

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 19<sup>th</sup> April, 2012

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

### PRAYERS

### PAPERS LAID

The following Papers were laid on the Table:-

The Financial Statement of the Town Council of Karuri for the year ended 30<sup>th</sup> June, 2010 and the certificate thereon by the Controller and Auditor-General.

The Financial Statement of the County Council of Lamu for the year ended 30<sup>th</sup> June, 2010 and the certificate thereon by the Controller and Auditor-General.

The Financial Statement of the Town Council of Kajiado for the year ended 30<sup>th</sup> June, 2010 and the certificate thereon by the Controller and Auditor-General.

The Financial Statement of the Municipal Council of Nyahururu for the two years period ended 30<sup>th</sup> June, 2009 and the certificate thereon by the Controller and Auditor-General.

The Financial Statement of the County Council of Kirinyaga for the two years period ended 30<sup>th</sup> June, 2009 and the certificate thereon by the Controller and Auditor-General.

The Financial Statement of the County Council of Embu for the two years period ended 30<sup>th</sup> June, 2009 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Ministry of State for  
Defence (Maj-Gen. Nkaisserry) on behalf of the Deputy Prime  
Minister and Minister for Local Government)*

The Financial Statement of the Registration of Certified Public Secretaries Board for the year ended 30<sup>th</sup> June, 2011 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Ministry of State for  
Defence (Maj-Gen. Nkaisserry) on behalf of the Minister  
of State for Public Service)*

The Annual Report and Financial Statement of Jomo Kenyatta Foundation for the year ended 30<sup>th</sup> June, 2011 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Ministry of State for  
Defence (Maj-Gen. Nkaisserry) on behalf of the  
Minister for Education)*

The Annual Report and Financial Statement of the Kenya Airport Authority for the year ended 30<sup>th</sup> June, 2011 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Ministry of State for  
Defence (Maj-Gen. Nkaisserry) on behalf of the Minister for Transport)*

The Financial Statement of the Town Council of Ahero for the two years period ended 30<sup>th</sup> June, 2009 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Ministry of State for  
Defence (Maj-Gen. Nkaisserry) on behalf of the Deputy Prime  
Minister and Minister for Local Government)*

The Financial Statement of Kenya Industrial Property Institute for the year ended 30<sup>th</sup> June, 2011 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Ministry of State for Defence  
(Maj-Gen. Nkaisserry) on behalf of the Minister for Industrialization)*

## **QUESTIONS BY PRIVATE NOTICE**

### **NON-PAYMENT OF TAXES BY MASTERMIND TOBACCO (K) LIMITED**

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Finance the following Question by Private Notice.

(a) Is the Minister aware that Ms Mastermind Tobacco (K) Limited has not been remitting taxes since 2007 and now owes the Kenya Revenue Authority (KRA) more than Kshs.12 billion?

(b) Why has the company not paid the arrears despite several Tax Demand letters sent to them by KRA?

(c) Can the Minister confirm that the failure by KRA to enforce the several tax demand notices is attributed to corruption and, if so, what measures will the Ministry take to ensure that all companies which have not remitted due taxes do so, with the appropriate penalties?

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

(a) I am not aware that Mastermind Tobacco Limited has not been remitting taxes for the last five years since the information available as tabulated in Appendix I indicates that they have remitted a total of Kshs6.6 billion over the period 2007/2008 to 2011/2012. However, they have a debt of Kshs4.5 billion including interest and penalties arising from various additional assessments as tabulated in Appendix II.

(b)The company has not paid the arrears since it has challenged the same in court and those demands not before the court are being enforced through agency notices on their bankers as per attached copies.

(c) There has been no failure by KRA to enforce the tax demands. The KRA has applied enforcement measures provided for in the tax laws including placing of urgency notices on their bank accounts as per evidence shown.

*(Allegations of bribery arising from the main reply to this Question were expunged from the records of the House as ordered by the Speaker on Thursday, 26.04.2012)*

**Mr. Deputy Speaker:** The Question has not been dropped nor has it been disposed of. The Question is deferred and will appear on the Order Paper exactly two weeks from today.

*(Question deferred)*

Let us move on to the next Question.

RAMPANT CATTLE RUSTLING IN MUHORONI/  
ALDAI/ KISUMU TOWN EAST AREAS

**Mr. Shakeel:** Mr. Deputy Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

(a) Is the Minister aware that cattle rustling is rampant in the area bordering Muhoroni, Aldai and Kisumu Town East constituencies?

(b) Is the Minister aware that six heads of cattle were stolen from the home of the late Mr. Matengo Ongondo on the night of 27<sup>th</sup> February, 2012?

(c) Could the Minister consider installing an Anti-Stock Theft Unit in Kisumu Town East?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that cattle rustling is rampant in the area bordering Muhoroni, Aldai and Kisumu Town East Constituencies. However, I am aware of only eight cases of stock theft recorded at Miwani Police Station in the last three years.

Out of the eight cases, two of them were prosecuted but withdrawn under Section 204 of the Criminal Procedure Code by the complainants. Four others are pending before court while the other two are still under investigation.

(b) I am not aware that six heads of cattle belonging to Mr. Matengo Ongondo (deceased) were stolen from his home. Records held by the police in the area do not reflect such a report as at 27<sup>th</sup> February, 2012 or thereabouts.

(c) Owing to the low level of stock theft trend in the area, the Ministry does not intend to establish an Anti-Stock Theft Unit in Kisumu Town East Constituency. The few cases reported in the area can be effectively dealt with by the local police and the Administration Police. Establishing such a unit in the area will not be desirable at this particular time.

**Mr. Olago:** On a point of order, Mr. Deputy Speaker, Sir. I was listening very carefully to the answer by the hon. Assistant Minister. He started by saying that he is not aware of incidents of cattle rustling, but he has mentioned eight incidents of cattle theft. When does stock theft become cattle rustling? Is he in order to say that?

**Mr. Ojode:** Mr. Deputy Speaker, Sir, I did mention that I am not aware of the rampant cases of cattle rustling. I want my colleague, Mr. Olago, to understand these things because it looks like he is not reading from the same script and yet he is a lawyer by profession. Hon. Olago, I am saying that I am not aware of rampant cases of stock theft but I am aware of isolated cases. I have also said that I am aware of eight cases, but I am not aware of the rampant cases.

**Mr. Shakeel:** Mr. Deputy Speaker, Sir, I have asked on various occasions Questions in this House about cattle rustling. The Assistant Minister has treated this issue with contempt and ridiculed our attempts. At one time, he even said there was fish rustling and not cattle rustling in Kisumu Town East Constituency. I have expressed to the Assistant Minister that Kisumu Town East is a rural constituency.

*(Loud consultations)*

Mr. Deputy Speaker, Sir, hon. Members are consulting in loud tones.

**Mr. Deputy Speaker:** Order, hon. Members! Can you consult in low tones?  
Proceed, Mr. Shakeel!

**Mr. Shakeel:** Thank you, Mr. Deputy Speaker, Sir. Kisumu Town East is not a town constituency. The name is a misnomer. In fact, we border Muhoroni and Aldai. The recent problems that occurred when the Minister sent police officers and went there personally to Muhoroni and Aldai are the same problems that we are experiencing in Kisumu Town East Constituency. The Assistant Minister has taken this in total disregard and contempt and is handling this issue as if it is a joke. He says that he is aware of only eight cases. We have mentioned to them by name and we have found that that cattle was “rustled” from Kamorongo Village---

**Mr. Deputy Speaker:** Can you ask your question? Do not give us statements.

**Mr. Shakeel:** Mr. Deputy Speaker, Sir, could the Assistant Minister visit my constituency and hear for himself before he makes claims that there is no cattle rustling? When can he come to my constituency?

**Mr. Ojode:** Mr. Deputy Speaker, Sir, visiting a constituency is a different thing all together. If I am invited to visit the constituency, I will go. But I want to assure the hon. Member that, yes, indeed, we have been having petty theft cases of livestock here and there but that does not necessarily mean that I have to set up the Anti-Stock Theft Unit in that constituency because I need the RDU and the Anti-Stock Theft Unit where we have rampant theft of livestock. But in his case, if he invites hon. Ojode to visit his constituency to do surveillance, I will go.

**Mr. Deputy Speaker:** Final question on the same, Mr. Shakeel.

**Mr. Shakeel:** Mr. Deputy Speaker, Sir, the Assistant Minister has said that he will come to survey. I want to ask the Assistant Minister today to openly apologise to the people of Kisumu Town East that he has ridiculed them and called us fish rustlers. Can he please apologise today so that when he visits Kisumu Town East Constituency he is welcomed by the people whose cattle has been “rustled”? Will he be able to apologise now please?

**Mr. Ojode:** Mr. Deputy Speaker, Sir, I thought we were dealing with a matter where---

**Mr. Deputy Speaker:** Order, Mr. Shakeel! You are out of order!

**Mr. Ojode:** Completely!

**Mr. Deputy Speaker:** We are dealing with a matter that is on the Order Paper.

**Mr. Ojode:** Do not bring politics here!

**Mr. Deputy Speaker:** We are dealing with a matter that concerns cattle rustling. The Assistant Minister has given you his undertaking after you invited him yourself. What are these other conditions you are setting here? Those conditions are not part of the business of the House today.

*(Loud consultations)*

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

Order, hon. Members!

### **ORAL ANSWERS TO QUESTIONS**

**Mr. Deputy Speaker:** Hon. Members, Ordinary Question No.1004 by Mr. C. Kilonzo, Question No.1079 by Mr. Kabogo and Question No.1204 by Ms. Karua are all deferred to Tuesday next week.

*Question No.1004*

LACK OF PREMISES FOR KENYA HIGH  
COMMISSION IN UGANDA

*(Question deferred)*

*Question No.1079*

ILLEGAL SALE OF LAND UNDER PLAN  
TKA/4/03/2 IN THIKA

*(Question deferred)*

*Question No.1204*

ILLEGAL ALLOCATION OF LAND AT  
MUKURU KWA REUBEN

*(Question deferred)*

### **COMMUNICATION FROM THE CHAIR**

**Mr. Deputy Speaker:** Hon. Members, the Chair has a Communication to give. You will recall that on Tuesday, 17<sup>th</sup> April, 2012, when the Public Financial Management Bill, 2012, came up for Second Reading, Mr. Mbadi, rose on a point of order seeking the direction of the Chair as to whether the debate on the Public Financial Management Bill, 2012 was constitutional. In the debate that ensued, various arguments were advanced by the Deputy Leader of Government

Business, Mr. Kimunya, the Minister for Finance, Mr. Githae, Mr. Ethuro and Mr. Ogindo. In a summary, the following issues were raised for determination by the Chair:

- (a) whether the Second Reading of the Public Financial Management Bill, 2012 was contrary to the Constitution and more specifically whether the debate on Clause 109 of the Public Financial Management Bill, 2012 relating to the establishment of county revenue funds for county governments was unconstitutional in so far as the timeline of 18 months specified in the Fifth Schedule to the Constitution for the enactment of legislation to implement Article 207 of the Constitution had lapsed,
- (b) whether the County Governments Bill, 2012 as passed by the National Assembly on 23<sup>rd</sup> February, 2012, contains provisions establishing the county revenue funds for county governments, and whether the passage of County Governments Bill, 2012 satisfied the requirement of the said Article 207 and the Fifth Schedule to the Constitution,
- (c) whether the Government must seek leave of the House to extend the time for the implementation of Article 207 of the Constitution so as to enable Parliament to debate and enact the Public Financial Management Bill, 2012, and;
- (d) whether the Government must seek leave of the House to extend the time so as to enable Parliament to enact the County Governments Bill, 2012.

*(Several hon. Members stood at the Bar)*

The hon. Members at the Bar may walk in!

*(Several hon. Members walked into the Chamber)*

Please, take your seats.

Hon. Members, you will further recall that the Chair did then make preliminary observations on the issues raised, observing that the facts of the matter were, on the face of it, very clear but the Chair was inclined to adjourn debate so as to study the matter in detail and give a comprehensive ruling or direction this afternoon.

On the first issue as to whether the Second Reading of the Public Financial Management Bill, 2012, is contrary to the Constitution, Article 207(1) and (4); Article 207 (1) says:

“There shall be established a Revenue Fund for each county government into which shall be paid all money raised or received by or on behalf of the county government except money reasonably excluded by an Act of Parliament.”

“(4) An Act of Parliament may (a) make further provision---

*(Messrs. Kabogo and K. Kilonzo consulted loudly)*

Order, hon. Members! Messrs. Kabogo and K. Kilonzo, you want to talk in loud tones when there is a Communication from the Chair?

I will repeat. Article 207(1) of the Constitution says:

“There shall be established a Revenue Fund for each county government into which shall be paid all money raised or received by or on behalf of the county government except money reasonably excluded by an Act of Parliament.”

“(4) An Act of Parliament may –

(a) make further provision for the withdrawal of funds from a county Revenue Fund, and

(b) provide for the establishment of other funds by counties and the management of those funds.”

The Fifth Schedule of the Constitution then gives a timeline of 18 months for the enactment of legislation with regard to the establishment of revenue funds for county governments under Article 207 of the Constitution. The period of 18 months from the date of Promulgation of the Constitution of Kenya, 2010 expired on 24<sup>th</sup> February, 2012. As the Chair had earlier observed, Clause 109(2) of the Public Financial Management Bill, 2012 contains provisions specifying the monies raised by a county government that are exempted from payment into the county revenue fund of that particular county. This is an express implementation of the requirement of Article 207(1) of the Constitution, which was required to be implemented by 24<sup>th</sup> February, 2012. The Chair has upon further and closer scrutiny of the Public Financial Management Bill, 2012 realized that is not the only debate on Clause 109 of the Bill that raises the issues of constitutionality, but Clause 110 of the Bill that empowers the county executive committee to establish the county governments emergency funds and Clauses 111, 112, 113, 114 and 115 provide for the management of the emergency funds by the county governments executive committees which are in effect implementing the provisions of Article 207(4) of the Constitution. The same can be said of Clause 116 of the Bill that empowers the county executive committee, with the approval of the county assembly, to establish other county public funds.

The Fifth Schedule to the Constitution requires that the legislation to implement Article 207(4) should have been enacted by 24<sup>th</sup> February, 2012.

*(Several hon. Members stood at the Bar)*

The hon. Members at the Bar may walk in and take your seats.

*(Several hon. Members walked into the Chamber)*

Hon. Members, on the second issue as to whether the County Governments Bill, 2012 as passed by the National Assembly on 23<sup>rd</sup> February, 2012 contains provisions establishing the Revenue Fund for county governments, and whether the passage of the County Governments Bill, 2012 satisfied the requirements of the said Article 207 and the Fifth Schedule to the Constitution, I have perused the County Governments Bill, 2012 in the form in which it was passed by the House and have ascertained that this Bill contains no substantive provision relating to the finances of county governments as contended by the Deputy Leader of Government Business, Mr. Kimunya and the Minister for Finance, Mr. Githae. Indeed, the Bill makes no attempt to substantively implement Article 207 of the Constitution, but merely makes a cross reference to the proposed Public Financial Management Act. This can be found at Clause 122 of the County Governments Bill, 2012 where the Bill provides as follows.

Clause 122 (1) says:

“The funds and financial management of county governments shall be as provided under the law relating to public finance.”

*(Applause)*

Clause 122 (2) says:

“The procedure of budgeting, borrowing powers and grants management shall be as provided in the law relating to public finance.”

*(Applause)*

## **DEFERMENT OF COMMITTEE OF THE WHOLE HOUSE**

### **THE COUNTY GOVERNMENT BILL (BILL NO.1 OF 2012)**

On the third issue as to whether the Government must seek leave of the House to extend the time for implementation of Article 207 of the Constitution so as to enable Parliament to debate and enact the Public Financial Management Bill of 2012, Article 261(1) of the Constitution provides that:-

“Parliament shall enact any legislation required by this Constitution to be enacted to govern a particular matter within the period specified in the Fifth Schedule commencing on the effective date.

We all know the effective date.

(2) Despite Clause (1), the National Assembly may, by resolution supported by the votes of at least, two-thirds of all the Members of the National Assembly, extend the period prescribed in respect of any particular under clause (1) by a period not exceeding one year.

(3) The power of the National Assembly contemplated under (2) may be exercised-

(a) only once in respect of any particular matter; and

(b) only in exceptional circumstances to be certified by the Speaker of the National Assembly.”

Hon. Members, you will recall that the House as in the recent past invoked the provisions of (2) in extending the time of the enactment of various legislations required to implement the constitutional provisions related to land. The reason for this is because in instances where the Constitution sets out clear procedural guidelines, including a mechanism for rectification or redress in case of a breach of those timelines, the House is bound by the provisions of the Constitution. To do otherwise will be to open a pandora’s box for the House to breach the express provisions of the Constitution.

Indeed, the Constitution contemplates great consequences for Parliament if there is failure to adhere to the timelines set in Fifth Schedule. Article 261(5) of the Constitution provides as follows:-

“If Parliament fails to enact any particular legislation within the specified time, any person may petition the High Court on the matter.

(6) The High Court in determining a petition may under Clause (5) may-

(a) make a declaratory order on the matter; and,

(b) transmit an order directing Parliament and the Attorney-General to take steps to ensure that the required legislation is enacted within the period specified in the order and to report progress to the Chief Justice.



(7) If Parliament fails to enact legislation in accordance with an order under Clause (6)(b), the Chief Justice shall advise the President to dissolve Parliament and the President shall dissolve Parliament.”

As I have already observed, Clauses 109, 110, 111, 112, 113, 114, 115 and 116 of the Public Financial Management Bill of 2012 contains provisions expressly implementing the requirements of Article 207 of the Constitution of which legislation was required to have been enacted by 24<sup>th</sup> February, 2012.

Hon. Members at the Bar, you may walk in.

*(Members at the Bar walked into the Chamber)*

In other words, the timelines for legislative action by the House have already passed. It has already lapsed and the House is bound to invoke provisions of Article 261 of the Constitution if it wishes to be further seized of the matter.

Hon. Members, the fourth issue as to why the Government must seek extension of the period by the House so as to enable Parliament to fully enact the County Governments Bill, 2012, was raised by hon. Martin Ogindo. Under Section 46 of the former Constitution which is saved by Section 3 of the Sixth Schedule to the Constitution of Kenya, 2010, the legislative power of Parliament shall be exercisable by Bills passed by the National Assembly and assented to by the President.

Hon. Members, Article 261 of the Constitution of Kenya, 2010, requires Parliament to enact any legislation required by the Constitution within the various specified periods. Under Section 30 of the former Constitution, Parliament consists of the President and the National Assembly. It, therefore, follows that the Bill is only enacted by Parliament when it receives the assent of the President in the manner contemplated under Section 46 of the former Constitution.

*(Applause)*

Hon. Members. owing to the special circumstances of raised points of order and considering that the issues raised have far reaching constitutional implications for this House, I am convinced that debate on The Public Financial Management Bill, 2011 and The County Governments Bill, 2012, in their present form is contrary to the express provisions of Article 261 of the Constitution. The Chair, therefore, orders that the Leader of Government Business initiate immediate action to ensure that the House is in compliance with the provisions of Article 261 of the Constitution before proceeding with debate on these two Bills.

Consequently, consideration of Order No.10(i) on today’s Order Paper with regard to the consideration of The County Governments Bill, 2012, is deferred until the necessary extension of period is granted by the House.

Thank you, hon. Members.

*(Committee of the Whole House of  
The County Governments Bill deferred)*

*(Loud consultations)*

Order, hon. Members! Order, hon. Ethuro!

Hon. Ethuro, you have a Ministerial Statement to seek and that is going to be the only Ministerial Statement we will take today. Hon. Namwamba will also have a moment. Proceed and be fast.

#### INSECURITY IN TURKANA COUNTY

**Mr. Ethuro:** Thank you, Mr. Deputy Speaker, Sir. I rise to seek a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security on the state of insecurity in the Turkana County---

**Mr. Deputy Speaker:** Order, hon. Members! Order, hon. Ethuro! Wait until we get to the order.

#### POINTS OF ORDER

#### INSECURITY IN TURKANA COUNTY

**Mr. Ethuro:** Mr. Deputy Speaker, Sir, you can appreciate the anxiety. I rise to seek a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security on the state of insecurity obtaining in the Turkana County. An incident took place at the border point of Lokirama and Lorengiti where raiders from a neighbouring country attacked in the night of Thursday/Friday last week. Battles continued for the whole of Friday. Again, it is alleged that five people were killed and five sustained serious injuries and were rushed to the Lodwar District Hospital, a distance of over 100 kilometres.

In his Statement, I would like the Minister to provide the following information:-

(i) Who are the attackers or the raiders, where were they coming from and how many were they? How many residents were killed, injured and displaced, how many livestock were taken away and/or recovered from the raiders how many security forces were killed or injured in the process?

(ii) I would like him to explain the continued failure by the Government and the security forces comprising of the police, Administration Police (AP) and General Service Unit (GSU) to contain these raiders.

(iii) I would like him to confirm whether the Chairman of the District Security Committee who is also supposed to be the District Commissioner and the Officer Commanding Police Division (OCPD) were at the time of the attack. What was the response in terms of efficiency and efficacy and why do they continue to leave away from the district headquarters in Lodwar, 50 kilometres away and even then, they are always away from the office? So, the Minister should confirm why the Government has failed to recruit the Kenya Police Reservists. The Government promised to recruit them last year to beef up security.

Mr. Deputy Speaker, related to that one, is also an attack that took place in Todonyang, where the AP's RDU Camp was actually attacked and the officers of Government were killed and injured. I would like the Minister to respond along the same lines, in terms of the attackers, in terms of the casualties and in terms of why the Government has failed even to protect its own personnel, that are supposed to protect the residents. At that rate, could the Minister assure this country and, in particular, the residents of Turkana County that they are safe given that even a Government camp was attacked by people from outside the country?

Mr. Temporary Deputy Speaker, Sir, you remember that even the Prime Minister has visited Todonyang twice, and it is still vulnerable to those attacks. Thank you.

**Mr. Deputy Speaker:** Mr. Assistant Minister, can you give an undertaking on the same? When will you have the Ministerial Statement available given the sensitivity of the matter?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Deputy Speaker, Sir, while I want to undertake to issue an elaborate Statement on Wednesday morning, given the very nature of the statement, I want to assure Kenyans that we are safe and we are in control. Listen to my Statement on Wednesday morning.

**Mr. Deputy Speaker:** Fair enough, you have made your undertaking.

Hon. Ababu Namwamba! Just take exactly two minutes because by 3.30 p.m., we have to start another business.

#### RE-EMERGENCE OF POLICE BRUTALITY

**Mr. Namwamba:** Mr. Deputy Speaker, Sir, I just want to bring to the attention of the House that I had earlier on today given a notice for a Motion of Adjournment to discuss the matter of re-emergence of police brutality against innocent Kenyans and their leaders; incidents of political scenophobia or intolerance that have been witnessed in the recent past. But I have since noted the provisions of Standing Order No.156, which indicate that we cannot interrupt debate on the Supplementary Estimates and, therefore, I wish to request the Chair to guide myself and the House in terms of how we can proceed with this matter.

Mr. Deputy Speaker, Sir, this in light of the fact that, even as we talk today, incidents of police brutality are seen to be gaining momentum. We have been treated to horrifying scenes in the past. We watched in horror clips on national TV of a young Pokot man being brutalized by police officers.

Mr. Deputy Speaker, Sir, yesterday, we witnessed other worrying scenes of police dispersing innocent Kenyans in a manner that is certainly not consistent with the new Constitution. I do seek your guidance on exactly when this House could adjourn to give attention to this matter, which I believe is a grave matter of national importance.

Thank you, Mr. Deputy Speaker, Sir.

*(Mr. Deputy Speaker consulted the Clerk-at-the-Table)*

**Mr. Deputy Speaker:** Hon. Ababu Namwamba, the Chair is, indeed, aware of your concerns but on a Committee of Supply Day, we cannot interrupt the business of the House. In any case, it is supposed to be for three hours. We are right on time now. But clearly, the Chair will definitely do the needful for this matter to come up at the earliest opportunity.

**Mr. Namwamba:** Mr. Deputy Speaker, Sir, most obliged.

**Mr. Deputy Speaker:** Next Order!

#### PROCEDURAL MOTION

#### EXTENSION OF SITTING TIME

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Deputy Speaker, Sir, I beg to move the following procedural Motion:-

THAT, notwithstanding the provisions of Standing Order No.20 (2), this House orders that the sitting time of today's sitting be extended until the conclusion of business appearing on the Order Paper.

Mr. Deputy Speaker, Sir, I notice that you have made a Communication from the Chair with regard to matters to do with the Finance Bill and The County Governments Bill. But the matter of the Finance Bill is important. It is the Committee Stage and I notice that there are several amendments that are proposed. Therefore, we think it is important to conclude this matter today because, as it has been already observed, Kenyans are concerned that we continue to levy taxes illegally. In fact, I have heard others say that this Government and the Minister for Finance should be prepared to refund a staggering sum of Kshs3 billion because, according to them, we continue to levy taxes illegally. Therefore, this matter of the Finance Bill has assumed a very serious urgency.

Mr. Deputy Speaker, Sir, similarly, we have to deal with the Supplementary Estimates because the Government must continue to function. This is why I humbly submit that this Motion, if passed, will be able to, at least, give us time. Should we manage to conclude the business before 6.30 p.m., it will be very well for this House but we do not want to take chances. That is why I seek to move and request the Minister for Finance to second this Motion.

**The Minister for Finance** (Mr. Githae): I second!

*(Question proposed)*

*(Question put and agreed to)*

*[Mr. Deputy Speaker left the Chair]*

*[Mr. Speaker took the Chair]*

*(Mr. Speaker consulted with Messrs. Farah and Githae)*

*(The Clerk and Hon. Musyoka consulted the Speaker)*

**Mr. Speaker:** Order, hon. Members! Hon. Members, there is a Statement to be given by the Leader of Government Business, and I think this is the time for him to do so before we go to the next order.

#### SCHEDULE OF BUSINESS FOR THE COMING WEEK

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): I thank you, Mr. Speaker, Sir. I rise pursuant to the provisions of Standing Order No. 36 (4), this being a Thursday, when the Leader of Government Business makes a Statement with regard to the business for the following week.

Mr. Speaker, Sir, I have this to say, that next Tuesday, it is anticipated that - I know that you are going to make a more comprehensive Statement on this matter - His Excellency the President will address a special sitting of this House. Then we will have to deal conclusively

with the land Bills. The Minister for Lands, hon. James Orengo, ably moved at the Second Reading the necessary legislation, so that we can, again, be able to make history; we gave ourselves an extension of 60 days. But it is important that we conclude the matter of the land Bills, which the country eagerly awaits, as part of the implementation of our Constitution.

Of course, Mr. Speaker, Sir, as usual, the House Business Committee will sit at the rise of the House on Tuesday next week.

Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Order, hon. Members! I have two communications to make before we go to the next order. Taking up from where the Leader of Government Business has left off, I wish to make the following communication with respect to the Address by His Excellency the President next Tuesday.

## COMMUNICATIONS FROM THE CHAIR

### ADDRESS TO THE HOUSE BY HIS EXCELLENCY THE PRESIDENT

**Mr. Speaker:** Pursuant to sections 3 and 7 of the Sixth Schedule to the Constitution as read with Standing Orders No.16 and 18, the President of the Republic of Kenya, who under the Constitution and the Law is, until the first elections held under the Constitution of Kenya, 2010, a Member of the National Assembly and may attend a sitting of this House and participate in its proceedings, either:-

- (a) from the Chair of State; (see Standing Order No.16); or
- (b) from the Front Bench; (see Standing Order No. 17); or
- (c) from the Speaker's Chair; (see Standing Order No. 18).

By a letter from the Office of the President dated 17<sup>th</sup> April, 2012, His Excellency the President has notified the Speaker of the National Assembly of his wish to attend and deliver a Presidential Statement to the House on Tuesday, 24<sup>th</sup> April, 2012 at 2.30 p.m. I wish to draw the attention of hon. Members to Standing Orders No.16 and 18, which will apply to the President's attendance in the House on that day. Standing order 16 provides thus:-

“The President, while occupying the Chair of State-

(a) may on any day after disposal of all matters other than business and between or by way of interruption of any orders of the day (but not in relation to any order of the day), make a Presidential Statement, which shall be heard in silence and not followed by any comment or question;”

Thereafter, paragraphs (2) and (3) of Standing Order No.18 provide as follows:-

Paragraph (2):-

“Whenever the President delivers a Speech or a Presidential Statement from the Speaker's Chair, the Leader of Government Business shall lay the Speech or Presidential Statement on the Table of the House after such Speech or Statement is read.”

Paragraph (3):-

“The Leader of Government Business may give a notice of Motion to adopt the Speech or Presidential Statement but debate on the Speech or Statement shall not exceed four sitting days.”

I have directed the Office of the Clerk of the National Assembly to make the necessary invitations to the other arms of Government, namely the Executive and the Judiciary, as well as other persons to attend the sitting. I have also directed that all the appropriate protocols and

administrative arrangements be made. I wish to urge all hon. Members to make every effort to attend this important event.

I thank you.

*(Applause)*

From that Communication, Leader of Government Business, therefore, note that it will be your duty and privilege to table the Presidential Address after it is completed.

*(Hon. Musyoka stood up in his place and bowed to the Chair)*

The Second communication I wish to make is as follows.

TABLING OF THE BUDGET POLICY STATEMENT  
AND THE SUPPLEMENTARY ESTIMATES

Hon. Members, you will recall that, on Tuesday, 17<sup>th</sup> April, 2012, several hon. Members of the House rose to seek the directions of the Speaker on a number of matters related to the laying of the Budget Policy Statement and the Supplementary Estimates by the Minister for Finance and their implications considering that the Finance Bill, 2011, has not been enacted. The hon. Members who raised or spoke to these issues were the hon. Member for Bura, Dr. Nuh Nassir; the hon. Member for Gwassu, the Chairperson of the Budget Committee, the hon. Member for Garsen, the Minister for Transport and, finally, the hon. Member for Rangwe.

The issues raised or responded to by these Members can be summarized as follows:-

a) whether or not there is default on the part of the Treasury in laying before the House the Budget Policy Statement beyond the 21<sup>st</sup> March deadline set out in the Fiscal Management Act and, if so, the implications of such default considering that under the same Act, the Budget Committee is required to consult each Departmental Committee and lay its report before the House not later than 15<sup>th</sup> April, now passed.

b) whether the Supplementary Estimates have been properly laid before the House considering that the Finance Bill, 2011, has not been passed by the House and, therefore, the measures which were intended to finance the Budget have not yet been enacted. Hon. Members will recall that I undertook to give directions after affording the Minister for Finance an opportunity to be heard on the issues raised, and the Minister duly stated the position of the Ministry at the afternoon sitting of yesterday, Wednesday, 18<sup>th</sup> April, 2012. Hon. Members, I will pause there for a minute to allow hon. Members at the door to walk in.

*(Hon. Members walked into the Chamber)*

As hon. Members are aware, this House adjourned and proceeded on recess on 15<sup>th</sup> March, 2012, and as at that date, the deadline stipulated by the Fiscal Management Act on the submission of the Budget Policy Statement had not been breached.

The Act at Section 7(2) is alive to the possibility that the Budget Policy Statement could fall due for laying before the House at a time when the House is not sitting and accordingly provides that in such event, the Budget Policy Statement is required to be laid in the National Assembly within the first week of the reconvening of the House. The Minister, in his statement

to the House, explained that the Ministry was alive to these provisions and for that reason, took the earliest possible opportunity to comply. It is, therefore, the position, taking one thing with another, that considering the circumstances of this case and the statutory provisions, the Minister for Finance in laying the Budget Policy Statement in this House on the first day upon its reconvening, cannot be said to have acted out of time.

As Hon. Members are aware, Standing Order No.7 reads:-

“Whenever during a Session the House stands adjourned, whether or not a day has been appointed for the next meeting, the Speaker shall, at the request of the Government or a majority of the Members of the National Assembly (excluding the *ex-officio* Members), appoint a day or, as the case may be, a day other than the day already appointed for the meeting of the House, and such day having been notified to the Members, by the Speaker by notice in the Gazette, the House shall meet thereon at such time as shall be appointed.”

It was, therefore, open to the Executive or Members during the recess to request the reconvening of the House for the purpose of the laying of the Budget Policy Statement. This is not unprecedented. Members will, in fact, recall that when the House re-convened on 14th February, 2012, it was on the request of the Executive, in order to dispose of the specific business of certain Bills relating to the implementation of the Constitution. The failure to request an early reconvening of the House for purposes of the laying of the Budget Policy Statement is, therefore, one that is shared between the Executive and the rest of the membership of the House.

Hon. Members, I will pause, again, to allow the hon. Members at the door to come in.

*(Mr. Speaker resumed his seat and several hon. Members walked into the Chamber)*

Hon. Members, as you are all aware, the purpose of the Budget Policy Statement is to provide an opportunity for the legislature to engage on the Budget at policy level and subsequently to ensure that the input by Parliament feeds into and informs the annual estimates. The Budget Policy Statement is going to grow even more in stature as a critical document since it is the point at which the legislature apportions funds between the three arms of Government and ensures that there is adherence to the principles of Public Finance as provided for at Article 201 of our Constitution. Article 218 of the Constitution further gives powers to Parliament to distribute resources, both vertically and horizontally. It is, therefore, important that this document is accorded the seriousness that it deserves.

Hon. Members, you are further aware that under Article 221 of the Constitution, it is a requirement that the annual estimates be submitted to Parliament at least two months before the end of the financial year. It, therefore, follows that the submission of the Budget Policy Statement may require to be pushed back in a manner commensurate with the provisions in the Constitution regarding the Budget process. This will need to be considered in the Public Financial Management Bill now before the House as well as in the current review of the Standing Orders of this House.

So, Member for Gwassi, please, note that we have an opportunity to realign these processes. It is a very serious matter. Just note what I am saying at that point and that applies to all the other hon. Members.

Hon. Members, to the first issue on the delay in tabling the Budget Policy Statement and the implications for the Budget process, the Speaker notes that that even as the Budget Policy Statement was being tabled in the House, the Estimates were being finalized by the three arms of

Government for submission to this House and that, therefore, as expressed by several Members, there is a real danger that the Budget Policy Statement may not perform its functions as expected.

Effective parliamentary oversight of public budgets is central to democratization and improved budget management. It also ensures that there are checks and balances that are crucial for transparent and accountable government and, hence, ensuring efficient and effective delivery of goods and services to the citizenry. As representatives of the people, Parliament has a role to ensure that the nation's priorities are adequately reflected in the nation's major fiscal plan which is the budget. This is why the Budget Policy Statement is so critical. It is not ceremonial. It is not, and was never intended to be an exercise in futility.

Hon. Members, notwithstanding, the delay, I direct as I did yesterday, that the Budget Committee nevertheless proceeds pursuant to the provisions of the Fiscal Management Act and the Standing Orders, to review the Budget Policy Statement and submit a report to this House. I note that the Chairperson of the Budget Committee has expressed the preparedness of his Committee to make the best of the present circumstances and has requested for seven days for this purpose. The cooperation of all other Committees is, of course, expected, and I am certain, will be forthcoming. As hon. Mbau, the Chair of the Budget Committee explained, the Report of his Committee even if it is laid after the annual estimates have been prepared or even submitted to the House, will nevertheless form the basis of the review of the Estimates and possible adjustments to the final form of the annual estimates. For you, Minister, that part is important.

*(Applause)*

Hon. Members, despite the late submission of the Budget Policy Statement, this House is committed to ensuring that the Estimates of Revenue and Expenditure for the three arms of Government are submitted according to the Constitution and this must, therefore, still happen on or before 30th April this year. Again, it is noteworthy that the Minister has undertaken that this will, in fact, happen.

Hon. Members, on the matter of whether the Supplementary Estimates have been properly laid before the House considering that the Finance Bill, 2011 has not been passed by the House and, therefore, the measures which were intended to finance the Budget have not yet been enacted, it needs to be noted, as was explained by the Minister for Finance, that there is no direct link between the Supplementary Estimates and the Finance Bill. This is because the Supplementary Estimates derive their mandate from the Appropriations Bill, 2011 already passed by the House. The Supplementary Estimates seek to make adjustments to the Appropriations Bill, 2011, and set the stage for the passage of the Supplementary Appropriations Bill and have no bearing on the Finance Bill, which addresses itself to matters relating to raising of revenue through taxation measures. I, therefore, rule that the Supplementary Estimates have been properly laid and may be proceeded with by the House.

Hon. Members, this is not to say that the matter of the Finance Bill and its protracted state of limbo is not of concern.

It is important for all of us to appreciate the role of the Finance Bill. It provides an opportunity to amend tax and other related laws as well as coming up with new measures. Parliament is required to deliberate on these matters and enact the necessary laws as contained in the Finance Bill to allow Government to raise the requisite resources. When the Minister tables the Finance Bill he also has the authority under the Provisional Collection of Taxes and Duties



Act, to collect resources on some of these measures while he awaits the enactment of the Finance Bill. This provisional Act, however, expires after six months within which the Finance Bill should have been enacted.

When this does not happen, the question which has severally been raised in this House about how the Minister proposes to collect revenue to finance the current Budget becomes a legitimate one. This, however, was not the subject of the present communication, and furthermore, as had been promised by the Minister for Finance, the Committee of the Whole House on the Finance Bill, 2011 is appearing on today's Order Paper as Order No. 10. It may, therefore, be well to leave the matter at that for now.

Hon. Members, in order to obviate the need for further communication of directions from the Chair on the matter of the Budget process, I wish to draw the attention of the House to the comprehensive Communication from the Chair which I gave on 7th June last year, and which remains in force for the remainder of the term of this Parliament. I made it clear then, and I reiterate that the regime of the Constitution of Kenya, 2010 in relation to the Public Finance chapter of the Constitution is applicable, and that it follows that every effort must be made to abide by the provisions of that chapter in every respect. Going forward, it is, therefore, the expectation of the Chair, and indeed of this House, that this will be so. I thank you.

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

**Mr. Speaker:** What is it, hon. Member for Gwassi? Go on as long as it is not revisiting matters on which I have given direction in this Communication.

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. I totally agree with your ruling, but there is a part of your ruling on which I want to seek more clarification. You have pointed out that there is no direct connection between the Finance Bill and the Supplementary Budget. That is assuming that the Supplementary Budget is just realigning expenditure within the agreed total Budget allocation, or appropriation for that matter. But what of instances where the Executive is asking Parliament to give, through a Supplementary Budget, more allocation than was previously envisaged under the Appropriation Bill? That, therefore, would require additional funding either through borrowing or through Government increased collection of taxes. So, before we even know how much this country is going to collect, if you look at the Supplementary Budget Estimates, you will realize that the Executive is asking for close to Kshs5 billion more. How then would this be financed if we do not even know how much this country will collect because we have not passed the Finance Bill? In that case, it is my conviction that there is a direct relationship between the Finance Bill and the Supplementary Budget.

**Mr. Speaker:** Indeed, hon. Member for Gwassi, you are entitled to that opinion. Mine was to give directions and I believe I have given them as best as I understand the law. Whatever challenges there will be we will meet them as we transact on the Finance Bill, and, subsequently, the Supplementary Appropriations Bill. All these are matters of law and we will all input into them.

*(Several hon. Members stood up)*

Order, hon. Members! I do not wish to have this matter protracted beyond where it has reached; I want to take the next Order.

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

**Mr. Speaker:** Order, hon. Member for Gwassi! I will take the next Order.

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

**Mr. Speaker:** Order, hon. Member for Gwassi! Let us conduct this business in a manner that is expeditious.

Hon. Members, you will note that the next Order, Order No.9 is supposed to last a minimum of three hours. So, we should have started at 3.30 p.m. but we are now at 4.00 p.m. So, we will continue with this Order depending on the level of interest up to 7.00 p.m.

### COMMITTEE OF SUPPLY

**Mr. Ogindo:** On a point of order, Mr. Speaker, Sir. I have no intention of disrupting debate on Order No.9; I also want to appreciate your ruling. There is something of logic and procedure that we have raised before. I do not wish to direct the operations of the House Business Committee; but when you look at the sequencing of Order No.9 and Order No.10, it is only logical that Order No.10 comes before Order No.9. The simple logic is that once there is a Budget it is better to have authority to raise money before you get authority to spend. That is what Order No.9 is seeking. So, I would want to invite your direction at some point at your convenience that as a matter of practice we change the way these issues are normally ordered in this House, so that the Finance Bill comes ahead of the Appropriations Bill.

**Mr. Speaker:** Very well, hon. Member for Rangwe, I have heard you but maybe I want to hear the Minister even as I will address myself to the practice that we ought to embrace. Before I hear the Minister, I see the hon. Member for Kisumu Town East is so anxious on this matter; so, we will hear him.

**Mr. Shakeel:** Thank you, Mr. Speaker, Sir. Likewise, I do not wish to challenge your ruling, but I would like to point out that further to what my brother, Mr. Ogindo has said, I would like to refer you to the Constitution, Article 223(5). It is very clear that in any particular financial year, the national Government may not spend more than 10 per cent of the sum appropriated by Parliament for that fiscal year, unless in special circumstances the Parliament has approved higher percentage. That raises two points. Parliament has not yet appropriated any expenditure; secondly we in the Budget Committee were looking at the Estimates and it is clear that the intention is to alter the Estimates by more than 10 per cent of the amount appropriated, not the total amount, per Ministry. If we allow this to proceed in this way we shall have affected the Budget, because there are a number of Ministries which have set out their Budget and the Estimates here seek to alter that.

Mr. Speaker, Sir, I will plead with you that, while I accept your ruling, you kindly consider having Order No.10 before Order No.9; put it in that order.

Thank you, Sir.

**Mr. Mbadi:** Mr. Speaker, Sir, on the same vein, I would like you to give your direction on a matter. If you look at the way this Motion is framed, you will see that it talks about a sum not exceeding--- and all that being granted from the Consolidated Fund. My reading of this is that the Minister is asking this House to appropriate funds through the Supplementary Appropriation Bill. If you look at the Constitution, and I want to particularly go to Article 223(4), you will find that it says:-

“(4) When the National Assembly has approved spending under clause (2), an appropriation Bill shall be introduced for the appropriation of the money spent.”

So, this envisages that Parliament must, first of all, approve spending before we appropriate the funds. We cannot, as a House, attempt to appropriate funds before the spending is

approved by the House. So, the Minister is jumping the gun. He should have given us the Supplementary Estimates and then bring the Appropriations Bill to this House. So, I would ask the Chair's ruling as to whether this Motion is constitutional in the first place.

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, I am aware that hon. Mbadi is asking you to repeat what you have just said in your ruling and what has been said here before. Perhaps, taking into account that he is a first time Member in this House, there is a procedure that is usually used in terms of the Motions and the passage of a Supplementary Bill. It starts with a Motion and when the Motion is passed, the Minister then brings the Supplementary Appropriations Bill which is then passed by the House. That starts with a Motion and that Motion is what is before this House. When this one is passed, the details are then brought in the Supplementary Appropriations Bill. So, it does not go in the reverse. I just want to guide my colleague. Let him be patient and he will learn these procedures as he goes on. There are still a couple of months and, perhaps he will catch up with the rest of us.

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

**Mr. Speaker:** Order! Hon. Mbadi, I have heard you. I heard you loudly and your reference to constitutional provisions. I respect your arguments on the Constitution but please, have the patience to hear others in the House. It is unhealthy to allow an altercation between the Member for Gwasssi and the rest of the Front Bench. We have heard you, I respect what you have said and I will respond to it even as I give directions.

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

**Mr. Speaker:** Order, the Member for Gwasssi! Let us hear the Minister.

**The Minister for Finance** (Mr. Githae): Thank you, Mr. Speaker, Sir. You have already ruled that there is really no connection between the Supplementary Budget and the Finance Bill. You have also ruled that the Supplementary Budget is based on the Appropriations Act which has already been passed by this House. Therefore, just to reiterate what Mr. Amos Kimunya has said, after we have passed the Supplementary Budget, we will bring the Supplementary Appropriations Bill. That is the time you will be able to see whether we are in breach of the Constitution or not.

In my view, we need to proceed.

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. I wish to be heard and for the Minister to understand what I actually said. I am not saying that they have brought the Appropriations Bill. What they have done is seeking the authority of Parliament to grant money from the Consolidated Fund. If you look at the Constitution, and I want to remind the Minister that this Constitution is new--- It was not there in the last Parliament. So, a new Member of Parliament and an old Member of Parliament, we are the same. I would urge for some respect from hon. Amos Kimunya who is my professional colleague but remind him that he left class long before I went to class to do accounting.

**Mr. Speaker:** Order, Member for Gwasssi! Can you address yourself to the core business?

*(Laughter)*

**Mr. Mbadi:** Thank you, Mr. Speaker, Sir. I am just challenging that the wording of this Motion is trying to ask this House to grant the Executive powers to go to the Consolidated Fund and withdraw money, something you cannot do. If the motive of the Executive was to ask Parliament to approve the Supplementary Budget, then it should have been done differently. If

this is the way it was being done before--- The way the Constitution is worded today is contrary to what he is telling us to do because he is asking us to give him authority to go and withdraw money from the Consolidated Fund. Even if he does not bring the Appropriations Bill, he will have the authority to do it. This Constitution is saying that he is not supposed to do that. That is what I am saying. I am not asking for traditions. If traditions are repugnant, we should replace them.

**Mr. Speaker:** Order, Member for Gwassi! Be modest even as you make your submissions.

*(Mr. Speaker laughed)*

**Mr. Okemo:** Mr. Speaker, Sir, it is, indeed, true that there is a relationship between the Supplementary Budget and the Finance Bill. This is not a direct relationship. In other words, the Budget is not only financed by revenue from taxation, the Government has various ways of raising money to finance the Budget. Taxation is only one of them and borrowings, external and local is the other while grants is another way. Therefore, I do not see why, necessarily, the Finance Bill must be debated before this Motion on the Supplementary Budget because it is not necessarily tied to the Finance Bill measures that are contained in the Finance Bill. Therefore, the Supplementary Budget Motion can continue and the Finance Bill can follow. I do not think we lose anything and there is nothing legal or illegal about it. I think we can go ahead with the Order Paper exactly in the order in which it is.

*(Applause)*

**Mr. Speaker:** Order, hon. Members! Indeed, I have listened and reflected as carefully as I possibly could this time to the issues raised by the hon. Member for Ragwe and supplemented by the Member for Kisumu Town East. We have also heard the Member for Nambale and the Minister for Finance and his colleague in the Ministry of Transport.

Hon. Members, I find that the arguments, particularly, those presented by the Member for Nambale absolutely convincing and are in tandem with the ruling which I delivered earlier on. But, hon. Members, because I must respect the submissions made by other Members, I just want to reiterate the findings and the directions which I gave in my ruling earlier on today and to further say this:

That, before we get to the Supplementary Appropriations Bill, I will give further direction which will then solidify the ground with regard to the practice that we ought to embrace hereafter. But, at the moment, I am persuaded that there is no harm which will be done if we do the Supplementary Estimates Motion first on Order No.9 and then the Motion on Order No.10.

As I see it, it does not affect the authority of the House one way or the other. The “authority of the House,” mark those words. I think we can transact business in that manner. Significantly, I do not see any inconvenience given that those two Orders are being transacted in the same sitting. I am most obligated.

Thank you.

Proceed, Mr. Minister!

## MOTION

APPROVAL OF SUPPLEMENTARY ESTIMATES:  
(RECURRENT AND DEVELOPMENT 2011/2012)

**The Minister for Finance** (Mr. Githae): Mr. Speaker, Sir, I beg to move the following Motion:-

(i) THAT, a sum not exceeding Kshs32,229,309,230 be granted from the Consolidated Fund to meet expenditure during the year ending 30th June, 2012, in respect of Supplementary Estimates of 2011/12 Financial Year (Recurrent) having regard to the proposed reduction of Kshs10,477,941,240 therein appearing.

(ii) THAT, a sum not exceeding Kshs7,841,257,830 be granted from the Consolidated Fund to meet expenditure during the year ending 30th June, 2012, in respect of Supplementary Estimates of 2011/12 Financial Year (Development) having regard to the proposed reduction of Kshs25,091,468,240 therein appearing.

*(H. E. The President has given his consent to this Motion)*

Mr. Speaker, Sir, when I presented the Budget for the year 2012, it assumed a strong economic growth and stable micro-economic environment. Our financial programme was aimed at containing non-priority and un-productive Recurrent expenditure, so as to bring the Budget deficit down and ensure sustainable public debt. Based on these underlying assumptions, the Budget approved by this Parliament, after adjustments, contained a total expenditure of Kshs1,159,005,000 and its financing was as contained in the Appropriations Act. Discretionary Recurrent and Development Expenditure amounted to Kshs552.9 billion and Kshs213 billion respectively, while non-discretionary expenditure for contingency services (CFS) payments amounted to Kshs209.5 billion. By the time of approving the Budget, the contingency funds amounting to Kshs1.5 billion had been utilized for drought mitigation measures, leaving a balance of only Kshs0.5 billion.

Mr. Speaker, Sir, between July and December 2009, the micro-economic situation in this country had slightly changed. High inflation from higher food and fuel prices and deteriorating global economic conditions had weakened economic growth. The shilling exchange rate had weakened, thus putting further pressure on inflation. The tightening of the monetary policy has, as expected, resulted in rising domestic interest rates both in the money market and auctions for Government securities, thus putting further pressure on the Budget. Given these circumstances, the implementation of the Budget for this year has proved very challenging in the following aspects:-

One, revenues have fallen behind targets mainly due to changes in the holding mechanisms and slower than projected growth. Two, borrowing has been constrained because of the volatility in the money market interest rates and investor uncertainty brought about by high inflation and weakening of the shilling. We have, therefore, avoided borrowing from the domestic market. This has resulted in cumulative borrowing by the end of March rising from Kshs90 billion to Kshs19.9 billion in January 2012. We have also had expenditure pressures. On the expenditure side, we are faced with additional spending measures amounting to Kshs175 billion to support, among others, the salaries, implementation of the new Constitution, cushioning vulnerable households from the impact of drought and higher food prices and fuel prices, as well as dealing with the security operations along our borders with Somalia. The weakening of the Kenya exchange rate against major currencies has also increased the payment of our external debt in shilling terms and Government expenditure on imported goods and services.

Mr. Speaker, Sir, in order to finance this additional expenditure, we have, in collaboration with the line ministries, instituted austerity measures and identified cut backs in the funding of projects. The austerity measures were based on the performance of expenditure over the last seven months of this financial year. We have also had to reassess the absorption of earlier programmes from external financing of Development Expenditure for the remainder of the financial year. The Supplementary Estimates have already been printed and tabled in Parliament for debate and approval.

Mr. Speaker, Sir, as I have explained, we have received requests for expenditure and the major areas where we received requests were security and other operations. That was Kshs26 billion; allowances and salary shortfalls for the Ministry of Health - Kshs11.3 billion; electronic voter registration kits - Kshs9.2 billion; recruitment of teachers - Kshs6.2 billion; Local Government way leaves - Kshs5.9 billion; fertiliser for the long rains - Kshs4.7 billion; Lamu Port and Southern Sudan Ethiopian Corridor - Kshs1.8 billion; medical insurance scheme for civil servants - Kshs1.4 billion; Free Primary Education expenses - Kshs1.3 billion and operations and maintenance of foreign missions and headquarters - Kshs1 billion.

Mr. Speaker, Sir, given this scenario, we had four choices. One was to increase borrowing from the domestic market. We looked at this and we realized that if we were to source this additional request for additional borrowing, our borrowings would increase from Kshs119.5 billion to Kshs329 billion. Obviously, this was not sustainable and we did not go for that option. Also borrowing such an amount under the current economic conditions would cause major micro-economic disturbances and render public debt unsustainable. In addition, the prevailing tight market conditions have made domestic borrowing extremely expensive. Further borrowing would only have put additional pressure on interest rates which, as I have said, were already very high. We, therefore, did not go for that option.

The other option was to enhance revenue collection, but the scope of raising taxes in this time of economic hardships is limited. Moreover, the option is not tenable as it might have negative impact on business climate and further suppress growth. This was not feasible and we, therefore, did not go for it. The only alternative was to cut expenditure and also seek alternative sources of funding. In view of the tax revenue constraint and the need to ensure sustainable borrowing, the only feasible option is tightening our belt as the Government. This entails a combination of scaling down planned expenditure and rationalisation of additional requests. Consequently, the request for additional funding were rationalized and limited to priority areas and necessary interventions which could not be postponed. After the rationalization exercise, the following areas were agreed as priority areas and required funding:-

- (i) We have a major military operation in Somalia, which we have allocated Kshs14.3 billion.
- (ii) We also need to make strategic interventions. We need to buy fertilizers for planting during the long rains seasons. We have, therefore, provided Kshs3 billion.
- (iii) We need to employ more teachers and, therefore, we have provided Kshs6.237 billion.
- (iv) We also need to complete the Thika Superhighway. There is a counterpart funding requirement, for which we have provided Kshs2 billion.
- (v) We also need to provide for other priority areas the sum of Kshs560 million.
- (vi) We need to fund the medical insurance scheme for civil servants, in respect of which there is a shortfall of Kshs541 million.
- (vii) We need to issue Identity Cards (IDs) to our citizens, this being an election year, for which we have provided Kshs300 million.

(viii) We have the very important project of the Lamu Port, Southern Sudan Ethiopia Corridor, for which we have provided, as an initial funding, a sum of Kshs1.27 billion.

(ix) Our national airline, the Kenya Airways, is issuing a rights issue. We own more than 26 per cent shareholding and it is important that we support it. If we do not support it, it will lose its status as a national carrier with the subsequent disastrous effects. So, we have provided for subscription of the rights issue of Kshs5 billion. We have been receiving good dividends from the Kenya Airways. So, this is a worthwhile investment.

Hon. Members will recall the nurses had gone on strike and we had agreed with them that we will give them enhanced allowances. In this regard, we have provided for Kshs4.75 billion.

There are other operation expenses of Kshs1 billion.

Mr. Speaker, Sir, we are now changing foreign affairs missions from political to economic missions and, therefore, we need to support them.

Hon. Members can see that the only areas where we decided to intervene are on payment of enhanced allowances for nurses and doctors; recruitment of the contract teachers and other additional teachers. We have also provided for support to the operation mounted by our soldiers in Somalia, which has really improved our security. The piracy rate has gone down and we have maintained the territorial integrity of this country.

Mr. Speaker, Sir, I am, therefore, requesting the Members of this august House to support this Motion, so that we can continue with our development efforts.

While I am here, let me also say that what has been published by the Media – that Treasury has abolished the Constituencies Development Fund (CDF) is not correct. We only said that there will be change in the name of the Fund. The same amounts of money will be voted for in the Budget Estimates for the next financial year.

The only thing we are saying is that the CDF Act requires some amendments to bring it in line with the new Constitution. Therefore, I would like to assure this House that the CDF is there to stay. It is not going anywhere. We may change its name, but it is there to stay. The same applies to the Local Authority Transfer Fund (LATF) and all the other devolved funds.

With those remarks, I beg to move and ask hon. Kimunya to second the Motion.

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, I rise to second the Motion, which will unlock the door for us to receive and debate the Supplementary Appropriations Bill, which will lead to the ratification of the realignment of expenditure in line with the current realities.

Mr. Speaker, Sir, this is a very straightforward matter. When the Government came to this House and asked for authority to spend monies within specific budget lines and received that authority from the House, some issues shifted. Some expenditure could not be committed because of projects not beginning. Other projects became more expensive. New realities came into being. An example is our military intervention in Somalia, which has helped to stabilize maritime operations within the region and bring down the cost of doing business for everyone.

There are, indeed, other issues that the Minister for Finance has enumerated, including the adjustment of salaries and other benefits that have come into being between the last approval and now. It, therefore, becomes necessary for this House to give that extra authority for the realignment of the monies within the bigger envelope that was done.

Mr. Speaker, Sir, I just want to highlight the fact that even as we go for extra monies in some of the accounts, it is not just a matter of asking for more. There have been major sacrifices in some of the Ministries with people saying, yes, we are cutting down our expenditure on

foreign travel, furniture and other expenditures to give room for what is now viewed as key expenditure constraints.

Specifically, I want to highlight the issue that is very current, of the acquisition of extra shares in Kenya Airways. As part of its fundraising strategy, the Kenya Airways has called upon its shareholders to inject new money into the company. The Government of Kenya is a major shareholder, with 23 per cent shareholding. The only other strategic shareholder in the company is the KLM with a shareholding of 26 per cent.

Mr. Speaker, Sir, the two strategic shareholders account for 49 per cent of the shareholding of the Kenya Airways. The two key shareholders have agreed that instead of our anchor airline, which is really the pride of Africa, going to the market to borrow money expensively, it is important for the shareholders to inject more capital into the company. That capital can only come in by way of extra shares being subscribed by shareholders. The two shareholders sat down and said, yes, we need to save our airline from extra interest rates. Let us put in the money.

Therefore, the Kshs5 billion that they requested is really for the Government of Kenya to inject extra shareholding capital into the airline, so that it does not get diluted by other shareholdings coming in. This is because if the Government of Kenya does not increase its shares, the impact would be that its current shareholding of 23 per cent could well come down to something like 15 per cent. We really do not want the Government to lose its stake in such a strategic airline like the Kenya Airways.

Mr. Speaker, Sir, besides that, in order for an airline to qualify to be a national fly carrier and enjoy the benefit of flying to all the destinations that it currently flies to--- Currently, Kenya Airways flies to over 90 per cent of the destinations within Africa. Kenya Airways is the only African airline on the Sky Team network enjoying lots of connectivity. With the extra investment that is coming in and the extra aircraft that it is going to buy, Kenya Airways could well be the best airline within Africa. However, that can only happen if the shareholding of the Government is sustained at over 51 per cent, which makes the Kenya Airways to qualify to be a national carrier.

I believe that the House is fully briefed on these matters. The Committees are fully briefed. I just wanted to highlight the fact that the Kshs5 billion we are being called upon to provide is a commitment by the Government to sustain its shareholding in the Kenya Airways, so that it does not get diluted in order to sustain the status of the Kenya Airways as the national flag carrier for Kenyan and, indeed, for the region.

Mr. Speaker, Sir, other than that, again, we have gone through the realignments of the figures and I really need to seek the support of the House to pass the Motion and unlock the door for us to bring on board the Supplementary Appropriation Bill, which will then ratify the spending and also unlock the extra payments that need to be made for all the other commitments that have been made, including on the matter of salary adjustments, the issue of medical cover for our civil servants and all the other issues that are awaiting the passage of this Motion by this House for those expenditures to take place.

With those words, I beg to second.

*(Mr. Okemo consulted the Chair)*



**Mr. Speaker:** Hon. Members, the Member for Nambale happens to be a bit closely involved with me in parliamentary business that we are pursuing together. So, he engaged me and I did not follow what was happening.

*(Question proposed)*

**Mr. Mbau:** Thank you, Mr. Speaker, Sir, for giving me this chance to make my comments on the Supplementary Estimates this afternoon. From the outset I would like to state that, as Members of Parliament with the mandate of ensuring that the Executive is kept on its toes in so far as disbursement, appropriations and allocations of public resources are concerned, I wish to note that we do not make our comments and counter arguments only because we have to make those comments but we do so because we have a duty to Kenyans. I believe when that duty is expedited even the Executive, which for the time being also represents constituencies is assisted.

Mr. Speaker, Sir, it is now without doubt that the economy of this country has not grown to the level that it was anticipated when the last financial year's Budget was tabled. This indicates that in spite of numerous warnings by this House through the Budget Committee of the level of growth of the economy, the Government still continues to over-estimate the growth which results in an ambitious and, therefore, unfounded basis for budgeting of this economy.

Time and again this House has expressed concern that these over ambitious forecasts for economic growth translate to missed revenue targets which are now clearly manifest and consequently gives a Budget that is not fully financed.

This means that we, as a country, have constantly have had to reorganize our finances and re-prioritize expenditures all because undue short-sighted measures and decisions have been made on the part of the other arm of the Government. It is important to note that the constant shifting of the Budget items, as is now apparent in the supplementary budget, provides opportunities for lethargy and abuse of the Budget as well as resulting in donor fatigue due to shifting of priorities. This makes policies and targets unpredictable as well as undermining the confidence of investors, both local and external.

Mr. Speaker, Sir, in the current financial Supplementary Estimates, if you cast your eyes on the measures that we had spelled regarding adherence to austerity measures, you will note that a few Ministries have adhered to what Parliament expressed. Directives were given regarding the curtailing of allocations to non-priority items such as communication, domestic and foreign travel, printing, hospitality, office and general supplies, furniture as well as purchase of vehicles. There are instances where spending agencies are still seeking additional funding for these items, and this is a year when we need to curtail our spending especially in areas which are exerting pressure on the economy leading to unnecessary inflationary pressure.

Mr. Speaker, Sir, there have also been major important allocations proposed in the supplementary budget hereby presented including Kshs6.1 billion to cater for the teachers' salaries and allowances, Kshs1.9 billion for the purchase of fertilizer as well as Kshs1.723 billion for purchase of fertilizer subsidy. It is, however, of concern that these supplementary budget proposals significantly reduce expenditure on voter education, irrigation, provision of water as well as livestock development. This is like robbing Peter to pay Paul, and we have often pointed out that this ought to stop.

Hon. Members may recall that we collectively last year fought a good fight together during the review of the 2011 Budget Policy Statement through the allocations that the

Committee of Supply made to Livestock Development. Let me inform the House that the allocations which we approved last year are now being reduced and reallocated through these Supplementary Estimates.

The most significant increment in the Supplementary Estimates is on Personnel Expenditure. This squarely goes against the commitment of the Government to prioritizing development and it will further inflate the wage Bill which the Minister has pledged to keep below 7 per cent of the GDP. In fact, by approving these estimates the wage bill in this country will go to beyond 7.1 per cent of the GDP.

Mr. Speaker, Sir, when you consider where financing will come from, you will note that even though borrowing has been low up to February, 2012, the Government has borrowed heavily in the month of March. This is a trend that is expected to continue to the end of this financial year due to under performance of tax revenue and tax collection.

Mr. Speaker, Sir, this seems to be the only avenue that the Government will utilize to raise additional resources to fund the additional expenditures arising from the supplementary budget. Indeed, the Government has increased the budget allocations for interest to payment of Kshs2.5 billion to presumably cater for these anticipated borrowings from the domestic sector.

Domestic borrowing insured by the Government will have repercussions on the economy including crowding out private sector investors due to ensuing rise in interest rates and should be discouraged and kept at an absolute minimum. This is something that we have always recommended.

Mr. Speaker, Sir, you will recall that Parliament had directed that the Appropriations-in-Aid be converted to revenues to avoid unnecessary leakages. There are, however, instances where Appropriations-in-Aid have been applied at source. The Ministry of State for Immigration and Registration of Persons is a case in point; the quarterly economic and budgetary review for the second quarter of this year indicated that that Ministry had spent Kshs3.45 billion, although it had been issued from the Exchequer with only Kshs273 million. This issue was raised in November by the Budget Committee. Even the Controller of Budget's half-year report shows that the Ministry of State for Immigration and Registration of Persons is not being issued with any Exchequer, yet it is spending. We are wondering whether this should be allowed to continue to happen; a Ministry spends Appropriations-in-Aid at source when, as a Parliament, we have recommended that the same should be sent to the Exchequer then the expenditures required can be financed from there.

This Supplementary Budget raises pertinent issues about how we, as a Government, wish to deliver on our commitment as well as the direction we want to take for our country to move forward with regard to public finances. Of most concern is the high domestic borrowing and the subsequent application of these funds; Recurrent Expenditure is a toxic prescription for our economy.

In conclusion, I want to inform the Executive that the Budget that we passed last year through the Revised Estimates for 2011/2012 required to be adhered to; we did a Budget Policy Statement recommendation in this House. We were able to realign and reallocate some items from one Vote to another. I am urging the Minister for Finance to ensure that as he does his Supplementary Appropriations for this year, the recommendations that Parliament made through the Revised Budget Estimates of last year are reinstated, so that when we get to the business of doing justice to the Budget of 2012/2013, the exercise by this House will not be in vain. Let us not undertake an exercise in futility. If we give a leeway, as a House, to the Ministry of Finance to be adjusting and changing that which has been adopted by this House through the

Supplementary Estimates, then it will be an exercise that should not have been undertaken. I fear that even as we finalized the exercise last year, we could see indications of members of the Executive saying “Parliament, do what you have to do today; we shall know what to do during the Supplementary Estimates.”

Therefore, I am urging this House and my colleagues that as much as we are desirous of passing these Supplementary Estimates so that the functions of the Government can continue, they should not be passed without ensuring reinstatement of Votes and expenditure items as we had recommended in the previous financial estimates, which these Estimates are supplementary to.

Mr. Speaker, Sir, with those few remarks, I wish to say that we will wait to see whether the Supplementary Appropriation Bill will contain and align our proposals as we discussed today before we can pass the same.

Thank you!

**Ms. Karua:** Mr. Speaker, Sir, I rise in support of the Motion but with some reservations. I have seen an allocation of over Kshs1 billion to the Lamu Port project. One will be forgiven for getting suspicious of mega projects that seem to come always during the elections year.

*(Applause)*

Although they are necessary, governance in the implementation of such projects is suspect. We do not know for whose good it is being hurried up, and whether the Government is hiring experts who are saying that it may be better for it to be inland rather than on the coastline, with the knowledge that the coastline rises by a certain number of centimeters or meters every year. This is an area of concern, especially when we are short of money; I do not know whether this is the priority area.

I support the increase to the health sector in order to meet the salaries and remuneration of nurses and other medical personnel. I think this is an area that we need to check. They may even deserve more than allocated in the sense of also providing the necessary facilities for them to carry out their duties.

Once again, I am in support of the allocation to our security forces who are out there in Somalia, but then I am reminded that recently our forces became part of the African Union Mission in Somalia (AMISOM). I know that the international partners are contributing to this. Are there possibilities that this Kshs12 billion is going to be reimbursed? If it will be reimbursed, we need to see it flowing to other much needed areas, otherwise at least, personally I am satisfied with the work that our defence forces have carried out. One wishes that the police force would get equally serious and handle internal security in the same manner.

*[Mr. Speaker left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, I am disappointed that money is being taken away from the Independent Electoral and Boundaries Commission (IEBC). The Government appears to be doing all within its power to sabotage elections within the fifth year, which is December this year. Although the IEBC has announced a date, we know that there is a matter in court and

we know a large part of the population, including myself, supports a date within this year, which is what the Constitution envisages. I have often said that even in the worst dictatorships, the date of elections is always within the five year limit, or there is five-year term, and election is never outside it. It looks like there is a plot to ensure that the IEBC does not do the necessary preparations which will enable a credible election in December. This is an area I have reservation in, because the Government ought not to be behaving as though they have the final word. They are behaving as though they will not be bound by the court's decision. The only solace is that we are coming to the Budget season again in June when this Parliament, if the courts will have decided, will be able to correct that.

If I personally had a say I would have removed any funding to the Electricity Regulatory Commission (ERC) and put it to a worthy cause. They do not deserve any funding from the taxpayer. Not that I have noted any addition but I would have scrapped it all together, because they keep on raising the cost of fuel and also of electricity. This body is supposed to protect the interest of Kenyans, but it appears that their primary duty is to protect the big companies which are operating in the energy sector. I am wondering whether the Minister considers mopping up money from useless ventures like this one in order to give it to more deserving cases.

I am happy with the enhanced allocation to the teachers. The Government promised this Parliament that they would be employing teachers and, therefore, this is a worthy cause. But I want the Minister to assure this House in his response: Are the monies for the retired teachers factored in this? In an answer to this House, the Minister said that he had been consulting the Attorney-General on some technicality. Has he now factored it in? Has the Minister now factored that money in a manner that he no longer needs an opinion and the retired teachers will finally be paid? This is remembering that the Minister had undertaken to pay them before Christmas last year. It is now five months since and it is time these teachers; hard working retired Kenyans, were paid.

Mr. Temporary Deputy Speaker, Sir, finally, I am disappointed that money is being taken away from the Ministry of Water and Irrigation. Every year, we are providing money to buy food because we cannot feed ourselves. When you take away money from the Ministry of Water and Irrigation instead of enhancing it so that we can have sufficient water infrastructure to harvest water so that we can stop relying on rain-fed agriculture, it shows a Government that is devoid of forward planning and wants to continue managing through crisis.

With those reservations, I beg to support.

**Mr. Njuguna:** Thank you, Mr. Temporary Deputy Speaker, Sir, for the opportunity to contribute on this very important Motion. Let me start by thanking the Minister for reassuring the country that the CDF funds will not be withdrawn. These funds have already transformed the lives of Kenyans and we as Members of Parliament have started viable and critical projects in our constituencies. We have started primary and secondary schools, water projects and health centres. Some of these projects are not complete and we would like the same projects to be completed, so that they can render the necessary service to the communities.

On the Teachers Service Commission (TSC), although there is a new Minister, I feel that the required number of teachers in our primary and secondary schools must be met. There has been a shortage of 80,000 teachers in our schools and the Minister should meet this requirement. Meeting the full requirement will translate to improvement in the quality of education in our schools.

The Ministry of Health and Sanitation, in my view, is seriously under-funded. Our doctors need to be paid well and the number of nurses should be increased in our health centres.

We also need to check on the brain drain of our doctors to the neighbouring countries. Our doctors must be enumerated properly.

On the issue of land, the Ministry of Lands has also been under-funded. This is a critical period when we want the Ministry to be computerized because recently, we have seen the production of fake title deeds and survey maps. Therefore, this Ministry requires sufficient funds to rectify some of the anomalies that are in that Ministry. It is the same Ministry that has been mandated to make sure that the remaining IDPs are settled. Therefore, this Ministry should have been allocated more money so that by the end of this year, all the suffering and agonizing IDPs are fully settled. It is very painful in our eyes that these people are still in camps, which are worn out.

On the issue of fertilizers, we need to be assured by the Minister that the allocated funds will be invested well and fertilizers will be bought and no cartels will be allowed to distribute this fertilizer. Innocent farmers have been suffering and, therefore, it is important that critical steps are taken.

**Mr. Mungatana:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Some very important points are being made by hon. Njuguna and some Ministers are engaging the Minister for Finance, who is not listening at all to what is being said.

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Mungatana!

**Mr. Mungatana:** No, Mr. Temporary Deputy Speaker, Sir. The time that is being utilized by the Member should be utilized properly.

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Mungatana, the Minister is listening and he is also consulting other colleagues.

**The Minister for Lands** (Mr. Orengo): On a point of order, Mr. Temporary Deputy Speaker, Sir. It is wrong for my learned friend to create that impression. If you look at the paper he is carrying, the Minister's notes are more current on what hon. Njuguna was saying. We can lay what he has on the Table and what the Minister has on the Table and you can see that all the points which hon. Njuguna has raised, he has noted them down. I can tell you that. I am an hon. Member and you should trust what I am telling you.

**The Temporary Deputy Speaker** (Prof. Kaloki): Very well! Indeed, the Chair has already ruled that the Minister is listening and consulting.

Hon. Njuguna, you can now proceed!

**Mr. Njuguna:** Mr. Temporary Deputy Speaker, Sir, I was on the point of fertilizer. This is the planting season and the same fertilizer that is supposed to be released to the market at Kshs2,300 is selling at Kshs3,500. The poor Kenyan farmer cannot afford to buy this fertilizer. Therefore, the farming community will continue to be impoverished in this country if cartels will be allowed to engage in the distribution of this fertilizer.

On road projects, we want the Minister to be given more money, so that all the road networks that have been started in various parts of this country are completed. We want this country to be the shining example where investors will be attracted by the good road network in this country. Therefore, allocating adequate money to this Ministry will also create the necessary jobs for our youth.

On the Ministry of State for Defence, our country must be secure all the time. Allocating Kshs12.5 billion is not enough. There are some hostile neighbours that need to be checked properly. We have noted that our forces have been sent to Somalia. Our weaponry and ammunitions are being used and we need to replenish some of these things. We also need to

improve our jet fighters. We need to have warships, if it is possible. Therefore, security must be of paramount importance on this aspect.

On education, the Ministry of Education should have been allocated more money, so that the free primary education funds reach the schools in good time. The free secondary education funds should also reach our secondary schools in good time. When these funds are not released immediately, we compromise the quantity and the quality of learning in our institutions. You will realize that education is the backbone of economic growth. It is important, therefore, to pay more attention to the role of the Kenya Revenue Authority (KRA), the main collector of our taxes. This morning, if my memory is not failing me, we had one company that has not paid tax to a tune of Kshs4.5 billion. This money is enough to employ all the teachers that we require in this country. Therefore, the KRA must take the necessary measures to make sure that tax evasion by all investors is checked completely. Illicit goods and counterfeiting of goods in this country must not be allowed.

With those few remarks, I fully support the Supplementary Estimates.

**Mr. Mungatana:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to also make a small contribution to this debate on the Supplementary Estimates.

Mr. Temporary Deputy Speaker, Sir, at the outset, I want to state that we are not happy with the way the Government has handled itself, as far as the preparation of these Estimates are concerned. What we say now - I hope the next Members of Parliament who shall be here will really put the Cabinet Secretary, President and his budget officers on the spot. That is because we expect them to follow the law and the spirit of the law, which is that we, as Parliament, really control the purse strings of this country and not the other way round.

Mr. Temporary Deputy Speaker, Sir, first of all, we passed a Budget here. That Budget was based on the Budget Policy Statement that was agreed between Parliament and the Minister. When the Budget came, we expected that, that Budget would be followed. We were not wasting time. We were not engaged in discussions in the market. That Budget was meant to be followed.

Mr. Temporary Deputy Speaker, Sir, I want to remind the House and the Minister - who was then not the Minister - that before the Budget was put before this House, the departments of Government made proposals and this House, through its departmental Committees, sat down, looked at those proposals and agreed. That is how we ended up with a Budget. So, when you have a Supplementary Estimate that takes more than 100 per cent variation in certain Ministries, there is a problem. How can it be that a Government department, which went through the process, presented a budget, and then we have a supplementary process here.

*(Mr. Githae consulted with Mr. Kimunya)*

Mr. Temporary Deputy Speaker, Sir, if the Minister can listen to what I am saying.

**The Temporary Deputy Speaker** (Prof. Kaloki): Proceed!

**Mr. Mungatana:** At some point, they bring the same Supplementary Estimates which actually changes the Budget by more than 100 per cent in a certain department.

Mr. Temporary Deputy Speaker, Sir, the accepted international best practice is that, if there are any changes at all within the Supplementary Estimates, it should not go beyond 10 per cent. By and large the Minister, in some of those departments, there was an attempt at adherence of that policy. Questions then have to be raised and the Minister has to explain what is happening.

Mr. Temporary Deputy Speaker, Sir, for example, if you look at the Development estimates that have been presented, you would find that the Ministry of Lands under Development Vote No.36 has had a percentage increment of 225.76 per cent up from the Budget that was presented before this House. That is making a joke of the process of budget making. Vote D23, the Cabinet Office has had an increment of equivalent of Kshs125 million, which is 67.57 per cent. Again, this is an office that brought its budget. We debated those things. We looked at them. How can it be that a few months down the road, the Cabinet Office has an increment of 67 per cent in the budget? How does the Minister explain that? What is the emergency? What is it that has happened in the Cabinet Office to require such a large increment; almost 70 per cent?

Mr. Temporary Deputy Speaker, Sir, then you have other important bodies such as the Kenya Anti-Corruption Commission. If you look at the Development Vote No.34, KACC has had a reduction of a total of 94 per cent, which translates to a Kshs188 million cut away from this year's Budget. This is the same Government that talks about zero tolerance to corruption, talks about fighting corruption tooth and nail and then, in Budget, they cut 94 per cent of the funds that are supposed to go towards implementing the programmes.

Mr. Temporary Deputy Speaker, Sir, I am focusing on the Development vote. It is not fair for a Ministry such as the Ministry of Fisheries Development, which to a large extent affects two regions, the region in the Coast and the region in the Lake area, to lose a total of 26.28 per cent in its budgetary allocation.

Mr. Temporary Deputy Speaker, Sir, the point I am trying to make to the Minister is very simple; we must have fiscal discipline. You cannot bring a Budget a few months ago and three months down the road, you are asking for this ridiculous increment to the Ministry of Lands of 225.76 per cent in the Development Vote.

Mr. Temporary Deputy Speaker, Sir, this country needs to be taken more seriously in as far as planning of its finances is concerned. Proper explanations need to be given for us to accept to move in the manner in which the Minister proposes we do. We expect proper planning. If a Ministry can come and tell us something and then, a few months down the road they require even more than a 100 per cent increment in their budget, it means there was no budgeting at all. It means there was no seriousness.

Mr. Temporary Deputy Speaker, Sir, you remember what we did. We went through so much. A lot of time was put in not just by the Budget Committee, but all the departmental committees trying to listen and to approve the proposals by the Government departments. What we are saying is that for the purpose of the future, we have to create more time in terms of how we even effect the Supplementary monies that we move here. We need two or three days so that proper amendments can be moved on these estimates so that the correct things can be done. It is not right to take so much of Parliament's time and then we come one day and we want to pass Supplementary Estimates that completely negate the budget-making process.

Mr. Temporary Deputy Speaker, Sir, again, the second point I want to make is that all the cuts that have been made, they have nothing to do with the Recurrent Expenditure. In fact, the Recurrent budget that was laid in June has had a net increase of several billions and the figure that I have here from the Quarter Economic Budget Review and the Monthly Statements of Actual Revenue and net Exchequer Issues is Kshs21.7 billion. That has increased as far as the Recurrent budget is concerned. But as far as the Development budget is concerned, it has been cut down by a total of Kshs17.25 billion.

Mr. Temporary Deputy Speaker, Sir, this country does not move forward because of Recurrent Expenditure. This country does not deal with roads using Recurrent Expenditure. This country has made strides in development because of the Development Vote. We complained here in June that the amount that has been left for the Development Vote is very small. Then, in this Supplementary Budget, it is like we are talking to the Treasury that is not listening to us.

Mr. Temporary Deputy Speaker, Sir, what they did is to go back to that little development Vote, and it was the one that suffered massively. Then, they exchanged that and put it in the Recurrent Vote, but 10 or 20 years down the road, you could not show what this money had done.

Mr. Temporary Deputy Speaker, Sir, we want to state it again for Treasury to listen; if we are going to have any changes as far as Supplementary Estimates are concerned, then they should not only adhere to the international standards of not more than 8 per cent, but they should develop a culture and a practice of interfering with the Recurrent Vote; they should not keep on coming to the Development Vote.

Mr. Temporary Deputy Speaker, Sir, the third point I want to make is this, it was Parliament's directive when the Budget was here that austerity measures should be implemented in the Budget. The view that the Minister gave us at that time was that, indeed, they were going to implement Parliament's directive through the Budget Committee, and that austerity measures would be taken; there should be as much reduction as possible in those areas that are not core to the functions of the departments of Government. But what we have found out from our analysis is that still, contrary to what we had agreed upon, instead of curtailing allocations to items such as domestic and foreign travel, printing, hospitality, office and general supplies, furniture, and the purchase of motor vehicles--- In these Supplementary Estimates, the same items that were supposed to have been cut under the agreed austerity measures between Parliament and the Minister are the ones that which benefitted from the Supplementary Estimates.

Mr. Temporary Deputy Speaker, Sir, I will give you examples. For example, why would State House, under printing and advertising, get some more money? For example, office and general supplies got Kshs10 million and hospitality Kshs21 million that were not in the Budget. What is it that has suddenly happened that needs to increase these things so much, yet we had said that these are not items that are core.

Mr. Temporary Deputy Speaker, Sir, I will give you another example of the Ministry of Foreign Affairs; it was in the Budget; they knew they had to travel; they knew they had to do even that foreign policy on trade. These things were talked about in the last Budget. Can you imagine that now, they have a Supplementary Budget and they increased the item of foreign travel in the same Ministry of Foreign Affairs by Kshs633 million! In fact, this is probably the biggest in terms of those items that Parliament had said should face austerity measures. Then why did we go through the Budget process? Why was Parliament exposed to all that, you know, merry-go-round?

Mr. Temporary Deputy Speaker, Sir, look at the Ministry of Labour; again, there is a variation of Kshs21.9 million in these Supplementary Estimates. Surely, even if they are going to the International Labour Organization (ILO), this happens once in a year and they knew it when the Budget was being done. How can it be that suddenly these items that we had said are non-essential and they ought to face the austerity measures that Parliament had directed, have come back with a force that was not there?



Mr. Temporary Deputy Speaker, Sir, the Ministry of East African Community, Kshs36 million is being given to office supplies. Do they not have offices? What is it that is so new that they did not see in the Budget, and suddenly we should have it in this Supplementary Estimates?

Mr. Temporary Deputy Speaker, Sir, we are very unhappy with what these Supplementary Estimates are trying to do and we think they are making a mockery of the Budget process. If we agree, through Parliament, that this is what we are going to do, I think this is a bit of a joke. You see such huge variations yet the Budget was so clear on what we had agreed. The Budget Policy Statement was so clear on what we had agreed. In fact, you heard the Minister when he was talking; the same Minister is saying that they are not able to hit the revenue collection target; he is the same one who is now supporting increment on items that were supposed to face the austerity measures. We are saying that this is wrong and we should be more serious in the process of budget making.

Mr. Temporary Deputy Speaker, Sir, I am taking issue with the fact that the Independent Electoral and Boundaries Commission (IEBC) faced a major reduction of Kshs4 billion. This is an election year and we are looking at an area and an institution that--- While you can cut this anti-corruption thing and justify it, this is an election year! How can you effect heavy reductions in the budget of the IEBC?

Mr. Temporary Deputy Speaker, Sir, I am also looking at the Judiciary. The Judiciary, under its Development Vote, has faced a total reduction of Kshs1.1 billion. Already, you have heard of the cases that arose from disputes over boundaries; there are over 50 cases which have been filed in the High Court. We need to employ new Judges; we need to facilitate the Judiciary with modern equipment. Now, the Judiciary, being a serious anchor of this Government, is facing a Kshs1.1 billion cut. Is this right? Is this what Parliament wanted? Is this the way we are going to carry out reforms in this country? This is not acceptable.

Mr. Temporary Deputy Speaker, Sir, while that is going on, you will see another increment, a major increment to the Kenya Defence Forces (KDF). KDF received a Kshs12.5 billion increment. Now, the argument that has been presented on the side of the Government is that we are at war, but they are not mentioning the element of contribution from other partners who are involved in this process. They are not mentioning the elements that the African Union Mission in Somalia (AMISOM) brings. It is possible that we are double-funding the KDF, and at the same time, we are reducing money on essential institutions like the Judiciary.

Mr. Temporary Deputy Speaker, Sir, I am very, very unhappy with these Supplementary Estimates, and I wish people will pay attention to see that something is really wrong. We cannot agree on a Budget and then we have over 100 per cent variation on several items. Then, here, things are brushed over nicely; we are told that teachers' salaries are being increased, so that people can keep quiet. No! If we do not do the right thing, this is how this country is going to go down. I pray that there will be proper adherence to Budget making process; there will be proper adherence to how we handle our money.

With those very many remarks, Mr. Temporary Deputy Speaker, Sir, I beg to oppose this Motion.

Thank you, Mr. Temporary Deputy Speaker, Sir.

**Mr. M'Mithiaru:** Mr. Temporary Deputy Speaker, Sir, I also rise in support of this Motion.

Mr. Temporary Deputy Speaker, Sir, we know the challenges that the economy has faced in the last nine months, including the issue of drought mitigation. Although I am supporting this Motion, I would also like the Minister to note that when he talked about the issue of drought

mitigation, we are not hearing it for the first time. For the last so many years, even when I was in school, there were still those issues of drought mitigation. Is the Government not in a position to come up with proper measures on how to reduce issues of drought, so that, year in, year out, we do not have figures in the Supplementary Budget to finance those efforts? So, it is an issue of planning for the country. Somebody somewhere in the planning area is failing. Also, the provisions of the Budget process should include issues of drought mitigation and even other issues of risk reduction management.

Mr. Temporary Deputy Speaker, Sir, when the Minister was moving the Motion, he said that part of this Budget is a result of the financing of the external loans that became too expensive because of the weakening of the shilling. The weakening of the shilling was also one of the issues that were not properly arrested by the Government. So, it shows that although the Supplementary Budget is here, there were also actions by the Government that actually did not take place at the right time and, hence, now the unnecessary expenditure that we are incurring.

Mr. Temporary Deputy Speaker, Sir, I also know, from the Supplementary Budget moved by the Minister, that the Ministry of Water and Irrigation is not being funded. If we are to have a healthy nation, water is very important, indeed. Where I come from, for example, our biggest problem is water. When we see that, that Ministry is not being funded, then something somewhere is really not right.

Mr. Temporary Deputy Speaker, Sir, I note from the Supplementary Budget that the figure of Kshs40 billion as a per cent of the trillion Budget, is actually reasonable. But, then, what we feel that is not right is the area of priority, in that when we see furniture being brought into the Supplementary Budget, then that is not seriousness. This is because it is not an item that has just come up or was not foreseen. So, even if it means sitting on that chair and waiting for the next Budget, that can be done rather than to bringing in issues of furniture and we are not giving money to the actual sectors which should address the real needs of Kenya.

Mr. Temporary Deputy Speaker, Sir, security issues are also very important. I note that the Minister did not really address, especially the issue of internal security. Again, in Igembe North District we have police stations which have no vehicles at all. I remember bringing that issue to this House and the Minister promised that it will be provided for in the Budget. The last time I asked him, he said that it will be brought in the Supplementary Budget. So, I hope that this time round now, the little that has gone towards the Ministry of State for Provincial Administration and Internal Security, there is a provision now to give my district vehicles for the police to use, because there is a lot of insecurity, especially in the area of cattle rustling. While still on that issue, cattle rustling has also been in Kenya from time immemorial. We know the particular communities that participate in the cattle rustling. I know that there was even a Select Committee in this House to address that issue among others. One of the recommendations was that the Government should have a kind of vocational training for the morans or youth who undertake cattle rustling, so that they can actually be inducted in modern ways of doing business. Those are the issues that we would like to see being addressed in our Budget.

Mr. Temporary Deputy Speaker, Sir, I am happy to know that the Minister is pursuing the issue of education, in that he has allocated some money for the employment of teachers. We know that because of Free Primary Education, many of our children have gone to school, but they are lacking teachers. When we lack teachers then we are not talking about quality education which is the in-thing. So, once we have enough teachers in our schools, then we are assured that, at least, our children will get the required quality education, which will take us now a notch

higher in terms of even the achievement of the Millennium Development Goal No.2, which is universal education for all.

Mr. Temporary Deputy Speaker, Sir, on the issue of prioritizing the Budget, we note that there are line Ministries that address real issues. They are the Ministry of Medical Services, the Ministry of Water and Irrigation, the Ministry of Education and the Ministry that is going to address the issue of unemployment among the youth. These are the issues that we would like to see properly coming out, because once arrested, then we are sure that the Kenyans are going to benefit. This is because the youth will be in some kind of gainful employment.

Mr. Temporary Deputy Speaker, Sir, with those remarks, I beg to support the Motion.

**Mr. Mwadeghu:** Bw. Naibu Spika wa Muda, naomba nitoe mchango wangu kulingana na makadirio ya ziada ambayo yamewasilishwa na Waziri wa Fedha.

Bw. Naibu Spika wa Muda, nikiunga mkono Hoja hii, namuomba Waziri wa Fedha kusikiliza ushauri wetu kwa makini. Hii ni kwa sababu ana masikio lakini hataki kusikiliza ushauri wetu. Shida yao kubwa ni kuwa hawazingatii ushauri wowote. Tafadhali Bw. Waziri, fungua masikio yako leo.

Bw. Naibu Spika wa Muda, Kamati ya Bunge ambayo inahusika na makadirio ilimshauri Waziri na kumuelekeza vile ambavyo ilionelea makadirio hayo ya fedha yawekwe ama yaelekezwe, lakini hawakusikia. Walikataa katakata na wakaja hapa Bungeni na kuendelea vile walivyokuwa wanataka. Ni nini kilichotokea? Walimu na madaktari wakagoma. Iliwabidi watafute pesa za ziada ambazo hazikuwa katika makadirio ili wapate kutimiza yale yale ambayo tulikuwa tumewaambia katika Kamati ya Fedha, Mipango na Biashara. Wakati huu tukikutana katika Kamati hiyo kuna mambo kadha wa kadha ambayo tutayachambua na kuyaleta hapa. Wakati huu, naomba Waziri wa Fedha ayasikie na kuyaweka maanani.

Bw. Naibu Spika wa Muda, namshukuru Waziri wa Fedha kwa kuweka mkazo na kuhakikishia Bunge kuwa fedha za sehemu za uwakilishaji Bungeni, ambazo tunaziita, Constituencies Development Fund (CDF) na Local Authorities Transfer Fund (LATF) hazitaondolewa. Ninampa pongezi kwa kusema CDF itabaki vile ilivyo. Kama kuna matatizo ya vile pesa zinatumiwa, basi naomba aangalie mbinu mwafaka ya kusuluhisha matatizo hayo. Suluhu si kuondoa pesa hizi za CDF.

Bw. Naibu Spika wa Muda, naomba wakati huu pia muangalie mambo ya riba kwa sababu wananchi wanaumia. Hivi juzi benki zimeongeza riba kwa kiwango cha juu sana. Hakuna mtu anayeajibika. Mara nyingi mnazunguka hapa na pale mkisema kuwa riba hii itakuja chini ilhali benki nyingi hapa nchini zinatangaza faida kubwa sana ambazo si za kawaida. Ukipata benki inatangaza faida ya mabilioni ya pesa na sehemu zingine za uchumi hazipati hizo faida, basi utajua kuna tatizo fulani. Bila shaka kuna uporaji wa fedha. Ninamuomba Waziri aangalie benki hizi kwa makini sana kwa sababu sikubaliani nazo kuwa zinafanya biashara ya haki. Kuna pahali ambapo wanahujumu uchumi wetu.

Nasikitika kwamba Waziri Ameacha kando Wizara ya Maji na tukiangalia Wizara hii ina upeo mkubwa sana katika uchumi huu. Katika makadirio haya Waziri, ameiacha. Naomba uyafikirie vile yalivyo.

Naunga wenzangu mkono ambao wamesema kwamba mara nyingi Wizara ya Fedha huwa haisambizi fedha katika mikoa yote. Hata nikiangalia sioni kama mmepeana fedha kwa barabara ya Voi-Mwatate-Taveta na hivi sasa kazi yake inatarajiwa kukwama kwa sababu zile fedha mlikuwa mmeipatia katika makadirio yaliyopita zimeisha. Mwenye kandarasi mliomweka pia ameshindwa na kazi. Natumaini kwamba Waziri ambaye anahusika atachukua wadhifa wake vizuri na ahakikishe kuwa hiyo barabara imeisha ili angalau wakati huu wake, Waziri aambiwe

na watu wa Pwani kwamba si yeye anawasukuma kwenda kwa *Mombasa Republican Council* kwa kutowapatia hela za kutosha. Mara nyingi nyinyi ndio mnawasukuma watu wa Pwani kwenda mrengo mwingine, kwa kukataa kuwapatia fedha za kufanya maendeleo katika mkoa wa Pwani. Natumai wakati huu utahakikisha kuwa watu wa Pwani wameangaliwa kikamilifu na barabara ya kutoka Voi kwenda Taveta imepatiwa pesa.

La Mwisho ni swala la vijana. Sidhani kama umetilia maanani hela za kuwaangalia vijana. Naomba katika majadiliano ambayo tutakuwa nayo na Kamati ya Fedha, ambayo inahusika hapa Bungeni, kuanzia kesho hadi jumatatu, yale mapendekezo ambayo tutakuwa tumekupatia, utayaweka maanani ili angalau hizi fedha ambayo umeziweka katika vitengo vingine zigeuzwe na zipate kuwasaidia vijana.

Kwa hayo machache naomba Waziri wa Fedha wakati huu achukue mawaidha yetu kwa moyo mkunjufu; asante.

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, first of all I want to remind this House that we are not under any obligation at all to approve and pass this Supplementary Budget. We should not be misled to think that the Government will shut down if this money is not approved. I think we need to do the right thing by telling the Executive that we are not going to be part of their intention of trying to take this country for a ride.

Mr. Temporary Deputy Speaker, Sir, I am inclined to oppose this Motion and the reasons are as follows. First, the Minister has casually moved this Motion yet the Constitution is very clear that the only amount we can appropriate is where the amount appropriated was insufficient, or where a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Act. I expected the Minister to take us through all these expenditure lines and tell us exactly what was not foreseen, or why the amount we appropriated has become insufficient. So, unless the Minister tells me, for example, why the Cabinet Office should be given 7 per cent more for development; how was that not foreseen and how has money become insufficient? If you look at the Recurrent Expenditure, a lot of it has been increased. For the Ministry of Development of Northern Kenya and other Arid Lands, expenditure has been increased by 76 per cent. This is basically money for salaries, hospitality, furniture, office expenses and so on. How were these not foreseen? Instead of increasing development expenditure for that Ministry to develop northern Kenya, you are only increasing Recurrent Expenditure and reducing Development Expenditure. Are we getting our priorities right?

Mr. Temporary Deputy Speaker, Sir, I believe that unless the Minister tells us why he wants us to give him more funds on this Budget line, this House should not give any extra coin for the Government to spend on this line. Secondly, the Constitution is very clear under Article 223(2) that the approval of Parliament for any spending under this Article shall be sought within two months after the first withdrawal of the money. The Minister has not given us expenditure analysis to show us--- For example, if he wants us to give him more money to give to the Kenya Defence Forces, can he tell us whether he has not already spent that money? If you have already spent it then in which manner did you spend it? If you spent it in January or December, we cannot give you money because the Constitution does not allow us to give you money beyond two months. You should have come to this House within two months after spending the money and requested additional funds, so that when you bring the Supplementary Budget already this House would have given you authority to spend. This House is going to give you authority to spend yet you have not told us in which month you spend this amount; what this House is going to do is to participate and be part of violation of the Constitution.

Mr. Temporary Deputy Speaker, Sir, I want to find out why we are increasing Recurrent Expenditure to over 70 per cent or 200 per cent in some lines. More importantly, and as my other colleagues have said, the Budget Committee advised the Ministry on how to rearrange and realign various expenditure lines, one of them being the issue of teachers. The Budget Committee recommended additional funding for teachers but this Government, in their own wisdom or lack of it, decided to reduce that amount. Right now they are bringing it back. We are telling you, yes for teachers we know you should get more money, but wait a little so that we deal with this Government. We will give teachers more money in the next Budget but we want to show the Executive that it is this Parliament that appropriates. Do not condition us to think the way you are thinking.

Regarding the case of land, we added money for computerization. The Minister took it away but right now in the Supplementary Budget, you are bringing it back. What does that mean? That definitely means that you belittle Parliament. You believe that any suggestion that comes from Parliament must be rejected so that you bring it in your own way through the Supplementary Budget. We are telling you, no, the Ministry of Lands can still wait. Our people have stayed without title deeds for all this time and they can wait for two more months, and then we will allocate money through the right Budget process.

I plead with this House, let us not be blackmailed into thinking that if we do not give the additional funds requested, the Government will shut down. This Government will continue. In fact, as the Budget Committee, we had to push the Executive to bring the Supplementary Budget. They were not in a hurry. Why do we give them the money? Let us say “no”. If anything, this money for the Kenya Defence Forces, which I think the people feel is the most urgent, the amount is being paid from elsewhere. We know and we are sure so many billionaires will be created after this. After we give you this extra Kshs12.5 billion we are aware already we shall have created so many additional billionaires in this country.

**The Minister for Finance** (Mr. Githae): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is Mr. Mbadi in order to mislead this House that the amount of money that has been allocated to defence forces is being paid elsewhere, yet we have not yet received a single cent from Amison or the United Nations. They are saying that it is going to take at least six months. In the meantime we have to shoulder the burden.

**Mr. Mbadi:** I think he has just confirmed my fears that this money will be paid after all. So, why are we giving you the money? Why do you not wait and pay them from the amount that will be given? This will be a double allocation. This Kshs12.5 billion will not be given to our forces. You are just misusing the names of these poor Kenyans for nothing. They are fighting out there in the cold and they are suffering. I am sure if you bring them back here, many of them will be crying that they never even got a coin yet the management of Kenya Defence Forces will be increasing their wealth. They are laughing here in Nairobi. They are never in the field but we are appropriating more funds to make them fat

**The Minister of State for the Development of Northern Kenya and other Arid Lands** (Mr. I.E. Mohammed): Mr. Temporary Deputy Speaker, Sir, is the hon. Member in order to impute improper motive on Members of this House and those who are outside and cannot defend themselves, that they will be making billions of money out of the allocation that is being made?

**Mr. Mbadi:** Mr. Deputy Speaker, Sir, I think the Minister has not read the Standing Orders properly. He should have asked whom I am imputing improper motive against, because I cannot impute improper motive on a ghost.

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Mbadi, stick to your contribution and not the sideshows such as some millionaires will be created after the budget is passed and issues like those. Just stick to your contribution.

**Mr. Mbadi:** Mr. Speaker, Sir, exactly. How do you expect me to sit in this House and approve a Supplementary Budget that is taking away money from the Ministry of Fisheries Development and yet I represent fishermen? That is impossible. I have to oppose this Motion and say that we are creating billionaires out of this expenditure. If we were not creating billionaires---

**The Minister of State for Immigration and Registration of Persons** (Mr. Kajwang): On a point of order, Mr. Temporary Deputy Speaker, Sir. I just want to enquire from my good neighbour why he is so worried about creating many billionaires. That is what we want to target in Vision 2030. We want very many billionaires including him. Why is he so shy?

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, I would not like to be a billionaire but I would like to be relatively comfortable. Probably, I would not like to be a billionaire. However, if we create them through proper channels, that is fine. However, I am afraid that we do not want to create billionaires through corruption. I want to conclude.

**Mr. James Maina Kamau:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Prof. Kaloki): I really want hon. Mbadi to conclude.

**Mr. Mbadi:** Maybe he has a burning point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Prof. Kaloki): Proceed, Mr. Mbadi!

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, I would like to finish my contribution. The other final reason why I am opposed to this Motion is; how can the Government come and ask us for more money and yet this country does not even know how much we collect in terms of revenue? I have brought a statement to this House. I have also requested for a statement from the Minister. This statement was supposed to be delivered last Tuesday but, I was requested to give him more time. Up to today, it has not been given. Do you know and does this House know that we were misled into approving Budget Estimates of 2009/2010? We were misled by over Kshs489 billion in the actual revenue for 2007/2008. This House was given figures which were not correct and have since been contested by the Controller and Auditor-General. The then Controller and Auditor-General has, clearly, stated that of all the 14 revenue accounts of Government, he could only certify two and those were very small ones. With regard to the rest, he does not know whether the amount collected is the same one which was banked in the Exchequer Account and the same one that was reported.

**The Assistant Minister for Finance** (Dr. Oburu): Mr. Temporary Deputy Speaker, Sir, all the queries which were raised by Controller and Auditor-General for 2007/2008 - that is what he has asked for - and 2008/2009 were raised before the Public Accounts Committee of this Parliament. Our officers explained this in detail. The Reports of the Public Accounts Committee were tabled in this House, they were debated and passed and the Ministries have been asked to implement them and a memorandum showing the process of implementing the recommendations of Parliament on every issue has been given and tabled also in this Parliament. So, I do not know what the hon. Member is talking about. Everything has been tabled in this Parliament, discussed, reconciled, recommendations made and appropriate actions taken.

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir---

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Mbadi, hear me out. Which specific reports are you referring to?

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, it is the hon. Minister who is misleading this House. The Speaker has already ruled that the Minister must bring that statement

on the 2007/2008 Financial Year to this House. I will also tell you that the Speaker considered and looked at the Public Accounts Committee Report before he made his ruling. So, unless the Assistant Minister is challenging the ruling of the Speaker, I will tell you that there is no explanation that the Ministry has given this Parliament and this country. He cannot explain to us. In fact, the reasons he is giving do not make sense.

So, the Minister should come to this House, give that statement, meet me on the Floor of the House and I will show them how they cannot account for the revenue of this country. The 2007/2008 Financial Year was an election year and it appears that money was stolen to finance campaigns in this country. The earlier we say this, the better for this country because we are again going into another election. I fear chances are that we will lose revenue. The Government has already realized that Parliament is more vigilant on expenditure and less vigilant on revenue. They have now decided to be stealing from the revenue and not from the expenditure because they know that if they steal from the expenditure, chances are they will be caught.

**Eng. Maina:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member who is my friend has just made a very serious statement that money was stolen. We are in a country with law and order. What this House cannot be silent about is when we are told that public funds were stolen for purposes of an election. Unless the Member can substantiate it and say that tomorrow he will report the culprits to the police, then he should withdraw that statement.

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, I cannot withdraw that because it is obvious that the Government has been unable to present my statement. I have already asked why the revenue cannot be explained. If the Kenya Revenue Authority (KRA) says that they have collected this, the Exchequer Account where the money is supposed to be banked is reading a different figure and the Controller, Auditor-General told Parliament that he does not know how much is being collected in this country, this Government cannot explain that and there are differences, that is theft.

**Eng. Maina:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I think the matter must be cleared. The hon. Member is saying that the Controller and Auditor-General said that the money cannot be explained. That does not amount to stealing. He has used the word “stealing” which is clearly illegal and a crime in this country.

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, Eng. Maina should concentrate on engineering. When an auditor expresses an opinion, he cannot say that it is stolen. He tells you that he cannot express an opinion. That means it is theft. I wish the hon. Member can come to me for advice.

**The Temporary Deputy Speaker (Prof. Kaloki):** Hon. Mbadi, let me get one more point of order from hon. Shebesh and then you will proceed and make your conclusion.

**Mrs. Shebesh:** Thank you, Mr. Temporary Deputy Speaker, Sir. I really want to take what hon. Mbadi is saying seriously and beg my colleague, the MP for Mathira, soon to be a Governor or Senator, to allow the Government that is being paid money to respond to what hon. Mbadi is asking. They are seated here. Could they respond? Do not work for them because they do not work for the people of Mathira but they work for Kenyans.

**Eng. Maina:** On a point of order, Mr. Temporary Deputy Speaker, Sir. But I work for Kenyans.

*(Laughter)*

**The Temporary Deputy Speaker** (Prof. Kaloki): Order Eng. Maina! You are out of order.

Yes, hon. Mbadi!

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, I can even indicate where money has been stolen because I have the figures, the data and information.

*(Applause)*

I think it is important that this country takes these matters very seriously.

If you take, for example, the issue of income taxes on profits and capital gains, you will see that there is a difference of Kshs11 billion. The Auditor-General is saying that we have told him that we have collected this money but he has not found it in the bank. He is telling Parliament, please, ask the Executive to explain. Parliament is sitting here and when I bring a statement for the Government to respond, nobody takes it seriously. If you have the answers, why can you not give them to me?

**The Assistant Minister for Finance** (Dr. Oburu): Mr. Temporary Deputy Speaker, Sir, all those issues were discrepancies which were in the form of audit queries which are normal. These audit queries are answered in the Reports which were tabled in Parliament on revenues and expenditures. All those issues were explained and hon. Mbadi had ample opportunity to discuss them and bring them out. The reason why he wants them again tabled while he was here is because he is using the Mars Report which was a production of the queries by the Controller and Auditor-General. Those were just queries. How can we be dealing with queries in Parliament? We should deal with actual answers because discrepancies arise as a result of time differences when revenue is collected.

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, the hon. Minister should bring the statement. The hon. Minister should confirm this.

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Mbadi, is that report from the Committee or it is just a collection of views from the Committee? Is that a report that has already been presented in this House?

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, I am not bringing any report. I am telling you to go to the Report of the Controller and Auditor-General. It is very clear. It tells you this--- And, please, Mr. Temporary Deputy Speaker, Sir, I would want this House to listen to me. What the Controller and Auditor-General is saying with regard to those taxes on Income Tax on income, profits and capital gains--- I will give you one example. He says: The Kenya Revenue Authority (KRA) collected Kshs166 billion. That is in the records of Kenya Revenue Authority. He says: "When I go to the Exchequer account, I find Kshs172 billion. I have been given from the Ministry Kshs177 billion." So, he is asking us: Where is the difference of this Kshs11 billion? That is not something that will force me to go to the books. You just add.

**The Temporary Deputy Speaker** (Prof. Kaloki): Alright. Hon. Mbadi, do you have anything else to add? You have the Floor. Order, hon. Minister!

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, I am saying: Could this Minister bring the answer to my statement and I will engage him appropriately. I have gone through those accounts. If you look at what they are talking about - the Public Accounts Committee (PAC) Report - it is one small paragraph on revenue. They have only talked about expenditure. We are talking about the following financial year. The financial year in question is the time he is in. In



fact, I was even wondering how PAC could do such a thing – just a small paragraph. So, how did you expect me to know? I had to go and look at the books themselves.

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Mbadi, do you have anything else to contribute? Are you done? Very well. Of course, let us have Eng. Maina and then we will come to you, hon. Shakeel.

**Eng. Maina:** Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to support this Motion because as a House, I feel that the Motion in front of us is important. This House has to deal with the business that we were brought here to deal with.

Mr. Temporary Deputy Speaker, Sir, having said that, I wish to say that when we are looking at the Budget and the planning in this country, we need to pay attention to what we want Kenya to be. I want to say that from the very beginning, there was a Sessional Paper which I think this Ministry and Government should acquaint itself with – that is Sessional Paper No.10 of 1965 which was authored by the late Tom Mboya and our present President. One of the issues in this country is that in the Budget, we should see more financing and spending on our agricultural sector. I want to say that Kenya is turning into an import country. In future, I would like the Budget to look at Kenya as an export oriented country. That has to start with simple things that Kenyans understand - like the growing of food crops. I think we spend colossal sums of money on that item and that should not be the case.

Mr. Temporary Deputy Speaker, Sir, I support the allocation of money for the war that we are fighting in Somalia; the reason being that, as a country, we cannot continue living in fear. We need that money. If we have any question against this allocation, I would seek the House that we defer that, but allocate that money because we need it for our security.

Mr. Temporary Deputy Speaker, Sir, we have had strikes in this country. There is money that was voted for teachers and nurses. Teachers and nurses were asking for money. I think this country has gone into a spiral where we are starting to be chasing expenditure because we are unable to control the cost of living. We need to look at that, including banks. We have left our markets at will to people whose agenda is purely profiteering. I would wish the Government to look into this matter and ensure that the cost of living in this country is looked into. The way to do it, from my point of view, is to ensure that, one, Kenya is an export-oriented country. Two; ensure that we have put in place various mechanisms to control profiteering.

Mr. Temporary Deputy Speaker, Sir, regarding the Constituencies Development Fund (CDF), I want to say that it will be sad if anybody would imagine that CDF should be removed from the respective Members of Parliament. CDF should remain! I want an undertaking from the Ministry that CDF should remain actually with Members of Parliament. CDF should not be left to the so-called Governors at all. As of now, we do not know who are going to be Governors, but we know who Members of Parliament are. Therefore, I want to say that CDF has done a lot for this country and if there is an issue with any particular management of CDF, let that proposal be brought here. But CDF should be enhanced because the Governor could turn that to be like the central Government, where the services are not reaching the smaller projects for the *wananchi*. Therefore, I would support and urge that before the next Budget comes here, let the CDF remain the way it is. Let it be given whatever channel or whatever term it is, but it should remain controlled by Parliament. I heard a Member say: “I do not know whether Mr. Maina is standing for Governor or Senator.” It is irrelevant. I talk the truth for Kenya and Kenyans. Even if I will be the Governor, I would like to say that CDF should remain with Members of Parliament.

Mr. Temporary Deputy Speaker, Sir, I would like to give credit to the present Minister. I want to say that he is co-operating and he has been honest to the House. That is the kind of

attitude that we expect now and in the future. Therefore, I want to urge Members of Parliament to support this Motion. Under agriculture, I want to single out one particular item called coffee. Today in this country, we are capable of producing only 15 per cent of coffee and yet, we are crying for the dollar. I find it completely paradoxical in this country that we want to vote money for tourism and things that we do not understand and things that depend on others. Coffee in this country is able to give us six times the amount of foreign exchange it is giving us. Why it is not giving us that kind of money is because today, as we know, agriculture - coffee included - there is nowhere where our farmers can go and borrow money. They cannot access money that can be spread over a long period of time and paid through affordable ways.

Mr. Temporary Deputy Speaker, Sir, I would, therefore, like to ask that the Ministry of Agriculture, even through Treasury, channels some money for such important items like growing coffee. Let that money go directly to the people. We have an issue, for example, with the kind of money we are giving to the Youth Enterprise Development Fund (YEDP). We give it to a bank. The bank earns money from it, yet it is public money. It does not make the slightest sense to me. It is like you, as a person, when you want to lend money to somebody, taking that money to a bank for that person to go to the bank to borrow it and repay it with interest.

Therefore, I would like to ask the Government to devise a way of channelling money directly to the beneficiaries. When we mean to help, say, women; we channel the money directly to them. If it is the youth, we channel the money there. If it is coffee farmers we want to help, let us channel the money there directly. The idea of channelling money through commercial banks is not good. Let us not listen to outsiders who come here and say that the Government should not be involved in this or that. I do not think it will work. It never worked in their countries. They only come here to speak that language when in their own countries, they are just small fellows lecturing in some small universities.

Mr. Temporary Deputy Speaker, Sir, I wish to end my contribution by saying that I support the Motion. I want to ask the Minister to continue engaging the House in the way he is doing.

Thank you.

**The Temporary Deputy Speaker** (Prof. Kaloki): I will have hon. Shakeel and then go to hon. Sambu.

**Mr. Shakeel:** Thank you, Mr. Temporary Deputy Speaker, Sir. I stand to oppose the Supplementary Estimates as they have been proposed.

Earlier on, I referred to Article 223(5) of the Constitution, which says that not more than 10 per cent of the appropriated amount can be changed. From the list that I have here, which was prepared by the Budget Committee, I can see that there are over 15 items whose revisions have exceeded 10 per cent of the appropriated amounts. It is 10 per cent of the appropriated amount, and not ten per cent of the total amount. That is very clear in the Constitution.

*(Loud consultations)*

Mr. Temporary Deputy Speaker, Sir, may I ask the “Luhya nation” to consult in low tones? May I, kindly, request that our colleagues on this side consult in low tones?

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Shakeel, continue, the hon. Members are listening.

**Mrs. Noor:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Prof. Kaloki): Sophie, what is your point of order?

**Mrs. Noor:** Mr. Temporary Deputy Speaker, Sir, did you hear the hon. Member refer to the “Luhya nation”? Is he in order to call people the “Luhya nation”? Could he clarify who the “Luhya nation” is?

**The Temporary Deputy Speaker** (Prof. Kaloki): Yes, hon. Shakeel!

**Mr. Shakeel:** Mr. Temporary Deputy Speaker, Sir, I did not intend any malice. We should be proud. If I have offended anybody by that, I withdraw.

**The Temporary Deputy Speaker** (Prof. Kaloki): Proceed.

**Mr. Shakeel:** Mr. Temporary Deputy Speaker, Sir, I will, however, still ask them to, kindly, consult in low tones.

Mr. Temporary Deputy Speaker, Sir, I was relating the issue of percentages to the provisions of Article 223(5), which is very clear that the amount appropriated cannot be exceeded by more than 10 per cent. Let me clarify to my colleagues that the 10 per cent is of the appropriated amount. Even hon. Kimunya will want to confirm that the appropriated amount is that amount appropriated to a Ministry.

The Supplementary Estimates are making a mockery of the budget process. A budget process is exactly what it says. You sit down and budget. I cannot see here anything that could be unforeseen that could not have been covered earlier.

Mr. Temporary Deputy Speaker, Sir, Mr. Mbadi has talked to you about the Ministry of Education where the Budget Committee had already put aside some money and it was turned down. But now we are bringing it back. So, that was foreseen.

There are also other issues that were foreseen like the Kenya Airways Rights issue. The issue of Budget and realignment must take place in the budgetary process. I want to even take on from what Eng. Maina said that he is very much concerned about road infrastructure. The Minister in his presentation earlier on said that some of the reasons why they want more money are because of the Thika project and yet the Minister is reducing the amount allocated to the Ministry of Roads by over 20.5 per cent. So, it is actually tantamount to shooting yourself in the foot. There is one vote where we have increased by 225 per cent; and that is the Ministry of Lands. This was where the Budget Committee had said put some money aside.

Mr. Temporary Deputy Speaker, Sir, when we say that we are putting money aside and we now want extra money, we forget that there is tax that is still to be collected. Earlier this afternoon the issue of tax not collected came up. I advise the Minister to kindly ask the revenue authorities to provide a list of people whose tax has not been paid. I was told this afternoon that somebody said that Mastermind Tobacco has not paid tax amounting to Kshs12 billion, while somebody else said that the company has not paid tax amounting to Kshs6 billion. We would like to know how much tax is not being paid, how that will affect our budget and whether we can go and collect this tax. I know there are certain cases where even the court has given the approval. There is a case where the court had given consent for attachment of some goods from a very large organization but nothing has been done there.

Coming back to the issue of Vision 2030, as I said earlier on, the budget process is a process where we set aside resources to meet our vision. Our Vision 2030, together with the Maputo Declaration, is that we would spend about 15 per cent of our budget---

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

**The Temporary Deputy Speaker** (Prof. Kaloki): What is it, Mr. Kimunya?

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I do not want to interrupt Mr. Shakeel, but in his contribution I did hear him say that he was told that a certain company called “Mastermind Tobacco” has not paid taxes of either Kshs12 billion or Kshs6 billion. The company he is talking about is not present in this House. This is a company registered under the laws of Kenya that enjoys as much protection as any other person who cannot be mentioned in this House without substantiation. I am not sure who told Mr. Shakeel about the company. Unless it is an authoritative source that can be tabled on the Floor of this House, I would like to ask that he withdraws that remark and the issue be expunged from the records because I am also aware that there is a Question pending before this House which will shed more light on that matter but it cannot be used as part of the contribution by Mr. Shakeel. So, I would like to urge that the hon. Member either substantiates in terms of the authority of his source or withdraws the mention of a company that cannot defend itself on the Floor of this House until the matter comes substantively through the Question that has been put on the Floor of the House.

**The Temporary Deputy Speaker** (Prof. Kaloki): Mr. Shakeel, indeed, that is true because that is supposed to be an allegation. You are even talking about Kshs12 billion or Kshs6 billion. On that matter, I think the honorable thing is just to withdraw the statement, not unless you have a document there which--- You have already said that it is either Kshs12 billion or Kshs6 billion. Either you are tabling two documents and if you cannot do that just go ahead, withdraw that remark and move on.

**Mr. Shakeel:** Mr. Temporary Deputy Speaker, Sir, I stand guided by Mr. Kimunya. I was actually referring to the question but Mr. Kimunya has guided me correctly. I shall withdraw that and wait for that discussion to take place when the question is raised.

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Mr. Shakeel; you have withdrawn.

**Mr. Shakeel:** I have withdrawn, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Prof. Kaloki): Very well.

**Mr. Shakeel:** Mr. Temporary Deputy Speaker, Sir, however, the gist of my argument was that there are a lot of taxes still outstanding and the further argument that I was proposing was that our Budget is a medium and short term step towards Vision 2030. What we are finding is that by reducing certain expenditures, especially on health or adding the expenditure on agriculture we are jeopardizing the achievement of our vision. This country must be food sufficient and we are not yet food sufficient. So, I urge the Minister to kindly look at some of these Supplementary Estimates that they have done and arrange them in such a way that there is not more than 10 per cent variation in each Ministry. If he does, I will gladly support him, but at this moment I cannot support the Motion.

With those few remarks, I beg to oppose.

**The Temporary Deputy Speaker** (Prof. Kaloki): All right. We had agreed that we would have Mr. Sambu and then Mr. Onyancha, in that order.

**Mr. Sambu:** Mr. Temporary Deputy Speaker, Sir, thank you for giving me this chance to give my views on this Motion. Basically, I support the Motion. In the last Budget Policy Statement and subsequently in the last Budget it was clear that this country was going through a very difficult time; as a result we recommended that we also take austerity measures. The Budget Committee went through the Budget Policy Statement of the time and the Budget, and we also came up with recommendation that; since the country was going through a very difficult time, we also needed to take some austerity measures. This House gave directives to various Ministries

to curtail allocations to non-priority areas such as communications, domestic and foreign travel, printing, hospitality, general supplies, furniture and vehicles. I am glad that some Ministries have complied with this directive, but most of the Ministries have not. In fact, they have come to ask for more; it is only those areas where we felt were not priority areas that needed curtailment in terms of allocation.

When you look at, for instance the Judiciary, it was very clear that we wanted curtailment in vehicles but the Judiciary has introduced a new item for the purchase of motor vehicles for Kshs500 million. But when you look at major increments one will appreciate that most of them are necessary; as far as I am concerned, I will support the Motion.

Regarding the increment particularly for our defence forces, we appreciate that our sons and daughters are doing a good job and we need to support them and to that extent, I will support the idea of increment to the defence forces.

On the issue of the TSC, that is where the Budget Committee wanted some more money. Now they have come to realize that, indeed, we needed more money. I still feel that the teachers deserve the money and I will certainly support the idea.

On the Ministry of Gender, Children and Social Development, one never knows when he will be an orphan. You never know when you will be vulnerable and to that extent too, I will support an additional Kshs400 million that they have asked.

I am not quite happy with the introduction of a new item in the Judiciary for the vehicles that we felt should not have been a priority at the time we were making the Budget last year.

The Ministry of Agriculture has asked for additional funds for the purchase of fertilizer and subsidy to the fertilizer. This is quite a good idea because we really want to have food security, but I am afraid these things are not reaching the common mwananchi. We believe that the price being charged for a 50 kilogramme bag of fertilizer is still high, particularly considering that the fertilizer is subsidized. Because of that subsidy, we are recommending that that price, particularly to the ordinary mwananchi, be reduced. The Departmental Committee on Agriculture, Livestock and Co-operatives has done quite a bit of research on this issue and we do not understand why the price of DAP should be more than Kshs1,500 per bag and the CAN should not be more than Kshs1,000 per bag, taking into account that these prices are being subsidized by the Government.

Of major surprise is the area of the Independent Electoral and Boundaries Commission (IEBC). We had a major problem in this country which we all know and we do not want the IEBC to have an excuse for a bad election just because they did not have the resources they needed. So, to have a reduction of Kshs4 billion from the late voter registration under the IEBC is not helping the situation.

Secondly, we all need water, particularly in the ASAL areas. We are fighting for water and water is life. In the last Budget, the Minister was very serious on the question of water and he said that we needed water in order to improve our food security. We provided the funds that were required, but these funds are now being reduced. This is an area where funds should not be reduced, but we should encourage the construction of more dams and water pans for irrigation purposes in order to increase our food production and, therefore, attain food security.

There was also a problem with the Ministry of Livestock Development which needed more money in order to save the livestock farmers, but now I can see a reduction. This was going to help the people of North Eastern Province, particularly in cattle rearing. It would have supported them in having more slaughter houses, so that during the dry season, their animals do not perish.

Mr. Temporary Deputy Speaker, Sir, I feel this reduction is unjustified and we need livestock. More so, when we have a commitment to the Arab world who need more meat--- In fact, we have an agreement to export more meat and we are not actually meeting that quota. That kind of financial support would have encouraged farmers in that sector to produce more livestock. That way, we will export more and meet the requirements.

With those few remarks, I support the Motion.

**Mr. C. Onyancha:** Thank you, Mr. Temporary Deputy Speaker, Sir. I want, at the outset, to say that I support this Motion, but I have reservations. But before I go into them, I want to address the issue of the Constitution.

Mr. Temporary Deputy Speaker, Sir, it may look irrelevant at the start, but the constitutionality of some of the actions that we are taking is hampered by the fact that the Constitution is new and is experimental for the time being. In my constituency, we have a problem generally about allotment of wards. In my County, we have got two constituencies, which are illegal under the Constitution because they exceed the maximum population allowed by the Constitution. That is just one example of where it does not “fit the foot”. Likewise, when it comes to budgeting, this Constitution is right now being tried for the first time. I would, therefore, not entirely blame the Minister for Finance for not absolutely adhering to the terms of the Constitution as laid out. Indeed, it may come to a point where it may be necessary for it to be amended because it is not possible to fulfil its terms. I have a case in mind, for example, with respect to Independent Electoral and Boundaries Commission (IEBC) where there appears to be a budget reduction. But on seeking explanation, I am informed that the IEBC is not ready to expend those sums before the year ends. Obviously for that reason, it had to be reduced. For me, to come out here and blame the Minister for Finance for that reason, I think would be unfair. We all understand why the IEBC is not ready to spend that money because of the cases which are going on and the uncertainty about the final results of the wards and, indeed, even the constituencies.

However, it is a pity that we are not thinking about introducing certain taxes, which would go a long way in assisting and curbing certain loopholes. One of them would have been, for example, a wind fall tax on, say, the gains on the shilling, which was a temporary gain that was brought about by - to a large extent - bad policy.

Mr. Temporary Deputy Speaker, Sir, I hope that something will be done about that in the near future. I support the increment with regard to teachers’ salaries as well as that of the Kenya Defence Forces. During the Budget last year, we were not at war. I can, therefore, fully understand why this is coming under the Supplementary Budget. Indeed, that is one of the cases that was not covered by the Constitution; emergencies like those. That needs to be corrected.

Mr. Temporary Deputy Speaker, Sir, I am very happy that the Minister has confirmed the retention of the Constituencies Development Fund (CDF) funding to the constituencies. I am very, very, very hopeful that hon. Members will utilize this fund properly so as to enhance development in our constituencies, which has already brought a lot of change at the grass root level.

Mr. Temporary Deputy Speaker, Sir, let me come to the Budget differentials that we are complaining about. We know that these Estimates were submitted by various Ministries, and each Ministry has an Accounting Officer, who actually proposes what the requirements of that Ministry are. I notice that Mr. Kimunya’s Ministry – now that I am mentioning it, he is listening – has proposed the reduction of 28 per cent with respect to the same expenditure as is required by most of the other Ministries. I believe that other Ministries, like the Ministry of Agriculture,

could do a lot better in assisting farmers. There were funds which were allocated in the last Budget to the National Cereals and Produce Board (NCPB); these funds were to buy fertilizer for the farmers. Unfortunately, even after it has been purchased, the distribution is a problem. We have seen cases in my county where dealers and distributors of fertilizers are the ones who actually line up to receive the fertilizer and then go and double the price to the farmers. This is an issue which, I think, should be looked into. I would propose that measures be taken against these people. These are some of the people who hinder the Budget process and its success; it reflects badly on the Government.

Mr. Temporary Deputy Speaker, Sir, I want to touch a little bit on the issue of security. Apart from our KDF, right from the village, Kenyans are living in fear because of insecurity. In my constituency, we have adopted a security measure called community policing, which has been very, very effective. I would like to see in the very near future – I had requested this from the Minister for Finance – this initiative financed properly so as to guarantee continued security, which has started deteriorating because of lack of funding.

Mr. Temporary Deputy Speaker, Sir, I want to commend the Minister for the efforts he has put into this; I also urge him to have those Accounting Officers who do not budget properly-- --. They should at the beginning have explanations ready so that we do not have to fight over Supplementary Estimates; explanations for the differentials should have been given to the Budget Committee.

With those few remarks, Mr. Temporary Deputy Speaker, Sir, I beg to commend the Minister and I support.

**Mr. James Maina Kamau:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this chance to support this Motion.

Mr. Temporary Deputy Speaker, Sir, I stand here to support this Motion because it is a very important one; we need to pass this Supplementary Budget because we know we have our soldiers fighting in Somalia. That is number one; we know that war, anywhere in the world, is very expensive. This is the first time, I think, the country is fighting a full scale war in another country; our soldiers need support, so that they get motivated and continue to fight. They are fighting and dying for the sake of Kenyans. So, whatever they are doing cannot be taken for granted. In war, we require equipment and this equipment must be bought with money. This equipment is actually very, very expensive.

Our soldiers need to be properly dressed when they are in the combat zone and all these cost money. We also need our soldiers to get fed, because if they are not fed they will, definitely, start selling their bullets and guns. As a result, the country will be defenseless. So, for anybody to think that the money will be wasted, I think he is either naïve or something. It is important that we have our security taken care of. The soldiers are doing a very good job in Somalia and need all our support as Kenyans.

Mr. Temporary Deputy Speaker, Sir, I support this Motion, again, because we are going to pay our nurses properly. We know that nurses do a very good job. They are professionals and we spend a lot of money training them. So, if we cannot maintain them, it will be a disgrace. The other day the nurses were on the streets and it is very embarrassing for our country that we cannot pay our nurses properly. We do not need to have such kind of thing happening again in this country. Again, we know that our nurses are running out of this country in very great numbers. They are doing this because we are not able to sustain them and pay them good salaries. They need to be paid at the rates that are competitive internationally, so that we can maintain them here. This is because they do a very good job. I have never seen a hospital without

nurses. So, it is important that we make sure that they are taken care of, so that we maintain them in this country. As I said, it is very expensive to train one nurse. So, to have one running out of this country is also not good for us. So, it is important that we support this Motion, so that this money is available to pay these nurses.

Mr. Temporary Deputy Speaker, Sir, the other point that I would like to make that has made me support this Motion is about teachers. We need to have more teachers employed in this country. This is because if you go to any school in the country, including Kandara, you will notice there are no enough teachers. So, it is important that we employ these teachers. After employing them, we need to pay them good money because it is very embarrassing to see a teacher teaching and he cannot support his family, dress properly or live decently. So, it is important that we pass this Motion, so that the teachers in this country can get proper salaries.

Mr. Temporary Deputy Speaker, Sir, we all know that infrastructure in this country is getting into very good shape. If you travel around the country, you will find that there are road projects all over. For example, if you travel from Nairobi to Thika, you will see a superhighway. Of course, all these superhighways are built with money. Without money we cannot get those highways and proper roads. So, it is important that we support this Supplementary Budget, so that these things can be maintained up to the level that the country will require.

Mr. Temporary Deputy Speaker, Sir, there is the issue of the Constituencies Development Fund (CDF). I support the fact that the CDF should not be removed from the control of Members of Parliament. It has been helping us to support our people. If it is given to the Governors, it could go to a crazy Governor who may not want to help the people. So, it is important that the CDF is left under the control of the hon. Members as we have been doing all the time.

Mr. Temporary Deputy Speaker, Sir, if every cent of the Budget that we are passing will go to address the issues that I have mentioned, I will not hesitate to support this Motion, because it is important.

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

**Mr. Mwangi:** Mr. Temporary Deputy Speaker, Sir, I rise to support the Motion.

Mr. Temporary Deputy Speaker, Sir, during the Financial Year 2010, the Ministry of Education had promised and agreed that they would take on early childhood development. That is the basis of our education. We discussed this in our Committee and agreed that the Ministry was going to provide funds for early childhood development, but nothing has been done about it.

Mr. Temporary Deputy Speaker, Sir, I hope the Minister for Finance is listening. We have not known of any country that has taken off economically without addressing the early childhood development, yet today the early childhood development sector has been lumped together with other administrative programmes. I am afraid that unless the Minister for Finance and the Minister for Education work together, we may not be able to take off in early childhood development which is a very big shortcoming in our educational development.

The other issue is that we have read that the retired teachers are still waiting to be paid Kshs3 billion. I hope the Minister for Education and the Minister for Finance have considered the matter after the court gave a ruling for the teachers to be paid. Some of them have already died. I hope that the Minister for Education has taken care of that.

Our schools have no adequate teachers. There is no quality education that will be provided in Kenya when teachers are inadequate. We know very well that this country is short of 80,000 teachers, yet we are talking about Vision 2030. How do you arrive at that when you have a mediocre education system, and the Government cannot employ enough teachers, both in primary and secondary schools?



Mr. Temporary Deputy Speaker, Sir agriculture is the backbone of this country. The Ministry of Finance and the Ministry of Agriculture should consider themselves lucky that they are able to feed part of the population, depending on rain. We are not going to be able to feed our country if we do not support projects on irrigation. It is sad. This financial year the Ministry of Agriculture requested District Agricultural Officers to identify areas where water pans could be developed, but the Ministry for Finance has not provided funds. We went out to the constituencies, identifying areas where we could develop water pans but the Minister for Agriculture stopped the programme. I hope the Minister for Finance is listening. Why did the Minister for Agriculture stop the development of those water pans when the Ministry had promised Kenyans that they would be developed? It is time the Minister for Agriculture put more money into irrigation.

We are talking about livestock in this country; the price of animal feeds has shot up. The New Kenya Co-operative Creameries (KCC) is buying the farmers milk for peanuts, that is, Kshs23 per kilogramme yet the consumer is paying three times as much for the same amount of milk.

The farmer does not benefit. We have been talking about provision of fertilizers to our farmers. You will be surprised that today when the planting season is over some of our areas have not received any fertilizer. While I support this Motion, a lot needs to be done in the agricultural sector, the livestock sector, the education sector and the water sector.

We wish the new Minister for Finance all the best, but let us hope that these funds that we are voting will not be returned to Treasury while we are suffering and the small-scale farmers are still in need of fertilizers and other inputs to improve agriculture.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Prof. Kaloki): All right. Mr. Minister you can respond now then we put the Question.

**The Minister for Finance** (Mr. Githae): Thank you very much, Mr. Temporary Deputy Speaker, Sir. I thank the Members of this august House for the support they have given to the Supplementary Budget. I will only talk about three issues that have come up. One is on the Lamu Port – South Sudan – Ethiopia Corridor and I would like to assure this House that it is just a coincidence that it is being inaugurated during an election year. This has nothing to do with elections whatsoever. In any case, I would not even have allowed it to be part of electioneering and if I had the slightest suspicion that it was being done for electioneering, I would definitely not support it.

However, this is an important project because it will open up that area of eastern Kenya. It is an important project that needs to be supported. Why is there an increase in the allocation to the Ministry of Lands? Basically, this is because of the need to purchase land for the IDPs. That is the reason for the increase.

Somebody raised an issue on why we have reduced the budget for the Ethics and Anti-Corruption Commission. It is not that we do not want to fight corruption. The reason why the amount has been reduced is because they had proposed the construction of offices but due to a court case, this did not proceed. Therefore, the amount was surrendered and applied elsewhere.

Another Member raised an issue about the increase in the Cabinet Office. This is basically because of the support required by the Government on donor funding. We have got some donor funding for the e-government and we are required to have a counter funding from the Government. That is the reason why it is there.

Mr. Temporary Deputy Speaker, Sir, the reason why the Foreign Affairs' budget has been increased is because we are compensating them for the depreciation of the Kenyan Shilling. They were really affected when our Kenyan Shilling depreciated to Kshs107 against the dollar because they are paid in foreign currency. However, here, it is done in Kenyan shillings and when they did the conversion, they were really affected. Some missions could not even pay for fuel and that was the reason for the increase. I think those are the issues that arose.

With those remarks, I beg to move.

*(Question put and agreed to)*

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

### IN THE COMMITTEE

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

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Members, we are now in the Committee of the Whole House and on Order No.10. Let us move to the second part of it, which is the Finance Bill, (Bill No.12 of 2011). So, we will proceed.

### THE FINANCE BILL

*(Clauses 2, 3 and 4 agreed to)*

#### *Clause 5*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 5 and substituting therefor the following new Clause-

**Amendment of  
Section 5 of  
Cap. 470.**

**5.** Section 5 of the Income Tax Act is amended in subsection (4)-

(a) by inserting the words "or his beneficiaries" immediately after the words "full time employee" wherever they occur in paragraph (b);

(b) by deleting paragraph (h) and substituting therefor the following new paragraph-

(h) For the purposes of this subsection-

(i) "beneficiaries" means the full time employee's spouse and not more than four children whose age shall not exceed twenty-one years; and

(ii) “low income employee” means an employee whose taxable income is not subject to tax at the rate of more than twenty per cent under Head B of the Third Schedule to this Act.

*(Question of the amendment proposed)*

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, I think it will be important for the Minister to be taking even one minute to explain to this House why he wants it done? Even the mother Bill is not with us and he needs to tell us. That is the practice.

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I thought that it was clear on the Order Paper. Basically, it is just giving a definition of “beneficiaries” to avoid any misinterpretation. So, there is only one interpretation for a beneficiary.

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

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

*(Clause 5 as amended agreed to)*

*(Clauses 6 and 7 agreed to)*

Clause 8

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 8 and substituting therefor the following new Clause—

**Amendment of  
Section 35 of  
Cap. 470.**

**8.** Section 35 of the Income Tax Act is amended –

(a) in subsection (1) –

(i) by deleting the words “aircraft or aircraft engines” appearing in paragraph (c) and substituting therefor the words “aircraft, aircraft engines, locomotives or rolling stock”;

(ii) by inserting the words “and deemed interest” immediately after the word “interest” wherever it occurs in paragraph (e);

(iii) by inserting the following new paragraph immediately after paragraph (i) –

(j) winnings from betting and gaming;

(b) in subsection (3), by inserting the following new paragraph immediately after paragraph (h) –

(i) winnings from betting and gaming.

Mr. Temporary Deputy Chairman, Sir, this is basically imposing taxes on betting and gaming services paid to non-residents. We want non-residents to also pay tax.

*(Question of the amendment proposed)*

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

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

*(Clause 8 as amended agreed to)*

*(Clauses 9 and 10 agreed to)*

*Clause 11*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 11 and substituting therefor the following new Clause –

**Amendment of  
section 52B of  
Cap.470.**

11. Section 52B of the Income Tax Act is amended by deleting the proviso to subsection (1) and replacing it with the following new proviso–

“Provided that an employee who is employed by or renders service to one employer shall not be required to give a return under paragraph (a) –

(i) if the employee had no income chargeable to tax for that year of income other than emoluments; and,

(ii) the tax payable in respect of those emoluments had been recovered by deduction under section 37.”

*(Question of the amendment proposed)*

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

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

*(Clause 11 as amended agreed to)*

*(Clauses 12 and 13 agreed to)*

*Clause 14*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 14 and substituting therefor the following new Clause:-

**Amendment  
of Third  
Schedule to  
Cap. 470.**

14. The Third Schedule to the Income Tax Act is amended –

(a) in paragraph 3 –

(i) by inserting the words “and deemed interest” immediately after the words “and interest” appearing in subparagraph (e) (i);

(ii) by inserting the following new subparagraph immediately after subparagraph (l) –

(m) in respect of winnings from betting and gaming, twenty percent.

(b) in paragraph 5-

(i) by deleting the expression “five percent” appearing in subparagraph (f)(i) and substituting therefor the expression “ten percent”;

(ii) by inserting the following new subparagraph immediately after subparagraph (i) –

(j) in respect of winnings from betting and gaming, twenty percent:

Provided that the tax so deducted shall be final.

Mr. Temporary Deputy Chairman, Sir, there is one correction I would like to make on this amendment because I see that hon. Okemo is not here. We had agreed with him on this one. Since he is not here, I need not amend mine, so that it can correspond with his. This is in respect of part (b) of the amendment, which says “(i) by deleting the expression “five per cent---”

**The Temporary Deputy Chairman** (Prof. Kaloki): Order, Minister! I saw hon. M’Mithiaru behind you, trying to, maybe, stand in for hon. Okemo.

Hon. M’Mithiaru, what are you trying to do?

**Mr. M’Mithiaru:** Mr. Temporary Deputy Chairman, Sir, the effect is the same.

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. M’Mithiaru, go ahead and put that on record.

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir---

**The Temporary Deputy Chairman** (Prof. Kaloki): Order! Order, Minister!

Proceed, hon. M’Mithiaru!

**Mr. M’Mithiaru:** Mr. Temporary Deputy Chairman, Sir, since my Chairman has already talked with the Minister and they have seen that the effect will be the same, the Minister is to move the amendment.

**The Temporary Deputy Chairman** (Prof. Kaloki): Very well! Minister, you can now move the amendment.

**The Minister for Finance** (Mr. M’Mithiaru): Mr. Temporary Deputy Chairman, Sir, I am proposing that we amend the proposed amendment to Clause 14. The amendment is basically to correct part (b) of the amendment to paragraph 5, which should now read “by deleting the expression “five percent” – which should be substituted with “ten per cent” – appearing in subparagraph (f)(i) and substituting therefor the expression “ten per cent” – which I am now revising to read “five per cent”.

The effect of this will be the same. We are basically reducing the Withholding Tax for professionals from 10 per cent to five per cent. We have agreed on this with the Committee.

**The Temporary Deputy Chairman** (Prof. Kaloki): Very well!

*(Question of the amendment proposed)*

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, I do not know why the Minister and the Committee took that route but I thought we could just delete the entire Sub-Section d(1) to b(1) because at the moment the withholding tax has always been 5 per cent. So, the Minister was proposing it be moved to 10 per cent. But he is saying he wants it to revert back to 5 per cent. This House had not approved the movement from 5 per cent to 10 per cent.

**The Minister for Transport (Mr. Kimunya):** Mr. Temporary Deputy Chairman Sir, indeed, what Mr. Mbadi is saying is within the Finance Bill. The prevailing rates before the introduction of the Finance Bill was 5 per cent but the Finance Bill attempted to raise it to 10 per cent. So, the figure in the Bill is 10 per cent. The correction is now to reduce the 10 per cent to the 5 per cent so that we get to the *status quo*. So, the amendment is proper in that respect.

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

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

*(Clause 14 as amended agreed to)*

*(Clauses 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29,  
30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43 agreed to)*

*New Clause 1A*

**The Temporary Deputy Chairman (Prof. Kaloki):** Where is Dr. Kones? He had an amendment to move. Since the hon. Member is not in the House, the Chair will drop his amendment

*(Proposed New Clause 1A by Dr. Kones dropped)*

*New Clause 1B*

**The Temporary Deputy Chairman (Prof. Kaloki):** Dr. Kones, are you now in the Chamber?

**Dr. Kones:** Yes, Mr. Temporary Deputy Chairman, Sir. First, I must apologize because I have come late and I had another amendment.

**The Temporary Deputy Chairman (Prof. Kaloki):** Order, Dr. Kones! We have dropped your amendment to New Clause 1A because you were away. I now want you to go to New Clause 1B. So move with us.

**Dr. Kones:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the following new clause be inserted immediately before clause 2, after the heading "Part II – Customs and Excise" -

**Amendment of**

Section 95 of  
Cap.472

**1B.** Section 95 of the Customs and Excise Act be amended-

(a) in sub-section (5) by inserting the words “or such further period, not exceeding six months, as the Commissioner may, on the application of a licensee, permit in respect of that license” and

(a) by inserting the following new sub-clause after sub-clause (5)-

“(6) The Commissioner shall ensure that a metering device prescribed under sub-section (4) does not compromise the safety of goods or materials that are manufactured by a licensee or the health of consumers of the goods or materials.

Let me make some explain so that hon. Members can follow what the amendment is meant to achieve. It is that last year we had moved an amendment that all factories were supposed to install what we called flow meters in certain factories and then we had given a specific deadline by which those factories must install them. however, we realized that after sometime quite a number of those factories were not able to meet that requirement within that period; it was the feeling that we could, probably, give them another grace period so that if they were not able to do that within that period, the Commissioner would be given the power to act in another six months thereafter depending on the reasons for those factories’ failure to install the meters.

*(Question of the New Clause 1B proposed)*  
*(New Clause 1B read the First Time)*

*(Question, that the new clause 1B be*  
*read a Second Time, proposed)*

*(Question, that the new clause 1B be*  
*read a Second Time, put and agreed to)*

*(The new clause 1B was read a Second Time)*

*(Question, that the new clause 1B be*  
*added to the Bill, put and agreed to)*

*New Clause 2A*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by inserting the following new Clauses immediately after Clause 2-

**Amendment of**  
**Section 119 of**  
**Cap.472.**

2A. Section 119 of the Customs and Excise Act is amended by inserting the following new sub-section immediately after sub-section (6)-

(7) Notwithstanding the provisions of sub-sections (1) and (1A), the Minister may, by notice in the Gazette, adjust the specific rate of excise duty to take account of inflation.

The main purpose of this amendment is to empower the Minister to adjust specific rates of Excise Duty to take account of inflation so that to bring it at par with *ad valorem* rate of Excise Duty from time to time. It gives flexibility.

*(Question of the new clause 2A proposed)*

*(New clause 2A read the First Time)*

*(Question, that the new clause 2A be read a Second Time, proposed)*

*(Question, that the new clause 2A be read a Second Time, put and agreed to)*

*(The new clause 2A was read a Second Time)*

*(Question, that the new clause 2A be added to the Bill, put and agreed to)*

#### *New Clause 2B*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by inserting the following new Clause immediately after Clause 2-

**Amendment of Section 127C of Cap.472.** 2B. Section 127C of the Customs and Excise Act is amended in subsection (2) by adding the words “except in the case of beer and wine, where the value shall be the retail selling price as determined in accordance with the regulations” immediately after the words “ex-factory selling price”.

The amendment seeks to impede the retail selling price (RSP) in the Customs and Excise Act as a basis for levying *ad valorem* Excise Duty. Currently, the law only provides factory selling price as a basis for levying *ad valorem* Excise Duty.

*(Question of the new clause 2B proposed)*

*(New clause 2B read the First Time)*

*(Question, that the new clause 2B be read a Second Time, proposed)*

*(Question, that the new clause 2B be read a Second Time, put and agreed to)*

*(The new clause 2B was read a Second Time)*

*(Question, that the new clause 2B be added to the Bill, put and agreed to)*



*New Clause 2C*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by inserting the following new Clause immediately after Clause 2-

**Amendment of  
Section 139 of 2C.  
Cap. 472.**

Section 139 of the Customs and Excise Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (h)-

(i) that in the case of water, remission shall be granted to such extent as the Minister may, by notice in the Gazette, specify.

*(Question of the new clause 2C proposed)*

*(New clause 2C read the First Time)*

*(Question, that the new clause 2C be read a Second Time, proposed)*

*(Question, that the new clause 2C be read a Second Time,  
put and agreed to)*

*(The new clause 2C was read a Second Time)*

*(Question, that the new clause 2C be added to the Bill,  
put and agreed to)*

*New Clause 5A*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 5-

5A. Section 10 of the Income Tax Act is amended-

(a) in paragraph (c), by inserting the words “and deemed interest” immediately after the word “interest”;

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

(f) -

(g) winnings from betting and gaming.

*(Question of the new clause 5A proposed)*

*(New clause 5A read the First Time)*

*(Question, that the new clause 5A be read the Second Time, proposed)*

*(Question, that the new clause 5A be read the Second Time, put and agreed to)*

*(The new clause 5A was read a Second Time)*

*(Question, that the new clause 5A be added to the Bill, put and agreed to)*

*New Clause 7A*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 7-

**Amendment of** 7A. Section 34(2) of the Income Tax Act is **Section**  
**34 of** amended by inserting the following new  
**Cap. 470.** paragraph immediately after paragraph (h)-

- (i) winnings from betting and gaming.

*(Question of the new clause 7A proposed)*

*(New clause 7A read the First Time)*

*(Question, that the new clause 7A be read the Second Time, proposed)*

*(Question, that the new clause 7A be read the Second Time, put and agreed to)*

*(The new clause 7A was read a Second Time)*

*(Question, that the new clause 7A be added to the Bill, put and agreed to)*

*New Clause 15A*

**Mr. Mwaita:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Finance Bill be amended by inserting the following new clause after Clause 15-

**Amendment of** 15A. Section 16 of the Rating Act is amended-  
**Section 16 of**  
**Cap.267** (a) in sub-section (3) by inserting the word

“simple” after the words “The rating authority shall charge”; and

(b) by inserting the following new sub-section after sub-section (3)-

“(4) Notwithstanding sub-section (3), the interest charged shall not exceed the principal amount of the rate owing”

Mr. Temporary Deputy Chairman, Sir, the import of this is that we wish to amend the Section 16 of the Rating Act to bring specificity in terms of computing rates for rate payers. The second point is that this would accelerate and promote land owners to pay their rates in time and avoid the situation where they have to come to the Minister every year seeking for a waiver. Thirdly, it would also serve the *in duplum* rule where accumulated interests would not exceed the principal sum every year. Thank you.

*(Question of the new clause 15A proposed)*

*(New clause 15A read the First Time)*

*(Question, that the new clause 15A be read the Second Time, proposed)*

*(Question, that the new clause 15A be read the Second Time, put and agreed to)*

*(The new clause 15A was read a Second Time)*

*(Question, that the new clause 15A be added to the Bill, put and agreed to)*

#### *New Clause 19A*

**Mr. M’Mithiaru:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 19-

**Amendment of  
the Seventh Schedule  
to Cap.476**

**19A.** The Seventh Schedule to the Value Added Tax Act is amended in paragraph 6(5) by deleting the word “an” appearing after the words “any person to use” and substituting therefor the words “a General Packet Radio Service (GPRS) enabled.”

*(Question of the new clause 19A proposed)*

*(New clause 19A read the First Time)*

*(Question, that the new clause 19A be read  
a Second Time, proposed)*

**Mr. M'Mithiaru:** Mr. Temporary Deputy Chairman, Sir, the import of this amendment is really to improve on the revenue collection because the Kenya Revenue Authority (KRA) will be connected online to this GPRS.

*(Applause)*

*(Question, that the new clause 19A be  
read a Second Time, put and agreed to)*

*(New clause 19A read the Second Time)*

*(Question, that the new clause 19A be added to  
the Bill, put and agreed to)*

*New Clause 28A*

**The Temporary Deputy Chairman** (Prof. Kaloki): Let us move to the next Clause 28A.

Hon. Members, I will propose that New Clause 28 (a) be read a Second Time.

It has been distributed, not unless--- Hon. Mututho will be coming later to move it. We will get to that when we reach there. So, let me do the first section and then we will get to hon. Mututho.

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

**The Temporary Deputy Chairman** (Prof. Kaloki): Order! Order! Order!

**The Minister for Roads** (Mr. Bett): Mr. Temporary Deputy Chairman, Sir---

**The Temporary Deputy Chairman** (Prof. Kaloki): Order! Order! Order, Minister! We were coming to that. There will be discussion. I have proposed it. Is there any question or comment?

Proceed, hon. Minister. I have proposed; you can contribute.

**The Minister for Roads** (Mr. Bett): Mr. Temporary Deputy Chairman, Sir, I am contributing to what I do not have. So, I want to humbly request that, that document be given to us so that we may have the benefit---

**The Temporary Deputy Chairman** (Prof. Kaloki): That is fair enough!

*(Mr. Kioni passed a document across the Table to Mr. Bett)*

Order, hon. Kioni! You cannot do that!

**The Minister for Roads** (Mr. Bett): Mr. Temporary Deputy Chairman, Sir, he has given me the document in a very unorthodox manner.

**The Temporary Deputy Chairman** (Prof. Kaloki): No! No! No!

All right. the document is available, so, we can proceed. Is there any other contribution before I put the question?

Yes, Minister?

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I believe the normal practice on the introduction of any new clause is that, once you call for the new clause to be read a Second Time, the Mover of the new clause has to move it, then it is debated so that, in effect, it goes through the Second Reading. When you go through the Second Reading, then it becomes a part of the Bill. Unless there is a subsequent amendment in the Committee, it will just be a proposal and putting of the question. So, I believe that all you need to do is for hon. Mututho to move the amendment so that he can convince the House as to the rationale for the amendment and what it means. Once it has gone through the Second Reading---

**The Temporary Deputy Chairman** (Prof. Kaloki): That is fair enough!

**The Minister for Roads** (Mr. Bett): It becomes the property of the Committee.

**The Temporary Deputy Chairman** (Prof. Kaloki): Fair enough, hon. Kimunya! You have said enough!

*New Clause 28A*

**Mr. Mututho:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Finance Bill be amended by inserting the following clause after Clause 28-

**Amendment of Section 2 of Cap.488**     **28A.** Section 2(1) of the Banking Act is amended in the definition of the expression “banking

business” by inserting the following new paragraph immediately after paragraph

(c)-

(d) such other business activity as the Central Bank may prescribe as being part of banking business.

Mr. Temporary Deputy Chairman, Sir, *Hawana* is simply an informal money transfer and is very common in most communities. It is an ancient money transfer system, but the problem with it is that it has been associated with illegalities, such that the Government does not collect any revenues or commissions, whereas, if you work from the Forex bureaus, it will be possible to trace back who actually received what portion of money and the Government is able to tax appropriately. Just like M-Pesa when it came, this is M-Pesa of the ancient days and you have to use their own secret codes and move money from point A to B.

Mr. Temporary Deputy Chairman, Sir, that is the essence of this particular amendment.

*(Question of the new clause 28A proposed)*

*(New clause 28A read the First Time)*

*(Question, that the new clause 28A  
be read a Second Time, proposed)*

**Mr. M’Mithiaru:** Mr. Temporary Deputy Chairman, Sir, I think the way this clause is being crafted is like it is redefining the banking business. From the Banking Act, they define that the banking business includes--- Then, now they enumerate what the bank does. So, it does not include that one. The same Banking Act includes what they call prohibited business, that is, what banks cannot do. So, by bringing this one here, it is not adding any value at all in this particular respect. More so, the Mover has talked about M-Pesa service. It is like bringing in that one to be a banking activity and excluding the current providers from that kind of activity. So, I do not think that this clause is adding value to this one.

**The Minister for Finance (Mr. Githae):** Mr. Temporary Deputy Chairman, Sir, it is not very clear what really is the intention of this proposed amendment. If the intention is to include M-Pesa as banking business, then we must oppose it. If the intention is to include foreign exchange bureaus as banking businesses, then we must oppose it. This is because this is now really expanding the definition of banking business. In any case, the definition of banking is not exclusive, but inclusive. So, really, we do not have an idea what the purpose of this amendment is, unless he tells us.

Mr. Temporary Deputy Chairman, Sir, I oppose.

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, even more fundamentally, I think we need to oppose this amendment. This is because it says “such other business activity as the Central Bank may prescribe as being part of banking business.” I think that this is giving the Central Bank of Kenya too much power. We do not even know how much and how far the Central Bank could go in prescribing. They may even say that if I transfer money to my wife in the house, it is banking business.

**The Temporary Deputy Chairman (Prof. Kaloki):** All right, Mr. Mbadi! Since we are in the Committee stage, we have contributed enough. So, I will put the Question.

*(Question, that the new Clause 28A be read  
a Second Time, put and negatived)*

*New Clause 30A*

**The Temporary Deputy Chairman (Prof. Kaloki):** Hon. Midiwo!

Hon. Mbadi, do you have the mandate to move it on behalf of hon. Midiwo? Yes, he is fully authorized to move that amendment.

Proceed, hon. Mbadi!

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, on behalf of hon. Midiwo, I beg to move:-

THAT, the following new clause be inserted immediately after Clause 30-

**Insertion of new sections 16B and 16C in Cap. 488.**

**30A.** The Banking Act is amended by inserting the following new sections immediately after section 16A—

**Maximum interest chargeable.**

16B. The maximum interest rate that a bank or a financial institution may charge for a loan or monetary advance shall not exceed by more than four per centum, the rate set and published by the Monetary Policy Committee established under section 4D of the Central

Cap. 491. Bank of Kenya Act.

**Minimum interest rate payable.** 16C. The minimum interest rate that a bank or a financial institution shall pay on deposits held in interest earning accounts shall be at least seventy per centum of the base rate set and published by the Central Bank of Kenya.

*(Question of the new clause 30A proposed)*

*(New clause 30A read the First Time)*

*(Question, that the new clause 30A be read a Second Time, proposed)*

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, this is something that has been in the public domain for quite sometime now. We are aware of what banks have been doing in this economy. Hon. Members, this is the right time to be with the people of Kenya; those middle class people who are paying high interest rates. We are not even hurting banks so much. What we are saying is: Yes, once the CBR rate has been set, if it is 20 per cent, we can allow you to go upwards of 24 per cent.

I also want to say that this is the only country, probably in the world where the spread is so huge. The banks give us very low interest rates on deposits but charge us very high interest rates on loans. I do not need to belabour this point but just to ask my colleagues to support this amendment.

**An hon. Member:** Propose the Question!

**The Temporary Deputy Chairman** (Prof. Kaloki): I had already proposed it; so, I need to put the Question now. Is there confusion?

Mr. Mbadi has already explained the rationale for that particular amendment. We can now take a few contributions; we go to Mr. Duale and then we shall pick three other hon. Members.

**Mr. Duale:** Mr. Temporary Deputy Chairman, Sir, I stand to oppose this amendment. Capping interest rates might appear feasible and might be very populist but it can only work if Kenya was a communist country. It cannot work in this country. It cannot work in a country where there is a free market. I want to raise fundamental issues on this amendment. We want to control both the cost and the revenue. That is the worst form of price control. Again, this amendment is very simplistic in view of the structural drivers of interest rates in the market where both the private and public sector must play a very crucial role in the regulation of interest rates.

**Mr. Outa:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**Mr. Duale:** Finally, this will show the credit lending rate that will affect---

**Mr. Outa:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Speaker** (Prof. Kaloki): Mr. Duale, make your contribution!

**Mr. Duale:** Mr. Temporary Deputy Chairman, Sir, I want to give figures. Credit in the private sector in this country has grown over the years, and reached Kshs1.16 trillion and Kshs13.4 billion in 2011 alone. If you look at 2010, it was Kshs880 billion.

**Mr. Outa:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**Mr. Duale:** Can I finish?

**The Temporary Deputy Speaker** (Prof. Kaloki): What is not in order?

**Mr. Outa:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Would I be in order to ask the hon. Member--- The hon. Member who is contributing knows that this Bill does not affect him because he is an Islamist and he banks in Islamic---

**The Temporary Deputy Speaker** (Prof. Kaloki): Order! Just ignore that and proceed.

**Mr. Duale:** Mr. Temporary Deputy Chairman, Sir, from the outset, I said this can only work in communist countries, and maybe those who are spearheading it should wait for their day when they can turn this country into a communist state.

I want to give my final statement. This House and this country must promote competitiveness. It must enhance consumer protection measures and empower credit bureaus. That will reduce the interest rates. That is the way forward.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I stand to strongly oppose the introduction of this clause. I want to draw hon. Members' attention to the implications of the introduction of this clause. The introduction of this Clause is purporting to say that the rate set by the Monetary Policy Committee, which is a committee that sets the rate for purposes of signaling whether the banks should lend more or less; it is not the contractual arrangement between a borrower and a bank.

Right now, the rate is at 18 per cent. If this was to pass through, automatically, all interest rates on all loans would go, including any that any of us has, to the rate of 22 per cent. We have all borrowed from banks.

**Dr. Nuh:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I think the Standing Orders clearly stipulate that a Member is entitled to give this House facts. The amendment that is being fronted by hon. Midiwo says; "not more than." It does not say that a bank has to charge 4 per cent and above. So, when hon. Kimunya misleads this House into believing that the moment we pass this amendment, then all interest rates will go to 22 per cent, that is clearly misleading. Hon. Kimunya, a former Minister for Finance, has to be honest enough to tell the House what the amendment entails and not to come and give propaganda to the House.

**The Temporary Deputy Speaker** (Prof. Kaloki): Order! Dr. Nuh, what is that that the Minister said that is not in order?

**Dr. Nuh:** Mr. Temporary Deputy Speaker, Sir, the Minister misled the House into believing that the moment we pass this amendment, it means that all banks will charge 22 per cent because the CBK rate is at 18 per cent, which is clearly misleading.

**The Temporary Deputy Speaker** (Prof. Kaloki): Okay. I have heard you.

Yes, Mr. Kimunya!

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I believe that is an argument. If the hon. Dr. Nuh, who we respect for his age and enthusiasm was to read this amendment, he would see that it is basically saying that the maximum interest that a bank may charge - it is optional - is 22 per cent based on the CBR rate of 18 per cent today. It also says that the bank must pay deposit rates from tomorrow. I will be happy to get that but for now let me just proceed with my line. It also says that if we pass this amendment, the minimum interest that banks shall pay shall be 12.6 per cent on the deposit.



Basically, we are saying that if everyone took advantage of the introduction of this clause, loans would be 22 per cent from tomorrow. This is because we have allowed them a leeway of up to 22 per cent. We are also saying that all deposits must be paid for at 12.6 per cent. We are allowing even a spread of close to up to 10 per cent. Currently, people are enjoying deposits even at 18 per cent. So, anyone who has a deposit at 18 per cent would have it automatically lowered to 12.6 per cent while anyone who has a loan at 20 per cent could have it going up to 22 per cent. This is only one of the implications. But the bigger picture we need to appreciate is that Kenya embraced a liberalized economic regime in 1994. Since 1994, we have been going to the world and telling people to come and invest in Kenya as the biggest economy within East Africa because we are a liberalized economy; other than the communists or centrally-controlled economies.

People have come to this country and have invested, based on the confidence that they have been given not just by the Government but by this National Assembly passing laws that say we are a liberalized economy. Immediately you pass this, what signal will you be giving to people who want to come to the country to invest on the understanding that it is a liberalized economy and then tomorrow you tell them that you will control them?

You are basically telling them: "Pack up and go to Rwanda and Burundi and leave Kenya because we do not need investors in Kenya." That is the danger. Much as it may look populist, let me also remind hon. Members that the rate we are talking about here--- We have not even defined what rates we are talking about. We are saying that the rate has to be determined by the Monetary Policy Committee. We are not talking about rates. Is it the interbank rates? Is it the CDR rates? Is it the new rates to be determined for purposes of loans? Suppose the Monetary Policy Committee sat tomorrow and set the rate at 50 per cent? Is that what we want? Let us not do these things from a very emotional perspective. Let us not do it for purposes of settling some political scores or wanting to be populist. We are going to lose out.

Mr. Temporary Deputy Chairman, I think it is important. This is a fundamental issue and we should have discussed it at the Second Reading, so that we can have enough time. It is coming in now at the Committee Stage with people knowing that it has limited time. But I can tell you this for a fact: Immediately we do this, the credit that you have secured with the international lenders, the World Bank, the International Monetary Fund (IMF) – the Kshs200 billion that you have received to stabilize your economy, will be in jeopardy. When that happens, this House will stand condemned by Kenyans; that you are the ones who have put them in that situation. There will be no roads. There will be no money from the World Bank to do the airports. There will be no money to finance education because of a populist amendment by a Member wanting to just show that he cares.

**Mrs. Odhiambo-Mabona:** Thank you, Mr. Temporary Deputy Chairman, Sir. Today I am bit quiet, unfortunately, because I did not go for lunch. So, I am a little tired because I did not go for lunch. Having said that, I want to say that I support this amendment.

Mr. Temporary Deputy Speaker, Sir, I want to say that despite the harassment that I am being given by hon. Isaac Ruto, he knows that I am *unbwogable* and unmoved and if he continues, I will call hon. Beatrice Kones to deal with him. I know *dawa yake*.

*(Laughter)*

Mr. Temporary Deputy Chairman, Sir, having said that, I want to say that despite what hon. Mbadi is saying, that this affects the middle class, it is not affecting just the middle class. I

get calls every day from rural Kenyans; from people who did not go to school; people who are struggling; fishermen and farmers whose houses are being auctioned. They do not auction houses that they own like us. They are auctioning chairs. Indeed, one person told me that one of the banks went and actually uprooted a simple house, which is even illegal by any law.

So, I do not care. Today, I did not eat lunch but I am going back home with a better conscience and I have no apologies. If that makes me a communist, I am a very happy communist today to support this.

With that, I support.

**Mrs. Shebesh:** Thank you, Mr. Temporary Deputy Chairman, Sir, Quickly, let me start by saying that calling us names will never really scare some of us. You can call us communists, dictators and merchants of impunity. You can even call us *Mungiki*, but we will always say what we need to say.

Mr. Temporary Deputy Chairman, Sir, the day that houses were demolished in Syokimau, we adjourned this House to discuss the demolition. The people who live in Syokimau whose houses were demolished - and today I wish I could see the same passion in some of the hon. Members sitting across the Floor--- Was Syokimau a political issue? That is because today, in the three months which, of course, the Government will not tell Kenyans---

**The Temporary Deputy Chairman** (Prof. Kaloki): Order, hon. Shebesh! I really want you to stick to the issue at hand!

**Mrs. Shebesh:** Mr. Temporary Deputy Chairman, Sir, I am saying three months because when we were sitting as the Select Committee on the Decline of the Shilling, we were saying six months. So, it is now three months. Houses of bankers, civil servants and nurses will start being repossessed. The effect of a house being repossessed is similar to that of a house being demolished, like we saw happen in Syokimau.

Mr. Temporary Deputy Speaker, Sir, the Minister has asked which interest rate we are capping. It is that provided under Section 4(d) of the Central Bank of Kenya Act. He can go and read it. We are saying that on the Monetary Policy Committee there is also a recommendation. That is also another cartel, so is the Kenya Federation of Bankers. You have allowed cartels to run this country as Government called "coalition".

Maybe you think that we are supporting this because we are in the ODM. Even the Prime Minister is on notice on this issue. You are on notice as Government, including the Prime Minister; that this country will not be run by cartels.

**Mr. Duale:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Prof. Kaloki): Order, hon. Shabesh! There is a point of order from hon. Duale.

**Mr. Duale:** Mr. Temporary Deputy Chairman, Sir, I want you to guide this deliberation. It is an amendment. We want to hear about its merits and demerits. Is the hon. Member in order to go round and round? We want to hear its merits and demerits.

**Mrs. Shebesh:** Mr. Temporary Deputy Chairman, Sir, I will finish in two minutes because I have nothing else to say. I have finished what I was saying.

I have said that the interest rate capping we are asking for is in Section 4(d) and the reason we are asking for this is not because we do not believe that it is, probably, not the best idea, it is because the Government has refused to act to tame the cartel of bankers, whom we are told own this country and will continue to own it forever. We are saying, if you do not have the courage, we will give you an instrument you can use. If the banks will not listen to you, they will certainly listen to Parliament.

Mr. Temporary Deputy Chairman, Sir, we are saying, use the Central Bank of Kenya (CBK) rate to cap the commercial bank interest rate at 4 per cent above the KCB rate. If banks cannot make profit from that, I do not mind because most of them made billions of shillings in profit last year.

Thank you.

**The Temporary Deputy Chairman** (Prof. Kaloki): Let me get hon. Ruto. I will then get Minister Dalmas Otieno and then the Minister for Finance will conclude.

Yes, hon. Ruto!

**Mr. Ruto:** Mr. Temporary Deputy Chairman, Sir, I want to ask my colleagues to look at these issues with a very sober mind because we have a country to manage. Indeed, there have been some unfortunate occurrences in the past six months, which have caused our financial markets to become quite unstable. I believe that the Government has now put its house in order. They have learnt a lesson. We have a country to run. We are in a period in which we are transiting to a new order. We are having elections this year. We are also transiting to county governments.

We have huge financial burdens to bear yet we want to play around with matters that can destabilise the donor community. We may lose face before the international community. There are times to play populist. There are times to be communists and there are times to be serious. I want to ask my colleagues - they have insisted that they have not had lunch - I am offering dinner to Millie Odhiambo. I hope somebody else will offer some donor to---

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Millie Odhiambo, what is your point of order?

**Mr. Ruto:** Mr. Temporary Deputy Chairman, Sir, she said that she did not go for lunch.

**The Temporary Deputy Chairman** (Prof. Kaloki): Order, hon. Ruto!

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, is the hon. Member in order to offer me lunch, which all of us know that it was worth Kshs50,000? I cannot go for lunch worth Kshs50,000.

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Ruto, make your conclusion, please.

**Mr. Ruto:** Mr. Temporary Deputy Speaker, Sir, I want to conclude by requesting my colleagues to pass the Finance Bill as it is and reject this particular amendment with due respect.

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Dalmas Otieno, I will give you time. I had promised hon. Ogindo time to make some contribution. Hon. Noor, from the Committee, let me have just one of you and then I will go to hon. Dalmas Otieno.

**Mr. Ogindo:** Mr. Temporary Deputy Chairman, Sir, I rise to support this amendment.

I just want to persuade this House that this amendment seeks to achieve one simple thing. We are not capping the interest rate. This amendment seeks to regulate the interest rate. When you look at this amendment, you will see that it is floating with the CBR rate. That floatation allows flexibility in the market. What we want to achieve are two important points. Of late, the high interest rates have caused a lot of suffering to individuals in this country. The high interest rates have caused a lot of businesses to be closed. The high interest rates have caused a lot of families to lose their houses.

The other thing that the House needs to appreciate is that even at the Government level the high interest rates affect the deficit in this country because the Government pays very high rates on its borrowing. It is important that interest rates are brought under control.

Mr. Temporary Deputy Speaker, Sir, the second point I want to raise is that---

**The Temporary Deputy Chairman** (Prof. Kaloki): Remember we are on the Committee of the Whole House.

**Mr. Ogindo:** Mr. Temporary Deputy Chairman, Sir, allow me to say this. It has been alleged here that this amendment has communist leanings. I want to say that in the United States of America there are State laws that have been legislated to guard against usury which is the excess interest charges.

In England or the United Kingdom in 1715, a law was passed called the "Legal Maximum Interest Rate" which regulated interest. The long and short of this is that if we have an affordable interest rate regime we are able to ensure that we have an economy that thrives and grows. What we have now is an interest rate that stifles the economy. I want to persuade this House that we pass this Bill in order to jump start our economy.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I want to persuade my colleagues that if some of us are motivated by any political sin, I am not aware. But first I want to declare my interest in saying that I am a firm believer in the Islamic concept that no interest rate should be charged on any amount that is either borrowed or lent.

I think at times sanity has to prevail and there are times when intervention has to be called for. So, I do not have any personal grudge that would make me advocate for interest rates to go down apart from thinking about the poor Kenyans who are suffering at the behest of banks which are becoming irrational.

*(Applause)*

Mr. Temporary Deputy Chairman, Sir, secondly, I want to take hon. Members down memory lane. I want to remind hon. Members that the Finance Bill has been in abeyance majorly because---

**Mr. Duale:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Prof. Kaloki): Mr. Duale, is it a valid point of order?

**Mr. Duale:** Yes, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Prof. Kaloki): What is it?

**Mr. Duale:** Mr. Temporary Deputy Chairman, Sir, Dr. Nuh confirmed to be of Islamic religion. The choice is there even for Christians that you can go to an Islamic bank where the interest rate is zero. So, is he in order to mislead the House that he wants to speak for others who can even go for Islamic banking? Islamic banking is for everybody including Christians.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I am glad that Mr. Duale has given more credence to my argument. I want to say that the Finance Bill has been in abeyance majorly because of this pending amendment of Mr. Midiwo that has to do with regulating the interest rates. I want to remind hon. Members that there was a time when this House was called to the Kenyatta International Conference Centre (KICC) by the two Principals. The leader of my party, the hon. Vice-President was there and I do not see any circumstances that have changed since Members of this House unanimously rejected the call to drop this amendment.

**Mr. Mbadi:** On a point of information, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Prof. Kaloki): Dr. Nuh, do you want to be informed?

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I just want to say, for the record, that when the Finance Bill was in abeyance, some of us tried to see whether it was possible to crack the nuts because we wanted a win-win situation, a situation where the Government which was so much averse to regulation of interest rates because of conditions they are saying have been set by the IMF; maybe there is fear that this will cause disarray in the financial sector. It wants to be pleased on one hand and on the other hand it wants to ensure that Kenyans are suffering under an interest rate regime that is not friendly to the poor families and members of this society.

*(Loud consultations)*

I want to report progress of those meetings.

I should be protected because there are hon. Members who are consulting loudly.

**The Temporary Deputy Chairman** (Prof. Kaloki): Proceed, I can hear you.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I want to report progress; I want to say that we sat down with the bankers' association and all the banks involved for more than three times. We were trying to build consensus. At one time we said that we were willing to even drop the amendment, because--- At the end of the page, I have a similar amendment to that of Mr. Midiwo. We said that we were willing to drop the amendment but they had to tell us how they were going to take care of the interest for the sake of Kenyans whose houses were being sold on a daily basis, because they were unable to meet the interest rates that were skyrocketing. We gave them a very good option. We asked them to give the number of Kenyans that they lent money, whom they thought had interest rates that were to be varied. They said that on the face value, we were making noise for a very small percentage of people they lent money to which was just below 25 per cent.

In fact, that gave us more teeth; we told them if they were talking about 25 per cent of borrowers, that was very small amount of money. We told them to concede to the idea that if there was someone they had lent at the interest rate of 13 or 15 per cent and he was repaying the loan at an interest rate of 28 per cent because of the so-called inflation, to take that interest regime back to the 13 per cent. In the next meeting, they came up and said they had given us the wrong statistics. The number of borrowers they were talking about was 75 per cent. It was shame! They were changing goal posts just because we were giving concessions and we wanted to reach a consensus.

*(Applause)*

I want to give the reasons as to why we want this amendment. Today, every bank has a specific lending rate that it has set on its own criterion and no one regulates it. M/s Barclays can set at 18 per cent, the Kenya Commercial Bank (KCB) can set at 22 per cent, and any other bank can set at 30 per cent and they are honest. They will tell you: "This is our lending rate; so we are charging you 3 per cent or 4 per cent plus." When you ask the Central Bank of Kenya (CBK), the regulator as to why interest regimes are not being curtailed, or why interest rates are skyrocketing, they will tell you that they have no control over banks.

*(Applause)*

So, the Kenyan borrower is left at the mercy of banks which determine which rates they are going to lend at.

**The Temporary Deputy Chairman** (Prof. Kaloki): All right!

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, let me just finish.

**The Temporary Deputy Chairman** (Prof. Kaloki): Take 30 seconds.

**Dr. Nuh:** No, Mr. Temporary Deputy Chairman, Sir, I want to, at least---

**The Temporary Deputy Chairman** (Prof. Kaloki): No!

**Dr. Nuh:** I plead with you, Mr. Temporary Deputy Chairman, Sir. The reason as to why we are setting a reference point that will be determined by the CBK is, at least, for Kenyans to know that they have an office which is responsible, which is going to determine at what cost they are going to borrow at any one given time. For example, if the CBK rate is set at 18 per cent today--- the Monetary Policy Committee sat the other day, they looked at issues and said: "Fine, inflation is going down." They said the Kenyan Shilling was stabilizing but they were not reducing the CBK rate. They were saying that they were going to give it a month or two to see how the economy would perform. If we were to have a CBK rate that determines the fluctuation of interest rate, the CBK Monetary Policy Committee would be more concerned about the prevailing CBK rate at any one given time. They would be coming to answer to a Committee of this House as to why the CBK rates are high and they would have to provide solutions as to how they can bring it down to zero per cent, so that the borrowing in this country cannot go beyond 4 per cent and that would be the rationale.

**The Temporary Deputy Chairman** (Prof. Kaloki): Thank you.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I am pleading with hon. Members that at this time let us think with the Kenyans who are suffering; let us think with our constituents whose houses and lives have been mortgaged, so that sanity can prevail. We are not going to be at the mercy of bankers who are irrational and irresponsible.

Thank you.

**The Minister of State for Public Service** (Mr. Otieno): Mr. Temporary Deputy Chairman, Sir, I sympathize with the sentiments in the House that banking practice has developed in this country in such a way that our savers are paid peanuts, but banks charge high figures as their lending rates. The Members have to realize that the money market, like all other markets even if it was the property market, is never one market. They are several markets. In this particular amendment, the biggest flaw, particularly in Part "b" that is talking of interest earning accounts, the simple way to dodge it is to say that you have no interest earning account as far as your bank is concerned; all accounts are non-interest bearing. Then what happens thereafter? We have achieved nothing.

Secondly, the monetary policy read "the Central Bank rate is the rate set and cost with the specific objective. It operates in the segment of the monetary market between the Central Bank and the banks themselves". That is a totally different money market. It only controls that segment. You cannot use it to control the other market segments in the economy.

The Members must also realize that Kenya is a very open economy. If you add up the imports and the exports, you are talking of a large percentage of our Gross Domestic Product (GDP). When you look at the global market, if Kenya wanted to borrow, we would give a sovereign risk rate which assesses Kenya as a borrower. A nation in Africa borrowing from the east or the west, the sovereign risk assessment is based on different factors, namely, political, economic and otherwise. You cannot use that one rate to determine the other rates in the economy. If we take the retail rates in our country; if we take the check-off rates where you

borrow and the money is taken from your salary to repay your loan, the risk is different from a business person who borrows and has to make sure they have net cash surplus to service the loan. So, we are not talking one market. You cannot use the Central Bank rate to control all the other money market rates in the economy. It is a big blunder.

I was in banking and the immediate effect of this amendment is the low risk large banks--

**Mr. C. Onyancha:** On a point of order, Mr. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Prof. Kaloki): All right. Just make your concluding remarks. You know we are in the Committee of the Whole House. Just make your concluding remark.

**The Minister of State for Public Service** (Mr. Otieno): Mr. Temporary Deputy Chairman, somebody is interrupting. My concluding remark is that if part “a” passes, the smaller banks who are able to get niches in the money market and use their deposit and lending rates to retain the market that they control to be able to develop, will be the biggest losers and the larger lower risk banks will get more money and they will increase oligopolistic control of our market until they get what they want in it.

I oppose and the instrument we are using is faulty.

*(Loud consultations)*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I would beg that you listen to me because what you are going to do is going to have a very bad effect on this country, and I will give the reasons. One, if you pass this amendment, this is what you are saying. One, what you are going to do is to distort the market. What you are going to have are black markets. You are going to have parallel markets as it happened in 1980s when we tried to control interest rates. You are aware when the CBK controlled the interest rates from the banks. What they did was that they started charging you appraisal fees, application fees, booking fees and all sorts of fees just to evade the 19 per cent. That is exactly what is going to happen. You are aware when the CBK curbed those methods, they now formed finance companies which then were able to charge more than banks. So, dear colleagues, I am telling you that we are engaging in an exercise in futility. That is one.

Secondly, already - and I want to be very sincere and frank - we have got commitments with the World Bank and the International Monetary Fund (IMF) and one of the conditions we had agreed is that we will maintain a liberalized economy as far as the interest rates regime is concerned. If we pass this amendment, dear colleagues, what you are saying--- You are giving those banks the ability to recall our loan, which is more than Kshs400 billion, and which we do not have now. Therefore, we are going to default. Our kitty rating is going to go down.

Secondly, already we have a limit. Already, we have a credit limit of Kshs200 billion. What you are saying is that, that extended new credit limit is going to be terminated. Therefore, if that happens, you can forget what you have passed in the Supplementary Budget today. There will be no roads. There will no dams. There will be no water projects. There will be no hospitals. So, we must know that if we pass this amendment that would be the effect.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Prof. Kaloki): Very well. Conclude, Mr. Minister!

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I need time.

**The Temporary Deputy Speaker** (Prof. Kaloki): Just take one minute!

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I need time. I plead for more because it is important. What we are going to do is going to make or break this country. We must be very clear in our minds about what we are going to do. I want to say that the Executive does not support this because it knows the consequences. The other consequence would be this: The very people we are trying to protect, the lower income groups, the middle class, I can tell you, if you have ceilings on interest rates, they are going to be eased out of the credit market. The banks will start lending to prime customers like the East African Breweries and those kind of companies. So, the people we are trying to save will actually lose out. Secondly and this is even more serious, take it from me, if you pass this amendment, expect a financial crisis. More than ten to 15 small banks are going to collapse. So, we are actually creating a financial crisis. This is exactly what you are doing. The other reason, the bad loans and non-performing loans are only 3 per cent. So, the issue has been exaggerated. At the moment, the non-performing loans in the entire banking portfolio is 3 per cent.

Mr. Temporary Deputy Chairman, Sir, if the issue is about banks making super profits, the solution is not to cap interest rates. The solution is for me to come up with a law that will tax the super profits. Again, interest rates are on their way down. At the moment, there are three banks which are charging 15 per cent. The majority are at 19 per cent.

Lastly, we have been talking about this matter with a committee that was established. We had actually agreed that we will oppose this amendment. This will give us time between now and June, because we must bring another Finance Bill, to discuss and agree with the banks on this issue.

Mr. Temporary Deputy Chairman, Sir, if the things I have said happen, then we will know who is responsible; it is any hon. Member who supports this amendment. You will be responsible for the financial crisis! You will also be responsible for banks closing---

**The Temporary Deputy Chairman** (Prof. Kaloki): Order, Mr. Minister! You have made your point!

**The Minister for Finance** (Mr. Githae): You will be responsible for lack of roads---

**The Temporary Deputy Chairman** (Prof. Kaloki): All right! Thank you, Minister.

**Mr. Mbadi**: On a point of order, Mr. Temporary, Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Prof. Kaloki): Order, hon. Mbadi!

Hon. Members, I will now proceed to put the Question. Let us vote on this, so that we can proceed.

*(Question, that the new Clause 30A be read a  
Second Time, put and negatived)*

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

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Members, for us to have a Division, we must have 20 Hon. Members requesting it.

Clerk-at-the-Table, do we have the numbers?

**Hon. Members**: We have the numbers.

**The Temporary Deputy Chairman** (Prof. Kaloki): All right. We have the numbers. Ring the Division Bell.



*(The Division Bell was rung)*

**The Temporary Deputy Chairman** (Prof. Kaloki): I believe the Tellers are ready and may now proceed with the results.

## **DIVISION**

*(Question put and House divided)*

*(Question negatived by 58 votes to 17 votes)*

**AYES:** Eng. Gumbo, Mrs. Kilimo, Dr. Kones, Messrs. Magwanga, Mbadi, Munyaka, Mwadeghu, Mwau, Dr. Nuh, Messrs. Ogindo, Ojaamong, Prof. Olweny, Messrs. Onyancha, Outa, Washiali, Mrs. Odiambo-Mabona and Mrs. Shebesh

**Tellers of the Ayes:** Mr. Mwadeghu and Mr. James Maina Kamau.

**NOES:** Messrs. Anyanga, Baiya, Bett, Ms. Chepchumba, Messrs. Duale, Githae, Godhana, Gumo, Gunda, Prof. Kamar, Messrs. Kamau Irungu Jamleck, Kamau Maina James, Kambi, Kapondi, Kenyatta, Keynan, Kiilu, Kimunya, Kinyanjui, Kioni, Mrs. Kones, Mr. Lessonet, Mrs. Leshoomo, Messrs. Letimalo, M’Mithiaru, Magerer, Eng. Maina, Messrs. Mbai, Mbau, Mbuvi, Mututho, Mudavadi, Munya, Muoki I., Muriithi, Ms. Mathenge, Messrs. Murungi, Musyoka, Muthama, Mwaita, Mwangi, Nanok, Ndambuki, Njuguna, Ms. Noor, Messrs. Nyamweya G., Obure, Omollo, Dr. Otichillo, Mr. Otieno, Dr. Otuoma, Messrs. Oyongo Nywameya, Poghisiu, Eng. Rege, Messrs. Ruto, Sambu, Maj. Sugow and Capt. Wambugu.

**Tellers of the Noes:** Mrs. Shebesh and Eng. Maina.

**Mr. Ogindo:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I have two points of order. You saw the way the defunct Electoral Commission of Kenya behaved immediately after they presented results. They were quick to rush to the other side to shake hands.

**The Temporary Deputy Chairman** (Prof. Kaloki): Order, Mr. Ogindo!

**Mr. Ogindo:** Mr. Temporary Deputy Chairman, Sir. The second point of order is this: This is very fundamental. We forced a Division and there was counting. We were 31 and at the voting, we ended up with 17. I want you to find those hon. Members who did not vote grossly out of order. I invite you to find them out of order; can you rule on that?

*(Laughter)*

**The Temporary Deputy Chairman** (Prof. Kaloki): Order, Mr. Ogindo! Everybody had the freedom to vote one way or the other and we had the results here. So, that is not a point of order and we need to proceed.

Dr. Nuh, the New Clause 30A, since it has lost and you were pegging that on Mr. Midiwo’s amendment, we will not proceed with it. It has been negatived, and now we will proceed to the New Clause 32A.

*New Clause 32A*

**The Temporary Deputy Chairman** (Prof. Kaloki): Mr. Midiwo

*(Mr. Mbadi moved to the Dispatch Box)*

I think Mr. Mbadi is standing in for Mr. Midiwo.

**Mr. Mbadi:** I am Midiwo!

Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the following new clause be inserted immediately after Clause 32 -

**32A.** The Banking Act is amended in the Second Schedule by deleting the proviso appearing in paragraph (d).

I think in 2009, the core capital of banks and mortgage finance companies was increased to Kshs1 billion. This particular amendment is proposing to revise that downwards by deleting that requirement to Kshs250 million. Basically, this will help other interested Kenyans with capacity, who can raise at least Kshs250 million to also start banks. This will help make the banking sector even more competitive as my colleague from the Government side was saying.

Mr. Temporary Deputy Chairman, I want to put it that before, the core capital of the banks and the mortgage finance companies was very low. That is why---

**The Temporary Deputy Chairman** (Prof. Kaloki): You have made the point. It is very clear to me.

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, just allow me to make my point clear.

**The Temporary Deputy Chairman** (Prof. Kaloki): Thirty seconds, please.

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, that is why we had Equity Bank and the Family Bank becoming financial institutions and you can see how they are performing now. I would urge this House to allow other competitors to also enter the banking sector.

*(Question of the new clause 32A proposed)*

*(New clause 32A read the First Time)*

*(Question, that the new clause 32A be read  
a Second Time, proposed)*

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I stand to oppose that amendment on the basis that the amendment is trying to dilute the strength of the banking sector. It is basically saying that anyone who has Kshs250 million can open a financial house and call it a bank. We have moved from there as a country. It also means that a bank with Kshs250 million is capped in terms of the amount of money they can lend. The reason we moved and this House approved that we should move progressively to banks increasing their capital to Kshs1 billion was to protect the financial sector, so you only have sound banks operating within the country. All the 45 banks that are operating in this country have already met that threshold. So, removing it, you are basically telling people that this House made a mistake three years ago by saying the Kenyan banking sector should be so strong with banks having Kshs1 billion as capital and now we are saying that we should reduce it to Kshs250 million and refund from where they had raised it. This is basically like saying that the House punished them

three years ago by forcing them to move their capital to Kshs1 billion. Now we are saying that we were not right then.

This is something that we cannot do. Again, it goes back to the consistency in policy and legislation. Once you say that we are moving in one direction one day, it does not augur well to then come---

**Mr. Mbadi:** On a point of order, Mr. Temporary Deputy Chairman.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, could you, please, protect me?

**The Temporary Deputy Chairman** (Prof. Kaloki): Proceed!

**Mr. Mbadi:** On a point of order, Mr. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Prof. Kaloki): Order, hon. Mbadi! You had your time, please.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, this House passed this law. This House passed a schedule; a negotiated schedule that said that the core-capital of the banks will now be increased to Kshs1 billion. If we now reduce that---

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Kimunya, conclude!

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, it is also important to underline that as the House was passing this law, it also passed the Micro-Finance Act that also said that for small banks that do not want to compete with the big banks, they can operate as micro-finance institutions and with a core-capital of Kshs20 million when operating outside town and Kshs50 million when operating within town, so that everyone was taken care of.

I beg to oppose.

**Mr. Mbadi:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I think if a Member has a point of order, he should be allowed to raise it.

**The Temporary Deputy Chairman** (Prof. Kaloki): Order! I am the Chair. The Chair will make the decision on when somebody has to speak.

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, the hon. Minister talked about changing policy. My proposal is perfectly in line with the policy of Government of promoting competitiveness. If the Minister is honest, the earlier contribution he made was that he wanted the market to be opened for competition. Right now, what he is saying is completely opposite; that he wants to control those who are entering the banking sector. This is a clear indication by the Government to protect the banking cartels.

**Mr. Ogindo:** Mr. Temporary Deputy Chairman, Sir, I rise to support the amendment. I am aware that three years ago, there was an amendment that was brought to this House that increased the core capital of the banks. But this country has since moved. Three years ago, we did not have a new Constitution. Today, we have a new Constitution. The new Constitution today creates counties. The counties have become centres of operation. It is important that we enlarge the banking market to create competition.

Secondly, we also want banks to be started in the far flung areas of this country such as Lodwar, where there has been discovery of oil, Mandera and also Homa Bay.

With those remarks, I want to persuade this House that we open the market instead of going back to my earlier amendment, which sought to regulate. In retrospective, what we are trying to do now is to block entry into the banking industry.

With those few remarks, I beg to support.

**The Assistant Minister for Industrialization** (Mr. Muriithi): Mr. Temporary Deputy Chairman, I stand to oppose.

Mr. Temporary Deputy Chairman, Sir, the Micro-finance Act already provides the mechanism for you to have a bank in a town, for you to have a bank that covers a county or a region, in fact, with far lower amount of capital. So, that proposal is already sorted out.

The competition in terms of banks, in fact, what we need is consolidation of banks so that we stop replicating infrastructure. For example, today, what you see, if you go to a shopping mall, you will find bank "A" has an ATM and another one and another one. These are the additional costs of infrastructure that are brining up the cost within the bank which, in fact, is what in part is driving banks to charge higher interest rates.

So, we have provided the avenue for a regional bank to exist. There is really no need to do it again. Thank you.

**The Temporary Deputy Chairman** (Prof. Kaloki): Members, let us just take a minute for contributions. We are in the Committee of the whole House. So, this is not open debate.

Hon. Harun Mwau!

**Mr. Mwau:** Mr. Temporary Deputy Chairman, Sir, I am slightly disappointed because when the hon. Member for Kipiriri was contributing, he was saying that we passed a law that allowed us to increase the share capital to Kshs1 billion, and we cannot go back again. Legislation is that if you make a law that you think is no longer serving, you amend it. So, to try to persuade the House that we should not amend what we think is not right or what we think now does not serve our people, that is not very good. However, I come from Kilome. Kilome is a constituency. It has no bank because we are poor people. Kaiti Constituency, which is served by my neighbour hon. Ndambuki, has no bank. We are poor people. Kibwezi has only a few banks which have gone there because of some few things. In Mbooni, there is no bank. We are poor people.

If you look at the banks that we are saying are the top banks now, most of them only became banks in 2005. They were not banks before. Equity was not a bank in 2005. Family Bank was not. If you read the history of Equity, they started with Kshs5,000. Now they are the top bank. If they were blocked at that time, they would not be what they are today. If you read the history of Family Bank, the owner says he started it with Kshs100,000. So, now you are saying, those people who have Kshs100,000 cannot start a bank. What I do not want us to do, I do not want to condemn our great grand children never to be bankers because I do not know when my great grand children or your great grand children will be able to amass certain amount of money - a billion shilling - to open a bank. You heard the former Minister for Finance saying that there are 45 banks that have complied. Now, we want to block and say that, now that is it.

*(Applause)*

No other community will be allowed to come into the banking sector unless it can raise Kshs1 billion; a billion Shillings is not loose change. Allow us to continue with the Kshs250 million and then we shall grow!

*(Applause)*

If we allow this to happen, we are going to cause a very big margin between our people, because if you look---

**The Temporary Deputy Chairman** (Prof. Kaloki): Very well;

**Mr. Mwau:** If you look at the banks that we are talking about, you will find that there are some communities which do not own banks. Only some communities---

**The Temporary Deputy Chairman** (Prof. Kaloki): Very good, hon. Mwau; you have made your point.

**Mr. Mwau:** Mr. Temporary Deputy Chairman, Sir, let me just finish; I am just finishing.

**The Temporary Deputy Chairman** (Prof. Kaloki): All right.

**Mr. Mwau:** You will find that there are some communities which do not own banks; but there are some communities which own banks. What will happen is that ethnicity will start growing because others will feel that they are only supposed to serve other ethnic groups, and that is very bad!

*(Applause)*

We want to be open so that in Makueni, which is a county, we can open a bank even with 20 bob. Now if we say it is Kshs250 million, we in Makueni County can raise Kshs250 million and start a bank there. People in Siaya can raise Kshs250 million and open a bank. People in Turkana can raise Kshs250 million and open a bank.

*(Applause)*

**The Temporary Deputy Chairman** (Prof. Kaloki): Very well!

**Mr. Mwau:** Thank you, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Prof. Kaloki): Thank you, hon. Mwau. I will take hon. Dalmas Otieno, then the Minister will conclude and then we put the Question.

**Mr. Mbadi:** I am here, Mr. Temporary Deputy Chairman, Sir.

**The Minister of State for Public Service** (Mr. Otieno): Mr. Temporary Deputy Chairman, Sir, I will be very brief. Let us understand what the core capital is meant to serve. In banking, you are taking other people's money which you then lend to other people and make a profit from the margin. The core capital is what is intended to get you your fixed assets; the banking premises, some of your staff, and the computer technology that you will be using. As we are talking now, the banking software alone for you to be in the clearing house will cost a minimum of Kshs200 million. Even if you are a one-branch bank, opening a one-branch bank alone may cost you more than Kshs40 million. So, if establishing a bank is going to cost you Kshs300 million before you hire the higher calibre personnel that will make you competitive, you need that core capital, so that your business is anchored on your own equity while the profit and operations will depend on your deposits.

**The Temporary Deputy Chairman** (Prof. Kaloki): Very well.

**The Minister of State for Public Service** (Mr. Otieno): The second point, Mr. Temporary Deputy Chairman, Sir, which is important to note also is this. The attitude amongst many of us, Africans, why we continue to have our banking sector dominated by foreigners – and I sympathize with the Movers of these – is because of a feeling that a bank can be a one-man business. We should remove that from our mentality and accept that banking must be a large number of investors business; we should be able to raise the necessary capital to bear the risk of the deposits of the people being placed in our hands.

**The Temporary Deputy Chairman** (Prof. Kaloki): Very well;

Minister, just take 30 seconds.

**The Minister for Finance** (Mr. Githae): Thank you, Mr. Temporary Deputy Chairman, Sir. I just want to say one thing; the cause of the banking crisis in 1980 was the low capitalization and that is why Central Bank has, over the years, been increasing the capital for banks. We are encouraging mergers, and a few banks have merged. We are encouraging amalgamations. So, if you are a small bank, the way is to merge or to amalgamate with another one, or to be taken over by another bank.

Let me come to the argument that we are closing the door on other people; we are not doing that.

As of now, you can start a bureau society, SACCO or microfinance company with very low capitalization. So, we are not closing. Once you have grown, like the way you have mentioned Family Bank and Equity Bank, then you can apply to be a bank.

Mr. Temporary Deputy Chairman, Sir, lastly, now with agency banking - forget about having a bank in the headquarters of every county – every shop now is a branch, which has now been adopted by almost all the major banks. So, you can open an agency in your *kiosk* and it is allowed. So, you are not being prevented from banking sector.

Mr. Temporary Deputy Speaker, Sir, I oppose.

*(Question, that the New Clause 32A be now read a Second Time, put and negatived)*

**The Temporary Deputy Chairman** (Prof. Kaloki): Is hon. Mututho not here?

**Mr. Mututho:** Mr. Temporary Deputy Chairman, Sir, I withdraw my amendment.

*(Proposed new clause 32A by Mr. Mututho withdrawn)*

**Mr. Ogindo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

That the Finance Bill be amended by inserting the following new clause after 32-  
**Amendment of section 11**

**of Cap.491 32A.** Section 11 of the Central Bank of Kenya Act is amended-

(a) in sub-section (1) by deleting paragraphs (a) and (b) and substituting therefore the following new paragraphs-

(a) chairperson

(b) a Governor;

(b) by deleting sub-section (2) and substituting therefor the following sub-section-

(2) The directors appointed under paragraph (d) of sub-section (1) shall be appointed by the President with the approval of Parliament and shall hold office for a period of four years but shall be eligible for re-appointment for one further term of four years.

(c) in sub-section (5) by deleting the words “Governor, the Deputy Governor” and substituting therefor the words “chairperson, the Governor.”

(d) in sub-section (6) by deleting the words “Governor, the Deputy Governor” and substituting therefor the words “chairperson, the Governor.”

Mr. Temporary Deputy Chairman, Sir, this amendment is informed by the fact that today we are in a new dispensation of transparency and accountability. We have seen that the Central Bank of Kenya (CBK) is a very important institution for this country. Most of the problems that we are seeing today were as a result of the management in the CBK. You will appreciate that

recently we had a select committee, which you were privileged to be a Member of, and our findings were such that we need to deal with the law governing the CBK.

Mr. Temporary Deputy Chairman, Sir, my proposal here is that we want to separate the function of the Governor and the composition of the board of governors. In the present legislation, the Governor is both the chairman of the board and the chief executive of the bank. In effect, we have a CBK where the Governor reports to himself. This denies the bank the accountability that is required to go with the office.

Mr. Temporary Deputy Chairman, Sir, we also propose that we have two Deputy Governors. This is to allow division of labour in the bank which has several departments. We appreciate that in the last regime the banks suffered because one of the Deputy Governors was incapacitated. We want to have a situation where such is cured.

Lastly, we are also looking forward to having the governor recruited competitively. This will ensure quality and it will be good for this country. I know the House might possibly be in a foul mood but this is a very deserving amendment; I want to persuade the House to carry it.

*(Question of the new clause 32A proposed)*

*(New clause 32A read the First Time)*

*(Question, that the new clause 32A be read a  
Second Time, proposed)*

**The Temporary Deputy Speaker** (Prof. Kaloki): I will just give one chance. Mr. Muriithi.

**The Assistant Minister for Industrialization** (Mr. Muriithi): Mr. Temporary Deputy Chairman, Sir, I want to assure Mr. Ogindo that we are not in a foul mood and we support him. This is a good idea.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I will surprise Mr. Ogindo by supporting this amendment. I brought it in 2006; it was rejected by this House; I brought it in 2007 and it was rejected again; I am glad that the House has now seen the light and I support it.

*(Question, that the new Clause 32A be read  
a Second Time, put and agreed to)*

*(The new Clause 32A was read a Second Time)*

*(Question, that the new Clause 32A be added  
to the Bill, put and agreed to)*

*New Clause 32B*

**Mr. Ogindo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, the Finance Bill be amended by inserting the following new Clause after Clause 32A-

Amendment of  
Section 12 of Cap.  
491

32B. Section 12 of the Central Bank of Kenya Act be amended-  
(a) in sub-section (1) by deleting the words “Governor  
as chairman of the Bank” and substituting therefor the word  
“chairperson”;

(b) by inserting the following new sub-section after sub-section (1)-

(1A) The chairperson shall preside at all meetings of the Board;

(1B) In the absence of the chairperson at a meeting, the members present shall elect one of the members appointed under paragraph (d) of section 11(1) to preside at the meeting of the Board.

(c) in sub-section (2) by deleting the words “Governor or the Deputy Governor” and substituting therefor the words “chairperson, the Governor”;

(d) in sub-section (3) by deleting the words “chairman or deputy chairman” and substituting therefor the words “chairperson or the person”.

Mr. Temporary Deputy Chairman, Sir, what we are doing to Section 32B is to spell out the separate functions between the chairman and the governor.

**The Temporary Deputy Speaker** (Prof. Kaloki): That is good enough.

*(Question of the new clause 32B proposed)*

*(New clause 32B read the First Time)*

*(Question, that the new clause 32B be  
read a Second Time, proposed)*

*(Question, that the new clause 32B be read  
a Second Time, put and agreed to)*

*(The new clause 32B was read a Second Time)*

*(Question, that the new clause 32B be added  
to the Bill, put and agreed to)*

*New Clause 32C*

**Mr. Ogindo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Finance Bill be amended by inserting the following new clause after Clause

32B-

Amendment of

32C. Section 13 of the Central Bank of Kenya Act is amended by  
inserting

Section 13 of Cap.

The following new sub-sections immediately before the present  
sub-

491

section (1)-

(1) There shall be a Governor who shall be appointed by the President through a transparent and competitive process and with the approval of Parliament.

(2) The Governor shall hold office for a term of four years, but shall be eligible for re-appointment for one further term of four years.



Mr. Temporary Deputy Chairman, Sir, the whole import of the new clause 32C is to spell out the manner of recruiting the Governor and also the term of office.

*Question of the new clause 32C proposed)*

*(New clause 32C read the First Time)*

*(Question, that the new clause 32C be read a Second Time, proposed)*

*(Question, that the new clause 32C be read a Second Time, put and agreed to)*

*(The new clause 32C was read a Second Time)*

*(Question, that the new clause 32C be added to the Bill, put and agreed to)*

*New Clause 32D*

**Mr. Ogindo:** Mr. Temporary Deputy Chairman, I beg to move:-

THAT, the Finance Bill be amended by inserting the following new clause after Clause 32C-

**32D.** Section 13B of the Central Bank of Kenya Act is deleted and substituted with the following new section-

**13B.** (1) There shall be two Deputy Governors who shall be appointed by the President through a transparent and competitive process and with the approval of Parliament.

(2) The Deputy Governors shall hold office for a term of four years, but shall be eligible for re-appointment for one further term of four years.

(3) The Deputy Governors shall perform such functions as the Governor may from time to time assign to them.

(4) The Board shall appoint one of the Deputy Governors to act in the office of Governor whenever-

(a) the position of Governor falls vacant in the period before a substantive appointment is made; or

(b) the Governor is temporarily absent from office.

(5) A Deputy Governor appointed under sub-section (4) shall, during the period of appointment, exercise all the powers and perform all the functions conferred on the Governor under this Act or under any other law.

Mr. Temporary Deputy Chairman, Sir, we are trying to tidy up the Act as we bring in the new clauses so that they are consistent. On 13B, we are also spelling out the necessity for the Deputy Governors and also to take care of any eventuality should the Governor not be there.

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Ogingo, that is good.

*(Question of the new clause 32D proposed)*

*(New Clause 32D read the First Time)*

*(Question, that the new clause 32D be read a Second Time, proposed)*

*(Question, that the new clause 32D be read a Second Time, put and agreed to)*

*(The new clause 32D was read a Second Time)*

*Question, that words in the new clause 32D be added to the Bill, put and agreed to)*

*New Clause 33A*

**The Temporary Deputy Chairman** (Prof. Kaloki): Is Dr. Nuh not here? Then that amendment is dropped.

*(Proposed New Clause 33A by Dr. Nuh dropped)*

**Mr. Kioni:** Mr. Temporary Deputy Chairman, Sir, I would like to tidy up this amendment and introduce it in the next Finance Bill. Therefore, I withdraw it.

**The Temporary Deputy Chairman** (Prof. Kaloki): Very well.

*(Proposed New Clause 33A by Mr. Kioni withdrawn)*

*New Clause 33B*

**Mr. Kioni:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after clause 33-

**Insertion of new Section 37 in**

**Cap. 491**

**33B.** The Central Bank of Kenya Act is amended by inserting a new section immediately after Section 36 as follows-

**Publication and Sharing of**

**Information**

**36A** (1). The Central Bank shall publish in the Gazette, the Central Bank website and two daily newspapers of national circulation the following information-

- (a) the weighted average lending and deposit rates for all banks and financial institutions;
- (b) the interest rate spread and its composition; and

(c) a simplified version of the balance sheets and income statements.

(2) Notwithstanding the provisions of this section, a bank shall disclose any positive or negative information of its customers to the licensed credit reference bureaus, where such information is reasonably required for the discharge of the functions of the banks and the licensed credit reference bureaus.

Mr. Temporary Deputy Chairman, Sir, the reason for this is that this helps introduce efficiency in the banking sector. It allows sharing of information and, in the process, perhaps you will end up with a lower interest rate.

*(Question of the new clause 33B proposed)*

*(New Clause 33B read the First Time)*

*(Question, that the new clause 33B  
be read a Second Time, proposed)*

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, I would like to support this amendment and plead with the House that it helps us with this one. Even if you have taken the others, let us now have this so that, at least, we know why these banks charge the rates that they charge.

*(Question, that the new clause 33B be read  
a Second Time, put and agreed to)*

*(The new clause 33B was read a Second Time)*

*Question, that the new clause 33B be added to  
the Bill, put and agreed to)*

*New Clause 33C*

**Mr. Kioni:** Mr. Temporary Deputy Chairman, Sir, I beg to move that:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 33B-

The Central Bank of Kenya Act is amended by inserting a new section immediately after Section 36A as follows-

36B The Central Bank shall, on a quarterly basis make and present to Parliament a report on the key economic and banking sector aggregate.

Mr. Temporary Deputy Chairman, Sir, we felt that Clause 33C be read a second time and the reason is that this will again ensure that Parliament is able to get information and monitor Central Bank of Kenya (CBK) in terms of non-performing loans, economic growth and such other aggregates.

*(Question of the new Clause 33C proposed)*

*(New clause 33C read the First Time)*

*(Question, that the new clause 33C be  
Read a Second Time, proposed)*

*((Question, that the new clause 33C be read  
a Second Time, put and agreed to)*

*(The new clause 33C was read a Second Time)*

*(Question, that the new clause 33C be added to  
the Bill, put and agreed to)*

#### *New Clause 33D*

**Mr. Kioni:** Mr. Temporary Deputy Chairman, Sir, I beg to move that:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 33C-

33A. The Stamp Duty Act is amended by inserting the following provision at the end of Section 5-

“Provided that the Government shall not charge stamp duty twice where a person moves a mortgage from one bank to another.”

Mr. Temporary Deputy Chairman, Sir, I want to propose that Section 33D be read a second time and the reason is that it allows for mobility within the banking sector.

*(Question of the new clause 33D proposed)*

*(New clause 33D read the First Time)*

*(Question, that the new clause 33D be  
Read a Second Time, proposed)*

*(Question, that the new clause 33D be read  
a Second Time, put and agreed to)*

*(The new clause 33D was read a Second Time)*

*(Question, that the new clause 33D be added to  
the Bill, put and agreed to)*

#### *New Clause 44*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Finance Bill 2011 be amended by inserting the following new clause immediately after clause 43 –

**Amendment of first  
Schedule of Cap 5**

44. That the National Assembly Remuneration Act is amended- in the first schedule by inserting in the third column thereof, under the title “Parliamentary Responsibilities Allowance” and corresponding to the entry “ Deputy Speaker”, “Member of Chairmen’s Panel”, and “Parliamentary Service Commissioner” in the first column, the figures “2,400,000.00, and “1,200,000.00” respectively and that it comes into effect on 1<sup>st</sup> January, 2006.

*(Question of the new clause 44 proposed)*

*(New clause 44 read the First Time)*

*(Question, that the new clause 44 be read a Second Time, proposed)*

*(Question, that the new clause 44 be read a Second Time, put and agreed to)*

*(The new clause 44 was read a Second Time)*

*(Question, that the new clause 44 be added to the Bill, put and agreed to)*

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Members we will consult a bit and then move on.

*(The Temporary Deputy Chairman (Prof. Kaloki) consulted with the Clerk-at-the-Table)*

It is okay now. The Clerk-at-the-Table, you can now move to New Clause 44A.

*New Clause 44A*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, I beg to move:-

THAT, the Finance Bill 2011 be amended by inserting the following new clause immediately after Clause 44-

**Amendment of Second  
Schedule of Cap 5**

44A. The National Assembly Remuneration Act is amended in the Second Schedule by deleting the words “A severance at the rate of Kshs. 300,000.00 for every year in service” appearing in column 2 of the Schedule against item 5 of the first column of the Schedule and substituting therefor the words “A severance allowance at the rate of thirty one per centum of

the salary specified in the second column of the First Schedule for every year in service.”

*(Question of the new clause 44A proposed)*

*(New clause 44A read the First Time)*

*(Question, that the new clause 44A  
be read a Second Time, proposed)*

*(Question, that the new clause 44A be read  
a Second Time, put and agreed to)*

*(The new clause 44A was read a Second Time)*

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I am not very clear which New Clause 44 we are dealing with because we have New Clause 44 and New Clause 44A and there is an amendment I wish to oppose. So, I want to be clear. If it is the one being moved by hon. Keynan, I wish to oppose it. So, I would like to know.

**The Temporary Deputy Chairman** (Prof. Kaloki): No! Actually, these two amendments are by the Minister and there is no amendment by hon. Keynan. So, you are okay.

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, if the amendment by the Minister is the one that was by Mr. Keynan, which is increasing the emoluments for Members of Parliament, I wish to oppose. This is because whereas I believe Members of Parliament are entitled, I will not be party to unfairness to this country. Members of Parliament have refused to reduce interest rates for members of the public, but when it comes to our own things, we are very quick and sneaky.

I oppose the amendment.

*(Question, that the new clause 44A be added  
to the Bill, put and agreed to)*

*(Mr. Ogindo consulted the Chair)*

**The Temporary Deputy Chairman** (Prof. Kaloki): Hon. Members, we are consulting on a new clause which is not on the Order Paper, to be moved by hon. Ogindo. We want to make sure that we are reading the right things. That is why we are waiting.

*New Clause 45*

**Mr. Ogindo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Section 102 (w) of the Energy Act 2006 be amended by inserting the following words immediately after the word “products”-

“which must not exceed the international purchase price per unit by a factor of 1.75.”

Mr. Temporary Deputy Chairman, Sir, in the Energy Act, 2007, there is a provision which gives the Minister a leeway to regulate the prices of fuel from time to time. The import of

the addition I want to make is that in making those regulations, the new addition now seeks to guide the Minister, so that prices that come in the regulations do not exceed the crude oil price by more than 75 per cent. The import of that is such that we do not overcharge on petroleum products.

Thank you, Mr. Temporary Deputy Chairman, Sir.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, cognizance of the fact that our fuel prices are high, this House passed the Energy Act, 2006 and gave power to the Minister and the Energy Regulation Commission and a very elaborate formulae to work out what should be the price to be paid at the pump.

What hon. Ogingo is attempting to do is to remove that formulae and cap it to the international oil price. In between the price per barrel, there are transportation and distribution costs. There are all those other costs, which have nothing to do with the crude price until the fuel lands in Kenya. If we cap the price at not more than 0.75, suppose those costs exceed the 0.75, what are we basically saying? We are saying that the oil that will land at Mombasa will be sold at that price even before distribution. We are going to remove the leeway that we have put in place and whatever we have done with the Energy Regulatory Commission (ERC). Let us give them enough time.

Let us remove this so that we do not give leeway to a Commission and then cap their work with an arbitrary figure of 1.75 because the 1.75 could well be exhausted even before the fuel lands in Mombasa. We will then have given no leeway.

Mr. Temporary Deputy Chairman, Sir, I beg to oppose and ask hon. Ogingo, with whom we have agreed on a number of very fundamental amendments in the last couple of minutes, to withdraw this one until the Departmental Committee on Energy, Communications and Information looks at it, so that we can get a comprehensive amendment that will sort out the issue of oil prices for this country.

In the meantime, if hon. Ogingo does not want to withdraw the amendment, I would urge the House that we reject the amendment.

Thank you.

*(Question, that the new Clause be 45 be read a Second Time, put and negatived)*

*(Schedule agreed to)*

*New Schedule 2*

**Eng. Rege:** Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT, a new schedule be introduced into the Finance Bill after PART III appearing on page 330 to read as follows:

*Schedule 2*

THAT, the Bill be amended by inserting a new clause 29 into Part A of the Eighth Schedule to read as follows

<b>Amendment to the Eighth Schedule to the Value Added 476</b>	29. “All goods, including materials, supplies, equipment and machinery procured or sourced by the Rural Electrification Act Cap Authority for the implementation of the Rural Electrification Programme.”
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The reason we want to do this is because rural electrification has become part of our lives in the rural areas especially for the youth. It is very popular because the youth in our rural areas can now do welding, hairdressing, carpentry and what have you.

**The Temporary Deputy Chairman** (Prof. Kaloki): Thank you, Eng. Rege. We have it. Thank you for moving that.

*(Question of the new Schedule 2 proposed)*

*(New Schedule 2 read the First Time)*

*(Question that the new Schedule 2 be read a  
Second Time, proposed)*

*(Question that the new Schedule 2 be read a  
Second Time, put and agreed to)*

*(The new Schedule 2 was read a Second Time)*

*(Question, that the new Schedule 2 be added to the Bill,  
Put and agreed to)*

*(New schedule 2 agreed to)*

*(Title agreed to)*

*Clause 1*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 1 of the Bill be amended-

- (a) in paragraph (a)-
  - (i) by deleting the expression “8” and substituting therefor the expression “8(a)(i), 8(a)(ii)”;
  - (ii) by deleting the expression “14(a)” and substituting therefor the expression “14(a)(i), 14(b)(i)”;



- (iii) by inserting the expression “5A(a)” immediately after the expression “5”;
- (b) in paragraph (b)-
  - (i) by deleting the expression “14(b)”;
  - (ii) by inserting the expression “2A, 2B, 2C” immediately before the expression “3”;
- (c) by inserting the following new paragraph immediately after paragraph (b)-
  - (c) sections 5A(b), 7A, 8(a)(iii), 8(b) 14(a)(ii) and 14(b) (ii), on such date as the Minister may, by notice in the Gazette, appoint.

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

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

*(Clause 1 as amended agreed to)*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Finance Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## **REPORT, CONSIDERATION OF REPORT**

### **AND THIRD READING**

#### **THE FINANCE BILL**

**Prof. Kaloki:** Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Finance Bill and approved the same with amendments.

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said report.

**The Minister for Transport** (Mr. Kimunya) seconded.

*(Question proposed)*

**Mr. Ogindo:** Mr. Temporary Deputy Chairman, Sir, I want to thank the Minister for the-

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**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Mr. Ogindo! It is the Speaker!

**Mr. Ogindo:** Mr. Temporary Deputy Speaker, Sir, thank you. We have been with the Chairman for a very long time and I got stuck with it. I want to thank the Minister and everybody else for a job well done despite the vigorous war that we have fought. I think all that began well has ended well.

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

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, hon. Members! This is not the Third Reading. You can use the platitudes at the Third Reading.

*(Question put and agreed to)*

**The Minister for Finance** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Finance Bill be now read the Third Time.

**The Minister for Nairobi Metropolitan Development** (Mr. Jamleck Irungu Kamau) seconded.

*(Question proposed)*

**Mrs. Shebesh:** Mr. Temporary Deputy Speaker, Sir, I want to thank you for giving me this opportunity. I thought I must say this, we are glad to have a Minister for Finance who has a good heart.

*(Applause)*

You were supposed to be on honeymoon, but I do not think you have been on honeymoon. I think you have done a good job in attempting to bring some unity and I am glad that even if you took our Kiambu seat, you are worth it.

**Mr. Konchella:** Mr. Temporary Deputy Speaker, Sir, I also want to thank the Minister for a job well done, but I am concerned about the plight of Kenyans, particularly the issue of the middle class. There is no economy which will ever grow until we are able to manage and provide for our middle class.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, hon. Konchella! This is Third Reading!

**Mr. Konchella:** Mr. Temporary Deputy Speaker, Sir, I would like the Minister to consider in future to come up with a difference between commercial and social loans, so that any fund which is provided by the public should not earn more than 1 per cent interest in terms of loans to homes. This is an area we need to handle as a nation to increase home ownership by our middle class people.

**The Minister for Information and Communications** (Mr. Poghiso): Thank you very much, Mr. Temporary Deputy Speaker, Sir. This is just to thank and congratulate the Minister for Finance and all those who made this possible that we have moved to this stage. The

bipartisan way in which we have done this and moved the country forward is something that this House can be proud of, and I would like to be associated with the success.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, let me take this opportunity on behalf of the entire Government to thank this House for finally bringing to a close this issue of the Finance Bill. Despite the push and pull, at least, we made good progress and we achieved what is good for the Kenyan people. I want to just record those thanks for Members not just for passing the Bill, but for having sacrificed their time and staying behind. I am sure we will continue until we finish this business for the other remaining one small matter after the passage of the Finance Bill.

**The Temporary Deputy Speaker** (Mr. Ethuro): The Chairman of the Committee on Energy, Communication and Information, since they denied you the amendment, you can just say one word.

**Eng. Rege:** Thank you, Mr. Temporary Deputy Speaker, Sir. I also want to join my colleagues in congratulating the Minister for a job well done. I was very apprehensive, especially about the infrastructure which had come to a screeching halt just because the Finance Bill was not passed. After today, we are going to have water, roads and all other infrastructure rolled out in our constituencies, especially the rural electrification will now be done. I thank and congratulate the Minister.

*(Question put and agreed to)*

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

## MOTION

### ADOPTION OF REPORT ON VETTING OF NOMINEES TO IPOB

**Mr. Kapondi:** Mr. Temporary Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts The Report of the Departmental Committee on Administration and National Security on the Vetting of Nominees to the Independent Policing Oversight Board laid on the Table of the House on Wednesday 18th April, 2012.

I am aware of the law of diminishing returns. The Members have been here long enough and I will be quick in moving the Motion.

Section 8(1) of the Independent Policing Oversight Authority Act, 2011, provides that the Independent Police Oversight Authority shall be governed by a body to be known as the Independent Policing Oversight Board. The Board shall consist of the Chairperson, seven other persons and the chairperson of the Kenya National Human Rights and Equality Commission who shall be an *ex-officio*. In accordance to this section, in Section 11(5) of the aforesaid Act, the President shall select the chairperson and members of the Board from the list of qualified persons forwarded to him by the selection panel and subsequently forward the names of the persons so selected as chairperson and members of the Board to the National Assembly for approval.

Mr. Temporary Deputy Speaker, Sir, in a letter from the Permanent Secretary, Secretary to the Cabinet and Acting Head of the Civil Service dated 5<sup>th</sup> March, 2012, the National Assembly was informed that His Excellency the President, in consultation with the Prime Minister, had nominated the following persons for the position stated hereunder:-

1. Mr. Macharia Njeru for Chairperson.
2. Ms. Fatuma Ali Saman for Member.
3. Mr. Mbuko Thomas Kagwe for Member.
4. Ms. Jedida Filate Ntoyayai for Member.
5. Ms. Jane Njeri Njoki Onyango for Member.
6. Ms. Madoka Grace Mabra for Member.
7. Mr. Vincent Kibet Kiptoo for Member.
8. Ms. Rose Awuor Bala for Member.

Mr. Temporary Deputy Speaker, Sir, on 6<sup>th</sup> March, 2012, in a Communication from the Chair, the Speaker directed that the names of the eight nominees to the Board and their accompanying curriculum vitae be referred to the Departmental Committee on Administration and National Security for consideration prior to the approval by the House---

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

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, hon. Outa. You are out of order!

**Mr. Kapondi:** The Committee tabled its recommendations on or before 20<sup>th</sup> March, 2012.

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

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, hon. Kapondi! Hon. Outa, you are completely out of order the way you are dealing with the microphone. You should go out for the remainder of today.

*(Applause)*

**Mr. Kapondi:** Thank you, Mr. Temporary Deputy Speaker, Sir, for protecting me.

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, hon. Kapondi, there is a stranger in the House.

*(Mr. Outa withdrew from the Chamber)*

Proceed, hon. Kapondi!

**Mr. Kapondi:** Mr. Temporary Deputy Speaker, Sir, after consideration of the nominees, the Committee recommends that Parliament approves the appointment of the eight persons to respective positions to which---

## QUORUM

**Mrs. Shebesh:** On a point of order, Mr. Temporary Deputy Speaker, Sir. This is an issue that we have really been waiting to have time to debate because of the reforms that we are expecting in the security sector.

Mr. Temporary Deputy Speaker, Sir, I would like to raise the issue of quorum because I do not feel that there is enough debate going to be given to this particular Report of this Committee.

**The Temporary Deputy Speaker** (Mr. Ethuro): Clerks! Order, Members, we do not have quorum. I order that the Division Bell be rung!

*(The Division bell was rung)*

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

*[Mr. Deputy Speaker resumed the Chair]*

**Mr. Deputy Speaker:** Order, hon. Members! Eight minutes are over now; you can stop the ringing the Bell. Could you count and see if we have a quorum?

*(The Clerk-at-the-Table counted the hon. Members  
in the Chamber and consulted with the Chair)*

#### **ADJOURNMENT**

**Mr. Deputy Speaker:** Hon. Members, there being no quorum, the House stands adjourned until Tuesday 24<sup>th</sup> April, 2012, at 2.30 p.m.

The House rose at 10.10 p.m.