

**PARLIAMENT OF KENYA**  
**THE NATIONAL ASSEMBLY**

**THE HANSARD**

**Wednesday, 11<sup>th</sup> March 2020**

The House met at 2.30 p.m.

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

**PRAYERS**

**PAPERS LAID**

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

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, the Clerk's Office was supposed to give me the documents to table. They have only given me... I will table it tomorrow.

**Hon. Speaker:** Very well. Next is the Vice-Chairperson of the Committee on Delegated Legislation.

**Hon. (Ms.) Fatuma Gedi** (Wajir CWR, PDR): Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House today Wednesday, 11<sup>th</sup> March, 2020.

- (i) The Statutory Instruments Bill, Senate Bill No.21 of 2018; and,
- (ii) The Statutory Instruments (Amendment) Bill, Senate Bill No. 24 of 2018.

Thank you.

**Hon. Speaker:** The next one is by the Chairperson of the Departmental Committee on Lands.

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House today Wednesday, 11<sup>th</sup> March, 2020.

Report of the Departmental Committee on Lands on its consideration of the Land (Amendment) Bill, National Assembly Bill No. 54 of 2019.

Thank you.

**Hon. Speaker:** Next is the Report by the Chairman, Departmental Committee on Finance and National Planning. The Chairman is not present. Next is the Chairman of the Departmental Committee on Information, Communication and Innovation.

**Hon. William Kisang** (Marakwet West, JP): Thank you, Hon. Speaker, I beg to lay the following Paper on the Table of the House today Wednesday 11<sup>th</sup> March, 2020 - Afternoon Sitting.

The Report of the Departmental Committee on Information, Communication and Innovation on its consideration of the County Outdoor Advertising Control Bill, Senate Bill No. 19 of 2018.

Thank you.

**Hon. Speaker:** Very well. Next is the Chairman, African Parliamentarians Network Against Corruption (APNAC), Hon. Shakeel.

**Hon. Shakeel Shabir** (Kisumu East, Independent): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House.

The Report of the Kenyan delegation to the Seventh Symposium of the Independent Commission Against Corruption held in Hong Kong from the 22<sup>nd</sup> to the 24<sup>th</sup> May, 2019. The Symposium which was held in Hong Kong was sponsored by the ICSE and the World Justice Project. It was held in Hong Kong between the 22<sup>nd</sup> to the 24<sup>th</sup> May, 2019. The theme of the symposium was: *Fighting Corruption a new Perception*. It was attended by more than 500 leaders and professionals from more than 50 countries. The delegation from Parliament attended the symposium...

**Hon. Speaker:** You will do that when moving the Motion. Today you are just tabling the Report.

**Hon. Shakeel Shabir** (Kisumu East, Independent): Thank you, Hon. Speaker.

**Hon. Speaker:** For the second time, the Chairman of the Departmental Committee on Finance and National Planning.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House...

*(An Hon. Member stood between the Speaker and Hon. Joseph Limo)*

**Hon. Speaker:** The Member standing between the Speaker and the Chairman of the Departmental Committee on Finance and National Planning, if you follow these things, it will come naturally to you that when a person is on his feet, you should be very far away, so that those other village issues you want to discuss with Dr Mishra... I am sure he was not in the Chamber yesterday. Maybe, that is why you wanted to consult him. Proceed, Hon. Limo.

**Hon. Joseph Limo** (Kipkelion East, JP): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

Reports of the Departmental Committee on Finance and National Planning on its consideration of:

- a) The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 36 of 2019); and,
- b) The Kenya Uwezo Fund Bill (National Assembly Bill No. 42 of 2019).

Thank you, Hon. Speaker.

**Hon. Speaker:** Next order!

## NOTICE OF MOTION

### PROVISION OF ASSISTIVE DEVICES TO PERSONS WITH DISABILITIES

**Hon. (Ms.) Dennitah Ghati** (Nominated, ODM): Thank you very much, Hon. Speaker. I beg to give notice of the following Motion:

THAT, aware that according to the World Health Organisation (WHO), an estimated 15 per cent of the world's population live with some form of disability or different ability, with 80 per cent living in developing countries; further aware that in Kenya, approximately 6.5 million persons live with some form of disability, out of whom nearly 3.8 million are women and girls, while approximately 85 per cent of the total number live in abject poverty; concerned

that a majority of persons with disabilities face numerous challenges, including being denied their fundamental rights and freedoms including the right to education and opportunities to work, virtually guaranteeing that they will live their lives in poverty which often exacerbate their vulnerability and dependence on other people, assistive devices and critical medical items and requirements; deeply concerned that lack of these devices, medical items and requirements makes it impossible for persons with disabilities to live normal and dignified lives; this House urges the national Government to provide assistive devices and required medical items and requirements free of charge to persons with disabilities at the constituency level through government hospitals or any other government body, and to put in place mechanisms for replacement of worn-out devices to enable them live dignified lives, be more productive and to co-exist with other people in the society.

I thank you, Hon. Speaker.

**Hon. Speaker:** Next Order!

### ORDINARY QUESTIONS

**Hon. Speaker:** The first Question is by the Member for Loima.

*Question No.031/2020*

#### STATUS OF FLOOD VICTIMS IN TURKANA COUNTY

**Hon. Jeremiah Lomorukai** (Loima, ODM): Thank you, Hon. Speaker. I rise to ask Question No.31 of 2020, directed to the CS for Devolution and ASALs:

(a) Could the Cabinet Secretary—

(i) Provide the number of persons who were affected by the floods in Turkana County in 2019, giving a breakdown of the number of those who lost lives, those who were displaced and those who had their properties destroyed?

(ii) State whether the Ministry supplied any non-food items to the victims?

(iii) State whether the Ministry has considered instituting adequate reparation measures to assist those who lost their livestock as a result of the floods?

(b) What policy and mitigating measures has the Ministry put in place to ensure that a long-term solution to avert such disasters is put in place, including any measures instituted under the National Disaster Management Authority?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question will be responded to before the Departmental Committee on Administration and National Security. Next question is by the Member for Sigowet/Soin, Hon. Kipsengeret Koros.

*Question No.049/2020*

#### FAIR DEPLOYMENT OF POLICE OFFICERS

**Hon. Kipsengeret Koros** (Sigowet/Soin, Independent): Thank you, Hon. Speaker, for giving me this opportunity to ask Question No.049 of 2020 to the Chairperson of the National Police Service Commission:

(i) What is the criterion used to deploy new police trainees upon graduation from the respective police training colleges?

(ii) What is the maximum period of service required for police officers to be eligible for transfer from one station to another?

(iii) Why are some police officers who have served in extremely remote and hardship areas for long periods of time have not been considered for transfers?

(iv) Could the Cabinet Secretary undertake to ensure that initial posting of trainee officers and subsequent transfer of police officers is done in a fair and transparent manner devoid of favouritism?

Thank you

**Hon. Speaker:** The question is directed to the Chairman of the National Police Service, and the request is for a written reply. Therefore, it is directed that the Question be transmitted to the said Chairperson to reply within 14 days from the date hereof. Give that written reply to Hon. Koros.

Next Question is by the Member for Nambale, Hon. Sakwa Bunyasi.

*Question No.050/2020*

STATUS OF CASH TRANSFER PROGRAMME IN NAMBALE CONSTITUENCY

**Hon. Sakwa Bunyasi** (Nambale, ANC): Thank you, Hon. Speaker. I wish to ask Question No.50 of 2020 to the CS for Labour and Social Protection:

(i) Could the Cabinet Secretary provide the total number of elderly persons, widows and those with extreme disability who are eligible for cash transfer benefits in Nambale Constituency?

(ii) What is the status of disbursement of funds to the above-listed categories of persons?

(iii) Are there plans in place for the Ministry to ensure that all persons eligible for the cash transfer benefits in Nambale Constituency are registered and that payments are effected in a timely manner?

Thank you, Hon. Speaker.

**Hon. Speaker:** The question to be responded to before the Departmental Committee on Labour and Social Welfare. The last Question is by the Member for Mwatate, Hon. Mwadime.

*Question No.051/2020*

IMPLEMENTATION STATUS OF MGENO/SAGHALA-BUGHUTA/KAZIGHAU ELECTRIC FENCE

**Hon. Andrew Mwadime** (Mwatate, ODM): Thank you, Hon. Speaker. I rise to ask Question 51 of 2020 to the CS for Energy. Could the Cabinet Secretary give the implementation status of the construction of Mgeno/Saghala-Bughuta/Kazighau Electric Fence Project that was budgeted for in the Financial Year 2017/2018?

**Hon. Speaker:** Question to be responded to before the Departmental Committee on Energy. There are no requests for Statements. Move on to the next Order.

Order, Members! If the two leaders can wind up their consultation, we can progress. Well, consultations are healthy.

If you look at the Order Paper, Order No.8 is the Report of the Committee of the whole House on the President's recommendations to the Law of Contract (Amendment) Bill (National Assembly Bill of 2019)... Just to remind Members, and this was done very eloquently and ably by the Deputy Speaker yesterday, in this particular stage, it does not matter who shouts the loudest. There is the other step that we must follow.

*(Question put and agreed to)*

Hon. Members, I have to issue this guide: The House has voted to amend the Bill to accommodate all the amendments recommended by His Excellency the President. The recommendation of the President to the House was a deletion of Clause 2 of the Bill. The Bill, as originally passed by the House, had two Clauses, that is, clauses 1 and 2. Clause 2 contains the substance of the Bill. Following the decision of the House, the Bill now as passed has only one Clause, which is Clause 1 and it provides for the Long Title of the Bill.

In this regard, I will have nothing to present to the President for assent as required under Article 115(5) of the Constitution, but convey the effect of the decision of the House which is that the Bill has been lost and the House is accordingly informed. The Bill is lost.

*(Bill lost)*

Next Order!

## MOTION

### REPORT OF THE COMMITTEE OF THE WHOLE HOUSE ON THE REPRESENTATION OF SPECIAL INTEREST GROUPS LAWS (AMENDMENT) BILL

THAT, this House doth agree with the Report of the Committee of the whole House on its consideration of the Representation of Special Interest Groups Laws (Amendment) Bill (National Assembly Bill No. 52 of 2019).

*(The Member for Migori walked into the Chamber)*

**Hon. Speaker:** Hon. Member for Migori, if you walked in like somebody who belongs to the National Assembly, I am sure you may have feared to sit where you have sat because you would know the person who regularly sits there. It is the indomitable Hon. Millie Odhiambo-Mabona. Hon. Chris Wamalwa has another name for Hon. Millie, which is not known to the House.

Hon. Members, debate on this Motion was concluded yesterday. What remains is for me to put the Question and proceed to Third Reading.

*(Question put and agreed to)*

**Hon. Speaker:** Hon. Members, this is the Bill, which as you know, seeks to give effect to provisions of Article 100 of the Constitution on the representation of women, youth, persons living with disabilities, minority groups and other marginalised groups. With the enactment of this Bill, I can confirm not just to the House but also to the whole world that, the House will have fully discharged all the obligations in the Fifth Schedule relating to the enactment of any laws that were meant to have been enacted by the House.

*(Applause)*

The other responsibilities about those others are obligations placed on the State. Parliament is part of the State; it is not the State. So, people seeking to petition elsewhere, will now seek to enjoin the State in law suits and not only the House.

Mover, Hon. Kioni, the Floor is yours.

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Hon. Speaker, I beg to move that the Representation of Special Interest Groups Laws (Amendment) Bill (National Assembly Bill No. 52 of 2019) be now read a Third Time.

I also ask the “Chief Justice Fake”, Hon. T.J. Kajwang’, to second.

*(Laughter)*

**Hon. Speaker:** I can hear people shouting: “Point of order!” I think you need to have listened carefully to what Hon. Kioni said. I suspect you are reacting to the wrong thing. He just said: “For the Chief Justice’s sake.”

*(Laughter)*

**Hon. Members:** Fake!

**Hon. Speaker:** Fate or fake? He meant that Hon. T.J. Kajwang’ is a fake “Chief Justice”?

**Hon. T.J. Kajwang’** (Ruaraka, ODM): Hon. Speaker, ears are given to all but very few people hear properly. I also heard Hon. Kioni refer to this speaker as “Chief Justice Sake”.

*(Laughter)*

I wish to second this Bill. It has been a long journey getting this law together. I can assure you that some of the best brains have looked at this Bill. However, I also want the lady Members of this House to come and support this Bill. Initially, all of them wanted us to get into something called two-thirds or one-third. Now, we have legislation specifically for the women. They now need to see the advancement that this House has made, and the country should know.

The other day, I saw a Judge rush to give an injunction. In fact, it was the first injunction that was given against this House. That this House had not done certain things that were expected in the Fifth Schedule. Sometimes, judges should also wait for the National Assembly to express itself. We are not retired brains; we are very active. For now, I hope those of us who are in that bracket of the marginalised, youth, women and persons living with disabilities, can now engage each other. Sooner or later, I suspect that Hon. Kioni will also amend the same legislation to provide for men because they are also marginalised in this country.

Thank you, Hon. Speaker, I second.

*(Question proposed)*

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, Hon. T.J. Kajwang' as much as he has seconded, he was not in the House yesterday when we were dealing with this matter.

This is a matter that not only concerns women, as we said, but also minorities, marginalised and people living with disabilities. Unfortunately, and let me go on record, apart from Hon. Millie and two other women leaders here, the women were missing yesterday. You know, they are busy executing this matter on television, on the International Women Day, but yesterday, when we were dealing with their own matter, they were less than three or four. I think I can only remember Hon. Millie, Hon. (Prof.) Oduol and maybe Esther Passaris. For the first time, the men who were there yesterday helped you. In fact, the only group which was represented was the people with disability led by Hon. Sankok. The minorities were here, Hon. Mbadi and myself. We follow our clans which are within the minority, including Hon. Baya. The marginalised groups were here, but the only group which was missing was the women. Next time, please, be in the House to discuss your matter. I think those people who are writing you letters asking you that Parliament should be dissolved, should know that from today, the moment the President assents into law the actualisation of Article 100 of the Constitution, then they should stop writing letters to you and the Chief Justice (CJ). Not the fake one. The real Chief Justice of the Republic of Kenya, Justice Maraga.

I beg to support.

**Hon. Speaker:** I see the Member for Funyula. I think he wants to speak on behalf of the marginalised or something?

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Speaker. I once again want to reiterate that, first of all, let me thank my senior colleague, Hon. Kioni, for spearheading the issues that relate to Article 100 of the Constitution of Kenya by bringing us a Bill in respect of the same matter.

Secondly, we also need to go on record that many of us were extremely disappointed. Some of us received very many calls from our constituents complaining that we have very many Hon. Ladies in the House, but they were only countable - not more than four - to spearhead and push the confirmation and approval of this Bill. They felt fairly let down and they wanted to go on record that the Hon. Ladies in the House really need to come on record and have their voice heard. I hope you will give a number of them, at this moment, a chance to go on record in support of the Bill.

Hon. Speaker, the third issue is that we hope the state of minorities and special interest is not a permanent state and we need to have mechanisms in the Constitution to continuously review the listings and Article 100 of the Constitution of Kenya. As I mentioned here - and I want to repeat again - at times, the state of minority is really self-inflicted or is by design because the process of changing the status of minority is well documented in the Bible and it is also a biological process. With those few remarks, I support the Bill.

Thank you, Hon. Speaker.

**Hon. Speaker:** Maybe, it is only fair, now that you have mentioned the ladies and as far as I know the conference of the status of women in the world was to take place for only one day and it is over, so I expected as many as possible to be in the House in their droves to give their

views either in support or even in opposition. There is no harm, but it is only fair that you ought to have been in. Hon. Jaldesa, I can see you are a bit agitated.

*(Hon. (Ms.) Rehema Jaldesa spoke off record)*

**Hon. Speaker:** Wait until you get the mic.

**Hon. (Ms.) Rehema Jaldesa** (Isiolo CWR, JP): Thank you, Hon. Speaker. First of all, I would like to take this opportunity to thank our male colleagues for supporting this very important Bill.

Secondly, I was rising on a point of order to set the record straight that yesterday, majority of us were presenting views to the Building Bridges Initiative (BBI) over the same. Therefore, it is not right when it is made to look like we are not supporting. We are supporting and the few who were left, had to rush home to pick the kids from school and do many other things that we do back at home. Therefore, I really appreciate the Majority Leader and other Members for supporting us.

Thank you.

**Hon. Speaker:** However, surely, you know your first duty is to the House to do legislative work, not even collecting children and those other places. Nevertheless, your explanation has been heard.

Hon. John Mbadi, you had indicated you want to speak.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Speaker. As we support this Bill at the Third Reading, we also want to mention that although it was something supporting women issues, it is not so much. We also have to be honest with ourselves. We just hope that the parties will do justice at the time required otherwise, the parties can find a way of going around. I am speaking as one of the leaders of one of the most serious parties that we have in this country.

Hon. Jaldesa has surprised me because I really thought this was more important and that they would have sent a few of them to present views to the BBI. I am wondering because you have been presenting views to the BBI on women issues every day.

*(Laughter)*

I do not know when it will stop and they are the same things. I think now we have listened to you. We have heard you and now we want to support women. I do not think you should present any more views to the BBI because it is clouding and making us get confused. I see in every BBI function, women are presenting the same views. Now we understand it is opposite. You want the opposite. I think now you can leave it there. You now do not want more than two thirds. Now they want 50/50 and we have heard them. We have heard you women loudly. If you elect a governor or whoever a man... I do not know for Member of Parliament (MP) what you are going to do, but we have heard them that now it is 50/50. I was just pleading with our ladies that now we can stop it there.

Thank you very much, Hon. Speaker. I support.

**Hon. Speaker:** Well, I can see the Member for Imenti South want to say something.

**Hon. Kathuri Murungi** (South Imenti, Independent): Thank you, Hon. Speaker. As we pass this, I commend Hon. Kioni for working hard on Article 100 of the Constitution. As the Chair of the Departmental Committee on Special Funds Account, you know we examine audited accounts of all those affirmative funds. Those are the funds actually directly involved with



women. To my surprise, especially on the *Uwezo* Fund, when I spoke here last week, I said County Women Representatives are co-patrons with Members of Parliament but, that is the Fund that is going down. Since they want to be supported by men and the State, they should be responsible for that Fund because it is not helping women. I am surprised they want to be supported. They cry every day. They go and cry to the BBI. The other day, they were doing the Women International Day, but they are not doing anything to ensure that, that Fund is getting to the women of this country.

Male Members of Parliament who are here from the constituencies have told me severally, including yesterday by the Member for West Pokot, Mr. Moroto, that, that money *imepotea kabisa, haisaidii mama ya kwangu*. That is because there is no coordination between women Members of Parliament and the County Women Representatives. There is no correlation. It is not there absolutely. I want them to take up that task to ensure that, in the next financial year, let us see a lot of money from *Uwezo* Fund and the Women Enterprise Fund empowering women in the rural areas. So far, nothing is happening. Even if you ask them how the Women Enterprise Fund is performing, only ten out of 47 will tell you how the Women Enterprise Fund and *Uwezo* Fund are performing.

Hon. Speaker, if they want to be active representing women, let them be active empowering them with what the State has provided.

I thank you.

**Hon. Speaker:** Let me find the final one from the Member for Rarieda.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Speaker. I was fortunate to be in the House. I can confirm that there were very few Members.

**Hon. Speaker:** Sorry! I see there is a point of order from the Member for Mathare.

**Hon. Anthony Oluoch** (Mathare, ODM): Hon. Speaker, I wanted to contribute to this debate. I am not on a point of order. I wanted to catch your eye to speak to this very question.

**Hon. Speaker:** Hon. Members, this is the Third Reading. It is good for all of us to appreciate. Where is the Chair of the Committee on Parliamentary Broadcasting and Library? Hon. Nyamoko? Please, move with the direction so that the country can begin to understand that the Second Reading of any Bill is the time and period dedicated for debate. Many of you participate in that. Unfortunately, even where you express reservations about certain clauses in a Bill, at the most crucial moment, which is the Committee of the whole House, when we expect you to come and present your contra-views, you conspicuously go missing. In fact, Hon. Otiende Amollo had just begun addressing that issue that they were, indeed, very few Hon. Members; which explains part of the reason why the Question was never put yesterday.

However, we would want that Committee to move with speed so that even if it is recorded, those records are stored. Even if it is during weekends, Kenyans will be at liberty if they switch on to some television channels dedicated only to Parliament, they can see what is it that Hon. Members have been saying and follow up during the Committee of the whole House. This is because, not so many of you Hon. Members appear to understand what is the Committee of the whole House or how crucial it is. You can imagine how much of a similar lack of knowledge exist out there in the countryside. So, Hon. Oluoch, let me just allow Hon. Otiende Amollo to proceed. I will give you one minute.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Speaker. I will be very brief. I thank Hon. Jeremiah Kioni for bringing this Bill, but I want to point out two things. There is a process; a near unconstitutional process...

*(Loud consultations)*

**Hon. Speaker:** Order, Hon. Members! Those of you who have finished your day's session after 43 minutes, please, when you are walking out, do so silently. Do not make noise. These are the ones who will be complaining the next day!

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Hon. Speaker, while I thank the Hon. Jeremiah Kioni and support the Bill, there are one or two clauses of the Bill that were lost for constitutional reasons, and it has to be explained. That is a trend that we need to guard against. While the entire Bill by Hon. Jeremiah Kioni was brought under Article 100, he sought to introduce some parts that dealt with political parties, which are supposed to fall under Articles 91 and 92. For that reason, a lot of those provisions, including some of the positive ones, had to fall. That is something we might want to look into as we move forward.

The second one, on which I need your direction in the course of the Committee proceedings, I did have a point of order, but I was unable to prosecute it because having pressed the intervention button, I was not given permission. When I was later given permission by the Chair of the Session, I sought the direction. Some of the Hon. Members suggested that the practice has now generated for points of orders. You do not press the intervention buttons. You must shout beyond the decibels of the rest of the Members. That appears to me to be a departure both from the Standing Orders and the practice.

Hon. Speaker, because you do not ordinarily sit during the Committee of the whole House, I think I would need your guidance on this so that I know whether to follow what is ordinarily the practice of intervention or to sharpen my voice and ability to jump and shout so that I may be heard when I need to intervene.

Thank you, Hon. Speaker.

**Hon. Speaker:** Let me discourage the latter and encourage that we only follow the intervention buttons. Especially like now, I noticed your name because you pressed the intervention box. So, allow Hon. Antony Oluoch.

**Hon. Anthony Oluoch** (Mathare, ODM): Thank you, Hon. Speaker. You are usually in a position to tell who is in the House even from where you sit. I think your record will confirm I am one of the Hon. Members who stayed here up to 7.00 p.m. as a member of the Committee and an active Member of this House.

The point I wanted to make was the one raised by Hon. Jaldessa. It is good that we place this on record. The ladies of the House allowed themselves to let the women of this country down. They let the male Hon. Members of Parliament carry the burden of doing what they have been claiming that men have failed to do. When the two-thirds gender rule was not passed, they blamed the men. I was at the Building Bridges Initiative (BBI) yesterday and they presented before me. I presented after them and still made it to the House to prosecute this Bill up to the end. It cannot be that because they were at a BBI meeting they could not come here. That will be very misleading, Hon. Speaker.

I thank you.

**Hon. Jimmy Angwenyi** (Kitutu Chache North, JP): ... *(Inaudible)*

**Hon. Speaker:** Very well, the father of the House has, in an awkward way, tried to address it.

Let us hear the Member for Migori.

**Hon. (Ms.) Pamela Ochieng** (Migori CWR, ODM): Thank you, Hon. Speaker. I appreciate the male Hon. Members who were here yesterday for taking that burden. Personally, I

was in this House. I was part of the team that passed that Bill. Much as the Hon. Members want to make it go on record; that the women did not care about that Bill, in the past, when this Bill was being debated and even at the Second Reading, quite a number of women participated in this Bill.

It is not fair that female Hon. Members should be crucified just because of that Bill. In any case, it should go on record that the women have really fought for this country and for those Bills that would support the participation of women in leadership. Many times, the male Hon. Members have shot those attempts down. So, it is good that today it goes on record that the male Members have come up to support the women, and we appreciate them. However, we request that this should not be the genesis for sacrificing women. The women have done much and we are still doing a lot.

Hon. Speaker, allow me also to correct one Hon. Member who is accusing the women representatives of not helping the *Uwezo* Fund to support women in the grassroots. The truth of the matter is that, it is the constituency Members who are patrons of that Fund. In fact, most of the time, they have chased away the committees made by the women representatives. The *Uwezo* Fund is not directly under the women representatives.

Let us not misinform the public.

**Hon. Speaker:** The Member for Tiaty, just take your seat. Why do you not sit next to Hon. Chepkut? He is not harmful.

This Hon. Member is the size of the other Members when they are seated. Hon. Ahmed Abdi Salan, the Member for Wajir North, it is becoming very difficult to tell when you are standing and when you are seated. When you stand in front of other Members, you appear like you are sitting. I suspect it has to do with the vertical challenge.

Hon. Members, debate on this Order was concluded and this was just some short comments, which are expected during the Third Reading.

I want to confirm that the House has sufficient quorum and announce that this is a Bill that is addressing Article 100 of the Constitution. It is dealing with representation in Parliament. Hon. Members, I think we have tried to explain this on several occasions. That, all other requirements in Article 27(6) and (8) of the Constitution are for the State. That, the State shall ensure, encourage or implement the policies administratively or through legislative means, the principle of not more than two-thirds of either gender representation in public and elective bodies.

This one is specific to Parliament and not those other elective bodies. This is to do with representation of women, youth, people living with disabilities, minorities and marginalised groups in Parliament. Therefore, upon the passage of this Bill, it will be transmitted to the other House for consideration. I believe you can go and lobby the other House to pass it.

Therefore, having confirmed there is sufficient quorum, I will put the Question.

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed)*

## COMMUNICATION FROM THE CHAIR

### THE BUSINESS LAWS (AMENDMENT) BILL

**Hon. Speaker:** Order Members! The Member for Imenti South, we are still in the House.

Hon. Members, you will recall that the Second Reading of the Business Laws (Amendment) Bill (National Assembly Bill No.80 of 2019) was concluded yesterday, 10<sup>th</sup> March 2020. What now remains is for the Bill to proceed to the Committee stage. However, before the Bill proceeds to that stage, I wish to bring to the attention of the House the following information.

Hon. Members, I have since received a letter from the Leader of the Majority Party requesting for my consent to withdraw proposed amendments to the Value Added Tax No.35 of 2013 from the Business Laws (Amendment) Bill (National Assembly Bill No.80 of 2019).

In his letter, he indicates these amendments will be appropriately dealt with during the consideration of the Finance Bill 2020, which is scheduled to be introduced before the House by 30<sup>th</sup> April 2020, latest.

Hon. Members, I have acceded to the request. This implies that the Bill will now be proceeded with without making reference to the withdrawn provisions. Thus, the Bill should be dealt with as though the provisions proposing amendments to the Valued Added Tax No.35 of 2019 were not part of the Bill.

Thank you, Hon. Members.

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]*

#### THE BUSINESS LAWS (AMENDMENT) BILL

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order Members! We are now in the Committee of the whole House dealing with the Business Laws (Amendment) Bill, (National Assembly Bill No.80 of 2019). We shall now start.

#### *Clause 2*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): There is an amendment by the Chair, Departmental Committee on Justice and Legal Affairs, Hon. Cheptumo. Order, Leader of the Majority Party! Hon. Duale, I am referring to you because the Chair of the Departmental Committee on Justice and Legal Affairs is not here to move his amendments on clause 2. You can proceed.

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

THAT, the Bill be amended by deleting Clause 2 and substituting therefor the following new Clause-

Amendment of  
section 3 of Cap 23

2. Section 3(6) of the Law of Contract Act is amended-
- (a) in the definition of the word “sign” by inserting the words “physically or by means of an advanced electronic signature” immediately after the word “initial”;
  - (b) by inserting the following new definition in proper alphabetical sequence-  
“advanced electronic signature” has the same meaning as defined in the Kenya Information and Communications Act, No. 2 of 1998.

The main reason is that the Office of the Attorney-General and the Department of Justice submitted the amendment as initially drafted in the Bill. They want to ensure that the words “physically” and “electronic” are recognised in signatures indicating the person intends to bind.

The Chair is ensuring that both electronic and physical signatures are allowed. That is the gist of this from the Chair of the Departmental Committee on Justice and Legal Affairs.

*(Question of the amendment proposed)*

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

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

*(Clause 2 as amended agreed to)*

*Clause 3*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): The Chair, Departmental Committee on Labour and Social Welfare. Where is he? Leader of the Majority Party, the Chairs moved on a frolic of their own or what? The Chairs must be present because this has been in the Order Paper. Leader of the Majority Party, you have to put extra effort.

**Hon. Aden Duale** (Garissa Township, JP): As the Mover of the Bill and the Chair, I am comfortable with the way it is in the Bill. So, let us drop that amendment. I am not the Chair of the Departmental Committee on Labour and Social Welfare. If he is not here and has not written, we drop the amendments.

**Hon. Omboko Milemba** (Emuhaya, ANC): On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is out of order?

**Hon. Omboko Milemba** (Emuhaya, ANC): Hon. Temporary Deputy Chairman, this will be unfortunate because, as a Committee, we looked at this. I had a chance of reporting on behalf of the Chair and there are key amendments which will support the work environment. They should be put across through the Chair or possibly through the Leader of the Majority Party.

The fact that we want to drop the amendments simply because the Chair is not here will be bad for the workers and Parliament will not be doing its work. I wish you give a direction that will favour the position the Committee took.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is out of order, Hon. Otiende? I will come back to you the Leader of the Majority Party.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Temporary Deputy Chairman. It is not so much a matter of order but because of that inquiry on a point of law. It is my understanding that if the amendments are of the Committee and the Chair of the Committee is not here and there is a member of the Committee who is prepared to move it, then he or she should be allowed to move it.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Yes, the Leader of the Majority Party. Hon. Kioni, I will give you a chance. I can see the Member moving.

**Hon. Aden Duale** (Garissa Township, JP): The Chair is here. Hon. Temporary Deputy Chairman, this is a House of procedure. Hon. Otiende Amollo, if the Chair is not around, he delegates to any of his Members. Hon. Omboko Milemba cannot just come and say it is unfortunate. That is being very casual. I am prepared. All the other Chairs are prepared but I am lucky Hon. Wario is here. He is one of the most active Chairs. So, the matter is saved now. It is good that I have been talking. Hon. Wario, move your amendment.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Members! What Hon. Milemba raised was very weighty because the Committee has spent a lot of time on this amendment. It was unfortunate that the Chair earlier was not here but as we spoke, the Chair came in. Hon. Kioni, why do you not let the Mover move and then I will give you a chance to speak to it? What is it on? Is it on procedure?

**Hon. Jeremiah Kioni** (Ndaragwa, JP): There is a tendency that we seem to be developing. Just a while ago, we heard Hon. Jaldesa. She said something that is really irritating. That you are allowed to present it to BBI when you are making law and it is for that reason that you did not contribute to the making of laws. If you allow this trend to continue in this country, this institution will become like a place where you come in when you want and you go. It is important. Even when there are Press conferences outside, this exercise that we have here is very crucial. Unfortunately, I have to speak when my good friend was on his feet but I want to say that let us give the House priority and the status that it deserves and it will be respected to the extent that we respect it ourselves.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Kioni, you are quite on target. This is the primary responsibility, but let us not belabour the point. Chair, you are here. Earlier on, we were wondering where you were when you were meant to be moving but now, you have the space and the time.

**Hon. Ali Wario** (Bura, JP): Thank you very much, Hon. Temporary Deputy Chairman, for giving me the opportunity. I apologise for coming late. That said and done...

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): It is the amendment on Clause 3. You can say as it appears in the Order Paper but you take time to explain the import of that amendment so that we move.

**Hon. Ali Wario** (Bura, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting clause 3 and substituting therefor the following new clause—

Amendment of  
section 5B of  
Cap.237.

3. Section 5B of the Industrial Training Act is amended in—

- (a) subsection (3) by deleting the words “month or part of a month” and substitute therefor the word “year”; and
- (b) subsection (4) by deleting the words “month or part” and substitute therefor the word “year”.

That amendment to sub-section (4) is a consequential amendment that seeks to align the penalty imposed for failure to comply with the provision of sub-section (3) in line with the yearly payment that is to be introduced in the amendment in sub-section (3). Initially they used to pay monthly. If you fail to pay, then there will be a fine but now that we have decided to pay annually, that is the import of our amendment.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Yes, Hon. Makali.

**Hon. Makali Mulu** (Kitui Central, WDM-K): All I wanted to say is to support this amendment. It makes a lot of sense. At the same time, I want to go on record that today, the Chair of the Departmental Committee on Labour and Social Welfare, who I respect a lot, has actually let the House down. In the morning, he disappeared. This time again, we had to look for him to come and do this. Since we respect him a lot, he needs to be here when we require him.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chair, you do not need to respond to that. Please take note of what your colleague has said.

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

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

*(Clause 3 as amended agreed to)*

*(Clauses 4, 5, 6, 7, 8, 9 and 10 agreed to)*

*Clause 11*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, there are two amendments to that, one by the Chair of the Departmental Committee on Finance and National Planning. The next is by the Departmental Committee on Transport, Public Works and Housing. They are similar. So, we shall give the chance to the Chair of Departmental Committee on Finance and National Planning. I will also give the Chair of the Departmental Committee on Transport, Public Works and Housing the chance to speak. Let us have Hon. Limo.

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

THAT, the Bill be amended in clause 11 in the proposed paragraph 24E (1) by deleting the word “ten” appearing immediately before the words “billion shillings” and substituting therefor the word “five”.

The reason for this amendment is that this Bill is proposing to give capital gain tax deduction for those investors who will invest in bulk storage and they invest up to Kshs10 billion. Our view was that Kshs10 billion is a bit high. We are proposing to amend it to 50 per cent which is Kshs5 billion. That is the reason for it.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chair for Departmental Committee on Transport, Public Works and Housing, I will give you a chance because you have a similar amendment to the same clause so that you speak to this.

**Hon. David Pkosing** (Pokot South, JP): I thank you, Hon. Temporary Deputy Chairman. Because this is on transport, I support the Chair of the Departmental Committee on Finance and National Planning. This is a Government that works together and in the same spirit, it is to create equitability. That was actually the main aim. Taking the threshold too high will remove many people. Therefore, we might be misunderstood that we are making laws for some few individuals. I thank my colleague, Hon. Limo. I support.

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

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

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chair of the Departmental Committee on Transport, Public Works and Housing, yours has sailed through in light of that decision by the House.

*(Clause 11 as amended agreed to)*

*Clause 12*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We have an amendment by the Chair of the Departmental Committee on Finance and National Planning, Hon. Limo.

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

THAT, the Bill be amended in clause 12 in the proposed new definition of “stamp” by inserting the words “recognised by the Government,” immediately after the words “adhesive stamp”.

This Clause is bringing stamp duty to become electronic. The current manual stamp duty payment is cumbersome, but we are moving a further amendment so that the electronic stamp which is being used is the only one which is recognised by the Government so that it ensures that it seals loopholes or prevents them from misuse by fraudsters. They can use fraudulent means to do electronic stamping. So, we are proposing a further amendment to make it fool-proof.



*(Question of the amendment proposed)*

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

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairperson, the Chair is not doing a further amendment. There is no further amendment; it is just your amendment. You are trying to make sure that the stamp duty is the only one that is recognised by the Government to make sure that we safeguard the integrity of it.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. Hon. (Dr.) Wilberforce Oundo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Temporary Deputy Chairperson.

Hon. Temporary Deputy Chairperson, I support the amendment, but I need to go on record to caution that the word “Government” seems to be too wide. We need to have a very clear definition on what constitutes Government. Who is the custodian of the so-called “recognised by Government”? A lot of stamp duty is paid as a result of transactions in the land and real estate sector where there have been so many unscrupulous practices. I pray that necessary measures will be put in place to make sure that the so-called “Government” is clearly defined, gazetted and recognised.

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

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, even the Chair of the Departmental Committee on Finance and National Planning needs to vote. I will take that again.

*(Clause 12 as amended agreed to)*

*(Clauses 13, 14, 15 and 16 agreed to)*

*Clause 17*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We have an amendment by the Chairperson of the Departmental Committee on Transport, Public Works and Housing, Hon. David Pkosing.

**Hon. David Pkosing** (Pokot South, JP): Thank you, Hon. Temporary Deputy Chairperson. Before I move, I think there was some amendment on Clause 14.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): It is a new clause. There was no amendment.

**Hon. David Pkosing** (Pokot South, JP): I get it. I am well guided Chair. Hon. Temporary Deputy Chairperson, I beg to move:

THAT, Clause 17 of the Bill be amended in the proposed new section 23A by deleting the proposed new subsection (2).

The amendment seeks to empower the Cabinet Secretary to make regulations regarding the mandatory inspection by the Authority. They had put it differently in the Bill. They were giving powers to the CS to make regulations in a different clause and yet, it is already provided for under Section 42 of the main Act. Therefore, we are just re-organising and taking it to where it is in terms of the CS making regulations.

Secondly, Temporary Deputy Speaker, we have become even more specific. We are giving two regulations: one on building code and the other on mandatory inspection. It is so that making of regulations is not in a vacuum but well guided in law.

*(Question of the amendment proposed)*

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

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairperson, in simple language, the Chair is saying that in line with Statutory Instruments Act Section 11, it is the CS who has powers to bring regulations to the House.

I support.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. (Dr.) Wilberforce Oundo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Temporary Deputy Chairperson, I support the amendment. That particular section was negated by the amendment that is going to be proposed without purporting to know what is going to be debated under the new Clause 14. Once we pass Clause 14, then there are sections under that part that are already negated.

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

*(Clause 17 as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is your point of order, Hon. Odhiambo-Mabona?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Chairperson, I wish to make a formal request to the House leadership, especially for the Committee of the whole House. As you know, there are not many Members who usually engage in this process. Now that we have gone electronic, it becomes very difficult unless you have a physical copy. Yesterday, I was forced to use two screens for the amendment of the Bill on special interest groups. Today, the gadget next to me is dead. So, I cannot really follow what is going on. That is the truth. We have electronics that have become disabled. Could I make a special request that we have printed copies to enable us follow through? We are in the Committee of the Whole House and we are very few?

*(Hon. Aden Duale handed a document to Hon. (Ms.) Odhiambo-Mabona)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Well, the Leader of the Majority is gracious enough to have given you a hard copy, but that is a temporary reprieve.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Yeah, but what I am requesting Hon. Temporary Deputy Chairperson, is that if we can formalise it so that, ordinarily, when we go to the Committee of the whole House, that we have, at least, 20 copies. I already have what the Leader of the Majority Party has given me on the screen. If I want to get the Bill, it means that I have to have two screens so that I can compare both.

Thank you, the Leader of the Majority Party for giving me this.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Do you want to say something on that, the Leader of the Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairperson, we have paid a lot of money for this system. You must go on record that these systems must work. If they cannot work, then they should be removed. We either go back to manual or we go electronic. There are no two ways about it.

Secondly, let me inform Members that we have got Personal Assistants (PAs) and researchers. I always carry a printed one in the event the system collapses. I am sure the Clerk's Office gives Members who have amendments a hard copy. What Hon. (Ms.) Odhiambo-Mabona has raised is that we either go electronic or not. The Information Communication Technology (ICT) Department in this House must live to its mandate. Otherwise, we have copies, particularly in Committee of the whole House. It is important that during the Committee of the whole House that Members have a document they can refer to, in the event the system fails. I agree. I think, Hon. Temporary Deputy Chairperson, you need to say it on record that the ICT Manager or whoever is concerned, we will not agree when we come to the Committee of the Whole House next week...

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let Hon. Makali Mulu not linger on that one. Do you still want to speak on that?

**Hon. Makali Mulu** (Kitui Central, WDM-K): Additional information.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): The final one so that we get back to the substance.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairman.

Hon. Temporary Deputy Chairperson, at times, when you go to the listing of the Bills on this other screen, you find that not all Bills which we are discussing are there. So, it becomes very tricky to follow the debate. I agree with my colleagues in terms of making sure that we speed up debate.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. That is a very valid issue that Hon. (Ms.) Odhiambo-Mabona and the Members have raised. For Members to engage, they need to have the documents. The decision has been made that we go electronic. Maybe, the solution is not to go back where we came from, but to ensure that the system works. As the Leader of the Majority and Hon. (Ms.) Odhiambo-Mabona have said, if Members do not have the documents electronically, it becomes a challenge to engage. It is noted that those that have amendments have hard copies. We do not want to go back to the hard copies. We want the system to work. I am sure the Clerk has taken note of that so that we can make it easy for Members to contribute and engage.

*(Clauses 18, 19, 20, 21, 22 and 23 agreed to)*

*Clause 24*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): There is an amendment by the 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 Section 24 and substituting therefor the following new section—

Amendment of Section  
39A of No.18 of 2012

24. Section 39A of the Public Finance Management Act, 2012 is amended –

(a) in sub-section (3) by deleting the words “in time for it to be assented to” and substituting therefor the words “in time for it to be presented for assent”; and

(b) in sub-section (4) by deleting the words “and the Division of Revenue Act”

appearing in paragraph (a).

This is just a correction. When we amended the Public Finance Management (PFM) Act last year, we intended to provide for a smooth flow of the Finance Bill in this House from the introduction to the passage. The amendment that we made last time to the PFM Act was that the Finance Bill must be submitted by 30<sup>th</sup> April and passed by 30<sup>th</sup> June each year. There was a drafting error which was not rectified at the time of the passing of that Bill. The error indicated that the President must assent to the Finance Bill by June 30<sup>th</sup>. The intention was that it should be presented for assent by that day. That is an error in conformity with Article 115 of the Constitution. For every Bill that we pass, the President has 14 days either to assent or to return it using his veto power. When we said that it should be assented to by 30<sup>th</sup> June, the Legal Directorate felt that, that bit was an error.

The amendment in (b) was to align it by deleting the words “and the Division of Revenue Act” appearing in paragraph (a). This amendment is just to clean up the process of introducing the Finance Bill in the National Assembly so that we do not curtail its passage and, if possible, if there will be a disagreement between the two Houses on the Division of Revenue Bill. The drafters of the Constitution have separated those two processes. My proposed amendment in paragraph (b) is simply an insertion of the words “and the Division of Revenue Act” in the same section. The text was left out in the earlier amendment. This was what we did in the PFM Act just to make sure that the Finance Bill is introduced on 30<sup>th</sup> April, the House has until 30<sup>th</sup> June and then the President has 14 days. I was correcting those errors.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): That is sufficient explanation.

*(Question of the amendment proposed)*

Let us have Hon. Makali say something then we progress.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairman. I support this amendment. Even as I support it, it would be good practice that by the time we pass the Finance Bill, the Division of Revenue Act is also in place. It would be good practice. Otherwise, it would not be good from a financial perspective if we started passing the Finance Bill without the Division of Revenue Act in place.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Leader of the Majority Party, do you want to have a second stab at it?

**Hon. Aden Duale** (Garissa Township, JP): I agree with Hon. Makali. We anticipate that in a seamless flow, the Division of Revenue Bill must be passed by 30<sup>th</sup> April. If we pass it by 30<sup>th</sup> April, we would have finished with it and would be waiting for the Finance Bill that we must pass by 30<sup>th</sup> June. I agree with that. That is the tidiness we want all to anticipate. I hope our colleagues in the Senate will not bring us to those protracted mediations over the Division of Revenue Bill.

*(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 24 as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We shall not deal with Clauses 25 and 26 in light of the Speaker's earlier Communication because they deal with VAT Act No.35 of 2013. Those were dropped. We shall not be considering the two clauses.

*(Clauses 25 and 26 dropped)*

*Clause 27*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): There is an amendment by the Chair of the Departmental Committee on Trade, Industry and Co-operatives, Hon. Kanini Kega.

**Hon. Kanini Kega** (Kieni, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended in Clause 27 by inserting the word "Service" immediately after the word "Registration".

It is basically a typographical error in that the word "service" was omitted in the Bill. It is just that simple.

*(Question of the amendment proposed)*

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

*(Clause 27 as amended agreed to)*

*(Clauses 28, 29, 30, 31, 32, 33, 34, 35 and 36 agreed to)*

*Clause 37*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): There is an amendment by the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Is it me?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Yes. It is you.

**Hon. Aden Duale** (Garissa Township, JP): Are you sure it is me? Yes. I do not know why for the first time my Office has given me too many papers. I hope they are watching me so that they do not do it next time.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 37 of the Bill be amended by deleting the clause and substituting therefor the following—

Amendment  
of section  
560A of  
No. 18 of  
2015.

37. The Insolvency Act, 2015, is amended by deleting section 560A and substituting therefor the following new section—

Considerations  
to take into  
account on  
applications  
for approval to  
lift  
moratorium.

560A. (1) When considering whether to grant its approval under section 560, the court or the administrator may in particular take into consideration the following where appropriate –

- (i) the statutory purpose of the administration;
- (ii) the impact of the approval on the applicant particularly whether the applicant is likely to suffer significant loss;
- (iii) the legitimate interests of the applicant and the legitimate interest of the creditors of the company, giving the right of priority to the proprietary interest of the applicant;
- (iv) whether the value of the secured creditor's claim exceeds the value of the encumbered asset;
- (v) whether the secured creditor is not receiving protection for the diminution in the value of the encumbered asset;
- (vi) whether the provision of protection may be feasible or overly burdensome to the estate;
- (vii) whether the encumbered asset is not needed for the reorganisation or sale of the company as a going concern;
- (viii) whether relief is required to protect or preserve the value of assets such as perishable goods; or
- (ix) whether in reorganisation, a plan is not approved within six months.

(2) An approval granted under subsection (1) shall be for a period of not more than twenty-eight days.

This is on the Insolvency Act. The reasons behind this are that the law provides for an automatic stay on the enforcement when a debtor enters into a court-supervised re-organisation procedure in order to protect secured creditors' rights. There is need to provide clear grounds for relief from the stay in case if there is one, while setting a time limit for it. The proposed amendment seeks to ensure that the grounds are clear and broad enough in size to cover all the justifiable reasons for relief from stay as per the international best practice within the insolvency law.

*(Question of the amendment proposed)*

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

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

*(Clause 37 as amended agreed to)*

*(Clause 38 agreed to)*

*Clause 39*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We have an amendment by the Chairman of the Departmental Committee on Finance and National Planning.

Hon. Pkosing, you moved in a manner to suggest that you also have an amendment, at least that is not on the Order Paper.

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

THAT, the Bill be amended in clause 39 in the proposed new item in the description by inserting the words "excluding imported glass bottles for packaging of pharmaceutical products". The reason for this amendment is that the Bill is proposing to tax imported glass at 25 per cent in order to promote local manufacturing. Whereas this is going to promote local manufacturing as per the Big Four Agenda, it is also making some of the packaging materials for pharmaceuticals which are used in Universal Health Care (UHC) to be expensive. We are, therefore, moving this amendment to exclude imported glass for packaging of pharmaceutical products.

*(Question of the amendment proposed)*

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**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Yes Hon. (Dr.) Wilberforce Oundo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Temporary Deputy Chairman, the proposed amendment, however plausible it may be in the short-term, is self-defeating. We are talking about encouraging manufacturing in the Big Four Agenda. We have a lot of rerun glasses in this country. We have several factories in Nairobi and some in Mombasa that mill glasses. This essentially is self-defeating and we are not achieving the Big Four Agenda. I do not understand the need because we can encourage manufacturing. The policy should be import substitution instead encouraging imports as it is going to kill local manufacturing.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have the Leader of the Majority Party before we come to you Hon. (Dr.) Makali Mulu.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, the first intent of the Bill from the Government was to protect local manufacturers. But there was a concern, not only from the Chairman of the Departmental Committee on Finance and National Planning, that the capacity for particularly pharmaceutical related bottles has not been reached by the country. What he has amended is to exclude those manufacturing pharmaceutical bottles. All the other companies that are making local bottles will have better tax rebate than those imported. The imported ones are going to be more expensive. The Chair needs to clarify that.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Limo, I will come to you. Just take note of what Members are saying. I will give you a second chance.

Hon. (Dr.) Makali Mulu, you may proceed.

**Hon. (Dr.) Makali Mulu** (Kitui Central, WDM-K): Thank you Hon. Temporary Deputy Chairman. I want to agree with what Hon. (Dr.) Wilberforce Oundo is saying. Basically, once you start introducing these exemptions for specific products, you make tax administration very complex. At times, we are realising reduced revenue collection because of the many exemptions. At the end of the day, they work against the objective of generating more revenue. Even as you bring this component, it is important that we are very careful. When you complicate the process, it becomes very difficult to collect revenue.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have Hon. Onyango Oyoo then to the Leader of the Minority Party.

**Hon. Onyango Oyoo** (Muhoroni, ODM): Thank you very much, Hon. Temporary Deputy Chairman. I wish to oppose the proposal by the Chairman of the Departmental Committee on Finance and National Planning. It is high time we decided whether we want to import or we want to do things locally. Fraudsters will still use these goods that we are going to exempt, to bring in other goods which is going to hurt the economy. Either we import the drugs in the bottles or not. Most of the times they are already packed. This is not good at a time when we are trying to remedy the ailing economy. I do not support this.

**Hon. John Mbadi** (Suba South, ODM): Hon. Temporary Deputy Chairman, do we have...

*(Hon. Members walked into the Chamber consulting loudly)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Leader of the Minority, do not listen to what is happening, just proceed.



**Hon. John Mbadi** (Suba South, ODM): I request the Chair, as he comes to address this matter...

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order Members! Order! Those who are coming in, please do so silently. We must proceed with the business of the House. Order Members!

Hon. John Mbadi, you may proceed.

**Hon. John Mbadi** (Suba South, ODM): As the Chairman of the Departmental Committee on Finance and National Planning rises to speak, he needs to clarify to us if the Cabinet Secretary of the National Treasury was involved in this. I listened and I largely agree with Hon. (Dr.) Makali Mulu and Hon. (Dr.) Wilberforce Oundo that tax administration has been facing a challenge because of these exemptions. But at the same time, we have to be careful because the moment you subject glass to taxation, if you do not take care of issues around pharmaceutical packaging of drugs using glass, definitely it will have cost effects on our pharmaceutical products.

We need the clarification on whether the National Treasury is clear that they will manage this properly because tax administration becomes a problem when it comes to these exemptions.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We will have a few other members, then Hon. Limo will have the final stab at this.

*(Several Members walked into the Chamber)*

Order Members. There is quite a bit of energy that has come in which is helpful for the House. Let them come in silently so that we then proceed with the Committee of the whole House.

Hon. Limo, please take note of the issues Members have raised because you will have the final stab at this. Then we will have the House make a decision.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you very much, Hon. Temporary Deputy Chairman. For the same reasons that Hon. Mbadi has said, I want to support. I would also request that because we are dealing with almost 15 pieces of legislation, in future, if it is possible - and this is something I am putting before the House because I do not sit on the Committee on Procedure and House Rules - to find a way of putting the word 'omnibus' at the beginning. This is because, when we just have Business Laws (Amendment) Bill, I actually thought that it was one law but we are dealing with almost 14 to 15 pieces of legislation.

We can have that in future for better preparation. I thought I am preparing for one but this is very tedious because it requires more preparation than even some of us have done. Just for effective preparation in future, if we can have the word 'omnibus' at the front it will help us know. Yesterday, we dealt with a similar Bill and we finally managed to catch-up and follow but it becomes difficult when we have so many things that we are following.

I am afraid that as a Parliament we might just find ourselves passing laws simply because we are not following. So, I feel a little bit frustrated with the process today.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I will speak to that. Leader of the Majority Party, do you want to speak to that then we have the Chair?

**Hon. Aden Duale** (Garissa Township, JP): To clarify and go on *Hansard*, Hon. Millie knows the Statute Law (Miscellaneous Amendments) Bills usually have many laws from different sectors. But this one specifically is business related and is geared towards making it easy to do business in Kenya. It only deals with businesses. But I agree with Hon. Millie Odhiambo that it is also an omnibus Bill and it does not harm us if we put it as that.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): It does not harm. It is just a house keeping way of alerting Members that it is not just one piece of legislation that is being amended, but several. It also helps Members tidy up and organise themselves in terms of their contributions and engagements on the amendments.

Hon. Limo.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Chairman, I want to make it very clear on the issue of pharmaceuticals. This was addressed very well by the National Treasury because some pharmaceuticals have specialised bottles that cannot possibly be produced quickly in the country. Protection of local manufacturers is recommended to be progressive. That is why the exemption was brought and the National Treasury supports it.

I propose that we support the exemption for now because progressively, almost everything will be produced in the country.

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

*(Hon. Joseph Limo consulted Hon. Julius Melly)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order Members. Even the Chairman who moved the proposed amendment is so engaged in a conversation that he forgot to vote. Hon. Chair, you need to vote for this amendment.

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

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is out of order?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I just want to inform my colleagues that the Press conference is over. Some of us have some business to do. I thank them much for joining me in doing this business with the rest of the Members. So, can we first be quiet and finish the business.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I will take a stab on this again.

*(Clause 39 as amended agreed to)*

*(Clauses 40 and 41 agreed to)*

*New Clause 12A*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chair, Departmental Committee on Finance and National Planning, please move the Second Reading of New Clause 12A. Hon. Melly has kept you quite busy there to the extent that you forgot to flip your papers. Hon. Melly, the Chair is on the Floor. Hon. Melly engaged Hon. Limo, quite a bit.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, protect me.  
**The Temporary Deputy Chairman** (Hon. Patrick Mariru): The amendment is on page 119.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I do not have any proposed amendment on Clause 4.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): It is New Clause 12A.

**Hon. Joseph Limo** (Kipkelion East, JP): I heard Clause 4. It is good that you are protecting me, Hon. Temporary Deputy Chair. There is a lot of excitement around for obvious reasons that very good things are happening in the country. For every action, there is always an equal and opposite reaction.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Limo. Just relax and move New Clause 12A.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I was appreciating the work you have done. You have made the Members give us peace of mind to prosecute this serious business.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 12—

THAT, the Bill be amended by inserting the following new clause immediately after clause 12—

Amendment of section 119  
of Cap. 480.

12A. Section 119 of the Stamp Duty Act is amended by inserting the following paragraph immediately after paragraph (c) –  
 (d) electronic stamping.

The reason for this amendment is that now that we have introduced in the Bill electronic stamping, there is need to give the Cabinet Secretary the power to make regulations for ease of implementation of this new system.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(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)*

*New Clause 14A*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chair, Departmental Committee on Transport, Public Works and Housing.

**Hon. David Pkosing** (Pokot South, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 14—

Amendment of  
section 2 of No.41  
of 2011.

14A. Section 2 of the National Construction Authority Act, 2011 is amended by inserting the following new definition in its proper alphabetical sequence—

“building code” means the building code provided for under regulations made pursuant to section 42.

The reason for that is because the amendment I moved earlier was to introduce the building code. I am now bringing the building code at the definition level so that we can say what it is. It will now refer you to Section 42 which we had done earlier on. So, we are aligning it in terms of definition.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Oundo, do you want to speak to this?

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM) Hon. Temporary Deputy Chairman, probably, the Chair of the Committee needs to tell the House clearly that, indeed, there exists a building code of 1968 and adoptive building code that covers all the local authorities, which are county governments. He needs to clarify whether by virtue of this section, we are abolishing or building the existing building codes or what is the procedure for enacting this particular one and the amendments we made on Clause 17?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chairman, do you want to say something on that?

**Hon. David Pkosing** (Pokot South, JP): Hon. Temporary Deputy Chairman, there is no anomaly. I would like to inform the Hon. Member who spoke earlier that if he goes to where the building code was earlier or long time ago, he will find that it was in the Local Government Act of 1968, which was repealed. So, what we are doing is not contrary to any piece of legislation. We are actually introducing it afresh. We are now bringing law. It was not there.

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

**Hon. Aden Duale** (Garissa Township, JP): The Prof. like Hon. Millie are the people always here with me and has asked a very valid question.

This amendment seeks to define the building code, as the Chair has said. The Local Government Act upon which the national building code of 1968 was anchored, was repealed by the County Government Act. We want to make sure that there is harmonisation of building codes in both levels of government. The gist of it was to define the building code and ensure that building codes are not anchored in different pieces of law. The whole essence of these amendments is the ease of doing business. We want to make sure that an investor sitting in Singapore does not need to know how the building codes of a county government and the national Government are. The whole thing is to anchor it in law.

*(Hon. (Dr.) Wilberforce Oundo spoke off record)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Oundo. We cannot have crossfire where one asks a question and another responds. The House must make a decision on this, Hon. Oundo. I am afraid.

*(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)*

*New Clause 17A*

**Hon. David Pkosing** (Pokot South, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 17—

17A. Section 42 of the National Construction Authority Act, 2011 be amended in subsection (2) by inserting the following new paragraphs immediately after paragraph (a)—

(aa) the Building Code in the construction industry; and

(ab) the manner of conducting mandatory inspections by the Authority.

We are bringing the building code in its rightful position in terms of how it is going to be developed. This is going to be developed as a regulation. Regulations must happen only under Section 42 of the main Act. That is why we are now introducing the building code as part of what we are going to develop regulation on. The reason is to open it for public participation so that Kenyans can participate and know the kind of code they have.

Second is mandatory inspection. If it is mandatory inspection, you cannot just do it. There must be public participation so that Kenyans can know the processes of doing mandatory inspection, the person doing and the level of the officer. That is going to be done in form of a regulation so that we can allow it for public participation. That is why I am introducing it so that it can be taken to the right position in law, which is Section 42 of the main Act.

Thank you.

Amendment of  
Section 42 of No. 41  
of 2011

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chair, Departmental Committee on Communication, Information and Innovation.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairman, I beg to support this amendment. There are many buildings that have collapsed in the past. With introduction of this new code and new regulations on actualising the codes, it basically means we are putting the industry into order. Because of introduction of digital signatures, you actualise it by coming up with new regulations.

Thank you.

*(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)*

#### *New Clause 32A*

**Hon. Aden Duale** (Garissa Township, JP): I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 32—

Amendment of section 289 of No. 17 of 2015.

32A. Section 289 of the Companies Act, 2015 is amended —

(1) in subsection (1) by—

(a) deleting paragraph (b) and substituting therefor the following new paragraph immediately after paragraph (a)—

“(b) in the case of a quoted company, a new item to be put in the agenda of the general nature of business to be dealt with at the meeting.

(b) inserting the following new paragraph immediately after paragraph (b)—

“(c) other business to be dealt with at that meeting.”

(2) in subsection (2) by inserting the following new paragraph

immediately after paragraph (b)–  
“(b) in the case of subsection (1) (b), by members representing at least five percent of paid up capital of the company.

This is a matter on the Companies Act. It is amending Section 289 of the Companies Act. We are seeking to ensure that minority stakeholders of a company are given a fair chance to be heard by being accorded the right to put an item in the agenda. The proposed provisions seek to ensure that quoted company shareholders representing 2 or 10 per cent of the paid capital of that company are at liberty to propose an item in the agenda to be circulated to the general membership of the company entitled to notice of the meeting.

The Committee noted that there is need to give the minority shareholders in our country in any company a chance to propose an agenda. For example, if Hon. Oundo and I can buy shares in a company worth 5 per cent but because it is 5 per cent, we will be bulldozed by the majority shareholders. We have realised that this is an impediment to the ease of doing business. This amendment from the Attorney-General’s Office, in concurrence with the National Treasury, wants to protect the minority shareholders so that when members are called to annual general meeting and if they have a concern, they can put it in the agenda of the annual general meeting.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Chairman, I am just concerned that you are moving at such a high speed that even when we want to contribute, we do not have the opportunity.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): You have the chance now. I have just proposed that the new clause be part of the Bill. So, you have a chance.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): I thought you were putting the Question. If you were proposing it, it is okay. It is very rare, normally, to find the Leader of the Majority Party and I on the right side and speaking the same language. When we get to these moments, Chair, you let us so that I can support him and..

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Please do so now.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): I am actually supporting his position and supporting the ones who are saying *ni maombi si ujinga* because it is rare to find me sitting while others are singing in the choir. That was my role in the last Parliament. So, *ni maombi si ujinga*. I thank them for doing my work as I sit quietly doing house business and supporting the Leader of the Majority Party. I love it. *Ni maombi*. God is an amazing God.

Thank you. I support.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Member for Kibwezi West.

**Hon. (Dr.) Patrick Musimba** (Kibwezi West, Independent): Thank you, Hon. Temporary Deputy Chairman. That particular amendment is very good especially for companies

which were public in nature and have since been floated and you want to ensure that the minority within the same companies get their way, especially in nominating directors to vote on the way business is conducted. This is to ensure that it is in tandem with the original thinking of the entities.

I support that amendment. Thank you.

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

**Hon. David ole Sankok** (Nominated, JP): I really support that amendment. It is good so that, at least, everybody has a chance. Even if you are the minority, you also have a chance. I support what Millie Odhiambo said. She is the one who was used to singing. She also has to confirm that she was used to abusing the President. She is now lecturing us on how to respect a President we voted for three times, four times, in fact. The President belongs to Jubilee.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well. Before we hear Hon. Limo, allow me to introduce pupils from Karagurerio Primary School, plus their parents, from Mukurweini Constituency, Nyeri County.

*(Applause)*

Yes, Hon. Limo.

**Hon. Joseph Limo** (Kipkelion East, JP): As I stand to support the Leader of the Majority Party, I want to confirm that Kenya has been rated highly. It must be at the top in protection of minority shareholders. It was actually stated in the last conference where Kenya was one of the countries which were really seen to be serious in protection of minority shareholders. When you invest in quoted companies, the minority shareholders in most cases only have their say during annual general meetings. Therefore, by allowing them leeway to introduce a line, it is a very good amendment.

I support it.

*(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)*

*New Clause 39A*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): The Chair of the Departmental Committee on Transport, Public Works and Housing.

**Hon. David Pkosing** (Pokot South, JP): Thank you, Hon. Temporary Deputy Chair. I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 39—



Amendment of  
section 8 of No.29  
of 2016.

39A. Section 8 of the Miscellaneous Fees and Levies Act, 2016 is amended in subsection (3) by inserting the words “and operation” immediately after the word “construction”.

What we are attempting to do here is expand the usages of the Railway Development Levy to include paying operation. The operational costs, at the moment, have attracted a pending bill of about Kshs37 billion since 2017, the reason being that the revenue that accrues from the normal running of the Standard Gauge Railway (SGR) goes to what we call an escrow account to pay our loans. I confirm to the nation and the House that we have not defaulted. We have already started paying our loan. The only problem is that now we are looking for money to buy fuel, oil and pay members of staff. That is why we are now opening a Development Levy Fund (DLF) to solve the problem. It is very clear. I thank you.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Yes, Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): I am a bit very unhappy with this amendment. Always, levies of this nature are levied to help spur economic growth and development. That is why we have the Fuel Levy Fund. That is why we came up with this Railway Development Levy. When we are going to spend this money in running and expending recurrent expenditure, it is a reflection of a failure on our part as a country. This SGR business should have been well thought out before it was executed. If it is not able to sustain itself, then as a country we must own up. The leadership of the country, those who did financial assessments should come out and apologise to Kenyans. They should tell us why they took a direction where we have a project for which we have borrowed money to implement and it cannot pay for itself. How then do we dip our fingers into levies that were meant to do development projects expecting them to support recurrent expenditure? I am very unhappy with this.

I cannot support this unless I am persuaded properly. Thank you, Hon. Temporary Deputy Chairman. I oppose.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Yes, the Leader of the Majority Party. I will give one or two Members a chance and then we make progress.

**Hon. Aden Duale** (Garissa Township, JP): Chair, you know Hon. Mbadi is my friend. We have built the railway and we cannot uproot it. We cannot uproot the railway. So, we have to find a way. This is from Government — you have to find a way of making it sustainable.

*(Hon. John Mbadi spoke off record)*

**Hon. Aden Duale** (Garissa Township, JP): I agree. The one we used to uproot was very easy to uproot. It is going to be very costly to uproot this one. I really indulge Hon. Mbadi. We have really looked at the justification by the Ministry of Transport and also the National Treasury and Planning. Let us support it. We are in a fix. I agree with Hon. Mbadi that we have issues. However, let us find a way of enticing the private sector to come on board and help us manage this railway line.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Musimba.

**Hon. (Dr.) Patrick Musimba** (Kibwezi West, Independent): Thank you, Hon. Temporary Deputy Chair.

We must oppose this amendment because the whole premise of having a levy coming from the public to be able to pay off our loans is wrong. The SGR's operational costs are being run by a private entity. They are not being run by Government. So, when you give them a *carte blanche* to use the money to pay for operations, then you really do not have a cap on the operational costs. You are all of a sudden going to stare at a levy which is going to get bankrupt. The time we will need to pay our external obligations as per agreement, we will not have any money for it. So, we cannot support that public funds be utilised in a way that is not transparent.

This amendment must fall. It must fall because it is not in the interest of the Kenyan people. It must fall. I do not support.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Omulele.

**Hon. Christopher Omulele** (Luanda, ODM): Hon. Temporary Deputy Chair, thank you for this opportunity.

I want to align my thoughts on this with what my brother, Hon. Musimba, has just stated. When we set up this Railway Development Levy, we were very clear in our minds what we intended it to do. If we are going to amend in this way we are proposing, to allow a private entity to use funds that we, the people of Kenya, had specifically set aside for a purpose that we set out, we shall be failing.

I oppose.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I will come to you, the Leader of the Majority Party. It is your second stab at it. Let me give chance to Hon. Millie, Hon. Kimunya and then you.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Chair. I stand to oppose.

I am opposing because we cannot give this levy to a private entity. We have an obligation to ensure we reduce our debts. We are bedeviling our children and putting too much burden on them. We will be holding this burden for many years to come. As I am speaking, there are students from Karagurerio Primary School here. They are in primary school. Their Member of Parliament is my schoolmate, Hon. Anthony. You can imagine that these children who are here watching us today will still be paying loans that they know nothing about many years to come. It will be loans they heard us talk about in this place.

So, I oppose.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Amos Kimunya.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Temporary Deputy Chair. Let us be clear on this matter, Members of this Committee. We already have the levy. We are not changing the levy. What we are saying is that the levy was initially envisaged for purposes of building a fund for the construction of a railway.

*(Loud consultations)*

I know. I know because I was involved in it. I was the Minister for Transport. So, I know what we had in mind on the levy. At that point, it was expected that the operation would be funded from other sources. Now, the levy is there. The money is there. You have a choice, either use the levy to pay the construction cost and then appropriate money from other funds to pay for the maintenance.

*(Loud consultations)*

No. Those are the two choices. Let us not engage. I am explaining so that we make a decision for the record. We have a levy and it was to create a fund to pay for the loans incurred on the construction. It was envisaged that the annual operational costs would be funded from the user fees and also from grants by the National Treasury through Kenya Railways. Now that we have money in the fund, there is no harm in using the money from the fund to pay for the construction and maintenance.

**Hon. Christopher Omulele** (Luanda, ODM): On a point of order.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is out of order, Hon. Christopher Omulele? Certainly, I will give a few Members a chance. So, do not worry.

**Hon. Christopher Omulele** (Luanda, ODM): Hon. Temporary Deputy Chairman, I have listened carefully to Hon. Amos Kimunya. I agree with him to the point where he is saying that we set up the levy specifically for the construction of the railway. The question is: Have we paid for this railway so that we can now start spending this money on *mandazi*?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have Hon. Amos Kimunya to be done with his time. I will give few other Members time. So, do not worry on this. Proceed, Hon. Amos Kimunya.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Chairman, the levy is building up. Every time you import, there are already deductions that are going towards building that other fund. That fund is available. You can either use it for the construction or expand the use towards operations. That is the import of this amendment. Otherwise, you will tie yourself to only using the money that you have for the construction cost and then have to look for other money to pay for the maintenance. It is the same thing we are talking of. Let us expand the use of the fund. I disapprove the amendment.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well.

*(Hon. Aden Duale consulted loudly)*

Leader of the Majority Party, we will not take a decision on this. We will give a few Members time to speak to this. So, do not worry. I can tell particularly from this clause that there is a bit of passion and energy.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I have listened to the concerns of Members.

*(Hon. John Mbadi consulted loudly)*

Hon. John Mbadi is very good in some things. This is a new Clause of the Business Laws (Amendment) Bill (National Assembly Bill No.80 of 2019). I want to ask the Chairperson: Do you see how controversial it is? It is a very important Bill for ease of doing business. You have explained it, but you know this animal called the SGR is a very sensitive animal. Hon. Amos Kimunya should apologise first. Hon. Amos Kimunya confessed that in the 10<sup>th</sup> Parliament he is the guy who was running the contract. The whole afternoon we were doing give and take. Now there are more people who are opposing it. So, we will consult further and help you. Just withdraw it.

**Hon Member:** After all, there is handshake!

**Hon. Aden Duale** (Garissa Township, JP): No, no. He has held it since the handshake.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. David Pkosing, before I give chance to any other Member, you look like you want to say something. It is you who moved the Second Reading of this particular clause.

**Hon. David Pkosing** (Pokot South, JP): Hon. Temporary Deputy Chairman, I want to plead with the House and Members...

*(Loud consultations)*

Hon. Temporary Deputy Chairman, protect me.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Yes, you are protected completely. The decision to withdraw or not to withdraw is entirely yours.

**Hon. David Pkosing** (Pokot South, JP): Hon. Temporary Deputy Chairman, I want to persuade the House and explain a little. Let me explain that the reason we established this levy was to build the SGR. That should be understood very clearly. It was to build the SGR. It was a counter fund. Being a counter fund...

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, I am sure the Chairman looks like he is concluding his remarks. Hon. David Pkosing, do not be too intimidated. Finalise your arguments.

**Hon. David Pkosing** (Pokot South, JP): I will do that, but let me explain a little.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Proceed.

**Hon. David Pkosing** (Pokot South, JP): First of all, let us understand that it was supposed to build the SGR as a counter fund.

**Hon. Members:** No!

**Hon. David Pkosing** (Pokot South, JP): That is the truth. It was to build the SGR as a counter fund. It was a loan from China, but the loan cannot be used to pay for land compensation. Therefore, we brought in the levy...

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. David Pkosing, why are you listening to plenary interventions? You have the Floor, speak. If you conclude, then the House will make a decision on this.

**Hon. David Pkosing** (Pokot South, JP): Hon. Temporary Deputy Chairman, when a leader like Hon. John Mbadi, whom I respect is talking, I give him some respect. I also expect him to give me some respect too.

It was supposed to provide counter fund for the SGR. They have done it very well. The SGR has stopped at Naivasha for the time being, but the fund is still accumulating. It is supposed to run up to Kisumu. What we are now saying is that rather than the Government accumulating a pending bill... The pending bill for the Government now stands at Kshs36 billion and we cannot get any fund to pay for even the fuel and the operation of the SGR. That is why we are pleading with the House to allow us to use that fund for two things. We can still use it for construction, but allow the Government, therefore, to get this fund to be able to meet the operational cost. The money that is the proceeds from the SGR cannot be used because it goes to Escrow Account which is used to pay for the loan. As advised by the Leader of the Majority Party, whom I respect, I, therefore, withdraw it for further consultations and we will bring it back.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. David Pkosing, you took a very long route, but eventually you have reached there. So, that is marked as withdrawn.

*(Proposed amendment by Hon. David Pkosing withdrawn)*

*(Title agreed to)*

*Clause 1*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Leader of the Majority Party, you do not have an amendment to that. Is there an amendment on Clause 1?

**Hon. Members:** Yes.

**Hon. Aden Duale** (Garissa Township, JP): It was circulated.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Oh! Hon. Members, that one is not on the Order Paper, but it was actually circulated.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, it has been signed by the Speaker. This is just on the commencement date.

I beg to move:

THAT, the Bill be amended in Clause 1 by inserting the words “shall come into force upon assent” immediately after the expression “2019.”

This Bill is so important and the President wants to go to the East Africa Community, maybe in two weeks’ time. So that it enables the Community to get the benefits, we are saying that the moment it is assented to by the President, it becomes law.

I beg to move.

*(Question of the amendment proposed)*

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

*(Clause 1 as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We are done with the Bill. Let me call upon the Mover.

**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 Business Laws (Amendment) Bill (National Assembly Bill No. 80 of 2019) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker  
(Hon. Christopher Omulele) in the Chair]*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Chairperson.

**Hon. Patrick Mariru** (Laikipia West, JP): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Business Laws (Amendment) Bill (National Assembly Bill No. 80 of 2019) and approved the same with amendments.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well. Mover.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move that the House doth agree with the Committee in the said Report. I request Hon Mbadi to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. John Mbadi** (Suba South, ODM): I second.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well.

*(Question proposed)*

Hon. Mbadi, for good reasons I will defer the putting of the Question on this to such a time that the House Business Committee will allocate time for that business.

I, therefore, direct that we move to the next business on the Order Paper.

*(Putting of the Question deferred)*

## MOTION

### ADOPTION OF ANNUAL REPORTS ON STATE OF JUDICIARY

THAT, the House notes the Annual Reports on the State of the Judiciary for Financial Years 2016/2017 and 2017/2018, submitted to the House, pursuant to the provisions of Article 254(1) of the Constitution and adopts the recommendations of the Departmental Committee on Justice and Legal Affairs as contained in the Reports of the Committee, laid on the Table of the House on Thursday, 9<sup>th</sup> May 2019.

*(Hon. William Cheptumo on 10.3.2020)*

*(Resumption of Debate interrupted on 10.3.2020)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Chairperson of the Departmental Committee on Justice and Legal Affairs, you are well in your place. This is resumption of debate. It is a matter that had taken off. We are resuming debate on it. I see interest from Hon. Oduol Adhiambo. Do you wish to contribute to this?

Proceed

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute to this Motion. Because of the debate that was heated in the Committee of the whole House, as I start, I want to thank the Chair. I understand that we have completed the business in the Committee of the whole House. We are now looking at the Report on the State of the Judiciary.

Earlier on, I tried, but I did not get an opportunity to contribute. I find this Report useful. It indicates the critical role of restructuring the Judiciary and the place of the Judiciary in the country not only in helping us to address the critical area of justice, but in particular for advancing and stabilising democracy.

When you look at the Report that was ably shared, the critical matter that is flagged is how we can ensure the reforms that are on course are sustained. In terms of funding, we should have sufficient funds to ensure that there are adequate facilities and infrastructure to enable the Judiciary to perform its role in an effective and dignified manner.

Allow me to elaborate on the concept of representation. When we look at the Judiciary, it plays its independent role as an arm of the Government. When citizens have challenges with the Executive or the Legislature, that is where they go. In this House, I am a representative of what the Constitution calls “special interest groups”. In some cases, this seems to get lost as we interpret this concept. As I support the Report and agree with the Chair, who flagged important matters of concern, allow me to raise the concern that, at times, we are guilty for not trying to get Kenyans to understand the concept of representation. In other words, trying to get every individual citizen or institutions to speak for themselves or look more at quality instead of quantity. I am speaking from the perspective of a Member who has been specially nominated from special interest groups categorised in Article 100 of the Constitution as women.

Earlier on, I was concerned that when it comes to representation, we mislead the public. When contributing in the House as two female Members - I understand the commendation that was made when Hon. Millie Odhiambo, a ranking Member, and I, were here when they were discussing that matter. My concern, as we speak about the issue of justice, is that it seems it is expected that when you look at representation, you burden Hon. Members of the female gender with guilt and shame and in a way, you ridicule their contribution when, in fact, they are Members who sufficiently represent Kenyans.

The Report acknowledges the central role that the Judiciary plays. Representation does not require that each individual speaks. I want to discourage Kenyans for electing and nominating people to represent them, then when one representative substantively talks about an issue, they try to get every representative to speak on the same. I hope they will desist from that practice. We have 76 female Members of the National Assembly from the total of 349 Members. Whenever we point fingers and say that the female gender appears not to know their roles, we should ask ourselves if we are looking at that from a perspective of fairness that will help us.

As I support the Report, I am encouraged, because the Report is clear that we provide sufficient funds to the Judiciary. As a House, we should allocate adequate resources to the 41 Government-funded projects that are at various stages of completion in order for them to be completed. I hope we will understand that representation is a matter of quality and relevant contribution, and not numbers by burdening the minority and special interest groups with guilt and shame.

Thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Oduol, without a doubt, you are one of those Members who have made a mark in this House, and your contribution can never be taken for granted. It is appreciated.

Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker, for giving me this opportunity. From the outset, I want you to forgive me because I have lost my voice. I was singing out and it is not a role I am used to. I know it is a role for Hon. Millie Odhiambo, but since they took over a part of the Government, I had to take up the role and sing. So, my voice is not very clear today. I will try as much as possible.

I support the Report in totality. It is very important for the Judiciary to be independent. There is no independence without enough funding, especially when the Judiciary has to depend on the Executive to allocate funds to them. This House, in consultation with the BBI taskforce, should start a conversation on how we can set a percentage of our total revenue to the Judiciary, so that it can have total autonomy.

As I support the Report, the Judiciary must also convince us that they deserve the money. For a long time, the Judiciary has dwelt on quantity instead of quality. Quantity in terms of infrastructure and in terms of the corruption cases that are under prosecution in our courts, but we have not seen quality in terms of convictions. Once the Judiciary convinces this House that it can save taxpayers' money through conviction of corrupt individuals, we will have no problem in increasing its allocation. Where do we get the money to allocate to them when the corrupt individuals who have been prosecuted in the courts are given bails? When you are told that someone has stolen Ksh100 million and he or she is released on a bail of Ksh1 million, automatically, that fellow will not feel any pain because it is 1 per cent of what he or she has stolen. So, the Judiciary must convince us by having convictions and returning the funds that have been stolen by corrupt individuals.

We want the Judiciary to be at speed in convicting corrupt cartels in our country the same way it was at speed in convicting the Nakuru fellow who slaughtered a cat and made *sambuza* from the meat. No one even complained of stomach upset, but when he was taken to court, because he had nothing to give in terms of kickbacks, he was convicted within 24 hours and he is serving a jail term. Why can the Judiciary not use that speed to convict the fellows who have been stealing billions of shillings from the taxpayers? These billions of shillings are stolen through banks. In fact, it is daytime robbery because no bank is open at night. So, why can the Judiciary not follow up the process in which the money was transferred from the Treasury to the ministries and then to individual accounts? I support the Report. For sure, the Judiciary must up their game and convince us that they need the money. As we continue with the BBI conversation, we will set aside a percentage of funds, maybe 5 per cent, to the Judiciary, so that it is not at the mercy of the Executive.



I have tried as much, because my voice is a bit hoarse. I was singing a lot. Thank you very much for giving me this opportunity to contribute. For those who think they can bring an impeachment Motion against the Deputy President, bring it on because we are quite ready for it.

Thank you very much, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Sankok, you have spoken to a lot of issues, all of them constitutional. I am sure Hon. Oluoch Tom, the Member for Mathare, will remind you about the presumption of innocence, so that if today it was alleged that Hon. Sankok has stolen Kshs2 billion or Kshs10 billion and we took you to court and you are fined Kshs1 billion, and you might not have stolen the money, what happens to you?

Hon. Oluoch, the Member for Mathare, I am sure you want to contribute to this.

**Hon. Anthony Oluoch** (Mathare, ODM): Thank you, Hon. Temporary Deputy Speaker. First, I want to thank the Committee for coming up with this Report. This Report is timely because the discussion allows us to delve into three issues. One is that the constitutional tensions that we have are very healthy. The constitutional tensions have allowed us to enter into a national debate on our system of governance. The first constitutional tension would be in regard to the bicameral Parliament. We constantly grapple with the issue of various powers and how we distribute legislative powers and roles between the National Assembly and the Senate. We also have another constitutional tension which is the subject of national discourse, which is between the levels of government, the national Government and the county governments.

I want to speak specifically to the constitutional tension that we constantly have to grapple with between the Executive arm of the Government and the Judiciary. This is important because it was contemplated in our Constitution. It is the reason we have Article 160 of the Constitution that speaks to the independence of the Judiciary. It is very good that we have this Report because we can now buttress the question: To what extent do we exercise or allow judicial independence? Here, we are speaking about both judicial decisional independence and judicial institutional independence. It is also good to remind ourselves that it is for this reason that in Article 173 of the Constitution we provided that in order not to let the Judiciary worry about decisional and institutional independence, and the question of its financing is unstable, we created the mechanism for its funding. I say this also against the background of a well celebrated publicist by the name Alexander Hamilton, who wrote in the 18<sup>th</sup> Century on this very question of the tensions between the three arms of the Government. If I was to paraphrase, he said that the Executive holds the sword and dispenses honours while the legislator holds the purse strings. But the Judiciary neither dispenses any honours nor has the purse strings. He was trying to suggest that in this process, the Judiciary, even though an arm of the Government, is the weaker link and needs to be provided with as much protection as possible.

Another Justice in the USA by the name Marshall said that it is distinctly the role of the judicial department to declare what the law is. Sometimes that decision may not be very good to us. The way to disagree with the decision is not for Parliament to cut down the funding of the Judiciary or for the Executive to decline to carry out constitutional duties - with all due respect, this affects the independence and even the operations of Parliament - but by way of appeal.

The ways to disagree with the Judiciary, so that we can build the institution, is by appeal. When Parliament disagreed with the Judiciary on certain things, we did not like. It was very easy for us to use the power of the purse strings to slash money that had been allocated to them. This comes at a very good time. Just like the President has an opportunity to address Parliament often in the State of the Nation Address, also, the state of the Judiciary should be elevated if it is possible. The Standing Orders can be amended to allow heads of the Judiciary and the Supreme

Court to stand at some point inside or slightly where the lady Serjeant-At-Arms is seated, to read to us the state of the Judiciary. This is so crucial for proper functioning of the rest of the other arms of the Government.

I want to speak to Chapter Two of this Report on Page 17 on access to justice. It is very crucial. Article 159 of our Constitution talks about one of the principles of the Judiciary, which is access to justice. This has been buttressed and emphasised under Article 49 of the Constitution which talks about fairness, fair administration and access to justice. This is one of the things which Article 25 of the Constitution has stated as rights that you cannot derogate to access justice. However, there are things that we have done that impede access to justice. I am looking at some of the statistics in the Report. In the 2017/2018 Financial Year, about 283,788 criminal cases were pending before our judicial system; a backlog, and 118,455, which in total comes to 402,243. Massively, with the funds that we appropriated to them in that financial year, under the judicial transformation framework, they were able to reduce the backlog by 370,488. However, last year, when we slashed their money, they were not able to proceed with the judicial transformation, which includes infrastructure, construction of courts, hiring of more judges and digitisation of the courts. This is the reason we have a backlog according to the Report for that particular financial year of 327,928 taking into account that cases are also filed every year.

I use that as my most important point because at the moment, something has been pending and causing tension between the two arms of the Government. I want to use this opportunity to plead with my President to appoint more judges, so that we can ease the issue of the backlog and improve access to justice. Among the judges that were appointed, there are those that have been highlighted or have been flagged by our agencies as persons not fit to hold office as judicial officers. I clearly would like to ask my President to have other judges appointed, so that we could deal with the question of the backlog. This will also ensure that judicial independence and access to justice do not get impeded.

Secondly, I would also like to make comments about Recommendation No.1.7. Having come out of this discussion and observations of the Committee on the leadership and management, I would like to laud the Judiciary for coming up informally or administratively with the Judicial Ombudsman. However, I suggest that instead of what the Committee has recommended here, we elevate and put in statute the position of the Ombudsman of the Judiciary, that we buttress the Commission on Administrative Justice (CAJ). That is what became the successor of the Ombudsman. Under the CAJ, we can have a sub-department of the Judicial Ombudsman working under the CAJ, so that we do not have many structures and we are not left confused. This may work properly.

Lastly and because my time is up, I want to laud them on the judicial transformation and with the more money being appropriated to them, digitisation of the Judiciary will have the effect of improving access to justice, but more importantly, the youth will get jobs in the area of ICT. For these reasons, I would like to thank the Committee again and ask that, as we engage in the national discussion of the constitutional tensions, let us improve and give the weaker link, the Judiciary, an assistance even as we tell them that as the weaker link, the fight against corruption must not fall because the judicial officers are compromised or implicit.

I thank you, Hon. Deputy Speaker. I support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very well spoken, Hon. Oluoch. However, food for thought. You have posited that the President in delaying to appoint these judges who have been interviewed and are waiting for presidential appointment because he has received some advice from “agencies.” We do not know that for certain. However, at what

point should that advice come? Is it for the interviewing panels or after the people have been pointed out by the interviewing panel to be proper for appointment? That is food for thought for you.

Hon. Mwirigi Paul, the Member for Igembe South, the Floor is yours.

**Hon. John Paul Mwirigi** (Igembe South, Independent): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to support the Report.

The Judiciary is one of the arms of the Government. When Judiciary is underfunded, we cannot expect much in the delivery of services. That is why last year, the Chief Justice lamented a lot about lack of funds for the Judiciary. This annual Report, therefore, helps us to know the progress of our courts and the extent they have gone with their work. When the Judiciary is not funded, recruiting new judges to tackle the backlog of cases is impossible. That is why most cases take years in courts without being completed and our people, whom we represent, suffer a lot. When people want justice, they run to courts. However, the magistrates who are supposed to be working there are not funded and that is why most cases are still pending.

Digitisation of information in our courts cannot take effect or cannot be effected because there are no funds to do the work. In my constituency, the headquarters of Nyambene, a court is proposed to be built, but up to now no work has started because there is no money. Therefore, it is the right time as legislators to give priority to the Judiciary so that, at least, they can have funding. It will enable them to tackle cases of corruption and nobody can get compromised. If, for example, you are tackling a case of a person who has stolen Kshs1 billion or more, and you have never earned such money, when the accused person approaches you to tackle the case in his favour, you would easily do so. We will, therefore, never get justice in this country. We will be unable to fight corruption because the arms that are supposed to be fighting corruption and prosecuting the alleged corrupt people are not getting anything.

I support the Report. I urge my fellow Members to support the Report, so that the Judiciary can be well funded and can work well. When the Judiciary is funded, it opens an avenue for employment. When I mention employment, let us recall that the biggest number of unemployed people in this country is the young people.

Therefore, with that, I beg to support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Mwirigi. We should have Hon. Oundo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker. I stand to support the Committee Report on the State of the Judiciary. I will mostly concentrate my comments on the Report for 2017/2018.

Hon. Temporary Deputy Speaker, I must admit from the outset that the Judiciary has made major milestones in the protection of human rights in this country. Prior to the 2010 Constitution and prior to the many changes that were made to our legal system over the years, human rights were trampled on without fear and without apology under the whims of those in leadership. However, we must admit, over time, we no longer hear of detention without trial, or people being denied bail unnecessarily.

The Judiciary is critically important for providing checks and balances necessary to sustain and keep a country together. The leadership that has been exhibited by the Judiciary in the recent past is something to laud and support as we go along. We have heard so many lamentations from the Chief Justice on inadequate funding. We have heard so many complaints from the Chief Justice of the Judiciary on the casual way the Judiciary is treated in this country both by the Executive and occasionally by the political class and others. It is important for us to

continuously invest in supporting and strengthening the Judiciary, but at the same time, we must hold it accountable to the people of Kenya and to the other arms of the Government to work in a harmonious manner.

Articles 48, 49, 50 and 51 of the Constitution of Kenya 2010 require a strong, robust and independent Judiciary to protect the human rights stated in the aforementioned. Therefore, we get worried when the Chief Justice stands up and complains in public. We get worried when the National Treasury or the Budget and Appropriations Committee purport to continuously change, reduce or cut down the budget associated with the Judiciary. We must find a way for the Judiciary to exercise independence as contemplated under Article 160 of Constitution of Kenya. They must have adequate funding. They must be given the leeway to manage the funds, of course, remembering to abide by the relevant laws and regulations pertaining to the management of public funds.

I think, last year, in the Committee on Delegated Legislation, we approved quite a number of regulations that will support the Judiciary, including the code of conduct for judicial officers and the management of judicial funds. We expect, by now, the Judiciary should have implemented a lot of those things and, indeed, enabled itself to collect adequate funds. It is not uncommon to find corrupt judicial officers. Many years back - I am not sure if this still remains the position - there was a joke that why would you need to hire an advocate if you can bribe a judge or a magistrate? I just pray and hope that, that is no longer the position in this country. My advocate friends, who are here, and litigants can tell us.

Hon. Temporary Deputy Speaker, of course, to the local *mwananchi*, there is always this fear of the Judiciary, that the Judiciary has no room for the small man, the Judiciary has sets of laws, namely, for the poor and for the rich; for the educated and the uneducated, and for those who can wriggle their way through and those who cannot do so.

We have seen quite a number of cases handled by utterly incompetent judicial officers who have been bestowed powers to arbitrate issues between various litigants in courts. I would, therefore, urge - as the Committee has proposed - that all officers and State organs involved in the administration of justice should be strong and robust. We have so many cases... There are many of the so-called graduates from the law schools who cannot write a sentence or even draw a plaint. Quite a number of them end up being magistrates and clerks of such nature. You can see what to expect when you go to such courts.

However, I note from the Report that there has been an increase in the number of cases, more so, civil cases. This indicates that there is a growing confidence in the Judiciary and the judicial system which we must continuously invest in.

As I conclude, there are two issues that we must clearly indicate and you have raised them. It is understood that the President does not interfere in the recruitment process of various judicial officers. Therefore, his agencies, probably, might not necessarily be invited to offer any advice on the suitability. However, that said and done, and whichever way you look at it, I do not believe all the persons proposed for appointment are rotten. I do not believe all of them are that bad. To enhance the independence and strengthen the Judicial Service Commission, it would be my humble plea to the President, and if the law allows, to isolate those that he has got misgivings about from the others. He should then return those reservations to the Judicial Service Commission. It is only a fool who does not change his mind. Just like there is judicial review, the Judicial Service Commission should look at that matter and see to it that we get men and women of integrity to preside over court cases. There is nothing as demoralising as to have a judicial officer whose integrity is questionable. It disorganises the society. We expect a magistrate or

judge to be like Caesar's wife; to be beyond reproach. This will make me have trust. When I see any of the two, I should expect fair judgement. It is hilarious that you find a drunken judicial officer roaming the streets at night and expect to find him to preside over your case the following day. For sure, you will have serious misgivings. Not that drunkards cannot make decisions, but we will have misgivings on how well he will interpret the law and sort the matter out.

The most challenging issue in the Judiciary is the increasing backlog of cases. The Report indicates we have almost half a million pending cases. Many of them are criminal in nature involving the downtrodden in society who have no powers and no means to get bail and argue their case while outside. They rot in the cells and police remands. Life and labour are lost and generally their social life is disadvantaged. The State has to spend unnecessarily too much money to keep them in the cells. So, we urge the Judiciary to look for fair bond terms considering the situation and the status of the victim or the accused.

As I conclude, I wish the Judiciary can be given more money. Funyula Constituency has no court room. We were promised and even a Supreme Court Judge, Dr. Smokin Wanjala, was detailed to break the ground for the court room construction but up to now, nothing has happened. We have to travel over 100 kilometres all the way to Busia Town to answer to even petty cases such as being found resting after work, enjoying our local brew.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Very interesting contributions Hon. (Dr.) Oundo, but on point.

Let us have Hon. Wario. Member for Bura.

**Hon. Ali Wario** (Bura, JP): Asante, Mheshimiwa Naibu Spika wa Muda kwa fursa hii. Zamani kuna mtunzi mmoja wa Shairi aliyesema:

Uhuru sijauona, na tunda silibaini  
Ijapo tumepigana, tukang'oa mkoloni  
Limebaki kubezana, na utu kutothamini  
Tunda la uhuru lipi, Mkenya shamba huna?

Mheshimiwa Naibu Spika wa Muda, tunapozungumzia uhuru wa mahakama, vifungu vya sheria 48, 49, 50 na 51 vinazungumzia kwa upana uhuru wa mahakama. Uhuru huu utatoka wapi iwapo Jaji Mkuu na majaji wa Mahakama Kuu ni watu wanangoja waajiriwe na Rais, Rais ambaye licha ya kuwa kiongozi wa taifa, ni kiongozi wa utawala? Kwa hivyo, mimi naona kuna chembe kubwa hapa. Uhuru wa mahakama ni ndoto mpaka tuwe na sheria maalum ambayo inawapa rasilimali bila kuomba. Jaji Mkuu anasimama hadharani akiomba apewe rasilimali. Sasa uhuru utatoka wapi wakati Jaji Mkuu hawezi kutekeleza wajibu wake wa kisheria mpaka aombe utawala umpe hela aweze kutekeleza kazi yake?

Kuna dhana potovu kule nje kwamba Bunge la Taifa ndilo linasimamia ugavi wa rasilimali za taifa. Kuna vipengele kadhaa katika sheria yetu vinavyoruhusu utawala kutumia pesa bila kupitia Bunge. Ni tamthilia uwezo wa Bunge kusimamia ugavi wa rasilimali. Ugavi wa rasilimali ni siasa. Ni mchakato wa siasa. Ndiposa kama mahakama inafanya kazi yake vilivyo, mifereji hufungwa ili wahisi kiu, walie na waombe ifunguliwe kidogo kwa mtiririko. Kwa hivyo, uhuru wa mahakama ni ndoto ambayo ni ngumu Wakenya kuifikia kwa sasa.

Demokrasia nyingi duniani zina mipaka baina ya utawala wa Bunge na mahakama. Kenya pia tunaamini kwamba kuna mipaka baina ya utawala, Bunge na mahakama. Lakini utawala ndio unakalia rasilimali. Umewahi kusikia hukumu ikitolewa kwamba ndugu yetu

Miguna Miguna ana uhuru wa kurudi Kenya? Imetokea nini Miguna hawezi kurudi Kenya? Ni kwa sababu utawala hauna masikio ya kusikia hukumu ya haki. Miguna hawezi kurudi Kenya. Vivyo hivyo, utawala wa mahakama ni ndoto.

Katika Tana River, kuna Mahakama Kuu moja kule Garsen. Tana River ni kilomita 88,000 mraba. Ili mtu aliye Balambala aweze kufikia Mahakama Kuu iliyoko Garsen, lazima asafiri kilomita 400. *Access to justice* kama walivyosema wahenga ni nadra. Ni vipi yule mtu aliye kilomita 400 atapata haki kweli? Ni vizuri tuwe na kifungu ambacho kitatoa uhuru wa rasilimali kwa mahakama.

Uhuru wa mahakama hauwezi kupatikana hadi hapo watapokuwa na uhuru wa kupata rasilimali bila kutegemea taasisi nyingine. Hivyo basi, zile pesa wanazopata zichunguzwe. Hata zile zitakazoenda kwa utawala pia zichunguzwe lakini kuwe na uhuru. Tusifike kiwango cha kumdhalilisha Jaji Mkuu hadi kiwango cha kuomba ama atamani kujiuzulu. Taifa hili linategemea mahakama.

Juzi kulitolewa hukumu. Jaji mmoja wa Mahakama ya Rufaa alisema kushika Wakenya siku ya Ijumaa ni dhuluma. Lile jambo la kushika watu Ijumaa linajulikana kama “kamata kamata”, likimaanisha kwamba watu walale jela jumamosi na jumapili bila kufika mahakama. Jaji Mkuu alisema ni dhuluma. Lakini, nani atamsikiza? Je, watekelezaji wa sheria wataheshimu mahakama? Ni kwa nini hawajaheshimu uamuzi uliotolewa kumhusu Miguna Miguna?

Kwa hivyo, utawala lazima uwe wazi na uwache kukalia mahakama. Utawala lazima utoe rasilimali ya mahakama ili iwe huru kwa mujibu wa vifungu 48, 49, 50 na 51 vya Sheria za Kenya.

Asante.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Mhe. Wario, nimepata raha sana kukusikiza ukitoa hiyo hotuba hapa Bungeni.

Kwa sasa hivi tutamskiza, Mhe. Osotsi.

**Hon. Godfrey Osotsi** (Nominated, ANC): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to also contribute to this very important Motion.

We are discussing the Report on Judiciary for the year 2016/2017 and 2017/2018 which is a requirement under the Judicial Service Act of 2011, that the Chief Justice will present a report on the state of the Judiciary to Parliament every year.

This is one of the best reports I have read in this House. The Report is well written, well-structured and it captures many of the issues that we would want to hear as representatives of the people.

I would like to comment on a few things: One is on budget reallocation as has been discussed by my colleagues. One of the challenges of the Judiciary is lack of adequate budget. I am happy that in the Budget Policy Statement (BPS) that we recently passed, we have increased the ceiling for the Judiciary. I hope when we get the Estimates from the National Treasury, they will not fundamentally go against the BPS that we passed here. Therefore, that is one step in which Parliament is trying to help the Judiciary perform its constitutional role.

I want to comment on the issue of tribunals. According to the Constitution, tribunals are one of the functions of the Judiciary. But the Report notes there are quite a number of tribunals that are still managed by various line ministries. The ministries have not transferred them to the Judiciary and so far, only 40 tribunals have been transferred.

This is a very serious matter and I wonder why line ministries are illegally holding onto these tribunals. One of the issues raised is that we do not have legislation on tribunals yet, this Bill is before the Attorney-General. One wonders why the Attorney-General is taking too long to

bring this Bill to Parliament so that we can help the Judiciary take control of all tribunals and offer justice to Kenyans.

The other issue is the Office of Ombudsman. One of the issues noted is that this office is not known to many Kenyans. A lot of publicity has to be done to make it known. Fundamentally, there is no law that is supporting the establishment of this office. It is more administratively managed and there is no legislation in place. Therefore, the Judiciary should move with speed and come up with appropriate legislation to ensure the Office of the Ombudsman in the Judiciary works, because it is a very critical unit within the judicial system.

The biggest problem we have in the Judiciary is the backlog of cases. This Report attempts to propose various solutions of dealing with this problem. One is that they want to focus more on alternative dispute resolution.

In the Financial Year 2017/2018 they managed to handle 705 cases valued at Kshs20.8 billion. This tells you that we can do a lot in managing some of these cases, if the Judiciary enhanced the mechanism of alternative dispute resolution.

The other issue is non-operationalisation of the Small Claims Court Act, 2016. This was a law supposed to deal with petty cases. According to this Report, this piece of legislation has not been operationalised because there are no rules. Who is supposed to give these rules? It is the same Judiciary. So, why can they not come up with rules to enable them deal with petty cases supposed to be handled under this piece of legislation?

Also, on the issue of judges, they are inadequate. The Report says that a country like Germany with a population of 80 million has 20,000 judges. We are almost half the population of Germany which means for us to operate efficiently we need close to 8,000 or 10,000 judges. We are falling short and this has led to a backlog of cases. That is why sometimes we complain about some of the judgements issued.

The other issue of concern is human resource within Judiciary. It proposes that they would want to enhance the Judiciary Training School. I want to agree with the Committee that we should not have separate training schools, one for the Judiciary, another one for the Office of Director of Public Prosecutions (DPP) and another one for the Ethics and Anti-Corruption Commission (EACC). They should all be integrated because they are related in operation. I think this should be the way to go.

The other aspect of human resource is the issue of performance management and measurement which this Report proposes. I hope the Judiciary will move with speed and actualise some of these proposals put in place. This will enhance the quality of judgement and work they dispense. One of the things this Report has not talked about which is serious and needs us look into as a country is the composition of Judicial Service Commission. This is a serious matter because this Commission has 11 members and out of them six are from one community. We cannot have a JSC that does not comply with the laws according to Article 10 of the Constitution.

Something has to be done. This is because we will get to a situation where the JSC will call for a meeting, get quorum and conduct the meeting in vernacular. This is a very serious issue. I hope the Chief Justice is listening to this debate and will do something about it. Lastly, even as we talk about inadequate funding of the Judiciary, it has been operating without a substantive finance director. Someone has been acting in that position for four years. Even after doing an interview they have not appointed a substantive finance director.

We know a lot happens in terms of finance in the Judiciary. Something needs to be done. I am happy the Chair of the Departmental Committee on Justice and Legal Affairs is here and is

listening to us. We need a substantive finance director at the Judiciary. This is because a lady by the name Susan Oyatsi has acted for four years. They did an interview and she emerged number one but she has not been given the position. We need to know why this has taken too long. The Chair of the Departmental Committee on Justice and Legal Affairs, this is an assignment for you.

Hon. Temporary Deputy Speaker, with those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Osotsi, how do you intend to deal with the composition of the JSC knowing the different components are elected by different bodies? I know for certain that the Law Society of Kenya (LSK) elects some part of the JSC, the magistracy, the judges of the High Court and Court of Appeal also have elected representation. I hear you but I do not know how to deal with this. Probably, it is the same conundrum we face in this House, on how to effectively ensure the two-thirds rule is complied with.

Very good contribution, Hon. Osotsi. We shall have contribution from Hon. Kibeh, Member for Gatundu North.

**Hon. (Ms.) Wanjiku Kibeh** (Gatundu North, JP): Thank you, Hon. Temporary Deputy Speaker. I wish to add my voice in supporting the Report of the Committee on the State of the Judiciary. Allow me to confess that before my election, I had never had a court case. Interestingly, I got a petition and I was able to understand very clearly the saying that justice delayed is justice denied. I commend the Committee because they have tried to highlight and focus on the main areas and challenges that the Judiciary is facing. I appreciate the fact that they have a very deliberate and strategic plan on sustainable judicial transformation to ensure that right from the bottom going up, there is a very deliberate strategy to make sure that we reduce the backlog in our courts.

In my work, I have encountered very many cases of our people who have been to court for very many years. Others have faced frustrations and they have even died. When we are talking about a backlog of over 170,000 cases that are before our courts, then this is a matter that should worry all of us, especially us as the leaders. I agree with the Committee that there is need for the Judiciary, through the Ministry, to bring to this House legislation that would somehow prescribe how much time cases should take in a court of law. I have also noted that there are very good strategies to make sure that the Judiciary establishes court stations at various levels. I am happy that Gatundu North is just about to be one of the beneficiaries of this strategy. However, this cannot be achieved if we do not facilitate the Judiciary in the right way. I agree that we are facing austerity measures in this country but at the same time, I think the Judiciary has a very huge responsibility. Whenever we are faced with situations that require litigation and solutions or determination, we all run to these courts. In the same breath, we expect them to bear the very heavy responsibility of serving justice to this country. It is, therefore, hypocritical that, again, we go behind and feel that we should not facilitate them in the right way. I wish to support that we facilitate them to be able to do their work. We need to also look at some of these challenges that the Committee has highlighted.

I have noted that the Report also highlights the Judiciary as facing inadequate judges and magistrates. This is one of the areas they critically need to look at so that we can fast track court cases.

With those few remarks, I support the Report.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): A very good contribution. Next is Hon. Mogaka, Member for West Mugirango.



**Hon. Vincent Kemosi** (West Mugirango, FORD-K): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to also support the Motion.

The establishment of the Judiciary is under Chapter 10 of the Constitution of Kenya. Article 160 of the Constitution has given the Judiciary the independence it deserves. In reality, the independence of the Judiciary, under the Constitution of Kenya 2010, has not been the reality. For any entity to obtain its independence, that particular entity, including the Judiciary, must have enough resources to run its affairs. It is obvious that the Judiciary or the court system in Kenya has been starved of resources. That has made the backlog of cases to increase day by day. The state of the Judiciary currently is wanting.

You realise that after we promulgated the Constitution in 2010, between the year 2011 and 2016, there were establishments of many courts in Kenya. Initially, before the new Constitution, we only had 11 High Court stations. However, during the period between 2011 and 2016, we had an increase in High Court stations numbering to 40 or more. Construction works of most of the court houses are not ongoing because there are no enough funds to finish them. Even the lower and subordinate courts have suffered a similar fate. This Report captures the state of the Judiciary. The Judiciary currently needs not less than Kshs2.1 billion so that it can complete construction works. We have not mentioned recurrent expenditure, which is a day-to-day expenditure of the court system. Last year, because the Judiciary had been starved financially, the Chief Justice had to recall Court of Appeal Judges from various stations, including Mombasa, Kisumu, Malindi and Nyeri, to Nairobi because they had no enough resources. This has hampered administration of justice. The only way we can dispense with justice is for this august House to allocate enough resources to the Judiciary.

It is a fact that we cannot have justice where the Executive does not respect the independence of the Judiciary. That has been provided under the Constitution. This is absolute abuse of the Constitution of Kenya. It is a fact that after the Judicial Service Commission concluded the process of filling up various positions of judges last year, the Executive blatantly refused to avail money for that purpose. Article 166 of the Constitution of Kenya does not give the President of the Republic of Kenya an option of either to appoint or not to appoint the judges of the High Court. It only gives him the mandate to appoint. So, he does not have the powers to vet or not to appoint judges. We can only do this if we stand up and say enough is enough. As we speak, the only institution that has the faith of Kenyans is the Judiciary and not the Executive or Parliament. So, it is necessary for us to realise the independence of the Judiciary, that we give them enough resources. The Constitution provides for a Judiciary Fund. The monies allocated by this House should directly be channeled to the Judiciary Fund.

In this financial year, the Judiciary had asked for Kshs33.8 billion but they were allocated Kshs18 billion. That is a shortage of about Kshs15 billion. How are they going to execute their duties if they have a shortage of Kshs15 billion? It is my submission that we need to look at the Judiciary. The Judiciary must be allocated funds. In order for it to have independence, I propose that, going forward, as Members of Parliament, we come up with an amendment to the Constitution so that we provide that during allocation, a certain percentage is given to the Judiciary. That way, it will be the mandate of this House to directly allocate the funds to the Judiciary as provided in the Constitution. If we do that, we will be able to limit the role of the Executive in allocating funds to the Judiciary.

In terms of backlog of cases, that is a headache in itself. Most of the people in the Executive have never experienced a backlog of cases in various courts. They have never been taken to court so that they can experience the pain of having a court case delayed in court.

Hon. Temporary Deputy Speaker, you and I are advocates of the High Court of Kenya. We have been in practice. We have seen how litigants suffer. Some people in high offices have never had that experience.

With those few remarks, Hon. Temporary Deputy Speaker, I support the Report because the independence of the Judiciary must be exercised.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Vincent Kemosi, I am enriched by your take on the provisions of Article 166 of the Constitution. It is important for us to obey the Constitution on its stipulations on appointment of judges.

We shall have the contribution from Hon. John Mose, Member for Kitutu Masaba.

**Hon. Shadrack Mose** (Kitutu Masaba, JP): Thank you, Hon. Temporary Deputy Speaker.

First and foremost, Hon. Temporary Deputy Speaker, I would like to appreciate and thank the Committee for a Report that is well researched and represented. I listened carefully to the Chairman and the Seconder — who incidentally were my classmates — and I was thoroughly impressed.

I would also want, Hon. Temporary Deputy Speaker, before I forget, to concur entirely with the submissions of the Member of Parliament for West Mugirango on Article 166 of the Constitution. We need to respect and follow the Constitution. Nothing is left to us in the Constitution as an option of any further delay. In fact, we need to amend that bit of the Constitution and add a rider, that if the President does not appoint judges within a given period — for instance within 7 or 14 days — then we should have those judges automatically appointed.

Indeed, Hon. Temporary Deputy Speaker, the doctrine of separation of powers, where we are talking about the Judiciary, Legislature and Executive, is anchored in the Constitution. We need to secure the independence of the Judiciary by ensuring that we give them the financial support that they require. How would this happen? We need to anchor in our Constitution a provision where we have a direct financing—a certain percentage of financing—that should go directly to the Judiciary without having to go through National Treasury — where you will be told that there is no Integrated Financial Management Information System (IFMIS) or it has an issue— and at the end of the day, this has a lot of consequences that affect the entire administration of justice.

Hon. Temporary Deputy Speaker, a lot has been detailed in this Report but largely, if we all listened to the Chief Justice of the Republic of Kenya, he was in a lot of problems when he addressed us. One of the issues that the CJ raised was the issue of funding. As far as I know, funding is almost everything to the Judiciary. Talk of the human resources which means the people who serve in the Judiciary — the clerks and all the personnel — if you do not have enough of these who are the facilitators of the justice system, at the end of the day you will not make progress.

Secondly, Hon. Temporary Deputy Speaker, I am extremely shocked to learn that since 2018, there has not been employment of magistrates in this country. What does that tell you? Whereas the number of cases is continually increasing on a daily basis, the number of staff and magistrates that will be able to handle these cases remains stagnant. Therefore, that would lead to a backlog of cases. When you talk about the backlog of cases, it means day in, day out, as we continue to register cases in our registries, the number of cases that are being handled by a single magistrate will continue to increase. So, the number of cases that they are going to address in a single day will remain the same but the backlog will increase.

Hon. Temporary Deputy Speaker, the same applies to the issue of judges. We have very few judges. I am shocked that we only have 33 judges who are dealing with land cases. On a day-to-day basis, the number of land cases and disputes that are arising between various parties, groups, organisations and institutions are on the increase but the number of judges remains constant. To worsen the scenario, even those judges who have undergone a rigorous vetting exercise and are appointed by the Judicial Service Commission to date — almost one year down the line — have not been appointed to ease the number of backlog cases. That is why we need to amend the Constitution and ensure that if the President does not expedite the process of appointing judges, say within a period of maybe 14 days, those judges should be automatically appointed. This will help this country and reduce the backlog of cases.

I have seen from the Report, Hon. Temporary Deputy Speaker, the issue of alternative dispute resolution. It is one of the good relieves that the Judiciary has come up with which is a deliberate move to ensure that while they are handling cases through the normal judicial system of dealing with civil and other cases in court, they also give a chance to alternative dispute resolution undertaken by mediators and parties that set their terms of articulating those cases. At the end of the day, you will find that — as we have seen in the Report—about 700 of these cases have been resolved. I am sure, as one of the advocates that as parties engage, they would reduce the tensions that normally arise when parties go to courts and somewhere down the line, they will find a middle ground of settling cases.

Hon. Temporary Deputy Speaker, in this Report, there is also the issue of the tribunals, that we should be able to come up with legislation in this Parliament. We should have tribunals that are managed by the Judiciary. I happen to practise before tribunals that are handled by line ministries and the manner in which they are handled leaves a lot to be desired. In fact, Parliament should move with speed and ensure that we come up with a tribunal Bill that would ensure that we expedite them in a fair and expedient manner, so that those tribunals are able to move with speed.

Last but not least, there is the issue that has always arisen of courts delaying cases. Convictions cannot be given by the courts. It will depend on the evidence that is adduced in court by the prosecution. We should ensure that both parties are ready so that the Judiciary can proceed.

With those remarks, I support the Motion.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us have Hon. Mbogo Menza, the Member for Kisauni.

**Hon. Mbogo Ali** (Kisauni, WDM-K): Asante sana, Naibu Spika wa Muda, kwa kunipa fursa hii kutoa usemi wangu kuhusu Ripoti zetu za Mahakama.

Kusema ukweli, ni jambo la kusikitisha na kutamausha kumwona Rais wa Mahakama Kuu ya Jamhuri ya Kenya akiongea mbele ya wananchi akilalamika anavyonyanyaswa, anavyoonewa na anavyodhulumiwa. Hii haitoi taswira nzuri kwa Jamhuri ya Kenya kwa sababu Rais wa Mahakama ni mtu mkubwa sana katika Jamhuri yetu. Nakumbuka vizuri sana hivi majuzi tulipokuwa na sherehe ya kitaifa ya Mashujaa Day katika Kaunti ya Mombasa. Rais wa Mahakama Kuu alilalamika sana akisema hakutambuliwa wakati alifika katika sherehe kubwa za Serikali kama ile. Ikiwa tunashindwa kumtambua Rais wa Mahakama, je kweli tutaheshimu uamuzi wa mahakama? Yeye ndiye Rais wa mahakama zile. Ni lazima tufikirie jambo hilo kama Bunge, tuone vile tunaweza kusaidia mahakama zetu na kuzipa nguvu zinapofanya uamuzi wao.

Maamuzi mengi yametolewa na mahakama zetu lakini hayasikizwi wala kutekelezwa. Jambo hilo linaonyesha madharau makubwa sana katika Jamhuri ya Kenya. Yale yanayofanywa

na mahakama yanaonekana katika ulimwengu mzima. Uamuzi uliotolewa na mahakama unasikiza ulimwengu mzima. Ikiwa uamuzi ule hauwezi kutekelezwa, ni kuumanisha kuwa hata wale waekezaji walioko nje ya Jamhuri ya Kenya wanahofia kuja kueleza katika Jamhuri ya Kenya kwa sababu wanajua kesho wakiwa na shida wapelekwe katika mahakama na uamuzi utolewe, uamuzi ule hautatekelezwa. Jambo hilo linaonyesha picha mbaya sana ya Jamhuri yetu ya Kenya.

Kuna kiongozi hapa ameongea, Mjumbe wa kule Bura, akisema kuwa siku hizi, ikifika siku ya Ijumaa, watu wanakamatwa. Inaitwa kamata kamata. Kamata kamata ni kule kushikwa siku ya Ijumaa. Kuna jaji alitoa hukumu juzi akisema hiyo ni dhuluma. Lakini kusema kweli, nani atasikiza dhuluma kama ile? Ijumaa itafika kesho kutwa na utasikia mtu fulani amekamatwa na awekwe rumande kuanzia Ijumaa hadi Jumapili kwa sababu siku hizo hakuna mahakama inafanya kazi katika Jamhuri ya Kenya. Atafikishwa mahakamani siku ya Jumatatu.

Mahakama za Kenya zinapigwa vita kila upande. Zinapigwa vita na Bunge la Kitaifa lenyewe kwa sababu sisi ndio tuna uamuzi wa mwisho katika kupitisha bajeti. Leo Mahakama isipocheza vile tunavyotaka, tunasema kuwa kama hawawezi kufanya yale yanatakikana basi bajeti yao itakatwa.

Naongea kama Mjumbe wa Kisauni. Sisi watu wa Kisauni, Mombasa na Pwani kwa jumla tumeumizwa sana na kesi za mashamba. Leo ukienda katika mahakama zetu kule Bura, Garsen, Malindi, Kilifi, Mombasa, Kwale na Taita utapata kuna kesi zaidi ya elfu sita zimerundikana pale kuhusu masuala ya mashamba. Yote hayo yameletwa na ukosefu na uchache wa majaji na mahakimu. Kama tulivyosikia, mara ya mwisho mahakimu walijajiriwa ilikuwa ni katika mwaka wa 2011. Miaka tisa baadaye, hakuna hakimu yeyote ameajiriwa kupunguza ule mrundikano wa kesi katika korti zetu. Ndio maana tumesema leo korti zetu zimepata picha mbaya.

Korti zinatambulika kuwa na sheria mbili. Kuna sheria ya matajiri na sheria ya masikini. Ukiwa masikini, kesi yako inaweza kuenda miaka mitano au sita mpaka ukashindwa njiani na ukaachana na kesi ile. Kwa sababu gani? Labda korti iko kilomita 300 kutoka pale ulipo na unatakikana ufike pale utoe ushahidi. Lakini kwa sababu huna uwezo, utakwenda mara ya kwanza na mara ya pili mwishowe unaachana na kesi kama ile. Uamuzi unatolewa. Mambo hayo yameleta picha ambayo inaonyesha mahakama zetu zinapendelea upande fulani. Lakini ukweli ni kuwa mahakama zetu hazipati fedha za kutosha za kuendeleza kazi zao.

Juzi juzi tuliona mahakama nyingi zilisimamisha kazi zao kwa sababu hawakuweza kupata pesa za kulipia mafuta ya majaji kuenda kusikiza kesi kama zile. Hii ilionekana katika Jamhuri yote ya Kenya. Tuliona Malindi walifunga korti. Huku pande ya Kiambu korti ilifungwa kutokana na ukosefu wa hela ili mahakama zitimize wajibu wao wa kikatiba.

Nilisikia ikitangazwa juzi kuwa mwaka jana, Mahakama ilikusanya ushuru wa Ksh700 milioni. Lakini leo unapata kuwa pesa wanazogawiwa kila mwaka zinazidi kupungua. Hatujui ni kwa nini zinazidi kupunguzwa. Tunajua kuna mikakati imewekwa kwa sababu uchumi haufanyi vizuri na tumepunguza hapa na pale lakini tunajua umuhimu wa mahakama zetu katika Jamhuri ya Kenya. Ni lazima kila Mkenya kuanzia Rais mpaka mtu wa kawaida aheshimu hukumu na uamuzi wa korti zetu za Kenya.

Ukikumbuka mwaka wa 2017, Mahakama ya Upeo ilitoa uamuzi wakati wa kura ya urais kati ya Mheshimiwa Raila Amolo Odinga na Mheshimiwa Uhuru Kenyatta. Uamuzi ulitolewa kuwa ni lazima kura ile irejelewe kwa sababu kulikuwa na makosa fulani hapa na pale. Lakini viongozi wote - Mheshimiwa Raila Odinga na Mheshimiwa Rais Uhuru Kenyatta - waliheshimu uamuzi wa korti, kura ikarejelewa na mshindi akapatikana. Leo tuko na Mheshimiwa Rais Uhuru

Kenyatta kama Rais wa Jamhuri ya Kenya. Ikiwa tulisikiza na kutii uamuzi ule mkubwa ambao ulikuwa ni wa Jamhuri nzima ya Kenya, kwa nini hatuwezi kusikiza haya maamuzi madogo madogo ambayo yanatolewa na kuhakikisha yametimia? Hiyo inaonyesha kuwa hatuko tayari kuitambua Mahakama kama kiungo muhimu.

Huwa tunasema kuna viungo vitatu katika Jamhuri ya Kenya lakini kiungo cha Mahakama ni kiungo dhaifu. Kiko tu pale na watu fulani wanakichezea vile wanavyotaka. Lakini umefika wakati ni lazima tukubali kuwa mahakama lazima zisaidiwe na tuhakikishe zimejengwa kila sehemu ya Jamhuri ya Kenya. Leo Mombasa tunajenga mahakama nyingine. Ujenzi wa mahakama ile umesimama kwa sababu hakuna pesa ya kuendelea kujenga. Hii ni kumaanisha kutakuwa na mrundiko wa makesi kwa sababu mahakama hazitoshi. Tumesikia Mbunge wa Bura akisema mtu anatoka Mbalambala anasafiri kilomita 400 kuenda Garsen. Hiyo ndio korti iliyo katika eneo la ugatuzi la Tana River nzima. Eneo nzima liko na korti moja. Niambie kama mtu ataweza kufanya safari hiyo ya kilomita 400 afike mahakamani.

Naunga mkono Ripoti hii. Lakini sisi kama Wajumbe tuna kazi kubwa ya kufanya ya kuhakikisha Mahakama yetu imepewa uhuru wa kufanya kazi zake kisawasawa bila kuingiliwa na upande wowote - sio Bunge wala upande ule mwingine.

Naunga mkono Ripoti hii kikamilifu.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well. Let us now have Hon. Gichimu Githinji.

**Hon. Gichimu Githinji** (Gichugu, JP): Thank you, Hon. Temporary Deputy Speaker for the opportunity to contribute in support of the Report.

The Judiciary is one of the three arms of Government which also includes the Executive and Parliament. The independence of the Judiciary should be enhanced. It should not only be on paper. As envisaged by Article 160 of the Constitution, the Judiciary shall not be subject to the control and direction of any person or authority. When the funds of the Judiciary are under control by another arm of the Government, that is another issue. I support and associate myself with the sentiments or contribution by Hon. Shadrack Mose. It is high time that we amend the Constitution so that we can also have a provision of a certain percentage of the total revenue allocated to the Judiciary Fund. Just like we have a percentage going to the counties, we should also have Parliament deriving its funds directly from the Exchequer as a percentage. That way, Parliament and the Judiciary will not be under the mercy of the Executive. It is the only way those two arms of government will be able to act independently and efficiently.

Hon. Temporary Deputy Speaker, financial independence will also enable the wheels of justice to roll in a good way. Of late, we have been seeing notices in courts that there will be no sittings because a judge or a magistrate was not facilitated to get to the station. That is delay of justice and we all know that justice delayed, is justice denied. This is affecting Kenyans who are the litigants in those courts. They are really suffering. Actually, the cost is being transferred to the litigants.

Another very critical aspect that I would like to applaud and congratulate the former Chief Justice, Justice Gicheru for is that during his tenure, he expanded law courts. Indeed, law courts were opened in almost every sub-county. I believe there are few sub-counties that do not have law courts. The current CJ is also working hard to ensure that law courts are accessible to the litigants, as a way of promoting access to justice.

I know there are infrastructural challenges in the law courts. I happen to have asked a question in this House about how the Judiciary is planning to make sure that the law court in Gichugu Constituency is well fenced to make sure that there is security as well as enough

facilities. Law courts have some holding cells within their premises. Most of the courts only have a chamber for a magistrate to sit in but there are no holding cells or even facilities like toilets. That is a very big problem within my constituency and I am really following up with the Judiciary.

My question was answered, but it was with the kind of cry by the CJ that we witnessed: that one of “there are no enough funds”. How could they prioritize the building of security walls and other infrastructure and yet they are unable to facilitate a judge to reach his or her work station to handle cases?

The other issue that needs to be looked at is the backlog of cases. These things that are affecting the efficiency in the Judiciary are all surrounded by the issue of funds. If Judges are not able to go handle cases, of course, there will be backlog. I believe that the most critical part is to ensure the independence of the Judiciary, including the availability of funds. We can do that by way of legislation. We can have an amendment to the Constitution that a certain percentage be put aside, but that amount should also be put to very strict audit to avoid wastage. Should there be any excess money that is not used at the end of a financial year, it should be ploughed back to the National Treasury for the benefit of other Government departments.

Another area that the Judiciary needs to be very keen on is employment and remuneration of the officers. They should be above board, in terms of pocket independence. This way they will not be tempted to take bribes in order to adjudicate cases. Remuneration of a judicial officer is a critical aspect of the reforms in the Judiciary. This needs to be looked at so that, a judge dispensing justice will not be tempted to look at other areas for them to make a decision concerning a certain matter.

The other issue is the management of the cases in court. There is a good reform that was introduced by the former CJ, Justice Gicheru that there should be pre-trial directions before a case starts. That would ensure that there will be minimal adjournments in cases because once the case is set for hearing, all the parties will be ready to proceed. But we are also seeing that in some cases, pre-trials are done and yet the cases are adjourned every other time, hence creating a backlog. That should be strictly followed. Once a matter has been confirmed for hearing through a pre-trial direction, that matter must proceed unless there are compelling reasons to adjourn. This will help in the reduction of backlog of cases.

I would like to stop at that point. I also support the report. It comes at a crucial time when we need to reflect on the issue of funding of the Judiciary.

Thank you Hon. Temporary Deputy Speaker

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Gichimu, I was wondering whether you are not confusing the two former CJs, Justice Gicheru and Justice Mutunga because you seem to have referred a lot to CJ Gicheru yet I have information that the two examples you gave were done by CJ Mutunga.

**Hon. Gichimu Githinji**, (Gichugu, JP): Thank you for that correction. It was both. The reforms were started by former Chief Justice Gicheru. Former Chief Justice Mutunga was able to carry on with the reforms. I believe that the current CJ is also doing something to ensure that the wheels of justice role effectively and smoothly.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well. Hon. Mutunga, you may proceed.

**Hon. John Mutunga** (Tigania West, JP): Thank you Hon. Temporary Deputy Speaker, for the opportunity to contribute to the adoption of the report on the Judiciary. This being an independent arm of Government, we would expect, as Kenyans and as leaders in this country, for

it to be treated as an independent arm and also as an important arm in this Republic. The Judiciary has a lot of work to do. This work needs to be done in record time. They have specialised in a specific business which everybody cannot do: to provide justice to Kenyans.

In a growing economy like ours, there are need demands growing, devious is growing, and we need to be looking at how we should grow the budget of an independent office like this one, so that it will be able to attend to the increasing demands. It is amazing how we may find or realise that there is no correspondence between the expected growth and the levels of funding to the Judiciary. It is also amazing that the Judiciary has to be put on a begging mission most of the time. Every time, we find the CJ talking to the nation, we always expect that he will be complaining that something is not going right or he is not being treated with the due dignity of the office that he holds.

One may wonder, if we want an independent and efficient justice system that helps Kenyans to grow as an economy, then why should we not adequately fund the justice system? We have been treated to the work plan of the Judiciary. They want to improve the courtrooms, build more court houses, improve on the infrastructure and digitise. They are seeking to improve the flow of information. They also want to improve on the speed with which they handle cases. Unfortunately, the underfunding aspect has made it impossible for them to improve in any of these areas.

Therefore, instead of having increased efficiency in dealing with the businesses at the Judiciary, we have decreased it and this is deliberate. This is the case and yet we are in a country that is struggling in dealing with corruption, struggling with the backlog of cases that have been awaiting determination for too long and we are a country that may not deal with cases for up to ten years.

Hon. Temporary Deputy Speaker, we need to have funding of the Judiciary looked at more positively than it is right now. Whenever we cannot influence, we delay. This is one of the principles that has been applied especially in the resource allocation in the country. I would like to say without any fear of contradiction that the Judiciary is underfunded deliberately. I hope this is not an execution of the threat that the Judiciary was given at one point in time.

This House has occasionally had to address the issue of the Judiciary in terms of trying to retain funding levels that have been requested or retain the previous year's funding levels instead of reducing. When the Executive suggests or proposes that we should reduce funding of the Judiciary, one wonders whether we are reducing in population or we are reducing in the number of cases or have we become so perfect that we have other mechanisms of dealing with cases, therefore, we need to reduce funding for the Judiciary. No wonder we have not had employment in the Judiciary for the last many years. No wonder we have not significantly improved the efficiency of dealing with matters in the Judiciary in the previous period. Therefore, this Report outlines a number of things that need to be looked into if our Judiciary is going to deliver in view of the circumstances it is operating in and in view of the demands that we place on it as Kenyans.

If we are allowed to ask one question, we would pose that supposing the Judiciary gets money directly instead of controlled by the Executive as an independent arm. I do not just have in mind the Judiciary only, but the three independent arms of Government. Suppose we look at the Constitution and introduce provisions that make independent arms truly independent, can that not be a better suggestion than having control or arm twisting independent arms of Government so that our Government can operate with due credence and respect that is expected? Even the Legislature suffers sometimes serious proposals of serious reductions of the budget. We may need to rethink the Constitution in terms of the provision in that particular area.

In capacitating the Judiciary, we need to improve on the number of people working there. We understand the personnel have not changed for a while and we are in a growing economy. We also need to look at the capacity of the personnel and the extent to which we are sharpening the edge of judges and magistrates and those who handle the operations in the Judiciary to become better people in changing circumstances of the growing world.

We also need to look at the extent to which we are establishing new systems, giving them amenities and making it easy for them to perform better than they are doing right now. That cannot happen without proper or sufficient funding of the Judiciary. Whenever the Chief Justice speaks, he always complains that there are issues not going on well and he points fingers at a specific direction. I wonder why our Executive does not look at such matters positively when every Kenyan sees that they are deliberately causing damage within some of the systems that exist.

We realise that the Judiciary is basically targeted. We can only hope that the Judiciary is not under some kind of punishment and that it is not being forced to go through duress because of certain un-kept promises or those kept. Any of the above should be condemned in the strongest terms possible. If anyone wants to make sure the Judiciary does not perform effectively, that person is an enemy of development or that system is an enemy of Kenya. Any of the above, therefore, should be condemned in the highest terms possible.

Finally, I may not be a lawyer as I say this, but I understand that the Judiciary is suffering in most parts of the country. I understand that things are not moving. I understand they need more money and better money meaning in areas to increase efficiency and effectiveness of the judicial system of the country. If not enabled, then we are going to face a lot more challenges as a country. We are going to face more deviants; we are going to have more delay of cases that remain unresolved; we are going to have a lot more of the backlog of cases in courts; and we are going to have a lot more of corruption. This is so because I believe if the systems are not working, then it will expose the entire system to other ways of doing business. We cannot forgive especially those who undermine the Judiciary or who seem to do this trying to make sure that the Judiciary does not work.

So, with those very few remarks, this Report is timely and has exposed a number of issues that we need to think through as a nation and as a House. We need to make a decision when it comes to independent institutions in the country, not only the independent arms of the Government but also independent commissions that probably suffer at one point in time because they are not allowed to do their work the way they should.

I support the Report.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): I saw Hon. Bunyasi smiling when he heard you say “very few remarks”. Hon. Bunyasi, you have the Floor.

**Hon. Sakwa Bunyasi** (Nambale, ANC): Thank you, Hon. Temporary Deputy Speaker. I rise to positively take note of this Report on the Judiciary. Without attempting to repeat what my colleagues have said, I want to approach it from the way that bothers my mind.

At one level, if we think about the Judiciary as a wholesome institution in this Republic, it is critically essential for curbing the excesses of power. One reason we have the Judiciary as an independent arm comes from the old saying that power corrupts and absolute power corrupts absolutely. So, one of the responsibilities of the Judiciary is to curb excesses of institutionalised power like that of the Executive. There is also power in our societies where the well to do can have their way no matter how. The Judiciary is to help to curb such excesses; institutional and social excesses, that occur because we are not of equal strength within society. Critically



important is to hold together the Republic. If we do not pay attention to that, then we will make it a banana republic.

This same Republic that oppresses its weak and where the Executive who are employees of the people, wants to exercise excessive executive power yet they are supported by the taxpayer. This is completely unconscionable. In this respect, as much as we look at those other areas that oppress the Judiciary, at the end of the day, it is Parliament that has the ability to amend the laws and has the ability to bite if it so chooses. We see threats to the Judiciary which have been many and furious coming at high speed but we do not do anything. We begin to look at political affiliations and whether to support or condemn, with none of it based on principle that says we cannot accept those kinds of utterances.

If in fact, in the appointment of judges has gone beyond reasonable time, and we are not convinced there is a good reason for it, but suddenly the Ethics and Anti-Corruption Commission says that many of the nominees have cases... We should remember that we have been appointing people to high level positions including the Cabinet and Principal Secretaries yet we cannot get anything other than a vague statement that the person has not shown up in their investigation or something like that. We do not know if they have investigated, whether the person has not shown up or whether they forgot. We do not know. Now suddenly we get a frustration of an appointment of judicial officers on grounds of that kind. That is at the macro level or the level of the entire institution, and how badly it is going. Here we are crowing around like cocks about how well we are doing in issues of doing business in Kenya. If you cannot obey contracts, if cases take years or decades, how can we be doing so well on that index? It must be quite a partial index used by institutions that are eager globally to show that they are doing good particularly in developing countries. We should not praise ourselves. We should look critically at what is happening internally. We are the only people who understand it. We are the only people who live here. We know it is not going well. It is being magnified by budgetary cuts and reluctance to provide budgetary support.

We can also look at the role of the Judiciary in ensuring fairness to the poor and the weak. We are 47 million people. Probably we have 45,000 well-to-do people and the rest of the millions are people who are struggling and cannot get justice. Murders occur and nobody cares. There will be some high profile something and then it just goes dead, you do not hear about it. You hear of graft and the Friday phenomenon is simply drama. In fact, this should belong to some of these western-type movies that simply do entertainment. Actually, when real work is supposed to be done, nothing happens. You think they are doing investigations. We now hear that the Office of the Director of Public Prosecutions (ODPP) and Directorate of Criminal Investigations have begun to undermine each other. Nothing will move. All elites and the wealthy are trying to oppress the poor and we are looking at it. We hear them saying Constitution that, Constitution this. We are guardians of that. We can induce the change and sensitise process but we are not doing that. It is within our means to make these things happen, be it realisation of financial independence or protection in terms of the law. Protection of these officers is within our means. We are not doing very much there.

It is very sad that on this day and age, we still have judicial officers taking notes furiously as they listen to cases when technology is in abundance. I know it judicial tradition to take notes in that manner; maybe they enjoy it. We can, for example, say we are going to increase funding for development but not for recurrent expenditure. There are certain institutions where recurrent funding is what you really need, including the capital expenditure within recurrent funding. That way, judicial officers will be able to just sit and listen. Judicial officers in the developed world sit

down and listen carefully. They are not worried about taking notes themselves. I am sure our judicial officers know that. They are now saying what is stopping them from getting that done is the Budget. If it is indeed the Budget, we must go to what my colleagues have said over and over – that, we must protect the Judiciary by ring-fencing it. We must put these funds beyond the reach of the Executive. We should put these funds once voted beyond the short-term reach of even Parliament because they may be hungry.

We have had leadership in this House as well as people with varying degrees of support. In some cases where the support is so intense, they draw in the Judiciary to criticise it. Why? So that they are heard out there as having agreed with the positions of the people out there. As legislators, we are just about 400 individuals out of the 45 million Kenyans. We are so privileged to sit here and make those decisions. People think that Parliament is large. We are quite few. We should be able to stand up and do it during our time.

First of all, I do not see why the Chief Justice should bother himself attending national day celebrations. I do not see that in other developed countries. You do not see them in those kinds of functions. They should stay away and do something more useful. When they go and they are ignored, that is doubly sad. The Chief Justice is one of the few within the top five people no matter how you count it. If they are not being recognised, they should not show up. That is my advice to our Chief Justice now, and to others. Do something else. Stay out there. Have an element of mystery there but do not show up in these forums that are clearly political. I feel extremely bad to see the Chief Justice lining up waiting to shake the hand of the Head of the Executive. He should not be there. Let other people do that kind of thing.

Having said all that, we now have a tendency of people getting hold of executive power as they have done. They use it in very bad ways. Some people can even say, “I can slap you, what will you do?” There are cases of violence in and around courts and everywhere. This House is not exempt. We have sitting Members involved in what are clearly criminal activities. It does not go anywhere. Something is wrong. That clearly indicates systems have been manipulated. When systems are manipulated, particularly the system of justice, it is like allowing the country to slide into civil war. That is when you can do whatever you like to whoever you like and they can do nothing about it. That is what we are allowing, as an institution. We should not do that. The interest of this Republic, and more so to those who are seeking to leave behind a legacy, is the interest of poor people who are looking for fairness. So, we should uphold the independence of the Judiciary. As I said, we are a crucial component in the process of upholding the independence of the Judiciary. As I note and support this Report, my prayer is that the Judiciary will truly seek to have independence in terms of financial and operational autonomy.

Thank you.

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

**Hon. Munene Wambugu** (Kirinyaga Central, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to add my voice to this Motion on noting of the Annual Reports on the state of the Judiciary for financial years 2016/2017 and 2017/2018.

I want to associate myself with the Members who have supported this Report and say that this Report has shown what is wrong with the Judiciary. It has shown what they are doing about it and where they expect to go. We must appreciate that Kenya is a country governed by the rule of law. The institution that has the constitutional duty of interpreting the law is the Judiciary. So, we cannot do without Judiciary.

We also know that Kenyans are quite litigious, which is a good thing because it means that Kenyans know their rights. The substitute to having a working Judiciary is chaos. So, we

need a Judiciary which is working. As parliamentarians, we must make sure that our Judiciary works. As captured in the Report, one way of making it work is to fund it adequately.

It is very clear that of the three arms of the Government, the most underfunded is the Judiciary. The Judiciary, and to some extent Parliament, lack financial autonomy. Because of lack of financial autonomy, we become an appendage of the Executive. We always rely on the Executive for funds. This low funding of the Judiciary has led to a situation where there is not enough infrastructure in terms of court rooms and personnel. In our country, we have about 500 magistrates, which is quite a low figure compared to the number of the court cases that are filed each day. The same case applies to Judges of the Court of Appeal. Without enough manpower, we are bound to experience delays in hearing of cases. We all know that justice delayed is justice denied.

Presently, if you are a practising lawyer or a litigant and you go to the environment and land court, for example, they have dates from May 2021 yet we are in March 2020. If you get a case in the environment and land court, you can only get a date next year. Are we really serving justice to the people of Kenya? This lack of proper funding of the Judiciary is unnecessary. It is a form of interference with the independence of the Judiciary because you cannot be independent if you do not have enough resources. The recommendation by the Committee that the Judiciary should be well-funded should be the way to go. Actually, with the Judiciary Fund, time has come when the Judiciary gets its own money directly from the Consolidated Fund without being at the whims of the Executive which releases the money when it wants and pleases.

The other issue I would like to touch on is about digitisation of our courts. We have to digitise our courts going forward. It seems, much as there is not enough funding to do that, there is not much impetus to really and completely digitise our courts. The advantage of doing that is, first of all, you are going to ensure that the proceedings of the courts are accurate. For lack of a better word, some dishonest judges or magistrates sometimes do not record the proceedings the way they are supposed to. One has no way of ascertaining or knowing whether what you have said is what the court has recorded. With proper recording like the way we have the *Hansard*, if you deny whatever you say, it can always be pulled out. With proper recording, it will ensure that what was said in court is what the judge or magistrate recorded. The other advantage is that there will be quicker determination of the matters. It is because recording proceedings using the hand which is time consuming should be an issue of the past. The way things are going, the Judiciary must catch up or wake up or put more effort towards this issue.

The other thing which is a bit disturbing and was noted by the Committee is having conflicting judgements from the same court. You will find that a court in Mombasa says this and another court in Nyeri says this yet it is almost a similar matter, principles and all that. So, I think our judges and magistrates need to be continually empowered on how they do their research and all that such that their judgements are uniform. Then you will be sure to get the same judgement as one in the Nyeri High Court if you are in the High Court of Kisumu. It is because justice is for all of us, whichever part of the country you come from.

Although there is an Office of the Ombudsman in the Judiciary, there is no legal requirement. It is an office created administratively. I think it should be legislated such that it is in law that we must have such an office and what it is supposed to deal with.

There was also the issue of management of cases. You will find that there are delays. There is no law apart from election petitions which determine the timelines of cases. That is an issue which the Judiciary should come up with in a proposed legislation. If they fail, maybe Parliament can take it up so that we know the timelines in any given type of case. One cannot be

in court for 20 or 30 years. The law on election petitions cured a lot of mischief. Before then, you win a case, your election is challenged, the system plays and by the time your election is determined, the other election is coming up. You will find that someone who filed the case when the elections were announced sees the next election held before his or her case is determined. That makes that case superfluous. It has been a good thing. As we speak, most election petitions have been finalised. If it is done for election petitions, why can it not be done on land matters, labour matters and all types of matters? I think it is doable. We should, as a country, move towards that direction of making sure that we set timelines for each type of case. We should say if it is two years, three years or six months for a case to stay in the courts. That is so that, at least, any litigant will know, even in the worst case scenario he or she cannot take more than two or one year on a certain matter. It is a good thing. It is a positive thing and we can learn from the rulings of the courts on election petitions.

The other thing is that we keep on lamenting about how Judiciary is frustrating litigants. However, we must also appreciate that we parliamentarians represent the judges or the Judiciary in our own capacity as legislators. When it comes to issues of independence of the Judiciary, the same force we apply when we are fighting about the independence of Parliament should be the same one we apply when talking about the Judiciary.

With those many remarks, I support the adoption of the two reports because they are good. It is something that is novel. It never used to happen. At least now there is a public report out there and people will know the status of our Judiciary and issues to do with administration of Justice.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. (Dr.) Wamalwa Kibunguchy, the Member for Likuyani you have the Floor.

**Hon. (Dr.) Wamalwa Kibunguchy** (Likuyani, FORD-K): Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to also support this Report of the Judiciary. First of all, I would like to start off from what my colleagues already talked about, that is, equity for justice in the country.

I remember very well the immediate former Chief Justice and the present one working on a modality that would get High Courts established in every county. The target was, at least, one High Court in every county and one Magistrate Court in every sub-county or constituency. It was going on very well until just recently, say, about two or three years ago when it started slowing down. In fact, in Likuyani, we were so excited and we had even got a premise. We were excited that all small cases regarding land sales and others things will not require our people to travel very far to have them adjudicated. However, the momentum on that matter has really slowed down until we got to a point where every time we ask them about it they say, "It is Parliament's fault. You need to give us money." We have come to that and I agree totally with all my colleagues who have said that the Judiciary should be independent and should have its own financial kitty just like Parliament and the Executive.

This is probably the best time that we should be talking about this matter now that we are looking at the Constitution through the Building Bridges Initiative (BBI). This is the time for us to think about a certain percentage of money from the Exchequer that will go directly to the Judiciary. Let them manage it just the same way Parliament does.

Finally, I agree, again, with my colleagues who have talked about having a timeframe within which to complete cases. Cases take far too long to be concluded. Similar cases in the United Kingdom (UK) have already been determined, the culprits jailed and have, probably,

finished their jail terms and are now out. Here in Kenya, the cases are still dragging on. I am thinking about the so-called “Chicken Gate” scandal.

If we can provide a timeframe within which certain cases should be adjudicated and completed in the same way we deal with election petitions, I think the dispensation of justice will be faster and equal to everybody. Finally, again, as Parliament, we must put...

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. (Dr.) Wamalwa Kibunguchy, you have said finally but you have not finished your 10 minutes. It is not a must that you finish now. It is 7.00 p.m. If you have not finished your thoughts, you will have a remainder of six minutes when this matter comes back in the Order Paper.

For the other Members who had registered interests, the good news is that this is not the end of debate on this item. It still continues. So, Hon. (Dr.) Wamalwa Kibunguchy, when this matter comes up again in the Order Paper, you will have six minutes to finalise your presentation.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, the time being 7.00 p.m., this House stands adjourned until Thursday, 12<sup>th</sup> March 2020, at 2.30 p.m.

The House rose at 7.00 p.m.