleting the proposed amendments to section 155(2) of the Children Act (No.8 of 2001).
- (b) by deleting the proposed amendments to section 156(1) of the Children Act (No.8 of 2001) and substituting thereof the following new amendment-

- s.156 (2) Insert the following new subsection immediately after subsection (3)-
(4) The Cabinet Secretary may issue a moratorium on inter-country and residents adoptions where there is sufficient evidence to support the opinion that such adoptions or processes leading up to such adoptions are likely to be in contravention of the Constitution or any other law, or any international treaties or conventions to which Kenya is a party.

The rationale behind these amendments is that when the proposals to bring in---

Hon. Kajwang’: On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Gichigi, sorry to interrupt you. What is out of order, Hon. T.J?

Hon. Kajwang’: Hon. Temporary Deputy Chairlady, I beg your indulgence and that of the Member for Kipipiri. Maybe, I am out of order myself, but I was just going to ask. I saw that there were amendments proposed by the Chairman of the Committee at some point.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): He is actually representing the Chairman of Committee. He is presenting the amendments of the Labour Committee.

Hon. Kajwang’: I was referring to the Chairman of Departmental Committee on Justice and Legal Affairs.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): On the Children Act?

Hon. Kajwang’: Yes.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): No! There is no amendment to the Children Act by the Chairman of the Departmental Committee on Justice and Legal Affairs.

Hon. Kajwang’: Number (c) has nothing to do with this?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I am giving you direction. There is no amendment.

Hon. Kajwang’: There is the Sexual Offences Act.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We are on the Children Act.

Hon. Kajwang’: I beg your pardon.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I can see we have not reached the Sexual Offences Act. Hon. Gichigi, please, go ahead.

Hon. Gichigi: Hon. Temporary Deputy Chairlady, I was giving the rationale. When the proposed amendments were made and forwarded to the Attorney-General, that was a long time ago. Since then, the Ministry has constituted a task-force to look into the issues of the law on adoption and the structures of adoption in this country. The CS has since issued a moratorium. The task-force has gone out of the country and engaged various stakeholders. It has made a Report and forwarded it to the respective CS and she is in the process of implementing it. So, she needs to be given time to come up with other proposals. We are proposing that various proposals be dropped and the new moratorium proposal be passed.

(Question of the amendment proposed)

Hon. (Dr.) Nyikal: Hon. Temporary Deputy Chairlady, I rise to support that amendment on the provision of the moratorium. The work of the Committee that is being talked about should actually be brought into effect very quickly. That is because the issue of adoption is really messy.

There are a lot of issues and there are so many adoption societies. They are doing all sorts of things. I support that it should be done as soon as possible.

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

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

(Provisions relating to the Children Act, 2001 as amended agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us move on to the amendment to the Copyright Act, 2001 by Hon. Ichung'wah.

Provisions relating to the Copyright Act, 2001 (No 12 of 2001)

Hon. Ichung'wah: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended in the Schedule-

(b) in the items relating to the Copyright Act, 2001 (No 12 of 2001)-

(i) by deleting the amendments proposed to section 30(8) and substituting therefor the words "and performance for private purposes shall include the digital content of artistic works";

(ii) by deleting the amendments proposed to section 30A(1);

(iii) by inserting the following row in its proper sequence-

The amendment, as proposed, is unconstitutional as it seeks to force our artists, especially musicians' royalties, to be channelled to entities other than those entities of their choice. We have seen how many of our artists have suffered, especially with the ringtones on our phones. Many songs are being played and our artists end up not benefiting. Therefore, we seek to have this digital content recognized in the Act. That will help our artists in a great way.

(Question of the amendment proposed)

Hon. Kaluma: Thank you, Hon. Temporary Deputy Chairlady. The issues of copyright need a lot of clarity. Could the Mover of the amendment, please, explain the import of the amendment for our better understanding?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): He just did!

Hon. Kaluma: We have done a lot of amendments on the copyright law which is just taking too much from--

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Ichung'wah, you have explained it but, please, do it again for the sake of Hon. Kaluma.

Hon. Ichung'wah: For Hon. Kaluma, I know a lot of his time was taken by the amendments to the Children Act. The Leader of the Majority Party was also away.

The issue here is deleting amendments proposed to Section 38 and substituting the words, "and performance for private purposes shall include digital content of artistic works". I have said many of our artists have their artistic work being downloaded and used especially as ringtones on phones. Because the Act did not recognise digital content, therefore, they are forced to have their

money channelled through entities that they have not approved themselves. Those are people who are just collecting money on their behalf and not channelling the same money to the artists. A case in point is our vernacular gospel musicians who have suffered because people are collecting royalties on their behalf, but they do not remit that money to them.

(Hon. A.B. Duale interjected)

Hon. Leader of the Majority Party is interrupting me!

The other thing, if I can also speak to the second amendment, is deletion of Section 30A. Many Members will remember that there was a court case in the constitutional court in Malindi, that is Petition No.5 of 2016, and the court proposed that Section 30A of that Act be deleted in its entirety. It is basically on the same argument that the provisions in Section 30A were unconstitutional. Therefore, this is just to align the law with the court ruling. I hope Hon. Kaluma is now happy.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kaluma, I actually have the court ruling that has occasioned, I believe, the amendment that has been brought by Hon. Ichung'wah. What he has said is true, that the section was declared unconstitutional in the ruling of the judge. I hope Hon. Kaluma is now comfortable.

Hon. Kaluma: Hon. Temporary Deputy Chairlady, I am shocked that Hon. Ichung'wah knows the Copyright Law because that is an area that I am passionate about. I support this amendment. I am surprised that he, at times, knows some good things.

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

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

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

*(Provisions relating to the Copyright Act, 2001 (No.12 of 2001)
as amended agreed to)*

(Provisions relating to the Public Officer Ethics Act agreed to)

(Provisions relating to the Persons with Disabilities Act agreed to)

(Provisions relating to the Refugees Act agreed to)

(Provisions relating to the Anti-Counterfeit Act agreed to)

(Hon. Kaluma and Hon. Kajwang' consulted loudly)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kaluma and Hon. Kajwang', can I, please, have your attention?

Hon. Members, the following proposed amendments to the Statute Law (Miscellaneous Amendments) Bill, 2016 were withdrawn by the Leader of the Majority Party as communicated by the Speaker on Thursday, 9th February 2017. They were in respect of the following Acts:

- (i) The Sexual Offences Act, 2016.
- (ii) The Proceeds of Crime and Anti-Money Laundering Act, 2009.
- (iii) The Treaty Making and Ratification Act, 2012, and,
- (iv) The Independent Policing Oversight Authority (IPOA) Act, 2011.

Hon. Members, the above are no longer part of this Bill because they were withdrawn by the Leader of the Majority and, therefore, they have been deleted.

(The Competition Act agreed to)

(The Judicial Service Act agreed to)

Hon. A.B. Duale: On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. A.B. Duale, what is your point of order?

Hon. A.B. Duale: I had an amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Is it on the Retirement Benefits Authority Act, or on the Judicial Service Act?

Hon. A. B. Duale: *(Off-record)*.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We are not yet there.

Provisions relating to the National Police Service Act, 2011

Hon. Abongotum: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended in the Schedule in the proposed amendments to the National Police Service Act No. 11A of 2011—

- (a) by deleting the proposed amendment to section 2;
- (b) by deleting the proposed amendment to section 10(1);
- (c) by deleting the proposed amendment to section 13 and substituting therefor the following new amendment—

“Insert the following new subsection immediately after sub-section (7)—

(8) Whenever a vacancy occurs in the office of the Deputy Inspector-General, the President may, on the recommendation of the Commission, appoint a suitably qualified police officer to act as Deputy Inspector-General until the appointment of the substantive holder of the office, provided that such police officer appointed to serve in acting capacity shall serve for a period not exceeding six months.”

- (d) by deleting the proposed amendment to section 29(1);
- (e) by deleting the proposed amendment to section 76(3); and,
- (f) by deleting the proposed amendment to section 79(2).

Hon. Temporary Deputy Chairlady, I wish to explain that by deleting (a), the amendment proposes to remove the civilian staff from the membership of the service and yet, the substantive

provision of the National Police Service Act and the National Police Service Commission Act have recognized civilian staff working in the Service as members of the Service. For instance, Section 7 of the National Police Service Act clearly provides that all employees and officers, including civilian staff working in the various respective agencies of the police at the commencement of the Act, became members of the Service. The amendment would, therefore, result in a vacuum to the effect that civilian members of staff of the Service will not be provided for in the Act.

The amendment would, therefore, result in a vacuum to the effect that civilian members of staff of the Service will not be provided for in the Act. Basically, this is to recognise civilian staff who work within the National Police Service Commission and within the National Police Service (NPS). There was an agreement that they should be separate from the NPS but the Commission says that they should have both civilian and uniformed police officers on board.

In Paragraph (b), we are deleting the proposed amendment to Section 10(1). The current provision which is proposed to be deleted by the Bill is more specific on the type and rank of officers who qualify to be designated as county commanders. The proposed amendment is drafted with generality leaving room for even the appointment of junior officers as county commanders, a situation that may disregard the command structure of the Police Service and may be susceptible to abuse. The rationale behind this is to make sure that there is clarity of mandate so that junior officers may not be designated as senior while they really do not have the seniority or the power to command. So, it was meant to clarify issues concerning mandates.

In Paragraph (c), the amendment proposes to delete the procedure for the appointment of Deputy Inspector-General without providing for an alternative procedure. The amendment, if adopted, would therefore result in a vacuum as regards the procedure for the appointment of the Deputy Inspector-General.

The proposed New Section 13 merely provides for the appointment by the President of an officer in acting capacity where a vacancy occurs in the Office of the Deputy Inspector-General. The current Section 13 of the Act should, therefore, be retained in the Act and instead the new provision should be inserted as Sub-section 8 with addition of the timelines within which the appointee should hold office in acting capacity so as to guard against a situation of an officer holding the office in acting capacity indefinitely. This is meant to avoid a situation where somebody is appointed and is serving for more than one year without going through interview. This has given the President that leeway to appoint an officer in acting capacity as Deputy Inspector-General for six months and we expect that within six months, interviews would have been done and a name forwarded to the President for appointment.

In Paragraph (d), we are deleting the proposed amendment to Section 29(1). The amendment seeks to provide that the Director of Criminal Investigation (DCI) shall be of equal status to the Deputy Inspector-General.

However, Article 245 (3) of the Constitution provides for the two instances of the Deputy Inspector-General and those are the heads of Kenya Police Service and the Administration Police. Therefore, this proposed amendment is unconstitutional as it seeks to provide for the third instance where we have three main---

(Hon. A. B. Duale interjected)

The Leader of the Majority Party says it is quite okay. I think that is clear so that we only have two deputies. The DCI will serve under the current Act.

Paragraph (e) seeks to delete the proposed amendment to Section 76(3). The amendment seeks to remove the restriction on voluntary retirement from only those officers below the rank of sergeant. Therefore, the amendment proposes that any officer irrespective of rank may voluntarily retire from Service upon completion of 12 or 20 years of service. If the amendment is adopted, the Police Service may run the risk of losing its valuable skill of well trained and experienced officers. Therefore, the provision on voluntary retirement should be retained as it is currently in the Act.

(Hon. Chepkong'a interjected)

Hon. Chepkong'a says he is very much in agreement.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Chair, we have got your gist. Your justification is on why you are deleting, is it not?

Hon. Abongotum: Therefore, do I just give the gist? That is what I will do.

Lastly in Paragraph (f), the rationale is that the amendment seems to be in conflict with Section 10 of the National Police Service Commission Act which gives the Commission power to implement and oversee the training curriculum within the Service. This is basically to give powers to the National Police Service Commission to undertake matters related to training, recruitment and such other matters. So, it is just to empower the Commission and retain what is there.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Thank you, Committee Chair.

(Question of the amendment proposed)

Hon. Chepkong'a: On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chepkong'a, are you on a point of order?

Hon. Chepkong'a: While I support what he has just proposed, I am concerned with the facilities in this House. They are neither convenient for the presenter nor for the hearers. The sort of microphone that Hon. Kamama has been given is close to his mouth.

Hon. Temporary Deputy Chairlady, can you, therefore, direct the Clerk or whoever is responsible for this broadcast to give him an appropriate microphone so that he is not speaking too close to it. It is like booming on your ears.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chepkong'a, the way you use the microphone is up to the individual. You can decide to move too close to the microphone or stay far from it. You handle the microphone. It does not handle you.

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

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

*(Provisions relating to the National Police Service Act, 2011
as amended agreed to)*

Provisions relating to the Kenya Citizenship and Immigration Act (Act No. 12 of 2011)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Again, Hon. Kamama, you have an amendment. I see the Chair of Justice and Legal Affairs Committee has come to teach you how to use a microphone.

Hon. Abongotum: You know as a former administrator, I am used to microphones than the advocate or the Chief Executive Officer (CEO) who normally addresses many board meetings. I am used to *barazas* and the rest. I hope this is clear.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): It is fine. I can hear you well.

Hon. Abongotum: Hon. Temporary Deputy Chairlady, I beg to move:

THAT the Bill be amended in the Schedule in the proposed amendments to the Kenya Citizenship and Immigration Act No. 12 of 2011—

- a) by deleting the proposed amendment to section 31(1);
- b) by deleting the proposed amendment to section 33(1);
- c) in the proposed amendments to section 37—
 - (i) by deleting the proposed amendment to paragraph (b);
 - (ii) in the proposed new paragraph (ca) by deleting the words “or dependants” appearing immediately after the word “children”;
- d) in the proposed amendment to section 40(10), by inserting the words “and may appeal the decision of the Cabinet Secretary to the High Court” immediately after the words “receipt of the notification” in the proposed new subsection (12).

This amendment may be open to abuse by unscrupulous officers as it is vague and it may not always be possible to ascertain what period of time shall be reasonable in the circumstances. The proposed amendment in Paragraph (b) is a repetition of the existing paragraph one in the Act and is not necessary.

In the proposed amendment in Section 37, we are deleting the proposed amendment to Paragraph (d). The proposed amendment introduces persons who have held resident permits as those who may apply for resident permits. The provision should, however, be retained as it is in the current Act to allow persons who have held work permits for a period of seven years to apply for permanent residence.

Hon. Temporary Deputy Chairlady, part (ii) reads “in the proposed new Paragraph (ca) by deleting the words “or dependants” appearing immediately after the word “children”.

The proposed amendment in the Bill if adopted will result in unclear provision since the definition of the term “dependant” is different from that of a “child”. The word “dependant” is, therefore, not necessary in the provision.

On Paragraph (d) and the last one, I can see the Deputy Chair, Hon. Gaichuhie is jittery.

The last amendment means that a person aggrieved by any decision may apply to the court for redress. It is, therefore, necessary to include the provision of an appeal to the court in the proposed amendment in this Bill.

Thank you, Hon. Temporary Deputy Chairlady.

(Question of the amendment proposed)

(Question, that the words to be left out be left out,

put and agreed to)

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

*(Provisions relating to Kenya Citizenship and Immigration Act, 2011
as amended agreed to)*

(Provisions relating to National Construction Authority Act agreed to)

(Provisions relating to Kenya School of Government Act agreed to)

Provisions relating to the Retirement Benefits (Deputy President and Designated State Officers Act

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We have an amendment by the Chair of the Departmental Committee on Justice and Legal Affairs.

Hon. Chepkong'a: Hon. Temporary Deputy Chairlady, I beg to move:

THAT the Schedule to the Bill be amended by—

(a) amending the proposed amendments to the Retirements Benefits (Deputy President and Designated State Officers) Act, No. 8 of 2015 as follows—

(i) inserting the words “Deputy Chief Justice” immediately before the words “or Chief Justice” in the proposed amendments to the Long title;

(ii) inserting the following new item immediately after the proposed amendment to the Long title—

s. 2 Insert the following new definitions in their proper alphabetical sequence—
“retired Chief Justice” means a person who, having held the office of Chief Justice, has ceased to hold the office as such in the manner specified in the Constitution;

“retired Deputy Chief Justice” means a person who, having held the office of Deputy Chief Justice, has ceased to hold office as such in the manner specified in the Constitution.

New (iii) inserting the following proposed new section immediately after the proposed new section 5A—

Pension and other benefits of retired Deputy Chief Justice 5B. A retired Deputy Chief Justice shall, during his or her lifetime, be entitled to—

(a) a monthly pension equal to eighty per cent of the monthly salary of the entitled person’s last monthly salary while in office;

(b) a lump sum payment on retirement calculated as a sum equal to one year’s salary paid for each term served in office;

(c) one salon vehicle of an engine capacity not exceeding 2000 cc which shall be replaceable once every four years;

- (d) one four-wheel drive vehicle of an engine capacity not exceeding 3000 cc which shall be replaceable once every four years;
 - (e) a fuel allowance equal to fifteen per cent of the current monthly salary of the office holder;
 - (f) full medical and hospital cover, providing for local and overseas treatment, with a reputable insurance company for the entitled person and the entitled person's spouse;
 - (g) the additional benefits set out in the First Schedule.
- (i) inserting the words "THE DEPUTY CHIEF JUSTICE" immediately before the words "Or the Chief Justice" in the proposed amendments to the First Schedule.

The import of this, as you know is that any system of Government has three arms. There is the Executive, the Judiciary and Parliament. We have provided for retirement perks for the CJ, but what we did not do was to provide for the DCJ. As you know, the DCJ sits as a judge of the Supreme Court. These are people who are supposed to retire at the age of 70, having offered their services to this country in their positions. So, what we are seeking to do is to provide for remuneration after their retirement. They will retire at the age of 70, they will be old people and they need to be taken care of having served this country in a very distinguished manner.

We are, therefore, proposing that the DCJ be given some stipend and vehicles when she or he retires. For this case, it has always been women who have been DCJs. As you know, Rawal retired recently but she could not be given any benefits. She looks like she was edged out of the Judiciary because of age issues. It is important for the DCJ to be rewarded. As you know, in the absence of the CJ, it is the DCJ who performs the functions of the CJ. So, we propose that the Act be amended to include the DCJ.

I thank you, Hon. Temporary Deputy Chairlady.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Before I give Members opportunity to contribute, Hon. Chepkong'a and the Leader of the Majority Party please hear me please. Hon. Chepkong'a, the Act that you are amending has been effective since 1st January, 1993. Are you going to go back to 1993 to cover the four DCJs and the CJs that have been there? If you are not going that far, you must pronounce yourself in terms of how far you want to go back before we open debate to others.

Hon. Chepkong'a: Thank you, Hon. Temporary Deputy Chairlady. The proposed amendment is only with respect to the DCJ who was appointed after the promulgation of the new Constitution. It is not intended to apply retrospectively to those DCJs before the promulgation of the new Constitution. I am not even aware whether we had the position of DCJ.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We did. We also had CJs. You know it is just a further amendment. You know this because you are a lawyer and I am not. You have to be clear so that you do not have litigation after that.

Hon. Chepkong'a: I, therefore, move a further amendment by inserting the words "at any time after the 27th August, 2010" immediately after the words "office of the Chief Justice" in the definition of the term "retired Chief Justice" and secondly, inserting the words "at any time

after the 27th August, 2010” immediately after the words “office of the Deputy Chief Justice” in the definition of the term “retired Deputy Chief Justice.”

I thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chairman, now you have made it clear that currently as we speak, it is the immediate former Deputy Chief Justice and those that will follow after that.

Let us have the Hon. Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I wanted to support this because my good friend, the former Chief Justice, Dr. Willy Mutunga, since he retired, has been living a very difficult life. Tonight I will call him and tell him that the Bill has been passed.

Secondly, just because there was war in the Judiciary when this Bill was being made, the Attorney-General (AG) left out the name of the former Deputy Chief Justice, Kalpana Rawal. She was a member of the Judicial Service Commission (JSC) and because of that tug of war, he decided to leave her name out. At least, we have now brought her name back and we have also secured the current Deputy Chief Justice Philomena Mwilu. So, I support this so that senior citizens can get--

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Leader of the Majority Party, much as you are my senior, when I sit on this Chair, I guide. Please, withdraw the inference that the Attorney-General deliberately left out anything. Indeed, you have mentioned the Attorney-General.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I cannot withdraw. When this Bill was brought to me by the AG, one question I asked was: “Why has he left before we deal with the current Deputy Chief Justice? Why has he left out the name of the former Deputy Chief Justice?” I represent people and I am the Leader of Government Business. When it comes to the House, whatever the AG brings here, he becomes subservient to the Leader of the Government Business. He becomes my junior.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): You are imputing something on the AG. What you are saying imputes that he deliberately left out the name.

Hon. A.B. Duale: He left it out and I am saying it on the Floor. Why are we adding “the Deputy Chief Justice” here? That is his function. You cannot ask for retirement benefits for the Chief Justice and forget about the Deputy Chief Justice. So, the AG of the Republic of Kenya should not play monkey business.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have the Hon. Chairman of Departmental Committee on Justice and Legal Affairs.

Hon. Chepkong’a: Thank you. I totally agree with the Hon. Leader of the Majority Party. This AG has been playing monkey business in many things, including in his own Act in which he has refused to provide for his removal. He drafts a Bill and brings it here and yet it does not have any clause providing for his removal. So, when the Law Society of Kenya petitioned for his removal, there was no provision for his removal, but there was one for the Cabinet Secretary. So, he does some things deliberately for his own purposes. He sits as a Member of the JSC. So, we are saying these things with full knowledge of the politics in the JSC.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kaluma, you have the Floor.

Hon. Kaluma: Hon. Temporary Deputy Speaker, I oppose this provision the reason being that there is a Bill we have negotiated with the Judiciary through the Departmental Committee on Justice and Legal Affairs. It is called “The Judges Retirement Benefits Bill.”

We must understand that the CJ is a judge and the President of the Supreme Court. The Deputy CJ is also a judge. We must avoid a situation where --- I am being interrupted very badly by the leaders of our House--- We must avoid a situation where we are creating retirement benefits laws for various sections instead of dealing with departments at once.

Secondly, this is a very substantive provision. I would pray that matters of retirement benefits of the CJ and his Deputy go to that law and not this one.

Hon. Chepkong’a: On a point of order.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kaluma, there is a point of order.

Hon. Chepkong’a: You know I have a lot of respect for Hon. Peter Kaluma. He has a very sharp mind.

Hon. A.B. Duale: (*Inaudible*)

Hon. Chepkong’a: It is true. I chair a committee in which he is a member and so I know and I can even attest to those facts even as a Commissioner for Oaths. It is true we have a proposed Bill, but what we are seeking to do is with regard to constitutional office holders. This is not for any other Judge. So, the CJ and his Deputy ---

Hon. Kaluma: (*Inaudible*)

Hon. Chepkong’a: I do not know why he is getting very annoyed.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let us have Hon. T.J.

Hon. Kajwang’: Hon. Temporary Deputy Chairlady, the problem is that in this Chamber we sometimes--- Can the Hon. Member for Garissa Town just allow me get my thoughts together?

We make contributions in this House thinking of individuals and when it is convenient to us. Looking at the original Bill, I realize that it is talking about the CJ. The further amendment is talking about the DCJ. My problem is neither the CJ nor his deputy. We have said in this House before that for a Bill such as this to come to the Floor of the House, it must be constitutional.

This Bill has not gone through the normal processes required by Article 144 of the Constitution. This is a miscellaneous amendment provision which has not gone through those processes. If you are going to allow the AG--- The Hon. Leader of the Majority Party is criticizing the AG for doing haphazard things and yet he is also allowing the same AG to sneak things through the Statute Law (Miscellaneous Amendments) Bill.

My point is that this is a substantive issue; both the matter on the CJ and the DCJ should come as an amendment in which there is public participation. The matters should also be subjected to the Committee through the normal procedure.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): What is your point of order, Hon. Leader of the Majority Party?

Hon. Kajwang’: Something must be out of order.

Hon. A.B. Duale: The CJ, as a constitutional office holder, should have been in the Bill that this House dealt with which was called, “Retirement Benefits (Deputy President and Designated State Officers) Act.” The CJ and the DCJ were left out. The provision in the Bill is for the CJ and it went to his own committee, the Departmental Committee on Justice and Legal Affairs. This Bill has been in the House for over six months. So, public participation was done. If

you were not there on the day when this Committee was dealing with the Bill, that is a different issue. The further amendment we are moving is for the DCJ.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): This is from a process that went through public participation. We even got a memorandum---

Hon. A.B. Duale: The Report of the Departmental Committee on Justice and Legal Affairs has that. I think we should just continue.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. T.J, the Chairman of the Departmental Committee on Justice and Legal Affairs serves in a committee that you sit in. This amendment was brought to your Committee. When it comes to a committee, it is deemed to have gone through public participation, including consideration of a memorandum from the Judiciary itself to the Committee. So, argue on another point but not on public participation.

Hon. Kajwang': I sit in that Committee and I am one of those that are regularly there in spite of many things that I do. The Bill is talking about the CJ while the amendment is talking about his deputy. I have no problem with both of them. My problem is how we process things in this House and how consistent we are to the rule of law whenever we have things which look like Money Bills. The issue is in the Committee where I sit, and the Chairman is not known to be a liar. I am sure about this because he knows it and he will not dispute. I do not know a single time - and it will come in many of these amendments - that the Statute Law (Miscellaneous Amendments) Bill was prosecuted as it is.

We have not had any representation from the Judiciary on this matter, taken witness statements or anything from the Salaries and Remuneration Commission (SRC). The Budget and Appropriations Committee needs to look at it. These are the laws we face every day which we are bringing amendments concerning Money Bills. Maybe at the end of the day, we will get these amendments go through.

All I am saying is that we have some standardised procedure between the office of the Leader of the Majority Party and the Attorney-General so that amendments are in the main Bills and not through the Statute Law (Miscellaneous Amendments) Bill. That is my point.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, Hon. Kamama.

Hon. Abongotum: I support the amendment as moved by the Chair of the Departmental Committee on Justice and Legal Affairs because these two positions are constitutional. We are not saying that the offices of judges are unconstitutional, but in terms of mandate and in the absence of the Chief Justice (CJ), the Deputy Chief Justice (DCJ) takes over to run the entire Judiciary.

I support the amendment and call upon Hon. Members to support it fully.

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

*(Provisions relating to the Retirement Benefits
Deputy President and Designated State Officers)
Act, No.8 of 2015 as amended agreed to)*

*(Provisions relating to the Business Registration Service Act,
No.15 of 2015 agreed to)*

(Provisions relating to the Companies Act,

Act No.17 of 2015 agreed to)

Provisions relating to the Excise Duty Act, No.23 of 2015

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The Leader of the Majority Party, do you have an amendment?

Hon. A.B. Duale: I beg to move:

THAT, the Bill be amended in the Schedule –

(a) in the items relating to the Excise Duty Act, 2015 in the proposal in respect of Part I of the First Schedule by deleting the words “Motor Vehicle excluding school of tariff heading 87.02, 87.03 and 87.04” substituting therefor the words “motor vehicles excluding school buses for use by public schools of tariff heading 87.02,87.03.87.04”.

The justification is that this amendment seeks to correct an error that relates to the wrong reference to a title that the House did when we were dealing with the Finance Bill last year. The Title has been referred to as “Motor Vehicle excluding school of tariff heading 87.02, 87.03 and 87.04.” However, the correct reference to the title should be “motor vehicles excluding school buses for use by public schools of tariff heading 87.02, 87.03.87.04”.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): That is straightforward the Leader of the Majority Party.

(Question of the amendment proposed)

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

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

*(Provisions relating to the Excise Duty Act,
No.23 of 2015 as amended agreed to)*

*(Provisions relating to the High Court (Organisation
and Administration) Act, No.27 of 2015 agreed to)*

*(Provisions relating to the Court of Appeal (Organisation
and Administration) Act, No.28 of 2015 agreed to)*

*(Provisions relating to the Legal Aid Act,
No.6 of 2016 agreed to)*

*(Provisions relating to the Water Act,
No.43 of 2016 agreed to)*

(Title agreed to)

(Clauses 1 and 2 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members we have now concluded the Committee of the whole House, where we have been considering the Statute Law (Miscellaneous Amendments) Bill No. 45 of 2016. Mover, the Leader of the Majority Party, you have the Floor.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.45 of 2016) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we will start with the Mover. Let us have the Hon. Chairperson.

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.45 of 2016) and has approved the same with amendments.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

I request Hon. Nelson, the Vice-Chairperson of the Departmental Committee on Finance, Planning and Trade to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Gaichuhie: Hon. Temporary Deputy Speaker, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. T.J, do you have a recommittal? Give him the microphone.

Hon. Kajwang': Hon. Temporary Deputy Speaker, I beg to move:

THAT, the Motion for agreement with the Report of the Committee of the whole House be amended by inserting the words "subject to recommittal of provisions relating to the Advocates Act, Cap 16".

I ask Hon. Kaluma, the Member for Homa Bay Town, to second.

Hon. Kaluma: seconded.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Let us start with the Leader of the Majority Party on the recommittal.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, Hon. T.J. was busy with the interrogation of the Auditor-General. I did not know what his interest was. He is not a Member of the Departmental Committee on Finance, Planning and Trade but as a Member of Parliament, he has the powers to attend. We have agreed with the Chair of the Departmental Committee on Justice and Legal Affairs that certain sections of the Advocates Act are detrimental. We have consulted and I support his recommitment.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Did you also say that you had consulted the Chair of the Committee and you are in agreement?

Hon. A.B. Duale: Yes.

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

*[The Temporary Deputy Chairlady
(Hon. (Ms.) Shebesh) took the Chair]*

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

(Recommitment of Provisions relating to the Advocates Act, Cap 16)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): It is good to follow the procedures of the House.

Hon. Members, we are back to the Committee of the whole House. We will be considering the Advocates Act, Cap 16.

Provisions relating to the Advocates Act, Cap 16

Hon. Kajwang’: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended in the Schedule by deleting the proposed Section 34B (1A) and (1B).

Thank you for allowing us to come back to the Committee of the whole House. I also thank my senior, the Member for Garissa Town and Leader of the Majority Party. He forgot why I was in the Ouko inquiry. I am always in the Ouko inquiry. I was in the other Ouko inquiry and now I am in this Ouko inquiry. Other than Sam Chepkong’ a, I am probably one of the senior-most lawyers with the exception of the Member for Kisumu West.

I am glad that we have an understanding on this. The Leader of the Majority Party has proposed amendments on what is 2A and 34A. It is on the Order Paper. We have consulted and

agreed to delete the amendments that he is proposing in part (iii) which include 1A and 1B. We will retain his proposal in parts (i) and (ii). I will explain shortly.

The reason why I have been moving up and down is that I have been at pains to save young lawyers and particularly in-house lawyers. I am trying to save all the young people who are lawyers and are helping us in *Bunge* and those in corporations, authorities, the Office of the Attorney-General and wherever else they are. In the manner it was structured before, if a lawyer does not have the stamp of his head partner, that lawyer cannot even sign a small affidavit for his niece or aunt who is just passing by because nothing like that can be done without a stamp. That is one reason.

Secondly, for Sam Chepkong'a and I, who has taken a sabbatical to do something for the Ruaraka people, an honourable task which is very thankless, if I do not apply for exemption, then it is professional misconduct. Somebody will take me to the disciplinary committee and my name will be removed from the roll. Advocacy is a skill and a business.

I can choose today to close shop and then do something else. One day when the people of Ruaraka are tired of me, and I assume they will after they have elected me in the next Election, I will dust my books and go back to the Court of Appeal and the Supreme Court. I should be able to exercise my practice. If I do not apply for exemption then it is professional misconduct and it is very dangerous. It is something which is beneficial to the old big firms at the expense of young lawyers who are starting their practice.

If I have the consent of the Leader of the Majority Party, who is proposing those amendments, we can then retain his proposals in parts (i) and (ii) but delete his proposal in part (iii) because it has already been processed. I would be most obliged.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, that is what we are seeking to delete.

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

(Provisions relating to the Advocates Act, Cap16 as amended agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Mover.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I beg to move that, the Committee doth report to the House its consideration of the Statute Law (Miscellaneous Amendments) Bill, (National Assembly Bill No.45 of 2016) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Chairperson.

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Statute Law (Miscellaneous Amendments) Bill, (National Assembly Bill No.45 of 2016) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Mover of the Bill.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

I request Hon. Nelson Gaichuhie, the Member for Subukia to second the Motion of agreement with the Report of the Committee of the whole House.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Gaichuhie, you have the microphone.

Hon. Gaichuhie: I second, Hon. Temporary Deputy Speaker.

(Question proposed)

(Putting of the Question deferred)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we will put the Question at the right time for obvious reasons. We will now move on to the next Order.

MOTIONS

ADOPTION OF REPORT ON IMPLEMENTATION OF DEVOLUTION

THAT, this House adopts the Report of the Constitutional Implementation Oversight Committee on Oversight over the Implementation of Devolution up to the year 2016, laid on the Table of the House on Tuesday, 21st February, 2017.

(Hon. Baiya on 28.2.2017)

(Resumption of Debate interrupted on 28.2.2017)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we had only two members who had spoken on this. We had Hon. Baiya who moved and Hon. Kang'ata who seconded. Hon. Members, the Motion is now open for debate because it had already been moved and seconded.

Yes, the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, we need to defer the Motion because this is a very important Report. I can see the Chair of the Departmental Committee on Justice and Legal Affairs wants to purport to reply. It is not fair. This is a very important Motion.

We need to discuss it tomorrow when Members will know the formation of a new Select Committee on Devolution. So, we can defer it to another day.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, because of the Leader of the Majority Party's request, we will put that Order in the next Order Paper that is available for debate in the House.

Let us move on to the next Order.

ADOPTION OF REPORT ON MARRAKESH TREATY

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled, laid on the Table of the House on Thursday, December 1, 2016, and pursuant to Section 8 of the Treaty Making and Ratification Act, approves the ratification of the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, I saw the Chair of the Departmental Committee on Defence and Foreign Relations and his deputy for a while. I think, they may have thought we may not get to the Order.

So, we will move that Motion to the next Order Paper.

ADOPTION OF SPECIAL REPORT ON DUTY FREE SHOPS

THAT, this House adopts the Special Report of the Public Investments Committee on Kenya Airports Authority Duty Free Shops contracts at Jomo Kenyatta and Moi International Airports: 1989 to 2015, laid on the Table of the House on Tuesday, December 01, 2015.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Again, we do not have the Chair of the Public Accounts Committee or any of its Members here. So, we will move that business to the next Order Paper.

ADOPTION OF REPORT ON PROTOCOL TO CONSTITUTIVE ACT RELATING TO PAP

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the Protocol to the Constitutive Act of the African Union relating to the Pan-African Parliament, laid on the Table of the House on Thursday, December 1, 2016, and pursuant to Section 8 of the Treaty Making and Ratification Act, approves the ratification of the Protocol to the Constitutive Act of the African Union relating to the Pan-African Parliament

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Again, Hon. Members the Chair to the Departmental Committee on Defence and Foreign Relations together with his Deputy are not in the House. So, we will again move that Order to the next Order Paper.

So, we will move on to the next Order.

(Motions deferred)

BILL*Second Reading*

THE OFFICE OF THE COUNTY ATTORNEY BILL

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): We also do not have the Chair of the Departmental Committee on Justice and Legal Affairs. Again, we will move this Bill to the next Order Paper.

He has come. He had just stepped out for a minute. I see him coming and he looks prepared. Hon. Chepkong'a is always prepared.

Hon. A. B. Duale: He is not prepared!

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Duale, the Chair of the Departmental Committee on Justice and Legal Affairs is always prepared.

Hon. Chepkong'a: Which one do I move?

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Move the Office of the County Attorney Bill (Senate Bill No.37 of 2014)

QUORUM

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I cannot speak to an empty House. There is no quorum. So, it is unfair to speak to chairs and the Temporary Deputy Speaker. The Temporary Deputy Speaker should be moderating. There is no quorum and it is unfair.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Chair of the Departmental Committee on Justice and Legal Affairs, I think you know the import of declaring no quorum in the House.

Hon. Chepkong'a: Yes, it is true that there is no quorum.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): It means that I need the Quorum Bell to be rung. Serjeant-At-Arms, please ring the Quorum Bell.

(The Quorum Bell was rung)

Hon. A.B. Duale: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): When the Quorum Bell is ringing, I cannot take any point of order until we get quorum.

(Hon. A.B. Duale tried to withdraw from the Chamber)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): You cannot leave the House when the Quorum Bell is ringing. It is only the Whip who is allowed to leave.

Hon. A.B. Duale: I am going to look for people because I represent my people.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Stop the Quorum Bell because we do not have quorum. Hon. Members, this House stands adjourned until tomorrow, Thursday 2nd March, 2017, at 2.30 p.m.

The House rose at 6.03 p.m.