

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 18th July, 1996

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following papers were laid on the Table:-

Annual Report of the Kenya Law Reform Commission, 1993.

*(By the Assistant Minister for Finance (Mr. Koech),
on behalf of the Attorney-General)*

Economic Review of Agricultural Production and Marketing, 1995.
Annual Report and Accounts of Agricultural Finance Corporation for the year ended 30th June, 1995,
and the Certificate, thereon, by the Auditor-General (Corporations).

*(By the Assistant Minister for Finance (Mr. Koech)
on behalf of the Minister for Agriculture,
Livestock Development and Marketing)*

Annual Report and Accounts of Kenya Power and Lighting Company for the year ended 30th June, 1995
and the Certificate, thereon, by the Auditor-General (Corporations).

*(By the Assistant Minister for Finance (Mr. Koech)
on behalf of the Minister for Energy)*

Annual Report and Accounts of Local Authorities Provident Fund for the year ended 30th June, 1994,
and the Certificate, thereon, by the Auditor-General (Corporations).

*(By the Assistant Minister for Finance (Mr. Koech)
on behalf of the Minister for Local Government)*

ORAL ANSWERS TO QUESTIONS

Mr. Sifuna: Mr. Speaker, Sir, before I ask my Question, I would like to make the following correction: This Question is addressed to the Minister for Finance and not the Minister of State, Office of the President.

Question No. 370

RELEASE OF MRS. WERUNGA'S BANK SAVINGS

Mr. Sifuna asked the Minister for Finance:-

- (a) if he was aware that Mrs Prisca N. Werunga deposited Kshs40,000 with United Trustee Finance Limited for six months fixed deposit on 12th July, 1994 and was issued with receipt No.000740; and,
- (b) if he could direct the finance company to release Mrs. Werunga's money since the expiry

date for the deposit was 11th January, 1991, and she has not received her money to date.

The Assistant Minister for Finance (Mr. Koech): Mr. Speaker, Sir, I hope the correction of the error on the Order Paper has been noted. The Question is directed to the Ministry of Finance and not the Office of the President.

Mr. Speaker, Sir, I beg to reply.

(a) No, I am not aware that Mrs. Prisca N. Werunga deposited Kshs40,000 with United Trustee Finance Limited for six months fixed deposit on 12th July, 1990 and that she was issued with receipt No. 000740.

(b) In view of the answer in (a) above, I am unable to direct the finance company to release Mrs. Werunga's money.

Mr. Sifuna: Mr. Speaker, Sir, I would like to know from the hon. Assistant Minister, since I have already provided the receipt number, whether he has checked with this United Trustee Finance Company to find out whether they have that receipt number. If so, whom does it belong to?

Mr. Koech: Mr. Speaker, Sir, we are all aware that United Trustee Finance Limited came to liquidation in 1990 and it was unable to settle all the claims for its depositors because of the

mismanagement of the financial institution. So, in this regard, there is no money to pay.

Mr. Sifuna: Mr. Speaker, Sir, may we know which is which? Is it because the finance company has no money to pay, or Prisla has not deposited the money? If it is so, can Mrs. Prisla produce that receipt number, and upon producing it, would this financial institution then be able to pay her all her dues plus interest?

Mr. Koech: Mr. Speaker, Sir, as I answered before, Prisla Werunga, like other depositors, had to lose because of the mismanagement of the financial institution. So, there is no way we can pay. Even if we got the receipt number and the details, there is nothing which can be done to salvage this money.

Mr. D. Otieno: On a point of order, Mr. Speaker, Sir. The Assistant Minister is misleading the House. It is public knowledge that the United Trustee Finance Limited was in liquidation since 1990. But Kshs40,000 is below the Kshs100,000 protected deposit. So, it is expected that the Assistant Minister should tell us whether the deposits of United Trustee Finance Limited were protected or not, and if not, why not? If they were protected, the lady should be paid.

Mr. Koech: Mr. Speaker, Sir, the United Finance Limited was not protected.

Hon. Members: Why not?

Dr. Lwali-Oyondi: Mr. Speaker, Sir, could the Assistant Minister tell this House whether this United Trustee Finance Limited had any assets? If it had, were those assets disposed off?

Mr. Koech: Mr. Speaker, Sir, the assets of the United Trustee Finance Limited had already been attached by the land-lord, who had not been paid his dues. So this put the financial company in such a mess that there was even nothing to retrieve from this financial Institution.

Question No.432

COMPLETION OF TIMAU HEALTH CENTRE

Mr. Mwiraria asked the Minister for Health:-

- when the Ministry intends to complete the construction of Timau Health Centre which has been under construction for over five years;
- when he expects the centre to become fully operational; and,
- what services will the centre be offering when it becomes fully operational.

The Assistant Minister for Health (Mr. Criticos): Mr. Speaker, Sir, I beg to reply.

(a) Timau Health Centre is still under construction and we cannot be specific about the exact date of completion, because this will depend on the funding level. A sum of Kshs10 million is required to complete the project while the funding in 1995/96 allocated to this project was Kshs1 million.

(b) No specific date has been given and the centre can only be fully operational when all the remaining works are done, as well as the delivery of equipment and posting of staff to man this facility.

(c) Once the facility becomes fully operational, it will offer both out-patient and in-patient services.

Mr. Mwiraria: The Minister sought the indulgence of the House two weeks ago, to go and look for a better answer. Unfortunately, he has come back with the old answer and it is even worse because, we already have the new estimates. Since this project was given Kshs1 million during the last financial year and Kshs600,000 was re-allocated during the Supplementary Estimates and in this financial year you have only got Kshs800,000 this means, at this rate, the Ministry will take 13 years to complete the Timau Health Centre. Could you provide a little more money than K£40,000 or K£20,00 as you have been giving during the last five years?

Mr. Criticos: I sympathise with the hon. Member because he claims that this is the same answer which I read last week. I went to the PS to discuss it with him, because the amount which is required to complete the project is a lot. I agree with the hon. Member when he says it will take 13 years to complete this project. We should try and look for more funding. He has assured me that the only funds he has got are those in the Estimates and he cannot due anything more. I am afraid this is all that I can give to the House and the hon. Member.

Mr. Maore: Mr. Speaker, Sir, going by the answer given by the Assistant Minister, he did say that the completion of this project depends on the funding levels. Can he explain who is supposed to do the funding if the Assistant Minister is addressing some entity outside the Ministry? When do you intend to complete the project as per the Ministry's terms of contract with the contractor who is already on site?

Mr. Criticos: Like I said earlier, and I would like to repeat it for the benefit of hon. Maore, is that there is no money available for this project which requires Kshs10,464,600 to be completed. However, the Ministry is doing its level best to try and look for an NGO to do this project for example, DANIDA or any other organisation. If anybody, the local Member of Parliament included, has anybody in mind whom he can approach, we are ready to assist. The Government, through the Ministry of Health, does not have those funds to complete the Health Centre.

Mr. Mwiraria: I am really flabbergasted. The Assistant Minister knows, in fact, that my Question was wrongly framed. The Project started over 10 years ago. It continues to get a little trickle at a time. All the buildings are not ready and as it stands there, this year, the Ministry is providing for the construction of new health centres elsewhere. When will the Government stop wasting money because at Timau today, there is a lot of money piled up which cannot be used. There are lots of incomplete buildings. What is the Government policy on completing started projects instead of starting new ones, which will not be completed either?

Mr. Criticos: We do have a problem in our Ministry especially on self-help projects like health centres and dispensaries. When wananchi go and raise money in good faith for the dispensaries, some of them are completed while others are not completed. Eventually, the Ministry is made responsible for the completion of these dispensaries. However, we do not have the money to complete this project. We require Kshs10 million which we do not have. Our hands are tied.

Question No.741

ALLOCATION OF GOVERNMENT HOUSES

Mr. Speaker: Bishop Tanui is not here? Next Question.

Question No.373

MAINTENANCE OF TEA AND COFFEE ROADS

Mr. Mutahi, on behalf of **Mr. Mathenge**, asked the Minister for Public Works and Housing:-

- whether he was aware that access roads in tea and coffee areas are in deplorable state;
- whether he was further aware that tea and coffee produce from Nyeri District continue to earn Kenya substantial amount of foreign exchange; and,
- what measures he was planning to take in order to ensure proper maintenance of the access roads in Nyeri.

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

(a) I am not aware that tea and coffee access roads are in a deplorable state.

(b) I am aware that tea and coffee produce earn Kenya a substantial amount of foreign exchange.

(c) The Government has plans for routine maintenance of classified road network in Nyeri this Financial Year. Furthermore, further technical assistance will be made available to tea roads committees as and when Kenya Tea Development Authority makes tea cess funds available for roads maintenance. My Ministry is not responsible for the maintenance of coffee access roads; that is the responsibility of the Ministry of Local Government.

Mr. Mutahi: It is a great shame for the Assistant Minister to say that he is not aware that coffee and tea access roads are impassable. It was the day before yesterday that this Ministry answered a Question from hon. Michuki. Last week, another one was answered by hon. Col. Kiluta about Embu. I want to make the assistant Minister aware that coffee and tea access roads are not accessible in Central Province. Can the Assistant Minister tell the House how much money has been allocated for these roads? You have said that there are some funds which are going to be available. Can you tell us the figures? What is the amount that you are going to give to tea and coffee roads?

Mr. Mwamzandi: For the information of the hon. Member, tea and coffee roads are not the responsibility of my Ministry. We only provide technical assistance to the cess committees. In any case, for routine maintenance and grading minor roads programme, even safety roads, we have K£17,328,000 for that area.

Mr. P. N. Ndwiga: I think we are getting mesmerised by the answers we are getting from this Assistant Minister. Two weeks ago, the Minister for Agriculture, Livestock Development and Marketing admitted in this House that he is aware that a lot of tea and coffee is going to waste in Embu District. Now,

we are being treated to a similar scenario; it is the same in Nyeri District, Embu District and in Meru District. Tea and coffee roads are not accessible. The Assistant Minister has talked about tea cess committees. In these places, KTDA takes tea cess to the district commissioners. The Ministry is supposed to provide technical assistance the tea cess committees. The Ministry should identify these roads. Could the Assistant Minister, therefore, tell this House, what his Ministry is going to do, to make use of the cess money they have collected from tea and coffee growing areas, if they do not have any other money?

Mr. Mwamzandi: Mr. Speaker, Sir, my Ministry is only responsible for roads other than those ones the hon. Member is talking about, and immediately the money is available from the Tea Cess Committee, we are going to assist.

Mr. Murungi: Mr. Speaker, Sir, I have read in the Press that the European Union (EU) has allocated Kshs 700 million for tea and coffee roads in Eastern Province, but the Ministry has refused to sign the agreement. Can the Assistant Minister tell this House why the Government does not want tea and coffee roads in Eastern Province to be maintained through that Fund?

Mr. Falana: That is very serious!

Mr. Mwamzandi: Mr. Speaker, Sir, that is entirely a different Question and if the hon. Member was able to ask such Question, he would have been told exactly what is happening.

Mr. P.N. Ndwiga: On a point of order, Mr. Speaker, Sir. The Assistant Minister is introduced the issue of Cess and the Cess Committee. The reason why the EU is asking the Government to sign this contract is because they are also demanding that they be told how the Cess money is being used and this Ministry is dragging its feet. Is he in order, therefore, to refuse to answer that straight Question? Is he in order? Mr. Assistant Minister, stand up!

(Laughter)

Mr. Mwamzandi: Mr. Speaker, Sir, my Ministry is not responsible for any Cess money. My Ministry only becomes apart to it when the money has been allocated to it.

Mr. Mwaura: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to continue persisting that the major Ministry which is in charge of roads in this country, can refuse to undertake the maintenance of roads which really are the economic pipeline of this nation? Would your Ministry consider advising the county councils how to manage these roads so that they can take-over these roads?

Mr. Mwamzandi: Mr. Speaker, Sir, we have been advising and providing technical assistance to the county councils with respect to these roads. But we are not responsible for their maintenance. We are only responsible for other roads in that area and that is why I said earlier on that we have allocated Kshs 17.3 million for those roads.

Mr. Speaker: Mr. Kiraitu's Question.

Question No 093

FUNDS FROM ROAD MAINTENANCE LEVY

Mr. Murungi asked the Minister for Public Works and Housing whether he could confirm that the funds from the Road Maintenance Levy are kept in a special fund and that they form part of the Consolidated Fund.

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

The funds from the Road Maintenance Levy are not kept in a special account that forms part of Consolidated Fund, but the Levy is accounted for as Appropriation-In-Aid and utilised on road maintenance under Vote R13 of the Printed Estimates approved by Parliament.

Mr. Murungi: Mr. Speaker, Sir, I am shocked by that answer. This House passed an Act of Parliament, the Roads Maintenance Levy Act of 1993, and was amended in 1994. Section 7 sets up a special fund and under Section 7 (4), it states:-

"There shall be paid out of the Fund such monies as approved for the repair and maintenance of public roads".

Mr. Speaker, Sir, can the Assistant Minister explain to this House, why those special funds for maintenance and repair of roads have not been established despite the clear provision of this Act?

Col. Kiluta: Mr. Speaker, Sir, for the benefit of the hon. Member, last year, he approved the same funds under the A-I-A and this year they appear in the Printed Estimates on page 659.

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

Dr. Otieno-Kopiyo: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: What is it, Dr. Otieno-Kopiyo?

Dr. Otieno-Kopiyo: Mr. Speaker, Sir, the point is very clear that the law says that the Fund will be put in a special kitty and it is incorporated in the Consolidated Fund. The Assistant Minister is being asked why he is violating the law.

Col. Kiluta: Mr. Speaker, Sir, we are not violating the law. Last year, we established the Road Maintenance Levy Fund and we brought it to Parliament, and you amended the law. We are agreed to we put it under A-I-A, and it was approved here in this Parliament. You said that the excess money that would be left after spending what you approve, should be taken back to the Exchequer and that is what is we did and, even this year, we did the same.

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

Mr. Speaker: Order! It is Question time, Mr. Mulusya. What is burning you?

Mr. Mulusya: Mr. Speaker, Sir, you know well that in 1995 there was no amendment to the Road Maintenance Levy Act which was brought to this House. Is the Assistant Minister in order to say that they brought an amendment in this House and it was approved? When was it approved? Is he in order? Can he tell us?

Col. Kiluta: Mr. Speaker, Sir, I said that the amendment was brought to this House in 1994. We tried to establish that Fund, but it did not work. Then we had to put it under A-I-A and it was approved by Parliament, and it was also approved in the subsequent years. Why did you not complain then?

Mr. Muite: Mr. Speaker, Sir, the Assistant Minister has agreed that the money which this Government raises through the Road Maintenance Levy is actually not put into a special fund. Would he agree that the reasons why this Government has failed to comply with the law and acting in breach of the law is because the Road Maintenance Levy Fund which is supposed to be used for the maintenance and repair of roads, is, in fact, never used for that purpose, but that is the money they are using for Recurrent Expenditure to pay salaries and to meet the normal operations of the Government? Does he agree that is the reason why the Government would not put the Road Maintenance Levy into a special fund?

Col. Kiluta: Mr. Speaker, Sir, I do not agree.

Mr. Murungi: Mr. Speaker, Sir, the Assistant Minister does not know what he is talking about.

Col. Kiluta: I know!

Mr. Murungi: Mr. Speaker, Sir, I talked with the Minister himself, hon. Prof. Ng'eno, and he told me that he is very frustrated because he has to go to beg for this money from the Treasury, although we voted the money for roads. Can the Assistant Minister confirm to this House, that from now onwards all the money from the Road Maintenance Levy will be put in a special fund and it will not be used for any other purpose?

Col. Kiluta: Mr. Speaker, Sir, there is a difference between Prof. Ng'eno and Colonel Kiluta and I am not aware that he is frustrated.

Dr. Lwali-Oyondi: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to say that what he is stating here will be different from what Prof. Ng'eno said when it is one and the same Ministry?

Col. Kiluta: Mr. Speaker, Sir, I am not aware of the conversation between the hon. Questioner and Prof. Ng'eno. If he wanted Prof. Ng'eno to answer the Question, then he should have said it from the word go.

Mr. Achieng-Onoko: Mr. Speaker, Sir, is it not true that the funds that we are discussing now are normally used when the Government is on a tour of a certain area to gravel some roads for "the Government" to pass through without difficulties.

Col. Kiluta: Mr. Speaker, Sir, I have got a lot of respect for the hon. Member first because of his age and secondly because of his experience but I did not expect such a cheap question from him.

Mr. Anyona: On a point of order, Mr. Speaker, Sir. This is a very serious matter. The Assistant Minister has admitted that this money has not been put in the Consolidated Fund accounts and yet Section 99 of the Constitution, paragraph 2 reads as follows:-

"Provision may be made by or under an Act for any revenue or other monies received for the purposes of the Government of Kenya be paid into some public fund other than the Consolidated Fund established for a specific purpose or to be repaid by the authority that received them for the purpose of defraying the expenses of that authority but no money shall be withdrawn from any such public fund unless the issue of those monies has been authorised by or under an Act of Parliament"

In which case, this Government is actually breaching the Constitution, if they have been putting this money in other accounts other than the account for which it was authorised by this Parliament. Can he explain that?

Col. Kiluta: Mr. Speaker, Sir, I said from the word go that this money is voted for. If you have patience, you vote for money which you expect us to collect from the word go, like you vote for money by saying that "This year the Ministry will be expected to collect so much money". The only way that you can account for money collected elsewhere as is under Appropriations-in-Aid. So, the money is not in the Consolidated Fund but the excess is what we put in the Consolidated Fund.

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

Mr. Speaker: I am sorry, Mr. Mulusya. Proceed, Mr. Shikuku.

Question No. 305

PAYMENT OF COMPENSATION TO MR. MBAYA

Mr. Shikuku asked the Minister for Tourism and Wildlife when Mr. Dixon F.T. Mbaya will be compensated for his cow as per the Ministry's letter Ref. WCMD/KAK/COMP/22 Vol II(71) dated 21st October, 1986.

The Assistant Minister for Tourism and Wildlife (Mr. Sing'aru): Mr. Speaker, Sir, I beg to reply.

The Government is looking for funds to pay all the Wildlife compensation claims that had not been settled by my Ministry before the amendment of the Wildlife Conservation and Management Act, Cap 376 of the laws of Kenya in 1989.

Mr. Dixon F.T. Mbaya is among the pending claimants and he will be informed of the outcome once this exercise is finalised.

Mr. Shikuku: Mr. Speaker, Sir, arising from that absurd reply from the Assistant Minister, is he aware that I am talking of 1986 which is ten years ago for this man to be compensated for his cow and up to now, the Ministry is still saying of that "he will be informed of the outcome of his case". How long should he wait because some people even die before they get their compensations? Does he not realise that ten years is a long time?

Mr. Sing'aru: Mr. Speaker, Sir, after the amendment of the Wildlife Conservation and Management Act, Cap 376, nobody was paid up to date and Mr. Mbaya is among the pending claimants.

Mr. Shikuku: Mr. Speaker, Sir, arising from that reply, from 1986 and since the time that I submitted this question, has the Assistant Minister found it necessary to bring the so called amendment he is talking about in this House? How long will it take him to bring the amendment?

Mr. Sing'aru: Mr. Speaker, Sir, we are going by the Act. That Act has tied the Ministry not to pay anybody when it was amended.

Mr. Falana: Mr. Speaker, Sir, the Assistant Minister talks of looking for funds. I do not know where the Ministry is looking to get this money from. This is a very common case all over the country: crop, human life and livestock compensation and he confesses here that they have not been able to pay for the last ten years or so. Could he tell this House, and the nation at large through the Chair, when they will pay this money? This is because there are so many Kenyans who are victims of this situation. If they have no hope, be very honest and tell them that they will not be compensated, and if there is a pledge that you want to "eye" or look for that money, tell us and how long it will take before your "looking" can spot something?

Mr. Sing'aru: Mr. Speaker, Sir, the Government is still consulting on how best it can settle all these claims because it is not for one particular man; but for all Kenyans.

Question No. 278

DE-GAZETTEMET OF FOREST LAND

Mr. Gichuki asked the Minister for Environment and Natural Resources why the three hundred acres in Ndaragwa forest have not been de-gazetted to enable the settlement of squatters living within Ndaragwa township.

The Assistant Minister for Environment and Natural Resources (Mr. Abdi): Mr. Speaker, Sir, I beg to reply.

The process leading to the de-gazettement of 10.3 hectares which is two hundred and seventy three acres, or close to three hundred acres, from Ndaragwa forest for expansion of Ndaragwa township is under way. Survey, boundary plans and schedules for legal and de-gazettement notices have been prepared. Subject to accurate verification of all the groundwork, the Ministry of Environment and Natural Resources will then de-gazette the site for expansion of Ndaragwa township.

Mr. Gichuki: Mr. Speaker, Sir, that is an amorphous answer from the Assistant Minister with no specifics. The area that I am talking about is already bare and there are no trees. If I may tell this House, the Government came there sometimes early last year and we, as local leaders, requested the Government for this area to be de-gazetted and---

Dr. Otieno-Kopiyo: On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Kiluta to mislead the House and then he crosses to this side and confesses that he was only avoiding an awkward situation for the Government?

Hon. Members: Throw him out!

Mr. Murungi: Col. Kiluta is my friend and I do not know why hon. Dr. Otieno-Kopiyo is spreading malicious---

Mr. Speaker: Order, hon. Murungi! You see you are now taking over and conducting business as if we are in a baraza. You must stand on a point of order. As far as the Chair is concerned, the private consultations between Members are out of my hearing and out of the business of the House. Proceed, Mr. Gichuki.

Mr. Gichuki: Mr. Speaker, Sir, as I was saying, we as the local leaders requested the Government to de-gazette the said area and the Government accepted in that meeting which took place early last year. Could the Assistant Minister, therefore, be specific because the answer he is giving is quite open to abuse and it has no time frame? Could he be specific and say when we are going to have the actual de-gazettement of the area so that the squatters can be settled and the township also expanded?

Mr. Abdi: Mr. Speaker, Sir, there is a difference between Prof. Ng'eno and Col. Kiluta, and I am not aware of the degazettement of Ndaragwa Forest, as I can give the boundary plan No.175/320 signed and already issued by the survey of Kenya and has been drawn for the site. So, the Questioner should not panic because the Survey of Kenya has already completed that work and the degazettement will be done very soon.

Mr. Ndicho: Mr. Speaker, Sir, we feel a bit encouraged by the Ministry of Environment and Natural Resources and it is good if they are agreeing that they are doing this kind of thing to settle the landless people in Ndaragwa. I am worried because there are so many Kenyans who are landless and the forest that the Ministry is degazetting for settlement of Kenyans is going to the wrong people because it is those people who have got land who have been given more in these areas. Could the Ministry formulate a policy whereby if such a case arises, it is only the people who are genuinely landless who will be given this kind of land because it is the haves who have got it and the have-nots are not getting anything?

Mr. Abdi: Mr. Speaker, Sir, the present Government has done a lot through my Ministry to degazette the forest for those who are not having land all over the country. The question of how the distribution is done will entirely be based on the District Development Committees where the hon. Member is one of the members.

Mr. Gichuki: Mr. Speaker, Sir---

Mr. Speaker: Order! Mr. Gichuki, when you are called to order and I have moved to another Question, do not forget that there are other Members who have Questions. I hope you are not going to argue.

Mr. Gichuki: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to insist that he is going to degazette 300 acres of forest in Ndaragwa township? He is not giving us the specific time when he is going to do it. He is saying "soon". Is he in order?

Mr. Speaker: That is not a point of order. But anyway---

Mr. Abdi: Mr. Speaker, Sir, for the benefit of the Member, I just want to give him very important information that the Ministry has already done everything possible to hand-over this work to the Survey of Kenya. So, people in Ndaragwa township will get land very soon.

Question No. 753

MARKETING OF WOMEN CO-OPERATIVE PRODUCTS

Mr. Imana asked the Minister for Co-operative Development:-

(a) whether he is aware that Turkana Women Handcraft Co-operative Society Limited is being exploited by middlemen who offer very low prices for the handcraft products; and,

(b) if the answer to "a" above is in the affirmative, whether he could put into place alternative measures to enable the society members to benefit

fully from their products by marketing their products within the country and abroad.

The Minister for Co-operative Development (Mr. Munyi): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware and I would like to tell the hon. Member that I am very happy that he has managed to raise this issue in the House for the Members to know that women in Turkana are being exploited by middlemen. All I want to say is that my Ministry is doing everything possible to help the co-operative movement in Turkana to export its products and everything possible will be done to get a good market in foreign countries.

Mr. Imana: Mr. Speaker Sir arising from the Minister's reply, he agrees that middlemen have exploited Turkana women. But what is the Ministry doing to assist the Turkana Women Handcrafts Society to get a better market for their products because right now at the source, the price of a basket is only Kshs100, but when you come to Limuru or Nairobi, the price is Kshs800? What is the Ministry doing to assist these women to get a better price in Nairobi or even abroad?

Mr. Munyi: Mr. Speaker, Sir I want to tell the hon. Member that I went to Lodwar and I saw what the women groups are doing there. All I have told the District Co-operative Officer and Trade Officer is to contact women there so that my Ministry, as we have been doing with other co-operative societies elsewhere, can help them to get a market in America, Canada and in other foreign countries. This is because I am sympathise with them and we have taken action.

Mr. Anyona: Mr. Speaker, Sir, this Minister has been here for along time as a Member of this House. He is very long on words but very short on action. He has admitted that he is aware, and he even went there and saw that Kenyans were being exploited and yet he has done nothing about it. Could he now tell us what he is going to do because those words mean nothing?

Mr. Munyi: Mr. Speaker, Sir, though the Member is trying to put words in my mouth, I have said that we are doing everything possible to help those women so that they are not be exploited in future.

Dr. Kituyi: Mr. Speaker, Sir, unfortunately it is very difficult to get this hon. Minister to answer a question about specific measures. This Minister is supposed to know that promises of help by his Ministry did not assist the Fishermen Co-operative Society of Turkana which collapsed because of inactivity from his Ministry. These women of Turkana have been having the basket problems since the 1980s. The District Co-operative Officers and Trade Officers of Lodwar cannot explore external markets for the produce in Lodwar. What is his Ministry doing beyond looking around for everything specifically to reduce this problem?

Mr. Munyi: Mr. Speaker, Sir, just to be even more specific than the specifics he is talking about, I have already directed my Ministry officials to go to Lodwar, meet those women and discuss with them on how they will export their products.

Mr. Mulusya: On a point of order, Mr. Speaker, Sir. The Minister has been asked a question on what he is doing to make sure that those women get a market for their products to avoid being exploited. What he is saying is that he has sent his officials to go and get information from the women and yet the women do not have the market. What is he doing? Is he in order to refuse to tell us what he is supposed to be doing?

Mr. Munyi: Mr. Speaker, Sir that is the survey I am talking about and that is a practical action which my Ministry is taking.

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. Could you kindly ask the hon. Minister to move away from the microphone? My eardrums are almost bursting and his size also big; we can hear him.

Question No.682

PAYMENT OF EX-EMPLOYEES TERMINAL DUES

Mr. Ojode asked the Minister for Labour and Manpower Development:-

- whether he is aware that ex-employees of East African Road Services (EARS) have not been paid their terminal benefits to date;
- whether he is aware that a total of Kshs14,665,245.00 was paid to Messrs Shelufa by the United Transport Overseas Company Limited which is the mother company of EARS in June, 1988, in order to pay workers their terminal benefits; and,
- if the answers to "a" and "b" above are in the affirmative, if he could direct and order the management of Messrs Shelufa which took over the assets of EARS to pay all ex-employees of the said company their terminal benefits together with accrued interest.

The Assistant Minister for Labour and Manpower Development (Mr. Ali): Mr. Speaker, Sir, I beg to reply.

- All statutory benefits due to the employees of East African Road Services were paid by joint receiver managers in 1991.
- I am not aware.
- Since I am not aware, no action is required.

Mr. Ojode: Mr. Speaker, Sir, you have heard the answer. This is a ploy. The Assistant Minister is misleading the House that there are some ex-employees of EARS who were paid. I have names of 421 ex-employees of this company who have not been paid to date. In fact, the Minister should have been here because he is very conversant with the problem of these people. Could the Assistant Minister tell us who were the employees they paid and how much was paid?

Mr. Ali: Mr. Speaker, Sir, the total amount paid was Kshs587,429.20 through cheque No.081880 for payment of statutory benefits and the number of employees who were paid was 280.

Mr. Ojode: Mr. Speaker, Sir, I wish to ask the indulgence of the Chair for the Assistant Minister to be serious because we are talking of the plight of the workers. If I pose a question to him on when this company went under receivership, he would not answer. The 421 ex-employees have not been paid to date and nobody has received any money. I have a dossier here that I will table. A total of Kshs16 million was paid by the parent company; the United Transport Overseas Company of London, for these people to be paid. Mr. Kassim Lakha who was the receiver colluded with Shelufa Directors and they "ate" all the money. This is the same money which was used to purchase the OTC, and he is aware of all this. Could he be serious for today only and tell the House when he is going to consider or order the payment to the rest of the employees whom he claims have been paid?

Mr. Ali: Mr. Speaker, Sir, although the hon. Member was not specific in his Question, I have documents to show that Messrs. Kassim Lakha never received the Kshs14,665,245.00 as alleged. However, the liquidation is still in the process and the ex-employees will be given first preference over the others.

Mr. Anyona: Mr. Speaker, Sir, this is the Assistant Minister in the Ministry of Labour and Manpower Development and they are supposed to look after the welfare of Kenyans. This Ministry is conspiring with employers to exploit Kenyans! The Assistant Minister has answered two Questions and insisted that he was right when, in fact, the crux of the matter is that he was not right. For example, the Question about Naivasha, that company is operating illegally yet he insisted that they fired Kenyans lawfully. Now, you can see that he is trying to cover up the issue. Can this Assistant Minister not go back and bring a proper answer to this House?

Mr. Ali: Mr. Speaker, Sir, the hon. Member is asking a different Question. However, there is very little we can do when a company goes under liquidation.

Mr. Kamuyu: Mr. Speaker, Sir, it has become more than obvious that this Assistant Minister is either most unprepared to answer this Question, scared or uninformed. Can he go back and do a little bit more research and bring a better answer to this House because complaints by ex-employees of this company have also reached me? This is a very deep matter. Can he please go back and come with a better answer?

Mr. Ali: Mr. Speaker, Sir, I am really satisfied with that answer and there is very little we can do once a company goes under liquidation. However, ex-employees' unpaid severance benefits fall under unsecured creditors.

Mr. Ojode: Mr. Speaker, Sir, through you, could the Assistant Minister go back and do his investigations and report back to the House his findings? I have letters here that have been written to the Government itself, and I have the names of these ex-employees that I am going to lay on the Table.

(Hon. Ojode laid the documents on the Table)

I have even tabled the letters which had been written to the Government three times and to the Attorney-General. Mr. Speaker, Sir, through your Chair, could the Assistant Minister go back to his office, do research and then let Kassim Lakha and Shelufa pay the benefits to the employees?

Mr. Ali: Arising from the last question by the hon. Member, investigations will be carried out.

Mr. Speaker: Very well. For the second time, Bishop Tanui's Question!

Question No. 741

ALLOCATION OF GOVERNMENT HOUSES

Mr. Speaker: Bishop Tanui still not here?

*(Question dropped)***QUESTIONS BY PRIVATE NOTICE****DISAPPEARANCE OF ARMY CORPORAL**

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

(a) Is the Minister aware that Cpl. Stephen Njiru Jonah, P/No.53157, has disappeared from the Kenya Armed Forces and his family does not know his whereabouts?

(b) Is he further aware that his family is extremely concerned about his safety?

(c) In view of the above facts, could the Minister inform this House the whereabouts of Cpl. Njiru?

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

(a) I am very aware of the very unfortunate situation that Cpl. Njiru disappeared from the Armed Forces and his whereabouts are unknown to the family and to the Kenya Army.

(b) I am further aware that his family is concerned about his safety.

(c) The whereabouts of Cpl. Njiru is still unknown. He took his annual leave from his desk at the Department of Defence on 28th June, 1995 to 29th July, 1995. He was expected to report back for duty on 30th July, the same year, but he did not. On Monday, 31st July, 1995, his absence was noted and reported accordingly.

Mr. P.N. Ndwiga: Mr. Speaker, Sir, this is a very very sad reply coming from the Assistant Minister who is also my friend. It does appear that the Department of Defence is withholding information from the Minister because the truth is that Cpl. Njiru was last seen in February, 1995, and the family had been inquiring about this whereabouts since February, 1995. You notice the answer given here is that he went on leave on 28th June, 1995. A man who had been missing for four months could not go on leave! He was not on duty. Could the Assistant Minister perhaps confess that he does not have adequate information because what I am giving him is the correct information? Could he perhaps go and investigate further the matter and bring a proper answer to this House?

Mr. Manga: Mr. Speaker, Sir, the information from the officer's file shows that the officer went on leave on 30th June and he was supposed to report back on 29th July. If what the hon. Member is saying is correct, then I want to say that the Department has gone further in establishing **[Mr. Manga]** a Board of Inquiry to investigate the whereabouts of this officer and the machinery of the Military Police and the civilian police has been put in place to investigate this situation.

Therefore, if the hon. Member has any information, I kindly ask him to come and see me in the office, so that I can give that information to the Board of Inquiry.

Dr. Lwali-Oyondi: Mr. Speaker, Sir, it would appear that the security forces are not all that secure themselves. This is evident from the fact that there is now a dispute about the disappearance of this particular officer. The hon. Member concerned has been given information by the wife and on the other hand, the authorities in the armed forces have come up to state that this man went on leave four months after he had disappeared. This shows that there is some cover-up. Would the Assistant Minister tell this House whether he is going to look at this particular situation from that cover-up point of view?

Mr. Manga: Mr. Speaker, Sir, as far as I am concerned, there is no reason as to why the Department of Defence would be putting up a cover-up for a person who just disappeared from the service. As I have said, the Department is very concerned and it is very sorry about this, and it has established a Board of Inquiry to look into the matter.

Mr. Anyona: Mr. Speaker, Sir, the disappearance of a military officer from the service is a very serious matter. The impression I am getting right now is that this Assistant Minister is not very serious about this issue. Can he tell us in detail, from the time they knew that this officer was missing, whether it was in February of June, what investigation took place and how much more investigation is required to establish the fate of this man.

Mr. Manga: Mr. Speaker, Sir, in normal circumstances, according to the Act, the Department of Defence establishes an inquiry. The Inquiry is expected to report back the findings. From there, then the Department would decide.

Mr. P.N. Ndwiga: Mr. Speaker, Sir, I want to assist the Assistant Minister. I just said that the family realised that Corporal Njiru was missing way back in February, 1995. The mother of Corporal Njiru went and saw Brigadier Kamuti at the Department of Defence. At that time, they actually confirmed that the man was not on duty. This was way back in March, 1995. So, the story of the man going on leave and not re-appearing again cannot be a true story. Could the Assistant Minister, and I am insisting, go and do his investigations and bring the answer in this House? We want the answer in this House. When can he give us that answer?

Mr. Manga: Mr. Speaker, Sir, I do not want to promise to go and do an inquiry on another inquiry. There is already an inquiry established and it is going to come out with a report, and that report will be tabled here.

WATER SHORTAGE IN SAMBURU EAST

Mr. Leshore: Mr. Speaker, Sir, I beg to ask the Minister for Land Reclamation, Regional and Water Development the following Question by Private Notice.

(a) What steps is the Minister taking to alleviate the water problems seriously affecting people surrounding Barsilinga area in Samburu East?

(b) Why has the Barsilinga Borehole not been put to operation?

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

(a) The Ministry is looking for funds to drill another borehole at Barsilinga area. This is because the old boreholes for the grazing fields have been damaged by the community beyond repair, according to the latest assessment report. Meanwhile, I would like to encourage the people from the surrounding areas to make use of the Lochungokwe dam because Barsilinga is only a grazing ground and there are no permanent settlements.

(b) The Barsilinga Borehole has not been put to operation lately because the project's draw pipes are stuck inside and cannot be fished out as the community has topped up the shaft of the borehole with stones. In this regard, I would advise the hon. Member to appeal to his constituents to treat water facilities in the area as their own and stop vandalising them.

Mr. Leshore: Mr. Speaker, Sir, sometimes I think some of these Ministers should do a bit of research because funds have been allocated for this borehole in the 1994/95 and 1995/96 Financial Years, and he is still saying they are looking for funds. Some of these Assistant Ministers should be told to go back and do more research. When are the Assistant Minister going to get a rig, to drill an additional borehole because money is there. Over Kshs500,000 is lying at Maralal treasury, and the Assistant Minister is saying that he is still looking for money. Who is he going to leave those funds for? When is he going to send officers there? I have been to his Permanent Secretary and he has promised to send a team there. When is he going to do that?

Mr. Mokku: Mr. Speaker, Sir, we conduct research before coming to answer questions here. I do not know where the money the hon. Member is referring to is. I do not know whether the Kshs500,000 he was talking of has been allocated during the 1995/96 Financial Year. I think that money has been used to repair a similar project in Samburu East at a place called Lerata. Meanwhile, for this particular project, as I had said earlier, as soon as funds are available, a new borehole will be drilled.

Mr. Leshore: Mr. Speaker, Sir, he is saying: "As soon as funds are available". Did he set aside some funds in this year's Budget? This is because I have been to his office and he promised that he would set aside some funds for this borehole. How much has he set aside?

Mr. Mokku: Mr. Speaker, Sir, for this Financial Year, there were no funds set aside.

Mr. Mulusya: Mr. Speaker, Sir, does the Assistant Minister now agree that they are taking people of that area for a ride? If the hon. Member was promised that money was going to be set aside in 1994/95, 1995/96 and 1996/97 Financial Years, and now there is nothing in the Budget, when will the Assistant Minister set aside money for those people, because they need water?

Mr. Mokku: Mr. Speaker, Sir, that is not the only project in Samburu East, contrary to what hon. Mulusya is alleging. As early as 25th June, 1996, there is one project in Samburu East, that is Lerata which had also been done partially, and it has been completed. So, I deny the allegation.

Mr. Leshore: Mr. Speaker, Sir, Samburu District, or Samburu East needs a rig. This year, they have allocated this district over Kshs2 million for Lerimilimo. We need at least to give those people a good supply of clean water. There are rigs number seven, eight and number one, which are lying in the millionaires settlements in Kajjado. What are those rigs doing there? There are also three rigs in Karen. What are they doing there? Those people are capable of hiring private rigs. When are you going to send a rig to Samburu District? That is what we want.

Mr. Mokku: Mr. Speaker, Sir, if the hon. Member wants an answer on availability of rigs in Samburu or in any other part of Kenya, he can put a question and we will say when rigs will be available in each district.

Mr. Anyona: Mr. Speaker, Sir, I beg to ask the Minister for Co-operative Development the following Question by Private Notice.

In view of the perennial problems at the Kenya Co-operative Creameries(KCC), will the Minister tell the House:-

- (a) What is the current financial and management position of KCC?
- (b) How much money does KCC owe dairy farmers throughout the country and when will this money be paid in full?
- (c) How much money do current and past directors, employees and other debtors owe KCC?

The Minister for Co-operative Development (Mr. Munyi): Mr. Speaker, Sir, I beg to reply.

(a) Currently, the KCC realises an income of Kshs450 million.

(b) Its current expenditure stands at Kshs450,680,458.

(c) The KCC is managed by an elected board of directors. At present there are 10 elected members of the board of directors. The KCC has been having a debt of over Kshs750 million. So, the money owed to the dairy farmers is over Kshs750 million.

Mr. Anyona: On a point of order, Mr. Speaker, Sir. I have a written answer here, but nothing of what this Minister is reading out is in this answer. I do not know whether there are two answers or not. What he is reading out is totally different from what I have here! Which is which. Can he repeat his answer?

Mr. Munyi: Mr. Speaker, Sir, I have said that the total amount of money earned by the KCC is Kshs450 million. As to what debt has been incurred, I have said that the amount is over Kshs450 million.

Mr. Anyona: Mr. Speaker, Sir, I would like you to help the House, because this is a very important Question.

(Loud Consultations)

Mr. Speaker: Order! Order! Can hon. Members consult quietly so that we can follow what is being said about the Question? Mr. Anyona, what were you complaining about?

Mr. Anyona: Mr. Speaker, Sir, this is a very important Question. Clearly, there is something the Minister is trying to hide. If he tries to hide it from this House, then God help him. I have an answer which I would like to read out so that you can assist me in understanding whether it is the same one the Minister is reading out or not. The answer states:-

(a) Currently the KCC realises an income of Kshs450 million per month. Its monthly expenditure stands at Kshs400 million, and has incurred an outstanding debt of Kshs758,147,061.25. That is the first part of the answer. I have not heard him mention any of these figures. The second section of part (a) of the answer says:-

The KCC is managed by a team of 10 elected members of the board of directors who are supported by the management staff.

I have not heard any of this from him. Part (b) of the answer says:-

The KCC Ltd owes dairy farmers Kshs758,147,061.25, being payment for milk delivered in November/December, 1995 and January, 1996. The KCC will be able to pay dairy farmers for these deliveries as soon as it disposes of the present stock of milk products, which are valued at Kshs1,621,781,032".

Finally, part (c) of the answer---

Mr. Speaker: Mr. Anyona what was the---

Mr. Anyona: Mr. Speaker, Sir, I am trying to prove that what the Minister is reading out is different from what I have got here. The final portion is even more important.

Mr. Mr. Speaker: Can he then respond to that?

Mr. Anyona: Mr. Speaker, Sir, let me give him the final figures, since he does not want to give them to us, then he can respond to them. In part (c) he says this:

The KCC Ltd is owed money as follows: current directors nil; past directors Kshs961,743.60; the employees owe KCC Kshs4 million and trade debtors Kshs165,353,001.56.

That is the answer I have here. The Minister has been reading out a different thing. Can he now answer? And he had better wake up! I am telling him that he is asleep! He would be thrown out of this House if only he was not nominated!

Mr. Munyi: Mr. Speaker, Sir, this is exactly what I have even said. Now, the hon. Member is trying to put words into my mouth. I mentioned the figures Kshs450 million and Kshs400 million.

Mr. Orenge: Mr. Speaker, Sir, some time last year a Question was brought before this House concerning the Minister's and the Government's interference, particularly in the appointment or election of the KCC directors. In fact, this Minister stood before this House and said that the directors of the KCC were appointed in accordance with the relevant Act. In fact, the same Minister purported to appoint one Member of this House as the chairman of the KCC. Now, we are seeing the consequences of this Minister's action: The current directors who were popularly elected by the farmers owe the KCC nothing, but those directors who were appointed by this Minister owe the KCC nearly Kshs1 billion! Can the Minister assure this House that he will be more careful and will stay away from the KCC because it belongs to the farmers and not to him and the Government?

Mr. Munyi: Mr. Speaker, Sir, part of what he has said is mere invention: There is nothing like Kshs1 billion. He is trying to be tricky in this matter. What he has said is not true.

Dr. Kituyi: Mr. Speaker, Sir, when the immediate past board of directors of the KCC, which was headed by hon. Chebelyon and Mr. Raymond Moi, presided over the worst decline in the performance of the KCC, there was never any open criticism of their management style and the running down of that corporation throughout its life. Why is it that after they were defeated and replaced by popularly elected leaders, it has become public Government business to tarnish their names? Even top leaders have declared that they will not take their milk to the KCC, and have continued to abuse those in office!

Mr. Munyi: Mr. Speaker, Sir, that is his opinion. But the Government is there to protect the interests of the farmers.

Mr. Anyona: If I were to read that answer, I suppose I would make a better Minister for Co-operative Development than him. If you add those figures, the money owed by former directors, employees and trade debtors is a colossal sum of Kshs170,314,745.16. Can this Minister now give us a breakdown of the former directors who owe money and how much, a breakdown of the employees who owe money and how much, the breakdown of trade debtors who owe money and how much and explain why they have not recovered that money and why they have not recovered that money and why they have not been taken to court?

Mr. Munyi: Mr. Speaker, Sir, I am also very serious because of what has been going on. Some people are trying to blame the Government for nothing. The responsibility has been taken by the Ministry concerned and some of the figures which the hon. Member is mentioning are not correct.

Mr. Wamalwa: Mr. Speaker, Sir, would the Minister take this opportunity to clarify one point? Is KCC under the Ministry of Co-operative Development or is it under the Ministry of Agriculture, Livestock Development and Marketing? Because, quite often we see the Minister for Agriculture, Livestock Development and Marketing making statements about the KCC.

Mr. Munyi: Mr. Speaker, Sir, it is in both the Ministry of Co-operative Development and also the Ministry of Agriculture, Livestock Development and Marketing.

Mr. Speaker: That is the end of Question time! That has exhausted my generosity!

MINISTERIAL STATEMENT

CANING OF PUPILS

The Minister for Education (Mr. Kamotho): Mr. Speaker, Sir, I wish to request the indulgence of the House to make a very brief Ministerial Statement on something which happened yesterday, which is not very palatable and I hope the House will bear with us.

Yesterday, at Ndeiya, in Kiambu District, in a school called Githunguchu Primary School, three teachers, a Mr. Samuel Gichia, Mr. Joseph Mwangi and Tabitha Wangari caned the whole class Eight N students in Githunguchu Primary School in Kiambu at 10.00 a.m.

(Loud consultations)

Mr. Speaker: Order! Order, Members! Can we hear what the Minister is saying!

The Minister for Education (Mr. Kamotho): As a result, a 16 year old student collapsed after the beating and died. Each of the three teachers administered on each child canes. The three teachers are already interdicted and are in police custody. The headmaster who was not in school when the incident took place, has also been interdicted. While investigations by the police and the District Education Officer are going on, I have directed the District Education

Officer Kiambu and the Teachers Service Commission to appoint an acting headmaster and post three teachers to the school to replace the ones interdicted.

The Government wishes to condemn the brutal and unkind treatment of pupils by some teachers and warns that uncompromising action will be taken against such teachers.

I wish to send condolences to the family and the community of the school for the unfortunate and untimely death of the girl.

Mr. Wamalwa: Mr. Speaker, Sir, in the wake of this very sad incident, would the Minister state once and for all whether corporal punishment is permitted in our schools or not? I think it will help a lot to know that.

The Minister for Education (Mr. Kamotho): Mr. Speaker, Sir, as far as the public policy is concerned on this matter, it is not allowed.

Mr. Speaker: I will only give time to hon. Nyanja, to seek some clarification!

Mr. Nyanja: Mr. Speaker, Sir, I am saddened by the news from the Minister of Education. That is where I was born and that is where I come from. Before sending my condolences to the bereaved family and the entire school community, I must give some background about that school.

Mr. Speaker: Order! Order, Mr. Nyanja! I gave you the Floor to seek further clarification from the Minister not to give the background of the school.

Mr. Nyanja: Thank you, Mr. Speaker. Now, the Provincial Administration has a tendency of wanting to run the administration of that school. It is only the other day that plots in that area were being grabbed by KANU hawks in Limuru---

(Loud consultations)

Yes, you must have the background information. We have lost a child and I want to inform the Minister so that he can clarify this matter further. Why is the Government side allergic to the truth?

Mr. Speaker, Sir, when the parents and the children shouted and tried to cry because their land was going, the administration invaded the school and the teachers who are there are appointed by the Provincial Administration. All this is happening behind the back of the Ministry. I am sure the Minister does not know about this. So, I want some light shed on this because it will only help if a small select committee is appointed to conduct an inquiry into the incident, because teachers cannot just start beating school children who are that young. This is primary level, not secondary. What have they done? Why the whole class? There must be something very serious and it is the grabbing of land in that school, there is a lot of politics.

The Minister for Education (Mr. Kamotho): Mr. Speaker, Sir, first of all, I would like to warn against dragging the Provincial Administration into this issue.

An hon. Member: Who are you to warn!

The Minister for Education (Mr. Kamotho): Because it has nothing---

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

Mr. Speaker: Order! Order! He is responding to a point of order!

The Minister for Education (Mr. Kamotho): Mr. Speaker, Sir, there is nowhere in the 16,165 primary schools in this country where a teacher is employed or appointed by the Provincial Administration. As far as discipline of teachers is concerned, it is the responsibility of the Teachers Service Commission and I have already directed the TSC to take necessary action. I do not know how the Provincial Administration comes into this matter. They can only help in the investigations to establish exactly why this happened.

Mr. Speaker: Order! Order! I do not believe that I should take all this time. I have already given Members allocation to seek clarification. It is now about time we went to the Business of the House. I will of course be sympathetic to Mr. Nyanja at an appropriate time. If he wants to put a Question, maybe, he can.

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

Mr. Speaker: Order! Order, Mr. Nyanja! You are already out of order. As I have said, I have already given time. I know it is a grievous matter. I do sympathise, I join in fact, the Minister and the hon. Member for Limuru in condoling the family of this unfortunate child. I know it is a grievous matter and I have given the hon. Member the Floor. I gave the hon. Members also on this side an occasion to seek clarification, and I think, it is just about time we went to the next order.

Mr. Icharia: On a point order, Mr. Speaker, Sir. I worked as an Education Officer for many years, and I think it is most unusual for a whole class to be caned. It think the Minister should take the opportunity to explain to this House, what exactly happened that prompted three teachers to beat the whole class.

Another point is that the Minister said that corporal punishment is not allowed in schools. That is not correct! According to the Education Act, the boys can be caned, but not the girls. Can he go a little further and explain what exactly happened in this school? There seems to have been a crisis. What was the cause of the crisis?

The Minister for Education (Mr. Kamotho): Mr. Speaker, Sir, as I said earlier, I gave an assurance to this House that the District Officer and police and the whole of the Provincial Administration of Kiambu are investigating. I have also sent my officers from Jogoo House to establish exactly what happened. As soon as all the details are available to me, I will be in a position to make further statements in this House.

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

Mr. Speaker: Order! I think hon. Members must do one thing, they must be orderly in their deliberations in this House. When a Member is speaking on a point of order, he shall not be interrupted! I think that is the only way we can go on with the business of this House. Nevertheless, I have heard the Minister saying that he will come back to the House. If Members are not quite happy with what has gone on, maybe, they can follow it in another way on what he has already said. But we must now continue with other business of the House. Next Order!

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

Mr. Speaker: Order! The three of you will not hold the House to ransom. It has become impossible to carry on business with the three of you.

I think the hon. Minister has heard the sentiments of the hon. Members, and I do sympathize, obviously, because a Kenyan child has lost life. You have heard the sentiments of the hon. Members. I do hope by next week when you have all the information from your officers, you will return to the House and give further information to the House.

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

Mr. Speaker: Order! I do not think it is right for hon. Members to create a scene out of this misfortune. I have already said, and the Minister has agreed, that once he has the information from the officers who are now doing investigation, he will return to the House next week and let the House know exactly what happened.

Next Order!

BILL

Second Reading

THE NATIONAL INTELLIGENCE SERVICES BILL

(The Minister of State, Office of the President (Mr. Kones) on 17.7.96)

(Resumption of Debate interrupted on 17.7.96)

Mr. Speaker: I think, Mr. Orengo, you were on the Floor yesterday.

Mr. Orengo: Mr. Speaker, Sir, yesterday---

Mr. Muite: Mr. Speaker, Sir, I rise on a point of order to seek your guidance as to whether it is in order for this House to debate a Bill, the provisions of which effectively amend the Kenya Constitution in important respects without a formal Bill to amend the Constitution being first brought to this House.

The Special Branch, now under their new name called the Directorate of State Security, forms part of the Police Force in this country. That is beyond dispute. The Commissioner of Police who has the sole constitutional authority to deal with the police, his position is created by the Kenya Constitution.

I would like to refer to section 108 of the Kenya Constitution, on page 76 of the Constitution. Section 108, says:

"The power to appoint a person to hold or act in the office of the Commissioner of Police shall vest in the President."

And the marginal note there is appointment, etcetera, of members of Kenya Police Force.

So, Section 108 is dealing with the appointment of members of Police Force. This is the Constitution.

Section 108 (2) says:

"The power to appoint persons to hold or act in offices in the Kenya Police Force except the office of the Commissioner of Police, including the power to confirm appointment, the power to exercise disciplinary control over persons holding or acting in those offices, and the power to remove those persons from office shall vest-

(a) In the case of offices of or above the rank of Assistant Inspector or such ranks other than the rank of Assistant Inspector as may be specified for the purposes of this section or under an Act of Parliament, that power is vested in the Public Service Commission."

The power to hire, determine the terms and conditions of service, discipline, termination of all police officers who are of the rank of Assistant Inspector and above is vested by the Kenya Constitution in section 108(2) in the Public Service Commission.

(b) For those who are below the rank of Inspector, the power is vested in the Commissioner of Police.

Mr. Speaker, Sir, the present Bill seeks to divest those powers from the Public Service Commission and to vest them on other individuals.

The Scheme of Service says "The Director-General---" this is the new office created by this Bill--- "shall, in consultation with the Public Service Commission and the Directorate of Personnel Management, establish a Scheme of Service setting out the terms and conditions for the appointment of officers and employees of the Services which shall provide for--"

To that extent this Bill is seeking to take away powers which, under Section 108 of the Kenya Constitution, are vested exclusively in the Public Service Commission (PSC) and in the Commissioner of Police. The effect of this Bill is to amend Section 108 of the Kenya Constitution. Can we do it? This is the issue on which I am seeking the guidance of the Chair. The PSC, which is mentioned in Sub-section (a) of Section 108 is itself established by Section 107 of the same Constitution. It says:

"Subject to this Constitution, the power to appoint persons to hold or act in offices in the public service and in the service of local authority and so on, including the power to exercise disciplinary control over persons holding or acting in those offices and the power to remove those persons from offices, shall vest in the PSC".

The Chairman and members of the PSC are given constitutional security of tenure in Sub-sections (2) and (3) of Section 107. So, the constitutional arrangement which we have in this country, envisages a situation where public servants in the civil service including the police, will be under the control of the PSC who enjoy political neutrality. That is why they are given the constitutional security of tenure. They are intended to be servants of the law to serve the Kenyan public. That is why they are protected from political manipulation. To the extent, therefore, that this Bill is seeking to change this constitutional order and to give the President power to appoint the two directors, and indeed, to determine their terms and conditions of service, this amounts to a very serious alteration of the constitutional arrangements. Of course, he is a person who is interested in the political affairs in the country.

Mr. Speaker, Sir, Section 106, Chapter 8 of the Kenya Constitution is headed: "The Public Service". There you will see the establishment of the Public Service Commission.

"There shall be a Public Service Commission, which shall consist of a Chairman, a Deputy Chairman and 15 other members". Let me mention in passing that the 1981 decision---

The Minister of State, Office of the President (Mr. Kones): On a point of order, Mr. Speaker, Sir.

Hon. Members: He is on a point of order!

Mr. Speaker: Order! I have just warned the House, a few minutes ago to observe the rules of the House, that a Member shall not be interrupted when he is on a point of order.

Hon. Members: Correct!

Mr. Speaker: But I also urge the hon. Member on the Floor, to strictly confine his speech to the objection he is making to the Bill being unconstitutional. Please, be brief on it.

Mr. Muite: Mr. Speaker, Sir, I was just about to conclude. I was winding up by mentioning that the decision of Mr. Justice Hancox, as he then was, in the Mureithi case in 1981, to the extent that Mr. Justice Hancox, purporting to rely on Section 25 of the Kenya Constitution said that public servants hold office during the pleasure of the President--- Section 25 of the Kenya Constitution says:

"... save, in so far as may be, otherwise, provided by this Constitution of by any other law."

Those opening words in Section 25 of the Kenya Constitution mean that people only hold office at the pleasure of the President in the public service to the extent only that other provisions are not made in the Constitution or in any other law. That is why it says "...save, in so far as, may be otherwise, provided by this Constitution." My point is that this Constitution has otherwise provided in Section 107 and 108. Therefore, the Mureithi decision does not affect the position or the issue which I am raising here.

Mr. Speaker: What are you asking me to do?

Mr. Muite: Mr. Speaker, Sir, I was pointing out that Sub-section 4 says specifically who does not hold office in accordance with this law---

Mr. Speaker: But you are suggesting against that order.

Mr. Muite: Mr. Speaker, Sir, I am seeking your guidance. Here is a Bill--- Can we debate a Bill which effectively amends the Kenya Constitution? It contravenes Sections 107 and 108 of the Kenya Constitution. If we pass it, we will effectively amend the Constitution through the back door. This Government needs to bring a constitutional amendment Bill first to amend Sections 107 and 108, before we can debate this Bill. I am seeking your guidance. If you ask me what we are to do, I will suggest that this Bill be withdrawn and that this Government seeks opinion from---

(Applause)

Mr. Speaker: Order! The Attorney-General is not here. Mr. Kones, are you in a position to respond first?

An hon. Member: Does he understand the issue?

(Loud consultations)

Mr. Speaker: Order! I would, indeed, have been very happy if the Attorney-General was here to respond to what the hon. Member for Kikuyu has had to say, which no doubt will also give the Chair the other side of the story to enable the Chair to make a decision. I am sure the House does appreciate that the matter that has been raised by the hon. Member for Kikuyu concerning the constitutionality, or otherwise, of this Bill being passed is a matter that requires the Chair to address all the arguments raised by the Members properly before I make a ruling. I cannot make a ruling just now because it will be premature. But as we know, the Bill does not become law until it has gone through the Second Reading and goes to the Committee of the Whole House, and I believe I will be able to address this issue in the meantime, and make a ruling before it ever gets to the Committee stage.

MOTION

ADJOURNMENT OF DEBATE UNDER SO 21: THE NATIONAL INTELLIGENCE SERVICES BILL

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. In view of your ruling and taking into account the case made by hon. Muite, could I now invoke Standing No. 21, where I would like to move the adjournment of the debate on this Bill so that it will give the Chair and the Attorney-General time, in the meantime to look at the whole issue?

(Applause)

At any rate, yesterday, I thought we should not have rushed this thing, but in view of the circumstances now, I would like to invoke Standing No. 21 and hereby move that the debate on this Bill be adjourned and during that time, you will be able to make your ruling.

Mr. Speaker: Order! Can we take things at one stage? The hon. Members must know that once a Motion has been moved--- Can we find out whether he has a seconder before we---

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

You can just stand up and then I make my ruling whether it is right.

Mr. Orengo: Mr. Speaker, Sir---

Mr. Speaker: I have not yet allowed the Motion, I just wanted to see whether there was anybody supporting him.

Mr. Orengo: Mr. Speaker, Sir, can I address---

Mr. Speaker: He has not even moved, he has---

Mr. Orengo: Mr. Speaker, Sir, he has moved.

Mr. Shikuku: Mr. Speaker, Sir, I have moved.

(Loud consultations)

Mr. Speakers: Order! Order! We have to get this right. Every procedural issue must be handled properly. Whether it is a Motion that can be moved without notice or things like that, I have got to be satisfied, and there is no hurry.

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

Mr. Speaker: Order, Mr. Kamuyu!

Mr. Orengo: On a point of order, Mr. Speaker, Sir. I want to second the Motion, but I want to also point out that in the practices of Parliament, it is odd for the House to be in abeyance to allow the Speaker to consult. The House should discuss business continuously even when the Speaker is consulting the Clerks.

Mr. Speaker: One thing which I know is that, there is no House in this world, that has ever employed the services of a non-human Speaker. Every human being, therefore, including this particular Speaker, requires time to look at the Standing Order quoted and check whether it is properly quoted. I do not expect to be rushed and thrust over my throat and I must swallow. That, I refuse to do. So, this House is the better if everything that is raised is given sound and proper consideration, particularly by the Chair. Any ruling from the Chair has consequences that follow. So, I do not wish that the House is always in a rush to do something. There must be time to reflect and to consult. In fact, I would like to tell this House that the Speaker of the House is entitled to advice as indeed, is every Member of this House, from the Office of the Clerk. But, the ultimate responsibility to make the decisions, lies squarely on the Speaker. So, please, do not be in a hurry.

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

Mr. Speaker: Order! Order, Mr. Orengo. I would like to ask you to have respect for the Chair. When you are called to order, you must, like every other hon. Member in this House, sit down and stop interjecting. So, I want to deal with Mr. Shikuku's issue first. Mr. Shikuku has quoted to me Standing Order No.21, which reads:

(1) A Member who wishes to postpone to some future occasion the further discussion of a question which has been proposed from the Chair may claim to move "That the debate be now adjourned", or in the Committee of the whole House "That the Chairman do report progress.

(2) The debate on any such Motion shall be confined to the matter of the Motion.

(3) If Mr. Speaker, shall be of the opinion that any such dilatory Motion is an abuse of the proceedings of the House, he may forthwith put the Question thereof or he may decline to propose it.

(4) A Member who has moved or seconded a dilatory Motion which has been negatived may not subsequently move or second another such Motion during the same debate, whether in the House or in the Committee of the whole House.

May I rule straight away that I do not consider, for example, that the claim by the hon. Member for Butere, "That the matter be now adjourned" I cannot rule it to be an abuse of the proceedings of the House. He is perfectly in order to move the Motion of adjournment. I think my opinion on this issue is that the Member is quite right and he is within the Standing Orders to move that Motion. I therefore allow the Motion.

(Question proposed)

Mr. Anyona: I was hoping to contribute to this Bill and in my contribution, I was going to ask for the withdrawal of this Bill under Standing Order No.113. If this Government wants to maintain a decorum of democracy and decency, they should accede to the wishes of the House. I believe that in a matter concerning security like this one, this House must speak with one voice. We should not be divided along the lines of the Opposition versus the Government. This is one Bill over which we should have a meeting of the minds. We shall not have a meeting of the minds if the Government side wants to have it their own way. This is one Bill, that, if the Government wants to have it its own way, it will be your grave forever. I have prepared a long memorandum here in which I have analyzed the weaknesses of this Bill and the failures of this Bill. This Bill cannot be allowed to go as it is. We want this Bill withdrawn so that the matter can be referred to a Committee of Parliament, we have two Committees, E and F. This will enable Members of Parliament sitting in the Committees to contribute ideas.

Without going far, I want to request the Government, and I am glad that the Leader of Government Business is here - If he believes in the unity and harmony of this House and the unity and harmony of Kenya, he should accommodate these views. So, I would like to support the Motion of adjournment.

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. I think the Mover should now be called upon to reply.

(Applause)

Mr. Speaker: Order! Order! The House has not even heard anything from the Government side.

(Laughter)

Mr. Mulusya: They have nothing to say.

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Speaker, Sir, I oppose that Motion of Adjournment. The hon. Members must realise that the arguments that were presented by the hon. Member for Kikuyu, were his arguments. We cannot base our decision on the arguments which I want to submit are wrong arguments of one particular side.

An hon. Member: Mr. Speaker, Sir---

Mr. Speaker: Order! Order! One thing I would have is total order in this House. This is a very important issue and it is not an issue that we will be in disarray about. Can we get everything right?

Mr. Orengo: On a point of order, Mr. Speaker, Sir. Arising out of your ruling, you have said that the debate on this particular Motion must be confined to the issue of adjournment, not on the argument as to whether this Bill is constitutional or otherwise as addressed ably by hon. Muite. We must confine ourselves only to the issue of the adjournment.

Mr. Speaker: Yes, indeed. How did the issue of the adjournment come? Order! How did the adjournment come?

Mr. Gitau: Muite!

Mr. Speaker: Order! It is not from Mr. Muite. Mr. Gitau, you should not interject when I am speaking.

(Laughter)

What the hon. Member for Butere claimed to move that this debate be now adjourned, is because of the reasons given by the hon. Member for Kikuyu, when he stood on a point of order, that the matter is a constitutional issue, and that this Bill does contravene the Constitution. Therefore, it was necessary to sort out that issue first before we proceed. It was as a result, as I said, that I ruled that we can continue, but make that ruling before the Bill ever gets to the Committee Stage because that is where it could be going. That, even after that ruling, the hon. Member for Butere, thought that the best course is for him to move the House to adjourn further discussion on this Bill until that issue is sorted out. That is now the matter for debate. Do we adjourn further or not, the discussion on this Bill? That is what the hon. Sunkuli is addressing and hopes to address.

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Speaker, Sir, there is absolutely no reason to adjourn this debate. A proper notice was given and the Bill was published within the requisite time, and hon. Members have had time to read all the materials that pertain to this particular Bill. There is no reason why a matter that is, in fact, a subject of debate should cause the debate to stop.

Mr. Speaker, Sir, you would be interested to note that the Government side would have answers to what the hon. Members on the Opposition side are saying. At any rate, the Mover of the Bill will have answers whether or not, these matters are constitutional, and that is not a good reason to call for an adjournment of debate on this Bill. It is merely procrastination and a mere delay of the process of passing the Bill.

Mr. Speaker: Order! Order!

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. I do not know whether the hon. Member was here.

Hon. Members: He was not here!

Mr. Shikuku: If he was not there, could he be informed that you were not in a position to make a ruling at that time because it was brought to you abruptly and you also sought to find out if the Attorney-General was present so that he could give his legal opinion, but the Attorney-General was not there? We are not killing the Bill. The only way is to adjourn the debate on this Bill, so that the Attorney-General and the Chair can have some time to revisit the contentious issues. Is it in order for the hon. Assistant Minister to go against your ruling?

Mr. Speaker: Order! Order, hon. Members! As I said when hon. Muite raised that issue as to whether that Bill is constitutional or not: I said "I am not, at this particular moment, in a position to rule either way because it is a matter that requires me to revisit the section that the hon. Member mentioned, both in the Constitution and his arguments". I feel up to this moment that I still require time to do it. It is just a question of whether or not we should adjourn or continue until I revisit that section.

Mr. Anyona: We should adjourn!

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Speaker, Sir, that is what we are saying. I, therefore---

Mr. Speaker: Order! Order! Hon. Members. Quite frankly, I cannot understand why an issue as simple as adjourning a debate should generate too much animosity on both sides of the House. What hon. Members ought to do is to listen to him and he also will give you his reasons. I will give you a chance, he will be listening to you, and then the House will make a decision. Order! Let us not be emotionally charged.

The Assistant Minister, Office of the President (Mr. Sunkuli): With those few remarks, Mr. Speaker, Sir, I beg to object.

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

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Speaker, Sir, first, let me commend you for [The Vice-President and Minister for Planning and National Development] guiding this House by pointing out to us that the issue before the House is whether we do adjourn the House or not.

Mr. Nthenge: On a point of order, Mr. Speaker, Sir. There is confusion as to whether we are adjourning the House or not. We are only adjourning the debate on the National Intelligence Services Bill and then go to the next Order because some hon. Members are confusing the adjournment of the House and the debate.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Speaker, Sir, that is precisely what I had in mind when I referred to you the guidance you gave us, mainly the question as to whether we should adjourn the discussion on this Bill, so that further consultations can take place. While the hon. Member is entitled to make the remarks he made, I personally believe that, indeed, this is going to deny the hon. Members a chance to make their contributions because we are not passing the Bill today. I want to assure this House that the Government is not rushing this Bill. We want as much contributions as much as possible on this Bill and, indeed, what the hon. Member has said, I think it sounded that he could continue to expound on his own contribution and the other hon. Members can build up on that one. Then at an appropriate time, if, indeed, the statements which are made or the arguments made by the Mover of this Motion are so convincing, then the Government will look into this one, and, indeed, effect the necessary amendments. Let me assure this House that it is not the intention, whatsoever, of this Government, to try to push in a Bill here in this House, that would be contrary to the Constitution. But I must, of course, refer the hon. Member to the Constitution which he knows very well that Section 3 makes this quite clear. I am not saying that this does apply to this Bill, but it does state quite clearly that: "The Constitution is---"

Mr. Anyona: On a point of order, Mr. Speaker, Sir. I was really appealing for the magnanimity of both sides of the House, so that we can deal with this matter as one Parliament of one nation. We are not opposed to what the Vice-President and Minister for Planning and National Development is saying, but we are querying how we can continue to debate a Bill that is deemed to be unconstitutional. We shall be acting unconstitutionally in the first place. What we are asking is to adjourn the debate on this Bill. We will not kill this Bill; we need it. I have suffered because we did not have such protection. Can the Vice-President, and Leader of Government Business, please, for once, show magnanimity and either accept this Motion or on your own withdraw the Bill under Standing Order No. 113 so that we can look at its constitutional legality and other implications involved together, and then you bring a Bill here on which we all agree? That is all we are saying and for once, we are asking for wisdom and common sense and everything that goes with it.

(Applause)

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Speaker, Sir, I think the hon. Member got me wrong. I have made it quite clear that it is not the responsibility of the Government, neither will it be the intention of the Government, to move a Bill that is contrary to the Constitution of this country. At the same time the argument is the following: namely, the Government is not pushing for the passage of the Bill today, and I want to assure this honourable House, neither are we pushing for the passage of this Bill tomorrow. What we would wish to do is that the Bill be debated exhaustively and what the tradition has been is---

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. I referred to your earlier ruling about this matter that we do not want to discuss the merits or motives of the hon. Member of Parliament for Kikuyu on what he gave notice of in the House. The issue is that the Motion by the hon. Martin Shikuku is: Do we adjourn to give the Government time to reflect upon what has been said or not? It is not for the Vice-President standing here to start reflecting loudly about a matter which is not yet a Motion before the House. Is he in order?

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Speaker, Sir, I still believe I am very much in order. In fact, what intrigues me now is that when there are so many points of order, then it looks to me that there must be something else other than the debate on this Bill.

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

Mr. Speaker: Order, Mr. Kamuyu! My own understanding on a thing like this, is that the House would like to hear the views of the Leader of Government Business and, I also hope the views of the Leader of the Official Opposition, and it would help matters a lot if Members were to give those Members an opportunity to be heard by this House and then you will make your decision having heard the two sides.

Mr. Kamuyu: Mr. Speaker, Sir, I think that the general mood of the House is that your advice is that we are in agreement that you heard one side of the House through hon. Muite and you wanted to hear the other side from the Attorney-General

[Mr. Kamuyu]

because he has not been in the House. Now, I would like, therefore, to call upon the Mover to reply at this point in time.

(Applause)

Mr. Speaker: Well, order! I am constrained, and I am not quite willing at this stage, to put the question without finishing with the Leader of Government Business and the Leader of the Official Opposition. I think it would make sense that we also hear what Mr. Wamalwa has to say.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Speaker, Sir, indeed, what I was trying to say here--- First of all, I am very happy that the Attorney-General, who is the counsel to the Government, has arrived, and as I speak he will be in a position to come and explain clearly whether there is an inconsistency. But I also wanted to draw the attention of this House, so that whatever decision we make, we do take this thing into perspective because Section 3 of the Constitution does say:

"That the Constitution is the Constitution of the Republic of Kenya and shall have the force of law throughout Kenya and subject to Section 47. If any other law is inconsistent with the Constitution, this Constitution shall prevail and the other law shall to the extent of the inconsistency be void"

That, Mr. Speaker---

Mr. Speaker: Order! Order! Two things will not happen at this stage. I must make it absolutely clear to the House that two things will not happen. The first thing that will not happen is that we will not go away from the Motion of Adjournment and secondly, any presentation by either the Attorney-General, or anybody on behalf of the Government, will have to come after we have disposed off the Motion of Adjournment because for now the issue is, do we or do we not postpone further deliberations of this Bill to another day, and the House must make that decision. It is simple; do we or do we not?

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Speaker, Sir, what I wanted to make quite clear here is the fact that I would wish to urge the House if, indeed, we could allow more Members to continue debating on this Bill so that the inconsistency comes. Then there will be another inconsistency. That really is the issue and let us hear more. Let much more exposition be brought into question. But I think I really want to appeal to the House to ensure that indeed, if there is an inconsistency, let us try to gain the attention of the Attorney-General to put the position clear. But let me also---

Hon. Members: No! No! No!

Mr. Speaker: Order! Order, hon. Members!

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Speaker, Sir, since I can see that there is still a lot of heated debate on this one, I will still insist that the Motion for the time being is uncalled for and I do not support it.

Mr. Wamalwa: Mr. Speaker, Sir, at the outset, the Vice-President and Minister for Planning and National Development, I thought was reaching out to the Opposition in the sense that both sides of this House have a grievous responsibility to this nation and to the development of this Parliament as a multi-party

Parliament; that there are certain issues on which both sides of the House can consult each other and agree amicably in the interest of the nation as a whole. I would like this to be the *modus operandi* on matters, for example, of national security because national security is not just for the Government, but it is for every Kenyan. I am glad that the Vice-President and Minister for Planning and National Development did point out that the Government was not trying to rush this Bill through. But then to spend time making submissions on a Bill which submissions will later be found to be an exercise in futility because it offends against certain sections of the Constitution, I do not think is worthy of this Parliament.

Mr. Speaker, Sir, what is being asked for is not the "killing" of the Bill, but the appreciation and the sagacity of Mr. Speaker, that this question has just been brought all of a sudden and Mr. Speaker needs to reflect upon it and make appropriate consultations as to whether debate should continue or not. That is what this House is asking for, that the Chair be given a chance to reflect upon this and consult with the Attorney-General and so forth. Even if the Attorney-General were to speak now, the Attorney-General is not an encyclopedia of law at any time and he was not even here to know the background. Even he will need to reflect upon these issues and even consult.

Mr. Speaker, Sir, I think we should have the humility to realise that our duty rests first on this House and then to the nation and we are duty-bound to put off this debate until we consult each other and come to debate it as a reasonable House.

With those few words, I beg to support the Motion.

(Applause)

Mr. Speaker: Order! I will have none of that. I hope the Attorney-General was not trying to [Mr. Speaker] "catch my eye" so that he could reply to what was raised by hon. Muite, because I have already said that according to the rule, we restrict ourselves to the matter whether we should adjourn or we should not adjourn. The Chair will appreciate whatever decision the House makes and also the presentation by the Attorney-General on his side of the story. I can assure you that the Chair will give the Attorney-General the earliest opportunity to make his presentation. For now, I think, I will simply put the Question.

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. You are making a ruling and at the same time I saw the Leader of Government Business on his feet. He is violating Standing Order No.83, and he should be sent out!

(Applause)

I am on a point of order under Standing Order No.68 which the Leader of Government Business should read. He should be seated and everybody must be heard in silence. He was completely out of order to be on his feet when you were communicating. Was that in order and you are about to put the Question?

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Speaker, Sir, if I were actually standing at the time the Speaker was standing, I must admit that, that is out of order. But I was not aware. But I stand on a point of order because the Leader of the Opposition said that consultation should take place on this matter of the Bill, in the event of a problem. But I want to draw the attention of this House, to the fact that at no time did the Leader of the Opposition contact me for consultation. If, indeed, the intention is to adjourn the debate temporarily to allow for consultations and to check on the legalities, the Government side has no objection.

Mr. Speaker: Order! Discipline shall return to this House again.

(Question put and agreed to)

BILL

Second Reading

THE AUCTIONEERS BILL

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

(Resumption of Debate interrupted on 13.6.96)

Mr. Speaker: Order! It was only the debate on the National Intelligence Services Bill that was adjourned. The House is not adjourned. Total order must be maintained and we have now gone to the Next Order, which is the Auctioneers Bill. Mr. Wetangula was on the Floor. Order!

(Loud consultations)

We cannot run a Parliament like this! There must be some order. Could we now listen to Mr. Wetangula? Those who are very anxious to consult, please, you are at liberty to very quietly move out of the Chamber and go and consult out there as loudly as you require. But if you choose to remain in the Chamber, do not disrupt the Business of the House. Proceed, Mr. Wetangula!

Mr. Wetangula: Thank you, Mr. Speaker, Sir, for allowing me to wind up my contribution to the Auctioneers Bill. I want to point out to the Attorney-General who seconded the Bill, that the following Clauses should be looked at with the possibility of amendment when he comes back to reply.

Under Clause 7, the Secretary to the Board should be elected by the Board members and not appointed by the Chief Justice.

On Clause 3, the representatives of the auctioneers under Clause 3 (1) (e) should be elected by the auctioneers themselves and not appointed by the Chief Justice who in any case is not in a position to know the auctioneers properly and know whether they should be able to serve on the Board or not.

On Clause 14 (3) and (4), auctioneers are required to give or furnish a security in the form of money as an assurance for faithful discharge of duty. My suggestion to the Attorney-General is that, all the auctioneers need to do is to take out an indemnity cover from a credible insurance that will cover their liability.

Clause 14 (7) is likely to be abused if left as it is. It says:-

"In addition to the conditions set out in the section, the Board may impose any conditions it may consider necessary on a licence and may add to, substitute or vary such conditions"

Mr. Speaker, Sir, the variations, substitutions and additions ought to be set out to avoid abuse.

[Mr. Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, Clause 15(1) reads as follows:-

"A licensed auctioneer who -

- (a) carries on business as a sole proprietor; or
- (b) is the sole surviving partner in a firm of auctioneers shall, within ninety 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 the revocation of his license."

This is one Clause that is not only important to auctioneers, but also to other professions as well. There are many cases where professionals, particularly, those proprietors of firms abruptly die and leave their clients high and dry without anybody to administer their firms. This is one Clause on which I must congratulate the Attorney-General for bringing it up, but also urge him that it should find its way into the Advocates Act where a sole proprietor must, as a legal requirement, nominate a person or persons or a firm that will run their business in the event of a sudden death. I say this because we have a lot of people who have sought professional services from lawyers, doctors and all other professionals who suffer immense losses whenever these professionals suddenly die. I think this is a very positive step in protecting the public in the event of eventualities. This Clause, going hand in hand with the requirements for insurance cover for the professionals, will be very, very helpful in enhancing the protection of the consumer of professional services, be they auctioneer services, legal services or doctors services.

On Clause 17(2), where the Board has refused to grant a licence we must impose a time limit within which it has to inform the affected persons. The

Attorney-General should look into that.

Clause 18(6), I emphasized this last time that in a country where the population largely literate, it does not help members of the public to have a provision of advertisement through the *Kenya Gazette*. I urge the Attorney-General to take the cue of the recent Bill we passed on Physical Planners that the publication should be in the *Kenya Gazette*, local dailies both in English and Kiswahili, and has to be posted at the chiefs barazas so that it can reach the common man.

I also urge the Attorney-General to look at Clause 20(1) (a) and (b) and find a way of containing possible abuse of power by the police who may break into people's private residences without reasonable cause.

Again, I want to urge the Attorney-General to take the cue of the Physical Planners Bill such that any form of advertisement should be in the *Kenya Gazette*, local dailies both in English and Kiswahili, and must be published through the chiefs barazas or through notices at the chiefs barazas.

I have spoken long enough on this Bill and I hope that my views will be taken into account by the Attorney-General in replying. I just want to wind up by once again appealing to all auctioneers, both in practice and those intending to be auctioneers, to treat the people they deal with with a human touch. With those few remarks, I beg to support the Bill.

Mr. Nthenge: Mr. Temporary Deputy Speaker, Sir, I am very delighted to have a chance to speak on this Bill. I do not want to take long, but just to make a few observations.

Nobody says that those who do not pay people's debts should be left alone, but they can be dealt with gently. The habit of picking anybody in the street because he has a big tummy and making him an auctioneer is wrong. An auctioneer is an officer of the court. He is there to execute a decision that has been made by a court. Our experience is that you will find that auctioneers are more or less robbers. They are rough people and that is not what they should be. They should be gentlemen. They should carry out their duties gently without roughing up people. It is obvious that a good number of firms have been employing thugs to terrorise debtors. These debtors already have problems of clearing their debts yet they are terrorised. As a result of this manhandling, such people can become angered and cause harm. Therefore, to avoid all this, I would like this wise House to legislate that we get auctioneers who behave gently. They should execute court orders like people who work for courts because courts show a lot of gentility. Even when they put one in jail they are not rough. When a judgement is passed that one's goods should be attached, they still do it gently.

Similarly, the auctioneers should do their work with gentility. We should not just allow any applicant to be an auctioneer. I would be happy if I saw this auctioneering business done by retired advocates. Such advocates can run auctioneering firms and show these other auctioneers how to behave. This is a career that should be performed by people who are respected in society. I am suggesting that there should be a committee to probe all auctioneers and see if they are people of integrity and people who are known in some circles as "senior citizens".

Mr. Temporary Deputy Speaker, Sir, when a bad thing is done well, it is better than even a good thing done badly. So, I want to see gentility in this exercise.

People with some experience, and people who have been connected with courts do retire and others resign. Those kind of people are the ones that I am visualising. I am visualizing well-educated and well-mannered people. We have many people like those now. It is no longer the time when Kenya was short of manpower. We are very rich now. We have all sorts of well-educated people. There are young people who will work under the auctioneers whom they will respect, and who will tell them not to be rough. Even if they are coming to attach my goods and they are very gentle, I will not also be rough.

The other day, I had the experience of some very rough auctioneers. We, the six founders of the Forum for the Restoration of Democracy (FORD) in the early days left some debts unpaid because some people went to organisations and borrowed money on our behalf, without our knowledge or the party's knowledge. Tempers grew very high and yet we did not know. But when it was brought to our attention, we told our bankers, Barclays Bank to pay the people because we accepted that they gave goods which were for the original FORD.

Somehow, an auctioneer became very rough and went to attach my car, hon. Shikuku's car and the old retired general, Mr. Gachoka. It was in the streets and thank God I was near there. The ordinary boys almost beat the auctioneers because they were rough. Finally, we had to cool down the boys. All this happened because the auctioneers did not behave gently.

All I am saying is that it is good to attach, but it should be done gently. To be able to get people who are gentlemen, you have to check first. There are people who are born rough by nature. Even the owners of auctioneering firms must be told not to employ rough boys. This is because if they want to attach hon. Shikuku's car, they can talk to him nicely and hon. Shikuku will let the car go and pay the debt. Hon. Nthenge will do the same.

We had a lot of money banked at Barclays Bank and we only authorised the bank to pay. It was not our intention not to pay. But because of the splits in FORD and the deaths of the late hon. Muliro and Odinga, we had all these problems. In fact, as I talk now, some rough auctioneers came to my shop the other day, for another little debt of about Kshs54,000. They said that among the six original founder members of FORD, they can only locate hon. Nthenge's shop. So, they went to attach my goods. They were a bit rough and broke a few things. Anyway, a friend of mine had the money and knew that I am not a man of debts and paid Kshs85,000 cash from his bank. He had to wait for me to come back to make good his debt. Up to now, as I speak, the auctioneers have never bothered to see me. The matter is not yet squared. The problem is still with lawyers and the banks, here and there. I understand that the money of the original FORD is in the courts. So, whoever has a claim can go and claim.

So, what I am trying to get at is: I want the courts to be gentle and another arm of the courts, that is auctioneers to be also gentle. They must know that every mwananchi can get into difficulties.

I would like to say that this Bill should improve the situation, so that people who may have forgotten to pay, are given a chance. This is because there are some people whose money may be far away or the signatories may not be available due to sickness or death. They should realise that finance has to be organised. This should ensure gentility because we do not have to be rough.

We have so many educated boys in the streets. We have even university graduates who have finished a year looking for jobs. These are the kind of people who can do these jobs. They can work together with the lawyers to make sure that even if one has to be attached, it is done with a lot of gentility.

I support that this Bill should be looked at by our legal brains. This House is very lucky because it has very many lawyers. It can form a small committee of four or five advocates who are hon. Members of Parliament and make it a perfect Bill, so that when we pass it, it will not interfere with those we have the honour to represent. They will be happy to see a good thing happen. I never think of the House, because I know there are some people who think of parties, that is the Government side and the Opposition. Here, we are the nation of Kenya, and we are voted in by the nation of Kenya. These divisions and---isms, whether you believe in certain methods of ruling and the other does not, and so on, does not worry the ordinary man. The ordinary man wants, first of all, to have shelter, food, medical facilities, peace and truth. Once we supply all these to the people, then you can have the cars, aeroplanes, big houses and so forth. All that 90 per cent of ordinary Kenyans want is what I have just said. Give them shelter, food, gentility and tell them the truth and they will be the best people. Unfortunately, we sometimes confuse them for nothing. Whether you are from KANU, DP or FORD (A), we should always remember that we are all from one nation. When a Bill like this comes, we should know that we are together. This is because it is for the good of those who lent, to be able to get back their money and it is for the good of those who borrowed and a misfortune befell them. It offers a way for them to solve their problems. This is because when you cannot sell your goods to pay somebody, what do you do? You let it be auctioned. So, the whole thing should go well so that we can satisfy those who have given us the honour to represent them in this National Assembly, which is an honourable House. Once we do things honourably, the people will continue giving us great support.

With those few remarks, I beg to propose that we should have a committee to look at the Bill and perfect it, and we shall pass it happily. Thank you.

QUORUM

Mr. Shikuku: 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)

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ndotto): Order, hon. Members! Since we cannot raise the quorum, I am afraid we have to adjourn. The House is, therefore, adjourned until next Tuesday, 23rd July, 1996, at 2.30 pm.

The House rose at 5.25 p.m.