

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 12th June, 1996

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

## ORAL ANSWERS TO QUESTIONS

*Question No.486*

RAPING OF MS. WINFRED MUSYOKA

**Mr. Speaker:** Is Mr. Mulusya not in the House? We will leave this Question until the end.

*Question No. 339*

PAYMENT OF VEHICLE FUEL BILL

**Mr. Sifuna** asked the Minister for Local Government:-

- (a) whether he is aware that Bungoma Municipal Council paid a total of Kshs38,852.00 for fuel used in only one vehicle registration No. KAB 281Q for the month of May, 1995, as per Payment Vouchers Nos 001365 and 001449;
- (b) whether he is further aware that the Council paid a total of Kshs34,220.00 for fuel used in the same vehicle in the month of June 1995, as per Payment Vouchers Nos 001662, 001823, 001824, 001744, 001914 and 001869; and,
- (c) where this vehicle has been working.

**The Assistant Minister for Local Government** (Mr. Kamuren): Mr. Speaker, Sir, I beg to reply.

- (a) Yes, I am aware.
- (b) Vehicle No. KAB 281Q is a refuse collection vehicle and the expenses incurred were for fuelling that particular vehicle between February 1995 and June, 1995.
- (c) The vehicle which belongs to the Council has been working within the jurisdiction of Bungoma Municipal Council.

**Mr. Sifuna:** Mr. Speaker, Sir, the Assistant Minister has not answered part "b" of my Question. The amount of Kshs38,852.00 was made in one particular month; the month of May, then the following month there was another payment voucher for over Kshs34,000. Could the Assistant Minister clarify this issue since we know that the question of refuse collection does not arise?

**Mr. Kamuren:** Mr. Speaker, Sir, this particular vehicle does move from one place to the other within the town of Bungoma. At times it even runs short of fuel and has to be refuelled. That is why within those particular months that amount of money was incurred.

**Mr. Sifuna:** Mr. Speaker, Sir, the truth of the matter is that this vehicle has not been collecting refuse at all but instead, the Clerk of Bungoma County Council has been colluding with the petrol station owners to draw cash purported to be used for purchasing petrol. Can the Assistant Minister therefore table in this House the work ticket of this particular vehicle to prove that it actually worked for the purpose of collecting refuse in the municipal council?

**Mr. Kamuren:** Mr. Speaker, Sir, if at all my colleague has certain information which might assist us, he can give it to us and then we will have to look into the matter.

**Mr. Kaptan:** Mr. Speaker, Sir, the hon. Member is telling the Assistant Minister that the vehicle was not actually working during the period in question. The Assistant Minister could still look at the work ticket to see whether this vehicle actually moved from one place to another or not. Can the Assistant Minister tell us whether

he has done his investigations properly to establish whether or not this vehicle was actually working during the period in question?

**Mr. Kamuren:** Mr. Speaker, Sir, the work ticket that I went through when I was investigating this matter has shown that the vehicle was moving from one place to another. Unless there is another work ticket which might not have been given to us in the Ministry, that is the information I have within the Ministry.

*Question No. 431*

OVERFLOW OF SEWAGE PONDS

**Mr. Speaker:** Mr. Mwiraria is not in? We will move on to the next Question. Mr. Rotino's Question!

*Question No. 403*

STD FOR SIGOR AND KABICHBICH

**Mr. Speaker:** Mr. Rotino too is not in? Next Question, Mr. Imana!

*Question No. 512*

IMPROVEMENT OF LODWAR-DELTA ROAD

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

(a) whether he is aware that in order to reach Kerio Delta, businessmen and NGOs have to travel for 200 Kilometres via Lokichar and Nakalei, instead of travelling 65 Kilometres from Lodwar to Kerio directly; and,

(b) if the answer to "a" above is in the affirmative, whether he could take urgent measures to improve the Lodwar-Kerio-Delta Road to ease the inconvenience and reduce the expenses.

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

(a) I am aware that in order to reach Kerio Delta, businessmen and NGOs have to travel 200 kilometres via Lokichar and Nakalei instead of using the 65 km long direct route from Lodwar to Kerio because the later route is sandy and vehicles tend to get stuck along that road.

(b) The Government will improve the road by ensuring that adequate grading works are carried out to keep the road motorable.

**Mr. Imana:** Mr. Speaker, Sir, this is the usual answer we have been getting from the DDC and the officers from the Ministry of Public Works and Housing. Now, I would like to tell this House that the Kerio Delta is an area where there is a lot of produce. As you travel to Nakuru from Nairobi, along the roadside, you will see baskets displayed for sale, people think that they are produced within Limuru area but these are baskets from Kerio Delta that cannot reach Lodwar or Nairobi easily because of the poor state of the road. Can the Assistant Minister assure this House when what he has said will be done?

**Col. Kiluta:** Mr. Speaker, Sir, this road was done last year in August and is reschedule for a regrading in August, this year. We have budgeted money for this work. As concerns the tarmacking of the road---

**Mr. Kapten:** On a point of order, Mr. Speaker, Sir. The Assistant Minister is saying that this road "was done last". I do not know what he means by that. So, can he elaborate on that?

**Col. Kiluta:** Mr. Speaker, Sir, in English when you say "last" you mean when you touched the road. The road was done in August last year and work on it will be repeated this year. What I was saying before I was rudely interrupted by my good friend, hon. Kapten, is that the DDC gave us priorities in the district for tarmacking. The first road which is now being done is Lokichar-Kapendo. At the moment we are doing---

**Mr. Achieng-Oneko:** On a point of order, Mr. Speaker, Sir. What do you really do to the road? The Assistant Minister has kept on telling us: "The road was done last---" How do you do a road?

*(Laughter)*

**Col. Kiluta:** Mr. Speaker, Sir, I tender my apologies. The road was last gravelled last year. The Makutano/Lokitang Road is being gravelled at the moment at a total cost of Kshs35 million, and it is funded by the World Bank. After this one, we will come to the one in question.

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

**Mr. Speaker:** What is it Mr. Gitonga? We will never get out of this situation if we continue to have all these points of order!

**Mr. Gitonga:** On a point of order, Mr. Speaker, Sir. Will the Assistant Minister be clear whether the road was graded or gravelled?

**Mr. Speaker:** He said it was done! proceed.

**Col. Kiluta:** Mr. Speaker, Sir, I said that the road was gravelled and we have set aside Kshs35 million---

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

**Mr. Speaker:** Order, Mr. Gitonga! I thought the Assistant Minister said the road was done, gravelled or murramed. Can you proceed?

**Col. Kiluta:** Mr. Speaker, Sir, the road was actually gravelled, and we have earmarked Kshs35 million for gravelling Makutano/Lokitang Road. After this, we will come to the road in question. So, we have plans for gravelling and murraming the hon. Member's roads.

*Question No. 517*

#### TARMACKING OF SIAYA-RWAMBWA ROAD

**Mr. Mak'Onyango** asked the Minister for Public Works and, Housing:-

(a) whether he is aware that the Siaya-Uranga-Rwambwa Road has not been up-graded for a long time and is impassable; and

(b) when the road will be up-graded and tarmacked.

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

(a) I am aware that Siaya-Uranga-Rwambwa Road has not been up-graded from earth to gravelled standard and that various sections totalling approximately three kilometres become impassable during the rainy season. However, these sections will be gravelled during the 1996/97 Financial Year.

(b) There are no immediate plans to up-grade the road to tarmac standard due to lack of funds.

**Mr. Mak'Onyango:** Mr. Speaker, Sir, could the Assistant Minister tell the House why the Government has not found it necessary to up-grade this road to at least murrum standard, given that it is one of the busiest roads in the whole of Siaya District? As you know, it is an extension of Kisumu-Siaya Road.

**Col. Kiluta:** Mr. Speaker, Sir, the DDC gave us all the roads for tarmacking for the years 1997 to 2001. So, we are still within time in doing the road.

**Mr. Mak'Onyango:** Mr. Speaker, Sir, the Assistant Minister wants the House to believe that they are going to do the needful on this road. But, as a temporary measure, could he find a way of helping the motorists who use this road? As I said, this is a very busy road, which is used for transporting fish from Port Victoria and other parts down there to Kisumu and beyond. When there are rains, as there are right now, the road becomes totally impassable. Can the Assistant Minister do something to provide some temporary solution to the problem?

**Mr. Kiluta:** Mr. Speaker, Sir, this road was re-graded in November, 1995 and March, 1996. We have already planned to have it done again during the 1996/97 Financial Year at a total cost of Kshs2.5 million. We hope that by the end of this process, we will be looking forward to the period when we should be tarmacking the road.

**Dr. Lwali-Oyondi:** Mr. Speaker, Sir, has the Government changed its policy on maintenance of roads? Could the Assistant Minister make it clear whether roads are repaired at specified periods or as it becomes necessary?

**Col. Kiluta:** Mr. Speaker, Sir, the roads are repaired depending on the requirements or requests. If a road has heavy traffic, it will be given preference for repair over a road that does not have heavy traffic.

*(Mr. Mak'Onyango stood up in his place)*

**Mr. Speaker:** Mr. Mak'Onyango, what is it? I thought I had given you more time than you need!

**Mr. Mak'Onyango:** Can the Assistant Minister confirm or deny that it is because of doing the road badly that the pot holes have increased instead of being eliminated?

*(Mr. Mak'Onyango laughed as he concluded his question)*

**Mr. Speaker:** Mr. Mak'Onyango, why are you laughing? Have you finished?

**Mr. Mak'Onyango:** Yes, Sir.

**Col. Kiluta:** Mr. Speaker, Sir, we normally do the roads very well.

*Question No. 407*

COMPLETION OF KISII-CHEMOSIT ROAD

**Mr. Anyona** asked the Minister for Public Works and Housing in view of the resolution of this House of 3.5.95 regarding the completion of Kisii-Chemosit Road (C-21) and the fact that in the 1995/96 Supplementary Estimates the meagre allocation of K£200,000 for the project in the printed estimates was reduced to K£50,000 whether he will tell the House:-

(a) why he has failed to implement the resolution of the House on the completion of the Kisii-Chemosit Road;

(b) why the budgetary allocation for the project was reduced in the 1995/96 Supplementary Estimates from K£200,000 to K£50,000; and

(c) If the Ministry will make adequate provision in the 1996/97 Budget and commence work on the completion of the Kisii-Chemosit Road (C-21) in July, 1996.

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

(a) The resolution of the House could not have been implemented because of lack of funds. However, arrangements are at an advanced stage for the contractor to resume work.

(b) The budgetary allocation was reduced as a result of a Government budgetary process to reduce expenditure for the year 1995/96.

(c) The Ministry has included a request for sufficient funds in the draft estimates for the 1996/97 Financial Year to facilitate resumption of the project. However, the actual allocation will not be known until the estimates for the year 1996/97 are approved.

**Mr. Anyona:** Mr. Speaker, Sir, that is an extremely unsatisfactory answer, given the long saga of broken promises over this road. This Road was supposed to have been tarmacked in 1965. In fact, in some books, it is indicated as having been already tarmacked. As we are sitting here, the Road is totally impassable.

Without issuing any threats, I would like to tell the Assistant Minister and the entire Government that this Road is likely to become the great graveyard of KANU and this Government in 1997. Will the Assistant Minister tell this House how much money is required to finish this Road, and how much he has made provisions for?

**Mr. Mwamzandi:** Mr. Speaker, Sir, the project actually stalled in February, 1992. In any case, I cannot disclose the amount of money that we will allocate this Financial Year, but I am sure that, that amount will be enough to complete the work.

**Mr. Anyona:** On a point of order, Mr. Speaker, Sir. How much money is required to complete the Road and against that, how much they have estimated? I am not asking for the budget figures.

**Mr. Speaker:** Sure. I think that is legitimate.

**Mr. Mwamzandi:** Mr. Speaker, Sir, before the work stalled, we had spent over Kshs76 million. The work which was remaining needed Kshs330 million to complete the project.

**Mr. Obwocha:** Mr. Speaker, Sir, could the Assistant Minister tell this House how much money they spent recently on the construction of the bridge on this Chemosit-Nyamira-Kisii Road?

**Mr. Mwamzandi:** Mr. Speaker, Sir, I do not have the figures of what we spent on the bridge. But we had spent Kshs76 million before the project stalled having done 30 per cent of work or 21 kilometres of the Road.

**Mr. Otieno:** Mr. Speaker, Sir, I think the Assistant Minister is aware that once a road has been earmarked for tarmacking, it must be a major road. But

the practice is that once he stops paying the contractor, then he moves out of the road, thus making major roads to become impassable. You do not allocate further funds to maintain it to the grade at which it is expected, even if the tarmacking has been frustrated. What is the Assistant Minister doing to change that practice, so that this particular Road, and Ndori-Lwanda-Kotieno Road are passable, in accordance with the status they had reached before they were messed by contractors?

**Mr. Mwamzandi:** Mr. Speaker, Sir, I said earlier that we have put the required estimates before the 1996/97 Financial Year Budget. We do not expect to stop the work any more after that.

**Mr. Otieno:** On a point of order, Mr. Speaker, Sir. I am talking about the policy that once a road has been earmarked for tarmacking, it is a major road. If the work is abandoned, it means that we will need a much higher allocation to keep it to the standards, even if the tarmacking has stalled. It is a policy issue that they abandon major roads when tarmacking has failed. What are you doing about it?

**Mr. Mwamzandi:** Mr. Speaker, Sir, I am not in a position to answer that question, because I am not responsible for the policy of the whole Ministry.

**Mr. Manoti:** Mr. Speaker, Sir, since it was the fault of the Government which made the contractor to move out of site, how much penalty is the Government going to pay to the contractor? I have learnt that it is the same contractor who is still on the site.

**Mr. Mwamzandi:** Mr. Speaker, Sir, we have appointed Messrs. Otieno Odongo and Partners Consulting Engineers to request the contractor to complete the Road.

*(Dr. Ombaka was applauded as he entered the Chamber)*

**Mr. Manoti:** Mr. Speaker, Sir, he has not answered my question--

**Mr. Speaker:** Who gave you the Floor? What was it anyway?

**Mr. Manoti:** Mr. Speaker, Sir, I had asked the Assistant Minister to tell us how much money the Government is going to pay? This is because it is the Government which forced the contractor to move out of site. That is what he should tell us.

**Mr. Mwamzandi:** Mr. Speaker, Sir, I did not answer that question because as I had said, there is a consultant who is negotiating with the contractor right now, so that he can complete the road. So, I cannot give the figures.

#### *Question No. 420*

#### WATER SUPPLY FOR RERICHWA LOCATION

**Mr. Githiomi** asked the Minister for Land Reclamation, Regional and Water Development:-

(a) whether he is aware that residents of Rerichwa Location where the source for Greater Nakuru East Water Supply Project is located, have not been supplied with water; and,

(b) if the answer to "a" above is in the affirmative whether he could consider supplying water to the residents of the location from the project or construct an alternative project.

**The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale):** Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that the residents of Rerichwa Location have not been supplied with water from the dam that is the source of water for the Greater Nakuru East Water Supply Project.

(b) At the moment, it is not possible to provide water to the location from the Greater Nakuru East Water Supply Project because of topographical reasons. However, my Ministry has now completed design plans for an alternative gravity system project estimated to cost Kshs30 million, and are now negotiating with a possible donor for funding.

**Mr. Githiomi:** Mr. Speaker, Sir, water for this multi-million Greater Nakuru East Water Supply Project is extracted from Nturachia River. The irony of the whole matter is that not a single resident of the location has been supplied with even a drop of water. The biggest problem here is that the Assistant Minister is saying that the biggest problem is due to topographical reasons.

This is unacceptable because water does not necessarily have to be gravitated. It can be pumped to those residents.

Could the Assistant Minister assure this House that he is going to provide a reticulation system to the residents of Rerichwa Location and ultimately, pump water for their consumption? Could he also assure this

House, that this Kshs30 million project is going to supply water to the residents of Rerichwa Location?

**Mr. Ligale:** Mr. Speaker, Sir, I have indicated that due to topography, pumping water back to that location will be a very expensive affair. And that is why we have decided to design an alternative solution; i.e. to provide water that can go by gravity and we are looking for possibility of donor funding for this particular project.

**Mr. Mutahi:** Mr. Speaker, Sir, between the time that the Ministry will get a financier of Kshs30 million, can they consider, as a humble request from the hon. Member of the area, to pump back the water between now and the time you will be financed so that these people can have water? The financiers can even take ten years before they finance the project.

Between now and finances, can the Ministry consider pumping the water back to those people?

**Mr. Ligale:** Mr. Speaker, Sir, if that solution was cheaper than the alternative we would have done so.

**Mr. Nyagah:** Mr. Speaker, Sir, this is a rather interesting Question. We had a similar situation in Masinga Constituency where the water was supposed to go all the way to Kitui and be pumped back, but instead the Government accepted to feed the people within Masinga constituency on the main line before going to Kitui and the problem here again was topographical. Here we have a water engineer, capable Minister and so on, why do you not do exactly the same thing as happened last year to Masinga constituency so that these people can benefit?

**Mr. Ligale:** Mr. Speaker, Sir, I cannot remember the actual arithmetic involved in the case of Masinga.

Presumably, the alternative of providing Masinga people with water would have been much more expensive than pumping the water from that project to Kitui.

**Mr. Wamae:** Mr. Speaker, Sir, I believe that this water is the same one which also by-passes Nakuru and goes to some people's farms. Why has the Assistant Minister considered it necessary that the people through whom this water is passing should not have water, even by building tanks and other things?

**Mr. Ligale:** Mr. Speaker, Sir, the preamble is not correct. In fact, the water that serves these other people come from the other source, from the Mau Narok area. But I have indicated that we are already looking at an alternative solution and we are hoping to get it started as soon as possible.

**Mr. Mulusya:** On a point of order, Mr. Speaker, Sir. You have heard the hon. Matu Wamae talking about water-feeding other people and the Minister has said that this water is the preamble which is serving those other people who come from the other side.

Can we be told who these other people are?

**Mr. Speaker:** I have no doubt that Mr. Matu Wamae and Mr. Ligale understand each other perfectly well! Next Question.

#### *Question No. 176*

#### ARREST OF NARCOTIC DRUG DEALERS

**Dr. Kituyi** asked the Attorney-General:-

- (a) if he is aware that Kenya has increasingly become identified as a major transit point for narcotic drugs in the region;
- (b) if he further aware that United States of America authorities have complained of corruption in the Government as a major draw back in efforts at the use of shared information to arrest notorious dealers in Kenya; and,
- (c) what steps he is taking to reverse these trends.

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

(a) As to (a), Yes, I am aware.

(b) As to (b), no, I am not aware.

(c) As to (c), the Government, in its effort to fight illicit drug traffic in narcotic drugs and psychotropic substances has:

(i) Enacted the Narcotic Drugs and Psychotropic substances (Control) Act 1994 with stiff penalties for offences committed thereunder.

(ii) Established an anti-narcotics squad which specialises in the investigation of the offences under the said Act.

(iii) Established an Inter-ministerial Drug Co-ordinating Committee under the Chairmanship of my office on which the Police Department, Customs and Excise Department, Ministries of Health and Education are represented. I may wish to modify my answer here and say, in addition to those Ministries, the Ministry of Culture and Social Service and the Ministry of Home Affairs and National Heritage have been added. The Committee is to advice on strategies to combat crime and formulate a comprehensive national drug control policy.

**Dr. Kituyi:** Mr. Speaker, Sir, I am glad that hon. Attorney-General is aware that this has increasingly become a major transit point for drugs in this region.

It is open statistics on all the bulletins of the international drug business that the USA Government has formally and even publicly been complaining about the Kenya Government's failure to use shared information to apprehend criminals in the drug business who are passing through here.

But be that as it may, if you look at the answer given by the Attorney-General, he does not answer the question of what is being done to reverse trends, but he is celebrating what was done in the past. Considering that stiff penalties have been followed by the culprits bribing their way out of prisons or even their way before they get to prison, particularly Nigerians and Tanzanians, not to suffer the penalties imposed, what it means in essence is that stiff penalties only increases the street value of drugs but does not contain the trend and transit of drugs through Kenya. Can the Attorney-General set up new incentives by the Government not about the Ministry of Culture and Social Service that has nothing to do with stopping transit trade that has to do with domestic consumption---? New initiatives by Government, for example, to be more co-operate in handing over a leading Mombasa tycoon who has been wanted by the Tanzanian Government for smuggling of drugs, and two, stopping senior politicians from that side of the House from going to police stations and saying, "I have orders from above to release persons who have just been arrested by these anti-narcotics officers".

**Mr. Wako:** Mr. Speaker, Sir, these initiatives which have been taken are current because the stiff penalties are current. As I speak here I want to put on record my appreciation and my happiness at seeing the hon. Member of Parliament from Gem constituency I have just noticed him now, Dr. Oki Ooko Ombaka. We really wish him speedy recovery!

*(Applause)*

Mr. Speaker, Sir, on this particular question, the fact of the matter is that stiff penalties coupled with intensive investigations are beginning to pay. For example, if I may give some figures, in 1994, 22,800 tabs of madras were confiscated, in 1995, 500,037 tabs of madras were confiscated which was an increase of 2,255.3 per cent. In 1994, 22,282 kilogrammes of heroine were confiscated, in 1995, 29,572 kilogrammes of heroine were confiscated which is 32.7 per cent increase. On cannabis and other derivatives; in 1994, 2,008 kilogrammes, in 1995, 8,943 kilogrammes, which is a percentage increase of 3.53 per cent.

Only yesterday, I destroyed the largest single seizure of drugs in Kenya and perhaps in East Africa which is approximately 20 tonnes there in Mombasa and I made sure that I stood at place where I could not inhale the fumes coming from that particular fire.

This anti-narcotics squad is also being assisted in training and so on to be able to investigate these crimes which as you are aware, are organised and very sophisticated. I want to put on record my appreciation to the United Nation Drug Control Programme to the Government of United States of America, the Government of United Kingdom and the Government of Germany for the assistance they have rendered to ensure this particular unit is effective.

Mr. Speaker, Sir, the fact of the matter is that the United States does recognise that Kenya is on the war-path against drugs, but what they only lack is--- If I may quote the Report---

**Dr. Lwali-Oyondi:** On a point of order, Mr. Speaker, Sir. An allegation has been made in this House whereby a speaker on the Floor said that drug traffickers have been released from custody by senior politicians, after being apprehended. Could he substantiated that?

**Mr. Wako:** Mr. Speaker, Sir, I am still replying. I wanted to give a comprehensive answer as to what is happening today. Let me have the particulars as to the allegation of senior politicians going to the police stations and seeking the release of somebody in custody, and we shall follow it up.

**Mr. Anyona:** Mr. Speaker, Sir, the Attorney-General has admitted that this particular problem is on the increase. He has also made reference to the Act passed here in 1994. Can he also tell us what the actual impact of that Act has been? He should also tell us how the implementation of that Act has been carried out since we have been told that there is a problem with the interpretation of that Act in the courts.

**Mr. Wako:** Mr. Speaker, Sir, as I rightly said and admitted, this is a big problem, as far as Kenya being a transit point is concerned. In fact, Kenya is also increasingly becoming a consumer society and possibly, even a producer society. The hon. Member asks what the effects of the Act have been. The effect of the Act, coupled with investigations, is what I have just outlined. It is true that at the very beginning of the Act, there were some misunderstandings on the provisions of the Act. But as I assured this House, I was satisfied that the provisions of the Act were intact. What had happened is that there had initially been wrong interpretations of some of the Clauses in the Act. But I am glad that the court itself; the Judiciary which is an independent institution, corrected the initial wrong interpretation under the Act and the High Court came up with the interpretation of those provisions which I totally agreed with.

So, as far as this issue is concerned now, there is really no problem with the Act as such. As far as investigations are concerned, as I said yesterday, we want to target the drug traffickers as such. I asked the police that we target the big drug traffickers first and then we can take care of the small ones later on.

**Mr. Speaker:** Final Question; hon. Achieng-Oneko.

**Mr. Achieng-Oneko:** Mr. Speaker, Sir, the Attorney-General has accepted or admitted that trafficking of drugs has been going on. Can he tell the House when it started? Civil Servants have been accused of helping in the transportation of drugs through northern roads to either Nairobi or to Mombasa. They have been using mechanised vehicles to transport drugs. Can the Attorney-General today tell us when he heard this for the first time and why it has been going on for such a long time without him taking action? Or is it that the Attorney-General and his people were conniving to this?

**Mr. Wako:** Mr. Speaker, Sir, it is difficult to state exactly when it began. But the first Act which concerned this drug control was passed in 1934. In 1994 we now brought this very comprehensive legislation dealing with this matter.

As to the Civil Servants who may be involved, I think hon. Members have read in the Press about some District Officer in Thika and Gatundu area and his entire staff who caught. When it comes to the attention of the law enforcement agencies that any person, civil servant or otherwise is involved and there is evidence, investigations will be done and if there is enough evidence, they will be prosecuted. So, if you are aware of any civil servants who are engaged in this exercise, please let me know and we shall take it up.

**Mr. Speaker:** Next Question!

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

**Mr. Speaker:** Order, Mr. Mulusya! I am sorry now. What is it, hon. Shikuku?

**Mr. Shikuku:** Mr. Speaker, Sir, in part (b) of the Question, there is a definite allegation that the United States of America complained of corruption... Is this a fact or an allegation?

**Mr. Speaker:** Hon. Shikuku, I thought he had answered it before you came in.

**Mr. Shikuku:** Mr. Speaker, Sir, he has not answered it.

**Mr. Wako:** Mr. Speaker, Sir, I answered as follows:

(1) I am not aware.

(2) What I am aware of is what I have already told the National Assembly that the United States Government is very pleased with the efforts that are being made and that they will support our war against drug traffickers.

**Mr. Speaker:** Mr. Mulusya, for the second time.

**Mr. Mulusya:** Mr. Speaker, Sir, I first want to apologise for coming late. I decided to miss my lunch and rush here. With those, I beg to ask---

*(Loud consultations)*

**Mr. Speaker:** Order! Now that you asked for it, there is time for lunch and time for Parliament. Where were you for lunch?

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

**Mr. Speaker:** I thought I asked you a question? Anyway, ask your Question.

*(Laughter)*

*Question No. 486*



## RAPING OF MS. WINFRED MUSYOKA

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

(a) if he is aware that a four (4) year old girl, Ms. Winfred Wayua Musyoka, from Kitwii Sub-location was on 18th August, 1995 at 5.p.m. raped by a relative of the Chief of Kanzalu Location and the matter reported to Kangundo Police Station;

(b) whether he is further aware that inspite of a medical report from the Kangundo Sub-District Hospital confirming the rape, no arrest of the suspect has been made to date, and further that there is gross interference to prevent the law from taking its course; and,

(c) if the answers to "a" and "b" above are in the affirmative, what action does he intend to take to have the culprit brought to book.

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

(a) Yes, I am aware.

(b) On 6th of September, 1995, Acent Nzioka Mutua was charged with the offence of defilement vide Kangundo CR 444/328/95. He was later found guilty and imprisoned for three years on the 25th of April, 1996.

(c) As stated in (b) above, the culprit has been sentenced.

**Mr. Mulusya:** Mr. Speaker, Sir, before this rapist was arrested, he had sold a bull for Kshs12,000 which he was using to entertain the police and the local chief. It forced me as a Member of Parliament for the area to write to the Commissioner of Police for action to be taken. Three years in jail for a rapist of a four year child is a very small punishment.

Is the Assistant Minister satisfied that this is a sufficient sentence for this rapist, who has not even been tested for Aids infection? Is he going to order for this rapist to be tested for Aids and be re-tried, maybe for enhancement of the sentence?

**Mr. Awori:** Mr. Speaker, Sir, the sentence was limited in accordance with the law. I would like to agree with you and I would like to see this young man put away for ever and the key thrown away. I agree.

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

**Mr. Speaker:** I am sorry.

**Mrs. Ngilu:** Thank you, Mr. Speaker, Sir. First, I would like to ask you to recognise the presence of 44 women elected Councillors who are sitting in the Speaker's Gallery.

*(Applause)*

I thank you. On this question of rape---

**An hon. Member:** From where are they?

**Mrs. Ngilu:** They are from the whole country.

**Mr. Speaker:** She has just said from Kenya.

**Mrs. Ngilu:** They are from the whole of Kenya and they are elected.

**An hon. Member:** Not nominated?

**Mrs. Ngilu:** No. On this question of rape, this is the most serious offence or crime that can happen to a woman, and for that matter, to a four year old girl.

The question of rape and defilement in this country has never been addressed very seriously, as you can see in this case. This is even more serious because it involved the administration. I would say that in my own constituency we have a chief, leave alone a relative of a chief, who is doing this kind of thing all the time.

**Hon. Members:** Ah!

**Mrs. Ngilu:** Mr. Speaker, Sir, we have reported him to the authority and I would like to know---

**Mr. Speaker:** Can you ask the question?

**Mrs. Ngilu:** Is the Assistant Minister aware that this is happening in most parts of the country and what is the Government doing about this?

**Mr. Awori:** There is nobody, chiefs included who is above the law. If any chief participates or attempts rape to anybody and it is proved that chief will be jailed according to the law. It is as simple as that.

**Dr. Otieno-Kopiyo:** Mr. Speaker, Sir, the Assistant Minister has informed the House that he is not satisfied with the sentence handed down to this rapist. Will he appeal against the sentence?

**Mr. Speaker:** Could you repeat what you said?

**Dr. Otieno-Kopiyo:** The Assistant Minister in the Office of the President has said that he is not satisfied. Is the State going to appeal against this sentence since he is not satisfied?

**Mr. Awori:** Mr. Speaker, Sir, I agreed with the Questioner that the sentence was inadequate. It is as simple as that. I did not say I will appeal because the sentence was inadequate. I was agreeing with the Questioner.

**Mr. Ndilinge:** Can the Assistant Minister tell this House whether the chief, who is an administrator and who seems to have obstructed the law from taking its course, was punished? This is because according to the Questioner, it appears that the chief was a relative of the wrong-doer. If he is going to be kept in that location----

**Mr. Speaker:** May I ask you hon. Ndilinge a question, if your cousin were to commit a crime, should you be taken to court?

**Mr. Ndilinge:** No. But we want to know whether any action was taken against the chief who was obstructing the law from taking its course.

**Mr. Awori:** I have no information whatsoever that the chief interfered in this case. Looking at the speed at which action was taken, I find it very difficult to believe that the chief interfered. Perhaps, I may have to give some more details. The event occurred in August, and on the 6th September, 1995, the culprit was arrested and on 25th November, 1995, he was arraigned in court and on 25th April, 1996, the man was sentenced. Surely, that speed does not indicate in any way that any relative, whether a chief or otherwise tried to interfere.

**Mr. Otieno:** In addition to cases of rape of which there is punishment in our laws, there are now cases where somebody knows that he is HIV positive and let alone raping, he also goes into sexual relationship knowing that he is HIV positive. When can we expect a suitable legislation or a Bill from the Government to provide for partners to refuse unprotected sex, and, if the partner is testing HIV positive, appropriate punishment should be provided for?

**Mr. Awori:** Mr. Speaker, Sir, we are the law-makers. It is not necessary to wait until the Government brings in a Bill into the House. Any action that is in the interest of the whole country, since we are lawmakers, whether sitting on that side or on this side, I am pretty sure, that will be supported.

**Dr. Kituyi:** Mr. Speaker, Sir, you must have heard as well as I did the hon. Assistant Minister alleging before this House that the maximum the Government could do anything about this defiler was put him in jail for three years.

Is it in order for him to mislead the House when he knows that the laws of this country allows much stiffer punishment than three years imprisonment for defilement? In fact, there is a provision of up to life imprisonment.

**Mr. Awori:** Perhaps, the hon. Member has to check in the HANSARD. He will find that at no time did I use the word "maximum."

**Mr. Mulusya:** I asked the Assistant Minister whether he is satisfied with the sentence and he said that he is not. May I now get from him whether he is prepared to appeal against this sentence because it is highly inadequate and I have also stated here that the rapist had to sell a bull to continue to entertain the policemen and the chief for one week to make sure that he is not arrested. So, he should take action against the chief. Are you going to appeal against the sentence meted out on this rapist?

**Mr. Awori:** I am not going to make any appeal and if there is any evidence at all, of the bull having been purchased and slaughtered for the entertainment of chiefs, please, bring them before me and we will see.

#### *Question No. 431*

#### OVERFLOW OF SEWAGE PONDS

**Mr Mwiraria** asked the Minister for Local Government:-

(a) whether is aware that the sewage ponds belonging to the Municipal Council Of Meru always overflow;

(b) whether he is further aware that the overflow is a serious health hazard to the inhabitants of the area, as children play with the sewage waste, which runs along the road, and that the sewage eventually drains into Kathita River which is used downstream by the inhabitants of Nyaki and Giaki

locations; and,

(c) what immediate action he is taking to remedy this dangerous health hazard.

**The Assistant Minister for Local Government (Mr. Kamuren):** I beg to reply.

This matter is a subject of court case No. PMCRC3718 of 1990 - The Republic versus the County Council of Meru and will be heard on 24th June, 1996. It is, therefore, *sub judice* for the matter to be tabled in the House.

**Mr. Speaker:** Mr. Kamuren, does it concern the issue of the overflow of the sewage? Are they charged for allowing the sewage to overflow?

**Mr. Kamuren:** The case that is in court concerns this particular sewage---

*(Loud consultations)*

**Mr. Speaker:** Order! Order, hon. Members! I want the Chair to be satisfied that that matter is indeed, *sub judice*.

I put the same question to you again. Has the Municipal Council of Meru been charged in court for allowing the sewage to overflow?

**Mr. Kamuren:** Yes, Mr. Speaker, Sir.

**Mr. Speaker:** Are you disagreeing with that position Mr. Mwiraria?

**Mr. Mwiraria:** I just want to follow up the answer. This matter was supposed to have been taken to court in 1990. The Question which I raised after becoming an MP three and a half years ago is dealing with the problems that arose last year last year.

**Mr. Speaker:** I am going to ask you a question the same way I did to the Assistant Minister. Are you denying that the Municipal council has been charged for allowing the sewage to overflow?

**Mr. Mwiraria:** Mr. Speaker, Sir, I am not denying because I was not even aware of this fact, otherwise I would not have brought the Question here.

**Mr. Speaker:** The safety course, then would be, if you do not agree with him check the charge sheet and then see the Chair. If it is, indeed, not touching on this matter, I will reinstate your Question. In the meantime, I will leave it.

**Mr. Mwiraria:** But, Mr. Speaker, Sir, could I ask a Question relating to a matter which is *sub judice*?

**Mr. Speaker:** Can I hear what you are saying?

**Mr. Mwiraria:** Mr. Speaker, Sir, could I ask a question? What is happening is that since 1990, the people of North Imenti have been drinking dirty water, catching diseases and dying. For how much longer can this case which is in court continue to be held up while the people are dying?

**Mr. Speaker:** Well, I suppose that is the only thing we can do if the matter is *sub judice*. If the matter is *sub judice*, maybe the best thing that can be done is to ask the Assistant Minister to ensure that the case comes to a conclusion as quickly as possible.

**Mr. Anyona:** On a point of order, Mr. Speaker, Sir. I think just to clarify this matter since according to hon. Mwiraria is a very serious matter because people are dying, is it surely not the responsibility of the Assistant Minister who alleges that the matter is in court, to actually produce evidence to satisfy the Chair that the matter is, indeed, before a court?

**Mr. Speaker:** Indeed, you are right. They should satisfy me, although in ordinary circumstances I do believe Members. But it is the duty of a person pleading *sub judice* to satisfy the Chair that, indeed, the matter is *sub judice*.

**Mr. Murungi:** On a point of order, Mr. Speaker, Sir. Since the Assistant Minister has failed in his duty to satisfy the Chair that the matter is, indeed, *sub judice*, could the Question now be asked?

*(Laughter)*

**Mr. Speaker:** Well, Mr. Murungi, you do have a valid point, but in the interest of the rules of the House and in the interest of the common good, maybe the best thing we can do is to defer the Question to next week with an order to the Minister to satisfy the Chair that, indeed, there is a case attaching to these people. The Question is now deferred!

*(Question deferred)*

*Question No 403*

STD FOR SIGOR AND KABICHBICH

**Mr. Speaker:** Mr. Rotino is not in for the second time? The Question falls to the ground.

*(Question dropped)*

### QUESTIONS BY PRIVATE NOTICE

#### CONSTRUCTION OF AMMUNITION FACTORY

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

- (a) Could the Minister deny or confirm that the Government of Kenya has facilitated by contract or otherwise, the construction of an ammunition factory in Kenya based in Eldoret or its environs?
- (b) If the answer to "a" is in the affirmative, could the Minister tell the House who are the owners of this factory?
- (c) Is the Minister satisfied that the existence of the factory will not compromise peace in the region and will not jeopardise the country's stability?

**The Assistant Minister, Office of the President (Mr. Manga):** Mr. Speaker, Sir, any matter related to military or State security are termed as State Secrets. So I would be unable to answer this Question under Standing Order No 74.

*(Several Members stood up)*

**Mr. Maore:** On a point of order, Mr. Speaker, Sir. The Assistant Minister should be honest. When he gets to part "b," he can say the facility is owned by the military and the matter would end there. But he cannot just hide under state security while it is a very important information to be discussed by Parliament.

**Mr. Speaker:** Order! Order, hon. Members. As I understand it, the hon. Assistant Minister is saying that the information being sort in this Question is, by its nature, secret and, therefore, he does not wish to answer it. I understand he has quoted to me Standing Order No. 37. It cannot be Standing Order No. 74. Did you say Standing Order No 74?

**Hon. Members:** Yes!

**Mr. Speaker:** Order! Indeed, it is also covered in addition to this in S.O. No 37. It is also covered by Standing Order No. 74, which says:-

"No Member shall refer to any particular matter which is *sub judice* or any matter which is in its nature secret."

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

**Dr. Otieno-Kopiyo:** Mr. Speaker, Sir, the Question here involves a private limited liability company which is actually owned by foreigners. What is so secret about it that the Kenya Parliament is denied information while the Belgium Parliament can discuss it and deliberate upon it?

**Mr. Speaker;** Order! Order! I said my only response is that as far as the rule is concerned, it is up to the Assistant Minister to tell the House that the matter is secret and he does not want to answer the Question. I do not think I can decide whether it is State secret or not. It is for him to tell the House whether it is secret or not. That is all.

*(Several Members stood up)*

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

**Mr. Manga:** Mr. Speaker, Sir, the question is quite straight forward. He is asking me to deny or confirm the development of the ammunition factory in Kenya and I am saying that this is a secret.

**Hon. Members:** No! On a point of order, Mr. Speaker, Sir.

**Mr. Mulusya:** Mr. Speaker, Sir, I seek guidance from the Chair.

**Mr. Speaker:** Order! Order, hon. Members. I do not think I have a choice, but to accept that what the Assistant Minister says is true. In fact, on the face of the Question, it does look to me that what the Assistant Minister's pleading is right and I accept it.

*(Several Members stood up)*

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

**Mr. Speaker:** Order! Order! It does pay when hon. Members, if they have risen on a point of order, seeking the guidance of the Chair and such guidance has been given, I do not think we should prolong it any further.

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

**Prof. Mzee:** Mr. Speaker, Sir, in actual fact the Assistant Minister has already answered the question. But the fact that he says this matter is secret, it means that he is affirming the fact that this factory is existing and doing exactly what it is doing.

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

**Mr. Shikuku:** My point of order is in relation to Standing Orders of this House. I know you referred to Standing Order No. 37, Mr. Speaker would only approve any question coming before this House if he is satisfied that it is not contrary to the Standing Order No 37. In view of the fact that you approved this Question to come here, naturally you were satisfied that it could be asked in this House. That being the case, it is not time that the Assistant Minister replies to this Question and stop hiding under the secrecy? These bullets are not for fun.

**Mr. Speaker:** Order! Order! Hon. Members, as you know, when a Question comes to the Chair, it comes in various forms and sizes. I am not in a position to know what is Government secret as the Chair because I am not part of the Government. It is the Minister who knows what is secret and what is not Government secret. At the time the Chair approved this Question, the Chair had absolutely no idea that it is a Government secret. Now that the Assistant Minister says that it is a Government secret, then the Standing order applies. He has a Standing Order to help him and that should end it.

**Mr. Orengo:** On a point of order, Mr. Speaker, Sir. If my memory serves me right there was a ruling by the Chair some years ago on a matter which involved hon. Shikuku, when he said in this House that KANU was dead. The ruling by the Chair was that he cannot substantiate the obvious.

**Mr. Speaker:** You cannot do what?

**Mr. Orengo:** You cannot substantiate the obvious. By that argument, a matter which is already in the public domain can no longer be a secret. The Belgium Government has already told us that President Moi is a partner in this factory. That is a fact which is being debated in the Belgium Government. It is not a secret. It is a matter which is in the public domain.

**Mr. Speaker:** Order! Order! Order Mr. Orengo! First of all if indeed you did know the answer to the Question, you were out of order in the first place to ask it because the rules of this House state that Questions asked in this House should be on what you do not know an answer to and, therefore, you want the Minister concerned to give you an answer. In any case, hon. Members will be referred to Standing Order 37 (11) together with 74 and as far as the Minister has pleaded secrecy, I listen and I concur with him. Next Question.

*(A number of hon. Members stood  
in their places)*

**Mr. Speaker:** I am sorry. Order! Order! Mr. Munene Kairu.

#### WILDLIFE MENACE IN KIENI

**Mr. Kairu:** Mr. Speaker, Sir, I beg to ask the Minister for Tourism and Wildlife the following Question by Private Notice.

(a) Is the Minister aware that wild animals from Mt. Kenya National Park are causing massive destruction of crops and properties in Kieni East, and in particular Kabarú location?

(b) Is he further aware that these animals are posing serious risks to human life in this area?

(c) In view of the above facts, what happened to the funds earmarked by the World Bank for an electric fence around this Park and when will this fence be put up?

**The Assistant Minister for Tourism and Wildlife** (Mr. Kisiero): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that wild animals from Mt. Kenya National Park are causing massive destruction of crops and property around the park including Kabarú location in Kieni East.

(b) I am also aware that like in all other areas in the country where there is human/wildlife conflict risk to human life is always there.

(c) The Kenya Wildlife Service has received Kshs 50 million from the European Union which will be used to put up a fence in all the high conflict areas of Mt. Kenya. The first phase is in Kieni East from Chehe to Naro Moru covering approximately forty kilometres. Preliminary surveys are complete and construction work will

start during the next Financial Year 1996/97. The Kenya Wildlife Service has never received any money from the World Bank as it has been claimed.

**Mr. Kairu:** Mr. Speaker, Sir, I would like to first of all thank the Assistant Minister for disclosing that we have received Kshs 50 million through the Kenya Wildlife Service and I am satisfied with his answers to "a" and "b" but as to "c", I recall last year talking to the Minister himself and in fact I invited him to tour that area but he was not able to do so. Could the Assistant Minister be more specific this time and tell us when this fence will be put up because the question of survey does not arise. The boundaries of the park are well defined. Can you tell the House in which month the work will be started and whether the contract has already been awarded because you have got the money with you?

**Mr. Kisiero:** Mr. Speaker, Sir, the work will start after July 1st of this year, 1996.

**Mr. Murungi:** Mr. Speaker, Sir, it appears that our Government values the elephants more than the peasant farmers in Meru District. During this rainy season many elephants have escaped from Mt. Kenya forest and "harvested" potatoes and maize in Meru District and the farmers have been left hungry and miserable. Can the Assistant Minister confirm to this House whether the same programme which is being done in hon. Munene Kairu's constituency which is our neighbour is going to be extended to Meru district?

**Mr. Kisiero:** Mr. Speaker, Sir, the Ministry generally has very serious concern on any problem affecting animals and the farmers. In the case of Meru, I do not have the details of what the Ministry intends to do but we will very pleased to get any information that will help us to get rid of animals that maybe bothering my friend in Meru but as I said, generally speaking we shall do everything possible to see that the conflict between the human beings and wildlife is minimised.

**Mr. Mwiraria:** Mr. Speaker, Sir, is the Assistant Minister in order to say that they are doing everything possible to minimise conflict between human beings and wildlife when KWS has moved elephants from the Samburu-Shaba area to the forests in Meru which elephants are now destroying everything in sight so that the people living around the Mt. Kenya forest in North Imenti are going to be faced with starvation this season? Is he in order?

**Mr. Kisiero:** Mr. Speaker, Sir, if elephants were moved from one area to another one, I think it was for the good of the people of that area. Wildlife is part of our way of attracting tourists to this country and therefore I am sure that KWS could not have done something that would hurt the people of Meru but we shall always be prepared to discuss any problems that may crop up as a result of moving wildlife from one place to another.

**Mr. Wamae:** Mr. Speaker, Sir, is the Assistant Minister aware that a mzungu called Sylvia Jones has animals near Mweiga and he has switched off an electric fence which traverses the Aberdares to Mt. Kenya through peoples farms in Kabaruru location? What is the Assistant Minister going to do? **Mr. Kisiero:** Mr. Speaker, Sir, with due respect that is a different question and ---

**Mr. Speaker:** In any case Mr. Wamae you know that you have a Question on this matter coming and wrong to ask that question.

**Mr. Mwiraria:** Mr. Speaker, Sir, is it really in order for the Assistant Minister to tell us that animals attract tourism or rather they are there for the good of the people when the people I am talking about are faced with starvation because of destruction of crops by elephants in Ruiru, Kerwa, Anari locations of my constituency? Is it in order? What do people really want? No tourists come to see them in Meru but all our people want is food to eat. Could the Assistant Minister be a little more serious and tell this House that the Government cares more for its people than for the animals because unless he does this, I am afraid the Meru people will employ the traditional methods of keeping elephants away from their shambas and you know what that means.

**Mr. Kisiero:** Mr. Speaker, Sir, hon Mwiraria has already hijacked the question from Kieni East to Meru and in order for us to be able to answer him well, I think it will be good if he brings a question so that we get all the facts together because we are always ready to assist.

**Mr. Speaker:** Well that is the end of Question Time.

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

**Mr. Speaker:** I will recognise the hon. Dr. Ombaka.

## PERSONAL STATEMENT

### RETURN OF HON. DR. OMBAKA TO PARLIAMENT

**Dr. Ombaka:** Thank you very much Mr. Speaker. First of all I would like to thank hon. Members very much for the warm welcome and the kind words from the hon. Attorney-General.

Mr. Speaker, Sir, Members will recall that I was taken seriously ill in December last year. I was hospitalised in Nairobi and then evacuated to the United States for specialised medical care. I stand under Standing Order No. 69 to record my gratitude for the many words of encouragement and support that Kenyans gave me during my illness.

Mr. Speaker Sir, I recall that when I was at Nairobi Hospital, many Members of Parliament from both sides of the House came to see me although I was not in a position to recognise or be aware of their visit. I was informed when I gained my awareness of every single Member who came. The list is too long for me to name the hon. Members, but I want to record my gratitude for their care during that period.

In the United States, many Members who had business across the Atlantic also took time off to see me or to send words of encouragement or telephoned. In that regard, I particularly want to thank hon. Member for Ugenya, Mr. James Orengo, hon. Member for Lagdera, hon. Farah, hon. Member for Kisumu Rural Prof. Anyang' Nyong'o, hon. Member for Nyakach, hon. Denis Akumu and hon. Member for Buret, Prof. Jonathan Ng'eno.

Mr. Speaker, Sir, before leaving for the United States and while there, the Kenya Government extended a lot of assistance to me and my family. I would like to record my appreciation to the Ministry of Foreign Affairs and International Co-operation and the Permanent Secretary in particular, Dr. S. Kosgey, for arranging for my entry into the United States. I would like to record my deep felt gratitude to our Ambassador to the United States Dr. Benjamin Kipkorir and his gracious wife Leah who beyond the call of duty visited me frequently while in hospital, called daily and went beyond really the call of duty in providing me with even Kenyan food while I was in hospital. I would also like to record my appreciation for the assistance extended to me by Mr. Muraura, our immediate past Permanent Representative to the United Nations in New York. Mr. Speaker, Sir, back home, I would like to record very much my appreciation for Mr. Speaker and Clerk's assistance both moral and financial, the ex-gratia financial support for my hospitalisation.

*(Applause)*

Mr. Speaker, Sir, I would not be standing here today substantially recovered, were it not for the very supportive and loving care of my family. I would like to record that appreciation. My standing here is both a private and a public duty. I have always believed that the illness of a public official while private also has a public dimension. The minute we accept public office we surrender a substantial part of our privacy and the public has the right to know the health and condition of public officials. This is the principle of accountability. As an elected official, Kenyans generally and the constituents in particular, have a right to know the state of their Member of Parliament and whether one is able and capable of carrying on the onerous public responsibilities bestowed on us by public mandate.

Mr. Speaker, Sir, as I stand before you, my doctors have certified me fully recovered with the exception of my sight that remains impaired. There has been recovery in that respect and there is still hope that I may recover substantial part of my vision. If it occurs that this recovery is not fast enough, I have been put on a rehabilitation programme that should substantially minimize any disability especially in respect of reading, writing and self locomotion. Therefore, I wish to assure both my constituents and Kenyans that I am ready, willing and able to continue with my public responsibilities. I would like to take this opportunity to record my very special gratitude to my doctors who have been managing my care; Dr. Mwinzi, in Nairobi, who co-ordinated the doctors in Kenya who looked after me and Dr. David Nyanjom in the United States who co-ordinated the doctors in United States that looked after me. My humility prods me to record the fact that Dr. Nyanjom hails from Gem Constituency, the constituency that I have the privilege to represent in this House. In that respect, I would like to record finally, my deep gratitude to the people of Gem for the understanding and support during my illness and I am sure I will continue craving for their indulgence as I continue recovering. Illness generally has a positive effect that also probably comes to bear in our lives. Being so near to death, you get a certain peace and courage, that prepares you to meet all the challenges pretty much in your stride. In pain and suffering, I have discovered endurance and patience that I did not know existed within me. In my visual disability, I have discovered an inner vision and an insight that eludes many people with sight. I hope I can bring this to bear in my public life.

So, finally, Mr. Speaker, all this would not have been possible without the healing hand of the Almighty God who I thank for my recovery. I am sure I will ask for indulgence of hon. Members in carrying out my responsibilities and given the warm welcome I have been accorded, I believe that indulgence will be given.

Thank you very much.

**Mr. Speaker:** Well, I think on behalf of the House, we wish you a very quick recovery and I can assure you that the Chair was the poorer for your absence. The House knows that hon. Ombaka was a Member of the Chairmen's Panel all the time assisting the Chair in the management of the business of this House. We wish you

a very quick recovery.

**The Assistant Minister, Office of the President** ( Mr. Awori): On a point of order, Mr. Speaker, Sir. I wish to refer back to the question by hon. Mulusya. Having thought about it more, I have decide to write to the Attorney-General and request him to appeal against the sentence which as I mentioned, I definitely did feel that it was inadequate. Therefore, I intend to do that, Mr. Speaker, Sir.

**Mr. Nthenge:** On a point of order, Mr. Speaker, Sir. Internationally, but at least in all Commonwealth Parliaments, members of the public are allowed to come and see what is happening around and see their members.

But in our case now, the wing that faces the Attorney-General's Chambers is locked and members of the public are refused entrance completely and I think that is very, very unfair because it is not only those with cars, even the little entrance which you had allowed now is locked.

**Mr. Speaker:** Order, Mr. Nthenge! I have said again and again that the management of this House should not be done on this Floor. You do not understand the background of that. You certainly will not allow; will you? A riot to proceed into the House of Parliament, would you? It is the business of the Chair to manage this House and its security and that is my job and I am doing it the best I can. Yes, Mr. Sankori!

### POINT OF ORDER

#### GUIDANCE SOUGHT: NULLIFICATION OF PAC PROCEEDINGS

**Mr. Sankori:** Mr. Speaker, Sir, I want to seek your guidance on some of the issues that you actually addressed yesterday. This one in particular, is an issue that happened on 28th and 29th during the PAC Committee meeting when Members of the Opposition failed to come to the Committee and KANU Members went ahead, after forming a quorum and transacted the business of the Committee, but the following day Members of the Opposition came and nullified the work of the Committee. I am seeking your guidance especially on Standing Order No.147 and Standing Order

No.157, as to whether the cancellation of a legal Committee can really be accepted by this House.

**Mr. Speaker:** As I said yesterday and I repeat it again, the sole responsibility of interpreting the Standing Orders rests with the Speaker. I may also add that all the Committees of this House work under the general supervision of the Speaker. Any issue as to the meaning and interpretation of Standing Orders or matters of practice of the House must be referred, in the case of dispute, to the Speaker for his ruling. As to what to constitute a valid meeting of a Select Committee, and the Public Accounts Committee is a Select Committee of the House established under the Standing Orders, it is not special. It does not enjoy better rights and privileges than any other Select Committee of the House. The Select Committees of the House are set up from Standing Orders Nos.145 right to 153. All Select Committees of the House are set out from Standing Order No.145 to Standing Order No.153. From Standing Order No.154 to Standing Order No.162 and all those other Standing Orders including Nos.54, 55, 56, 57, 58, 59, 60, 61 and 62 give the procedure under which those Select Committees are operating, including the Public Accounts Committee. Standing Order No.157 is clear, it says:-

"In the absence of the Chairman, the Committee shall elect another Member of the Committee to act as Chairman in his stead for the period during which he is absent."

Standing Order No.159 gives the quorum of all the Select Committees of this House, as three Members, and "Members" simply means Members. It does not put a tag whether you are in the Opposition or in Government, so long as you are a Member. Once you are three, you form a quorum and out of those three you elect one of them to be Chairman and the business of the Committee will proceed lawfully. But if a resolution of the Committee is made; if that Committee wants to alter or rescind that resolution, it has to follow the law to do it by Motion and record that decision in the same way as we do in the House. But it is also wrong for a Member or Chairman of any Committee to get the Minutes--- I am surprised hon. Members, I have never seen anything like this; a chairman of a committee takes the Minutes; the journals of the House, of a properly constituted committee the previous night, and with a pen cancels it and writes with a pen "nullified" and signed. If this House were to rescind any Motions that we make in this House, this House will do it by Motion. A Motion will be moved and the results of that Motion will be recorded as the decision of the House. And the Motion that was rescinded will remain as it was, but there is a further record that it has been rescinded by a latter motion of this House. And both of them form the record of this.

May I also tell this House that by law, the journals of the House are in the lawful custody of the Clerk of the National Assembly and no Member, whatever his position, is allowed to mutilate them or otherwise to alter.



It is wrong and hon. Members must understand that. I may also add here that we cannot have two parallel Parliaments in this House, there is only one Parliament. All other Committees are subordinate to this House and there cannot be two parallel Parliaments and the rules of this House apply to all Committees and they must be obeyed by all Chairmen. Next Order!

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

**Mr. Speaker:** On what I have said?

**Mr. Shikuku:** Yes.

**Mr. Speaker:** Yes, I can give you the Floor. It is said "never condemn unheard."

**Mr. Shikuku:** Mr. Speaker, Sir, as much as I agree with you on Standing Order No.157 which is applying to all Select Committees, indeed the Public Accounts Committee is a Select Committee of this House. But it is governed by Standing Order No.147 which provides for, and that is where there is that provision--- The other Select Committees do not have those provisions in respect of Standing Order No.147 and Standing Order No.148. It is very specific, it stipulates who should be the chairman and the Chairman and two others form a quorum. All that is provided for in Standing Order No.147, it does not apply to the Speaker's Committee, the Library Committee, the Catering Committee and all other Committees of this House. This is very specific. Even under Standing Order No.148, it clearly states how far that Committee can go. But Standing Order No.147 which governs PAC, does not give us that at all. Everything is provided for under that Standing Order and I do recall once this matter was brought to you, you actually made a decision and that is when these KANU members and even the secretariat which had been withdrawn, came back to the meeting in the afternoon. I would hate to argue with the Chair but let the public know that this nullification was done with the full forum and a vote was taken. I understand now - though I do not have serious evidence but I think I am not very far from the truth - that there are people trying to have two reports. When we read the Erskine May, which is the authority on Parliamentary affairs, it states that, if you take a vote, the report that has the votes of the majority is the one that is tabled and the minority views can be recorded in the minutes, and if later on they feel so strongly about the matter, they can move a Motion to the Motion of adoption of the Public Accounts Committee Report on the Floor of the House.

**Mr. Speaker:** Mr. Shikuku, we have not come to that. I will relook at the meaning of Standing Order No.147(3) now that you have particularly brought it to my attention but one thing I am not prepared to relook, is what I have said that the management of the committees of this House are under the general supervision of the Speaker and second, if any Committee were to move with the quorum to rescind any decision, they can do that so long as they do not tamper with the documents of this House. They must remain exactly as they were. The decision that was earlier arrived at should remain as it was. The Motions moved to rescind it should remain and the decision to rescind it should be there so that when you read the decisions to rescind, it means that the first one is not there but you do not physically alter the journals of this House. They must remain in the manner in which they appear. So, hon. Members, can we take it at that. I will look specifically at Standing Order 147(3) and communicate to this House. Very well, Next Order!

## BILLS

### *Second Reading*

#### THE AUCTIONEERS BILL

*(The Assistant Minister, Office of the President  
(Mr. Sunkuli) on behalf of the  
Attorney-General on 11.6.96)*

*(Resumption of Debate interrupted on 11.6.96)*

**Mr. Shikuku:** Bw. Spika, Bunge lilipoahirishwa nilikuwa nimeanza kutoa hotuba kuhusiana na Mswada huu ulio mbele yetu. Ningependa sasa kumjulisha Mkuu wa Sheria maoni yangu kuhusiana na vifungu vilivyo katika Mswada huu. Ukiangalia ukurasa wa 66, kifungu cha tatu kinasema hivi:-

"There is established a Board to be known as the Auctioneers Licensing Board which shall consist of -

- (a) one judge of the High Court to be appointed by the Chief Justice who shall be the Chairman;
- (b) The Permanent Secretary in the Office of the President for the time being responsible for matters

relating to Provincial Administration, or his representative".

Bw. Spika, sioni ni kitu gani huyu katibu wa kudumu atafanya hapa. Ukweli ni kwamba katibu wa kudumu yeyote katika Wizara yoyote ile ana mikutano mingi na wengine wa hawa hata hawahudhuri; mikutano lakini badala yake, wao huleta maofisa kuwaakilisha katika mikutano hii. Utapata kwamba katika mikutano hii, kukiwa na jambo la kukata shauri, ofisa kama huyu anasema kwamba hana uwezo wa kukata kauli na kwamba ni lazima Katibu wa Kudumu katika Wizara yake akate kauli hilo. Hivyo ndivyo mambo yanavyoendelea na kuzidi kuchelewa. Ingefaa Mkuu wa Sheria asema ni ofisa gani atakuwa akihudhuria mikutano hii kuzuia jambo la kuwa kutakuwa na maofisa wengine wakiwakilisha Katibu wa Kudumu. Kwa hivyo, sioni haja ya Katibu wa Kudumu kuwa katika kamati hii.

Sehemu ya (c) inasema:- "One Chief Magistrate to be appointed by the Chief Justice;". Kama tuna jaji wa High Court ambaye ni mwenyekiti wa kamati hii tutamhitaji Chief Magistrate? Siwezi kuona vibaya sana lakini sijui kazi gani atakuwa akifanya. Sehemu ya (d) inasema:- "two advocates, of not less than ten years' standing to be nominated by the Council of Law Society of Kenya;" Ninakubaliana na jambo hili lakini kuna mambo mengi yanafanyika. Mawakili hufanya mambo mengi. Wanafanya mambo ya kuwadhulumu wale ambao hawawezi kupata pesa za kuweza kuwashitaki mawakili. Nina kesi nyingi sana za mawakili. Utapata kwamba mawakili wengine wanaowasaidia wananchi kufuata pesa zao za insurance, hawawapatii wenyewe pesa zao. Utapata kwamba kuna kesi za miaka ya 1974 na 1981 ambapo pesa za insurance zililipwa lakini wenye hizi pesa hawajazipata hata sasa. Mara nyingi nikipigia simu kampuni za bima kuuliza ni kwa nini hizi pesa hazijalipwa, ninaambiwa kwamba zimelipwa kupitia wakili fulani. Watu wengine wanakufa hata kabla hawajapata pesa zao. Lazima mawakili wachunguzwe. Kuna mawakili wengine wanapanga njama na madalali kuwanyanyasa wananchi. Inafaa wale mawakili wataochaguliwa wawe wamechugunzwa kabisa na LSK. Pia ukiandikia LSK kuhusiana na tabia mbaya za mawakili fulani hata barua yako haijibiwi na pia hawachukui hatua yoyote.

Sehemu ya (f) inasema:- "one representative of each province to be appointed by the Attorney-General". Ninaunga mkono jambo hili. Kila mkoa uwe na mwakilishi wake. Lakini huyu mtu atakuwa nani? Kwa mfano, katika Mkoa wa Magharibi, ambao una idadi ya watu zaidi ya milioni tatu, atateua mtu gani kati ya hawa wote? Ninafikiria mtu ambaye anastahili kuteuliwa awe---

*(The Attorney-General consulted  
with the Vice-President)*

Bw. Spika, Mkuu wa Sheria anazungumza na Makamu wa Rais ninapozungumza. Sasa nani anayesikiza maoni yangu? Haya ndiyo madharau! Madharau aina hii hayawezi kukubaliwa. This is the voice of the people. Huyu anayezungumza anazungumza kwa niaba ya watu wa Butere kwa sababu Butere yote haiwezi kuletwa hapa. Lakini ninapozungumza, wale watu wanaotakiwa kusikiza maoni ya watu wa Butere, wanapiga domo. Kuna siku mambo yatabadilika. Juzi tuliambiwa kwamba hapa kulikwa na Attorney General mmoja ambaye alikuwa maarufu sana lakini siku hizi kazi yake ni kuangalia mbwa gani mzuri, na hayu sijui ataangalia kondoo au wanyama gani! Yes, things change. Mambo hubadilika na hata Makamu wa Rais anaweza kujikuta yuko jela. Waswahili husema: Mambo ni mkangaja, huenda yakaja. Kwa hivyo, tunaposema watu wanaohusika kama Mkuu wa Sheria inafaa wasikilize ili wajue shida za watu ni nini. Sisi tumechaguliwa kuja hapa na kutoa shida za wananchi kwa Serikali, ambayo inawakilishwa na Mawaziri na Mkuu wa Sheria. Inaudhi sana kuona kwamba unapotoa shida za wananchi watu wengine wanacheza. Nakumbuka wakati mmoja nilipokuwa nikizungumza hapa na huku aliyekuwa Waziri wa Serikali za Mitaa alikuwa akicheka. Nilimwambia kwamba maoni niliyokuwa nikitoa yalikuwa ya wananchi, na kwa vile alikuwa akicheka hangaliingia katika Bunge hili tena. Kwa kweli alikufa kabla ya kuingia katika Bunge hili tena. Alikuwa Mbunge mteule lakini hakuingia tena katika Bunge hili. Kwa hivyo, tunapozungumza kuhusu shida za wananchi ni lazima zisikilizwe na wale wanaohitajika kuzisikia.

Bw. Spika, sijui mwakilishi wa mkoa atachaguliwa kwa njia gani. Ningependa mtu huyu achaguliwe baada ya Mkuu wa Sheria kusikia maoni ya viongozi waliochaguliwa. There must be a difference between a nominated, ex-officio and an elected representative of the people. Kwa hivyo, inafaa maoni ya madiwani na Wabunge yasikilizwe kabla ya mwakilishi wa mkoa katika kamati hii kuteuliwa. Naona kwamba Mswada unasema:-

"A member of the Board, other than an ex-officio member, shall hold office for three years but shall be eligible for re-appointment".

Nakiunga mkono kipengele hiki. Hii ni kwa sababu mtu akikaa sana katika afisi fulani yeye "humea mizizi" na mwishowe afisi hiyo huwa na ufisadi. Mfano ni watu ambao wameteuliwa kwa mara kadhaa kuwa wanachama wa Land Board. Sasa wanaitumia bodi hiyo kuwanyanyasa wananchi kwa kupokea hongo kutoka kila upande.

Inafaa mtu afanye kazi kwa miaka mitatu halafu aondoke na mwingine achukue nafasi yake.

Kifungu cha 4 cha Mswada huu ni juu ya kazi ya bodi hii na kinasema "(a) license and regulate business and practice of auctioneers". Lakini nilipousoma Mswada huu niliona unasema kwamba mtu anaweza kupewa na kupokonywa leseni, lakini hauweki masharti yatakayotakiwa kwa mtu atakayepewa leseni. Pia kuna mahali ambapo Mswada huu unasema kwamba ni lazima mwenye kutaka leseni ya udalali awe na ujuzi. Ikiwa mtu hawezi kufanya kazi ya dalali kama hujapewa leseni ujuzi huo utaupata wapi? Pengine Mswada huu ungesema kwamba muombaji leseni atahitajika kuwa amefanya kazi chini ya dalali mwenye ujuzi wa miaka mingi. Mswada huu unasema kwamba itakuwa ni hatia kwa mtu kufanya kazi ya udalali kabla ya kupata leseni. Mtu ataupataji huo ujuzi na hali hajapata leseni. I think the Attorney-General should look into this provision because it does not make sense at all.

Mswada huu pia unasema kwamba kazi nyingine ya bodi hii ni "to supervise and discipline licensed auctioneers". Hiyo ni sawa lakini inafaa kuwe na kanuni. How do you discipline somebody without him breaking the rules? Where are the rules? Hata Mungu aliweka amri 10. Mungu hakutaka kuweka maneno mengi lakini aliweka amri 10. Kama hufuati amri hizi 10 unajua hutaingia mbinguni. Where are the regulations which state what this Board will do to any auctioneer who breaks them?

**The Attorney-General** (Mr. Wako): On a point of information, Mr. Speaker, Sir. Once the Act comes into force regulations will be made under it. Those regulations will contain details of what hon. Shikuku is asking for. If he reads the report of the Task Force, he will see some of the draft regulations in it.

**Mr. Shikuku:** Bw. Spika, nakubaliana na hayo, lakini kuna wakati mmoja tulipokubaliana na Mkuu wa Sheria wa zamani, Bw. Njonjo, awe akizileta kanuni za kisheria katika Bunge hili. Hii ni kwa sababu tulitaka kuziidhinisha kanuni hizo. Mkuu wa Sheria anataka tumpe uwezo na kisha aende na kuzibuni kanuni hizo, lakini sisi tunataka kanuni hizo ziletwe hapa ili tuzijue.

Kifungu cha 5 kinasema:-

"The Board shall have such powers as necessary or expedient for the proper discharge of its functions under this Act".

Bw. Spika uwezo huu uko wapi? Mswada huu unasema wanachama wa bodi hii watakuwa na uwezo, lakini ni nani atakayewapa uwezo huu? Sisi

tunapitisha Mswada halafu watu wengine watotoa uwezo. Tunataka uwezo huu huonyeshwe katika Mswada huu ili tujue kama utawaumiza au utawaokoa watu wetu. Hapa tunatakiwa tutoe uwezo usioeleweka. Wengine wetu hatuwezi kulikubali jambo hili, hasa tunapokumbuka kwamba Serikali za Kiafrika ni mbaya: Hazina au uadilifu, na hazifanyi haki hadi zisukumwe. Ukimpa haya Mwafrika uwezo kama huo siku moja atamtaka bibi yako akamuoe. We must have these powers defined in the Act.

Kifungu cha 9 kinasema:-

"No person shall in Kenya carry on business of an auctioneer unless he holds a valid licence issued by the Board under this Act".

Kama nilivyosema, kipengele hiki kinagongana na Kifungu cha 10(1) (c) ambacho kinamtaka muombaji leseni kuwa na "sufficient knowledge and experience in the business and practice of an auctioneer". Kifungu cha 9 kinasema ni lazima uwe na ujuzi na kifungu cha 10 kinasema huwezi kuifanya kazi ya udalali bila ya kuwa na leseni. Now, how will you get the experience before you get a licence? Lakini kifungu hiki kinaweza kurekebishwa ili kusema mtu ambaye amefanya kazi chini ya dalali mwingine kwa muda fulani anaweza kuomba leseni ya udalali. Pia tunaweza kuwa na chuo cha kufunza kazi ya udalali kama vile watu wanavyoingia katika chuo cha unasheria na wanapopita mitihani ya unasheria wanapewa leseni za kuwa mawakili. Lazima tuwe na mafunzo, Bw. Spika.

**The Attorney-General** (Mr. Wako): On a point of information, Mr. Deputy Speaker, Sir. I want to inform the hon. Member on the Floor that when an application is made, under Appendix number one, on page 65 of the Report, a proforma of the application is issued. It requires the applicant to show that he has worked with an experienced auctioneer for two years prior to the application.

**Mr. Speaker:** If I may ask you, hon. Attorney-General: Is that Report going to be part of the Bill?

**The Attorney-General** (Mr. Wako): Mr. Speaker, Sir, what I mean is that the Report is available to all the hon. Members. It is available. It was made available before Parliament went into recess.

**Mr. Shikuku:** Lakini, Bw. Spika, ijapokuwa nanukuru hiyo ripoti, lakini kulingana na sheria, huwezi kunukuru ripoti hiyo.

**Mr. Speaker:** That is what I was asking. Is it going to be part of the Bill?

**Mr. Shikuku:** No. Haiwezi kuwa. Sasa anatuambia---

**Mr. Speaker:** Order! That means that you cannot use material outside the Bill, to answer his genuine

worries about the Bill. This is because he wants the Bill repealed.

**The Attorney-General (Mr. Wako):** Mr. Speaker, Sir, when I was moving the Bill, I did mention that a number of factors such as this one are going to be taken care of in the regulations, once the Act has been passed. They recommended that the Bill should be passed first before regulations are made under it. I did refer the hon. Members to the various pages under the Report, where the proposed regulations are set out. In other words, what I am trying to say is that we have shown good faith by saying that when the Bill is passed, some of the regulations will be in place. It may be very well be that hon. Members will specify other matters on which we must have regulations. In which case, we shall draft them, but the regulations can only come into force once the Bill has been passed.

**Mr. Shikuku:** Bw. Spika, tumekuwa na tajriba katika Bunge hili, na nimemfahamisha Mkuu wa Sheria kwamba kuna wakati tuliafikiana na tukakubaliana na aliyekuwa Mkuu wa Sheria kwamba akizungumza, tunapitisha Mswada. Hapa pia, mmeuliza mpewe uwezo huo. Tukipitisha Mswada huu vile ulivyo, atakwenda kuongeza matakwa yake mwenyewe ambayo yataumiza na kuwaua madalali katika nchi hii. Sisi kama Wabunge, tunataka tuelezwe ni matakwa gani yatakayoletwa baadaye. Lazima yaletwe mbele yetu tuyaangalie, ili tujue kama ni mazuri au mabaya. Kwa hivyo, haya mambo yaliyo katika Ripoti hii, hayawezi kunukuliwa kortini. Hayawezi kukubaliwa. Kitu kinachofanya kazi ni Mswada huu. Kwa hivyo, tunataka Mkuu wa Sheria, wakati wa marekebesho, alete uwezo wa madalali, ili tujue kila kifungu kina uwezo gani. Lazima atuletee ili tuweze kuupitisha. Hatutaki yeye aende atengeneze peke yake, au wakiwa na marafiki zake huko nje.

Bw. Spika, nimemwonyesha hapa kwamba, yeye anasema ati yule ambaye anataka na hiyo lazima iandikwe katika Mswada huu - na siyo katika ripoti inayosema kwamba ikiwa mtu anataka kuwa dalali, lazima awe amefanya kazi ya udalali kama naibu wa dalali kwa miaka fulani. Lazima jambo hilo liandikwe hapa. Hii Ripoti si sheria. Mswada huu ukipitishwa, ndio utakuwa sheria.

Jambo lingine liko katika Kifungu cha 10. Kifungu hiki kimeandikwa ifuatavyo:

"Has not been convicted in the ten years,, immediately preceding the application, of the offence involving fraud, dishonesty or immorality".

Mimi nakubaliana na mambo mawili ya kwanza. Lakini juu ya ukosefu wa maadili, hawa watu watakaokuwa wanachama wa Kamati hii watatoka wapi? Watatoka mbinguni, sayari ya Mars au watakuwa Wakenya hawa ambao nawafahamu? Swala la ukosefu wa maadili ni jambo kubwa sana. Sisi tutawezaji kuwa majaji wa ukosefu wa maadili, na hali sisi wenyewe hatuna maadili. Wewe Bw. Spika unajua kwamba Waafrika wetu hawana aibu kusema uwongo. Wanasema uwongo hata mbele ya runinga, na mbele ya wapigaji picha. Uadilifu huko wapi hapa, Bw. Spika? Uwongo unasemwa mchana na picha zinapigwa za wasemaji huo uwongo, na tunaonyeshwa kwa runinga. Wanachama hawa watapata uwezo wapi wa kujua ikiwa mtu fulani anakosa maadili au la?

*[Mr. Speaker left the Chair]*

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

Taifa lote la Kenya ni gonjwa. Viongozi ni wagonjwa. Viongozi wanasema uwongo waziwazi. Viongozi wanafanya mambo ya ajabu na bado wanasimama mbele ya watu. Wanaiba na kuchukua ardhi na kuuza, na zile pesa wanazitoa katika Harambee, na hawaulizwi wanazitoa wapi? Wale watakaa kwa kamati hii watatoa uadilifu wapi? Si ni hawa watu tunaowafahamu hapa? Watu ambao wanawanyang'anya watu wadogo mashamba. Mkuu wa Sheria anazungumzia ukosefu wa maadili gani?

**The Attorney-General (Mr. Wako):** On a point of information, Mr. Temporary Deputy Speaker, Sir. This section reads "offences involving immorality". Therefore, it talks about those aspects of immorality which constitute an offence. For example, under the Penal Code, the whole of Chapter 15 of the Penal Code is headed: "Offences against morality". So, the morality as conobited here, is that morality which amounts to an offence.

**Mr. Shikuku:** Ameeleza ile sheria iliyoko. Lakini nani anasikiliza hiyo sheria? Nani anafuata hiyo sheria? Kuna wizi, unyang'anyi na maovu mengine. Nchi ya Kenya haifanyi kitu kingine chochote ilicho hayo maovu, ukiongeza pia uwongo na kutokuwa na haki. Hawa watu, hawatakuwa malaika. Watakuwa ni wale wale ambao tunawafahamu. Sijui hao watapata wapi mwongozo wa kuwawezesha wasikose maadili. Uadilifu katika nchi hii ni nadra sana kupatikana. Hii ni kwa sababu, Serikali yetu inaendeshwa na mambo yasionyooka.

Jambo lingine ambalo nataka kumuuliza Mkuu wa Sheria ni lile ameandika hapa chini, katika Kifungu cha 10 kwamba:

"Not withstanding provisions of Section 1 (a), a person who is a judge or a magistrate, or employed in a

capacity as an executive subordinate officer of the court".

Jambo hilo ni sawa. Huyu ni mfanyakazi katika korti ambaye ameandikwa kazi. Lakini ukiendelea, wameandikwa hapo chini kwamba:

"He is not a Member of Parliament or Councillor".

Bw. Naibu Spika wa Muda, kuna Waheshimiwa Wabunge hapa ambao wanafanya biashara ya kila aina. Imekuwaji kwamba, hapa katika kazi ya dalali, Mbunge na diwani hawatakiwi? Ni kwa sababu gani? Kama ni jaji, yeye ni mtu ambaye anaangaliwa mambo ya sheria. Hiyo ni sawa. Lakini mimi najua kuna waheshimiwa Wabunge hapa ambao wanauza na kununua bidhaa kutoka nje, na wanafanya biashara ya kila aina. Imekuwaje sasa wanakatazwa kuwa madalali. Ni kwa nini kuna ubaguzi huu? Ni kwa nini Mbunge anabaguliwa? Mimi mwenyewe naweza kuwazungumzia wale ambao ni wafanyabiashara. Mimi mwenyewe sina biashara yoyote. Lakini siwezi kusema Wabunge wote wawe kama mhe. Shikuku ambaye hana biashara. Lakini ni kwa nini Wabunge na madiwani wanakatazwa kuwa madalali, na hali wako katika biashara ya kila aina? Kwa nini ubaguzi huu?

Pia ukiangalia kifungu cha (iii) katika ukurasa wa 28 kinasema, utaona hivi: "A person who obtains or holds the licence contrary to any of the provisions of this Act commits an offence and shall on conviction be liable to a fine not exceeding Kshs100,000 or to imprisonment of a term not exceeding two years or to both."

Hapa mimi naunga mkono. Lakini atapata vipi hii leseni bila kutumia udanganyifu fulani? Kama kuna udanganyifu basi Serikali yetu inafanya kazi gani? Au akiwa kuna mtu kutoka nje ya nchi, jambo hilo ninaweza kulifahamu kwa sababu nimeshasikia mara nyingi watu wengine wanatoka nje ya nchi na wanakuja hapa kuanza biashara na wanaandikwa kazi bila kuwa na kibali cha kufanya kazi katika nchi hii. Hii ni sawa lakini sijui hapa kama tunafanya kazi yetu vizuri ingawa sioni ni vibaya sana lakini je, yeye ataanza vipi kufanya kazi bila leseni?

Lakini katika kifungu 11, hapa anazungumza juu ya habari ya leseni kutolewa katika mazingira fulani maalum. Hapa ningependa nielezwe na Mkuu wa Sheria, hii "special circumstances" kama ndiyo tundu ambalo watu wengine wanaweza kupewa "special licence" ya kufanya udalali na hali pengine wamehonga ili kupata leseni. Jambo hili si siri. Katika nchi yetu ya Kenya ukitaka lolote ni lazima uzunguke mbuyu, hata tarishi anataka hongo, karani anataka kitu

fulani, ukienda kwa karani kuna Harambee, tarishi anakuuliza Harambee, unafika kwa ofisa mkuu katika ofisi hiyo anakwambia ya kwamba yeye ni mgeni wa heshima katika Harambee fulani kwa hiyo toa kitu fulani hapa na kadhalika. Wakati utapata hiyo leseni utakuwa maskini kuliko wakati ulipofikiria juu ya wazo hilo! Hii ni jamii ambayo mhe. Nyerere aliwahi kuipa nchi hii jina ambalo linaoana vilivyo na hali kamili ya maisha yetu. Alisema ya kwamba Kenya is a "society of man eat man."

Utapata kwamba haya mambo ya ufisadi, mambo ya "asoyea" yamekolea sana katika nchi hii. Hata wakati huu wananchi wameona vile mambo yalivyo na picha tunazo. Wananchi kwa vile wamefilisika sana na umaskini umekolea kweli kweli. Wakati huu pesa zatolewa wakati wa kupiga kura katika laini kwa mtu anapokwenda kupiga kura. Wengi wa wapigaji kura wanakaa pale nje wakingojea tu wapewe pesa ili wapige kura. Hii ndio demokrasia ambayo tumefikia wakati huu ya kuwanunua maskini kwa sababu hawana cho chote, wanapewa tu. Na hapa tunapata hii habari ya "special licence." Waliyo na mali ndio watakaopata leseni katika kifungu hiki cha "special licence."

Wananchi wamekwisha. Wamefanywa maskini. Ndio, najua wamefanywa maskini kwa sababu mwelekeo wa Serikali hii ni kuwafanya watu wawe maskini na wakisha kuwa maskini sana wanakuja kununuliwa.

Hata unaweza kuwanunua wapige kelele kuanzia asubuhi mpaka sana tano za usiku. Lakini ninajua ya kwamba tuko katika hali ya hatari sana kwa sababu wakati utafika wale ambao wanapata Kshs50, Kshs500 au Kshs1000 wakati huu, watajua baadaye ya kwamba hizo Kshs1000 hazitoshi kuwafikisha miaka 100. Na wakati utafika ambapo watauliza zaidi ya Kshs1000. Na Mkuu wa Sheria anajua Miswada hii akiileta hapa sisi tukizungumza tunazungumzia yale tunayojua kwa sababu kuna wakati wananchi watasema wanataka zaidi ya zile Kshs1000. Siku hiyo itakuwa siku mbaya sana kwa sababu tumeanza kuwazoeza kwa kuwapa pesa hata wakati wa kupiga kura. Nafikiri wakati umefika Mkuu wa Sheria alete marekebisha ya sheria hapa na aseme kila mtu akitaka kununua kura awe akilipa Serikali ushuru fulani ili awauzie wale ambao wanaotaka kupigiwa kura ili apewe pesa.

Kadi ya kura anapata bila malipo yoyote lakini anaenda kuza kwa Kshs200. Siwanunue nao kwa Serikali ili Serikali ipate ushuru ili nayo iwauzee wale wanaotaka kura. Lakini mwisho wa kila kitu wao wananchi ndio watakaopata taabu kwa sababu hakuna atakayewazungumzia hapa. Pengine sisi ndio wa mwisho ambao tunaweza kuzungumzia wananchi kwa wakati huu ingawa hawana habari ya kwamba wao ndio watakaopata taabu kubwa sana. Na sheria unaona jinsi zinavyokuja "special circumstances" special gani? Ningependa hiki kifungu "special" kiondolewe na mtu afuate utaratibu. Hii "special" ndiyo itakayoleta ufisadi. Wakubwa na hasa wasimamizi wa halmashauri watahonga na mambo yatapita na mimi sitakuwa mmoja wa kupitisha kifungu kama hiki na hali ninajua hii ndiyo tundu ya wakubwa kupitia ili wapate "special licence." Mtu wa kawaida

ambaye hawezi kutoa kitu hatapata haki yake!

Leo watu wanaokwenda kortini ni wale maskini. Huko kwangu na mahali popote ukiita polisi na kuarifu kwamba mtu fulani amepigwa hapa na kuuwawa katika sehemu fulani hawawezi kuja. Ukitaka wafike waambie kuna chang'aa hapa, watakuja wakiwa tayari "all the guns cocked and very fast." Kwanza wanakunywa hiyo chang'aa halafu tena wanashika mwenye chang'aa kwa sababu wanajua kwamba yeye atatoa Kshs5,000, Kshs8,000 au Kshs10,000 kununua uhuru wake. Anarudi nyumbani na kuendelea na upigaji wa chang'aa na baadaye wanakwenda kumshika tena na anawahonga tena. Yule anayefikishwa kortini kwa chang'aa ni yule ambaye hakuweza kutoa "asoyea" kwa polisi. Jambo hili ni la kweli wala si la kukisia, maskini ndio wanaofikishwa kortini. Kwa hivyo, haki nchini Kenya wakati huu ni haki ya matajiri. Tajiri akiiba mabilioni ya pesa atawekwa rumande kidogo halafu anarudi nyumbani lakini maskini anakaa katika rumande. Mkuu wa Sheria anajua ya kwamba kuna watu maskini ambao wamewekwa katika rumande kwa muda wa miaka zaidi ya mitatu. Wanakaa huko lakini wale walioiba mabilioni wanatoka na kula raha na maisha yanaendelea! Kuna wakati wale ambao wananyanyazwa wataamka na wale ambao ni wakubwa ambao wanaona raha sasa watalala. Hii ni kwa sababu hiki ni kitu kilichowafanya wabeberu kutimuliwa. Wabeberu walikuwa wabaya lakini hawakuwa wanatufanyia haya tunayofanyia watu wetu. Mbeberu akikushika kabla ya kumalizika kwa masaa 24 anakupeleka kortini na kesi inaamuliwa huko ndani. Ijapokuwa uamuzi ulikuwa si wa haki kesi inamalizwa bila kukawia. Lakini wakati huu utakaa rumande miaka nenda miaka rudi, na mwisho wako unaambiwa kwenda nyumbani. Hakuna haja ya kuwa mhe. Mbunge katika Kenya. Wengi wa hawa waheshimiwa Wabunge katika upande wa Upinzani wana mifupa katika mikono yao. Sisi wengine tunashikwa tunatupwa ndani ya jela bila mashtaka yoyote kutolewa dhidi yetu. Hii ndiyo Serikali tuliyo nayo, zamani Mbeberu akikushika alikuwa anakupeleka jela na unafanyiwa mashtaka. Utafika kortini na kesi yako itafanywa kuambatana na sheria zake. Hapa nikumtupa mhe. Mbunge kwa jela na Mkuu wa Sheria anakuja na *nolle prosequi*, mambo yanaishia hapo!

Mwafrika ni nyoka na kumpatia madaraka ni kama kuharibu au kumwashia kipofu taa. Hata ukisugua chimni iwe safi namna gani, na uwashe taa, kwa kipofu, haina maana.

Ukiangalia Kifungu cha 12 ambacho kinasema:

"...shall be made in prescribed form and shall be forwarded to the..."

Tunataka tuone hii "form" hapa. Hapo mbeleni, tulipokuwa tukipitisha ile National Assembly and Presidential Election Act, tulionyesha ile form na vile itakavyojazwa. Kwa nini wasilete hiyo form iwekwe hapa na tuiangalia ili tujue inasema nini? Lakini tukimpatia hii "blank cheque" ataenda kujaza yale anayotaka. Katika Sheria zetu, ukiangalia National Assembly and Presidential Election Act, utaona hata form ya uchaguzi wa Rais, Wabunge na kadhalika ikiwa hapo. Nyingine zote kutoka (i) mpaka (v), inahusiana na aina ya forms. Tunataka kuangalia hizo forms tuone ni za aina gani.

I now come to the issue of issuing a Licence under Clause 14 on page 69 which says:

" A licence issued under this Act shall not be transferable.

(ii) A licenced auctioneer shall carry on business in his own name or the name of the firm, all of whose partners are licenced auctioneers, provided that such licenced auctioneer or firm of auctioneers may employ a licenced auctioneer who shall, nevertheless, continue to be personally accountable to the Board."

Hapo chini inasema kwamba:

"Subject to subsection 5, the applicant shall, if so required in any rules made under this Act, give security in such a form and an amount may be prescribed as assurance for the faithful discharge of his duties."

Hapo ningetaka waongeze sehemu nyingine. Kwa mfano, katika sheria ya Finance, ukitaka kufungua benki yako, kuna kiasi cha pesa ambacho ni lazima uwe nacho ili kuanzisha hiyo benki yako. Kwa nini isiandikwe hapa ni kiasi gani dalali anahitajika kuwa nacho kabla ya ombi lake kushugulikiwa? Na ningependa pia msembe ni kiasi gani cha pesa mtu anatakikana kuwa nacho kabla ya kupewa leseni ya kuwa dalali. Wengi wa hawa madalali ni wakora. Wanakuja kuchukua vitu vyako kwa ukaidi mwingi sana na kuviharibu. Sijaona kifungu hapo kinachosema chochote kuhusu uharibifu unaotokea wakati wa kuchukua vitu. Hawa madalali wanaajiri makaidi ambao wanakuja nyumbani kuchukua vitu. Mimi niliwaona siku moja walipokuja kwa rafiki yangu mmoja. Wanachukua meza na hawachukui muda kuona meza itatoka vipi kwa mlango. Wanavuruta vitu bila utaratibu na mguu moja wa meza unakatika, televesheni wanang'oa na wanaharibu kila kitu. Sioni kifungu chochote hapa kinachosema juu ya kugharamia uharibifu wa vitu vya mtu ambaye wanataka kufanyia mnada. Kunahitajika kifungu katika huu Mswada cha kuonyesha kwamba vitu vya mtu vikivunjika saa ile wanabeba, lazima dalali atahitajika alipe hiyo mali. Pia, sioni pahali popote dalali anatoa notisi. Koti ikikwisha sema kwamba vitu vya fulani vipigwe mnada, ni lazima koti hiyo pia iambie huyo dalali kukujulisha ni muda gani atakuja kuchukua mali yako, na ni chini ya masharti gani ataichukua.

Nimeusoma huu Mswada na hakuna mahali wanasema kwamba hii mali yako itakuwa bei gani.

Unapata motokaa inauzwa kwa Kshs120,000 na wenyewe wamekwisha fanya mipango na wale watakoininua. Kuna njama kati ya madalali na watu wengine wakubwa. Wanaambiana kwamba tutaenda kuchukua vitu kwa Mzee Mwamzandi na tutakuuzia kwa bei fulani. Kwa hivyo wale watu wanaokuja kukaa hapo wakati wa mnada wanajua ni kitu gani wanachotaka, na watakipata kwa ile bei wanaotaka, ambayo wamesikizana na dalali.

**The Assistant Minister for Public Works and Housing (Mr. Mwamzandi):** I have also seen such things happen.

**Mr. Shikuku:** Thank you very much. Hon. Mwamzandi amesema pia yeye amekwisha ona mambo kama hayo. Hii ni mambo ya kuwanyang'anya watu mali yao kwa kutumia dalali. Na sisi kama Wabunge, ambao tunawakilisha watu, ni lazima tuone kwamba vitu kama hivi vinangaliwa ili visifanyike. Na katika Mswada huu, sioni pahali pa gharama ya uharibifu wa mali, wala notisi ambayo dalali atampatia mwenye mali. Sasa huu ni Mswada gani?

Pili ukiangalia ukarasa wa 70, Kifungu 15, wanasema hivi:

"A licensee of an auctioneer who:

(a) Carries on business as a sole proprietor or is the sole surviving partner in a firm of auctioneers, shall within 90 days of being licensed, nominate for approval by the Board, two licensed auctioneers, who shall be responsible for winding up his business in the event of his death or revocation of his licence."

Wewe ukiwa ni "sole proprietor", utapata hawa madalali. Kama huwezi kuwapata, itakuwaje? Kwa mfano, ukiwa huko Busia, na wewe ndiyo dalali wa pekee kule, utapata wapi hawa madalali wawili watakaokuja kufanya kazi? Ama ukiwa wewe umekufa, utawapata wapi? Kifungu hiki lazima kifanyiwe mabadiliko kwa sababu itakuwa vigumu

kupata madalali ambao watafanya hiyo kazi ikiwa utakufa au utasimamisha kazi. Katika sehemu ifuatayo, wanasema:

(2) "A licensed auctioneer may, with approval of the Board, at any time, change his nominee under Subsection (1)."

Yaani, kama umepata watu wawili, unaweza kubadilisha ukaweka mwingine. Lakini hata kumpata yule mmoja, katika huko sehemu za mashambani ni vigumu sana. Pia, hao madalali ni watu wa tabia mbaya na wengi wao wanajua jinsi ya kupata mali kwa njia rahisi. Hata hiyo mali anayochukua haifiki kwa duka lake. Inauziwa hapa njiani. Wakati mwingine hata ng'ombe huchukuliwa kwa kukosa kulipa mikopo ya Agricultural Finance Corporation (AFC) au Kenya Commercial Bank (KCB). Dalali amepanga na watu, ng'ombe hazifiki hata anakokwenda. Zinauziwa hapo njiani. Ngo'mbe inapatikana kwa Kshs120, Kshs200 ama Kshs500. Na wakati huu, hakuna ng'ombe wa Kshs500. Hii ni kummaliza yule mwenye mali afitisike kabisa.

Katika huu Mswada, Clause 15, inatakikana kuangaliwa ili ifanyiwe marekebisho. Mhe. Mathenge na Prof. Mzee wanaongea na Mhe. Wako na hawezi kusikia mapendekezo yangu. Kifungu 15 ambacho kinahusika na uteuzi wa madalali wawili ambao wataangalia mali yako ukiwa umekwisha filisika au ukifa.

Clause 16 says as follows.

"The Board may, on application by a licensed auctioneer, renew a licence for a further period of 12 months. An application under this, shall:

(a) Be made in a prescribed form, forwarded to the Board together with the prescribed fee."

Wakati huo utakaofika, Bw. Attorney-General, atatuonyesha hii form ili iambatane na Mswada huu. The Board may refuse to grant you licenses kwa sababu wameona kwamba wewe si mtu mzuri. Siasa pia uingia katika kazi hii. Wanajua wewe ni mtu wa FORD(A) au FORD(K) na wanaweza kutumia njia hii kwa kukataa renewal of your licence. Hawajaeleza hapa ni mambo gani ambayo itakufanya uziweze kupata renewal of your licence. Ni dhambi gani lazima mtu afanye ndiyo asipate leseni mpya? Is it the fifth or the sixth commandment katika regulation? Ni lazima mtu aambiwe ni mambo gani yanaweze kufanya wewe usipate leseni mpya baada ya miezi kumi na miwili. Tunataka masharti yawe katika Mswada huu. Lakini tukiacha vile Mswada ulivyo, they can do anything with you. Tell us the things that can warrant the non-renewal of licences. Pia mhe. Mkuu wa Sheria alisema kwamba ataleta marekebisho ili ikuwepo na mahali pa kwenda kufanya appeal kama mtu amenyimwa leseni. Na mimi naunga mkono hilo pendekezo.

Clause 18 on page 71 - Revocation of licenses which states as follows:

"The Board may revoke a licence if:-

(a) it discovers that the licensed auctioneer made a statement in or in connection with the application therefore which he knew to be false or untrue in any material particular;

(b) any event occurs which renders the licensed auctioneer ineligible to hold a licence under this Act."

Mhe. Mkuu wa Sheria ni lazima atueleze ni nini maana ya kifungu hiki. Kifungu hiki kinasema "if any event occurs" Ni kitendo gani hiki? Anybody who does not want you will talk of any event. Hata Mungu

ametupatia amri kumi na ukizivunja hautaenda mbinguni lakini ukizifuata na kuzitunza zote kumi utakwenda mbinguni. Hiyo ndiyo sababu tunataka mambo yote yawe wazi.

Katika kifungu cha (c) wanasema:-

"The licensed auctioneer ceases to carry on business in Kenya or his business is wound-up or otherwise dissolved."

Kama mtu hafanyi kazi tena, basi hayo ni maneno mengine. Mimi sina neno na hicho kifungu na pia hakina maana.

Katika kifungu cha (d) kinasema:-

"the licensed auctioneer is in breach of any condition attached to the licence."

What are the conditions attached? Are these going to be dreamt of by the Board? Tunataka hizo zielezwe.

Katika kifungu cha (e) kinaendelea kusema:-

"If the licensed auctioneer does not comply with any of the provisions of the Act or any rules made thereunder."

Nimeshaambia mhe. Mkuu wa Sheria alete hizo rules tuzione kwa sababu zinaweza kuwa kizingizio kikubwa kwa Board kuweza kuwanyanganya watu leseni zao. Ni lazima tukumbuke kwamba ukiwa dalali, siyo wewe peke yako lakini pia watoto wako na ndugu zako na ile extended family, wote wanategemea wewe kwa mahitaji yao. Kwa hivyo, ukinyanganywa leseni ya mtu, hauchukui hiyo leseni kutoka kwa mtu moja. Unachukua kutoka kwa watu wengi sana.

*(Loud consultations)*

Bw. Naibu Spika, wa muda, kuna mkutano mwingine upande ule. Ninataka umalizike ndiyo niendeleo.

**The Temporary Deputy Speaker** (Mr. Ndotto): There is a Member of this House on the Floor and I think if you are consulting, please do it quietly.

**Mr. Shikuku:** Nilikuwa namueleza mhe. Mkuu wa Sheria kwamba ukichukua leseni ya mtu, unachukua maisha ya watu wengi. Hata saa hii, nikimnyanganya Mkuu wa Sheria kazi yake, sitakuwa nimemnyanganya yeye peke yake lakini pia nitakuwa nimemnyanganya bibi yake, watoto wake na pia watu wengine wengi ambao wanategemea. Kwa hivyo, kumnyanyanya mtu leseni yake ni jambo mbaya sana. Kwa hivyo basi, ni lazima madalali wapatiwe amri za kufuata katika kazi zao. Tusitunge sheria ambazo zitakuja kudhuru wananchi wetu. Hapa ninamshukuru mhe. Mkuu wa Sheria kwa sababu imeelezwa hapa kwamba dalali lazima awe ni mwananchi wa Kenya kwa kuzaliwa. Wengi watakuja kuingia katika hii biashara ya udalali na watatusumbua sisi. Ikiwezekana, siyo yule mwananchi wa Kenya kwa kuandikishwa lakini yule ambayo ni mwananchi wa Kenya kwa kusaliwa. Wengine wanasema hapa mhe. Shikuku ni mtu wa ukabila. Ninakumbuka siku moja nilikuwa hapa siku moja na aliyekuwa Mkuu wa Sheria, Bw. Charles Njonjo alikuwa pale, pamoja na mhe. Jan Mohammed. Nilisema siku hiyo hawa waliopata kuwa wananchi wa Kenya kwa kujiandikisha watatumaliza. Wakati huo, niliambiwa na aliyekuwa Mkuu wa Sheria "wewe hutaki amani?" na nikasema huyo mhe. Jan Mohammed atatuwaja na mwishowe alienda na pesa za nchi hii. Alinyakua pesa na kutoroka na alipofika kule alikoenda alimwandikia marahemu Rais Kenyatta barua kwamba amejuzulu kama Naibu wa Waziri na pia katika chama cha KANU na hataki kuwa rahia wa Kenya tena.

Mimi sina mahali pa kutorokea kama mwananchi wa Kenya. The only place where I can go to is when I am buried six feet below the ground. Lakini hawa wengine wataenda, waturudishia hiyo cheti cha urahia, KANU life membership na kila kitu na kutuambia kwaheri.

**The Assistant Minister for Research, Technical Training and Technology** (Mr. Kagwima): On a point of order, Mr. Temporary Deputy Speaker, Sir. I have been listening to hon. Shikuku since yesterday and he has made good points already. For now, he is repeating himself and bringing issues that are not relevant to the Bill. The Standing Orders prohibit us being repetitive. Could you ask him to end the debate so that we can also participate. Otherwise that is why other hon. Members are conducting their own debates inside here.

**Mr. Shikuku:** Nitamsamehe mhe. Kagwima. Sijui kama nitamwona katika Bunge ijayo. Hakuna jambo lolote ambayo nimeirudia. Mimi nimezungumzia jambo hili kifungu kwa kifungu na nina haki ya kuzungumza hata kwa siku saba. Hana habari hiyo. Hii ndiyo shida ya kuleta watu kutoka msituni nakufanywa Manaibu wa Mawaziri na hawajui Standing Orders.

**The Temporary Deputy Speaker** (Mr. Ndotto): Order! Order hon. Shikuku! Wabunge hawatoki msituni. Can you withdraw that word?



**Mr. Shikuku:** Hawatoki msituni. Niliondoa hilo neno. Lakini wakitoka nje lazima wajue kwamba wakiingia hapa Bungeni inafaa wajifundishe Parliamentary procedures na Standing Orders. Lakini ukiletwa hapa na ufanywe Naibu wa Waziri mara moja, hupati hilo fahamu. That is a fact!

**The Assistant Minister for Research, Technical Training and Technology (Mr. Kagwima):** On a point of order, Mr. Temporary Deputy Speaker, Sir. I respect hon. Shikuku because of his experience, but he should also respect those others who also have a capacity, in a short time, to learn what he knows. Is it in order for him to say that I do not understand that he has a right even to speak for seven days? I know he can do that, but we also have a right to have a chance to talk, especially when he has exhausted what he has been saying. I petition the Chair under Standing Order No 87, to prevent this man from continuing making his contribution.

**Mr. Shikuku:** Mr. Temporary Deputy Speaker, Sir, you can see. Yeye hajui kwamba mimi ni mheshimiwa, lakini ananiita "This man". Sasa nikisema jambo hapo, si utasema nimeharibu tena? Ananiita "This man". Is he in order to call me, "This man"?

*(Laughter)*

**The Temporary Deputy Speaker (Mr. Ndotto):** Order! Order! Hon. Kagwima, this is not "This man"; he is hon. Shikuku. I think what is going on between the two of you, is not helping the House. Proceed with your contribution, Mr. Shikuku.

**Mr. Shikuku:** Asante, Bw. Naibu Spika wa Muda. Saa zote ninapitia vifungu vile ambavyo ninaunga mkono na vile ambavyo ninapinga. Ilhali mhe. Kagwima anasema kuwa ninarudia vifungu hivi na wewe uko hapa na anajifanya eti yeye ni Bw. Naibu Spika wa Muda.

Nimesema, na ninataka kusema tena, kuwa ninamshukuru Mkuu wa Sheria kwa kuweka hapa kifungu kwamba huwezi kuwa dalali mpaka uwe mwenyeji wa nchi hii. Hiyo ninaunga mkono. Kwa sababu tusipofanya hivyo tutapata wale wananchi wa karatasi ambao watafanya maovu na wakishatosheka watakwenda kwao. Ni mara ngapi nimepiga kelele hapa nikisema kwamba pesa zinapelekwa ng'ambo? Sasa tumefilisika na hawa watu wamekuja kugundua hayo wakati wamechelewa baada ya mimi kupigana miaka hiyo yote nikisema kwamba zinapelekwa ng'ambo. Kwa hivyo, ninaunga mkono kifungu hicho na ninataka wenye nchi waendeshe kazi hii.

Bw. Naibu Spika wa Muda, ukiangalia ukurasa wa 72, ukitaka kujua kuwa sirudii kitu, ukiendelea na Kifungu cha 18, ukiendelea nacho utapata kwamba habari hapo na Mkuu wa Sheria mwenyewe, alisema kwamba mtu akinyang'anywa mali yake hawezi kukata rufani. Mkuu wa Sheria amekubali kuwa katika Committee Stage ataleta mabadiliko ya kuonyesha kwamba mtu huyo akitendewa hivyo, ataweza kukata rufani kortini ili kesi yake iangaliwe upya. Lakini kabla ya kwenda kortini, wakati ule ambao wanamletea ilani kwamba leseni yake itatwaliwa, what happens between that? Inafaa ionyeshwe wazi kwamba yeye ataendelea na kazi yake mpaka wakati ule rufani yake itakaposikizwa. Hiyo itakuwa njia bora kwake kwa sababu ukimwamrisha asimamisha kazi yake, atafanya hivyo na bado kesi yake itakuwa kortini, na kortini kuna kesi ambazo zinachukua miaka nenda miaka rudi. Atakuwa akifanya nini wakati huo wote? Kwa hivyo, wakati ambapo atapewa ilani hiyo atakata rufani. Pia anaposubiri kusikizwa kwa rufani yake kortini, awe anaendelea kufanya kazi kwa sababu kesi zinaweza kuchukua miaka mingi kule kortini. I know of a case ambapo mtu mmoja alihukumiwa miaka 20 na akachapwa viboko 20. Baada ya miaka 15 rufani yake ilisikizwa na kuamua kuwa hana hatia, aende nyumbani. Nimeleta hata swali hilo katika Bunge hili kuuliza, je, miaka 15 aliyomaliza jela na viboko juu yake, anaambiwa tu aende nyumbani hana hatia? Kwa nini Serikali haiwezi kulimpa mtu huyo fidia? Mpaka leo huyo mheshimiwa hajapewa chochote. Hii ndiyo Serikali tukufu ya Kenya! Inamfanya mwananchi ateseke kwa miaka 15 katika jela na achapwe viboko 20 na baadaye anaambiwa "huna hatia, kwenda nyumbani". Kwa hivyo, nina tajriba ya kutokuwa na haki katika nchi hii. Inatakiwa pia akienda kortini, itakuwa at the court's order na itakuwa katika Schedule ya korti. Kwa hivyo, kesi yake haiwezi kusikilizwa mara mmoja. Atakuwa akifanya nini huku akisubiri uamuzi wa korti? Hapo a provision should be made.

Bw. Naibu Spika wa Muda, katika Kifungu cha 20 ukurasa 72, wanasema juu ya Register of Licence. "The Board shall keep a register in such a form as it may determine. All licences issued under this Act and shall enter therein in respect of every licence. (a) The full names and identity cards number of the auctioneer. The place of business in respect of which the licence is being granted". Maoni hayo yote ninaona ni mazuri hata kuhusu tarehe ya kumalizika kwa leseni yake na kila kitu ni sawa mpaka ukurasa 73 ambapo hapa chini wanasema kuwa:-

"Provided that a person who is a member of the Police Force or a public officer acting in course of his duty or authorised in writing by the Board."

Hizi kesi za polisi kuja katika ofisi ya dalali, hazifai. Wakati mwingine polisi wengine wakishachoka kula sukumawiki, wanafanya jambo fulani. Siku hizi polisi hawaweki zile nambari zao ambazo zingetumika kuwatambua. Unaona tu mtu anaingia na ukimwuliza kuna nini, anakwambia yeye ni polisi ilhali hajavaa mavazi rasmi ya kazi. The Attorney-General should take note of this because they do not put their number on the shoulders ili ujue ni nani amekuja kukudhulumu. Siku hizi hawaweki nambari hizo. Wakati mwingine wanakuja huku wamevaa mavazi ya kiraia na anakwambia, mimi ni polisi. Tena anatoa ile kadi yake kutoka mfuko upesi sana na kuirudisha mara moja kabla hujapata fursa ya kuiangalia. Mtu ambaye hakusoma kadi hiyo inachomolewa mara moja na anaanza kazi yake. Mambo haya yanazidi. Anatoa kadi hiyo kidogo tu na kurudisha haraka na anaanza kazi yake. Wakiendelea hivyo, utakuta kwamba mwisho wake ukimpa kitu, basi mambo yanakwisha. Anasema tu atakuja tena. Anapochoshwa na sumawiki, amefanya hapo kuwa mahali pa kwenda kupata kitu kidogo na hivi ndivyo mambo yanafanyika. Hapa ninaona wanasema kuwa ofisa wa polisi anaweza kuja wakati wowote, lakini ningependa maofisa wa polisi wafuate madaraka yao. Ikiwa yeye ni Inspekta na aje akivalia mavazi yake rasmi ili tujue kuwa huyo ni nani. Tumenyoosha sana huko risavu na tumefanyiwa maovu mengi. Polisi wa utawala na polisi wa kawaida, ninajua mshahara wao ni mdogo na pia hali ya maisha imepanda sana. Lakini si vizuri kwenda kufilisisha wale maskini ili kidogo walicho nacho wampe. Maofisa hawa wavae mavazi yao rasmi na nambari zao so that we can read the numbers. Hata ingawa alita kile kitambulisho chake na kukirudisha haraka, ninaweza kukumbuka kwamba nambari yake ilikuwa 45623. Lakini siku hizi hawaweki nambari zao. Therefore, let him be an authorised police officer in his official uniform, lakini sio kuja katika mavazi ya raia na bunduki.

Bw. Naibu Spika wa Muda, nitamalizia katika Kifungu cha 21 ingawa kuna vingine vingi kama vile Vifungu nambari 22 na 24 ambavyo nimesoma vyote. Wengine husoma mengine, lakini sisi wengine tukirudi nyumbani, tumechaguliwa kutetea watu, tunasoma Miswada. Hatuna wakati wa kupiga pombe au nini. Kwa hivyo, watatusamehe tukianza kuzungumza juu ya Miswada kwa sababu tunajua kile tunachozungumza. Mwingine husoma vile vitu ambavyo anataka kusema na hata sasa amekwishaondoka. Clause 21 is about auction sales na zile ilani ambazo zinamewa hapa. Utapata notisi zikiwa kwa Official Gazette au zinatokea katika gazeti za *Daily Nation* au *The East African Standard* lakini circulation ya magazeti ni ngapi? Mnaweza kujiuliza wenyewe ni watu wangapi ambao hawaoni gazeti kwa wiki nzima? Mimi kwangu itanibidii niende maili tano ili nipate gazeti. Kwenda na kurudi ni maili kumi. Kuna wengine ambao najua kama kule upande wa Laikipia huko msituni hawaoni gazeti. This is another way of robbing the people because the circulation of newspapers is limited. I do not want to talk about the Official Gazette because some rural dwellers do not know about it. Mawasiliano ni ya taabu na ni lazima tutengeneze sheria ambazo zitakuwa rahisi kutekeleza na ambazo zitasaidia wananchi. Si wakati umefika kwa Mkuu wa Sheria kuleta Mswada hapa ili hizi notisi zikitolewa katika magazeti ziwe zinaweza kufika hata kwa lokesheni pekee yake? Kuwe na notisi kwa lokesheni kwamba fulani wa fulani ajue shamba lake Kenya Commercial Bank (KCB) inataka kuichukua. Wengi wao hawana habari kuhusu kuitwa kwao mahakamani kujitetea na hii inafanyika hata hapa kwa Wabunge. Wabunge wengi wako taabani kwa sababu hawana habari ya notisi ya kuitwa mahakamani. Hana habari eti dalali anakuja. Je, kama Mheshimiwa pia anataabika juu ya kutopata habari, mwananchi wa kawaida atataabika namna gani?

Bwana Naibu Spika wa Muda, wakati umefika ambapo Mkuu wa Sheria anatakikana apeleke notisi kwa magazeti lakini pia zifike kwa vituo vya machifu kwa sababu viko karibu na wananchi. Wananchi wataweza kujulishwa habari juu ya mali zao kama zitauzwa. Baada ya korti kutoa hizo notisi kwa lokesheni yako inatakikana iweke muda ambapo dalali atakuja kuchukua mali yako. Muda ndio kitu kikubwa hapa. Muda huu unatakikana kuwa siku sitini kwa sababu ya shida za mawasiliano. Halafu wapewe siku thelathini ambazo dalali atakuja kuchukua mali yake.

**The Assistant Minister for Land Reclamation, Regional and Water Development** (Mr. Ligale): On a point of information Mr. Temporary Deputy Speaker, Sir. I am rather intrigued that the hon. Member wants these notices to be posted at the chiefs centres. But the hon. Member has been saying time and again that when the Opposition comes into power, they want to do away with the Provincial Administration, including the chiefs.

**Mr. Shikuku:** Bw. Naibu Spika wa Muda, mimi huwa mtu mkarimu. Mwenzangu ametoa information lakini najua yale anayosema ni ya hapa katika Bunge hili. Lakini kama kuna watu wanaopata taabu ni Wamaragoli. Na nakwambia haki ya Mungu akiita mkutano kule kwake na niseme haya ninayosema na yeye aseme mzaha anaofanya hapa, atakiona kilichomfanya punda asiwe na pembe.

Bw. Naibu Spika wa Muda, mpaka wakati ule tutakapokalia kiti tutasema yale yatakuweko. Kwa saa hii upende usipende, vile mheshimiwa Nassir anavyosema, kuna Chiefs Act lakini tutafanya nini? Si wazungu walikuwa wanatusumbua hapa na wametoka na hii Serikali ya KANU pia itatoka na siku moja nitakutana na huyu Mheshimiwa? Tutakapokutana na huyu Mheshimiwa atakuwa na pamba katika bega la koti lake ikiwa nje.

Hata hana habari eti ana pamba katika koti lake. Na akitaka kujua, kuna wakati moja nilipomuuliza Mbunge mmoja awali hapa. Nilipomuuliza swali la ziada hapa ya kwamba "Is the Minister aware that leaving a nine inch forcep and cotton swab in a human stomach can be the cause of his death?" Waziri yule alisimama na akasema "He was a dying man any way". He said that on the Floor of this House but later he was voted out by his electorate.

**The Temporary Deputy Speaker** (Mr. Ndotto): Mr. Shikuku, I want you to deal with the Bill.

**Mr. Shikuku:** Asante sana Bw. Naibu Spika wa Muda. Kwa hivyo hizi taabu ziangaliwe na tuwalinde watu wetu na sio kuwanyanyasa. Hilo ni swali ambalo nafikiri Mkuu wa Sheria amesikia na nimemuona akiandika.

Clause 22 inahusiana na Recovery of Charges of The Auctioneer. Tuanataka kuwe na Schedule ambayo itatujulisha ni pesa ngapi dalali atalipwa ili kufanya kazi yake. Hii ni kwa sababu madalali wengine wanatoza pesa wanazofikiria. Kunatakikana kuwe na Schedule ya kuonyesha ni pesa ngapi madalali watahitaji. Hii schedule inatakikana iwe kama ile ya mawakili.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, it is true that lawyers and many other professions now have schedules for charging fees but those schedules are not in the Act but they are in the regulations and they are there in the report. It will definitely come when the regulations are being made under the Act and in good faith again, we circulated the report of the Task Force so that people can know what is coming. If it does not come ask me a question here in Parliament and I will be able to answer.

**Mr. Shikuku:** Bw. Naibu Spika wa Muda, hizo schedules na hayo yote anayosema ayaleta hapa tupitishwe kwa sababu muda wangu mrefu katika Bunge hili nimeona kwamba tunapopitisha Mswada kama huu tunapata taabu baadaye. Pia gazettements za Mawaziri hazifai. Wenyewe ndio wanaongeza hivyo vitu wanavyotaka. Sisi hatuna habari na tukienda kule nje nyinyi ndio mnatuambia eti sisi ndio tulipitisha sheria hizi wakati hatukupitisha hizo regulations. Tunataka hizi regulations zote ziletwe hapa mbele ya Meza ili tuzichunguze. Hii ni kwa sababu nimepata taabu hii mara nyingi na wale askari wanani laumu mimi kwa kupitisha regulations hizi. Kwa hivyo ziletwe zote hapa.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir if we look at page 61 to 64 of the Task Force Report, some Schedules are there and these are the schedules that I am saying that when the Bill is passed, just like other professions have Acts, like the Advocates Act or the Architects Act and so on, there will be regulations to regulate the fees to be charged by auctioneers.

**Mr. Shikuku:** Bw. Naibu Spika wa Muda, sikatai, alikuwa akileta haya maagizo ili tuyapitishwe hapa. Hiyo ina matokeo mawili, moja tunajua kile ambacho tunapitisha kwa sababu maagizo yanaweza kufanywa na Mkuu wa Sheria na watu wengine ili yawafae. Pili, tutawaeleza wale watu wa kwetu, katika barasa ambao hawana redio. Wanasikia tu Mtukufu Rais, na kuimba. Lakini hawasikii maoni ya Upinzani. Tukishapata hiyo knowledge hapa ndio tunabeba na kupeleka kule na kuwaelimisha watu wetu ili wajue kile ambacho kimetendeka, sababu regulations hizo zipitishwe hapa Bungeni.

Pili, katika ukurasa wa 75 Clause 24, ni kuhusu dalali. Wanasema hapa;

"A complaint against a licensed auctioneer of misconduct which expression includes disgraceful or dishonourable conduct incompatible with the status of auctioneer, may be made to the Board by any person."

Bw. Naibu Spika wa Muda, misconduct hii tunajua. Malalamiko yangu yatakuwa, alipokuwa akitoa mali amevunja meza, sahani, alisukuma redio yangu ikaanguka na haisemi tena. These are the sort of complaints. Lakini hizi misconducts, do we know them? Sisi tunajua, tunataka tuambiwe ni nini.

"Where a person makes a complaint under this section, the complaint shall be by an affidavit and by himself setting out the allegation of misconduct which appear to arise on the complaint and shall be forwarded to the Board with a prescribed fee."

Ni watu wangapi wanaweza kufanya affidavit huko msituni kwetu huko? Hakuna simu, hakuna stima, barabara hazipitiki. Je, tunatengeza sheria ya mtu gani? Ya Wabunge? Tunatengeza sheria ya kuwahusu watu wa kawaida, maskini Wakenya, ambao hawajui affidavit ni nini. Hii sheria itakuwa sawa katika nchi iliyoendelea. Hapa unazungumza juu ya affidavit kwa mtu aliye kule Turkana, ambako hata pengine mwanasheria hawako huko. Kuna mahali pengi katika Kenya hii ambako mwanasheria hawako.

Tulikuwa na shida kule Naivasha; tulifikiria kuwa tungepata mwanasheria Naivasha, lakini hakuweko. Tulikimbia mpaka Nakuru, na mwisho tulichelewa kuwasilisha makaratasi yetu. Tuliunga mkono mgombea kiti wa chama cha DP. Tulikuwa tunafikiria kuwa tutapata mwanasheria huko Naivasha, au Commissioner of Oaths, atuwekee sahihi, lakini ilitubidi turudi mpaka Nakuru. By the time we arrived, we were time barred. What are we talking about? Affidavit, kule Buhayo, kwa Mheshimiwa? We are not serious! Kwa nini tusirahisisha mambo?

Hii habari ya affidavit hapa haitafanya kazi kwa sababu hakuna wanasheria wakutengeneza affidavit, kuletwa

kwa Board. Hata pengine wanataka hiyo affidavit ichapwe lakini hakuna typewriters kule Isiolo. Ukienda huko unaona ngamia, hakuna typewriters huko. We are not serious. Tunatengeneza sheria inayohusu mtu gani? Kama ni wale watu tunaowakilisha lazima tuangalie hali yao. Haiwezekani! Juzi, kule Mumias, ni bahati tulikuwa na hakimu hapo, tulimpelekea fomu za kiapo, lakini kupata mwanasheria hapo ni shida. Mumias si sehemu ambayo iko nyuma katika maendeleo, kuna simu na hata stima, lakini kupata mwanasheria ni shida. Utapata wapi affidavit?

Kwa hivyo, Bw. Naibu Spika wa Muda, Mkuu wa Sheria atakapokuwa akiangalia habari ya amendment, yafaa aangalie hii habari ya affidavit. Haina maana kwa watu wetu.

"The Board shall give a licence of auctioneer against whom the complaint has had an opportunity to file affidavit in reply to the allegation and to appear before it and furnish him with the copy of the complaint and any evidence in support thereof, and shall give him an opportunity of inspecting any relevant document not less than seven days before the date of fixing---"

Bw. Naibu Spika wa Muda, wanasema juu ya siku saba. Dalali anatakiwa atoe jawabu katika kipindi cha siku saba. Inawezekana hata hiyo barua anayopelekewa ikachukua wiki mbili tukifikiria huduma za posta hapa nchini. Hizi siku saba zinatoshwa kweli kwa huyo dalali kwa kupeleka mambo yake pamoja na kuitwa? This is not practical. Lazima tuangalie hizi siku ziongezwe ili tuwe na haki kwa mlalamishi na anayelalamikiwa, ili tupate haki. "Haki iwe ngao na mlinzi---" But you just sing, na hakuna haki Kenya, wimbo tu, "iwe ngao na mlinzi." Hakuna ngao wala haki! Ukiangalia mambo ya Kenya, wakati mwingine, utaumwa na kichwa. Because we are the greatest pretenders under the sun. Tunajidai kuwa tunapenda demokrasia, haki na korti. Lakini unaambiwa korti hiyo haiendelei vizuri. Mtu fulani awe mwenyekiti, mtu fulani hakuitwa kwa arbitration na korti imefuata sheria ya Bunge hili, 1994 Arbitration Act. Sasa siasa zinafanywa. We are coaching anarchy and we shall get it at the end. Yafaa tuangalie sheria na kuzifuata sheria zetu. Tunataka kuchukua mkato kutumia mamlaka yetu kuvuruga umoja wa nchi hii, tutavuna matunda machungu mwisho wake. Lakini tutajibu hiyo, sababu mimi na wewe, sote tumeapa hapa kulinda Katiba ya nchi hii kwa sababu hiyo ndiyo kazi yetu. Tusisahau hata kidogo.

Bw. Naibu Spika wa Muda, namaliza kwa kugusia vifungu nambari 25, 26 na 29. "The right to recover damages from auctioneer". Ni nani atasaidia wananchi kupata haki yao? Hata saa hii, wanaenda kwa mawakili lakini mawakili nao wanawapunja. Nani atasaidia wananchi kupata kile madalali walichoharibu? Hilo ndilo swali ninalouliza. Ukileta swali hapa kama Mbunge na kusema, hiki na kile kimefanyika, unaambiwa hiyo si kweli, na ni kweli. Mbunge anasema "nimepitia hii barabara lakini haipitiki," Waziri anasimama na kusema; "tuna mtu wa kandarasi anayefanya kazi sana kwa hiyo barabara." Unamwambia Waziri kuwa hii imekuwa hivi, watu wanakufa kutokana na kipindupindu, Mkuu wa Mkoa anatoa taarifa kuwa ugonjwa wa kipindupindu haujaua watu huko. Ukija hapa unaambiwa hiyo si ukweli, ilhali umehudhuria matanga ya Omollo, mtoto wa Okechi. Hata kasisi alikuwa huko akiomba. Lakini hapa, Waziri anasema kuwa hakuna kitu kama hicho. Bw. Naibu Spika wa Muda, ni siku gani mwananchi wa nchi hii atapata haki? Ni siku gani mtu yule aliyechaguliwa na mwananchi wa nchi hii atawasilisha matatizo yake hapa na yasikizwe? Lakini nitamaliza kwa kusema hivi. Mungu si Abdalla wala Athumani. Wale Mawaziri na Mawaziri Wasaidizi wanapojibu maswali yafaa wajue - na sisiengine tunajua mambo haya - kwamba wananchi wanasikia maneno wanayosema na yanaweza kuwadhuru wao wakati wa kura. Kwa sababu yule Waziri niliymtaja alitoka Vihiga na alikuwa akijibu Swali la Ikolomani. Lakini Radio ilipotangaza watu wa Ikolomani na watu wa Vihiga walisikia. Kura ilipopigwa aliulizwa fulani yuko wapi? "Tutakupata kura lakini tunataka umlete fulani" lakini akashindwa. Mpaka leo hajalionna Bunge na wala hataliona mpaka Yesu ama Mtume Muhamad S.A.W. warudi.

Naunga Mkono.

**Prof. Mzee:** Thank you, Mr. Temporary Deputy Speaker, Sir for giving me this opportunity to contribute to this important Bill. Right from the outset, I say, I support this Bill. This is because auctioneers have in the past taken advantage and exploited the tragedy to make maximum money for themselves. Most of the times, goods in an auction are not sold at market value. Most of the time goods are undervalued and most of the auctioneers know they are under-selling goods. In some cases they collude with friends to under-value goods and to exploit the tragedy which quite a number of times, befalls most of us.

Mr. Temporary Deputy Speaker, Sir, most of the time a debtor whose goods are seized is able to pay the principal amount which was originally involved. The problem arises with interest; the interest is the problem and the other costs. I have an example here, one of my constituents sometime back in 1992 went to the Kenya Finance Corporation for a loan to buy a second-hand matatu. He was given a loan of Kshs800,000 at an interest rate, at that time in 1993, of 72 per cent. The interest was that much because when they were trying to map up excess liquidity the interest went up to 72 per cent and he was given a loan of Kshs800,000 at 72 per cent and he was asked to repay the loan at Kshs50,000 a month. With a second-hand matatu on the road, it is impossible to

meet that payment. The man was asked to give the matatu as a security including his house and his shamba. The house alone, located in Frere Town had a value of over Kshs500,000 and his shamba had a value of another Kshs1.2 million. So the security for his loan amounted to over Kshs2 million and all these documents charged were held by the Kenya Finance Corporation and it knew very well through experience that this man will never be able to pay this loan at the interest rate of 72 per cent. They never advised him, they just took the advantage of him and before long the man started defaulting. By the time they called the auctioneers, to seize the goods, the man had paid twice the amount of the principal. He had already paid over Kshs1.6 million but there was interest and other things waiting for him and in the end the auctioneer who was a member of this task force auctioned his house, auctioned the matatu and the shamba to recover a loan of Kshs800,000 which had been paid for more than twice. The problem is interest and advice. These bankers quite a number of times know they are waiting for this situation to make lots of money. Their sole purpose is to give big loans, with big securities so that they can come back and get more than what they had given. Therefore, I say the problem is in interest. At one time, hon. Shikuku had related what Jesus Christ had said and he had asked me what Prophet Muhammad has said and I am in a position to tell him. Prophet Muhammad usually forbade interest for the simple fact that, it is the interest which brings a lot of problems. We are discussing the Auctioneers Bill today because of this interest and lack of advice from the bankers to the people that if you take a loan at an interest rate of 72 per cent to buy a second-hand matatu, you will never be able to pay this loan. If this man was advised, he would not have lost the matatu, he would not have lost the house he lived in and the shamba. It is a fact, and I can substantiate, it is one of the auctioneers mentioned in this booklet who auctioned all those things to recover the loan and yet at the end of the day after losing the shamba, the matatu and his house he still owes the Bank money. This is all because of the interest.

Mr. Temporary Deputy Speaker, Sir, this Bill fails to mention anything about foreign involvement holding auction in Kenya. The only thing they have said is, they are allowing special licence. This special licence is aimed at foreigners who are going to come in here to conduct special auction for antiques as we have been told and other things where the auctioneers of Kenya are not able to do it. But it does not say anything else about the condition or anything of that sort. This is very important especially now that auction can be carried out through electronic media via satellite. I had to witness at one time where auctions were carried out internationally through satellites and television and the auction was selling embryos. Embryos from dairy cattle. And the bidders were in America, Europe in Australia and they were all bidding through telephones and other systems when these things were being displayed through electronic media and satellite. Since auctions are internationalised at the present time, we have to take cognizance of that and provide something in this Bill especially under the circumstances where we are going to go into East African Co-operation and there might be goods seized which involve the entire East Africa or even more than that at a later stage where auction has to take place and the auctioneer might come from Tanzania or Uganda. So, it is important that this Bill should mention something of that sort.

Then there are auctions that are held for Harambee purposes by guests of honour. We also have another example of the Ring-us-Up Programme in the Kenya Broadcasting Corporation. This is an auction which is done on a yearly basis for the purpose of raising money to help the poor people. There are occasions in Harambee where the guest of honour has to auction goats, agricultural produce and so on in order to raise money. If this Bill is passed, what will happen to these people?

Mr. Temporary Deputy Speaker, Sir, there is also one aspect of auction which has never been mentioned here and it is very important; the auction of livestock. This auction is carried out in most of the districts in the country, especially in those districts that fall under the arid and semi-arid areas. These districts include those in North Eastern, Coast and Rift Valley Provinces. In a district like Kilifi, there are five designated areas by the Livestock Marketing Division where weekly livestock auctions take place. We also have such auctions taking place in Wajir, Mandera, Garissa and other towns, and the people conducting these auctions cannot fulfil the conditions of this Bill. They cannot also fulfil the conditions contained in the Report of the Task Force on the Laws relating to Auctioneers and Brokers, which the Attorney-General has promised to include in this Bill. What I am requesting is the Attorney-General to make a special provision where these livestock auctioneers are not going to be affected by this Bill, otherwise, you are going to create a crisis in the marketing of livestock in this country. It will be a crisis because the Ministry of Agriculture, Livestock Development and Marketing has established a department of livestock marketing with representatives in the districts and provinces all over the country. These people established these auctions to protect the farmers from being exploited by unscrupulous merchants who may go there to buy these animals on the farm at the price which is very very much below the market price. These farmers know that in their districts, once every week, there are auctions which are arranged by the Livestock Marketing Division where they can sell their cattle at competitive prices and I am requesting the Attorney-General

to keep that in mind. What I recommend is that licensing should be left to the provincial director of agriculture rather than the Board, as it is a cumbersome and expensive exercise. After saying what I have said, I would like to go through the Bill so that I can point out areas which we have to look into. When we look at Clause 2, the definition of an auctioneer includes every person who asks for bids. It includes livestock auctions, Ring-us-Up auction and every type of auction. This definition has to be amended so that it excludes certain people, otherwise, every time an auction is going to take place, say for fund-raising purpose, then the people conducting it will be breaking the law.

Mr. Temporary Deputy Speaker, Sir, Clause 3(1) states:-

"There is established a Board to be known as the Auctioneers Licensing Board..."

I protest against the use of the word "licensing" in this provision. I would like this Board to be referred to simply as an "Auctioneers Board". It is a Board of professionals. Its work will not be only licensing, but it will have other duties like enforcing discipline and receiving complaints. Why should a Board which performs all these duties be referred to as an "Auctioneers Licensing Board"? We have a Veterinary Board, but we do not call it a "Veterinary Licensing Board". We also have the Medical and Dentists Practitioners Board but we do not call it "Medical and Dentists Practitioners Licensing Board". So, I do not see any reason why the word "licensing" should be used in this Bill. I recommend an amendment to Clause 3(1) by deleting the word "licensing" so as to refer simply to it as "Auctioneers Board".

We have been asked to read this Bill together with the report of the Task Force, although I cannot see the connection between the two. I think that this is impossible because it is the Bill, and not the report, which should be passed by this House. So, I would very much like to suggest that whatever is in the report is meant to be part of the Bill and should be included in the Bill. Clause 3(1) (a) and (c) provide that a Judge of the High Court and a chief magistrate to be appointed by the Chief Justice will be members of the Board. Why is it necessary to have on the Board a judge and a chief magistrate? The report of the task force had recommended membership of either of them but not both of them. This is not going to be a bench of judges and magistrates: It is going to be a board of auctioneers. If we have decided to have a judge as the chairman of the Board, there is no point in having a magistrate on the Board.

I also object very strongly to having on this Board a Permanent Secretary from the Office of the President.

He has absolutely nothing to do with auctions. I cannot understand why, of all the people, he should be the one recommended to be on this Board.

I will leave other clauses which have been covered in detail by those who spoke before me, and go to Clause 10(1)(c), which states:-

"Subject to Subsection (2) of this section, and Section 11, a person who satisfies the Board that he has sufficient knowledge and experience in the business and practice of an auctioneer..."

This knowledge remains vague: It has not been defined in this Bill what knowledge is required. How can the Board determine the level or kind of knowledge which is required before a person is licensed? Hon. Shikuku had suggested that a school of auctioneers be established to train people and award them a diploma in auctioneering before they are licensed to be auctioneers. But there is no such thing. The Task Force Report only mentioned something little about knowledge on page 22. It talks about knowledge and education required to enable one to qualify for category (a) or (b) of the auctioneer's licence. If you look at part (f), you will see that it refers to four O-Level passes or equivalent passing.

First of all, we no longer have O-Levels in this country. So, for a Task Force which worked in 1995 to refer to O-Levels is absolutely meaningless. What we have now in Kenya is the Kenya Certificate of Secondary Education (KCSE). There is nothing like O-Levels. So, this recommendation on four O-Level passes or equivalent, including English and Mathematics, is something which is very, very strange in the education system of Kenya. It has to be looked into.

Also, I cannot understand why they have chosen Mathematics and English subjects. In Kenya, we speak Kiswahili, and auctions in quite a number of times are conducted in Kiswahili language. Why should they emphasise on English and Mathematics alone? This is the only reference we have as far as knowledge is concerned. So, I would like to ask the Attorney-General, whether, when he refers to sufficient knowledge in sub-clause 1 (c) of Clause 10, he means that the application would only be relevant during KCSE era? If it is so, why does it not state so? Why is it remaining so vague? What is the knowledge which is required from the auctioneer to be licensed? We cannot remain this vague. If it is referring to KCSE, then the Attorney-General should come out clearly and tell us the knowledge which is required. He should tell us if it is four passes in KCSE, including a pass in Kiswahili, English and Mathematics and so on.

Mr. Temporary Deputy Speaker, even though this Report says how many years of experience are required, the "very detailed" Report says that it should be five years for both category (a) and category (b) licence.

But the Bill itself is absolutely quiet about the years required. I cannot understand how this Bill will be married with this Task Force Report, if these specifications in the Task Force Report are not put as part of the schedules in this Bill. They should be put as part of the schedules so that everything is very clear, and the Board can know what it is doing.

As I was saying, if we look at what is here, the Attorney-General makes us believe that when it comes to making resolutions, which this Bill has been silent about, they will be looking at the Report. If you look on page 22 of the Report - my God! - to be an auctioneer, you require to have a hell lot of money. I cannot see how a livestock auctioneer in Elgeyo-Marakwet, Lodwar, Wajir or Garissa will be able to come up with all this money to get either licence (a) or (b), if the Attorney-General does not make special provisions for these types of people. They require excess deposit or a guarantee of Kshs100,000. They are required to be insured and pay application fees, licence fees and so on. The amount of money which is required before you become a licensed auctioneer is just too much for ordinary auctioneers in remote areas, especially livestock auctioneers.

Mr. Temporary Deputy Speaker, Sir, I repeat again that if we talk about knowledge, we have to have a training centre, syllabus and examinations. The Board is the one to administer the examinations, and then give appropriate qualifications, so that the knowledge can become defined, especially under the circumstances where the auctioneers are valuers, and we know that the valuers undergo vigorous training before they get a diploma in valuation and before they can be registered as valuers. So, the auctioneers as well as valuers because somewhere along the line we have been told that the auctioneers will be called upon to value, they would also require training in valuation.

If you look at Clause 10(2b) - I have to repeat this - we have here in Parliament, lawyers who are hon. Members of Parliament and they are free to practise their law. We have doctors like Dr. Wameyo, who are free to practise their medicine. We also have veterinarians and they are free to practise their veterinary work, and we have also consultants of different fields. Why exclude hon. Members of Parliament and councillors from becoming auctioneers? It does not make any sense whatsoever. Therefore, I would ask the Attorney-General to delete Clause 10(2b).

### QUORUM

**Mr. Moiben:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is there a quorum in the House?

**The Temporary Deputy Speaker** (Mr. Ndotto): No, we do not have a quorum. Ring the Division Bell.

*(The Division Bell was rung)*

**The Temporary Deputy Speaker** (Mr. Ndotto): Order! We have a quorum now. You may proceed Prof. Mzee.

**Prof. Mzee:** Mr. Temporary Deputy Speaker, Sir, what disturbs me very much is that once this Bill is passed, the licensed auctioneer automatically also becomes a valuer. While the valuer has a special training and qualifications, the only thing required of a licensed auctioneer is to achieve a Kenya Certificate of Secondary Education (KCSE) level of education. Definitely, there will be a confusion here. Further, if you look at Clause 33, we are even amending the Distress for Rent Act by making the licensed auctioneer to be recognised as a valuer as well. Without auctioneers being trained properly and knowing exactly what qualifications they should have, auctioneering, as a profession, will be very vague.

Now I would like to turn to Clause 12 where the Bill talks about fees. In all the Bills that we have passed before, such as the Medical Bill, the Veterinary Bill and the Planners Bill, all the fees were clearly specified.

However, in this particular Bill, it remains very vague in spite of the fact that the Report specified what fee is to be charged for application and for other things. I think these fees should appear on this Bill as specified in the Report. Leaving it as vague as it is will mean that there will be a lot of exploitation when the Board sits by itself and decides arbitrarily how much fees to charge.

Also, if you look at Clause 12(4), you will see that it reads as follows: "Licence issued by the Board shall be classified in such manner as may be prescribed."

Already, in the report, we have talked about two types of licences; that is, (a) and (b). I cannot understand why this Bill does not describe the types of licences which we are going to issue. It should also define what type (a) will do, and what type (b) will do. So, I am requesting the Attorney-General to specify in this Bill all the classifications of the types of licence which can be available for people to apply.

If you look at Clause 13(1), you will see that it reads as follows: "In addition to the licence, the Board shall issue to a licensed auctioneer an identification card in a permanent form---" What is the purpose of this card? I can understand if the auctioneer will be required to wave at the time he is conducting the auction because it can make sense. But if it is just a card for the sake of having it and the person has a licence, then, the card does not serve any purpose whatsoever.

Again, when you look at Clause 14(3), I think there is an English grammar problem here. It says: "The liability of a licensed auctioneer, in relation to the conduct of this auctioneer's business, shall be unlimited." I think there is a grammatical problem here. What it should read, in my opinion is: "The liability of a licensed auctioneer in relation to the conduct of his auction business shall be unlimited." It does not make any sense the way it reads here in this booklet.

Also, when you look Clause 14(4), the security is not defined but it is defined very well in the report. I cannot understand why the security which is defined in the Report was not put in here in the Bill so that it becomes very clear that if you want licence of type (a) or (b), then the security which the auctioneer has to have is Kshs100,000.

**The Attorney-General** (Mr. Wako): On a point of information, Mr. Temporary Deputy Speaker, Sir. When you are reading these Task Force Reports, there are a number of suggestions there. The Report says a number of those suggestions should be in the regulations. If you read the Report, the regulations have also been drafted; the prescribed forms have also been drafted, and all those will be done when the Bill is passed as regulations under the Bill. So, the issue of security is there in the regulations. I just wanted to clarify that so that we do not have people disputing that it is in the Report and it is not in the Bill. If you read the Bill and the Report very carefully, there are those matters that are supposed to be in the Bill and those other matters that are supposed to be in the regulations. When the Bill is passed, the regulations will come. The act of good faith which I have done for you is to say, whereas in the past you did not know what the regulations are going to be this time, I will bring them as soon as the Act comes into force.

**Prof. Mzee:** I agree very much with that. These recommendations which have been put here are very good. But when the Bill is vague and we pass it, and in good faith we hope that the Attorney-General, when he makes the regulations, he will go and abide by this Task Force Report; what guarantee do we have?

Mr. Temporary Deputy Speaker, Sir, we should know that we are guaranteed, but in the absence of the schedule, there is no connection between the Report of Task Force on the laws relating to auctioneers and brokers, and this Bill. There is no assurance that the Attorney-General will keep his word when it comes to formulating the regulations.

**The Attorney-General** (Mr. Wako): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to imply that we shall not keep our word, when, while I was seconding this Bill, I did say that the Government had accepted this Report of the Task Force in total? In totality, means the Act and the regulations that are in this Report will be implemented. Is that not good enough guarantee?

**Prof. Mzee:** Mr. Temporary Deputy Speaker, Sir, I trust the Attorney-General, but I would have been much happier if I had seen the regulations. But if the regulations are going to go according to this Report of the Task Force, then I do not have anything to worry about.

**Mr. Gitau:** On a point of information, Mr. Temporary Deputy Speaker, Sir. As far as we are concerned this document is also subject to scrutiny by the hon. Members before it is adopted by the Attorney-General. Therefore, he cannot tell us that once this Bill is passed, all that is recommended here is going to be put in the Bill. Surely, there are certain things in this document which require our recommendation, deleting or addition, *et cetera*.

**The Attorney-General** (Mr. Wako): On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Ndotto): Order! Order, hon. Attorney-General. Continue, Prof. Mzee. This is not a duel between you and the Attorney-General. He will respond to your points when he is replying.

**Prof. Mzee:** Mr. Temporary Deputy Speaker, Sir, we know that this document is a wonderful document because it specifies a lot of things in detail, which makes you feel very happy. It also has answers questions on how much the auctioneer can charge. It is specified in categories. For example, from Kshs 0 to 2,000; how much per cent from Kshs 2,000, which is a very wonderful document in terms of seeing that there would no longer be excessive exploitation; that when your goods, land or house have been auctioned, you know how much the auctioneer would take and how much will go into paying the debt which you had incurred and how much will come back to you. But still, we cannot debate these percentages whether they are high or low, because they are not part and parcel of the Bill again. The fact that if they were part of the Schedule, we would have been able to



debate on them and say they are either excessive or not. We have been deprived of an opportunity to contribute to the so-called regulations because they are not part and parcel of the Bill.

Also, in this, all the types of application forms *et cetera*, which are being required are in here. It is common practice to have made them part of the Schedule, so that we can improve on them, but now we have been denied the opportunity to improve on them.

Mr. Temporary Deputy Speaker, Sir, Clause 19, says that the Board may suspend a licence for a period not exceeding six months for different types of offences. Even after looking through the list of amendments on the Order Paper, I did not see anything which says that the Attorney-General will introduce amendments to give rights to those people who have had their licences suspended to appeal. I hope even though it is not here as a proposed amendment, at the appropriate time, he will give the right to those people whose licences have been suspended to appeal either to the Board, or to the High Court, so that their business is not interrupted.

Mr. Temporary Deputy Speaker, Sir, if I look now at Clause 24 (4) (f), I can understand why there is a limit on compensation; it says that:-

"That the licenced auctioneer pay compensation not exceeding one hundred thousand shillings to the person damnified by his misconduct."

Due to the misconduct by the auctioneer, he might lose a lot of amounts of money and we are putting a limit of Kshs 100,000. At most times the auctioneers deal with millions of shillings. It may be an easy way out just to pay for compensation of Kshs 400,000 instead of meeting the actual damage which is done by misconduct.

Mr. Temporary Deputy Sir, when we come to Clause 29 (g), which refers to the training of auctioneers, I wonder because there is no syllabus, no examination board and no school for training. How can this be achieved? This is on page 77, sub-clause 2a. If there is no syllabus, no training school, no qualification and then they just put in training of auctioneers, you have to establish certain minimum requirement so that a syllabus could be drawn and established, and some type of qualification be attained by the auctioneers.

Mr. Temporary Deputy Speaker, Sir, I think with these few words, and I hope the Attorney-General will bring in the appropriate amendment at an appropriate time as he promised he would do, I beg to support the Bill.

**Mr. Gitau:** Mr. Temporary Deputy Speaker, Sir I stand here to support this Bill because many Kenyans dread auctioneers indeed, and any time you get a letter from your lawyer, you feel that your wife and children will be left without a shelter.

Mr. Temporary Deputy Speaker, Sir before I even refer to the Task Force Report, some of the advocates in this country have been accused quite often of colluding with the auctioneers. Families have lost property through jealousy, through collusion between fighting brothers and---

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Ndotto): Hon. Members, the House is now adjourned until tomorrow, Thursday 13th, June 1996 at 2.30 p.m.

The House Rose at 6.30 p.m.