

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday 22nd July, 2004

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### ORAL ANSWERS TO QUESTIONS

*Question No.540*

#### REGULATION OF OVERSEAS TRAVEL BY CABINET/ASSISTANT MINISTERS

**Maj-Gen Nkaiserry** asked the Minister of State, Office of the President:-

- (a) whether he could table a list showing the number of overseas official trips made by Cabinet/Assistant Ministers since January, 2003;
- (b) whether he could inform the House the total cost of the trips tabled in (a) above and the anticipated cost of such trips in the remaining part of this financial year; and,
- (c) what administrative mechanisms are in place to determine and regulate overseas travel by individual Cabinet/Assistant Ministers.

**Mr. Speaker:** Anybody here from the Office of the President? Prof. Kivutha Kibwana, is that yours?

**The Assistant Minister, Office of the President** (Prof. Kibwana): No, Mr. Speaker, Sir.

**Mr. Speaker:** Any other Minister from the Office of the President who is dealing with this issue?

**The Assistant Minister, Office of the President** (Mr. Mungatana): Mr. Speaker, Sir, Dr. Machage is on the way coming.

**Mr. Speaker:** All right. I will leave it until the end then.  
Next Question by Mr. Sasura!

*Question No.514*

#### NUMBER OF PSS ABOVE MANDATORY RETIREMENT AGE

**Mr. Speaker:** Is Mr. Sasura not here? We will leave his Question until the end. Let us move to the next Question by Ms. Mwau.

*Question No.633*

#### EXTORTION BY APS/REGULAR POLICEMEN

## AT KILOME POLICE STATION

**Ms. Mwau** asked the Minister of State, Office of the President:-

- (a) whether he is aware that Regular and Administration Police in Kilome Police Station are demanding money from *wananchi* for transport or to fuel police vehicles in order to render services to them; and,
- (b) what remedial measures he is taking to address this problem.

**The Assistant Minister, Office of the President** (Mr. Mungatana): Mr. Speaker, Sir, I beg to reply.

(a) No, I am not aware about the claim.

(b) The officers are allocated enough fuel for their operational duties which is subject to review from time to time depending on availability of resources.

**Ms. Mwau:** Mr. Speaker, Sir, the registration number of the vehicle at Kilome Police Station is 1379 and it was manufactured in 1957. It is one of the oldest vehicles in Kenya. Could the Minister inform the House why that police station does not have a new vehicle?

**Mr. Mungatana:** Mr. Speaker, Sir, the Question that was directed to us is in respect of the fuelling of that motor vehicle. However, as far as the question of that police station getting a new motor vehicle is concerned, we will answer it when the hon. Member asks it separately.

**Mr. Kagwe:** Mr. Speaker, Sir, the issue of fuelling of police vehicles is not restricted to Kilome Police Station only. Indeed, it is a nationwide problem. All the time, we hear of victims being told to buy petrol for police vehicles. What is the general policy regarding the supply of petrol to police stations? On what basis is the petrol allocated? How much petrol is allocated per kilometre? Is there a structure for the maintenance of police vehicles?

**Mr. Mungatana:** Mr. Speaker, Sir, we have a fixed amount of fuel and money that we allocate to each police station. For example, Kilome Police Station receives 2,435 litres for each financial year and we allocate it 200 litres per month. So, the general policy is that each police station is allocated what we consider adequate fuel within the limitation of our resources for purposes of operations. However, yes, we admit some of it is not enough but we do not agree that the general policy is to let other people fuel those vehicles.

**Mr. Ndambuki:** Mr. Speaker, Sir, this is really a very serious issue. For instance, last night, several schools in that area experienced problems and the police could not move from one school to another. One reason for that is because of the terrain. Two, there is no petrol station nearby. Three, the vehicle moves at a slow pace. You can even run and overtake it because of the slow speed at which it moves. We know that the Office of the President has spent substantial amounts of money to buy new vehicles. Why can Kilome Police Station, which is one of the oldest police stations in that area, not be allocated a vehicle? Secondly, why does the Office of the President provide only 2,435 litres per month and yet, the area the police station serves is so vast that, that the amount can be used for only a week? Why allocate it 2,435 litres?

**Mr. Mungatana:** Mr. Speaker, Sir, we have to allocate 200 litres because we are operating within the constraints of the budget that Parliament allocated us. As far as purchasing of new vehicles is concerned, during this financial year, we will not be able to do that because of Treasury restrictions. However, we shall consider that request in the next financial year.

**Mr. Ndambuki:** Mr. Speaker, Sir, could the Assistant Minister consider reallocating one vehicle from Makueni District Headquarters to that area because they have many new vehicles?

**Mr. Mungatana:** Mr. Speaker, Sir, the motor vehicles that were purchased were allocated to each police station. We have already actually distributed most of them. So, it will be very difficult at this time to take away a vehicle from a station that already has and reallocate it there. However,

we shall consider putting the existing vehicle in good condition until we are able to access new vehicles.

**Ms. Mwau:** Mr. Speaker, Sir, you heard the Assistant Minister say that Kilome Police Station will not have a vehicle in this current financial year. The existing vehicle was bought in 1957. Could he consider withdrawing and taking it to a competition of old cars, because it is not worth being in Kilome? When will the Ministry give Kilome Police Station a new vehicle? The crime rate is so high in that area.

**Mr. Speaker:** Mr. Mungatana, the hon. Member is asking you to take it to the *Concours de elegance*.

(Laughter)

**Mr. Mungatana:** Mr. Speaker, Sir, the request to put Government vehicles for *Concours de elegance* is not acceptable because that will amount to misappropriation of public vehicles. However, I have heard the sentiments of the hon. Member and we shall consider Kilome Police Station once we access funds for new vehicles.

**Mr. Speaker:** Next Question by Mr. Ojaamong!

**Mr. Ojaamong:** Mr. Speaker, Sir, this Question was partly answered yesterday. I think the House needed some clarification from the Minister on who is supposed to supervise the convicts. Is it the members of the Provincial Administration or probation officers?

**Mr. Speaker:** What are you saying?

**An hon. Member:** He has not asked the Question.

**Mr. Speaker:** Order! Mr. Ojaamong, ask your Question.

*Question No.766*

NUMBER OF TESO DISTRICT  
RESIDENTS IN PRISONS

**Mr. Ojaamong** asked the Minister of State, Office of the Vice-President and Ministry of Home Affairs:-

- (a) what the total number of people from Teso District detained in prisons is; and,
- (b) how many people from Teso District are serving under the Community Service Orders Act.

**Mr. Speaker:** What was left in this Question?

**The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs** (Mr. Too): Mr. Speaker, Sir, in a supplementary question, the hon. Member wanted to know who is supervising the Community Service Order offenders. That is what I beg to answer now.

The Community Service Order offenders are supervised by probation officers who work in conjunction with the district and divisional community service order committees. These committees have the responsibility to review the performance of the programme in the districts and divisions and make recommendations to the Minister in charge of Home Affairs and the Chief Justice for purposes of enhancing efficiency and effectiveness of the programme.

**Mr. Ojaamong:** Mr. Speaker, Sir, considering that we have a shortage of probation officers and we have so many people now being held in prisons, awaiting to be assigned community duties, what is the Assistant Minister doing to ensure that these people stop being subjected to suffering in prisons and are assigned duties promptly?

**Mr. Too:** Mr. Speaker, Sir, it is true that the Ministry has a serious shortage of probation officers. I also know that the effectiveness and efficiency in supervising these fellows is lacking. However, we shall do our best to ensure that we employ more probation officers to supervise these fellows.

**Mr. Speaker:** Very well. Let us proceed because this Question was partly answered. Next Question, by Mr. Sambu!

*Question No.710*

GOVERNMENT SHAREHOLDING IN  
PAN AFRICAN PAPER MILLS

**Mr. Sambu** asked the Minister for Finance:-

- (a) what the Government shareholding is in Pan African Paper Mills, Webuye;
- (b) what the value of shares in shillings and as a percentage of the total valuation of the company is; and,
- (c) whether he could inform the House the annual profit remittance from Pan Paper to the Treasury since 1980.

**The Assistant Minister for Finance** (Mr. Obwocha): Mr. Speaker, Sir, I beg to reply.

(a) Currently, the Government of Kenya shareholding in the Pan African Paper Mills is Kshs401.9 million. The shareholding as a percentage of the total share capital is 33.8 per cent.

(b) The shareholders' funds or net worth of the company; that is the share capital plus reserves, as at 30th June, 2003 was Kshs8,931,597. Considering the per value of the Government shares of Kshs401.9 million, the Government shares, as a percentage of the total valuation of the company is only 4.5 per cent. In fact, at the inception the Government held 20 million shares, out of 59 million. That was 33.88 per cent. However, it has now reduced to 4.5 per cent.

(c) The amount of dividend paid by the company to the Government since 1980 is Kshs301 million. The company has also issued bonus shares worth Kshs408.9 million. I also wish to add that there are royalties of Kshs984 million paid to Government since inception because of harvesting timber.

**Mr. Sambu:** Mr. Speaker, Sir, Pan African Paper Mills clears over 3,000 acres of mature cypress and patulous plantations. In 20 years, they have cleared over 100,000 acres of tree plantations and they have never replanted them. Even if one was to lease land at Kshs1,000 an acre, one will be getting over Kshs100 million a year. Does the Government consider having Pan Paper clear forests in the north rift, Kakamega, Lugari and Mt. Elgon a worthy project? The Government should also take into account the fact that it is also doing a lot of environmental pollution on the River Nzoia and the surrounding areas.

**Mr. Obwocha:** Mr. Speaker, Sir, I said the royalties they have paid to the Government is close to Kshs1 billion. So, it is a matter of judgement whether it is worth it. However, I would like to add that I believe the Ministry of Environment and Natural Resources does allow them to harvest timber to the extent of not destroying our forests.

**Capt. Nakitare:** Mr. Speaker, Sir, you heard what the Assistant Minister said. He is trying to lay the blame on the Government. Of course, it is true, the Government allowed Pan Paper to destroy our environment. The weather pattern has even changed in my area. We have no rain. Could he tell this House how he is protecting the environment if they are destroying the forests?

**Mr. Obwocha:** Mr. Speaker, Sir, to the extent the Ministry can answer, we are responsible for financial affairs. As to the question whether this is proper, I believe this is a question that should be referred to the Ministry of Environment and Natural Resources.

**Mr. Abdirahman:** On a point of order, Mr. Speaker, Sir. As much as we may realise, is the Assistant Minister in order to tell us that they work in a compartmentalised way? In most cases, we get answers that do not satisfy us. Is he in order to tell us that they are only bothered with money and not with what affects Kenyans?

**Mr. Obwocha:** Mr. Speaker, Sir, I would like to inform the hon. Member that we will liaise with the Ministry of Environment, Natural Resources and Wildlife, and ask them to direct Pan Paper Mills to only harvest timber that will not destroy our forests.

**Mr. Sambu:** Mr. Speaker, Sir, now that the Assistant Minister is aware that Pan Paper Mills is felling trees without replanting, and to date, it has cleared over 120,000 acres, will he liaise with the Ministry of Environment, Natural Resources and Wildlife, and get the National Environmental Management Authority (NEMA) to conduct an environmental impact assessment to check whether it is still viable to have Pan Paper Mills, or we should import paper from COMESA, which is duty free? He should take into consideration the fact that Nzoia River is drying up due to the pollution caused by the effluent from Pan Paper Mills.

**Mr. Speaker:** Mr. Sambu, you have made your point.

**Mr. Obwocha:** Mr. Speaker, Sir, yes, we will assess the environmental impact of Pan Paper Mills. My colleague, Prof. Maathai, is here, and we will liaise with her Ministry to take up that issue.

**Mr. Speaker:** Next Question, Dr. Manduku!

*Question No.654*

PROTOCOL OFFICER FOR PARLIAMENT

**Mr. Angwenyi:** Mr. Speaker, Sir, Dr. Manduku is in a delegation to the United States of America, which got permission and money from the Speaker's office.

**Mr. Speaker:** So the Speaker must ask the Question?

*(Laughter)*

**Mr. Angwenyi:** Mr. Speaker, Sir, I wish to seek your indulgence that the Question be deferred until he comes back.

**Mr. Speaker:** Order! I again reiterate that hon. Members have a duty to this House and to their constituents, irrespective of where they go. It is the business of the hon. Member to organise his or her affairs before departure. I said yesterday that you must organise your trips when the House is not sitting. Anyway, I will defer this Question, but everybody is warned.

*(Question deferred)*

Next Question, Mr. Midiwo!

*Question No.534*

SHOWING OF X-RATED MOVIES ON  
LOCAL TELEVISION NETWORKS

**Mr. Midiwo** asked the Minister for Information and Communications:-

(a) whether he is aware that PG 21-rated movies are routinely shown on local

television networks without any editing;

(b) whether he is further aware that the above is exposing children to foul language and explicit indecent scenes; and,

(c) what steps the Government will take to ensure that x-rate movies are not shown to children.

**The Assistant Minister for Information and Communications** (Mr. Were): Mr. Speaker, Sir, I beg to reply.

(a) I wish to inform the hon. Member that there is no film rated 21 in Kenya. According to Films and Stage Plays Act, Cap.222, (Amendment) Legal Notice No.126 of 1989, films are classified in four broad categories. There are general exhibitions, unsuitable for under 10, unsuitable for under 16 and unsuitable for under 18 and adults only. (b) It is true that our local television stations show films that are rated adults only, which can expose our younger generations to morally indecent scenes and values. Such films should be shown only after 10.00 O'clock when children have gone to sleep.

My Ministry, through the Kenya Film Censorship Board, has issued directives to all broadcasting stations to that effect and will take stern action against any station ignoring the advice. The Censorship Board has been going round the local television stations to sensitise them and seek their co-operation in making sure that rated or controversial films are censored and only aired after 10.00 o'clock in the evening.

(c) The x-rated films are banned in this country by the law because such films contain scenes of pornography. No-one should hire, sell or exhibit such films and anybody who comes across them should report to the police or the Kenya Films Censorship Board.

I would like to add that it behoves all parents to take the responsibility of deciding for their children what they consume from the electronic medium. Ideally, children should be discouraged from spending too much time watching television programmes, as it may affect their growth and performance in other areas, like academics.

**Mr. Midiwo:** Mr. Speaker, Sir, I want to thank the Assistant Minister for that answer. However, it does not satisfy my Question. In the event that the Assistant Minister does not know, the sign "21" on your television set means PG 21. This means that the movie or whatever they are showing is just a video tape from somewhere, which has not been censored and should be. This is not a trivial Question. This is a real problem. There is a particular channel which shows two particular movies every week at night or during the day, namely, OV or OZ. I have seen this channel showing pictures of men and women having sexual intercourse while in my living room. I am asking the Assistant Minister to regulate these movies.

**Mr. Speaker:** Can you put your question now, please?

**Mr. Midiwo:** Mr. Speaker, Sir, without violating the freedom of the Press, could the Assistant Minister consider asking broadcasting houses to stop screening such movies or introduce pay channels, whereby, if I want to watch men and women having sex, I pay for it?

**Mr. Were:** Mr. Speaker, Sir, the Film Censorship Board which regulates the films shown in the country was constituted at the end of last year and from 2001 to 2003, it was not operational. Right now, they are holding discussions with the broadcasting houses in order to find a way of controlling all the movies that are being shown.

**Mr. Omingo:** Mr. Speaker, Sir, our society has gone through moral decay. The Assistant Minister knows that there is a Children Act, which provides that a parent cannot dictate to his children what they should watch. The Assistant Minister has said that children should go to sleep before 10.00 o'clock. This is not possible. For purposes of retaining moral decency, could the Assistant Minister legislate and regulate properly what is screened on our local television stations?

He should not tell us that our children should watch movies during certain times. Otherwise, our morals are decaying.

**Mr. Were:** Mr. Speaker, Sir, we are in the process of bringing a Bill to this House, which will regulate information and broadcasting in this country.

**Mr. Kamama:** Mr. Speaker, Sir, I just want to bring to the attention of the Assistant Minister the existence of Channels 5 and O. I do not know whether the Assistant Minister has watched this Channel 5. This channel displays nudity and very obscene pornographic material that is not in tandem with our culture. What is the Assistant Minister doing to make sure that such channels are not licensed?

**Mr. Were:** Mr. Speaker, Sir, as you are aware, right now, the Government has been taken to court because of trying to interfere with the broadcasting houses when we tried to control what they show. As I said before, we are bringing a Bill to this House very soon, which will help us to sort out all these problems.

**Mr. Midiwo:** Mr. Speaker, Sir, I appreciate that the Assistant Minister is not trying to do anything, but could he consider having these sexually explicit movies screened after midnight as opposed to 10.00 o'clock?

**Mr. Were:** Mr. Speaker, Sir, my Ministry has noted the concern of the House and we will take appropriate action.

*Question No.518*

RESETTLEMENT OF PEOPLE DISPLACED FROM  
MALKAMARI GAME RESERVE

**Mr. M.A. Haji** asked the Minister for Environment and Natural Resources:-

- (a) whether he is aware that Malkamari Game Reserve gazetted in the 1980s has not been developed;
- (b) whether he is further aware that many people were displaced from the reserve but were not compensated;
- (c) whether he is also aware that people have started encroaching on the area thereby creating tension with the original inhabitants displaced therefrom; and,
- (d) what plans he has to develop the reserve, compensate the displaced people and avert the imminent conflict.

**The Assistant Minister for Environment and Natural Resources** (Prof. Maathai): Mr. Speaker, Sir, this Question will be directed to the Ministry of Tourism and Wildlife.

**Mr. Speaker:** Well, is that okay with you, Mr. M. A. Haji?

**Mr. M.A. Haji:** Mr. Speaker, Sir, it should have been directed to that Ministry earlier on.

**Mr. Speaker:** Mr. M.A. Haji, you are right! I direct that the Question be directed to the Ministry of Tourism and Wildlife. I think it was because the Department of Wildlife was recently removed from the former Ministry of Environment, Natural Resources and Wildlife. The Question was not sent to the Ministry under which the Department of Wildlife falls. The Question should appear on the Order Paper any day next week.

*(Question deferred)*

Let us move on to the next Question by Mr. Ndambuki!

**Mr. Ndambuki:** Mr. Speaker, Sir, this Question was answered but there is one part the

Minister was supposed to come and answer. He can answer it now.

*Question No.489*  
MEASURES TO SAVE  
KITHANGATHINI COFFEE SOCIETY  
FROM COLLAPSE

**Mr. Ndambuki** asked the Minister for Co-operative Development and Marketing:-

(a) whether he is aware that Kithangathini

Coffee Co-operative Society is on the verge of collapse due to heavy debts;

(b) how much was advanced to the co-operative society from SCIP I and II schemes;  
and,

(c) what plans he has to save the society from collapse.

**The Assistant Minister for Co-operative Development and Marketing** (Mr. Kenneth):

Thank you, Mr. Speaker, Sir. I think we answered the Question in full. What remained was for us to lay on the Table, the Inter-Ministerial Task Force Report on the coffee co-operative societies debts. I do lay the report on the Table.

*(Mr. Kenneth laid the report on the Table)*

**Mr. Speaker:** Very good! That should end the Question there! Yes, Mr. Ndambuki!

**Mr. Ndambuki:** Mr. Speaker, Sir, could the Assistant Minister tell this House the amount for Kithangathini to be written-off, even though he has laid the report on the Table? That is all that I am interested in.

**Mr. Kenneth:** Mr. Speaker, Sir, the report touches on all the co-operative societies which deal in coffee. The amount for Kithangathini which has been recommended for write-off is about Kshs29.2 million.

**Mr. Speaker:** Very well! That is the end of that Question.

Let us move on to the next Question by Mr. Ethuro!

*Question No.632*  
DEATH OF LOMURODO AMODOI  
IN POLICE CUSTODY

**Mr. Ethuro** asked the Attorney-General:-

(a) whether he is aware that a teenager known as Lomurodo Amodoi died in police custody on 5th May, 1997 in Lokichogio Police Station; and,

(b) why it has taken so long for the Government to prosecute those responsible for the death.

**The Attorney-General** (Mr. Wako): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the deceased Lomurodo Amodoi died in police custody on 5th May, 1997.

(b) The decision on the issue of prosecution will be taken as soon as the Senior Resident Magistrate in Kitale has completed the hearing of the inquest before the court and made a decision thereon.

**Mr. Ethuro:** Mr. Speaker, Sir, the Attorney-General of the Republic of Kenya is an eminent lawyer and must know that justice delayed is justice denied. Seven years and two months down the



line, the decision on prosecution has not yet been taken. When will the policemen who tortured the teenager in police custody in 1997 be prosecuted? That is my question.

**Mr. Wako:** Mr. Speaker, Sir, I made a decision on 4th December, 1997 that an inquest be held. I do agree with the hon. Member that justice delayed is justice denied. I am not very happy with the slow pace of the inquest. I have directed the Judiciary to finalise that inquest as a matter of urgency because I noted that it has come up for hearing on a number of occasions, witnesses have given evidence over the years and only four witnesses are remaining. Hopefully, the hearing will be completed on 27th October, 2004. Thereafter, I will take an appropriate decision.

**Mr. Angwenyi:** Thank you, Mr. Speaker, Sir. How come that judges or magistrates who were involved in that inquest were not identified by the Committee on Corruption and Integrity in the Judiciary and punished if they have taken seven years to conclude an inquest of a person who died in police custody and the person who killed him is known?

**Mr. Wako:** Mr. Speaker, Sir, I cannot confirm or deny as of now, whether the magistrate in question is one of the judges who have been disciplined. But most likely, he is one of them.

**Mr. Rotino:** Mr. Speaker, Sir, the Attorney-General is not serious because seven years down the line the inquest has not been concluded. Could he give us the reasons which have delayed the inquest results from coming out up to now? Could he tell us why the results have not come out because there are many cases of this nature?

**Mr. Wako:** Mr. Speaker, Sir, I do agree with the hon. Members that the inquest has taken unduly long time. For example, on 11th August, 1998, it came up for hearing and police constable, Joseph Mwasuma gave evidence; on 23rd September, 1999, it came up again for hearing and police constables Ngatia and Otieno gave evidence; it came up again for hearing in November, 2000 and Paul Egenyo gave evidence; on 6th April, 2001, it came up for hearing and Jared Mwangi gave evidence; an independent private pathologist, Emily Rosena gave evidence on 8th June, 2001; police constable Wamukota gave evidence on 14th February, 2003 and 16th February, 2004. Amodoi gave evidence on 2nd June, 2004. The rest of the hearing should be completed on 27th October this year. I do agree that the inquest has taken unduly long time. Part of this, I am told, is because of the distance between where the incident took place and Kitale. The delay is also because of the transfers of the police officers who were involved, while others have retired. But I do hope the inquest will be concluded on 27th October, 2004.

**Mr. Serut:** Thank you, Mr. Speaker, Sir. From the Attorney-General's answer, it appears as if we are having one witness giving evidence in a whole year. Could he now explain to this House why we have only one witness giving evidence per year? These include police officers who can easily go to court because they have means of transport.

**Mr. Wako:** Mr. Speaker, Sir, if you listened carefully, I have already given the reasons. But, as I said, I am not satisfied with those reasons. That is why it is now moving faster. I hope that, at least, four witnesses will give evidence in October, 2004, and not one witness.

**Mr. Speaker:** Last question! Mr. Ethuro, could I give the chance to Mr. Muite to ask a question on your behalf?

**Mr. Ethuro:** Mr. Speaker, Sir, you can give a chance to Mr. Muite, but I will still ask the last question.

*(Laughter)*

**Mr. Speaker:** Mr. Muite's question will be the last!

**Mr. Muite:** Mr. Speaker, Sir, it is in the public knowledge that some of those inquests are instituted as a way of buying time. In view of the period that, that inquest has taken, what is

stopping the Attorney-General from terminating it, arresting the culprits and prosecuting them?

*(Applause)*

**Mr. Wako:** Mr. Speaker, Sir, the Questioner is a Senior Counsel and he knows very well that the Attorney-General of the Republic of Kenya cannot prosecute, unless he has an investigation file with sufficient evidential evidence to support a conviction.

**Mr. Speaker:** Very well. Next Question for the second time!

**Mr. Ethuro:** Mr. Speaker, Sir, let me ask the final question.

**Mr. Speaker:** All right, please, proceed!

**Mr. Ethuro:** Mr. Speaker, Sir, Mr. Paul Muite is a Senior Counsel! That is why he got the chance.

That is an issue of immense international interest. Amnesty International, I am sure, has written to each and every Member of this House. One of the reasons that the Attorney-General has given is the distance involved. Is he implying that Lokichoggio is not part of this Republic? Those are not good reasons.

Secondly, as you heard, there is only a single hearing per year! That is not good enough! What guarantee is the Attorney-General giving this House that, that inquest will be completed by 27th October, 2004, and that there should be no more protection of police torture?

*(Applause)*

**Mr. Wako:** Mr. Speaker, Sir, on the latter part of the question, I can guarantee you that there has never been, there is not and there will never be any protection of police officers involved in those types of criminalities

On the issue of whether the case will be completed by 24th October, 2004, I can tell you that I have informed the courts to ensure that, that is done. But, as to whether it will be done, we shall await that day.

**Mr. Speaker:** Very well. Next Question, for the second time, Maj-Gen. Nkaiserry!

**Maj-Gen. Nkaiserry:** Mr. Speaker, Sir, before I ask my Question, I would like to bring to your notice that I have not received a written answer.

*Question No.540*

REGULATION OF OVERSEAS TRAVEL BY  
CABINET/ASSISTANT MINISTERS

**Maj-Gen. Nkaiserry** asked the Minister of State, Office of the President:-

(a) whether he could table a list showing the number of overseas official trips made by Cabinet/Assistant Ministers since January 2003;

(b) whether he could further inform the House the total cost of the trips tabled in (a) above, and the anticipated cost of such trips in the remaining part of this financial year; and,

(c) what administrative mechanisms are in place to determine and regulate overseas travel by individual Cabinet/Assistant Ministers.

**The Assistant Minister, Office of the President (Dr. Machage):** Mr. Speaker, Sir, I had asked to be given time up to Thursday next week to answer this Question. I have just been

ambushed in today's Order Paper. I beg for the indulgence of the House to be given that time, Sir!

**Hon. Members:** Ah! Ah!

**Mr. Speaker:** Order, Members! I think the Assistant Minister is right! I think the Question wrongly found its way into the Order Paper today. It should come on Thursday next week!

*(Applause)*

**Mr. Maore:** On a point of order Mr. Speaker, Sir. If you notice the framing of the Question, it is asking about Cabinet Ministers and Assistant Ministers only! Could we ask that Members of Parliament be included in it?

**Mr. Speaker:** Well, you put the Question! Anyway, the Question is deferred to Thursday next week!

*(Question deferred)*

Mr. Abdi Sasura for the second time!

**Mr. Sasura:** Mr. Speaker, Sir, I apologise for not having been here the first time.

*Question No.514*

NUMBER OF PSS ABOVE  
MANDATORY RETIREMENT AGE

**Mr. Sasura** asked the Minister of State, Office of the President:-

(a) how many Permanent Secretaries currently serving in the Government are above the mandatory retirement age and who they are; and,

(b) whether he could justify the retention of the said officers in the Civil Service.

**The Assistant Minister, Office of the President** (Mr. Shitanda): Mr. Speaker, Sir, I beg to reply.

(a) According to the records maintained by the Government, six Permanent Secretaries are above the mandatory retirement age of 55 years---

**Mr. Speaker:** Order! I think this Question was here yesterday and it was deferred. Why was it deferred?

**The Assistant Minister, Office of the President** (Mr. Shitanda): Mr. Speaker, Sir, this Question was deferred because hon. Members required more information on the terms of service for the affected Permanent Secretaries. Also, one hon. Member stood up and raised the issue of Mr. Mwongera, the Permanent Secretary, Ministry of Lands and Housing. He said that his name was not in the list, and he is supposed to be over 55 years.

**Mr. Wanjala:** On a point of order, Mr. Speaker, Sir. I want to tell you that the Assistant Minister is still misleading the House. The Assistant Minister asked that question and he was given the answer I am talking about. The Financial Secretary in the Ministry of Finance is a twin brother to the Permanent Secretary, Ministry of Education, Science and Technology. Twin brothers must be age mates! Why are they not mentioned in the list?

*(Laughter)*

**Mr. Speaker:** Order, Members! We do not want to have a Question dragging on in the

House forever! If a Question must be deferred, and that must be discouraged--- I think everybody must come prepared to answer and to raise questions. The trend of deferring Questions all the time clogs our business. It must be under very rare circumstances that Questions must be deferred! That will enable us to move to other issues. I wanted to find out why the Question was deferred, so that we can address it.

Mr. Sasura, what was it?

**Mr. Sasura:** Mr. Speaker, Sir, besides the issue of twin brothers--- That one did not even arise! When the Assistant Minister was answering the Question yesterday, an hon. Member raised another issue. He said that this Question was here last time, and one of the Permanent Secretaries was said to be 56 years old. He was not in the list and there is no way he could have remained 56 years old even today.

The second reason was the terms of employment. Are they on contract or permanent basis? The Chair, then, asked him to bring the details.

**Mr. Speaker:** Let me get it right. Was the Question deferred so that specific names could be added?

**Hon. Members:** No! No!

**Mr. Speaker:** Order, Members! We must get out of this! Was it because Mr. Mwongera's name was absent?

**Hon. Members:** No! No!

**Mr. Speaker:** What was it? Can we listen to Mr. Sasura?

**Mr. Sasura:** Mr. Speaker, Sir, when the Assistant Minister was answering the question, he was asked to explain whether the six names mentioned were on permanent employment or contracts, but he could not answer that.

**Mr. Speaker:** Very well! So---

*(Loud consultations)*

Order, all of you! I think the world is not coming to an end! So, let us deal with this issue!

Mr. Shitanda, as I understand it, two issues were required by the House. One, a total list of all permanent secretaries beyond the age of 55 years and, secondly, their terms of employment. That is all you have to address now!

*(Applause)*

**The Assistant Minister, Office of the President (Mr. Shitanda):** Mr. Speaker, Sir, I have a full list of those permanent secretaries who have attained retirement age. They are six in number.

Mr. Speaker, Sir, the first one on the list is Ambassador Francis Muthaura. His date of birth is recorded as 1946 and he is serving on contract. Second on the list is Mr. Peter Njau who was born in 1948 and he is also serving on contract. The others are as follows: Prof. Karega Mutahi, born in 1943 and serving on contract; Mr. Patrick Nyoike, born in 1944 and serving on contract; Mr. Sammy Kyungu, born in 1948 and serving on contract; and, Prof. Gerishon Ikiara, born in 1948 and also serving on contract. With regard to Eng. Mwongwera, according to the records held by Government, I have an appraisal form with me completed by Eng. Mwongera himself, he was born in 2nd December, 1949. He will, therefore, turn 55 in December, 2004. Again, with regard to Mr. Njeru Kirira, I wish to clarify that Prof. Karega Mutahi and Mr. Njeru Kirira are not twins. Prof. Karega Mutahi was born in 1943 and Mr. Njeru Kirira was born in 1948. The reason for Mr. Njeru

Kirira's name missing in the other list was that he is not a Permanent Secretary. He is a Financial Secretary.

*(Loud consultations)*

**Mr. Speaker:** Order, Members! Let us restrict ourselves to the two issues for which the Question was deferred.

**Mr. Sasura:** Mr. Speaker, Sir, the main issue for me here is not names of specific people. It is true that it is the prerogative of the President to appoint Permanent Secretaries according to the Constitution in the Section quoted by the Assistant Minister. However, further down, the Constitution states that the President does so in consultation with the Public Service Commission. I hope he did that. Considering the fact that there are many Under-Secretaries waiting to be Permanent Secretaries instead of mark-timing for so many years, could the Assistant Minister assure this House that these old men will not have their contracts renewed so that other people get an opportunity to serve this country?

**Mr. Shitanda:** Mr. Speaker, Sir, the prerogative of appointing the Permanent Secretaries lies with the President according to the Constitution. However, I wish to assure the hon. Member that those Deputy Secretaries lining up for the position of Permanent Secretary, will be considered as and when vacancies arise.

**Mr. Gitau:** Mr. Speaker, Sir, this policy of recycling retired employees is rendering the children of this country hopeless. My son is aspiring to become a Permanent Secretary. He tells me that if he has to wait until he is 56 years old, he will never be able to have time to serve this country. Could the Assistant Minister assure this House that there will be no renewal of contract of service for the existing Permanent Secretaries?

**Mr. Shitanda:** Mr. Speaker, Sir, these officers were hired when we were taking over from the previous Government. It was necessary and important that we work with people who knew the system. Now that the NARC Government is comfortably in the saddle, we are going to consider the concerns raised by the hon. Member.

### QUESTIONS BY PRIVATE NOTICE

#### MURDER OF MR. PATRICK WAINANA WAMWEA

**Mr. Kagwe:** Mr. Speaker, Sir, I beg to ask the Minister of State, Office of the President the following Question by Private Notice.

(a) Is the Minister aware that Mr. Patrick Wainana Wamwea who was the Assistant Chief of Kariara Sub-Location, Rutune Location, Mukurwe-ini Constituency was murdered on 4th February, 2004?

(b) Is he further aware that suspects were released and are now threatening witnesses who either forwarded or want to forward information?

(c) What steps is the Minister taking to bring the perpetrators of this crime to book?

**The Assistant Minister, Office of the President** (Prof. Kibwana): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware.

(b) No report of any threat to potential witnesses has ever been made to any police station.

(c) The matter is still under investigation through Criminal File No.252/28 of 2004. Several

witnesses have already recorded statements.

**Mr. Kagwe:** Mr. Speaker, Sir, I thought that my friend, the Assistant Minister, would come with a more profound answer. However, I would like to point out this is the area where thugs who come to Nairobi are trained. The Mukurwe-ini area and the lower Murang'a area are where people go to practise before they come to break into houses in Nairobi. Therefore, if the Assistant Minister could be able to handle the situation in Mukurwe-ini, he would actually be handling the situation in Nairobi indirectly. Could he, therefore, consider, first of all, putting a police station in that area and then a police vehicle to save all Kenyans from this issue of murders and thuggery?

**Prof. Kibwana:** Mr. Speaker, Sir, because I took this to be a very serious concern from the hon. Member, I, indeed, travelled to see the District Commissioner (DC) of Nyeri as well the Officer Commanding Station (OCS) in the same area. The hon. Member stated that there is a big problem of the thugs being trained in this area and, in fact, there have been about four networks of such thugs. We have managed to crack two networks. The question of putting up a police post or station is one we are considering very seriously because we believe that we should have a clear police presence in that area.

#### ARREST OF IRAQI REFUGEE

**Mr. Mwandawiro:** Mr. Speaker, Sir, I beg to ask the Minister of State, Office of the President, the following Question by Private Notice.

(a) Is the Minister aware that a fifty-five year old refugee from Iraq by the name Adel Mohammed Al-Dahas, presently at Kileleshwa Police Station, Nairobi, has been held in police cells since October, 2001?

(b) If the answer to (a) above is in the affirmative, why is the refugee being held?

(c) When will he be released and accorded his rights as a refugee?

**The Assistant Minister, Office of the President (Prof. Kibwana):** Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that a Mr. Adel Mohammed Al-Dahas has been in custody at the Kileleshwa Police Station.

(b) Mr. Al-Dahas was arraigned in a court of law duly convicted and declared a prohibited immigrant by the Kenya Government. The Kenya Government cannot, therefore, recognise him as a refugee. His stay in the country has been granted as a request of the United Nations High Commissioner for Refugees (UNHCR) pending his own decision to either return to his country of origin or his relocation by the UNHCR to a third country. The custody of Mr. Al-Dahas is subject to the provisions of Articles 9, 31 and 32 of the 1951 Geneva Conventions relating to the status of refugees.

(c) Mr. Al-Dahas is free to leave Kenya to any country of his choice that will be ready to host him. In the meantime, the Kenya Government is committed to his safety and security while he remains in Kenya as the UNHCR continues the search for a third country to host him. So far no country has shown willingness to grant him refugee status.

**Mr. Mwandawiro:** Mr. Speaker, Sir, I have been in police cells including Kileleshwa Police Station. I have also been an asylum seeker and a refugee. So, I am very, very much aware and informed about this matter. Whether a person is a refugee, an asylum seeker or a criminal, keeping him in police custody since October, 2001 is a violation of human rights.

**Mr. Speaker:** Order, Mr. Mwandawiro. You heard what the Assistant Minister said. You have also heard his reasons for putting Mr. Al-Dahas where he is. Could you, please, now question those reasons?

**Mr. Mwandawiro:** Again, Mr. Speaker, Sir, neither Articles 9, 31 nor 32 of the Geneva Conventions of 1951 relating to the status of refugees says that somebody who is seeking asylum has to be kept in conditions where his rights as a human being are violated, and where he has to live under torture.

Even when an asylum seeker seeks asylum in a country and he is not given the asylum status, he is not---

**Mr. Speaker:** What is your question?

**Mr. Mwandawiro:** I am coming to my question, Mr. Speaker, Sir.

**Mr. Speaker:** Order, Mr. Mwandawiro! Please look at Standing Order No. 35. You are, in fact, changing your Question and you have turned it into a Motion, contrary to the Standing Orders. If you breach the Standing Orders any further, I will go on to the next Question.

**Mr. Mwandawiro:** Thank you, Mr. Speaker, Sir. When will this person be released from the---

*(Prof. Saitoti crossed the Floor  
without bowing to the Chair)*

**Dr. Ali:** On a point of order, Mr. Speaker, Sir. Hon. Prof. Saitoti, who has been the Leader of Government Business for so long and who has been sitting on this Side of the House, just crossed the Floor and sat on the Government side, where he is sitting now. Is it in order for him to cross the Floor without bowing to the Chair? He should follow the routine!

*(Applause)*

**Mr. Speaker:** Order! Order! Order, hon. Members! Now, Dr. Ali, in a less agitated voice, what is your complaint?

*(Laughter)*

**Dr. Ali:** Thank you, Mr. Speaker, Sir. I said that the honourable Minister, Prof. Saitoti was on this side of the House talking to hon. Leshore, and he sat on the Bench here. After that, he decided to walk to the Government side comfortably without bowing to the Chair. Was he in order to do that?

**Mr. Speaker:** You must go back, Prof. Saitoti!

*(Prof. Saitoti went back and  
bowed to the Chair)*

**Mr. Mwenje:** On a point of order, Mr. Speaker, Sir. Have you noticed that Prof. Saitoti has repeated exactly the same mistake?

*(Laughter)*

**Mr. Speaker:** Order! He was on the centre-line. You can see that hon. Leshore is seated on the centre-line. So, it is all right.

Can you finish your question, Mr. Mwandawiro?

**Mr. Mwandawiro:** When will this Government, which was elected on a platform of respect

for human rights, end the torture of Mr. Adel Mohammed Al-Dahas by removing him from Kileleshwa Police Station, where he is suffering and his human rights are being violated?

**Prof. Kibwana:** I have stated very clearly that Kenya will allow Mr. Adel Mohammed Al-Dahas to go to any other country any time and any moment the United Nations High Commission for Refugees (UNHCR) identifies such a country. Indeed, if we are really told to do that today, we will do so today. So, we are not---

**Mr. Sambu:** On a point of order, Mr. Speaker, Sir. Mr. Adel Mohammed Al-Dahas must have become a refugee when Saddam Hussein was in power. Now that Saddam Hussein is gone, can we exchange Mr. Adel Mohammed Al-Dahas for the three Kenyans who are allegedly being held by Iraqi terrorists?

*(Applause)*

**Prof. Kibwana:** I do not know whether that is a point of order.

**Mr. Speaker:** No, it is a valid question.

**Prof. Kibwana:** Mr. Adel Mohammed Al-Dahas was a former fighter in the Iraqi Army. He arrived in this country in 1999 through the Moyale border point, and travelled to Nairobi. The Special Crimes Police Unit arrested him in Eastleigh, Nairobi on 21st April for being in possession of a forged Danish passport number---

**Mr. Speaker:** Order, Assistant Minister! You are taking us back!

**Mr. Mwandawiro:** Mr. Speaker, Sir---

**Mr. Speaker:** Order, all of you! We are not going to spend all our time on this particular Question. Hon. Sambu has asked you now that this particular individual came to Kenya when the then Iraqi Government was against him, now that the Government in Iraq has changed, can he be taken back to where he came from in exchange for the Kenyan hostages?

**Prof. Kibwana:** Mr. Speaker, Sir, in my first answer, I did indicate that he is free to go back to his country or to any other country identified by the UNHCR. He is free because if he say that he wants to go today, we will release him so that he can go. But we do not exchange people. I do not think that is the Government policy as such.

**Mr. Mwandawiro:** Mr. Speaker, Sir, this is a very sad day. A few years ago, this country was shamed by the return of a Kurdish leader, Mr. Ocalan, who is still in jail today in Turkey. Now, my question is this: When will we end this shame of violating conventions on human rights, which include torture? When will we remove this man from prison?

*(Applause)*

**Mr. Speaker:** Order, Mr. Mwandawiro! Just before you make us all sad; as you have just said that this is a sad day for the country, where do you want the Assistant Minister to take this person?

**Mr. Mwandawiro:** Mr. Speaker, Sir, I was an asylum seeker in Tanzania. While there, I was not granted asylum status, but then I was kept in humane conditions outside, and not in prison! Not in cells!

**Mr. Speaker:** Will you keep the person in humane conditions, Prof. Kibwana? Respond to Mr. Mwandawiro's question whether you are going to keep this individual under circumstances that befit a human being.

**Prof. Kibwana:** Indeed, Mr. Speaker, Sir, this particular individual is not treated as the other suspects at the Kileleshwa Police Station. He is allowed to walk freely and even to receive food which has been brought for him and so on. The point that we are making is that---



**Mr. Kajwang:** On a point of order, Mr. Speaker, Sir. The Assistant Minister should stop misleading us. This person is either a prisoner or a refugee. If he is a prohibited immigrant, then you should deal with him as such. If he is a refugee, you should deal with him as such. If he is a prisoner, then he is a prisoner! I was also the first refugee from Kenya to Uganda when Mr. Binaisa was in power, and I know how I was treated. They even paid my fees.

**Mr. Speaker:** Will you ask your question?

*(Laughter)*

**Mr. Kajwang:** So, can he tell us exactly the status of this man? Is he a prisoner, refugee or a prohibited immigrant.

**Prof. Kibwana:** He is a prohibited immigrant.

**Mr. Speaker:** Very well! Next Question by Mr. Ndolo!

AWARD OF TELKOM NGV-VOIP  
PROJECT TENDER

**Mr. Ndolo:** Mr. Speaker, Sir, I beg to ask the Minister for Information and Communications the following Question by Private Notice.

(a) Could the Minister inform the House the criteria that was used to award the tender on the supply, engineering, survey, installation, testing, commissioning and commercialisation of Next Generation Network - Voice-over Internet Protocol (NGV-VOIP) project at Telkom Kenya?

(b) Why did the Huawei Company offer 65 per cent discount on its products?

(c) Why did the Telkom Kenya management visit the said company in China before the tender was awarded?

**The Minister for Information and Communications (Mr. Tuju):** Mr. Speaker, Sir, I beg to reply.

(a) The tender award for the project was carried out in accordance with the existing public procurement procedures as outlined in the Exchequer and Audit Public Procurement Regulations 2001, Legal Notice No.51. The company was rated the best in both the technical and commercial evaluation, and was declared as the overall winner. The Tender Committee, using the normal tender procedures, therefore, awarded the tender to the Company.

(b) The bid price offered by the company at the tender opening was already a discounted amount. The evaluated price was, therefore, based on the bid price.

(c) Telkom Kenya management visited the company in China as part of the Government of Kenya delegation led by the then Minister for Transport and Communications Mr. John Michuki, who had been invited by the Government of the People's Republic of China. The other delegates were from the parent Ministry, Ministry of Finance and Kenya Railways Corporation. The objective of the visit was to map out a way forward for government to government bilateral funding for rural telecommunication development programmes and improvement of railway infrastructure.

**Mr. Ndolo:** Mr. Speaker, Sir, I thank the Minister for that answer. Huawei is a company which is involved in a court case right now. Sisco Company from the USA has taken this company to court because of copying what Sisco has been doing. Could the Minister tell this House whether a company that is in court for having pirated products give this country the kind of network we need?

**Mr. Tuju:** I thank the hon. Member for that piece of information. Let me hasten to add that if the hon. Member has got any further information that he can give me on this particular matter, I will be interested to hear it.

**Mr. Maore:** Mr. Speaker, Sir, I wanted to seek clarification from the Minister. Did the management of Telkom Kenya Limited and the then Minister for Transport and Communications visit the company, before the opening of the tender or after? If it was during the tender opening, it will raise a lot of questions.

**Mr. Tuju:** Mr. Speaker, Sir, I do not have those details with me. As you will appreciate---

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! I think this Minister took over this Department of Communications recently. From the look of things, maybe he needs time to acquaint himself with it. What is your reaction, Mr. Minister?

**Mr. Tuju:** Mr. Speaker, Sir, I would be most grateful for that. I would urge any hon. Member with any piece of specific information that they can give me to do so.

**Mr. Speaker:** I will defer the Question to next Thursday. Direct any information you have to the Minister.

*(Question deferred)*

**Eng. Okundi:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order! Is it on this same Question?

**Eng. Okundi:** There is something very important, Mr. Speaker, Sir.

**Mr. Speaker:** On that Question?

**Eng. Okundi:** The second part of the discount of 65 per cent has not been touched on.

**Mr. Speaker:** Order, Eng. Okundi. Will you please sit down? Once a Question has been deferred, it is no longer before the House.

That is the end of Question Time. I think there were some Ministers with Ministerial Statements. Let me begin with the Minister for Information and Communications.

## MINISTERIAL STATEMENTS

### TENDERING FOR THE SECOND NATIONAL LANDLINE OPERATOR

**The Minister for Information and Communications (Mr. Tuju):** Mr. Speaker, Sir, two weeks ago the issue of the integrity of the tendering for the second national landline operator was raised on the Floor of this House. I did ask Members of the House and members of the public of Kenya to bring to my attention any evidence of impropriety in the tendering process. As the new Minister in charge of the docket, I requested a comprehensive brief from the Communications Commission of Kenya (CCK) that is charged with managing this process. I also requested briefs from my colleagues, Mr. John Michuki and Mr. David Mwiraria.

It is our belief, as a Government and common sense, that the licensing of the second national landline operator is vital for the improvement of telephone and other communication services. The second national operator will introduce essential competition in this important sector, where this country is badly lagging behind. It is also commonsense that the corporate entity that wins the licence for the second national landline operator will have a potential lucrative business avenue that it can exploit. Figures in this sector are not in millions of shillings, but billions of shillings.

We, therefore, recognise the high stakes involved in the bidding process. As the Minister, I

have had to navigate very carefully, so that I am not misconstrued to be interfering unduly with the procurement process. However, after due consultation within the Government, and with the President, a decision was reached this morning on the integrity of this process. Initially, some seven organisations submitted pre-qualification packages---

*(Mr. Balala consulted loudly)*

**Mr. Speaker:** Mr. Balala, you do not want to listen to this?

**The Minister for Information and Communications** (Mr. Tuju): Mr. Speaker, Sir, initially some seven organisations submitted pre-qualification packages, and they qualified. Five of the seven consortiums met the pre-qualification requirements. Four of the five purchased tender documents. A final three were short-listed for their technical proposals to be evaluated. Out of these three finalists, two have been disqualified, only leaving one bidder to go to the next stage of opening of the financial bid. In other words, no competition is now possible with respect to the funds that the licensee will pay.

On balance, and so as to be fair to all parties involved, the Government has decided that this process be declared as a non-responsive bidding process. Our examination of the process so far has not revealed that there was any deliberate attempt to rig the process. However, it is very important that not only is the process fair and free of corruption, but must also be seen as being fair and transparent. Based on the foregoing, the process has been declared a non-responsive bidding process. No award will be made, neither will the financial proposals be opened for the benefit of those finalists.

The bidding process will be started anew and, we will ensure that we guard against all risks of the process being run badly and becoming non-responsive in future.

#### SHORTAGE OF MAGISTRATES AND JUDGES

**The Assistant Minister for Justice and Constitutional Affairs** (Mr. Githae): Mr. Speaker, Sir, on Wednesday, 21st July, the Member of Parliament for Amagoro Constituency, Mr. Sospeter Ojaamong, sought a comprehensive Ministerial Statement from the Ministry of Justice and Constitutional Affairs on the state of administration of justice in the country in the light of the shortage of magistrates and judges occasioned by their suspension, transfers, sacking and irregular transfers. I beg to advise as follows.

In October, 2003, there were 11 judges in the Court of Appeal. Five of these were suspended. Since then, three have been appointed. There are, therefore, nine Court of Appeal judges, including the hon. Chief Justice. The two vacancies in the Court of Appeal cannot be filled as two Court of Appeal Judges have cases pending before the tribunal investigating the conduct of judges.

Mr. Speaker, Sir, before May, 2003, there were 36 judges of the High Court. In the same month, eight judges were appointed bringing the total number of judges in that court to 44. Following the Ringera Report on Integrity and Anti-Corruption in October, 2003, 17 judges were suspended, but since then, 18 judges have been appointed. The Constitution provides for a maximum establishment of 50 judges. The five positions that would have to be filled to bring the total number of judges of the High Court to the constituted maximum cannot be filled now because, again, there are five High Court judges having cases pending before the tribunal. The position now is that there are 45 judges in post. This is the highest number of judges at any point in the history of the Kenyan judiciary. It should be noted that the number of judges cannot be increased beyond 50

unless this Parliament amends the Constitution to provide for more. Given the increased population and enhanced awareness of the citizens' legal rights, there is certainly a need to expand the establishment.

Mr. Speaker, Sir, with regard to magistrates, before May, 2003, there were 271 magistrates in the Judiciary; three resigned, 21 had their contracts terminated in line with the judiciary's reform and policy of doing away with lay magistrates and leave professional qualified magistrates. In addition to the above, 68 magistrates were retired in public interest, leaving about 179 magistrates in post.

Secondly, on the issue of recruitment of new magistrates and low salaries, the judiciary recently recruited and posted a total of 67 magistrates. The recruitment exercise is on-going and it is expected that the optimum number will be reached before the end of September, 2004.

On salaries, we acknowledge that the salary emoluments for magistrates remain low. It will be desirable to increase the salaries of both magistrates and support staff to encourage qualified and competent officers to apply to join and be motivated enough to remain in the Judiciary.

Mr. Speaker, Sir, on the issue of the response to the adverts, even so, the response to the adverts for the jobs of magistrates has been overwhelming. For example, the jobs recently advertised and from which 67 magistrates were recruited, 329 applications were received. The Judiciary considers those recruited to be competent and properly qualified.

On pardoning of suspended magistrates, none of the magistrates were irregularly pardoned by the Judiciary. All the cases of suspended magistrates were considered by the Judicial Service Commission (JSC), each on its own merit, and all the procedures under the JSC regulations were adhered to expressly before the decisions were arrived at.

#### SUB-STANDARD PARACETAMOL TABLETS

**The Minister for Health** (Mrs. Ngilu): Mr. Speaker, Sir, I wish to make a Ministerial Statement on paracetamol tablets that were found to be mouldy. My attention has been drawn to a recent Media report of 18th July, 2004, over the substandard pain killers in some of the Ministry of Health institutions. The Ministry of Health wishes to state as follows.

On 10th June, 2004, the Kenya Medical Supplies Agency (KEMSA) received sealed packs of paracetamol tablets which appeared contaminated or growing moulds from the Ministry of Health, Nyeri. On 25th June, we wrote to the Chief Pharmacist and sent samples of the said paracetamol to his office for the purpose of initiating action. The letter was copied to the Director of Medical Services (DMS), the Provincial Medical Officer (PMO), Central Province and the Registrar of the Pharmacy and Poisons Board (PPB). At the same time, we instituted further investigations in accordance with the regulations prescribed by the Pharmacy and Poisons Act. The drug in question was part of the 23,400 dispensary drug kits that were procured by the funds donated by the Government of Denmark through the Royal Danish Embassy Development Aid in Kenya. The value of these kits was Kshs182 million.

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! Is there really any value in me allowing Ministers to make Ministerial Statements when they are not being listened to? So, make up your mind! If you want to hear the Ministers, give them a chance. If you do not, I can move on to the next business!

Proceed, Mrs. Ngilu!

**The Minister for Health** (Mrs. Ngilu): Mr. Speaker, Sir, these kits contained 35,000 tins of

paracetamol, each containing 1,000 tablets whose value is approximately Kshs7 million. The kits contained 18 other drug items, but only paracetamol tablets have a problem. The kits were procured by GTZ prompt on behalf of DANIDA, and donated to the Ministry. The Ministry, therefore, was not involved in any way in the procurement. Of the 23,400 dispensary kits that were procured, 11,700 were supplied by Gesto Pharmaceuticals Limited. The donation was delivered to KEMSA between 15th December, 2003 and 8th March, 2004. Before distribution to the health institutions, the dispensary kits were subjected to normal KEMSA routine of random sampling and testing procedures to determine the quality and suitability of the products. These samples were tested and they met the quality standards. The total consignment of paracetamol from Gesto Pharmaceuticals Limited was 234 batches.

Mr. Speaker, Sir, no defects have been observed on other products supplied of the 23,400 dispensary kits. M/s Gesto Pharmaceuticals sourced the paracetamol from M/s Bulk Medicals Limited of Nairobi. In the past, this company has supplied sub-standard goods in cellular blankets to the Ministry which the Ministry rejected.

Mr. Speaker, Sir, I want to assure the House that we are now in the process again of putting in place the roles played by procurement agents in the Ministry so that commodities can be procured directly by the Ministry through KEMSA. This will apply both to GTZ and foreign agents who have in the past been procuring for us. No Ministry official was involved in this exercise at all.

#### APPOINTMENT OF GOVERNMENT SPOKESMAN

**The Assistant Minister, Office of the President** (Mr. Mungatana): Mr. Speaker, Sir, following Mr. Kembi-Gitura's demand for a Ministerial Statement on the nature of the terms of contract of the Government Spokesman, and an explanation as to why there was a contradiction, or an apparent contradiction of his statement, and the statement of the Minister for Finance, Mr. Mwiraria, regarding the return of funds to the Treasury, I wish to respond as follows.

Mr. Speaker, Sir, first and foremost, I would like to inform this House that the appointment of the Government Spokesman was done through interviews conducted by the Public Service Commission of Kenya (PSC). Upon the completion of the interviews, Dr. Alfred Mutua emerged successful and was appointed to the post of Public Communications Secretary, Job Group "T" on local agreement terms of service for an initial period of three years, with effect from 22nd June, 2004. One of the immediate tasks of this office is to set up regular media briefings so that *wananchi* are informed of the intention of the Government in terms of development.

The Government believes that the freedom of expression, accountability and an open system are vital for development and institutionalisation of democracy in our country. May I also inform this House that, there was no contradiction in the statements issued by the Minister for Finance and the Government Spokesman. The actual position is that when the Minister for Finance referred to "nothing having been returned to the Treasury", he was responding to a question as to whether money was returned to the Treasury by ghosts. No ghosts returned money to the Treasury. The Minister and the Government Spokesman are in agreement as to the amount of money that was returned to the Treasury. The amount returned was Kshs461 million.

Mr. Speaker, Sir, finally, I wish to inform hon. Members of this House not to allow contradictions portrayed by the media to reduce their support for the office of the Government Spokesman, to facilitate the prompt understanding between the Government, *wananchi* and the international community.

**Mr. Speaker:** I think I will give a chance to Mr. Muite, Mr. Mwenje and Mr. Weya. Then,

we will go to business.

**Mr. Kagwe:** On a point of order, Mr. Speaker, Sir. One of the Ministerial Statements was sought by me and I hope you will give me a chance to seek clarification.

**Mr. Speaker:** We do not have time!

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

Order, hon. Members! Actually, Ministerial Statements are not subject to debate. I have told this House so many times that, if you want your matters addressed, put a Question. But hon. Members circumvent that because it is an easier option to ask for a Ministerial Statement. If I go strictly under the law, they are delivered and that is the end of the matter. So, please, next time, put Questions.

### POINTS OF ORDER

#### ABDUCTION OF KENYANS IN IRAQ

**Mr. Muite:** Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Ministry of Foreign Affairs regarding Kenyans who have been abducted in Iraq and now face the danger of being executed through beheading. It is not enough for Mr. Wetangula, the Assistant Minister for Foreign Affairs, to state that the Government is doing everything possible to secure the release of those Kenyans. This House needs to know precisely what the Government is doing. For example, has this Government confirmed to the Iraq Government that Kenya has no quarrel with the Iraq people or the Iraq Government? Has this Government confirmed that Kenya has no soldiers fighting in Iraq? Is the Kenya Government in negotiation with the American Government? That is because we are now paying collateral damage, when the real target is America. Are they engaging the American Government to secure the release of those people? Finally, are they in touch with the families? Are they giving support to the families, including information? Those families stay in Mombasa and they had sent somebody all the way from there to ask me to raise this matter in Parliament.

**Mr. Speaker:** You are taking a whole day! Mr. Ndolo, you are also seeking a Ministerial Statement? Hon. Members, I repeat that I will be very dis-inclined except on matters like the one raised by the hon. Member, affecting an urgent issue of Kenyans under threat elsewhere! But on ordinary Ministerial issues, we must proceed by way of questions.

**An hon. Member:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** You will sit down! Will you? Mr. Ndolo!

#### DEMOLITION OF KIOSKS IN KALOLENI

**Mr. Ndolo:** Mr. Speaker, Sir, I wish to seek a Ministerial Statement from the Minister for Local Government. This morning, at 4.00 a.m. in my constituency, a barbaric act was committed by City Council *askaris* and Administration Police from the Provincial Administration. They demolished *kiosks* in my area. The former Minister for Local Government, Mr. K. Maitha, gave an assurance in this House that such a thing was not going to happen again in this country. But, today in the morning, the same thing has happened again! It was committed by our Government. This Government---

**Mr. Speaker:** Will you make your point?

**Mr. Ndolo:** Yes, Mr. Speaker, Sir! A lot of money was taken away by those *askaris*. They have taken everything. The Minister should give us an assurance that such a thing will never happen again!

**The Minister for Local Government (Mr. Kombo):** Mr. Speaker, Sir, this morning, at about 4.00 a.m., the incident that the hon. Member is referring to happened in Kaloleni. It was an unfortunate incident. The rules of demolitions are very clear. It is only the Minister who can authorise demolitions. That incident took place without my authority. I have checked with the Mayor and he did not know about it! I checked with the Town Clerk and he did not know about it. I checked with the Permanent Secretary and he did not know about it! Consequently, I have given instructions to---

**An hon. Member:** It was Mr. E.K. Maitha!

*(Laughter)*

**Mr. Speaker:** Order! Mr. Minister, could you say what you have?

**The Minister for Local Government (Mr. Kombo):** Mr. Speaker, Sir, consequently, I have given instructions to the Town Clerk to take action against the officers who were involved immediately. It is also unfortunate because the property they were demolishing is owned by a private developer. So, we are investigations how he went to City Hall and engaged City Council *askaris*.

**Mr. Speaker:** Mr. Mwenje! Hon. Members, I will finish with Mr. Mwenje! We have dealt with those issues for too long!

FATE OF MONEY REFUNDED  
BY CONTRACTOR

**Mr. Mwenje:** Mr. Speaker, Sir, before I raise mine, I would like to inform the Minister for Local Government that another demolition happened at Pipeline in the same manner.

**Mr. Speaker:** Order! I did not give you the Floor on that aspect!

**Mr. Mwenje:** Mr. Speaker, Sir, you authorised me to make a follow up on the Ministerial Statement issued by Mr. Mungatana. With the information that we have about those refunded monies, I tend to disagree with the Ministerial Statement that has been issued here. That is because the Government Spokesman gave a huge figure, while the Assistant Minister only gave Kshs461 million.

**Mr. Speaker:** Do this, Mr. Mwenje: The Vote of the Ministry of Finance is coming on Tuesday! Question them then! Is that right?

**Mr. Mwenje:** Mr. Speaker, Sir, you have allowed me to follow up the Ministerial Statement!

**Mr. Speaker:** No! No!

**Mr. Mwenje:** Are you withdrawing the authority you gave me?

*(Laughter)*

**Mr. Speaker:** Order, Mr. Mwenje! I have not withdrawn! I gave you permission to seek clarification, but you are actually debating. So, I am bringing you to order as I am supposed to do, because that is my business. So, please, could you seek a clarification?

**Mr. Mwenje:** Mr. Speaker, Sir I am seeking clarification. We have been given two different figures by two different people. We are told by the Minister that the money which has come is only Kshs400 million. The other money, which was referred to by the Government Spokesman, where has it been deposited? Or has it also been pocketed after it was refunded?

**Mr. Speaker:** Well, do you want to respond to that, very quickly?

**The Assistant Minister, Office of the President (Mr. Mungatana):** Mr. Speaker, Sir, that is a valid question. But the Government Spokesman made a clear clarification that the amount of money that had been returned is Kshs461 million.

**Mr. Speaker:** Mr. Wetangula, when are you going to give the Statement on those Kenyans?

**The Assistant Minister for Foreign Affairs (Mr. Wetangula):** Mr. Speaker, Sir, I can give the Statement on Tuesday afternoon.

**Mr. Speaker:** Very well. Mr. Weya has the last question.

**Mr. Weya:** Mr. Speaker, Sir, I wish to seek some clarification about the Kshs461 million that the Government said it was returned. It was returned from which account, which country, which company and by whom?

**The Assistant Minister, Office of the President (Mr. Mungatana):** Mr. Speaker, Sir, the money, Kshs461 million, was returned back to the Treasury. The Minister clarified that it was not "ghost" people who returned that money. We have said that the proper report will be tabled here on Tuesday.

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

STATEMENT ON GOVERNMENT  
SPOKESMAN UNSATISFACTORY

**Mr. Kembi-Gitura:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** What is it? Why are you upset?

**Mr. Kembi-Gitura:** Mr. Speaker, Sir, I am the one who sought that Statement.

**An hon. Member:** It is not a right!

**Mr. Kembi-Gitura:** I know it is not a right, Mr. Speaker, Sir. But it is only fair---

**Mr. Speaker:** Order! Do not overdo it! Now, what is your problem?

**Mr. Kembi-Gitura:** Mr. Speaker, Sir, I have no problem, but I would like a clarification. First of all, that Statement takes a very paternalistic stance. It assumes that I did not know what I was asking when I sought that Statement. It is not sufficient to blame the media and say that we have been misled by the media. When I watch television news, it tells me what is happening then without the interference of somebody else interpreting it. So, I was talking about what I saw.

*(Applause)*

Mr. Speaker, Sir, they may want to blame the media. But the question that I put forward was about the contradiction that is so apparent on the Government Spokesman. Let them call him a Public Relations Officer (PRO). But when they call him a Government Spokesman, then, what he says is assumed to be the Government position.

*(Applause)*

So, the issue I am raising is that I am not satisfied with that statement. It is a whitewash!



**Mr. Speaker:** Ask a question!

**Mr. Kembi-Gitura:** Mr. Speaker, Sir, I hope that they are going to look deeply into the issues I raised because it is the Government which is being embarrassed, not myself, as hon. Kembi-Gitura.

*(Applause)*

**Mr. Speaker:** Next Order!

*(Dr. Godana stood up in his place)*

**Mr. Speaker:** Order! Order, Dr. Godana! You were a Deputy Speaker for a long time and you should know these things. A matter must be called first before it is discussed before the House. So, please, relax.

DISCUSSION OF JUSTICE RINGERA  
NOT A BREACH OF STANDING ORDERS

**Dr. Godana:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Yes, what is it?

**Dr. Godana:** Mr. Speaker, Sir, I apologise with humility for having been a little over-excited. But the reason is that I stand to object to the matter which has just been raised, as improperly before the House.

*(Applause)*

**Mr. Speaker:** Order! Order! It is out of order to make the Speaker unable to hear an objection! You must all keep quiet! I want to understand every word of what he has to say.

Proceed!

**Dr. Godana:** Thank you, Mr. Speaker, Sir. I want to precede my reasons for objection---

**Mr. Speaker:** What are you actually objecting to?

**Dr. Godana:** Mr. Speaker, Sir, I am objecting to the Motion which is proposed to be before the House.

**Mr. Speaker:** Order! Dr. Godana, again, it pays to understand the rules of the House. A Motion is never before the House until it has been proposed from the Chair, and then you can do what you want to do with it.

**Dr. Godana:** Mr. Speaker, Sir, I am objecting to the Order of Business before the House and we have always done this.

*(Applause)*

**Mr. Speaker:** On what grounds are you objecting?

**Dr. Godana:** Thank you, Mr. Speaker, Sir. I am a Member of the House Business Committee. We met on Tuesday and this matter was not listed as the leading Business for today.

*(Applause)*

I am saying this as the acting leader of this part of the House, in the absence of the Leader of the Official Opposition. But beyond that---

**Mr. Speaker:** Order! Just a moment! First of all, Dr. Godana, on that particular one, were you here in the House yesterday? If you were here, an issue about this particular matter was raised by way of a Question, and I directed from this Chair; I approved a Motion--- I do not think it was yesterday. I think it was on Tuesday. I directed then that the Motion that I had approved, which a Member from your side was following up, the Minister brings it before the House. That is an order from the Chair.

*(Applause)*

Therefore, and by the way, the Business of the House shall be taken in such a manner as has been directed by the Speaker. And I directed that this matter comes to this House. So, go to the next score.

**Dr. Godana:** Mr. Speaker, Sir, I then go to the next issue, which is the main substantive ground, anyway. I would not want to comment on your ruling on that.

Mr. Speaker, Sir, this is a House which is run on the basis of set rules of conduct of Business, the Standing Orders. Standing Order No. 73(1) states:

"Neither the personal conduct of the President, nor any conduct of Mr. Speaker or of any judge, nor the judicial conduct of any other person performing judicial functions, nor any conduct of the ruler or the Government or the representative in Kenya of any friendly country shall be referred to adversely except upon a specific substantive Motion moved for that purpose."

Mr. Speaker, Sir, for the purpose of questioning and discussing the conduct of an individual, a censure Motion is the kind of Business which is envisaged here. We have a request for approval by this House of a number of persons to be appointed to an important body in this country. On top of that list is the name of a serving judge; to approve or disapprove. Hon. Members of the House must convince themselves and be satisfied and, therefore, be able to discuss the technical, legal and moral competence of the individual concerned.

*(Applause)*

We cannot do that without infringing the express provisions of this House! I, therefore, plead that the Minister withdraws the matter---

**Mr. Speaker:** Order! The hon. Member ultimately read, fully, the relevant Standing Order which he attempts to rely upon, in essence, to shut out this particular Order of Business from the House. His main objection is that among the names being presented to the House is one hon. Justice A. Aaron Ringera. From what I understand the hon. Member to say, is that we cannot take this Order because we may, in the course of that Motion, discuss adversely the Judge. I want to say the following:

First, the Motion as it stands reads as follows and I want every hon. Member to look at the Order Paper. That is the business the hon. Godana is opposing. The Motion reads:

"THAT, pursuant to section 8(3) of the Anti-Corruption and Economic Crimes Act (No.4) of 2003 and on the recommendation of the Kenya Anti-Corruption Advisory Board, this House "approves" the following nominations to the Kenya Anti-Corruption Commission:-

Hon. Justice A. Aaron G. Ringera - Director of the Kenya Anti-Corruption Commission

Dr. Julius Tangu Rotich - Assistant Director, Finance and Administration  
Dr. John Parmenas Mutonyi - Assistant Director, Investigations and Assets Recovery.  
Dr. Smokin C. Wanjala - Assistant Director, Research, Policy and Preventive Services.  
Ms. Fatuma Sichale - Assistant Director, Legal Services."

That, hon. Members is the Motion! That Motion is for approval; not disapproval.

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

Order! It is for the approval of those names. Hon. Members, Dr. Godana raised the issue of a possibility of hon. Members talking about the personal conduct of Justice Ringera. Dr. Godana, as a long standing lawyer, and I am sure that he will again, in this instance, be assisted by Mr. M. Kilonzo, that when you are a volunteer, you cannot plead against the law. If Justice Ringera has volunteered to bring his name to apply for this---

*(Loud consultations)*

Order! If you do not understand the law, you do not! If you do, you do! I am challenging Dr. Godana and Mr. M. Kilonzo if that not be the position. They will be capable to respond! Therefore, what I will say is the following: On the face of it, the Motion does not call upon the character of Justice Ringera to be discussed.

*(Applause)*

If in the end of the course of the Motion, there is need as must be actually, when this House is called upon to approve names for appointment, it by itself means that you look for pros and cons. You must look at both sides of the coin! As I said, if that be the position, he will be discussed because he is a volunteer and, therefore, he waives all his rights. That is the law! I want these honourable learned lawyers to challenge that.

**Dr. Godana:** Mr. Speaker, Sir, I refuse to be drawn, with respect, into a duel on what the law is on this matter. However, let me say that if you will make it clear that by this Motion, we are actually discussing a censure Motion on Justice Ringera in which his character will be called into question, I think, we will go by it. Beyond that, the application before the House is by the hon. Minister for Justice and Constitutional Affairs. There is no application by Justice Ringera here. We are not even sure that he applied for the job.

*(Applause)*

**Mr. Speaker:** Order, hon. Members! What is becoming of this House? Why do you not read Section 8 of the Anti-Corruption Act? If you read this section, we are not the people to receive applications. The applications go to another authority.

**Dr. Ali:** We know that!

**Mr. Speaker:** If you do, then why complain?

Order, Dr. Ali! Everybody must now keep their cool! The law will prevail and that is what it is supposed to be. Section 8 of the Act says:-

"(i) The Commission shall have a Director who shall be the chief executive officer of the Commission who shall be responsible for its direction and money.

(ii) The Commission shall have up to four Assistant Directors to assist the Director; the relevant ones who are three. The Director and Assistant Directors shall be persons recommended by the Advisory Board and approved by the National Assembly for appointment to their respective positions."

*(Loud consultations)*

Order, hon. Members! First of all, one thing that will not happen is that we must never disregard the law! It up to you to---

*(Mr. M. Kilonzo stood up in his place)*

Will you, please, sit down? It is up to you, first of all, to listen to the Minister, find out whether actually the earlier provisions of Section 8 have been complied with and if they have not, the Motion is before you; you can refuse. Why do we take all the time on technicalities when you can actually make the final decision yourselves? However, as far as the Chair is concerned, the Motion is properly before the House!

*(Applause)*

**Mr. M. Kilonzo:** On a point of order, Mr. Speaker, Sir. You mentioned that, perhaps, I could offer confirmation that a volunteer cannot use the law, again, as a shield.

**Mr. Speaker:** Yes!

**Mr. M. Kilonzo:** Mr. Speaker, Sir, you also said that this Motion simply seeks "approval" of this House. I would like to say that you are right to the extent that a volunteer cannot, at the same time, seek to use the law as a shield when he is confronted about his voluntarism. On the other hand, the Motion before the House uses the word "approves". As you are aware, the word "approves" also has an opposite called "disapproves".

*(Applause)*

Having agreed with you with regard to the use of the law as a shield, I would seek your agreement with me that it is not possible for this House to discuss the word "approves" without discussing the word "disapproves", because that would be taking this House for granted. It is as though we should only be saying we approve. It is like saying, we ought not debate it.

**Mr. Speaker:** Can I give you my honest opinion on that?

**Mr. M. Kilonzo:** Mr. Speaker, Sir, allow me to finish! As you know, I normally do not take very long.

The issue as to whether the Hon. Justice A. Aaron G. Ringera is a volunteer is, in fact, an issue that is going to be on the Floor of the House. Secondly, over the last one-and-a-half years, this country has faced a tremendous problem in the Judiciary and it is not possible for hon. Members here to debate the issue of approving a group of people who will be running the Kenya Anti-Corruption Commission without raising the question as to whether the Judiciary itself has been behaving well. I want to remind this House that the judges who were suspended early this year, were suspended through a committee chaired by the Hon. Justice A. Aaron G. Ringera.

*(Applause)*

**Mr. Speaker:** Order! Order! The last statement by Mr. M. Kilonzo is a matter that truly belongs to the Motion, but let me come to his first two issues.

Thank you, Mr. M. Kilonzo, for your intellectual honesty. Actually, the principle is called *volonti non fit injuria*. That is the legal principle. It is always good, whatever we do, either here or outside, to have our intellectual honour about and around us all the time. So, I thank you for that intellectual honour. Secondly, I agree with you, Mr. M. Kilonzo. In fact, this is what I have been saying, including on Tuesday; that this is a new concept of Parliament approving or disapproving public appointments. We have never done it before. This is the first time we are doing it. Hon. Members must understand that anything that comes new always has attendant problems, including procedures. When we put these acts together, I do not think procedure was at the topmost on the minds of the drafters. Therefore, this is a matter that all of us must develop, because that is the direction the country is going. The country is going to the direction of Parliament approving public appointments. Therefore, we must address our minds to perfecting the system.

For the time being, put out of your mind the individual called Justice Ringera and leave the four proposed names. What is the correct system of doing it? If I may pose the following questions: Is this House, as constituted, in a proper position to vet persons for appointment to positions? We are obviously not. In plenary, we are not in a position to find out all the facts. I think in developing this procedure, the House must rely on its Committees to do the vetting.

*(Applause)*

Order! Order, hon. Members! I want you to relax! This country belongs as much to me as to each one of you. We owe it to society and posterity that we get things going right from the very beginning. Therefore, what was the dilemma that we faced when this matter was brought to us? The dilemma that we faced was the following: The Motion was brought to the Clerk of the National Assembly by the Minister for Justice and Constitutional Affairs, who requested that it be sent to the Departmental Committee on Administration of Justice and Legal Affairs, because that is its natural home; as I heard a Minister the other day say that Yala Swamp is a natural habitat of crocodiles. So, naturally, the Clerk of the National Assembly sent this Motion to the Committee. The Committee looked at Section 8(3) of the Anti-Corruption and Economic Crimes Act and said: "This does not belong to the Committee. It belongs to the House." That is why the Motion came here. However, this House also has power to refer any matter to a Committee.

*(Applause)*

For those who have never visited the Standing Orders, please, tonight, visit Standing Order No.153 and you will see its proviso looking at your face; that this can be done. The Standing Order empowers this House to refer a matter to a Committee but, again, the catch is here, and this is where you, hon. Members, go wrong: The House cannot deal with a matter that is not before it, and a matter only comes before the House when it has been proposed from the Chair. Therefore, the correct thing to do is to let the matter be brought before the House. Once it is before you, after it has been proposed from the Chair, any interested hon. Member may move, under Standing Order No.153, to refer the matter to the Committee. You will then be able to get whatever you want.

Finally, to respond to the last issue raised by my good friend and colleague, Mr. M. Kilonzo, let me say that once you are a volunteer, you can never call upon the law to assist you. So, hon. Ringera, by making an application and knowing very well that it must come to Parliament for

approval, he must be considered as a volunteer and must be able to face any and every probe this House may wish upon him.

*(Applause)*

If he wants the law to protect him, then there is only one option left; maybe, take away his application or leave the other job there, but really, he is a volunteer. So, if he is a volunteer, he will face everything. So, Mr. Minister, proceed!

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

**The Minister for Trade and Industry** (Dr. Kituyi): On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order, hon. Members! Will you sit down? Proceed, Mr. Minister!

**Mr. Kajwang:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order! Order! Mr. Kajwang what tells you that you have superior rights to every other hon. Member of this House? Dr. Kituyi rose on a point of order! Proceed!

**The Minister for Trade and Industry** (Dr. Kituyi): Mr. Speaker, Sir, first, I want to thank you very much for a very lucid presentation. It is historically important because, as we move into necessary procedure, we must get it right and my interest here is purely about procedure. While we are trying to create a precedent, it is my personal and humble opinion, that it be necessary not to have Motions with more than one name because we pass or defeat a Motion on every individual separately.

*(Applause)*

**Mr. Speaker:** Let me also correct that notion again; that, if a Motion comes with five or six names, you are bound to approve all of them or refuse all of them. Absolutely not! It cannot be! You cannot be guilty by association. I mean, if three out of five names are okay, the House can approve three names and refuse two names. Now, if all of them are bad, the House can refuse all of them. In fact, this House is under no obligation to approve them. It can actually refuse them. I wanted to be clearly understood; that this House is not going to be a rubberstamp. This House will do its duty. If it does not like any appointees, it will refuse to approve. If it likes them, it will approve. So, that is the spirit in which we must proceed. Could we now go to the real business?

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

**The Minister for Education, Science and Technology** (Prof. Saitoti): On a point of order, Mr. Speaker, Sir. Just for consistency here in this House, there is one clarification that we really need to set out very clearly. The issue which has been raised here is the fact that one of the names is likely to be discussed and, therefore, violate one of the Standing Orders of this House, that no Judge of the High Court can be discussed. We know that when Motions have been brought here for setting up Committees, normally, the Mover of those Motions usually gives out the names of the hon. Members who are going to serve in them. We also know that there is a Standing Order which stipulates that you cannot discuss the conduct of a Member of Parliament without bringing a Substantive Motion and yet, we have been able to move along.

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

**Mr. Speaker:** Will you all please sit down? Now, please, get this right! There is a difference between condemnation and commendation. There is a difference between you seeking a job and you doing your job elsewhere. When you are an applicant for a job, you cease to hold your other positions for the duration of the interview and the interviewers are at liberty to look at your correct and wrong behaviours. Now, if you do not like that, then do not come to this House. So, as I said, let this Motion be brought. I hope some hon. Members may wish it to go to the relevant Departmental Committee. I hope the relevant Departmental Committee will be able to look at all the individuals.

*(Applause)*

By the way, let me ask you one simple question; even to hon. Godana who has been agitated by the name Ringera: Do you actually know who the other four are? Do you actually know them?

**Dr. Godana:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Do you know them?

**Dr. Godana:** Mr. Speaker, Sir, I hope you have given me the Floor on a point of order.

**Mr. Speaker:** Proceed!

**Dr. Godana:** Thank you, Mr. Speaker, Sir. Let me put the record straight for the avoidance of doubt. This is not a personal matter about Godana and Ringera. He was a colleague as a law student. He was a colleague and a contemporary at the Faculty of Law as a fellow lecturer and a Judge who, when he served as Solicitor-General, I worked with, even as Minister for Foreign Affairs. I know the major issues which we discussed with him and I respect him as an individual. My interest in this matter is not personal. My interest is respect by this House---

**Mr. Munya:** On a point of order, Mr. Speaker, Sir.

**Hon. Members:** Sit down, Mr. Munya! *Kaa chini!*

**Mr. Speaker:** Order! Order! In all honesty, I think I have laid the law bare. I have also been as frank as possible as to the inadequacies of our law for the reasons that this is a new world which you and I must chart together. So, do not obstruct; be constructive. So, what is your constructive way forward?

**Dr. Godana:** Thank you very much, Mr. Speaker, Sir. So, I have said it is not a personal matter. My interest is nothing but respect for the integrity of the procedures of this House; the rules of procedure. The Standing Orders are the "Bible" or the "Koran", if you like, of this House and where statutes have provisions on the conduct of our business---

**Mr. Speaker:** In short, you are then overruling me?

**Dr. Godana:** No, Mr. Speaker, Sir!

**Mr. Speaker:** So, what is it?

**Dr. Godana:** Mr. Speaker, Sir, I cannot! Please, I wish that you also hear me out. It is my submission. You asked whether I know the other individuals. Yes, I know Dr. Julius Tangu Rotich. I worked with him when I was at the Ministry of Agriculture. I know Dr. Smokin C. Wanjala. He was a member of my department when I was the Chairman of the Faculty of Public Law. I do know some of them but that is beside the point.

Mr. Speaker, Sir, it is my submission that any decision we make, and I fully agree with you, we are in a field which is unknown to us. We have to chart the course of establishing precedence in

the matter of vetting public appointments - a business and job for which we do not have our own experience to fall back on. It is, therefore, critically important that as we establish those precedents, we be absolutely clear that we are on the right side of our own procedures. If we get it wrong at the very beginning with the fundamental rule of our own procedures---

*(Applause)*

**Mr. Speaker:** Dr. Godana, it is very good to say all those good principles but you have not told us what then is the right way.

**Dr. Godana:** Thank you very much, Mr. Speaker, Sir. I want to help the House. I am a Member of this House. I have one option which I know you cannot compel but which the hon. Minister for Justice and Constitutional Affairs as the Mover or proposed Mover of this Motion, can actually adopt, and normally, that is; he is going to stand up and say he steps down the Motion now, so that we go to the next Order and then we can deal with the matter outside.

**Mr. Speaker:** Order! That is called escapism. I am not an escapist! Look behind my back, Dr. Godana, where I sit. There is no escape route. I cannot escape from any issue. I must face it head on. I truly believe I have already done so. There is nothing further to revisit!

Proceed, Mr. Minister!

*(Dr. Godana stood up in his place)*

Dr. Godana, you are now firmly warned by the Chair! Please, sit down! It is not you! It is the House!

Proceed, Mr. Minister!

### MOTION

#### APPROVAL OF NOMINATION OF KACC DIRECTORS

**The Minister for Justice and Constitutional Affairs** (Mr. Murungi): Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to Section 8(3) of the Anti-Corruption and Economic Crimes Act No.4 of 2003 and on the recommendation of the Kenya Anti-Corruption Advisory Board; this House approves the following nominations to the Kenya Anti-Corruption Commission:-

Hon. Justice A. Aaron G. Ringera-Director of the Kenya Anti-Corruption Commission.

Dr. Julius Tangu Rotich Assistant Director, Finance and Administration.

Dr. John Parmenas Mutonyi Assistant Director, Investigations and Assets Recovery.

Dr. Smokin C. Wanjala - Assistant Director, Research Policy and Preventive Services.

Ms. Fatuma Sichale-Assistant Director, Legal Services.

*(Several hon. Members started  
withdrawing from the Chamber)*

**Mr. Speaker:** Order, hon. Members! As I said, we are charting a new course. I reminded hon. Members of Standing Order No.153. So, for any hon. Member who wishes to take advantage of it, let the matter be proposed and you proceed with it. However, I would like hon. Members to



stay and help us to chart this course together.

Proceed, Mr. Murungi!

**The Minister for Justice and Constitutional Affairs** (Mr. Murungi): Mr. Speaker, Sir, Section 8 of the Anti-Corruption and Economic Crimes Act on which this Motion is based reads:-

"That the Director and Assistant Directors shall be persons recommended by the Advisory Board and approved by the National Assembly for appointment to their respective positions."

Mr. Speaker, Sir, number four of Section 8 reads:-

"On the approval of a person by the National Assembly under Subsection 3, the President shall appoint the person concerned to the office in respect of which the approval was given."

Mr. Speaker, Sir, the qualifications for appointment as Director or Assistant Director are contained in the First Schedule made under Section 8 of which paragraph 1 reads:-

"1(1) To be appointed as a Director or as an Assistant Director, a person must satisfy the following qualifications:

(a) The person must be knowledgeable about or experienced in at least one of the following:

- (i) Law,
- (ii) Public Administration,
- (iii) Accounting and Financial Matters and
- (v) Fraud investigation.

In addition to that, the person must be a person of outstanding honesty and integrity.

The Advisory Board shall not recommend a person who is not qualified under this paragraph."

Mr. Speaker, Sir, all the persons who have been recommended by the Board for approval by the National Assembly meet the qualifications under the First Schedule, paragraph 1. This House is only required to consider whether this law has been followed by the Board in making these recommendations. The Board followed an open and transparent procedure in making these nominations which have been forwarded for recommendation by this House.

The advertisements for the post of Director and Assistant Director were published in *The Daily Nation*, *The East African Standard*, *The People* and *The Kenya Times* newspapers on 28th and 30th October, 2003. The closing date of those applications was 8th November, 2003. A total of 279 applications were received and shortlisted by the Board. Interviews were conducted by the Board on 5th December, 2003 and further interviews were also conducted on 9th December, 2003.

The following were the members of the Advisory Board which constituted the Advisory Panel:

Mr. Ahmednassir Ali Abdullahi, Chairman of the panel; Mr. K.K. Bett, Mr. Francis Atwoli, Prof. A.B. Otieno, Mr. Richard Ndung'u, Shivaz(?) Nasar Sumar, Prof. Miriam K. Were, Mr. Allan Ngugi and Ms. Mariam Elmawe.

At the conclusion of the interviews, the five persons named in the Motion were nominated by the Board to their respective positions.

Mr. Speaker, Sir, as I said before, all the nominees are qualified in accordance with the First Schedule, paragraph 1. First, Justice Aron Ringera---

*(Loud consultations)*

**Mr. Poghiso:** On a point of order, Mr. Speaker, Sir. If you look at the House there is hardly

any order!

**Mr. Speaker:** Order! Order hon. Members! I again wish to appeal for sobriety in this issue, particularly when charting a new course for these procedures. I want sobriety on both sides of the House. Let us sober up and create a new course. Let us chart this course together! In fact, forget completely that there are names on this Motion. Let us, first of all, think of how to get it right. So, please, let us get this thing right!

Proceed, Mr. Minister!

**The Minister for Justice and Constitutional Affairs** (Mr. Murungi): Mr. Speaker, Sir, I was saying that all the nominees in this list are qualified in terms of Schedule 1, Paragraph 1. First, Justice Ringera is a Judge of the Court of Appeal. He holds a Masters Degree in Law from the University of Nairobi. He has practised law for over ten years. He has been a High Court Judge, Solicitor-General and a former Director of the Kenya Anti-Corruption Authority (KACA). So, in terms of Schedule 1, Justice Ringera is qualified for this job.

The second person is Dr. Smokin Wanjala. He holds a Ph.D in Law from the University of Kent in Belgium. He also holds a Masters Degree in Law from the University of Columbia in the United States of America. He also hold a Bachelor of Laws (LLB) Degree from the University of Nairobi. Dr. Wanjala has taught at the University of Nairobi for 15 years. He has done extensive research and published extensively. He is the co-author of a book called *The Anatomy of Corruption in Kenya, Legal, Political and Economic Perspective*. Therefore, Dr. Wanjala is more than qualified for the job for which he is seeking approval from this House.

Mr. Speaker, Sir, the third person is Dr. Julius Rotich, who is a Certified Public Accountant. He also holds a Ph.D in Management Science, Finance and Accounting from the University of Lancaster in the United Kingdom. He holds a Masters Degree from the University of Sussex, a Bachelor of Commerce and MBA Degree from Nairobi University. He has worked previously as an Assistant Director for---

*(Loud consultations)*

**Mr. Speaker:** Order! Hon. Members, we are in session! We are not in a Division! We want to hear each other! So, please, relax! There will be time for that.

**The Minister for Justice and Constitutional Affairs** (Mr. Murungi): Mr. Speaker, Sir, I was saying that Dr. Rotich is very qualified for this position because he has worked previously as an Assistant Director of the KACA. At one time, he acted as the Director of the KACA. So, his qualifications are not in doubt.

Mr. Speaker, Sir, the fourth person is Dr. John Mutonyi, who is a career policeman with over 32 years experience. He holds a Masters Degree and Ph.D from the University of Leicester. His Ph.D Thesis was on approaches to control corruption in procurement systems in Kenya. Indeed, as hon. Members will recall, it is corruption in procurement which has been the source of the grand corruption in this country. So, Dr. Mutonyi is qualified to be the Assistant Director for Investigations and Assets Recovery because this is the subject which he studied for his Ph.D at the University of Leicester.

Mr. Speaker, Sir, the fifth person is Ms Fatuma Sichale, who is an advocate of the High Court of Kenya. She has practised law for 17 years. She has worked as a Resident Magistrate. She has been a Council member of the International Federation of Women Lawyers (FIDA) and a member of the KACA Advisory Board since its inception. She has been very active in the civil society.

This shows that all the candidates that the Board has nominated for approval by this House

today---

*(Loud consultations)*

**Mr. Poghiso:** On a point of order, Mr. Speaker, Sir. Once again, I want to draw your attention to the other side of the House. They are having their own debate on that side of the House and we cannot hear what the Minister is saying.

**Mr. Speaker:** Order, hon. Members! Let me say, again, that what we are doing this afternoon is a very serious business. This is the first time that this Parliament is called upon to approve people for appointments, and yet hon. Members are not paying attention at all. In fact, they are making it impossible for the Minister on the Floor to communicate; they are also making it impossible for those hon. Members who want to hear who are the people whom we are being called upon to approve. The Minister is telling you who they are, and yet some hon. Members are not letting others hear that bit. Please, let us hear the Minister in silence, so that when you make your decision, you make it knowing what it is you are voting for.

Proceed, Mr. Minister!

**The Minister for Justice and Constitutional Affairs (Mr. Murungi):** Mr. Speaker, Sir, I have just completed explaining who the various persons recommended by the Advisory Board to Parliament are and their qualifications. I have said that all of them are qualified in terms of Schedule 1, Paragraph 1.

The only other point I want to make is that the fight against corruption in this country has reached a critical stage and the political will of this Government and its commitment to fighting corruption is being challenged everyday. The only way we can demonstrate as a Government and, indeed, as Parliament, that we are committed to fighting corruption in this country, is by creating a strong professional anti-corruption agency, which is provided for by the law. Although we have an ambitious anti-corruption agenda, we are very short on its implementation. The reason why we are short on implementation is because we do not have a strong Anti-Corruption Commission, which is charged with prevention, investigation and public education.

Mr. Speaker, Sir, as presently established, the Commission is seriously under-capacitated and under-resourced because we have only eight professional investigators. We also have only 12 policemen at the Commission right now and there is a backlog of cases pending investigation and prosecution. So, I am appealing to hon. Members to have the broad picture and rise up against corruption in this country.

I would like to clarify one simple matter; that is my personal relationship with Justice Ringera. I was happy when Dr. Godana said that we are not dealing with personalities here. Justice Ringera has been known to me for a long time. He has practised law with me as my partner for ten years; between 1980 and 1990. As fate would have it, we went separate ways in 1990. In 1990, we parted company when Justice Ringera left our firm to join Oraro and Rachier Advocates. That same year, I also left the firm to go into exile. Since then, I cannot say that we meet with Justice Ringera frequently. They say that two partners can sleep on the same bed and dream different dreams. So, there is no personal issue here between me and Justice Ringera. I will not feel sad if you reject him on grounds of principle. However, it will be very sad for those who do not like Mr. Murungi to punish Justice Ringera on grounds of an imagined association which is not there.

Mr. Speaker, Sir, I want to say that I have no personal interest in this matter. I am presenting the candidates, some of them who are not personally known to me, but I have got documentation to explain to me who they are. It is on that basis that I would like the House to treat all the candidates, including Justice Ringera.

It is true that we are entering uncharted waters as far as Parliamentary business is concerned. It is during this Parliament that this House is being called upon to vet and approve names of persons to be appointed to public offices. The problem we are facing is that we have not created rules to deal with the new phenomenon. We have not created rules and procedures through which this Parliament will vet persons to public offices. It is a challenge to us, as Parliament, to look again at our Standing Orders to make rules because from now on, Parliament will be called upon to approve all public appointments in this country. But in the absence of those rules, we have a practice to follow.

Just recently, hon. Members of this House approved the hon. Members to serve in the House Business Committee. The Motion which was brought here by the Leader of Government Business was just a Motion like the one I have brought to this House today. It was upon the House to look at those hon. Members and approve them. Because of that confusion, I would like this Motion to be treated the way we treated the Motion which approved the hon. Members to serve in the House Business Committee.

This matter has been pending for a long time. I proposed that it goes to the relevant Departmental Committee of this House and the Committee said that it was the business of the House. That Committee has not changed. Let us make the decision; as a decision of the House today.

**Mr. Owidi:** On a point of order, Mr. Speaker, Sir. The matter has not been brought before the relevant Departmental Committee of this House. I am a Member of that Committee, and it is not fair for the Minister to mislead this House. The matter has never been brought before that Committee!

**Mr. Speaker:** Order, hon. Members! From what I have been told, I think the hon. Member is quite right. I have been informed by the Secretariat that when the matter was sent to the Committee, it was, I believe, the Chairman who said that under Section 8, it was not under their mandate and it was returned at that stage and that is why it is here. Any how, you cannot be serious because under Section 8, it does not rest there. So, you can see that we are in a blind spot. Let us get the way forward.

Proceed, Mr. Minister!

**The Minister for Justice and Constitutional Affairs (Mr. Murungi):** Mr. Speaker, Sir, I propose that as we put our House in order and draw the rules and procedures, let this House which has the competence and the authority to make any decision, make a decision today because we cannot keep this matter hanging on forever. Let us decide whether we are recommending them for appointment or not. Let us get through with this matter.

Mr. Speaker, Sir, with those few remarks, I beg to Move.

Prof. Kibwana will second the Motion. **The Assistant Minister, Office of the President (Prof. Kibwana):** Thank you, Mr. Speaker, Sir. I rise to second this important Motion. We have said a lot, as a country, about the fight against corruption. It is really a very sad day that there is a bottleneck when we start to establish the organ to fight corruption. Such activity within Parliament and without, questions whether we seriously want to establish organs and institutions which will fight corruption. After we established the Anti-Corruption and Economic Crimes Act and other pieces of legislation, what was left was for us to establish the institution to fight corruption. We established the Anti-Corruption Advisory Board and, yesterday, the President inaugurated the committee which will carry out public education on corruption. The last and very important organ for fighting against corruption is the Kenya Anti-Corruption Commission (KACC). This Motion seeks to ensure that this Commission is established, so that the real fight against corruption can proceed.

All of us here, and other public servants, have filled in the wealth declaration forms. Without the KACC, those forms will lie in some stores because they cannot be processed. If we will fight old corruption and what is being termed as new corruption, it is important that we have in place the institutions to fight the vice. Indeed, we cannot fight corruption if we do not establish all the institutions to fight it.

Mr. Speaker, Sir, I have looked at the people whose names have been put forward for appointment---

**Mr. Maore:** On a point of order, Mr. Speaker, Sir. If you look carefully, you will see that the Assistant Minister is reading a speech instead of contributing to the Motion.

*(Loud consultations)*

**Mr. Speaker:** I cannot hear you! Order, hon. Members! I am getting a little problem with that side of the House. You know, under Standing Order No.1, whatever is not provided for, the Speaker shall decide. You know, I may decide to evict all of you from there! So, please, keep your peace now!

Proceed, Prof. Kibwana!

**The Assistant Minister, Office of the President** (Prof. Kibwana): Mr. Speaker, Sir, the hon. Member wants to destabilise me. I am not reading a speech. I was saying that I am conversant with the names which are on this list. I have worked with Justice Ringera at the University of Nairobi. I followed his endeavours, even when he worked at the Attorney-General's Chambers.

If there are hon. Members in this House who object to Justice Ringera being appointed as the Director of KACC, it is because he has demonstrated his thoroughness in the fight against corruption. People who have pending cases of corruption and those whose integrity has been questioned are scared-stiff, with the possible appointment of Justice Ringera, because if he is appointed as the Director of KACC, there will be nowhere for them to hide. The chicken are coming home to roost. For the first time, I can see real fear and jitters when somebody who is very effective in the fight against corruption is proposed for that job. I know by stating this and the fact of my seconding this Motion might not endear me to some of our colleagues here. But I think the truth must be said. If we reject the appointment of Justice Ringera as the Director of KACC, we will be doing so because we are afraid of the real fight against corruption. I do not mind if he is rejected! It means that we will have voted and rejected him. Of course, we will send a message to Kenyans on what we think about fighting corruption.

Mr. Speaker, Sir, the fight against corruption has caused some of us a lot of trouble. Some of us were almost killed by the former regime, when we questioned corruption. I remember that when we wrote the first report on corruption - when I used to work for a Non-Governmental Organisation (NGO), I was not able to sleep in my house for some time. That is because some of the people, and some are in this House unfortunately, were not happy. Therefore, I can understand perfectly well why this matter is really causing a lot of problems---

**Mr. Speaker:** Order, Mr. Assistant Minister! I think you are being very unfair to the House! I mean you are imputing collective malice on the House!

*(Applause)*

**The Assistant Minister, Office of the President** (Prof. Kibwana): Mr. Speaker, Sir, I said "some" and, of course, I think if I imputed collective malice, that would be defeating the fact of my seconding this particular Motion.

**Mr. Weya:** On a point of order, Mr. Speaker, Sir. You have heard the Assistant Minister say that "some" Members of this House are corrupt! Could he substantiate and name them?

**Mr. Speaker:** You know, and I wish even the hon. Prof. Kibwana was listening to me, you never serve your cause by being belligerent to your colleagues. I think let us divorce all those matters from of this issue and talk soberly.

*(Applause)*

Mr. Assistant Minister, please, proceed! I hope hon. Members will give him a chance to say his bit!

**The Assistant Minister, Office of the President** (Prof. Kibwana): Mr. Speaker, Sir, I am not belligerent; I am just trying to drive some truths home.

Mr. Speaker, Sir, to fight corruption at all levels, we need to have a robust law. It is important to have institutions that will fight corruption. We should reverse the culture of endemic corruption and educate our people on corruption. We need to do all those things, if we really would like to reverse that malice.

Mr. Speaker, Sir, The Judicial Commission probing the Goldenberg Affair is in progress. It is beginning to give us some evidence on past corruption. We also had the Lands Commission, which recently produced a report on corruption. The Minister for Justice and Constitutional Affairs has also been following ill-gotten wealth abroad. I think it is time we had a Truth and Reconciliation Commission. That way, we will fight corruption seriously without politicising it.

Finally, as I second this Motion, I want to pose this question: If some of us in Parliament have been named in corrupt deals, do we still have the moral authority to vote on these names? We will be fearful because of the corrupt deals we have been involved in!

With those few remarks, I hope that we are going to put national interests at the fore, and propose people who can steer an institution in the fight against corruption. If we are not able to do so, then we must collectively as the National Assembly, tell Kenyans that we are not serious about fighting corruption.

Mr. Speaker, Sir, I beg to second.

*(Question proposed)*

**Mr. M. Kilonzo:** Mr. Speaker, Sir, with your kind permission and with the leave of the House---

**Mr. Speaker:** Order, Mr. M. Kilonzo! Just one moment!

Hon. Members, as you know, this is an ordinary Motion and I think the time limit is 30 minutes. Is it?

**An hon. Member:** Two hours!

**Mr. Speaker:** It is not two hours! It has no time limitation! You can speak forever! But, you know, it may be in the interest of the House--- I do not know whether, ultimately, you may wish to contain some of your time, to make it shorter. But let us give the Official Opposition reasonable time. Then, you can reduce the others if you please!

Mr. M. Kilonzo, please, proceed!

**Mr. M. Kilonzo:** Mr. Speaker, Sir, with your kind permission and with the leave of the House, I seek leave to move:-

THAT, in accordance with the proviso to Standing Order No.153 of this House; this House orders that the nominations of the Director and the Assistant Directors of the

Kenya Anti-Corruption Commission be referred to the Departmental Committee on the Administration of Justice and Legal Affairs.

*(Applause)*

Mr. Speaker, Sir, with your permission, the reason for this Motion is clear. We want to establish the sort of precedence that this beautiful country can be proud of. This is the first time that Parliament is exercising a unique role in the management of our affairs, whereby, officials and other Government Departments wishing to appoint persons to positions of authority, will require to be vetted by this honourable House, on behalf of the people of the Republic of Kenya.

Mr. Speaker, Sir, it is, therefore, fitting that we have an opportunity to establish an orderly method of making sure that, that vetting can withstand the test of daylight, and can also be seen the world over that Kenya has really come of age in terms of parliamentary democracy and processes.

Mr. Speaker, Sir, if you look at the Motion before you, among other things, it is seeking to establish and appoint the very first Director and Assistants to the Kenya Anti-Corruption Commission as established through an Act of Parliament by this House. I feel that it is important that we send a message across the country that the people who have been brought before us for approval or disapproval, understand that they will be given a fair opportunity of their qualifications, abilities, skills, and everything else would be tested in a fair manner. If we proceed as a whole House and debate this Motion as framed, and we either approve or disapprove the appointment, it will leave a huge gap in our procedures. It is, therefore, fitting that this House considers referring the Motion to the Departmental Committee on Administration of Justice and Legal Affairs which, indeed, has been established for that purpose.

Mr. Speaker, Sir, my very reliable information is that these nominations and the Motion have not, in fact, reached the Departmental Committee. You are aware, that throughout the Commonwealth, Departmental Committees are a very important arm of Parliament. It is, therefore, important that the Committee on Administration of Justice and Legal Affairs considers these nominations. Lest some hon. Members think that I am moving this amendment purely to go there and bash anybody who has been nominated, it is fair that this House knows that I am, in fact, not even a Member of that Committee. However, I am thinking of a way forward for this country so that we establish a precedent that we can be proud of and live with as we move forward.

Mr. Speaker, Sir, with those few remarks, I beg to move and hon. Kajwang will second the Motion.

**Mr. Kajwang:** Mr. Speaker, Sir, I need not say too much. However, it appears like we are being forced into a situation which will require us to discuss a very senior judicial officer in the House. We are going to discuss his conduct either positively or negatively. We will, obviously, not do that without touching on the Judiciary which is another respectable arm of the Government. If we must do it, I think the way forward is through the relevant Departmental Committee in a closed door discussion. The Committee will come up with a report which will either be favourable or unfavourable. This House will, then, merely vote on the report of that Committee.

*(Applause)*

Mr. Speaker, Sir, it is not nice for me to discuss Justice Ringera in this House because I have appeared before him. He was my teacher and to stand here now and start talking about him, either positively or negatively, is not good. After all, he is still a judge of the High Court. The best way forward, I think, is to send these names to the relevant Departmental Committee. Let the Committee

deal with the names and then bring a Report to this House within the shortest time possible. If it were possible, the Committee could bring the Report here next week on Tuesday so that we finalise with this matter and the Kenya Anti-Corruption Commission to begin work immediately. It will appear like this Parliament is the anti-corruption authority and yet we have been fighting for the establishment of the Kenya Anti-Corruption Commission.

We have also been telling the Chief Executive of this country to deal with corruption decisively. It will appear that we on the Opposition side do not like the establishment of the Kenya Anti-Corruption Commission. This really will send a bad impression to Kenyans out there. So, it is true that we are serious about this matter and we want it concluded. However, it is better that the matter be referred to the Departmental Committee on Administration of Justice and Legal Affairs. It is for that simple reason that I support Mr. Mutula Kilonzo's amendment to the original Motion. Otherwise, if we are forced to discuss it in this House, of course, we will, but it would not be good for this country at any time.

Mr. Speaker, Sir, with those few remarks, I second.

*(Loud consultations)*

**Mr. Speaker:** I am really struck by the inability of Members of this House to stay quiet even for a minute! I will repeat.

*(Question of the first part of  
the amendment, that the words to  
be left out be left out, proposed)*

**The Minister for Roads and Public Works (Mr. Raila):** Mr. Speaker, Sir, this is a very important Motion because as all hon. Members know, the entire Kenya nation has been speaking very, very forcefully against corruption. The subject of corruption is pregnant on the lips of every Kenyan. As a nation, we have said that we want to fight the cancer of corruption. That is the reason why the establishment of this Commission is very important.

Mr. Speaker, Sir, however, I rise to support the amendment that has been proposed.

*(Applause)*

This is a matter on which we as a House need to show the way forward. It has been said that we are charting new waters and it is important that we start right from the beginning; on the right footing. We are, indeed, setting a precedent that is going to live with us for a long time to come.

It is important that the relevant Departmental Committee be given the opportunity to vet the credentials of the individuals whose names now appear on the Motion before us. That Committee can even summon the individuals and interview them on behalf of this House.

Mr. Speaker, Sir, without taking too much time, I would like to strongly support and appeal to all my colleagues in this House to support the proposed amendment.

*(Ms. Karua stood up in her place)*

**Mr. Speaker:** Ms. Karua, do you have a contrary view?

**The Minister for Water (Ms. Karua):** Very much so, Mr. Speaker, Sir.

Mr. Speaker, Sir, I rise to oppose the Motion for the following reasons: I want to agree that



we do not have a set procedure for vetting names. However, the Anti-Corruption and Economic Act, 2003, does set the procedure. If you can recall, this House was called upon and approved the nominees for the Kenya Human Rights Commission (KHRC). The procedure was again in-built in that Act. It required that the names be vetted by a Parliamentary Committee. That is not the case in this Act.

Mr. Speaker, Sir, Section 8(3) of this Act clearly states:-

"The Director and Assistant Director shall be persons recommended by the Advisory Board and approved by the National Assembly for appointment to their respective positions."

So, the recommendation is done by the Advisory Board. When you look at the Schedule, the Advisory Board is told how to go about its business. Pursuant to the First Schedule, the Board is supposed to look for persons who have knowledge either in Law, Public Administration, Accounting and financial matters or fraud investigations. In part (b) it is stated that the person to be appointed must be of outstanding honesty and integrity.

**Mr. Weya:** On a point of order, Mr. Speaker, Sir. Last year when I brought up this issue in this House, you almost threw me out of the Chamber. Justice Ringera's curriculum vitae (CV) was even put in the newspapers. If you check in the HANSARD, you will see---

*(Loud consultations)*

**Mr. Speaker:** Mr. Weya, again, you perilously stand being thrown out for being frivolous! Please, wait until that issue comes before this House. For now, what we are discussing is whether this matter should be sent to the relevant Departmental Committee or it should be decided here in this House. That is what we are dealing with now.

**The Minister for Water** (Ms. Karua): Mr. Speaker, Sir, I am, therefore, saying that the Board is given the qualifications and the manner of vetting. Then, it is told that the Kenya Anti-Corruption Advisory Board (KACAB) shall not recommend a person who is not qualified under this paragraph. So, under this Act, the onus is on the KACAB. It is not the duty of Parliament to interview or to look at the credentials of the persons being vetted. For its own good reasons, Parliament may approve or disapprove the list given. If today we were to disapprove any of the names listed here, it is not Parliament which shall bring its own names. We will have to return to the KACAB, which will go back to the drawing board. It is the duty of this House, therefore, to approve or disapprove these names. We are not in the American system, where the Senate or whichever Committee conducts public hearings on public appointments. Let us not confuse procedures that are not of this House.

But should we find it necessary to set a procedure in the Constitution on how to vet names during the constitutional review process, then we shall do so, and the constitutional provisions shall override the provisions of this law. But for now, Parliament cannot turn itself into an interviewing body, whether in a Committee or otherwise.

*(Applause)*

Therefore, Mr. Speaker, Sir, we ought to approve or disapprove these names. Let us not create the notion that this is a forum to discuss individuals. We can reject these names, and we are not even obliged to give reasons for doing so. But if we do, it is the KACAB that is going to do so. Kenyans are looking at us to see whether we are going to dilly-dally, claiming that we are trying to build a procedure, when, maybe, it may appear that there are underlying currents. We have seen

debates being taken outside this House even before it was laid before the House. Let us not lose sight of the fact that there may be individuals who are out to sabotage the creation of an Anti-Corruption Authority immediately. We need it, my Ministry needs it and Kenyans need it!

*(Applause)*

So, let us move ahead and vote for these names.

With these few words, I beg to oppose the amendment.

**Mr. Speaker:** I will give one Member from the Government side one more chance to contribute to this debate. So far, three Members have supported the amendment while only one Member was against it. So, I want one more Member who is opposing the idea to contribute. Are you opposing, Mr. Obwocha?

**The Assistant Minister for Finance** (Mr. Obwocha): Yes, Mr. Speaker, Sir. I am opposing this amendment on the basis that in other countries where this procedure is normally carried out, for example, our neighbours in Uganda, they have what they call an Appointments Committee. This Committee looks into the issues of all appointments and recommends its findings to the House. The basis of this Committee is that the parties look at who in their midst is capable, has information and has dealt with these issues of appointments, and that is how this Committee is in place. In this case, and particularly for this Motion, we have seen how we have taken almost one hour because of acrimony. I do not think---

**Mr. Cheboi:** On a point of order, Mr. Speaker, Sir. I do not think it is right for anybody to mislead this House that we do not have mechanisms to interview and appoint people, when, indeed, the same Committee to which we are asking this Motion to be deferred to has interviewed human beings---

**Mr. Speaker:** Order! That is a point of argument, and you must wait for your chance! But truly and frankly speaking, I want those for and those against the amendment to assist the House on the best way to go about this issue. As you contribute either for or against this amendment, give us the best way of doing it, because this is not the end of this issue. This is probably just the beginning. As I said earlier, if we constitute this list wrongly on the first day, then we will be wrong throughout the process.

Proceed, Mr. Obwocha!

**The Assistant Minister for Finance** (Mr. Obwocha): Mr. Speaker, Sir, we are saying that the procedure of referring the process to a Committee is not wrong. But in this case, the issue of a Committee dealing with appointments recommended at senior levels in the Government is not in place. That is the point I am trying to put across. Because of acrimony over this issue--- It reminds me of the time when Mr. J.F. Kennedy was the President of the United States of America and he appointed his own brother, Mr. Robert Kennedy as the Attorney-General. They did not say he appointed his own brother! What we are talking about here is the competence of individuals.

*(Applause)*

Whether Mr. Murungi comes from the same area as Mr. Ringera, or whether So-and-so comes from the same area where So-and-so is, we are not interested! We want to talk about competence. It is about the question of whether to refer the matter to a Committee or not; we are not yet on the subject of discussing the competence of the Judge or not.

*(Applause)*

**Dr. Godana:** On a point of order, Mr. Speaker, Sir. This is a different matter!

**Mr. Speaker:** Order, Dr. Godana! Order, Mr. Obwocha! Carry your rules around! When you are talking of an amendment, you may also talk about the main Motion. Look at the Standing Orders!

Proceed!

**The Assistant Minister for Finance** (Mr. Obwocha): Thank you, Mr. Speaker, Sir. If I was to recommend one of the best doctors in this country, and I recommended Mr. Reuben Mogere to a post, I should not be accused of recommending one of the best doctors who deals with prostrates in this country, just because he comes from West Mugirango! This House should rise above these petty issues which we have all along been saying that we should get the best Kenyans to do the job.

To finish, because I believe that others should also contribute, I want to say that the war cry of the people in this country is to finish this "animal" called corruption. This House should appoint this Commission so that we can face this animal squarely.

With these few remarks, I want to oppose that amendment.

**Mr. Speaker:** How long do you want us to talk about this amendment?

*(Loud consultations)*

All right, I will allow one more Member from each side of the House to contribute, then we can dispose of this amendment.

Proceed, Dr. Godana!

**Dr. Godana:** Mr. Speaker, Sir, this matter is so important and it should be allocated enough time so that, if not everybody, then at least a minimal number of Members can contribute to it.

**Mr. Speaker:** Listen, hon. Members! I am at your service depending on your moods!

Proceed!

**Dr. Godana:** Thank you, Mr. Speaker, Sir. I stand to support the amendment moved by hon. M. Kilonzo. I also want to plead with my colleagues, particularly on the Government side not to mislead or misrepresent the issue before the House. Before we came to the stage when the Minister moved the substantive Motion regarding the debate on whether, in fact, the matter on the Order Paper is properly before the House, I made it very clear that the issue at stake is not a personal quarrel with

any individual. The issue, first and foremost, is a matter of respect for our own procedures. The Constitution of this country has empowered the House to make its own rules of business and procedure. Those rules override all other stipulations, including the statutory stipulations.

*(Applause)*

The Constitution has given the House the freedom to make its own rules.

Mr. Speaker, Sir, about seven years

ago, I had the privilege of being appointed by your honourable self as the Chairman of the Standing Orders Committee to chair a Committee to reform the Standing Orders of this House. I had the privilege to work with the likes of hon. Obwocha, hon. Wetangula and others who are not Members of this House. We travelled the entire Commonwealth, and we came up with the present Standing Orders in which we made a major innovation, namely the establishment of Departmental Committees. They were not part of the system before that. Why did the Committee make recommendations and the House accept them unanimously, with the support of the hon. Members

who are on the opposite side the House? Ms. Karua, the former Vice-President, the current Vice-President, Mr. Kombo, the current Minister for Justice and Constitutional Affairs, Mr. Obwocha and many others were there. This House approved those changes unanimously. Why did the House do so?

**The Minister of Water** (Ms. Karua): We walked out!

**The Minister for Justice and Constitutional Affairs** (Mr. Murungi): On a point of order, Mr. Speaker, Sir. Is it in order for Dr. Godana to say I was a member of a committee, while I was not?

**Mr. Speaker:** I think you got it wrong. He did not say that you were a Member of that committee. He said that you were a Member of that House that approved the rules.

**The Minister for Water** (Ms. Karua): On a point of order, Mr. Speaker, Sir. Is the hon. Member in order to claim that the rules were passed unanimously, when he recalls that the then Opposition actually walked out?

**Mr. Speaker:** Order! I think Ms. Karua is referring to a subsequent amendment to the Standing Orders to increase the number of Members from the Government side in the Public Accounts Committee and Public Investments Committee. That was a different one.

**Dr. Godana:** Mr. Speaker, Sir, the Standing Orders were adopted, as is the tradition, comprehensively at the end of the parliamentary term. They were passed by this House unanimously.

I want to remind hon. Members of the wisdom behind the establishment of Departmental Committees. We realised, as was the case elsewhere, that, as the business of modern Government becomes more and more complex, it is impossible to deal effectively with legislative matters in detail in the whole House. It is better to have smaller, open-ended committees, where even non-members, who are Members of this House, can sit to thrash out the details. It is in line with that spirit that on a major matter like this one, where we seek to make decisions which will set precedents on new fields on which we have no precedents, that we actually use Departmental Committees. We are only saying that the matter should go to the Committee. It will even help deal with the risk of names of individuals, including a senior judge, perhaps being mentioned adversely here. It will be better that this matter goes to the Committee.

Mr. Speaker, Sir, when we earlier discussed the question of whether the right procedure had been used or not, we got the understanding that the Government would not be opposed to referring the matter to a Departmental Committee. Surely, this is an adversarial House, but it must conduct its business on the basis of certain principles of give and take. We should avoid a situation where you give gentlemanly indications that you are prepared for the matter to go to the Committee, only for you to ambush us by saying that it will not be so referred, just because you have counted numbers and found that your side has a majority of one or two hon. Members. That is not fair!

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

**Mr. Speaker:** I want someone with a contrary opinion. Mr. G.G. Kariuki, do you have an opposing opinion to it?

**Hon. Members:** The chairman!

**Mr. Speaker:** Who is the chairman?

**Hon. Members:** Mr. Muite!

**Mr. Speaker:** I will come to you later. Order, hon. Members! At what stage do you want us to dispose of the amendment?

**Hon. Members:** Now! Tuesday!

**Mr. Speaker:** Order! I think somehow the amendment must be disposed of. I have made up my mind. I will give a chance to one person from each side, put the Question in order to dispose of

it.

**Mr. G.G. Kariuki:** Mr. Speaker, Sir, I think our problem here is not to discuss individuals. What we are required to do by the Motion, which has been moved by the Opposition is very simple. Let us ask ourselves: Why the hurry?

*(Applause)*

Mr. Speaker, Sir, this being the first appointment that requires our approval, I think the whole House needs to be united, so that it can be seen to be discussing a serious matter. Let us not make it appear as if we are against one individual. We, on this side of the House, are not disagreeing with the other side, although there are those who want to pass this Motion now. Corruption has been with us for a long time. Can we not just agree to take this matter back to the relevant Departmental Committee?

**Mr. Speaker:** Very well. Mr. Muite, be brief because I do not want this to go on forever.

**Mr. Muite:** Mr. Speaker, Sir, earlier you kept on asking for some contribution on the way forward---

**Dr. Godana:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Why do you not let him talk? What is it?

**Dr. Godana:** Mr. Speaker, Sir, I do not like rising on frivolous points of orders. Let us pay attention to each other. Mr. Muite is the Chairman of the Committee in question. We learnt this afternoon here that the matter was properly forwarded to the Committee, which means it went to the desk of the Chairman. The Chairman returned it without giving any reason for doing that. Can he declare his interest?

**Mr. Speaker:** Order! I honestly do not know what is happening with my very good friend, Dr. Godana. Why are you becoming so intolerant? Please tolerate others.

**Mr. Muite:** Mr. Speaker, Sir, may I first of all clarify the context---

**Mr. G.G. Kariuki:** On a point of order, Mr. Speaker, Sir. What happened? You discontinued my speech!

**Mr. Speaker:** I am sorry. I thought you had finished!

**Hon. Members:** No!

**Mr. Speaker:** I am really sorry. I was under the impression that you had finished.

**Mr. G.G. Kariuki:** No! I was just talking, Mr. Speaker, Sir. I was trying to say that currently we have about 11 committees, which deal with corruption in this country, and it is still going on. I urge this House to accept that we go back, study our Standing Orders and see whether there is a better way of bringing this kind of Motion to the House. I think it will be in the interest of this House if we all agree that we refer this Motion to the relevant Departmental Committee.

**Mr. Muite:** Mr. Speaker, Sir, may I begin by clarifying the context in which this matter came to the Departmental Committee on the Administration of Justice and Legal Affairs? The hon. Minister spoke to me and gave me these names. At a formal meeting of the committee, I raised this issue because the Minister had indicated that there was a lot of pressure on the Government from the donors to fully constitute the commission. Two hon. Members of the Departmental Committee on the Administration of Justice and Legal Affairs pointed out that it was irregular---

*(Mr. Owino stood up in his place)*

**Mr. Speaker:** Order! You must sit down! Every time somebody opens his mouth and you think you disagree with him, you must stand up even before they have completed a sentence! Please

relax!

Proceed, Mr. Muite.

**Mr. Muite:** Mr. Speaker, Sir, two hon. Members of that Committee pointed out properly, in my view, that it was irregular for the matter to come before the Committee through the Minister just speaking to me. They felt that, legally, the Minister should table those names here. If a majority of the hon. Members here are of the view that the matter should be referred to the Committee, then, at that point in time, it can properly and legally be referred to the Committee. So, we decided that the matter was not properly presented before the Committee because it had not been tabled in this House. That is the decision that was made. However, if, indeed, a majority of the hon. Members of this House today are of the view that this matter be referred to the Committee, it will now be properly referred. However, if, on the other hand, a majority of hon. Members feel that this a matter can be disposed of today on the Floor of the House, I believe that will be the decision of the House.

Mr. Speaker, Sir, as I said, this is not the first time we are doing this because, in fact, this is the third time. The first time concerned the constitution of members of the Kenya Human Rights Commission (KHRC). It is important for us to look at the particular Act that indicates how a body is constituted so as to know the parameters of what we are permitted to do as House and what we are not permitted to do. What are our obligations? The KHRC is governed by the Kenya Human Rights Commission Act. In that Act, it is the Committee on the Administration of Justice that was required by law in that Act to conduct interviews. We received 846 applications, out of which, we conducted interviews, shortlisted the applicants and finally made a report. We laid 12 names on the Table of the House because the responsibility of interviewing was placed on the Committee. We also interviewed members of the Advisory Board because, again, that was an obligation that was placed on us by the Anti-Corruption Act. I would like, through the Chair, to plead with hon. Members to appreciate the rationale and the philosophy of the Anti-Corruption Act. The philosophy is this; that in recognition of how difficult it is to fight corruption, the Advisory Board is given complete autonomy in the Act. The intention is that the Anti-Corruption Commission must have independence and authority, so that they are able to investigate even, for example, Dr. Murungaru, Mr. Moi; the Member for Baringo Central, or the Member for Kabete Constituency!

*(Laughter)*

We need to appreciate that philosophy. That is why, once this House, through the Committee, approved the members of the Advisory Board, the question of advertising for these posts and of interviewing these applicants, was exclusively the jurisdiction of the Advisory Board, not the Committee.

Mr. Speaker, Sir, even if these names were to be committed to the Committee, it is not right to suggest that the Committee will interview them, because these interviews have already been undertaken by the Advisory Board. Our role will be to see whether the Advisory Board has complied with the law or not; whether they have done what they are supposed to do.

So, although, ordinarily, I agree that we should work through the Committee, in this particular case, in my view, and on the balance of probability, it is more appropriate that this issue be disposed of by the House, on the Floor of the House!

*(Applause)*

**Mr. Speaker:** Hon. Members, Mr. Wario will be the last to contribute to this matter and then I will put the Question.

**Mr. Wario:** Bw. Spika, asante kwa kunipa fursa hii nizungumze juu ya mjadala huu. Kenya imevamiwa na mnyama anayejulikana kama ufisadi. Mnyama huyu ametanda, amemea mizizi na kujikita kabisa katika nchi hii. Kwa minajili ya misimamo yetu ya kisiasa na vyama vya kisiasa, leo kama viongozi wa nchi hii, tumesahau mahitaji ya Wakenya ya kupigana na adui huyu na tunazozana na kuvurugana sisi kwa sisi.

Bw. Spika, ningependa kuwaambia waheshimiwa Wabunge kwamba kupitishwa kwa Hoja hii si kufaulu kwa vita dhidi ya ufisadi. Kwa hivyo, kufaulu kwetu kutahitaji kumhusisha kila Mkenya. Nilazima tukubaliane na tuvumiliane ili tuweze kufaulu vita dhidi ya ufisadi. Leo ni mara ya kwanza tunajadili jambo ambalo linaambatana na kiasi hiki. Mimi siwajui watu hawa watano ambao wamependekezwa kuteuliwa katika tume hii. Nikiulizwa na watu wa Bura ni nani ninayemuunga mkono na kwa minajili gani, siwezi kuwa na jawabu.

Bw. Spika, Bunge hili si kama popo ambaye si mnyama wala ndege. Kuna tabia fulani hapa Bungeni kuwa mhe. Waziri au Mbunge akitaka kuleta sheria hapa anaamurisha sisi kufanya kupitisha kable ya kujadili Hoja katika Kamati maalum ya Bunge. Bunge inawajibu mkubwa wa kutekeleza katika nchi hii. Kwa hivyo, Bunge isitumiwe na mtu yeyote licha ya cheo chake awe Waziri, Mbunge au Mahakama. Hatutaki kuona Bunge ikiamrisha kufanya hili na lile bila kupewa fursa ya kujadili Hoja au Miswada katika Kamati zake.

Bw. Spika, hii ndio sababu nimesimama kuwaeleza waheshimiwa Wabunge, kuwa vyama si suluhisho kwa vita vya ufisadi. Vita dhidi ya ufisadi ni lazima kuwahusisha kila Mkenya. Kwa mfano, mkulima au mfugaji. Ni lazima kila mwananchi afahamu ni akina nani watakaopewa mamlaka ya kupigana na ufisadi.

Kwa hivyo, ninapendekeza majina haya yawasilishwe mbele ya Kamati inayojishughulisha na sheria ili vita na uvutano baina yetu ukome.

Bw. Spika, kwa hayo machache, ninaunga mkono rekebisha hili.

**Mr. Speaker:** Hon. Members, I am afraid I must dispose of this issue at this juncture.

**Mr. Sungu:** Mr. Speaker, Sir, what about the reply?

**Mr. Speaker:** Order! There is no reply to an amendment.

At this stage, every hon. Member must have an interest in remaining here. If you are disorderly and you are out, you will reduce your numbers. So, please, keep order completely now!

*(Question of the first part of the amendment, that the words to be left out be left out, put and negatived)*

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

**Hon. Members:** Division! Division! Division!

**Mr. Speaker:** I think I do not need to count. For the record, there are more hon. Members than is required, under Standing Order No.53, for a Division. I, therefore accede.

*(Mr. Awori and Mr. Saitoti consulted loudly)*

Hon. Members, I am going to make history by sending out the Leader and Deputy Leader of Government Business if they do not behave! So, you better keep the peace. Messrs. Awori and Saitoti, I intend on making that history if you do not obey the rules!

**DIVISION**

*(Question put and the House divided)*

*(Question negatived by 78 votes to 74)*

**AYES:** Mr. Abdirahman, Dr. Ali, Dr. Awiti, Messrs. Bahari, Balala, Bett, Billow, Cheboi, Chepkitony, Dr. Godana, Messrs. Kajwang, Kamotho, G.G. Kariuki, Dr. Keino, Messrs. Keter, Khalif, Khaniri, K. Kilonzo, M. Kilonzo, M.C Kilonzo, Kipchumba, S.C. Koech, Korir, Koros, Kosgey, Ligale, Maj. Madoka, Messrs. Magugu, M. Maitha, Prof. Mango, Messrs. Manoti, Midiwo, Moi, Moroto, Musila, Muturi, Mwandawiro, Mwanzia, Ndambuki, Ndolo, Ngoyoni, Maj-Gen Nkaisserry, Rev. Nyagudi, Messrs. J. Nyagah, Nyamunga, Odoyo, Dr. Oburu, Messrs. Ojaamong, Omingo, Okemo, Okundi, Oloo-Aringo, Omamba, Omondi, Archbishop Ondiek, Messrs. Oparanya, Osundwa, Owidi, Owino, Poghisio, Raila, Dr. Rutto, Messrs. Salat, Sambu, Sang, Samoei, Sasura, Shaaban, Shakombo, Sudi, Sungu, Wamunyinyi, Wario and Weya.

Tellers of the Ayes: Messrs. Kipchumba and Muchiri

**NOES:** Messrs. Akaranga, Angwenyi, Awori, Dzoro, Gachagua, Gitau, Githae, Kagwe, Kaindi, Kamama, Kamanda, Karaba, Ms. Karua, Messrs. Karume, Katuku, Kenneth, Dr. Kibunguchy, Prof. Kibwana, Mrs. Kilimo, Messrs. Kimathi, Kimunya, Kingi, Dr. Kituyi, Messrs. Kiunjuri, J.K. Koech, Kombo, Konchella, Kones, Dr. Kulundu, Messrs. Kuria, Lesrima, Prof. Maathai, Dr. Machage, Messrs. K. Maitha, Maore, Masanya, Ms. Mbarire, Messrs. Metito, Mganga, Miriti, A.C. Mohamed, A.M. Mohamed, Muchiri, Mrs. Mugo, Messrs. Muiruri, Muite, Mukiri, Munya, Munyes, Muriithi, Muriungi, Dr. Murungaru, Messrs. Murungi, Mutiso, O.K. Mwangi, Ms. Mwau, Messrs. Mwenje, Mwiraria, Dr. Mwiria, Mr. Nderitu, Ms. Ndung'u, Messrs. Ndwiga, ole Ntimama, Nyachae, N. Nyagah, Obwocha, Prof. Saitoti, Messrs. Sugow, Tarus, Mrs. Tett, Eng. Toro, Messrs. Tuju, Waithaka, Wambora, Wamwere, Wanjala, Were and Wetangula.

The Tellers of Noes: Messrs. Bahari and Wambora.

**ADJOURNMENT**

**Mr. Speaker:** Order, hon. Members! That marks the end of Business. In the interest of the hon. Members who do not know the rules, the rules are as follows: Standing Order No.17(3) says:

"If at the time appointed for interruption of business, any division is in progress, or a question is being put from the Chair and a division results immediately thereon, such interruption shall be deferred until after the declaration of numbers."

After that, the House must adjourn. That is the law.

So, the House is, consequently, adjourned until Tuesday, 27th July, 2004, at 2.30 p.m.

The House rose at 6.45 p.m.