

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 1st August, 2012

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

ORAL ANSWERS TO QUESTIONS

Question No.1552

ELECTRIFICATION PROGRAMME FOR BURA CONSTITUENCY

Dr. Nuh alimuuliza Waziri wa Kawi:-

(a) ni lini Halmashauri ya Usambazaji wa Umeme Mashinani ilizindua mradi wa umeme eneo bunge la Bura; na,

(b) ni kwa nini hakuna umeme katika eneo bunge la Bura mpaka sasa.

Mr. Deputy Speaker: Waziri wa Kawi! Tutarudia hilo Swali baadaye.

Question No.1376

NON-PAYMENT OF AWARDED OWED TO MRS. LYDIA MUHONJA MUMIA

Mr. Washiali asked the Attorney-General:-

(a) why the Government has not settled the Kshs388,795 awarded to Mrs. Lydia Muhonja Mumia by the Kakamega Senior Principal Magistrate's court through Civil Suit No.616 of 1995; and,

(b) when she will be paid and whether the Attorney-General could compensate Mrs. Mumia without delay.

The Attorney-General (Prof. Muigai): Mr. Deputy Speaker, Sir, I beg to reply.

On 20th August, 1992, the daughter of Mrs. Lydia Muhonja Mumia was knocked down by a Government vehicle registration number GK 563P, causing her severe injuries. On 12th March, 1993 the plaintiff served the Attorney-General with a notice of intention to sue that was dated 8th March, 1993. The Attorney-General called for instructions on 16th March, 1993 from the relevant Ministry which was the Ministry of Livestock Development.

On 24th March, in the same year, the Ministry issued instructions to the Provincial State Counsel, Western Province admitting that the vehicle that had caused the accident belonged to the Ministry but was stationed in Nairobi.

A plaint was filed on 17th August, 1993, and the same was served upon the Attorney-General together with summons to enter appearance. The Attorney-General entered appearance

on December, 1993 and filed his defence on 18th October, 1994. The case was heard on 16th December, 1997 and judgment delivered on 24th March, 1998.

The plaintiff was awarded Kshs150,000 as general damages and Kshs1,300 as special damages. The costs of the suit were taxed at Kshs38, 575. The Government could not meet the decretal amount without a Certificate of Cost. On 21st July, 2003, my office called for the relevant documents including the Certificate of Order against the Government from the advocate representing the plaintiff. The substantive response to our request for the relevant documents was made on 27th May, 2011, seven years after our request. We immediately requested for funds to settle the decretal amount upon receipt of the documents. The Bill of Costs was filed on 28th February, 2011 and taxed on 30th March, 2011.

The Certificate of Order against Government under Section 21 of the Government Proceedings Act was prepared on 5th May, 2011. The matter has been pending action due to the fact that the claimant's lawyer had failed to prepare a Certificate of Order against the Government as required by law.

The amount payable to the plaintiff today is broken down as follows:-

- | | | |
|--------------------------------|---|-------------|
| 1. General damages | - | Kshs150,000 |
| 2. Special damages | - | Kshs1,300 |
| 3. Costs | - | Kshs38,575 |
| 4. Interest on General Damages | - | Kshs232,500 |
| 5. Interest on Special Damages | - | Kshs2,834 |

Mr. Deputy Speaker, Sir, the total now payable to the claimant stands at Kshs425,200. We have sent a reminder to the Permanent Secretary in the Ministry of Agriculture to send the funds to us so that we may disburse the same to the plaintiff. Our last request was on 16th May, 2012, and we await the response of the Ministry.

Thank you.

Mr. Washiali: Mr. Deputy Speaker, Sir, I would like to take this opportunity to thank the Attorney-General for the answer which was comprehensive enough and also quickly add that this is an accident that took place in 1992. It is now 20 years today since 1992. I think you are not doing any justice to either the victim, Lydia Muhonja or the Government because according to the figures here, you can see the interest on general damages alone amounts to Kshs232,500. What are you doing and should you get the Certificate of Order from the advocate of Lydia, how long will it take you to make sure that the payment finally gets to Lydia Muhonja to be able to take care of her problems and the challenges that came out of this accident?

Prof. Muigai: Mr. Deputy Speaker, Sir, I want to admit this period is inordinate period and this should not happen. We are acutely aware of this problem. My office has been working on some draft changes to the Government Proceedings Act, so that we streamline how these claims are handled. Secondly, I have asked all pending claims against the Government of this nature to be compiled, so that I prepare a Cabinet Paper authorizing a single pay off to all these victims who have been waiting for a long time. So, something is being done.

Mr. Imanyara: Mr. Deputy Speaker, Sir, I want to thank the Attorney-General for the answer that he has given. However, it is amazing that he had to write to the plaintiff's lawyer when he has a provincial state counsel in the province who ought to have provided this information. Nevertheless, my question is: Given the emerging practice where the permanent secretaries routinely disobey the Attorney-General's legal advice and instructions, what assurances can he give us that this particular Permanent Secretary will, in fact, follow up and pay

and will not act like the recent permanent secretaries who have brazenly ignored advice from him?

Prof. Muigai: Mr. Deputy Speaker, Sir, any Permanent Secretary or any other Government official who ignores the specific advice of the chief legal adviser to the Government under the Constitution and the Government Proceedings Act does so at his own peril. I have directed this particular Permanent Secretary to avail payment. I believe he will do so within a reasonable time. But if he fails to do so, I would not avail the services of my office to defend a case where he is cited for contempt of court.

Mr. Ethuro: Mr. Deputy Speaker, Sir, the Attorney-General has given timelines that have accumulated to 20 years. He has confirmed that he cannot get money from the line Ministry. He also confirmed his inability to do so. The Judges and Magistrates Vetting Board has already dismissed some judges on the basis of not giving judgments for a very long time, including four years. We are talking about the Government, but not relationships between Government departments. What will the Government do to compel that particular Permanent Secretary to make payments for this case or compensation? This is an accident. He needs to act more than this. In any case, the new Constitution demands that he acts effectively.

Mr. Deputy Speaker: Prof. Muigai, you are the legal adviser to the Executive. The Executive is demonstrated at the highest by the President. These permanent secretaries serve at the pleasure of the President. It is not sufficient for you to say that you will not defend them in their cases. Therefore, you need to advise the President to do the needful.

Prof. Muigai: Mr. Deputy Speaker, Sir, I would agree that persistent and consistent failure to pay legitimate court awards is misconduct on the part of a Permanent Secretary for which I believe myself there ought to be a sanction by the appointing authority. In addition, the Permanent Secretary who fails to pay an award in time and accumulates interest on the award to be paid by the Kenyan public from their taxes is further evidence of misconduct on his part. I myself would be advising that they should be surcharged for this kind of monies.

Mr. Njuguna: Mr. Deputy Speaker, Sir, as the new Attorney-General of the Republic of Kenya, what new plans or mechanisms does he have to make sure that court awards are settled immediately, so that the victims' relatives do not undergo unnecessary suffering?

Mr. Lessonet: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Njuguna to refer to the Attorney-General as the new Attorney-General? He is the Attorney-General of Kenya.

Mr. Deputy Speaker: Order! Nothing in the Standing Orders says that an Attorney-General was appointed for that period. He is neither new nor old. So, he is in order.

Proceed, Attorney-General!

Dr. Nuh: On a point of information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Who do you want to inform?

Dr. Nuh: Hon. Lessonet!

Mr. Deputy Speaker: Does he have the Floor to be informed? Order! Hon. Attorney-General, proceed and respond to hon. Njuguna's question.

Prof. Muigai: Mr. Deputy Speaker, Sir, I want to assure hon. Njuguna that one of the things that I am personally committed to and have already started implementing is taking an audit of all the pending claims against the Government. I have divided those claims into two; we have human rights violations which are several. Some of them are already pending in courts. For others, damages have already been awarded and I want to prioritise their payments. The others are court claims and contract claims against the Government. With regard to the court claims, I

have prioritized them into different categories. We have road traffic accidents, injuries by wildlife *et cetera*. We also have Government contracts. We hope to have a comprehensive Cabinet Memorandum authorising the payment of all these pending claims. I want by the end of this parliamentary term, the Government not to owe the public any money in this respect.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Attorney-General to mislead the House that they are compiling things when the Leader of Government Business before we went on recess was also compiling questions and statements that have not been answered, and up to now, we are yet to get that response? Especially with the timeline he has given of the end of this Parliament, could he give something that we can hold him to account with like at the end of this month? We want him to come back to this House within this month of August and tell us what he has done. We want to hear something that he can own up to at the end of the month.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. Is the Attorney-General in order to mislead the House that he is intending to compile a Cabinet memo and ensure that before the end of the life of this Parliament the Government does not owe any money when he knows that the Budget process has already passed and it is binding? If nothing was done before the Budget process, then it will only take a supplementary Budget which comes in May next year when there will be a different Parliament?

Prof. Muigai: Mr. Deputy Speaker, Sir, I have expressed a wish that we should have a proper audit. That proper audit will tell the Government who it owes, how much it owes and will provide for a payment schedule. I would hope that with the present Budget, allocations have been made to various ministries to pay already outstanding claims and I would hope---

Dr. Khalwale: On a point of information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Prof. Muigai, would you like to be informed by hon. Dr. Khalwale?

Prof. Muigai: Mr. Deputy Speaker, Sir, I do not want to be informed by my friend, hon. Dr. Khalwale.

(Laughter)

Mr. Washiali: Mr. Deputy Speaker, Sir, my Question was very specific. It was brought to the Floor of the House in favour of Lydia Muhonja Mumia. I think generalizing this answer is unfair to her. I will get the Certificate of Order from the advocate representing her. Suppose I get this certificate tomorrow, could the Attorney-General inform the House when he is likely to have a cheque ready in her name?

Prof. Muigai: Mr. Deputy Speaker, Sir, in 14 days.

Mr. Deputy Speaker: Next Question by Mr. Cheruiyot.

Question No.1610

RATIONALIZATION OF PACKAGING OF
POTATOES IN 90 – KILOGRAMME SACKS

Mr. Cheruiyot asked the Minister for Agriculture:-

(a) whether he is aware that despite the Ministry's assurances on the rationalization of the packing of potatoes per sack, traders in Kuresoi and Molo

continue manipulating the packing of 90-Kilogramme sacks in excess of the standard measure; and,

(b) what urgent administrative measures the Government considers taking to rectify the practice and protect potato farmers from exploitation by the shrewd middle men.

Mr. Deputy Speaker, Sir, I have not received the answer up to now, and I do not know how I can---

Mr. Deputy Speaker: Do you wish to proceed and prosecute this Question without the benefit of a written response?

Mr. Cheruiyot: No. I would like to have an answer.

Mr. Deputy Speaker: Fair enough. Assistant Minister for Agriculture, why have you not provided an answer to Mr. Cheruiyot?

The Assistant Minister for Agriculture (Mr. Ndambuki): Mr. Deputy Speaker, Sir, this Question was asked before we went on recess and we brought everything to Parliament. I have a copy which I can give to him.

Mr. Deputy Speaker: Fair enough. The Chair directs that you furnish him now with a copy of the answer and the Question be listed on the Order Paper tomorrow.

(Question deferred)

Next Question, No.1550 by Mr. Ochieng.

Question No.1550

REPAIR OF KISUMU JUNCTION-MAMBOLEO-MIWANI/
CHEMELIL-MUHORONI ROAD

Mr. Ochieng asked the Minister for Roads:-

(a) when the Ministry will repair the Kisumu Junction-Mamboleo-Miwani, Chemelil-Muhoroni Road; and,

(b) how much money the Ministry intends to spend on the road.

The Assistant Minister for Roads (Dr. Machage): Mr. Deputy Speaker, Sir, I beg to reply.

(a) My Ministry, through the Kenya National Highways Authority (KeNHA), plans to carry out routine maintenance work on the Kisumu Junction-Mamboleo-Miwani, Chemelil-Muhoroni Road, otherwise referred to as C34, in the first quarter of the Financial Year 201/2013.

(b) An amount of Kshs46.6 million has been allocated for carrying out the routine maintenance works. In addition, KeNHA has engaged a consultant to carry out the design for the construction of the road at a total cost of Kshs34 million.

Thank you.

Mr. Ochieng: Mr. Deputy Speaker, Sir, could the Assistant Minister tell us the length of this road and also whether this amount of Kshs46.6 million will be sufficient to undertake proper repairs on this road taking into account that this road is very important? This is where all the sugar factories within Kisumu County are located. All the farmers in that area use that road

frequently. It is also the shortcut if you want to go to Kericho. Historically, this is the road that made *Nyayo* sack the late Minister for Roads, Mr. Kipkalia Kones.

Dr. Machage: Mr. Deputy Speaker, Sir, whereas I do not know who *Nyayo* is, this road C34 is 60 kilometres in length. I think the money that is allocated is adequate. In case there will be need for more money that will be decided at that time.

Mr. Kiptanui: Mr. Deputy Speaker, Sir, indeed, because of the ongoing rains in the country, many roads have been rendered impassable. What measures have you put in place to ensure that the roads in the constituencies, which are impassable, including Nyaru–Iten Road in my constituency, are repaired as soon as possible?

Dr. Machage: Mr. Deputy Speaker, Sir, it is true the long rains caused a lot of havoc and many of our roads, especially earth roads, were destroyed. Currently, the Ministry is undertaking a lot of repairs and a lot of contracts have been given. I believe the hon. Member can check with the local officer as to which contract has been awarded to repair the road he refers to. We will repair all of them.

Mr. Deputy Speaker: Last supplementary question, Mr. Ochieng.

Mr. Ochieng: Mr. Deputy Speaker, Sir, could the Assistant Minister also let us know who the contractors are and when the works are supposed to start, bearing in mind that the road has been in a very bad shape for a very long time?

Dr. Machage: Mr. Deputy Speaker, Sir, consultant Ms. MECE/ITEC has been contracted to do the design and construction of this road. We expect that work on the road should be starting after August and within the first quarter of this year. The design will be completed by August this year.

Mr. Ochieng: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has only given the abbreviation of the company that is supposed to construct or repair this road. Could he, please, read the full name so that the House can be informed accordingly?

Dr. Machage: Mr. Deputy Speaker, Sir, that is the name I have.

Mr. Deputy Speaker: Next Question, No.1548, by Mr. Sirat Mahamud.

Question No.1548

ALLOCATION AND USAGE OF DEVELOPMENT EXPENDITURE IN 47 COUNTIES

Mr. Sirat asked the Minister for Roads:-

(a) how the development budget of over Kshs24 billion has been used in the last three years in the 47 counties, and what criteria is used in allocating money to counties;

(b) whether he can provide a per constituency list showing how the allocation of 10 percent of the development funds was spent by both the Kenya Rural Roads Authority (KERRA) and the Kenya National Highways Authority (KeNHA) in the last three years; and,

(c) whether he could consider allocating enough money to repair the road from Abakore to Habaswein, which serves both Wajir and Mandera counties.

The Assistant Minister for Roads (Dr. Machage): Mr. Deputy Speaker, Sir, after consultation with the Member I seek the indulgence of this House that this Question be deferred

for me to get enough information. What they have given me is information for only one year and information for three years is required. I seek the indulgence of the House.

Mr. Bahari: On a point of order, Mr. Deputy Speaker, Sir. The time of this House must be used properly. You can see this is an Ordinary Question. This is not a Question by Private Notice. The English is very clear. Is it in order for this Assistance Minister to take this House for a ride?

The Assistant Minister for Roads (Dr. Machage): Mr. Deputy Speaker, Sir, when it comes to mastery of English I think I am more educated than the hon. Member. I know more English. That is an insult and I do not take it lightly. It is my duty, as an Assistant Minister, to give adequate answers to the hon. Members and that is what I have requested.

Mr. Deputy Speaker: It is your duty also to prepare that adequate answer! So why do you not have the adequate answer today since this Question was listed on the Order Paper way back?

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. The answer was signed by the Assistant Minister in his office. After signing it in his office he cannot purport, on coming to Parliament, that the answer is not adequate unless he tells us that he found the answer in the House. Even if it was signed by the substantive Minister, he cannot purport to have not seen it in their office. That is how the issue of English comes in.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. The rules of debate in this House are very clear; that a Member is not allowed to impute improper motives against a colleague. He said that he is more educated in English than Mr. Bahari. Could the Chair consider that both hon. Members table their curriculum vitae in the House, so that we can clear this thing once and for all!

Hon. Members: On English! On English!

Dr. Khalwale: On English, Mr. Deputy Speaker, Sir. English language!

Mr. Deputy Speaker: Order! Dr. Machage, could you proceed and answer the Question?

The Assistant Minister for Roads (Dr. Machage): Mr. Deputy Speaker, Sir, let the truth be told; I was just given this answer this morning by my Ministry. It was signed by my substantive Minister; that is all right. However, I have given my stand on the answer that I have been given. I do not think it is proper to take this House for a ride. I have to say the truth.

Mr. Bahari: On a point of order, Mr. Deputy Speaker, Sir. This House is being taken for a ride once again. It is not the business of this House to know when he got the answer. Parliament gave him adequate notice on this Question. Why would he come and give these kinds of explanations which are not satisfactory?

Mr. Deputy Speaker: Assistant Minister, in the separation of powers and responsibilities, the Constitution and the laws of the country only recognize something called the Executive, which you are part of yourself; it includes your Minister and officers. You have a collective responsibility on that and it is not fair for the very Minister who is supposed to answer this Question, to have the answer on the morning he is supposed to answer it.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. Would I be in order to request that we indulge the Assistant Minister since he has been away for quite a while from the Ministry? He is also traumatized because there was a criminal case against him. Now at least he is free. He is my brother; we can indulge him and let him have time.

Mr. Deputy Speaker: Assistant Minister, when can you have this answer? How much more time do you need?

The Assistant Minister for Roads (Dr. Machage): Mr. Deputy Speaker, Sir, may I first of all thank the hon. Member for acknowledging that I was unceremoniously traumatized. Some of the things I said about the Constitution are now happening. Two weeks will be enough for me. One year and a half out of the Ministry is long enough. Let me have enough time to look at this Question.

Mr. Deputy Speaker: Mr. Sirat, are you happy with having this Question listed on the Order Paper two weeks from now?

Mr. Sirat: Mr. Deputy Speaker, Sir, I would like to ask the Assistant Minister to supply me with an answer before he comes to Parliament next time.

Mr. Deputy Speaker: Fair enough! I direct that this Question be listed on the Order Paper two weeks from today.

(Question deferred)

Question No.1506

NON-COMPLETION OF ROAD REHABILITATION WORKS
BY RAPIDO CONSTRUCTION COMPANY LIMITED

Dr. Khalwale asked the Minister for Local Government:-

(a) whether he could inform the House why Rapido Construction Company Ltd., the contractor rehabilitating the road from St. James Hospital on Mombasa Road to Amboseli Estate in Nairobi South C has abandoned the site before completion;

(b) when the constructor will resume rehabilitation work and save taxpayers the agony of walking through mud in the rains and dust in the hot season; and,

(c) what the value of the contract CCN/CE/TO41/CE/2009-10, is, how much money has been paid and what the balance is.

Mr. Deputy Speaker: Where is the Minister for Local Government? There are two substantive Ministers. There are two full Cabinet Ministers. Where is your colleague from the Local Government?

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, my apologies. The Minister for Local Government himself is indisposed. He is not feeling well but I am not quite sure where---

An hon. Member: Where is the Assistant Minister?

The Minister for Medical Services (Prof. Anyang'-Nyong'o): I am coming to that! Patience pays!

(Mr. Nguyai entered the Chamber)

The Assistant is here!

Mr. Deputy Speaker: Mr. Nguyai!

The Assistant Minister for Local Government (Mr. Nguyai): Mr. Deputy Speaker, Sir, first let me apologize for not being in time but I was listening to the proceedings. I have run very

fast and just like the Assistant Minister for Roads, I am not satisfied with the answer. If you will indulge me for one week, I will give a very substantive answer.

Hon. Members! Ah!

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. This Question was filed long before we went on recess. The Assistant Minister has had plenty of time to look at the answer, satisfy himself or otherwise. In spite of that, I do not even have his answer. This is a Question that touches on the public being denied public services through failure by this Ministry to use public funds. Secondly, this Question is capturing the issue of corruption. I demand that before the Assistant Minister comes here, he should give me 48 hours notice with that answer so that I interrogate it for the issues I am looking for.

Mr. James Maina Kamau: On a point of order, Mr. Deputy Speaker, Sir. You notice that this last session is very short and if you continue giving these Ministers over two weeks, we may end up not getting answers. Could you please ask them to have at least one week? These are intelligent people and they can even give the answers in 48 hours.

Mr. Deputy Speaker: That is exactly what he has requested for.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. This goes to the core of Standing Orders and I think these issues were raised by the Back Bench way back. If my memory serves me right, a ruling was supposed to be given by the Speaker, your brother, Mr. Marende on 19th June before we went on recess because this issue of two weeks does not arise. The Standing Orders clearly say that a moment a Minister gets a Question, within five days he is supposed to supply 15 copies of the answer to the House and to the Chamber. So, even the issue of 48 hours before the Question comes for a reading in the House does not arise. I think I mentioned it to Mr. Marende that we wanted to take up the matter and he said he will look back in his file. If kindly, as a panel you can give us a ruling on this matter, it can settle the problem that has bedeviled this House in terms of answering Questions which has not been taken seriously by the Front Bench.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. In addition to the issues raised or as the Chair usually refers to it, “canvassed” by the previous Backbenchers, I want to add a third dimension. One, we have Standing Orders and the Chair must enforce them. Two, the Assistant Minister for Local Government cannot even make a distinction between Rapido Construction Company and a company that has abandoned the works. It means they are not rapid enough. So when the company contradicts its own name in terms of keeping its contract, then he does not need more time but to just dismiss the company.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. Further to what my colleagues have said, I am just concerned because this session is going to be very short and it is like when you have been studying the whole year and you are going to sit for your examinations; you must increase and enhance the time that you put to your work. I would like to invite the Speaker to make a ruling that if the Government side does not pull up their socks, then we shall also put Private Members’ work in the afternoon and on Thursdays and only leave constitutional issues because as Private Members we have many Bills. I have four pending Bills which I want this House to pass. So if the Government side is not ready, we can rule from this side of the House. Could the Speaker please make a ruling on that?

(Applause)

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. It is very evident that the Assistant Ministers from one wing of the Government; the PNU, are not very comfortable with

the Ministers who come from the ODM. This is because in both cases these are Assistant Ministers from the PNU side who do not want to read the answers which have been signed by Ministers from the ODM. So, is the Government going to hold the House to ransom because of their divisions within the Government?

(Laughter)

Mr. Deputy Speaker: Assistant Minister, are you sure we do not have this problem because the Grand Coalition Government is not working?

The Assistant Minister for Local Government (Mr. Nguyai): Mr. Deputy Speaker, Sir, I want to assure you that we do not have that problem in the Ministry of Local Government. You are aware that the substantive Minister is unwell. I had six Questions this week and I looked at all of them on Monday and when I saw the answer to this particular Question, I realized that it was not going to be satisfactory. I then contacted the Town Clerk who assured me that he would address the Question himself and give me the answer within 48 hours. I am waiting for that answer so that I can come and address it and that is why I did not want to delve into this Question.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has confirmed and I want to congratulate him for being serious. But Monday and Wednesday, the period he was given by the Town Clerk of 48 hours, can you determine that that period has already lapsed and so the Assistant Minister should be having the answer already? This Assistant Minister cannot even add up figures!

The Assistant Minister for Local Government (Mr. Nguyai): Mr. Deputy Speaker, Sir, it was Monday afternoon; so the 48 hours have not lapsed.

Mr. Deputy Speaker: Assistant Minister, Standing Order No. 42(5) states: -

“When the Speaker directs that a Question is in order (all Questions that are filed by hon. Members are approved by the Speaker or his deputy) the Clerk shall, as soon as possible forward the Question to the Minister to whom it is directed and the Minister shall, within five days of receipt of the Question, submit a written reply to the Clerk.”

Standing Order No.46 states:-

“It shall be disorderly conduct for a Member to fail to ask or for a Minister to fail to answer a question listed on the Order Paper without the leave of the Speaker.”

So this business of coming to the Floor of the House and asking for additional time and failing to answer a Question; failing to have the answer within five days, are both disorderly conduct on the part of the Government.

Mr. Bahari: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Are you seeking a point of order on the Chair? It is the Chair on the Floor!

Mr. Bahari: On a point of order, Mr. Deputy Speaker, Sir. I want to plead on behalf of the Assistant Minister who looked at his Question on Monday, unlike the previous Assistant Minister who displayed a lot of arrogance to the House by coming to look at the Question here, to allow him more time so that he can answer the Question.

(Several Members stood up in their places)

Mr. Deputy Speaker: Order, hon. Members! The Chair is giving these directions and

quoting from the Standing Orders because a number of hon. Members wanted to have a Communication from the Chair.

Hon. Members: Yes!

Mr. Deputy Speaker: There is no need for the Chair to give a Communication as these are expressly provided for in the Standing Orders. So, Assistant Minister, as the practice has been, lately, there are no other sanctions that the Chair can pass other than to deny a Minister the opportunity to transact Business on the Floor of the House for being either disorderly or for contravening the provisions of the Standing Orders. So, in the circumstances, I am left with no option but to proceed again and do as we have done always and ask you; how much more time do you need?

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I want to agree with what you have said; that the Standing Orders are very clear. By the very words you have said, you should also apply Standing Order 97(2). It says:-

“The Speaker or the Chairperson of Committees shall order any Member whose conduct is grossly disorderly to withdraw immediately from the precincts of the Assembly, either-

(a) for the remainder of that day’s sitting; or

(b) for a period not exceeding two sitting days, including the day of suspension.”

Mr. Deputy Speaker, Sir, I invite you to apply this law. You should order the Assistant Minister out of the House, so that it sends a clear message to Ministers so that if they will repeat what you have found him having done, then they will meet the same fate.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I want to support the point of order by Dr. Khalwale. Dr. Nuh already refreshed the memory of the Chair that before we went for recess, there was an undertaking by the Chair to make a ruling on this matter. You have even done better because you have said that there is no need because the Standing Orders are very clear. Since the Standing Orders are manifestly clear, then you just need to do what the Standing Orders demand of us. The Standing Orders do not demand Ministers to read Questions on a Monday for the week; they demand five days once the Question is submitted and that is even before Questions have appeared on the Order Paper. Given that Standing Order numbers 42 and 46 are very clear on the word “shall,” then we are requesting the Chair to do the needful so that we shall send a strong message to Government that this House cannot entertain incompetence and laziness. They need to be shown the door now.

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Before you take the action of throwing out the Assistant Minister, which I know you are going to do, can I plead that he answers Question No.1555 and then you can throw him out?

(Laughter)

Mr. Deputy Speaker: Order, hon. Members! That is, again, making the presumption that your Question has an adequate answer. Nonetheless, there is a difference of being disorderly and being grossly disorderly. The practice of the House is that an hon. Member is grossly disorderly if that hon. Member behaves or misbehaves in a manner that essentially is an outrage to the House, an outrage to our own dignity as a House. That involves the demonstration of an extreme arrogance that essentially is a denigration of the dignity of the House itself. But not on a matter like the way the Assistant Minister is right now; not having an answer and pleading with the Chair to be given more time. But, nonetheless, there is a difference of being disorderly and being grossly disorderly. So, that is the practice of the House and the Chair has no intention of

throwing him out now, more so when he has given such humility and is really almost going down on his knees.

(Applause)

How much time do you need?

The Assistant Minister for Local Government (Mr. Nguyai): Mr. Deputy Speaker, Sir, today being Wednesday, I would be happy to answer the Question on Tuesday, next week. The answer will be with the hon. Member on Friday morning.

Mr. Deputy Speaker: Dr. Khalwale, are you comfortable with that? Do you have any trips or do you wish to---

Dr. Khalwale: Mr. Deputy Speaker, Sir, I have to go by your ruling. But why do you not apply the Standing Orders, that he gives me that answer now?

Mr. Deputy Speaker: Order! Order! You are now treading on dangerous territory yourself!

(Laughter)

Order! The Chair directs that this Question be listed on the Order Paper on Tuesday, next week!

(Question deferred)

Next Question, Mr. C. Kilonzo.

Question No.1555

NON-PAYMENT OF WAGES TO CASUALS ENGAGED

Mr. C. Kilonzo asked the Minister for Local Government:-

(a) why Masaku County Council has not paid the 169 workers who desilted Kwa Kilee Water Pan under the *Kazi Kwa Vijana* Programme in Yatta Constituency in December 2011; and,

(b) when they will be paid.

The Assistant Minister for Local Government (Mr. Nguyai): Thank you, Mr. Deputy Speaker, Sir. I beg to reply.

(a) The County Council of Masaku engaged 169 casuals to de-silt the Kwa Kilee Water Pan under the *Kazi Kwa Vijana* (KKV) Programme. The casuals were paid an initial amount of Kshs462,000 through cheque number 000588 dated 11th April, 2012, for 11 days worked.

(b) The council has undertaken to pay the remaining balance of Kshs676,000 for 21 days worked tomorrow, Thursday, 2nd August, 2012.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, this was done under the KKV Programme in the beginning of 2011. Why has it taken more than one year for the Government to pay these people?

Mr. Nguyai: Mr. Deputy Speaker, Sir, I know that this project was undertaken in 2011 and there was a budgetary provision. However, the funds were not released on time. As such, the funds have just been released. That is why we are making the payment tomorrow.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: That is fair enough! Hon. C. Kilonzo, given that there is an undertaking, which is only tomorrow, then you should not worry so much. Do you wish to ask a final supplementary question?

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, since this has been promised very many times before and the Government has not been able to meet the promise, could I suggest that we defer this Question until next week?

Hon. Members: Yes!

Mr. C. Kilonzo: If the money has been paid, we do not need to bring the Question. I will confirm with you if it has already been paid---

Mr. Deputy Speaker: Order! Hon. Member! If this money is not paid by tomorrow, then you draw the attention of the Chair to that.

Next Question, Dr. Erastus Mureithi.

Question No.1542

REHABILITATION/UPGRADING OF
OL KALOU HOSPITAL TO LEVEL 4 STATUS

Mr. Mureithi asked the Minister for Medical Services:-

(a) whether he is aware that Ol Kalou Hospital, which was built in 1975, is yet to be gazetted as a Level 4 hospital

(b) whether he is also aware that the hospital's equipment and facilities are broken down or obsolete; and,

(c) what steps he is taking to ensure that the hospital is opened, gazetted and fully equipped to serve residents of Nyandarua County effectively?

The Minister for Medical Services (Prof. Anyang' -Nyong'o): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Ol Kalou District Hospital was gazetted as a Level 4 facility, that is a District Hospital, through Gazette Notice No.3142, published on 16th June, 1995.

(b) The hospital's equipment and facilities are functional.

(c) The hospital is already rendering services to the people of Nyandarua County and for all intents and purposes, the people know that it is open. As I have already stated, the facility was gazetted in 1995 and there is, therefore, no need to gazette it afresh as a Level 4 hospital, unless its status is changing to another level.

As regards equipping the facility to serve residents of Nyandarua County effectively, our position is that like other public hospitals in the country, Ol Kalou District Hospital has functional equipment which the Ministry will continue to progressively improve or replace as funds become available. We are conscious that, indeed, this improvement needs to be done, but we need development funds to do so. Notwithstanding the foregoing facts, the Ministry on 6th July, 2012 received a request from the Town Council of Ol Kalou to rename the facility in honour of the late J.M Kariuki and subsequently, have it launched by a national leader. Following the request, the Ministry issued Gazette Notice No.9811, dated 10th July, 2012 to effect the change of name. There are plans for the Rt. Hon. Prime Minister to launch the renamed facility on 2nd August, 2012, that is, tomorrow.

Mr. Mureithi: Mr. Deputy Speaker, Sir, I wish to thank the Minister for the answer. I have just had a discussion with him. Ol Kalou District Hospital has never been refurbished since it was built in 1975. For example, it does not have even an Intensive Care Unit, which should exist in a Level 4 hospital. Its mortuary can only carry 12 bodies and yet the hospital serves 6,000 inpatients and not 150,000. If the Minister and the Prime Minister will visit that hospital tomorrow as I have been told, is the Minister in a position to do this? This is because all the work that has been mentioned to have been done in Ol Kalou District Hospital has been done in Nyahururu Hospital, which is in Laikipia. Why has the hospital never been opened since 1975? Why have these facilities not been improved since 1975?

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, the hon. Member is right. I am conscious of the fact that Ol Kalou District Hospital which becomes J.M. Kariuki Memorial Hospital as from tomorrow really requires a lot of rehabilitation. When we undertook rehabilitation of 23 hospitals over the last two years, we rehabilitated the neighbouring Nyahururu District Hospital, which also overlaps with the population that Ol Kalou serves. Now, the next step, of course, is to invest in Ol Kalou. We are conscious of the fact that during this financial year, where we have plans to rehabilitate more hospitals, Ol Kalou District Hospital should be factored among those to be rehabilitated. The hon. Member is right. We know that the hospital gets an average of 6,500 admissions per year, which is pretty high and the attendance, including outpatients is about 45,000 patients per year. That is quite a high number and with a catchment population, as the Minister says, our figure is 150,000 but his is much higher than that. But that notwithstanding, with an attendance of 45,000 patients a year, I do agree that the mortuary is now small for the catchment area. We will, definitely, factor this in our rehabilitation programme. However, as you know the 23 hospitals that we have rehabilitated, it was with the support of the Dutch Government and a little bit of Government of Kenya (GoK) contribution. So, if we succeed in getting more development funds with GoK partnership, we shall, definitely, improve the J.M. Kariuki Memorial Hospital.

Mr. Kioni: Mr. Deputy Speaker, Sir, the Minister has said nothing else other than the fact that the Prime Minister will be going to visit the hospital to get it renamed "J.M. Kariuki". He is just saying "should, should." This is the case and yet we are saying that Nyandarua County has 516,000 people and does not have a hospital that can serve them. What the Ministry did was to rehabilitate a hospital within Laikipia County, and they are pretending that it will serve Nyandarua County. Even the visit of the Prime Minister is actually to perpetuate the same thing. Everything that is done in Nyandarua has to be done in the neighbouring counties. We do not have a court and yet Kirinyaga has three courts. Could the Minister clearly tell us what he has within his books and what the Budget provides this year, that will be used to improve Ol Kalou District Hospital?

Dr. Nuh: On a point of information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Do you wish to be informed by Dr. Nuh?

Mr. Kioni: Yes, Mr. Deputy Speaker, Sir.

Dr. Nuh: Mr. Deputy Speaker, Sir, we are informed that there are very few criminals in Nyandarua and that is why the Government did see the necessity to have a court in that county.

(Laughter)

Mr. Kioni: Mr. Deputy Speaker, Sir, that is useful information from Dr. Nuh, because coming from the medical profession, he certainly has difficulties in other professions. The courts

are not necessarily there to deal with criminals. There are areas where you arbitrate on issues that are more useful, including family matters. So, if he has a criminal mind, that may not be very useful.

Mr. Deputy Speaker, Sir, the level of marginalization of Nyandarua County is being confirmed here by the Minister himself. It is only useful for the people of Nyandarua if he can specifically say what the Budget provides for Nyandarua in terms of the health facility that they want to rename. Renaming it “J.M.” is okay because this is a facility that was started in 1975.

(Mr. Ochieng stood up in his place)

You are too far in Kisumu. This is Nyandarua. Allow us to deal with matters of Nyandarua.

(Laughter)

Mr. Deputy Speaker: Order, hon. Kioni!

Yes, Mr. Minister!

Prof. Anyang’-Nyong’o: Mr. Deputy Speaker, Sir, I am totally in agreement with hon. Kioni about the marginalization of Nyandarua County. As you know, the concept of “county” dates to the year 2010. Before that Nyandarua County or District was marginalized and the hon. Member knows the politics of that time. Even J.M. Kariuki Hospital that we are going to rename tomorrow suffered this marginalization which goes several years before even the Coalition Government came into being.

However, I am saying that the Ministry has a development budget which is not very big this year because we would have wanted more. I think we may have a development budget of about Kshs6 billion if we factor in development partners. But once we have that, we then look at all the demands from various district hospitals which are very many and we have to prioritize the most needy and where critical intervention is needed. I am quite sure that, that process has been done. But since the Question did not ask me to bring the figures as to how much is allocated, let me assure the hon. Member that we are committed in the rehabilitation process of facilities to factor in the J.M. Kariuki Memorial Hospital. One of the things that we have discussed with the hon. Member is the mortuary which only holds 12 bodies. I will tell him that just last week, we were rehabilitating the mortuary at Voi Hospital. So, it is not rocket science to do it at Ol Kalou or J.M. Kariuki Memorial Hospital.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I ordinarily hate to contradict the hon. Professor, because he is my good friend and a good man. However, is he in order to mislead the Prime Minister by taking him to open a facility that is supposed to be Level 4 and yet, all the facilities that are supposed to be provided by a Level 4 District Hospital are not in the hospital? Why can he not, as the Minister responsible, ensure that those facilities are operational so that when the Prime Minister of the Republic of Kenya is going, he will rename--- We support this, because this is a great Kenyan. We need to give that hospital that name, but let us give the name to a facility that is befitting the name and the Prime Minister himself. This is the same conmanship when we sent the Prime Minister and President to open a pipeline that did not have the capacity that it was supposed to have been given. Is the Minister in order to do that?

Prof. Anyang’-Nyong’o: Mr. Deputy Speaker, Sir, let us get our facts clear here. I said that the Ol Kalou Town Council requested us to rename the hospital as J.M. Kariuki Memorial

Hospital, and the other people living there had no problem. I can read to you the services available at the Ol Kalou District Hospital. So, they are not really out of the ordinary. They are befitting of any district hospital. We have an outpatient department comprising two blocks, an x-ray department, a maternity, a male general ward, a female general ward, an amenity, a pharmacy, a theatre, two pediatric wards, administration block, health records, physiotherapy, occupational therapy, laboratory, comprehensive care centre, MCHFP, mortuary, special clinics, TB, chest, eye, psychiatry, dental and orthopedic units. We have 90 nurses, two consultants, five medical officers and others. This is not something that is child play. As far as I am concerned, given the increasing population in the area, we are determined to improve the facility and there is some Development Budget for the whole country that we shall factor in for this particular hospital to be one of the beneficiaries.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to read the departments that he has read? These are things which have been there since 1965 and which, we are confirming as back benchers, are old and dilapidated? They are not functional. If the Prime Minister must go there tomorrow, then he should not go there in the name of renaming. He should go there to unveil new facilities, structures and machines. They should stop playing politics and make sure that before they go there, they will take real development to the people of Nyandarua. These are very unique people. They are children of the freedom fighters of this country, including the late Josiah Mwangi Kariuki.

Mr. Deputy Speaker: Order! Hon. Dr. Khalwale, if you want to talk about the dignity of the freedom fighters, you should conduct yourself in a manner that is relevant to that. You do not shout. You rose on a point of order and when you rise on a point of order, you say what is not in order. When the Minister talks about 90 nurses, are they dilapidated? Do you have doctors who are dilapidated or consultants who are dilapidated? You do not have the facts yourself. If you are going to stand here and say "This is the information on the ground", that will be a valid point of order. But do not rise on a point of order to make a political statement. Hon. Kioni has asked: What are you doing now? You have gone into the development budget, the role of the development partners, but you have not been specific on this particular hospital. Can you get specific on that particular hospital and then we dispose of this Question and go to the next Question?

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order! Can you allow the Minister to answer that question?

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, let me be as consistent as possible. I have repeated before that in 2010/2011, we carried out a baseline survey of all our district hospitals and their requirements, including this particular hospital. We submitted to the Treasury a requirement of Kshs8 billion to revamp all these facilities. Between us and the Treasury, we have agreed that that requirement be converted into an investment plan to seek funds from both the Government and development partners to improve our facilities, because it requires resources. In this year's Budget, we were only allocated a limited sum of money, which if I combine with what we expect from development partners is going to be Kshs6 billion. We must use that Kshs6 billion to intervene critically in some of our facilities which have urgent needs.

In that regard, I have said that the Ol Kalou District Hospital is one of the hospitals we have targeted to do that. One of the things that we are doing at the moment is to look at critical areas of intervention in these hospitals since the resources cannot allow us to do everything which will help to improve the facilities. After discussing with the Member of Parliament from the area, Mr. Mureithi, the Questioner, we have agreed that the mortuary is one area in which we

must intervene urgently as we did in Voi two weeks ago. We will go there with the Prime Minister; the community has requested one thing, that we go and rename the hospital “J.M. Kariuki Memorial Hospital”. That is what is requested of us. These other needs---

Mr. Deputy Speaker: Order, hon. Minister! The Question we have listed on the Order Paper is not on the visit by the Prime Minister. The issue we have right now is that either you seek more time to consult with the community there and find out exactly what the needs are, and then say, with the limited resources, how much you can allocate to which area. Ask that this Question be deferred to another day. That will be the right thing.

Prof. Anyang’-Nyong’o: Mr. Deputy Speaker, Sir, that is not difficult at all. I could request to be given until next Tuesday to furnish the House and the Member for the area with details of exactly how much resources we shall dedicate to Ol Kalou. I can do that. I can give the House the information on Tuesday.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I want to thank you for that guidance and the Minister for agreeing with you. The Minister, through his Permanent Secretary, visited the Lodwar District Hospital and upgraded it to Level 4 hospital and up to now, nothing has happened. This is why we are annoyed with these promises. As he renames the Ol Kalou District Hospital as J.M Kariuki Memorial Hospital, we do not want people to play politics with the lives of Kenyans. We want the Prime Minister of the Republic of Kenya to rename a fully functional hospital. The same should apply to Lodwar District Hospital; rename it as “Ethuro Hospital.

Mr. Kioni: On a point of order, Mr. Deputy Speaker, Sir. I want to thank you for the opportunity. I want to appreciate that you are one of the people who fight for the rights of the people. We know you as a person who has stood for the rights of people from the time you entered politics. As Dr. Khalwale has mentioned, Nyandarua is the home of the former freedom fighters *na watoto wao*. It is sad that every other time we turn the page, all that we do is play politics with the people of Nyandarua, the people who fought for the Independence of this country.

As the Minister gives us a specific answer next week as to how much money he will commit to Ol Kalou District Hospital, could he also give us a report clearly informing the House of the state of the facilities he has mentioned, because none of them is functional? You may have 90 nurses, but if they have nowhere to work from and have no gloves, they will not be effective. People are dying because of just toothaches. We have buried people in Nyandarua because they could not get their teeth removed in a proper way. This is what the Prime Minister is going to see tomorrow. He is going to open a facility that is actually not functional. I cannot believe it.

Mr. Deputy Speaker: Hon. Mureithi, the Minister has given an undertaking to sit down with you, and I would even advise him to sit down with your colleague, hon. Kioni, from the same county. Do you want to ask a question? This Question is going to be listed again on the Order Paper for next week. The Chair directs that the Question be listed on the Order Paper on Wednesday next week in the morning. In the meantime, the Chair expects that the Minister and the Members from the county will have had adequate consultation. The Minister will have referred back to his Ministry and decided how much is going to be allocated and to which areas; the answer will be comprehensive in the sense that we will know exactly what will be done for Ol Kalou Hospital at that stage.

Question No.1609

NON-PAYMENT OF FUNDS OWED TO MASINDE MULIRO UNIVERSITY
BY KAKAMEGA MUNICIPAL COUNCIL

Ms. Chepchumba asked the Minister for Local Government:-

(a) whether he is aware that Kakamega Municipal Council has declined to honour payment of Kshs575,964 owed to Masinde Muliro University of Science and Technology arising from preparation of Environmental Assessment Report contract by the council six years ago and, when the money plus interest will be paid;

(b) whether he is further aware that after the initial payment of Kshs.159,036 vide cheque dated 25th April, 2005, council officers have been demanding a bribe of between Kshs60,000 to Kshs80,000 before Kshs575,964 could be released and also over the years, written cheques have been torn when bribes are not given and what action will be taken against the officers; and,

(c) whether he could table the letter dated 10th December, 2004 requesting the then Western University College of Science and Technology to undertake Environmental Audit for the Kakamega Municipal Council, Environmental Audit Report contract No KMC/QUO/12/04, invoices and demand letters from Masinde Muliro University of Science and Technology and any relevant information related to this case.

Mr. Deputy Speaker: Where is the Minister for Local Government? Mr. Minister, where is your colleague? He was here just a few minutes ago and the Chair thought the he would stay.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, he must have moved out.

Mr. Deputy Speaker: Why did he move out?

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, I am not in his conscience. I do not know why.

Mr. Deputy Speaker: That is a form of being disorderly and the Chair directs that this Ministry will not transact any business on the Floor of the House until such a time that they can explain themselves very well. The Chair will make an assumption that they will have taken this matter seriously and I direct that the Question be listed on the Order Paper next week on Wednesday morning. Is that okay with you, Ms. Peris Simam?

Ms. Chepchumba: Yes, Mr. Deputy Speaker, Sir. Indeed, I am disappointed that a Minister just walked out when a Question of this magnitude was about to be asked. He has not returned to answer the Question from a gracious lady and a serious Member for that matter?

Mr. Deputy Speaker: Fair enough! The Chair directs that this Question be listed on the Order Paper next week on Wednesday.

(Question deferred)

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. We wish to plead with the Chair. Even if it means that you come one day in a very bad mood so that you discipline the Government. It is not in order for a Minister whom we wasted close to 20 minutes discussing the conduct of his Ministry only for him to walk out and then all you do is to suspend the business of that Ministry until they explain themselves. Can I plead with you that that Minister be named next time he comes to the House?

Mr. Deputy Speaker: Fair enough! The Chair takes very serious note of that. The Chair will definitely take firm action against such errand behavior which is very bad.

Question No.1552

ELECTRIFICATION PROGRAMME FOR BURA CONSTITUENCY

Dkt. Nuh alimuuliza Waziri Wa Kawi:-

(a) ni lini halmashauri ya usambazaji umeme mashinani ilizindua mradi wa umeme eneo Bunge la Bura; na,

(b) kwa nini hakuna umeme eneo Bunge la Bura mpaka sasa.

Mr. Deputy Speaker: Yuko wapi Waziri wa Kawi? Ni heri Waziri mwingine aeleze ni kwa nini Waziri wa Kawi hayupo leo kulijibu Swali hili.

The Minister for Public Works (Mr. Obure): Bwana Naibu Spika, sielewi kabisa ni kwa nini Waziri wa Kawi hayuko hapa kulijibu Swali hili lakini nitajaribu kujua ni kwa nini ili nilieleze Bunge hili.

Mr. Ethuro: Hoja ya nidhamu, Bwana Naibu Spika. Ningependa kukashifu Waziri wa Kawi ambaye ana wasaidizi wawili, kwa hivyo wote ni watatu. Waziri wa Kawi amekawia kupeleka umeme eneo la Bura ambalo halijapata umeme tangu tupate Uhuru. Pia, Waziri huyu amekawia kuja Bunge. Ni vyema Waziri ambaye anapaswa kupeleka umeme katika sehemu ambayo haijakuwa na umeme tangu Uhuru bado anaendelea kukawia? Utafanya nini ili kuhakikisha kwamba Waziri huyu hakawii tena?

Mr. C. Kilonzo: On a point of information, Deputy Speaker, Sir.

Mr. Deputy Speaker: Tuna Swali ambalo limeulizwa kwa Kiswahili. Unaposimama zungumza Kiswahili.

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. I would like to inform you why the Minister is not here to answer the Question. The Minister has already provided two answers. In the first answer, he says that there would be electricity in Bura in May, 2012 but there is no electricity up to now. In the second answer, he says that there would be electricity by 6th June and there is no electricity in that place. So, there is no way that the Minister would face Dr. Nuh. So, we suspect that he will only respond when there is electricity in Bura. He has refused to come because he has already embarrassed himself by giving due dates that he cannot confirm.

Mr. Mungatana: On a point of order, Mr. Deputy Speaker, Sir. Apart from the Minister for Energy, we have a substantive Leader of Government Business. The Office of the Leader of Government Business receives a salary, it has staff and is located within the precincts of Parliament. The reason Parliament has allocated, through the Budget Committee, money for this office is so that the leader can be there.

An hon. Member: All the time!

Mr. Mungatana: Mr. Deputy Speaker, Sir, if he is not here, he deposes to someone who can answer for the Government. I request that as you visit sanctions on the Minister for Energy, you should also visit sanctions on the Leader of Government Business. This is because the whole of this morning, and you are a witness, we have seen that the Government has not been functional and, therefore, wasting the time of this House.

Mr. Ochieng: Hoja ya nidhamu Bwana Naibu Spika. Tunashangaa sana kuona Waziri wa Kawi akihepa kuja hapa kulijibu Swali linalohusu Wizara yake. Sehemu ya Bura iko katika

Mkoa wa Pwani. Huko ndiko tuna mambo ya MRC ambao wanasema kwamba wamekanyagiwa katika mambo ya maendeleo kwa miaka mingi. Hii ndio sababu wanateta. Kuteta kwao kutamalizwa vipi kama Waziri hawezi kuja hapa kutuambia ni lini atapeleka stima kule Bura? Ni lazima uhakikishe kuwa Waziri huyu amepewa siku 14 kupeleka umeme katika sehemu hiyo ili tusiwe na vikundi kama MRC vikiteta na kusema vimekanyagiwa maendeleo kwa miaka mingi.

The Minister for Public Works (Mr. Obure): Bwana Naibu Spika, mimi ninamfahamu Waziri wa Kawi kama mtu anayeielewa kazi yake. Ninauliza Bunge hili kwanza tuelewe ni kwa nini Waziri hajafika hapa. Lazima awe na sababu nzuri sana.

Mr. Deputy Spekaer: Hakuna sababu nzuri ya kutokuwa na Waziri Wasaidizi wawili na Waziri hapa. Pia, Leader of Government Business au Waziri mwingine angekuwa hapa ili alijibu Swali hili.

Mr. C. Kilonzo: Hoja ya nidhamu, Bwana Naibu Spika. Ni kweli sisi Wabunge tunaelewa na kufahamu mahali Waziri huyu yuko. Tunaelewa kwamba Waziri huyu anatafuta ni nani ataliendesha basi.

(Laughter)

Si rahisi kumpata Waziri Kiraitu Murungi kwa sababu basi limekosa dereva. Kwa hivyo, Waziri asije akasema kwamba hajui Waziri mwenzake yuko wapi. Tunataka uchukue hatua kali kwa watu wanaoenda kufanya siasa za vyama badala ya kufanya kazi ya Bunge.

Mr. Ethuro: Jambo la nidhamu, Bw. Naibu Spika. Wakati tulipata likizo ya mwezi moja kwenda nyumbani, hiyo Hoja ililetwa na Mkuu wa Shughuli za Serikali Bungeni ambaye ni Makamu wa Rais na Mawaziri wenyewe wakaunga mkono, nasi pia tukakubali. Waliomba nafasi ya kuenda kutengeneza kazi ili wakati tutarejea katika Bunge hili watakuwa na majibu kwa Maswali. Hii ni siku ya pili tangu turejee na unaona kwamba Mawaziri walienda kulala badala ya kuenda kurekebisha kazi.

Kwa hivyo, baadala ya Mhe. Obure, rafiki yangu, kuja kumtetea mwenzake, angekuja kujibu hilo Swali au angemtafuta. Ama atuambie ni kwa nini Mhe. Nuh anataka nuru kwa mambo ya Bura na Waziri huyu hampatii nuru Mhe. Nuh.

The Minister for Public Works (Mr. Obure): Bw. Naibu Spika, naomba muda mfupi ili nimtafute Waziri mwenzangu aje ajibu Swali hili.

Mr. Deputy Speaker: Order! The Chair directs that the Minister avails himself tomorrow and that this Question be listed on the Order Paper tomorrow. He should answer this Question adequately tomorrow, failure to which the Chair will take some serious sanctions this time round.

The Minister for Public Works (Mr. Obure): Bw. Naibu Spika, ninakuhakikishia nitapeleka ujumbe huo kwa Waziri mwenzangu.

Mr. Speaker: Next Order!

Mr. Cheruiyot: Mr. Deputy Speaker, Sir, following your intervention, I managed to get the answer and I now beg to ask Question No. 1610.

Question No.1610

RATIONALIZATION OF PACKAGING OF POTATOES IN
90-KILOGRAMME SACKS IN MOLO /KURESOI

Mr. Cheruiyot asked the Minister for Agriculture:-

(a) whether he is aware that despite the Ministry's assurances on the rationalization of the packing of potatoes per sack, traders in Kuresoi and Molo continue manipulating the packing of 90 kg sack in excess of the standard measure; and,

(b) what urgent administrative measures the Government considers taking to rectify the practice and protect potato farmers from the exploitation by the shrewd middle men.

The Assistant Minister for Agriculture (Mr. Ndambuki): Mr. Deputy Speaker, Sir, I beg to reply---

Mr. Deputy Speaker: Order. This Question was deferred to tomorrow.

(Question deferred)

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. You had made a ruling on the Minister for Local Government and he is sitting very pretty in the House. I do not know if you are aware.

Mr. Deputy Speaker: I did not direct that the Minister for Local Government shall not sit in the House. I have already done the sanctions. It is upon the Minister to approach the Chair and explain himself, either for the sanctions to be lifted or not to be lifted. So this matter is not for discussion in the House now.

Next Order!

BILLS

Second Reading

THE ENERGY AND COMMUNICATIONS LAW (AMENDMENT) BILL

Eng. Rege: Mr. Deputy Speaker, Sir, I beg to move that the Energy and Communications Law (Amendment) Bill, 2011 be read a Second Time.

Mr. Deputy Speaker, Sir, over the past couple of years the number of incidents of vandalism---

(Loud consultations)

Mr. Deputy Speaker, Sir, could you save me from the discussions in the House?

Mr. Deputy Speaker: Proceed, Eng. Rege!

Eng. Rege: Mr. Deputy Speaker, Sir, over the past couple of years, the number of incidents of vandalism and sabotage affecting telecommunications and energy service providers has been on the increase. The effect of vandalism has been far reaching not only affecting the service providers who lose revenue and pay dearly for repairs but also suffer reputation damage which may at times not be quantifiable.

Similarly, corporate organizations that are cut off from the electricity and telecommunications grid do suffer losses in billions of shillings every year in forgone revenues. Moreover, some organizations in the manufacturing sector are put under strain to meet their service level obligations. With the lives of patients in hospitals being placed under risk, of

course, the biggest loser of all has been the innocent consumers and *wananchi* who have been denied their basic services like telephone, electricity, internet, fuel, *et cetera*.

Mr. Deputy Speaker, Sir, you will remember late last year when power was cut at Jomo Kenyatta International Airport due to vandalism of the electrical cables and also the major blackout that engulfed Mombasa City as a whole. Mombasa Town was cut off electricity for so long. In fact, we have just been informed by the Energy Regulatory Commission that the shortage of fuel recently was as a result of vandalism of power cables. It is with this in mind that the Departmental Committee on Energy, Communications and Information held consultations with affected organizations to seek an end to the vice of vandalism. Among these, we were able to identify as the main cause of the increase in incidents of vandalism were flaws in the law which did not effectively deter people from crimes relating to vandalism and sabotage. Today, those convicted get away easily with fines of less than Kshs100,000 which in our view is not commensurate to either the cables they stole or the losses they had occasioned to the respective organisations and the clients or customers.

Having taken this in mind, the Committee came up with a Bill that seeks to address these flaws by introducing amendments to the Energy Act, 2006; the Kenya Information and Communications Act, 1998 and introducing certain provisions of the Scrap Metal Act that were repealed in 2008.

[Mr. Deputy Speaker left the Chair]

*[The Temporary Deputy Speaker
(Mr. Ethuro) took the Chair]*

Mr. Temporary Deputy Speaker, Sir, the principal objective of this Bill is to amend various laws that contain offences relating to protection of communication and energy apparatus from damage and vandalism so as to make the offences stiffer and thus deter vandalism of those apparatus.

The Energy and Communications Law (Amendment) Bill, 2011 primarily seeks to recognize vandalism as an economic crime and for that matter, proposes stiffer penalties for those who are convicted of related crimes. The Bill has also introduced a new offence of severing with intent to steal in respect of telecommunications and energy apparatus to ensure that all those who are guilty are dealt with according to the law.

Mr. Temporary Deputy Speaker, Sir, further, the new Bill proposes amendments to the Scrap Metal Act, Cap. 503, which will obligate scrap metal dealers to seek licences before they are allowed to operate. Obviously, we all know that once vandalism takes place, all the vandalized goods end up in the scrap metal market.

Indeed, it is the unregulated scrap metal industry which is fuelling the demand for copper wires, transformer oil, metal and iron materials. If we deal with this, 20 per cent of the problem will be blocked. We will be left with the vandals who comprise 20 per cent of the problem. This can be dealt with by stiffer penalties being introduced by the Bill.

Mr. Temporary Deputy Speaker, Sir, among the key changes introduced by the Bill are:

(i) Introduction of stiffer penalties in both the Energy and Communications Act or conviction to a fine of not less than Kshs5 million or to imprisonment for a term of not less than ten years or both for a person who vandalises any electrical plant or equipment or telecommunication apparatus.

(ii) Introduces offences of economic sabotage which its intent is to interfere with the management or the operation of the apparatus of licensee.

(iii) Recognises the act of vandalism which is broadly defined in the interpretation.

(iv) Introduces the new offence of tampering with intent to steal which is not there in the existing Act and also tampering with or stealing transformers or transformer oil which is also not captured in the existing statute of this Act. This will attract a conviction to a fine of not less than Kshs5 million or to imprisonment for a term of not less than ten years or both.

Mr. Temporary Deputy Speaker, Sir, the Scrap Metal Act was amended on 12th October 2007 by the licensing laws to repeal the amendment Act, 2007. The net effect was that there was no control over the scrap metal business in Kenya which has greatly contributed to the escalation act of destruction of telecommunication apparatus and energy installations. The amendment proposed by this Bill to the Scrap Metal Act, Cap.503 to introduce control over scrap metal business. The Bill introduces 14 provisions in the Act with necessary modification to fit the new constitutional dispensation.

We, as the Departmental Committee on Energy, Communications and Information, are confident by the passage of this Bill. The country stands to benefit immensely in the coming years. This will have a long-term positive impact on the economy. There is growth spur in the energy sector that largely depends on the availability, but most importantly, the consistency of service provision. A decline in vandal cases will lead to a steady growth of businesses which will in turn lead to less reliance on conventional job opportunities that exist.

Mr. Temporary Deputy Speaker, Sir, among other things, it will lead to the acceleration of the Rural Electrification Programme (ERP) which extends telecommunications network that will cut down on the amount of valuable time that organizations experience and overall contribute towards the overall success of the Vision 2030 programme. Of course, the Bill is not the panacea of all the problems ailing the energy and telecommunications industry. We, therefore, encourage all colleagues to be vigilant and work with the police in enforcing the provisions of this law since we are all confident that with the law, the police now have a right tool to fight the vice of vandalism.

Mr. Temporary Deputy Speaker, Sir, with those words, I move that the Energy and Communications Law (Amendment) Bill, 2011 be read a Second Time. Thank you.

I would like to request hon. Mungatana to second the Bill.

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, I rise to second the Energy and Communications Law (Amendment) Bill, Bill No.29 of 2011. First of all, I want to thank the hon. Chairman of the Departmental Committee on Energy, Communications and Information for the work they have done. They have taken time to look at the problem that is affecting the spread of the REP. They have taken the chance to listen to what Members of Parliament have been raising here time and again about the vandalization of transformers when the programme is taking place within the various constituencies. I congratulate them because they have gone ahead to meet stakeholders who have given concrete suggestions. One of them is the strengthening of the law that has been governing the operations and the protection of these transformers, among other things.

Mr. Temporary Deputy Speaker, Sir, in seconding this Bill, I would like to say that law in general has been brought into society for various reasons. One of them is to regulate behaviour of society. In this particular case, what Parliament is hoping to achieve is to regulate the behaviour of those who have been making life difficult by vandalizing electrical transformers.

They have been affecting a wide section of society. The penalties have been very light. This has contributed towards the continuity of this habit.

Mr. Temporary Deputy Speaker, Sir, I stand very strongly to support the strengthening of the penalties against these vandals. The Kshs5 million fine that is proposed or ten years imprisonment or both will be a strong message being sent from this Parliament that we will not accept that vandalism to be part and parcel of Kenya. We will not accept vandalism to be business as usual in this country.

Mr. Temporary Deputy Speaker, Sir, we all know that these vandals operate within the community. I would urge that we come together and when we find these vandals, we report them to the police. More importantly, I also want to urge particularly the Kenya Power Company (KPC), which is the distributor, to create a special hotline for reporting these people. We, as a nation, must take a collective stand against them.

Mr. Temporary Deputy Speaker, Sir, it would also be good for KPLC to create incentives for communities that have come together to report people who are involved in vandalism. Incentives could be monetary. Incentives could also mean that they provide better services in those particular areas. They should recognize those communities who come together to work with them and help them arrest these vandals.

It would be useful for the vandals who have been involved in these, particularly in rural areas. It is so bad that when rural electrification is starting within a constituency in far flung places, thieves descend on that area and mess up the whole area because of selfish interests. We want to send a very strong message from Parliament that this behaviour must stop. People must look for a better way to earn a living and we will not accept vandalism as a nothing.

With those many words, I beg to second.

(Question proposed)

The Minister for Public Works (Mr. Obure): Mr. Temporary Deputy Speaker, Sir, first, I want to start by congratulating the hon. Member for this very important initiative.

Provision of electricity is a pre-requisite to development. We cannot develop as fast as we would like to because electricity is not available in every part of our country. We need electric power for industrial development. In fact, we need equitable industrial development throughout our counties, both in urban and rural areas. We need electric power so that we can carry out value addition activities to our agricultural produce. In this era of information technology, electricity is vital and we must have it in all our learning institutions, particularly secondary and primary schools. We need electricity at the family and household level, so that our people can improve the quality of their lives. It is, therefore, a vital commodity.

Mr. Temporary Deputy Speaker, Sir, I want to thank the Government for the huge investment in this area, and the success we have been able to achieve so far in providing electricity, particularly in our rural areas. However, we need to hasten this pace, so that the entire country can benefit.

One of the major handicaps is the rampant vandalism of transformers. This is a major menace. People wait for years to be provided with electricity. Once that has been done, the next thing you see is the area experiencing a blackouts again because some individuals have come at night and taken away the transformers. This is a terrible thing. It is a terrible practice and it is taking us back into the dark period. This menace must be dealt with very firmly. In my view, this is economic sabotage which should not be tolerated in a civilized society.

I support the various measures which have been proposed in this Bill; I thank the Committee for the initiative and for thinking along this line. This is because we must deal with this menace firmly, so that we can allow development to continue to take place. It is not possible to achieve Vision 2030 if we do not hasten the pace of the provision of electricity in all parts of the country.

I, therefore, support this Bill very strongly and say that the activities of criminal individuals or groups bent on sabotaging this electrification programme must be stopped. Very firm action must be taken against them to ensure that we allow development to take place and this vandalism is stopped once and for all. Those who want to be rich quickly and those who want to take shortcuts to acquire wealth at the expense of society must be told that, that is not acceptable. We only do so by enhancing punitive action through this Bill. This Bill deserves to be supported by every person of good will.

I support.

Mr. Ruteere: Mr. Temporary Deputy Speaker, Sir, thank you for according me this opportunity to support this Bill. We have seen vandalism making our economic activities decline. We have seen the sabotage that has taken place. The Bill addresses very crucial issues that have affected us as a country and as individuals. We have seen how this kind of vandalism has put some areas into total darkness and, therefore, brought about criminal activities, not only by those who cause vandalism but also by others who look for opportunities whenever there is darkness to steal, attack people or rob.

Mr. Temporary Deputy Speaker, Sir, Eng. Rege and his Committee need to be congratulated for taking a proactive action to see that this menace is addressed in a way that will curb its existence.

We have seen accidents occur on the roads because scrap metal dealers have taken away the roads designs. They have vandalized all the road signs that direct drivers who are new to the roads to particular areas, and on how to drive on those sections they have never driven before. Drivers who do not know roads cause serious accidents, some of which are fatal.

Those who do these things are economic criminals. They are saboteurs. Actually, the Bill is not providing for the penalties properly. Maybe we need to increase the penalties proposed by the Bill. Anybody wishing Kenya good, anybody wanting us to achieve Vision 2030, anybody who wants us to think in a manner that will address our electrical and communication problems has, I think, the right to support this Bill. This Bill is timely and needs to be supported by all Kenyans of good will, and those who want us to develop in our infrastructure and economic activities.

Without saying much, I support the Bill.

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, thank you for this opportunity to give an input into this very important Bill.

Let me start by thanking the leadership of this Committee for this very prudent and overdue Bill. We have seen vandalism in this country devastating the economy of this country. We have seen transformers in different parts of this country being stolen. The Kenya Power and Lighting Company has lost billions and billions of shillings through this act. We have also seen the optic fibre cable that was laid a few months ago being interfered with, thus affecting communication, both local and international. This is an impediment to investment in this county.

This is, again, an impediment to the investment in this country. It also affects employment of the youth in this country and, therefore, the cost of business will escalate in this country scaring any investment in this county. We have also seen the high degree of

cannibalization of vehicles. Hardworking Kenyans have had their vehicles stolen by vandals and their vehicles cannibalized and parts sold in the market. It is causing fear for willing motor vehicle buyers because the moment you decide to buy a vehicle, you are likely to lose it. We have also seen church signposts and road signs disappearing. The Thika Super Highway has also not been spared and you will realize that the contractor has not left the site. The road side guards have been interfered with and stolen. You cannot see school signposts; they are not also safe because of these metal vandals. The railway line has also not been safe and even *sufurias* belonging to women in our homes have been stolen by these metal keepers. This is causing despondency and fear in our families.

Mr. Temporary Deputy Speaker, Sir, of great concern is that this illegal business is being conducted in the glaring view of policemen. Why should this happen in modern Kenya? Therefore, this law is going to deter these illegal businesses. Scrap metals have been exported to foreign countries and this must be discouraged completely because people have become millionaires for not working because of this illegal and indecent business. It is important to set heavy deterrent fines. I would think that Article 3(a) is not adequate. It is not deterrent. The Bill is suggesting Kshs500,000 and I would think that initially, this should be proposed to be Kshs1 million and putting the vandals for two years in prison. This will stop the vandalism that we have in the country.

On the transfer of these items, the Bill is also very lenient and I would suggest that the Kshs1 million suggested in this Bill be raised to Kshs2 million and imprisonment of one year so that we lay a firm foundation to fight the degree of impunity in this country.

With those few remarks, I support this proposed Bill.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, thank you for always getting all my names correctly.

I want to thank the hon. Member and the Committee for bringing this Bill. I would also want to note, at the outset, that primarily, the amendment seeks to cut the issue of vandalism of telecommunications gadgets. It is a fairly straightforward Bill and it has my full support. What I would want to encourage hon. Members - because we have a very short Session and time, that informally without a formal Motion being brought - we be very brief even in our contributions so that in any sitting on a Wednesday morning, we can deal with five or six Private Members' Bills. It is possible and we can set a record for this House.

(Applause)

Having said, I want to be, therefore, very brief. When there are incidences of vandalism, it affects security in the country and where there are incidences of insecurity, many people lose lives like in Homa Bay on Monday, four watchmen were killed. They lost their lives for no reason because even though it was very close to the police station, there are no public lights. The persons who subsequently suffer are women who are widowed and children who are orphaned and are unable to go school. But also in cases of insecurity, high incidents of persons who are affected are women and children. Women get raped and sometimes, they get murdered and children also get raped. So whenever you have such incidences, it is the women and children who bear the greatest brunt of insecurity. Again, it affects the economy and especially employment that affects our youth and because our unemployment rate is very high in the country, unless we curb it, it is going to affect our youth further.

I want to thank Mr. Njuguna for raising the issue that through vandalism, the other items that are affected are road signs. That again affects our children but having said that, I want to encourage the hon. Member to note certain things that the Bill should cover. Sometimes whatever we intend to cure, we might be having the very people we are seeking to protect. If you look at Clause 21(d), it talks about the premises of the applicants who are in the opinion of the licensing officer unsuitable in dealing with scrap metal. You know that the people who generally deal in scrap metal are *Jua Kali* artisans. Most of them do not have premises. Most of them work in open spaces and so I would encourage the hon. Member to amend that so that he takes into account the fact that *Jua Kali* artisans are generally our young people who do not have other means and they are trying to create employment even though there are people who are misusing that and stealing and affecting the industry.

Mr. Temporary Deputy Speaker, Sir, I would also want to encourage the hon. Member that the same standards we are trying to put in this sector should also apply to the telecommunication providers themselves. For instance, when they are bringing or replacing telecommunication gadgets, they are usually very careless like when they are putting fibre cables, a lot of times, they open up the ground, they leave it and you further endanger the lives of people. You can cause accidents; people can fall and hurt themselves. I am saying this because right outside my house, they have done that and you do not know who is coming to cover that. It is possible for even terrorists to come and dig up places outside your house and say that they are telecommunication providers. So as much as we want to regulate the *jua kali* artisans, we must also bring discipline in the telecommunications; that you do not just say that because you are bringing telecommunication, we can mess roads or around people's homes and we do not care whether we replace. That is the culture of impunity that this country must stop and it is the same culture that I have said that we want to pass so many Bills.

With those few remarks, I beg to support.

Dr. Otichilo: Mr. Temporary Deputy Speaker, Sir, I thank you for allowing me to make my contributions to this very important amendment Bill. First, I want to thank the Committee and Eng. Rege for bringing this amendment. This is very timely.

Secondly, I want to thank the Rural Electrification Authority (REA) for a commendable work they have done in the distribution of electricity in our constituencies. This is a commendable job and now most of our constituencies have a supply of power. But the problem we have throughout the whole country is vandalism. The vandalism of transformers has become so rampant that electricity is installed in one week and the following week, the transformers are vandalized. This is a problem that is stifling the good work the REA is doing. Therefore, it is very important that we must come up with very punitive measures to ensure that those criminals involved in the vandalism of these important national installations are severely punished. I am particularly very happy that as regards the vandalism of transformers, those who will be involved in this criminal act will be fined not less than Kshs5 million or an imprisonment of ten years or both. This is very important. Also as regards the issue of fibre optic cables, this country is doing an excellent job in the installation of fibre optic cables throughout the country so that ICT is available to everybody because this is the engine of development in the 21st Century.

However, we have these criminals who, after this good work is done, come and vandalize these fibre optic cables and they make the whole programme a mess. It is, therefore, important that these people must be punished thoroughly. So I want to congratulate the Committee for coming up with very punitive measures so that these criminals are severely punished.

Scrap metal and road furniture contributes a lot to this problem. In my own constituency,

for example, people have lost *jembe*, *sufurias* and other items to metal dealers. So, it is important for us to come up with stringent measures to punish metal dealers who buy these stolen metal materials from these vandals. We should punish them very severely, so that we deal with this problem once and for all. I agree with hon. Njuguna that a penalty of Kshs500,000 for scrap metal dealers who buy stolen materials from the vandals is not adequate. I would want an amendment to be brought where these people should be fined not less than Kshs1 million and be jailed for not less than five years. Currently, we have good roads that are now being constructed in this country. Once guard rails and signboards are erected, these vandals come and vandalize them and sell them to scrap metal dealers. So, it is important that we come up with severe punishment for those people who deal with stolen scrap metals in this country.

So, Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to support this Bill.

Mr. Midiwo: Thank you, Mr. Temporary Deputy Speaker, Sir, for allowing me to contribute to this very dear matter to me.

Mr. Temporary Deputy Speaker, Sir, let me congratulate Eng. Rege and his Committee. What they are attempting to do is something which the Government should have done a long time ago. This Government has really tried in infrastructural development. But our people at every level do not seem to appreciate the efforts being done in infrastructural development by the Government.

Mr. Temporary Deputy Speaker, the issue of road signs and accidents is something that we must criminalize and punish very heavily. This is the only country where we do not care even about good things. It is an issue we cannot run away from and the Committee needs to enhance the penalties.

Mr. Temporary Deputy Speaker, Sir, one other thing I want to plead with the Chair is to make an amendment, as we amend this Act, regarding the positioning of electricity transformers. The problem is that when contractors go for design, they tend to put these transformers in the bush. Now, as I speak to you, in the last two or so months alone, I think four or five transformers have been stolen from my constituency. What is interesting is that those transformers are not being stolen by scrap metal people. They are being stolen by contractors or the briefcase contractors who are being hired by KPC. After investigations, I know that they are selling the same transformers back to KPC. So, it is a vicious circle. The issue of transformers must be criminalized to the extent that if you are caught stealing one, you may even face the death penalty because electricity saves lives like the example which has been enumerated by Mrs. Odhiambo-Mabona about the massacre in Homa Bay two days ago. If the place had lights, those people will still be living today. This is happening all over the country. So, please, I want to plead with you to go the Mututho way. A few months ago when I was moving the Traffic Amendment Bill, people said that the penalties are punitive. Penalties must be punitive. Why pass a law that seems to be creating a holiday for people? We should pass a law that if anybody thinks of breaking it, it is a deterrent. That way, we shall be moving in the right direction as a country. I want to plead with you to carry an amendment to force KPC, by design, to put electricity transformers in schools, in Church compounds, in people's compounds and they will be safe. Let us not entice theft; let us, please, put them in a way that will deter opportunities for theft.

With those very many remarks, Mr. Temporary Deputy Speaker, Sir, I beg to support.

[The Temporary Deputy Speaker

(Mr. Ethuro) left the Chair]

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

Mr. Ethuro: Madam Temporary Deputy Speaker, I have a duty to support my Chairman on this one.

(Applause)

Madam Temporary Deputy Speaker, the cost of vandalism to the economy of this country is huge. I am a member of this Committee. Representations were made to our Committee and were very shocking. Given that telecommunications infrastructure is just as important as the physical infrastructure we are having in this country; given that if we really want to realize Vision 2030 as conceived in this country, we must ensure that we invest in the Information, Communication and Technology (ICT). Vandalism is negating all the efforts by the State to make serious progress in this particular sector. So, this is why we thought, as a Committee, that we must really come up with punitive measures, so that it becomes a serious deterrent to vandalism. In fact, I would have put this under economic crimes so that these fellows are actually put away.

Madam Temporary Deputy Speaker, Sir, you realize that for this amendment to be effective, we should invest a lot in the police force. If you look at who the licensing officer is, it is a police officer. If the police force is not being reformed as we expect, even these amendments we are proposing here will come to naught. This is because we have a police service now that will enter into partnerships with criminals. So, we can make all the laws here and nothing will happen. So, I urge my Chairman, because he should not just look at the police reforms in isolation; he must appreciate that their kind of work he is proposing here, this legislation can only be effected if the police will perform their duty as required.

Madam Temporary Deputy Speaker, this Bill is actually making amendments to the three Acts already in place, that is, the Scrap Metal Act, the Information and Communications and the Energy Act. On how they propose to inspect the scrap metal, we should be thinking of not just one person coming to inspect the premises. It should actually be a panel. As hon. Millie Odhiambo, definitely, observed a little earlier, if the youth – because this is a serious problem in Kenya – who are about 75 per cent of our population will be looking for where to get some of this scrap metal--- They do not have the resources to have a fancy place, unless you are saying that it is only the “big” fellows who will deal with scrap metal. So, we need to consider that a bit of a panel or committee of sorts will be dealing with particular issues so that seeking for bribes, collusion or being hired by the “bigger” boys to frustrate the “smaller fish” can be handled as we make these amendments.

Madam Temporary Deputy Speaker, I also want to appreciate that in the Statutes Law (Miscellaneous Amendments) Bill, I actually fast-tracked some of the proposals here so that they are part of the law. So, at the Committee Stage, we will have to dispense with those ones as well. But the point that I want to make, and want it to be loud, is that while we protect the telecommunication infrastructure, there are areas in this country which hear about telecommunication infrastructure as if it is rocket science, the story of Apollo 11 going to the moon or Neil Armstrong. I want to urge my Chairman to put as much seal that the infrastructure

is so basic that northern Kenya in particular, should not remain behind in the 21st Century in terms of telecommunication infrastructure, the way we have remained behind in terms of the physical infrastructure, like the roads. We should be able now to compensate ourselves because in telecommunications, we can deal with mobile telephony which does not need that particular infrastructure that you are talking about so that these areas of Kenya, some of which are agitating for separation--- These are the kind of issues that contribute to people entertaining the kind of notion that should not be entertained in this country. I have many people who climb trees to be connected to a network when they look for the Member of Parliament. In the process of the conversation, they may forget and slip, fall and injure themselves. So, chances of protecting life are slim.

(Laughter)

Madam Temporary Deputy Speaker, I think I have made my case.
I support.

The Temporary Deputy Speaker (Dr. Laboso): Since there seems to be no more interest by the hon. Members, I call upon the Mover to respond.

Eng. Rege: Thank you, Madam Temporary Deputy Speaker. I would like to take this opportunity to thank my colleagues for supporting this important Bill.

Madam Temporary Deputy Speaker, their contributions will extremely help in passing this Bill during the Third Reading, especially the newly introduced issues, like what hon. Mungatana proposed that we have a hotline for reporting vandalism. That is very crucial.

There is also the idea that hon. Odhiambo-Mabona introduced, that the service providers must be careful when they are doing installations, especially when digging trenches across the roads or near premises. In the developed world, there is a very severe punishment if a service provider digs a trench and leaves it open or does not bring the place back to its normal condition after the installation. So, I would like to encourage all our service providers to ensure that they are very careful. When they give out contracts, they must ensure that the contractors leave a deposit which can be used if they do not repair the road to the condition that it was before the installation. That money should be used to do the correct thing.

Madam Temporary Deputy Speaker, Dr. Otichilo also talked about road signs. Our road signs are stolen by scrap metal vandals leaving the roads very dangerous for motorists, especially if there are no signs near corners, the matatus or any motorist is really at risk. So, this is another important area that the police should take keen interest in.

I want to thank hon. Ethuro very much for his contribution. I think it will be taken into account during the Third Reading.

Madam Temporary Deputy Speaker, I would like to, again, thank all the contributors for the work well done.

Madam Temporary Deputy Speaker, I beg to move.

(Question put and agreed to)

(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)

THE CONSUMER PROTECTION BILL

Mr. Midiwo: Madam Temporary Deputy Speaker, I beg to move that The Consumer Protection Bill be now read a Second Time.

Madam Temporary Deputy Speaker, let me, first of all, say that I am very delighted that this day has come that we can talk about the issues of consumer rights in our country. This has been a long journey. I first drafted this Bill in the Ninth Parliament. The Government and the Minister for Trade then were not willing to let it come to the Floor because it was going to affect the general trade atmosphere, particularly the issue of class action suit but we have now gone full circle.

Article 46 of the Constitution has underpinned consumer rights. Just to refer you, it says:-

“Consumers have the right to goods and services of reasonable quality, to the information necessary for them to gain full benefits from goods and services, to the protection of their health, safety and economic interests.”

Madam Temporary Deputy Speaker, they also have a right, which is what the general trade environment is against, to compensation for loss or injury arising from defects in goods or services.” Then, it goes further to allow Parliament to legislate. We are here to honour that authority given to us by legislation.

The issue of consumerism is so important. We cannot have a scenario in this country where we do not care about what our people consume and about how businessmen treat our people. Even the Government itself must be sensitive to consumer issues. This week, what is alive before us is the Value Added Tax Bill, which purports to want to tax basic needs at a time when our people are really suffering and a time when Kenyans have nowhere to turn to. There have been calls by Members of this Parliament that that Bill be shelved, but I am encouraging hon. Githae to bring that Bill, so that we can use it to once and for all, amend the Value Added Tax Act and zero rate those items which are hurting our people. We will use that VAT Act and turn it against an insensitive Government and zero-rate a lot of items, so that we can liberate and help our people who are suffering and the Government does not seem to be listening to them. A lot of things, which are hurting our people, are well within the reach of this Government. They can do it in the evening, at night and in the morning.

Last October – and the situation extended to early this year - I tried to say that Kenyans were suffering from the attitude and the exploitation of commercial banks. We then put an amendment to try to force the Government to, at least, give people relief. Only this week, an ordinary citizen sent me a message saying that he had a mortgage loan on which last year he was paying Kshs270,000, but now he is paying Kshs385,000. Something must happen. Everybody is complaining. I am shocked that even the people who are campaigning saying that they want to lead this country, are not addressing the issue of interest rates. It is embarrassing that people keep talking about non-issues, yet there are real issues. Our middle class is dying and/or choking from the exploitation of banks.

Nothing stops this Coalition Government from controlling interest rates from this afternoon - nothing whatsoever - so that Kenyans can get relief. Even if they respect the principles of a free market economy, nothing stops the Government of Kibaki and Raila from controlling interest rates in the National Bank of Kenya, the Kenya Commercial Bank and the Consolidated Bank, where the Government has interest. In the current Finance Bill, I am going to be proposing an amendment to force the Government to do two things, namely, first control interest rates in consultation with Parliament in those banks that are controlled by the Government. The other thing that we are going to do, so that our consumers are not exploited,

and we shall do it in this Act, relates to the women and youth funds. The Minister for Finance stands here year in, year out as he reads the Budget and says that they are providing money to help women and the youth and then the money is given to the commercial banks. Even after they have prescribed that money cannot be given at an interest rate of more than eight per cent, commercial banks still give the women and the youth that money at over 30 per cent. You cannot walk into Equity Bank and be told that they are holding a Government kitty and you, as a women group, can take a loan at eight per cent interest rate. They do not even advertise.

We are also going to be moving an amendment to the Finance Bill to make sure that all Government money that is meant for the poor goes to Government controlled banks under the rules that are established by this House. We realize that it is a long journey, but we shall win this war against the banks as it was won in Brazil recently. We understand the issues. They will not hoodwink us. We want the Kenya Commercial Bank, because it has the infrastructure, to hold the funds. The Government cannot say that it is not in the business of controlling interest rates because it has already prescribed that the youth and women funds cannot be lent out at more than eight per cent. So, why can the KCB not do it? Why can the NBK not do it? Why can the Consolidated Bank not do it? They should then go out and buy all these other loans from foreign banks, which have come here for the sole purpose of exploiting our people. They are here to exploit. They are not our brothers and sisters. They are thieves who are milking our economy. We will do that, so that we can help our people; our people look up to us. We will be going that direction immediately.

Madam Temporary Deputy Speaker, the Consumer Protection Bill is a big Bill. We will be doing very many things. Our people live at the mercy of merchants. We live at the mercy of matatu operators. This is the only country where, because it has rained and you are in River Road waiting for a matatu to take you to Kibera, they say that because it has rained, the fare has risen from Kshs20 to Kshs100 and you have nowhere to go to. We are now going to make it law that if a matatu operator does that to you, tomorrow morning you will be in court with its operator. If somebody does something which you do not like, you can take them to court. For example, in most petrol stations, the petrol pump has been doctored. You do not get a litre or a gallon of fuel when you buy it. You do not. I have tested it. When you buy fuel and say that you want five litres, in some petrol stations, five litres is actually three litres. They tamper with the pump.

The other day I was in South Africa and we went somewhere to eat nyama choma and I had never seen so much of a kilogramme of meat. In Kenya, weighing machines are supposed to be tested by the Weights and Measures Department, which has no capacity. It is an office in South C. It has nobody in Bungoma, Wajir or Kwale. We want to criminalize these things, so that you do it at your own peril. It is extremely important because it allows for fleecing of Kenyans. We now have the Energy Regulatory Commission which is bringing down the prices of fuel, but you will find a petrol station in Eldoret or Kisumu just refusing to obey it and they are collecting money from the consumers. It is as if there is another Government within the Government. All we are saying is that we want to have a legal framework under which you will not get away with it if you do it to me. Kenyans are increasingly getting sensitized and the Judiciary is also doing an excellent job in its reforms, thanks to the Chief Justice, Willy Mutunga. This country is a better place than it was a year ago.

Hon. Odhiambo-Mabona has appealed to us and this is a Bill which has been moved and passed. The problem then was that I moved it, the Government purported to want to take it over and then they went and shelved it because big companies approached the Minister for Trade then and said that they did not want to be regulated even though they were hurting our people so

much. Now that the environment has changed and the Constitution has allowed us to bring this Bill, I am going to follow the advice of hon. Odhiambo-Mabona that we talk less and pass many more Bills. Just to inform my friend, hon. Odhiambo-Mabona, yesterday in the House Business Committee, we even said that we would use Standing Order No.38 and take up Government time. In fact, even tomorrow afternoon, we will be dealing with Private Members' Bills. If they are not bringing the Bill, let us do it because we all get blamed and yet they are sleeping for whatever reason. So, beginning tomorrow, things will be different. I beg to move and request hon. Onyancha to quickly second.

Mr. C. Onyancha: Thank you, Madam Temporary Deputy Speaker. I rise to second the Bill and as I do that, I wish to thank my friend, Mr. Jakoyo, for presenting this Bill. For a very long time now, consumers have been very disadvantaged in our country. Most of the consumers consume common cheap goods because of the levels of poverty in the country. These are the same goods through which they are exploited in terms of price and their rights to obtain goods of the quality that is acceptable, rights to obtain goods at a price that is reasonable and rights to obtain goods that are what they purport to be.

This Bill seeks to correct all those unfair practices which have been previously loaded on the consumer. I know from certain aspects this will be looked at as an attempt to control trade. This is a good attempt for many reasons. There is no reason why we should pretend to be a Parliament if we cannot protect our voters from excessive price including the price of money. We have had discussions both in and out of Parliament with the bankers of this country and the Minister for Finance seeking to have the price of money, credit and the interest rates come down. There are measures which the Government is capable of taking to bring down interest rates.

This is a very lethargic and reluctant Government when it comes to the rights of the common man. The banks are charging hefty rates of between 25 per cent and 30 per cent while giving between 10 per cent and 15 per cent to depositors. The margin between the deposit rates and the rates charged is just too wide and it is a reflection of the inefficiency of the operators of these banks or alternatively the greed with which they want to operate.

There is no small bank in Kenya these days. Last week, I read in the newspaper the half year results of banks. These are in terms of billions and billions of shillings. It is an embarrassment when a bank says that it did very well when it has literally been stealing from *mwananchi*. This theft extends to Government Funds that are designated for the poor namely the Women Enterprise Fund and the Youth Enterprise Fund. The Youth Enterprise Fund has funds designated for particular areas at particular interest rates. The banks which have been favoured to carry out these programmes are stealing from *mwananchi* and they are doing this in a manner that is straightforward that the Government can check. Just as Jakoyo Midiwo said a few minutes ago, the interest rates for these funds is designated by the Government but it is never given at that rate.

Secondly, and this is very painful, I will take a case of Kisii because I come from that area. The fact that we do not have a Kisii Bank with funds designated to it has made our people suffer because banks owned by other people, international or commercial, whatever they are, are redirecting the funds meant for that area to people from their area who troop all the way to Kisii to get the loans. We want to call upon the Government to ask for an account of how the Funds have been expended because if they are meant for my region, then they should stay in my region.

Let me not take too long because of the pressure of time but I am very happy with this Bill in other areas. One other area that many *wananchi* suffer from is the motor vehicle repairs. This has been very well addressed in terms of requiring that an estimate be given before the

repairs are done and the charge is within 10 per cent of that estimate. One of the consumer rights which my brother did not address but I am sure we can look at is the speed at which the repairs are done. We should have a commitment that the repairs will be done within a certain period of time at a particular cost. The issue of holding property that belongs to a consumer so that he is forced to pay a particular price or is exploited has been addressed and it is an issue that *mwananchi* should be very happy about.

Misleading statements and misrepresentation of the quality has been addressed and this Bill, indeed, will go a long way in the protection of the consumer in very many areas.

I beg to second.

(Question proposed)

Mr. Ethuro: Madam Temporary Deputy Speaker, hon. Jakoyo Midiwo keeps on impressing me every time. He is highly productive and looks at the issues that matter to the Kenyan citizens. I wish to commend him for his gallant efforts. He has also told us, in terms of the Consumer Protection Bill--- This is an issue that will be an ongoing concern in this House that the Governments in the past - and they still have that tendency now because I am bring an IDP Bill and someone is writing that the Government wants to take it. We will not allow the Government to take our Bills because when they do so, they sit on them. Actually, they take them away and put them in the dust bins. Therefore, the issue of protecting the consumer of this country is very important and I will not go to the reasons because you have heard them. You will go to look for beef but you end up eating donkey meat. When you go for mutton, you are given other things. When you go for chicken, you are given flamingo, cat or dog meat. Surely, where is the protector of public interest?

Consumerism is at the heart of my discipline called “economics” and the demand theory. Preferences and tastes and the relative prices of commodities determine how the consumers partake of certain commodities. However, here you have a state which does not care what the prices are, what the consumer preferences would be and when you go to the super market, you get different prices for such basic essential commodities even when this House has passed into law a Bill in terms of protecting the consumer in relation to basic commodities like wheat, maize and rice, which is the staple food of the Kenyan citizenry. However, the enforcement by the state is completely wanting. I think this is why this Bill – I want to thank hon. Midiwo – is coming with a legal framework to ensue the enforcement is guaranteed. I will not talk about the interest rates because we have heard that. We had a Select Committee in this House to look into the depreciation of the Shilling to the extent that the exchange rate as we speak now you cannot buy a vehicle from Toyota Kenya using Kenyan Shillings. You must use dollars because of the exchange rate has gone haywire.

Once companies and corporations start trading in the dollar, then you must be worried for the country. When you find that with Kenya Airways you fly with dollars, then you have reason to be worried. This is a basket case. This is a similar case to Zimbabwe. With this law, we are going to inspire confidence in our own country. We are going to stabilize prices. We will ensure that consumers get value for their money.

Madam Temporary Deputy Speaker, it is not only the Government. I think this Bill will go to the heart of Kenyans’ bad behavior; that you go for *nyama choma* or *boilo* and ask for a kilogram and in the process of cutting the meat they put some aside for their own consumption or to sell to other people. These bad habits by Kenyans must stop. The Government is not going to

legislate on this one. The Government must inspect the premises and the kind of people who are dealing with these kinds of issues so that once they know that “Uncle Sam” is watching, then at least they will start taking these things very seriously.

In the place where I come from, we do not have many supermarkets; just one or two. When you go to the *duka* where they only have weights of 500 grammes or one kilogram and then they put the product on the other end, you will find that those scales are permanently defective. This morning there was a Question on the packaging of potatoes in Molo and Kuresoi by the traders. Instead of packing the potatoes in a 90- kilogramme bag, they are packaging them in a 110 kilogramme bag for the same price of a 90 kilogramme bag. This is a rip off to the consumers of this great Republic.

Madam Temporary Deputy Speaker, in the spirit of the request by Mrs. Odhiambo-Mabona, we just want to support Mr. Midiwo because he has really brought very good Bills here which focus on the nation. I just want to mention that I hope that Mr. Midiwo is not treating this Bill as an ODM Bill because if you notice the seconder was Mr. Onyancha and they come from the same party. I thought he would ask me to second because this matter is beyond a party. This is a matter that is at the heart of the Kenyan people. I want Mr. Midiwo to also take the same zeal in dealing with issues and not just having that zeal when it comes to ODM matters so that we reduce---

The Temporary Deputy Speaker (Dr. Laboso): Order, Mr. Ethuro!

Mr. Ethuro: I support, Madam Temporary Deputy Speaker.

The Temporary Deputy Speaker (Dr. Laboso): If it was a party Bill it would have been stated as such.

Mr. Kathuri: Thank you, Madam Temporary Deputy Speaker. Let me start by commending Mr. Midiwo. It is a well thought out idea of introducing this Bill to the House. While he is in ODM and they would use this as a platform to campaign for ODM, I would have no quarrel but we are sure that this is not an ODM agenda and he should steer clear from propelling the ODM agenda using this Bill because it may not receive the necessary attention and support.

The Temporary Deputy Speaker (Dr. Laboso): Order, hon. Members! Where is the party ODM coming into the Bill of Jakoyo Midiwo who is in Government?

Mr. Balala: On a point of order, Madam Temporary Deputy Speaker. Is it in order for the hon. Member to refer to this as an ODM Bill because most of us here present in this House are non-ODM party members? We are the supporters of the Bill. So, only the Mover of the Bill is in ODM party. The rest are the supporters of the Bill because it is a national Bill.

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Speaker.

The Temporary Deputy Speaker (Dr. Laboso): What is your point of order, Mrs. Odhiambo-Mabona? Hon. Members, it is Mr. Ethuro who has brought in the issue of party.

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Speaker, in light of the ruling that was given in court, I do not know Mr. Balala would want to consider withdrawing the statement he has just made. There was a ruling in court that is requiring the Registrar of Political Parties to give information about Members of Parliament and their party affiliations and their party memberships. What Mr. Balala is doing is that, through the HANSARD he is saying that he is not a member of ODM party. Because Mr. Balala is my friend, I would want to encourage him to request that the same be expunged.

The Temporary Deputy Speaker (Dr. Laboso): Mr. Balala, as a lawyer she is encouraging you.

Mr. Balala: Madam Temporary Deputy Speaker, I appreciate the advice of the lawyer in red. I can withdraw the statement in the good spirit as a Member of Parliament who represents national interests and not party interests.

The Temporary Deputy Speaker (Dr. Laboso): Thank you, Mr. Balala. Now, can we allow Mr. Kathuri to continue his contribution?

Mr. Kathuri: Madam Temporary Deputy Speaker, mine was only a word of caution just after what my colleague Mr. Ethuro made clear. That is why we are supporting this Motion because if it was a party Motion we would not definitely be supporting it. I stand to support it.

While supporting this Bill, I want to draw the attention of this House to some of the issues that I believe will definitely be addressed by this Bill. I have been in the insurance industry after leaving college. One of the areas that the consumers do not know what they are buying or whether they have really been misadvised is when insurance agents are selling life policies. You will find that many of them give potential customers and policy holders the impression that they borrow loans which will assist them to construct houses. Wait until you apply for that loan after two or three years, you will only get 30 per cent of your savings. That has been the trend. When you ask the agent he tells you that that is the maximum you are entitled to. By the time you ask the very same agent: Why did you not tell me this? You are already in the contract. You cannot reverse it. Should you reverse it, you lose miserably.

Madam Temporary Deputy Speaker, there are many reasons why this Bill is very important. That is just one of them. I can tell you that regarding motor insurance, very few agents disclose the excess clause. The excess clause is where, if a vehicle gets involved in an accident you have to pay some money before your vehicle is repaired or before the insurance company can take up that matter. Even when asked about this clause, they always pass the blame after you continue calling or you have an accident and you are told the insurance company played games on us; they inserted an excess clause which is very punitive. All these are as a result of there being no Bill which can take care of such consumers. They expect every policy holder to read that policy document which is written in prints which are not legible. That leads to a lot of problems.

Madam Temporary Deputy Speaker, we have witnessed many cases where even banks will give you a facility and when you are midway they start changing terms and conditions. If you are literate enough; if you are not strong enough to challenge that, they always get away with it. Even if you are strong, sometimes it is because you have started getting into arrears and by then you do not have the muscle to challenge them because you are also bleeding on the other side. They take advantage. We need this Bill so that it can take care of such crooked operators, who at the end of the day intend to auction your property. Maybe they already have a buyer.

What has happened in this Kenyan society is that we have many businessmen who camouflage themselves as assisting others only to wait for them to fall by the roadside and exploit them to the maximum. It is unfortunate. Mt. Kenya region is known for that. I am sorry because I also belong there. We have seen many putting others into traps in the form of assisting them only to wait until they fall by the roadside and exploit them.

This is a very timely Bill---

Mr. Nyammo: On a point of order, Madam Temporary Deputy Speaker. I come from the region the hon. Member has referred to and I am not aware of those practices. Could he substantiate those allegations?

Mr. Kathuri: Madam Temporary Speaker, first of all, let me start by declaring my interest; I come from that area. The hon. Member wants me to produce evidence where we have

such land deals fraudulently transacted. There are many cases of such nature. This is what has been documented here. We even had the pyramid schemes. We had corrupt banks which were in the area.

The Temporary Deputy Speaker (Dr. Laboso): Hon. Kathuri, is that only unique to Central Province or region or the fraudulent land deals are across the country?

Mr. Kathuri: Madam Temporary Deputy Speaker, I started by saying I come from that region. However, I am not saying this is a preserve of the Mount Kenya region. I am only saying we had such cases in the region. Even my colleague who has told me to substantiate was a big shareholder of a bank that went under.

(Laughter)

Mr. Nyammo: On a point of order, Madam Temporary Deputy Speaker. Is the hon. Member in order to use individual cases to stereotype a whole community or region as engaging in malpractices?

Mr. Kathuri: Madam Temporary Deputy Speaker, I only gave examples. I did not say that it is everybody. I started by disclosing that I come from the region. I have no reason to say that everybody has been in that practice, but it is good to state as it is that we have a wicked society.

Madam Temporary Deputy Speaker, I also happen to come from a very strong background called the Public Service Vehicle (PSV) sector. I have no reason to hide about that. It is a faith I professed before I became a Member of Parliament. We witnessed cases where the bus fare from Nairobi to Githurai skyrocketed from Kshs50 to Kshs200 for no apparent reasons. They knew commuters were stranded. Those who did that were just a few individuals, but it reflected badly on the whole sector. In the circumstances, we need a Bill like this to take care of such situations. I am not saying that bus fares should not be adjusted accordingly because even aircraft fares keep on being adjusted. However, these adjustments should be realistic. I am not saying that they should always be fixed, but before you board a vehicle, you need to know how much you will pay as your bus fare. They should not wait until you have gone to Roysambu, for example, to be told to pay Kshs200. Sometimes vehicles are driven towards coffee bushes to scare the commuters to pay exorbitantly.

Madam Temporary Deputy Speaker, there are many examples which I can quote where consumers have been exploited. Even big companies including DT Dobie where when you drive in your Mercedes Benz, you will not know the bill until it is out of the workshop. Once the invoice is tabled, it will send you crazy. That has happened to many of us. Some of our colleagues here have had to abandon their vehicles for a week or two. I have been a victim. This does not happen to us because we do not have money. Sometimes it is because we are not prepared to incur such expenditure. It becomes very disastrous when we see those who have held you captive take this advantage just because they are holding your machine and certain items.

Madam Temporary Deputy Speaker, there are many times when we have even witnessed shoe shiners taking advantage of Kenyans on Kenyatta Avenue. Thank God that matter is coming to a halt, but it may be repeated if we do not have such a Bill. Your shoes get polished and you end up being charged Kshs300. Imagine if you had Kshs50. It becomes a big nightmare for you to sort yourself out. It is very important for us to pass this Bill, so that we do not even see

the Government going out of its way lending or imposing taxes which are going to affect the very consumer in a very negative way.

Madam Temporary Deputy Speaker, we were here this morning and I heard a demonstration outside just because of imposing Value Added Tax (VAT) on consumables when it is not an idea that has been thought out properly. It is taking advantage of the consumer. It is an excuse by the manufactures to pin down these consumers to pay more under the pretence of VAT and other taxes.

*[The Temporary Deputy Speaker
(Dr. Laboso) left the Chair]*

*[The Temporary Deputy Speaker
(Prof. Kaloki) took the Chair]*

Mr. Temporary Deputy Speaker, Sir, this is a very timely Bill and I want to support it wholeheartedly.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I wish to support and congratulate hon. Jakoyo Midiwo for bringing this Bill. All of us are consumers of goods and services at any given time. In the spirit that I said before, we should fight the culture of impunity in our lives. That is why even though we pass laws here Kenyans will tell you that there is a way to circumvent them. For instance, the other day, Parliament passed a law stopping *Harambees*, but when you go to the ground, the people tell you that there must be a way to circumvent it. That is the culture that we are used to in this country. We do not really need a Consumer Bill, but because of the culture of impunity, we have to spell out to people everything in black and white. Otherwise other commercial laws would adequately cover this. But in Kenya you have to tell somebody, for example, I am Millie. Unless he sees I am Millie and I am wearing a dress, he cannot realize that I am a woman unless I say I am a woman. I think that is the culture that we have in this country. So, because of that, we have to be really specific.

Mr. Temporary Deputy Speaker, Sir, having said that, I just want to make certain brief comments in relation to the Bill. Because of time, I will pass written comments to the hon. Member. In the preliminary part where he indicate that the period within which the Bill may come into effect--- It says:- “Upon a date which cannot exceed 90 days from the date of publication.” Sometimes what the Government does, if they are not very keen on implementing the law then they make the 90 days pass and we have a legal crisis like what happened to the Counter Trafficking in Persons Act which we passed in this House. Some amendment has to be brought to ensure that, therefore, the Bill comes into effect. So, please, bring an amendment that brings an automatic effect date of the Bill if the Ministry does not do so.

Secondly, the other issue I want to correct you on is the definition of “consumer”. In this Bill you say “consumer” means a person who purchases goods or services. But if you look at even some of the ills you are trying to embrace, if you only talk about a “purchaser,” then you will be excluding a very big category who do not purchase. For example, the young people, children and the elderly who depend on others to purchase. They are consumers who are just users, but not purchasers. They are also affected by wrongful practices. So, please, amend it to include purchasers and users of goods or services.

Mr. Temporary Deputy Speaker, Sir, the other thing I want to say in the definition is to congratulate the hon. Member for including definitions on marital status, spouses name and age.

This is because what happens a lot of times is that women are excluded when our husbands make transactions that affect children and their spouses. Therefore, it is good that you do not just mention it, but within the body, provide how you protect those spouses against practices that may harm the women and the children as consumers.

Again, I want to just comment the hon. Member on the definition of internet agreement, especially in relation to contract law. When you are talking about internet based agreements, you will want them to be binding. We need to provide a slightly higher standard of proof in relation to those internet agreements. I want to laud him where he provided for services to include health, sickness, diet or matters of a similar nature, modeling and talent, including photo shoot. The reason is that if there is one sector that is really exploited is our young girls who get into modeling and beauty pageants. We have noted that most of them are forced to get into sex slavery in order for them to get into those kinds of situations.

Therefore, I am glad that you are also bringing this within the ambit of the law, including martial arts, sports and dance. Indeed, I think about two years ago somebody raised an issue of persons with disabilities who are also subjected to sexual harassment in sports. Therefore, I am very happy that you are covering the category of persons who are vulnerable in the provision of goods and services.

Mr. Temporary Deputy Speaker, Sir, I would request the hon. Member to look at the definition of personal information; provision of personal information means information other than credit information about a consumer's character, reputation and health. The reason I am saying this is that at times when we intend to protect people we may harm, though not intentionally, other categories of persons like persons living with HIV/AIDS, who may not want their health status to be made public. It may be unconstitutional when you are dealing with the issue of privacy. Therefore, if we want to qualify it, look at the constitutional standards providing for the right to privacy.

The other issue I would want to talk on is the issue of implied agreement. I am glad you have mentioned it because I was actually going to tell you that you need to provide very specifically for implied agreement. This is because implied agreement will cover the category of persons that I am talking about as users. A user will be presumed to have an implied agreement that certain standards and certain services will be provided for them as users and not as persons who have entered into contracts and agreements with these people.

In conclusion, I am very happy that you have provided for the issue of unfair practices and misrepresentation. I think virtually everyone of us here can give examples of instances when we have been conned out of services even by very good companies. Personally, when I was going for my honeymoon we contracted Kenya Airways to do the work for us. We went outside the country, reached our hotel which they had forgotten to confirm; we went outside to another country in the middle of the night, at 1.00 a.m. There was no hotel booking, and we were forced to sleep outside on my honeymoon day. So, there was no honeymoon. Let us start from there. We could not invite others to--- You know what I am talking about.

Mr. Temporary Deputy Speaker, Sir, even though Ekwee is telling me to tell them, I am not telling them. I would like to say that even though they are raising their points of order from where they are sitting for further clarifications, I will not give them further clarifications.

Kenya Airways was very lucky because I got too busy. At that time I was too busy as an Executive Director, but I wanted to sue them. I was forced by the hotel, which was kind enough, to be in another hotel that picked us up for three days. They would pick us up, bring us to this

hotel, but we stayed outside because the hotel was fully booked. We were only able to access the hotel after two or three days.

Again, the other day I contracted Safaricom for internet services. I loaded Kshs1,000 into my phone, but the money was all used before I even opened the phone. When we called customer service they told us, “You must have used it”. They were very insistent that I must have used Kshs1,000, when I had not even tried to use the internet. They get away with that. I was just telling myself if 1,000 of us load Kshs1,000 and it goes the way it went for me, and because I am busy I say, “To hell” and my Kshs1,000 goes because I have left it to Safaricom Limited---

Mr. Temporary Deputy Speaker, Sir, I know Safaricom is doing a lot of good work on corporate social responsibility and all that. So I am not really targeting them. Indeed, they have supported many children but I am just giving this as an example that sometimes because we let people get off very lightly with poor services, that is why I want to thank Mr. Midiwo that because we do not have a very litigious nation, the law must then force these suppliers to provide adequate and proper services to consumers.

With those few remarks, I beg to support.

*(Messrs. Namwamba resumed his seat
moved to the Dispatch Box)*

The Temporary Deputy Speaker (Prof. Kaloki): Go on, Mr. Namwamba!

(Mr. Namwamba sat in his place)

Please carry on, Mr. Namwamba!

Mr. Namwamba: Mr. Temporary Deputy Speaker, Sir, I was attempting to be magnanimous in respect of my big brother but I believe he will get an opportunity to contribute.

I want to thank Mr. Midiwo, this gallant son from Gem, for taking a very giant step that moves us so close to realizing the dream encapsulated in Article 46 of our new Constitution. This Article specifically guarantees and protects the rights of consumers and for the avoidance of doubt, let me just put it on record that this Article provides very expressly that consumers have the right to goods and services at reasonable quality, to the information necessary for them to gain full benefit from goods and services and further to the protection of their health, safety and economic interest and to compensation for loss or injury arising from defects in goods or services. Parliament shall enact legislation to provide for consumer protection and for fair, honest and decent advertising. This Article applies to goods and services offered by both public entities and private persons.

It is so inspiring that it has taken a Private Member’s Bill to bring to actualization and fruition the dream of Article 46. Having gone through this Bill, I am convinced that it is a giant step towards this country realizing the kind of consumer protection guaranteed by that Article. I just want to emphasize, therefore, the provisions in Part 2 of this Bill; provisions which speak to consumer rights and make provision for very innovative measures like class proceedings, amplifying the requirement for quality of goods and services and all those issues that for many Kenyan consumers, they can only but dream about.

Mr. Temporary Deputy Speaker, Sir, listening to Mrs. Odhiambo-Mabona talking about her tribulations with Safaricom reminded me of a similarly nasty experience I had with the then Celtel - I believe it is currently branded as Airtel – when I procured broadband facility on behalf

of a colleague that was visiting me from the USA. The terms of the agreement seemed to provide that we could actually terminate the service at any point and because the service was so unsatisfactory, we terminated that service about five days after procuring the service. We accordingly notified Celtel of our displeasure, first of all, and our reluctance to have the service further in writing. But even after that termination, about a month and a half later, I received a very hefty bill on a service that we have terminated about five weeks earlier. I promptly contacted the company again to indicate and remind them that on a specific date we communicated that we were terminating the service for reasons which we expressed in our communication. However, strangely, the company ignored all that and month after month, they continued billing me and it took some kind of legal action on my side to stop that.

I just wondered what ordinary Kenyans who may not have easy access to legal action go through with these very sub-standard services. This happens especially because many providers of goods and services in this country go about doing this kind of thing confident that there is a vacuum in the law. Therefore, they believe that they have a *carte blanche* or a blank cheque to behave without any responsibility at all.

Mr. Temporary Deputy Speaker, Sir, I just want to applaud this step that provides the Kenyan consumer with a platform, not only a platform to take action, but a deterrent. This law in itself, upon enactment by this House and assent by the President - I do believe that His Excellency will assent to it expeditiously because it is a Bill of great import - will serve as a deterrent. Let all providers of services and goods out there be warned in advance that the paradigm has shifted. The arena of provision of goods and services shall never be the same again. Kenyans should take comfort that now they will have a legal framework within which they can protect their interests and rights and a responsibility on the side of anybody who provides goods and services be they public or private entities, will be enforced strictly.

Mr. Temporary Deputy Speaker, Sir, with those remarks, I thank the hon. Member for Gem again and I do support.

Mr. Balala: Mr. Temporary Deputy Speaker, Sir, I want to congratulate hon. Midiwo for the wonderful work he has produced in this House, particularly the Consumer Protection Bill. There are many examples that are done by merchants and businessmen in terms of exploiting the masses. The hon. Member has been very passionate in the aspect of interest rates. A company like Barclays Bank always announces a Kshs12 billion profit despite the fact that it operates in a third world country. This is purely exploitation.

Hon. Members: Shame!

Mr. Balala: Mr. Temporary Deputy Speaker, Sir, Barclays Bank advertises the interest rate in the UK of 0.5 per cent. One wonders why the interest rate in their own headquarters or motherland is less. This is because they have a freeway to exploit people in other countries. This is dangerous. We here in Kenya when we try to protect our people from these exploiters who are not genuine businessmen, we fall in the trap of the western countries. Today, their economies have collapsed because they have actually mortgaged their Gross Domestic Product (GDP) and their economies to the banks. This is a dangerous trend that we need to literally look at.

Mr. Temporary Deputy Speaker, Sir, we are always being blamed that we want to stop the open market economy. This is not the case. We are also economists and we understand how the economy works. But if you want to steal, that is a different game. We know the people who can do genuine and honest business.

Mr. Temporary Deputy Speaker, Sir, a good example is internet services. You can buy a broadband of 2 mbps or 8 mbps, but you do not have the gadget to test whether they supplied

you with the 8 mbps to your company. I am a victim of a company, I do not want to mention its name here, from who I bought a service and then I realized that they gave me half of that service three months later. I had paid for the service three months in advance. So, what do I do? When you complain and you do not pay, they disconnect you with no mercy and your business collapses. So, you always have to be a slave of that company. So, these are things that we need to address.

Mr. Temporary Deputy Speaker, Sir, I hope that this Bill can address the sensitive issue like land transactions. Why should it be upon the buyer to do a due diligence as it was said by Ms Angote, the Permanent Secretary? She said it is upon the buyer to do a due diligence. We assume that there should be a thorough and transparent way of issuing of title deeds.

(Applause)

My region is a big victim and so is the rest of the country. Kenyans are victims of these title deeds and conmen are there. We think that there are laws to protect the poor but the laws are protecting the conmen of this country. So, it is unfair if we allow people to exploit, particularly the poor.

Mr. Temporary Deputy Speaker, Sir, I am a traveler, for example. They call me a globetrotter, but I do it because I had something to sell for this country. So, I travelled all over the world. Since I commute between Mombasa and Nairobi, I use our national carrier. I am a patriot to the Kenya Airways. I was there a week ago and Business Class cost Kshs26,000 return. A week later it was Kshs29,000 return without notice or anything. You take it or leave it. I said that it is not a big deal to fly Business Class. We can fly Economy Class as well and it is 45 minutes anyway. We pay Business Class and do not get even a small meal for breakfast when we fly at 5.30 a.m. from Mombasa to Nairobi. We pay through our noses, but do not get service in return. A good example is that when I come from my home City I dress up in a suit because the City or Parliament demands that I should dress up in a suit. When I do not want to cramp my suit and I want to hang it with the cabin crew I am told; "we do not have that service to hang your suit," and yet I am paying Business Class. You travel from Hong Kong to Bangkok to Nairobi for 15 hours, and you are told that there is no toilet kit facility, toothbrush or toothpaste. In those international airports you are not allowed to travel with liquids in your trolley and so, we expect the airline to provide you. At times there is no entertainment in terms of video to pass your time, because not all of us have the capacity to sleep when we fly. Some of us are nervous when flying and we just want to be awake so that nothing happens. I hope that my colleague, hon. Midiwo, is noting these down, so that they are captured.

Mr. Temporary Deputy Speaker, Sir, yesterday, I checked my electricity bill. My consumption of electricity in terms of value in Kenya Shillings was Kshs5,000. The total bill was Kshs14,000. All was added from surcharge, fuel cost, adjustment, adjustment--- There were three adjustments in that bill. That is full exploitation. Maybe I can afford, but what happens to *Mama Mboga* in *Kariokor* Market, who receives an electricity bill? Sixty per cent of her bill has costs which we do not know where they are going. That is exploitation.

Mr. Ethuro: On a point of order, Mr. Temporary Deputy Speaker, Sir. You heard hon. Balala claim that there are too many adjustments but he can afford the figure. However, can he afford the cheating by the Kenya Power?

Mr. Balala: Thank you very much, hon. Ethuro. It is not a matter of affordability here. It is a matter of being cheated and dishonesty and yet, the Kenya Power is a publicly owned

company which we paid taxes to build. We are supposed to be considerate. I will give you an example. Let hon. Ethuro listen to me. Most of the underground railway lines in the United Kingdom (UK) are subsidized because they are supposed to support the consumer and the public at large. Today, we have liberalized everything. We are actually telling the private sector: "Come and take over the responsibility of the Government and exploit the public." That is why Barclays Bank can make a profit of Kshs12 billion and the country is in poverty. Those are the issues.

I want to talk about the issue of measurements. Because I come from the hospitality industry, I enjoy my beef when I go to South Africa. It will be a T-born and a half and you need three people to share it. But when you go to our hotels here, a T-born is less than a quarter kilogramme, and half of it is a bone and it is heavy. You are told that that it is the French style being served to you; you are given so little that you wonder whether you paid for the amount that you deserve to pay for. This is a problem. It is not only in South Africa, but if you go to other countries, you will see that the amount of food served is commensurate to what you pay; that is not the case in this country.

Finally, some of us are Muslims and are so sensitive to things like *halal*. You go to a place and they mix pork, beef and chicken and they do not even inform you whether this is *halal* or not. *Halal* to me is like life and death. It is like telling me to disown my faith if I eat port. So, could there be clear signs for the consumer to appreciate that this is *halal* and this is not *halal*. The signs should show that a product has these ingredients, so that the consumer can appreciate it. If hon. Midiwo accepts, we must force people to have stickers of the *Halal* Bureau. Today, we have institutions that certify *halal* products. Those are the issues that we need to raise.

Recently, I saw Ford as a motor vehicle company in the United States withdrawing 20,000 vehicles from the market because they had a defect and they detected that defect. Show me one Ford vehicle that was withdrawn from the Kenyan market. The same thing happened with Toyota. About 37,000 vehicles were withdrawn from the international market. Show me one vehicle that was withdrawn from the market by Toyota in Kenya. There was none. This is because this is a place where the western world and the multinationals come and exploit us. It is becoming a dumping site.

Today, why can we not have an automobile assembly plant like Brazil, South Africa and other countries? Why do we have to import *mitumba* cars in the name of cheap cars? This is a dump site. We have accepted to be a dumping ground, and then we have environmental issues arising.

I want to congratulate my brother and support the Bill. This is the right Bill for Kenya.

Mr. Shakeel: Thank you, Mr. Temporary Deputy Speaker, Sir. This is a very happy day for me. We have gone through a lot with hon. Midiwo in relation to this Consumer Protection Bill. As far as dumping is concerned, we have been talking about trade and dumping. One of the issues that we must address in this Bill - I am sure the Bill addresses it - is the issue of medicines. Most of the medicines that have been given to us are actually banned even in the Western World. I do not know why people there do not think we are human beings. The Western World will ban some drug and it will be sold here.

I must bring out this issue and I know every speaker has talked about it. We must try our level best to get the interest rate sharks and shylocks out of the system. We must do that. It is very important. There is nowhere in the world where interest rates are as high as they are here. The shylocks have bribed everybody and have got away with it. In England, the very centre of financial trade is the Barclays Bank, the one we let off the hook here; it has been taken to task.

With those few remarks, I support.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, we will now call upon the Mover to respond.

Mr. Midiwo: Thank you, Mr. Temporary Deputy Speaker, Sir. Let me, first of all, thank my colleagues who have contributed to this Bill. The issues here are numerous. I wish hon. Shakeel could let hon. Balala listen. Let me begin by thanking you and inviting Members of Parliament to know that this cannot be an individual's Bill. All I have tried to do is to create debate. I think it is an opportunity for all of us to bring in all other areas by way of amendment as we go to the Third Reading so that we can make it much more comprehensive.

I agree with you in many things you have said but I do not think you covered everything. I think we all need to sit together as interested people. I think it is very important. There are issues which have been raised which are here but subtle like hon. Kathuri referred to the way insurance companies treat people because they make prints which you cannot even read. Banks are also doing this and many more people. Clause 7 of the Bill says that any ambiguity that allows for more than one reasonable interpretation of a consumer agreement provided by the supplier to the consumer or any information that must be disclosed under this Act shall be interpreted to benefit the consumer. However, we will go further because I realized what he was saying and say that even prints must be legible. You must be given an opportunity to read and not to be hoodwinked.

So, I want to invite my colleagues. I agree with hon. Balala on the issue of land transactions with no doubt. Look at the Syokimau issue. Even though the aggrieved Kenyans built on the Kenya Airports Authority (KAA) land, they were given titles to the land. The giver of the fake titles is walking scot-free and yet these people are homeless with their families. We want to end that. If the culprit is the Government, it must pay. I think that is the only way we will regulate our industries. The issues you are raising regarding Safaricom and the Kenya Airways to use dollars is because we have allowed class action suits.

On Monday, I was supposed to come from Kisumu using Jet Link. The plane left Kisumu at 2.00 p.m. and yet it was supposed to leave Kisumu at 8.00 a.m. How does an economy work? Somebody in the caliber that can fly a plane from Kisumu to Nairobi is a productive citizen. We want to make sure that some of these people pay so that they do not take our consumers for granted. Sometimes when you go to some of the places--- For instance, the Kenya Airways is doing business in West Africa but in Kenya, they do not have enough flights and yet this is a national carrier. The issue that has been raised about medicine by hon. Shakeel and the whole health sector, I want to encourage you to do a research and bring it here so that people do not die in hospitals like chicken and yet nobody cares. We have built dispensaries through the CDF. The Government is supposed to put medicine. It should not be the responsibility of the MP or the citizens.

I beg to move the Bill and hope to engage my colleagues in other fora so that we can improve it.

(Question put and agreed to)

(The Bill was read a Second Time and Committed to a Committee of the Whole House tomorrow)

ADJOURNEMENT

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, it is now 12.30 p.m. It is now time to interrupt the proceedings of the House. The House will reconvene this afternoon at 2.30 p.m.

The House rose at 12.30 p.m.