

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 23rd April, 1997

The House met at 2.30 P.m.

[Mr. Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.059

IMPLEMENTATION OF DROUGHT RECOVERY PROGRAMME

Mr. Speaker: Hon. Nyagah not here? Next Question!

Question No.058

ALLOCATION OF PLOTS IN KABAZI MARKET

Bishop Kimani not here? Next Question, Mr. Muite!

Question No. 067

ALLOCATION OF PLOTS IN VIPINGO

Mr. Muite asked the Minister for Lands and Settlement:-

(a) Whether he is aware that over 1,000 squatters allocated plots in Vipingo Crown Lands - LR. No.289 and 290, Kilifi District, have started to develop the plots following issuance of letters of allotment by the Commissioner of Lands;

(b) if he is further aware that the Commissioner of Lands has revoked the allocation of Messrs Thompson Chibo, Plot No.59; Munga J. Munga, Plot No.107; Julius Kiti Munga, Plot No.81 among other allottees, and if so, why the Commissioner of Lands revoked these allocations; and,

(c) why the Commissioner of Lands has issued title deeds of these plots to Vipingo Estates Limited which is foreign owned.

The Assistant Minister for Lands and Settlement (Mr. Sumbeiywo): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that over 1,000 squatters allocated plots in Vipingo Crown Land L.R. No.289, 290 have started developing the plots.

(b) I am aware that the Commissioner of Lands revoked allocation of Messrs Thompson Chibo Plot No.59; Munga J. Munga, Plot No.107; Julius Titi Munga Plot No.81 among other allottees. The reason being that those plots were allocated to Vipingo Estate Limited in 1950.

(c) The Commissioner of Lands has not issued title deeds for these plots to Vipingo Estates Limited. He has only issued letters of allotment for a lease of 999 years for agricultural development for which they have been paying Crown rent.

Mr. Muite: Mr. Speaker, Sir, I have here, letters of allotment to these poor people to own these plots. Plot Nos.59, 81 and 107, were originally allocated by the Commissioner of Lands and these are the letters of allotment. These are poor people without any piece of land. Is the Assistant Minister suggesting that, at the time when the plots were being allotted to these landless people, the Government was not aware of the original allotment to the foreign Company? And now that the Assistant Minister is aware that the letters of allotment had been issued, what action is he going to take in order to ensure that these poor landless people are actually settled?

Mr. Sumbeiywo: Mr. Speaker, Sir, it is true that the Government or the Ministry was not aware that this land

had been allocated in 1950 to Vipingo Estates Ltd. Vipingo Estates Limited, was allocated this land in 1950, they accepted the offer and have been paying ground rent since then up to date. The titles for the plots have not yet been prepared and no title deeds have therefore been issued. What hon. Muite has shown here are the titles which were issued erroneously and there is a pending court case.

Mr. Muite: On a point of order, Mr. Speaker, Sir. I have not shown any title deeds at all, these are letters of allotment.

Mr. Speaker: Yes, indeed, he showed letters of allotment.

Mr. Sumbeiywo: Thank you, Mr. Speaker, Sir, for the correction. The same people have now taken the Ministry to court, so I plead *sub judice* because the case is in court.

Mr. Mumba: Mr. Speaker, Sir, this is a very good question from Mr. Muite. But my concern here is that the hon. Member of Parliament has not shown courtesy to me as Member of Parliament for the area by at least consulting me. Is it in order? Obviously, I am handling this matter. We took Rea Vipingo to court.

Mr. Speaker: What is your question?

Mr. Mumba: Mr. Speaker, Sir, this is a good question, but is it in order that while I am doing all these, somebody hijacks my efforts and capitalises on it to gain political mileage?

Mr. Speaker: Order! Order! Any good question is in order.

The Assistant Minister for Public Works and Housing (Mr. Mwamzandi): On a point of order, Mr. Speaker, Sir. It has been the tradition of this House that a Member asking a question in respect of another Member's constituency, as was advised by the Chair, to consult with the Member of that particular area in question and that is why the hon. Member is complaining. Because, the area in question is in the constituency of hon. Mumba and hon. Muite is overriding all areas to that area.

Mr. Speaker: Order! Order! I have said in the past that it is quite right and courteous for a Member to consult another on a matter involving his or her constituency. But that does not mean that I will force Members to be courteous. I plead with Members to be courteous. It is not a ruling that you cannot ask a question.

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. I thought it was clear that once you are here, you are a Member of the National Assembly. Anything within our borders here, is your responsibility. Therefore, it is a question of courtesy. If someone does not want to help, we cannot live people suffering when other people are keeping quiet.

Mr. Speaker: Mr. Shikuku, I think you are just confirming what I have just said. Proceed Mr. Muite.

Mr. Muite: In fact, these poor people camped at my constituency office for over a week---

Mr. Ndzai: On a point of order, Mr. Speaker, Sir. Is it in order for this House to discuss matters that are in court?

Mr. Speaker: Order! Order, hon. Members. The Assistant Minister mentioned that one as a by-the-way here, that the matter is in court. It is the duty of any Member who is asserting that a matter is *sub judice* to satisfy the Chair, that indeed, the matter is *sub judice*. You do not expect the Chair to know about all the cases that may be pending in the various courts in this country. It is upon the Members to satisfy the Chair, that indeed, the matter is in court and it is touching on the matters in the House. A mere mention that a matter is pending before the court does not satisfy the Chair. You must, for example, mention the case number, the parties involved and the court where it is.

Mr. Muite: Mr. Speaker, Sir, will the Assistant Minister investigate what role the District Commissioner, Kilifi is playing in this matter, so as to ensure that justice is done to these landless people, as opposed to this foreign company being favoured? Mr. Speaker, Sir, no discourtesy was meant whatsoever, to the Member of Parliament from the area. I have a letter here from the people who wanted me to ask this question. They travelled all the way from Takaungu and had actually camped outside my office for three days before we eventually met. I now wish to table this letter on the Table of the House.

(Mr. Muite laid the letter on the Table)

Now, will the Assistant Minister undertake to investigate what role the District Commissioner, Kilifi is playing in this matter?

Mr. Sumbeiywo: Mr. Speaker, Sir, I undertake to carry out further investigations and to bring the matter here. But as I said earlier on, it is true that the matter is in court and I am going to bring the case file and all the relevant documents related to the case.

Question No.043

Mr. Musyoki asked the Minister for Lands and Settlement what happened to the issuing of title deeds in Kasinga, Ngelani, Misakwani sub-locations and when they will be issued.

The Assistant Minister for Lands and Settlement (Mr. Sumbeiywo): Mr. Speaker, Sir, I beg to reply.

The title deeds for Misakwani Sub-location are ready and they are at the District Lands Registrar's office in Machakos. Adjudication work in Kasinga and Ngelani sub-locations is at an advanced stage and the title deeds will be ready by December this year.

Mr. Musyoki: The hon. Assistant Minister has told this House that the title deeds for Misakwani Sub-location are already at Machakos District Lands Office. We have been hearing of all these stories for a long time but when my people go to the Lands Office in Machakos, they are told that the title deeds are at the Ministry's headquarters in Nairobi. Can he tell us when these title deeds for Misakwani Sub-location were taken to Machakos Lands office?

Mr. Sumbeiywo: Mr. Speaker, Sir, I cannot give the exact date when they were taken there but I am sure, and I can prove that the title deeds are lying in Machakos Lands Office.

Mr. Rotino: On a point of order, Mr. Speaker, Sir. The hon. Member from the area has said that the title deeds are not there. The Assistant Minister here tells us that the title deeds are in Machakos. Who are we going to believe?

Mr. Speaker: Who do you want us to believe?

Mr. Rotino: I do not know!

Mr. Sumbeiywo: Mr. Speaker, Sir, I still maintain that the title deeds for Misakwani Sub-location are in Machakos Lands Office. For the other areas, Kasinga and Ngelani sub-locations---

Mr. Maundu: On a point of order, Mr. Speaker, Sir. The Question from the hon. Member is specific. He wants the date when these title deeds were taken to Machakos. If the Minister does not have that information, why does he not say that he is going to undertake to provide the date and make sure that these title deeds are in Machakos for people to collect, instead of just beating about the bush?

Mr. Sumbeiywo: Mr. Speaker, Sir, the title deeds are in Machakos but I do not know the date when they were taken there. If he wants to know the exact date when they were taken there, we can find that out from the Ministry.

Mr. Gitonga: Mr. Speaker, Sir, could the Assistant Minister confirm to this House that if the hon. Member goes to Machakos tomorrow and tells his people to go there, they will find the title deeds ready and they will collect them? Can you confirm that to this House?

Mr. Sumbeiywo: Yes, they will find the title deeds there.

Mr. Ndilinge: Mr. Speaker, Sir, if the House can recall very well, I have been asking similar Questions to this one. The replies I have been getting from the Ministry is that when money will be available, we are going to get the title deeds. Demarcations in these areas were done in 1974 - those are 23 years ago. Can the Assistant Minister tell the House why the hon. Member who is the MP for Machakos Town has to come all the way and ask that Question in this House? It would not have been wise for him to come here and ask about title deeds when they are lying at the District Lands Registrar's Office in Machakos. This is what is happening to every Member here. Can he tell us when the title deeds were taken to Machakos.

Mr. Sumbeiywo: Mr. Speaker, Sir, I think I have answered that question three times. The title deeds were taken to Machakos. If they want me to proof the date, I will get it and inform the House accordingly.

Dr. Otieno-Kopiyo: On a point of order, Mr. Speaker, Sir. That is the second time he saying "if you want the information I shall bring it." Is it not in order for him to name the date when he will bring that information? He has just said he will bring it if we need it. We need it. So, when is he going to bring it?

Mr. Sumbeiywo: I will bring it on Wednesday, next week.

Mr. Nthenge: If the title deeds are at Machakos and the people of Misakwani border the town, why are they not being given the title deeds?

Mr. Sumbeiywo: Unless one goes to a certain Government office to collect a document, the documents cannot move from the office to where the people are.

Mr. Shikuku: Jambo la nidhamu, Bw. Spika. Mhe. Mbunge amesema watu wake wanaambiwa hati za kumilika mashamba hakuna. Naibu wa Waziri anaweza kukubali kwamba ni kwa sababu hawatoi kitu kidogo? Kama hawatoi, hawapati!

Mr. Sumbeiywo: Mr. Speaker, Sir, I do not know what kitu kidogo is.

Mr. Maundu: Mr. Speaker, Sir, this issue of title deeds in many parts of the country and in Ukambani in particular, is a serious matter. This is a basic collateral which many people, both rural and urban rely on to borrow

money from banks or other institutions. We have a lot of complaints about the Ministry of Lands and Settlement not making title deeds available quickly when ordinary people need them for borrowing purposes. Can the Assistant Minister ensure that, apart from these title deeds, all other title deeds that are pending throughout the country are made available to Kenyans, so that they may be in a position to borrow money and do other activities that are economically viable to them?

Mr. Sumbeiywo: Mr. Speaker, Sir, I will undertake to make sure that title deeds which are ready for dispatch and issuance are sent out to relevant areas.

Mr. Musyoki: Mr. Speaker, Sir, for the information of this House, the Assistant Minister is telling this House that title deeds for Kasinga and Ngelani are at an advanced stage. Demarcation on these two areas was done when I was in primary school, long time ago, over 20 years ago. Now, he is telling us that the process is at an advanced stage. **[Mr. Musyoki]**

Can he tell us at which stage they are, and when they are going to be ready? He is telling us that these title deeds could be ready in December, 1997. Can he tell us at what stage they are? When will he finish the whole process?

Mr. Sumbeiywo: Mr. Speaker, Sir, for Kasinga, the adjudication records were received by the Director of Land Adjudication and Settlement for checking on 5th July, 1996. Signing of the certificates of finality will be done by the end of May, 1997, after which the section will be registered.

With regard to Ngelani, the relevant maps were received by the Director of Survey on 11th October, 1995. They were prepared and sent to the Director of Land Adjudication and Settlement for ratification on 4th February, 1997. He will complete the work within two weeks, subject to availability of funds. After that, it will be forwarded to the Director of Survey for fair drawing. Upon completion, the adjudication records will be forwarded to the Director of Lands Adjudication and Settlement for checking and signing of certificate of finality, after which, the section will be registered.

Lastly, Misakwani Section is registered. The certificate of finality was signed by the Director of Land Adjudication and Settlement on 7th February, 1996. The residents have been advised to collect their title deeds at the District Registrar, Machakos.

Question No. 060

MAINTENANCE OF KERUGOYA-KIANDERI ROAD

Mr. Speaker: Is Mr. Mbui not here? We will leave his Question until the end. Let us move on to the next Question.

Question No. 074

PAYMENT OF TERMINAL BENEFITS TO MR. KIBERENGE

Mr. Mutani asked the Minister for Public Works and Housing:-

- (a) whether he is aware that Mr. Meshack Mbaru Kiberenge, P/No.496879 - P/O III, was employed on 16th April, 1953;
- (b) whether he is further aware that he retired on 30th June, 1991 after attaining the retirement age of 55 years; and,
- (c) whether he could tell the House why Mr. Kiberenge was not paid his terminal benefits like other former Government employees.

The Assistant Minister for Public Works and Housing (Col. Kiluta): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that Mr. Meshack Kiberenge, No.496879, was employed as a sub-ordinate staff grade III on 16th April, 1953.

(b) Yes, I am further aware that Mr. Kiberenge retired from public service on 30th June, 1991, upon reaching the maturity retirement age of 55 years.

(c) Mr. Kiberenge has not been paid his compensation gratuity under the Pensions Act because he has not submitted to us the option on commutation of pension, and his mailing address as requested by the Ministry.

Mr. Nthenge: Why did they have to wait until---

Mr. Speaker: Order, hon. Nthenge! Hon. Nthenge, I am sure you have something burning to tell the House. However, the normal procedure is that we give the Questioner the first priority. So, if you allow me, I will revert to you later, hon. Nthenge. Proceed, hon. Mutani!

Mr. Mutani: Thank you, Mr. Speaker, Sir. Bearing in mind that it is six years ago since this employee left employment upon retirement, we are surprised to hear the Assistant Minister saying that this officer did not fill this or that form in order to be compensated or paid his terminal benefits.

Could the Assistant Minister tell this House whether it is the employees who do this, or it is their personnel officers who instruct them on what to do after retiring, rather than making them suffer for all those years?

Col. Kiluta: Mr. Speaker, Sir, when Mr. Kiberenge retired, he was asked to provide to the Ministry, a copy of his identity card and his mailing address. He was also advised to open a bank account. He gave us a box number: 246 Chuka, and we wrote to him three letters. But so far, we have not received any reply. If the honourable Questioner does not mind, I will give him copies of the letters to take to Mr. Kiberenge, and then bring the required documents. From there, we will take the necessary action.

Mr. Speaker: What was it, hon. Nthenge?

Mr. Nthenge: My question is: Before anybody retires, the fact is known even two years in advance. Why do they wait to ask for his identity card after he has left as if they were not aware that he was retiring? Why did they not take all these documents before his retirement date? Why do they have to inconvenience a retired officer by making him to come back to Nairobi, wasting his time and money while he should be at home enjoying his pension?

Col. Kiluta: Mr. Speaker, Sir, Mr. Kiberenge was asked to provide these documents before he retired, that is during his clearance. He cleared but he never provided the documents. He said that he would come back. He gave us the address because he wanted to go and open a bank account, which is a requirement for his pension, so that it could be paid through the bank, but since he left the Ministry, he never came back.

Mr. Maundu: Thank you, Mr. Speaker. The issue of retirement benefits and payments has become very critical because many people travel all the way from the country side to come and claim for their benefits. More often than not, they are turned back to the rural areas day-in-day-out, month after month, until most of them give up or even die. The number of documents required are so basic. Unless Mr. Kiberenge was retired on mental grounds, a copy of an identity card and a bank account are so easy to get. Can the Assistant Minister tell us what other reasons are involved? We have reasons to believe that perhaps, "a kitu kidogo" was required, and when he was unable to produce any, he was frustrated all along.

Col. Kiluta: Mr. Speaker, Sir, I am not sure that a, "kitu kidogo" was required in this case, but the hon. Questioner being my friend, I am sure he is too willing to assist me. I would like him to take that responsibility and bring the documents of Mr. Kiberenge. I will give him the last contact address that we have.

Mr. Maundu: On a point of order, Mr. Speaker, Sir. If the Ministry wanted to pay the dependants of Mr. Kiberenge, they would do it right away, but it seems as if the Assistant Minister has personalised the matter. Can he undertake to make sure that he makes further communication for immediate payment if he is serious?

Col. Kiluta: Mr. Speaker, Sir, I said that we were given his latest address and we have been using the same address, but no response. That is why I am willing to give the hon. Questioner the letters that we have written to Mr. Kiberenge to take to him and bring us the documents we require.

Mr. Kamuyu: On a point of order, Mr. Speaker, Sir.

Mr. Gitau: Is it me or hon. Kamuyu?

Mr. Speaker: Order, hon. Members! I said hon. Kamuiru Gitau. If you doubt your name, please, confirm it from me. That is you!

(Laughter)

Mr. Gitau: Mr. Speaker, Sir, my name is Kamuiru Gitau from Gatundu and not Kamuyu.

Mr. Speaker, Sir, the answer given by the Assistant Minister surprises us because this Kiberenge has got two PIN numbers. Any time, the efficient Government of Kenya wants to arrest anybody, it will not take time to arrest that person, but when it comes to paying a person, it takes years. Can he tell the House why he continued misleading the nation that he cannot get across to a citizen of this country when he wants to do so? Otherwise, then the Government should resign, if it cannot get access to its own people.

Col. Kiluta: Mr. Speaker, Sir, I think the question of arrest does not arise in this case. In any case, if there were arrests, they should go to the relevant Ministry and not this one.

Mr. Michuki: On a point of order, Mr. Speaker, Sir. Arising out of the confusion which appears to be here, is it in order for the Assistant Minister not to tabulate what is required for payment of pension instead of prolonging this question? He is not telling us whether Mr. Kiberenge elected to be paid lump-sum or computed pension? Now, he has talking about identity cards. Which is which? If he had not elected that, whether there is identity card or not, he cannot be paid. So, can he be conversant with pensions regulations before he attempts to

answer the question?

Col. Kiluta: Mr. Speaker, Sir, for the benefit of the Questioner, I am a pensioner, by the way, and I know what is required because I provided the documents. So, I can talk from experience. What is required here is the identity card because he wanted computed pension, since that is what he qualified for. He was required to produce the photocopies of his ID card and the bank's account. That is all we required from him, but he has not been to the Ministry.

Mr. Mutani: Mr. Speaker, Sir, I wonder whether the Assistant Minister is in order to say that this pensioner did not submit all the documents while after the letter was written to him, he submitted all the documents to the Ministry. Is he in order to mislead the House?

Col. Kiluta: Mr. Speaker, Sir, when Mr. Kiberenge cleared with the Government, he did not give us any bank account because he did not have one. He was a casual labourer and he was being paid through the normal way of paying casual labourers. Secondly, he did not give us a copy of his ID card, otherwise, we would not be asking for it.

Mr. Kamuyu: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to very deliberately mislead this House, indeed, tell "untruth"? A Kenya citizen cannot work in one place for 38 years as a casual labourer. That is not true at all. He is misleading this House and he better expound on that point.

Col. Kiluta: Mr. Speaker, Sir, he was employed as a casual labourer, then promoted to a plant operator. I apologise for that. He was still being paid cash because he did not have any bank account.

Dr. Lwali-Oyondi: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order, first, to state that this man had no bank account while working and then expect him to have an account before he is paid his pension? Is he in order to state that?

Col. Kiluta: Mr. Speaker, Sir, I am in order. You can open a bank account any time you want!

Mr. Speaker: Next Question, Mr. Saulo Busolo.

Question 093

IMPROVEMENT OF STATE PROSECUTION SERVICE

Mr. Busolo asked the Attorney-General what proposals he has to improve the efficiency of the state prosecution service.

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

The Attorney-General is always seeking for ways to improve the efficiency of the State Law Office, including the Public Prosecution Department. Among the many ways, are:-

1. The Attorney-General is seeking to increase the establishment of legal officers and to better their terms and conditions of service. The Attorney-General in his submission to the Presidential Commission to review terms and conditions of service chaired by Mr. P.M. Munene requested not only for the substantial increase and bettering of the terms and conditions of service. But the Attorney-General also requested that the authorised establishment of legal officers in the State Law Office which includes the Prosecution Department, be increased by one-third. The current establishment which was established long time ago is 262.

2. The Attorney-General, in his submission to the Commission to review the terms and conditions of service of the police force and so on, chaired by Mr. Kipng'eno arap Ngeny, urged the establishment of a professional cadre with appropriate terms and conditions of service within the police force which will include legally-qualified and/or persons well versed in the law to be police prosecutors.

3. Under the UNDP funded programme of assistance to the Attorney-General's Chambers which was signed on 27th December, 1996, 12 vehicles will be supplied to the Attorney-General's 12 field stations which are mostly manned by legal officers who are prosecutors.

4. Under the said UNDP programme, registries including the criminal registry will be computerised.

Mr. Busolo: Mr. Speaker, Sir, I would like to thank the Attorney-General for his answer. He does usually rise above his fellow Ministers when answering Questions and I thank him for that. Nonetheless, he has told us about the establishment of cadre of legal officers, provide prosecution officers with vehicles and so on. I would like him to make some comments, at least, regarding training. For example, service delivery to rape victims. The sexual offences and those who deal with them within the Attorney-General's Chambers, in my view, do not seem to be well-trained. The investigation technique needs to be looked into, the medical examination, police recording techniques and the judges who deal with cases related to sexual offences. Could he make some comments about the training programme on those kind of issues?

Mr. Wako: Mr. Speaker, Sir, I think, as far as the issue of rape cases is concerned, the problem is more to do with investigations. Also the problem maybe more also to do with the way those cases are heard in court; that is the rules of evidence and procedures in court. It does not have much to do with the way, as I understand it, prosecutions are made in court.

Mr. Maundu: Thank you, Mr. Speaker, Sir. This is a very important question. Some of us are aware that upon graduation from the University, the Attorney-General's Chambers was the most competitive to be employed in because it had a big reputation for State Counsels. This situation does not seem to prevail now. We have had a case of expatriates who came to this country and disappeared mysteriously from the country because of certain problems. What I wanted the Attorney-General to tell us is this: What urgent steps is he taking to make sure that the status of State Prosecutors with regard to salaries, benefits and career advancement is improved so that the morale of State Counsels is improved and then the capacity to attract personnel to work with the State Department is improved?

Mr. Wako: Mr. Speaker, Sir, I do agree that when all is said and done, it is the issue of the terms and conditions of service which must be addressed. And that issue, I must say, has been addressed since 1991. You may recall that the Government, sometime in 1993, did substantially increase the basic salaries and improved the terms and conditions of service of the professional legal officers in my Chambers. And, in fact, it led to COTU and other organisations complaining as to why professional legal officers should get a 300 per cent salary increment. That happened, but the inflation and so on has eroded that and that is why in my answer, I said that we have, in fact, made very strong submissions before the Munene Commission which is currently sitting and which is supposed to recommend shortly on these matters. I hope that they will listen to the sentiments expressed in this House and award my officers appropriate salaries and terms and conditions of service.

Mr. Muite: On a point of order, Mr. Speaker, Sir. Does the hon. Attorney-General consider that there is movement in the right direction in the improvement of the efficiency of the state prosecutors when he continues to recruit lawyers from Sri Lanka and India and bring them here and pay them salaries, emoluments and other benefits way above what he is paying to the locals? Does he not consider that he is killing the morale of the locally-recruited staff?

Mr. Wako: Mr. Speaker, Sir, obviously the hon. Member of Parliament must be given the correct information. First, the terms and conditions of service of the State Counsels from India and Sri Lanka are not any better than the terms and conditions of service of the local staff except only as regards the passages between here and India, not forgetting gratuity. But that gratuity will also be available to the local staff who are on contract. So, those are the terms and conditions. Secondly, a lot of hullabaloo has been raised about a mere five expatriate staff in my Chambers. As I have assured members of my Chambers and, as I have assured the public, and as I have said again and again before, these expatriates do not in any way create an obstacle in the promotion of the local staff at the level of the Senior State Counsel and that of the Principal State Counsel at which these five people are employed. We are having 68 vacancies which we have advertised severally in our newspapers and which we have even advertised in the minutes of the Law Society of Kenya. So, they do not create a threat to the local staff.

Mr. Busolo: Could the Attorney-General consider reviewing the police recording procedures? I want him to tell us why a number of cases that are reported to the police do not end at his office?

Mr. Wako: Mr. Speaker, Sir, that is not related to this question, but I can say this: That I have a task force on the Reform of Penal Laws and Procedures which is addressing that very issue.

Question No. 059

IMPLEMENTATION OF DROUGHT
RECOVERY PROGRAMME

Mr. Speaker. Mr. Nyagah still not here? Then the question falls.

(Mr. P.N. Ndwiga stood up in his place)

Mr. P.N. Ndwiga, what is wrong? The Question has already fallen.

Mr. P.N. Ndwiga: Mr. Speaker, Sir, but I am on my feet. I know I do not look like Mr. Nyagah but I was on my feet. Hon. Nyagah requests that this Question be deferred for two weeks since he is out of the country.

Mr. Speaker: Question deferred.

(Question deferred)

Next Question Bishop Joseph Kimani.

Question No. 058

ALLOCATION OF PLOTS IN KABAZI MARKET

Dr. Lwali-Oyondi, on behalf of **Bishop Kimani**, asked the Minister for Local Government:

(a) if he is aware that plots in Kabazi Market have been allocated and now constructions are going on at the entrance of the market and,

(b) if the answer to "a" is in the affirmative, what step he is taking to cancel these allocations.

The Minister for Local Government (Mr. F.P.L. Lotodo): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that plots in Kabazi Market were allocated by the Nakuru County Council in 1989 and no new allocations are going on in the centre at the moment. Construction of the plots in question is ongoing, but the entrance to the market has not been blocked.

(b) The plots in Kabazi Market have been allocated by the Nakuru County Council as per the laid down regulations. Therefore, my Ministry cannot intervene in this issue.

Dr. Lwali-Oyondi: Mr. Speaker, Sir, is the Minister aware that some of the local authorities, particularly in Nakuru, are fond of issuing these plots today, but backdating the issuance. The result is that they have taken some of the public utility plots which were meant for open markets. They have built there so that wananchi have nowhere to display their wares when the market is going on.

Mr. F.P.L. Lotodo: I am not aware of that.

Dr. Lwali-Oyondi: Mr. Speaker, Sir, in the same Nakuru area, most of our public utility places including the Chief's Office in Lanet and the Presbyterian Church of East Africa (PCEA) ground in Lanet have been issued again to private individuals. Could the Minister explain how this is done and whether he is considering to sack---

Mr. Speaker: Order, Members! Dr. Lwali, I am not sure whether you were briefed by the Bishop Kimani because you are not talking about Kabazi Market but you are talking about elsewhere and that is why I ask Members to have instructions from their colleagues so that they have their facts about the questions that they ask on their desks. Can you now restrict yourself to Kabazi Market?

Dr. Lwali-Oyondi: Mr. Speaker, Sir, is the Minister satisfied because this Question is not only confined to Kabazi---

Mr. Speaker: Order! Order, Dr. Lwali! If you are not sure read the Question. The Question is: "Is the Minister aware that plots in Kabazi Market have been allocated and now constructions are going at the entrance of the market"? The market is Kabazi.

Mr. Kamuyu: On a point of order, Mr. Speaker, Sir. In view of the Chair's very accurate and correct observation, would I be in order to propose that this Question be deferred because clearly Bishop Joseph Kimani may wish to come and ask it himself?

Mr. Speaker: Well, I think, two things will happen; one is that we allow Dr. Lwali-Oyondi to continue, failing that, we shall drop the Question for non-attendance of the Member. I will give the benefit to Dr. Lwali-Oyondi to try as best as he can!

Dr. Lwali-Oyondi: Mr. Speaker, Sir, I wish to impression upon this House that the issue of grabbing land is common in all places and not specific only to Kabazi.

Could the Minister assure this House that this particular entrance is not going to be blocked by these grabbers, as alleged by the Questioner?

Mr. F.P.L. Lotodo: Mr. Speaker, Sir, the entrance to the market is 15 feet wide, so it has not been blocked as alleged.

Mr. Nthenge: Mr. Speaker, Sir, would the Minister instruct that proper planning by qualified planners be followed in the markets rather than these "Kangaroo" methods of a councillor saying you can do this and that, while they are not qualified and quite often going against qualified valuers and surveyors?

Mr. F.P.L. Lotodo: Yes, Mr. Speaker, Sir, the instructions have been given.

Mr. Speaker: Next Question, Mr. Kinyua Mbui for the second time.

Question No. 060

MAINTENANCE OF KERUGOYA-KIANDERI ROAD

Mr. Speaker: Mr. Mbui still not here? The Question is dropped.

(Question dropped)

QUESTIONS BY PRIVATE NOTICE

HARASSMENT BY ADMINISTRATION POLICE

Mr. Anyona asked the Minister of State, Office of the President, the following Question by Private Notice.

(a) Is the Minister aware that at midnight on 19th March, 1997, four Administration Policemen from Nyamarambe Divisional Headquarters of South Mugirango in Kisii District, harassed innocent wananchi in Bomonyara and Bokimai sub-locations of South Mugirango Chache Location without lawful authority or cause?

(b) Is he further aware that the Administration Policemen extorted money from wananchi for fictitious offenses without taking anybody to court?

(c) What are the names of the Administration Policemen and what disciplinary measures has the Minister taken against them?

The Minister of State, Office of the President (Mr. Kalweo): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware.

(b) I am not aware.

(c) Because of "a" and "b", part "c" does not arise.

Mr. Anyona: On a point of order, Mr. Speaker, Sir. There is something wrong with this Minister and with this Ministry too. That is precisely the same answer we got last time until I laid documents on the Table to show that the things I was alleging in the Question had taken place. So, the Chair ordered the Minister to go back on the basis of the documents I laid here and come with a proper answer. He is reading the answer that was read here on the 8th. Is that the way we are going to proceed in this House?

Mr. Kalweo: Mr. Speaker, Sir, it is adequately very correct!

(Laughter)

Mr. Maundu: Thank you, Mr. Speaker, Sir. This is a fairly serious Question and, as the hon. Anyona says, documents were laid on the Table indicating the sort of mischieves he was complaining about. The Minister is insisting on that information. It is either for him to say that whatever was tabled here is not correct, in view of his investigations, because saying that he is not aware, it means that he knows nothing. Can the Minister now tell us what he knows about those documents that were tabled by hon. Anyona last time?

Mr. Kalweo: Mr. Speaker, Sir, what I very well know is that I am not aware of these incidents.

Mr. Anyona: On a point of order, Mr. Speaker, Sir. It is on record when I insisted in view of the answer we had got that I hope we will get a proper answer. The Chair stated, that he too, expected a proper answer because the Minister had come here and said he was not aware and documents had been laid here. This is a matter where wananchi have been terrorised by the Provincial Administration. In addition, since the Question came to Parliament and was partly answered, the Provincial Administration has continued to terrorise wananchi with vengeance.

I have further communication which has just come from those people by phone. My point of order is that I would like to lay a further communication of further terrorism. Would I be in order to ask, that for a second time, the Chair orders this Minister to go and investigate this matter which is supposed to be a "KANU Zone" and the people are being terrorised and we want to assume that it is this Government which has sanctioned the terrorism?

Mr. Speaker: Mr. Anyona, you are now making a speech! Mr. Minister, would you like to respond?

Mr. Kalweo: Mr. Speaker, Sir, I would like to inform the hon. Member that I can be aware when such matters have been reported to any of my police stations.

Mr. Kaptan: Mr. Speaker, Sir, I think the Minister should take the Members' Questions very seriously. Is this Minister aware that chiefs and Administration Police in various places in this country have established "Kangaroo courts" where they are extorting money from members of the public, and some Administration Police are looking for chang'aa; but when they do not have money to buy chang'aa, they sometimes deposit hand-cuffs and cartridges as a pledge for chang'aa?

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. A deposit of cartridges and hand-cuffs in a chang'aa drinking den is a very serious matter. Could the hon. Kaptan substantiate his allegations?

Mr. Speaker: I do not even understand what he is talking about. Mr. Minister, would you like to respond?

Dr. Kituyi: Let him first substantiate the claims?

Mr. Speaker: Order! This is Question Time, let the Minister respond, Dr. Kituyi. Do you understand what he said?

Mr. Kalweo: No, Mr. Speaker, Sir.

Mr. Kapten: Mr. Speaker, Sir, I am not talking in Kimeru, I am speaking in English. I want to give him an incident in Namanjalala Location, where the Administration Police with the Chief are going round the location to ask for chang'aa. When they do not have money to pay for that chang'aa, they pledge hand-cuffs to be given chang'aa so that they could pay afterwards, after getting the money.

Mr. Speaker: Are you making a statement or asking a question, Mr. Kapten?

Mr. Kapten: No, Mr. Speaker, Sir. He is shouting that he is not aware, but these are the hand-cuffs which his own Administration Police deposited with wananchi to be given chang'aa.

(Laughter)

(Mr. Kapten laid the handcuffs on the Table)

Mr. Kalweo: Mr. Speaker, Sir, still I am not aware!

Mr. Speaker: Order! Order!

Mr. Ojode: On a point of order, Mr. Speaker, Sir. This Minister is disappointing this Government. Would I be in order to call, both for his resignation, Mr. Awori, and the entire Ministers in the Office of the President? They are quite incompetent!

Mr. Speaker: Mr. Kapten, the instruments you have deposited, I think, you still have part of it, the keys. Can you put the keys there as well?

Mr. Kapten: Mr. Speaker, Sir, these are my keys, they are not for the hand-cuffs. I remember they only deposited the hand-cuffs which one of my constituents brought to me.

Mr. Anyona: Mr. Speaker, Sir, unless this Government and this Parliament wants an outbreak of violence in this particular area where the Government is terrorising people and the Government says that they are not aware, even when letters have been tabled here. I want to seek the guidance of the Chair.

Since it was the Chair that directed that, in view of the documents tabled before the House, the Ministry should bring a different answer, they have not brought a different answer. Today, I have also laid further communication from the people showing that there is further terrorism. Would I be in order to beseech this Minister so that he can now go and investigate on the basis of the documents I have laid just now because he says he is still not aware? Can he now be ordered to go and investigate and come back with a proper answer, if not, there is going to be an outbreak of violence in that area?

Mr. Kalweo: Mr. Speaker, Sir, I will thoroughly investigate how these handcuffs happened to be in the pockets of an hon. Member. Maybe they are Government property which has been stolen. What the hon. Member has alleged will be investigated.

An hon. Member: But you are not aware!

Mr. Kalweo: I will be aware when I investigate it.

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

Mr. Speaker: Order, hon. Members! I hope the House is not being excited by this. We are losing track of Mr. Anyona's Question. Mr. Kalweo, I want to go to the next Question. Mr. Anyona asked you whether, in view of what has been laid on the Table, you would like to investigate the issue further?

Mr. Kalweo: Mr. Speaker, Sir, I was going to the second allegation by the hon. Member. We believe that whatever hon. Members raise here must have been reported to a police station. What are the police stations for, if we do not report incidents to them? When hon. Members bring to me matters which have not been reported to police stations in the concerned areas, how do they expect me to know what is going on in every village? That is impossible!

Dr. Otieno-Kopiyo: On a point order, Mr. Speaker, Sir. With due respect, this is the second time this Question is appearing on the Order Paper. You had ordered the Minister to go and investigate the issue and come back to the House with further details, but he has come back with nothing. What is your ruling on this issue?

Mr. Speaker: Do you want me to imprison him?

Hon. Members: Yes!

Mr. Speaker: I am sorry, I have no such powers.

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. The procedure is that when you lay a paper on this

Table, it is normally taken by the Clerk-at-the-Table who files it so that it can be referred to in future. In what type of file will the handcuffs laid on the Table be placed? I hear that the Minister wants to investigate the matter further, but he is not allowed to take away the handcuffs because they have become the property of the House.

Mr. Speaker: Order! In ordinary circumstances, hon. Members would table documents to prove their cases. This is a very rare case, where an hon. Member has in his possession handcuffs and has proceeded and laid them on the Table of the House. I think the best I can do is to direct the Minister to take possession of the same, go and do the necessary investigations, and then he may report back to the House, if he so wants. We cannot store handcuffs in this House: I have no use for them.

(Mr. Kalweo collected the handcuffs from the Table)

PROVISION OF FAMINE RELIEF TO SLUM DWELLERS

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

(a) Is the Minister aware that poor slum dwellers and those who live on Mihango, Ruai and Kamuru are in urgent need of relief food and that some children cannot attend school due to hunger?

(b) Could the Minister tell the House why a leaders' request, contained in a letter dated 24.3.97, appealing for famine relief food for the poor slum dwellers in Mukuru wa Njengea, Mukuru wa Reuben, Mihango, Soweto, Maili Saba, Gitari Marigu and Kinyago was not granted?

The Minister of State, Office of the President (Mr. Koech): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware.

(b) The Government is distributing famine relief supplies to drought victims, or those affected by other disasters, which threaten their livelihood. Residents of Mukuru wa Njenga, Mukuru wa Reuben, Mihango, Soweto, Maili Saba, Gitari Marigu and Kinyago are neither drought victims nor have they been affected by any other disaster to qualify for the famine relief supply.

Mr. Ruhiu: Mr. Speaker, Sir, when we had another drought in, I think, 1994, these people were given about 900 bags of maize and many bags of beans, and that is in the HANSARD. These people are an endangered species. They are slum dwellers who cultivate and grow crops on road reserves and under power lines. That is how they earn their livelihood. How can the Minister say that they do not qualify for famine relief food? This is why we say that relief food in Kenya has been given selectively. Why does he discriminate against my people who in the past have received this food?

Mr. Koech: Mr. Speaker, Sir, I do not think that what the hon. Member has said is true. This is because for people to qualify to be given this food, there must be a sort of a disaster. While it might be true that some people within the city cultivate some areas that cultivation is not their source of livelihood.

Mr. Ruhiu: Mr. Speaker, Sir, can I produce the HANSARD tomorrow to show that these people received this food in 1994?

Mr. Speaker: Order! Yes, Mr. Nthenge.

Mr. Nthenge: Mr. Speaker, Sir, is the Minister aware that the places mentioned in this Question are like rural areas? They are on your way to Tala and people there live like people in rural areas, who are now being supplied with famine relief food.

These people are on the outskirts of Nairobi and live like people in rural people, whom we represent.

Mr. Koech: Mr. Speaker, Sir, the hon. Member has talked about slum dwellers. It is not that I do not sympathise with those who live in slums. But relief food is being given to people whose crops have failed. It is also being given to people, especially those in urban areas, who have suffered disasters like fire.

Mr. Anyona: On a point of order, Mr. Speaker, Sir. The Minister is making a distinction between people in rural areas and slum dwellers. Is the position not that the declaration of famine to be a national disaster covers the whole country? Is he in order now to say that supply of famine relief food can only be confined to rural areas? Why did the President make a declaration covering the whole House? What was the purpose? Is he in order to mislead the House?

Mr. Koech: Mr. Speaker, Sir, it does not mean the Government can give all the people food. We have only been giving food to areas whose crops have failed. We know the urban areas are not agricultural lands.

Mr. Nthenge: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! We will now go to Questions. With all these points of order, we shall never get to Questions.

Mr. Shikuku: Bw. Spika, kufuatana na majibu ya Mhe. Waziri katika Ofisi ya Rais, pengine hajawahi kutembelea Ruai. Watu wa Ruai hupata mahitaji yao ya chakula kutokana na kupanda maharagwe na mahindi ukielekea upande wa Tala katika Nairobi. Kiangazi hakikuwaonea huruma. Wao pia walikuwa katika kiangazi, na Waziri aliona Maasai wakileta ng'ombe wao hapa Nairobi kwa malisho. Anaweza kufuata swali la Mhe. Ruhii aliyeuliza Swahili hili, kwamba mwaka wa 1994, watu hawa walipewa msaada wa chakula. Kwa nini wakati huu wa kiangazi ambacho kiliwadhuru, hawawezi kupewa chakula?

Watu wa Ruai hawako katika maeneo ya mitaa ya mabanda. Janga la njaa lilitangazwa katika Kenya nzima.

Mr. Koech: Mr. Speaker, Sir, every district or for this case Nairobi, hon. Members are members of the District Social Dimensions Committee. I believe, if hon. Ruhii believes that this was an agricultural land, he should have reported this one and it would have been handled by the Social Dimensions Committee. Since we have not received a report to that effect, there is no way we can give relief food to these particular slum dwellers.

Mr. Ruhii: Mr. Speaker, Sir, in fact, I wrote a letter. This letter was not written by leaders. I personally wrote this letter and hon. Manga, of this same Ministry confirmed that the letter had been received by the Ministry. Can he tell me why places like Kamuru and Mihango, where people have got parcels of land measuring about 10 acres each, cannot be regarded as agricultural farms?

Mr. Koech: Mr. Speaker, Sir, if the hon. Member had followed my earlier answer, he should consult with the District Social Dimensions Committee.

An hon. Member: He has written!

Mr. Koech: It is quite true he has written, but the reports we get come from the District Social Dimension Committee and with those reports, we try to do our best, in spite of the difficulties in getting enough food.

Mr. Speaker: Order! We are short of time now. Mr. Mwiraria's Question.

RE-POSSESSION OF SETTLEMENT PLOTS

Mr. Mwiraria: Mr. Speaker, Sir, I beg to ask the Minister for Lands and Settlement the following Question by Private Notice.

(a) Is the Minister aware that hundreds of settlement plots belonging to the poor in Timau are being re-possessed and re-allocated to the wealthy?

(b) Could the Minister give the number of plots involved and the justification for re-possession?

The Minister for Lands and Settlement (Mr. Ngala): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that hundreds of settlement plots belonging to the poor in Timau are being re-possessed and re-allocated to the wealthy.

(b) Since the answer to (a) is in the negative, I therefore, do not have the number of plots involved.

May I request the hon. Member to give me the necessary details for investigations and appropriate action.

Mr. Mwiraria: Mr. Speaker, Sir, this is, indeed, a very sad answer. As a former civil servant, I am really embarrassed by some of the replies we get in this House. The Civil Service used to give priority to Parliamentary Business. Today, we have a Minister, who does not know what is happening in his office. I have a heap of documents here, but let me read a few just in case hon. Members think I come here to ask useless questions regarding the---

Mr. Speaker: Read one!

Mr. Mwiraria: Right, Mr. Speaker, Sir. The first one is a letter addressed to a Mr. Kibue Nyongo, a settler in Timau by the Director of Land Adjudication and Settlement. The Director says:

"The Government, through Settlement Fund Trustee, allocated you plot No.265 of approximately five acres in Lewa Down Settlement Scheme in Meru District. The particulars of the breach are as follows:-

- (a) That you have failed to fence the plot.
- (b) That you have failed to reside on the plot.
- (c) That you have neglected and/or failed to cultivate the plot.
- (d) That you have failed to pay the necessary dues.

In accordance with Settlement Fund Trustee's terms and conditions of allocation of settlement plots, you are hereby called upon to rectify the same within 60 days from 8th October, 1996. Failing which the Settlement Fund Trustee will cancel your allocation of the plot without further notice to you. In the event of such cancellation, your interest will cease and your continued presence or any attempt to enter or deal with the plot will be construed as a trespass and will be dealt with

accordingly."

That is a letter from the Director of Settlement. Mr. Speaker, Sir, the point I really want to make is that, I have a Court Order implementing some of these letters. The Court order is dealing with 40 plots. If I may read only one paragraph, so that--

Mr. Speaker: Is that the Court Order?

Mr. Mwiraria: Yes, Mr. Speaker, Sir.

Mr. Speaker: Okay.

Mr. Mwiraria: Mr. Speaker, Sir, in fact, it is a pre-amble Court Decree. It states as follows:-

"Now it is hereby decreed as follows:-

- (a) Judgement be and is hereby entered against the defendant jointly and severally
- (b) Settlement Registrar in respect of land parcel numbers... be rectified and be replaced by the name of the plaintiff.
- (c) The Land Registrar is hereby ordered to nullify the sub-division of Map sheets No. Meru-Ngushisi three and combine the 40 portions that is, land and parcels numbers (they are listed) into one to enable the District Surveyor to excise 200 acres out of the same.
- (d) Cost of the suit be paid to the plaintiff."

Mr. Speaker, Sir, I am talking about an area where the poorest of the poor, people who were squatters on the land were settled in 1972. After ten years, the Government decided the two and a half acres was not adequate, so they gave them five acres. Now these are the people who are being moved out this hour. To prove that the move is not being taken lightly, let me read a letter from--

Mr. Speaker: Order, now! That is becoming a Motion. Can the Minister respond to you first?

Mr. Mwiraria: Mr. Speaker, Sir, then let me now ask the question. My question is: "Since these people have already got a notice from the District Land Registrar asking even those who had title deeds to surrender them so that somebody can get 200 acres; what action will the Minister take to stop blood shed?"

The meru people fight for honour, and they will fight for land. I do not want bloodshed. That is why I take this question very seriously. What action will the Minister take?

Mr. Speaker: Just cool down, Mr. Mwiraria.

Mr. Ngala: Mr. Speaker, Sir, I would like to thank the hon. Member for explaining the way he has done. I was earlier replying to an erroneous situation where the hon. Member of Parliament had said the plots are being taken and given to the wealthy, and I was saying if there was an example of where a plot has been taken and given to the wealthy; I would like to know so that we can take action. Now that the hon. Member has given the full details, I would like to take time to investigate and then bring a proper reply to the House.

Mr. Speaker: Will a week be enough?

Mr. Ngala: I think, it should be enough.

Mr. Speaker: I will defer the Question to Thursday next week.

(Question deferred)

MINISTERIAL STATEMENT

MAFIA GANG ACTIVITIES IN KENYA

The Minister of State, Office of the President (Mr. Kalweo): I rise to make a Ministerial Statement in connection with an allegation on Mafia Gang Activities in Kenya. The matter first appeared in the *East African Standard* newspaper and raised in this House by hon. Shikuku. In his contribution he alleged that foreigners of Italian origin were coming to the Coast as tourists and later on obtaining entry or work permits to man jobs that can easily be performed by qualified local Kenyans.

Mr. Speaker, Sir, if I may, I would like to go back to 1994/95 when the Press raised the same allegations which were critical of the activities of some foreigners at the Coast. The local people had complained of systematic plans by foreigners marginalising them in commercial activities in the Coast Province. Consequently, the local community's complaints were taken up by the Government and a decision was arrived at that, a Committee be appointed to look into the issues raised and come up with a workable solution to the problem, if it existed. The Committee's terms of reference were to outline an appropriate strategy of dealing with foreign investors taking into account the interests and needs of local people and also to work out investment procedures to be followed by investors including; the processing of entry permits and vetting of investment capital among others.

The Committee which was chaired by Eng. Sarawe went on a field trip to get first hand experience of the situation on the ground. They also held discussions with various groups and authorities, for instance, Provincial Administration, professional organisations dealing with tourism, for example, KATO, Members of Parliament in Coast Province, local authorities and foreign investors among others. The issue raised in the East African Standard newspaper on 8th April, 1997, is a repetition of the earlier allegations investigated in June, 1995, and the data received in the investigations did not reveal anything to warrant the manner it was reported in the Press. After the Committee's findings were complete, recommendations were made to the Government within the framework of existing Acts governing trade licensing, work permits and investment procedures.

Mr. Speaker, Sir, I would like to give an assurance to the House that, it is Government policy that the economy of Kenya should, as much as possible, be manned by trained and competent Kenyans. Entry work permits are, therefore, issued to non-citizens with skills not readily available on the open labour market and only on the understanding that effective training programmes are undertaken to produce trained citizens within the valid time of the entry work permit so issued.

The foreign investors who have at their disposal Kshs10 million are issued with entry work permits once their projects have been approved by both Investment Promotion Centre and Entry Permit Steering Committee and there must be proof to the effect that such projects would be of some benefits to Kenya in terms of creating employment and earning foreign exchange for Kenya. Most foreigners, including Italians, found in the Coast are tourists and any of them found contravening the laws of the land are dealt with swiftly and firmly including expulsion from the country. Even investors who violate the provisions of their entry work permits are liable to cancellation of the same. Furthermore, the Immigration Department has an investigation team whose work is to go round all the establishments employing foreigners to check, on a regular basis, to ensure that non-Kenyans do not violate immigration regulations.

Mr. Speaker, Sir, finally, I would like to emphasise the importance of foreign investors in the country who have in the past created more employment opportunities for Kenyans. Projects such as manufacturing under bond, Export Process Zone and Export Promotion Council are good examples.

Lastly, I would like to assure the hon. Members of the country's commitment in protecting its citizens from exploitation; by ensuring that the entry work permits and investment procedures are safeguarded by regulations which aim at ensuring that immigrants and foreign investors are thoroughly vetted. Any foreigner found violating these regulations will face the full force of the law including expulsion from the country.

Thank you, Mr. Speaker.

Mr. Shikuku: On a point of clarification, Mr. Speaker, Sir. While thanking the Minister for his statement, I was just wondering if he could ensure that, that loophole in the immigration is sealed because most of these people do not get these work permits from their brothers here; they get them from the black man like me, probably more black than I am from the Immigration Department. Could he assure this House that he will make sure that, that exercise does not continue because most of these people want "Harambee" and "Harambee" is given by these people who want these work permits and who deny our people an opportunity of getting jobs?

The Minister of State, Office of the President (Mr. Kalweo): Thank you, Mr. Speaker, Sir. The Immigration Department is very alert on this issue and I thank also hon. Shikuku for raising that issue so that people can understand the issue. That is a very tricky area and we have competent officers. Of course, I cannot rule out any foul play, but we are alert.

POINTS OF ORDER

REQUEST FOR MINISTERIAL STATEMENT: BRUTAL MURDER OF S.K. NDUNGI

Mr. Muite: Mr. Speaker, Sir, I rise on a point of order on a very sad issue in connection with the brutal murder of the late S.K. Ndungi. The late S.K. Ndungi was born in Kikuyu Constituency where he lived until his death yesterday.

Mr. Speaker, Sir, I would wish to request, through you, for a Ministerial Statement from hon. Attorney-General to reassure this House that thorough investigations will be done on this matter. Indeed, the Attorney-General should inform this House what steps the Government intends to take to ensure that the truth surrounding this brutal murder comes out. Last year, the late Mr. Ndungi was arrested and arraigned in court on some bogus and fabricated charges of murder and robbery with violence and, therefore, there are fingers pointing at the Government regarding his killing yesterday. I am not saying that the Government was involved, but the Kikuyu people, his family and Kenyans in general would like to know the truth. We have a catalogue of unresolved murders in this country which is very chilling indeed. Could the Attorney-General, perhaps, consider appointing or agreeing to

the appointment of a Parliamentary Select Committee to investigate this murder or alternatively a judicial inquiry to be chaired by a judge who enjoys independence and security like, Mr. Justice Richard Kwach and Justice Gicheru?

Mr. Speaker: Order! I think you have gone beyond your mandate. The Attorney-General, as we know, has no power to appoint any Parliamentary Committee. The best he can do is to issue a Ministerial Statement, but if you want a Parliamentary Committee, you come to the House.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, the unfortunate murder of Mr. Ndungi is a matter that concerns all of us and apart from his family and members of his constituency, it is also a matter that does concern members of the legal profession of which I am a teacher and head.

I can inform these hon. Members of Parliament that only this morning I instructed the Commissioner of Police and the Director of Criminal Investigations to carry out thorough, proper and comprehensive investigations with a view to finding the culprits. I take into account the background which has been stated by hon. Muite. I have mentioned that background to them and told them that they have no alternative, but to get to the culprits.

So, as we are talking today, instructions have been given. I talked to these two people personally and they are carrying out the investigations. I will keep the matter under review. I was instructing them in the exercise of my powers conferred upon me under Section 26 of the Constitution.

BILL

Second Reading

THE CUSTOMS AND EXCISE (AMENDMENT) BILL

*(The Assistant Minister for Finance
(Mr. Keah) on 17.4.97)*

(Resumption of Debate interrupted on 17.4.97)

Mr. Speaker: Who was on the Floor?

MOTION FOR ADJOURNMENT

ADJOURNMENT OF DEBATE UNDER STANDING ORDER 21(1):

Mr. Anyona: On a point of order, Mr. Speaker, Sir. I beg to rise on a point of order under the provisions of Standing Order No.21 (1) which state as follows:-

"A Member who wishes to postpone to some future occasion the further discussion of a question which has been proposed from the Chair, may claim to move "That the debate be now adjourned."

Mr. Speaker, Sir, in accordance with those provisions, I would like to move that the debate on the Customs and Excise (Amendment) Bill be now adjourned. The reasons for seeking this adjournment are as follows:- The amendment before the House arises from a declaration made by His Excellency the President about a national disaster involving famine. The declaration itself, found in Kenya Gazette Notice No.7, was based on the provision of Section 3 (1) of the Preservation of Public Security Act, Cap. 57. For the convenience of the Members, I would like to read that particular provision. It says:

"If at any time it appears to the President that it is necessary for the preservation of public security to do so, he may by notice published in the Gazette declare that this part shall come into operation in Kenya or in any part thereof".

The part referred to here is part two of the Act. In accordance with those provisions, the President did make a declaration. Now, the first problem arises from the fact that the provision of Section 3(2) requires that regulations be made to make the declaration operative so that it can be administered. Section 3(2) requires as follows:-

"Where a notice under sub-section 1 has been published and so long as the notice is in force, it shall be lawful for the President to the extent to which this Act is brought into operation and subject to the Constitution, to make regulations for the preservation of public security".

Now, the declaration covers the whole country. That is why we were telling the hon. Minister from the Office of the President that the declaration applies to every part of this country. If they intended to apply in the rural areas and slums, the law says that they should have said so. In any case, I think it was a good thing because there are maybe people in the slums who have no food. As far as I know, no regulations have been made in pursuance of Section 3(2).

There was hue and cry, particularly from the Opposition and the churches on the extent of the declaration. Was it a state of emergency or what was it? The only way you can differentiate is when you make regulations because they will state clearly that we are dealing with famine relief. This arises from Section 2 of the Act which gives you the various circumstances under which this applies. In this particular case, we are dealing with famine. You can only say so in the regulations, but as of now, regulations have not been made. So, as it stands, the declaration is illegal. The declaration can also be used indiscriminately because it is not limited by any regulation. Now, that is the first problem with this Bill.

The second problem is that under Section 6 (1) of the same Act, Cap.57, it is required as follows:-

"All subsidiary legislations shall be laid before the National Assembly as soon as maybe after it is made, and if the Assembly within the period of 20 days commencing with a day on which the Assembly first sits, after the subsidiary regulation is laid before it, resolves that it be annulled, it shall cease to have effect".

Not only have the regulations not been made, they have not been tabled. Of course, they cannot be tabled because they have not been made. Therefore, to that extent, the Bill before the House is not properly before the House.

Section 34(1) of the Interpretation and General Provisions Act, Cap.2 requires as follows:

"All rules and regulations made under an Act shall, unless a contrary intention appears in the Act, be laid before the National Assembly without unreasonable delay and if a resolution is passed by the Assembly within 20 days on which it next sits, after the rule or regulation is laid before it, the rule or regulation be annulled, it shall be deemed to be void but without prejudice to the validity of anything previously done thereunder or to the making of the new rule or regulations".

So, from Section 6 and Section 34 of the two Acts, there is a mandatory requirement that the regulations are laid before the National Assembly.

Mr. Speaker, Sir, the purpose for doing that is because the National Assembly then has an opportunity, within 20 days, to decide whether the regulations should have legal force. If within 20 days there is no negative resolution, then the regulations have the force of law.

Mr. Speaker, Sir, this Bill is brought as an amendment to Cap 472 which is the Customs and Excise Act. Even in that particular Act, Section 19, Sub-section 4, it is required that:-

"A variation in the rate of any duty made under Sub-section 1---

That is the law, as it stands now, before the proposed amendment.

"Or, 2, shall be laid before the National Assembly without unreasonable delay and shall cease to have effect if a resolution of the National Assembly disapproving the variation, is passed within 20 days from the first day on which the National Assembly next sits after the variation is so laid".

Mr. Speaker, Sir, the first thing I think we should say here is that, the purpose of this amendment is to enable the full implementation of the declaration by the President which in itself has not complied with the law. The reason is that, because it was necessary to lower certain rates, for instance, we are going to import wheat, rice and even maize and milk. It was necessary to enable the Minister to lower the rates. At the moment, the Customs and Excise Act requires that the Minister may increase or decrease the rate, but by more than 30 per cent. In fact, the rate on some of these goods is as high as 75 per cent. So, if you were to raise it in accordance with the provisions of the Act as it is now, he could only bring it down to 45 per cent. Yet, because of famine, it was necessary to lower it much further than that.

So, Mr. Speaker, Sir, what could he do? He could only go back to the Customs and Excise Act and require that the Act is amended to enable him to lower the rate by any margin. In this case, up to zero.

Mr. Speaker, Sir, the amendment that we are debating this afternoon is intended to enable the Minister for Finance to lower the rate of Customs and Excise duty on these goods to any level between zero and the current rate which is 75 per cent. Now, that is the purpose of this amendment. The amendment as it stands, is full of legal lacunas as I have indicated. I have indicated the lacunas under the preservation of Public Security Act.

Mr. Speaker, Sir, in the Customs and Excise Act, Section 119 requires an extra sub-section 1(a) which is the main amendment of this Bill. It reads as follows:-

"Notwithstanding the provisions of Sub-section 1 - which is what the current situation is - the Minister may by order in the gazette decrease the rates of duty on maize, wheat, sugar, milk or rice by any amount during periods of civil strife, national disaster or calamity declared under any written law for the time being in force, and may upon revocation of the declaration, increase the rates of duty by such amounts as may be necessary to restore the rates prevailing immediately before the declaration".

Mr. Speaker, Sir, as it is, the Minister cannot make any variation before this amendment becomes law, because he would have no law to enable him to do that. So, the Minister has brought the amendment, we are debating

the amendment right now, inspite of the fact that the declaration itself is illegal. What has happened is, even before the amendment has been debated in this House and either become or not become law, the Minister for Finance has proceeded and made variations in the rates of duties.

Mr. Speaker, Sir, I have with me here several legal notices making the variations. There is Legal Notice No.6 of 24th January, 1997 which reduces the rates on these goods. There is another Legal Notice No.15 of 7th February, 1997 which reduces the rates of duty chargeable on maize, milk and others. There is Legal Notice No.43 which similarly reduces the rates on beans and these other items to nil. So, indeed, there is evidence that the Minister has made the variation. But he has made the variations in a legal vacuum. They are illegal. The law does not at the moment enable him to do that. He can only reduce the rate at the moment by 30 per cent. He cannot reduce this to nil, not until this Bill becomes law. That is the first problem.

Mr. Speaker, Sir, the second problem as I read is that, even if this Bill had become law and he then subsequently made the necessary variations, he would still be required to bring the variations to Parliament for 20 days, within which if there was negative resolution they would have no effect. If there was no resolution, then they would have legal effect. I do not know why they have not been laid here, although they are illegal. I have gone through the votes and proceedings, these illegal variations have not been laid before the National Assembly. So, right now we are debating this Bill in a vacuum. We are debating something that does not exist in the House. We are debating something that infringes the provisions of the law.

Mr. Speaker, Sir, in terms of laying the documents here, the law uses a "reasonable time". But how reasonable is a "reasonable time?" I have calculated, and since Parliament resumed, it is 15 Parliamentary days and 23 calendar days. By any standards, that is reasonable time to lay documents on the Table. Even that has not been done.

Mr. Speaker, Sir, it would be illegal for Parliament to proceed with this debate on this basis: Either the declaration is itself illegal; the Bill itself is illegal or has not assumed legal authority and that the rates that have been levied are themselves illegal. We do not want to perpetuate illegality either by default or by design. I want to believe that the office of the Minister for Finance is possibly not aware of these legal lacunas; and indeed, the entire Government. I would like to ask the Attorney-General sitting there: Are you the legal advisor to this Government? Why then is this Government acting illegally? Whom should we hold responsible? Is it the Attorney-General or who? Or is it that the Attorney-General gives wrong advice. If that is the case, of course he enjoys legal tenure.

Mr. Speaker: Mr. Anyona, look at the provisions of Standing Order No.212. Your debate must be restricted to the matter of adjournment.

Mr. Anyona: Yes, Sir. I do not want to debate, I was merely illustrating that these things are illegal and it is very surprising that they should be illegal when we have an Attorney-General and the Minister for Finance who should know. But as I said, I want to believe that it was an oversight.

Mr. Speaker, Sir, if we have discovered in terms of our own procedures, that there is something seriously wrong for us to continue with this Bill, then we should adjourn debate on the Bill. It is on the basis of what I have just said that, I was proposing that the House adjourns debate on this particular Bill until the Minister for Finance and the Government sort themselves out in relation to the law - so that they can come back to the House with a Bill that complies with the requirements of the law. In the meantime, the country has been put into extreme difficulties because it requires food and yet, the legal machinery is not in place because of the inefficiency of a Government of this kind. That is why Kenyans at the end of this Session must end this Parliament. We must have a Parliament that lives to its aspirations and we must have a Government that complies with the law and takes into account, the welfare of the people.

Mr. Speaker, Sir, I now wish to ask hon. Dr. Otieno-Kopiyo to second the Motion.

Dr. Otieno-Kopiyo: Mr. Speaker, Sir, I wish to second this very important Motion.

In the first place, Parliament should never be used by any authority on the land to rubberstamp decisions that have already been made, especially if they are made outside the law. The second issue is that the current Bill seeks to ratify decisions that have already been undertaken and imports are already here in the country and the variations have been made. This is a very sad affair and I suggest that the process of tax collection in Kenya should be so sacrosanct, that nobody whatsoever, should be able to manipulate that process. In that respect, the Bill seeks to put Parliament in an embarrassing situation where we will be acting outside the ambit of the provisions of the law - without changing those provisions, to provide for the flexibility required to effect them as they are.

The other issue which I want to raise is that the process of Zero-rating should be used to benefit the majority of Kenyans - those caught up in the famine catastrophe. We have not been given details by the Minister concerned as to what amounts of food were involved and how much money was involved and more particularly, how much money the country is loosing through zero-rating - and whether or not that sum total of money has been transferred to the consumer, who in this case, is the Kenyan suffering from the pangs of hunger and other catastrophes. In that respect, it will be very important, when the Bill is looked at and brought back again, that the Minister brings to Parliament the

full details of the financial involvement in terms of the amount of duty that the Government will not be able to receive.

Finally, at the back of that Bill, there is a declaration that the Exchequer will not spend any further money if the Bill was to be implemented. This is not necessarily true, because the Exchequer foregoes the tax that they could have been able to collect if the law was in place as it were.

With those few remarks, I beg to second.

(Question proposed)

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I wish to contribute to this very important Motion.

First of all, I want to assure this House that we have a principal legal advisor to the Government. I also want to further assure this House that the Bill which is before Parliament is properly so.

I wish to state why it became necessary to follow the procedure that was followed. In actual fact, I believe that the Mover of this Motion did touch on it and he said that it was a good thing - but he is concerned about the legalities. I would like to draw the attention of the Members to the fact that, we were faced with a national disaster and it was necessary that food was brought into the country and it was also further necessary that the duty from that food be lower or even zero, than was permitted under the law. I think that has already been stated. It is a necessity that the current laws do not permit completely the removal of duty, excise and other things. So, it was necessary that this happens.

Mr. Speaker, Sir, the Customs and Excise Act, Section 138, under which the public declaration was made, reads as follows:

"Provided that where maize, wheat, sugar, milk, rice, textiles, new and used clothing and footwear are imported during periods of civil strife, national calamities or disaster declared under any law for the time being in force or where they are intended for use in officially recognised refugee camps---

So, you will bear immunity not to, but apart from the importation of those essential items intended for use in officially recognised refugee camps and here we are making reference to the United Nations High Commissioner for Refugees Camps in Kenya. In all other situations, there must be a national calamity or disaster declared for the Minister to be able to exercise the powers under Section 138 to remove the duty.

Under the laws that we currently have, a number of people may say these are too draconian and they should not have been used here. But the fact remains that under the laws that we have today, the only---

Mr. Anyona: On a point of order, Mr. Speaker, Sir.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, why is he interfering with my contribution? I did not interrupt him when he was making his contribution. I would have done that many times if I wanted to!

Mr. Speaker: Order! Order, hon. Anyona. I think it is good grace for a Member who has raised substantial issues, to allow the opposite side time to put his or her views across without unnecessary interruption. He may have the right to reply. You can seek my indulgence subsequently but I prefer that Members do not unnecessarily stop the free flow of ideas. Mr. Anyona, you will have to listen patiently. Mr. Wako, proceed!

The Attorney-General (Mr. Wako): Thank you, Mr. Speaker, Sir. Indeed, there were many times that I wanted to stand up on a point of order when hon. Anyona was contributing, but I was patient enough to wait and listen to his arguments, which I followed very, very closely. I hope that when we are discussing this important issue, the same courtesy prevails. It is an important issue. Under the laws that we have today, to be able to declare a national disaster or calamity, one has to use the Preservation of Public Security Act. I believe this was a concern when this matter was declared. The fact of the matter is that, since Independence, the Preservation of Public Security Act has not been used for any other purpose other than detaining people and declaring certain areas to be security zones, so that people cannot go there. That is the fact of the matter.

Therefore, to some extent, one understands the public outcry when this Act was used. But on careful reading of the Act, it is an Act which has its purpose, not just in those situations, but even in situations which are of this type. If you look at Section two of the Preservation of Public Security Act, you will see that the preservation of public security is not just limited to the traditional uses of security as we understand it. It has a very wide definition, and I would like to refer to Sub-Paragraphs F and G, which deal with the provision of sufficiency. In this Act, the preservation of public security includes: (F); The provision of a sufficiency of the supply and services essential to the lives and well being of the community, their equitable distribution and availability at fair prices and the provision of administrative and remedial measures during periods of action or apprehensive national danger or calamities; or in consequence of any disaster or destruction arising from natural forces.

Mr. Speaker, Sir, you will see that there is some wording which is similar in definition of the preservation of public security; and in Section 138 of the Customs and Excise Act. Those two words are "national calamities". You will find both words in the definition of the preservation of public security under the Preservation of Public Security

Act and also in the provision to Section 138 of the Custom and Excise Act. Therefore, for the Minister to have been able to apply what he wanted to do; that is, reduce duties and so on under Section 138 of the Act, he had, as a matter of law, to be sure that a national calamity or disaster had been declared under our laws. For that to be done, you have to turn, as I have explained, to the Preservation of Public Security Act. That declaration was made under Section 31 of the National Social Security. So, the declaration is there.

Mr. Speaker, Sir, I think where I depart from the contribution by the hon. Member in interpreting this Section is that, after that declaration, he says that it is a must that regulations must be made. A careful reading of Section three, and even of Section four of the Preservation of Public Security Act shows that it is not a must that regulations must be made. It depends on the President considering whether or not the regulations must be made after the declaration has been done by him. He has to consider the purpose for which that declaration is being made. Obviously, if it is a situation where people are fighting in a particular area and the preservation of law and order is almost impossible and so on, he will make regulations to deal with how the declaration which he has imposed is to be implemented in that particular area. Regulations have been made. For example, regulations have been made concerning the situation where somebody has been detained under this Act. There are regulations to cover that point, like accessibility and appeals to be held and so forth. You may recall that when we had a situation in Burnt Forest and Molo areas, during the absurd, notorious and shameful ethnic clashes, regulations had to be made on how the declaration would be implemented in those areas. It is not a must that in every situation, regulations must be made. In this instance--- and I will be coming to it--- it was not necessary for regulations to be made.

There are a lot of comments; which are understandable because of the way this Act has been used in the past, where people felt that regulations were made. The President had made a declaration of a national calamity throughout the country, and therefore, people expected regulations to be made. There were even suggestions that these regulations would cover all the points mentioned in the Section like censorship, limitation of the freedom of the press, and of the movement of people, and all sorts of things. But because people had a perception that regulations were going to be made to cover all those things, there was a public outcry. In fact, it was said that it was one way of already rigging the forth coming General Elections. The fact is that the President exercised his discretion not to make regulations on all those points, and to limit himself to the point at issue; which was Section 138 of the Customs and Excise Act. It made it not necessary to issue regulations, and that option is there and it is vested in the President.

Mr. Speaker, Sir, a careful reading of the Sections that hon. Anyona raised shows quite clearly that it is not a must. All it says is that if the President chooses to make regulations, then those regulations will be lawful. That is all.

It does not say that he must make those regulations. If you go further to Sub-Section three of Section three, it says: Subject to this Section, regulations made under this part, may make provisions, and if they are made, then they may make provisions for those matters.

If you read Sub-Section four again, the word, "may" is there. Therefore, it was proper that as far as this issue was concerned--- and, in fact it is good for the country that the President did not deem it fit to make all sorts of regulations on censorship, limitation of the freedom of the press, free movement of the people throughout the country and issues of that nature. He did not make those regulations, and advisedly so. He did not make those regulations because that system is already there under the Customs and Excise Act. This Act contains regulations on how to deal with those types of goods which come in a situation similar to the one which we were facing.

So, Mr. Speaker, Sir, it is not a must that the regulations must be made, it is up to the President to exercise his discretion into the matter, and he properly exercised it. In fact, he should be commended for exercising it in that manner. Otherwise, it would have led to loss of liberty, limiting of our freedoms which are enshrined in our Constitution. The Mover did state that regulations are there to differentiate so that we can know the purpose for which the regulations have been made. A careful reading of the Legal Notice, the declaration itself, makes it very clear beyond any reasonable doubt the purpose for which the declaration for natural calamities or disaster was made. There was no need even to make regulations for that. If the purpose of making regulations is to make clear the purpose for which that declaration is made and, therefore, to make provisions for implementation of that declaration, then one can say that in this aspect, just reading the declaration itself, will give you, not only the purpose for which the declaration was made, but, in fact, goes further and gives you the way in which it is going to be implemented.

Mr. Speaker, Sir, this declaration is not like other declarations. It does not just state that there is a public emergency in districts a, b and c. There is almost a whole page explaining why the emergency exists. It says:- "Whereas under section II of the Preservation of Public Security Act, the expression for the preservation of public security includes and states the sub-section which I have quoted in section II." Then it goes on to give the purpose for which this declaration is being made. "Whereas, I am satisfied that the current period of prolonged drought is a national disaster or calamity---" It gives again the reason why it is being made; "whereas under section 138 of the Customs and Excise Act and section 23 of the Value Added Tax (VAT), the remission from duty or VAT on maize, milk and rice is subject to--- It is a declaration under our laws and, therefore, means declaration under this Act. It

makes it very, very clear. He does not want to say anything else. He is confining himself within the ambit of section 138 of the Customs and Excise Act. And it is saying that I am, in fact, making this declaration because of the provision of our laws which are there enshrined in section 138 of the Act.

Mr. Speaker, if I may just comment on section 138 of the Act which came into force in 1993 or thereabout, it was a great improvement in---

Mr. Anyona: On a point of order, Mr. Speaker, Sir. I think the Attorney-General is deliberately misleading the House by repeating the provisions of section 138 of the Act. He has finished the first part about the declaration, but the Bill we are debating is brought under section 119 of the Customs and Excise Act and not section 138. He is misleading the House!

Mr. Speaker: I think the House gave you all the time to advance your arguments. To the best of our recollections, there was not a single hon. Member who stood on a point of order asking you to clarify then. I think it is only fair and fitting that we hear the Attorney-General, in toto, reply to you! He does not have to agree with you! He is entitled to negate or to agree with you, contradict you and show you, that you are wrong. That is why we are sitting and listening. So, can you have patience?

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, let him be patient because I am coming to section 119 of the Act and they will be very surprised as to what I have to say about that section.

Mr. Speaker, Sir, consequently, to summarise that aspect of the matter, it was necessary for the declaration to be made in view of the situation which we were in. It was also necessary to limit that declaration to the issue at hand and not to make it wider or misuse it and that is why the President was very candid that he was purely making this declaration not for any other purpose, but for section 138 of the Customs and Excise Act. To summarise again, under the Preservation of Public Security Act, it is not necessary to make regulations. It is up to the discretion of the President and he rightly exercised the discretion here not to make regulations because procedures are already there under the Customs and Excise Act. Therefore, all the things that you said about regulations, when they should be laid in Parliament, about section 34 of the Interpretation Act and so on, are all absolutely irrelevant when we come to consider the issues here. I will be saying that they are irrelevant. As I have said, there are already procedures under the Customs and Excise Act. So the declaration was made. Having made that, it was then found that section 119 did not authorise the Minister to make or to remit duty and excise in the manner hon. Anyona himself said. Section 119, as it stood then, did not authorise the Minister to remit up to zero. That is a fact! Therefore, it became necessary that the same provisions that are in section 138 should be brought into section 119. And again, these provisions are very limited. They say where there has been a declaration of national emergency or disaster or calamity which provisions are good because prior to that, the Minister for Finance had almost absolute discretion on what he could remit and not remit in the previous law. But here, at least, we are tying the Minister's hands by saying that he can only exercise that under certain specific circumstances. What are those specific circumstances? (A) where food is going to refugee camps recognised as such, and in this country, such camps are normally run by the United Nations High Commissioner for Refugees (UNHCR). (B) where a national disaster has been declared. It became necessary to make that amendment to that Act, hence, the Bill we have before this House.

Mr. Speaker, Sir, the hon. Members have asked what the use of debating this Bill is when the Minister had quoted a number of legal notices. The Minister has already acted, as if the amendments proposed by this Bill are already law; what is the use in section 119? I want to address that issue. Can the Minister, after publication of the Bill, the type that is before this House today, act on it as if it is law before he tables such a Bill to this House? That is the issue and it is an issue to which I say; "Yes, the Minister can do exactly what has happened; publish the Bill and all these notices, effect his decisions, pending the matter being brought to this House. The relevant law which the Mover of this Bill did not, at any one time, refer to, may be, because he does not know, is the provisional collection of taxes and duties Act, Chapter 415 of the laws of Kenya. Chapter 415 of the Laws of Kenya is very clear and it says:

"An Act of Parliament to give statutory effects for limited periods to orders of the Minister in imposing new tax or duty or rate of tax or duty or creating new allowances or altering or removing existing tax or duties or any such rate or allowance."

That is the purpose of Chapter 415 of the laws of this country, which is the law today. Section 2 of the Act reads as follows and I will read it in its entirety:

"If a Bill is published in the Gazette (and here the Bill was published in the Gazette on 7th February, 1997) whereby if such Bill were passed into law, any tax, duty or rate allowance or administrative or general position in respect thereof would be imposed, created, altered or removed, the Minister may, subject to this Act, and notwithstanding any provision of any other written laws relating to taxes and duties, make an order that all or any specified provisions of the Bill relating to taxes or duties shall have effect as if the Bill were passed into law."

That is Section 2 of the Provisional Collection of Taxes and Duties Act.

Where a Bill of this nature has been published and it is about removal or alteration, even before it is debated in the House, the Minister is allowed by Section 2 to act on that Bill as if the Bill were passed into law. So, all those notices which the Mover of the Motion referred to were properly done by the Minister for Finance. The Bill had been published and it had the effect of removing whatever it was and he acted on that Bill, in accordance with Section 2 of this Act, as if that Bill had been passed into law.

Mr. Speaker, Sir, I now come to the question that has been posed by the hon. Member of Parliament for Butere: What about if he rejects? Again, the law does provide for that and if you read Section 3 of the Act, it states:

"Every order made under this Act shall come into force on the day to be named therein and without prejudice to the power to cancel it at any time shall cease to have effect".

In other words, the Bill already can be acted on, as if it was already law and that will continue until any of the following circumstances have happened:

(a) If the Bill in respect of which the order has been made is not introduced into the National Assembly within 4 months of the making of the order. In other words, we published this Bill on 7th February 1997. If this Bill had not been brought to Parliament by 7th June this year, then this Bill would have ceased to have the operation of the law. But until 7th of June, it still has the force of law. That is one circumstance.

(b) The next one is on the rejection by the National Assembly of the Bill in respect of which the order was made, or on the withdrawal of the Bill or on the consideration of the Bill by the National Assembly being adjourned.

In other words, if the Bill had not been presented to this National Assembly by the 7th of June, that Bill would have ceased to have the operation of the law. But again, and this is where we are today, the Bill has been brought before this National Assembly within the period specified, in fact, almost immediately. As the hon. Member said, that we have been sitting here for around 15 days and 23 hours and so on, which is obviously within the four months. The Bill has been brought to this National Assembly to be debated as a Bill.

Mr. Speaker, Sir, if this National Assembly rejects the Bill, then the Bill will cease to have the force of the law; of course without prejudice to what has already been collected. On that day, it will cease to have the force of law. Section (c) says that:

"On the expiration of six months after the date on which the order is expressed to come into force".

In other words, if nothing happens, that is, no Bill is brought to the House and so on, then that order can be in force for six months.

Mr. Speaker, Sir, you can see now that the Government has not taken advantage of the House. We have not waited until the last day to try to come to this Parliament or whatever. We have not. We have not said that we shall wait for six months to elapse. We have, at the earliest possible opportunity during those number of days which are very well known to the hon. Anyona because he mentioned it-- At the earliest possible opportunity, we have brought this Bill for debate in this House and it is upto this House to accept or reject the Bill. If they reject the Bill, then those orders will cease to have the effect of law. And, therefore, as I said, all these issues about regulations and when they are laid in the House and so on, are completely irrelevant.

Dr. Otieno-Kopiyo: On a point of order, Mr. Speaker, Sir. With due respect to the Attorney-General whom I have a lot of respect for, he is misleading the House to the extent that the current Bill before the House was not published until 7th February, 1997, whereas the first variation Legal Notice No.6 of 24th January 1997 already varies the duty of rates for maize before that Bill came into effect.

The Attorney-General (Mr. Wako): That issue will be dealt with by the Minister, but my job here is to expound on the law and, of course, by the way, we have to bear in mind that we have Section 138 which was already law and Section 119 which had the force of law because of this Bill. So, one has to find out under what section that particular order was made. So, he will check and let us have the answer. So, really what has been said about regulations being laid on the Table and so, which is all part of the transparent process, that it must be brought here, is irrelevant because regulations will not come in. But fortunately, the law again provides, as I said, and the President knew that there was already a method for doing this and again, that method provides for coming to this Parliament, for that Parliament to decide. That is why the Government has come to this Parliament with the Bill, as it is now, and it is really upto this Parliament to accept or to reject it.

Mr. Speaker, Sir, this Bill is properly before this august House. I oppose whatever hon. Anyona said.

Mr. Speaker: Order! Order! You cannot oppose "whatever" because the House is not seized of "whatever". It is seized of a specific Motion. So, you may support the Motion or oppose the Motion.

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

Mr. Muite: Mr. Speaker, Sir, I would like to start by saying that I think the interpretation of the law by the Attorney-General, as far as the issue of the provision of collection of Taxes Act is concerned, is correct. It is one of those rare occasions on which the Attorney-General is absolutely right on the law. But he fell--

The Attorney-General (Mr. Wako): On a point of order, Mr. Speaker, Sir. Is the hon. Member correct to

say that "one of those rare occasions" when he knows very well that on numerous occasions, he used to consult me on the issues of law?

Mr. Speaker: Order! Order! No Member of this House shall sit over judgement of another, not even the Chair does! So, can you proceed without judging each other?

Mr. Muite: Mr. Speaker, Sir, there is a very important issue here relating to the Preservation of Public Security Act and, with due respect to the Attorney-General, I think that he is wrong on his interpretation of Sections 3 and 6 of the Preservation of Public Security Act. As Mr. Speaker would be aware, the Preservation of Public Security Act is a derogation from the constitutional provisions. In fact, Section 85 of the Constitution was inserted in the Constitution in order to permit derogation from the Constitution by the enactment of the Preservation of Public Security Act. Therefore, the philosophy behind the Preservation of Public Security Act is that, being a derogation from the constitutional rights, it must be interpreted very strictly, indeed.

If the Executive wishes to exercise any powers under the Preservation of Public Security Act, it is required, because that is a derogation by the Constitution, to comply with the letter of the law. It was in recognition of the fact that you cannot vest so much powers in one individual that Sections 3 and 6 require regulations to be made and to be laid before this House for ratification. When our forefathers were drafting the Constitution, they wanted this House to have the opportunity to act as a check on the exercise of the powers under the Preservation of Public Security Act by the Chief Executive. Therefore, where the Executive or the President makes an order as he did in making the declaration, it is mandatory for regulations to be made, and it is mandatory that those regulations be brought to this House, so that this House can either confirm those regulations, reject them or suggest amendments. That is the only way in which the exercise of the power by the President can be controlled by this House.

[Mr. Speaker left the Chair]

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

So, with due respect, the Attorney-General is wrong when he says that Section 138 of the Customs and Excise Act amounts to all regulations. Any lawyer or legislator will realise that there is a world of difference between a section in any Act of Parliament and regulations. What the Preservation of Public Security Act requires are regulations. So, the Attorney-General cannot pretend that Section 138 of an Act of Parliament amounts to regulations.

No regulations have been made, no regulations have been brought to this House---

The Attorney-General (Mr. Wako): On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not like interrupting my learned colleague, but the point he has said is exactly what I did not say. I did not say that Section 138 of Customs and Excise Act amounts to regulation, what is required is a declaration. The requirement for making a declaration under the Act is Section 3 of the Act, not regulations.

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, I do not wish to have an argument with the Attorney-General. I understood his argument for non-making of the regulations under Sections 3 and 6 of the Preservation of Public Security Act. He was saying that when the President issued this order, he was aware that there was Section 138. Section 138 is the reason the Attorney-General put forward as a basis for the non-making of the regulations. But I am saying that Section 138 cannot, in law, amount to non-compliance and is not a good reason for non-compliance with the Preservation of Public Security Act, which requires those regulations to be made. So, let us not distort or misinterpret the law. It does not take long for the Attorney-General, on behalf of the President, to make these regulations and to table them in this Parliament and the Government has a majority to be able to pass those regulations. What we are saying is that the law needs to be respected and complied with.

We have had so many instances where, when it is stated that the Government or the Attorney-General is wrong on his interpretation of the law, he still persists in that misinterpretation. He has to this day persisted in misinterpreting Section 16 of the Constitution which requires this House to set the number of Ministries, before the President can appoint the Ministers. He says he is not wrong while everybody knows that he is wrong. This is another instance where the Attorney-General is misinterpreting Sections 3 and 6 of the Preservation of Public Security Act. There are no short-cuts.

The existence of Section 138 is neither here nor there; regulations must promulgated to govern that declaration and those regulations must be tabled here. Therefore, to the extent that those regulations have neither been made nor tabled in this House, the hon. George Anyona is absolutely right because the Bill is very clear. It is talking about national disaster or calamity, declared under any written law for the time being in force. What we are saying is that, at the moment, because the regulations have not been promulgated, they have not been laid before this House, there is no written law on which this proposed Bill can be based. It is required to refer to any national disaster or

calamity, civil strife, declared under any written law. Until that law is complied with, this Bill does not have a basis or foundation in law.

So, Mr. Temporary Deputy Speaker, Sir, with those few remarks, I support wholly the Motion by the hon. George Anyona, that this House ought not to debate this Bill until this Government complies with the law.

*[The Temporary Deputy Speaker
(Mr. Wetangula) left the Chair]*

[Mr. Speaker resumed the Chair]

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Speaker, Sir, I rise to explain the fact that what actually has been moved here has got no legal basis. I am very glad to note that hon. Muite, whom I do not refer to as "my learned colleague" since I am not a lawyer, but we do share in the area of logic, since he is a lawyer and I am mathematician, and logic a very basic instrument in the argument. But I think hon. Muite did make it quite clear that he did agree with the Attorney-General as to whether this Bill is properly before the House or not, and I want to dwell on that aspect.

First of all, initially, the Minister for Finance was able to reduce the import duty by 30 per cent and that was permissible in accordance with Section 119 of the Customs and Excise Act. That in itself empowers the Minister for Finance to be able to reduce the duties by that amount without coming to Parliament. But I want to say that this is a power that is given to the Minister for Finance by this House. I think we should get that very clearly. If we are not happy with what was done, we would need to come here and remove those powers from the Minister. I would like to say that those powers of the Minister do not have to be exercised because there is a national disaster: They are supposed to be exercised in accordance with the prudence of the Minister for Finance. Mr. Speaker, Sir, the gravity of drought in this country was such that we had widespread famine throughout the country. It was also very clear that food was not available in this country. In order to fill in the deficit, and as quickly as possible, and ensure that food was available throughout the country, we had to import it commercially and also from donors. Given the very high prices of food abroad, the only way out was to ensure that the 30 per cent limit was removed. The Minister for Finance did not have the power to exceed the 30 per cent limit. So, what did he do? He proceeded to use the powers contained in the Provisional Collection of Taxes and Duties Act. That is why the Minister for Finance proceeded to publish in the Kenya Gazette this particular Customs and Excise (Amendment) Bill on 7.2.97 for introduction in this House. I have to add that the Minister did not reduce the duty by more than 30 per cent prior to the publication of this Bill. So, the procedures laid down in the Provisional Collection of Taxes and Duties Act were properly followed. I want to quote from this Act once again:-

"If the Bill is published in the Gazette whereby if such a Bill were passed into law and any tax or duty or any rate, allowance or any administrative or general provision in respect thereof would be imposed, created, altered or removed, the Minister may, subject to this Act, and notwithstanding the provisions of any other written law relating to taxes and duties, make an order that all or any specified provisions of the Bill relating to the taxes or duties shall have effect as if the Bill were passed into law".

Further, the Act says that the Bill should have been published within four months. This has been provided for.

Mr. Speaker, Sir, I want to add something else. Every year the Budget is presented here. Hon. Members will recall that when the Minister for Finance presents his Budget and mentions variations in tax rates he states: "I have today published in the Gazette this and that measure".

It is also well known in this House that duties and tax rates which have been raised or reduced take effect at midnight on the day of the Budget before they have been debated here. That is what the Collection Orders Act basically means. This is what enables the Minister to collect taxes before the Finance Bill is debated here.

So, first, I want to say that it was absolutely important to sensitise Kenyans and the rest of the world to the fact that there was a disaster in this country. We had to ensure that our friends and partners abroad knew that this country was facing a very major disaster: There was famine and we required their assistance. That could only have been captured within the campus of a national disaster. That itself triggered off the flow of food to this country from the World Food Programme and many other bilateral donors. It also alerted Kenyans to the fact that there was a problem, and a number of Kenyans willingly donated food.

Mr. Speaker, Sir, what the Minister for Finance has done, namely, duty reduction and publication of the legal notice, is very much within the law. That stands by itself irrespective of whether there is a declaration of a national disaster. So, the argument on the national disaster in no way dilutes the legality of the Bill which is before the House.

The Government has followed all the legal procedures in this matter. The basis for the reduction of duty, from a purely rational point of view, was the existence of a major drought. The declaration of a national disaster was meant to trigger donor and Kenyans' reaction and, of course, to give a moral basis for such a large duty reduction. But the law has been adhered to.

For that reason, I beg to oppose the amendment.

Mr. Speaker: I think we will now hear Mr. Shikuku and then dispose of the question of the amendment.

Mr. Shikuku: Bw. Spika, nimewasiliza sana Bw. Anyona na Mkuu wa Sheria. Lakini Mkuu wa Sheria hakusema kwa nini hakuzileta hapa Bungeni kanuni za sheria zinazohusiana na njaa. Hata hivyo, ukweli ni kwamba tuliposema kwamba kulikuwa na njaa humu nchini, Mawaziri wa Serikali kutoka Ukambani walisema kwamba hakukuwa na njaa na watu walikuwa "waking'alang'ala". Hata hivyo, baada ya wiki mbili Rais alitangaza kwamba kulikuwa na njaa iliyotokana na ukosefu wa vyakula. Sijui kwa nini Mkuu wa Sheria hakutueleza kama kunayo sheria inayotaka mambo haya yaletwe katika Bunge hili--

The Minister for Information and Broadcasting (Mr. Makau): On a point of order, Mr. Speaker, Sir. Is it in order for hon. Shikuku to mislead this House by saying that Ministers from Ukambani said that there was no famine? We made it very clear - and this was published in the newspapers - that the Government would feed everybody and nobody would die of hunger.

Bw. Shikuku: Bw. Spika, mhe. Makau anayatafuta matata bure--

Mr. Speaker: Order! Can I bring the House back to course? Actually what is in issue is not whether there is, or there is no hunger in Ukambani. What is in issue now is whether we should debate this Bill or adjourn debate on it. Any hon. Member going beyond that scope will be out of order in accordance with Standing Order No.21(2) of our Standing Orders. So, can we now stop parochialising this issue?

Mr. Shikuku: Bw. Spika, tunazungumza kuhusu hali ya hatari ambayo imeletwa kutokana na ukosefu wa chakula. Na sasa hivi, tunazungumzia ikiwa tutaendelea kujadili Mswada ambao unahitaji kuhalalisha ile hali ya hatari. Ndiyo sababu lazima tuseme kidogo hapa kwamba hii hali ya hatari imekuja kwa sababu ya ukosefu wa chakula. Ni lazima Waheshimiwa wakumbushwe ya kuwa tuliambiwa kwamba kuna chakula kingi. Waluhya wanasema: "Ukininyima chakula wakati wa njaa, hata nikiishi mika 60,000 sitakusahau." Ninajua ndugu zetu Wakamba hawatawasahau hawa Mawaziri.

(Laughter)

The Minister for Information and Broadcasting (Mr. Makau): Mr. Speaker, Sir, you have just ruled out the innuendos and irrelevancies that hon. Shikuku is bringing here. We have said and stated clearly that there is no time that any Minister or hon. Member of Parliament from Ukambani ever denied the existence of the situation of famine. Why should he persist in trying to drag our names into this debate?

Mr. Speaker: What did he say?

The Minister for Information and Broadcasting (Mr. Makau): Mr. Speaker, Sir, he said that hon. Members from Ukambani, according to a Luhya saying, will never be forgiven, even after 60,000 years. We are not interested in Luhya sayings.

Mr. Speaker: Order! Hon. Members, can I say this: Neither Ukambani nor their hon. Members, or the Luhyas, is at issue today. Any hon. Member, henceforth, who shall talk about the Luhyas or Ukambani or their respective hon. Members of Parliament is thoroughly irrelevant and stands a chance of being discontinued.

Mr. Shikuku: Ahsante sana, Bw. Spika. Jambo ambalo linahitajika hapa ni kufuata amri za Bunge hili, na ninasikiliza amri zako kutoka kwenye Kiti. Hapo mbeleni, kulikuwa na Mbunge mmoja hapa aliyelitwa mhe. Mwangale. Alisema maneno ambayo wengine watakumbuka. Lakini jambo kubwa ni hili: Kama kuna sheria ambayo inahitajika kufuatwa, ni wajibu wa Mkuu wa Sheria kuona kwamba sheria hiyo inafuatwa kwa vyovyote vilivyo. Lakini alipokuwa akizungumza hapa kuhusiana na kuhairishwa kwa mazungumzo juu ya Mswada huu, hakuwahi kusema ni kwa nini, baada ya Rais kusema kwamba kuna hali ya hatari ya chakula, hakuweza kuleta hiyo sheria hapa. Kwa nini? Au hiyo sheria hakuna? Mimi si mwanasheria, lakini ninajua hiyo iko na imesomwa. Lakini Mkuu wa Sheria hakutaka kuigusa hiyo; alienda kwa mambo mengine. Hili ndilo jambo sisi tunataka kujua kutoka kwa Bw. Mkuu wa Sheria. Kwa nini hatukuweza kufuata sheria ambayo tulipitisha hapa kuhusu mambo yatakayofanywa kama kuna hali ya hatari?

Bw. Spika, hali hii ya hatari imekuja, na hakuna mhe. Mbunge yeyote upande wa Upinzani ambaye anasema ya kwamba si haki kuwa na hali hiyo ili wananchi waletewe chakula. Pia imeelezwa hapo mbeleni kwamba hii sheria inahusu nchi yote, lakini leo hapa alasiri tuliambiwa: "Wale wanaoishi Mathare na sehemu nyingine za mitaa ya mabanda hawako katika haya maneno." Hawa watu wanaoishi katika sehemu hizi na hata kule Ruai, hawako Kenya?

Mr. Speaker: Order! Shall I again bring this to the attention of the House? I want to read to the House Standing Order 21 (2) under which Mr. Anyona moved to adjourn the debate. This Standing Order allows an hon. Member to move that the debate be now adjourned. Sub Section 2 states as follows:-

"The debate on any such Motion, that is, the House be adjourned, shall be confined, (and it is "shall", which is mandatory) to the matter of the Motion."

The matter of the Motion here is: That the House be adjourned because, according to Mr. Anyona, the relevant provisions of the Public Security Act, the Interpretation Act and the Customs and Excise Duty Act have not been fulfilled. So, any hon. Member contributing must confine himself or herself to those issues raised by hon. Anyona; that is whether or not the Bill before the House does or does not comply with those rules. It has nothing to do with hunger now.

Mr. Shikuku: Bw. Spika, mini nilikuwa ninajaribu kukumbuka yale Mkuu wa Sheria aliyoyasema na yale Bw. Anyona aliyoyasema. Kama wao walizungumaa juu ya hiyo, sijui--

Mr. Speaker: Nilikuwa ninakuongoza tu. Endelea.

Mr. Shikuku: Ahsante, Bw. Spika. Mimi ninazungumza kuhusu maneno yalikutoka kwa mdomo wa Mkuu wa Sheria, na yale ambayo hayakutoka. Sasa niko kwa yale ambayo nilifikiria ataoa kujibu maneno ya Bw. Anyona na ambayo pia hakutoa. Ninataka atoe hayo maneno. Yeye ndiye ameletwa katika Bunge hili kuweza kueleza kinaganaga sheria za nchi hii, siyo kwa Serikali peke yake, hata kwa upande wa Upinzani. Na yeye alikataa kutoa hayo maneno ya kuleta sheria hapa ambayo tunaweza kuzungumzia. Ndiyo sababu mimi ninaunga mkono maneno yaliyozungumzwa na Bw. Anyona ambayo hayakuweza kujibiwa na "Mtukufu" mhe. Mkuu wa Sheria. Kwa vile hilo jina halina mwenyewe, ninaweza kumpatia Bw. Mkuu wa Sheria. Mtukufu Rais alilikataa, basi ninampatia Mkuu wa Sheria.

Section 138 inasema kwamba hakukuwako na haja ya kuleta masharti katika Bunge hili kwa sababu Section 138 inayohusiana na utoaji wa forodha inamaliza maneno yote. Ikiwa ni hivyo, ni wapi ambako imeandikwa kwamba katika hali ya hatari lazima kuwako na masharti? Hiyo inahusiana na Wizara ya Fedha ambayo inaweza kupunguza 30 asilimia tu. Sasa hakuwa anataka apunguze zaidi ya 30 asilimia na ndio sababu Mswada huu unaletwa hapa. Kama ni hivyo, mbona hii hali ya hatari ilipotangazwa, wananchi hawakuweza kuambiwa kuwa kuna Section 138? Kwa hivyo, hakuna haja ya kuleta masharti hapa.

Bw. Spika, tuko hapa kukumbushana kama Sheria haikufuatwa. Jana, Waziri wa Fedha alikumbushwa kuhusu mambo mengine ambayo ameweka katika Supplementary Estimates, both Development and Recurrent. Alikumbushwa kwamba kuna mambo ambayo yako katika Kamati ya PAC. Alisema: "Ashante kwa kunikumbusha; nikileta Mswada wa Fedha, nitaondoa hayo". Hii hali ya kukumbushana ni nzuri. Ni vizuri mhe. Waziri akumbushwe kwa sababu yeye ni binadamu. Mungu tu ndiye hakosei, lakini binadamu ana makosa chungu nzima na ni lazima akumbushwe na binadamu wengine.

Kwa hivyo, kwa vile ninangojea kutoa maoni yangu kuhusu huo Mswada ambao utaletwa katika Bunge hili, na kwa vile naona kuwa upande huo umejaa Wabunge ambao wanajua kupiga kura sana, tutazungumzia zaidi juu ya huo Mswada. Tukifikia wakati huo, Bw. Spika, utanipatia nafasi ili nitoe maoni yangu.

Ahsante.

Mr. Speaker: I think, I had better dispose off this issue?

Hon. Members: Yes!

(Question put and negated)

(Resumption of Debate on The Customs and Excise (Amendment Bill)

Mr. Mutahi: Mr. Speaker, Sir, I have got few points to make on this Bill. It is unfortunate that we have to continue with the debate on this Bill because it has so many irregularities. We have four different millers who are now in problems. Premier Millers is one of those companies that has been awarded the tender to import duty free maize.

We know the relationship between Premier Millers and United Millers. We do not know for how long this duty-free maize is going to be imported into this country and what quantities are going to be imported because the Milling Corporation is getting this free maize from Premier Millers, which is owned by the same people who are owning the Milling Corporation. While Unga Company and Pembe Company are importing maize and are required to pay duty and VAT, since they did not succeed in winning this tender of getting duty-free maize Premier Millers are dividing the importation into two. They are giving the Milling Corporation which is their sister company some duty free maize and 50 per cent which remains is the one which is used as famine relief. There is a big competition with the

Milling Corporation and Unga Company. I said that Unga Company are importing their maize and paying duty, but the Milling Corporation are importing their maize duty free. So, the competition with Unga Company, Pembe and Milling Corporation is very wide.

[Mr. Speaker left the Chair]

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

Dr. Lwali-Oyondi: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Member contributing has just stated that the Milling Corporation mills its products without paying any tax while the other millers are paying tax. Since that is a very serious statement, could he substantiate?

Mr. Mutahi: Mr. Temporary Deputy Speaker, Sir, what I said is that it is known by everybody that there is relationship between Premier Millers, which won the tender for importing the famine relief food duty-free, and the with Milling Corporation, and there is no reason why Premier Millers cannot give part of their duty free maize to the Milling Corporation while Unga Company and Pembe are importing their maize and paying duty. So, I said that competition in the market is going to be very irregular; they are not playing on a level ground. So, the Government should have put up vivid measures to make sure that no maize that is imported duty-free is diverted to other companies.

Mr. Temporary Deputy Speaker, Sir, we have been told by the Attorney-General that this Bill legalised and put it on the *Kenya Gazette* on the 7th February, 1997. So, if the Bill fails to be passed today or after four months, or in the month of June, that power that the Minister for Finance was given will be invalid. We have seen a lot things being done by the current Government. It is strange for the Minister to be given four months to import anything, including maize---

Mr. Shikuku: Jambo la nidhamu, Bw. Naibu Spika wa Muda. Kuna jambo ambalo linanisumbua. Mhe. Mutahi alisema kuwa kuna Premier Flour Mills ambayo inaweza kuleta mahindi bila kulipa kodi ya forodha na kuna kampuni nyingine inayoleta mahindi baada ya kutoa kodi ya forodha. Kama ni hivyo, nataka kujua kutoka kwa wale wanohusika katika Wizara ya Fedha kama hii ni kweli, kwa nini wengine walete mahindi bila kulipa kodi ya forodha, au makampuni hayo ni watu wakubwa katika Serikali?

The Temporary Deputy Speaker (Mr. Ndotto): Order! Hon. Shikuku, that is a question which can be answered by the relevant Ministry.

Mr. Mutahi: Mr. Temporary Deputy Speaker, Sir, that is the truth of the matter. Unga Company Limited---

Dr. Otieno-Kopiyo: On a point of information, Mr. Temporary Deputy Speaker, Sir. My point of information is that Premier Flour Mill is owned by one Mr. Diamond. It was bought under a controversial deal by the Milling Corporation of Kenya in Nakuru almost free. The relationship between these people and some people in the centre of power in Kenya is well known also to the public.

An hon. Member: Who are they? We want to know.

Dr. Otieno-Kopiyo: Now, if it is true that Premier Flour Mills imported maize under the famine relief arrangement, then it is not inconceivable that this maize has ended up in Nakuru with the Milling Corporation of Kenya. This will distort the market prices of milled maize in Kenya.

Mr. Mutahi: Tell them! Mr. Temporary Deputy Speaker, Sir, that is exactly what I am saying. Unga Mills, for example, won a tender to import famine relief maize. Pembe, Unga Limited and other milling companies which have to pay duty on imported maize will suffer. They will not sell their flour because Milling Corporation of Kenya can sell at half of what Unga Limited and other companies are going to sell their flour. So, the Attorney-General and the Minister for Finance must look into that.

Mr. Temporary Deputy Speaker, Sir, it is the same case with the people who import sugar, rice and other commodities. Now, instead of delivering the maize that has been imported duty-free to starving people, it is taken to Nakuru to the Milling Corporation of Kenya.

The other question is on the duration upon which maize is supposed to be imported duty-free. I know that Premier Flour Mills is going to bring maize into the country in bulk. Even if the Government banned the importation of this maize today, such people will have millions of bags stored to be sold to the market. We would like to know the deadline for this importation.

The other question concerns what would happen---

The Assistant Minister for Finance (Mr. Keah): On a point of information, Mr. Temporary Deputy Speaker, Sir. It seems that the hon. Member was not here when I was moving the Bill. I was very specific in terms of

the dates, bags to be imported and who qualifies to import this maize. I said quite clearly that we need 6.1 million bags of maize. The importation will continue until 30th June, 1997. Anybody is illegible to import the bit that relates to the commercial part of it, which is 4.1 million bags. A total of 1 million bags will be brought in by NGOs and 2 million by the Government. Those were the specifics that I thought that I should mention because the hon. Member on the Floor is misleading the House.

Mr. Mutahi: Maybe, the hon. Member is also contradicting himself. On the same date, he mentioned about certain companies qualifying to import maize.

The Temporary Deputy Speaker (Mr. Ndotto): Hon. Mutahi, I think the Assistant Minister has clarified that about 4 million bags can be imported by anybody. It was not on tender basis.

Mr. Mutahi: It has happened before. We are just trying to legalize what has been going on. It has been the routine in this country for a long time. They have been unable to control it. The Attorney-General mentioned about four months. The Minister for Finance has got powers to import maize for four months before this Bill is brought into this House.

Now, hon. Shikuku asked what would happen if the Bill failed to pass in the House after four months. Giving this Government four months to import something which is irregular, would mean that no ship from abroad would come in with anything else except relief food. I do not know how that can be done. I do not think, it is in order to give the Minister for Finance powers to import goods and spend taxpayers money even before he has been given the authority by this House.

The other thing is importation of sugar. I would support Members of Parliament who come from sugarcane growing zones. There is one terrible irregularity that is going on. As much as we would not like rich people to import sugar, and instead we should use the locally manufactured sugar, they have monopolised the buying and marketing of sugar from Mumias and Nzoia. As a small trader, I am allowed to buy 100 bags of sugar from Mumias. They have put a condition that one must buy sugar worth about Kshs2 million. Who is this small businessman that Mumias is promoting? If the market has been liberalized, in the same way, the small trader should be catered for. If he wants to buy 10 or 40 bags of sugar, he should be allowed to buy it. Now, there are only a few rich people who are buying sugar from Mumias. These people hold meetings at night and fix prices. The same thing that happens in the oil companies is happening here. When these people want to raise the prices of oil, they meet at night and fix their prices. Those who are able to buy sugar from Nzoia in bulk meet at night and fix prices on this sugar. They get this sugar at a very low price, but when they bring it to the market, they do not want to compete with those people who import sugar. They want big profit margins. Today, one bag of 50 Kilogrammes of sugar costs a distributor Kshs1,700, and I hear that they buy it for less than Kshs1,600 at Mumias. So, if there is liberalization, the consumers are not going to afford the Kshs1,700 when they can get the imported sugar at Kshs1,400. Even Mumias Sugar Company can sell its sugar at the retail price that is sold by the importers. So, hon. Shikuku and other Members from Western and Nyanza Provinces should look into that. Wananchi are getting oppressed by these sugar factories. It is only a few individuals who can afford a full truck load of sugar from Mumias and those other manufactures.

With those few remarks, I beg to support.

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to make a few contributions in support of this Bill.

Mr. Temporary Deputy Speaker, Sir, the Bill itself is very short, the Memorandum of Reasons and Objects is also short and the Section 119, it is trying to amend is also very clear. But, I spoke to the Assistant Minister in charge of this Bill and requested him that the word "sugar" be deleted from this Bill. He promised that maybe tomorrow after they have been appended on the amendments of the Bill, we will see the word "sugar" having been deleted from it. If the word "sugar" is not deleted, I will not support this Bill, but I am waiting for that to come.

Mr. Temporary Deputy Speaker, Sir, I am saying so because a periodical in this country gave a very sad story on the importation of sugar which has paralysed the production and selling of sugar in the sugar zones of the Western part of Kenya. The periodical gave a story of how sugar was imported without payment of duty, of course, presumably for export market. It found its way into the godowns of the local tycoons and eventually, a lot of things happened. I am told that the Commissioner of Customs, after discovering that, that sugar which was intended for export was going to be released on the Kenyan market, locked up the godowns. I thank him very much for taking that brave action. But, we are not assured that eventually, the lock will not disappear and the sugar will be off-loaded onto the Kenyan Market. If it is off-loaded in the Kenyan market, factories in Western Kenya, including the infant factory that is bound to start in Busia District will be paralysed.

If sugar is left out in this Act, by June when the Act or the orders are revoked, they will have imported sugar to last this country for four to five years.

Mr. Temporary Deputy Speaker, Sir, we are aware that sugar does not go bad quickly, it stays in the stores for a long time. Indeed, the manufacturers of sugar who are not able to sell it now on the market - because the production

of sugar here is very high - are still keeping their sugar in the stores and maybe after two years, they will sell it.

The Assistant Minister for Finance (Mr. Keah): On a point of information, Mr. Temporary Deputy Speaker, Sir. To save my colleague the pain of wondering whether sugar has been excluded or not, I want to re-assure him that the word "sugar" will be deleted at the Committee Stage.

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Mr. Temporary Deputy Speaker, Sir, that will relieve my high blood pressure. I am now sure I will be a very comfortable old man today, because of that re-assurance. Having said that---

Dr. Otieno-Kopiyo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Was that re-assurance dated the day the Bill was brought to the House or was it dated 7th February, when the law was supposed to have come into effect? How much sugar has come into the country since then?

The Temporary Deputy Speaker (Mr. Ndotto): Order! I think hon. Members should know the difference between a question and a point of order. That is a question and this is not Question Time. Proceed, Mr. Osogo.

The Assistant Minister for Agriculture, Livestock Development and marketing (Osogo): Mr. Temporary Deputy Speaker, Sir, I have with me here, a copy of the order which the Bill refers to. Under Clause 2(b), during a period of civil strife, national disaster and calamities declared under any written law for the time being, he may, upon revocation of the declaration increase the rates. The order that was made by His Excellency the President under the preservation of Public Security Act, contained what was a point of contention a few minutes back when we were debating that adjournment Motion by hon. Anyona. It did not require a regulation to be brought here. The Act itself, Cap.472 contains subsidiary legislations. One deals with the shifta menace which used to be there at the time when I was the Minister for Information and Broadcasting. The other one deals with Meru District. I do not know what happened in Meru District at that time. Another section deals with detention. Those are regulations under the Act which are already in the Statutes.

Famine as a national calamity has not had invocation of the Public Security Act or Preservation of Public Security Act, as it has been said. It has never been done, at least, since Independence. Apart from the 11 years when I was out of this House, I have been in this House reading these Bills from 1963. The reason why I am saying that these are not new regulations is because, the type of regulations that could have been made were published by the Minister for Finance, when he said in his publication that duty will be waived to zero and that so much amounts of tonnage of maize will be imported and that the importation would be revoked by 30th June, 1997. Those are the type of regulations that would have come.

I do not see any other type of regulations that would come to explain the orders that the President issued. He covered himself very well. He said that he was declaring a State of Emergency, in so far as what is contained in Section of the Preservation of Public Security Act, Cap. 67. Sub-sections (f) and (g) are the ones dealing with famine.

He is issuing a declaration on those two only and he calls them (a) and (b) but in the Act, they are (f) and (g). It says that it is only by using the Preservation of Public Security Act that you can declare that there is a danger or emergency in Kenya, which requires certain things to be done. There are a provisions in the Act itself, (f) and (g) Section (g) which deals with issues.

Whereas I am satisfied as the President that the current period of prolonged drought is a national calamity or disaster, Section 138 of the Customs and Excise Act, which the Attorney-General was referring to and Section 23 of the Value Added Tax Act, if read alongside this Order, provide for regulations.

Remission from duty or Value Added Tax (VAT) on maize, milk and rice is subject to the declaration under these Acts. He has referred us to two different Sections of two Acts. If they are read alongside this Order, they form regulations. I do not understand what other regulations the President, or the Attorney-General would have published and laid in this House. This is because this Order was laid on the Table of the House.

He concludes: "Now, therefore, in exercise of the power conferred by Section (3) (i) of the Preservation of Public Security Act, I declare that the provisions of part (ii) of the provision of the Public Security Act are brought into operation in the Republic of Kenya".

That covers the regulations that my friends on the opposite were crying for!

Mr. Shikuku: We did not cry!

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Oh! They were laughing about it! Sorry! They were weeping about it!

Mr. Shikuku: We were talking about it!

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): They were talking about it.

Dr. Lwali-Oyondi: On a point of order, Mr. Temporary Deputy Speaker, Sir. I think hon. Osogo is trying to mislead this House. In these particular Sections, hon. Anyona was saying that it was stated specifically that

regulations were to be made, and not to be interpreted or imagined to be there, and to be read alongside other things!

Is hon. Osogo in order to mislead this House that regulations are there, when they are not there?

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Mr. Temporary Deputy Speaker, Sir, if I may be lent a copy of the Public Security Act which I think somebody has there, it states that it shall be lawful not obligatory for the President to issue rules as he has declared. The Act says, and I have read it---

Mr. Munyasia: On a point of order---

The Temporary Deputy Speaker (Mr. Ndotto): He is responding to a point of order! Let him finish!

An hon. Member: Were you the one who decided?

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Mr. Temporary Deputy Speaker, Sir, it was decided, and I am only trying to clarify the decision that was made. On the issue of the regulations that were requested for, I would like to clarify that they were not necessary, according to this Order, when read alongside the Acts involved.

The Temporary Deputy Speaker (Mr. Ndotto): I think you had better move out of that issue because a decision has already been taken on it and Dr. Lwali-Oyondi is right. So, you had better move out of that argument.

Mr. Shikuku: On a point of order, Mr. Temporary Deputy Speaker, Sir. Will you also warn him that when someone pursues matters which have been concluded - at any rate voting machines will - then there is some danger?

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Mr. Temporary Deputy Speaker, Sir, there is no danger anywhere in this House, as I am speaking.

Mr. Temporary Deputy Speaker, Sir, in conclusion, I would like to congratulate the Government for the speedy manner it saw the need to provide food to people of this country. I do not want to say as some of the hon. Members of Parliament, have said that there was enough food in this country. Those are the types of "errors" that can happen to very inexperienced politicians when calamities face their people. They think by saying certain things, it will take away the calamity. The truth must be said. When it was discovered that there was shortage of food, the truth came out and none other than the President himself who declared that there was shortage of food and there was looming famine in this country and he declared a national disaster to put it in order.

Mr. Temporary Deputy Speaker, Sir, with these few remarks, I beg to support the Bill.

Dr. Lwali-Oyondi: Mr. Temporary Deputy Speaker, Sir, I have only a few remarks to make on this Bill.

First of all, we had a calamity. Our people have suffered quite a lot with hunger, but we have to ask ourselves what was the origin of this? Of course, everybody says it was because of bad weather.

Mr. Temporary Deputy Speaker, Sir, but let us put it this way; nowadays, there is very little work or business.

If you are a trader, when the season is all right, you get a lot of money and then if you "drink" it all, you will have yourself to blame when the money is finished. There are ups and downs in everybody's life. There are times when somebody feels rich or poor, but normal people usually either invest their money on land or on something else. The same applies to a country, when we harvested a lot of maize at one time, we kept it in strategic reserves. Maize in these strategic reserves was taken away and sold. Some tell us that it was actually just bought and kept somewhere by the "cartel" of people in this country who have big connections in the corridors of power who keep on speculating. They bought the maize, caused a shortage in our strategic reserves. Then the drought came and they started wondering what to do. The same people have had a windfall this time and that necessitated the declaration of this disaster which has never happened since Independence. That was for these people again to import maize, rice, sugar and so on. We are afraid now that the six million bags of maize which are supposed to be imported are actually here. What we are doing here is "regularising" or "rubber-stamping." So, we have got a cat and mouse game with the Government.

I wish it was a cat-and-mouse game involving ordinary mwananchi trying to sneak in things, but it so happens that people even within this House are involved in this matter. They bought all the sugar from Mumias and at one time they imported a lot of sugar from overseas and after this importation, there was a slump. You know all our sugar stores were full and, therefore, they went there and bought it at the lowest price possible. Some of it was kept in stores in Lanet in Nakuru. They hired stores and hoarded the sugar there with the aim of selling it later on. These are the things that really puzzle me; that the Government which is supposed to be protecting wananchi is the one that is bothering them. The same people are connected with employers. Employers at the moment do not care about their employees and they tell you that you can go anywhere because they have connections with the same people. There is no job security because of the same activities. You know that now no Kenyan is able to retain his job for long. Most of the people are now employed as casuals simply because nobody can follow up their cases. If you follow up the issues with the Government, you end up at a dead-end.

Mr. Temporary Deputy Speaker, Sir, coming back to the Motion, if we import milk for example at this time and they will import it in the form of powdered milk or some other long-lasting milk we are going to kill our dairy industry because we shall soon be having imported milk here. The rains have come and the grass is already green and that is the way milk comes. We have water and grass and, therefore, we are going to have a lot of milk. Should we import any milk, we shall be in a lot of trouble. Therefore, I would urge the Minister not to allow any milk transportation right now. When it comes to rice, we have a lot of rice already. There is sufficient local rice in the stores. Those who come from the rice growing areas tell us that the stores are already full and there is a lot of rice from Pakistan and the Middle East which is being sold in supermarkets. Some of it is so good now that you do not need to remove stones and other impurities from it before you cook it. It is already done and it is costing relatively cheaper than the local rice. But while we may enjoy such facilities, what are we doing for our people? Why can we not protect them? Therefore, rice should never come in the first place without duty. It is probably only maize and beans that could have been brought in to cater for our people. But I understand that already we have big amounts of beans. You know beans only take about two months to be ready and particularly in the drought-affected areas like is Machakos, Kitui where their growth is so fast that these beans will probably be ready within one-and-a-half months.

If the people of Machakos and Kitui Districts have planted beans and we bring in tonnes and tonnes of beans where would these be sold when they are harvested? Therefore, we shall again create a situation whereby the price of these beans would drop so much that next time the farmers would not deem it expedient to plant beans and as a result, we shall have shortage of beans and then resort to importation. This is a vicious circle which is not good for our economic development. When we talk about development, we should be talking about development of our economy and anything short of that is being hypocritical. Development does not necessarily mean dishing out of money from politicians, particularly the ones who have been importing maize and, therefore, they have enough money to dish out in order to retain their seats. This is not development, but blinding the people and rendering them to be beggars for ever.

But the warning is that this question of keeping people poor so that you appear relatively rich so that you can give out millions of shillings every week would not go on for ever. The people will protest and they are just about to reach that stage. Let us avoid this stage. The people will protest and they will do more harm to these people who are importing foodstuffs. They know them by heart, therefore, we do not need to name them. They know who is importing what in this country. We do not get what we are talking about by dreaming about it, but we are informed by the ordinary wananchi. They know who is doing it and the reason why you are doing it. They are not animals, they are exactly like you and somehow in some cases, far better off than we are here. Therefore, one of these days, they will protest and it would not be the liking of those who are having money. Money is not everything, as our friend, Mr. Joseph Mobutu Sese Seko Kuku Ngbendu wa Zabanga has discovered recently. It cannot even cure his diseases!

(Applause)

Therefore, those who think money would do everything are mistaken and I wish to call upon wananchi to make sure that those who donate money are not given the power because they are the killers of our children. They are the ones who have brought famine in this country. A lot of money is wasted here and there, while the rest is stolen. For example, the milling corporation which was obtained free of charge in Nakuru. If they are also going to import maize and milk without paying taxes, they are giving unfair competition to other millers. Some of the millers, like Unga Ltd are some of the best employers we have because they pay their employees reasonably well. At least, the lowest salary in that establishment is about Kshs5,000 to Kshs7,000 for the watchmen and for casual labourers, they hardly get less than Kshs5,000. Therefore, they are some of the best employers we have in the milling industry. We should not allow them to be run down by these other illegal importers of maize.

The Assistant Minister for Lands and Settlement (Mr. Sumbeiywo): On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member for Nakuru Town, Dr. Lwali-Oyondi, has made a very serious allegation that the owners of the Nakuru Milling Corporation got it free of charge. Can he prove that?

Dr. Lwali-Oyondi: Yes, Mr. Temporary Deputy Speaker, Sir, the Milling Corporation of Kenya was more or less given free of charge in that the buyers were supposed to have paid a deposit of Kshs15 million for it. They did not do that. Instead they took over the Corporation and then raised the Kshs15 million through the normal sales. Therefore, they actually got it more or less free of charge.

The Assistant Minister for Lands and Settlement (Mr. Sumbeiywo): On a point of order, Mr. Temporary Deputy Speaker, Sir. Can he substantiate that with documents?

Dr. Lwali-Oyondi: Mr. Temporary Deputy Speaker, Sir, I think the hon. Member came in a little bit late. He is what is called "Johny come lately". A Public Investments Committee Report has been tabled here and debated. Another special committee was set up on the Corporation and it brought very elaborate information to this House.

I also wish to touch on what the Attorney-General was talking about. After the publication of this Bill the

Minister was in order to give notice that imported foodstuffs were to enjoy zero-rating. This Bill was published on 7.2.97, but Mr. Anyona has referred to notices which were dated January, 1997. It would, therefore, appear that the Minister illegally issued those notices. I think it is high time that the Government became the first to stick to the law. It is only the law that can make us stick together. We all have different opinions, but we have agreed to stay together as one family called "Kenya" because of the law. The moment anybody goes against the law, he is seeking to bring chaos into the country.

I do not know why the Minister did not give fertilizer zero-rating.

The Assistant Minister for Foreign Affairs and International Co-operation (Mr. Muchilwa): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is hon. Lwali-Oyondi in order to mislead this House that there is taxation on fertilizer when it is not there?

Dr. Lwali-Oyondi: Mr. Temporary Deputy Speaker, Sir, as far as I know - and I stand to be corrected - there is some tariff on fertilizer. We have never agreed in this House that fertilizer should be free of duty. We have always been complaining about duty on fertilizer.

Mr. Shikuku: Jambo la ufahamisho, Bw. Naibu Spika wa Muda. Unafahamu kwamba mimi ni mmoja wa watu ambao wamewahi kuwa katika mpango wa makao. Mimi najua kwamba hata wakati huu huwezi kuipata mbolea aina ya DAP ikiwa huna Kshs1400, na kuna ushuru katika bei hii. Kama anavyosema mhe Lwali-Oyondi, ushuru huu ungeondolewa ili wakulima waweze kutumia mbolea katika kilimo chao. Kwa njia hii tunaweza kupata chakula kingi na kuepuka njaa tena. Inafaa mhe Muchilwa ajue kwamba bei ya mbolea ni ya juu sana, na bado tunataka kuleta mahindi humu nchini kutoka nchi za nje. Hii inawatajirisha watu wengine na kuwaumiza watu wetu. Nafikiri siku moja Mungu atatumyoosha, hasa hawa watu wa KANU.

Dr. Lwali-Oyondi: Thank you very much, Mr. Shukuku. Fertiliser should have been considered at this time so that at this time of planting, our people should be able to plant without---

The Assistant Minister for Foreign Affairs and International Co-operation (Mr. Muchilwa): On a point of order, Mr. Temporary Deputy Speaker. Dr. Lwali-Oyondi is still misleading the House by claiming that there are taxes levied on fertilisers, based on the hearsay that his brother has tried to rely on.

Dr. Lwali-Oyondi: Mr. Temporary Deputy Speaker, Sir, I have stated here that duty is paid on fertiliser, and we have never had it free of charge. If the hon. Member can document his point---

The Assistant Minister for Research, Technical Training and Technology (Mr. Kagwima): On a point of order, Mr. Temporary Deputy Speaker, Sir. I would want to seek your guidance whether we should not ask the Minister for Agriculture, Livestock Development and Marketing to come and make a statement on the taxation of fertiliser. I am convinced that hon. Dr. Lwali-Oyondi is misleading the House because I know there is no taxation, as of now, on fertiliser.

The Temporary Deputy Speaker (Mr. Ndotto): Dr. Lwali-Oyondi, I think you better avoid that argument because there seems to be confusion whether there are duties or no duties on fertiliser and none of you seems to be sure.

The Assistant Minister for Research, Technical Training and Technology (Mr. Kagwima): On a point of order, Mr. Temporary Deputy Speaker, Sir. I am seeking your guidance by requesting the hon. Minister for Agriculture, Livestock Development and Marketing to come and clarify rather than assume that there is confusion.

There is no confusion and it is clear that there is no taxation on fertiliser.

The Temporary Deputy Speaker (Mr. Ndotto): I think the Minister for Agriculture, Livestock Development and Marketing is not here.

Dr. Lwali-Oyondi: Mr. Temporary Deputy Speaker, Sir, we shall leave that there and the Minister for Finance ought to be here to give us the exact position. But in any case, whether there is duty or no duty, the cost of fertiliser is very high.

Mr. Mutahi: On a point of information, Mr. Temporary Deputy Speaker, Sir. The problem with fertiliser and the cost is the same as the one I gave on sugar. It is only the few rich people that can import fertiliser because there is a certain fee. So, it is now for these rich people to sit and decide on what rights to sell and you know how good they are good in oppressing the small poor farmers.

Dr. Lwali-Oyondi: Thank you, very much, Mr. Mutahi. I think I am getting too much disturbance from the hon. Member for Emuhaya and I should be protected.

The Temporary Deputy Speaker (Mr. Ndotto): Mr. Muchilwa, what is worrying you?

The Assistant Minister for Foreign Affairs and International Co-operation (Mr. Muchilwa): On a point of order Mr. Temporary Deputy Speaker, Sir. What is worrying me is that as far as I am aware, this Parliament approves the Budget and the Budget is the one which sets out taxes. If they can look at it and find that there are no taxes and still assume that, because there are no taxes levied on fertiliser in the budget but the price is high, therefore,

there is some tax somewhere which is not reflected in the Budget, they are misleading the House.

Dr. Lwali-Oyondi: Mr. Temporary Deputy Speaker, Sir, I think that is not a point of order. If the cost of this fertiliser could have been reduced---

Mr. Shikuku: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am sorry to disturb the hon. Member on the Floor. I can see the Assistant Minister for Finance is here. Could he throw some light on this issue? We know there is duty on fertiliser and some other hon. Members want us to believe otherwise.

The Temporary Deputy Speaker (Mr. Ndotto): Order! It is depends on whether Dr. Lwali-Oyondi wants the information from the Assistant Minister or not. If he does not, leave it. Hon. Keah do you want to give information on the issue?

The Assistant Minister for Finance (Mr. Keah): Mr. Temporary Deputy Speaker, Sir, to the best of my recollection on the existing laws, we did remove duty on fertilisers. But I would like to re-confirm this recollection tomorrow during the debate.

Dr. Lwali-Oyondi: Thank you very much, hon. Keah. I think tomorrow you will make things clear.

Mr. Temporary Deputy Speaker, Sir, whatever it is, in this case, the fertiliser should have been subsidised somehow, so that we have---

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ndotto): Order, hon. Members! It is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Thursday April 24th, 1997, at 2.30 p.m.

The House rose at 6.30 p.m.