

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

THE HANSARD

Tuesday, 5th November 2019

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

SUBMISSION OF FINANCIAL STATEMENTS BY THE CENTRAL BANK OF KENYA

Hon. Speaker: Hon. Members, I wish to inform the House that my office is in receipt of a letter dated 24th October 2019 from the Cabinet Secretary (CS) of the National Treasury and Planning regarding the statutory requirements for the submission of financial statements by the Central Bank of Kenya (CBK). In his letter, the CS wishes to bring to the attention of the House to the following:

- 1) That, the Bank has concluded the audit process for the Financial Year 2018/2019 in all aspects, except for the signing of the audit report as required under Section 54 of the CBK Act;
- 2) That, due to the vacancy in the Office of the Auditor-General, and in line with the provisions of Section 54 of the CBK Act, the Bank is unable to submit certified financial statements for the Financial Year 2018/2019;
- 3) That, consequently the Bank is unable to publish the 2018/2019 Annual Report, pursuant to the provisions of Section 55 of the said Act.

Section 81 of the Public Finance Management Act, 2012 requires the accounting officer of a national Government entity to, not later than three months after the end of each financial year, submit the financial statements to the Auditor-General; amongst other constitutional offices and publicise the financial statements.

In the case of the CBK, the Cabinet Secretary for National Treasury is thereafter required to submit the financial statement to the National Assembly.

As you are all aware, the position of the Auditor-General is currently vacant, with the term of the former Auditor-General having come to an end in August 2019. Given the foregoing fact, the CS is requesting the National Assembly to extend the time limit for submission of the report on the Bank's operations, pursuant to the provisions of Section 90 of the Public Finance Management Act 2012, which states as follows:

“Any house of Parliament may by resolution, extend the time limit, other than a time limit set in the Constitution for submitting a statement or other documents required to be submitted to it under this Act.”

This is a precedent setting request. I, hereby, refer the request to the Public Investments Committee for consideration. The Committee should expeditiously consider the matter and submit its report to the House on 20th November 2019, to enable the House to consider the request by the CS for the National Treasury and Planning for extension of the time limit for the CBK to submit certified financial statements for the Financial Year 2018/2019 and publish the 2018/2019 Annual Report.

PAPERS LAID

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, you need to protect me from Hon. Ichung’wah. He still thinks he is in Kibra where he has been sleeping.

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

- 1) The Consolidated National Fund Investment Report for the Financial Year 2018/2019 from the National Treasury and Planning;
- 2) Assessment of Uptake and Impact of Tax Amnesty in Kenya as at September 2019 from the Institute of Certified Public Accountants of Kenya;
- 3) Annual Report and Financial Statements for the year ended 2016/2017 from the Kenya Tourism Board;
- 4) The Reports of the Auditor-General on the Financial Statements in respect of Ugenya Constituency for the year ended 30th June 2018 and the certificates therein; and,
- 5) The Reports of the Auditor-General on the Financial Statements in respect of Simlaw Seeds Company Limited for the year ended 30th June 2017 and the certificate therein.

Hon. Speaker: Let us have the Chair of the Special Funds Account Committee, Hon. Kathuri Murungi.

Hon. Kathuri Murungi (South Imenti, Independent): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Special Funds Account Committee on its consideration of the Audited Financial Statements for the Uwezo Fund for the Financial Year 2016/2017; and the Women Enterprise Fund for the Financial Year 2017/2018.

Hon. Speaker: Let us have the Chair of the Departmental Committee on Environment and Natural Resources, Hon. Kareke Mbiuki.

Hon. Kareke Mbiuki (Maara, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Environment and Natural Resources on its consideration of a Petition regarding Human-Wildlife Conflict in Kibwezi East Constituency.

NOTICES OF MOTION

ADOPTION OF REPORT ON FINANCIAL STATEMENTS FOR THE UWEZO FUND AND THE WOMEN ENTERPRISE FUND

Hon. Kathuri Murungi (South Imenti, Independent): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Special Funds Accounts Committee on Audited Financial Statements for the Uwezo Fund for the Financial Year 2016/2017 and the Women Enterprise Fund for the Financial Year 2017/2018 laid on the Table of the House on Tuesday 5th November 2019.

QUESTIONS BY PRIVATE NOTICE

Hon. Speaker: There is a Question by Private Notice by Hon. Brighton Leonard Yegon.

Hon. Leonard Yegon (Konoin, JP): Thank you very much, Hon. Speaker. Pursuant to the provisions of Standing Order No.42A, I would like to ask the following Question...

(Hon. Aden Duale consulted loudly)

Hon. Speaker: Hon. Yegon, is the Leader of the Majority Party making it impossible for you to communicate? The Leader of the Majority Party, you are now out of order!

Question No.042/2019

DISAPPEARANCE AND DEATH OF TUM STUDENT

Hon. Leonard Yegon (Konoin, JP): Thank you very much, Hon. Speaker. Pursuant to the provisions of Standing Order No.42(a) (5), I would like to ask the following Question to the Cabinet Secretary for the Interior and Coordination of National Government:

(i) Could the Cabinet Secretary explain the circumstances that led to the disappearance of one Caleb Kiplangat, a first year Mechanical Engineering student at Technical University of Mombasa (Registration Number BSME/252J/2019), on or about 11th October 2019 and subsequent death on 17th October 2019, after his body was found at Junda Beach Kisauni in Mombasa?

(ii) What is the status of investigations into the cause of his death since the matter was reported at Makupa Police Station vide Occurrence Book No. 36/18/2019?

(iii) What steps has the Ministry taken to apprehend the killer(s)?

Hon. Speaker: The Question is referred to the Departmental Committee on Administration and National Security. The Committee should observe that this is a Question by Private Notice and, therefore, requires an answer as soon as possible, if possible, by Thursday this week. Prioritise it in that manner.

The next Question is by the Member for Buuri, Hon. Rindikiri Mugambi Murwithania.

Question No.043/2019

ARREST AND DEATH OF PATRICK GITONGA HENRY

Hon. Mugambi Rindikiri (Buuri, JP): Thank you, Hon. Speaker. I rise to ask Question No.043/2019 directed to the CS for Interior and Coordination of National Government:

(i) Could the Cabinet Secretary explain the cause of death of one Patrick Gitonga Henry of ID No. 23082227 who was arrested on 6th July 2019 by police officers from Isiolo Police

Station, Isiolo Town, and later left at Isiolo Hospital with injuries, where he died on 6th July 2019?

(ii) Could the Cabinet Secretary further explain why keys to his house were confiscated thereafter and the house in Timau Area of Meru County was ransacked by the same officers from Isiolo Police Station on the same day, 6th July 2019?

(iii) Could the Cabinet Secretary explain the progress, if any, of the investigations of the incidence and action the Ministry has taken to ensure that the culprits are apprehended?

Hon. Speaker: The Question is referred to the Departmental Committee on Administration and National Security to prioritise. The next Question is by the Member for South Imenti, Hon. Kathuri Murungi.

ORDINARY QUESTIONS

Question No.468/2019

VAT ON DIABETES MANAGEMENT DEVICES

Hon. Kathuri Murungi (South Imenti, Independent): Thank you, Hon. Speaker. I rise to ask Question No.468/2019 to the CS for the National Treasury and Planning:

(i) Could the Cabinet Secretary explain why diabetes management devices such as insulin syringes, insulin pumps and blood sugar test strips are subjected to VAT yet diabetes vaccines and drugs are exempted from VAT?

(ii) Could the Cabinet Secretary consider proposing a framework to facilitate affordability of blood sugar monitoring devices and enable medics to make necessary drug adjustments to patients?

Hon. Speaker: The Question is referred to the Departmental Committee on Finance and National Planning. The last Question is by the Member for Laikipia County, Hon. Catherine Waruguru.

Question No.469/2019

SHORTAGE OF NEVIRAPINE

Hon. (Ms.) Catherine Waruguru (Laikipia CWR, JP): Thank you, Hon. Speaker. I rise to ask Question 469/2019 to the CS for Health:

(i) Could the Cabinet Secretary explain why the country is experiencing shortages of Nevirapine, a drug used to prevent mother-to-child transmission of HIV/AIDS?

(ii) What steps is the Ministry taking to safeguard the lives of new-born babies, who are at a threat of contracting the HIV virus and are highly dependent on this drug?

(iii) What mitigation measures has the Ministry put in place to ensure that there is no disruption in the provision of healthcare services in the country due to a shortage of Nevirapine and other drugs?

Hon. Speaker: The Question is referred to the Departmental Committee on Health. Let us have Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Speaker. I rise to seek your leave.

You are aware that last week on Thursday, following a point of order that was raised by Hon. Peter Kaluma on issues to do with the budget of the Judiciary, you directed that the Budget and Appropriations Committee summons the CS for the National Treasury and Planning and whoever else - in your words - that would assist him. Through the Clerk's Office, on 31st October, we wrote to the CS for the National Treasury and Planning and the Chief Registrar of the Judiciary (CRJ). They have since written to us. We had asked them to appear before the Committee this morning for us to be able to table a report, as you directed by the end of this week, on Thursday. The CS did indicate that he was engaged in prior arrangements in a function that I did see him officiate with the KRA and His Excellency the President. The CRJ also indicated that she was not able together with her officers to appear before the Committee this morning because of prior arrangements that they had at the Judiciary.

We had a meeting this morning and the Committee resolved to seek your leave to be able to table a report hopefully by the end of next week, on Thursday. The CS had indicated that he is available only on the 15th of November, which is Friday, next week. The committee resolved to invite the CS, latest Tuesday morning next week. That is why we seek your leave to be able to table that report, hopefully by the end of next week, around Thursday.

Hon. Speaker: Hon. Mbadi, you want to weigh in?

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker. Of course, you are aware that I also sit on the BAC. What the Chairman has said, I do not want to talk about because that is what we agreed. I am sure you are going to give us guidance.

But my concern on this matter arises from Article 95 of the Constitution which talks about the National Assembly representing the people of the constituencies and special interests; that the National Assembly deliberates on and resolves issues of concern to the people. Yesterday, the Chief Justice of the Republic of Kenya addressed this country for well over 30 minutes, in my estimation.

Hon. Speaker: Specifically, for 42 minutes.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker, for that correction, and a positive one. I got concerned. Reading Article 95 of the Constitution, I think as a House this is a matter that we cannot ignore. I say so because the issue that the BAC will deal with is actually just a subset of what I heard the CJ complain about. Therefore, as the BAC intends to deal with the matter of budgetary allocations and budget cuts or lack of it... I thought the Departmental Committee on Justice and Legal Affairs is responsible for overseeing the Judiciary. It needs to also take steps and listen to the issues that are being raised by the CJ.

The CJ is the President of the Judiciary. He is the head of the third arm of Government. If he can come out publicly to complain about frustration and possible interference of the Judiciary, this is a matter that we cannot ignore. Remember that this country at one point went into civil strife because of lack of confidence in the Judiciary. That was because the Judiciary had been compromised or, in the eyes of those who did not want to go the route of the Judiciary, by the Executive. If again the Judiciary is now complaining of an attempt by the Executive to compromise its independence, that is a matter that this House, which is responsible for overseeing all State organs needs to take interest in. Therefore, as you make a determination on the request by Hon. Kimani Ichung'wah on the budgetary matters, I would also request you that we hear from the Departmental Committee on Justice and Legal Affairs on whether they have taken up this matter as a matter of urgency. If not, then I would urge that this matter is dealt with. If this House does not step in, then I do not see any other institution that can step in.

As I sit down, we have moved forward as a country in terms of opening up the democratic space. And this House cannot allow the shrinking of that democratic space; more particularly the interference with the Judiciary.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, you know I am one person who has on numerous occasions advised Chairs of committees to follow the law when addressing issues. Do not pick matters from the newspapers and then start an investigation. I think it is only fair that as a plenary we should even be more guarded. The issues that may have been raised by the CJ, if he wants them to be debated properly; he should forward his complaints to the committee of this House that oversees him. If we pick it from television screens and newspapers, we shall open the floodgates of those many investigations that have purported to be done by some of you, arising from stories you may have picked from newspapers – some of them calling themselves political gossip, corridors of something.

I would expect that the Departmental Committee on Justice and Legal Affairs be formally contacted. A number of issues that the CJ raised – I watched him speak – could be pertinent, but obviously as a House it would be wrong for us to just pick up the stories of what he said. Everybody will now be committing everything to your memories. If, indeed, the CJ wants this House to address any of the concerns he raised; which this House has capability to do... The CJ is obliged to formally communicate to Parliament. We cannot assume some of the issues raised, do not even concern Parliament. We do not know how people operate in airports or how people go to public State functions. If we begin to address them, it will be messy.

I would expect that the CJ formally writes so that the House can, in a procedural manner, get seized of any of the issues that he raised. The ones of budget, as raised here by Hon. Kaluma, are properly before the House. The Chair of BAC merely requests that...

Hon. Jimmy Angwenyi, when too many people contribute, it becomes messy also. I do not want to remind you of a good friend of yours who said something will happen. It was going to be messy, noisy and have casualties. So, let us do something which is not messy.

(Laughter)

Let me address the first issue. It may well be that later in the evening when the HBC meets, there will be certain communication, which I am aware it will be discussing, relating to some other functions taking place in the country. As a result of some request that has been made by one of the regional Parliaments, to sit using this Chamber on Tuesday and Wednesday morning or even afternoon... It is another parliamentary organ that has made the request that they will be here in Kenya. I think Hon. Ochanda is seized of that matter. On the issue of budget, I want to allow the BAC to write again to the CS to appear before it. I may also proffer some information. Even us in the PSC had our meeting with the CS of the National Treasury yesterday and we had our own discussions. As far as we know, most of it is what you expressed on the Floor of the House last week. Whatever may have been contained in those documents called circulars was without constitutional or legal foundation and, therefore, must remain that way – circular. It has no force of law.

(Loud consultations)

Hon. Members, forget about any blames. A circular is just that. It does not amend the Appropriations Act which was passed by this House. Funds were appropriated to various arms of government, ministries, departments and other Agencies. That remains so until the current Appropriations Act is amended through a supplementary budget. That has not happened to date. Therefore, every arm is supposed to know how to deal with issues. As Parliament we cannot be crybabies merely because there has been a circular. We cannot go crying to the public. You represent the same public and so you cannot cry to them. You must look for ways of dealing with the issues that affect you.

An Hon. Member: On a point of information!

Hon. Speaker: I do not need to be informed. Forget about those things. We are dealing with them the best way we know. Everybody else is also expected to be knowledgeable and know how to deal with such situations when they arise. Let the Budget and Appropriations Committee meet with the Cabinet Secretary (CS) early next week, or towards the end of this week and give a report as requested.

(Loud consultations)

I do not know what further debate is. I hope we are not discussing these issues. Hon. Cheptumo, do you want to say something on this?

Hon. William Cheptumo (Baringo North, JP): Yes.

Hon. Speaker: Let us not address rumours.

Hon. William Cheptumo (Baringo North, JP): Thank you, Hon. Speaker. We are the Committee that oversees the Judiciary. I am happy with the direction you have given that the issues raised before the Budget and Appropriations Committee is indeed an issue of the budget. We had a meeting today and what we have resolved is that, during the meeting between the CS for the National Treasury and the Budget and Appropriations Committee, we will make ourselves available as the Departmental Committee on Justice and Legal Affairs.

The reason we want to be in that meeting is because the issues to be canvassed or discussed are matters touching on the Judiciary which we oversee. I want to agree that for issues concerning the Judiciary, if the Chief Justice (CJ) is concerned, we are always available to receive communication from the same and deal with them. It is this Committee which appeared before the Budget and Appropriations Committee and defended the budget for the Judiciary. We allocated Ksh18.9 billion. The issue before the House is truly rightly before the Budget and Appropriations Committee. I think we are within our rights to appear in that particular meeting so that we are able to share.

We could have called the CJ to appear before our Committee, but we felt the issue is already before the Budget and Appropriations Committee. I just want to inform the House that we are prepared all the time to deal with matters of the Judiciary in a manner that will help. On matters of protocol and what happens at the airports and so forth, those are concerns that we can never deal with. We will deal with matters of concern under our Standing Orders and the Constitution which fall under our Committee.

Thank you, Hon. Speaker.

Hon. Speaker: The Leader of the Majority Party, the Floor is yours.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I also watched the CJ and the President of the Supreme Court. In his 42 minutes speech, he talked about many things including

myself. I still stand that unless a Supplementary Budget is brought and approved by this House those memos are useless as you said.

Secondly, this House can only deal with a matter, as you said, on the budget cuts which are there. In fact, there is a meeting between the Chief Registrar of the Judiciary and the Budget and Appropriations Committee. There is also a meeting between the two Clerks of Parliament and the Budget and Appropriations Committee on how to deal with the cuts. But the Departmental Committee on Justice and Legal Affairs cannot deal with all the 42 minutes press conference. The CJ talked about some ministers who want to remove him from Office; he talked about the 500S Class Mercedes; he talked of coming to *Mashujaa* Day through a backdoor; he talked about a VIP lounge; he talked about a master of ceremony who never recognised him and many things. We cannot discuss those ones. I want you to guide the House. The Chair of the Departmental Committee on Justice and Legal Affairs cannot purport to say; and it is against Standing Orders, that he can join the Budget and Appropriations Committee when they invite the Minister. You will only go there as friends of the Committee. You will not go there as the Departmental Committee on Justice and Legal Affairs. You can call the CJ. The thing I did not see was that the CJ is also the Chair of the Judicial Service Commission. We need to know why none of the JSC Commissioners were not with him.

An Hon. Member: He is the Chairman!

Hon. Aden Duale (Garissa Township, JP): No! No! Just saying he is the Chairman is not enough. Is it only the CJ who is being frustrated? I hope many of the questions he spoke about – the frustrations – I totally agree with him. The CJ is the President of the Supreme Court and must be accorded the respect of his Office. But most of the issues were directed to the Executive, they were not directed to Parliament for us to deal with. We can only deal with the budget matters. I think it must be dealt with once and for all. I am sure the CEO of the Executive, the President, must also deal with the matters that the CJ has raised concerning the Executive. The CJ should tell us who these ministers are who do not want to follow the Constitution and want to remove him.

(Hon. Junet Nuh consulted loudly)

Relax, Hon. Junet. The CJ must tell us who these ministers and Permanent Secretaries are who want to remove the CJ of the Republic of Kenya from Office without following the due process of law. That is treason. That is not acceptable. The CJ has given us general information. We want him to be specific. He should tell us who wants to remove him from Office; who has denied him a Mercedes; and who has denied him VIP treatment.

Thank you, Hon. Speaker.

(Loud consultations)

Hon. Speaker: Hon. Members, you can see the reason why I was saying that there is nothing for us to discuss. For avoidance of doubt, we all know how a CJ can vacate Office. It is either by resignation, death or through a proper petition filed in accordance with the provisions of Article 168(5). Remember a petition for the removal of a Judge of a Superior Court or the CJ – just look at your Constitution – must be filed with the Judicial Service Commission (JSC) where the CJ is the Chairperson. That is why I am trying to avoid a discussion on this because we will be discussing things that are not really before this House.

Let us hear Hon. John Olago Aluoch. The Floor is yours.

Hon. Olago Aluoch (Kisumu West, FORD-K): Thank you, Hon. Speaker. This is exactly what I was afraid of. That once we open this matter to debate, we are going to escalate it to another level. We will get to another level where we get to discuss Members of the Judiciary without a substantive Motion, which is against our own Standing Orders.

Hon. Speaker, that is what I was afraid of. Two wrongs do not make a right. Maybe, the Hon. Chief Justice (CJ) was not right in addressing matters of budget and legislation together with protocol in the way he did. However, frustrations can make you lose your mind. Only recently, Hon. Raila Amollo Odinga was frustrated. When he was expressing his frustrations, he mentioned slightly about the carpet and the toilet and that was not taken up.

Hon. Speaker, I kindly urge you the following: The Departmental Committee on Justice and Legal Affairs is made up of experienced men and women who can handle this matter effectively. I can assure the Hon. Speaker that we are handling it. I kindly urge you not to let us escalate the debate to another level. Let us leave it where it is.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, that is wise counsel. In Kiswahili, it is said: “*Palipo wazee hapaharibiki neno*”. Nothing goes wrong where we have elders. I have not mentioned the gender. After all, it has been said that what a man can do, a woman can do better - including visiting violence on others. Hon. Ichung’wah, only on the matter of the Budget!

Hon. Kimani Ichung’wah (Kikuyu, JP): Hon. Speaker, mine is on Standing Order 195 and 202 in relation to what the Chair of the Departmental Committee on Justice and Legal Affairs has alluded to. He mentioned that they have invited themselves into the meeting of the Budget and Appropriations Committee (BAC). Our Standing Order No. 195 is very clear on how they should appear before our Committee.

Secondly, if they intend - and which is very well within the Standing Orders – that we have a joint sitting for the sake of good order, maybe you can guide whether the Chair of the Departmental Committee on Justice and Legal Affairs is in order to invite himself into our meeting with either the Judicial Service Commission (JSC) or the National Treasury or was he seeking to have a joint sitting of the two Committees? If it is for the sake of good order, he is at liberty to convene a meeting between themselves and JSC on matters to do with the budgetary provisions, and then appear before BAC as and when the Supplementary Budget is tabled because we will have that opportunity. However, I honestly do not think it is in order for him to invite himself in our meeting and insist that we shall be attending his. How many of them shall be attending and to do what?

Hon. Speaker: There has not been any order about joint sittings but the JSC, when they are invited to appear before your Committee, they are at liberty to tag along another person who may help their case. So, if they want to invite the Chair of the Departmental Committee on Justice and Legal Affairs, they will be there as witnesses or giving back up and whatever else is required. It is not a joint sitting.

Let us have Hon. Junet. Let us hope that we are not going to revisit... I want us to respect what was said by Hon. Olago Aluoch.

Hon. Junet Nuh (Suna East, ODM): Thank you, Hon. Speaker. I knew this is not a matter for debate. However, I want to say categorically that the Chief Justice must be respected. That is the Chairman of the JSC and he is the Chief Justice of the Republic of Kenya. It is very bad that he had to express his frustrations openly the way he did yesterday. We must uphold the integrity of the institution of the Judiciary and its independence as enshrined in the Constitution.

If the CJ is asking for a Mercedes Benz, he must be given. If he is asking for a toilet, he must be given. Anything that he asks for is a necessity in his office. He is not asking it for himself. He is asking it for the Office of the CJ.

Hon. Speaker, how can a whole CJ have his guests in a lounge of Kenya Airways? He must be given the facilities that are available to other heads of institutions. It is only that he is directing his matter to Parliament. We have already given him his budget. However, the people responsible for giving out that money, that is the National Treasury, must give the JSC the full amount that they were allocated by Parliament.

There are institutions that you can joke with, but institutions such as the Judiciary and Parliament must be held at the highest esteem possible. That is because these are people who are exercising delegated sovereign power of the people of Kenya. So, Hon. Speaker, I support the CJ and inform the Hon. Leader of the Majority Party that when the CJ is giving address, he does not need to be surrounded by people. He is the president of the Supreme Court and Chairman of the JSC. He was addressing Kenyans in that capacity. He was not doing it as a leader of a community.

When the Hon. Leader of the Majority Party wants to address his people, he must be surrounded by Hon. Members like us, but not the CJ. It is only that Hon. Duale is saying that in Parliament, if he could say that outside Parliament, I would have told the CJ to hold him accountable for contempt of the Office of the CJ.

(Laughter)

He should be detained for 30 days in prison. I thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, that is yet another person who can tag along with the JSC when they appear before the BAC to go and give them additional back up.

Let us have Hon. Jimmy Angwenyi on account of affinity.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Hon. Speaker, I support the expression given by Hon. Junet and Hon. Mbadi. For the first time, I want to advise my immediate boss that we represent all Kenyans, including the JSC staff. That is our work. We represent all Kenyans, whether they are presidents to courts or speakers of this House. So, when the CJ expresses himself, we should take his expression seriously. That is because he is being frustrated so much so that he has come out in the open and talked about his frustrations.

Hon. Speaker: Very well! Again, find a date when they will be appearing before the Committee. You can also tag along with the JSC. We are dealing with the issue of Budget, please.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Please give me a quarter of a minute.

Hon. Speaker: Hon. Members, those of you who do not know Hon. Angwenyi, he is not violent. That is the way he makes his point. Even the pressure has gone down.

Hon. Members, this House has rules. There is no Motion for us to debate. So, when there is no business, you cannot start arguing that you have a minute or even a second. Hon. Angwenyi knows that. He has not expressed his frustration. So, Hon. Members, I believe that matter will be dealt with by the BAC as we have directed. If the other one ever comes to the House, it will be referred to the relevant Committee, namely; the Departmental Committee on Justice and Legal Affairs. But it must be brought to the House formerly.

Hon. Members, before we move to the next Order, allow me to recognise the presence, in the Public Gallery, of pupils from Ganjoni Primary School, Mvita Constituency, Mombasa

County, which is the best performing school there. I can see Hon. Abdullswamad, the MP for Mvita is very elated that they are able to be here. They are welcome to observe the proceedings of the House this afternoon. Next Order!

Sorry, Hon. Members! It is good for us to transact business quickly. Hon. Members, before we go to the business appearing as Order No.8 (i), the business listed as (ii), after consultations and at the request of the Mover and the concerned Committee, I direct that it be stood down. For avoidance of doubt, the business appearing as (ii) is the Public Finance Management (Amendment) Bill (National Assembly Bill No.51 of 2017. At the request of the Leader of the Majority Party and the Departmental Committee on Finance and National Planning, it will be stood down for further consultations, including addition of further amendments from both the Committee and Mover. So, when the House dissolves into the Committee of the whole House, it will not consider that business.

GUIDANCE ON CONSIDERATION OF THE PRESIDENT'S RESERVATIONS
TO THE FINANCE BILL (NATIONAL ASSEMBLY BILL NO.51 OF 2019)

Hon. Members, before we go to that Order, allow me to give guidance. The next Order is to consider the President's Reservations to the Finance Bill (National Assembly Bill No.51 of 2019).

Hon. Members, as you are aware, consideration of the President's Reservations to any Bill is guided by the provisions of the Constitution, the Standing Orders as well as a Communication I issued on 28th July 2015, which explained matters that are not provided for in the Standing Orders as well as other questions of procedure that kept recurring. In summary, the content of that considered Communication which is now substantively codified in Standing Order No.154, was as follows:

- (i) THAT, in submitting his reservations on a Bill to the House, the President is not prohibited from including his preferred text of the particular clause, section, subsection or paragraph of the Bill;
- (ii) THAT, just like amendments to Bills, the text proposed by the President on a Bill need not be subjected to other stages subjected to a Bill upon publication, - that is, publication, First Reading, Second Reading and Third Reading;
- (iii) THAT, any Committee or Member of the House is free to propose further amendments to the President's recommendations;
- (iv) THAT, so long as such amendments have the effect of fully accommodating President's Reservations, the voting threshold for the passage of such amendment or, indeed, the proposals made by the President, is a simple majority as contemplated by Article 122(1) of the Constitution. Any other proposed amendment, that does not fully accommodate the reservations or, indeed, an amendment whose effect is the total override of the President's Reservations, including his proposed text, would attract the two-third voting threshold for it to pass;
- (v) THAT, pursuant to the provisions of Standing Order No.1(2), the determination of whether a proposed amendment by a Member or Committee to the President's Reservations would have the effect of "fully accommodating" those reservations shall be made by the Speaker on a case by case basis; and,
- (vi) THAT, the absence of, at least, two-thirds majority at the time of putting the Question, does not in any way imply that the House is improperly constituted, since only a simple majority is required to pass the Bill a second time in a manner fully accommodating the President's Reservations.

Hon. Members, in the case of the Finance Bill, 2019 which is before the House under Order No.8(1), His Excellency the President in his reservations, requests the House to delete Clause 45 of the Bill, which relates to capping of interest rates chargeable on loans advanced by banks and other financial institutions. In essence, the proposed amendment seeks to amend the Banking Act (Cap. 488) of the laws of Kenya by repealing Section 33B so as to remove rates chargeable on loans.

Hon. Members, in considering the President's Reservations, the Departmental Committee on Finance and National Planning recommends that the House agrees with the proposed deletion. The Committee has also proposed further amendments pursuant to the provisions of Standing Order No. 154(3) relating to referral of Bills by the President. The effect of the amendments proposed by the Committee is to safeguard any loan agreements entered into by borrowers under Section 33B of the Banking Act which is proposed to be repealed.

Hon. Members, having considered the amendments proposed by the Committee, I have made the determination that the proposed amendments as forwarded to me and will be moved by the Chair of the Departmental Committee on Finance and National Planning have the effect of fully accommodating the President's Reservations. In this regard, a simple majority will suffice to pass the Committee's proposed amendment to Clause 45 in the Committee of the whole House stage. A simple majority will also be required to pass the proposed deletion of Clause 45 of the Bill. On the other hand, a two-thirds voting threshold provided for under Article 115(4)(a) of the Constitution will apply to any vote to negate the proposed deletion of Clause 45 of the Bill as contained in the President's Reservations.

Hon. Members, therefore, the House is accordingly guided.

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

CONSIDERATION OF THE PRESIDENT'S RESERVATION TO THE FINANCE BILL

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Members! Order, Hon. Members! Take your seats we are now considering the President's Reservations to the Finance Bill (National Assembly Bill No.51 of 2019).

Hon. Members: No! No!

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Members! We are now in the Committee of the whole House. Order, Members! Order! We must proceed with this business. Order Members! Order Members! If you are consulting, you can do so, but the House must proceed.

Hon. Members: No! No! No!

(Hon. Members shouted)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Members! You cannot stand there and shout! We are now in the Committee of the whole House and this business must proceed. Order, Hon. Members! We are in Committee of the whole House and we must proceed.

Clause 45

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

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 45 and substituting therefor the following new clause-

Repeal of section
33B of Cap.488

45. The Banking Act is amended by repealing section 33B.

Hon. Temporary Deputy Chairman, the reason given...

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Leader of the Majority Party.

(Hon. Members sang)

Order, Hon. Members!

(Hon. Shakeel Shabbir displayed a banner)

Hon. Shabbir, you are now out of order. Order, Hon. Members! Leader of the Majority Party, please proceed.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, the purpose of this capping was to address the wide concerns about the affordability and availability of loans. We feel that as we move on, it is not in the interest of the people of Kenya and I agree with the President.

I beg to move.

(Question of the amendment proposed)

Hon. Members: No! No!

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Members! The Leader of the Majority Party has moved that Clause 45 be amended as proposed by His Excellency the President.

(Loud consultations)

Order, Hon. Members! We must proceed with this business. Order, Hon. Members! Hon. Joseph Limo, please move the amendment. We must proceed. Order, Hon. Members!

An Hon. Member: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Speaker (Hon. Patrick Mariru): You cannot say “point of order” when you are standing. Order, Hon. Members! Take your seats, Hon. Members.

(Hon. Shakeel Shabbir displayed a banner)

Hon. Shabbir, you are out of order. We must proceed. Hon. Limo, proceed.

New Clause 45A

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 45-

45A. The Banking Act is amended in section 56 by inserting the following new subsection immediately after sub-section (3) —

(4) Notwithstanding the repeal of section 33B, any agreement or arrangement to borrow or lend which was made or entered into, or varied pursuant to the provisions of section 33B (now repealed), shall continue to be in force on such terms, including interest rates, and for the duration specified in the agreement or arrangement.

Provided that the interest rate chargeable under that agreement or arrangement may be varied downwards.

The purpose of this amendment is to save members of the public who have loans so that the interest chargeable will not be affected. We are saving you, my friends. We are saving you. This one will help those who have loans so that they cannot pay high interests.

I beg to move.

Hon. Members: No! No! No!

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Members! Order, Hon. Members! Order, Hon. Members! Hon. Members, we are not going to transact business this way. Hon. Members, take your seats.

(Loud consultations)

Order, Hon. Members! Take your seats.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be

read a Second Time, proposed)

Hon. Members, who wants to speak to this? Order, Hon. Members! I will put the Question. I have proposed the Question. Hon. Leader of the Majority Party, I must put the Question first.

(Question, that the new clause be read

a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added

to the Bill, put and agreed to)

Order, Hon. Members! Order, Hon. Members!

Hon. Aden Duale (Garissa Township, JP): The Ayes have it! *Nipatie. Wachana naye Bwana. Enda kwa the next one. Go to the next one. We are going to the next amendment. Hii nimeshinda. Kwendeni!* Put the Question.

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

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

(Clause 45 as amended agreed to)

The Ayes have it. Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the President's...

(Loud consultations)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Members! Order, Hon. Members! Order, Hon. Members! That is completely unacceptable. Order, Hon. Members! Order, Hon. Members! Order, Hon. Members!

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the President's Reservations to the Finance Bill (National Assembly No. 51 of 2019) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

Hon. Aden Duale (Garissa Township, JP): Mr. Speaker!

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

(Several Members stood up in their places)

Hon. Speaker: Order! Order in the House! Order in the House! These Members, who are standing here, take your seats. Take your seats, Hon. Members. Order Members! Those of you who do not wish to participate... Hon. Members, we cannot transact business when everyone is standing. Hon. Members, take your seats! Those who are through with business can take their leave. Hon. Members, take your seats or take your leave!

(Several Members stood on the gangway)

(Hon. (Ms.) Rozaah Buyu stood up in her place)

Hon. Members, there should be silence in the House. Those of you who wish to leave are at liberty to do so. If you do not want to sit in the Chamber, you are at liberty to leave. We cannot all be upstanding. Those of you who are on the gangways, please, either take your seats or make your way out. Hon. Members, business will be transacted when there is order in the House. Those of you who are upstanding there... Serjeant-at-Arms! The Members who are standing!

Hon. Rozaah Buyu, please take your seat or make your way out of the Chamber. I do not want to get to the point where I have to order the Serjeant-at-Arms to make you leave. You know the consequences.

(Hon. (Dr.) James Nyikal, Hon. Omboko Milemba and Hon. Geoffrey Omuse stood up in their places)

I do not have to go to that route. Hon. (Dr.) Nyikal and Hon. Omboko Milemba, please, take your seats. Whatever it is you want to say, we will hear you. Now, who is this one? Member for Teso South, resume your seat. The Member for Nyando is seated. Hon. Members, we can now transact business. What it is that you want to say...

Hon. David Ochieng' (Ugenya, MDG): Committee of the whole!

Hon. Speaker: Hon. Ochieng', I have been called here not to preside over the Committee of the whole. I did not come here to preside at the Committee of the whole. So, we will proceed with the business.

Hon. Members: On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Members, there is nothing out of order now because I have just taken the seat, unless you are saying that my taking of the seat is out of order in which case you will be out of order. The Chairperson!

REPORT AND THIRD READING

CONSIDERATION OF THE PRESIDENT'S RESERVATION TO THE FINANCE BILL

Hon. Patrick Mariru (Laikipia West, JP): Hon. Speaker, I beg to report that a Committee of the whole House has considered the President's Reservations to the Finance Bill (National Assembly Bill No. 51 of 2019) and approved the same with amendments.

Hon. Speaker: Mover.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to move that the House agrees with the Committee in the said Report.

Hon. Members: No! No!

Hon. Aden Duale (Garissa Township, JP): I request Hon. Limo to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Speaker: Hon. Limo.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Speaker, I beg to second.

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

(Question proposed)

Hon. Aden Duale (Garissa Township, JP): Put the Question.

Hon. Speaker: Hon. Members, having confirmed that the House does quorate I, therefore, put the Question.

Hon. Members: Ayes.

Hon. Members: No! No! No!

Hon. Speaker: Hon. Members, having confirmed that the House has quorum as guided earlier, for us to proceed to the next level, I need to see whether the Noes are claiming for a division.

(Several Members stood up in their places)

(Loud consultations)

Very well! Hon. Members, you may resume your seats now. What I need to do now is transact the business. As this decision is one that cannot be decided on the basis of voice votes - and you know that - there must be, in the first instance, not less than 233 Members in the Chamber.

Secondly, in order to override this decision, there must be not less than 233 Members voting against. So, the Noes must be 233 Members.

Hon. Members: We have numbers!

Hon. Speaker: Hon. Members, do not tell me that you have the numbers because that is not what I am asking for.

(Hon. (Ms.) Odhiambo-Mabona spoke off record)

Hon. Millie Odhiambo, please, you are a ranking Member of the House. Hon. Members, I order that the Division Bell be rung for 10 minutes.

(Loud consultations)

I am not interested in that. Do not tell me. I am not the one who is going to decide, it is you. As you all know, I have no vote. So, let the Division Bell be rung for 10 minutes after which I will again put the Question, so that we can go into Division.

Serjeant-at-Arms, proceed to ring the Division Bell.

(Division Bell was rung)

Order, Members. You can take your seats now.

Please, take your seats. You can consult later. Hon. Members, take your seats. I now order that the Bars be drawn and all the doors shut. If you are in the washrooms, make your way into the Chamber quickly. All doors, including the ones behind there should be closed.

Hon. Members, as explained earlier, the first step is to ascertain whether we have not less than 233 of you present in the Chamber. That is before any other step is taken. The way to go about it is to first request all the Members to log out.

(Several Members walked towards the Chair)

Hon. Members, I have not called anybody here. Where are you going? Hon. Serem, just a minute. I have not called anybody up here. Is it Hon. Marwa who is standing? So, Hon. Members, we must ensure that no card is in the electronic voting machines. Hon. Members, I had indicated that I would want to apply very punitive measures, but given the sensitivity of the Motion before the House, I will allow those without cards to vote. I mean those who always forget their cards. It is only fair that everybody be given a chance to express his or herself one way or another. Therefore, those without cards can be recorded by the Clerks-at-the-Table. There are some Members who have already logged in. Is it Hon. Dan Mwashako? Hon. Njagua and Hon. Mwashako, please, remove your cards. Those without cards should do what I have said. There are still some two Members whose cards are showing. Those without cards, please, walk up to either side of the Speaker.

(Several Members walked into the Chamber)

Hon. Masara, remove your card. Those without their cards, please, walk up here. Now, Hon. Agoi, are you walking up here or you are just walking generally? Are these ones without cards? Hon. Members, I have called those without cards. Those who are walking, are they without cards or not? Can you not make a decision that you do not have a card and come up? Hon. Kamene, remove your card. Hon. Members, no counting as yet. These ones up here are the only Members without cards. Therefore, log in now.

(Members registered to vote while others logged in)

(Hon. Nyikal consulted Hon. T.J. Kajwang')

Order Members! It is okay. Hon. Nyikal was consulting Hon. T.J.

Hon. Members, as I explained, in the first instance, we have to ascertain whether we have the requisite quorum. So, there must be in the House not less than 233 of yourselves excluding me because I have no vote. So, these are the results.

Electronically, as it has been displayed: Total Present -136

Manual: Present - 25

Total: 161

The net effect, therefore, on the Motion is that the Ayes have it and the Motion is carried because we were not able to raise the 233 to take a vote either way.

(Question put and agreed to)

(Several Hon. Members rose on their feet)

That is the Constitution. You can go and check.

(Several Hon. Members walked out of the Chamber)

Hon. Members, the House is still on.
Next Order!

MOTION

RATIFICATION OF AGREEMENT BETWEEN KENYA AND SOUTH AFRICA ON DEFENCE CO-OPERATION

Hon. Katoo ole Metito (Kajiado South, JP): Thank you, Hon. Speaker. I beg to move the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on its consideration of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa on Defence Co-operation, laid on the Table of the House on Wednesday, 16th October 2019 and pursuant to Section 8 of the Treaty Making and Ratification Act, 2012 approves the Ratification of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa on Defence Co-operation.

Hon. Speaker, I want to highlight some aspects of the Agreement. We have brought to this House several agreements and co-operations of this nature. The status of the forces Agreement is a legal framework that defines the position and the *modus operandi* of a foreign military force in a host State territory. Often, we talk of bilateral, but at times, it is even multilateral. It can be a multilateral character.

Hon. Onyango Oyoo (Muhoroni, ODM): On a point of order, Hon. Speaker.

Hon. Speaker: There is a point of order from the Member for Muhoroni.

QUORUM

Hon. Onyango Oyoo (Muhoroni, ODM): Hon. Speaker, it is evident that we do not have the requisite quorum in the House. It is evident and we can see it.

Hon. Speaker: Well, it looks like. How many are here? Hon. Member for Muhoroni, remember that, having rose on that point of order, you must remain in the Chamber.

Can you ring the Quorum Bell for 10 minutes? The Whips can go out and whip.

(The Quorum Bell was rung)

Order Members! Are these Members coming in? I order that you stop ringing the Quorum Bell.

ADJOURNMENT

Hon. Speaker: Hon. Members, it is clear that even after ringing the Quorum Bell for ten minutes, we have not been able to raise the requisite numbers.

Therefore, the time being 4.30 p.m., the House stands adjourned until Wednesday, 6th November 2019, at 9.30 a.m.

The House rose at 4.30 p.m.